

**PARKLAND DEDICATION, HISTORIC STRUCTURE RESTORATION, ARBORETUM,
AND MOUNTAIN BIKE TRAIL SYSTEM
CONSTRUCTION AND MAINTENANCE AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND LEGACY, LLC
COF CONTRACT NO. 2019-0096**

PARKLAND DEDICATION, HISTORIC STRUCTURE RESTORATION, ARBORETUM AND MOUNTAIN BIKE TRAIL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT, (this "Agreement"), made and entered into this ___ day of _____ by and between THE CITY OF FRANKLIN, TENNESSEE ("City") and LEGACY, LLC (hereinafter "Legacy") as owner of that certain land consisting of approximately 988,812 square feet or 22.7 acres of undeveloped land located in Williamson County, Tennessee, as more particularly described in Exhibit A, Huffines Property PUD Subdivision Development Plan, Sheet C2.0, attached hereto, pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code

WITNESSETH:

WHEREAS, Legacy is in the process of developing 1343 Huffines Ridge Drive (Map 62-Parcel 20) (the "Property"), consisting of four hundred twenty-six (426) apartment units, a one hundred seventy (170) room hotel and an office building consisting of approximately 150,000 square feet all as more particularly shown on Exhibit A (the "Huffines Property PUD Subdivision Development Plan, Sheet C2.0"); and

WHEREAS, pursuant to Title 25, Chapter 4 of the City of Franklin Municipal Code, Legacy has agreed to design, construct, and maintain an Arboretum and Mountain Bike Trail System, as well as restore the Historic Structure located on 10.03 acres of undeveloped land within the Huffines Property PUD Subdivision, to be zoned Civic Institutional (CI), which will include, but not be 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 in Exhibit B (the "Letter of Intent") and on Exhibit C (the "Overall Master Plan") attached hereto; and

WHEREAS, Legacy intends to restore the Carothers family home ("Home") to community center specifications to be provided by City as shown in Exhibit D (the "Architectural Restoration Plans"); restore one associated structure as a maintenance shed for the City Parks Department; construct a trail storm shelter; demolish the other associated and unsound structures currently located on the property; restack the dry-stacked stone walls quarried and located in the area immediately surrounding the Home, ("Historic Structure Restoration Effort") all as more particularly described in Exhibit B (the "Letter of Intent") and on Exhibit C (the "Overall Master Plan") attached hereto; and

WHEREAS, Legacy intends to develop an interpretive Arboretum in the area immediately surrounding the Home as a means to commemorate the historical use of the property as a homestead and farm as more particularly described on Exhibit C (the “Overall Master Plan”) attached hereto; and

WHEREAS, Legacy and City intend the entire area to be included in a Historic Preservation Overlay (“HPO”) designation on the final plat; and

WHEREAS, the HPO, Historic Structure Restoration, Arboretum, and Mountain Bike Trail System encompasses approximately 10.03 acres of land on the Property all as more particularly shown and described on Exhibit A attached hereto; and

WHEREAS, Legacy 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 February 4, 2019, to be ONE MILLION EIGHT HUNDRED THIRTY-THREE FIVE HUNDRED AND FOUR and 00/100 Dollars (\$1,833,504.00) as itemized in attached Exhibit F ((Opinion of Cost); and

WHEREAS, Legacy has agreed to plat and dedicate the HPO, Historic Structure Restoration, Arboretum, and Mountain Bike Trail System upon restoration and construction of the Home, Arboretum, and 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 approved fixed structures associated with the Home, Arboretum, or Mountain Bike Trail System (examples may include fencing, benches, off-street parking, signage, etc. as illustrated on the approved construction drawings on file with the City of Franklin Parks Department) shall not be altered, expanded, or in any way modified in any material way by Legacy 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. [DEVELOPER] agrees to provide the City with a copy of the Certificate of Liability Insurance, which must show that the policy is active, prior to the signing of this agreement.
3. Legacy agrees to and has attached all pertinent exhibits to this contract prior to the first submittal of this agreement to the City for review. Legacy 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.

4. Legacy and City agree that Legacy shall be eligible and shall receive an offset of applicable Parkland Impact Fees as hereafter set forth for the Historic Home restoration effort, Arboretum construction, and Mountain Bike Trail System, dedication of land and easements, and associated improvements as illustrated in Exhibit 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 preserve the Historic Home, construct the Arboretum, and construct the Mountain Bike Trail improvement as illustrated in Exhibit C is One Million Nine Hundred Seventy-Three Thousand Seventy-Four Dollars (\$1,973,074) as indicated in Exhibit E, and the estimated total offset to Legacy is One Million Eight Hundred Thirty Three Thousand Five Hundred Four and 00/100 (\$1,833,504.00), as indicated on Exhibit F, 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.
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 Historic Home, Arboretum, and Mountain Bike Trail system as depicted in Exhibits C and D 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 on or about , _____ , or upon the reasonable request of the City. Legacy 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. Legacy will build, restore, and construct the Historic Home, Arboretum, and Mountain Bike Trail as depicted in Exhibit C and as approved in the Construction drawings approved by the City. The HPO and parkland dedication area on the Property totals approximately 10.03 acres. Upon acceptance of the restoration and construction per the plans on file with the City by Certificate of Occupancy, City will accept title to the Historic Structures, Arboretum, and Mountain Bike Trail System in fee simple by satisfactory form of deed.
9. Legacy 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. Legacy shall be solely responsible for the maintenance of the retaining wall, fencing, and parking stalls bordering the public right of way located within the non-exclusive, all-access public easement. Barring force majeure or weather delays, Legacy agrees, upon

thirty (30) days written notice from the City, to remove, repair or replace trees, landscaping, and damage as described herein that may require reasonable removal, repair or replacement. The City reserves its right to determine health of the trees, landscaping, and condition of the retention wall, fencing, and parking stalls and, whether trees, landscaping, retention wall, fencing, and parking stalls 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 retention wall, fencing, and parking stalls with notice to Legacy and at the sole cost and expense of Legacy. Legacy shall submit payment for full cost and expense incurred by the City within forty-five (45) days of the date of the invoice.

11. 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 worthy and enduring legacy for the City.
12. 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 at the Historic Home, Arboretum, and Mountain Bike Trail without prior approval of the Special Event Permit.
13. All improvements, uses, and activities shall comply with the policies established by the City of Franklin Zoning Ordinance and Municipal Code with the terms and conditions of this Agreement.
14. Upon completion and prior to acceptance of the Historic Home restoration, Arboretum construction, and Mountain Bike Trail improvements, Legacy will provide reasonable documentation for all such costs and provide notarized release of liens.
15. 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 AutoDACC14
 - 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.

16. In the case of emergency situations where unplanned disturbance of the trees, landscaping, Home, Arboretum, and Mountain Bike Trail system, occurs due to natural disaster, emergency infrastructure repairs, or public safety/emergency response, and the City must act swiftly for the purposes of public safety, health and welfare, the City agrees to minimize disturbance to the extent feasible. 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 Legacy unless the successor assumes the same obligations of Legacy in writing. Such assignment shall be provided to the City within fifteen (15) days after the transfer of the Development Project. Upon transfer, Legacy shall be relieved from any and all further liability under this Agreement, including, without limitation, pursuant to Section 18 hereof. Legacy shall exercise the rights, privileges and permission granted herein at Legacy's own risk. Legacy 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. Legacy shall indemnify and hold harmless The City of Franklin, its officials and agents, , 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 Legacy to comply with any of the provisions specified herein or compliance with the approved plans. The City shall not be liable to Legacy should Legacy's use of the property be hindered or disturbed.
19. The City agrees that the terms and conditions contained herein shall be binding on and shall insure to its 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 Legacy:

Goldberg Companies, Inc.
Attn: Jordan Goldberg
25101 Chagrin Blvd., Suite 300
Beachwood, OH 44122

Goldberg Companies, Inc.
Attn: Peter Nintcheff
25101 Chagrin Blvd., Suite 300
Beachwood, OH 44122

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

LEGACY _____, **LLC**, an Ohio 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 OHIO)
)
COUNTY OF CUYAHOGA)

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 Ohio that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

_____(seal)
Signature