

**PARKLAND IMPACT FEE AND MOUNTAIN BIKE TRAIL SYSTEM
CONSTRUCTION AND MAINTENANCE AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND GATEWAY MOSBY COOL SPRINGS, LLC
COF CONTRACT NO. 2018-0155**

PARKLAND IMPACT FEE AND MOUNTAIN BIKE TRAIL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT, (this “Agreement”), made and entered into this ____ day of October 2018 by and between THE CITY OF FRANKLIN, TENNESSEE (“City”) and GATEWAY MOSBY COOL SPRINGS, LLC (hereinafter “Mosby”) pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, and Mosby Cool Springs, LLC as owner of that certain land consisting of approximately two hundred five thousand, seven hundred sixty-one square feet or 4.72 acres of undeveloped land located in Williamson County, Tennessee, as more particularly described in Exhibit A attached hereto, and Gateway Mosby Cool Springs Lessee, LLC, as tenant, join herein for the sole purpose of consenting to and approving this Agreement, and hereby consent to and approve this Agreement.

WITNESSETH:

WHEREAS, Mosby is in the process of developing Map 079 - Parcel 04025 (the “Development Project”), consisting of three hundred twenty-eight (328) apartment units, and an affiliate of an indirect owner of Mosby intends to develop or cause the development of approximately twenty-eight (28) 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 Mosby has agreed to design, construct, and maintain a Mountain Bike Trail System located within the outer limits of The Standard at Cool Spring Subdivision, but not limited to, the mountain bike trail, trailheads, existing trees, shrubbery, and associated appurtenances such as signage, benches, and other associated amenities as approved by the City of Franklin, all as more particularly shown and described on Exhibit B attached hereto; and

WHEREAS, the Mountain Bike Trail System encompasses approximately *4.72 acres* of land on property known as The Standard at Cool Springs Subdivision and on the adjacent Columbia State Community College property located north of Liberty Pike all as more particularly shown and described on Exhibit C attached hereto; and

WHEREAS, Mosby 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 July 23, 2018, to be \$ 1,459,516.98 as itemized in attached Exhibit D; and

WHEREAS, Mosby has agreed to plat and dedicate a non-exclusive, all-access public easement, construct, and maintain the Mountain Bike Trail System improvements as illustrated on Exhibits B and 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 Mountain Bike Trail System improvements located on public and/or privately-owned property as illustrated in the approved Exhibit B and 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 Mountain Bike Trail System, examples may include fencing, benches, off-street parking, signage, etc. as illustrated on Exhibits B and C and further detailed on the approved construction drawings on file with the City of Franklin Parks Department 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 Mosby 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. Mosby and City agree that Mosby shall be eligible and shall receive an offset of applicable Parkland Impact Fees as hereafter set forth for the Mountain Bike 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.
3. 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 \$1,459,516.98 and the estimated total offset to Mosby is an identical amount upon submittal and approval of 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. 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.
5. City hereby grants Mosby permission to enter upon and to utilize the non-exclusive, all-access public easement known as the Mountain Bike Trail System located and situated on the The Standard at Cool Spring Subdivision and on the adjacent Columbia State Community College property in Franklin, TN, as depicted in Exhibits B and C for the purposes of construction and maintenance the Mountain Bike Trail System and associated appurtenances such as signage, benches, and other associated amenities approved by the

City as depicted in Exhibits B and C and on the approved construction drawings on file with the City of Franklin Parks Department.

6. The Mountain Bike 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 prior to January 1, 2019 or upon the reasonable request of the City, Mosby 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.
7. Mosby will build, construct, and maintain the mountain bike trails along the northern section of The Standard of Cool Springs Subdivision property and on the adjacent Columbia State Community College property as depicted in Exhibit C. The Standard at Cool Springs Subdivision parkland dedication area totals 4.72 acres stopping at northern boundary of the Standard at Cool Springs Subdivision. Mosby will maintain the portion of the Mountain Bike Trail System and appurtenances located on The Standard at Cool Springs Subdivision property into perpetuity and for fifteen (15) years for the portion located on the adjacent Columbia State Community College property beginning on the final acceptance of the Mountain Bike Trail System. 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 Columbia State Community College Property following the fifteen (15) year maintenance period.
8. Mosby 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.
9. 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.
10. 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 mountain biking trail without prior approval of the Special Event Permit.
11. 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.
12. Mosby shall name the City of Franklin as an additional insured on and submit Certificates of Liability Insurance to the City in coverage limits specified by the City of Franklin Risk Analyst for the construction, public use, and maintenance of the Mountain Bike Trail System prior to commencing construction.

13. Upon completion and prior to acceptance of the Mountain Bike Trail System improvements, Mosby will provide reasonable documentation for all such cost and provide notarized release of liens.
14. Barring force majeure or weather delays, Mosby 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 Mountain Bike Trail System and, whether trees, landscaping, and Mountain Bike 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 Mosby and at the sole cost and expense of Mosby. Mosby shall submit payment for full cost and expense incurred by the City within forty-five (45) days of the date of the invoice.
15. In the case of emergency situations where unplanned disturbance of the trees, landscaping and Mountain Bike 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.
16. 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.
17. This Agreement is non-transferable to the successors or assigns of Mosby unless the successor assumes the same obligations of Mosby in writing. Such assignment shall be provided to the City within fifteen (15) days after the transfer of the Development Project. Upon assignment, Mosby 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 Mountain Bike Trail System for which this Agreement is granted upon assignment or transfer by Mosby; 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.
18. Mosby shall exercise the rights, privileges and permission granted herein at Mosby's own risk. Mosby 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. Mosby shall indemnify and hold harmless Columbia State Community College, its officials and agents, 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 Mosby 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 Mountain Bike Trail System depicted in Exhibits B and C. The City shall not be liable to Mosby should Mosby's use of the property be hindered or disturbed. The City will not be liable to Mosby for any reason not specifically stated herein.

19. The City and Association 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.
20. 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.
21. 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 Mosby:

Middleburg Real Estate Partners
Attn. Rachel Noone
1921 Gallows Road, Suite 700
Vienna, VA 22182

Stockbridge Capital Group
Attn: Joel Sasser
3550 Lenox Road N.E., Suite 2500
Atlanta, GA 30326

22. 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.
23. 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 Mosby 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 Mosby for its gross negligence and willful misconduct. The City shall only look to Mosby and the Development Project for the enforcement of Mosby's obligations hereunder. None of the trustees, officers, directors, employees, members, owners, partners or shareholders of Mosby or any direct or indirect owner of Mosby shall have any personal liability for any of the liability or obligations of Mosby 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 Mosby 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

GATEWAY MOSBY COOL SPRINGS, LLC, a Tennessee limited liability company

By: Gateway Mosby Cool Springs, GP,
a Delaware general partnership,
its sole member

By: Gateway Cool Springs, LLC,
a California limited liability company,
the Gateway Managing Partner

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 CALIFORNIA)
)
COUNTY OF _____)

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 California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

_____(seal)
Signature

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

MOSBY COOL SPRINGS, LLC, a Virginia limited liability company

By: Mosby Cool Springs Manager, LLC, its sole Manager

By: Middleburg Real Estate Partners, LLC, its Managing Member

By: _____
Name: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public having authority within the State and County aforesaid, _____, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the _____ of Mosby Cool Springs, LLC, a Virginia limited liability company, and is authorized by the limited liability company to execute this instrument on behalf of the limited liability company.

WITNESS my hand, at office, this ____ day of _____, 2018.

Notary Public

My Commission Expires:

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

GATEWAY MOSBY COOL SPRINGS LESSEE, LLC, a
Tennessee limited liability company

By: Gateway Mosby Cool Springs, GP, a Delaware
general partnership, its sole member

By: Gateway Cool Springs LLC, a California
limited liability company, its managing
member

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 CALIFORNIA)
)
COUNTY OF _____)

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 California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

_____(seal)
Signature

CONSENT AND SUBORDINATION

Simmons Bank, an Arkansas banking corporation, its successors and assigns, (“Beneficiary”) hereby consents to this Park Agreement and subordinates all of its liens and security interests pursuant to that certain (i) Deed of Trust, Security Agreement and Fixture Filing executed by Gateway Mosby Cool Springs, LLC to Robert R. Campbell, Jr., as Trustee, in favor of and for the benefit of Beneficiary, dated as of June 16, 2017 and recorded at Book 7106, Page 613 in the official records of the County of Williamson, Tennessee (the “**Lot 2 Deed of Trust**”) and (ii) Hypothecation Leasehold Deed of Trust, Security Agreement and Fixture Filing executed by Gateway Mosby Cool Springs, LLC to Robert R. Campbell, Jr., as Trustee in favor of and for the benefit of Beneficiary, dated as of June 16, 2017 and recorded at Book 7106, Page 843 in the official records of the County of Williamson, Tennessee (the “**Lot 3 Deed of Trust**”), to the Park Agreement. Except only insofar as Beneficiary herein consents and subordinates, all of Beneficiary’s liens and security interests under the Lot 2 Deed of Trust and the Lot 3 Deed of Trust remain in full force and effect and of first dignity and priority. Beneficiary reserves all of the rights to which it is entitled and except to the limited extent provided herein, this consent and subordination in no way shall operate as a waiver of said rights.

BENEFICIARY:

SIMMONS BANK,
 an Arkansas banking corporation

By:
 Name:
 Its:

STATE OF _____)
) SS.
 COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of Simmons Bank, an Arkansas banking corporation (“Beneficiary”), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, as the free and voluntary act of said Beneficiary, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ___ day of _____, 2018.

(Seal)

 Notary Public
 My Commission Expires:_____