
DEVELOPMENT AGREEMENT

by and between

THE CITY OF MADISON

and

MCKINLEY HOMES US, LLC, ET AL.

Dated: _____, 2022

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is made and entered into on and as of this ___ day of _____, 2022 (the “Effective Date”), by and between the CITY OF MADISON, a municipal corporation organized under the laws of the State of Alabama (the “City”), and MCKINLEY HOMES US, LLC, a Georgia limited liability company, and its respective successors and assigns (both “Developer” and “Builder” and collectively the “Company”), and M & G HOLDINGS, LLC, an Alabama limited liability company (the “Owner”). The City, the Company, and the Owner 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 Owner that certain tract of real property, being and lying within Madison, Limestone County, Alabama, consisting of approximately 97.85 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 neighborhood mixed use subdivision to be developed and constructed in general conformity with Exhibit “B” attached hereto and to be known as “Madison Farms” or “Madison Farms” (the “Subdivision” or “Development”); and

WHEREAS, the Owner in cooperation with the City and the Developer plans to convey and/or donate approximately 24.25 acres, more or less, to the City of Madison, as further depicted in Exhibit “B” attached hereto, for use as park space, open green space, and/or recreational space accessible to the public (the “Open Space”); and

WHEREAS, the Planning Commission of the City of Madison, in accordance with the West Side Master Plan and after proper and timely notice and public hearing, has recommended approval of the Company and the Owner’s request to re-zone the Property from the current Agricultural (AG) zoning designation to the Traditional Neighborhood Development (TND) zoning designation; and

WHEREAS, the Company plans to construct the Development in multiple phases containing a mixture of commercial and retail space, community facilities, and a variety of for-sale residential housing types, including 84 stacked flat units, 135 townhome units, and 163 single-family detached residential lots, with approximately twenty-six point eight percent (26.8%) of the Subdivision to be set aside for Open Space; 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 the 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 allocation of the Open 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 97.85 acres of real property, said Property being more particularly described in Exhibit "A" attached hereto and as shown in Exhibit "B" hereto, which will be subdivided and developed into a neighborhood mixed use subdivision, comprised of three distinct areas: (1) the neighborhood center area (the "Neighborhood Center") containing approximately 33,000 square feet of commercial and retail space and other designated neighborhood/community space; (2) a mixed residential area (the "Mixed Residential Area") containing approximately 84 stacked flat units and 135 townhomes (each a "Unit," collectively, the "Units"); and (3) the neighborhood edge area (the "Neighborhood Edge") containing approximately 163 detached single family residential lots (each a "Lot," collectively, the "Lots").

(b) The Owner shall convey and/or donate to the City approximately 24.25 acres of Open Space, which is equivalent to approximately twenty-four point eight percent (24.8%) of the Development Site, for public park use, walking trails, green space, or any combination thereof ("Open Space" as depicted on Exhibit "B"). The Owner shall provide a statutory warranty deed for the Open Space in form and content reasonably acceptable to the City. The Company shall set aside and preserve public access to the Open Space. When the Company records the first final plat for the Development, the Company shall provide a public access easement to the Open Space designated by that final plat, in form and content acceptable to the City.

(c) The Company shall dedicate public right-of-way along the south margin of the existing public right-of-way for Huntsville-Browns Ferry Road as depicted in Exhibit "B" such that twenty (20) feet of right-of-way is provided from the edge of the existing right-of-way. Such dedication shall occur either with the recordation of the first final plat recorded for the Subdivision or by statutory warranty deed in form and content reasonably acceptable to the City. The Company shall dedicate public right-of-way for the main entrance and exit road connecting the Subdivision to Huntsville-Browns Ferry Road (the "Full Access Entrance/Exit") as depicted in Exhibit "B" hereto with the recordation of the first final plat. Should donation of the Open Space per Section 1.1 (e) occur prior to dedication of the Full Access Entrance/Exit, a public access easement shall be granted to the City from Huntsville-Browns Ferry Road to the Open Space in the approximate location of the future Full Access

Entrance/Exit until such time as dedication of the Full Access Entrance/Exit is completed. Upon the City's acceptance of any right-of-way from the Developer, whether by deed or plat dedication, as well as the Developer's presentation of an appraisal for the right-of-way to the City, the City shall provide to the Developer a letter acknowledging the donation pursuant to the requirements of the Internal Revenue Code.

(d) The parties acknowledge that the City's West Side Master Plan applies to the Development and that said plan calls for the preservation of tree cover and open space, and the establishment and expansion of greenway and trail networks. Accordingly, the Developer has set aside and will preserve fifty-foot (50') wide buffers along the eastern and southern boundaries of the Neighborhood Edge and a thirty-foot (30') wide buffer along the western boundary of the Neighborhood Edge (the "Buffers"). The Company agrees to cooperate with the City to develop and/or improve the Buffers with walking trails or greenways if requested by the City. Additionally, where practical, the Company agrees to clear trees only as may be reasonably necessary to provide adequate grading and drainage, space for installation of the single-family detached homes on each Lot, and infrastructure improvements, including but not limited to, public roadways, sanitary sewer facilities, detention ponds, electric utility conduits, telecommunication conduits, natural gas supply lines, and storm water sewer facilities. Any healthy, mature trees proposed for removal within the Buffers for purposes other than creation of a walkway or greenway shall be replaced at a minimum ratio of two trees planted for every healthy tree removed. Such trees shall be identified on a mapped tree inventory prepared by a licensed arborist or qualified equivalent that is submitted to the City Planning Department prior to or in conjunction with a preliminary plat submittal. The replacement trees may be located throughout the project and shall be in addition to other trees required by City ordinances. Replacement trees shall be no smaller than two inches diameter at basilar area. The parties acknowledge that two-for-one tree mitigation ratio may not be species specific for every tree removed. For the purpose of this Agreement, mature trees are defined as any tree with a diameter at basilar area of 12 inches or greater, unless otherwise indicated by a licensed arborist for a specific tree species. Dead trees or trees showing advanced stages or decay will not be inventoried and thereby not subject to mitigation.

(e) The Owner will convey and/or donate the Open Space to the City on or within one (1) year from its Closing with the Developer, or at such earlier date and time as may be requested by the Owner, but no later than June 30, 2024. Upon the City's acceptance of the Open Space, by deed, as well as the Owner's presentation of an appraisal for said Open Space, the City shall provide to the Owner a letter acknowledging the donation pursuant to the requirements of the Internal Revenue Code. Upon the receipt of the Open Space by the City, and the subsequent design of any future park, the City will consider the use and surrounding residential neighborhoods. Additionally, the City will limit the use of any public events or youth sports activities within any future park consistent with standard operating procedures for City parks and will use low spillage lighting within the Open Space in accordance with the *Zoning Ordinance of the City of Madison* and will design future public access, lighting, and parking so as to limit light spillage and maximize compatibility with the adjoining residential areas.

(f) Homeowners' Association & Covenants, Conditions, and Restrictions:

(i) Developer shall establish and maintain a Homeowners' Association ("HOA"), which, at a minimum, shall regulate and provide for maintenance of common areas.

(ii) The Developer and the HOA shall promulgate, institute, record and enforce Development Covenants, Conditions, and Restrictions (the "CC&Rs") which shall, at a minimum, incorporate applicable requirements of Section 1.1 of this Agreement. Developer shall submit the final draft of the CC&Rs to the City of Madison Planning Department for review, as well as the City of Madison City Attorney, for approval as to form no later than sixty (60) days prior to approval of the first final plat. The City shall not unreasonably withhold, condition, or delay its approval of the CC&Rs. In the event the City of Madison Planning Department or City Attorney fails to approve or disapprove of the CC&Rs within thirty (30) days after submittal, the CC&Rs shall be deemed to be approved in the form submitted by Developer.

(iii) Developer agrees that it shall record the CC&Rs in the Probate Office of Limestone County, Alabama, before it applies for certificates of occupancy for any Units in Phase 1, and Developer acknowledges that City will not issue any certificates of occupancy for any Units within the Subdivision until the CC&Rs are properly approved and recorded.

(g) Prior to layout plat approval, Developer shall submit a wetlands delineation to the Planning and Engineering Departments in a form and substance acceptable to said departments. The parties acknowledge that said delineation may result in necessary changes to Developer's concept plan, and the parties agree to cooperate on any required concept plan updates.

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 as follows:

(a) Mixed Residential Area; Townhome Development Phases. The Company shall develop 135 townhome Units in two (2) distinct phases (each a “townhome phase” together the “townhome phases”), with construction of the first townhome phase to begin in 2023, and construction of the second phase to begin no earlier than the last quarter of 2024. The first townhome phase shall consist of approximately 66 townhome Units and the second townhome phase shall consist of approximately 69 townhome Units. The Company will develop the number of townhome Units in each townhome phase in substantial conformity with the project phasing plan provided in Exhibit “C” attached hereto and incorporated herein incorporated herein (the “Townhome Phasing Plan”). Developer acknowledges that City will not issue building permits for the development of townhome Units that are not within the then current phase or previous townhome phase. However, Developer may submit building permit applications for townhome Units in a future townhome phase prior to any future phase. In its sole and absolute discretion, the City may approve more townhome Units than is authorized in the Townhome Phasing Plan. The Company shall cause its successors in interest to townhome Units within the Development to comply with the Townhome Phasing Plan. It is understood that the stacked flat Units are not included in the Townhome Phasing Plan.

(b) Neighborhood Edge; Lot 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 developed within a calendar year. The construction of the first phase will begin in 2023, and construction on the second phase to begin no earlier than the last quarter of 2024. The first phase shall consist of approximately 55 Lots, the second phase shall consist of approximately 55 Lots, and the third phase shall consist of approximately 55 Lots. The Company will develop the number of Lots in each phase in substantial conformity with the projected phasing plan provided in Exhibit “D” attached hereto and incorporated herein (the “Lot Phasing Plan”). Developer acknowledges that City will not issue building permits for the development of Lots that are not within the then current phase or previous phases. However, Developer may submit building permit applications for Lots in a future phase prior to any future phase(s). In its sole and absolute discretion, the City may approve more Lots than is authorized in the Lot Phasing Plan. The Company shall cause its successors in interest to Lots within the Development to comply with the Lot Phasing Plan.

(c) Commercial Development Site Plans. The Company may submit the site plans for the commercial retail space to the City for approval at any time but shall submit them no later than on or within 60 days from the issuance of the 100th Certificate of Occupancy.

(d) Commencement of Development. Pursuant to the Phasing Plan, the Company will cause commencement of development of the townhome Units and Lots to begin in the year 2023 and shall not apply for certificates of occupancy prior to March 1, 2024.

(e) 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. However, in the event such impact fees are adopted by the City, the Company shall be entitled to receive a credit for the donation of the Open Space to be applied against any impact fees assessed on the Development. Additionally, those Units and Lots where a building permit was issued prior to the adoption of the City ordinance shall be exempt from any impact fee.

Section 1.4 Approvals. The City agrees to use reasonable good faith efforts to facilitate the processing of city approvals and variances 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.

ARTICLE II

TERM

The term of this Agreement will begin on the Effective Date, and the Agreement will remain in effect until the later of (a) ten (10) years after the Effective Date, or (b) the date that the City issues the final building permit for the last Lot to be developed in the Subdivision.

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 the 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.

(c) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Developer requires any consent of, filing with or approval of, or notice to, or hearing with any Person or entity or other owner of the Developer, as well as any other affiliate of the Developer, and any Governmental Authority, whether domestic or foreign, which has not been obtained.

(d) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Developer, to the knowledge of the Developer, violates, constitutes a default under or a breach of (i) the Developer's corporate organizational documents, (ii) any agreement, instrument, contract, mortgage or indenture to which the Developer is a party or to which the Developer or its assets are subject, or (iii) any judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the Developer or any of its assets.

(e) There is not now pending nor, to the knowledge of the Developer, threatened, any litigation affecting the Developer which questions (i) the validity or organization of the Developer, (ii) the officers of the Developer or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

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) Any failure by the City to perform or observe its agreements or covenants contained in this Agreement, which failure shall have been brought to the attention of the City by written notice thereof from the Company, (A) unless the Company shall agree in writing to extend a period prior to its expiration, or (B) during such 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 3.3, 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.

(c) Attorney's Fees. In the event that either Party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in or arising out of this Agreement, the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

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 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 5.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same agreement. A signed copy of this Agreement delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 5.4 Governing Law. 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:

If to City: The City of Madison
Attn: Mary Beth Broeren, Director of Development Services
100 Hughes Road
Madison, Alabama 35758

With a Copy to: The City of Madison
Attn: Brian Kilgore, City Attorney
100 Hughes Road
Madison, Alabama 35758

If to Company: McKinley Homes US
Attn: Henry Massie & Bill Schmidt
655 Engineering Drive, Suite 208,
Peachtree Corners, GA 30092

With Copy to: Wilmer & Lee P.A.
Attn: Katie Beasley
100 Washington Street
Huntsville, Alabama 35801

If to Owner: M&G Holdings, LLC
Attn: Aaron Mance
2101 Governors Drive SW
Huntsville, Alabama 35805

With a Copy to: Harrison & Gammons, PC
Attn: Matt Harrison
2430 L&N Drive
Huntsville, Alabama 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 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 waive or limit the need for such consent in any other or subsequent instance.

Section 5.8 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

Section 5.9 No Partnership or Joint Venture. The parties specifically acknowledge that neither of the Parties is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among any two or more of the Parties, or cause them to be considered joint venturers or members of any joint enterprise.

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 not intended and shall not be construed to create any third-party beneficiary rights in any person who is not a party or a permitted assignee or transferee; and nothing in this Agreement shall limit or waive any rights any one or more of the parties may have or acquire against any third person with respect to the terms, covenants, or conditions of this Agreement.

Section 5.12 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arms' 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, transfer, or delegate any or all of its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving corporation), operation of law, or any other manner, without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section 5.13 shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations under this Agreement.

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 Contingencies. This Development Agreement is contingent upon (1) the successful closing of the purchase of the Property by Company, (2) Planning Commission approval the layout plat of the Property necessary to accommodate the development contemplated herein, (3) Approval and publication of an ordinance approving and authorizing re-zoning of the Property, and (4) City Council approval of this Agreement.

Section 5.16 Time of the Essence. Time shall be of the essence in this Agreement. Material time provisions in this Agreement include any references to dates or times, as well as the Phasing Schedule.

Section 5.17 Further Assurances. Each of the Parties shall, and shall cause their respective affiliates, successors, and assigns to execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of and transactions provided for in this Agreement.

Section 5.18 Recitals. All recitals in the preamble to this Agreement are incorporated into this Agreement as if fully set out herein.

Section 5.19 Counsel Acknowledgement; Conflict Waiver. The Parties acknowledge that the Developer's counsel, Katherine Amos Beasley ("Counsel") of Wilmer & Lee. P.A. (the "Firm") prepared this Agreement on behalf of and in the course of Counsel's representation of Developer. Other members of the Firm currently represent the City in unrelated eminent domain issues and other real estate matters. The potential conflict of interest concerning the rendition of legal services to both Developer and the City has been disclosed to the parties. For purposes of this Agreement, Counsel represents the Developer's interest and no others. All conflicts of interest due to Counsel's or the Firm's representation of Developer and the Firm's representation of the City in unrelated legal matters are hereby waived by the Parties.

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

By: _____
Paul Finley, Mayor

Attest:

By: _____
Lisa Thomas
City Clerk-Treasurer

STATE OF ALABAMA §
 §
COUNTY OF MADISON §

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, 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.

Given under my hand and official seal this ____ day of _____, 2022.

Notary Public
My Commission expires: _____

COMPANY:

MCKINLEY HOMES US, LLC, a Georgia limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____ §

§

COUNTY OF _____ §

I, the undersigned authority, a Notary Public in and for the said County in said State, hereby certify that _____, whose name as _____ of McKinley Homes US, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this the _____ day of _____ 2022.

NOTARY PUBLIC

My Commission expires: _____

OWNER:

M & G HOLDINGS, LLC

By: Trunk Bay Holdings, LLC, its
Member

By: _____
Name: Aaron Mance
Its: Member

STATE OF ALABAMA §
 §
COUNTY OF MADISON §

I, the undersigned authority, a Notary Public in and for the said County in said State, hereby certify that Aaron Mance whose name as Member of Trunk Bay Holdings, LLC, in its capacity as Member of M & G HOLDINGS, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Member, and with full authority, executed the same voluntarily for and as the act of said entity in its representative capacity.

Given under my hand this the _____ day of _____ 2022.

NOTARY PUBLIC
My Commission expires: _____

EXHIBIT "A"
SUBJECT PROPERTY DESCRIPTION

STATE OF ALABAMA
COUNTY OF MADISON

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 4 SOUTH, RANGE 3 SOUTH OF THE HUNTSVILLE MERIDIAN, LIMESTONE COUNTY, ALABAMA; THENCE, SOUTH 01 DEGREES 15 MINUTES 36 SECONDS WEST, A DISTANCE OF 30.65 FEET TO A 1/2" REBAR SET AND CAPPED "JWK&A CA-1098LS", SAID POINT BEING ON THE SOUTH MARGIN OF HUNTSVILLE – BROWNSFERRY ROAD, A RIGHT OF WAY OF VARYING WIDTH, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY;

THENCE FROM THE POINT OF BEGINNING AND ALONG SAID SOUTH MARGIN OF HUNTSVILLE – BROWNSFERRY ROAD, SOUTH 88 DEGREES 50 MINUTES 53 SECONDS EAST, A DISTANCE OF 405.18 FEET TO A 5/8" REBAR FOUND;

THENCE, SOUTH 88 DEGREES 48 MINUTES 04 SECONDS EAST, A DISTANCE OF 210.29 FEET TO A 5/8" REBAR FOUND;

THENCE, SOUTH 88 DEGREES 49 MINUTES 55 SECONDS EAST, A DISTANCE OF 220.64 FEET TO A 5/8" REBAR FOUND;

THENCE, SOUTH 88 DEGREES 49 MINUTES 55 SECONDS EAST, A DISTANCE OF 529.16 FEET TO A 1/2" REBAR SET AND CAPPED "JWK&A CA-1098LS", SAID POINT BEING THE NORTHWEST CORNER OF THAT PROPERTY DESCRIBED IN VOLUME: 669, PAGE: 38 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, LIMESTONE COUNTY, ALABAMA;

THENCE LEAVING SAID SOUTH MARGIN AND ALONG THE WEST BOUNDARY OF SAID PROPERTY, SOUTH 01 DEGREES 48 MINUTES 36 SECONDS WEST, A DISTANCE OF 275.02 FEET TO A 1/2" REBAR SET AND CAPPED "JWK&A CA-1098LS";

THENCE ALONG THE SOUTH BOUNDARY OF SAID PROPERTY, SOUTH 88 DEGREES 49 MINUTES 55 SECONDS EAST, A DISTANCE OF 283.02 FEET TO A 1/2" REBAR SET AND CAPPED "JWK&A CA-1098LS", SAID POINT BEING LOCATED IN A FENCE;

THENCE ALONG SAID FENCE, SOUTH 01 DEGREES 48 MINUTES 36 SECONDS WEST, A DISTANCE OF 2355.91 FEET TO A CONCRETE MONUMENT FOUND;

THENCE, NORTH 88 DEGREES 56 MINUTES 47 SECONDS WEST, A DISTANCE OF 810.33 FEET TO A RAILROAD SPIKE FOUND;

THENCE, NORTH 88 DEGREES 47 MINUTES 29 SECONDS WEST, A DISTANCE OF 839.69 FEET TO A 5/8" REBAR FOUND;

THENCE, NORTH 01 DEGREES 50 MINUTES 59 SECONDS EAST, A DISTANCE OF 2622.80 FEET TO A 5/8" CAPPED IRON PIN FOUND G.M.C.;

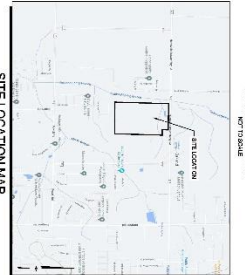
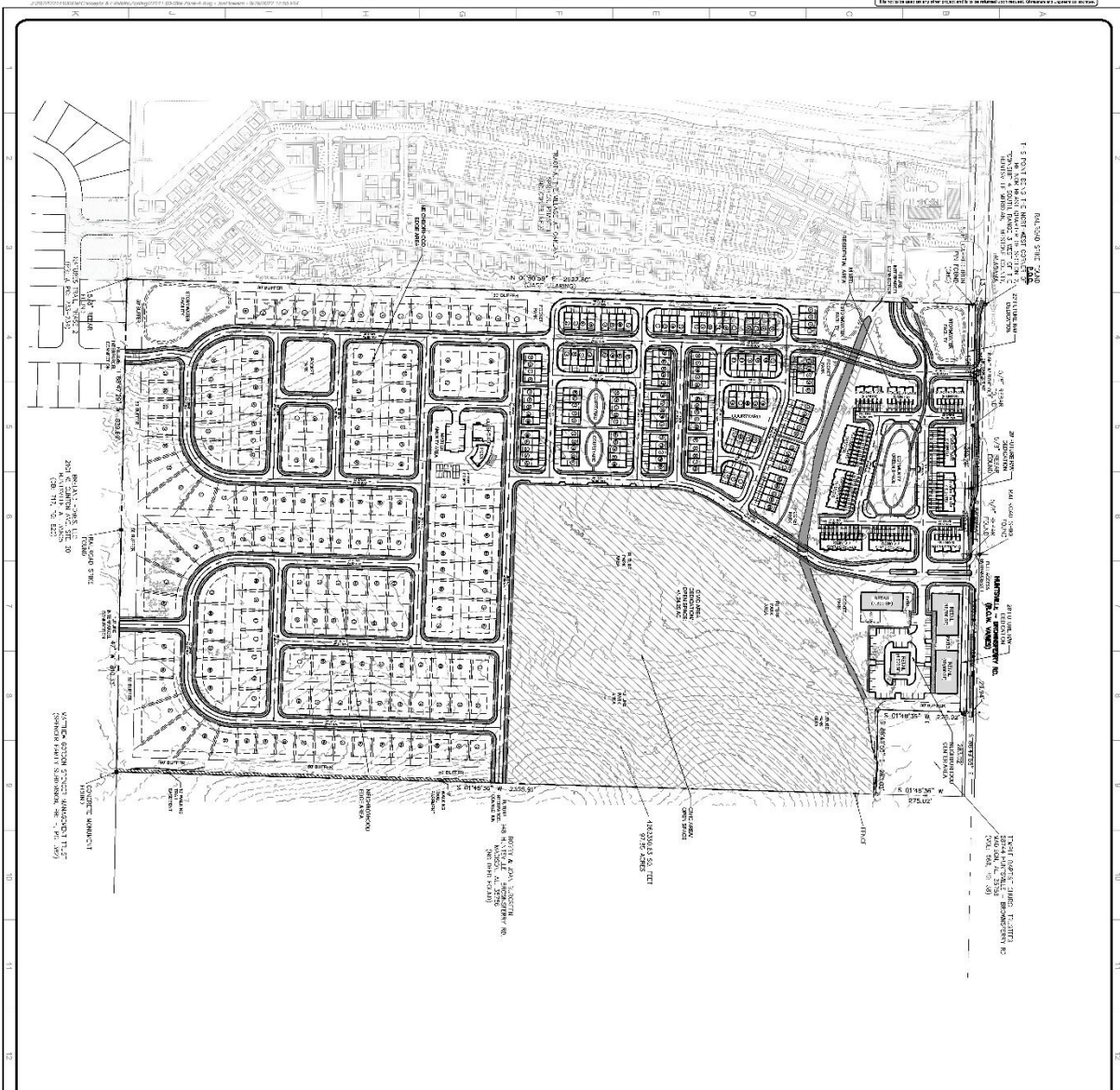
THENCE, NORTH 01 DEGREES 15 MINUTES 36 SECONDS EAST, A DISTANCE OF 9.17 FEET TO THE POINT OF BEGINNING AND CONTAINING 97.85 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS RECORDED OR UNRECORDED FOR PUBLIC UTILITIES AND/OR RIGHTS OF WAY.

THE FOLLOWING DESCRIBED PROPERTY BEING THOSE PROPERTIES DESCRIBED IN RPLY 2001-15430, DEED BOOK 776, PAGE 10, RPLY 2001-15423, DEED BOOK 667, PAGE 412, AND DEED BOOK 2944, PAGE 14 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, LIMESTONE COUNTY, ALABAMA.

EXHIBIT "B"

PRELIMINARY PLANS



GENERAL NOTES:	
1. SEE EXHIBIT "A" FOR THE LOCATION OF THE PROJECT WITHIN THE CITY OF MADISON, ALABAMA.	
2. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF MADISON, ALABAMA ZONING ORDINANCE.	
3. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE MADISON COUNTY SUBDIVISION.	
4. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA SUBDIVISION ACT.	
5. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA CONSTITUTION.	
6. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA DEED ACT.	
7. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EASEMENT ACT.	
8. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EJECTMENT ACT.	
9. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
10. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
11. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
12. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
13. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
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16. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
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18. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
19. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	
20. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE ALABAMA EMBODIMENT ACT.	

24 HOUR CONTACT:
BILL SCHMIDT

MASTER REZONING PLAN

SCALE: 1" = 150'

DATE: 06/07/2022

PROJECT: 2214.1.00

Z1

SHEET

PRELIMINARY

NOT TO BE RELIED UPON FOR CONSTRUCTION

NO.	DATE	BY	DESCRIPTION

MACKEY HOMES

MADISON COUNTY SUBDIVISION

3850, 3890, 4, 7070
HUNTSVILLE BROWNSFERRY ROAD
MADISON, ALABAMA 35758
CITY OF MADISON/
MADISON COUNTY SUBDIVISION

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