

STATE OF ALABAMA)
COUNTY OF MADISON)

PERMISSIVE USE AGREEMENT

This Agreement (“**Agreement**”) made and entered into on this the ____ day of _____, 2023, by and between the **CITY OF MADISON, ALABAMA**, a municipal corporation (“**City**”), and **SS Madison, LLC**, an Alabama limited liability company (“**Owner**”).

WITNESSETH:

WHEREAS, the City has installed and is responsible for operating and maintaining utility and drainage easements (the “**Easements**”) located in The Avenue Madison including specifically that portion of the Easement located on Lot 2 (the “**Tract**”), according to the Plat of The Avenue Madison, in Madison County, Alabama recorded as Document 2021-00018695 in the Office of the Judge of Probate of Madison County, Alabama (the “**Probate Office**”); and

WHEREAS, Owner is the fee simple owner of Tract.

WHEREAS, Owner intends to have a monument sign (“**Sign**”) constructed on the tract, and the Sign will extend into and encroach upon one of the Easements, in the approximate locations identified on attached **Exhibit A**; and

WHEREAS, the Sign could be impacted by excavation of the Easement in connection with the City’s permitted uses;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants given by the parties hereto, it is understood and agreed as follows:

1. Owner agrees, affirm and acknowledge as follows:
 - a. That the proposed Sign will encroach on the Easement located on the Tract and infringe upon the City’s unfettered access to the Easement for the purposes for which it was reserved.
 - b. That City’s acquiescence of Owner’s encroachment and resulting infringement is permissive only and shall not be deemed to affect or diminish the City’s right to the free and unfettered use of the Easement for the purposes for which it was granted, in any fashion at any time, except as otherwise expressly set forth herein.
 - c. Owner acknowledges that the Madison City Code and Zoning Ordinance provide that the City may remove obstructions or signs in easements at will, and that the

City reserves its rights to do so, subject to the notice provisions provided in this Agreement.

- d. If the City or City-authorized franchise holders (“Franchisees”) are required to maintain, repair, or replace utility lines located in the Easement, the City will provide thirty (30) days’ prior written notice to Owner of its need to excavate or otherwise access the Easement. After providing notice consistent with this paragraph, the City may remove or cause to be removed, at Owner’s sole cost and expense, the Improvements which encroach upon the Easement to the minimum extent reasonably necessary to complete the maintenance, repair or replacement within the Easement. After the City or Franchisees complete any such maintenance, repair, or replacement within the Easements, Owner may restore and reconstruct the Sign in accordance with this Agreement and City building and sign permit requirements. Notwithstanding the foregoing, in the event of an emergency, the City or its Franchisees may immediately access the Easement and remove or cause to be removed the Sign, which encroaches upon the Easement, as reasonably necessary to address the emergency, without giving notice, provided that the City shall give such notice to Owner as soon as is reasonably practicable given the circumstances. The determination of whether an emergency exists which requires immediate maintenance, repair or replacement shall be solely within the discretion of the City.
- e. Subject to the terms of Section 1(f) below, the City shall have no obligation to repair or replace any Sign, landscaping, or related improvements so removed or disturbed or to restore the surface of the Easement to the condition that existed prior to removal of the Improvements. To the extent reasonably possible given the circumstances related to any maintenance, repair or replacement, the City will endeavor to minimize interference with the business operations being conducted on the Tract while exercising its rights to use of the Easement and the rights included in this Agreement.
- f. That Owner indemnifies and holds the City harmless from any expense of any kind associated with the permissive use of the Easements or any removal of the Sign, other than damage caused by willful misconduct or gross negligence of the City. Specifically, Owner will hold the City harmless from any expense of any kind associated with utility work that Franchisees undertake without providing notice.
- g. That no additional improvement or encroachment beyond the proposed Sign referenced in this Agreement shall be allowed or permitted without the express, written, additional permission of the City.
- h. Owner acknowledges that this Agreement extends only to use of the Easement by the City and that no agreement, representation or warranty of any kind is made by the City whatsoever regarding any use of the Easement by persons or entities other than the City.

2. Subject to the conditions stated hereinabove, the City grants its limited permission for Owner to construct, operate, and maintain the proposed Sign within the Easement.
3. The provisions of this Agreement shall be covenants running with the land and shall be binding on the parties' successors and assigns.

[Signature pages follow.]

[Signature page to Permissive Use Agreement]

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals on the date and year first above written.

City of Madison, Alabama,
a municipal corporation

ATTEST:

By: _____
Paul Finley, Mayor

Lisa D. Thomas
City Clerk-Treasurer

Date: _____

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 D. Thomas, whose names as Mayor and City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as an act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this the ____ day of _____, 2023.

Notary Public

[Signature page to Permissive Use Agreement]

OWNER:

SS Madison, LLC,
An Alabama limited liability company

By: Charlie O. Sealy, III Company, LLC, its manager

By: *Charlie O. Sealy, III*
Charlie O. Sealy, III, Sole Voting Member

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charlie O. Sealy, III, whose name as Sole Voting Member of Charlie O. Sealy, III Company, LLC, the manager of SS Madison, LLC limited liability company, is signed to the foregoing conveyance and who is or has been made known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, in its capacity as the general partner of the sole member of such limited liability company.

Given under my hand and official seal this the 23rd day of Feb., 2023.

Cindy Brunette
Notary Public

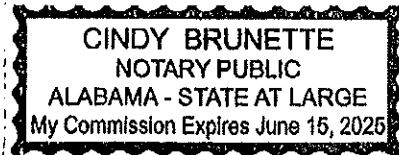


EXHIBIT A
[SIGN PLANS]