#### **ESCROW AGREEMENT**

#### BY AND BETWEEN

#### THE CITY OF MONTGOMERY, TEXAS,

## AND

# **BCS Capital Group, LLC**

# Dev. No. 2415

THE S	STATE	OF TEX	AS	Э									
COUN	TY O	F MONT	GOMERY	Э									
	This	Escrow	Agreement,	is	made	and	entered	into	as	of	the		day
			_, 2024 by an	d be	etween 1	the CI	TY OF M	IONT	GON	ИER	Υ, Τ	EXAS	S, a body
politic	, and a	municipa	al corporation	cre	ated and	d oper	ating und	er the	gen	eral :	laws	of the	State of
Texas	(herei	nafter cal	lled the "City	<sup>,</sup> "),	and BO	CS Ca	pital Gro	oup, L	<u>LC</u> ,	(he	reina	fter c	alled the
"Deve	loper")	).											

#### **RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of a 32-acre tract sometimes referred to as the <u>BCS Capital Tract</u>, 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 feasibility study, plan reviews, developer coordination, construction management, inspection services to be provided for during the construction phase, and one-year warranty services.

#### <u>AGREEMENT</u>

#### **ARTICLE I**

#### **SERVICES REQUIRED**

Section 1.01 The development of the <u>BCS Capital</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 the required Utility and Economic Feasibility Study ("Study") in the amount of \$6,000.

Section 2.02 Developer agrees to submit payment of the funds for the Utility and Economic Feasibility Study to City no later than ten (10) days after the execution of this Escrow Agreement. No work will begin on the Study until funds have been received and the Study has been authorized by City Council.

Section 2.03 As part of the Study, the estimated additional Escrow Amount will be determined for plan reviews, developer coordination, construction coordination, construction inspection of all exterior private site improvements, construction inspection of all proposed public infrastructure, warranty services, legal expenses, and administrative costs. Developer agrees to

submit payment of the Escrow Amount to City no later than thirty (30) days after the acceptance of the Study by City Council. No work outside of the Study will be performed by or on behalf of the City until the Escrow Amount has been deposited.

Section 2.04 The total amount shown above for the Utility and Economic Feasibility Study and the Escrow Amount determined in the Study 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:

Jack Burgher

BCS Capital Group, LLC

1940 Fountain View Dr.

Suite No. 220

Houston, Tx 77057

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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.

	CITY OF MONTGOMERY, TEXAS
	By:, Mayor
ATTEST:	
	By:, City Secretary
	BCS CAPITAL GOUP, LLC
	BCS Capital Goup, LLC  Jack Bugher  Developer
	By: Jack By Signature
	Title: Manager

STATE OF TEXAS	{
COUNTY OF MONTGOMERY	{
of the City of Montgon name is subscribed to the foregoing for the purposes and consideration and deed of said corporation.	ned authority, on this day personally appearednery, Texas, a corporation, known to me to be the person whose instrument, and acknowledged to me that he executed the same therein expressed, in the capacity therein stated and as the act D AND SEAL OF OFFICE on this theday
	Notary Public, State of Texas
THE STATE OF TEXAS	{
COUNTY OF HAPPEIS	{
personally appeared Tack Burg of BCS Capital Group LLC, known to me to be the person vacknowledged 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  New , Manager  a Texas   Imited liability tompany,  whose name is subscribed to the foregoing instrument and  d the same for the purpose and consideration therein expressed  d as the act and deed of said organization.  D AND SEAL OF OFFICE on this the 2nd day
LINDSAY ADAMS Notary ID #133552733 My Commission Expires January 25, 2026	Notary Public, State of Texas