

**PARKLAND IMPACT FEE AND PRIVATE PARK
CONSTRUCTION AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND SOUTHBROOKE, LLC FOR THE PROPERTY
KNOWN AS THE MEADOWS AND VILLAGES AT SOUTHBROOKE PUD
COF CONTRACT NO. 2019-0381**

PARKLAND IMPACT FEE AND PRIVATE PARK CONSTRUCTION AGREEMENT, (this “Agreement”), made and entered into this ___ day of _____ 2020 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 Three Million, Two Hundred Sixty-Four Thousand, Eight Hundred Twenty-Two Square Feet (3,264,822 ft²) or Seventy-Four Point Ninety-Five (74.95) 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 117 Parcels 19.01 and 19.02, consisting of 158 detached lots and 47 multifamily homes to be known as the Meadows and Villages at Southbrooke PUD (hereinafter, the “Development Project”) all as more particularly shown on Exhibit A; and

WHEREAS, pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, Southbrooke, LLC intends to develop or cause the development of private parkland amenities consisting of a swimming pool, a pool deck, furnishings, pool restroom facilities, open air pavilions, passive sitting areas, and open play spaces, all as more particularly shown and described on Exhibit B attached hereto; and

WHEREAS, Parkland Impact Fees and Parkland Dedication requirements are based on the mathematical formulas and allocations set forth in the City’s Parkland Dedication Ordinance (Ordinance 2016-25, Franklin Municipal Code 25-405, and hereinafter, “Ordinance”); and

WHEREAS, the Parkland Impact Fee as set forth in the Ordinance is Four Thousand Three Hundred Four and 00/100 Dollars (\$4,304.00) per dwelling unit; and

WHEREAS, the total Parkland Impact fee for Southbrooke is Eight Hundred Eighty-Two Thousand Three Hundred Twenty Dollars (\$882,320.00) and shall be paid at the final plat or issuance of the first building permit, whichever comes first; and

WHEREAS, Southbrooke has requested to offset a portion of the costs of construction of Private Park Amenities not open to the Public against any Parkland Impact Fees due from the Development Project; and

WHEREAS, in accordance with the off-set amounts predetermined in the Ordinance, Southbrooke is eligible to receive up to a Twenty-Five (25) Percent off-set of the Total Parkland Impact Fee Obligation in the amount of Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500.00); and

WHEREAS, the remaining Seventy-Five (75) Percent of the Total Parkland Impact Fee Obligation, in the amount of Six Hundred Nineteen Thousand Eight Hundred Twenty Dollars (\$619,820.00), shall be used by the City of Franklin on community type parks in Quadrant Two (2) in accordance with the Ordinance; and

WHEREAS, any and all improvements located on public and/or privately-owned property as illustrated in the approved Exhibit B 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 private parks, examples may include fencing, benches, off-street parking, signage, etc. as illustrated on Exhibit B and further detailed on the approved construction drawings on file with the City of Franklin Parks Department that may be located in the private open space 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 FOR PARKLAND CONSTRUCTION AND DEDICATION

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. 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 Private System and associated improvements as illustrated in Exhibit B, and as allowed under Title 25, Chapter 4 of the City of Franklin Municipal Code.
3. The total estimated cost of design, and the cost of labor, equipment, supplies, and materials used to construct the private park improvement as itemized in attached Exhibit C is One Million Fifty Thousand Dollars (\$1,050,000.00) and the estimated total offset available to Southbrooke is Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500.00), or Twenty-Five (25) Percent of the total cost of the improvement, upon submittal and approval of the supporting documentation. 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.
4. Southbrooke shall construct the Private Parkland Not Open to the Public, community pools with pool appurtenances which will not be open to the public, and private parkland not

- open to the public with playground, seating areas, and pavilions to be maintained the Southbrooke Home Owners Association.
5. 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.
 6. 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.
 7. 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.
 8. 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.
 9. Upon completion and prior to acceptance of the Private Park improvements, Southbrooke will provide reasonable documentation for all such cost and provide notarized release of liens.
 10. 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 and the City Engineer. 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, 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 AutoDACr14
 - 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.

11. 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.
12. 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.
13. 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 of 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 herein, or with the City's direction to remove and/or maintain any trees, landscaping, or portions of the Private Parkland Area as depicted in Exhibit B. The City shall not be liable to Southbrooke should Southbrooke use of the property be hindered or disturbed. The City will not be liable to Southbrooke for any reason not specifically stated herein.
14. The City and Southbrooke agree that the terms and conditions contained herein shall be binding on and shall insure to their heirs, representatives, successors, and assigns and that there are no understandings or agreements between them except as contained in this instrument.
15. 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.
16. 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
554 Franklin Road
Franklin, TN 37064

17. 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.
18. 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.

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.

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: _____
Maricruz R. Fincher, Staff 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)

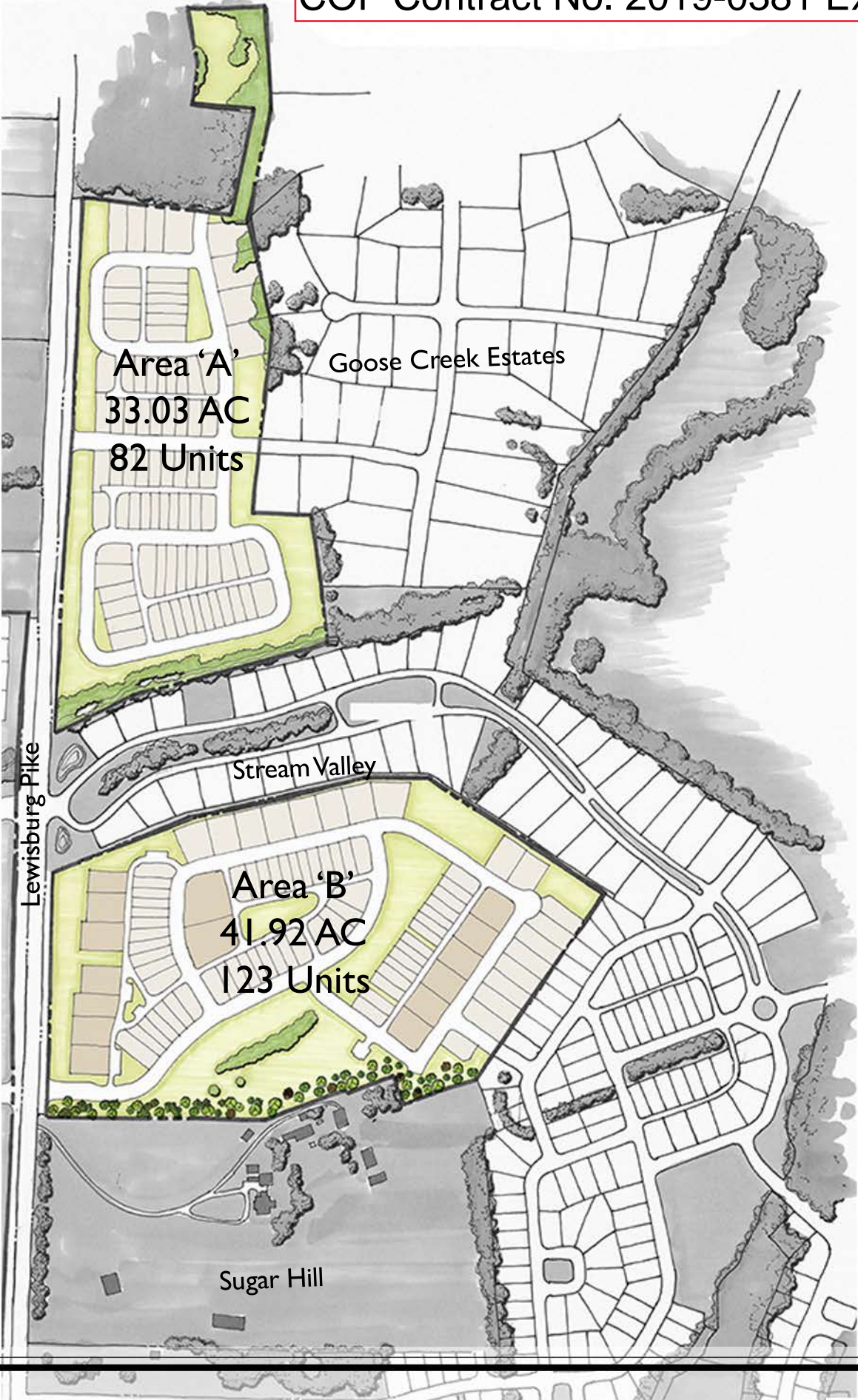
On _____, before me, _____,
Notary Public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies),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

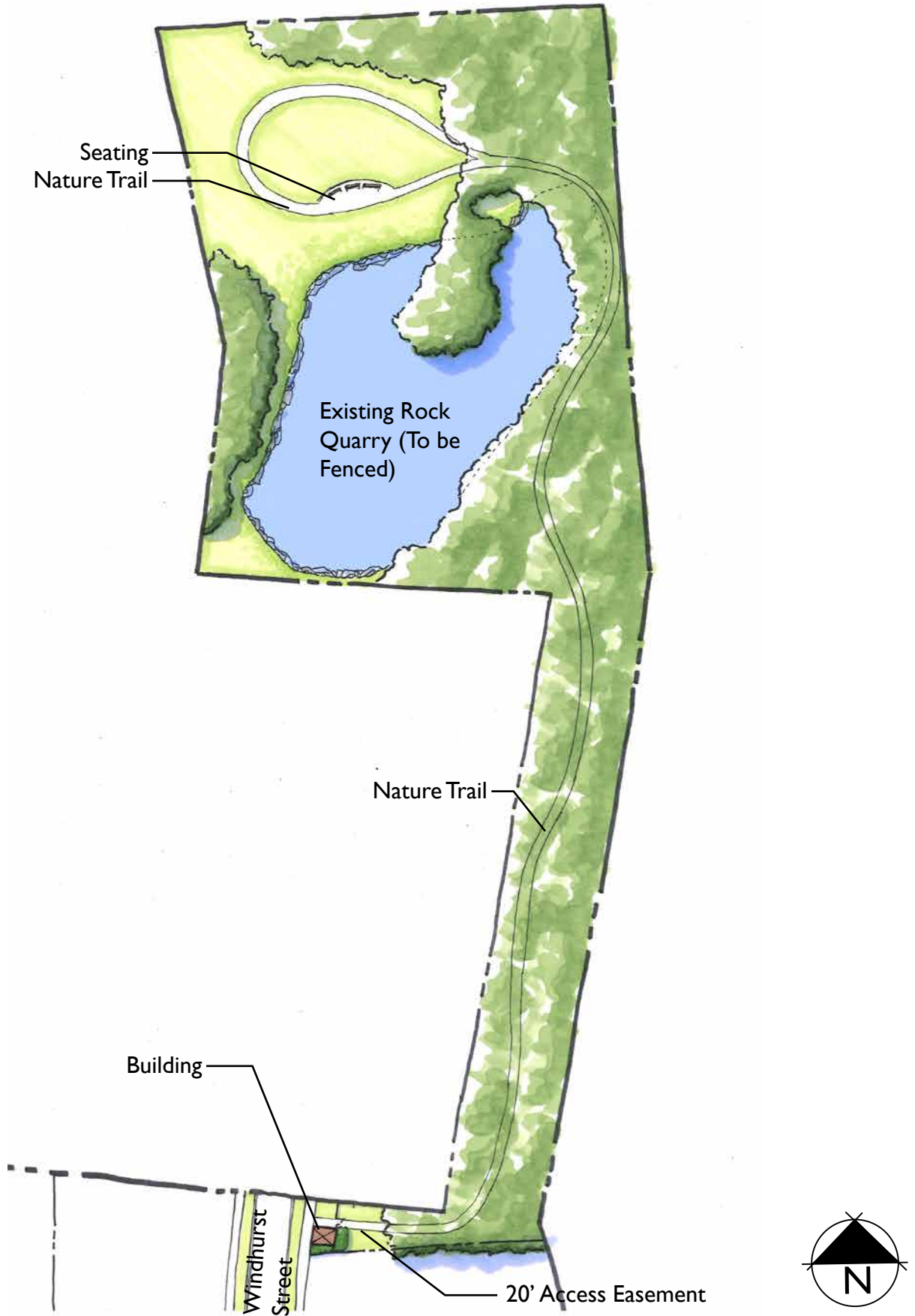
I certify under PENALTY OF PERJURY under the laws of the State of Tennessee that the foregoing
paragraph is true and correct.

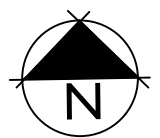
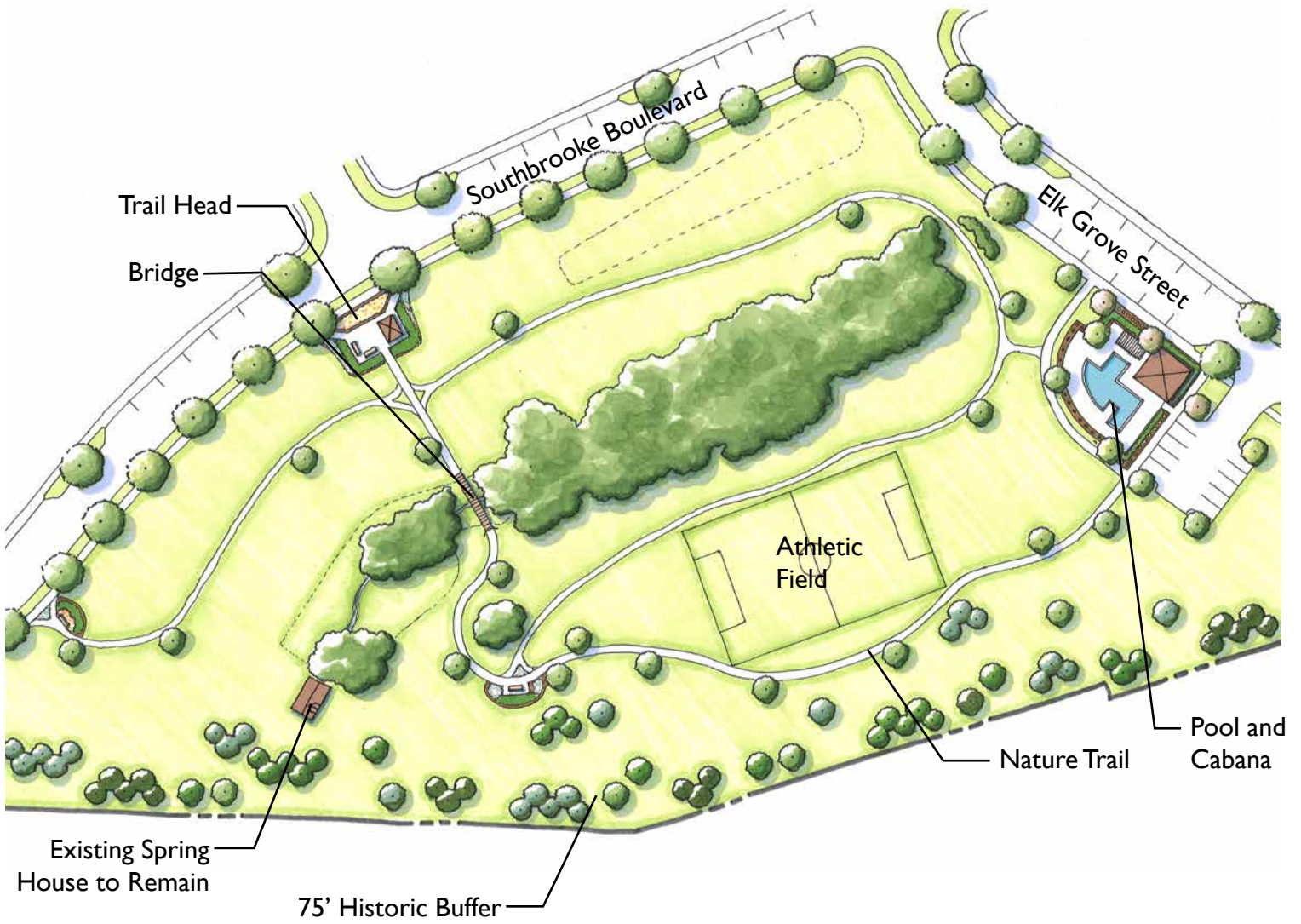
WITNESS my hand and official seal.

_____(seal)
Signature

My Commission Expires: _____









COF Contract No. 2019-0381 Exhibit C

Parkland Dedication Calculations*		
Calculation of Requirement		
Total Dedication Required for 205 Residential Units		
	QTY.	
	205 Lots	Land Value \$4,304 / Lot
		Cash Total \$882,320
Proposed Land and Construction Dedication		
Land Dedication		
	Land Total (SF)	Land Total (AC)
Description		
Parkland Dedication Area (3 Lots)	403,482 SF	9.26 AC
Construction Cost		
	Description	Estimated Construction Cost
	Lot 1000	\$150,000
	Lot 1008	\$150,000
	Lot 1012	\$750,000
	Total Construction Cost*	\$1,050,000
*Per agreement with Parks Department, only 25% of construction costs shall be applied to dedication requirements		
	Required Dedication	\$882,320
	25% Dedication	\$262,500
	Remaining Fees to be paid	\$619,820