

Ground Lease

Basic Terms

Date: NOVEMBER 12, 2024

Landlord: City of San Marcos

Landlord's Address: 630 East Hopkins Street, San Marcos, Texas 78666

Tenant: Frayezur Properties, Ltd., a Texas limited partnership

Tenant's Address: P. O. Box 629, San Marcos, Texas 78667-0629

Premises: Being 6,009 square feet, more or less of land area, being a portion of Lot 11, Block 9, and a portion of Comal Street, Original Town of San Marcos as recorded in Volume 46, Page 448 of the Hays County Deed Records, and being a portion of that tract described as 1.813 acres in a deed from Union Pacific Railroad Company to the City of San Marcos, dated December 5, 2013 and recorded in Volume 4897, Page 577 of the Hays County Official Public Records, as more fully described by metes and bounds in the attached Exhibit "A," made a part hereof for all purposes.

Term:

Commencement Date: January 1, 2025

Termination Date: December 31, 2029

Renewal: Subject to mutual agreement of the parties, provided either party notifies the other in writing of its intention to renew within 90 days of Termination Date.

Rent:

Year 1: \$3,605.40
Year 2: \$3,713.56
Year 3: \$3,824.97
Year 4: \$3,939.72
Year 5: \$4,057.91

Permitted Use: Continuation of existing premises use by business as parking for Toma Tacos restaurant; banned uses for lease and subleases specifically include adult oriented businesses, tattoo parlors, cannabis products shops.

Tenant's Insurance: As required by Insurance Addendum

Definitions

“Agent” means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

“Essential Services” means utility connections reasonably necessary for occupancy of the Permitted Use.

“Injury” means (1) harm or impairment or loss of property or its use, (2) harm or death of a person, or (3) “personal and advertising injury” as defined in the form of liability insurance Tenant is required to maintain.

“Lienholder” means the holder of a deed of trust covering the Premises.

“Rent” means Annual Rent in the amounts stated above, plus any other amounts of money payable by Tenant to Landlord.

Clauses and Covenants

A. Tenant agrees to—

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Premises in their present condition “AS IS,” the Premises being currently suitable for Permitted Use.
3. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, together with any public right-of-way abutting the Premises, free and clear from any obstructions or conditions which might create a hazard, or from any litter and debris. Lessee shall also be responsible for mowing the Premises and areas of public right-of-way abutting the Premises on a regular basis, but no less often than necessary to ensure that grass and weeds do not exceed 12 inches in height in accordance with Chapter 34, Division 2 of the San Marcos City Code.
4. Obey all laws relating to Tenant’s:
 - a. Use, maintenance of the condition, and occupancy of the Premises,
 - b. Keeping the Premises and adjacent property in attractive-looking, clean and sanitary condition, free of debris, and

- c. Any requirements imposed by utility companies serving or insurance companies covering the Premises.
5. Pay annually, in advance, on the first day of the year, the Base Rent to Landlord at Landlord's Address.
6. Pay a late charge of 10 percent of any Rent not received by Landlord by the fifth day after it is due, plus 10 percent of additional unpaid balances for previous rents, recalculated and charged annually.
7. Obtain and pay for all Essential Services used by Tenant.
8. Pay, prior to delinquency, all taxes levied during the life of this lease on real property and improvements comprising of the Premises, together with all personal property and improvements on the Premises.
9. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.
10. Repair, replace, and maintain the Premises, normal wear excepted.
11. Repair, replace, and maintain the (a) roof, (b) foundation, and (c) structural soundness of the exterior walls, excluding windows and doors.
12. Allow Landlord to file a financing statement perfecting the security interest created by this lease.
13. Vacate the Premises on the last day of the Term.
14. Provide Landlord written notice of any sublease or assignment at least 90 days prior to the Termination of this lease and at least 90 days prior to the commencement of any sublease or assignment.
15. Tenant shall not permit any sign on the Premises, except signs relating to Tenant's business that are authorized by permit from the Landlord. No political signs shall be placed on the Premises or on the adjacent city road right of ways.
16. ***INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF TENANT'S INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE***

BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.

B. Tenant agrees not to—

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Use the Premises, or allow any sublessee to use the Premises, in any way that would increase insurance premiums or void insurance on the Premises.
5. Alter, or allow any sublessee to alter, the Premises and any tenant owned improvements without applicable required City building or related permits.
6. Allow a lien to be placed on the Premises.
7. Assign this lease or sublease any portion of the Premises without the written consent approved by Landlord's governing body.

C. Landlord agrees to—

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Obey all laws relating to Landlord's operation of the Premises.

D. Landlord agrees not to—

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

E. Landlord and Tenant agree to the following:

1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.
3. *Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Exhibit B "Insurance Addendum".
4. *Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**
5. *Condemnation/Substantial or Partial Taking*
 - a. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.
 - b. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.
 - c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

6. *Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code.
7. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.
8. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease.
9. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).
10. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet, (b) enter the Premises and perform Tenant's obligations, and (c) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.
11. *Default/Waiver/Mitigation.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.
12. *Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.
13. *Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.
14. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.
15. *Venue.* Exclusive venue is in the county in which the Premises are located.

16. *Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.
17. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.
18. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
19. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
20. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Landlord: City of San Marcos

**Tenant: Frayezur Properties, Ltd., a Texas
limited partnership**

Stephanie Reyes, City of San Marcos



Fred R. Bost, III, General Partner

Exhibit A

DESCRIPTION OF 6,009 SQUARE FEET, MORE OR LESS OF LAND AREA, BEING A PORTION OF LOT 11, BLOCK 9, AND A PORTION OF COMAL STREET, ORIGINAL TOWN OF SAN MARCOS (OTSM) AS RECORDED IN VOLUME 46, PAGE 448 OF THE HAYS COUNTY DEED RECORDS, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 1.813 ACRES IN A DEED FROM UNION PACIFIC RAILROAD COMPANY TO THE CITY OF SAN MARCOS, DATED DECEMBER 5, 2013 AND RECORDED IN VOLUME 4897, PAGE 577 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a Concrete monument found in the common east line of L.B.J Drive and the west line of Lot 11, Block 9, OTSM, for the common south corner of that tract described as 0.081 of an acre in a deed from Stokes Family Partners, Ltd. to Frayezur Properties, Limited Partnership, dated April 19, 2007 and recorded in Volume 3181, Page 468 of the Hays County Official Public Records, and a northwest corner of the City of San Marcos tract, from which a ½" iron rod found for the northwest corner of the Frayezur Properties tract bears N 08° 40' 49" W 75.85 feet;

THENCE leaving L.B.J. Drive and the **PLACE OF BEGINNING** with the common northwest line of the City of San Marcos tract and the southeast line of the Frayezur Properties tract, as shown on that plat numbered 28282-24-3-b, dated July 12, 2024 as prepared for the City of San Marcos by Byrn & Associates, Inc. of San Marcos, Texas, **N 42° 23' 11" E 120.70 feet** to a concrete nail set with an aluminum washer stamped "Byrn Survey" for the northeast corner of the Frayezur Properties tract;

THENCE leaving the Frayezur Properties tract and crossing a portion of Lot 11, Block 9, OTSM, **N 81° 19' 11" E 64.53 feet** to a concrete nail set with an aluminum washer stamped "Byrn Survey" in the common east line of Lot 11, Block 9, OTSM and the west line of the alley within Block 9;

THENCE with the common east line of Lot 11, Block 9 and the west line of the alley, **S 08° 35' 25" E 2.24 feet** to a calculated point;

THENCE crossing a portion of Lot 11, Block 9 and a portion of Comal Street, the following five courses:

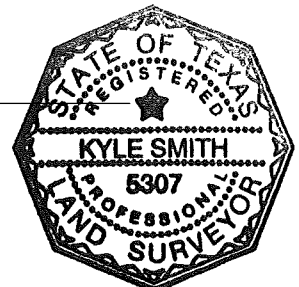
1. **S 42° 35' 33" W 118.83 feet** to a calculated point,
2. With a right breaking curve having the following characteristics, Radius = 108.02 feet, Central Angle = 23° 49' 46", Arc Length = 44.93 feet and a Chord which bears **S 55° 47' 00" W 44.60 feet** to a calculated point,
3. **S 71° 15' 16" W 11.24 feet** to a calculated point,
4. **N 17° 32' 32" W 7.36 feet** to a calculated point, and
5. **S 81° 50' 36" W 13.27 feet** to a calculated point in the east line of L.B.J. Street;

THENCE with the east line of L.B.J. Street, **N 08° 40' 49" W 14.53 feet** to the **PLACE OF BEGINNING**.

There are contained within these metes and bounds 6,009 square feet, more or less, of land area as prepared from public records and a survey made on the ground on July 12, 2024 by Byrn & Associates, Inc. of San Marcos, Texas. The Bearing Basis for this description was determined from GPS observations and refers to Grid North of the Texas State Plane Coordinate System, NAD 83, South Central Zone.



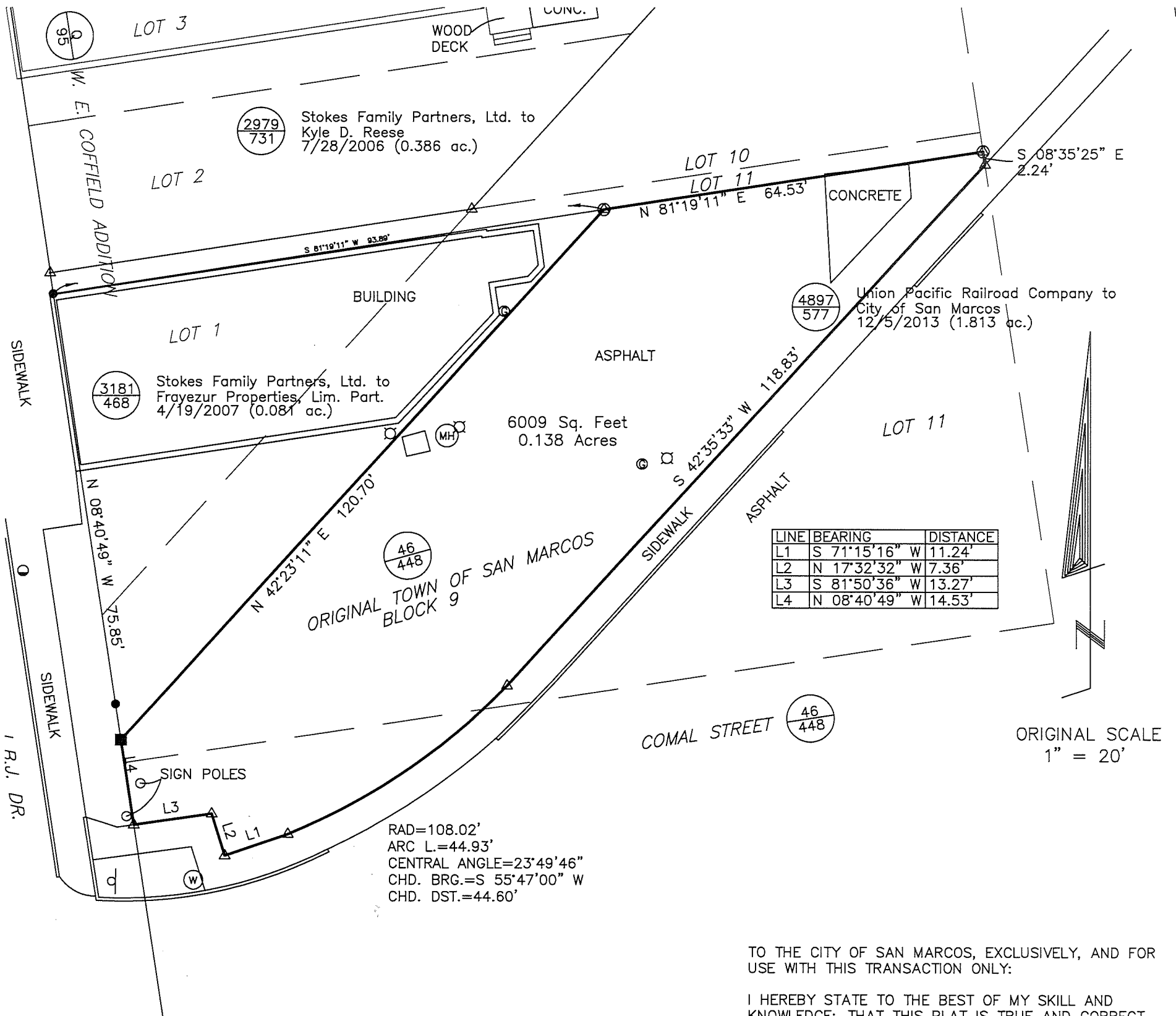
Kyle Smith, R.P.L.S. #5307



Client: City of San Marcos
Date: July 12, 2024
Subd: OTSM, Block 9
County: Hays
Job No: 28282-3
FND 6,009 sq. ft.

LEGEND

- VOL PG HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- △ CALCULATED POINT
- △ CONCRETE NAIL SET
- CONCRETE MONUMENT FOUND
- MH MANHOLE
- ⊙ GAS LID
- ⊙ CLEANOUT
- ⊙ CONCRETE NAIL SET WITH ALUMINUM WASHER STAMPED "BYRN SURVEY"

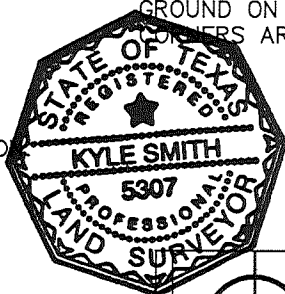


SURVEYORS NOTES

- FENCES MEANDER.
- BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
- ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO.48209C0389F, DATED 9/2/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
- THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED JULY 12, 2024 PREPARED BY BYRN AND ASSOCIATES, INC. OF SAN MARCOS, TEXAS.
- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

TO THE CITY OF SAN MARCOS, EXCLUSIVELY, AND FOR USE WITH THIS TRANSACTION ONLY:

I HEREBY STATE TO THE BEST OF MY SKILL AND KNOWLEDGE: THAT THIS PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND ON 7/12/2024. THAT ALL PROPERTY CORNERS ARE MONUMENTED AS SHOWN HEREON.



KYLE SMITH, R.P.L.S. NO. 5307

BYRN & ASSOCIATES, INC.

SURVEYING

P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945
FIRM NO. 10070500

CLIENT: CITY OF SAN MARCOS
DATE: 7/12/2024
OFFICE: K. SMITH
CREW: K. SMITH
FB/PG: 797/32
PLAT NO. 28282-24-3-b

PLAT OF 6,009 SQUARE FEET, BEING A PORTION OF LOT 11, BLOCK 9, AND A PORTION OF COMAL STREET, ORIGINAL TOWN OF SAN MARCOS, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

Exhibit "B"
Insurance Addendum

Tenant shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

- A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).
- B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).
- C. **Umbrella or Excess Insurance.** If Tenant utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- D. All policy(ies) required above must include Landlord as an "Additional Insured" using ISO Additional Insured Endorsement CO 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Landlord as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Landlord's negligence whether sole or partial, active or passive, and shall not be limited by Tenant's liability under the indemnity provisions of this Lease.
- E. Tenant waives all rights against Landlord and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Tenant required by this agreement.
- F. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by the state of Texas.
- G. Prior to execution of this Lease, Tenant shall furnish Landlord with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.
- H. All insurance policies must be written by a reputable insurance company acceptable to Landlord, and authorized to do business in the state of Texas.
- I. The fact that insurance is obtained by Tenant, or by Landlord on behalf of Tenant, will not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Landlord

from Tenant or any third party will not be limited by the amount of the required insurance coverage.