

From: [Milligan, Lisa \(Planning\)](#)
To: [Hardwicke, Laura \(Planning\)](#)
Cc: [Elliott, Logan \(Planning\)](#)
Subject: FW: Ivy Drive
Date: Thursday, April 23, 2020 2:16:39 PM
Attachments: [3901 Ivy Drive Time Line \(02044290\).pdf](#)

From: Doug Sloan <dsloan@bonelaw.com>
Sent: Thursday, April 23, 2020 2:06 PM
To: Elliott, Logan (Planning) <Logan.Elliott@nashville.gov>
Cc: Shepard, Shawn (Planning) <Shawn.Shepard@nashville.gov>; Milligan, Lisa (Planning) <Lisa.Milligan@nashville.gov>
Subject: Ivy Drive

Attention: This email originated from a source external to Metro Government. Please exercise caution when opening any attachments or links from external sources.

Logan,

Without the opportunity to meet with the Planning Commission in person, we are unable to present responsive documentation to the public comments that have been received by the Commission. Therefore, we request that the following documents to be supplied to the Commissioners via email. These documents include a timeline regarding meetings that were held, the subdivision plan that removed another lot from the plan and provides additional open space along the portions of the property where a steam exists.

Please let me know if the commissioners are supplied with this documentation or if your would prefer that we email them this information directly.

Thank you,

Doug



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Bone McAllester Norton PLLC mail server made the following annotations:

3901 Ivy Drive Project Timeline

- May 2019 Land was listed for sale on MLS. Listing included a Preliminary Concept Plan authorized by Seller showing thirty-two (32) lots under a RS10 Cluster Lot Subdivision zoning classification (Exhibit A). Listing stated: "Under the T4 Neighborhood Maintenance this property qualifies for a cluster lot subdivision suitable for 32 units without filing an SP or having the lot rezoned."
- November 2019 Developer and Seller enter into a Purchase Contract after 175 days on market. Survey and Preliminary Conceptual Design started.
- January 2020 Developer reached out to Councilwoman Benedict. Sat down for in-person meeting with preliminary designs showing thirty-two (32) lots.
- February 2020 Developer voluntarily knocked on neighborhood doors to obtain feedback and hosted first community meeting. Metro Staff in attendance included Matt Wilkinson and Robin Zeigler to explain mechanics of Cluster Lot Subdivision and Historic Conservation Overlay.
- March 2020 Subsequent to the meeting, Developer and Councilwoman identified a small committee of community stakeholders to help productively shape the development. Unfortunately, not enough people were willing to work together on this as a special committee. Developer volunteered to defer to the April 9th Planning Commission until feedback could be received.
- On March 18, Developer hosted a second public community meeting over Facebook Live due to COVID-19. Councilwoman Benedict presented a detailed and thoughtful explanation of the regulations and legislation surrounding the development (Exhibit B). A plan with thirty-one (31) lots was presented. Developer presented on stream and tree conservation, public access, stormwater, and a public infrastructure financial donation (Exhibit C).
- April 2020 Based on comments from the community and Councilmember Benedict, the developer agreed to reduce the number of lots from thirty-two (32) to thirty (30) and voluntarily drafted a Community Benefit Agreement (Exhibit D). The Agreement was drafted to create a legal obligation by the developer to adhere to certain standards above Metro requirements and address specific neighborhood concerns. However, it was communicated to the developer that the South Inglewood Neighborhood Association would not engage the developer to produce a document that would address the community's concerns.

WEHBY PROPERTIES AT IVY DRIVE

EXHIBIT A

PRELIMINARY CONCEPT PLAN - MAY 6, 2019



SITE DATA

TOTAL LAND AREA:	+/- 9.05 ACRES
TOTAL UNITS:	32
TOTAL DENSITY:	3.5 UNITS/ACRE
ZONING:	EXISTING: RS10 PROPOSED: RS10 CLUSTER LOT
LAND USE POLICY:	T4 NEIGHBORHOOD MAINTENANCE

LAND USE CALCULATIONS

MINIMUM LOT SIZE:	5,000 SF (10,000 SF FRONTING IVY DR.)
TYPICAL LOT DIMENSIONS:	50' x 100' 40' x 125' 35' x 145'
LOT SETBACKS:	
FRONT:	20'
SIDE:	5'
REAR:	20'

EXHIBIT B

3901-3905 Ivy Drive

A community meeting was held on February 25, 2020 which was attended by over 100 people, nearly all who expressed opposition to the proposed development. The property was listed for sale in the summer of 2019 and included a rendering of a development similar to the one that is now being presented.

I stand firmly in opposition to this development. I believe that density belongs closer to our corridors and pikes, where our infrastructure is more easily adaptable.

This post should answer the bulk of the questions that I have been asked, other than design questions, which will be addressed in a separate post. It has taken some time to put together, and I appreciate your patience as I continued to ask and seek ways to stop this.

The Metro Planning Commission adopted expanded **Subdivision Regulations** on March 9, 2006. Those regulations were amended in 2006, 2010, 2011, 2013, 2014, and 2016, and most recently in June 2017. Those regulations can be found [here](#).

While all chapters of those regulations are important, [Chapter 3](#) is the most useful in determining the requirements a developer must follow when creating a cluster lot subdivision which has been proposed at 3901-3905 Ivy Drive.

1. What is a Cluster Subdivision? (“Cluster Lot Option”) How does this fit with the current RS10 zoning and with the Neighborhood Maintenance Plan?
 - a. The cluster subdivision is a by right option for R and RS zoned properties per Zoning Code section 17.12.090 ([link here](#)).
 - i. A site must be ten times the minimum lot size of the site’s zoning district to be eligible for a cluster lot subdivision (17.12.090.B). In this case, Ivy Drive is zoned RS10 and therefore requires a minimum of 10,000 square feet per lot and the property is approximately 9.05 acres or almost 400,000 square feet or 40 times the minimum lot size for the RS10 zoning district. With this information it can be concluded that the property is eligible for a cluster lot subdivision.
 - b. The maximum number of lots that this site is permitted to create through a cluster lot subdivision is specified by the Zoning Code.
 - i. Section 17.12.090.D, requires that 15% of the total site area be designated for streets and infrastructure and removed from the total area that is eligible to be subdivided into lots.

- ii. The remaining 85% of 9.05 acres (335,085 square feet) is divided by the zoning district's minimum lot size (10,000 square feet) for a total of 33 permitted lots. As of this moment, the current developer is proposing 31.
 - c. The Zoning Code provides that, if using a cluster, "lots may be reduced in area the equivalent of two smaller base zone districts." RS10 therefore is allowed within the Cluster Development, by definition, to reduce to RS5 which requires a 5,000 square foot lot, depending on location of the lot in relation to existing streets and to landscape buffers.
 - d. Additionally, 15% of the total area of the site must be preserved as open space. Also, there are landscape buffering standards and recreational facility requirements in the zoning code.
 - e. Subdivision Regulations
 - i. The lots must meet all standards of Chapter 3 the Subdivision Regulations because the site is within the Urban Neighborhood Maintenance Policy. The Subdivision Regulations are largely technical standards. You can find the regulations [here](#).
 - f. Tennessee Code Annotated
 - i. The Tennessee Code Annotated section that specifies the time in which the Planning Commission must make a decision on a submitted subdivision once it has been heard is 13-4-304 which you can find [here](#).
****This is likely why a deferral request has not been granted to me.****
2. How will the environmental aspects of the parcels be protected? (Stream, soil erosion, wildlife)
- a. Metro Stormwater studies plus FEMA flood maps that result in unsafe and harmful features would prevent the subdivision of the land. This is one of the regulations that must be met prior to Concept Plan approval at the Planning Commission.
 - b. The developer has submitted a second set of plans that includes preserving more trees, as well as adjusting the layout to preserve the natural resources better. Those plans will be uploaded to this page.
 - c. Chapter 3-3, which can be found [here](#), of the Subdivision Regulations states:
 - i. Land which the Planning Commission finds to be unsuitable for subdivision or development due to flooding as shown on [FEMA maps](#) or identified in local studies confirmed by the Stormwater Division of Metro Water Services (Stormwater Division), steep slopes as shown on Metro's topographical maps, rock formations, problem soils, sinkholes, other adverse earth formations or topography, utility easements, or other features which may be harmful to the safety, health, and general welfare of inhabitants of the land and surrounding areas shall not be subdivided or developed unless adequate methods to solve the problems created by the unsuitable land conditions are formulated by the developer and approved by the Planning Commission. Additional technical evaluation,

plans, and analysis of a proposed subdivision by a professional engineer specializing in geotechnical, soils, hydrology, and/or structures may be required.

3. How can water retention be addressed to include not only the water retention on the property but also downhill from the development, towards those neighbors?
 - a. Chapter 3-3.6: Relationship to Watercourses. Except as noted in Section 3-10.6, Conservation Easements for Greenways, **if a tract being subdivided contains a water body, or portion thereof, lot lines shall be so drawn as to distribute the entire ownership of the water body among the fees of adjacent lots.**
 - i. The Planning Commission **may approve an alternative plan** whereby the ownership of and responsibility for safe maintenance of the water body is so placed that it shall not become a public responsibility.
 - ii. Where a watercourse separates a buildable area of a lot from the street by which it has access, provisions shall be made for installation of a culvert or other drainage device of a design approved by the Stormwater Division, and no building permit shall be issued for a structure on such lot until the installation is completed and approved by the Stormwater Division.
4. Is there any way to put in an overlay, or downzone to prevent this?
 - a. We can start that process immediately, however it is likely too late to get that completed. Completing an overlay requires 70% of the impacted property owners agreement, and is a process that takes at least 120 days, which does not include multiple community meetings and any deferrals on Council or at the Historic and Planning Commissions. If this is desired, please let me know and we can schedule this right away.
 - b. Without community agreement on an overlay, these parcels could only be downzoned upon the current owner's request.
5. Is there a legal way to stop this Cluster Subdivision?
 - a. I've exhausted many departments and spent countless hours trying to get an answer to this. All signs point to no.
 - b. There is case law demonstrating that neighborhoods have taken legal action against developers regarding Cluster Lot Subdivisions, and they have lost. Not only have they lost, but on at least one occasion, the court ruled that the developer could proceed without any additional review by the Planning Commission. (Metro Legal advised that they have found 6 cases and they will provide them to me on Monday 3/16. I will add them to this FB page once received.)
 - c. This is the information that has been presented to me and should not be meant to discourage the neighborhood from consulting or hiring counsel.

6. Can this be deferred at the Planning Commission from March 26 to April 9?
 - a. I made this request and was advised that a Councilmember does not have the authority to force a deferral. Concept Plans have time limits for deferrals, according to state law. We cannot hold this off indefinitely although I am working to defer it until at least April 9.
 - b. On March 13, the Mayor announced his request that all Boards and Commissions postpone meetings through April 6. While I have not yet confirmed that the March 26 Planning Commission meeting will be postponed, I suspect it will.

I have scheduled a meeting at Litton Alumni Center on Wednesday, March 18 from 6-8pm. Attendees will need to sign up at the door, including their home address.

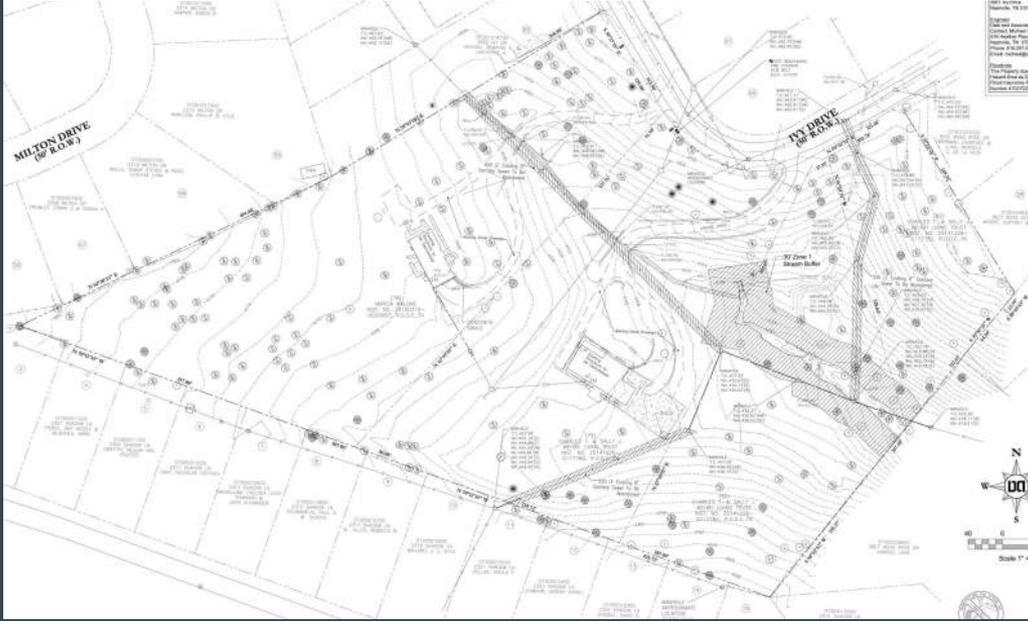
Should concerns about COVID-19 prevent this meeting from taking place (a high likelihood), then I will try to find a way to host a FB Live event at the same date/time.

Please send any questions or concerns to me at emily.benedict@nashville.gov.

EXHIBIT C

MIKEN
DEVELOPMENT, LLC

3901 Ivy Drive



>> 3901 - 3905 Ivy Drive

>> 9.05 acres

>> 31 Planned Lots (*0.29 acres / lot average*)

>> By right, entitled to subdivide into 33 lots

>> Area of Lots make up only 52% of Total Site

>> Minimum Lot Size: 5,000 sf

>> Maximum Lot Size: 22,392 sf

>> Open Space: 2.17 acres (*only 1.35 acres required*)

>> Max Structure Height: 35 ft (*from Ivy Dr. frontage*)

About the Site



Original Site Plan

CUL-DE-SAC 1 *Community and Public Works don't want single entry cul-de-sac. Updated concept includes proposed alley system, but may not be possible with the stream and steep grades.*

THE STREAM 2 *There is a stream buffer required by TDEC that would not allow any houses or lots within 30' of the stream in any direction.*

WILDLIFE 3 *The cluster lot subdivision allows us to leave areas open for wildlife migration across the site.*

TREE CLEARING 4 *We are assessing comments from environmentalists and tree conservationists that attended our first meeting to identify the high priority trees and save as many as possible.*

HOME DESIGNS 5 *No Tall & Skinnies, Brick Materials, Multiple Unique Designs, Porches, Street Facing*

IVY DRIVE 6 *There are currently 56 homes fronting Ivy Dr. The smallest and median size lot for a size on Ivy Drive are 0.26 acres and 0.32 acres. We are proposing adding 31, which density equals 0.29 acres / lot.*

Addressing Concerns

266 Trees

- **95 Hardwood Species (Oak, Maple, etc)**

- > *Highest Priority*
- > *Need to access health + quality*
- > *74 Trees to be Saved*

- **7 Ash Trees**

- > *To be Removed*
- > *Likely to die from Emerald Ash Borer*

- **153 Hackberry**

- > *Lower Priority*
- > *Preserve those in good health*
- > *Trees on Property Line will be preserved*

- **11 Misc Trees**

- > *7 of these to be saved*

**Tree information provided by a local tree conservationist who attended first meeting*



***Exact tree numbers subject to change as plans change. Working off of conceptual plans as we await construction / grading drawings.*

29.7% of Trees at Risk
- 79 total -

58 - Low Priority Trees
21 - High Priority Trees

Yellow Trees per Engineer
Purple Trees at risk to Grading



*At risk trees marked in yellow & purple

Tree Overlay

TREE ID (12/18/19 SURVEY)	Oak	Maple	Hickory	Beech	Sycamore	Elm	Poplar	Gum	Magnolia	Walnut	Cedar	Dogwood	Locust	Pine	Ash	Hackberry		TOTAL
Identified per Survey	40	37	11	1	1	1	2	1	1	2	1	1	1	6	7	153		266
Total POSSIBLE Loss	8	10	2	1	0	0	0	1	0	2	0	0	0	1	4	50		79
% Loss Total	20%	27%	18%	100%	0%	0%	0%	100%	0%	100%	0%	0%	0%	17%	57%	33%		29.7%
Conservation Priority	40	37	11	1	1	1	1	1	1	2	1	0	0	0	0	0		97
Consevation Conflicts	8	10	2	1	0	0	0	1	0	2	0	0	0	0	0	0		24
% Loss Per Engineer Layout	20%	27%	18%	100%	0%	0%	0%	100%	0%	100%	0%	0%	0%	0%	0%	0%		24.7%

**Green denotes high priority*

Trees Identified

Lot Sizes

1	5,185	11	6,174	21	5,009
2	5,235	12	5,312	22	5,660
3	5,000	13	5,591	23	5,032
4	5,000	14	8,381	24	5,314
5	5,000	15	5,000	25	5,089
6	5,100	16	5,000	26	5,000
7	5,518	17	5,000	27	5,490
8	5,780	18	5,000	28	5,408
9	7,740	19	5,000	29	12,371
10	22,392	20	5,397	30	12,014
				31	11,978



Updated Site Plan



Existing Culvert

A contract signed by community groups and a real estate developer that requires the developer to provide specific amenities and/or mitigations to the local community or neighborhood. This would be a legal document between the developer and neighborhood association.

In exchange, the community groups agree to publicly support the project, or at least not oppose it.

Some Possible Benefits:

\$50,000 FOR SIDEWALKS - STOP SIGNS - COMMUNITY GREEN SPACE - WALKING TRAIL - DESIGN CRITERIA FOR DEVELOPMENT

Community Benefits Agreement

EXHIBIT D

Ivy Drive, Nashville Community Benefits Agreement

This Ivy Drive Community Benefits Agreement (“Ivy CBA”) is made and executed on this ___ day of May, 2020, by and between South Inglewood Neighborhood Association, Inc. as defined herein (“SINA”) and South Ivy Investment, LLC, as defined herein (“SII”) (SINA and SII each a “Party”, and collectively the “Parties”), for the benefit of the residents of Metropolitan Nashville and Davidson County, as related to the construction of a new single family subdivision (the “Development”) on a portion of the Project Site (as hereinafter defined).

RECITALS

WHEREAS, SINA, through its coalition members, has identified a number of significant needs of residents in the vicinity of the Project Site; and

WHEREAS, SII will build the Development on a portion of the 9-acre site located at 3901 Ivy Drive; and

WHEREAS, SINA and SII desire to address some of the significant needs of local residents through this Ivy CBA.

NOW THEREFORE, in consideration of the above premises and mutual covenants and agreements herein set forth, SII and SINA do hereby agree to execute this Ivy CBA as follows:

I Definitions

“Community Advisory Committee” has the meaning set forth in Section III below.

“Developer” means the limited liability company formed for purposes of developing the approximately 9-acre single family development on the Project Site.

“Development” means the construction of 30 homes on approximately 9 acres of the Project Site.

“Party” or “Parties” refers to each signatory to this Ivy CBA.

“Term” means from the Effective Date of this Ivy CBA to the earlier of either (i) three (3) years or (ii) the final home in the Development receives its Use & Occupancy Permit.

II Responsibilities of SII

If the Project is built, and so long as any lot in the Project is owned by an entity affiliated with SII and in the process of building single family homes, SII will implement, or cause any successor to implement, the following provisions:

1) Community Amenities and Services:

- a) SII will reserve no less than 80,000 sq. ft. within the Development for public access to Open

Space, including the unnamed stream buffer area. SII will identify an acceptable area to provide such Open Space, which will include a walking trail and sitting area. A private HOA will be developed for the maintenance of the Open Space. SII will provide initial seed funding in an amount which combined with the ongoing fees will be sufficient to allow for safe and publicly accessible Open Space indefinitely.

- b) Façades facing Ivy Drive will not exceed two stories. All façade materials facing both Ivy Drive and to-be-name Private Drives will be minimum 50% brick or block material as a percentage of the wall section, excluding openings and roofing, unless such façade is the rear of a home.
- c) SII will seek to preserve Heritage Trees wherever possible. If Heritage species are removed, they will be replaced at a ratio of two (2) replacement trees of the same species for each Heritage species tree removed. Single-trunk replacement trees shall be (i) a minimum width of two-inch calipers; (ii) a minimum height of six feet. SII will seek to exceed replacement standards, but at a minimum, all Tree Protection and Replacement will comply with 17.24.100 of the Metro Government Zoning Code.
- d) Within the first year after the lots have been legally platted and recorded, SII will provide a \$50,000 donation for off-site improvements, including but not limited to, a Stop Sign at the intersection of Ivy Drive and Moss Rose Drive, Metro Nashville Public Schools bus stop improvement, and sidewalks on the south side of Ivy Drive between Moss Rose Drive and the Development. SINA will determine the appropriate entity to direct funds. If the funds are provided to SINA, a registered 501(c)(3) not for profit corporation, SINA will sign documentation required by the Internal Revenue Service to substantiate a charitable contribution.

III Monitoring, Timelines, and Enforcement

The Parties intend for the rights and obligations created by this Ivy CBA to be both continuing in nature and cooperative, such that both SII and SINA actively participate and work together with due diligence and good faith in furtherance of the terms and conditions of this Ivy CBA as outlined in Section III herein (“Community Advisory Committee Process”).

SINA and SII will create, or cause to be created, a six (6) person committee (the “**Community Advisory Committee**”). The Community Advisory Committee will be responsible for monitoring the Parties’ compliance with this Ivy CBA and undertaking the specific acts expressed in accordance with the terms herein. Annually in the month of June during the term of this Ivy CBA, SINA will cause the Community Advisory Committee to create an annual report detailing (1) the yearly activities undertaken pursuant to the terms of this Ivy CBA; (2) SII’s and SINA’s on-going compliance with the terms of this Ivy CBA; and (3) recommendations, as necessary, to ensure compliance with the intent of this Ivy CBA (the “Annual Report”). The Annual Report will be available for distribution to the general public, and the findings of each Annual Report will be presented during an annual neighborhood presentation hosted by SINA.

The Community Advisory Committee will be comprised of the following six members: (i) two representatives from SII; (ii) two representatives of SINA, (iii) one resident of Ivy Drive appointed by the councilperson for this district and the councilperson for this district. In the event SINA cannot reach an agreement on these two members, those members shall be chosen and appointed to the Committee by the Senior Pastor of Riverwood Church of Christ (or in the event of a vacancy in the Senior Pastor position, the person who is serving in that role on an interim basis).

Unless the Parties agree otherwise, the Community Advisory Committee shall meet no less

frequently than annually for the Term. The Community Advisory Committee Chair (nominated by a majority vote of the members) shall provide notice to the members of the Community Advisory Committee stating the place (or means if by telephone conference or other means), date and hour of each meeting of the Community Advisory Committee and provide an agenda prior to the meeting if practical to do so. Any representative may submit an item for inclusion on the agenda of a Community Advisory Committee meeting. Each of the representatives shall receive notice of and shall have the right to attend (with the methods of allowable attendance specified below) all meetings of the Community Advisory Committee. Attendance at a meeting of the Community Advisory Committee shall constitute a waiver of notification of any particular meeting. All Community Advisory Committee meetings shall be held in Davidson County, Tennessee unless otherwise agreed by the Parties and shall be scheduled at a regular time that generally allows the representatives to attend.

SII will execute and perform each provision outlined in Section II within a reasonable period of time from the date of this signed Ivy CBA; provided, however, that neither SINA or SII will have any obligation to perform under this Ivy CBA if the Project and Development are not constructed. Neither Party shall have any obligation to perform under this Ivy CBA if delays are caused by Force Majeure Events. For purposes hereof, "Force Majeure Events" shall mean events occasioned by causes beyond the control of Seller, including, but not limited to, labor disputes, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, epidemics, pandemics, fire or other casualty, inability to obtain any necessary materials or services, or acts of God.

IV SINA Support Obligations

In light of SII commitments set forth in this Ivy CBA, SINA will continually and strongly support the concept plan for the Project and the related Development. Therefore, SINA will execute the following support efforts on behalf of SII:

- 1) At SII's request, send a letter in support of Project and related Development, prior to the consideration of all approvals necessary for the Project and/or the Development.
- 2) If requested by SII during the term of this Ivy CBA, SINA will work with SII to secure other Development approvals from any other governmental entity specified by SII.
- 3) SINA agrees that it will consult and coordinate with SII before making public comments regarding project approvals, and will use its best efforts to address any issues in question with SII during the Community Advisory Committee meetings contemplated in Section III above. However, nothing in this provision or in the Community Advisory Committee Process shall limit either Party's ability to seek remedies for the other Party's breach of this Ivy CBA outside of the Community Advisory Committee Process.

V Expenses/Termination

The Parties agree that (i) SII will perform or cause to have performed the items set forth in Section II above at its expense and agrees to hold SINA and its officers, members, employees, and agents harmless from any expenses incurred by SII with respect to the above Section II provisions and (ii) SINA will perform or cause to have performed the items set forth in Section IV above at its expense and agrees to hold the SII and its officers, members, employees, and agents harmless from any expenses incurred by SINA with respect to the above Section IV provisions.

This Ivy CBA will remain in full force and effect for the Term, except that it can be terminated immediately in writing under the following circumstances:

- 1) SINA and SII may mutually agree in writing to modify or revoke any and/or all provisions of this Ivy CBA, or to terminate it;
- 2) The license termination, bankruptcy, and/or insolvency of SII;
- 3) By SII upon the termination (or lack of execution and delivery by the appropriate counterparty(ies)) of the Project or Plat.

At the end of the Term, with mutual agreement from the Parties and/or their designated representatives, this Ivy CBA may be renewed under the same and/or any subsequent modified terms and conditions for an additional mutually agreed term.

VI Miscellaneous

- 1) This Ivy CBA will be binding on each of the Parties hereto and their respective principals, agents, and assigns.
- 2) The Parties agree that full and adequate consideration has been given by each Party hereto and each Party acknowledges the sufficiency and adequacy of said consideration.
- 3) The Parties acknowledge that no promise, agreement, statement or representation, whether oral or written, not herein expressed has been made to or relied upon by any one of them and that this Ivy CBA contains the entire agreement between the Parties.
- 4) If any term, provision, or clause within this Ivy CBA will be determined by a court of competent jurisdiction to be invalid, void, or unenforceable, only that particular term, provision, or clause will be nullified. The remainder of the Ivy CBA will continue to be in full force and effect.
- 5) This Ivy CBA will be governed by and construed in accordance with the internal laws of the State of Tennessee without regard to its conflict of laws provisions.

(Signatures appear on the following page)

AGREED AND ACCEPTED this ____ day of May, 2020, by

MiKen Development, LLC:

Inglewood Neighborhood Association, Inc

By: _____,
Its: _____

By: _____,
Its: _____

EXHIBIT A

Legal Description