

**ESCROW AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MONTGOMERY, TEXAS,**

**AND**

**ALCONCORP INC**

**Dev. No. 2206**

THE STATE OF TEXAS            ⊃

COUNTY OF MONTGOMERY    ⊃

This Escrow Agreement, is made and entered into as of the 11 day May, 2022 by and between the CITY OF MONTGOMERY, TEXAS, a body politic, and a municipal corporation created and operating under the general laws of the State of Texas (hereinafter called the "City"), and ALCONCORP INC, (hereinafter called the "Developer").

**RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of a Block 2, Reserve "A" of the Montgomery Summit Business Park Plat sometimes referred to as the Montgomery Summit Business Park Reserve A Tract, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

WHEREAS, the City policy requires the Developer to establish an Escrow Fund with the City to reimburse the City for engineering costs, legal fees, consulting fees and administrative expenses incurred for plan reviews, developer coordination, construction management, inspection services to be provided for during the construction phase, and one-year warranty services.

**AGREEMENT**

ARTICLE I

**SERVICES REQUIRED**

Section 1.01 The development of the Montgomery Summit Business Park Reserve A Tract will require the City to utilize its own personnel, its professionals and consultants; and the Escrow Fund will be used to reimburse the City its costs associated with these services.

Section 1.02 In the event other contract services are required related to the development from third parties, payment for such services will be made by the City and reimbursed by the Developer or paid directly by the Developer as the parties may agree.

ARTICLE II

**FINANCING AND SERVICES**

Section 2.01 All estimated costs and professional fees needed by City shall be financed by Developer. Developer agrees to advance funds to City for the purpose of funding such costs as herein set out:

Administrative	\$1,000
City Engineer	\$4,000
Legal	\$1,000
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TOTAL	\$6,000

Section 2.02 Developer agrees to submit payment of the Escrow Fund no later than ten (10) days after the execution of this Escrow Agreement. No work will begin by or on behalf of the City until funds have been received.

Section 2.03 The total amount shown above for the Escrow Fund is intended to be a "Not

to Exceed” amount unless extenuating, unexpected fees are needed. Examples of extenuating circumstances created by the developer that may cause additional fees include, but are not limited to, greater than three plan reviews or drainage analysis reviews; revisions to approved plans; extraordinary number of comments on plans; additional meetings at the request of the developer; variance requests; encroachment agreement requests; construction delays and/or issues; failure to coordinate construction with City; failed testing during construction; failing to address punch list items; and/or excessive warranty repair items. If extenuating circumstances arise, the Developer will be informed, in writing by the City, of the additional deposit amount and explanation of extenuating circumstance. The Developer agrees to tender additional sums within 10 days of receipt of request to cover such costs and expenses. If additional funds are not deposited within 10 days all work by or on behalf of the City will stop until funds are deposited. Any funds which may remain after the completion of the development described in this Escrow Agreement will be refunded to Developer.

### ARTICLE III,

#### MISCELLANEOUS

Section 3.01 City reserves the right to enter into additional contracts with other persons, corporations, or political subdivisions of the State of Texas; provided, however, that City covenants and agrees that it will not so contract with others to an extent as to impair City's ability to perform fully and punctually its obligations under this Escrow Agreement.

Section 3.02 If either party is rendered unable, wholly or in part, by *force majeure* to carry out any of its obligations under this Escrow Agreement, then the obligations of such party, to the extent affected by such *force majeure* and to the extent that due diligence is being used to

resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the *force majeure* relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such *force majeure* relied upon to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "*force majeure*," as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents to machinery, which are not within the control of the party claiming such inability, which such party could not have avoided by the exercise of due diligence and care.

Section 3.03 This Escrow Agreement is subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any regulatory agency having jurisdiction.

Section 3.04 No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstance.

Section 3.05 Any notice, communication, request, reply or advice (hereafter referred to as "notice") herein provided or permitted to be given, made, or accepted by either party to the other

(except bills) must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail in the manner herein above described shall be conclusively deemed to be effective, unless otherwise stated in this Escrow Agreement, from and after the expiration of seven (7) days after it is so deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to City, to:	City Administrator City of Montgomery 101 Old Plantersville Rd. Montgomery, Texas 77356
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If to Developer, to:	Jack Allan ALCONCORP INC, 15325 Summit Park Dr. Montgomery, TX 77356
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The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party.

Section 3.06 This Escrow Agreement shall be subject to change or modification only in writing and with the mutual consent of the governing body of City and the management of Developer.

Section 3.07 This Escrow Agreement shall bind and benefit City and its legal successors

and Developer and its legal successors but shall not otherwise be assignable, in whole or in part, by either party except as specifically provided herein between the parties or by supplemental agreement.

Section 3.08 This Escrow Agreement shall be for the sole and exclusive benefit of City and Developer and is not for the benefit of any third party. Nothing herein shall be construed to confer standing to sue upon any party who did not otherwise have such standing.

Section 3.09 The provisions of this Escrow Agreement are severable, and if any provision or part of this Escrow Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Escrow Agreement and the application of such provision or part of this Escrow Agreement to other person circumstances shall not be affected thereby.

Section 3.10 This Escrow Agreement and any amendments thereto, constitute all the agreements between the parties relative to the subject matter thereof, and may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original.

Section 3.11 This Agreement shall be governed by, construed and enforced in accordance with, and subject to, the laws of the State of Texas without regard to the principles of conflict of laws. This Agreement is performable in Montgomery County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement in three (3) copies, each of which shall be deemed to be an original, as of the date and year first written in this Escrow Agreement.



STATE OF TEXAS {

COUNTY OF MONTGOMERY {

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ of the City of Montgomery, Texas, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF Montgomery {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared JACK ALLAN, \_\_\_\_\_ of ALCON CORP, a \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated and as the act and deed of said organization.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 11<sup>th</sup> day of MAY, 2022.



Melissa Duffy  
Notary Public, State of Texas







# City of Montgomery Development Application

**Upon completion return application to [shensley@ci.montgomery.tx.us](mailto:shensley@ci.montgomery.tx.us)**

*The City of Montgomery welcomes all development projects. To expedite the Development Review Phase of your project, we are requiring that you completely fill out this Development Application in its entirety. All the information will be reviewed to allow the timely processing of any and all aspects of your project.*

## **A. GENERAL INFORMATION**

1. **Name of proposed development:** Montgomery Summit Business Park Reserve A

2. **Name of Owner:** Freddy Saavedra

Mailing Address: 15325 Summit Park Dr.

City/State/Zip: Montgomery, TX 77356

Telephone Number: 832-341-2345 Fax Number: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Email: freddys@inazca.com

3. **Name of registered Professional Land Surveyor:** Stephen Coe

Firm Name & Registration No.: Survtech Surveyors & Planners

Mailing Address: P.O. Box 1080

City/State/Zip: Conroe, TX 77305

Telephone Number: 936-539-5444 Fax Number: 936-539-5442

Cell Phone: \_\_\_\_\_ Email: survtech@survcorp.com

4. **Name of registered Professional Engineer:** Jonathan White

Firm Name & Registration No.: L Squared Engineering - Lic. No. 127058

Mailing Address: 3307 W. Davis St., Suite 100

City/State/Zip: Conroe, TX 77304

Telephone Number: 936-647-0420 Fax Number: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Email: jwhite@l2engineering.com

## **B. DEVELOPMENT SPECIFICATIONS**

1. **General Location:** Within City Limits? If no, within Extra-Territorial Jurisdiction (ETJ)?

Yes

**If located in the ETJ:**

Prior to platting of the property to be developed, annexation procedures will need to be pursued if the property or parts of the property as required by State law are within one half (1/2) mile of the corporate limits of the City of Montgomery, Texas and lying and being adjacent to and contiguous to the present corporate limits, and located within the extraterritorial jurisdiction of the City. The City of Montgomery does have Landowner Petitions for Annexation included in the Development Application.


Will Annexation be required:  Yes  No

**2. Property Description:**

- a) Survey Name: Owen Shannon
- b) Abstract No.: A0036
- c) Total Acreage: 1.24
- d) Current Zoning: C4 - Commercial
- e) Number of Lots: \_\_\_\_\_ Number of Blocks: \_\_\_\_\_ Estimated Commercial Value: \$1,240,000
- f) Number of Streets: \_\_\_\_\_ Type:  Public  Private
- g) Total Acreage in Other uses (any land within the boundaries of the plat that is not divided into lots): \_\_\_\_\_
- h) Estimated Total Taxable Value: \$1,240,000 Land \$0 Improvements
- i) Estimated Size(s) of Lots: \_\_\_\_\_
- j) Estimated Value of House and Lot: \_\_\_\_\_
- k) Water Capacity Requested: 1200 gpd Wastewater Capacity Requested: 800 gpd

**3. Certification**

This is to certify that the information concerning the proposed development is true and correct, that I am the actual owner or authorized agent for the owner of the above described property, that prior to a request for any variance to the Montgomery Code of Ordinances, I will attend a pre-development meeting with the City Administrator and City Engineer concerning said variance request, and that I will comply with all of the City of Montgomery Code of Ordinances requirements for submitting a preliminary plat/variance request for approval.

  
\_\_\_\_\_  
Signature of Owner/Agent

5/2/22  
\_\_\_\_\_  
Date

Received by: \_\_\_\_\_

\_\_\_\_\_  
Date

Please attach a metes and bounds description of the tract, land plan, conceptual plat, preliminary land plan, and location map, to the Application indicating proposed location of project and boundaries of subject tract. Applicant agrees that it shall notify the City if any of the above information (including ownership of the tract) should change during the Application process.

**For City Use Only**

Date Submitted: \_\_\_\_\_ Development Number: \_\_\_\_\_

Engineer's Recommendation: \_\_\_\_\_

Operator's Recommendation: \_\_\_\_\_

Is Annexation Required: \_\_\_\_\_

Amount of Deposit Paid: \_\_\_\_\_ Date Escrow Agreement Submitted: \_\_\_\_\_

Amount of Service Recommended: \_\_\_\_\_

Additional Capacity Required: Water \_\_\_\_\_ gpd Wastewater \_\_\_\_\_ gpd

Tap Fee \_\_\_\_\_ Plan Review Fees \_\_\_\_\_ Inspection Fees \_\_\_\_\_ Impact Fee \_\_\_\_\_

Additional Considerations: \_\_\_\_\_

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