

**PARKLAND IMPACT FEE AND TRAIL SYSTEM  
CONSTRUCTION AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND SOUTHBROOKE, LLC  
COF CONTRACT No. 2019-0172**

**PARKLAND IMPACT FEE AND TRAIL SYSTEM CONSTRUCTION AGREEMENT**, (this “Agreement”), made and entered into this \_\_\_ day of \_\_\_\_\_ 2019 by and between THE CITY OF FRANKLIN, TENNESSEE (“City”) and Southbrooke, LLC (hereinafter “Southbrooke”) pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, and Southbrooke, LLC as owner of that certain land consisting of approximately five million, three hundred nine thousand, four hundred seventy-two square feet or 121.89 acres of undeveloped land located in Williamson County, Tennessee, as more particularly described in Exhibit A attached hereto-

**WITNESSETH:**

**WHEREAS**, Southbrooke is in the process of developing portions of Map 113 – Parcel 00100, Map 117 – Parcel 01300, Map 117 – Parcel 01400, Map 118 – Parcel 04900, Map 118 – 04901, and Map 118 – Parcel 05001 (the “Development Project”), consisting of 384 detached lots and 397 townhome lots all as more particularly shown on Exhibit A; and

**WHEREAS**, pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, Southbrooke has agreed to design and construct a multi-use trail system, park appurtenances such as benches, bike racks, trash receptacles, trail head signage, and a park structure with restrooms located within the outer limits of the Southbrooke PUD Subdivision, but not limited to, the mountain bike trail, trailheads with restroom facilities existing trees, shrubbery, and associated appurtenances such as signage, benches, and other associated amenities as approved by the City, all as more particularly shown and described on Exhibit C attached hereto; and

**WHEREAS**, the multi-use trail system, park appurtenances such as benches, bike racks, trash receptacles, trail head signage, and a park structure with restrooms encompasses approximately 120-125 acres of land on property known as Southbrooke located west of Lewisburg Pike all as more particularly shown and described on Exhibit B attached hereto; and

**WHEREAS**, Southbrooke has requested to offset a portion of the costs of construction of these improvements against any Parkland Impact Fees due from the Development Project, and the estimated amount of such eligible costs, and the potential offset, was determined by the Parks Department Director on April 25, 2019, to be THREE MILLION THREE HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED TWENTY and 00/100 DOLLARS (\$3,357,120.00) as itemized in attached Exhibit E; and

**WHEREAS**, Southbrooke has agreed to plat and dedicate a non-exclusive, open space lot, and construct the Trail System improvements as illustrated on Exhibit C and described in detail below for the future enjoyment of the public, free of charge, subject to the terms and conditions set forth herein; and

**WHEREAS**, any and all Trail System improvements located on public and/or privately-owned property as illustrated in the approved Exhibit C shall not be altered, expanded, or in any way modified in any material way from the level, nature and type of use as contemplated in this Agreement as of the date hereof, without the express prior written consent of the City (which shall not be unreasonably withheld, conditioned or delayed); and

**WHEREAS**, any approved fixed structures associated with the Trail System, examples may include fencing, benches, off-street parking, signage, etc. as illustrated on Exhibit C and further detailed on the approved construction drawings on file with the City that may be located in the City's non-exclusive, all-access public easement shall not be altered, expanded, or in any way modified in any material way by Southbrooke with respect to the nature and intensity of its use without the written consent of the City (which shall not be unreasonably withheld, conditioned or delayed).

**NOW, THEREFORE**, in consideration of the terms, conditions and mutual agreements by and between the parties as hereinafter set forth in detail, the parties do hereby mutually agree as follows:

**I. AGREEMENT OF LANDSCAPING IN THE CITY RIGHT-OF-WAY**

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. Southbrooke agrees to and has attached all pertinent exhibits to this contract prior to the first submittal of this agreement to the City for review. Southbrooke further understands that failure to provide all pertinent exhibits prior to the first submittal of this agreement for review will result in a delay in the agreement approval process.
3. Southbrooke agrees to provide the City with a Certificate of Liability Insurance evidencing General Liability insurance at \$1,000,000 per occurrence and \$2,000,000 aggregate limits that shall reflect the City of Franklin as a Certificate Holder. Southbrooke shall provide this Certificate of Liability Insurance prior to the signing of this agreement and shall provide an updated Certificate of Liability Insurance as General Liability insurance renews or changes throughout the term of this agreement.
4. Southbrooke and City agree that Southbrooke shall be eligible and shall receive an offset of applicable Parkland Impact Fees as hereafter set forth for the Trail System, dedication of land and easements, and associated improvements as illustrated in Exhibits B and C, and as allowed under Title 25, Chapter 4 of the City of Franklin Municipal Code.
5. The total estimated cost of land and/or easement dedication, design, and the cost of labor, equipment, supplies, and materials used to construct the mountain trail improvement as itemized in attached Exhibit D is \$8,072,174.75-\$8,382,779.75 and the estimated total offset to Southbrooke is \$3,361,424.00. The following costs are specifically excluded and not eligible for an offset: fiscal cost, including interest on money borrowed to finance the construction, cost for utility relocations, and other improvements that benefit the development.

6. Pursuant to Title 25, Chapter 4 of the Franklin Municipal Code, the eligible offset does and shall not exceed the total Parkland Impact Fees due for the Development Project.
7. The Trail System as depicted in Exhibits B and C and on the approved construction drawings on file with the City of Franklin Parks Department shall be constructed, inspected, approved, and accepted in its entirety within two (2) years from the date of approval or the issuance of the first building permit for the development or upon the reasonable request of the City. Southbrooke shall post a Letter of Credit or cash surety with the City for the cost of the outstanding improvements as reasonably determined by the City of Franklin Parks Department Director prior to additional Certificate of Occupancy Permits being issued.
8. Southbrooke will build and construct the Trail System along the western section of the Southbrooke PUD Subdivision property as depicted in Exhibit C. The Southbrooke PUD Subdivision parkland dedication area totals 120-125 acres stopping at the western boundary of the development. Notwithstanding anything to the contrary contained herein, the City of Franklin shall take over all responsibility for and maintenance of the trail and connections for the portion located on the Southbrooke PUD Subdivision Property following the completion of construction and acceptance by the City.
9. Southbrooke shall be responsible for the location and protection of all existing utilities in accordance with State and local laws while utilizing the right-of-way. There shall be no offsets or reimbursement for relocating or protecting public utilities.
10. Naming Rights. The policy of the City is to reserve naming or renaming of city assets to those circumstances which tradition and practice have shown to best serve the interests of the City and assure a worth and enduring legacy for the City.
11. Organized Events. Events require a Special Event Permit which may be obtained through the Franklin Parks Department. No entity shall sponsor, host or organize an event on the public trail without prior approval of the Special Event Permit.
12. All improvements, uses, and activities shall comply with the policies established by the City Franklin Zoning Ordinance and Municipal Code with the terms and conditions of this Agreement.
13. Upon completion and prior to acceptance of the Trail System improvements, Southbrooke will provide reasonable documentation for all such cost and provide notarized release of liens.
14. Final as-built plans shall be submitted immediately following completion of construction activities. If the project is developed in phases, as-built plans for each phase shall be submitted once the work is complete in that phase. Acceptance of parkland dedication and

construction projects will not be issued until satisfactory as-built plans have been approved by the Parks Department Director or designee and the City Engineer's designee. All aspects of the project that have been affected by construction shall be verified and appear on the as-built plans. This would include, but is not limited to the following items:

- All property lines and easements
  - New and Existing structures (include restrooms, playground equipment, trail/multi-use paths, trail heads, pavilions, pools, athletic fields, athletic courts, athletic venues, etc.)
  - Location of all "as-built" work with station and offsets
  - Height and location of all fences, walls, screens, trees, and hedges over 42" tall
  - All commercial driveways, paved areas, and required parking spaces
  - All concealed components with station and offsets (include known buried cables, utilities, drainage structures, etc.)
  - All utilities
  - File formats shall be in a \*.PDF along with either \*.DWG, \*.DXF, \*.DGN, or AutoDACA14
  - Two paper sets
- \*Note: on all sheets referencing the Tennessee State Plane Coordination System, Zone 5301, Fipszone 4100; NAD 83 datum.

Concealed components will require documented proof to be submitted with the as-built plans in the form of a certified construction log that has been generated by the design engineer. As-built plans are required to be endorsed by a Tennessee registered professional engineer and or a registered land surveyor.

15. Barring force majeure or weather delays, Southbrooke agrees, upon thirty (30) days written notice from the City, to remove, maintain, repair or replace trees, landscaping, and trail damage as described herein that may require reasonable removal, maintenance, repair or replacement. The City reserves its right to determine health of the trees, landscaping, and condition of the Trail System and, whether trees, landscaping, and Trail System are to be replaced and maintained. If no remedy is made within the specified time, the City reserves the right to remove all affected trees and landscaping and repair the trail with notice to Southbrooke and at the sole cost and expense of Southbrooke. Southbrooke shall submit payment for full cost and expense incurred by the City within forty-five (45) days of the date of the invoice.
16. In the case of emergency situations where unplanned disturbance of the trees, landscaping and Trail System, occurs due to natural disaster, emergency infrastructure repairs, or public safety/emergency response, the City to minimize disturbance to the extent feasible but must act swiftly for the purposes of public safety, health and welfare. The City will bring the site back to substantially similar condition as soon as practicable, subject to budgetary constraints; other priorities that serve the public health, safety, and welfare; seasonal limitations for replacement or planting; and weather delays.

17. The permission granted by this Agreement shall be effective as of the date of execution by both parties and shall terminate only as provided within this Agreement.
18. This Agreement is non-transferable to the successors or assigns of Southbrooke unless the successor assumes the same obligations of Southbrooke in writing. Such assignment shall be provided to the City within fifteen (15) days after the transfer of the Development Project. Upon assignment, Southbrooke shall be relieved from any and all further liability under this Agreement, including, without limitation, pursuant to Section 18 hereof. The City shall have the right to immediately remove trees, landscaping, and Trail System for which this Agreement is granted upon assignment or transfer by Southbrooke; subject, however, to application made by the successor for and due diligence in obtaining approval by the City of a new Agreement for the existing landscaping to remain in the right-of-way.
19. Southbrooke shall exercise the rights, privileges and permission granted herein at Southbrooke's own risk. Southbrooke shall not claim any damages from the City for any injuries or damages, including death, about or because the exercise of such rights, privileges or permission, the condition of the non-exclusive, all-access public easement or the use of the non-exclusive, all-access public easement excluding gross negligence or willful misconduct by the City and its Mayor, Aldermen, officers, employees, officials and agents. Southbrooke shall indemnify and hold harmless the City, its Mayor, Aldermen, officers, employees, officials and agents, from and against all claims, actual damages, actual losses and actual out-of-pocket expenses, including reasonable attorney's fees for outside counsel and costs, arising out of, resulting from, or in any way connected with the failure of Southbrooke to comply with any of the provisions specified herein or with the City's direction to remove and/or maintain any trees, landscaping, or portions of the Trail System depicted in Exhibits B and C. The City shall not be liable to Southbrooke should Southbrooke's use of the property be hindered or disturbed. The City will not be liable to Southbrooke for any reason not specifically stated herein.
20. The City and Southbrooke agree that the terms and conditions contained herein shall be binding on and shall inure to their heirs, representatives, successors, and assigns and that there are no understandings or agreements between them except as contained in this instrument.
21. Applicable Law/Choice Forum and Venue. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice for forum and venue shall be exclusively in the courts of Williamson County, Tennessee.

22. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail or in person to:

In the case of the City:

City of Franklin  
Attn: Vernon J. Gerth, ACA  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305

In the case of Southbrooke:

Southbrooke, LLC  
Attn: Michael Ford  
390 Mallory Station Road  
Franklin, TN 37067

Beginning November 2019:  
Southbrooke, LLC  
Attn: Michael Ford  
554 Franklin Road  
Franklin, TN 37067

23. This Agreement shall be recorded with the Williamson County Register of Deeds with a copy maintained in the City Recorder's office in City Hall, Franklin, TN. Upon completion of this Agreement, the City agrees to cover the costs and responsibility associated with recording this Agreement.

This Agreement constitutes the entire agreement between parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

## II. GENERAL TERMS AND CONDITIONS

### 1. **Personal Liability.**

No member, Mayor, Alderman, official, or employee of the City shall be personally liable to Southbrooke or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to Association or successor or on any obligations hereunder; provided, however, the City shall remain liable to Southbrooke for its gross negligence and willful misconduct. The City shall only look to Southbrooke and the Development Project for the enforcement of Southbrooke obligations hereunder. None of the trustees, officers, directors, employees, members, owners, partners or shareholders of Southbrooke or any direct or indirect owner of Southbrooke shall have any personal liability for any of the liability or obligations of Southbrooke in connection herewith.

Prepared by:  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

2. **Warranties/Limitation of Liability/Waiver.**

The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Southbrooke to limit its liability shall be void and unenforceable.

3. **Severability.**

If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

[Signature pages follow next]

Prepared by:  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

**IN WITNESS WHEREOF** the said parties have hereunto set their signatures, on this day and date first above written.

**CITY OF FRANKLIN, TENNESSEE**

**Attest:**

By: \_\_\_\_\_  
Dr. Ken Moore, Mayor

By: \_\_\_\_\_  
Eric S. Stuckey, City Administrator

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

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

**STATE OF TENNESSEE** )  
 )  
**COUNTY OF WILLIAMSON** )

Before me, \_\_\_\_\_, a Notary Public of said State and County, personally appeared, Dr. Ken Moore and Eric S. Stuckey, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and where, upon oath, Dr. Ken Moore acknowledged himself to be Mayor and Eric S. Stuckey acknowledged himself to be City Administrator of the City of Franklin, Tennessee, and that as such, being authorized to do so, have executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**Approved as to form:**

By: \_\_\_\_\_  
Shauna R. Billingsley, City Attorney

Prepared by:  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

**Southbrooke, LLC,**  
a Tennessee limited liability company

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

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

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF TENNESSEE    )  
  )  
COUNTY OF WILLIAMSON)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_ who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed  
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Tennessee that the foregoing  
paragraph is true and correct.

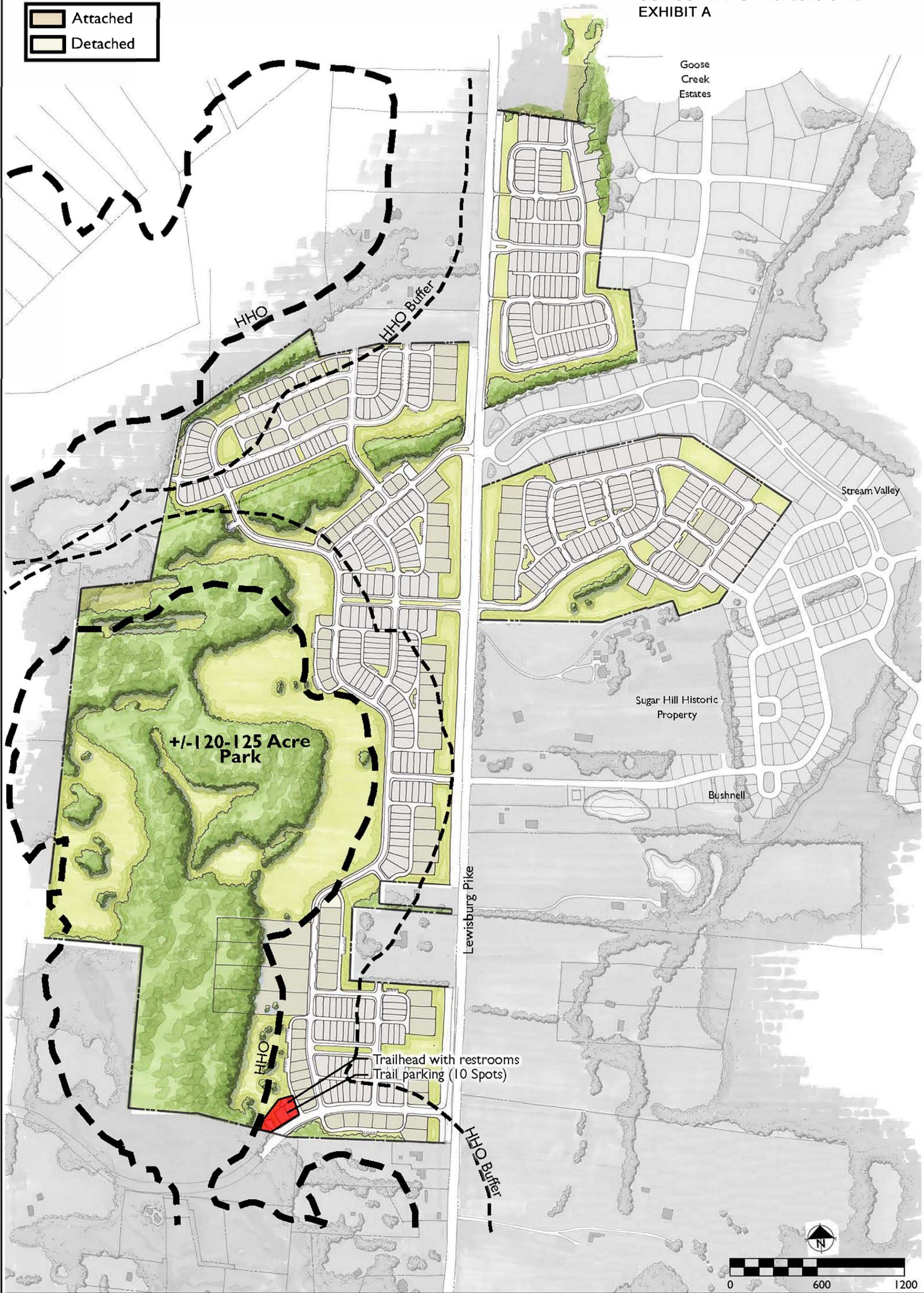
WITNESS my hand and official seal.

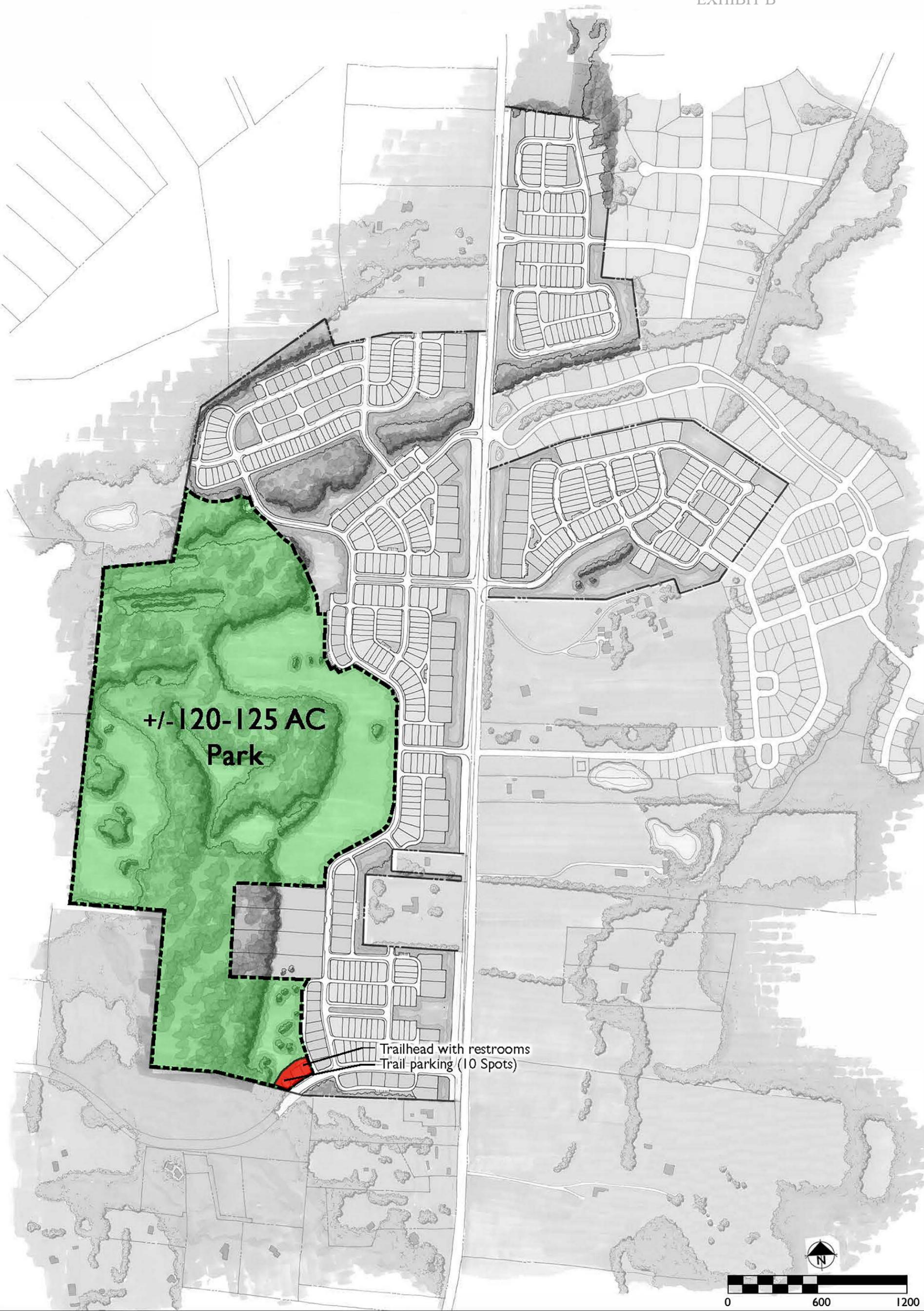
\_\_\_\_\_  
Signature

(seal)

My Commission Expires: \_\_\_\_\_

Attached  
Detached







| <b>Parkland Dedication Calculations*</b>            |                 |                 |               |                                 |
|---|-----------------|-----------------|---------------|---------------------------------|
| Calculation of Requirement                          |                 |                 |               |                                 |
| Total Dedication Required for 781 Residential Units |                 |                 |               |                                 |
|   | QTY.            |                 | Land Value    | Cash Total                      |
|   | 780* Lots       |                 | \$4,304 / Lot | \$3,357,120.00                  |
| Proposed Land and Construction Dedication           |                 |                 |               |                                 |
| Land Dedication                                     |                 |                 |               |                                 |
| Description   | Land Total (SF) | Land Total (AC) | Land Value    | Cash Total                      |
| Parkland Dedication Area                            | 5,309,472 SF    | 120-125 AC      | \$62,121 / AC | \$7,454,520 - \$7,765,125       |
| Construction Dedication                             |                 |                 |               |                                 |
| Description   | QTY.            | Cost            |               | Cash Total                      |
| Hiking Trails (5' Wide)                             | 19,407 LF       | \$9.25/LF       |               | \$179,514.75                    |
| Hiking Trail Grading, Clearing, and Grubbing        | 97,035 SF       | \$4.00/SF       |               | \$388,140.00                    |
| Trailhead with restroom facilities                  | 1               | \$50,000.00     |               | \$50,000.00                     |
|   |                 |                 |               |                                 |
| Total Proposed Construction Dedication              |                 |                 |               | \$617,654.75                    |
| Calculation of Additional Dedication Required       |                 |                 |               |                                 |
| Description   | QTY.            |                 |               | Cash Total                      |
| Land Dedication                                     | 120 - 125 AC    |                 |               | \$7,454,520 - \$7,765,125       |
| Construction Dedication                             |                 |                 |               | \$617,654.75                    |
|   |                 |                 |               |                                 |
| Total Proposed Dedication                           |                 |                 |               | \$8,072,174.75 - \$8,382,779.75 |
| Required Dedication                                 |                 |                 |               | \$3,357,120.00                  |
|   |                 |                 |               |                                 |
| Dedication Beyond Requirement                       |                 |                 |               | \$4,715,054.75 - \$5,025,054.75 |

\*Unit count is approximate. Final count to be established at site plan.

### **Exhibit E: Opinion of Cost**

Based on the City of Franklin’s Parkland Dedication Ordinance (Ordinance 2016-25, Franklin Municipal Code §25-405, and hereinafter, “Ordinance”), the opinion of cost is as follows. Southbrooke, LLC (hereinafter, “Southbrooke”) will be developing the property known as Southbrooke PUD Subdivision, which is located on portions of Map 113 – Parcel 00100, Map 117 – Parcel 01300, Map 117 – Parcel 01400, Map 118 – Parcel 04900, Map 118 – 04901, and Map 118 – Parcel 05001. The development will include seven hundred eighty (780) dwelling units. The Total Parkland Impact Fee Obligation Per Dwelling Unit fee, as listed in Appendix A, Chapter 25 of the Franklin Municipal Code (hereinafter, “Appendix”), is \$4,304.00.

The total obligation for Southbrooke, based on the seven hundred eighty (780) dwelling units at the assessed price of \$4,304.00, is in the amount of \$3,357,120.00. According to the Ordinance, this amount must be paid, “at the same time the fees that are due for recording of the final plat, or for issuance of a building permit, whichever occurs first, or in accordance with the provisions of the City of Franklin Charter or a Contract for Parkland Impact Fees, Parkland Dedication and/or Construction of Park Improvements approved by the BOMA, when applicable.” The amount may be reimbursed in part or in full based on the Parks Department’s assessment of any parkland construction on the development’s property.

Southbrooke intends to construct and dedicate a trail system on approximately 120-125 acres of land to the City. The Appendix states, Off-sets for Public Parkland will be, “calculated at 100% of the Parkland Dedication in Lieu of Parkland Impact Fee Off-Set amount if the parkland improvement is a project consistent with the Comprehensive Parks and Recreation Master Plan.” Based on this calculation, Southbrooke is eligible for a one hundred (100) percent off-set of the parkland impact fees in the amount of \$3,357,120.00 for the dedication of land and construction of the greenway trails. This is the maximum off-set amount available for this project, and it will be reimbursed to Southbrooke at the completion of the project.

The table below is a summary of the above information.

|   |                |
|---|----------------|
| Total Parkland Impact Fee for 780 units @ \$4,304/unit                | \$3,357,120.00 |
| Eligible amount of off-set based on 100% of total Parkland Impact Fee | \$3,357,120.00 |