

DRAINAGE FACILITY ESCROW AGREEMENT

This Drainage Facility Escrow Agreement (this “Agreement”), is effective as of _____, 2024 (the “Effective Date”), and is entered into by and among HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision created under the laws of the State of Texas (“**HCISD**”), CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation doing business in Texas as BROHN HOMES (“**Developer**”), and INDEPENDENCE TITLE COMPANY, a Texas corporation (“**Escrow Agent**”).

Recitals:

A. HCISD and Developer are parties to that certain Development Agreement dated _____, 2024 (the “**Development Agreement**”), which sets out certain agreements between HCISD, Developer, and Casetta Ranch Residential Community, Inc., a Texas nonprofit corporation, with respect to, among other things, the construction of the Facilities (as such term is defined in the Development Agreement) for the benefit of certain real property owned by HCISD and located in Hays County, Texas.

B. Pursuant to the Development Agreement, HCISD and Developer have each agreed to escrow fifty percent (50%) of the Estimated Cost (as such term is defined in the Development Agreement) to be disbursed to Developer as reimbursement for the Costs of Construction (as such term is defined in the Development Agreement). The Estimated Cost is \$133,317.75.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, Developer, HCISD and Escrow Agent agree as follows:

Article 1

Administering Escrow; Definitions; Recitals

1.1 Defined Terms; Recitals. Capitalized terms used in this Agreement and not otherwise defined herein will have the meanings set forth in the Development Agreement. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

1.2 Escrow Agent. Developer and HCISD designate and appoint Escrow Agent to serve as escrow agent under this Agreement. Escrow Agent accepts such appointment and agrees to perform its duties in accordance with the terms and conditions of this Agreement.

1.3 Delivery of Funds. Concurrently with the execution of this Agreement, HCISD shall deposit with Escrow Agent the sum of \$66,658.87 and Developer shall deposit with Escrow Agent the sum of \$66,658.88 (collectively, the “**Funds**”).

1.4 Funds in Escrow Account. Except as specifically provided in this Agreement, Escrow Agent shall have no responsibility or obligation of any kind in connection with the Funds, and shall not be required to deliver the same or any part thereof or take any action with respect to

any matters that might arise in connection therewith, other than to receive, hold and deliver the Funds as herein provided. Escrow Agent shall invest the Funds in an interest-bearing account with a federally insured financial institution (the “**Escrow Account**”), which account shall allow withdrawals on no more than 2 business days’ notice. The tax liability for all interest earned on the Funds will be allocated to HCISD, and Escrow Agent shall instruct the financial institution holding the Funds to submit any Form 1099 or other similar report to the IRS with respect to such accrued interest in the name of HCISD. Escrow Agent shall not be liable for any error of judgment, or for any act done or steps taken or made by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence, willful misconduct, or its own breach of this Agreement.

Article 2 **Construction of Facilities; Use of Funds**

2.1 Construction of Facilities. Developer will design, permit, and construct, or cause to be designed, permitted, and constructed, the Facilities pursuant to the Development Agreement. All Funds will be held and applied to pay (or reimburse Developer for) the costs of designing, permitting, and constructing the Facilities.

2.2 Use of Funds. At any time and from time to time during the term of this Agreement, Developer may submit draw requests to Escrow Agent (with a copy to HCISD) prepared by an engineer or architect (as applicable, the “**Design Professional**”) or a contractor (a “**Contractor**”) retained by Developer for the design or construction of the Facilities, along with supporting documentation (each, a “**Draw Request**”). Each Draw Request will specify the total amount of the Costs of Construction for which payment is requested. HCISD will have a period of 5 business days after the date of Developer’s submission of a Draw Request to Escrow Agent (“**5-day Period**”) to dispute the Draw Request by written notice to Developer and Escrow Agent within such 5-day Period, which notice must identify with specificity the basis of the dispute. If HCISD does not timely dispute a Draw Request in accordance with the foregoing sentence, but subject to there being sufficient funds in the Escrow Account to pay the Draw Request, Escrow Agent will release the amounts requested in the Draw Request to Developer from the Funds within 10 days after the date on which such Draw Request is submitted to Escrow Agent and HCISD (“**10-day Period**”). If HCISD timely disputes the Draw Request in accordance with the foregoing, HCISD and Developer will make a good faith effort to resolve the dispute within the 10-day Period. A disputed Draw Request will be paid by Escrow Agent within 5 days after Developer and HCISD notify Escrow Agent in writing that a dispute has been resolved. If the funds described in a Draw Request have been paid by Developer pending the resolution of such dispute, then amount requested in the Draw Request will be paid by Escrow Agent to Developer in accordance with written notice of Developer and HCISD notifying Escrow Agent of the resolution of the dispute.

In the event the Funds are estimated to be insufficient to pay all of the Costs of Construction, as evidenced by supporting documentation by the Design Professional or Contractor, then HCISD and Developer shall each deliver fifty percent (50%) of the amount of such estimated deficiency to Escrow Agent within ten (10) business days following a receipt of written notice from Developer or Escrow Agent, along with supporting documentation.

Within 5 days after Developer achieves substantial completion of the Facilities (“**Substantial Completion**”) and delivers written notice of Substantial Completion to Escrow Agent and HCISD (together with a certification of Substantial Completion executed by the applicable Design Professionals), Escrow Agent shall disburse fifty percent (50%) of all remaining Funds to Developer and fifty percent (50%) of all remaining Funds to HCISD, and this Agreement will terminate.

The existence of an unresolved dispute concerning a Draw Request shall not prevent: (i) Developer from submitting subsequent Draw Requests pursuant to the terms hereof before the resolution of such dispute, or (ii) disbursement of Funds by Escrow Agent for the amounts of Draw Requests that are not in dispute. Further, the terms of this Agreement shall not be construed to prevent Developer from paying all or a portion of the Facilities using Developer’s own funds, and not the Funds, and any such use by Developer of Developer’s own funds will not waive Developer’s rights under this Agreement. In any such case, Developer may submit to Escrow Agent and HCISD periodic or final Draw Requests accompanied by reasonable evidence of prior payment of the applicable portion of the Costs of Construction.

Article 3 **Protection of Escrow Agent**

3.1 Reliance by Escrow Agent. Escrow Agent shall not be charged with notice or knowledge of any fact or information not herein set out. Escrow Agent shall be entitled to rely completely on any statements, letters, certificates or other written communications received from Developer or HCISD without having to investigate the accuracy or truth of any information set forth in any such communication. It shall be sufficient if any such statement, letter, certificate or other written communication is delivered to Escrow Agent and purports on its face to be correct in form and signed or otherwise executed by the party or parties required to sign or execute the same under this Agreement. Escrow Agent shall not be required in any way to determine the identity or authority of any person executing the same or the genuineness of any such signature.

3.2 Disputes. In the event of any disagreement among Developer, HCISD, Escrow Agent and any other person, or between any of them, resulting in adverse claims or demands being made upon the Funds or Escrow Agent, then Escrow Agent may, in its discretion, either: (i) withhold delivery of the Funds until the controversy is resolved, the conflicting demands are withdrawn, or its doubt is resolved, or (ii) file an interpleader for the purpose of having the respective rights of the claimants adjudicated and may deposit the Funds with the applicable court. Additionally, if any part of the Funds is at any time attached, garnished or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any part of the Funds shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting the Funds or any part thereof, then and in any of such events, Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it under the terms of this Agreement or otherwise; and if Escrow Agent complies with any such order, writ, judgment or decree it shall not be liable to any of the parties hereto or to any other person, firm or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3.3 Indemnity of Escrow Agent. Developer and HCISD jointly and severally agree, to the extent permitted by law, to indemnify and hold Escrow Agent harmless from any and all losses, costs, damages, expenses, claims and attorney's fees, including but not limited to costs of investigation, suffered or incurred by Escrow Agent in connection with or arising from or out of its obligations as Escrow Agent under the Agreement, including all counsel fees incurred by Escrow Agent, except if due to the willful misconduct or gross negligence of Escrow Agent. Notwithstanding that this indemnity is joint and several, if Escrow Agent's loss results from a dispute between Developer and HCISD, then, to the extent permitted by law, the party who is the prevailing party in that dispute shall be entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

3.4 Escrow Agent May Consult with Counsel. Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities hereunder or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by Escrow Agent in good faith upon the advice of such counsel. Escrow Agent may act through its officers, employees, agents and attorneys.

Article 4 **Miscellaneous**

4.1 Resignation of Escrow Agent. Escrow Agent may resign upon 30 days' prior written notice to Developer and HCISD, and upon joint instructions of Developer and HCISD, shall deliver the Funds to a designated substitute Escrow Agent unanimously selected by Developer and HCISD. If Developer and HCISD do not unanimously designate a substitute Escrow Agent within 45 days after the giving of such notice, Escrow Agent may institute a bill of interpleader.

4.2 Successors and Assigns. The rights and obligations of Developer and HCISD may not be assigned by either without the prior written consent of the other. Escrow Agent's consent to any such assignment of the rights and obligations of Developer and HCISD is not required (but Escrow Agent may resign upon an assignment in accordance with the terms hereof).

4.3 Rights and Remedies. The rights and remedies of the parties are cumulative and not exhaustive of any rights or remedies to which they would otherwise be entitled.

4.4 Notices. Requirements for notices under this Agreement will be met when a notice has been reduced to writing and (i) personally delivered, (ii) delivered by reputable commercial overnight delivery service, (iii) delivered by email transmission with evidence of transmission, if confirmed by delivery, mail or overnight delivery service as described in subsections (i), (ii) or (iv), or (iv) sent certified United States mail, postage prepaid, return receipt requested to the below parties at the following addresses:

If to Developer:	Clayton Properties Group, Inc., dba Brohn Homes Attn: Adam B. Boenig 6720 Vaught Ranch Road, Suite 200 Austin, Texas 78730
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Email: adamb@brohnhomes.com

With copy to:

Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Attn: Kevin M. Flahive
Email: kflahive@abaustin.com

If to HCISD:

HCISD:
Hays Consolidated Independent School District
1003 Interstate 35 Frontage Road
Kyle, TX 78640-4745
Attn: Max Cleaver
Email: Max.Cleaver@hayscisd.net

With copy to:

Rogers, Morris & Grover, LLP
5718 Westheimer Rd., Suite 1200
Houston, Texas 77057
Attention: Mariana Evans
E-mail: mevans@rmgllp.com

If to Escrow Agent:

Independence Title Company
Attn: Gay Heavilin
5900 Shepherd Mountain Cove, Building 2, Ste. 200
Austin, Texas 78730
E-mail: gheavilin@independencetitle.com

The date of receipt shall be the date of actual receipt of such notice if the notice is personally delivered, the date of delivery to a reputable commercial overnight delivery service with instructions for next business-day delivery, the date sent if sent by email transmission (provided that any email transmission sent on a non-business day or after 5:00 p.m. on a business day shall be deemed received on the next business day), or if sent by certified mail, the earlier of actual receipt or 3 days after the postmark date. Addresses given herein for notice may be changed by any party by notification in writing at least 10 days prior to the effective date thereof.

4.5 Invalid Provisions. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.6 Governing Law. This Agreement shall be deemed to be made under the laws of the State of Texas and shall for all purposes be construed and enforced in accordance with said laws except as federal law may apply. This Agreement is performable in Hays County, Texas.

4.7 Amendments. This Agreement may be amended or otherwise modified from time to time, but only by a writing signed and acknowledged by all of the parties.

4.8 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Agreement, which exhibit may be amended by the parties from time to time in accordance with the provisions of this Agreement. All such exhibits constitute a part of this Agreement and are expressly made a part hereof.

4.9 Waivers. A waiver by a party of any provision of this Agreement or of any default by any party must be in writing and no such waiver shall be implied from any omission by a party to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision, covenant or condition contained in this Agreement. The consent or approval by a party to or of any act or request by another party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. No failure by a party to insist upon or to enforce any provision of this Agreement shall constitute or be interpreted as a waiver thereof and no provision of this Agreement shall be interpreted as waived, modified or amended by the acts or conduct of the parties except as specifically expressed to be such in writing.

4.10 Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of Developer, HCISD and Escrow Agent and not for the benefit of any third person. No provision of this Agreement is intended to make any person a third-party beneficiary hereof. This Agreement shall not be deemed to have conferred any rights upon any third person.

(Signature Page Follows)

The parties hereto, by their representatives duly authorized, have executed this Agreement to be effective on the date shown on the first page of this Agreement.

HCISD:

HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision created under the laws of the State of Texas

By: _____
Name: _____
Title: _____

DEVELOPER:

CLAYTON PROPERTIES GROUP, INC., a Texas corporation doing business in Texas as BROHN HOMES

By: _____
Name: _____
Title: _____

ESCROW AGENT:

INDEPENDENCE TITLE COMPANY, a Texas corporation

By: _____
Name: _____
Title: _____