

DEVELOPMENT AGREEMENT

by and between

THE CITY OF MADISON

and

DAVIDSON HOMES, LLC

Dated: _____

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this _____ day of _____, 2024 (the "Effective Date"), by and between THE CITY OF MADISON, Alabama, a municipal corporation organized under the laws of the State of Alabama (the "City"), DAVIDSON HOMES, LLC, an Alabama limited liability company, and its respective successors and assigns (both "Developer" and "Builder" and collectively the "Company"), and Second Wind Land Company, LLC, an Alabama limited liability company, (collectively, referred to as "Seller," who currently has an underlying contract to purchase from the current owner, Lilyland Holdings, LLC). The City, the Company, and Seller are herein referred to collectively from time to time as the "parties" and individually, from time to time, as a "party."

WITNESSETH

WHEREAS, the Company has an agreement to purchase from Second Wind Land Company, LLC through an underlying contract with the current owner, Lilyland Holdings, LLC that certain tract of real property, being and lying within the City of Madison, Limestone County, Alabama, consisting of approximately 89.27 acres, more or less, and being more particularly described in Exhibit 'A' attached hereto (the "Property" or "Development Site"), upon which the Company plans to design, develop, and construct a multi-phase single-family residential subdivision to be developed and constructed in general conformity with Exhibit "B" attached hereto and to be known as "Madison Heights" (the "Subdivision" or "Development"); and

WHEREAS, the Planning Commission, in accordance with the West Side Master Plan, and after proper and timely notice and public hearing, has recommended approval to rezone the Property from the Agricultural (AG) zoning designation to the residential cluster zoning (RC-2) designation; and

WHEREAS, the Company plans to construct the Development in multiple phases, to contain no more than 198 residential lots, and to set aside a minimum of twenty percent (20%) of the Subdivision for park land, walking trails, and/or green space accessible to the public; and

WHEREAS, the parties acknowledge that residential subdivision development within the City of Madison, such as the Subdivision described in this Agreement, affects the ability of the City and the Madison City School District to provide adequate capacity and municipal services, and both parties desire to pace the development of the Subdivision in order to allow time for the City and the School District to provide adequate capacity and services; and

WHEREAS, the parties agree that the phasing of the Development and the set aside of the Green Space described in this Agreement will promote the health, safety, and welfare of the City and its residents;

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. DEVELOPMENT OF PROPERTY

Section 1.1 The Development.

(a) The Development shall consist of approximately 89.27 acres of real property, more or less, said Property being more particularly described in Exhibit A attached hereto, which will be subdivided and developed into a residential subdivision for single-family detached homes. The Development is expected to contain no more than 198 residential lots (each a "Lot," collectively, the "Lots").

(b) Company shall set aside and preserve a minimum of 20 percent (20%) of the Development Site for park use, walking trails, general green space, or any combination thereof ("Green Space" as depicted on Exhibit B), with public access provided to all Green Space areas except the perimeter buffer areas. When Developer records the first final plat for the Development, Company shall provide a public access easement or conservation easement for the Green Space in form and content acceptable to the City. In coordination with the City, Company shall develop or improve the walking trails and Green Space within each phase of the Development before the next phase of the Development begins.

Section 1.2 Plans and Specifications for Development Site. The Company shall cause to be prepared, at its sole cost and expense, plans, bid quantities and specifications for the development and construction of the Development Site (the "Preliminary Plans and Specifications") to be in general accordance with Exhibit B attached hereto and incorporated herein. The Company shall submit the Preliminary Plans and Specifications to the Planning Commission for approval, which approval process of fully acceptable construction plans shall be conducted and occur in general accordance with the Planning Commission's standard and typical approval process. If the Preliminary Plans and Specifications are not acceptable to the City, the City shall notify the Company in writing of those matters or items that are not acceptable, and the Company shall revise and modify the same, at its sole cost and expense, until definitive plans and specifications can be agreed upon between the Parties and delivered to the City (the definitive plans and specifications being herein called the "Final Improvement Plans and Specifications").

Section 1.3 Multiple Phases Development Timeline. The Company hereby covenants and agrees to design, develop, and construct the Development in accordance with the terms and provisions contained in this Agreement and in accordance with the Final Improvement Plans and Specifications.

(a) Development Phases. The Company shall develop the Property in no less than three (3) distinct phases (each a "phase," together, the "phases"), with no more than one phase to be submitted for preliminary Planning Commission approval within an 18-month period. The Company will develop the number of Lots in each phase in substantial conformity with the projected phasing schedule provided in Exhibit B attached hereto and incorporated herein (the "Phasing Schedule"). The Company shall not develop more Lots in a given 18-month period than provided by the Phasing Schedule, but the Company may develop fewer Lots in a given 18-month period than permitted by the Phasing Schedule. The Final Improvement Plans and Specifications will determine the

configuration, timing, and maximum number of Lots permitted in each phase. Company shall cause its successors in interest to Lots within the Development to comply with the Phasing Schedule.

(b) Commencement of Development. Pursuant to the Phasing Schedule, the Company will cause commencement of development of the Lots to begin in November 2024 and shall not apply for certificates of occupancy until 2026.

(c) Construction Activities.

(i) All construction activities of the Company regarding any portion or phase of the Development shall be conducted in compliance with all applicable laws, ordinances, rules, and regulations of all governmental authorities, including, without limitation, all applicable licenses, permits, building codes, fire codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster, and environmental protection laws. The Company shall cause any architect, general contractor, subcontractor, or other business performing any work in connection with the construction of the proposed Development to obtain all necessary permits, licenses, and approvals to construct the same. Company acknowledges that the City will not waive any fees, access fees, or related expenses for any permits, licenses or approvals that must be obtained from the City or any other governmental authority in connection with the construction or operation of the proposed Development.

(ii) The Company, and any affiliate thereof involved with the Development, shall maintain its good standing within the City and shall at all times during the term of this Agreement be in compliance with all applicable laws, ordinances, rules and regulations of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City and all local government entities.

(iii) Company agrees and acknowledges that it shall pay any impact fees that the City may adopt by ordinance, which apply to the construction of the Development and all other similar residential developments, during the course of the construction of the Development.

Section 1.4 Approvals & Coordination with Comprehensive Plans. The City agrees to use reasonable good faith efforts to facilitate the processing of city approvals necessary for the development or construction of the Development, it being understood that nothing in this Section or Agreement is, or shall be deemed to be, an agreement by the City to waive any necessary city approvals required in connection to the Development. Furthermore, the City agrees to use reasonable good faith efforts to develop infrastructure improvements bordering the development in accordance with the recommendations of the adopted comprehensive plans of the City.

ARTICLE II. TERM

The term of this Agreement will begin on the Effective Date, and the Agreement will remain in effect for seven (7) years.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the City.

(a) The execution and delivery of this Agreement by the City have been duly authorized by the City Council of the City.

(b) The City has all right, power, and authority to enter into the transactions contemplated by this Agreement and to perform its obligations hereunder.

Section 3.2 Representations and Warranties of Company.

(a) The execution and delivery of this Agreement by Company has been duly authorized by all necessary action on the part of the governing body of the Company and its members and managers, if any.

(b) Company has all necessary power and authority to enter into the transactions contemplated by this Agreement and to perform its obligations hereunder.

ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES

Section 4.1 Events of Default by the City.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "City Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) Failure by the City to perform or observe its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an

extension of such period prior to its expiration, or (B) during such 30-day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of a Force Majeure Event, as defined in Section 4.3, at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent.

(b) If a City Event of Default exists, the sole and exclusive remedy of the Company shall be mandamus or specific performance. The Company shall not be entitled to any other damages whatsoever, including, without limitation, incidental, consequential, or punitive damages, whether arising at law, in equity, or otherwise.

Section 4.2 Events of Default by the Company.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "Company Event of Default"), whatever the reason for such event and whether it shall be voluntary or involuntary or be affected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body:

(i) at any time prior to the completion by the Company of its obligations hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement, or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of 30 calendar days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such 30-day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (C) the Company is by reason of a Force Majeure Event, as defined in Section 4.3, at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent.

(b) In addition to such other rights or remedies available to the City hereunder including, without limitation, those set forth and described in Article III hereof, if a Company Event of Default exists, the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Company herein contained. Under no circumstances shall the City be entitled to incidental, consequential, or punitive damages.

Section 4.3 Force Majeure Event. Force Majeure Event means and includes causes which could not have been foreseen or are beyond the reasonable control of a party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, and which are not the result of such party's fault, negligence, or deliberate act. Such causes include but are not restricted to, acts of the public enemy, acts of any government in either its sovereign or proprietary capacity (other than acts taken by the City in accordance with this Agreement), fires, floods, hurricanes, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather).

ARTICLE V. MISCELLANEOUS

Section 5.1 Party Approvals. Any approvals to be delivered by any party hereto shall be by a designated and authorized individual or officer for such purpose.

Section 5.2 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the transactions described herein and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by the party against whom enforcement of any change, modification, or discharge is sought.

Section 5.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute but one and the same agreement.

Section 5.4 Binding Effect; Governing Law. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns. This Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama.

Section 5.5 Notices.

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

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|-------------|--|
| If to City: | The City of Madison Attn: Director of Development Services Planning Department 100 Hughes Road Madison, AL 35758 |
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| | |
|-----------------|--|
| With a Copy to: | The City of Madison Attn: City Attorney 100 Hughes Road Madison, AL 35758 |
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If to Company:

Davidson Homes, LLC

336 James Record Rd SW

Huntsville, AL 35824

If to Seller:

Second Wind Land Company, LLC

2410 L & N Drive, Suite C

Huntsville, AL 35801

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. Any party (as well as the Authority) may change the address for the sending of notifications by providing written notice to the other Party in accordance herewith.

Section 5.6 Liabilities of the City. The Parties agree and acknowledge that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities, and public corporations by the Constitution of the State of Alabama and laws affecting the use and maintenance of public property.

Section 5.7 No Waiver. No consent or waiver, express or implied, by any party hereto or to any breach or default by any other party in the performance by such other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waiver or limit the need for such consent in any other or subsequent instance.

Section 5.8 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be declared invalid or unenforceable and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 5.9 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the City and the Company and their respective permitted successors and assigns.

Section 5.10 Headings. The headings in the Sections in this Agreement are for convenience of reference only and shall not form a part hereof.

Section 5.11 No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest, or obligations hereunder, is intended for the benefit of any other person or third-party.

Section 5.12 Ambiguity. The terms, conditions, and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

Section 5.13 Assignment. Neither party may assign any of its rights or obligations as under this Agreement without the prior written consent of the other party, and such consent may not be unreasonably withheld.

Section 5.14 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

Section 5.15 Entire Agreement. This written Agreement and the Exhibits hereto, contain all the representations and the entire agreement among the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between or among the parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

Section 5.16 Contingencies. This Development Agreement is contingent upon (1) the successful closing of the purchase of the Property by Company, (2) Planning Commission approval of the final plat for re-subdividing the Property necessary to accommodate the development contemplated herein, (3) Approval and publication of Ordinance No. 2024-287 authorizing re-zoning of the Property, and (4) City Council approval of this Agreement.

Section 5.17 Recitals. All recitals in the preamble to this Agreement are incorporated into this Agreement as if fully set out herein.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered on its behalf by its duly authorized officer, on and as of the Effective Date.

CITY OF MADISON, ALABAMA
a municipal corporation

ATTEST:

By: _____
Paul Finley, Mayor

Lisa D. Thomas, City Clerk-Treasurer

STATE OF ALABAMA §
 §
COUNTY OF MADISON §

I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer of the City of Madison, Alabama, respectively, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation, on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2024.

Notary Public

COMPANY: DAVIDSON HOMES, LLC

By: _____

Its: _____

STATE OF ALABAMA §
 §
COUNTY OF MADISON §

I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Davidson Homes, LLC, is signed to the foregoing instrument, and who is known to me, s/he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2024.

Notary Public

SELLER: Second Wind Land Company, LLC, who has an underlying contract to purchase from current owner

By: _____

Its: _____

**STATE OF ALABAMA §
 §
COUNTY OF MADISON §**

I, the undersigned authority, as Notary Public in and for said County in said State, hereby certify that Chadwick M. Anderson, whose name as member of Second Wind Land Company, LLC, is signed to the foregoing instrument, and who is known to me, s/he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 2024.

Notary Public

EXHIBIT "A"
(Legal Description of Property)

EXHIBIT "B"