

SUBDIVISION DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and effective this ____ day of _____, 20__ by and between the City of Conroe, Texas (hereinafter referred to as the "CITY"), and _____, (hereinafter referred to as the "DEVELOPER"), for the installation of certain required subdivision improvements for the subdivision known as _____ (hereinafter referred to as the "PROJECT"). It is understood that this AGREEMENT is applicable to the land contained within the subdivision to be known as _____, final approval of which subdivision application is now pending before the CITY'S Planning Commission. It is further agreed that this AGREEMENT, when properly signed and executed, shall satisfy the requirements of Section 94-113 of the CITY'S subdivision ordinance (Chapter 94, Code of Ordinances, City of Conroe, Texas).

I. GENERAL REQUIREMENTS

- A. It is agreed and understood by the parties hereto that the DEVELOPER has employed a professional engineer who has developed detailed plans and specifications for the construction of the required improvements necessary for approval by the CITY. These required improvements include those facilities described in Section II of this agreement to be installed as part of the PROJECT in conformance with City requirements and the plans and specifications prepared for DEVELOPER and approved by CITY's Director of Community Development.

The approved engineer's estimate lists the construction cost of all required subdivision improvements as \$ _____

The estimated cost of completing such required improvements, taking into account any improvements recognized by the City as constructed as of the date of this agreement is \$ _____.

- B. Within 24 months of the date upon which the Commission shall grant final plat approval, the DEVELOPER shall construct (or cause to be constructed) all of the required improvements described in Section II, such required improvements to be constructed in accordance with the approved plans and specifications. DEVELOPER shall thereafter guarantee the improvements against material defects in workmanship or materials for a period of one (1) year following the date upon which all such required improvements are certified to have been completed. DEVELOPER may request approval of changes or amendments to the approved plans and specifications. Provided that such changes meet the requirements of CITY's applicable regulations, such approval shall not be unreasonably withheld. No sale or conveyance of the subdivision by DEVELOPER prior to the completion of the required improvements shall be deemed to release DEVELOPER from the obligations imposed by this paragraph unless CITY shall have first consented in writing.

The amount of the guarantee against material defects in workmanship or materials shall be 5% of the approved engineer's estimate, which is \$ _____.

- C. The DEVELOPER further agrees that within 30 days of receipt of notice from the CITY construction of improvements will be accelerated so that all necessary services will be provided to property owners prior to the occupancy of any structure. Upon receipt of notice the DEVELOPER will take what actions are necessary to complete said improvements within 90 days of the date of the notice from the CITY. DEVELOPER shall thereafter guarantee the improvements against defects in materials or workmanship for a period of one (1) year following the date upon which all subdivision improvements are certified to be complete. Failure of the DEVELOPER to complete said improvements within the allotted time period will be cause for the CITY to draw down on the financial guarantee and complete such work at the DEVELOPER'S expense. In addition, it is expressly agreed and understood that the CITY may recover directly from the DEVELOPER any and all costs which the CITY may incur in its completion of the work, including sums in excess of the financial guarantee proceeds which are reasonably necessary to complete the required improvements. It is further agreed that the CITY may assign its right to draft such financial guarantee and receive such funds to a bona fide association of property owners within the subdivision to be used by such association for the purpose of completing the required improvements.

The DEVELOPER further agrees that within 30 days of receipt of notice from the CITY, construction of improvements will be accelerated so that all drainage improvements, as shown on the approved plans, are complete within 90 days of the date of the notice from the CITY. Upon receipt of notice, the DEVELOPER will take what actions are necessary to complete said improvements. DEVELOPER shall thereafter guarantee the improvements against defects in materials or workmanship for a period of one (1) year following the date upon which all subdivision improvements are certified to be complete. Failure of the DEVELOPER to complete said improvements within the allotted time period will be cause for the CITY to draw down on the financial guarantee and complete such work at the DEVELOPER'S expense. In addition, it is expressly agreed and understood that the CITY may recover directly from the DEVELOPER any and all costs which the CITY may incur in its completion of the work, including sums in excess of the financial guarantee proceeds which are reasonably necessary to complete the required improvements. It is further agreed that the CITY may assign its right to draft such financial guarantee and receive such funds to a bona fide association of property owners within the subdivision to be used by such association for the purpose of completing the required improvements.

- D. DEVELOPER will present to the CITY a financial guarantee in an amount equal to the estimated cost of completing the improvements. Such financial guarantee shall secure DEVELOPER'S obligation to construct the required improvements in accordance with the approved plans and specifications, and to thereafter guarantee such improvements against material defects in materials or workmanship for a period of one (1) year following completion.
- E. In the event the PROJECT is not completed within the required time, the CITY may, at its election, draw down on the financial guarantee provided by the DEVELOPER and complete such work at DEVELOPER'S expense. In addition, it

is expressly agreed and understood that CITY may recover directly from DEVELOPER any and all costs which CITY may incur in its completion of the work, including sums in excess of the financial guarantee proceeds which are reasonably necessary to complete the required improvements. It is further agreed that CITY may assign its right to draft such financial guarantee and receive such funds to a bona fide association of property owners within the subdivision to be used by such association for the purposes of completing the required improvements.

- F. All financial guarantees issued hereunder which expire prior to the completion of construction shall be renewed in substantially the same form, such renewed financial guarantee to be delivered to the CITY on or before the tenth (10th) day before the date of expiration of the then existing guarantee. If the DEVELOPER fails to deliver the renewed financial guarantee to the CITY within the time prescribed herein, such failure shall constitute a breach of this agreement and shall be a basis for the City to draw on all or any portion of the financial guarantee.
- G. Upon CITY'S approval and acceptance of a certification by DEVELOPER'S engineer that the required improvements have been completed in accordance with the requirements of this agreement, then DEVELOPER shall be entitled to obtain the release of the initial financial guarantee in exchange for a reduced financial guarantee in an amount equal to 5% of the initial guarantee. The reduced guarantee shall be in substantially the form attached hereto as Exhibit A and shall secure DEVELOPER'S guarantee against material defects in materials or workmanship for a period of one (1) year following completion of the improvements. Notwithstanding the reduced amount of such financial guarantee, DEVELOPER shall remain liable to CITY for the actual cost of any repairs which are reasonably necessary to correct defects in the work.

II. REQUIRED IMPROVEMENTS AND SUBMITTALS

- A. The following required improvements must be completed in accordance with the approved plans and specifications:
 - 1. All streets shown on the face of the approved plat;
 - 2. Storm water detention and drainage facilities;
 - 3. Water supply improvements;
 - 4. Sanitary sewer improvements; and
 - 5. Street lights.
 - 6. Sidewalks.
- B. Survey stakes at all lot and block corners and other locations specified by the City's subdivision regulations.
- C. "As-built" drawings in accordance with Chapter 94, Sec. 94-188, Code of Ordinances, City of Conroe, Texas.

III. GENERAL PROVISIONS

- A. **The DEVELOPER covenants and agrees to hereby fully indemnify, hold harmless and defend the CITY, its officers, agents, servants, and employees, from all claims, suits or causes of action of any nature whatsoever, whether real or asserted, brought for or on account of any injuries or damages to persons or property including death, resulting from or in any way connected with this AGREEMENT or the construction of the improvements or facilities described herein; and in addition, the DEVELOPER covenants to indemnify, hold harmless and defend the CITY, its officers, agents, servants and employees, from and against any and all claims, suits or causes of action of any nature whatsoever, brought for or on account of any injuries or damages to persons or property, including death, resulting from any failure to properly safeguard the work, or on account of any act, intentional or otherwise, neglect or misconduct of the DEVELOPER, its contractors, subcontractors, agents, servants or employees.**
- B. **Approval by the Director of Community Development, of any plans, designs or specifications submitted by the DEVELOPER pursuant to this agreement shall not constitute or be deemed to have constituted a release of the responsibility and liability of the DEVELOPER, his engineer, employees, officers or agents for the accuracy and competency of their design and specifications prepared by the DEVELOPER'S consulting engineer, his officers, agents, servants or employees, it being the intent of the parties that the approval by the City, through the Director of Community Development, signifies the CITY'S approval on only the general design concept of the improvements to be constructed. The DEVELOPER shall indemnify and hold harmless the CITY, its officers, agents, servants and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the DEVELOPER'S engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and the DEVELOPER shall defend at his own expense any suits or other proceeding brought against the CITY, its officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred or rendered against them or any of them in connection herewith. All responsibility and liability for drainage to adjacent and downstream properties from development of this PROJECT will accrue to the DEVELOPER.**
- C. **This contract or any part hereof or any interests herein, shall not be assigned by the DEVELOPER without the express written consent of the CITY.**

- D. The provisions of this agreement shall be covenants, running with the land, and shall be binding upon the parties hereto, their successors and assigns.
- E. Venue of any action brought hereunder shall be in Montgomery County, Texas.
- F. All required survey staking must be in place and "As-Built" drawings of required improvements submitted before the initial financial guarantee is released.

EFFECTIVE on and from the date first set forth above.

DEVELOPER: _____

BY: _____

Name Printed: _____

Title: _____

CITY OF CONROE, TEXAS

BY: _____

Chairman
City of Conroe Planning Commission

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, the _____, of _____, a _____, as its authorized act and deed.

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, the Chairman, of The City of Conroe Planning Commission.

After recording return to:
City Secretary
P. O. Box 3066
Conroe, Texas 77305
(Engineering)

Notary Public, State of Texas