

**ESCROW AGREEMENT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF MONTGOMERY   §

WHEREAS, \_\_\_\_\_  
hereafter referred to as “Developer,” has undertaken to subdivide and develop property within  
the City of Conroe, Texas, such subdivision to be known as \_\_\_\_\_  
\_\_\_\_\_ ; and

WHEREAS, Developer has, pursuant to the ordinance of the City of Conroe, Texas,  
hereafter referred to as “City,” executed Subdivision Development Agreement to insure that  
any and all streets, water and sewer lines, drainage facilities or other required subdivision  
improvements, hereafter referred to as “Improvements,” are constructed and completed in  
accordance with the specifications, standards and ordinances of the City; and

WHEREAS, Developer wishes receive final plat approval for said property prior to the  
completion and approval or acceptance of the Improvements by the City; and

WHEREAS, Developer desires, in lieu of posting a performance bond, to escrow cash  
money with an escrow agent in an amount not less than the amount necessary to insure  
completion of said Improvements;

NOW, THEREFORE, Developer, City and \_\_\_\_\_,  
hereafter called “Escrow Agent,” agree as follows:

1.     *Amount.* Developer, as a condition to receiving final plat approval for said  
property shall deposit the sum of \$\_\_\_\_\_, in cash money, with Escrow  
Agent, said sum being in an amount, as determined by the City, necessary to insure certain  
Subdivision Development Agreement dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
between the City and Developer, a copy of which is attached hereto for reference as  
Attachment 1.

2.     *Notice of Deposit.* No final plat approval shall be given by City for the property  
herein described until Escrow Agent notifies City, in writing, that cash money, in the amount  
specified herein, has been deposited in an escrow account with Escrow Agent.

3.     *Release of Funds.* Developer may, from time to time, apply to Escrow Agent for  
the release of the escrowed funds to be used for the purposes of paying the costs of  
constructing the required subdivision improvements. Any and all such releases of the  
escrowed funds shall conform to the following requirements.

- a. Not more than one draw request shall be permitted every thirty (30) days, and each draw shall be in an amount which is proportionate to the value of the work completed.
  - b. Each request for release of the escrowed funds shall be accompanied by Escrow Agreement certification of a registered professional engineer retained by Developer for the purpose of providing construction oversight, stating that, to the best of the engineer's knowledge, information and belief, the work on the required subdivision improvements has been performed in accordance with the approved plans and specifications and has reached the percentage of completion stated in the Developer's application for release of the escrowed funds.
  - c. A true and correct copy of Developer's request for the release of escrowed funds shall be delivered to the City Engineer for the City of Conroe at least ten (10) days prior to the release of escrowed funds by the Escrow Agent. Before the release of each draw is authorized the Developer shall certify to the Escrow Agent in writing that such notification has occurred.
  - d. The Escrow Agent shall not release any funds until after receipt of a written authorization from the City Engineer. This authorization is required for each separate draw.
  - e. Upon receipt of a written objection from the City Engineer the Escrow Agent shall withhold all or any portion of a requested draw in accordance with the request of the City Engineer. The objection of the City Engineer need not specify the grounds upon which such objection is based but shall be sufficient and conclusive on its face.
  - f. From each draw request the Escrow Agent shall retain an amount equal to 5% of each draw request, such funds to be held to secure the Developer's obligation to City to warrant the required subdivision improvements for a one-year period following completion. No portion of the retained funds shall be released until authorized in writing by the City Engineer.
4. If, at any time the City Engineer shall certify to the Escrow Agent, in writing that the Developer has materially failed in Developer's obligations as set forth in the Subdivision Development Agreement, then Escrow Agent shall pay to City all of the escrow funds then remaining in Escrow Agent's possession. The City Engineer's written statement shall be conclusive on its face and need not specify the grounds of Developer's non-compliance or default.
  5. *Notices.* Any notices to be sent, or required to be sent or given under this agreement shall be sent to the addresses of the parties hereto, as follows:

CITY: City Engineer  
P.O. Box 3066  
Conroe, Texas 77305

DEVELOPER:

ESCROW AGENT:

6. *Fees.* Developer agrees to pay any and all fees or costs charged by the Escrow Agent in connection with this Agreement.

7. *Nonliability of Escrow Agent.* The Escrow Agent shall have no responsibility except for the safekeeping and delivery of the amounts deposited in the Escrow Account in accordance with this agreement. The Escrow Agent shall not be liable for any act done or omitted to be done under this agreement or in connection with the amounts deposited in the Escrow Account except as a result of the Escrow Agent's gross negligence or willful misconduct. If any question, dispute or disagreement arises among any one or more of the parties hereto and/or any other party with respect to the funds deposited in the Escrow Account, the proper interpretation of this agreement, the duties of the Escrow Agent hereunder or the rights of the parties to this agreement, the Escrow Agent shall not be required to act and shall not be held liable for refusal to act until the question or dispute is settled, and the Escrow Agent has the absolute right at its discretion to do either or both of the following:

- a. withhold and/or stop all further performance under this agreement until the Escrow Agent is satisfied, by receipt of a written document in form and substance satisfactory to the Escrow Agent and executed and binding upon all interested parties hereto (who may include the subscribers), that the question, dispute, or disagreement has been resolved; or
- b. file a suit in interpleader and obtain by final judgment rendered by a court of competent jurisdiction, an order binding all parties interested in the matter.

8. *Successors and Assigns.* This agreement shall be binding upon the successors and Assigns of the parties hereto.

9. *Venue.* The parties hereto agree that if any legal action is necessary in connection With this agreement, exclusive venue shall lie in Montgomery County, Texas.  
IN WITNESS WHEREOF, the said City, Developer, and Escrow Agent have signed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CONROE, TEXAS

DEVELOPER

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

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

ESCROW AGENT

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

**ATTACHMENT 1.**