

ESCROW AGREEMENT
BY AND BETWEEN
THE CITY OF MONTGOMERY, TEXAS,
AND
H-E-B, LP
Dev. No. 2402

THE STATE OF TEXAS ⊃
COUNTY OF MONTGOMERY ⊃

This Escrow Agreement, is made and entered into as of the _____ day _____, 2024 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 H-E-B, LP, a Texas Limited Partnership, (hereinafter called the "Developer").

RECITALS

WHEREAS, the Developer desires to acquire and develop all or part of a 32.42 acre tract sometimes referred to as the HEB 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 actually incurred by the City for feasibility study, 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 HEB Tract and/or the development as directed by Developer 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 actual costs associated with these services.

Section 1.02 In the event other contract services are required related to the development of the HEB Tract 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 hereto may agree in writing.

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 or cause to be advanced funds to City for the purpose of funding the required Utility and Economic Feasibility Study ("Study") in the amount of \$5,000 ("Initial Escrow Amount").

Section 2.02 Developer agrees to submit or cause to be submitted 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 (being the Initial Escrow Amount). 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, warranty services, legal expenses, and administrative costs (“Additional Escrow Amount”). Developer agrees to submit or cause to be submitted payment of the Additional Escrow Amount to City no later than thirty (30) days after the acceptance of the Study by City Council and receipt by Developer of notice from the City of the Additional Escrow Amount. No work outside of the Study will be performed by or on behalf of the City until the Additional Escrow Amount has been deposited.

Section 2.04 The total amount shown above for the Initial Escrow Amount and the Additional Escrow Amount determined in the Study is intended to be a “Not to Exceed” amount unless extenuating, unexpected fees are needed due to Developer. 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 escrow deposit amount and explanation of extenuating circumstance. The Developer agrees to tender or cause to be tendered such additional sums reasonably requested by the City within 10 days of receipt of such request to cover such costs and expenses. If such additional funds are not deposited within 10 days of Developer receipt of notice, all work by or on behalf of the City will stop until funds are deposited. Any funds which may remain after the earlier of (i) the issuance of a certificate of occupancy or its equivalent

for the HEB Tract, or (ii) January 1, 2027 (the "Termination Date"), will be refunded to Developer within 10 days of the City's receipt of written request from Developer for refund. The City shall have the right to draw from time to time upon the Initial Escrow Amount and the Additional Escrow Amount after City services are performed and expenses are incurred by the City. The City shall provide to Developer on monthly basis, a detailed accounting of any draws of such escrowed funds, which such accounting shall include supporting documentation of services performed and expenses as reasonably requested by Developer. Upon the Termination Date or if earlier terminated by Developer as set forth herein, this Escrow Agreement will be terminated, the remaining funds in escrow (if any) shall be returned to Developer as provided above, and thereafter the parties hereto will have no continuing rights or obligations hereunder. Notwithstanding anything to the contrary herein, Developer shall have the right to terminate this Escrow Agreement upon 30 days prior written notice to the City.

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

If to Developer, to: Judy Aiello
 H-E-B LP
 646 South Main Avenue
 San Antonio, Texas 78204

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.

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 _____, 2024.

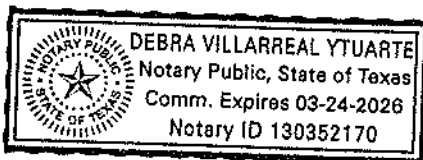
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF BEXAR {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Benjamin R. Scott, Group Vice President of Real Estate and Shopping Center of H-E-B, LP, a Texas limited partnership Development, 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 26 day of February, 2024.



[Signature]

Notary Public, State of Texas

EXHIBIT "A"

