

**PRECONSTRUCTION RESERVATION AND ESCROW AGREEMENT FOR
 “CANTERBURY PARK”
 (A Residential Subdivision)**

THIS PRECONSTRUCTION RESERVATION AND ESCROW AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of _____, 2022 (the “**Effective Date**”), by and between **IMG INVESTMENTS, LLC**, an Alabama limited liability company (“**Seller**”), and _____ (“**Purchaser**”).

RECITALS

A. Seller is the owner of that certain real property located in MOBILE, MOBILE COUNTY, ALABAMA (the “**Land**”), which Seller proposes to develop as a residential subdivision consisting of approximately twelve (12) lots and which will be known as **CANTERBURY PARK**, a copy of the preliminary Subdivision Plat is attached hereto as **Exhibit A** (the “**Subdivision**”). This Agreement is specifically contingent upon the completion of the development of the property described on the Subdivision Plat.

B. Seller will subject the Subdivision to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions of the Subdivision (the “**Declaration**”).

C. An association of Owners for the operation of the Common Areas and facilities of the Subdivision may be formed as a not for profit corporation under the Laws of the State of Alabama and shall be proposes to be known as **THE CANTERBURY PARK PROPERTY OWNER’S ASSOCIATION, INC.** (the “**Association**”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency which are hereby acknowledged and confessed, the parties hereto do hereby agree and bind themselves, as follows:

1. RESERVATION OF LOT. Subject to the terms and conditions of this Agreement, Seller hereby agrees to reserve and Purchaser hereby agrees to purchase the lot known as **LOT _____**, in CANTERBURY PARK, a residential subdivision, located in Mobile, Mobile County, Alabama.

2. PURCHASE PRICE, ESCROW MONEY AND TERMS OF PAYMENT. Purchaser agrees to pay the Purchase Price in the following manner:

| | |
|--|---------------------|
| A. Purchase Price of LOT _____ : | \$339,000.00 |
| B. Escrow Money Deposit to be paid upon the execution of this Agreement: | \$20,000.00 |
| C. Balance of Purchase Price to be paid at Closing: | \$ _____ |
| D. TOTAL PURCHASE PRICE: | \$ _____ |

3. MORTGAGE FINANCING. This Agreement is **NOT** subject to the ability of the Purchase to obtain mortgage financing. Purchaser does not require mortgage financing for the purchase of said Lot.

Initials of Purchaser

Initials of Purchaser

4. **ESCROW MONEY DEPOSIT.** The Escrow Money Deposit required to be made to Seller by the Purchaser shall be held by **ANDERS, BOYETT, BRADY & SMITH, P.C. c/o David Brady, Jr.**, in accordance with the terms and conditions of this Agreement until (i) credited to Seller at Closing (as defined by this Agreement); (ii) credited to Seller because of the default by Purchaser under this Agreement to purchase said lot; or (iii) refunded to Purchaser in accordance with the terms of this Agreement. The funds representing the Escrow Money Deposit shall be held in a non-interest bearing trust account by **ANDERS, BOYETT, BRADY & SMITH, P.C.**, Purchaser shall have no right to the Escrow Money Deposit and no right to any benefits accruing from the Escrow Money Deposit except the right to receive a refund of the Escrow Money Deposit in accordance with the express terms of this Agreement.

5. **DISCLOSURE.** Purchaser acknowledges that said lot will be subject to the following (the collectively, the "**Property Documents**"):

- i. DECLARATION OF COVENANTS AND RESTRICTIONS (the "**Declaration**");
- ii. PLAT OF SUBDIVISION PROPERTY;
- iii. PLANNED UNIT DEVELOPMENT;
- iv. ARTICLES OF INCORPORATION OF THE ASSOCIATION;
- v. BY-LAWS OF THE ASSOCIATION;
- vi. PROJECTED OPERATING BUDGET FOR THE ASSOCIATION;
- vii. RULES, REGULATIONS AND ARCHITECTURAL GUIDELINES; AND THIS AGREEMENT.

6. **RIGHT OF TERMINATION.** Seller agrees to complete the construction of the infrastructure improvements in the Subdivision within eighteen (18) months of the Effective Date, subject to events of Force Majeure. The Subdivision shall be deemed complete upon the substantial completion of the construction of the infrastructure improvements. The substantial completion of the infrastructure improvements shall be evidenced by certification by the engineer retained by the Seller that the contemplated infrastructure improvements are substantially complete. Seller shall have the right to terminate this Agreement, at the election of Seller, in the event of the inability of the Seller to complete the purchase of the Land or complete the construction of the infrastructure improvements for the Subdivision and obtain the certification from the engineer as provided in this Paragraph 6 or as the result of the refusal of any governmental entity to issue any approval, permit or license necessary to the completion of the construction of the infrastructure improvements for the Subdivision or the withdrawal by any such governmental entity of any such approval, permit or license, the filing of any legal proceedings against the Seller challenging the right of Seller to commence or complete construction or the imposition by any governmental authority of any act, regulation, rule, law or ordinance that would prohibit Seller from completing such construction. Provided, further, Seller and Purchaser may mutually agree to extend the aforesaid eighteen (18) month period for completion of construction of the infrastructure improvement's within a reasonable period of time to be agreed upon by Seller and Purchaser, in the event that Seller is delayed in the completion of the construction of the infrastructure improvements by an event of force majeure (including a pandemic, epidemic or the like) or legal proceedings filed against Seller with respect to the said construction or completion of the construction, or the withdrawal by any such governmental entity of any such approval, permit or license. In the event of the election by Seller to terminate this

Agreement pursuant to the provisions of this Paragraph 6, then the improvements referred to in this Agreement “**NEED NOT BE BUILT.**”

7. **LOT AND COMMON AREA DIMENSION.** The Lot and Common Area dimension as shown **on Exhibit A** attached hereto are approximate. Purchaser acknowledges that in the course of construction of the infrastructure improvements on the Land and the Lot and the Common Areas, certain changes, deviations and/or omissions may be required by Seller, an engineer, architect or other governmental authorities. Therefore, any changes, deviations or omissions that may be required are hereby pre-authorized by Purchaser, provided said changes, deviations and/or omissions do not materially affect the rights of Purchaser, the size or the location of the Lot. The Purchaser understands that certain items and improvements to the Lot, Subdivision and/or the Land are subject to design and/or engineering change from that shown to Purchaser on **Exhibit A** attached hereto.

8. **COMMON AREAS.** The Common Areas designated on the Subdivision Plat are not donated, dedicated nor granted to the public, but will be conveyed by the Seller, as declarant, to the Association for the use as Common Property of the Association as more particularly described in the Declaration. The streets shown on the Subdivision Plat shall constitute private streets and are not dedicated to the public.

9. **CLOSING.** The Closing Date shall be on or before fifteen (15) days after the substantial completion of construction of the infrastructure improvements and recording of the Subdivision Plat. Closing shall take place at the offices of **ANDERS, BOYETT, BRADY & SMITH, P.C.** at a specific time and date to be agreed upon by Seller and Purchaser. In the event Seller and Purchaser mutually agree to extend said Closing Date, the Closing Date may be extended for a reasonable period of time to be agreed upon by Seller and Purchaser.

If, on the Closing Date, Seller, without fault on the part of Purchaser, fails to convey good and marketable title of said Lot to Purchaser or for any other reason cannot convey said lot to Purchaser in accordance with the terms and conditions of this Agreement, then all Escrow Deposit Money shall be paid to Purchaser as liquidated and agreed upon damages, as provided in the DEFAULT provisions of this Agreement and this Agreement shall automatically be null and void.

Nothing in the agreed to this Agreement to the contrary, no interest in the Lot may be conveyed until the plat of the Subdivision is recorded and the Lot is substantially completed, as provided for in this Agreement. Until such time as the plat of the Subdivision is recorded, the Lot is substantially completed and the Closing Date set, this Agreement shall merely constitute a “**PRECONSTRUCTION RESERVATION**” of LOT ____ by Purchaser.

10. **DEFAULT.** Should Purchaser fail to make any of the payments coming due under this Agreement or fail or refuse to execute the instruments required to close the purchase transaction contemplated hereby or refuse to pay the cost or other sums required by this Agreement, or otherwise default under this Agreement, Seller may declare this Agreement terminated and all Escrow Money shall be forfeited to Seller as liquidated and agreed upon damages which Seller has sustained and suffered as a result of default by Purchaser, and thereupon the parties will be released and relieved from all obligations under this Agreement. The provisions contained in this Agreement for liquidated and agreed upon damages are bona fide provisions for such and are not a penalty, the parties understanding that by reason of Seller binding Seller to the sale of the Lot and by reason of the withdrawal of the Lot from sale at a time when other parties would be interested in purchasing the Lot, the Seller will have sustained damages, if Purchaser defaults, which damages will be substantial but will not be capable of determination with mathematical precision, and therefore, as aforesaid, the provisions for liquidated and agreed upon damages has been incorporated in this Agreement as a provision beneficial to both parties.

Except as set forth in this Paragraph 10, should default under this Agreement occur due to the failure of Seller to comply with or tender compliance with the obligations of Seller under this Agreement on the Closing Date, or should Seller elect to terminate this Agreement for any reason provided for in Paragraph 6 of this Agreement, then all Escrow Money shall be forfeited to the Purchaser as liquidated and agreed upon damages and thereupon the parties hereto shall be released and relieved from all obligations under this Agreement.

11. CLOSING EXPENSES.

A. The following Closing Expenses will be paid by Seller:

1. Warranty Deed from Seller to Purchaser.
2. Cost of Owner's Title Policy of Insurance in the amount of the Purchase Price.
3. Fees of the Attorney representing Seller.

B. Purchaser shall pay all other costs of Closing, including but not limited to, the following:

1. Recording of the Warranty Deed, including all transfer and deed taxes.
2. All costs required to be paid by the Mortgagee, if the Lot is to be mortgaged by Purchaser.
3. Proration of all ad valorem taxes which shall be applicable to the Lot.
4. Fees of the Attorney representing Purchaser and the fees for services of any other parties engaged by Purchaser.
5. Any expenses charged by the title agent for the handling of the Closing.
6. Any other expenses or charges specified in this Agreement to be paid by the Purchaser.

12. OBLIGATIONS AT CLOSING. At the Closing, the following will take place:

- A. Purchaser will execute and deliver to Seller such documents which may be necessary to give effect to this Agreement.
- B. Purchaser will pay the balance of the Purchase Price to Seller.
- C. Purchaser will pay to the Association the assessment for Common Expenses commencing as of the Closing Date. Said assessments shall be in the amount specified by the Association for the Lot and are *estimated* to range from **\$500 - \$600 per month** per Lot. The first payment shall be made at Closing. In addition to the initial assessment, Purchaser will pay the Association, at Closing, a sum of **Five Hundred and 00/100 Dollars (\$500.00)** as a non-refundable contribution to the initial working capital of the Association.
- D. Seller will execute and deliver to Purchaser a Warranty Deed conveying the Lot, subject to the matters set forth in this Agreement. The acceptance of said Warranty Deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement.
- E. Seller will credit Purchaser all Escrow Money deposited by Purchaser without interest.

- F. Seller will provide from ANDERS, BOYETT, BRADY & SMITH, PC or other title agent chosen by Seller, a Standard American Land Title Association (ALTA) Owner's Title Insurance Commitment in the usual form listing Purchaser as proposed insured with coverage in the amount of the Purchase Price. The Owner's Title Policy of Insurance Commitment will contain the standard exceptions and shall further contain the same exceptions as the Warranty Deed.

13. NON-ASSIGNABILITY. Seller may freely assign this Agreement without first obtaining consent from Purchaser, provided, however that Purchaser shall not assign this Agreement or the rights of Purchaser under this Agreement except without the proper written consent of Seller. This Agreement shall be binding upon the parties to this Agreement and their personal representatives, heirs, successors and assigns. Notwithstanding the foregoing, in the event of death or incapacitation of the Purchaser prior to Closing Date, the heirs, successors and/or assigns of such Purchaser shall have the right within thirty (30) days of the occurrence of such event to elect by written notice to Seller to (i) assign this Agreement to one or more of such heirs, successors and/or assigns and proceed under this Agreement or (ii) terminate this Agreement, upon which such Escrow Money Deposit shall be released to Seller and the parties shall have no further obligations or liabilities hereunder.

14. AGREEMENT NOT AN ENCUMBRANCE. No encumbrance shall arise against the Land or the Lot as a result of this Agreement. Purchaser agrees that the provisions of this Agreement are and shall be subject and subordinate to the lien of any mortgage(s), including, but not limited to, any mortgage, heretofore or hereafter made and any advances hereto made thereon and any payments or expenses already made or incurred or which hereafter may be made or incurred, pursuant to the terms of this Agreement. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with any schedule of payments or accelerated by virtue of the right of any lender to make advances before they come due in accordance with the schedule of payments. Seller shall, at the option of Seller, either satisfy such mortgage(s) or obtain a release of the Lot from the lien of such mortgage(s) on or prior to the Closing Date. The existence of any mortgage(s) encumbering the Land, or portions thereof, shall not constitute an objection to title or excuse Purchaser from completing payment of the Purchase Price or performing all of Purchaser's obligations under this Agreement or be the basis of any claim against, or liability of, Seller, provided that such mortgage(s) is/are subordinated to the Declaration or that the Lot to be purchased hereunder is released from the lien of such mortgage(s) at Closing.

15. Special Rights. This Declaration reserves certain special rights to the Seller, as the declarant, which are more specifically set out in the Property Documents. Reference is made to the Declaration for those special rights. In general and not by way of limitation, Seller, as declarant, has the right to: (i) add real estate to the Subdivision; (ii) create lots, combine lots or common property; (iii) subdivide lots or convert lots or common property in the Subdivision; (iv) maintain sales offices, management offices and models on lots or common property in the Subdivision; (v) maintain signs on the Subdivision; (vi) create and/or use easements throughout the Subdivision for purposes of making improvements within the Subdivision or within real estate that may be added to the Land or Subdivision including, but not limited to, dedicated the common property as provided for in the Declaration; and (viii) appoint or remove the officers and members of the Board of Directors of the Association.

16. Merger. All understandings and agreements made between the parties are merged in this Agreement and express the entire agreement and understanding of the parties hereto. No representations, oral or written, not contained in this Agreement shall be considered part of this Agreement. This Agreement may not be altered, enlarged, modified or changed except by an instrument in writing executed by the parties to this Agreement and Purchaser understands that the authority of any sales representative(s) is limited and confined to securing Purchaser as purchaser of the Lot identified herein upon the terms and conditions set forth in this Agreement, and that any sales representative has no power or authority to make any change, alteration, modification, stipulation, inducement, promise or representation whatsoever other

than those stated in this Agreement and that said sales representative(s) are acting as special representative(s), and all representations of Seller not specifically set forth in this Agreement shall be deemed NULL AND VOID and are hereby waived by Purchaser.

17. **Effective Date.** This Agreement shall not be binding upon Seller until signed by a duly authorized representative or agent of Seller. However, once executed by Purchaser and Seller, this Agreement shall be effective as of the Effective Date set forth on the first page.

18. **Notice.** All notices, statements, demands or other communications (“Notice”), to be given under or pursuant to this Agreement, shall be in writing, and addressed to the parties at their respective addresses as provided below and shall be delivered in person, or by certified or registered mail, postage pre-paid or overnight by a nationally recognized carrier. If mailed, such Notice shall be deemed to have been given twenty-four (24) hours after the date of the mailing.

ADDRESS OF SELLER:

IMG Investments, LLC
118 N. Royal Street, Suite 700
Mobile, Alabama 36602

ADDRESS OF PURCHASER:

19. **Real Estate Agent Disclosure.** One or more of the principals of the Seller are licensed real estate agents in the State of Alabama.

20. **Miscellaneous.** When the context permits within this Agreement, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders. All terms used in this Agreement not otherwise defined herein shall have the meaning giving to them in the Declaration and are incorporated by reference and made a part of this Agreement.

21. **Agency Disclosure.**

The Listing Company is: LLB&B, Inc. Real Estate

An Agent of: SELLER _____ PURCHASER _____ BOTH _____ (limited consensual dual agency)

The Selling Company is: _____

An Agent of: SELLER _____ PURCHASER _____ BOTH _____ (limited consensual dual agency)

Initials of Seller

Initials of Purchaser

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement or caused this Agreement to be executed to be effective as of the Effective Date first set forth above.

WITNESSES:

Print Name: _____

PURCHASER

Print Name: _____

PURCHASER

PURCHASER EXECUTED THIS AGREEMENT ON THIS _____ DAY OF _____, 2022.

WITNESS:

SELLER:

IMG INVESTMENTS, LLC

Print Name: _____

By: _____

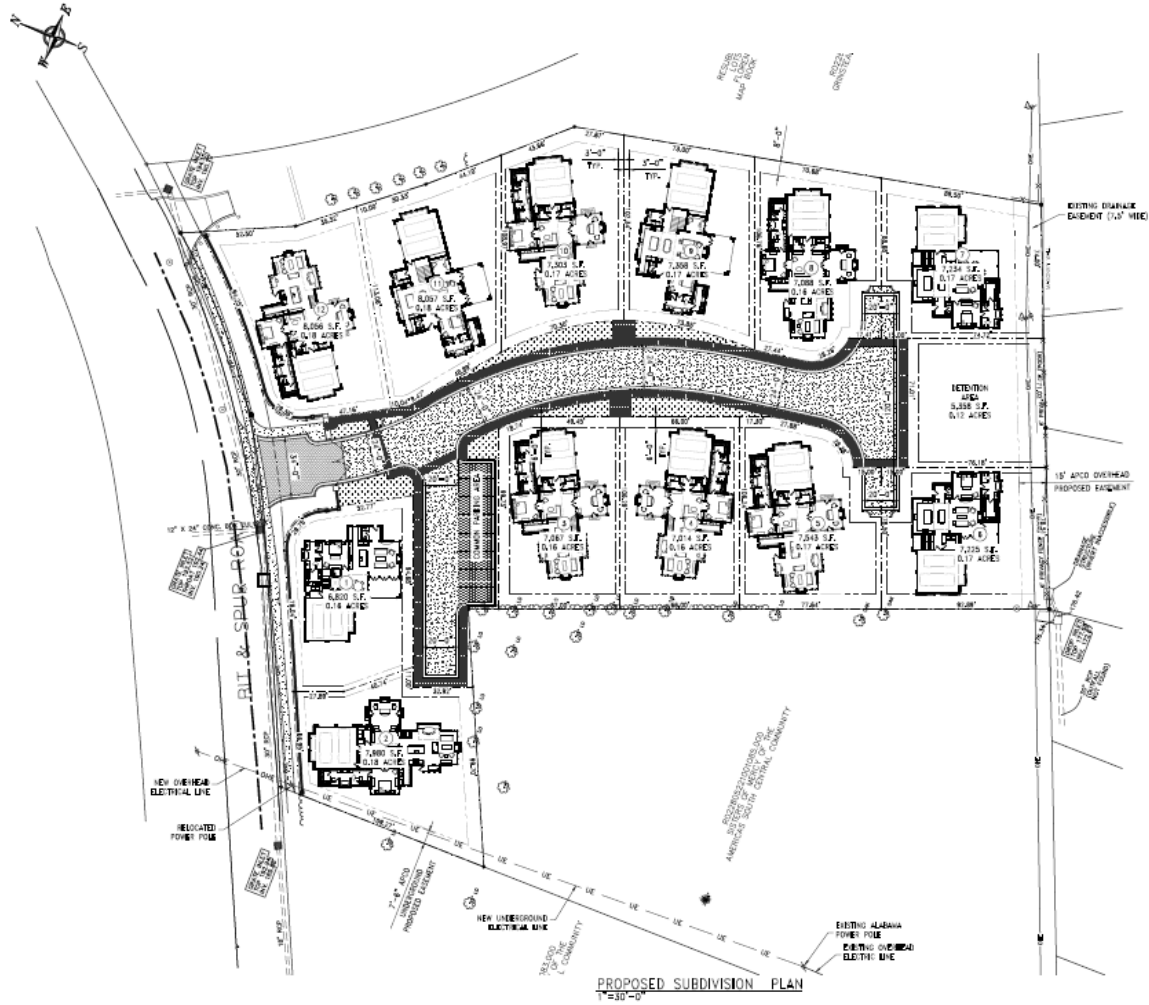
Name: _____

Its: _____

SELLER EXECUTED THIS AGREEMENT ON THIS _____ DAY OF _____, 2022.

**THIS INSTRUMENT PREPARED BY:
KMG LAW LLC
Kara M. Garstecki
118 N. Royal Street, Suite 709
Mobile, Alabama 36602**

EXHIBIT A SUBDIVISION



| REV. | DESCRIPTION | DATE | BY | CHK'D |
|------|-------------------|----------|-----|-------|
| A | ISSUED FOR PERMIT | 02/09/22 | HCC | FLD |

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