

SETTLEMENT AGREEMENT

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HAYS	§	

This Settlement Agreement (the “Agreement”) is entered into by and between SM Block 21, LLC (“SM Block 21”) and the City of San Marcos (the “City”), sometimes collectively referred to as the “Parties.”

WHEREAS, by virtue of the Special Warranty Deed dated March 12, 2020 recorded at Document #20009699 of the Official Public Records of Hays County, Texas, and the Special Warranty Deed dated May 1, 2020 and recorded at Document #20017093 of the Official Public Records of Hays County, Texas, SM Block 21 is the owner of:

Lots 4 and 5, including the area of the former alley in between Lots 4 and 5, Block 21 of the Original Town of San Marcos, Hays County, Texas, according to the map or plat thereof recorded in Volume 46, Page 448 of the Official Public Records of Hays County, Texas (“Lots 4 and 5”);

WHEREAS, on June 11, 1973, the City enacted the Ordinance abandoning, vacating, discontinuing and closing an alley segment residing between Lots 4 and 5, which ordinance is recorded at Volume 260, page 734, *et seq.*, of the Official Public Records of Hays County, Texas (the “Vacation Ordinance”);

WHEREAS, on July 3, 1973, the City executed and delivered an instrument in which the City did “bargain, sell, release, and forever quitclaim” the alley segment between Lots 4 and 5 to SM Block 21’s predecessor in title (the “Alley Conveyance”);

WHEREAS, on February 10, 2023, SM Block 21 filed the lawsuit styled SM BLOCK 21, LLC v. City of San Marcos; Cause No. 23-0339 seeking declaratory relief and making other claims premised upon the area between Lots 4 and 5 no longer being an alley and SM Block 21 owning

marketable tile to the area, free of any rights of the City or the public to use the area for ingress or egress or otherwise (the “Lawsuit”);

WHEREAS, on March 17, 2023, the City filed Defendant’s Original Answer in the Lawsuit, which answer includes a plea to the jurisdiction;

WHEREAS, without further summarizing the various pleading amendments in the Lawsuit, as used herein the meaning of “Lawsuit” will include and refer to all claims, counterclaims, defenses, affirmative defenses, pleas, suits in equity, remedies, and requests for relief pled, demanded, sought or asserted at any time in the Lawsuit by any of the Parties; and

WHEREAS, without admitting the contentions or allegations of law or fact asserted, or which could have been asserted, by an opposing party, SM Block 21 and the City are entering into this Agreement to evidence the settlement and release of all claims and disputes between and among them at issue in the Lawsuit, and are doing so in order to avoid further costs, expenses, and risks of litigation between them and to buy peace.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SM Block 21 hereby pays Forty Five Thousand Dollars (\$45,000) in good funds to the City, and the City hereby accepts that amount in exchange for the promises, releases, representations and warranties expressly described in this Agreement, the overall intent of which is that SM Block 21, its successors or assigns shall own the area of the former alley between Lots 4 and 5 free and clear of the area being a public access way or being burdened with any other public or private encumbrance.

2. Attached hereto and incorporated herein by reference are the following:

a. Exhibit “1.” A specimen copy of the Agreed Judgment, which the Parties, by and through the signature of their respective counsel, agree shall be submitted to the Court for signature and entry in the Lawsuit.

b. Exhibit “2.” A specimen copy of a Deed Without Warranty which the City is hereby executing and delivering to SM Block 21.

2. SM Block 21, on its behalf and on behalf of its Manager, employees, agents, attorneys, affiliates, representatives, predecessors, successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby RELEASE AND FOREVER DISCHARGE the City and its City Manager, employees, agents, attorneys (including, but not limited to, Fredrick Quast, Bessie Bronstein, Mick Mckamie, and the law firm of Taylor, Olson, Adkins, Sralla & Elam, LLP) successors, and assigns from any and all known claims, pleas, demands, damages, actions, causes of action, or suits in equity, of whatsoever kind or nature, accrued or accruing as of the effective date of this Agreement, arising out of the events made the subject of the recitals set forth above and/or the events made the basis of, or which could have been made the basis of, the Lawsuit, whether arising under the Constitution of the United States, the statutes of the United States, the Constitution of the State of Texas, the statutes of the State of Texas, the common law, or any other law; provided, however, no release of the agreements, representations or warranties expressly set forth in this Agreement, or the documents expressly incorporated herein by reference, is made or intended.

3. The City, on its behalf and on behalf of its City Manager, employees, agents, attorneys, affiliates, representatives, predecessors, successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby RELEASE AND FOREVER DISCHARGE SM Block 21, its Manager, employees, agents,

attorneys (including, but not limited to, Philip D. Mockford and Jackson Walker L.L.P.), affiliates, representatives, predecessors, successors, and assigns from any and all known claims, pleas, demands, damages, actions, causes of action, or suits in equity, of whatsoever kind or nature, accrued or accruing as of the effective date of this Agreement, arising out of the events made the subject of the recitals set forth above and/or the events made the basis of, or which could have been made the basis of, the Lawsuit, whether arising under the Constitution of the United States, the statutes of the United States, the Constitution of the State of Texas, the statutes of the State of Texas, the common law, or any other law; provided, however, no release of the agreements, representations or warranties expressly set forth in this Agreement, or the documents expressly incorporated herein by reference, is made or intended.

4. Except as provided in this Agreement, the Parties agree that all costs and expenses incurred in litigating (whether prosecuting or defending) the claims released herein, including attorneys' fees and expenses, shall be borne by the party who incurred the cost or expense.

5. SM BLOCK 21 INDEMNIFIES THE CITY AND HOLDS THE CITY HARMLESS (INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES) FROM ANY AND ALL KNOWN CLAIMS, DEBTS, LIABILITIES, DEMANDS, OBLIGATIONS, COSTS, EXPENSES, ACTIONS, CAUSES OF ACTION, OR SUITS IN EQUITY BASED ON OR ARISING OUT OF, OR IN CONNECTION WITH, THE LAWSUIT, BY SM BLOCK 21 OR BY ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER SM BLOCK 21 REGARDLESS OF CAUSE OR THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF THE CITY.

6. TO THE EXTENT PERMITTED AND NOT OTHERWISE PROHIBITED BY THE TEXAS CONSTITUTION OR OTHER LAW, THE CITY INDEMNIFIES SM BLOCK 21

AND HOLDS SM BLOCK 21 HARMLESS (INCLUDING ATTORNEYS' FEES AND LITIGATION EXPENSES) FROM ANY AND ALL KNOWN CLAIMS, DEBTS, LIABILITIES, DEMANDS, OBLIGATIONS, COSTS, EXPENSES, ACTIONS, CAUSES OF ACTION, OR SUITS IN EQUITY BASED ON OR ARISING OUT OF, OR IN CONNECTION WITH, THE LAWSUIT, BY THE CITY OR BY ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER THE CITY REGARDLESS OF CAUSE OR THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF SM BLOCK 21.

7. The Parties acknowledge, represent, warrant and confirm the following:

a. No party is aware of any claims, demands, damages, actions, causes of action or suits in equity not made the subject of the recitals set forth above or the Lawsuit.

b. The Parties have carefully read and understand the effect of this Agreement. Each of the Parties has had the assistance of separate counsel in carefully reviewing, discussing and considering all terms of this Agreement. No party shall be entitled to have any provision of this Agreement construed against the other party on the ground that the second party drafted or proposed that provision.

c. No party's execution of this Agreement is based upon its reliance upon any representation, understanding, or agreement not expressly set forth herein. No party (or its agent) has made any representation to any other party (or its agent) not expressly set forth herein. Further, but not in limitation of the foregoing, the Parties have made no representations one to another which relate to or effect the consideration, cause, or any condition for which this Agreement is granted and which representations have not been expressly embodied in this Agreement.

d. The Parties execute this Agreement as their free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of a party or any other person or entity. EACH PARTY HAS MADE ITS OWN DETERMINATION AS TO WHETHER TO ENTER THIS AGREEMENT, AND IS RELYING SOLELY AND EXCLUSIVELY ON ITS OWN DECISION AND JUDGMENT IN DOING SO.

e. Acceptance of this Agreement or any act appertaining hereto is in no way an admission of any fault or liability by any of the Parties.

f. Each of the Parties is the sole owner of the claims or causes of action being released herein. None of the Parties have conveyed or assigned any interest in any such claims or causes of action to any person or entity not a party to this Agreement.

g. Each of the Parties has full and complete authorization and power to execute this Agreement in the capacity herein stated. In particular, Milan Malkani has full authority to sign this Agreement on behalf of SM Block 21. Likewise, Stephanie Reyes, City Manager has full authority from the City to sign this Agreement on behalf of the City. This Agreement is a valid, binding and enforceable obligation of each of the Parties and does not violate any law, rule, regulation, contract, or agreement otherwise enforceable by any of the Parties.

h. This Agreement and the documents expressly incorporated herein by reference, constitute the entire agreement between the Parties, embody all agreements with respect to the respective rights, obligations, and liabilities of the Parties, and supersede all prior agreements and understandings, if any, related to the subject matter of this Agreement.

8. This Agreement has been executed and delivered, and shall be construed in accordance with the applicable laws of the State of Texas and the United States of America. The Parties agree that their performance of this Agreement is occurring in Hays County, Texas.

9. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, executors, administrators, assigns, successors-in-interest, predecessors-in-interest, and anyone claiming by, through, or under any one of them.

10. In any suit brought to construe or enforce the terms of this Agreement, the prevailing party shall be entitled to be awarded its reasonable and necessary attorneys' fees.

11. This Agreement cannot be changed or terminated orally.

THIS WRITTEN AGREEMENT, THE RECORD OF MEDIATION AGREEMENT, AND THE DOCUMENTS EXPRESSLY INCORPORATED HEREIN BY REFERENCE REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12. The Parties agree to enter into such other contracts or instruments which a party may later discover is necessary in order to accomplish the intent of this agreement. In particular, SM Block 21 needs whatever documentation may be reasonably necessary in order for a licensed Texas title company to insure marketable title, with no alley access encumbrance, for the former alley lying between Lots 4 and 5.

13. This Agreement may be executed in multiple identical counterparts, each of which when fully executed shall be deemed an original.

EXECUTED by the Parties on the dates set forth below, to be effective the date on which the last person or entity signs.

SM Block 21, LLC
A Texas Limited Liability Company

Dated: _____

By: _____
Milan Malkani
Manager

The City of San Marcos
A Texas Home Rule Municipality

Dated: _____

By: _____
Stephanie Reyes
City Manager

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on _____, 2024, by Milan Malkani, Manager SM Block 21, LLC on behalf of SM Block 21, LLP.

Notary Public - State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on _____, 2024, by Stephanie Reyes, City Manager of the City of San Marcos on behalf of the City of San Marcos.

Notary Public - State of Texas

CAUSE NO. 23-0339

SM BLOCK 21 LLC,
Plaintiff

V.

CITY OF SAN MARCOS AND
STEPHANIE REYES CITY MANAGER
OF THE CITY OF SAN MARCOS,
Defendants

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HAYS COUNTY, TEXAS

207TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

ON THIS DAY came on for consideration the above entitled and numbered cause. Plaintiff SM Block 21, LLC (“SM Block 21”) and Defendant City of San Marcos (the “City”) announced to the court that are entering into a full settlement of the matters in dispute between them and are entering into a written settlement agreement of which this Agreed Final Judgment is a material part. The Court accepts the terms of the parties settlement and consistent therewith hereby makes the following findings and rulings:

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that, pursuant to the provisions of Chapter 37 of the Texas Civil Practice and Remedies Code, in particular §37.004 and §37.006(b), the Court hereby DECLARES:

(a) SM Block 21 is the owner of Lots 4 and 5 and the area of the alley in between those lots as described in the March 12, 2020, Special Warranty Deed from Leghorn Investments, LLC to SM Block 21 recorded at Document # 20009699, and the May 1, 2020, Special Warranty deed from Haysco SM, LLC to SM Block 21 recorded at Document # 20017093.

(b) The City makes no further claim of any right, title or interest in or to the alley shown on various surveys and plats that resides between Lots 4 and 5, Block 21 of the Original Town of San Marcos, Hays County, Texas as depicted on the survey map and metes and bounds description attached hereto as Exhibit “A” (the “Former Alley”) and has executed a deed without warranty to SM Block 21 conveying the interests of the City, if any, such that SM Block 21 and its successors and assigns own and enjoy the right to exclusively possess the area of land in the location of the Former Alley free of any continuing or future claims or use by the City.

(c) On June 11, 1973, the City enacted the Ordinance abandoning, vacating, discontinuing and closing the Former Alley, which ordinance is recorded at Volume 260, page 734, *et seg*, of the Official Public Records of Hays County, Texas.

(d) SM Block 21 owns the Former Alley in fee simple absolute, and possesses good and marketable title in and to the area in its “AS IS” condition, without warranty as to title and without any representations by the City as to the condition or suitability of the Former Alley for the indented uses by SM Block 21.

(e) Pursuant to Tex. Civ. Prac. & Rem Code §16.005, SM Block 21 has “complete title to the [Former Alley] by limitations and the right of the [City] . . . to revoke or rescind the order or ordinance is barred,” and in particular any claim by the City of right, title or interest in or to the Former Alley is barred.

SIGNED this _____ day of _____, 2024.

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Telephone: 512-236-2000
Facsimile: 512-236-2002

By: _____
Philip Dale Mockford
State Bar No. 14244100
dmockford@jw.com

ATTORNEYS FOR PLAINTIFF SM BLOCK 21 LLC

TAYLOR, OLSON, ADKINS, SRALLA & ELAM, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: 817-332-2580
Facsimile: 817-332-4740

By: _____
William M. McKamie
State Bar No. 13686800
mmckamie@toase.com
Bessie Bronstein
State Bar No. 24118304
bbronstein@toase.com

ATTORNEYS FOR DEFENDANT CITY OF SAN MARCOS

PLAT OF 0.03 OF AN ACRE, BEING A PORTION
OF AN ALLEY IN BLOCK 21, ORIGINAL TOWN
OF SAN MARCOS, HAYS COUNTY, TEXAS

Exhibit A

DESCRIPTION OF 0.03 OF AN ACRE, MORE OR LESS, OF LAND AREA, BEING A PORTION OF AN ALLEY IN BLOCK 21, ORIGINAL TOWN OF SAN MARCOS AS RECORDED IN VOLUME 46, PAGE 448 OF THE HAYS COUNTY DEED RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a concrete nail with an aluminum washer stamped "Byrn Survey" set in the common south line of University Drive and the north line of Block 21, Original Town of San Marcos, for the common northwest corner of Lot 4, Block 21 and that tract described as 0.31 of an acre in a deed from Leghorn Investments, LLC to SM Block 21, LLC, dated March 12, 2020 and recorded in Hays County Instrument Number 20009699 of the Hays County Official Public Records, and the northeast corner of the Alley within Block 21;

THENCE leaving University Drive and the **PLACE OF BEGINNING** as shown on that plat numbered 28254-24-b, dated January 29, 2024 as prepared for Milan Milkani by Byrn & Associates, Inc. of San Marcos, Texas, with the common east line of the Alley and the west line of Lot 4 and the SM Block 21, LLC 0.31 of an acre tract, **S 08° 43' 56" E 82.93 feet** to a concrete nail found with an aluminum washer stamped "Byrn Survey" for the common southwest corner of Lot 4, the northwest corner of Lot 3, Block 21, and an interior corner in the west line of the SM Block 21, LLC 0.31 of an acre tract;

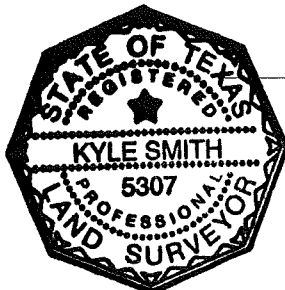
THENCE leaving Lots 3 and 4 and crossing the alley, with a south line of the SM Block 21, LLC 0.31 of an acre tract, **S 81° 15' 59" W 16.67 feet** to a calculated point within a utility pole in the common west line of the alley and the east line of that tract described as 1.242 acres in a deed from Haysco SM, LLC to SM Block 21, LLC, dated May 1, 2020 and recorded in Hays County Instrument Number 20017093 of the Hays County Official Public Records, for the common southeast corner of Lot 5 and the northeast corner of Lot 6, Block 21, and being an exterior corner in the west line of the SM Block 21, LLC 0.31 of an acre tract, from which a ½" iron rod found with a plastic cap stamped "Byrn Survey" for the common southwest corner of the SM Block 21, LLC 0.31 of an acre tract and an interior corner in the east line of the SM Block 21, LLC 1.242 acre tract bears **S 08° 43' 59" E 39.96 feet**;

THENCE leaving the SM Block 21, LLC 0.31 of an acre tract, with the common west line of the alley and the east line of the SM Block 21, LLC 1.242 acre tract, **N 08° 43' 59" W 82.92 feet** to a concrete nail with an aluminum washer stamped "Byrn Survey" found in the common north line of Block 21 and the south line of University Drive, for the common northwest corner of the alley and the northeast corner of Lot 5 and the SM Block 21, LLC 1.242 acre tract, from which a concrete nail with an aluminum washer stamped "Byrn Survey" for the northwest corner of the SM Block 21, LLC 1.242 acre tract bears **S 81° 03' 01" W 158.30 feet**;

THENCE leaving the SM Block 21, LLC 1.242 acre tract, with the common north line of the alley and the south line of University Drive, **N 81° 13' 38" E 16.68 feet** to **THE PLACE OF BEGINNING**.

There are contained within these metes and bounds 0.03 of an acre, more or less, of land area as prepared from public records and a survey made on the ground on January 29, 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.

Client: Malkani, Milan
Date: January 29, 2024
Subd. OTSM
County: Hays
Job No: 28254-24
FND 0.03 ac



A handwritten signature in black ink, appearing to read "Kyle Smith", written over a horizontal line.

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

DEED WITHOUT WARRANTY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: February ___, 2024

Grantor: City of San Marcos, Texas

**Grantor's
Mailing Address:** 630 East Hopkins Street,
San Marcos, Texas 78666 (*Hays County, Texas*)

Grantee: SM Block 21, LLC

Grantee's Mailing Address: 2100 Seven Wins, Austin, Texas 78733 (*Travis County, Texas*)

Consideration: TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements): The real property being a 16.67-foot-wide and approximately 82.93-foot-long alleyway adjacent to and located between Lot 4 and Lot 5 of Block 21, Original Town of San Marcos, Hays County, Texas, as shown on the map or plat of the original town recorded at Volume 46, Page 448, Deed Records of Hays County, Texas, and as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, and any improvements thereon.

Reservations and Exceptions to Conveyance and Warranty: None.

Conveyance: For and in consideration of the sum of Ten Dollars and no cents (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby bargain, sell, grant, and convey unto the Grantee and its successors and assigns, all of Grantor's right, title and interest in the Property described above.

No Warranties: The conveyance is without express or implied warranty. All warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

EXECUTED this ___ day of February, 2024.

GRANTOR:

City of San Marcos, Texas

By: _____
Stephanie Reyes, City Manager

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

Before me on this day personally appeared Stephanie Reyes, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she is the City Manager of the City of San Marcos, Texas, and she acted on and by the authority of the City Council in executing the above deed for the purposes and consideration therein expressed.

Given under my and seal of office this _____ day of February, 2024.

[SEAL]

Notary Public, State of Texas

My commission expires: _____

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OF AN ALLEY IN BLOCK 21, ORIGINAL TOWN
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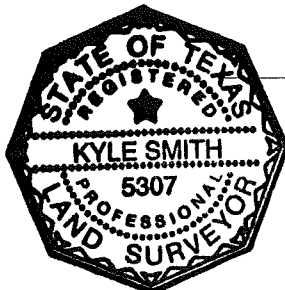
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