

**ESCROW AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MONTGOMERY, TEXAS,**

**AND**

**Home Depot U.S.A., Inc**

**Dev. No. 2305**

THE STATE OF TEXAS                    ⊃

COUNTY OF MONTGOMERY            ⊃

This Escrow Agreement is made and entered into as of the \_\_\_\_\_ day \_\_\_\_\_, 2023 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 Home Depot U.S.A., Inc. a Delaware Corporation, (hereinafter called the "Developer").

**RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of Restricted Reserve “J” of the Amended Plat of Buffalo Springs Shopping Center Phase 2 an 11.82 acre tract sometimes referred to as the Home Depot 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.

**AGREEMENT**

ARTICLE I

**SERVICES REQUIRED**

Section 1.01 The development of the \_\_\_\_\_ 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	\$3,000
City Engineer	\$5,000
Legal	\$3,000
<hr/>	
TOTAL	\$11,000

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



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

ATTEST:

By: \_\_\_\_\_  
Nici Browe, City Secretary

\_\_\_\_\_  
Developer

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

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

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 \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF \_\_\_\_\_ {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

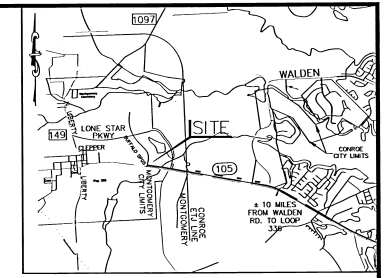
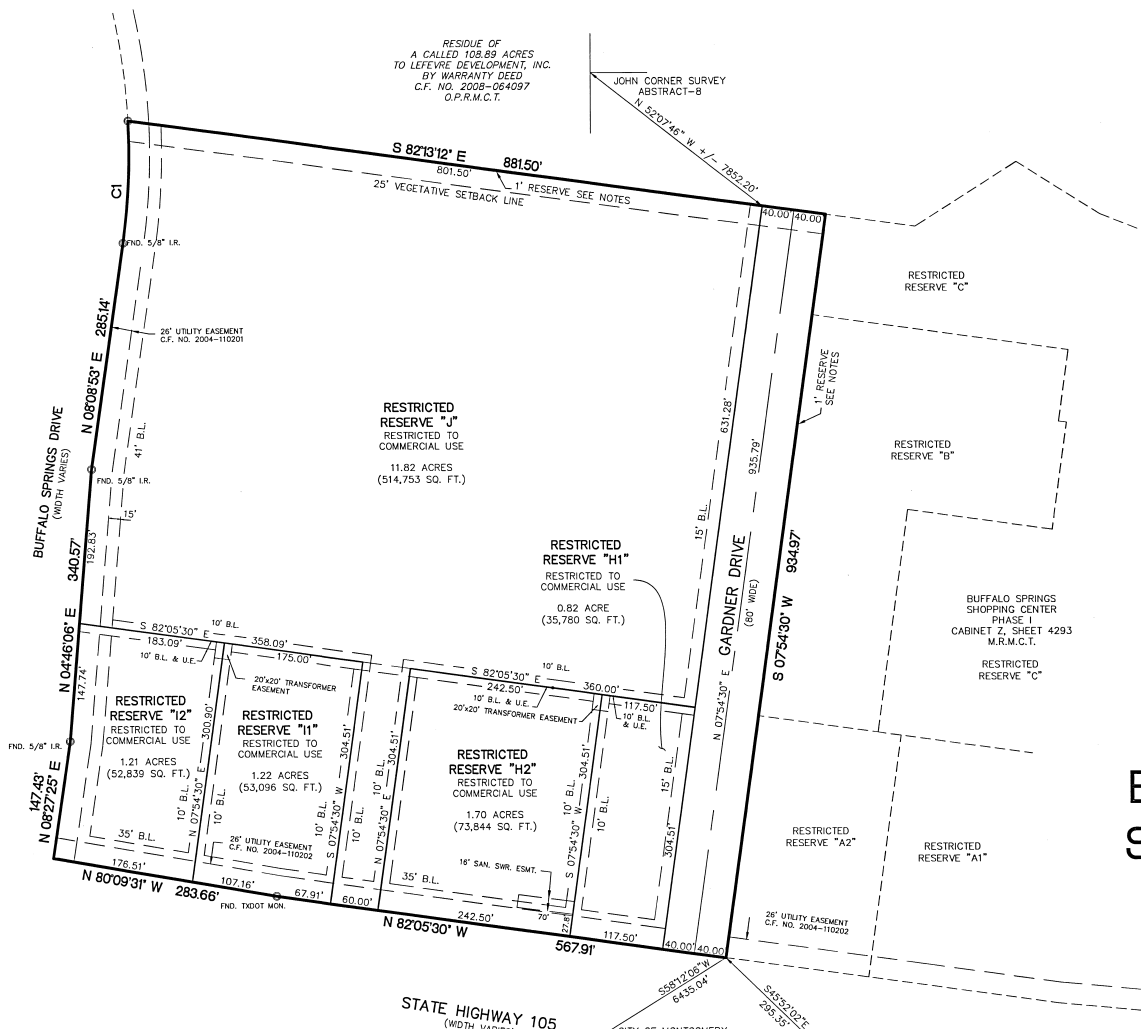
\_\_\_\_\_  
Notary Public, State of Texas



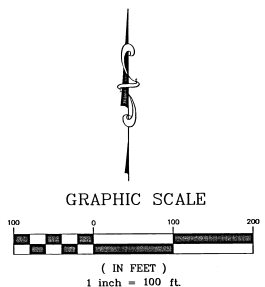
**NOTES:**

1. O.P.R. M.C.T. denotes Official Public Records of Montgomery County, Texas
2. M.R.M.C.T. denotes Map Records Montgomery County Texas
3. R.Q.W. denotes right-of-way
4. B.L. denotes building line
5. D.E. denotes drainage easement
6. U.E. denotes utility easement
7. SAN. SWR. ESM.T. denotes Sanitary Sewer Easement
8. ( ) denotes block number
9. This property is located in "Zone X", determined to be outside 100 year flood plain. This plot does not lie within a designated Special Flood Hazard Area, inundated by 100 year flood or Other Flood Areas.
10. All corners are set 5/8 inch iron rods w/cap unless otherwise noted.
11. There is a One-foot reserve dedicated as a buffer separation between the side or end of streets where such streets abut adjacent property, the condition of this dedication being that when the adjacent property is subdivided or re-subdivided in a recorded subdivision plat, the one-foot reserve shall thereupon become vested for street right-of-way purposes.

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHD. BRG	CHD.
C1	790.00	152.69	11°04'26"	N02°37'29"E	152.45



VICINITY MAP  
N.T.S.  
KEYMAP: 123 U



**BENCHMARK**  
ELEV. 244.25  
CONCRETE MONUMENT WITH BRASS DISK  
STAMPED "BSSC PHS 2"  
N(Y) = 10,135,655.67  
E(X) = 3,763,281.21

# AMENDED PLAT OF BUFFALO SPRINGS SHOPPING CENTER

PHASE 2  
A COMMERCIAL SUBDIVISION OF  
18.48 ACRES  
(805,182 SQ. FT.)

IN THE  
JOHN CORNER SURVEY, A-8  
MONTGOMERY COUNTY, TEXAS  
**1 BLOCK 5 RESERVES**  
**SEPTEMBER 2017**

SURVEYOR:



**TOWN AND COUNTRY SURVEYORS**  
2219 SAWDUST ROAD, STE. 2003  
THE WOODLANDS, TX 77380  
(281) 465-0700  
www.landpoint.net  
TPI#1510194172

**OWNER/DEVELOPER:**  
MILESTONE PROPERTIES, INC.  
10497 TOWN & COUNTRY LANE  
SUITE 820  
HOUSTON, TX. 77024  
PH. (713) 784-3790  
FAX (713) 784-8931  
EMAIL: jmolca@milestoneco.com

**ENGINEER:**  
DEVELOPMENT SERVICES, INC.  
900 TOWN & COUNTRY LANE, SUITE 220  
HOUSTON, TEXAS 77024  
PH. (713) 647-9211  
FAX (713) 647-9113  
EMAIL: www.developmentservicesinc.com

DOC # 2017093479  
Cabinet 002 Sheet 4804

HA 2017 Download(17-1062) (DWG) BUFFALO SPRINGS SHOPPING CENTER PHASE 2, AMENDED 9-717.dwg


STATE OF TEXAS  
COUNTY OF MONTGOMERY  
STATE OF TEXAS

That Milestone Properties, Inc., a Texas corporation, as General Partner of Milestone 105 Investments, Ltd., a Texas limited partnership, acting by and through Jacobo Malco, President, does hereby adopt this plat designating the herein described property as the Amended Plat of Buffalo Springs Shopping Center, Phase II, and does hereby make subdivision of said property according to the lines, streets, alleys, parks and easements therein shown, and dedicate to public use forever all areas shown on this plat as streets, alleys, parks, and easements, except those specifically indicated as private; and does hereby waive any claims for damages occasioned by the establishing of grades as approved for the streets and alleys dedicated, or occasioned by the alteration of the surface of any portion of streets or alleys to conform to such grades and does hereby bind Owner, and Owner's successors and assigns to warrant and forever defend the title to the land so dedicated.

Owner hereby certifies that Owner has or will comply with all applicable regulations of the City of Montgomery, Texas, and that a rough proportionality exists between the dedications, improvements, and exactions required under such regulations and the projected impact of the subdivision.

There is hereby dedicated a 5' aerial adjacent to all utility easement shown hereon from a plane 20 feet above the ground designated as "U.E. with A.E."

IN TESTIMONY WHEREOF, Milestone Properties, Inc., a Texas corporation, as President of Milestone Properties, a Texas corporation, has caused these presents to be signed by Jacobo Malco, President, thereunto authorized and its common seal hereunto affixed this 27th day of September, 2017.

BY:   
Jacobo Malco  
President

Attest:   
Michael Pappert, Authorized Agent  
Milestone Properties Inc., a Texas corporation

STATE OF TEXAS  
COUNTY OF MONTGOMERY

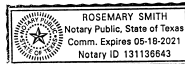
BEFORE ME, the undersigned authority, on this day personally appeared Jacobo Malco, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of September, 2017.

  
Notary Public for Montgomery County, Texas

Printed name Rosemary Smith

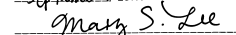
My commission expires 5-18-21



STATE OF TEXAS  
COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, on this day personally appeared Michael Pappert, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of September, 2017.

  
Notary Public for Montgomery County, Texas

Printed name Mary S. Lee

My commission expires 11-4-18



SURVEYOR:



TOWN AND COUNTRY SURVEYORS  
2218 SANDUSTY ROAD, STE. 2008  
THE WOODLANDS, TX 77380  
(281) 465-8700  
www.tandcsurveyors.net  
TBPIS# 10194172

OWNER/DEVELOPER:

MILESTONE PROPERTIES, INC.  
10497 TOWN & COUNTRY WAY  
SUITE 820  
HOUSTON, TX. 77024  
PH. (713) 784-3790  
FAX (713) 784-8931  
EMAIL: jmalco@milestoneco.com

ENGINEER:

DEVELOPMENT SERVICES, INC.  
900 TOWN & COUNTRY LANE, SUITE 220  
HOUSTON, TEXAS 77024  
PH. (713) 647-9211  
FAX (713) 647-9113  
EMAIL: www.developmentservicesinc.com

SURVEYOR'S CERTIFICATION

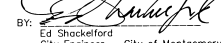
That I, Jay Dean Canine, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereof were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Montgomery, Texas.

By:   
Jay Dean Canine  
Registered Professional Land Surveyor  
Texas Registration No. 4345



CITY OF MONTGOMERY

I, THE UNDERSIGNED, Engineer for the City of Montgomery, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of the City as to which his approval is required.

By:   
Ed Shackelford  
City Engineer - City of Montgomery

This amending plat has been submitted to and considered by the City Administrator of the City of Montgomery, Texas, and is hereby approved as such.

Dated this 13th day of October, 2017.

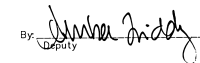
By:   
City Administrator, Montgomery, Texas

COUNTY CLERK

I, Mark Turnbull, Clerk of the County Court of Montgomery County, Texas, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on 14 day of October, 2017, at 4:14 o'clock P.M., and duly recorded on 16 day of October, 2017, at 8:58 o'clock P.M., in cabinet 2, sheet 40015 of Records of Maps for said County.

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

By:   
Mark Turnbull, Clerk, County Court,  
Montgomery County, Texas

By:   
Amber Triddy  
Deputy



AMENDED PLAT OF  
BUFFALO SPRINGS  
SHOPPING CENTER  
PHASE 2

DOC # 2017093479  
Cabinet 002 Sheet 4805

RWC / RS / JDC JOB No. 17-1062

SHEET 2 OF 2