

**PARKLAND IMPACT FEE AND GREENWAY TRAIL SYSTEM
CONSTRUCTION AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND CLAYTON PROPERTIES GROUP, INC.
COF CONTRACT NO. 2019-0007**

PARKLAND IMPACT FEE AND GREENWAY TRAIL SYSTEM CONSTRUCTION AGREEMENT, (this “Agreement”), pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, made and entered into this ____ day of _____ 2018 by and between THE CITY OF FRANKLIN, TENNESSEE (“City”) and CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation (hereinafter “Clayton”), owner of that certain land consisting of approximately 44 acres +/- of land located at 2970 Del Rio Pike, Franklin, Williamson County, Tennessee, being Parcel No. 1.03 on Williamson County Tax Assessor’s Map No. 63, as more particularly described in Exhibit A attached hereto (the “Property”).

WITNESSETH:

WHEREAS, Clayton is in the process of developing the Property (the “Development Project”), consisting of sixty-eight (68) attached townhome lots, and sixty-four detached single family lots all as more particularly shown on Exhibit A; and

WHEREAS, pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code Clayton has agreed to design, and construct a Greenway Trail System located within the outer limits of The Fields at Reese Farm PUD, but not limited to, the greenway 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 Greenway Trail System encompasses approximately 1.1471 acres of land on property known as The Fields at Reese Farm PUD all as more particularly shown and described on Exhibit C attached hereto; and

WHEREAS, Clayton 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 _____, 2018, to be \$ 69,097.32 as itemized in attached Exhibit D; and

WHEREAS, Clayton has agreed to plat and dedicate a non-exclusive, all-access public easement, and construct the Greenway 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 Greenway 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 Greenway 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 Clayton 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. Clayton and City agree that Clayton shall be eligible and shall receive an offset of applicable Parkland Impact Fees as hereafter set forth for the Greenway 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 trail improvement as itemized in attached Exhibit D is \$69,097.32 and the estimated total offset to Clayton 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 Clayton permission to enter upon and to utilize the non-exclusive, all-access public easement known as the Greenway Trail System located and situated on the The Fields at Reese Farm PUD in Franklin, TN, as depicted in Exhibits B and C for the purposes of construction of the Greenway 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 Greenway 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 _____, 20____ or upon the reasonable request of the City, Clayton 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. Clayton will build, and construct the greenway trails within The Fields at Reese Farm PUD as depicted in Exhibit C. The Fields at Reese Farm PUD parkland dedication area totals 1.1471 acres. The Reese Farm PUD Neighborhood Home Owner's Association will maintain the greenway trail until the connection is made with Mack Hatcher through Rizer Point. The City of Franklin will maintain the Greenway Trail System and appurtenances located on The Fields at Reese Farm PUD into perpetuity beginning on the completion of the greenway trail from Mack Hatcher to Mack Hatcher through Rizer Point.
8. Clayton 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 greenway 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. Clayton 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 of the Greenway Trail System prior to commencing construction.
13. Upon completion and prior to acceptance of the Greenway Trail System improvements, Clayton will provide reasonable documentation for all such cost and provide notarized release of liens.
14. Barring force majeure or weather delays, Clayton agrees, upon thirty (30) days written notice from the City, to remove, repair or replace trees, landscaping, and trail damage as described herein that may require reasonably removal, repair or replacement. The City reserves its right to determine health of the trees, landscaping, and condition of the Greenway Trail System and, whether trees, landscaping, and Greenway 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 Clayton and at the sole cost and expense of Clayton. Clayton 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 Greenway 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 Clayton unless the successor assumes the same obligations of Clayton in writing. Such assignment shall be provided to the City within fifteen (15) days after the transfer of the Development Project. Upon assignment, Clayton 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 Greenway Trail System for which this Agreement is granted upon assignment or transfer by Clayton; 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. Clayton shall exercise the rights, privileges and permission granted herein at Clayton's own risk. Clayton 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. The City shall not be liable to Clayton should Clayton's use of the property be hindered or disturbed. The City will not be liable to Clayton for any reason not specifically stated herein.
 19. The City and Clayton 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: Eric Stuckey
109 Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305

In the case of Clayton:

Clayton Properties Group, Inc.
Attn. Maverick Green
Suite 100, 393 Maple Street
Gallatin, TN 37066

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

[Signature pages follow next]

DRAFT

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

CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation

By: _____
Name: _____
Title: _____

STATE OF TENNESSEE)
)
COUNTY OF _____)

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the _____ of Clayton Properties Group, Inc., a Tennessee corporation, the within named bargainor, and that he as such _____, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as _____.

Witness my hand and seal at office in _____, Tennessee, this ____ day of _____, 2018.

Notary Public

My Commission Expires: _____

DRAFT