



# LEGISLATIVE COVER MEMO

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**Introduction:** June 6, 2022

**Public Hearing:** June 20, 2022

**Effective Date:** July 20, 2022

**Agenda Item:** **Ordinance 2022-19**

AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH CAP 5 DEVELOPMENT, LLC REGARDING APPROXIMATELY 109.6 ACRES OF REAL PROPERTY PRESENTLY LOCATED IN FRANKLIN TOWNSHIP, WARREN COUNTY, OHIO

**Submitted by:** Jonathan Westendorf, City Manager

**Scope/Description:** Cap 5 Development, LLC is under contract to purchase over 100 acres of undeveloped land currently located in Franklin Township and abutting the City of Franklin's corporate boundaries. Cap 5 intends to develop the property into a single-family residential development and desires to annex the property into the City of Franklin in order to utilize the City's services. The City supports the annexation. The Pre-Annexation Agreement generally states Cap 5's intent to develop the property and file an annexation petition with the Warren County Board of County Commissioners, the City's intent to pass future resolutions supporting the annexation, and the parties' understanding that Cap 5 will pursue a rezone of the property to a Residential PUD classification in connection with the annexation.

**Exhibits:** Exhibit A: Pre-Annexation Agreement

**Vote Required for Passage:** Per Section 4.03 of the City's Charter, the passage of this Ordinance requires the affirmative vote of a majority of members of Council present.

**Recommendation:** Approval

CITY OF FRANKLIN, OHIO  
ORDINANCE 2022-19

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT  
WITH CAP 5 DEVELOPMENT, LLC REGARDING APPROXIMATELY 109.6 ACRES OF REAL PROPERTY  
PRESENTLY LOCATED IN FRANKLIN TOWNSHIP, WARREN COUNTY, OHIO**

WHEREAS, Cap 5 Development, LLC (“Petitioner”) is currently under contract to purchase approximately 109.6 acres of real property presently located in Franklin Township, Warren County, Ohio (the “Property”), which is more particularly described in the Pre-Annexation Agreement attached as “Exhibit A” to this Ordinance and incorporated herein by reference;

WHEREAS, the Property abuts the current corporate boundaries of the City of Franklin;

WHEREAS, Petitioner desires to annex the Property into the City in order to obtain municipal services to support future development on the Property; and

WHEREAS, the City Council of the City of Franklin has determined that annexation of the Property into the City is mutually beneficial and desirable, and the Pre-Annexation Agreement attached as “Exhibit A” to this Ordinance properly sets forth the understandings and agreement of both the City and Petitioner with respect to the proposed annexation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FRANKLIN, WARREN COUNTY, OHIO THAT:

Section 1. The City Manager is hereby authorized to execute the Pre-Annexation Agreement, in substantially the same form as the attached “Exhibit A”, on behalf of the City of Franklin.

Section 2. The City Manager, Law Director and other appropriate City officials are hereby authorized to take such actions, and prepare and execute such documents, as are necessary to effectuate the Pre-Annexation Agreement and otherwise carry out the intent of this Ordinance.

Section 3. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

Section 4. This Ordinance shall go into effect on July 20, 2022.

INTRODUCED: June 6, 2022

ADOPTED: June 20, 2022

ATTEST: \_\_\_\_\_  
Khristi Dunn, Clerk of Council

APPROVED: \_\_\_\_\_  
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of Ordinance 2022-19 passed by that body on June 20, 2022.

\_\_\_\_\_  
Khristi Dunn, Clerk of Council

Approved as to form: \_\_\_\_\_  
Ben Yoder, Law Director

## **PRE-ANNEXATION AGREEMENT**

This PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into by, between and among the Council of the city of Franklin, the legislative authority of and for the City of Franklin, an Ohio municipal corporation (the "City"), and Cap 5 Development, LLC, an Ohio limited liability company ("Developer") under the following circumstances:

- A. Developer has a contract to acquire fee simple title to approximately 109.6 acres ± of undeveloped land located in Franklin Township, Warren County, Ohio, with County Parcel ID No. 0835200001. A portion of this undeveloped land (that land not subject to the public road right-of-way) is proposed to be annexed into the City; specifically, the land more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof (collectively, the "Property"); and
- B. Developer with the consent of the owner of the Property (the "Owner") as provided herein, desires to annex the Property into the City in order to obtain the City's services; and
- C. The Developer, the Owner and the City can benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Developer hereby agree as follows:

1. Annexation.

(a) The Developer will, at its own expense, prepare and file the necessary annexation petition executed by the Owner, with accompanying map or plat with the Warren County Board of County Commissioners ("Commissioners") within ninety (90) days after the execution of this Agreement. The Owner will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition or petitions during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation.

(b) The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code.

(c) The City acknowledges its intent to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the Commissioners. Under the service resolution, the City will make available to the Property all City services available to other parts of the City, including fire and police protection, emergency medical, waste collection, water, sanitary sewer, zoning, and City street maintenance services, which services will be provided to the extent and in the same manner as provided to other parts of the City. The service resolution will establish the approximate

date when those services will be available to the Property, once annexed. The service resolution shall provide a statement of incompatible land uses and zoning buffer as required by Section 709.023(C) of the Ohio Revised Code.

(d) The Developer, the Owner, and the City agree to cooperate and provide information necessary for the Commissioners for any review of the annexation as required by Section 709.023 of the Ohio Revised Code.

(e) Should the annexation petition be granted by the Commissioners, the Owner, the Developer, and the City agree to further process the annexation as provided by law, subject to the terms of this Agreement.

## 2. Zoning.

(a) Upon annexation the City shall be solely responsible for the zoning of the Property. Initially the Property will automatically be zoned I-2, with the City understanding, however, that the proposed use is for single family development and a rezoning to that proposed use, via a (Residential) Planned Unit Development Overlay District (“Residential PUD”), will be applied for and processed under the applicable provisions of the City's zoning code.

(b) Contemporaneously with, or shortly after, the filing of the annexation petition, the parties agree that the Developer-Owner will apply for re-zoning to a Residential PUD classification which will, among other things, permit the Developer-Owner’s intended use as a single-family housing community as generally depicted in Exhibit C (Preliminary Site Plan). The City Administration agrees that it will expeditiously process the application to so re-zone the Property.

- i. As part of the re-zoning process, Developer shall conduct a Traffic Impact Study (“TIS”). Developer acknowledges that recommendation for approval by Planning Commission and/or approval by Council of the proposed re-zoning will be conditioned on Developer making any road and related improvements necessary to address impacts indicated in the TIS.

(c) The City recognizes that if the Commissioners grant the annexation petition, once the annexation proceedings are placed before City Council by the City Clerk, the City has one hundred twenty days (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property through the requisite planning and zoning process to the Residential PUD classification, in a form that is substantially similar to Exhibit C. If the re-zoning cannot be accomplished and/or the re-zoning is referred to the voters or defeated for any reason, or the other conditions of this Agreement cannot be met as acceptable to the Developer and the Owner, the City agrees that, upon written request of the Owner and Developer, it will not annex the Property. The City agrees, to the extent

possible, to adopt the requisite ordinance(s) and/or resolution(s) necessary to accept the annexation and approval of the re-zoning contemporaneously, with the goal of deciding both issues at the same meeting.

(d) The City will consider proposed tax increment financing for any public streets and/or other public improvements in the proposed residential development of the Property, provided that the City reserves the right to approve the financial aspects and all other terms and conditions of any proposed tax increment financing.

3. Platting. Once the annexation to the City has been completed and the re-zoning approved, the Owner may submit, if desired by Owner, a preliminary and final plat. If filed, the City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations, including but not limited to standards and regulations relating to streets, street/road improvements, and traffic; and the regular fees for such review will be applied.

4. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

5. Execution. This Agreement shall not be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder shall not constitute a waiver of this requirement. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

6. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

8. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create

the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

9. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the City, the Developer and the Owner and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

10. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder. In the event any deadline falls on a weekend or holiday the deadline shall be extended to the next business day, being Monday through Friday.

11. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, pandemic, epidemic, governmental order, rule or regulations, riot, and conditions that could not have been reasonably foreseen by the claiming party.

12. Assignment of Agreement. Developer shall not assign this Agreement, or any part thereof, or any duty, obligation, privilege or right granted under this Agreement to any other developer, person, or entity without the express written consent of the City, which shall not be unreasonably withheld.

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

14. Entire Agreement/Merger/Modification. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written. No modification, amendment, alternation, or addition shall be made to this Agreement except in a writing duly executed by the City and the Developer (with written consent thereto by the Owner).

15. Joinder of Owner. The Owner joins in the execution of this Agreement to consent to the terms hereof and to acknowledge Owner's agreement to sign the annexation petition and perform the other actions of Owner contemplated by this Agreement.

16. Effective Date. This Agreement shall be effective when duly signed by the Developer, the City, and the Owner.

[Remainder of Page Intentionally Left Blank]



CONSENT AND AGREEMENT OF OWNER:

OWNER:

\_\_\_\_\_  
Mary L. Werline, Trustee of the Werline Family  
Revocable Living Trust UAD

STATE OF OHIO                    )  
  ) SS.  
COUNTY OF WARREN            )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Mary L. Werline, Trustee of the Werline Family Revocable Living Trust UAD, who acknowledges that she did sign the foregoing instrument, and that the same is her free act and deed personally and in her trust capacity. This is an acknowledgment. No oath or affirmation was administered to the signer with regard to this notarial act.

IN TESTIMONY, I set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public (Seal)

CITY:

CITY OF FRANKLIN, an Ohio municipal  
corporation

By: \_\_\_\_\_

Name:

Title:

Date:

Approved as to Form:

\_\_\_\_\_  
City Attorney

**Exhibit A**

[Legal Description of Property to be Annexed]

## Annexation Description Containing 107.403Acres

Situated in Section 35, Town 3, Range 4 M.Rs., Franklin Township, Warren County, State of Ohio, and being part of a 109-acre parcel owned by Mary L. Werline, Trustee by Official Record 1816, Page 917 and being more particularly described as follows;

**Beginning** at the northeast corner of Section 35, said corner monumented by a found 24" diameter deciduous tree (witness a 5/8" iron pin with no cap South 05°57'39" West a distance of 14.8 feet), said point being the northwest corner Lot 3 of Franklin Business Park Two Section One as recorded in Plat Book 51, Page 88 and in the south line of Bunnell Hill Development as recorded in Deed Book 5144, Page 639;

Thence with the easterly line of said Section 35 and the westerly line of said Lot 3 and Lot 4 of said Franklin Business Park Two Section One, and the westerly line of a parcel conveyed to Neil and Janet Amy Hoffman in Official Record 946, Page 787, and in part along the corporation line of the City of Franklin, **South 05°57'39" West**, a distance of **1716.23 feet**, (passing a found 1/2" iron pin with no cap at 986.12 feet) to the northerly right-of-way line of Manchester Road;

Thence along said right-of-way line of Manchester Road **North 86°26'25" West**, a distance of **2576.24 feet** to the easterly right-of-way line of Shaker Road;

Thence along said right-of-way line of Shaker Road **North 23°09'39" West**, a distance of **351.29 feet**;

Thence continuing along said right-of-way line of Shaker Road **North 05°03'44" East**, for a distance of **1386.23 feet** to the southerly line of aforesaid Bunnell Hill Development;

Thence, along the southerly line of said Bunnell Hill Development and a parcel conveyed to the City of Franklin in Official Record 4702, Page 722, said line being the corporation line of the City of Franklin, **South 86°45'16" East**, for a distance of **2769.80 feet** to the **Point of Beginning**, containing 107.403 acres, more or less, and being subject to all other rights-of-way, easements, restrictions, covenants, and/or conditions of record.

The above description is the result of a survey prepared by Sean T. Brooks & CESO, Ohio Registered surveyor No. 8828, dated January 2022, the survey plat of which is filed in Vol. \_\_\_\_ Plat \_\_\_\_ of the Warren County Engineer's Record of Land Surveys.

2-2-2022

Sean T. Brooks, PS  
Ohio P.S. #8828

Date

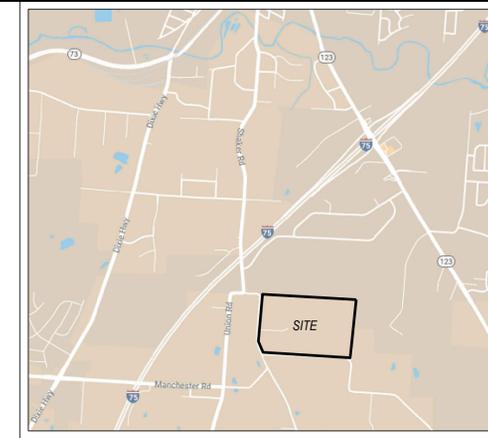


EXHIBIT A

**Exhibit B**

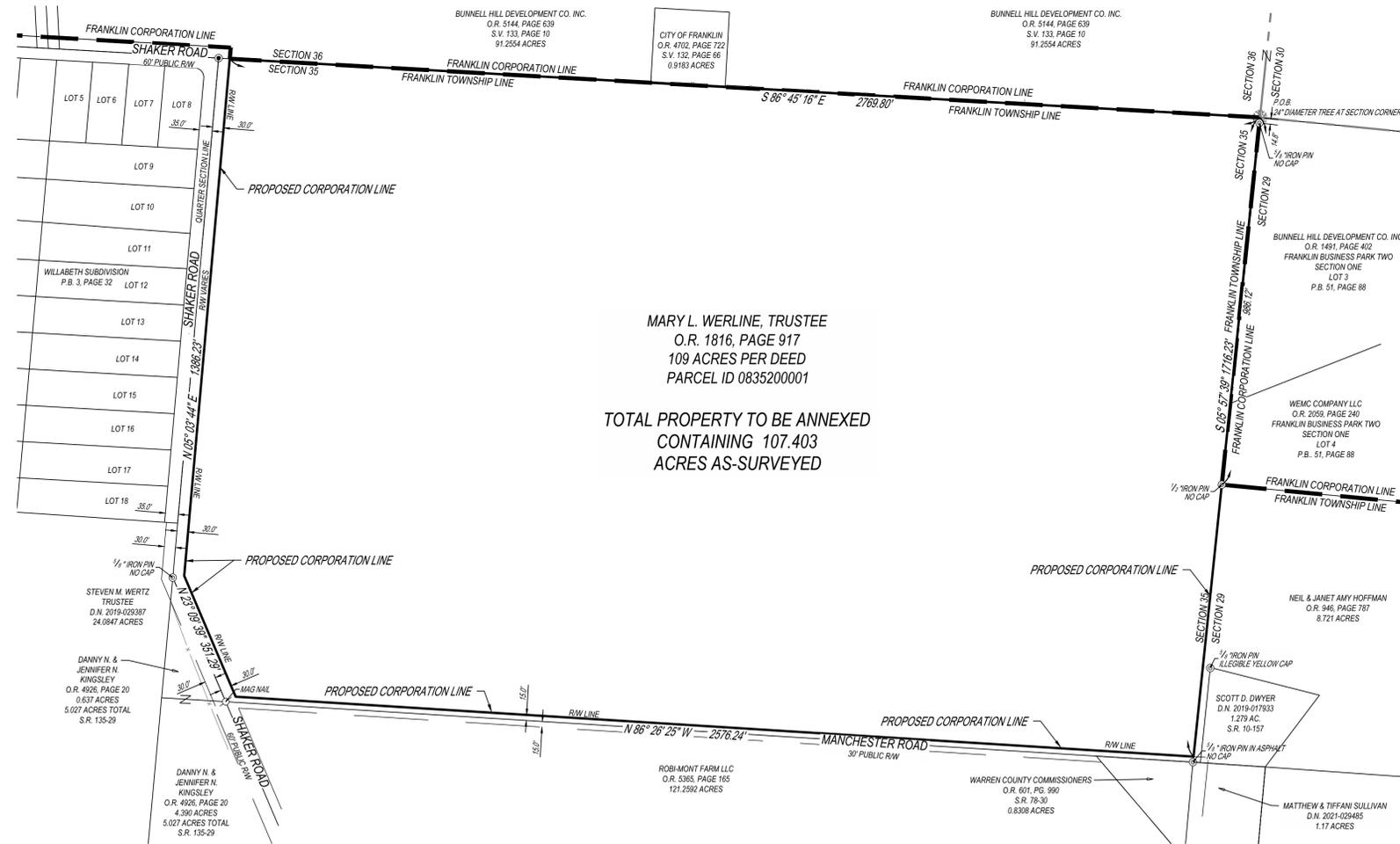
[Annexation Plat/Map]

**CITY OF FRANKLIN ANNEXATION OF WERLINE PROPERTY**  
107.403 ACRE ANNEXATION IN SECTION 35, TOWN 3, RANGE 4 M.Rs., FRANKLIN TOWNSHIP, WARREN COUNTY, OHIO  
THE PERIMETER OF THE TERRITORY SHOWN HEREIN IS 8,799.79 FEET, OF WHICH 3,755.92 FEET (42.68%) IS CONTIGUOUS WITH THE EXISTING CORPORATION LINE.



**VICINITY MAP:**  
NOT TO SCALE

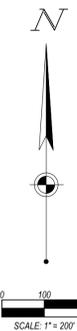
- LEGEND**
- 5/8" x 30" IRON REBAR SET WITH YELLOW CESO CAP
  - ⊙ IRON PIN FOUND AS NOTED
  - ⚡ MAG NAIL FOUND
  - PROPOSED CORPORATION LINE
  - ADJOINER PROPERTY LINE
  - RIGHT-OF-WAY LINE
  - SECTION LINE
  - EXISTING CORPORATION LINE
  - PROPOSED ANNEXATION AREA



MARY L. WERLINE, TRUSTEE  
O.R. 1816, PAGE 917  
109 ACRES PER DEED  
PARCEL ID 0835200001

TOTAL PROPERTY TO BE ANNEXED  
CONTAINING 107.403  
ACRES AS-SURVEYED

THIS PLAT IS FOR ANNEXATION PURPOSES ONLY



**SURVEY NOTES:**

- NORTH AND BEARING SYSTEM BASED ON THE OHIO STATE PLANE - SOUTH, NAD 83 AND UPON GPS OBSERVATIONS TAKEN BY CESO INC IN NOVEMBER OF 2021. SCALED TO GROUND AT A LAT. N39°31'33.82230", LONG. W84°17'44.14211" AT A PROJECT HEIGHT OF 754.988 FEET AND A SCALE FACTOR OF 1.00009715313252.
- ALL DATA SOURCES, DOCUMENTS AND RECORDS SHOWN HEREON ARE ON FILE AT THE WARREN COUNTY RECORDER'S OFFICE LOCATED IN LEBANON, OHIO, UNLESS NOTED OTHERWISE.
- SURVEY PREPARED FROM FIELDWORK PERFORMED IN NOVEMBER OF 2021. ALL MONUMENTATION SHOWN HEREON IS IN GOOD CONDITION UNLESS OTHERWISE NOTED.
- ACCESS TO THE SUBJECT PARCEL IS AVAILABLE VIA SHAKER ROAD AND MANCHESTER ROAD BEING PUBLIC RIGHT-OF-WAYS.
- OCCUPATION GENERALLY FITS THE BOUNDARY LINES AS SHOWN.

**SURVEYORS CERTIFICATION:**

I HEREBY CERTIFY THAT THIS PLAT OF SURVEY IS A CORRECT REPRESENTATION OF A FIELD SURVEY PERFORMED BY CESO IN NOVEMBER OF 2021 UNDER MY DIRECTION. I FURTHER CERTIFY THAT ALL MONUMENTS HAVE BEEN SET OR FOUND AS INDICATED.

SEAN T. BROOKS P.S. DATE \_\_\_\_\_  
OHIO PROFESSIONAL SURVEYOR #8828

**COUNTY COMMISSIONERS:**

WE, THE BOARD OF COUNTY COMMISSIONERS OF WARREN COUNTY, OHIO DO HEREBY APPROVE THIS PLAT ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

COMMISSIONERS \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

**CITY APPROVAL:**

CITY OF FRANKLIN CLERK

PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_

**COUNTY RECORDER:**

FILE NO. \_\_\_\_\_

RECEIVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, AT \_\_\_\_ A.M./P.M.

RECORDED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, AT \_\_\_\_ A.M./P.M.

RECORDED IN PLAT BOOK NO. \_\_\_\_\_, PAGE \_\_\_\_\_

FEE: \_\_\_\_\_

BY: \_\_\_\_\_ DEPUTY WARREN COUNTY RECORDER

**COUNTY AUDITOR:**

TRANSFERRED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

BY: \_\_\_\_\_ DEPUTY WARREN COUNTY AUDITOR

EXHIBIT B

REVISIONS		
NO.	DATE	DESCRIPTION

**107.403 ACRE ANNEXATION**

**MARY L. WERLINE, TRUSTEE**

5764 SHAKER ROAD  
FRANKLIN TOWNSHIP  
SCALE: 1" = 200'

SECTION 35, T3, R4 M.Rs.  
WARREN COUNTY, OHIO  
DATE: 02/08/2022

DESIGN: N/A  
DRAWN: DAS  
CHECKED: JKH

JOB NO.: 759872  
SHEET NO.: 1 OF 1

**CESO**  
WWW.CESOINC.COM

**Exhibit C**

[Preliminary Site Plan]

### Site Development

Site Jurisdiction:	Warren County
Overall Site AC:	±109 AC
Dedicated ROW AC:	±3.69 AC
Net Site AC:	±105.31 AC
Existing Zoning:	A1
Proposed Zoning:	PUD (Annex into the City of Franklin)
Proposed Lots:	340
Proposed Density:	± 3.23 DUA
Required Parkland:	± 9.40 AC (340 x 3.25 x 0.0085)
Proposed Parkland/COS:	± 20.9 AC
Pocket Park 1:	± 0.14 AC
Pocket Park 2:	± 0.15 AC
Pocket Park 3:	± 0.16 AC
Pocket Park 4:	± 0.16 AC
Park A:	± 6.15 AC
COS 1:	± 2.50 AC
COS 2:	± 5.59 AC
COS 3:	± 6.05 AC

-  37 (60' x 120')
-  36 (55' x 120')
-  267 (50' x 120')
-  WQ - Water Quality
-  COS - Common Open Space
-  POCKET PARK (PP)

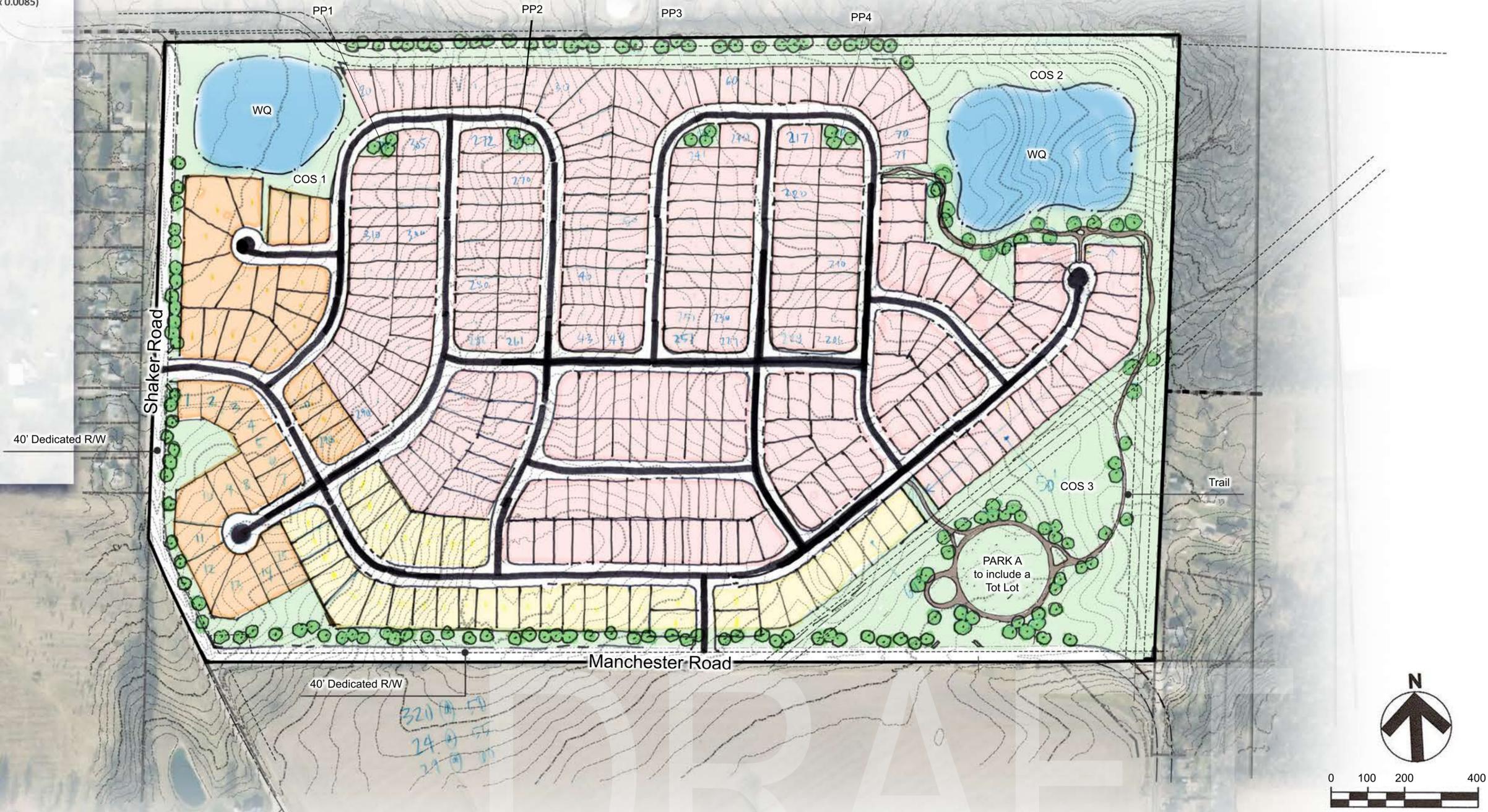


EXHIBIT C



This exhibit is conceptual in nature and may change at owners discretion in order to meet jurisdictional codes, final site engineering requirements and budget based on pricing for the final plan.