

## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is made and entered into by and between the City of Mansfield, Texas, a home rule municipal corporation of the State of Texas (the "City"), and Ashton Holdings, Inc., a Texas corporation ("Owner"). For convenience, Owner and City may be referred to individually as a "party" and collectively as "parties."

**WHEREAS**, the Owner owns a certain 158 acre tract of land, more or less, located in Johnson County, Texas, and located wholly within the extraterritorial jurisdiction of the City, as more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes ("Property"); and

**WHEREAS**, the Owner desires to develop the Property as an upscale custom home residential community and other amenities ("Project"); and

**WHEREAS**, the Owner further desires to purchase water from the City to service the needs of the current and future owners of the Property; and

**WHEREAS**, the Owner is agreeable to the Property being annexed by the City as consideration for the City permitting the Owner to have access to the City's waterline, provided that the annexation and development of the Property are done in accordance with the terms of this Agreement; and

**WHEREAS**, the property to be developed pursuant to the terms of this Agreement, will not connect to the City's sanitary sewer collection system at the time of its development, but will use onsite waste disposal systems thereby not requiring public expenditures for sanitary sewer system improvements; and

**WHEREAS**, the property to be developed pursuant to this Agreement will be developed on a rural ranchette theme involving significant amounts of open space within the development thereby eliminating the need for the development of significant public park or recreation areas within the development as it is currently configured; and

**WHEREAS**, the property proposed for development pursuant to the terms of this Development Agreement was not included within the ten year capital improvement plan relating to the development of impact fee charges pursuant to Chapter 395 of the Texas Local Government Code, therefore, improvements for sanitary sewer system service and roadway extensions were not planned or developed to service this area, and the imposition of a sanitary sewer impact fee or a roadway impact fee would not be appropriate; and

**WHEREAS**, the property to be developed pursuant to this Agreement was not included in the Master Park Planning Program that is currently being implemented by the City of Mansfield and, therefore, it would be reasonable not to assess the traditional park

development fee as a condition of this Agreement due to the low density rural character of this development; and

**WHEREAS**, the City is agreeable to waive certain requirements and fees as more fully set forth herein in exchange for the voluntary annexation of the Property and the development of the Property in accordance with the terms of this Agreement; and

**WHEREAS**, the parties have the authority to enter into this Agreement under state law, including, but not limited to, the authority granted by Section 212.172 of the Texas Local Government Code.

**NOW THEREFORE**, for and in consideration of the above recitals and the terms, conditions and agreements stated in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **TERMS AND CONDITIONS**

1. Purposes. The parties desire to enter into this Agreement to provide for the annexation and development of the Property on a mutually acceptable basis. The term “Owner” as used in this Agreement shall mean Ashton Holdings, Inc. and any successor-in-interest to title to any portion of the Property.

2. Consideration. The covenants of, benefits to, and performances by the parties set forth in this Agreement and the mutual promises expressed herein are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the parties.

3. Term. The term of this Agreement shall be from the date this Agreement is signed by both parties (the “Effective Date”) until such time as the Property is fully developed (completely built out) at which time the development of the Property shall be governed by the applicable requirements of the City’s Code of Ordinances.

4. Annexation. Within ten days from the Effective Date, the Owner agrees to file with the City Secretary of the City, a petition for annexation meeting the requirements of Section 43.028 of the Texas Local Government Code. The City agrees to approve the petition. The parties agree to cooperate in good faith with each other in such annexation process, including, but not limited to, the execution by the Owner and the City of such further documents or instruments as may be reasonably requested from time to time by either party to properly effectuate such voluntary annexation.

5. Zoning. Within forty-five days after the Property has been annexed into the City, the City agrees to modify the zoning of the Property from zone PR, Pre-Development District, to zone SF-12/22, Single Family District, except as modified by this Agreement.

6. Development Standards and Fees. The development of the Property and the fees to be assessed against the Owner related to such development shall be done in accordance with the terms and conditions stated on Exhibit "B" attached hereto and incorporated herein.

7. Disannexation. In the event that the City fails to permit the Owner to access the City's waterline, after receipt of thirty-days written notice and demand to cure, the City agrees to disannex the Property, if the noncompliance is not timely cured, in the manner provided by Section 43.144 of the Texas Local Government Code.

8. Recordation. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, this Agreement shall be recorded in the deed records of Johnson County, Texas.

9. Notices. Any notice or other communication required by this Agreement to be given, provided, or delivered to a party shall be in writing addressed to the parties as set forth below. Notices shall be considered "given" for purposes of this Agreement: (a) if sent by certified mail, five business days after deposited with the U.S. Postal Service, certified mail, return receipt requested; or (b) if sent by private delivery service (e.g., FedEx or UPS), on the date delivered to the notice address as evidenced by a receipt signed by any person at the notice address.

**MUNICIPALITY:**

City of Mansfield, Texas  
Attn: City Manager  
1200 E. Broad St.  
Mansfield, Texas 76063

**OWNER:**

Ashton Holdings, Inc.  
Attn: Adlai Pennington  
1375 Gilman Rd.  
Fort Worth, Texas 76140

Either party has the right to change, from time to time, its notice addresses by giving written notice to the other party in accordance with the terms of this paragraph.

10. Applicable Law and Exclusive Venue. This Agreement shall be interpreted in accordance with the laws of the State of Texas. Venue for interpreting or enforcing this Agreement shall be in Johnson County, Texas.

11. Non-Waiver. If a party fails to insist on strict performance of any provision of this Agreement, such failure shall not be deemed a waiver by such party of its right to insist on strict performance of such provision in the future or strict performance of any other provision of this Agreement.

12. Governmental Powers: Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

13. No Third Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the parties and their successors-in-interest. Except for any permitted assignee, which shall include any third party purchaser of the Property or any portion of the Property, no other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

14. Entire Agreement; Amendment; Severability. This Agreement and the exhibit attached hereto constitute the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the parties. If any provision of this Agreement is determined by a court to be unenforceable, the unenforceable provision shall be deleted from this Agreement, the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the parties, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the parties.

CITY OF MANSFIELD

By: \_\_\_\_\_  
Clayton W. Chandler, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Vicki Collins, City Secretary

OWNER

ASHTON HOLDINGS, INC.

By: \_\_\_\_\_  
Adlai Pennington, President

STATE OF TEXAS           §  
  §  
COUNTY OF JOHNSON   §

Before me on this day personally appeared Adlai Pennington and acknowledged to me that he is the President of Ashton Holdings, Inc. and that he executed the same on behalf of said entity for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

## EXHIBIT "A"

### Property Description

Being 157.940 acres of land located in the M.D. Dickey Survey, Abstract No. 195, Johnson County, Texas and the Thomas Hanks survey, Abstract No. 1109, Johnson County, Texas, being Tract 1 and a portion of Tract 2 described in the Deed to M.R. Development Corporation, recorded in County Clerks Document No. D205000288816, Deed Records, Tarrant County, Texas.

Said 157.940 acres of land being more particularly described as follows:

Beginning at an ½ inch iron rod found at the East corner of said Tract 1 being the South corner of a tract of land described in the deed to James H. Knapp, Jr. Trustee recorded in Volume 557, Page 445, Deed Records, Johnson County, Texas, said iron rod lying by deed South 30 degrees East a distance of 2077 varas and South a distance of 479.25 varas from the North corner of said Dickey Survey;

Thence South 59 degrees 31 minutes 04 seconds West, at a distance of 884.58 feet passing a point from which a 2 inch pipe bears North 30 degrees 28 minutes 56 seconds West a distance of 0.25 feet, at a distance of 885.36 feet passing an ½ inch iron rod found, in all a distance of 1,323.00 feet to a ½ inch iron rod stamped Beasley RPLS 4050 set at the South corner of Tract 1;

Thence North 30 degrees 26 minutes 56 seconds West, along the Westerly line of said Tract 1, at a distance of 3,813.95 feet passing an ½ inch iron rod found in all a distance of 3,856.49 feet to a mag nail found in County Road No. 525 of the east corner of said Tract 1;

Thence along a line in said County Road as follows:

1. North 28 degrees 02 minutes 04 seconds East, a distance of 247.15 feet to a point;
2. North 25 degrees 50 minutes 27 seconds East, a distance of 121.93 feet to a point;
3. North 19 degrees 33 minutes 49 seconds East, a distance of 82.10 feet to a point;
4. North 14 degrees 16 minutes 43 seconds East, a distance of 482.15 feet to a point;
5. North 18 degrees 43 minutes 06 seconds East, a distance of 135.16 feet to a point;
6. North 22 degrees 41 minutes 11 seconds East, a distance of 133.43 feet to a North corner of said Tract 1 from which a ½ inch rod found at the East corner of a tract of land described in the Deed to Marie De Jesus Gutierrez and Sergio Garcia recorded in Volume 3436, Page 776, Deed Records, Johnson County, Texas bears North 41 degrees 09 minutes 31 seconds West, a distance of 29.98 feet;

Thence South 30 degrees 03 minutes 40 seconds East, along the Easterly line of said Tract 1, at a distance of 27.82 feet passing a point from which a ½ inch iron rod bears North 59 degrees 56 minutes 20 seconds East, a distance of 13.83 feet, in all a distance of 875.88 feet to a point at the West corner of said Tract 2, from which a ½ inch iron rod found bears North 59 degrees 49 minutes 34 seconds East, a distance of 0.64 feet;

Thence North 59 degrees 49 minutes 34 seconds East, along the Northerly line of said Tract 2, at a distance of 16.71 feet passing a ½ inch iron rod found at the West corner of a tract of land described in the deed to Micah Lee Adkinson recorded in County Clerks Document D204091893, Deed Records, Tarrant County, Texas in all continuing along the common line of said Tract 2 and Adkinson tract a distance of 1,713.51 feet to a ½ inch iron rod stamped Beasley RPLS found at the West corner of a tract of land described in a deed to Mansfield Independent School District recorded in Volume 4208, Page 915, Deed Records, Johnson County, Texas;

Thence along the Westerly line of said School District tract as follows:

1. Southerly, 790.36 feet along a non-tangent curve to the right having a radius of 1,400.00 feet, a central angle of 32 degrees 20 minutes 45 seconds and a chord bearing South 21 degrees 33 minutes 11 seconds East, 779.91 feet to a ½ inch iron rod stamped Beasley RPLS 4050 found;
2. South 05 degrees 22 minutes 48 seconds East, a distance of 476.09 feet to a ½ inch iron rod stamped Beasley RPLS 4050 found in the Southerly line of said Tract 2 being the Northerly line of said Knapp tract;

Thence South 59 degrees 39 minutes 54 seconds West, a distance of 956.91 feet along the common line of said Tract 2 and Knapp tract to a ½ inch iron rod at the most Easterly North corner of said Tract 1, being the West corner of said Knapp tract;

Thence South 29 degrees 47 minutes 68 seconds East, a distance of 2,532.55 feet along the common line of said Tract 1 and Knapp tract to the Point of Beginning and containing 157.940 acres of land.

## EXHIBIT "B"

### Development Standards and Fees

**Development Standards.** The development of the Property shall be governed by the City's Code of Ordinances ("Code") except as modified herein. All of the City's requirements for the development of property in a SF 12/22 District shall apply to the development of the Property except for the following:

1. The Owner shall not be required to construct curbs and gutters and may utilize a bar-ditch system for the drainage of the lots;
2. The Owner shall construct the streets a minimum of twenty-four feet in width and meet the construction standards of the City of Mansfield Standard Construction Details. All streets must be dedicated to the City;
3. All lots shall be a minimum of one acre in size with a minimum street frontage of one hundred and fifty feet and a minimum front yard setback of forty feet;
4. The Owner shall not be required to comply with the terms of the City's tree preservation ordinance; and
5. The Owner shall not be required to comply with the requirements of the Subdivision Ordinance governing minimum and maximum block lengths.

After the annexation of the Property is complete, the Owner shall submit final plats for the development of the Property to the City in accordance with the requirements of the City's Subdivision Ordinance and shall comply with all other City requirements with respect to the approval of construction plans. The final plat shall be substantially similar to the concept plan attached to the Developer Agreement as Exhibit "C."

**Fees.** The fees assessed against the Owner regarding the development of the Property shall be as follows:

1. Water impact fees as provided by the Code;
2. Meter set and deposit fees for each water meter as provided by the Code;
3. Infrastructure and building inspection fees as provided by the Code; and
4. Platting fees as provided by the Code.

The following fees shall not be assessed against the Owner during the term of this Agreement:

1. Roadway impact fees;
2. Sewer impact fees (assuming Owner does not connect to the City's sewer system); and
3. Park dedication and development fees.



Exhibit "C"

Concept Plan for  
The Oaks Preserve  
[attached]