

PRE-DEVELOPMENT AGREEMENT

This Pre-Development Agreement (Agreement) is entered into as of January 28, 2025, by and between O'Brien Brothers Agency, Inc., a Vermont corporation with a principal place of business in the City of South Burlington, County of Chittenden and State of Vermont (O'Brien), Forest Park Realty Corporation, a Vermont corporation with a principal place of business in the City of South Burlington, County of Chittenden and State of Vermont (FPR), and the Town of Shelburne, Vermont, a Vermont municipal corporation located in the County of Chittenden and State of Vermont (Town)(together with FPR and O'Brien, the Parties).

Background

- A. FPR owns an approximately 197-acre parcel of land located in the Town of Shelburne and identified as SPAN #582-183-10912 (referred to herein as the "Property" or the "Parcel"). Approximately 110 acres of this Parcel are located north of Thomas Road and southeast of Irish Hill Road, and the remainder of the acreage is located south of Thomas Road. FPR and O'Brien have agreed to survey the Property to confirm the precise acreage.
- B. FPR is an affiliate of O'Brien. O'Brien is a development company with extensive experience in building neighborhoods and communities in Chittenden County.
- C. In 2023, the Vermont Legislature enacted Act 47, expanding 24 V.S.A. § 4412 to provide that, "[i]n any area served by municipal sewer and water infrastructure that allows residential development, bylaws shall establish lot and building dimensional standards that allow five or more dwelling units per acre for each allowed residential use, and density standards for multiunit dwellings shall not be more restrictive than those required for single-family dwellings."
- D. Act 47 defines "[a]n area served by municipal sewer and water infrastructure" to mean:
- (i) an area where residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems and not prohibited by:
 - (I) State regulations or permits;
 - (II) identified capacity constraints; or
 - (III) municipally adopted service and capacity agreements.
- 24 V.S.A. § 4303(42)(A).
- E. The Property is not explicitly located within the Town's existing defined water or sewer service areas, which the Town views as "municipally adopted service and capacity agreements." Although the Property is not within the Town's water or sewer service area, municipal sewer infrastructure is located on the Property and municipal water infrastructure is located across Irish Hill Road, in the existing Town right-of-way adjacent to the Property.

- F. The Town's 2021 Sewer Capacity Allocation Ordinance ("Sewer Ordinance"), also viewed by the Town as a "municipally adopted service and capacity agreement" under Act 47, limits sewer capacity to the sewer service area designated on the 2001 Town of Shelburne Map of Sewer Service Area.
- G. The Shelburne Selectboard acts as the Shelburne Sewer Commission pursuant to 24 V.S.A. § 3602(a) and has the authority to amend the Sewer Ordinance to expand the Town's sewer service area based on available capacity. Shelburne's Sewer Allocation Policy was adopted pursuant to 24 V.S.A. Chapter 59, and the Planning Commission therefore holds no authority to expand the Town's sewer service area.
- H. In November, 2024, Town voters approved a sewer project that will consolidate two aging wastewater treatment plans with one renovated treatment plant.
- I. While the Town is not required to modify its service areas to include the Property, the Parties agree that the Town has sufficient capacity to expand sewer service and water service to the Property.
- J. The Selectboard, acting as the Sewer Commission, has previously exercised its authority to expand the sewer service area when the Town has sufficient capacity.
- K. The 2019 Shelburne Comprehensive Plan ("Town Plan") recommends that the sewer service area boundaries should be reviewed and updated as necessary at least every five years.
- L. O'Brien and FPR desire that the Property be considered "[a]n area served by municipal sewer and water infrastructure" under 24 V.S.A. § 4412.
- M. For the Property to be considered "[a]n area served by municipal sewer and water infrastructure" by the Town, the Town would need to modify its water and sewer service areas. The Town agrees that once the Property is located in the Town's sewer service area, it would be in an "[a]n area served by municipal sewer and water infrastructure".
- N. O'Brien and FPR agree to limit the number of dwelling units on the Property to a maximum of 375. The planned development, as depicted on Exhibit A, will include a range of dwelling units in terms of both size and affordability, require no fossil fuel infrastructure, conserve and avoid certain forest blocks and certain resource areas depicted in the 2019 Town Plan, perpetually maintain and/or conserve a minimum of 60 percent of the Property as green space (including a combination of conservation areas, buffers, pocket parks and common element open space), avoid and conserve the LaPlatte River corridor, and provide community parks and play grounds, as well as recreation paths and walking trails connected to existing Town infrastructure.

- O. The Town desires to expand the Sewer Service Area to include the Property, and has sufficient treatment capacity to do so, and will work with O'Brien and FPR to limit potential impact the development may have on the Town and neighboring properties.
- P. Although O'Brien and FPR do not necessarily agree with the Town's interpretation of Act 47 as it relates to an area served by municipal sewer and water infrastructure, in an effort to move forward, O'Brien, FPR, and the Town agree to enter this Agreement to describe the framework for the Parties to proceed. Subject to the conditions set forth in Section 11 below, O'Brien and FPR agree that, upon execution of this Agreement, they shall not challenge whether or not this property should be considered an area served by sewer and water under Act 47.
- Q. The Parties understand that any development of the Property will require approval of the Town of Shelburne Development Review Board ("DRB"), and this Agreement is not intended in any way to limit the DRB's authority. Any allocation of water and sewer will be pursuant to the Town's ordinances.

Now therefore, in consideration of the promises and mutual covenants set forth herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

- 1. In consideration of the Town's agreement to undertake efforts to expand its sewer and water service areas to include the Property as described below, FPR and O'Brien agree to the following perpetual requirements and limitations relative to the Property, which shall take effect upon the Town Selectboard's approval to include the Property in the water and sewer service area:
 - a. There shall be no more than 375 dwelling units applied for or permitted on the entire Parcel. This shall not preclude homeowners from their legal right to apply for accessory dwelling units.
 - b. Prior to the issuance of the first zoning permit for a dwelling unit in the Development, the entirety of the portion of the Property south of Thomas Road ("Southern Conserved Area") shall be dedicated to the Town (through the Irrevocable Offer of Dedication process described below) for conservation/preservation purposes. O'Brien and FPR shall reasonably cooperate with the Town to take additional steps before or after such Irrevocable Offer of Dedication process to perpetually conserve the Southern Conserved Area through a legal mechanism determined by the Town. The Southern Conserved Area may be subject to State permitting requirements, including, without limitation, permit conditions in connection with the Development. This Southern Conserved Area is believed to be between 65 and 88 acres, and the precise acreage will be determined by a survey to be obtained by O'Brien and FPR. This Southern Conserved Area shall be accessible and open to the public. O'Brien and FPR shall create a means of perpetual public access to the Southern

Conserved Area through a method approved by the Town. As a condition of the issuance of the first zoning permit for a dwelling unit in the Development, O'Brien and FPR shall provide an Irrevocable Offer of Dedication to the Town with an unsigned warranty deed as an exhibit, conveying the Southern Conserved Area to the Town together with any applicable access easements. The Town may accept this land at any time in the future, but is in no way required to do so. Until such time as the Town may accept the Southern Conserved Area, O'Brien and FPR will remain responsible for the land and any requirements within this Agreement related to the Southern Conserved Area. In addition to the Southern Conserved Area, O'Brien shall set aside areas of the portion of the Property north of Thomas Road to be used as open space as established in the Declaration of Planned Community for the Development (the "Declaration"). The Declaration, which shall be recorded in the Town of Shelburne Land Records, shall: (i) establish such areas as open space; (ii) restrict development in such areas such that they are maintained as open space perpetually; and (iii) delegate to the homeowners association for the Development the management of such open space areas. Areas to be built upon in the Development are substantially shown in Exhibit A.

- c. O'Brien and FPR agree that the greater of: (i) twelve (12) percent, based on the number of dwelling units within the development; or (ii) two percent more than the inclusionary requirement within the Town's Zoning Bylaw update, shall perpetually qualify as affordable within the requirements described in this section.

Should the Town Zoning Bylaw not require inclusionary housing, the twelve (12) percent inclusionary unit requirement shall be distributed using the following percentages (and using a 375-unit project as an example only):

Total For-Sale Residential Units	375	
Total Inclusionary Units	45	12% of Total Units
Units meeting 80% AMI ¹	6	13% of Inclusionary Units
Units meeting 100% AMI	8	18% of Inclusionary Units
Units meeting 120% AMI	16	36% of Inclusionary Units
Units meeting 150% AMI	15	33% of Inclusionary Units

Any rounding (up or down) required within each category above shall be made at the discretion of O'Brien/FPR, provided that the total percentage of inclusionary units is 12% or above.

Should the Town Zoning Bylaw require inclusionary housing, the Parties agree that: i) the Project shall meet the inclusionary unit requirements of the Bylaw, but rental units shall not be used to meet more than a

¹ AMI based on county median income.

proportionate amount of the inclusionary requirement, based on the number of units; ii) the two percent of units required above those in the Bylaw will be distributed in the same percentages as in the table above.

The determination of the Purchase Price (for the initial sale and any resale) for each inclusionary unit and the eligibility for purchasers of those units shall be established by the Parties in good faith. Affordability calculations for rental units shall be determined in accordance with the Zoning Bylaw, or, if not addressed in the Zoning Bylaw, by Agreement between the Town Selectboard and O'Brien/FPR.

In addition, a minimum of eighty (80) percent of the for-sale inclusionary units will be two or more bedrooms. Inclusionary units may differ in size and/or materials from market rate units provided all homes are designed in an overall cohesive manner, in keeping with good neighborhood design. Inclusionary units will be integrated into the overall project layout and similar in architectural style and outward appearance to market rate units in the proposed Development. Inclusionary units shall be physically integrated into and complement the overall layout, scale, and massing of the proposed Development and shall be constructed with the same exterior materials and architectural design details and quality of those of the market rate units in the Development. Inclusionary units shall be constructed and made available for occupancy concurrently with market rate units. No payment in lieu of this inclusionary requirement shall be permitted.

- d. The market price for-sale housing units in the Development shall include a range of sizes, including a substantial component targeting the so-called "missing middle." FPR and O'Brien agree to offer, at a minimum, the following unit sizes (and the corresponding number of units expressed as a percentage of the total number of units in the Development):

Above-Grade Unit Size in square feet(+/- 5%)	Minimum Percentage of Total Units Offered in the Development
<1,700	15%
1,700-2,500	25%

The remaining unallocated percentage shall be determined by O'Brien and FPR based on market study and demand.

- e. Any development, proposed or built, shall include the recreation path/community trail and pedestrian infrastructure substantially similar to what is depicted in Exhibit B to this Agreement, with such locations and layout to be established by the DRB during its permit and review process. The Parties acknowledge and agree that the development of the recreation path/community trail in the Southern Conserved Area and any pedestrian connection from the northern portion of the Property to the Southern

Conserved Area may be included in a separate development application from other components of the Development, however, any subsequent application for pedestrian connections shall be submitted within one year of the initial permit application for the development. At a minimum, O'Brien and FPR shall include a continuous community trail/recreation path connection from Irish Hill Road to either Spear Street (in the vicinity of Thomas Road) or Thomas Road (depending on the final layout of the Development), as well as an integrated design that connects the development with the Southern Conserved Area. The community trail shall connect to existing Town infrastructure and will allow the public to access and cross the development from Spear Street and Irish Hill Road. The community trail shall be an eight-foot-wide paved multi-use path or such size as required by the DRB or the Zoning Bylaws at the time a permit application is submitted, accessible and open to the public. The recreational path through the Development that connects Irish Hill Road to Spear Street, all community trails in the Southern Conserved Area, trails through the forest blocks in the northern parcel (if any), and playgrounds dedicated to the Town through the Development Review Process will be open to the public. Playgrounds dedicated to the Town need not be accepted by the Town, but will be accessible to the public, whether or not they are accepted by the Town. Public access shall be limited to daytime use and shall be subject to reasonable rules and regulations as outlined in a public use easement. Paved recreation paths and sidewalks will be accessible to those with mobility disabilities, if not precluded by steep slopes. Access ways to playgrounds, and playgrounds will be accessible to those with mobility disabilities as follows: (i) there will be at least one wheelchair accessible route from a public street into formal parks where seating or pavilions are provided; (ii) at least one piece of playground equipment will be provided to those with mobility disabilities in parks where playground equipment is installed; and (iii) wheelchair accessible parking will be provided in dedicated parking areas developed to serve formal parks where seating or pavilions are provided. For avoidance of doubt, due to the topography and other site-specific factors, not all public areas will be accessible to those with mobility disabilities. The Parties agree that the Development will contain some private infrastructure and could include private recreational amenities/facilities.

- f. All dwelling units to be built to a minimum standard satisfying the following standards: (i) Energy Star certification and US Department of Energy Zero Energy Ready Home certification in effect in 2024; and (ii) the Residential Building Energy Standards, or such standards as required to satisfy Criterion 9(f) of Act 250. If certain types of units do not or cannot qualify for certifications under these standards, these units will nonetheless be built to the same standard as required for certification. In addition, as energy standards evolve over time, to reflect the most current and accepted technologies, the Town and O'Brien/FPR shall make commercially reasonable efforts to consider and implement, if feasible

(financially and otherwise for a development such as this), additional standards that reflect modifications and/or advances in energy efficiency technology. These certifications will be provided to the Town prior to issuance of each Certificate of Occupancy. The Property shall require no fossil fuel infrastructure, provided Green Mountain Power is able to support capacity, and will include solar power and electric batteries, provided existing or similar State approved pilot programs for GMP are approved for the Property and provided that Public Utility Commission approvals can be obtained.

O'Brien will conduct a feasibility analysis for the possible use of Geothermal Energy as a solution for heating and cooling needs and implement aspects that it deems feasible. This study will be a publicly available document, to be reviewed by the Shelburne Climate & Energy Committee and the Shelburne Selectboard.

For each phase of development, O'Brien and FPR shall test a minimum of ten (10) percent of the units built for air leakage, using a blower door test by a certified professional (as defined in the Vermont Residential Energy Code). The units tested in each phase must include a minimum of two inclusionary units. Air leakage rates must not exceed the standards in the most recent version of the Vermont Residential Energy Code at the time of the test. O'Brien and FPR shall provide the results of all such testing within sixty (60) days of such testing.

- g. Homeowner Association documents shall require that any lease of any unit within the Property must be for a time period of six months or longer.
- h. The Parties agree to cooperate in approaching Green Mountain Transit (GMT) to understand the requirements that would enable an extension of bus service to the Property and to seek such an extension.
- i. The development shall include specific design elements to reduce car traffic and promote alternative transportation. In addition to the above-described pedestrian and bike paths, such design elements shall include school bus shelters, a specific location for car-sharing services, public bicycle parking and GMT bus shelters, should GMT extend service to the Property. The development shall also include public car charging stations for electric vehicles.
- j. Development envelopes will exclude land mapped as a forest habitat block in the 2023 Shelburne Forest Habitat Block Assessment & Ranking Report, except as shown on Exhibit A.
- k. O'Brien and FPR will be responsible for any wastewater improvements necessary for, or attributable to, its development project, including larger sewer lines, pumping stations and other facilities outside the Property, to

support the effects of increased wastewater flows (excluding wastewater plant upgrades) and any extensions of existing wastewater or water lines pursuant to the Shelburne Subdivision By-Laws.

1. O'Brien and FPR shall comply with all Town regulations and requirements of any permits it may receive.
2. O'Brien and FPR agree to submit any application for development or building on the Property only after the Town has completed the Zoning Bylaw update currently in process, and agree the development shall be subject to the updated Bylaws which the Town intends to reflect the requirements of Act 47. If the Bylaws have not been updated by December 31, 2025, the Parties agree that O'Brien may proceed with an application for development.
3. O'Brien agrees to contribute up to \$40,000 towards funding a scoping study that would evaluate improvements to the Falls Road Village Area pedestrian infrastructure (the "Scoping Study"). Any payments for the Scoping Study would be made by O'Brien to the Town as follows: (a) \$20,000 to be paid within thirty (30) days of the expansion of the Town's sewer service areas to include the portion of the Property north of Thomas Road, without appeal; and (b) the lesser of \$20,000 or the remaining balance of the Scoping Study (after taking into account the initial \$20,000 payment), to be paid upon completion of the Scoping Study. Should this Agreement be terminated pursuant to Section 21, the Town shall refund any funds paid by O'Brien for the scoping study.
4. O'Brien and/or FPR agrees to commission its preliminary traffic study evaluating existing traffic conditions in the vicinity of the Property to the Town within three (3) months of the expansion of the Town's sewer service area to include the Property, without appeal. Prior to commission of the preliminary traffic study, O'Brien and/or FPR shall present the methodology and scope of the study as well as the contractor performing the study, all for the Selectboard's approval, which approval shall not be unreasonably withheld. O'Brien and FPR shall provide the completed traffic study to the Town within six (6) months of commissioning.
5. O'Brien and/or FPR agree to reimburse the Town for fifty (50) percent of any and all attorney fees and costs incurred in defense of any action related to or arising out of the Town entering this Agreement (except those actions in which O'Brien/FPR is an adverse party to the Town), including, but not limited to, payment of court costs and attorney fees, costs of judgments or awards, or settlement costs. O'Brien and/or FPR will participate substantially in any such action.
6. O'Brien and/or FPR agree to reimburse the Town for fifty (50) percent of its attorney fees spent in the development of this Agreement and addressing community concerns related to this Agreement through the date of full execution of this Agreement. O'Brien and/or FPR's reimbursement under this section shall not exceed \$35,000 to be paid after the sewer service area is extended.

7. The Parties acknowledge that prior to constructing the Project, O'Brien and FPR must obtain permits and approvals from the DRB. The DRB is an independent body, not under the Town's control or direction, and the Town does not guarantee the DRB will approve any project. Any requirements created by this Agreement shall be in addition to those that may be required by the DRB. O'Brien and FPR shall be responsible for the costs of any legal review required by the DRB, including review by the Town attorney of any legal documents required by the DRB approval. O'Brien and FPR further agree to be responsible for the costs of any other independent reviews required by the DRB, including, but not limited to engineering or other technical reviews. Additionally, should the Town determine in its sole discretion that it is necessary to obtain a part-time hourly consultant in the Department of Planning & Zoning to manage the Project through the Development Review process, until such time as the Chair of the Development Review Board signs the final plat to be filed in the Town's Land Records, O'Brien and FPR shall reimburse the Town for the additional cost of such consultant in an amount not to exceed \$50,000, with a reasonable credit to be applied to permitting fees. Such consultant shall be exclusively dedicated to the Project. Such reimbursements shall be paid within thirty (30) days of the Town providing an invoice to O'Brien and FPR.
8. The Selectboard will undertake effort reasonably necessary to expand the Town water and sewer service areas to allow the Property to be considered "[a]n area served by municipal sewer and water infrastructure" under 24 V.S.A. § 4412. At this time, the Town has the capacity to support the proposed development and upon the submittal of a proper application and application fee by O'Brien and FPR the Town will provide water and sewer capacity and allocation for the proposed development (the "Sewer Allocation") in compliance with the Town's applicable water and sewer ordinances, until such time as water and/or sewer capacity is no longer available.
9. The Agreement is to be recorded in the Town of Shelburne Land Records and be binding upon the Parties and their heirs, successors, and assigns, unless terminated. Any and all future development of this Parcel shall be subject to this Agreement, unless terminated. Upon any termination of this Agreement, a Notice of Termination shall be recorded in the Land Records.
10. This Agreement shall be governed by the laws of the State of Vermont. All rights and remedies provided by this Agreement or by law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy now or hereafter existing to enforce this Agreement. If any provision of this Agreement shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.

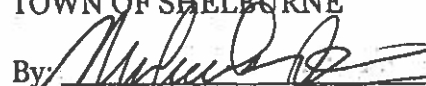
11. O'Brien and FPR agree that, upon: 1) execution of this Agreement; 2) the expansion of the sewer service area to include the area of the property north of Thomas Road; 3) the issuance of initial Sewer Allocation; 4) and the Zoning Bylaws updated to allow a density at the levels specified within this Agreement (i.e. five units per acre) in the area of the Property north of Thomas Road, they shall not challenge whether or not this property should be considered an area served by sewer and water under Act 47. If at any time, any of the four above conditions are revoked, without any violation by O'Brien or FPR of this Agreement or state or local laws or regulations, then the obligations in the preceding sentence shall be null and void.
12. In the event of any dispute arising out of this Agreement, the Parties shall first mediate the dispute. All disputes arising out of or related to this Agreement and not settled through mediation shall be heard in the Vermont Superior Court, Chittenden Civil Division.
13. The Parties do not intend by this Agreement to create, nor shall this Agreement be deemed to create, a partnership or a joint venture among the Parties, and nothing in this Agreement shall be deemed to make either Party an agent or partner of the other.
14. This Agreement represents the entire agreement between the Parties as to its subject matter. All prior agreements, offers, negotiations and representations not herein expressly contained shall be of no force and effect.
15. No party shall assign this Agreement or any interest hereunder without the written approval of all of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
16. This Agreement may be amended only with written approval of all Parties.
17. Each of the Parties warrants to the others that the person or persons executing this Agreement on behalf of such Party has the full right, power, and authority to enter into and execute this Agreement on such Party's behalf.
18. No failure by either party to insist upon the strict performance of any term hereunder or to exercise any right, power, or remedy consequent upon a breach thereof shall constitute a waiver of any breach of any such term. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the rights of either party with respect to any other existing or subsequent breach.
19. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

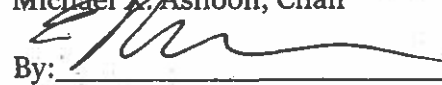
20. If any provision of this Agreement shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.
21. In the event that the sewer service area does not include the area of the property north of Thomas Road and/or the Zoning Bylaws does not allow a density as specified in this Agreement in the area of the Property north of Thomas Road at any time after December 31, 2025, then O'Brien and FPR shall have the right to terminate this Agreement, in which case all of the rights and obligations of the Parties hereunder shall be void.
22. The Selectboard and O'Brien and/or FPR agree to diligently proceed with their obligations under this Agreement in good faith in order to complete the Development under the terms and conditions outlined herein (the "Good Faith Obligation"). Should the Selectboard or O'Brien and/or FPR materially violate its Good Faith Obligation, including acts or omissions that materially inhibit completion of the Project, then the other Party may terminate this Agreement and pursue all remedies under law.
23. Should the Agreement be terminated, the Sewer Commission may amend the Sewer Service Area to exclude the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first entered above.

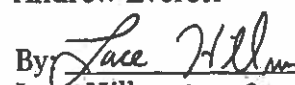
Signatures to Follow

TOWN OF SHELBURNE

By: 
Michael X. Ashooh, Chair

By: 
Matt Wormser, Vice Chair

By: 
Andrew Everett

By: 
Luce Hillman

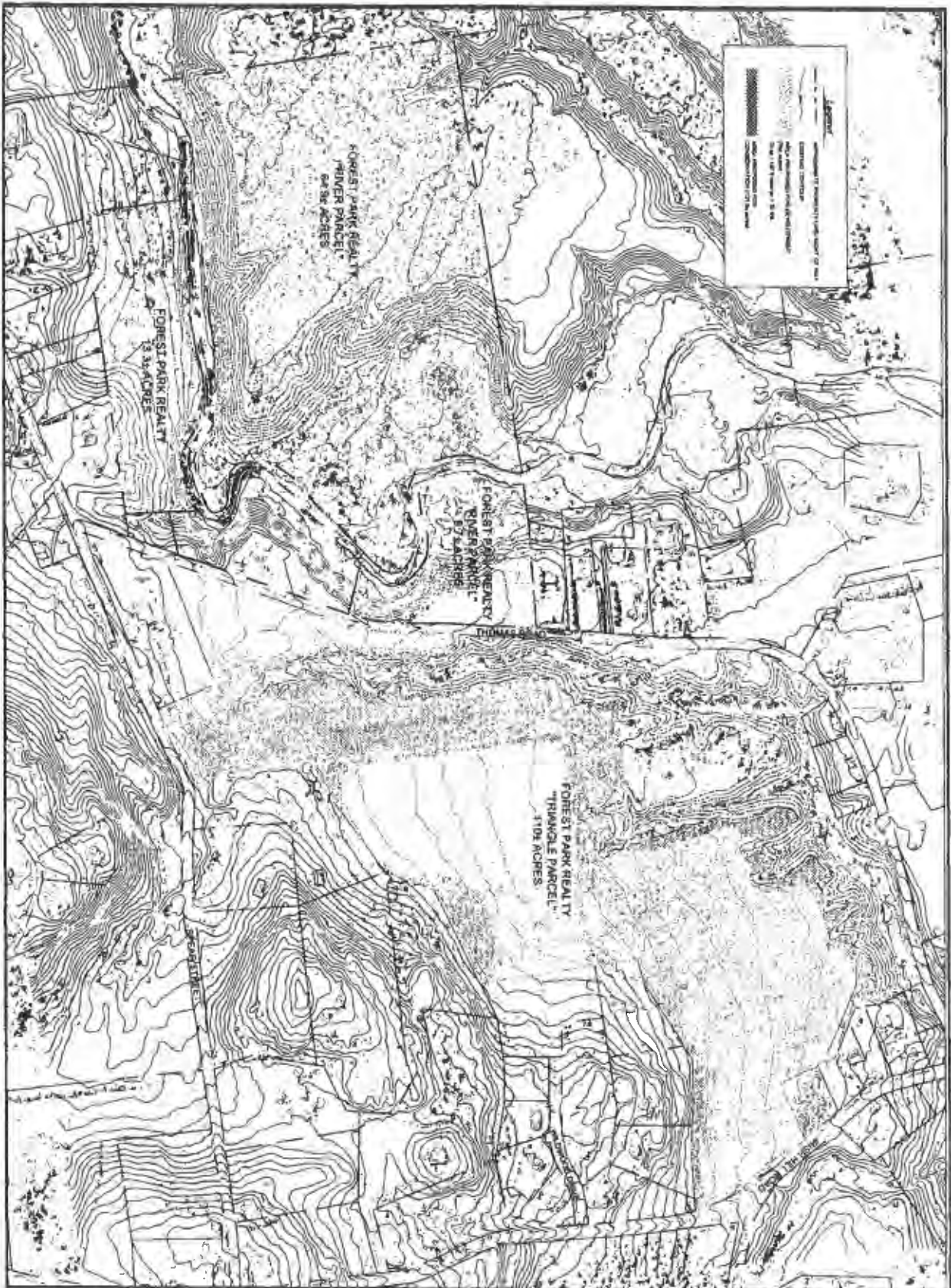
By: 
Chanka Mui

O'BRIEN BROTHERS AGENCY, INC.

By: 
Its Duly Authorized Agent

FOREST PARK REALTY
CORPORATION

By: 
Its Duly Authorized Agent



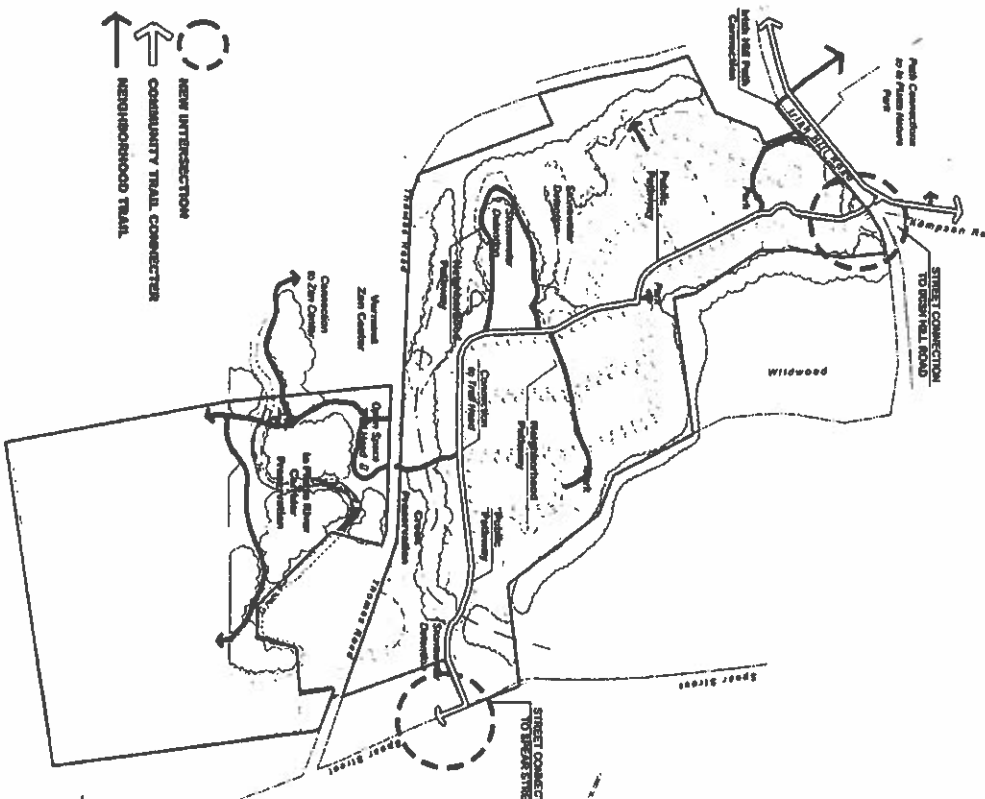
O'BRIEN BROTHERS SHELburne 10000 Highway 100, Suite 100 Shelbyville, Tennessee 37073	
KREBS & LANSING CONSULTING ENGINEERS 10000 Highway 100, Suite 100 Shelbyville, Tennessee 37073	
SHELburne FOR PROPERTY RELAY AND FOR CONSTRUCTION 10000 Highway 100, Suite 100 Shelbyville, Tennessee 37073	
OVERALL 10000 Highway 100, Suite 100 Shelbyville, Tennessee 37073	
D-2	

Shelburne Concept Plan



Connected

- Extend recreation path from Irish Hill to Spear Street
- Connect LaPlatte trails to new conservation area and Zen Center
- Internal pedestrian-scaled road and sidewalk network
- Off-street connections to school, bus, post office, grocery, and library



**END OF
DOCUMENT**