

ESCROW AGREEMENT

BY AND BETWEEN

THE CITY OF MONTGOMERY, TEXAS,

AND

Montgomery Independent School District

Dev. No. 2303

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 Montgomery Independent School District, (hereinafter called the "Developer").

RECITALS

WHEREAS, the Developer desires to acquire and develop all or part of a 8-acre tract, sometimes referred to as the Montgomery Elementary School 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 Montgomery Elementary School 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	\$3,000
Legal	\$500
<hr/>	
TOTAL	\$4,000

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

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

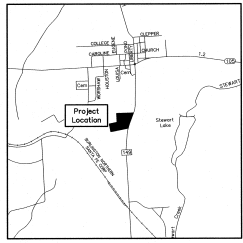
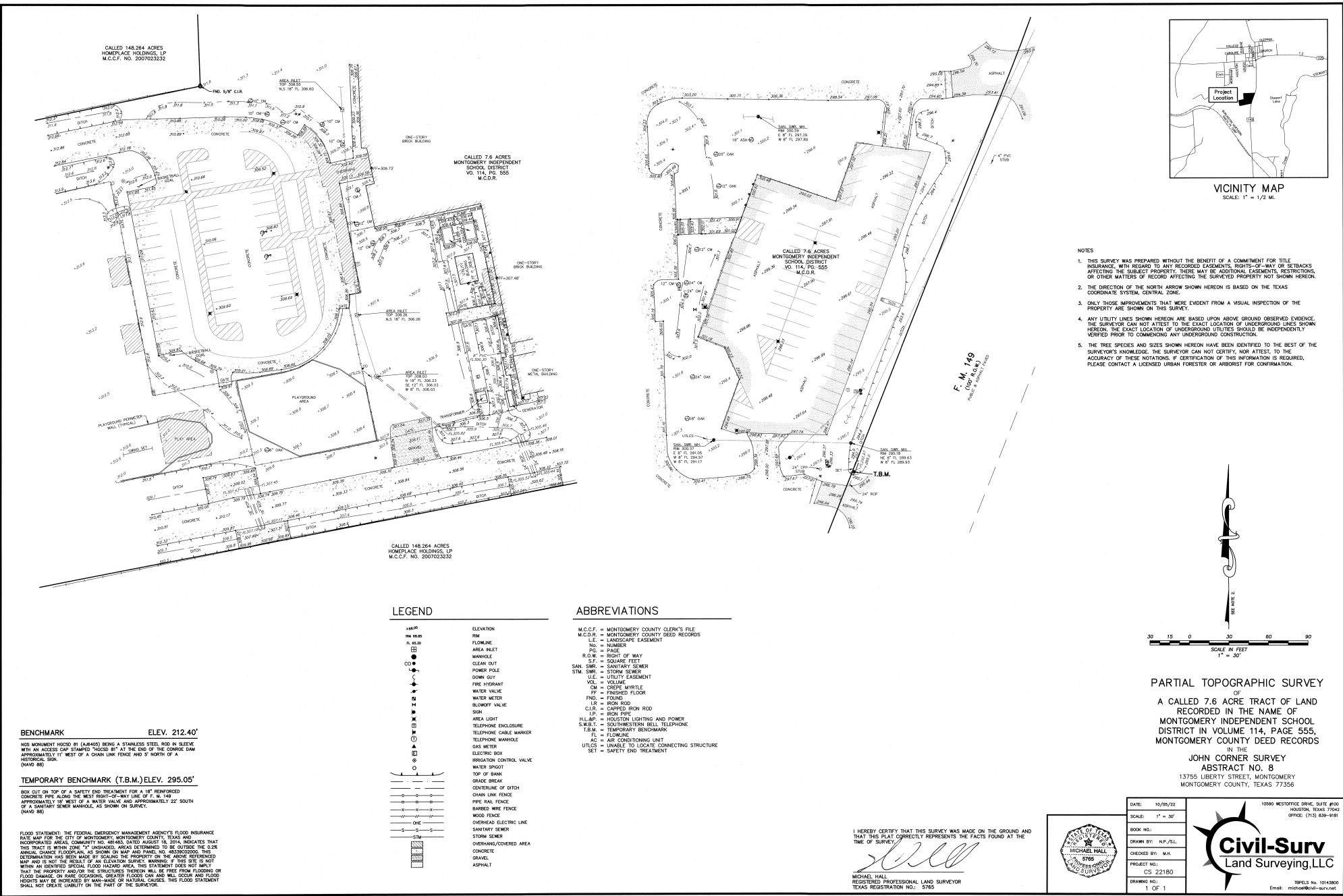
ATTEST:

By: _____
Nici Browe, City Secretary

Developer

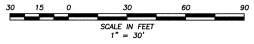
By: _____
Signature

Title: _____



VICINITY MAP
SCALE: 1" = 1/2 M.

- NOTES
1. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE. WITH REGARD TO ANY RECORDED EASEMENTS, RIGHTS-OF-WAY OR SETBACKS AFFECTING THE SUBJECT PROPERTY, THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS, OR OTHER MATTERS OF RECORD AFFECTING THE SURVEYED PROPERTY NOT SHOWN HEREON.
 2. THE DIRECTION OF THE NORTH ARROW SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE.
 3. ONLY THOSE IMPROVEMENTS THAT WERE EVIDENT FROM A VISUAL INSPECTION OF THE PROPERTY ARE SHOWN ON THIS SURVEY.
 4. ANY UTILITY LINES SHOWN HEREON ARE BASED UPON ABOVE GROUND OBSERVED EVIDENCE. THE SURVEYOR CAN NOT ATTEST TO THE EXACT LOCATION OF UNDERGROUND LINES SHOWN HEREON. THE EXACT LOCATION OF UNDERGROUND UTILITIES SHOULD BE INDEPENDENTLY VERIFIED PRIOR TO COMMENCING ANY UNDERGROUND CONSTRUCTION.
 5. THE TREE SPECIES AND SIZES SHOWN HEREON HAVE BEEN IDENTIFIED TO THE BEST OF THE SURVEYOR'S KNOWLEDGE. THE SURVEYOR CAN NOT CERTIFY, NOR ATTEST, TO THE ACCURACY OF THESE NOTATIONS. IF CERTIFICATION OF THIS INFORMATION IS REQUIRED, PLEASE CONTACT A LICENSED URBAN FORESTER OR ARBORIST FOR CONFIRMATION.



PARTIAL TOPOGRAPHIC SURVEY
OF
A CALLED 7.6 ACRE TRACT OF LAND
RECORDED IN THE NAME OF
MONTGOMERY INDEPENDENT SCHOOL
DISTRICT IN VOLUME 114, PAGE 555,
MONTGOMERY COUNTY DEED RECORDS
IN THE
JOHN CORNER SURVEY
ABSTRACT NO. 8
13755 LIBERTY STREET, MONTGOMERY
MONTGOMERY COUNTY, TEXAS 77356

DATE:	10/09/22	10560 WESTPARK DRIVE, SUITE #100 HOUSTON, TEXAS 77042 PHONE: (713) 838-9181
SCALE:	1" = 30'	
BOOK NO.:		
DRAWN BY:	NP./SL	
CHECKED BY:	M.H.	
PROJECT NO.:	CS 22180	
DRAWING NO.:	1 OF 1	



I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF SURVEY.

Michael Hall
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5765

CALLED 148.284 ACRES
HOMELACE HOLDINGS, LP
M.C.C.F. NO. 2007023232

LEGEND

48.60'	ELEVATION
48.60	CONCRETE
FL 42.50	AREA INLET
48.60	LANDSCAPE EASEMENT
48.60	MANHOLE
48.60	PAGE
48.60	RIGHT OF WAY
48.60	SAN. SBR. = SANITARY SEWER
48.60	STM. SBR. = STORM SEWER
48.60	UTILITY EASEMENT
48.60	VOL. = VOLUME
48.60	OF = OF
48.60	FF = FINISHED FLOOR
48.60	FND. = FOUNDATION
48.60	IR = IRON ROD
48.60	C.I.R. = CASTED IRON ROD
48.60	IP = IRON PIPE
48.60	H.L.A.P. = HOUSTON LIGHTING AND POWER
48.60	S.W.B.T. = SOUTHWESTERN BELL TELEPHONE
48.60	T.B.M. = TEMPORARY BENCHMARK
48.60	FL = FLOWLINE
48.60	AC = AIR CONDITIONING UNIT
48.60	UTILCS = UNABLE TO LOCATE CONNECTING STRUCTURE
48.60	SET = SAFETY END TREATMENT
48.60	IRRIGATION CONTROL VALVE
48.60	WATER SPOUT
48.60	TOP OF BANK
48.60	GRADE BREAK
48.60	CENTRELINE OF DITCH
48.60	CHAIN LINK FENCE
48.60	PIPE RAIL FENCE
48.60	BARRIED WIRE FENCE
48.60	WOOD FENCE
48.60	OVERHEAD ELECTRIC LINE
48.60	SANITARY SEWER
48.60	STORM SEWER
48.60	OVERHANG/COVERED AREA
48.60	CONCRETE
48.60	GRAVEL
48.60	ASPHALT

ABBREVIATIONS

M.C.C.F. = MONTGOMERY COUNTY CLERK'S FILE
M.C.C.R. = MONTGOMERY COUNTY DEED RECORDS
L.E. = LANDSCAPE EASEMENT
MANH. = MANHOLE
P.G. = PAGE
R.O.W. = RIGHT OF WAY
S.F. = SQUARE FEET
SAN. SBR. = SANITARY SEWER
STM. SBR. = STORM SEWER
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SET = SAFETY END TREATMENT

BENCHMARK ELEV. 212.40'

NIS MONUMENT H2020 B1 (A8465) BEING A STAINLESS STEEL ROD IN ALUEV WITH AN ACCESS CAP STAMPED "H2020 B1" AT THE END OF THE CONCRETE DAM APPROXIMATELY 11' WEST OF A CHAIN LINK FENCE AND APPROXIMATELY 22' NORTH OF A SANITARY SEWER MANHOLE, AS SHOWN ON SURVEY.

TEMPORARY BENCHMARK (T.B.M.) ELEV. 295.05'

BOX CUT ON TOP OF A SAFETY END TREATMENT FOR A 18" REINFORCED CONCRETE PIPE ALONG THE WEST RIGHT-OF-WAY LINE OF F.M. 149 APPROXIMATELY 18' WEST OF A WATER VALVE AND APPROXIMATELY 22' SOUTH OF A SANITARY SEWER MANHOLE, AS SHOWN ON SURVEY.

FLOOD STATEMENT: THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP FOR THE CITY OF MONTGOMERY, MONTGOMERY COUNTY, TEXAS AND INCORPORATED AREAS, COMMUNITY NO. 481463, DATED AUGUST 18, 2014, INDICATES THAT THIS TRACT IS WITHIN ZONE "C" UNDESIGNED AREAS DETERMINED TO BE OUTSIDE THE 2-2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON MAP AND PANEL NO. 4833020020. THIS DETERMINATION HAS BEEN MADE BY COLLATING THE PROPERTY ON THIS ABOVE REFERENCED MAP AND IS NOT THE RESULT OF AN ELEVATION SURVEY. WARNING: IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON ARE IMMUNE FROM FLOODING OR FLOOD DAMAGE ON RARE OCCASIONS. GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.