

## ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into by and among Montserrat Homeowners Association, Inc. ("Montserrat"), Law Office of Baker Firm, PLLC Fee Attorney for Fidelity National Title Company, ("Escrow Agent") and \_\_\_\_\_ ("Builder"), who agree as follows:

1. Builder Escrow Deposit Pursuant to Section 6.01 (xx) Builder Approval/Escrow Deposits of the Montserrat Deed Restrictions, Builder is required to deposit \$5,000 in escrow (the "Escrow Amount") with Escrow Agent pending completion of the residence to be built by Builder in the Montserrat development and the occurrence of certain other conditions. This Agreement shall govern the relationship between Montserrat, Escrow Agent, and Builder with respect to the Escrow Amount.
2. Delivery of Escrow Amount Simultaneously with the execution of this Agreement, Builder has delivered the Escrow Amount to Escrow Agent (which funds shall be held by Escrow Agent as provided in this Agreement).
3. Conditions of Escrow The Escrow Agent shall hold the Escrow Amount on the following conditions:
  - a. Investment of Escrow Amount The Escrow Agent shall deposit the Escrow Amount in an account at any state or nationally chartered bank insured by the FDIC. Escrow Agent shall not be liable, and all other parties hereto release Escrow Agent from all liability, for any loss or delay in payment of any of the Escrow Amount caused by the failure of any financial institution in which the Escrow Amount has been deposited.
  - b. Distribution of Escrow Amount The Escrow Agent shall release all or a portion of the Escrow Amount on the following conditions: (i) to Montserrat upon written authorization from a representative of the Architectural Control Committee of Montserrat certifying that written notice of Builder's failure to (a) comply with the Design Guidelines, (b) cure any deficiency in Builder's construction of the residence, or (c) pay any costs incurred or fines assessed against Builder in connection with the construction of such residence, has been provided to Builder and Builder has not paid or corrected such failure as of the date of such certification and such certification is at least ten (10) days after written notice of Builder's default was given; or (ii) to Builder upon written authorization from a representative of the Architectural Control Committee of Montserrat. The written authorization from Montserrat must state the amount to be distributed from escrow. Upon the release of all of the funds held in escrow by the Escrow Agent, this Agreement shall terminate and be of no further force and effect. Builder shall have no authority to direct Escrow Agent in the disbursement of the Escrow Amount.
  - c. Successor Escrow Agents The Escrow Agent, or any successor Escrow Agent, may at any time resign by giving notice in writing to Montserrat and Builder and shall be discharged from its duties under this Agreement on the first to occur of the appointment of a successor Escrow Agent, as provided in this Paragraph 3.c, or the expiration of thirty (30) calendar days after the written notice is given. In the event of any resignation, a successor Escrow Agent, which shall be a title company with an

office in Fort Worth, Texas, must be appointed within 30 days by Montserrat. In the event Montserrat does not appoint a successor Escrow Agent within said thirty (30) day period, then Escrow Agent may, at its election, interplead the Escrow Amount with a court of competent jurisdiction in Tarrant County, Texas, and Escrow Agent shall be entitled to recover from Builder its attorney's fees and costs in connection with such interpleader. Any successor Escrow Agent shall deliver to Montserrat, Builder and the predecessor Escrow Agent a written instrument accepting appointment under this Agreement, and thereupon it shall succeed to all the rights and duties of Escrow Agent under this Agreement and shall be entitled to receive the Escrow Amount then held by the predecessor Escrow Agent under this Agreement.

- d. Rights, Privileges, Immunities and Liabilities of Escrow Agent The following shall govern the rights, privileges, immunities and liabilities of Escrow Agent:
- i. Escrow Agent is not a party to, and is not bound by, any agreements between Montserrat and Builder, nor does it have notice of any instruments out of which this escrow arises.
  - ii. In the event the Escrow Agent becomes involved in litigation in connection with this Agreement or the Escrow Amount, Montserrat and Builder agree to indemnify and hold Escrow Agent harmless from all losses, costs, damages, expenses and attorney's fees ("Losses") suffered or incurred by Escrow Agent as a result thereof; provided that such Losses do not result primarily from actions taken or omitted to be taken by the Escrow Agent due to its gross negligence, bad faith or willful misconduct.
  - iii. Escrow Agent shall be protected in acting on any written notice, request, waiver consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.
  - iv. Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith provided that it acts in good faith and is not guilty of willful misconduct or gross negligence.
  - v. Escrow Agent may, at its own expense, consult with legal counsel in the event of any dispute or question as to the construction of any provision of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of its counsel.
  - vi. In the event of any disagreement resulting in adverse claims or demand being made in connection with the Escrow Amount, or in the event that Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in such event Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and Escrow Agent shall be entitled to continue to refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction or (ii) all differences

shall have been adjusted and all doubt resolved by agreement among all of the interested parties, and Escrow Agent shall have been so notified in writing signed by all such parties. In such event, and without limiting the generality of the foregoing, the Escrow Agent may, at its election, interplead the Escrow Amount or any portion thereof within a court of competent jurisdiction in Tarrant County, Texas, or commence judicial proceedings for declaratory judgment in Tarrant County, Texas, and the Escrow Agent shall be entitled to recover from Builder its attorneys' fees and costs in connection with any such interpleader or declaratory judgment action. The rights of Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.

- vii. Escrow Agent, on delivery of the Escrow Amount pursuant to the terms of this Agreement, shall be discharged from any further obligation hereunder.
- viii. This Agreement sets forth the exclusive duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations of the Escrow Agent shall be read into this Agreement. The Escrow Agent shall not be called upon to advise any party as to its rights and obligations hereunder.
- ix. The Escrow Agent is expressly authorized to comply with and obey order, judgment, or decrees of any court with respect to any matter relating to this Agreement. In the event the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

#### 4. Miscellaneous

- a. Notices Any notice permitted or required to be given under the terms of this Agreement shall be in writing and shall be deemed given when received by the party to whom it is directed or when deposited in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party to be notified at the appropriate address specified below. The mailing addresses of the parties are as follows:

**Party**

Montserrat \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Address**

Montserrat Homeowners Association, Inc. \_\_\_\_\_  
9411 Marbella Drive \_\_\_\_\_  
Fort Worth, TX 76126 \_\_\_\_\_

**Builder**

\_\_\_\_\_  
\_\_\_\_\_

**Escrow Agent**

Baker Firm, PLLC  
Fee Attorney for Fidelity National Title Company  
4541 Bellaire Drive South, Suite 101  
Fort Worth, TX 76109  
(817) 377-4100  
(817) 377-4111 (fax)

The above addresses may be changed by any party by notice given in the manner provided in this Paragraph 4.a.

- b. Effect of Agreement This Agreement shall be binding on, insure to the benefit of and be enforceable by Montserrat, Builder, and the Escrow Agent and their respective successors, assigns and legal representatives.
- c. Section and Paragraph Headings The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- d. Choice of Law This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and, to the extent applicable, federal law.
- e. Counterparts This Agreement may be executed in multiple counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- f. Effective Date The effective date of this Agreement is the date it is executed by the Escrow Agent, notwithstanding the date of execution by Montserrat or the Builder.

- g. Unenforceability If any portion of this Agreement shall be held invalid or unenforceable, then so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative and effect shall be given to the intent manifested by the portion held invalid or unenforceable.

This Agreement is executed by **Montserrat** on \_\_\_\_\_:

**MONTSERRAT HOMEOWNERS ASSOCIATION, INC.**

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

Name: Larry H. Hamre

Title: On-Site Property Manager

Montserrat Homeowners Association

This Agreement is executed by **BUILDER** on \_\_\_\_\_:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Builder's Tax ID No.: \_\_\_\_\_

This Agreement is executed by the **Escrow Agent** on \_\_\_\_\_:

Baker Firm, PLLC. Fee Attorney for Fidelity National Title Co.

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

Name: Nikki Jackson

Title: Senior Vice President

