

**ORDINANCE NO. 20130214-026**

**AN ORDINANCE APPROVING THE NEGOTIATION AND EXECUTION OF A  
MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE SHADY  
HOLLOW GARDEN TOWNHOMES PROJECT.**


**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Council finds that the Shady Hollow Garden Townhomes project described in SP-2008-0061C(XT2).MGA, is a large long term project under Section 25-1-540 (*Managed Growth Agreements*).

**PART 2.** The Council authorizes the City Manager to negotiate and execute a Managed Growth Agreement ("MGA") between the City of Austin and Madison City Homes in substantially the same form as the agreement attached and incorporated into this ordinance as Exhibit 1. The MGA is limited to the Shady Hollow Garden Townhomes development approved under Site Plan No. SP-2008-0061C(XT2).MGA, subject to any minor revisions approved in accordance with the MGA. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

**PART 3.** This ordinance takes effect on February 25, 2013.

**PASSED AND APPROVED**

February 14, 2013      §  
   §        
   §      Lee Leffingwell  
        Mayor

**APPROVED:**  **ATTEST:**   
Karen M. Kennard      Jannette S. Goodall  
City Attorney      City Clerk

# **EXHIBIT 1**

## **MANAGED GROWTH AGREEMENT** **BETWEEN THE CITY OF AUSTIN AND MADISON CITY HOMES**

This Managed Growth Agreement ("Agreement") Between the City of Austin, Texas ("City") and Madison City Homes. ("Madison City Homes") is made and entered into by the City, a home rule municipal corporation acting by and through its duly authorized City Manager and Madison City Homes. Madison City Homes and the City may be referred to jointly as Parties or singly as "Party" in this Agreement.

### **RECITALS**

1. On February 7, 2008, Madison City Homes filed an application for a consolidated site plan for the construction of town home units on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On December 15, 2008, the City approved Site Plan No. SP-2008-0061C, authorizing the construction of a phased housing development, which included 145 town homes, with attached garages, amenity center, internal drives, water quality and detention ponds, and infrastructure on 34.94 acres. ("the Project"). Portions of the Project, including 37 homes, detention and water quality pond, and infrastructure improvements, have been completed.
3. Madison City Homes desires to obtain buyers for the town homes, realizing that due to the current economic conditions, it could take 8 years to construct all units.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Madison City Homes agree as follows:

### **A R T I C L E   I** **PURPOSE & LEGAL AUTHORITY**

#### **Section 1.01      Purpose.**

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for Madison City Homes to obtain buyers and complete the Project in phases.

#### **Section 1.02      Legal Authority.**

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a large

project situated on 34.94 acres with 144 town home units and a long term project.

**Section 1.03            Expiration Date**

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. By Ordinance No. \_\_\_\_\_, the City Council directed that the expiration date is to be February 7, 2019.

**ARTICLE II**  
**TERMS**

**Section 2.01            Original Regulations; Expiration Date**

Subject to Section 2.03 below, Madison City Homes may construct the Project to comply with City regulations in effect on February 7, 2008, which is the day the application was originally submitted under the Comprehensive Watershed Ordinance and Land Development Code ("Original Regulations"). The expiration date of Site Plan No. SP-2008-0061C for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be February 7, 2019.

**Section 2.02            Revisions to the Site Plan; Change in Ownership**

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, Madison City Homes. may not construct any improvements on the Property that the City Manager determines to vary substantially from the Project as defined by Site Plan No. SP-2008-0061C without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations. This Agreement does not abridge the rights of Madison City Homes or its successors (including homebuilders who acquire one or more town home units for resale to third parties) to sell and convey town home units within the Project. However, if, without the City's written consent, title to the remaining unsold inventory of units within the Project is conveyed or assumed by an entity other than Madison City Homes or an entity that directly or indirectly controls, is controlled by, or is under common control with Madison City Homes, the City Manager may terminate the rights granted under this Agreement to develop the Project under Original Regulations, in which case the Project and Site Plan No. SP-2008-0061C will expire on its original expiration date of December 15, 2012.

**Section 2.03            Exceptions from Right to Develop Under Original Regulations**

In this section, Madison City Homes. agrees to comply with City regulations adopted after December 15, 2012, as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons;
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City.

### **A R T I C L E   I I I** **MISCELLANEOUS PROVISIONS**

#### **Section 3.01            Notice.**

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice ") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin:                      City Manager  
   P.O. Box 1088 Austin,  
   Texas 78767

with required copy to:              City Attorney  
   P.O. Box 1088 Austin,  
   Texas 78767

Owner

Madison City Homes (David Mahn)  
200 Congress Avenue, Suite 9A  
Austin, TX 78701

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

**Section 3.02                      Severability.**

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

**Section 3.03                      Waiver.**

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

**Section 3.04           Applicable Law and Venue.**

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

**Section 3.05           Incorporation of Exhibits.**

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

**Section 3.06           Assignability, Successors, and Assigns.**

This Agreement is not assignable by Madison City Homes or the City without the prior written consent of the City Council or Madison City Homes.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

**Section 3.07           Amendment.**

This Agreement may only be amended in writing on the approval of the City Council and Madison City Homes.

**ARTICLE IV**  
**DEFAULT AND REMEDIES FOR DEFAULT**

**Section 4.01           Default.**

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

Madison City Homes

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

Before me \_\_\_\_\_, Notary Public, on this day personally  
appeared \_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_,  
known to me through valid identification to be the person whose name is subscribed to the  
foregoing instrument and acknowledged that he executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

CITY OF AUSTIN:

By: \_\_\_\_\_  
Brent Lloyd  
Assistant City Attorney

By: \_\_\_\_\_  
Sue Edwards  
Assistant City Manager

Date: \_\_\_\_\_

**EXHIBIT A**

**"The Property"**

**Lots 1 and 2 of the Shady Hollow Gardens Subdivision as recorded in  
Document #200600356**