

**ESCROW AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF MONTGOMERY, TEXAS,**

**AND**

**1000 Foster Drive, LLC**

**Dev. No. 2206**

THE STATE OF TEXAS            ⤵

COUNTY OF MONTGOMERY    ⤵

This Escrow Agreement is made and entered into as of the \_\_\_\_\_ day \_\_\_\_\_, 2022 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 1000 Foster Drive, LLC, a Limited Liability Corporation, (hereinafter called the "Developer").

**RECITALS**

WHEREAS, the Developer desires to acquire and develop all or part of a Reserve "A" Depado Development Section 1 sometimes referred to as the Grand Monarch Apartments 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, and developer coordination.

**AGREEMENT**

ARTICLE I

**SERVICES REQUIRED**

Section 1.01 The development of the Grand Monarch Apartments 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	\$4,000
Legal	\$500
<hr/>	
TOTAL	\$5,000

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, be as follows:

If to City, to:	City Administrator City of Montgomery 101 Old Plantersville Rd. Montgomery, Texas 77356
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If to Developer, to:	1000 Foster Drive, LLC 18445 Highway 105 W Suite 102 Montgomery, Texas 77356
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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: \_\_\_\_\_  
Byron Sanford, Mayor

ATTEST:

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

1000 Foster Drive LLC  
Developer

By:   
Signature

Title: President

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 \_\_\_\_\_, 2022.

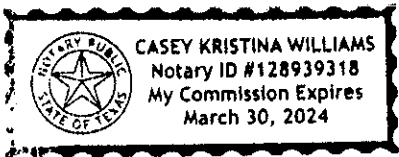
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS {

COUNTY OF Montgomery {

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Anthony Cook, \_\_\_\_\_ 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 1 day of June, 2022.



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



L SQUARED ENGINEERING  
 MUNICIPAL COMMERCIAL RESIDENTIAL  
 3907 WEST DAVIS ST #100  
 CONROE, TX 77384  
 (936) 647-0428  
 LAND SURVEYORS' TRINIDAD M. 1034340  
 T: 8139487500  
 F: 8139487500

ATLAS295 SURVEY  
 7.5389 ACRES (300.18 ±) SQ. FT.  
 BEING ALL OF RESTRICTED  
 COMMERCIAL RESERVE #1  
 DEPADO DEVELOPMENT SECTION 1  
 IN THE JOHN CORNER SURVEY, A-8  
 MONTGOMERY COUNTY, TEXAS

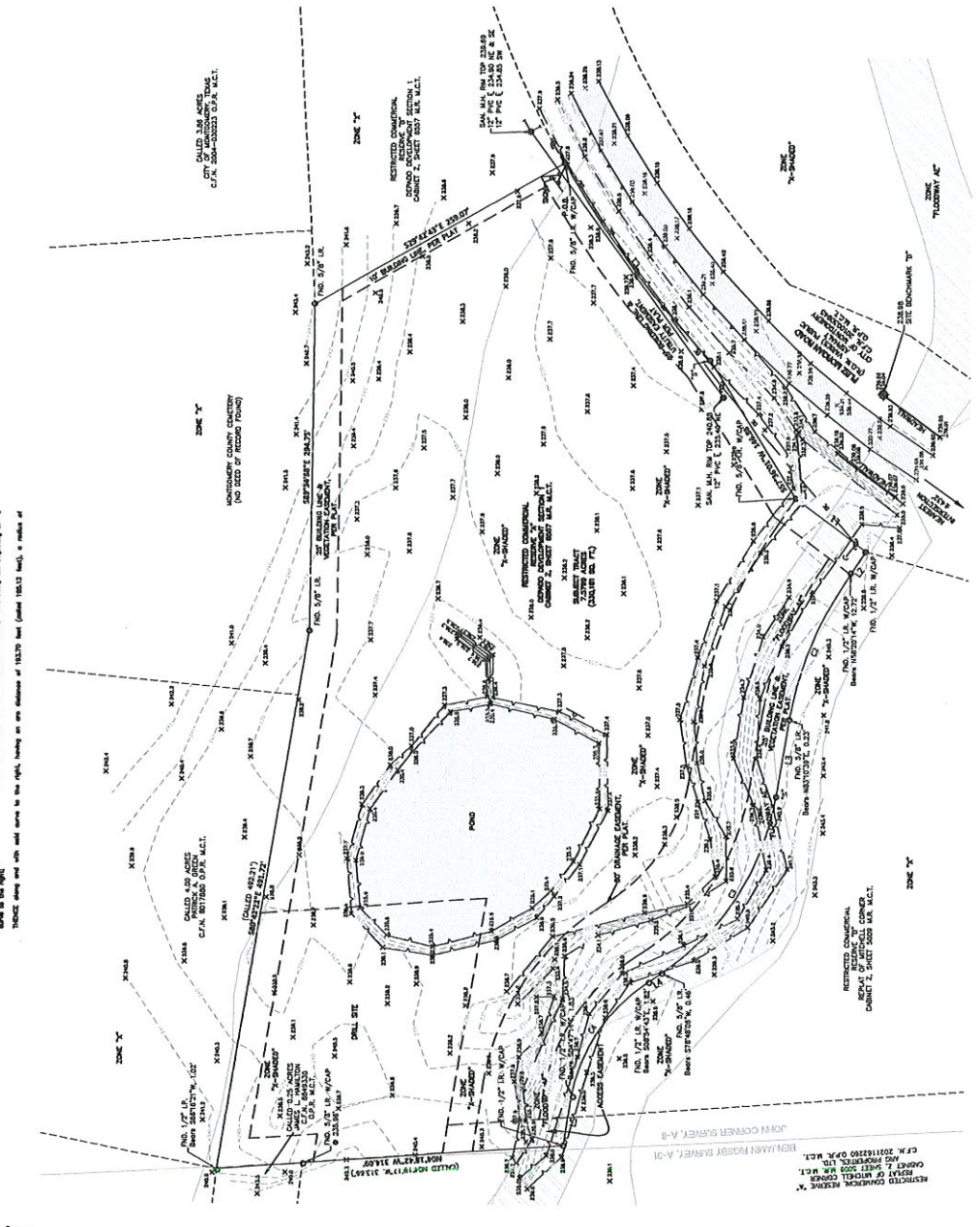
**DRAWING**  
 FIELD BK 24-2721  
 FIELD NO. 05  
 DATE 01/01/23  
 SHEET NO. 001  
 SHEETS 02  
 CHECKED EC  
 DATE 02/11/23

**ISSUE**  
 TO: CLIENT  
 DATE 02/11/23

CHECKED  
 DRAWING  
 JOB NO. 24-00001  
**SUP-1**  
 SHEET 1 OF 1

**SUBJECT TRACT (AS SHOWN)**  
 THE SUBJECT TRACT IS SHOWN IN RED ON THIS SURVEY. THE SUBJECT TRACT IS A PART OF THE DEPADO DEVELOPMENT SECTION 1, BEING ALL OF RESTRICTED COMMERCIAL RESERVE #1, IN THE JOHN CORNER SURVEY, A-8, MONTGOMERY COUNTY, TEXAS. THE SUBJECT TRACT IS A 0.79 ACRES (34,270 SQ. FT.) PARCEL OF LAND. THE SUBJECT TRACT IS BOUNDED BY THE RESTRICTED COMMERCIAL RESERVE #1 TRACTS, THE DEPADO DEVELOPMENT SECTION 1 TRACTS, AND THE JOHN CORNER SURVEY, A-8 TRACTS. THE SUBJECT TRACT IS SHOWN IN RED ON THIS SURVEY. THE SUBJECT TRACT IS A 0.79 ACRES (34,270 SQ. FT.) PARCEL OF LAND. THE SUBJECT TRACT IS BOUNDED BY THE RESTRICTED COMMERCIAL RESERVE #1 TRACTS, THE DEPADO DEVELOPMENT SECTION 1 TRACTS, AND THE JOHN CORNER SURVEY, A-8 TRACTS. THE SUBJECT TRACT IS SHOWN IN RED ON THIS SURVEY. THE SUBJECT TRACT IS A 0.79 ACRES (34,270 SQ. FT.) PARCEL OF LAND. THE SUBJECT TRACT IS BOUNDED BY THE RESTRICTED COMMERCIAL RESERVE #1 TRACTS, THE DEPADO DEVELOPMENT SECTION 1 TRACTS, AND THE JOHN CORNER SURVEY, A-8 TRACTS.

**LEGEND / ABBREVIATIONS**  
 A BOUNDARY LINE  
 B CENTER LINE  
 C CORNER POINT  
 D POINT OF BEGINNING  
 E POINT OF RESTRICTION  
 F POINT OF INTERSECTION  
 G POINT OF CONSTRUCTION  
 H POINT OF ADJACENCY  
 I POINT OF ADJACENCY  
 J POINT OF ADJACENCY  
 K POINT OF ADJACENCY  
 L POINT OF ADJACENCY  
 M POINT OF ADJACENCY  
 N POINT OF ADJACENCY  
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 Q POINT OF ADJACENCY  
 R POINT OF ADJACENCY  
 S POINT OF ADJACENCY  
 T POINT OF ADJACENCY  
 U POINT OF ADJACENCY  
 V POINT OF ADJACENCY  
 W POINT OF ADJACENCY  
 X POINT OF ADJACENCY  
 Y POINT OF ADJACENCY  
 Z POINT OF ADJACENCY



**LOCATION MAP**  
 NOT TO SCALE  
**BENCHMARKS**  
 MONUMENT NO. 1  
 BENCH MARK 1  
 BENCH MARK 2  
 BENCH MARK 3  
 BENCH MARK 4  
 BENCH MARK 5  
 BENCH MARK 6  
 BENCH MARK 7  
 BENCH MARK 8  
 BENCH MARK 9  
 BENCH MARK 10



**CHURV TABLE**

NO.	LENGTH	RADIUS	DELTA	CHD. BKG.	CHORD
C	235.64	500.00	147.12	153.79	235.64
G	133.27	150.00	49.87	153.79	133.27
L	133.27	150.00	49.87	153.79	133.27
M	133.27	150.00	49.87	153.79	133.27
N	133.27	150.00	49.87	153.79	133.27
O	133.27	150.00	49.87	153.79	133.27
P	133.27	150.00	49.87	153.79	133.27
Q	133.27	150.00	49.87	153.79	133.27
R	133.27	150.00	49.87	153.79	133.27
S	133.27	150.00	49.87	153.79	133.27
T	133.27	150.00	49.87	153.79	133.27
U	133.27	150.00	49.87	153.79	133.27
V	133.27	150.00	49.87	153.79	133.27
W	133.27	150.00	49.87	153.79	133.27
X	133.27	150.00	49.87	153.79	133.27
Y	133.27	150.00	49.87	153.79	133.27
Z	133.27	150.00	49.87	153.79	133.27

**UNIT TABLE**

NO.	BEARING	LENGTH	CALLED
1	S 75°17'14" W	802.1	802.1
2	N 15°30'17" W	362.9	362.9
3	N 82°38'19" W	208.9	208.9
4	N 82°38'19" W	208.9	208.9
5	N 82°38'19" W	208.9	208.9
6	N 82°38'19" W	208.9	208.9
7	N 82°38'19" W	208.9	208.9
8	N 82°38'19" W	208.9	208.9
9	N 82°38'19" W	208.9	208.9
10	N 82°38'19" W	208.9	208.9
11	N 82°38'19" W	208.9	208.9
12	N 82°38'19" W	208.9	208.9
13	N 82°38'19" W	208.9	208.9
14	N 82°38'19" W	208.9	208.9
15	N 82°38'19" W	208.9	208.9
16	N 82°38'19" W	208.9	208.9
17	N 82°38'19" W	208.9	208.9
18	N 82°38'19" W	208.9	208.9
19	N 82°38'19" W	208.9	208.9
20	N 82°38'19" W	208.9	208.9

**GENERAL NOTES**  
 1. The survey was performed without benefit of this monument.  
 2. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 3. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 4. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 5. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 6. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 7. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 8. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 9. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 10. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 11. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 12. This survey was performed in accordance with the provisions of the Texas Surveying Act, Chapter 81, Texas Civil Statutes, as amended.  
 13. There is no evidence of underground utilities existing on or across the subject land.  
 14. A new method and board used upon because the recorded plat did not cover mechanical.

L S SQUARED ENGINEERING  
 MUNICIPAL COMMERCIAL RESIDENTIAL  
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