

OFFSITE ROAD AGREEMENT

This Offsite Road Agreement ("Agreement") is between the **City of Dripping Springs**, a Type A General Law City located in Hays County, Texas (the "City"), and **Ashton Austin Residential, L.L.C.**, a Texas limited liability company ("Owner").

RECITALS:

- WHEREAS**, Owner owns approximately 100.58 acres of land (the "Land") as shown on **Exhibit A** and more particularly described on **Exhibit B**, which Land is being annexed into the City; and
- WHEREAS**, it is intended that the Land will be developed as a master-planned community by Owner, its affiliates and/or their successors and assigns, including future owners and developers (the "Project"); and
- WHEREAS**, City approved on the same date as this Agreement that certain "Annexation agreement and PDD Ordinance" that contains terms and agreements regarding the annexation and development of the Land; and
- WHEREAS** Owner desires to design and construct, or cause to be designed and constructed, Offsite Road improvements (as hereinafter defined) and also desires to have the option to provide funding for the Offsite Roads in order to provide a special benefit for the proposed development of the Land.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, City and Owner agree as follows:

ARTICLE 1 RECITALS

- 1.1** The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

ARTICLE 2 DEFINITIONS

- 2.1 Annexation and PDD Ordinance:** That certain Annexation agreement and PDD Ordinance executed between Owner and City on the same date as this Agreement.
- 2.2 City Administrator:** The chief administrative officer of the City of Dripping Springs, Texas. The term also includes the Deputy City Administrator or the City

Administrator's designee.

- 2.3 City Council:** The governing body of the City of Dripping Springs, Texas.
- 2.4 City Engineer:** The person or firm designated by the City Council as engineer for the City of Dripping Springs, Texas.
- 2.5 City Review Fees:** The fees set out in City's Fees Schedule Ordinance as may be amended from time to time.
- 2.6 City Construction Standards:** The following City standards for planning, design, location, and construction of the Offsite Road in effect on the date hereof, and as the same may be amended by the cross-sections or design descriptions as adopted as exhibits to the Annexation agreement and PDD Ordinance attached hereto. If not addressed in the Annexation agreement and PDD Ordinance then the standards shall be:
- 2.6.1 Subdivision Ordinance and Regulations;
 - 2.6.2 Development Ordinance and Regulations; and
 - 2.6.3 Dripping Springs Technical Criteria.
- 2.7 Contractor:** A person or entity that constructs the Offsite Roads.
- 2.8 Effective Date:** The date that this Agreement is approved by City.
- 2.9 Land:** Has the meaning set forth in the Recitals.
- 2.10 Notice:** Notice as defined in Section 7.3 of this Agreement.
- 2.11 Offsite Roads:** Has the meaning set forth in Section 3.1.
- 2.12 Parties:** Parties are City of Dripping Springs and Ashton Austin Residential, L.L.C., a Texas limited liability company.
- 2.13 Project:** Has the meaning set forth in the Recitals.

Unless indicated otherwise herein, other capitalized terms in this Agreement shall have the same respective meanings as are ascribed to them in the Annexation agreement and PDD Ordinance.

ARTICLE 3
DESIGN AND CONSTRUCTION OF OFFSITE ROAD

3.1 Offsite Roads:

a. Owner will:

(i) construct, or cause to be constructed, the four lane north-south arterial roadway from the southern boundary of the Land to US 290 as shown on the Transportation Diagram attached hereto as **Exhibit C** (referred to herein as the “Offsite Cannon Roadway”), this portion being the required roadway section for the proposed residential development of the Land, that being the final Offsite Cannon Roadway conforming to the typical section as shown in **Exhibit D**;

(ii) construct or cause to be constructed, the two lane east-west collector to the southeastern boundary of the Land as shown on the Transportation Diagram (referred to herein as the “East-West Roadway”) conforming to the typical section as shown in **Exhibit D**. The Offsite Cannon Roadway and the East-West Roadway are referred to herein jointly as the “Offsite Roads”); and

(iii) dedicate required right-of-way sufficient for the improvements to the existing Rob Shelton Blvd. to create a two-lane divided major collector to Founders Park Road (the “Rob Shelton Improvements”) in accordance with the Rob Shelton street sections attached hereto as either **Exhibit D.1, D.2, D.3 or D.4, including area for Rob Shelton Blvd. to intersect Founders Park Road** such that it intersects at 80-110 degrees, and does not adversely impact the intersection with Founders Park Driveway and allows for construction of a future roundabout, as shown in **Exhibit E** attached hereto. The Owner will construct the Rob Shelton Improvements of requested by the City through the process described in this section. Prior to commencing construction of the Rob Shelton Improvements, the budget for the Rob Shelton Improvements will be prepared by Owner and submitted to City for approval, such approval not to be unreasonable withheld, conditioned, or delayed. If the construction of the Rob Shelton Improvements and the budget are approved and the Rob Shelton Improvements completed and accepted by City, all of the budgeted expenses actually incurred by Owner relating to the Rob Shelton Improvements will be credited to the Owner by the City by way of planning fees, building permit fees, and other City fees as are necessary to fully reimburse the Owner. The obligation to construct the Rob Shelton Improvements is predicated on the first phase of infrastructure of the Project being under construction and City's granting any necessary rights-of-way and approving the budget. Acquisition of rights-of-way is primarily the responsibility of the Owner, but if needed, the City will employ its eminent domain/condemnation powers to acquire the rights-of way, all as described in Section 3.6 hereof. If either the construction and/or budget is not

approved by the City, the obligation of Owner to construct the Rob Shelton Improvements is released.

The north-south roadway within the Land shall be a four-lane minor arterial. Construction shall be generally in accordance with the cross-sections and design specifications as shown in the Annexation agreement and PDD Ordinance, typical sections of which are shown in **Exhibit D**, subject to plan review and acceptance by City pursuant to Section 3.4 and by the Texas Department of Transportation as applicable. Owner will coordinate this effort with City. The obligation to construct the Offsite Roads is predicated on the first phase of infrastructure of the Project being under construction and City's granting any necessary rights-of-way. Acquisition of rights-of-way is primarily the responsibility of the Owner, but if needed, the City will employ its eminent domain/condemnation powers to acquire the rights-of way, all as described in Section 3.6 hereof.

Owner will dedicate the right-of-way shown on **Exhibit E** to City of Dripping Springs for (i) future construction of roundabout at Rob Shelton Boulevard and Founders Park Road, (ii) future expansion of Founders Park Road, and (iii) future construction of a roundabout at Founders Park Road and "Offsite Cannon" Roadway.

- b. Owner shall be required to commence construction of the Offsite Cannon Roadway at such time as Owner has begun construction of the first phase of infrastructure of the Project; the East-West Roadway will be built in three phases, starting at the western most point of the East-West Roadway and moving east to connect to the onsite roadways as they are built, as shown on the Transportation Diagram and in accordance with the "Phasing Plan – Exhibit G" in the Cannon Ranch PDD. Owner shall coordinate with the City, TxDOT, Hays County, and any property owner needed to construct these improvements in a manner that allows this timing to be completed. Acquisition of rights-of-way is primarily the responsibility of the Owner, but if needed, the City will employ its eminent domain/condemnation powers to acquire the rights-of way all as described in Section 3.6 hereof.
- c. Based upon the Traffic Impact Analysis ("TIA") that will be approved by City and Owner within sixty (60) days of the approval of this Agreement, Owner and City have agreed upon the amount of Owner's required participation in the costs of associated with the offsite traffic impact brought on by the Project (the "Participation Costs"). Owner's obligations to construct the Offsite Roads and dedicate specified ROW and post \$307,500.00 in fiscal for transportation improvements shall fully satisfy Owner's Participation Costs. The \$307,500.00 will be used for improvements related to the construction of the proposed traffic signal at US 290 and Offsite Cannon Roadway (the "Signal Improvements"). If the traffic signal is warranted by the Texas Department of Transportation prior to the final phase of construction of the Project, the Owner shall construct or fund the Signal

Improvements and upon completion of the Signal Improvements, the City will deliver to the Owner the costs of the Signal Improvements incurred by the Owner up to \$307,500.00. For those amounts incurred by Owner in constructing or funding the Signal Improvements in excess of the \$307,500.00, the City will require adjacent landowners to reimburse the Owner for their pro rata share of the cost prior to the City approving any plat, site plan, utility connection, or other developmental requirement requested by the adjacent landowners.

- d. Notwithstanding the foregoing, City and Owner acknowledge that this Agreement is subject to plan review and acceptance by Texas Department of Transportation and any further requirements by Texas Department of Transportation shall be met by Owner.

3.2 Infrastructure Standards. The Offsite Roads shall be planned, designed and constructed in compliance with this Article 3 and the City Construction Standards that apply to the Land. Owner agrees to engage a professional engineer registered in the State of Texas to provide design phase, bid phase, and construction phase services necessary for the design, bidding, construction, and installation of the Offsite Roads. Owner shall not be required to publicly bid the project in accordance with all applicable City procedures and the Laws of the State of Texas. However, Owner will request at least three bids from qualified firms for each construction contract for the Offsite Roads work with City to provide locally-based, qualified firms access to bidding opportunities as allowed by state law.

3.3 Engagement of Contractor. Owner shall engage a contractor to construct the Offsite Roads in accordance with the terms and conditions of this Agreement and with the approved construction plans and specifications. The construction contract shall require that any and all change orders in excess of \$25,000.00 shall be jointly agreed to in writing by City and Owner, shall incorporate the requirements of this Article 3, and shall provide that City is a third-party beneficiary of the contract and may enforce such contracts against the Contractor. Change orders must represent an individual change to the contracted work such that large change orders are not subdivided for the sole purpose of arriving at a cost less than \$25,000.00 for any of the subdivided changes.

3.4 Plan Review, Payment of Fees, and Pre-Construction Conference. Construction of the Offsite Roads shall not commence until the plans and specifications have been reviewed and approved by the City for compliance with City Construction Standards and TxDOT, as applicable, for compliance with the TxDOT Construction Standards; a pre-construction conference has been held by the Contractor, Owner's Engineer, and the City Engineer, Hays County Fire, and TxDOT (as applicable); all applicable City Review Fees are hereby waived as to the road improvements related to this Agreement except those fees incurred by usage of third-party consultants for review, which shall be paid by the Owner. At such preconstruction conference, the City's Engineer shall designate the individual who will serve as the City's project manager and inspector (the "City Inspector").

- 3.5 Inspection by City.** City has the right, but not the obligation, to inspect and test the Offsite Roads at any time. Further, City has the right to participate in a final inspection of the Offsite Roads. Owner, or its Engineer or Contractor, shall notify the City Inspector when each of the Offsite Roads is ready for final inspection. If the City Inspector concurs that construction of the Offsite Roads is substantially complete, then the City Inspector will schedule a final inspection by the City's Engineer within 15 days. Upon such final inspection and correction of any punch list items, Owner shall request that City formally accept the improvements, subject to the provisions of this Agreement.
- 3.6 Easements and Rights-of- Way.** Acquisition of right-of-way is primarily the responsibility of the Owner, but if the Owner is unable to obtain all required off-site easements or right-of-way, then within 60 days after request by Owner, City shall attempt to acquire the easements and right-of-way, using its powers of eminent domain if necessary; provided specifically that City and Owner shall jointly incur the expense of attorneys' fees for counsel other than City staff; survey fees and expenses; appraisal fees and expenses; expert fees and expenses, and all other fees, costs, and expenses associated with the acquisition. City shall incur at its sole expense the cost of City staff time for oversight, legal advice provided to the City, and project management.

**ARTICLE 4
FEES, PERFORMANCE, PAYMENT
AND MAINTENANCE BONDS**

- 4.1 Payment of Fees.** All City Review Fees and City Inspection Fees for the Offsite Roads constructed by Owner as set out in the City's Fee Schedule are hereby waived.
- 4.2 Payment of Costs.** Except as otherwise provided herein, Owner will pay all costs incurred by Owner associated with the design and construction of the Offsite Road and any cost overruns.
- 4.3 Payment, Performance, and Maintenance Bonds.** City shall require Owner or Owner's Contractor(s) to provide performance and payment bonds at the time of construction of the Offsite Roads as applicable, in accordance with Applicable Rules. Owner or Contractor shall provide a two (2) year maintenance bond upon acceptance by City.

**ARTICLE 5
OWNERSHIP AND OPERATION OF OFFSITE ROADS**

- 5.1** Within sixty (60) days after City's final approval of the Offsite Roads and the inspection and correction of punch list items pursuant to Section 3.5 above, City will accept the Offsite Roads except any roads maintained and operated by the State of Texas.

(a) Owner shall provide the City Engineer with a set of as-built drawings, for permanent record.

(b) Owner or Owner's Contractor shall provide the City Administrator or designee with a two year maintenance bond for the Offsite Roads.

5.2 All warranties secured for construction of the Offsite Roads and all bonds, guarantees, other assurances of performance, record drawings, project manuals, and all other documentation related to the Offsite Roads will be delivered to City. Owner agrees that City will not accept the Offsite Roads burdened by any mechanic's lien created by, through or under Owner.

5.3 After acceptance by City, City will operate and maintain the Offsite Roads according to City's policies and ordinances, as amended from time to time. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate City's governmental authority or ordinances respecting the operation and maintenance of its road systems nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of same.

5.4 Maintenance of roadway and storm water infrastructure within the right-of-way will become the responsibility of the City through acceptance by the City Council under the current ordinances. All storm water infrastructure associated with roadways that is outside the right-of-way will remain the maintenance responsibility of the Owner or its assigns.

ARTICLE 6 INSURANCE AND INDEMNIFICATION

6.1 **Insurance.** Owner or its Contractor(s) shall acquire and maintain, during the period of time when any of the Offsite Roads are under construction by Owner (with full coverage in force for matters occurring prior to City's acceptance of the Offsite Road until expiration of two (2) years after the latter to occur of full and final completion of the Offsite Roads and acceptance thereof by City): (a) workers compensation insurance in the amount required by law and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability (e.g. deletion of exclusions for liability assumed under any indemnification provisions of this Agreement) , with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00 per occurrence and general aggregate coverage for bodily injury, death and property damage of not less than \$2,000,000.00 (per project); provided, however, if the applicable construction contract is for a sum greater than \$3,000,000.00, then either (at Owner's election) the general aggregate coverage for bodily injury, death and property damage shall be no less than \$5,000,000.00 (on a per project basis), or an additional \$3,000,000.00 of umbrella or excess liability insurance shall be acquired

and maintained. Such insurance shall cover claims for bodily injury, death and property damage which might arise out of the construction contracts for the Offsite Roads, whether by Owner, a contractor, subcontractor, material man, or otherwise. Commercial general liability insurance coverage in the amount of \$1,000,000.00 must be on a “per occurrence” basis. All such insurance shall be issued by a carrier which is rated “A-1” or better by A.M. Best’s Key Rating Guide and licensed to do the business of insurance in the State of Texas. The commercial general liability insurance shall name City including its current and future officers, councilmembers, employees, representatives, and other agents as additional named insureds and contain a waiver of subrogation endorsement in favor each additional named insured. Upon the later to occur of Owner’s execution of a construction contract for the Offsite Roads or five (5) days prior to commencement of construction under a construction contract for the Offsite Roads, Owner shall provide to City certified copies of all declarations, contracts, and policies of insurance, including all riders, exclusions, and all other attachments to each, evidencing such insurance coverage, along with the endorsement naming City as an additional insured. As to insurance required for current and for future Owners, even where Owner or the insurer has the right to cancel, fail to renew, or modify insurance coverage, each such policy shall provide that, at least thirty (30) days’ prior to the cancellation (including for non-payment of premiums), non-renewal or modification of the same, City and Owner or Owner’s contractor shall receive written notice of such cancellation, non-renewal or modification; furthermore, if Owner receives ten (10) days’ written notice for non-payment of premiums pursuant to Section 551.053 of the Texas Insurance Code, or if Owner is provided such notice by Owner’s contractor, then Owner shall provide such notice to City within five (5) business days. The commercial general liability insurance discussed in this Section 6.1 will not have exclusions or reduced limits for risks assumed pursuant to this Agreement. If insurance coverage that names a city as an “additional named insured” is commercially available to contractors which would bid for a construction project within the Cannon Ranch development at commercially reasonable rates, then City shall be named as an “additional named insured” to the insurance policy for such construction project.

6.2 DEFENSE, INDEMNIFICATION and HOLD HARMLESS. OWNER (IN THE EVENT OF AN ASSIGNMENT PURSUANT TO SECTION 8.5 BELOW “OWNER” FOR PURPOSES OF THIS SECTION 6.2 SHALL MEAN SUCH ASSIGNEE) HEREBY COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, AND ITS PAST, PRESENT, AND FUTURE OFFICIALS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND OTHER AGENTS (IN THIS SECTION, COLLECTIVELY THE “CITY”) AGAINST AND FROM (AND WILL PAY TO CITY OR THE CLAIMANT, AS APPLICABLE, THE AMOUNT OF SUCH DAMAGES TO THE EXTENT THAT PAYMENT OBLIGATIONS UNDER THIS INDEMNITY ARISE) ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE (COLLECTIVELY, “DAMAGES”), ARISING FROM (i) THE BREACH OF ANY PROVISION OF THIS

AGREEMENT BY OWNER OR (ii) ANY THIRD PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT CONSTRUCTED BY OWNER ACQUIRED UNDER THIS AGREEMENT, INCLUDING ANY CLAIM RELATING TO THE SOLE NEGLIGENCE OF CITY OR RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO PROPERTY RESULTING FROM THE ACTS OR OMISSIONS OF OWNER, ITS CONTRACTOR OR SUBCONTRACTORS, IN OWNER'S CONSTRUCTION OF THE OFFSITE ROADS FOR THE PROJECT. OWNER WILL DEFEND CITY AGAINST ALL SUCH CLAIMS OTHER THAN THOSE CLAIMS RELATING TO CITY'S SOLE NEGLIGENCE AND CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. CITY SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER SUBJECT TO THE TERMS AND CONDITIONS OF ANY INSURANCE POLICY APPLICABLE TO SUCH CLAIM AND THE INSURER'S RIGHT TO RETAIN COUNSEL ON BEHALF OF ANY INSURED OR ADDITIONAL INSURED. CITY RESERVES THE RIGHT, BUT IS NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT ITS OWN EXPENSE. OWNER SHALL RETAIN DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHTS TO DEFENSE AND INDEMNIFICATION, AND IF OWNER DOES NOT DO SO, CITY MAY RETAIN ITS OWN DEFENSE COUNSEL IF REASONABLY NECESSARY AND OWNER WILL BE LIABLE FOR ALL REASONABLE COSTS AND EXPENSES OF SUCH COUNSEL INCURRED UNTIL OWNER HAS RETAINED DEFENSE COUNSEL. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY WITH RESPECT TO MATTERS OCCURRING PRIOR TO CITY'S ACCEPTANCE OF THE OFFSITE ROAD, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW. OWNER WILL NOT SETTLE ANY CLAIM IF SUCH SETTLEMENT PROVIDES FOR INJUNCTIVE OR DECLATORY RELIEF AGAINST CITY WITHOUT THE WRITTEN CONSENT OF CITY, WHICH SHALL NOT BE UNREASONABLY WITHHELD (CITY SHALL NOT HAVE APPROVAL RIGHTS OVER MONETARY SETTLEMENTS, UNLESS AFFIRMATIVE ACTION IS REQUIRED BY CITY IN CONNECTION WITH SUCH SETTLEMENT); HOWEVER, LIMITS ON FUTURE GOVERNMENT ACTION AND PRECEDENTIAL CONSIDERATIONS RELATED TO OR POTENTIALLY ARISING FROM ANY PROPOSED SETTLEMENT ARE AMONG REASONS ON WHICH CITY MAY BASE REFUSAL TO CONSENT TO ANY PROPOSED SETTLEMENT.

- 6.3 At no time shall City have any control over or charge of Owner's design, construction, or installation of any of the Offsite Roads, nor the means, methods, techniques, sequences, or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture between City and Owner.

- 6.4 **Insurance and Indemnity by Contractors:** Insurance and Indemnity by Contractors: If Owner engages a Contractor to construct the Offsite Roads, Owner shall include in the contract requirements that the Contractor must provide commercial general liability insurance naming City as an additional named insured as required in Section 6.1. To the extent allowed by applicable law, Owner shall use reasonable efforts to cause the contract to provide THAT THE CONTRACTOR COVENANT AND AGREE, TO THE EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND NO FURTHER, TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY AGAINST ANY AND ALL SUITS OR CLAIMS FOR DAMAGES OF ANY NATURE ARISING OUT OF THE PERFORMANCE OF SUCH CONTRACT, EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO STRICT LIABILITY, OTHER THAN SUCH LIABILITIES THAT ARISE DUE TO THE SOLE NEGLIGENCE OF CITY.

ARTICLE 7.
DEFAULT AND REMEDIES FOR DEFAULT

- 7.1 **Preventative Default Measures.** The Parties presently enjoy a good working relationship and understand the meaning and intent of this Agreement; however, the Parties recognize that individual representatives of each of the Parties will likely change over the course of this Agreement. City agrees that day-to-day oversight of the implementation of this Agreement shall at all times during the Term be assigned directly to City Administration. In the event of a dispute involving an interpretation or any other aspect of this Agreement, upon Owner's request, the City Administration shall convene a meeting of the Parties as soon as reasonably practical and use all reasonable efforts to avoid processing delays and to resolve the dispute and carry out the spirit and purpose of this Agreement.
- 7.2 **Default.** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party arising out of the default, give written notice to the defaulting Party specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.
- 7.3 **Remedies Between City and Owner.** If a Party contends that the other Party is in default of this Agreement, the non-defaulting Party shall give written notice of such contention to the defaulting Party, specifying the nature of the alleged default, and allow the applicable time period for cure of the default set forth in Section 7.2 above. The defaulting Party shall either cure the alleged default timely, or if the non-defaulting Party and defaulting Party agree in writing for an extension of the time to cure, not later than

the extended cure deadline, or, within the time for cure stated in the non-defaulting Party's initial notice of default, give written notice to the non-defaulting Party denying the existence of the alleged default and invoking the following dispute resolution mechanisms. First, if both Parties shall mutually agree to submit to mediation, they shall attempt to resolve the dispute amicably. If mediation is unsuccessful or if one or both of the Parties decline to engage in mediation, then either Party may institute legal proceedings in a state district court in Hays County, Texas, pursuing all available remedies at law or equity, including without limitation a suit for specific performance and/or a Writ of Mandamus in the event of a default by City. All matters of fact and law shall be submitted to and determined by the court (subject to appeal). Each party shall pay its own costs and attorney fees.

ARTICLE 8 MISCELLANEOUS

- 8.1 Governing Law; Jurisdiction and Venue:** This Agreement shall be construed under and in accordance with the laws of The State of Texas. All obligations of the parties created hereunder are performable in Hays County, Texas and venue for any action arising hereunder shall be in Hays County.
- 8.2 Conspicuous Provisions:** City and Owner acknowledge that the provisions of this Agreement set out in **bold, CAPITALS** (or any combination thereof) satisfy the requirements for the express negligence rule or are conspicuous.
- 8.3 Notices:** Any notices, approvals, or other communications required to be given by one Party to another under this Agreement (a "Notice") shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by e-mail with a confirming copy sent by United States mail within 48 hours after the email is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620
mfischer@cityofdrippingsprings.com

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620

City of Dripping Springs, Texas
Attn: City Attorney
P. O. Box 384
Dripping Springs, Texas 78620

To Owner:

Original: Ashton Austin Residential L.L.C.
10721 Research Blvd, Suite B-210
Austin, Texas 78759
Attention: Keith Pearson

Ashton Austin Residential L.L.C.
10721 Research Blvd, Suite B-210
Austin, Texas 78759
Attention: Steven Pierce

Ashton Woods
3820 Mansell Road, Suite 400
Alpharetta, Georgia 30022
Attention: Christina Malone

Copies to: Baker & Robertson
P O Box 718
Dripping Springs, Texas 78620
Attn: Rex G. Baker, III

Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Attention: Kevin M. Flahive

8.4 City Consent and Approval: In any provision of this Agreement that provides for the consent or approval of City staff or City Council, such consent or approval must be granted in writing, and unless otherwise specified in this Agreement may be withheld or conditioned by the staff or City Council based on compliance with the terms of this Agreement and applicable laws and ordinances.

8.5 Assignment: This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner may assign all or an undivided interest in this Agreement to an affiliate of Owner, a land bank entity or other entity that facilitates the acquisition, development, or disposition of the Property, a person or entity that will have a co-ownership interest in all or a portion of the Property, or a joint venture in which Owner or an affiliate of Owner is a member, without the consent of City. As used in this Section, “affiliate” means (a) an officer, director, employee, shareholder, or partner of Owner; (b) any corporation, partnership, limited liability company, trust, or other entity controlling, controlled by, or under common control with Owner (whether directly or indirectly through one or more intermediaries); or (c) any officer, director, trustee, general partner, or employee of any person or entity described in (b) above.

For assignments other than to an affiliate as provided in the above paragraph, but including any assignment to a land bank entity or other entity that facilitates the acquisition, development, or disposition of the Property or other homebuilder, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party provided that the assignee has provided to Owner with a copy to City in a writing, certified by an officer with the authority to bind the assignee, stating that such assignee (i) does not owe delinquent taxes or fees to City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with City, and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. In the event the proposed assignee is a company that is publicly traded and listed on the New York Stock Exchange, then an officer of such proposed assignee shall provide this information in the certification described in this Section 8.5 in lieu of the requirements of (iii), above. Owner shall provide City sixty (60) days prior written notice of any such assignment, and Owner shall provide City with a copy of the writing described in this Section 8.5. Upon assignment pursuant to this Section 8.5, Owner shall be released of any further obligations under this Agreement.

- 8.6 **No Third Party Beneficiary:** This Agreement is solely for the benefit of the Parties, and neither City nor Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than City and Owner.
- 8.7 **Amendment:** This Agreement may be amended only with the written consent of Owner and with approval of the governing body of City.
- 8.8 **No Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- 8.9 **Severability:** The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.
- 8.10 **Captions:** Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the agreement.
- 8.11 **Interpretation:** The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term "shall include" means "shall include without limitation."
- 8.12 **Exactions Roughly Proportionate:** Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code, arising out of this Agreement. Both Owner and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual

determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement or the future zoning ordinance covering the Land. Owner further acknowledges that the benefits of platting and master planning have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Owner acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. Notwithstanding the foregoing, Owner does not waive any of its rights or claims with respect to any future requests or exactions from City not covered or determined by this Agreement or the future zoning ordinance covering the Land.

- 8.13 Counterpart and Originals:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.
- 8.14 Term.** The term of this Agreement will commence on the Effective Date and continue until City's acceptance of the Offsite Roads, unless terminated on an earlier date by written agreement of City and Owner.

8.15 Incorporation of Exhibits by Reference: All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A – Depiction of Land

Exhibit B – Legal Description of Land

Exhibit C – Transportation Diagram

Exhibit D – Typical Sections

Exhibit D.1 – Rob Shelton Section Option 1

Exhibit D.2 – Rob Shelton Section Option 2

Exhibit D.3 – Rob Shelton Section Option 3

Exhibit D.4 – Rob Shelton Section Option 4

Exhibit E – Offsite Roadway Dedication Rob Shelton and Founder’s Park (including future Roundabouts)

The Effective Date of this Agreement is _____, 2021.

[Signature Pages to follow]

THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT:

CITY:

CITY OF DRIPPING SPRINGS,
a Type A General-Law Municipality

By: _____

Name: Bill Foulds, Jr.

Title: Mayor

ATTEST:

By: _____

Name: Andrea Cunningham

Title: City Secretary

OWNER:

ASHTON AUSTIN RESIDENTIAL, L.L.C.
a Texas limited liability company

By: _____

Name: _____

Title: _____