

STATE OF TEXAS §

## CITY/OWNER AGREEMENT

COUNTY OF TRAVIS §

### KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is entered into by the City of Pflugerville, Texas, a home-rule municipality hereinafter “**City**”, whose address is 100 E Main Street, Pflugerville, TX 78660 and LC Pflugerville, LLC, an Ohio limited liability company, hereinafter “**Owner**”, whose address is 230 West Street, Suite 200, Columbus, Ohio 43215 (referred to herein individually as “**Party**” and collectively as “**Parties**”).

**WHEREAS**, Owner intends to acquire the land legally described on Exhibit A attached hereto (the “**Land**”) and to thereafter develop a community preliminary known as Lifestyle Community Pflugerville (the “**Project**”); and

**WHEREAS**, City is authorized by law to approve subdivision plats within its corporate limits and its extraterritorial jurisdiction; and

**WHEREAS**, City ordinances require the completion of various improvements in connection with the development of the subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

**WHEREAS**, Owner, in connection with the development of the Project, is required to design and construct certain Project improvements and is also responsible for certain traffic mitigation improvements and mitigation payments; and

**WHEREAS**, to provide for the development, City is permitting the improvement of its unimproved right-of-way (Segment A), and improvements to the intersection at Town Center Drive with a roundabout;

**WHEREAS**, the accelerated and timely benefit of certain improvements described herein is to the Parties and others tying into such improvements, beneficial to improved connectivity for public use; and

**WHEREAS**, the City shall be holding a bond election on November 3, 2020 for the purpose of funding certain improvements (“**Bond Election**”); and

**WHEREAS**, the City’s purposes in entering into this subdivision improvement agreement are to accelerate the delivery of the entire Pfluger Farm Lane corridor, encourage development in an equitable manner by all benefiting parties, and to minimize the City’s costs associated with limited extensions initiated solely by a private party’s interest in expansion; and

**WHEREAS**, the Parties to this agreement wish to provide for the protection of the rights and interests of the respective parties and to document for posterity a record of their agreement so that the public interest of the citizens of the City of Pflugerville is well served;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF**, the mutual covenants and obligations herein expressed, the parties hereto agree as follows:

#### RECITALS

1. Incorporation of Recitals and Legislative Findings. The above and foregoing recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

#### OBLIGATIONS OF OWNER

2. Construction Entrance. Owner's construction entrance for the Project will be from Wilke Lane.
3. Segments A & B. Owner has previously engaged a licensed civil engineer to design and will hereafter engage a general contractor to construct the Roundabout, Segment A & Segment B roadway and utility improvements as part of the Project in accordance with the Roundabout, Segment A and B Plans described in Exhibit F attached hereto, which Roundabout, Segment A & B improvements are depicted in Exhibit B attached hereto and incorporated herein for all intents and purposes (the "**Segments A & B Improvements**"). After approval and permit are granted by the City, Owner agrees to construct and dedicate the improvements as an independent obligation on its part, regardless of City's performance under this Agreement with respect to the City's obligations that are conditioned on the Bond election passing under Section 11 hereof.
4. Segments C & D. Owner agrees to dedicate to the City the portion of the Land, including Temporary Construction Easements, as more particularly described in Exhibit C, attached hereto and incorporated herein for all intents and purposes (the "**Segments C & D Improvements**").
5. Limestone Commercial Drive Reservation. Owner agrees to reserve the portion of the Land as more particularly described in Exhibit D, attached hereto and incorporated herein for all intents and purposes, for the future extension of Limestone Commercial Drive from the eastern property through to the western property line. Further, Exhibit D represents the approximate location of the road extension within a right of way consistent with Limestone Commercial at 60 feet. No further public street extensions shall be required.
6. Compliance with Law. Owner agrees that nothing herein shall negate the applicability of future health and safety regulations which are not currently a part of the laws concerning subdivisions, including, without limitation, under the City of Pflugerville's Unified Development Code dated effective February 25, 2015 ("**UDC**") as amended.

7. Conveyance/Dedication. No dedications by Owner will be effective until the City takes formal action to accept the dedication(s) by letter of acceptance.
8. Warranty. The Owner shall provide a two (2) year warranty bond for construction of Segments A & B Improvements and, if constructed by Owner, Segments C & D Improvements in accordance with the City of Pflugerville Engineering Design Manual. Improvements shall be designed and constructed in accordance with the City's standards and specifications under the UDC and the City of Pflugerville Engineering Design Manual and Construction Standards and shall be free from defects.
9. Inspections. Owner agrees that all work performed regarding the Segment A & B Improvements and, if constructed by Owner, the Segment C & D Improvements shall be inspected by the City's designated engineer or inspector to ensure the quality of work and materials. The acceptance of any improvement, upon completion, is subject to approval of the City's designated engineer, which approval will not be unreasonably withheld, conditioned, or delayed, provided that such improvements are in accordance with the Segments A & B plans, after being approved and permitted by the City for construction, described in Exhibit F attached hereto, or the Segments C & D procured by the City, as applicable.

#### CITY'S OBLIGATIONS

10. Segment A. The City will make available, at no cost to Owner, the right to use any rights of way or easements held by the City to accommodate Owner's construction of Segment A.
11. Segment Design. The City, at its sole cost and expense, shall engage a licensed civil engineer to design Segments C & D Improvements to extend Segments A & B to Wilke Lane. The City agrees to promptly commence design of Segments C & D after Owner acquires the Land and to cause completion of 100% construction drawings no later than one year after the date that Owner acquires the Land. Owner shall be named as a party that may rely on the use of the Segments C & D plans.
12. Segment Construction.
  - a. Should the Bond Election pass the City will construct Segments C & D Improvements. The City acknowledges and agrees that the construction of Segments C & D is critical to improving connectivity in furtherance of the City's Master Transportation Plan, and enhancing safety and circulation in the area and will start construction no later than one year after Owner dedicates Segments C & D, and will thereafter diligently pursue completion of Segments C & D. Alternatively, if mutually agreeable by the Parties, Owner may construct Segments C & D and the City will reimburse Owner for certain costs thereof under a separate written agreement.

- b. Should the Bond Election not pass, and the City does not specifically dedicate funding for construction of the Segments C & D Improvements, and Owner desires to construct the Segments C & D Improvements, the City shall provide all design documents for the Segments C & D Improvements to Owner for their use in construction. The transfer of such documents by City to Owner shall be without warranty. The City will make available, at no cost to Owner, the right to use any rights of way or easements held by the City to accommodate Owner's construction of Segments C & D if it elects to construct the same.
- c. Should the Bond Election not pass, and City specifically dedicates funding for construction of the Segments C & D Improvements, the City shall construct the Segments C & D Improvements or, should said funds be dedicated after Owner has constructed the Segments C & D Improvements, then City shall reimburse Owner for the construction of the C & D Improvements in the amount of the dedicated funds subject to Owner constructing the improvements in compliance with all Texas public procurement laws. Should the Bond Election not pass, the City will use its best efforts to include funds dedicated for the construction of Segments C & D in future traffic infrastructure bonds, which funds shall be used to construct Segments C & D or reimburse Owner for the same if Owner constructs Segments C & D.

#### CREDITS AND REIMBURSEMENTS

13. Traffic Impact Mitigation Improvements and Fees. As consideration to Owner for entering into this Agreement and for Owner's agreement to perform the obligations herein, Owner shall not be liable for and is released from any obligation to pay any traffic mitigation fees or construct any traffic mitigation improvements in connection with the Project, including without limitation, any obligation to pay traffic mitigation fees in the amount of \$373,786 or construct the Wilke Lane driveway 4 eastbound right turn lane as described in that certain Traffic Impact Analysis report prepared by Kimley-Horn dated July 30, 2019, notwithstanding any additional right of way that may be necessary to construct these improvements. The right of way will be donated by Owner as needed to fulfill the TIA obligations, and City will incorporate into the design accordingly. The Project shall not be subject to any future traffic or roadway impact fees imposed by the City nor shall any additional traffic improvements be required to be constructed by Owner unless there is an approved increase in density of the Project in excess of the density proposed in such Traffic Impact Analysis.

Wastewater Easement and Wastewater Impact Fee Credit. Owner will cause Owner's predecessor-in-interest to execute and deliver to the City, or Owner will within 15 days of closing to execute and deliver to the City upon acquiring the Land or before, the Wastewater Pipeline and Temporary Access Easement attached hereto as Exhibit E (the "**WW Easement**"). As consideration and upon recordation of the WW Easement, the City hereby grants Owner and the Project a wastewater impact fee credit in the amount of \$75,000, which shall be credited against any wastewater impact fees that are payable by Owner in connection with the Project.

14. Segment A & B Plans. Owner has previously caused a licensed civil engineer to design construction drawings for Segments A & B, which are referenced in Exhibit F attached hereto. At such time as Owner dedicates to the City the land for Segments C & D, the City will pay Owner a reimbursement payment in the amount of \$300,000, which is an agreed contribution toward the cost of such construction drawings.
15. Segment C & D Reimbursement. The City shall reimburse Owner no later than thirty (30) days after receiving the funds described under Section 12.c. above if Owner constructs Segments C & D and the City receives such funding. Reimbursement is subject to demonstration by Owner that Segments C & D were publicly bid in compliance with applicable public procurement laws.

### GENERAL TERMS AND CONDITIONS

16. Specifications. It is understood among the parties that the technical requirements and specifications for the construction of all improvements shall be in accordance with those established by the City's designated engineer in accordance with the UDC, City of Pflugerville Engineering Design Manual and Construction Standards and approved plans.
17. Objectives. In the negotiation and acceptance of any term or condition, the Parties hereby agree that the objectives to be fulfilled are the development of the improvements described herein and the orderly development in all the areas in its vicinity capable of development by reason of its location, topography, and pressure planes, subject to reasonable engineering efforts, so that both the public interests of the City of Pflugerville and Owner will be well served.
18. Binding Agreement. Subject to Section 26 hereof, the terms and conditions set out in this Agreement shall be binding upon the Parties hereto, and upon the heirs, successors, executors, administrators, personal representatives, and assigns of Owner and City.
19. Governing Law. In any dispute between the Parties, it is hereby agreed that the laws of the State of Texas shall control.
20. Effective Date. This Agreement is effective upon signature by the last Party to sign it.
21. Default. If one Party believes that the other Party is in Default (herein so called) of any provision of this Agreement, the non-defaulting Party will give written notice to the other Party ("Default Notice"), specifying the event of Default and extend the defaulting Party 30 days to cure the Default, or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-

defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances.

22. Rights Upon Default. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the non-defaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default. Either Party may seek specific performance of a default by the other Party at any time (after the period to cure the default has expired), and neither Party will be liable for damages to the other Party, except for the costs as specifically listed herein. The non-defaulting Party shall have the right (but not the obligation) to perform such obligations on behalf of the defaulting Party. The defaulting Party shall cooperate in all respects with such efforts by the non-defaulting Party, including without limitation by assigning any construction contracts and easements to the non-defaulting Party at its request. If the non-defaulting Party exercises its self-help rights hereunder and completes construction of any portion of the traffic improvements, the defaulting Party shall pay or reimburse the non-defaulting Party for all costs and expenses incurred by the non-defaulting Party in connection with the cure of Default.
23. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement. Nothing herein shall constitute an implied waiver of City's sovereign immunity.
24. Severability. If any provision of this Agreement is held by the courts to be illegal or unenforceable, that provision shall be severed from the Agreement and shall not render invalid the remaining provisions of this Agreement.
25. Entire Agreement. The provisions herein and the exhibits attached hereto and incorporated herein constitute the full extent of the Agreement concerning the subject matter herein between the Parties, and no parole evidence shall be allowed to contradict the terms hereof. Any amendment to or modification of this Agreement shall be by the written, mutual consent of the Parties hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts bear the signatures of all the parties.
26. Assignment. This Agreement and any rights and obligations contained herein shall not be transferred or assigned without the written, mutual consent of the Parties hereto, except that this Agreement shall run with the Land, Owner's interest in this Agreement shall automatically be assigned with respect to the portion conveyed upon the transfer of the Land or any portion thereof, the assignor shall be released from any further obligations hereunder with respect to the portion of the Land conveyed, and the assignee shall assume all obligations hereunder with respect to the portion of the acquired from and after the date of such acquisition; further provided, that any of

Owner's rights to payment or reimbursement hereunder are expressly reserved to LC PFLUGERVILLE, LLC, an Ohio limited liability company, shall not run with the land or automatically be assigned with the conveyance of the Land or any portion thereof, and will only be assigned if LC PFLUGERVILLE, LLC, an Ohio limited liability company, (i) files a recorded assignment referencing an assignment of such payment and/or reimbursement rights in the Official Public Records of Travis County, Texas, and (ii) gives written notice to the City of such reservation or assignment promptly before or after filing such recorded assignment. Owner, at its election, also hereby reserves the right to withdraw no more than 35 acres of the Land from this Agreement by recording a notice of withdrawal respect to such withdrawn Land, provided such withdrawn Land may not include any of the Land affected by Segments A & B or Segments C & D, or any portion of the Land that is contemplated to be dedicated hereunder. Following a notice of withdrawal that satisfies the terms hereof, such withdrawn Land shall no longer be subject to the terms of this Agreement.

27. Attorney's Fees. Should any Party hereto bring suit in court to enforce the terms hereof, it is agreed that the losing Party or Parties shall pay to the successful Party or Parties costs and reasonable attorney's fees. If relief is granted to all Parties, each will bear its own costs in their entirety.
28. Term. The term of this Agreement will commence on the Effective Date and continue until each Party has completed all of its obligations hereunder, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Developer. The Effective Date of this Agreement shall be the date stated on the signature page below, provided that the obligations of the Parties shall be subject to the acquisition of the Land by Owner. Owner will notify the City at such time as Owner acquires the Land. No current owner shall be bound by this Agreement unless such current owner subsequently becomes a successor to or assignee of Owner. In the event that Owner fails to acquire the Land within one (1) year after the date of this Agreement, this Agreement shall terminate and be of no further force and effect.
29. Estoppel. From time to time upon written request by any seller or purchaser of property within the Property, or any lender or prospective lender of the Owner or its assignees, the City shall execute a written estoppel certificate to such seller, purchaser, and/or lender stating, if true, that the City has not given or received any written notices alleging any events of default under this Agreement.
30. Cooperation. The City and Owner shall cooperate with each other as reasonable and necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably required.

(Signature Page to follow)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY:**  
**CITY OF PFLUGERVILLE**  
100 E. Main St.  
Pflugerville, TX 78660

BY: \_\_\_\_\_  
Sereniah Breland, City Manager

State of TEXAS           §  
                                  §  
County of TRAVIS       §

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Sereniah Breland, City Manager of City of Pflugerville, a Texas Municipal City, on behalf of said City.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**OWNER:**  
**LC PFLUGERVILLE, LLC,**  
an Ohio Limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of \_\_\_\_\_       §  
                                  §  
County of \_\_\_\_\_    §

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of LC Pflugerville, LLC, an Ohio limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_



EXHIBIT A

The Land

**EXHIBIT B**

**Road Segments A & B**

EXHIBIT C

Road Segments C & D

EXHIBIT D

Limestone Commercial Reservation

**EXHIBIT E**

**Form of Wastewater Pipeline and Temporary Access Construction Easement Agreement**

EXHIBIT F

Approved Segment A & B Plans