ESCROW AGREEMENT

BY AND BETWEEN

THE CITY OF MONTGOMERY, TEXAS,

AND

Azzip Enterprises Inc.

Dev. No. 2209

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

RECITALS

WHEREAS, the Developer desires to acquire and develop all or part of a <u>Block 1 Restricted</u>

Reserve "A" of the <u>Pizza Shack of Montgomery plat</u> sometimes referred to as the <u>Pizza Shack</u>

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.

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AGREEMENT

ARTICLE I

SERVICES REQUIRED

Section 1.01 The development of the <u>Pizza Shack</u> 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	\$500
City Engineer	\$2,000
Legal	\$500
TOTAL	\$3,000

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, by as follows:

If to City, to:

City Administrator

City of Montgomery 101 Old Plantersville Rd. Montgomery, Texas 77356

If to Developer, to:

Michael Simmons

Azzip Enterprises Inc. 19132 Stewart Creek Rd. Montgomery, Texas 77356

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.

CITY OF MONTGOMERY, TEXAS

By:
Byron Sanford, Mayor
Desc
By: Nici Browe, City Secretary
ividi blowe, City Secretary
usha I Stannas
Michael Simmons Developer
•
, /
By: Mark Mills
Signature
-
Title: OWNER

STATE OF TEXAS	{
COUNTY OF MONTGOMERY	{
of the City of person whose name is subscribed t executed the same for the purposes stated and as the act and deed of sai	Montgomery, Texas, a corporation, known to me to be the to the foregoing instrument, and acknowledged to me that he is and consideration therein expressed, in the capacity therein discorporation. D AND SEAL OF OFFICE on this the day
	Notary Public, State of Texas
THE STATE OF TEXAS	{
COUNTY OF	{
personally appeared Michael S of AZZIP Enterprises Inc. known to me to be the person wacknowledged to me that he execute and in the capacity therein stated an	ned, a Notary Public in and for the State of Texas, on this day Simmons, Dwner a Corporation, whose name is subscribed to the foregoing instrument and at the same for the purpose and consideration therein expressed at as the act and deed of said organization.
GIVEN UNDER MY HAND of <u>JUM</u> e, 2022.	D AND SEAL OF OFFICE on this the 30th day
Notary Pub	A GAMBOA Jic, State of Texas Notary Public, State of Texas

15.00 (15.00 m) 15.00 (15.00 m

PIZZA SHACK MONTGOMERY

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1 RESERVE, 1 BLOCK



STATE OF TEXAS COUNTY OF MONTGOMERY

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WITNESS my hand in Montgomery County, Yexas,

2016 this 3 day of MARKEL

John Simmons

Collec Sireparal

President
Azzle Enferprises, Inc.

Cloudio Simmont

Nice President
Azzip Enterprises, Inc.

COUNTY OF MONTGOMERY THE STATE OF TEXAS

BEFORE ME, the undersigned cuthouths, on this day personally appeared John Silmonns, forour lot one to be the person whose none is subscitted to the tempolog instrument, and action-veloged to me that he escurded some for purposes and consideration theseth as forth.

GIVEN UNDER MY HAND AND STAL OF OFFICE, THIS 3 GOY OF MONTCH. 2016.

COUNTY OF MONTGOMERY THE STATE OF TEXAS

BECURE ME, the undersigned outherfly, on this day personally operand Chouds Simmons, furent to me to be the person whose nome is subscribed to the foreshold intellument, and active-videged to me that he executed some for purposes and consideration therein set forth.

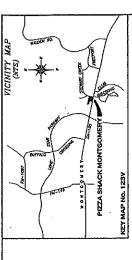
CIVEN UNDER MY HAND AND SEAL OF OFFICE, PHS 3, doy of MARCAL, 2016.

Public in and for nery County, Texas

This pist and subdividuo has been submitted to and considered by the City Planning and Zandrog Commission and its act Sound at the City of konfigureury, Teres, and its harry approved by suck Commission and Commission and Commission. Deared This \$\mathbb{Z}_2\$ Day of Partial \$\mathred{\text{Commission}}\$.



i. THE UNDERSICHED, Engineer for this city subdivision plot conforms to oil requirement City as to which his approvel is required.



(19th) Manipage Bank, cornection and behavior on the Section of the Section Space of the Section Secti

THE STATE OF TEXAS COUNTY OF MONICONERY

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for the purpose and consideration therein expressed.
CACH UNDER MY HAND AND SELL OF OFFICE Miss. A.
Oor of Articles Call. (Atth: Halony Seal)

Hotory Public in and For Montmornal Y County.

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

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WINESS MY HAND AND SEAL OF OFFICE, at Conroe, Montgomery County, Texas, the day and date last above withen.



Mark burnhull sar transit our Court sar transit our Court our Court our transit our transi

Gaward Note:

1) The base for bestriger for this survey one based on the finest State Perm Coordister System, Central Ziver (4223), Never, American Perm 1955 (4922), Shorthwest prom 1955 (4922), Dentitives strong hours, best on the DPS Observation, Nevel American Version Dental 1950 (ANSDS), 2022

Subject property aboven hearon is located in Zone X, and SHADED Zone X, does not logacy to lie within the \$100-year fload plain, according to the FEMAL Fload insurance Rate Map, Community panel 483390 0200 G, effective 08/18/14.

OWNER AZZIP ENTERPRISES, INC. 2002S, PEEL ROAD MONTGOMERY, TEXAS 77356

SURVEYOR TEXAS PROFESSIONAL SURVEYING FIRM REGISTRATION NO. 10053-400 3023 MORTH FRAZIER CONROG, TEXAS 77303

DOC # 2016863197 Cabber 902 Sheet 4068

SHEET 1 OF 2

