


AMENDED AND RESTATED REAL ESTATE SALES CONTRACT

The City of San Marcos, Texas ("Seller") and Life Style Development, L.L.C. ("Buyer") entered into that certain Real Estate Sales Contract dated February 4, 2016 for the purchase of Lot 1-A and Lot 2, Cottonwood Parkway Addition Amended, together with an associated 52 foot wide road reserve (the "Original Contract"). The Purchase Price under the Original Contract was \$3,265,000. The Closing Date under the Original Contract was 21 days after an Inspection period ending May 4, 2016.

By a series of amendments to the Original Contract, the Property was enlarged to include an approximately 3.66-acre tract adjacent to the original Property and the Purchase Price was adjusted accordingly to specify a price per square foot for the various tracts for a Purchase Price of \$3,114,317.15. By such amendments, the Closing Date was also extended to October 6, 2017 upon payment by Buyer of extra deposits of earnest money ("Additional Earnest Money"). Among other things, by this Amended and Restated Real Estate Sales Contract (the "contract"), the Parties wish to enable Buyer to purchase the Property in two separate phases. This contract amends and restates the Original Contract. Upon execution of this contract by Seller and Buyer and delivery by Buyer of ~~\$6,000~~ ^{\$1,000} to be added to the Earnest Money, this contract shall become effective and relate back to the Effective Date of the Original Contract.

 **Seller:** City of San Marcos, Texas

Address: 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Phone: 512.393.8151

Fax: 855.759.2846

E-mail: *saguirre@sanmarcostx.gov*

Entity Type: Texas home rule Municipal Corporation

Seller's Broker: Carter Breed, CBRE, Inc.

Address: 100 Congress Avenue, Suite 500, Austin, Texas 78701

Phone: 512.499.4923

Fax: 512.499.4999

E-mail: *carter.breed@cbre.com*

Buyer: Life Style Development L.L.C.

Address: 4851 Keller Springs Rd., Suite 209, Addison, Dallas County, Texas 75001

Phone: 972.733.0096

Fax: 972.733.1864
E-mail: *richard@tmaorganics.com*
Entity Type: Texas limited liability company

Buyer's Broker: Mike Dallas

Address: 900 Congress Avenue, Suite L-122, Austin, Texas 78701
Phone: 512.708.1800
Cell: 512.626.7878
E-mail: *mike@mikedallas.com*

Property:

Tract 1: 3.66 acres, more or less, in the J.M. Veramendi Survey, together with that certain adjacent 0.70 acre, 52 foot wide right-of-way, as shown in Exhibit A, together with any improvements ("Improvements").

Tract 2: Lot 1-A and Lot 2, Cottonwood Parkway Addition Amended, being a replat of Lot 1, Cottonwood Parkway, as shown in Exhibit A, together with any improvements ("Improvements").

Tracts 1 and 2 are, collectively, the "Property" or the "Land."

Title Company: Chicago Title-Attn: Leslie Wheeler

Address: 14160 N. Dallas Parkway, Suite 810
Phone: 214.389.2401
Fax: 214.361.4169
E-mail: *lwheeler@ctt-tx.com*

Purchase Price: Lot 1-A and 52-foot wide road reserve-\$2.79 per square foot
3.66-acre tract-\$2.25 per square foot
Lot 2-\$100,000

Earnest Money: \$60,000.00 (\$20,000 under Original Contract, plus \$40,000 deposited pursuant to amendments to Original Contract)

Surveyor: Byrn & Associates, Inc.

Survey Category: 1A

Buyer's Liquidated Damages: \$1,000.00

Seller's Additional Liquidated Damages: \$1,000.00

County for Performance: Hays County, Texas

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Seven days after execution of this contract by both parties
2. Delivery of Title Commitment: 30 days after the Effective Date
3. Delivery of Survey: 30 days after the Effective Date
4. Delivery of UCC Search: 30 days after the Effective Date
5. Delivery of legible copies of instruments referenced in the Title Commitment, Survey, and UCC Search: Five days after Delivery of Title Commitment
6. Delivery of Title Objections: 15 days after delivery of the Title Commitment, Survey, and UCC Search and legible copies of the instruments referenced in them
7. Delivery of Seller's records as specified in Exhibit C: 15 days after the Effective Date
8. End of Inspection Period: September 16, 2016
9. Closing Date:

Tract 1: Within 21 days after issuance of a Site Preparation Permit for Tract 1 by the City of San Marcos, but no later than March 21, 2018.

Tract 2: Within 21 days after FEMA's issuance of a Conditional Letter of Map Revision (CLOMR) for Tract 1, but no later than June 1, 2018, subject to timely closing on Tract 1.

B. Closing Documents

1. At closing, Seller will deliver the following items:

Special Warranty Deed with Vendor's Lien

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

A fully executed replat of the Property

Customary closing items as may be requested by the Title Company

2. At closing, Buyer will deliver the following items:

Balance of Purchase Price

Evidence of Buyer's authority to close this transaction

Loan Documents required by third-party lender

Customary closing items as may be requested by the Title Company

The documents listed in this section B are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the Closing Documents for which forms exist in the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas) will be prepared using those forms.

C. Exhibits

The following are attached to and are a part of this contract:

Exhibit A—Description of the Land

Exhibit B—Representations; Environmental Matters

Exhibit C—Seller's Records

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

E. Interest on Earnest Money

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will become part of the Earnest Money.

F. Title and Survey

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, or directly by Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor, dated after the Effective Date, that complies with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category and shows all easements and flood plains on the Property.

4. *UCC Search.* "UCC Search" means written reports stating the instruments that are on file in the Texas secretary of state's UCC records, the UCC records of any other appropriate state, and the UCC records in the jurisdiction in which Seller is organized, showing as debtor Seller and all other owners of the Personal Property during the five years before the Effective Date of this contract.

5. *Delivery of Title Commitment, Survey, UCC Search, and Legible Copies.* Seller must deliver the Title Commitment to Buyer and Buyer's attorney by the deadline stated in paragraph A.2.; the Survey by the deadline stated in paragraph A.3.; the UCC Search by the deadline stated in paragraph A.4.; and legible copies of the instruments referenced in the Title Commitment, Survey, and UCC Search by the deadline stated in paragraph A.5.

6. *Title Objections.* Buyer has until the deadline stated in paragraph A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, UCC Search, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey, Title Commitment (other than Schedule C requirements, to which Buyer need not object), and UCC Search to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must cure all Schedule C requirements at no cost to Buyer, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's records specified in Exhibit C, or otherwise make those records available for Buyer's review, by the deadline stated in paragraph A.7.

2. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it at Buyer's cost, subject to the following:

- a. Buyer must deliver evidence to Seller that Buyer, or Buyer's consultants and contractors, have liability insurance for its proposed inspection activities, with coverages and in amounts that are reasonably satisfactory to Seller.
- b. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests.
- c. If the Property is physically altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs.
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within five days after their preparation or receipt.
- e. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. *Environmental Assessment.* Buyer has the right to conduct environmental assessments of the Property. Seller will provide, or will designate a person with knowledge of the use and condition of the Property to provide, information requested by Buyer or Buyer's agent or representative regarding the use and condition of the Property during the period of Seller's ownership of the Property. Seller will cooperate with Buyer in obtaining and providing to Buyer or its agent or representative information regarding the Property.

4. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. If Buyer does not notify Seller of Buyer's termination of the contract before the end of the Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

5. Buyer's Indemnity and Release of Seller

- a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except those arising out of the acts or omissions of Seller and those for repair or remediation of existing conditions discovered by Buyer's inspection. The obligations of Buyer under this provision will survive termination of this contract and closing.

- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

H. Representations

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date. Seller will promptly notify Buyer if Seller becomes aware that any of the representations are not true and correct.

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; and (b) use the Property in the same manner as it was used on the Effective Date. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property without Buyer's prior written consent. If Seller's notice is given within three days before the end of the Inspection Period, the Inspection Period will be extended for three days. After the end of the Inspection Period, Seller may not enter into, amend, or terminate any contract that affects the Property without first obtaining Buyer's written consent.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid or incurred by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken, and (d) no change in the Purchase Price will be made. Seller shall not

institute or threaten to institute condemnation proceedings with respect to the Property during the term of this Contract.

4. *Claims; Hearings.* Seller will notify Buyer promptly after Seller receives notice of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.

5. *Cooperation.* During the Inspection Period Seller will cooperate with Buyer to process any requests for consents or approvals necessary for Buyer to operate the Property after closing. Seller, however, makes no representations regarding the likelihood that any requests will be approved. Buyer acknowledges that any applications filed with the City of San Marcos will be subject to all applicable ordinances, rules, procedures and fees of the City of San Marcos.

6. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

J. Termination

1. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, then unless Seller delivers notice of Seller's objection to Title Company's release of the Earnest Money to Buyer within five days after Buyer delivers Buyer's termination notice to Seller and Title Company, Title Company is authorized, without any further authorization from Seller, to deliver the Earnest Money to Buyer.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, then unless Buyer delivers notice of Buyer's objection to Title Company's release of the Earnest Money to Seller within five days after Seller delivers Seller's termination notice to Buyer and Title Company, Title Company is authorized, without any further authorization from Buyer, to pay and deliver the Earnest Money to Seller.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all of Seller's records in Buyer's possession or control. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract or that expressly survive termination of this contract.

K. Closing

1. *Closing.* Each phase (Tract 1 purchase and Tract 2 purchase) of this transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents; Title Company Documents.* The parties will execute and deliver the Closing Documents and any documents required by Title Company.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price for Tract 2.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any liens and security interests created at closing to secure financing for the Purchase Price.

2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare the deed; the costs to obtain, deliver, and record releases of any liens required to be released in connection with the sale; the costs to record documents to cure Title Objections agreed or required to be cured by Seller and to resolve matters shown in Schedule C of the Title Commitment; the costs to obtain the Survey, UCC Search, and certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in paragraph A.5. and Seller's records; any other costs expressly required to be paid by Seller in this contract; and Seller's attorney's fees and expenses.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be obtained or recorded at Seller's expense; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer, as well as the cost of any other endorsements or modifications of the Title Policy requested by Buyer; the costs of work required by Buyer to have the Survey reflect matters other than those required under this contract except changes required for curative purposes; the costs to obtain financing of the Purchase Price, including the incremental premium costs of the loan title policies and endorsements and deletions required by Buyer's lender; any other costs expressly required to

be paid by Buyer in this contract; and Buyer's attorney's fees and expenses.

- c. *Ad Valorem Taxes.* The Property is presently exempt from ad valorem taxes. Buyer agrees to pay ad valorem taxes first accruing from and after the Closing Date. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing.
- d. *Expenses Incurred by Seller.* Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be paid by Seller.
- e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- f. *Brokers' Commissions.* Seller will pay all real estate broker's commissions to be split between Seller's and Buyer's licensed real estate brokers. At closing, each party will provide the other party with a release of broker's liens from all brokers for which each party was responsible.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. *Seller's Default; Remedies before Closing.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy before closing:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer.
- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract, but any such action must be initiated, if at all, within ninety days after the breach or alleged breach of this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Seller's Default; Remedies after Closing.* If Seller's representations are not true and correct at closing for reasons reasonably within Seller's control and Buyer does not become aware of the untruth or incorrectness until after closing, Buyer will have all the rights and remedies

available at law or in equity. If Seller fails to perform any of its obligations under this contract that survive closing, Buyer will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

3. *Buyer's Default; Remedies before Closing.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may terminate this contract by giving notice to Buyer on or before closing and have the Earnest Money paid to Seller. The foregoing constitutes Seller's sole and exclusive remedies for a default by Buyer before closing.

4. *Buyer's Default; Remedies after Closing.* If Buyer fails to perform any of its obligations under this contract that survive closing, Seller will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

5. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

6. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract 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 contract. 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, provided that (a) any notice received on a Saturday, Sunday, or national holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or national holiday and (b) any notice received after 5:00 P.M. local time at the place of delivery on a day that is not a Saturday, Sunday, or national holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or national holiday. Any address for notice may be changed by not less than ten days' prior written notice delivered as provided herein.

2. *Entire Agreement.* This contract, its exhibits, and any Closing Documents delivered at closing are the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no representations, warranties, agreements, or promises pertaining to the Property or the sale of the Property by Seller to Buyer, and Buyer is not relying on any statements or representations of any agent of Seller, that are not in those documents.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer possesses, directly or indirectly, the power to direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise, and any other assignment is void. No such assignment releases Buyer of its obligations under this contract, and Buyer and the assignee will be jointly and severally liable for the performance of such obligations after any such assignment.

5. *Survival.* The provisions of this contract that expressly survive termination or closing and other obligations of this contract that cannot be performed before termination of this contract or before closing survive termination of this contract or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

6. *Choice of Law; Venue.* This contract is to be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance, except that, if in federal court, venue shall be in the United States District Court for the Western District of Texas, Austin Division.

7. *Waiver of Default.* Default is not waived if the nondefaulting party fails to declare a default immediately or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* If a provision in this contract is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this contract, and this contract is to be construed as if the unenforceable provision is not a part of the contract.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* Buyer and Seller acknowledge to each other that Buyer and Seller are not in significantly disparate bargaining positions. The rule of construction that ambiguities in a document are construed against the party who drafted it does not apply in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and the parties do not intend to create the relationship of principal and agent, partners, joint venturers, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together constitute this contract. Copies of signatures to this contract are effective as original signatures.

13. *Confidentiality.* This contract, this transaction, and all information learned in the course of this transaction shall be kept confidential, except to the extent disclosure is required by Texas Public Information Act, the Texas Open Meetings Act, other law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this

transaction. Remedies for violations of this provision are limited to injunctions and no damages or rescission may be sought or recovered as a result of any such violations.

14. *No Waiver of Immunity.* Notwithstanding any other provisions in this contract, the parties agree that this contract is not a contract for providing goods or services to a local governmental entity and Seller does not waive any limitations on liability or immunity from suit granted under applicable laws or the constitution of the state of Texas.

15. *Binding Effect.* This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

N. Special Provisions

1. *Completion of Roadway Improvements.* On or before the date on which the first permit is issued for the installation or construction of any improvements on Tract 1, Buyer shall post security for completion of public street and right-of-way improvements for the extension of the 0.99 acre, 70 foot wide portion of Leah Avenue, identified in Exhibit A and in accordance with the requirements of Chapter 1, Article 6, Division 6 of the City of San Marcos Land Development Code. Buyer, however, may replat Tract 1 at its sole expense. If such replat is approved without a requirement to build said 52 foot wide right-of-way, then Buyer shall be relieved of the requirement under this paragraph to build improvements for such 52 foot wide right-of-way. On or before the date on which the first permit is issued for the installation or construction of any improvements on Tract 2, Buyer shall post security for completion of public street and right-of-way improvements for the extension of the 0.99 acre, 70 foot wide portion of Leah Avenue, identified in Exhibit A and in accordance with the requirements of Chapter 1, Article 6, Division 6 of the City of San Marcos Land Development Code. No certificates of occupancy, including temporary certificates of occupancy, shall be authorized or issued for any improvements as to each Tract until the associated roadway improvements for each Tract has been completed and accepted by the City of San Marcos. Buyer shall construct all such public street and right-of-way improvements in accordance with applicable City of San Marcos ordinances and specifications. The requirements of this paragraph shall survive and be enforceable after closing.

2. *Zoning Approval.* During the Inspection Period, Seller agrees to request or authorize Buyer to request amendments to the Preferred Scenario Map of the Comprehensive Plan and Official Zoning Map of the City of San Marcos if such an amendment is necessary to allow Buyer's proposed use of the Property. Seller, however, makes no representations regarding the likelihood that any such request will be approved. If an appropriate preferred scenario map or zoning designation that allows for Buyer's proposed use is not approved during the Inspection Period, Buyer may terminate this contract. The Inspection Period will be extended by the amount of time necessary to allow the San Marcos City Council to finally act on the preferred scenario map and zoning requests.

3. *No Tax-Exempt Purposes.* Buyer agrees that it shall not use the Property for any purposes that result in the Property being exempt from the assessment and payment of ad valorem property taxes applicable to both real and personal property. Accordingly, Buyer agrees that the special warranty deed from Seller shall contain a restrictive covenant that provides as follows:

The Property shall not be used for any nonprofit or tax-exempt purposes, whether charitable, educational, agricultural, governmental or other similar purposes if such use would render the Property or any portion of the Property, or any personal property located thereon, wholly or partially exempt from the assessment and payment of ad valorem taxes on real or personal property. If, however, an exemption from ad valorem taxes is recognized by the Hays County Appraisal District, Grantee shall pay to Grantor an amount equal to the ad valorem taxes that would, otherwise, have been collected by Grantor during the period in which the exemption is recognized. If Grantee fails to pay such amounts within 30 days after receiving written demand for payment from Grantor, Grantor may file a suit for damages against Grantee for collection of such amounts, together with reasonable attorney's fees, court costs and costs of litigation. In addition to the foregoing, Grantor may pursue any other remedies available at law or in equity for enforcement of restrictive covenants. This covenant is a restriction running with the land and is binding on and enforceable against Grantee, its successors and assigns.

4. Seller will provide a utility service letter indicating the availability of utilities to the Property.

5. *Subject to Approval.* This contract is subject to the approval of the San Marcos City Council. If no such approval is obtained, the Title Company shall refund the Earnest Money to Buyer and this contract shall be of no further force and effect.

[SIGNATURES ON NEXT PAGE]

SELLER:

City of San Marcos

By: 

Bert Lumbreras, City Manager

Date: 10/30/17

BUYER:

Life Style Development, L.L.C.

By: 

Richard Shaw, Managing Member

Date: Oct 21, 2017

Exhibit A
Description of the Land

[Insert drawings showing Tract 1 and Tract 2]

Exhibit B
Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a Texas home rule municipal corporation duly organized and validly existing under the laws of the state of Texas with authority to perform its obligations under this contract. This contract, to the extent permitted by law, is binding on Seller. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller. Seller represents to Buyer that Seller's execution of this Contract has been duly authorized.

2. *Litigation.* Seller has not received written notice and has no actual knowledge of any litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received written notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received written notice that any license, permit, or approval necessary to use the Property in the manner in which it is currently being used has expired or will not be renewed on expiration or that any material condition will be imposed to use or renew the same.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Except as specifically disclosed to Buyer, to the best of Seller's knowledge, Seller has not received written notice of any condemnation, zoning, or land-use proceedings affecting the Property or any written inquiries or notices by any governmental authority or third party with respect to condemnation or the presence of hazardous materials affecting the Property.

6. *No Other Obligation to Sell the Property or Restriction against Sale.* Seller has not obligated itself to sell all or any portion of the Property to any person other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature not arising by, through, or under Buyer except the Permitted Exceptions or liens to which Buyer has given its consent in writing, and no work or materials will have been furnished to the Property by Seller that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent in writing.

8. Seller represents that the Property is presently zoned GC General Commercial.

8. *No Other Representation.* Except as stated above, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

THIS CONTRACT IS AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

BUYER IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS CONTRACT, SELLER'S RECORDS IN EXHIBIT C, AND THE CLOSING DOCUMENTS. BUYER IS NOT RELYING ON ANY INFORMATION REGARDING THE PROPERTY PROVIDED BY ANY PERSON, OTHER THAN BUYER'S OWN INSPECTION AND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

The provisions of this section B regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

C. Environmental Matters

AFTER CLOSING, BUYER RELEASES SELLER FROM LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY (1) UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE; OR (2) ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The provisions of this section C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

D. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to perform its obligations under this contract. This contract is binding on Buyer. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Buyer.

Exhibit C

Seller's Records

To the extent that Seller has possession or control of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in paragraph A.7.:

Governmental

- governmental licenses, certificates, permits, and approvals
- notices of appraised value for the current year
- records of any tax exemption, special use, or other valuation or exemption applicable to the Property
- records of regulatory proceedings or violations (for example, condemnation, environmental)
- correspondence between Seller and the federal government or the government of the State of Texas pertaining to FEMA mapping of the Property or alleged non-compliance of the Property with applicable state or federal laws

Land

- soil reports
- environmental reports and other information regarding the environmental condition of the Property
- water rights
- engineering reports
- prior surveys
- site plans

Facilities

- as-built plans, specifications, and mechanical drawings for improvements
- management, employment, labor, service, equipment, supply, and maintenance agreements
- engineering reports
- environmental reports
- current contracts between Seller and any third parties for, if any, pertaining to use, occupancy, or repair, maintenance, construction or development of the Property

TITLE COMPANY RECEIPT

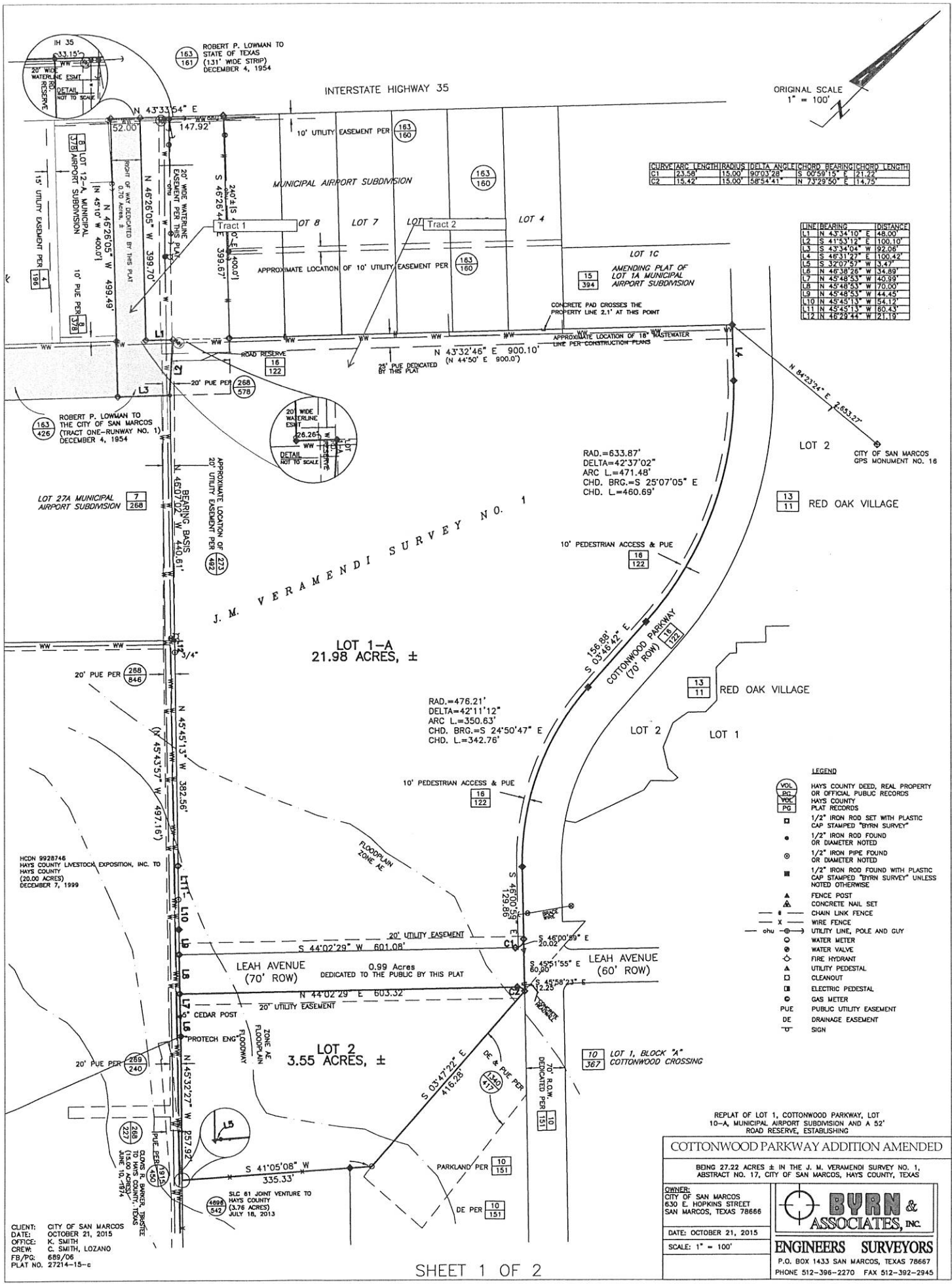
Title Company acknowledges receipt of ~~\$5,000.00~~ ^{\$4,000} (to be added to the Earnest Money previously deposited) and a copy of this contract executed by both Buyer and Seller.

Chicago Title Company

By: _____

Name: _____

Date: _____



CURVE	ARC LENGTH	RADIUS	DELTA	ANGLE	CHORD BEARING	CHORD LENGTH
C1	23.58'	15.00'	97°03'28"	S 00°59'15" E	21.22'	21.22'
C2	15.42'	15.00'	58°54'41"	N 73°29'59" E	11.75'	11.75'

LINK BEARINGS	DISTANCE
1.1 N 43°14'10" E	48.00'
1.2 S 41°53'12" E	100.10'
1.3 S 43°34'04" W	92.06'
1.4 S 46°31'27" E	100.42'
1.5 S 32°07'57" W	53.47'
1.6 N 46°38'28" W	34.89'
1.7 N 45°48'53" W	40.39'
1.8 N 45°48'53" W	70.00'
1.9 N 45°48'53" W	44.45'
1.10 N 45°45'13" W	54.12'
1.11 N 45°45'13" W	60.43'
1.12 N 45°29'44" W	71.19'

- LEGEND
- HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
 - HAYS COUNTY PLAT RECORDS
 - 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
 - 1/2" IRON ROD FOUND OR DIAMETER NOTED
 - 1/2" IRON PIPE FOUND OR DIAMETER NOTED
 - 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY" UNLESS NOTED OTHERWISE
 - FENCE POST
 - CONCRETE NAIL SET
 - CHAIN LINK FENCE
 - WIRE FENCE
 - UTILITY LINE, POLE AND GUY
 - WATER METER
 - WATER VALVE
 - FIRE HYDRANT
 - UTILITY PEDESTAL
 - CLEANOUT
 - ELECTRIC PEDESTAL
 - GAS METER
 - PUE PUBLIC UTILITY EASEMENT
 - DE DRAINAGE EASEMENT
 - SH SIGN

COTTONWOOD PARKWAY ADDITION AMENDED

BEING 27.22 ACRES ± IN THE J. M. VERAMENDI SURVEY NO. 1, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

OWNER:
CITY OF SAN MARCOS
630 E. HOPKINS STREET
SAN MARCOS, TEXAS 78666

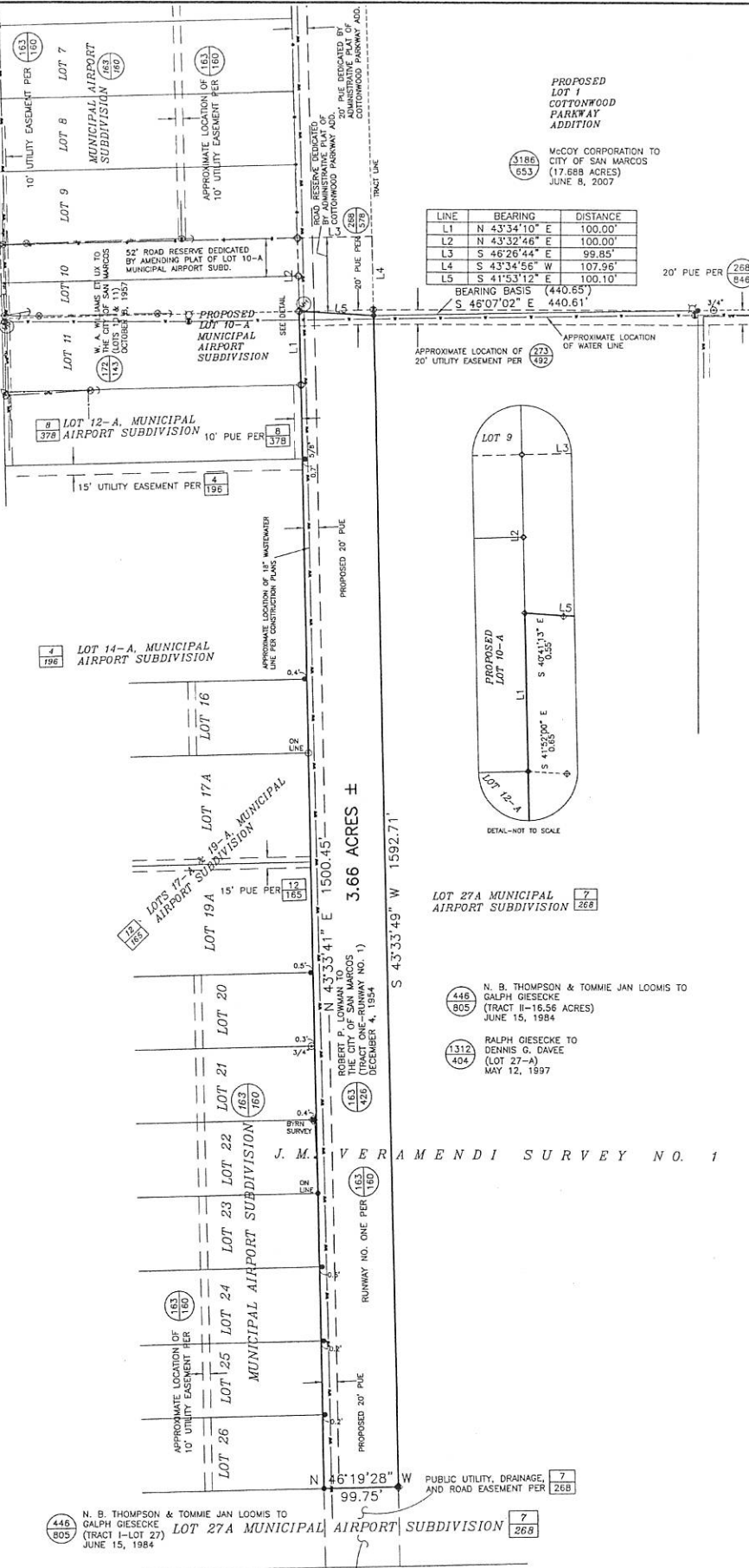
DATE: OCTOBER 21, 2015

SCALE: 1" = 100'

ENGINEERS SURVEYORS
P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945

INTERSTATE HIGHWAY 35

ROBERT P. LOWMAN TO
STATE OF TEXAS
(1.11 WIDE STRIP)
DECEMBER 4, 1984



ORIGINAL SCALE
1" = 100'

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. 48209C0477F, DATED SEPTEMBER 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.
- IN OUR OPINION THE EASEMENTS SHOWN IN VOLUME 261, PAGE 630, DEED RECORDS OF HAYS COUNTY, TEXAS AND VOLUME 845, PAGE 809, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS NO LONGER ARE APPLICABLE.
- NOT ALL UNDERGROUND UTILITIES ARE SHOWN.
- THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED OCTOBER 25, 2010, PREPARED BY BYRN & ASSOCIATES, INC., OF SAN MARCOS, TEXAS.

LEGEND

- VCOL PC HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- VCOL PG HAYS COUNTY PLAT RECORDS
- 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- 1/2" IRON PIPE FOUND OR DIAMETER NOTED
- 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "MCMIS #3682"
- COTTON SPINDLE SET
- FENCE POST
- CONCRETE NAIL SET
- WOOD FENCE
- CHAIN LINK FENCE
- WIRE FENCE
- UTILITY LINE, POLE AND GUY
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- UTILITY PEDESTAL
- CLEANOUT
- ELECTRIC PEDESTAL
- CONCRETE
- GAS METER
- PUE PUBLIC UTILITY EASEMENT
- DE DRAINAGE EASEMENT
- SIGN
- MANHOLE

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