

ESCROW AGREEMENT

THIS Escrow Agreement (this “**Agreement**”) made and entered into as of this ____ day of August, 2021 by and among QT South LLC (the “Developer”), City of Schertz, Texas (the “City”), and Chicago Title San Antonio as Escrow Agent, a _____ organized and existing under the laws of the State of Texas (“the **Escrow Agent**”).

RECITALS

WHEREAS, Developer and City have entered into an agreement whereby the City shall construct certain Public Improvements within the next ten (10) years, to wit: an 8” sewer line for approximately 556 feet along the west boundary of Lot 1, Block 2 of the QT 4032 Addition, adjacent to Schwab Road and 2 manholes (Exhibit A).

WHEREAS, Developer, rather than construct said improvements at this time, have agreed that it is more beneficial to them to pay the estimated costs of the improvement, as shown on Exhibit B, into an escrow account for the City to draw upon at such time the City determines it is in the City’s interest to construct the improvements.

WHEREAS, Escrow Agent hereby agrees to hold the Escrow Funds, pursuant to the terms of this Agreement, for a period not to exceed ten (10) years from the date of deposit. Should the City not draw upon the Escrowed Funds prior to the expiration of the ten (10) year terms, the Escrowed Funds shall be returned to Developer or Developer’s assigns.

AGREEMENT

NOW, THEREFORE, the Developer, the City and Escrow Agent agree to the terms of this Agreement as follows:

1. Commencement of Duties. Simultaneously with the execution and delivery of this Agreement, shall transfer to the Escrow Agent the aggregate sum of One Hundred Fifty Two Thousand Dollars (\$152,000) (the “Escrowed Funds”). Upon receipt of the Escrowed Funds and after the parties’ submission of all documentation required by the Escrow Agent to comply with the Bank Secrecy Act, the duties, and obligations of each of the parties to this Agreement will commence.
2. Operation of the Escrow.

With respect to any requested disbursement, the Developer and the City (i) certify they have reviewed any wire instructions set forth in such written disbursement direction to confirm such wire instructions are accurate, (ii) agree to indemnify and hold harmless the Escrow Agent from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agree they will not seek recourse from the Escrow Agent as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

3. Escrowed Funds. Upon receipt of the Escrowed Funds, the Escrow Agent shall hold the Escrowed Funds in escrow pursuant to the terms of this Agreement. Until such time as the Escrowed Funds shall be distributed by the Escrow Agent as provided herein, unless the Escrow Agent is otherwise directed in writing in a joint written investment direction signed by the Developer and the City, the Escrowed Funds shall be invested and reinvested by the Escrow Agent in the _____ fund. The parties hereto acknowledge that the Escrow Agent does not have a duty, nor will it undertake any duty to provide investment advice.

(a) The Escrow Agent shall be entitled to sell or redeem any such investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption.

(b) Income, if any, resulting from the investment of the Escrowed Funds shall be retained by the Escrow Agent and shall be considered, for all purposes of this Agreement, to be part of the Escrowed Funds.

4. Duties of the Escrow Agent. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent is not a party to, or bound by, the Purchase Agreement or any other agreement among the other parties hereto, and the Escrow Agent's duties shall be determined solely by reference to this Agreement. The Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person's obligations under any such document.

5. Liability of the Escrow Agent; Indemnification. The Escrow Agent acts hereunder as a depository only. The Escrow Agent is not responsible or liable in any manner for the sufficiency, correctness, genuineness, or validity of this Escrow Agreement or with respect to the form of execution of the same. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow

Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes, or other disasters. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrowed Funds, any account in which Escrowed Funds are deposited, this Agreement or any other agreement, or to appear in, prosecute or defend any such legal action or proceeding.

The Escrow Agent may consult legal counsel in the event of any dispute or question as to the construction of any provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion or instructions of such counsel.

The Escrow Agent shall not be responsible, may conclusively rely upon and shall be protected, indemnified and held harmless by Developer and City, acting jointly and severally, for the sufficiency or accuracy of the form of, or the execution, validity, value or genuineness of any document or property received, held or delivered by it hereunder, or of the signature or endorsement thereon, or for any description therein; nor shall the Escrow Agent be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any document, property or this Agreement.

In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrowed Funds, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

Developer and City, jointly and severally, hereby agree, to the extent permitted by law, to indemnify the Escrow Agent and each direction, officer, employee, attorney, agent and affiliate of the Escrow Agent for, and to hold it harmless against any loss, liability or expense incurred in connection herewith without gross negligence or willful misconduct on the part of the Escrow Agent, including without limitation legal or other fees arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability in the premises or any action for interpleader. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing, except that the Escrow Agent shall not be indemnified against any loss, liability or expense arising out of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, subject to no further appeal. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent.

6. The Escrow Agent's Fee. Escrow Agent shall be entitled to fees and expenses for its regular services as Escrow Agent as set forth in Exhibit (C). Additionally, Escrow Agent is entitled to fees for extraordinary services and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorneys' fees. Escrow Agent shall have a first lien upon all Escrowed Funds for the purposes of paying its fees and expenses. All of the Escrow Agent's compensation, costs and expenses shall be paid by Developer. Any fees and expenses shall

be payable from and may be deducted by Escrow Agent from interest and/or principal of any monies held in Escrowed Funds by Escrow Agent.

7. Security Interests. No party to this Escrow Agreement shall grant a security interest in any monies or other property deposited with the Escrow Agent under this Escrow Agreement, or otherwise create a lien, encumbrance or other claim against such monies or borrow against the same.

8. Dispute. In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until: (a) The rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (b) All differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

9. Resignation of Escrow Agent. Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least thirty (30) days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal:

(a) All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor Escrow Agent as may be designated in writing by the Developer and the City, whereupon the Escrow Agent's obligations hereunder shall cease and terminate.

(b) If no such successor Escrow Agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by the Developer and the City or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

(c) Further, if no such successor Escrow Agent has been designated by such date, the resigning or removed Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent. In such instance, the resigning or removed Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Agreement.

10. Notices. All notices, demands and requests required or permitted to be given under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon receipt, if (i) personally delivered, (ii) sent by telecopy and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, delivered as follows:

If to City: CITY OF SCHERTZ
1400 Schertz Parkway
Schertz, Texas 78154
Attention: Suzanne Williams

With copy to: Denton Navarro Rocha Bernal & Zech, P.C.
2517 N. Main Avenue
San Antonio, TX 78212

If to Developer: _____

Attention: _____

With a copy to: _____

If to the Escrow Agent Chicago Title San Antonio
270 N. Loop 1604 East, Suite 100
San Antonio, Texas 78232
Attention: Doug Becker

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas without regard to the principles of conflicts of law.

12. Binding Effect; Benefit. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

13. Modification. This Agreement may be amended, modified, or terminated at any time by a writing executed by the Developer, the City, and the Escrow Agent; provided the party making such assignment provides written notice to the other parties hereto.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

15. Headings. The section headings contained in this Agreement are inserted for convenience only, and shall not affect in any way, the meaning or interpretation of this Agreement.

16. Severability. This Agreement constitutes the entire agreement among the parties and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power, or remedy. In the event that any one or more of the provisions contained in this Agreement, shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

17. Earnings Allocation; Tax Matters; Regulatory Compliance. The parties hereto agree that, for tax reporting purposes, all interest or other income, if any, attributable to the Escrowed Funds or any other amount held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the Developer. The Developer and the City agrees to provide the Escrow Agent completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "Tax Reporting Documentation") at the time of execution of this Agreement. Additionally, the parties hereto agree that they will provide any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time, and the Bank Secrecy Act of 1970, as amended from time to time (together the "Acts"), which information will be used to verify the identities of the parties to ensure compliance with the terms of such Acts. The parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement.

[SIGNATURE PAGES FOLLOW]

Developer:

By: _____

Name: _____

Title: _____

City:

By: _____

Name: _____

Title: _____

Escrow Agent:

By: _____

Name: _____

Title: _____