

MEMORANDUM



January 6, 2012

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator
Paul P. Holzen, P.E., Interim Director of Engineering
David Parker, P.E., City Engineer/CIP Executive

SUBJECT: Consideration of the NOTICE OF LIMITATION OF USE Required by the State of Tennessee Department of Environmental and Conservation on City of Franklin Property known as Map No. 063N Parcel 01.00

Purpose

The purpose of this memo is to recommend approval of the NOTICE OF LIMITATION OF USE required by the State of Tennessee Department of Environmental and Conservation (TDEC) on City of Franklin Property known as Map No. 063N Parcel 01.00.

Background

On 4/15/2009 the City of Franklin was awarded a Recreational Trails Program (RTP) grant (\$100,000) for the Harpeth River Greenway. This grant was intended to be used as part of the 3rd Ave North Project to fund a section of the multiuse trail. In an effort to avoid losing this grant City staff separated this section of the trail out to be bid as a separate project. Per the grant contract funding must be spent prior to 4/14/2012. This project will eventually connect into the multiuse trail that will be completed as part of the 3rd Ave North Project. Prior to submitting for reimbursement we are required to record the attached NOTICE OF LIMITATION OF USE against the property.

Financial Impact

This action will facilitate the City's reimbursement from the TDEC Recreational Trails Grant.

Recommendation

Staff recommends approval of the NOTICE OF LIMITATION OF USE

**STATE OF TENNESSEE
Dept. of Environment and Conservation
Recreation Educational Services
RTP Grant
NOTICE OF LIMITATION OF USE**

Owner Address:
City of Franklin
P.O. Box 305
Franklin, TN 37064
615-791-3218

Property Address:
200 N Margins St
Franklin, TN 37064

**Map No. 063N Parcel 01.00
Deed Book 3088 Page 687**



The public property identified in the attached general warranty deed has been acquired or developed with federal Transportation Equity Act of the 21st Century (TEA-21) Recreation Trails Program (RTP) assistance through the Federal Highway Administration (FHWA). In accordance with this act, the state may decide to protect this project under 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended, 16 U.S. C 4601-5 et seq. (1970 ed.). Pursuant to a requirement of that law, this property may not be converted to other than public outdoor recreation uses (whether by transfer, sale, or in any other manner) without the express written approval of the Secretary of the Interior. By law, the Secretary shall approve such conversion only if he or she finds it to be in accord with the existing comprehensive statewide outdoor recreation plan and only upon such conditions as he or she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location. If a project is located on private lands that may include an easement or lease, the state requires a twenty-five year minimum commitment for public use.

CITY OF FRANKLIN, TENNESSEE:

DR. KEN MOORE, Mayor

**ERIC S. STUCKEY, City Administrator/
Recorder**

STATE OF TENNESSEE)
)**ss:**
COUNTY OF WILLIAMSON)

Personally appeared before me, **Dr. Ken Moore** and **Eric S. Stuckey**, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, after being first duly sworn, acknowledged themselves to be the City Administrator/Recorder and Mayor of the City of Franklin, Tennessee, respectively, and that as such City Administrator/Recorder and Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

Notary Public
My Commission expires:

This instrument prepared by:
 Kay B. Housch, Esq., BPR #010995
 Kay B. Housch, P.C.
 222 Second Ave. North, Suite 310
 Nashville TN 37201

WARRANTY DEED

Address New Owner(s) as follows:	Send Tax Bills To:	Map Parcel Numbers
(NAME) The City of Franklin, Tennessee	(NAME) Same	Map & Parcel 09-63N-D-1.00
(STREET ADDRESS) 109 3 rd Ave. South	(STREET ADDRESS)	
(CITY) (STATE) (ZIP) Franklin Tennessee 37064	(CITY) (STATE) (ZIP)	

FOR AND IN CONSIDERATION of the sum of Ten dollars and no/100 (\$10.00), cash in hand paid by the Grantee and other good and valuable consideration accepted as cash, the receipt and sufficiency of which is hereby acknowledged, **JOHNNY WORLEY**, has this day bargained and sold, and does hereby transfer and convey unto the said **THE CITY OF FRANKLIN, TENNESSEE**, the Grantee herein, its successors, heirs and assigns, certain real estate in Williamson County, Tennessee, as follows:

See attached Exhibit "A" for Legal Description

Being the same property conveyed to Johnny Worley, by quitclaim deed from Lonny Worley of record in Book 3088, page 1055, Register's Office, Williamson County, Tennessee.

NOTE: Contract for Sale of Real Estate by and between Johnny Worley, seller, and Floreat, Inc., Buyer, of record in Book 2652, page 559, Register's Office, Williamson County, Tennessee, was assigned to City of Franklin, Tennessee, by Assignment as shown as Exhibit "B" attached hereto.

STATE OF TENNESSEE COUNTY OF DAVIDSON	The actual consideration or value whichever is greater, for this transfer is \$175,000.00. Grantee is a municipal governmental entity and is exempt from transfer tax.
Subscribed and sworn to before me this the 2nd day of December, 2003.	<i>James B. Johnson</i> Affiant
My commission expires: <u>7/30/05</u>	<i>Kay B. Housch</i> Notary Public

This is unimproved property known as 325 North Margin Street, Franklin, Tennessee.

TO HAVE AND TO HOLD said real estate, with the appurtenance, estate, title and interest thereto belonging, to the Grantee, its successors, heirs and assigns forever we covenant that we are lawfully seized and possessed of said real estate in fee simple, have a good right to convey it, and that the same is unencumbered, except for those encumbrances set forth hereinafter.

We further covenant and bind ourselves, our heirs and representatives, to warrant and forever defend the title to said real estate to said Grantee, its successors, heirs and assigns, against the lawful claims of all persons.

Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Witness our hand this 2nd day of December, 2003.
Johnny Worley
 Johnny Worley

BK/PG: 3088/687-695
 03590576

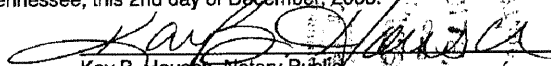
DEED	
12/02/2003	04:24 PM
BATCH	
MTG TAX	8251
TRN TAX	0.00
REC FEE	0.00
DP FEE	45.00
REG FEE	2.00
TOTAL	87.00

STATE OF TENNESSEE, WILLIAMSON COUNTY
SADIE WADE
 REGISTER OF DEEDS

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, **JOHNNY WORLEY**, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at Franklin, Tennessee, this 2nd day of December, 2003.


Kay B. Housch, Notary Public
My Commission Expires: 7/30/05

ENCUMBRANCES:

1. 2004 and subsequent years real property taxes are a lien, but not yet due and payable.
2. Subject to flowage of the Harpeth River.

EXHIBIT "A"

Certificate of Survey as to Legal Description

This is to certify that I have surveyed for the City of Franklin, Tennessee a certain tract or parcel of land located in the Ninth Civil District of the City of Franklin, Williamson County, Tennessee, and is more particularly described by metes and bounds as follows:

Beginning at an existing iron pin, said pin located in the northerly margin of North Margin Street, and being located at the southeast corner of the property conveyed to Worley Auto Parts by deed of record in Book 780; Page 765 in the Registers Office for Williamson County, Tennessee, the southwest corner of this tract;

Thence, with the easterly property line of Worley Auto Parts, North 26° 30' 16" West, 100.00 feet to an iron pin set this survey;

Thence, South 62° 40' 55" West, 67.00 feet to a set iron pin;

Thence, continuing with the boundary of Worley Auto Parts, North 26° 39' 02" West 82.00 feet to an existing iron pin, said iron pin being a southeast corner of the property conveyed to the City of Franklin, by deed of record in Book 2142; Page 53, R.O.W.C.TN, and the northeast corner of the Worley Auto Parts property;

Thence, continuing with the easterly boundary of the City of Franklin property, North 26° 39' 02" West, 524.97 feet to a point in the center of the Harpeth River, passing an existing witness iron pin at 434.97 feet;

Thence, with the centerline of the Harpeth River the following courses;

- North 88° 59' 33" East, 122.93 feet;
- South 75° 12' 41" East, 197.42 feet;
- South 60° 44' 36" East, 259.96 feet;
- South 44° 41' 46" East, 122.72 feet;
- South 31° 35' 40" East 139.93 feet;
- South 15° 16' 46" East 47.99 feet;

Thence, leaving the centerline of the Harpeth River, South 62° 45' 27" West, 378.43 feet, passing a set iron pin witness point at 80.00 feet, to the point of beginning, containing 225,961 square feet, 5.19 acres, more or less;

Being the property conveyed to Johnny Worley and Lonny Worley, by Quit Claim deed from Nathan Davis and wife, Aileen Davis, of record in Book 2586; Page 564, R.O.W.C.TN;

Said property is located within Flood Zone 'AE' as shown on FEMA Flood Insurance: Rate Map Number 47187C0131 'E', Dated January 16, 2003.

Surveyed By: William M. Keel 10-20-03
Name Date
 TN RLS #990

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**EXHIBIT "B" to deed
from Johnny Worley to City of Franklin, Tennessee**

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT, dated November ^{3rd} 2003, is by and between **FLOREAT, INC.** (the "Assignor"), whose address is 305 Richmond Place, Franklin, TN, **THE CITY OF FRANKLIN, TENNESSEE**, 109 3rd Avenue South, Franklin, TN (the "Assignee") and **JOHNNY WORLEY** ("Owner").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor does hereby assign, transfer, set over, grant, bargain, sell and deliver to the Assignee, all of its right, title, and interest in that certain Contract for Sale of Real Estate ("the Contract"), dated September 5, 2002, between Assignor and Owner for 5.07 acres of real property located at 325 North Margin Street, being property in Franklin, Williamson County, State of TN, more particularly described as Parcel A in Exhibit A. A copy of the Contract is attached as Exhibit B.

Assignee accepts and assumes all of the terms, covenants, and conditions in the Contract, with the following additional conditions and covenants as agreed to by Assignor, Assignee, and Owner:

1. Owner consents to this Assignment and to all conditions herein.
2. Assignor warrants that it is the sole and exclusive owner of the interests and contractual rights conveyed in this Assignment, that it has the unencumbered right to convey those rights, free of any liens or claims of any other party, and that it will defend and hold harmless the City from claims of any other parties respecting those rights, refunding to the City, at the City's option, the entire consideration paid for the

Assignment if the rights hereby acquired are in any way encumbered in a manner that is unsatisfactory to the City.

3. Owner agrees to update the title information currently available to the date of the agreed-upon closing and further agrees to deliver free and clear fee simple title to the City at closing.

4. Assignor warrants and Owner agrees that Assignor has not committed any breach of the Contract and has not expressly or by its actions waived any of its rights under the Contract. Assignor warrants that Assignor is still within the time period under the Contract in which it may notify the Owners of its intention to proceed with the purchase and/or that the Owner has extended the said deadline. At present the deadline is agreed to by all parties as December 1, 2003.

5. Assignor agrees to make immediately available to the City all information concerning Assignor's physical inspection of the property during the "Study Period" (see ¶15 of the Contract) and that if such inspection discloses property conditions that are unacceptable to the City, Assignor and Owner agree that the City shall have the right, in its sole discretion, to void its acceptance of this Assignment and have a refund of the consideration and the right to void the Contract.

6. Assignor agrees that the consideration (\$40,000) for the Assignment shall be paid to Kay Housch, Attorney at Law, as escrow agent, held in escrow, and paid to Assignor only at the closing the sale of the property to the City.

7. Assignor agrees that neither the Assignor nor Mr. Phil Pace nor any

personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to the Mayor and City Administrator/Recorder, respectively, of the City of Franklin, Tennessee, the within named bargainor, a corporation, and that as such Mayor and City Administrator/Recorder executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as Mayor and City Administrator/Recorder.

WITNESS, my hand and seal on this the 13th day of November 2003.

Ronnie J. Bence
Notary Public
My Commission expires: August 3, 2005

STATE OF TENNESSEE)
)ss:
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared Phil Pace, 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 President of Floreat, Inc. the within named bargainor, a corporation, and that as such officer executed the foregoing instrument for the purposes therein contained.

WITNESS, my hand and seal on this the 13th day of November 2003.

Ronnie J. Bence
Notary Public

My Commission expires:

August 3, 2005

STATE OF TENNESSEE)
)ss:
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared Johnny Worley with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Johnny Worley and being authorized so to do, executed the foregoing instrument for the purposes therein contained.

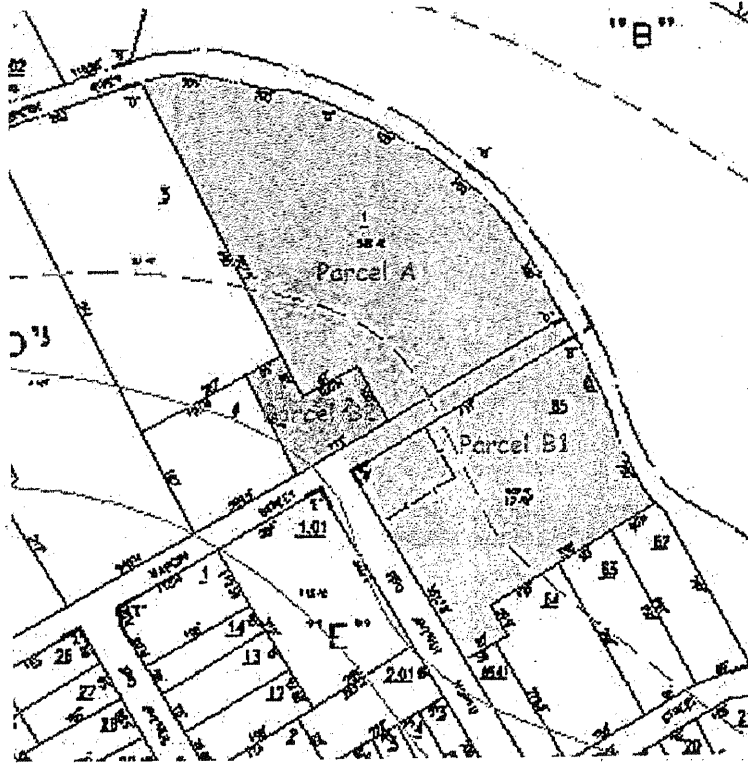
WITNESS, my hand and seal on this the *13th* day of November 2003.

Ranai? Benne
Notary Public

My Commission expires:

August 3, 2005

LEGAL DESCRIPTION



The above described property is all or part of the property conveyed to Seller by Warranty deed, dated April 30, 1992, recorded at Notebook 49, page 250, book 975, page 97-99, on May 4, 1992, in the Williamson County records.

EXHIBIT A