

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “Contract”) is dated to be effective as of the Effective Date (as defined below) by and between **PURSUANT VENTURES DEVELOPMENT, LLC**, a Texas limited liability company (“Seller”), and **THE CITY OF SAN MARCOS**, a home-rule municipality (the “City”).

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the agreements set forth in this Contract, the parties hereto agree as follows:

1. **Purpose.** The Seller and the City have identified the Master Site (as defined below) as the location for constructing an outdoor sports and recreation facility (defined as the “Sportsplex” below) and an associated indoor D-BAT training facility (defined as the “D-BAT Facility” below; collectively with the Sportsplex, defined as the “Project”). It is anticipated that the Project, with professional management, will draw a significant number of events and visitors that will generate a substantial economic impact for the City through Hotel Occupancy Tax revenue, sales tax revenue and the compound effect of dollars spent by visitors in the City all while fulfilling the City’s need for a high-quality sports and recreation venue. The purpose of this Contract is to set forth the manner in which the Sportsplex Property (as defined below) will be conveyed to the City and the City will lease the Sportsplex Property to SMBI (as defined below), all as further set forth herein to achieve the mutual interests of the parties in meeting the sports and recreational needs of the City and resultant Hotel Occupancy Tax revenues from organized events enabled by the Project. The Lease of the Sportsplex (as further set forth herein) will ensure use by the City for City Sponsored Uses (as defined below) based on an agreed upon schedule as set forth in the Lease.

2. **Definitions.** All capitalized terms used in this Contract shall have the meanings ascribed to them in this **Section 2**, or as otherwise provided herein.

“**As-Built Survey**” shall have the meaning set forth in **Section 6.b.** below.

“**Architect**” means the architect and/or engineer responsible for the design of the Sportsplex and/or Public Improvements.

“**Approvals**” means all governmental approvals, permits, and consents required for the development of the Project and Public Improvements, including, without limit, annexation and zoning changes, recordation of the Plat (as defined below), Watershed Protection Plan, Public Improvement Construction Plans, the SPP (as defined below) and building permits, and as may be set forth in **Section 12** below.

“**CCRs**” means those certain Covenants, Conditions and Restrictions to be entered into by Seller and the seller under the Underlying Contract (as defined below) covering the Master Site and the remainder of the 109 acre tract of which the Master

Site is a part (referred to as the Outlet West commercial/business park), which CCRs shall be in accordance with the Underlying Contract and shall address, among other things: (a) ownership and maintenance of the detention pond and drainage facilities, and the allocation of costs (based on land area, excluding public streets areas) amongst the properties using the existing detention pond, (b) use restrictions, (c) cross access and utility easements and right-of-way for the Public Improvements, and (d) design and maintenance obligations.

“**Change Order**” shall have the meaning set forth in **Section 10.e.** below.

“**City**” means the City of San Marcos, a home-rule municipality.

“**City Council**” means the city council of the City.

“**City’s Initial Share of Public Improvements Cost**” means the sum of (a) the Escrowed Funds (as defined below), plus (b) one-half (1/2) of the Public Improvements Cost (as defined below) in excess of the Escrowed Funds.

“**City Sponsored Uses**” means sports leagues, recreational and entertainment activities sponsored by the City and the City’s parks and recreation programs (including the San Marcos Youth Baseball/Softball Association).

“**Closing**” means the closing of the transaction contemplated herein, as set forth in **Section 8** below.

“**Closing Date**” means the date that Closing actually occurs.

“**Completion Date**” means the date on which the Sportsplex and Public Improvements are Substantially Complete (as defined below).

“**Construction Commencement Date**” means the date Seller commences construction of the Sportsplex as evidenced by receipt of a building permit and commencement of work related to the Sportsplex.

“**Construction Contract**” means all of the contracts entered into by Seller in connection with the development of the Sportsplex.

“**Construction Default**” shall have the meaning set forth in **Section 15.b.** below.

“**Contract**” means this Purchase and Sale Agreement by and between Seller and the City.

“**D-BAT Facility**” means the proposed indoor sports training facility, that is officially franchised by D-BAT and legally authorized to use the “D-BAT” moniker, consisting of approximately 30,000 square feet of indoor space, anticipated to feature up to 12 retractable training “cages”, indoor practice spaces, weight training facility, cross-

functional speed and agility drill area, a yoga/personal wellness room, a computer resource center and individual study rooms for after-school programs and tutoring sessions for the youth of the community.

“D-BAT Land” means that certain real property containing approximately 1.5 acres of land situated in San Marcos, Hays County, Texas, such land being approximately depicted on **Exhibit A** attached hereto, with the final size and configuration of such D-BAT Land to be shown on the Plat. The D-BAT Land is a portion of the Master Site.

“Effective Date” means the date this Contract is fully executed by the Parties and deposited with the Title Company (as defined below), as evidenced by the Title Company’s written receipt thereof.

“Escrow Agent” means that certain title company selected by Seller’s lender, subject, however, to the City’s and Seller’s mutual review and approval of the terms of the Escrow Agreement (herein so called), the form of which is attached hereto as **Exhibit F** under which the Escrow Deposit may or will be disbursed to or for the benefit of Seller, or Seller’s lender, or refunded to the City.

“Escrow Deposit” means the net bond proceeds after paying related costs of issuance, reserve fund deposits, capitalized interest, if any, and other expenses associated with the sale and issuance of bonds to be issued by the City, which net bond proceeds shall be no less than the sum of the Purchase Price (as defined below) in effect as of the date of such deposit of the Escrow Deposit plus the City’s share of the Public Improvements Cost less the Escrowed Funds.

“Escrowed Funds” means the base sum of \$427,077.69, which amount the City is currently holding in escrow under Account No. 100.000.22221 for the construction of certain Public Improvements pursuant to that certain Construction Funding (Escrow) Agreement dated August 6, 2014, plus accrued interest, if any. The City acknowledges and agrees that the “Developer” under the above referenced Construction Funding (Escrow) Agreement did not complete the improvements described therein and the Escrowed Funds are available for disbursement for the Public Improvements contemplated to be developed pursuant to the Construction Funding (Escrow) Agreement and such Escrowed Funds shall be used entirely to pay for the Public Improvements Cost as set forth herein.

“Excusable Delay” means any delay in causing the Sportsplex or Public Improvements to be Substantially Complete due to labor disputes, fire, unusual delay in deliveries, delay in approvals by any applicable governmental authority (except for delays by the City due to its enforcement or compliance with applicable ordinances), environmental matters, abnormally adverse weather conditions not reasonably anticipatable, unavoidable casualties, delays by the City (except for delays by the City due to its enforcement or compliance with applicable ordinances), or any other cause whatsoever beyond the reasonable control of Seller,

other than delays resulting from activities of Seller or Seller's failure to comply with this Contract.

"Existing Survey" shall have the meaning set forth in **Section 6.a.** below.

"Future Phases" means anticipated improvements to be constructed on the Future Phases Land, which improvements are planned to include, a proposed hotel and convention center/indoor sports complex, a golf entertainment complex, or such other similar entertainment or hospitality uses as reasonably and administratively approved by the City.

"Future Phases Land" means any portion of the Master Site that is not a part of the Sportsplex Land or D-BAT Land as shown on the Plat.

"General Contractor" means the general contractor that is selected by Seller with the reasonable approval of the City pursuant to **Section 10** below for the construction of the Sportsplex and/or Public Improvements.

"GMP" means the sum of the costs to develop the Sportsplex under the Construction Contract. The GMP as of the Effective Date of this Contract is **Sixteen Million Seven Hundred Seventy Two Thousand Two Hundred Seventeen and No/100 Dollars (\$16,772,217.00)**, which GMP may decrease or increase (not to exceed the GMP Threshold), as set forth in Section 10.b.ii.

"GMP Threshold" means **Seventeen Million Two Hundred Seventy-Five Thousand Three Hundred Eighty-Three and 51/100 Dollars (\$17,275,383.51)**, which amount is equal to 103% of the GMP as of the Effective Date of this Contract. City shall not incur any cost, liability or be responsible for any amounts exceeding the GMP Threshold and Seller shall have no recourse against the City to demand such amounts in excess of the GMP Threshold, except in the case that such cost in excess of the GMP Threshold is a direct result of an accepted Change Order submitted by the City and agreed to by the Seller.

"Lease" shall mean that certain Commercial Lease of Real & Improved Property by and between the City, as landlord, and SMBI, as tenant for the Sportsplex Property, to be executed at Closing in the form agreed to by the City and the Seller as attached hereto as **Exhibit E**.

"Master Site" means that certain real property containing approximately 62.48 acres of land, such land being a portion of a 109.22 acre tract of land out of the Edward Burleson Survey, No. 18, Abstract No. 63, Hays County, Texas; which Master Site includes the land described as Tracts 10, 11, and 12 in **Exhibit A** hereto, as well as any land located to the centerline of Cottonwood Creek, along with any land occupied by the streets to be constructed as part of the Public Improvements (including Transportation Way and Commercial Loop) and the existing detention pond, as such land is further described and shown on **Exhibit A** attached hereto, and which land

Seller is currently under contract to purchase in accordance with the Underlying Contract.

“Outside Completion Date” means the last day of the fifteenth (15th) month after the Construction Commencement Date, as the same may be extended for each day of Excusable Delay.

“Parties” means Seller and the City.

“Party” means Seller or the City.

“Permitted Exceptions” shall have the meaning set forth in **Section 7.a.** below.

“Plans and Specifications” means, collectively, those certain plans, specifications, construction drawings and other design materials in conformity with all government codes, regulations, and requirements, and in conformity with the Sportsplex Quality Standard (as defined below) which shall be prepared by the Architect with regard to the design and construction of the Sportsplex and the Public Improvements, as applicable, and approved by the City as set forth in this Contract.

“Plat” means the final subdivision plat for the Master Site, which Plat shall include (a) the Sportsplex Land as its own, separate platted lot, (b) a separate platted lot for the D-BAT Land, (c) separate platted lot(s) for the Future Phases on the Future Phases Land, as determined by Seller, and (d) dedication of right-of-way for the Public Improvements.

“Project” means the Sportsplex and D-BAT Facility.

“Public Improvements” means the public improvements described on **Exhibit B** and includes any improvement or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will accept ownership and assume the responsibility for operation and maintenance if completed in accordance with this Contract. This term also includes the following, as applicable: drainage and detention facilities, streets and other rights-of-way, potable water system, reuse water system, sanitary sewerage system, survey monuments, landscaping, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, and street pavement markings.

“Public Improvements Cost” means the cost to develop the Public Improvements in accordance with the Plans and Specifications.

“Purchase Price” shall have the meaning set forth in **Section 4** below.

“**Seller**” means Pursuant Ventures Development, LLC, a Texas limited liability company.

“**SMBI**” means SM Baseball Investments, LLC, a Texas limited liability company, an affiliate of Seller.

“**Sportsplex**” means an outdoor sports and recreation facility consisting of (i) eight (8) multi-purpose athletic fields with synthetic turf that will provide the ability to interchange the configurations of the playing areas to accommodate different age ranges and various outdoor sports, such as baseball, softball, lacrosse, flag football and others, (ii) concession areas, (iii) covered seating and (iv) community play space to be constructed on the Sportsplex Land in accordance with the Plans and Specifications.

“**Sportsplex Land**” means that certain real property containing approximately thirty (30) acres of land situated in San Marcos, Hays County, Texas, such land being approximately depicted on **Exhibit A** attached hereto, with the final size and configuration of such Sportsplex Land to be shown on the Plat. The Sportsplex Land is a portion of the Master Site.

“**Sportsplex Property**” means the Sportsplex Land, as will be shown on the Plat, together with any and all improvements located on the Sportsplex Land, including the Sportsplex, and all of the rights, privileges, easements and appurtenances to the extent belonging or appertaining to the Sportsplex Land or Sportsplex.

“**Sportsplex Quality Standard**” shall mean the Sportsplex having a quality of design and construction consistent (except for latent defects or uncured deficiencies) with the design and construction of the City of Portland Sports Complex and Municipal Park located in Portland, Texas.

“**SPP**” means the site preparation permits, together with building permits for the Sportsplex, issued to Seller by the City which permits the development of the Project and Public Improvements, as applicable.

“**Substantially Complete**” means (A) for the Sportsplex, that (i) the Sportsplex has been materially constructed in accordance with the applicable Plans and Specifications, subject only to punchlist items, as certified to by the Architect; (ii) Seller has delivered to the City the As-Built Survey of the Sportsplex Property; (iii) Seller has delivered to the City a statutory form unconditional waiver and release on final payment from the General Contractor (or a statutory form conditional waiver and release on progress payment which may exclude properly withheld retainage and other withholdings, but followed promptly by, but in no case greater than thirty (30) days, an unconditional waiver and release on final payment) for the Sportsplex; (iv) Seller and the City have completed the mutual inspection of the Sportsplex as further described below and the punchlist has been prepared and certified by the Architect; and (v) the City has issued a certificate of occupancy for

the Sportsplex; and (B) for the Public Improvements, the Public Improvements have been generally constructed in accordance with the applicable Plans and Specifications, subject only to punchlist items, as certified to by the Architect.

“**Termination Fee**” means the sum of One Million and No/100 Dollars (\$1,000,000.00).

“**Title Company**” means Corridor Title Company, having an address of 133 W. San Antonio Street, Suite 100, San Marcos, Texas 78666, Attention: Cindy Carroll, with a phone number of 512-392-8910, and an email of *cindy@corridortitleco.com*, or other representative as may be designated in writing by Corridor Title Company.

“**Title Commitment**” shall have the meaning set forth in **Section 7.a.** below.

“**Title Materials**” shall have the meaning set forth in **Section 7.a.** below.

“**Title Policy**” shall have the meaning set forth in **Section 7.b.** below.

“**Underlying Contract**” means that certain Real Estate Purchase Contract dated October 17, 2016 by and between Outlet West Investors, Ltd., a Texas limited partnership, as seller, and Seller, as buyer, as amended from time to time, for the purchase and sale of the Master Site.

3. **Agreement for Sale of Sportsplex Land.** Subject to the encumbrances, restrictions and other matters which become “Permitted Exceptions” pursuant to the provisions of this Contract, Seller agrees to sell and convey to the City, and the City agrees to purchase and take from Seller, the Sportsplex Property. Prior to Closing, Seller shall subdivide and Plat the Master Site as set forth in this Contract, and such lot and block legal description for the Sportsplex Land as shown on the Plat shall be substituted for the depiction of the Sportsplex Land set forth in **Exhibit A** attached hereto. The Sportsplex Property does not include any oil, gas, water, or other minerals in and under and that may be produced from the Sportsplex Property, which oil, gas, water, and other minerals shall be excluded from the Sportsplex Property for all purposes and which exclusion shall be reflected in the Deed from the current owner to Seller pursuant to the Underlying Contract and in the Deed from Seller to the City to be executed at the applicable Closing, and which Deeds shall include a waiver from the owners or lessees of such oil, gas, water and mineral interests of the right to use the surface of the Sportsplex Property in relation to such interests, and which waiver shall be binding on all heirs, successors and assigns.

4. **Purchase Price.** The total purchase price for the Sportsplex Property (the “**Purchase Price**”) shall equal **Nineteen Million Three Hundred Seventy Two Thousand Two Hundred Seventeen and No/100 Dollars (\$19,372,217.00)** (which amount consists of the sum of **Two Million Six Hundred Thousand and No/100 Dollars (\$2,600,000.00)** for the Sportsplex Land plus **Sixteen Million Seven Hundred Seventy Thousand and No/100 Dollars (\$16,772,217.00)** for the Sportsplex), which Purchase Price shall be adjusted as set forth herein to reflect the final GMP. The Purchase Price shall be paid by the City to Seller in the following manner:

a. *Escrow Deposit; Escrow Agent.* Within ninety (90) days of Seller's receipt of its SPP for the Project and Public Infrastructure, City shall deposit the Escrow Deposit with the Escrow Agent, to be held in accordance with the terms of the Escrow Agreement attached hereto as **Exhibit F**. The Escrow Deposit shall be invested by the Escrow Agent in a manner reasonably acceptable to the City and Seller, and all interest earned on such deposit shall be considered part of the Escrow Deposit. The remaining balance of the Escrow Deposit shall be released to Seller at the Closing as a part of the Purchase Price; or, if the Closing does not occur, shall be otherwise disbursed in accordance with this Contract.

b. *Cash Payment at Closing.* Subject to the adjustments under **Section 9** of this Contract, the balance of the Purchase Price shall be paid to Seller at the Closing in wire transferred funds, which will allow the Title Company to disburse those funds to Seller at the Closing.

c. *Release of Punch List Retainage.* Upon completion of the outstanding punch list items, Seller shall deliver written notice of such completion to City and Escrow Agent and, unless Escrow Agent receives a written objection from the City related to the completion of the punch list items within three (3) business days of Seller's completion notice, Escrow Agent shall release to Seller the retention amount being held by Escrow Agent pursuant to **Section 9**. The foregoing obligation shall survive Closing.

5. **CCRs.** Within sixty (60) days following the Effective Date, Seller shall provide to the City a copy of the CCRs for its review and approval, which approval shall not be unreasonably withheld so long as the CCRs (a) restrict the land covered by the CCRs (other than the Master Site) from being used for similar outdoor sporting, recreational and entertainment uses, (b) do not impose a requirement that the Sportsplex Land solely be used for outdoor sports and recreation uses beyond 35 years from the effective date of the CCRs, (c) do not unreasonably restrict the permitted uses for the Sportsplex Land (other than a restriction on customary obnoxious and nuisance uses), and (d) provide reasonable easements for access and utilities for the Project. The City shall notify Seller in writing within ten (10) days of receipt of the CCRs of its approval of same or any specific objections thereto (which objections shall be limited to terms in the CCRs that conflict with the terms set forth in this Section 5).

6. **Survey and Reports.**

a. *Existing Survey.* Prior to the Effective Date hereof, Seller has provided the City with the most recent existing survey in Seller's possession of the Master Site (the "**Existing Survey**"), a copy of which has also been provided by Seller to the Title Company. The City acknowledges that it has had the opportunity to review the Existing Survey and has accepted such Existing Survey.

b. *As-Built Survey.* Prior to Closing, Seller shall update and provide to the City an "as-built" survey (the "**As-Built Survey**") of the Sportsplex Property and a field notes description of the Sportsplex Land, which As-Built Survey shall be generally consistent with the Plat and shall reflect general matters affecting the Sportsplex Land pursuant to the Plat,

prepared and certified by Seller's surveyor, a copy of which shall be provided by Seller to the Title Company.

c. *Site Assessments.* Prior to the Effective Date hereof, Seller has delivered to the City the most recent Phase One Environmental Site Assessment and geotechnical assessment covering the Sportsplex Land in Seller's possession. The City acknowledges that it has had the opportunity to review the same and has accepted such reports.

7. **Owner Policy of Title Insurance.**

a. *Title Commitment.* Prior to the Effective Date of this Contract, Seller has provided to the City a title commitment issued April 22, 2019, dated effective April 15, 2019, having a GF No. 19-0974-C, issued by the Title Company for the Sportsplex Property ("Title Commitment"), as well as the documents referenced on Schedule B of such Title Commitment (collectively, the "Title Materials"). All such exceptions shown on the Title Commitment shall be deemed to be Permitted Exceptions (as defined below) and the City has approved such Title Commitment. Prior to Closing, Seller shall cause the Title Company to provide to the City an updated Title Commitment for owner policy of title insurance reflecting the Sportsplex Property as shown on the Plat. Seller shall cause any new exceptions shown on the updated Title Commitment to be removed before Closing; provided that Seller shall have no obligation to remove any matters shown on the updated Title Commitment or any updated Survey (i) that were included in the initial Title Commitment provided to, and approved by, the City prior to the Effective Date hereof or were shown on the Existing Survey, or (ii) which the City approved in writing prior to such exception being recorded of record, or (iii) that were caused by the City. All title matters and exceptions set forth in the existing Title Commitment, as well as all matters and exceptions and the state of facts shown on the Existing Survey, or which are thereafter approved by the City or deemed to be accepted or waived in writing by the City as hereinafter provided, are hereafter referred to as the "Permitted Exceptions". The City acknowledges and agrees that (i) the CCRs, and (ii) any matters reflected on the Plat for the Master Site (to the extent it affects the Sportsplex Land) shall be deemed Permitted Exceptions.

b. *Title Policy.* Seller shall cause the Title Company to furnish to the City at Closing, or within a reasonable time thereafter, but in no case greater than thirty (30) days, an Owner Policy of Title Insurance (the "Title Policy") (on a form prescribed by the State Board of Insurance of the State of Texas) issued through the Title Company, insuring title to the Sportsplex Property in the City in the full amount of the Purchase Price, and containing only the Permitted Exceptions and the following standard printed exceptions: (i) the standard printed exception for taxes for the year of the Closing and subsequent years, not yet due and payable; and (ii) the standard printed boundary and encroachments exception and exception for shortages in area (provided, however, that Seller will, at the City's option and expense, cause the Title Company to delete, to the extent permitted by applicable regulations, the survey exception from the Title Policy without qualification or condition except as to "any shortages in area").

8. **Closing; Closing Documents.**

a. *Possession and Closing.* The Closing of this transaction shall take place through escrow with the Title Company (it being agreed the Parties do not have to be physically present) at 11:00 a.m. central time on the third (3rd) business day following the Completion Date. The date the Closing actually occurs shall be the “Closing Date.” Following the Completion Date and delivery of all required closing documents as described below Seller shall direct the Title Company (and Escrow Agent, as applicable) to immediately record and deliver the closing documents to the appropriate Parties and make disbursements according to the closing statements executed by Seller and the City. Time is of the essence with respect to the Closing Date, the Completion Date and the delivery at the Closing of the Purchase Price.

b. *Seller’s Closing Documents.* Two (2) business days following the Completion Date, Seller, at Seller’s expense, shall deliver or cause to be delivered to the Title Company each of the following:

i. Deed of Conveyance. A duly executed and acknowledged special warranty deed, in the form attached as **Exhibit C** hereto.

ii. Bill of Sale and General Assignment. A duly executed bill of sale and general assignment, in the form attached as **Exhibit D** hereto.

iii. Tax Certificates. Tax certificates shall be available at the Title Company from appropriate authorities showing that all taxes then due on the Sportsplex Property have been paid, or amounts sufficient to pay those taxes shall be withheld by the Title Company from the Purchase Price for that purpose.

iv. Evidence of Authority. Evidence of authority reasonably acceptable to the City and the Title Company, reflecting that the person who has signed this Contract on behalf of Seller has been duly authorized to execute this Contract and identifying the person or persons who are authorized to execute all of Seller’s closing documents on Seller’s behalf and showing approval of the sale of the Sportsplex Property to the City under the terms and provisions of this Contract.

v. Non-Foreign Certificate. A certificate stating that Seller is not a “foreign person” as defined in the federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended.

vi. Lease. The Lease, duly executed by SMBI, as tenant, in the form attached as **Exhibit E** hereto, and a Lease Memorandum to the extent requested by Seller or SMBI.

vii. Other Documents. Any other documents required by this Contract to be delivered by Seller at the Closing or otherwise reasonably necessary to carry out the terms and conditions hereof, including, without limit, a duly executed closing statement.

c. *City's Closing Documents.* Two (2) business days following the Completion Date, the City, at the City's expense, shall deliver to the Title Company the following:

i. Cash Payment. The cash payment of the Purchase Price, subject to adjustment as set forth below and any additional sums provided for in this Contract.

ii. Bill of Sale and General Assignment. A duly executed bill of sale and general assignment, in the form attached as **Exhibit D** hereto.

iii. Evidence of Authority. Evidence of authority reasonably acceptable to Seller and the Title Company, reflecting that the person who has signed this Contract on behalf of the City has been duly authorized to execute this Contract and identifying the person or persons who are authorized to execute all of the City's closing documents on the City's behalf and showing approval of the purchase of the Property from Seller under the terms and provisions of this Contract.

iv. Lease. The Lease, duly executed by the City, as landlord, in the form attached as **Exhibit E** hereto, and a Lease Memorandum to the extent requested by Seller or SMBI.

v. Other Documents. Any other documents or instruments required by this Contract to be delivered by the City at the Closing or otherwise reasonably necessary to carry out the terms and conditions hereof, including, without limit, a duly executed closing statement.

9. **Adjustments at Closing.** The following prorations and adjustments shall be made at the Closing and, as the case may be, deducted from or added to the amount the City is required to pay at the Closing under **Section 4.b.** of this Contract:

a. *Taxes.* Ad valorem taxes for the period beginning on the Construction Commencement Date for the Sportsplex Property and until the date of Closing shall be shared equally between Seller and the City and shall be allocated accordingly at Closing. If the tax rate has not been fixed for the applicable period, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the most current assessed valuation. Subject to the foregoing obligation to share ad valorem taxes equally during construction, and to any terms of the Lease regarding payment of ad valorem taxes, taxes for the year of the Closing shall be prorated at Closing. Seller shall be responsible for all rollback taxes due to any change in use or ownership.

b. *Title Insurance and Other Closing Expenses.* Except as is otherwise provided herein, each party shall pay its own attorney's fees and customary closing expenses. Seller shall pay one-half of the base premium for the Title Policy (excluding endorsements), one-half of the escrow fee charged by the Title Company and one-half of all recording fees (other than for liens created by the City at Closing). The City shall pay one-half of the base premium for the Title Policy, the entire premium for any Title Policy endorsements and/or extended

coverage(s), one-half of the escrow fee charged by the Title Company, one-half of all recording fees (other than recording fees for any liens created by the City at Closing, which the City shall pay in full).

c. *Retainage.* Seller and City agree that 110% of the estimated costs to complete the punch list items (as further described in **Section 10.d** below), shall be held in escrow by Escrow Agent at Closing and shall be disbursed as set forth in **Section 4.c** upon completion of the punch list items.

10. **Construction of Sportsplex.** During the term of this Contract, Seller shall materially complete the development of the Sportsplex, all pursuant to the terms and conditions of this Contract.

a. *Point of Contact.* Each party shall designate a point-of-contact to be available on short notice and as needed for meetings, telephone conferences and site inspections with the other party, the Architect, the General Contractor, and otherwise as necessary during the term of this Contract. The Seller's point-of-contact shall be Tyler Sibley and the City's point-of-contact shall be provided to Seller's point of contact in writing within seven days after the Effective Date. The parties may rely upon decisions made and directions given by the points-of-contact.

b. *Plans and Specifications.*

(i) *Selection of Architect.* Seller shall retain the Architect subject to the review of Architect's qualifications and reasonable approval of the City. The Architect shall be licensed in the State of Texas and be qualified to design sports and recreation facilities of comparable complexity and character as contemplated by the Parties for the Sportsplex. Seller shall provide to the City documentation reasonably sufficient for the City to verify the experience and qualifications of the Architect. The City shall approve or provide specific objections to any request for approval of an Architect within five (5) business days of receipt of such documentation. If the City does not approve the Architect within thirty (30) days of initial submittal of the Architect's qualifications for reasons other than an unresolved objection by the City that the Architect does not meet the qualifications required hereunder, then Seller shall have the right to terminate this Contract and receive the lesser of (1) the Termination Fee or (2) the amount of costs and fees incurred by Seller in pursuit of the Project, up to the date of termination as evidenced by invoices provided to the City, plus a fee of 15% of such costs to Seller. Whenever such Termination Fee (or other amount due on termination of this Contract) is payable under the terms of this Contract, such amount shall be paid by the City within 30 days of Seller's delivery of an invoice to the City evidencing such amount due.

(ii) *Plans.* Seller shall deliver to the City proposed Plans and Specifications and the GMP for the City's review and approval (i) upon completion of the design which incorporates all mechanical, electrical, plumbing, structural, civil, and landscape plans and (ii) prior to the second submittal of the proposed

Plans and Specifications to the City in connection with the request for the final SPP and building permit. The City shall have fifteen (15) days within which to review and approve the Plans and Specifications and the GMP, or to respond to Seller with the City's proposed revisions thereto. In the event the City timely responds, Seller shall have thirty (30) days within which to resubmit the revised Plans and Specifications and the GMP to the City for the City's review and approval. Seller and the City acknowledge and agree that the final GMP approved by the Parties, as determined based on the final approved Plans and Specifications may be less than or greater than the amount set forth in the definition of GMP in Section 2 hereof (but in no event shall the GMP exceed the GMP Threshold unless otherwise agreed in writing by the City and Seller). If the City does not approve the Plans and Specifications and final GMP, or revisions thereto, as applicable, within fifteen (15) days of the receipt thereof by the City, for reasons other than failure to meet the Sportsplex Quality Standard, then either Party shall have the right to terminate this Contract and Seller shall receive the lesser of (1) the Termination Fee or (2) the amount of costs and fees incurred by Seller in pursuit of the Project up to the date of termination as evidenced by invoices provided to the City, plus a fee of 15% of such costs to Seller.

c. *Construction of Sportsplex.*

(i) *Selection of Contractor.* Seller shall retain the General Contractor subject to the City's review and reasonable approval of the General Contractor's qualifications. The General Contractor must be licensed and registered (to the extent applicable), shall provide payment and performance bonds based on the final amount of the construction contract, and be qualified to construct sports and recreation facilities of comparable complexity and character as contemplated by the Parties for the Sportsplex. To be a qualified General Contractor under this paragraph, the General Contractor's bid must be no greater than the GMP Threshold. Seller shall provide to the City documentation reasonably sufficient for the City to verify the experience and qualifications of the General Contractor. The City shall approve or provide specific objections to any request for approval of any General Contractor within five (5) business days of receipt of such documentation. If the City does not approve the General Contractor within thirty (30) days of initial submittal, for reasons other than the General Contractor's failure to meet the qualifications hereunder, then either Party shall have the right to terminate this Contract and Seller shall receive the lesser of (1) the Termination Fee or (2) the amount of the costs and fees incurred by Seller in pursuit of the Project up to the date of termination as evidenced by invoices provided to the City, plus a fee of 15% of such costs to Seller.

(ii) *Construction.* Subject to Seller's purchase of the Master Site, promptly following the City's final approval of the Plans and Specifications and the GMP and the Seller obtaining all required Approvals and the City depositing the Escrow Deposit, Seller shall enter into a contract with its General Contractor for the construction of the Sportsplex and shall thereafter cause such General Contractor to

diligently pursue completion of the Sportsplex in accordance with the Plans and Specifications and to meet or exceed the Sportsplex Quality Standard. The Parties agree that it is their intention that, subject to adjustments for Excusable Delays, Seller will Substantially Complete the Sportsplex on or before the Outside Completion Date. Seller shall use commercially reasonable efforts to cause the Construction Commencement Date for the Sportsplex to occur within one hundred twenty (120) days (subject to adjustment for Excusable Delays) following the date the City delivers the Escrow Deposit to Escrow Agent. The Plans and Specifications and construction of the Sportsplex shall comply with and be performed in accordance with all applicable laws and ordinances. Subject to applicable ordinances, the City shall not unreasonably withhold the delivery of the certificate of occupancy for the Sportsplex.

d. *Punch List and Warranties.* Approximately thirty (30) days prior to the estimated date of Substantial Completion, Seller shall develop a punch list of items and deliver same to the City. Within ten (10) days following the City's receipt of the initial punch list, the City and Seller shall inspect the Sportsplex and prepare a revised mutually agreeable punch list of items that do not prevent the Sportsplex from being Substantially Complete and will not prohibit issuance by the City of a certificate of occupancy for the Sportsplex. The City and Seller shall finalize the revised punch list items and an estimate of the costs to complete such punch list items within five (5) business days before Closing. In the event the City and Seller shall fail to finalize such list and estimate of costs on or before five (5) business days before Closing, then the Architect shall make the final determination of such punch list items and estimate of costs on or before Closing. Seller shall complete the items on the punch list within thirty (30) days after Closing. At Closing, Seller shall assign to the City the General Contractor's standard one-year warranty against all defects in materials, workmanship and labor for the Sportsplex and any other third-party warranties and claims. All of the obligations of this paragraph shall survive Closing hereunder.

e. *Change Orders.* Following the approval of the Plans and Specifications and the GMP, the City shall have the right to request, in writing, changes to the final Plans and Specifications (provided that any such changes do not reduce the value of the Sportsplex and are consistent with the Sportsplex Quality Standard). Within twenty (20) days of receipt of any such requested change, Seller shall respond to the City in writing informing the City of (i) any additional costs and expenses that will result if the changes specified in the City's request are made, and (ii) any delay in the Substantial Completion or Completion Date of the Sportsplex or Public Improvements that will result from such changes to the final Plans and Specifications. Within five (5) business days following receipt of Seller's response, the City shall inform Seller in writing whether or not the terms of Seller's response are accepted, in which event such changes and terms shall constitute an approved "Change Order" hereunder and the Purchase Price shall be adjusted relative to the reasonable costs and expenses saved or additionally incurred as a result of such Change Order (including any financing costs, carrying costs, and indirect costs associated with any extended time for construction), and the Outside Completion Date shall be extended by the reasonable estimated delay set forth in Seller's response. To the extent the terms are rejected by the City or the City fails to timely respond to Seller, the applicable request for

changes shall be deemed ineffective and the final Plans and Specifications and the GMP shall remain unmodified as a result thereof.

f. *City Remedies Under Seller Contracts.* Subject and subordinate to the rights of any construction lender for Seller, the contracts between Seller and the Architect, and Seller and the General Contractor shall include provisions acknowledging the City as a third party beneficiary of such contracts with the right: (i) to pursue any remedies available thereunder for default or breach by the Architect or General Contractor, as applicable, as if the City was in privity of contract with such parties; or (ii) to assignment of said contracts by Seller, or assignment of remedies for breach or default thereunder, without need for the consent by Architect or General Contractor, as applicable, to any such assignment.

11. **Construction of Public Improvements.** During the term of this Contract, Seller shall Substantially Complete the development of the Public Improvements, all pursuant to the terms and conditions of this Contract.

a. *General.* It is understood that the present infrastructure of streets and utilities in the vicinity of the Master Site are insufficient to support the Master Site, Project, and Future Phases and thus development of the Public Improvements will be necessary to adequately serve the Master Site, the Project, and Future Phases.

b. *Plans and Specifications.* The Public Improvements are described in **Exhibit B**. Seller shall be responsible for the development of the Public Improvements in accordance with the standards of the City. Seller shall deliver to the City Plans and Specifications (including an engineered Public Improvement Construction Plan), as well as the Public Improvements Cost for the City's review and approval. The City shall have fifteen (15) days within which to review and approve the Plans and Specifications and Public Improvements Cost, or to respond to Seller with the City's proposed revisions thereto. Failure by the City to respond within the foregoing 15-day period shall be deemed an approval by the City of the Plans and Specifications and Public Improvement Costs. In the event the City timely responds, Seller shall have thirty (30) days within which to resubmit revised Plans and Specifications and revised Public Improvements Cost to the City for the City's review and approval. At such time as the Plans and Specifications and Public Improvements Cost are finally approved (or deemed approved), this Contract shall be administratively amended to supplement **Exhibit B** attached hereto with (Y) the final Plans and Specifications for the Public Improvements to the Contract, and (Z) the final Public Improvements Cost.

c. *Construction of Public Improvements.* Subject to Seller's purchase of the Master Site, promptly following final approval of the Plans and Specifications and Public Improvement Costs and obtaining all required Approvals, and the City's deposit of the Escrow Deposit, Seller shall enter into a contract with its General Contractor for the construction of the Public Improvements and shall thereafter cause such General Contractor to diligently pursue completion of the Public Improvements in accordance with the Plans and Specifications. The Parties agree that it is their intention that, subject to adjustments for Excusable Delays, Seller will complete the Public Improvements in all material respects on

or before the Outside Completion Date in accordance with applicable ordinances and City standards. The Plans and Specifications and construction of the Public Improvements shall comply with all applicable ordinances.

d. *Inspection and Conveyance of Public Improvements.* The construction of the Public Improvements shall be subject to the inspection and approval of the City in accordance with applicable ordinances. Seller also agrees to allow authorized contractors or consultants hired by the City to conduct inspections on behalf of the City. Subject to applicable ordinances, the City will endeavor to expedite all inspection, review and approval procedures. Upon Substantial Completion of the Public Improvements and final payment to Seller of the City's Initial Share of Public Improvements Cost in accordance with **Section 11.f.** below, the City shall accept the Public Improvements and the Seller agrees to convey to the City, at no charge, (a) the land under which the roads that are part of the Public Improvements are located, which may be conveyed by deed, or Seller may dedicate such Public Improvements to the City via the Plat, and/or (b) easements in the location of the applicable Public Improvements to the extent reasonably required for the City's use and maintenance of the Public Improvements. In addition, in the event Seller requires access to or the use of adjacent property owned by third parties for the construction, use, or maintenance of the Public Improvements, the City will cooperate with and assist Seller in acquiring easements over such property owned by third parties. The conveyance of any Public Improvements shall not include any oil, gas, water, or other minerals in and under and that may be produced from the land on which the Public Improvements are located.

e. *Change Orders.* Following the approval of the Plans and Specifications, the City shall have the right to inform Seller, in writing, of any changes to the final Plans and Specifications. Within twenty (20) days of receipt of any such requested change, Seller shall respond to the City in writing informing the City of (i) any additional costs and expenses that will result if the changes specified in the City's request are made, and (ii) any delay in the Substantial Completion or Completion Date of the Public Improvements or Sportsplex that will result from such changes to the final Plans and Specifications. Within five (5) business days following receipt of Seller's response, the City shall inform Seller in writing whether or not the terms of Seller's response are accepted, in which event such changes and terms shall constitute a Change Order hereunder and the City shall be responsible for all additional reasonable costs and expenses incurred as a result of such Change Order (including any financing costs, carrying costs, and indirect costs associated with any extended time for construction), and the Outside Completion Date shall be extended by the estimated delay set forth in Seller's response. The City shall pay the costs associated with such Change Order as set forth in **Section 11.f.i.** below. To the extent the terms are rejected by the City or the City fails to timely respond to Seller, the applicable request for changes shall be deemed ineffective and the final Plans and Specifications and the Public Improvements Cost shall remain unmodified as a result thereof.

f. *Payment of Public Improvements Cost.* The City shall pay (or cause Escrow Agent to pay) to Seller the City's Initial Share of the Public Improvements Cost as follows:

i. The City shall promptly make (or cause Escrow Agent to make, as applicable) periodic disbursements to Seller for the Public Improvements Cost as work progresses on the Public Improvements, subject to the City's review and approval of invoices for work completed submitted to the City in support of the disbursements. The City agrees not to unreasonably withhold, condition or delay its approval to any such disbursements so long as the applicable Public Improvement was completed in accordance with the applicable Plans and Specifications, and the City shall make any such disbursements within thirty (30) days of receipt of an invoice and supporting documentation.

ii. Subject to subsection iii. below, the City shall pay 100% of the Public Improvements Cost set forth in any invoice until the full amount of the Escrowed Funds has been disbursed; and thereafter, the City shall pay 50% of the remaining Public Improvements Cost set forth in any invoice, which amount shall be payable from the Escrow Deposit in accordance with the terms of the Escrow Agreement with Escrow Agent.

iii. After the Escrowed Funds are fully disbursed, the Escrow Agent shall withhold from each subsequent disbursement of the City's Initial Share of Public Improvements Cost from the Escrow Deposit a ten percent (10%) retainage on the Public Improvements Cost for the work performed, until final acceptance of the Public Improvements by the City in accordance with applicable ordinances, which shall be released promptly following completion in accordance with the terms of the Escrow Agreement.

iv. The foregoing obligations in this **Section 11.f.** shall survive Closing.

g. *Development of Future Phases Land.* Seller and the City anticipate that the Future Phases Land will be developed as part of the Future Phases following construction of the Project and Public Improvements and that the City will reimburse Seller for the portion of the Public Improvements Costs that were not previously reimbursed to Seller by the City under **Section 11.f** above. In the event construction of any of such anticipated Future Phases is commenced on the Future Phases Land within three (3) years following the Closing Date, then, Seller shall have the right to seek reimbursement from the City for the portion of the Public Improvements Cost that were not previously reimbursed to Seller by the City as part of the City's initial disbursement of the City's Initial Share of Public Improvement Costs as set forth in **Section 11.f.** above. To the extent there is any remaining balance in the Escrow Deposit at the time Seller requests reimbursement, then such amount shall be payable from the Escrow Deposit in accordance with the terms of the Escrow Agreement; and any remaining amounts sought by Seller that are not reimbursed from the Escrow Deposit shall be payable within fifteen (15) days of receipt of an invoice along with documentation from Seller evidencing commencement of construction for such Future Phases on the Future Phases Land, subject to **Section 20.u.** below. Receipt of a building permit for all or a portion of such Future Phases and initiation of site work shall be sufficient to evidence that construction of the Future Phases on the Future Phases Land has commenced. The foregoing obligations in this **Section 11.g.** shall survive Closing.

12. **Approvals.** To the fullest extent permissible, but subject to applicable ordinances, the City will endeavor to conduct concurrent reviews of all submitted proposals and applications including, but not limited to the annexation requests, zoning applications, the Plat, Public Improvement Construction Plans, the SPP, building permits and the Plans and Specifications for the Project and Public Improvements, along with any other Approvals. The City and Seller agree and acknowledge that the second reading of any ordinances pertaining to the annexation or zoning of any portion of the Master Site shall not be considered by the City Council until after the Effective Date of this Contract and any such annexation and zoning and any other Approvals are contingent upon and subject to Seller's purchase of the Master Site.

a. *Annexation and Zoning.* The City acknowledges that the Master Site will need to be fully annexed into the City's municipal boundaries to permit the intended use for the Project and Future Phases. The Master Site (or a portion thereof) is currently unzoned (to the extent located in the City's extraterritorial jurisdiction) or not properly zoned for the Project and Future Phases. Within thirty (30) days following the Effective Date of this Contract, Seller shall submit to the City a petition for annexation of the Master Site into the City limits and a request for zoning the Master Site to allow for the development and operation of the Project and Future Phases.. The City's staff will process the respective petitions and requests for annexation and zoning concurrently, subject to sequential approval in order to expedite consideration by the City's Planning and Zoning Commission and City Council, subject to applicable ordinances and laws. Regardless of anything herein to the contrary, nothing herein shall be construed as a contractual obligation on the part of the City to rezone all or any portion of the Master Site.

b. *Plat.* Seller shall submit the Plat to the City in accordance with established City policies and procedures. Seller shall update the Plat as necessary to reflect any comments from the City. The final approved Plat shall be recorded in the official public records of Hays County.

c. *SPP.* Seller shall submit its SPP application for the Project to the City within eight (8) months following the Effective Date of this Contract, subject to Excusable Delays.

d. *Review Process.* Subject to applicable ordinances, the City will endeavor to utilize an expedited review process for all requests and applications for Approvals submitted by Seller. The City hereby agrees to refund to Seller any and all permitting fees, application fees, impact fees, and another charges and fees related to the Approvals and development of the Sportsplex. Such refund shall be delivered by the City to Seller within thirty (30) days of Seller's request for refund and evidence of payment of the applicable fee or charge. The foregoing obligation shall survive Closing.

13. **Lease.** At Closing, the City, as landlord, and SMBI, as tenant, shall execute and enter into the Lease, in the form approved by the Parties as of the Effective Date of this Contract (such approved form being attached hereto as **Exhibit E**), wherein SMBI shall lease the Sportsplex Property and have the right to operate, manage, and maintain the Sportsplex, all as further set forth in the Lease. Seller, in its sole discretion, shall have the right to market, and to permit SMBI to market, the

Sportsplex during the term of this Contract. The City agrees to promptly (within five (5) business days of the Effective Date hereof) seek guidance on the financing structure for the Sportsplex from the Attorney General of the State of Texas. In the event the Attorney General provides comments or objections to the financing structure as set forth in the form of the attached Lease, then the Parties agree to use good faith, diligent efforts to revise the Lease to address the comments from the Attorney General and the City shall thereafter promptly resubmit the Lease to the Attorney General for confirmation that the objections and comments have been addressed. The foregoing process shall repeat until the Attorney General determines such comments and objections to the financing structure have been addressed.

14. **Naming Rights.** The City and Seller desire to sell naming rights for the Sportsplex. Within sixty (60) days of the Effective Date of the Contract, the City, in cooperation with Seller and other quasi-governmental agencies such as the Greater San Marcos Partnership, San Marcos Convention and Visitors Bureau, San Marcos Area Chamber of Commerce, and other similar governmental or quasi-governmental agencies, shall issue an RFP for naming rights to the Sportsplex. The City and Seller shall work collaboratively and in good faith to jointly secure the naming-rights partner that is most aligned with the objectives of the Parties. City shall retain sole discretion to void, deny, refuse or disallow any such naming right deemed inappropriate, discriminatory, or inflammatory or violates, in any way, the City's Title VI Compliance Policy. Any revenue from the sale of such naming rights shall be held and disbursed in accordance with the terms of the Lease.

15. **Default; Remedies Upon Default.**

a. *Notice of Default and Opportunity to Cure.* In the event a Party shall desire to assert a default by the other Party, the Party asserting such default shall provide written notice and a period of ten (10) days to cure such default prior to exercising the rights and remedies under this Contract. If the City is asserting a default against Seller, the City shall also provide a copy of such written notice to Escrow Agent and any other lender of Seller (provided the City has received notice of the name and address of such lender) and Escrow Agent and other Seller's lender (if any) shall have a period of ten (10) days to notify the City if Escrow Agent and/or lender intends to cure such default, and if Escrow Agent and/or lender timely notifies the City of such intent, the Escrow Agent and/or lender, as applicable, shall have such cure period as reasonably necessary to cure such default of Seller.

b. *Seller's Default.*

i. **Construction Default.** If Seller fails to Substantially Complete the Sportsplex and complete the Public Improvements in all material respects by the Outside Completion Date (subject to Excusable Delay) (a "**Construction Default**"), Seller shall be in default and the City shall have, as the City's sole and exclusive remedies against Seller for a Construction Default under this Contract, at law or in equity, the option of (i) delaying the Closing for such reasonable time as may be necessary for Seller to cure such Construction Default, or (ii) enforcing specific performance of this Contract, or (iii) if the Seller's failure relates to the completion of the Sportsplex, to promptly cause the Sportsplex to be Substantially Completed, in accordance with the Plans and Specifications, under terms of the General Contractor's

performance bond, if applicable, or, at the City's sole option, with funds disbursed from the Escrow Deposit (excluding any such portion of the Escrow Deposit to be applied to the City's share of Public Improvements Costs), and off-setting against the Purchase Price all actual, reasonable costs and expenses incurred by the City in completing the Sportsplex in accordance with the Plans and Specifications to the extent not funded by any such performance bonds or the Escrow Deposit, in which event Closing shall occur and the Purchase Price shall be reduced by all such costs, or (iv) if the Seller's failure relates to the completion of the Public Improvements, to promptly complete or cause the Public Improvements to be completed in accordance with the Plans and Specifications and Seller shall be obligated to reimburse the City for the actual costs incurred by the City in completing the Public Improvements, excluding any portion of such costs that are part of the City's Initial Share of Public Improvements Cost.

ii. Other Default. If Seller otherwise fails to complete this sale in accordance with the terms and provisions of this Contract for any reason other than a Construction Default, City shall have, as City's sole and exclusive remedies against Seller under this Contract, at law or in equity, the option of either (i) delaying the Closing for such reasonable time as may be necessary for Seller to cure such default, or (ii) enforcing specific performance of this Contract.

c. *City's Default.* If the City fails to complete this sale in accordance with the terms and provisions of this Contract for any reason except Seller's default, Seller shall have the right (i) to enforce specific performance of this Contract, and (ii) if Seller prevails in a suit for specific performance, draw on the Escrow Deposit deposited with Escrow Agent to cure such default or enforce Seller's remedies hereunder.

d. *Other Termination Rights.* In the event (i) the City fails to approve the Plans and Specifications for the Sportsplex within ninety (90) days of the initial submittal of the Plans and Specifications to the City (and such Plans and Specifications are consistent with the Sportsplex project and Sportsplex Quality Standard described herein) or the City fails to approve the final GMP (and such GMP is less than or equal to the GMP Threshold, unless Seller elects, in its sole discretion, to pay the GMP amount in excess of the GMP Threshold) for any reason, or (ii) the City fails to timely deposit the Escrow Deposit, (iii) the City fails to approve the Plans and Specifications for the Public Improvements (including an engineered Public Improvement Construction Plan), as well as the Public Improvements Cost within ninety (90) days of the initial submittal of the Plans and Specifications for the Public Improvements to the City for any reason, or (iv) the City fails to issue any of the required Approvals necessary for the construction of the Project or Public Improvements in form and substance reasonably acceptable to Seller, then Seller shall have the right to terminate this Contract by written notice to the City. In the event Seller terminates this Contract pursuant to the foregoing sentence, or in the event the City terminates this Contract for any reason prior to the Construction Commencement Date, then (A) this Contract shall be deemed terminated, (B) the City shall pay to Seller the Termination Fee within sixty (60) days following the date of termination as liquidated damages (it being agreed that it would be extremely difficult, if not impossible, to calculate the actual damages to Seller for such termination); provided

that the City shall not be obligated to pay the Termination Fee if the City terminated the Contract prior to the Construction Commencement Date solely due to the Plans and Specifications for the Sportsplex not being reasonably sufficient to achieve the Sportsplex Quality Standard, and (C) the Seller and the City shall have no other or further liability or obligation to each other hereunder, except those obligations that expressly survive the termination of this Contract. The foregoing obligations shall survive the termination of the Contract. The City acknowledges and agrees that the City shall have no right to terminate this Contract after the Construction Commencement Date occurs.

e. **LIMITED WAIVER OF IMMUNITY.** SUBJECT TO THE FOLLOWING, THE CITY, IN ENTERING INTO THIS CONTRACT DOES NOT WAIVE ITS IMMUNITY FROM SUIT OR ANY OTHER LIMITATIONS ON ITS LIABILITY, CONTRACTUAL OR OTHERWISE, AS GRANTED BY THE TEXAS CONSTITUTION OR APPLICABLE LAWS OF THE STATE OF TEXAS. NOTWITHSTANDING THE FOREGOING, SELLER SHALL HAVE THE RIGHT TO SEEK THE REMEDIES SPECIFIED IN SECTION 15.A, SECTION 15.C AND SECTION 15.D HEREOF, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY IN RESPONSE TO AN ACTION BY SELLER SEEKING ONLY THE REMEDIES IN SUCH SECTIONS.

16. **Condemnation and Casualty.**

a. *Condemnation.* If, prior to the Construction Commencement Date, any portion of the Master Site shall be condemned or threatened (in writing) to be condemned, then either Party may terminate this Contract by giving written notice to the other Party, in which event (A) this Contract shall be deemed terminated, (B) the City shall reimburse Seller for all Seller's actual out-of-pocket expenses incurred in pursuit of this transaction with the City and the development of the Project and Public Improvements, but in no such event shall the City's reimbursement to the Seller under this Section exceed the Termination Fee, and (C) the Seller and the City shall have no other or further liability or obligation to each other hereunder, except those obligations that expressly survive the termination of this Contract. The foregoing obligations shall survive the termination of the Contract. If, after the Construction Commencement Date but prior to the Closing, any portion of the Master Site shall be condemned or threatened (in writing) to be condemned, then the Closing shall take place and there shall be assigned to the City at Closing all of Seller's interest in and to any condemnation award received or pending relative to the Sportsplex Land, and the Plans and Specifications for the Sportsplex and Public Improvements, and GMP and Public Improvements Costs, as well as the construction schedule, shall be adjusted as reasonably agreed to between the parties to take into account such condemnation. The City agrees that, during the term of this Contract, the City shall not take any action to condemn any portion of the Master Site, nor shall the City take any action to purchase any portion of the Master Site in lieu of condemnation (except for the purchase of the Sportsplex Property in accordance with the terms of this Contract).

b. *Casualty.* In the event that the Sportsplex Property suffers a casualty then Seller shall continue to reasonably pursue the construction of the Sportsplex and Public Improvements and shall use good faith efforts to Substantially Complete the Sportsplex and Public Improvements pursuant to a revised construction schedule and budget reasonably agreed to between Seller and the City. All insurance proceeds shall be used exclusively for such purpose. Seller shall not be in default hereunder as a result of such casualty (such casualty being an Excusable Delay) and the City shall not be relieved of the City's obligations hereunder.

17. **Real Estate Commissions.** Seller and the City represent and warrant to each other that they have dealt with no broker, finder or similar agent in connection with the transaction provided for in this Contract. Seller agrees to hold the City harmless from and against any claim made by any person claiming to have dealt with Seller in connection with this transaction, including reasonable attorney's fees incurred in the defense of such a claim. The City agrees to hold Seller harmless from and against any claim made by any person claiming to have dealt with the City in connection with this transaction, including reasonable attorneys' fees incurred in the defense of such a claim.

18. **Confidentiality; As-Is Acceptance.**

a. *Confidentiality.* The City agrees, that until the Closing, to the full extent permitted by applicable law or except as agreed to in writing by the Parties, the City and the City's agents and representatives shall hold all information obtained with respect to the Master Site in confidence and further agrees that until the Closing they will not disclose its content to others except and only to the extent required by applicable law (it being agreed that Seller shall have the right to object to any such disclosure as may be permitted by applicable law). If this Contract is terminated for any reason, any records and other information and copies of work sheets and other documents, reports and materials obtained by the City shall be held in confidence by the City, except to the extent the same is required to be disclosed by law or court order. The provisions of this **Section 18.a** shall survive any termination of this Contract.

b. *"AS-IS" ACCEPTANCE OF SPORTSPLEX LAND.* AS A MATERIAL PART OF THE CONSIDERATION FOR THE TRANSACTION CONTEMPLATED UNDER THIS CONTRACT, EXCEPT AS MAY BE SPECIFICALLY SET FORTH HEREIN, THE CITY AND SELLER EXPRESSLY STIPULATE AND AGREE THAT THE CITY SHALL ACCEPT THE SPORTSPLEX LAND "AS-IS" AND "WITH ALL FAULTS," WITH ANY AND ALL LATENT AND PATENT DEFECTS, AND THE CITY HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE SPORTSPLEX LAND, THE FITNESS OF THE SPORTSPLEX LAND FOR ANY INTENDED USE OR PURPOSE, THE EXISTENCE OF ANY HAZARDOUS OR TOXIC MATERIALS IN OR ON THE SPORTSPLEX LAND OR ANY OTHER ENVIRONMENTAL CONDITION OF THE SPORTSPLEX LAND, OR THE PRESENT OR FUTURE INCOME THAT MAY BE GENERATED FROM THE SPORTSPLEX LAND, OTHER THAN WITH RESPECT TO THE WARRANTY OF TITLE SELLER AGREES TO DELIVER IN THE DEED REQUIRED UNDER THE PROVISIONS OF THIS CONTRACT. THE CITY ACKNOWLEDGES THAT IT HAS

HAD AN OPPORTUNITY TO INSPECT THE SPORTSPLEX LAND AND SITE ASSESSMENT REPORTS AND IS NOT RELYING UPON ANY REPRESENTATIONS, STATEMENTS, ASSERTIONS OR NON-ASSERTIONS BY SELLER WITH RESPECT TO THE CONDITION OF THE SPORTSPLEX LAND, BUT IS RELYING SOLELY UPON ITS INVESTIGATION AND EXAMINATION OF THE SPORTSPLEX LAND. THE PROVISIONS OF THIS **SECTION 18.b** SHALL SURVIVE THE CLOSING AND THE DELIVERY OF SUCH DEED.

19. **Notices.** Any notices required or permitted to be given under this Contract shall be in writing and shall be deemed to be given when deposited with a nationally or regionally recognized overnight courier service guaranteeing next business day delivery, or when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or when delivered via electronic mail deemed given at the time and date when the transmission was sent.

Address for the City:

THE CITY OF SAN MARCOS, TEXAS
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Phone: 512-396-4656
Email: sparker@sanmarcostx.gov

Address for Seller:

Pursuant Ventures Development, LLC
Attn: Tyler Sibley
415 N. Guadalupe St., #400
San Marcos, TX 78666
Phone: (214) 282-8970
Email: tylersibley1@gmail.com

A copy of any notice given to Seller shall be given at the same time and in the same manner as the notice to Seller to:

Steven Metcalfe
Metcalfe Wolff Stuart & Williams, LLP
221 W. 6th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 404-2209
Email: smetcalfe@mwswtexas.com

20. **Miscellaneous.**

- a. *Interpretation.* In this Contract, unless a clear, contrary intention appears:
 - i. the singular number includes the plural number and vice versa;

ii. reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified in writing and in effect from time to time in accordance with the terms thereof;

iii. "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Contract as a whole and not to any particular article, section or other provision thereof;

iv. "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

v. reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date.

b. *Disclosure.* THE CITY ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT IT SHOULD HAVE AN ABSTRACT COVERING THE PROPERTY EXAMINED BY AN ATTORNEY OF ITS SELECTION, OR SHOULD BE FURNISHED WITH OR OBTAIN A POLICY OF TITLE INSURANCE COVERING THE SPORTSPLEX PROPERTY.

c. *Mutual Assistance.* The City and Seller will do all things reasonably necessary to carry out the terms and provisions of this Contract, and to aid and assist each other in carrying out such terms and provisions.

d. *Assignment; Binding Effect; Authority.* Neither Party may assign this Contract to any other person or entity without the prior written consent of the other Party, and no assignment permitted hereunder shall operate to release the assigning Party of its liabilities or obligations under this Contract without the express written consent of the other Party. Notwithstanding the foregoing, Seller may assign this Contract without the consent of, but upon written notice to, the City to (i) any affiliated or related entity under common control or ownership with Seller at any time and (ii) to any lender providing financing for the acquisition, development and construction of the Master Site, Project or Public Improvements as security for Seller's obligations pursuant to such financing. Subject to this restriction on assignment, this Contract and all of its terms and provisions shall be binding upon and inure to the benefit of Seller, and the successors and assigns of Seller, and the City, and the successors and assigns of the City.

e. *Complete Agreement.* This Contract together with the exhibits attached hereto contains the complete agreement of the Parties and cannot be amended or modified except by written agreement signed by Seller and the City (and any lender providing financing to Seller, if required by such lender). As the Parties continue work on the pre-development activities contemplated herein, the Parties will cooperate in good faith, as necessary, to finalize the necessary agreements, Plans and Specifications, applications and Approvals, and, when necessary, to administratively amend this Contract to reflect the terms of such agreements, Plans and Specifications, applications, and Approvals. The terms and provisions of this

Contract shall not merge with, or be extinguished or otherwise affected by, any subsequent conveyance or instrument between the Parties, unless the instrument specifically so states and is signed by both Parties.

f. *Headings.* The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the scope, content or extent of this Contract or any part of it.

g. *Waiver.* The requirements imposed upon Seller in this Contract are for the City's benefit, and those requirements or other provisions for the City's benefit may be waived in writing by the City. Likewise, the requirements imposed upon the City in this Contract are for the Seller's benefit, and those requirements or other provisions for the Seller's benefit may be waived in writing by Seller. If any portion of this Contract is held by a court of proper jurisdiction to be invalid or inoperative, then so far as is reasonable and possible, the remainder of the Contract shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provisions of this Contract shall not be deemed to be a waiver of that Party's right to enforce against the other Party the same or any other term or provision.

h. *Attorneys' Fees.* If it shall be necessary for either the City or Seller to employ an attorney to enforce its rights pursuant to this Contract (or defend any such enforcement action), the non-prevailing Party shall reimburse the prevailing Party for such Party's costs of court and reasonable attorneys' fees

i. *Governing Law.* This Contract and the obligations under this Contract shall be construed in accordance with, governed by, and shall be subject to, the laws of the State of Texas. The Parties agree that the venue of any litigation arising in connection with this Contract or in respect of any of the obligations of the Parties under this Contract, shall, to the extent permitted by law, be in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

j. *Dispute Resolution.* If a dispute arises out of or relates to this Contract, or the breach thereof, the Parties agree to use good faith, diligent efforts to promptly resolve such dispute, and if the dispute cannot be settled within thirty (30) days through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. If any controversy or claim is not resolved within sixty (60) days after initiation of mediation, either party may file suit in a court of competent jurisdiction for such remedies as are available at law or in equity.

k. *Legal Representation of the Parties.* This Contract was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Contract to be construed or interpreted against any Party shall not apply.

l. *Authority.* The City represents and warrants that the City has the full power and authority to consummate the transactions set forth in this Contract, and the execution, delivery and performance of this Contract has been duly authorized, is legal and binding on the City and is enforceable in accordance with its terms. The City further represents that the City has available, or will have available, the funds required to purchase the Sportsplex Property and to pay its share of the Public Improvements Cost pursuant to the Contract. Seller represents and warrants that Seller has the full power and authority to consummate the transactions set forth in this Contract, and the execution, delivery and performance of this Contract has been duly authorized, is legal and binding on Seller and is enforceable in accordance with its terms.

m. *Financing.* In connection with any financing Seller obtains for the acquisition, development and construction of the Master Site, the Project and the Public Improvements, the City shall reasonably cooperate with Seller and execute such additional documents, including without limit an escrow agreement, a triparty agreement, consents to assignments, estoppel certificates, subordination and non-disturbance agreement, and representations and covenants in favor of such lender, as may be reasonably required by such lender in connection with such financing, provided such instruments and documents do not materially increase the City's liabilities or obligations or materially decrease the City's benefits.

n. *Acquisition Contingency.* City acknowledges that Seller does not currently hold fee simple title to the Master Site but is under contract to purchase the Master Site. Seller shall use commercially reasonable efforts to complete the purchase of the Master Site pursuant to the terms of the Underlying Contract on or before the Construction Commencement Date. If Seller does not purchase the Master Site on or before the Construction Commencement Date, then Seller may terminate this Contract by written notice to the City at any time prior to Seller's obtaining fee simple title to the Master Site, whereupon this Contract shall then terminate, the Escrow Deposit (if previously delivered) shall be returned to the City, and neither Party hereto will have any rights or obligations pursuant to this Contract except those which expressly survive termination.

o. *No Third Party Beneficiaries.* This Contract is not intended to confer any rights, privileges, or causes of action upon any third party (except SMBI which shall be a third party beneficiary hereof solely in regard to the Lease).

p. *Force Majeure.* Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Contract as the result of any Excusable Delay (it being agreed that a day-for-day adjustment for each day of an Excusable Delay shall be deemed equitable).

q. *Time Periods.* Unless otherwise expressly provided herein, all periods for performance, delivery, review or approval and the like shall be determined on a "calendar" day basis. If any day for performance, delivery, review or approval shall fall on a Saturday, Sunday or legal holiday (state or federal) in Hays County, Texas, the time therefor shall be extended to the next business day.

r. *Execution in Counterparts.* The Contract can be executed in counterparts, each of which shall be an original and, upon the delivery to the Title Company of one or more of the Contracts signed by all Parties, together will constitute a fully executed and binding Contract.

s. *Effective Date of Contract.* For purposes of this Contract it is agreed that the Effective Date of this Contract shall be the date on which a fully executed copy of this Contract, signed by both Seller and the City, is deposited with the Title Company. The receipt of this Contract issued by the Title Company shall be conclusive evidence of the Effective Date of this Contract.

t. *No Joint Venture.* It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties.

u. *Subject to Appropriations.* Any financial obligations of the City hereunder not covered by the Escrow Deposit and Escrowed Funds shall be paid solely from lawfully available funds that have been budgeted and appropriated by the City during the fiscal year in which the obligation is performable or due. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Seller shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes of and satisfy its obligations under this Contract and such failure shall not constitute a breach of this Contract.

v. *Prohibition on Contracts with Companies Boycotting Israel.* Pursuant to Chapter 2270 and 808, *Texas Government Code*, Seller certifies that is not ineligible to receive payments under this Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

w. *2252 Compliance.* Section 2252 of the *Texas Government Code* restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Seller hereby certifies that is not ineligible to receive the award of or payments under this Contract. Failure to meet or maintain the requirements under this provision will be considered a material breach.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

[Signature Page to the Contract]

IN WITNESS WHEREOF, the Parties have executed this Contract as of the dates set forth opposite their respective signatures, but to be effective as of the Effective Date described above.

CITY:

THE CITY OF SAN MARCOS, TEXAS
a home-rule municipality

Date executed by the City:

_____, 2019

By: _____

Name: _____

Title: _____

SELLER:

**PURSUANT VENTURES DEVELOPMENT,
LLC**
a Texas limited liability company,

Date executed by Seller:

_____, 2019

By: _____

Name: _____

Title: _____

TITLE COMPANY RECEIPT

The undersigned, CORRIDOR TITLE COMPANY, hereby acknowledges receipt of a fully executed copy of this Contract, and agrees to perform the duties of Title Company strictly in accordance with the terms of the Contract.

TITLE COMPANY:

CORRIDOR TITLE COMPANY

By: _____

Name: _____

Title: _____

Date: _____, 2019 (“**Effective Date**”)

EXHIBIT A

Description of the Master Site; Depiction of the Master Site

Legal Description of Master Site

62.48 acres of land, more or less, out of the EDWARD BURLESON SURVEY, NO. 18, ABSTRACT NO. 63, Hays County, Texas, being a portion of a certain called 109.22 acre tract described in the Deed to Outlet West Investors, Ltd. of record in Volume 1486, Page 887, said 62.48 acre tract being more particularly described by metes and bounds below.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A

62.48 Ac.
Edward Burleson Survey No. 18, A-63,
Hays County, Texas

Job No. 070199-01-001
FN1965(en)
Page 1 of 3

FIELD NOTES DESCRIPTION

DESCRIPTION OF 62.48 ACRES OF LAND IN THE EDWARD BURLESON SURVEY NO. 18, A-63, HAYS COUNTY, TEXAS; BEING A PORTION OF A CERTAIN CALLED 109.22 ACRE TRACT DESCRIBED IN THE DEED TO OUTLET WEST INVESTORS, LTD. OF RECORD IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 62.48 ACRE TRACT, AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found in the southeast right-of-way line of that certain 200-foot wide Union Pacific Railroad right-of-way, being the south corner of that 100-foot strip described in the deed to the Missouri, Kansas & Texas Railway Company of Texas of record in Volume 41, Page 23, Deed Records of Hays County, Texas, in the northeast line of a certain 29.07 acre tract designated as Tract Number 3 and described in the deed to Eugene A. Herry, Jr. and Frances K. Herry of record in Volume 276, Page 313, Deed Records of Hays County, Texas, at the west corner of the said 109.22 acre tract, for the west corner and **POINT OF BEGINNING** of the tract described herein;

THENCE N 46°39'30" E, leaving the northeast line of the said 29.07 acre tract, with the southeast railroad right-of-way line and the northwest line of the said 109.22 acre tract, with the northwest line of the tract described herein, a distance of 1903.09 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found, for the north corner of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found in the southeast railroad right-of-way line and the northwest line of the said 109.22 acre tract bears S 46°39'30" W, a distance of 160.21 feet;

THENCE leaving the said southeast railroad right-of-way line, crossing the said 109.22 acre tract, with the northeast, southeast and northeast lines of the tract described herein, the following seven (7) courses and distances:

1. S 46°27'37" E, a distance of 657.03 feet to a calculated angle point,
2. S 52°15'35" E, a distance of 229.85 feet to a calculated point for the most northerly east corner,
3. S 39°31'34" W, a distance of 198.77 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found,
4. S 32°44'39" W, a distance of 199.24 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found at a re-entrant corner,
5. S 46°16'38" E, a distance of 348.25 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found at an east corner,
6. S 45°29'11" W, a distance of 46.11 feet to a ½-inch Iron rod found at a re-entrant corner, and
7. S 36°50'33" E, a distance of 111.52 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found in the southeast line of the said 109.22 acre tract, same being the curving northwest right-of-way line of Gregson's Bend, a 60-foot right-of-way, as shown on the Lot 2 and Gregson Road of Section 1, the Lowman Ranch Subdivision plat of record in Volume 7, Page 215, Plat Records of Hays County, Texas, for an east corner of the tract described herein;

THENCE with the west and northwest right-of-way line of said Gregson's Bend, with the east and southeast line of the tract described herein, the following five (5) courses and distances:

1. with the arc of a curve to the left, having a radius of 360.00 feet, an arc distance of 69.66 feet, and a chord which bears S 31°22'59" W, a distance of 69.55 feet to a ½-inch Iron rod with a plastic cap stamped "BYRN SURVEY" found at a point-of-tangency,
2. S 25°56'16" W, a distance of 277.98 feet to a ½-inch Iron rod found at a point-of-curvature,

3. with the arc of a curve to the right, having a radius of 503.00 feet, an arc distance of 293.42 feet, and a chord which bears S 42°37'23" W, a distance of 289.28 feet to a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found at a point-of-tangency,
4. S 59°20'03" W, a distance of 40.49 feet to a calculated point-of-curvature, and
5. with the arc of a curve to the right, having a radius of 25.00 feet, an arc distance of 40.54 feet, and a chord which bears N 74°10'24" W, a distance of 36.24 feet to a calculated point for the northeast terminus of Commercial Loop, a 70-foot right-of-way as shown on the Proposed Roadway and Lot 3, Lowman Ranch Subdivision, Section 1 plat of record in Volume 9, Page 62, Plat Records of Hays County, Texas, for a re-entrant corner of the tract described herein, from which a ½-inch iron rod with a plastic cap stamped "BYRN Survey" found bears N 62°00'33" E, a distance of 1.27 feet;

THENCE S 62°00'33" W, continuing across the said 109.22 acre tract, with the north terminus of said Commercial Loop, with a south line of the tract described herein, a distance of 70.00 feet to a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found at the northwest terminus of said Commercial Loop and a reentrant corner of the tract described herein, and from which a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found bears S 62°00'33" W, a distance of 4.93 feet;

THENCE continuing across the said 109.22 acre tract, with the curving northwest right-of-way line of said Commercial Loop, with a northeast line of the tract described herein, with the arc of a curve to the left, having a radius of 1245.00 feet, an arc distance of 123.28 feet, and a chord which bears S 30°42'59" E, a distance of 123.23 feet to a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found at the northerly east corner of Lot 3, said Proposed Roadway and Lot 3, Lowman Ranch Subdivision, Section 1, for a northeast corner of the tract described herein;

THENCE leaving the northwest right-of-way line of said Commercial Loop, continuing across the said 109.22 acre tract, with the north and northwest line of said Lot 3, Lowman Ranch Subdivision, Section 1, with a south and southeast line of the tract described herein, the following two (2) courses and distances:

1. with the arc of a curve to the left, having a radius of 25.00 feet, an arc distance of 44.76 feet, and a chord which bears N 84°42'52" W, a distance of 39.02 feet to an "X" in concrete found at a point-of-tangency, and
2. S 43°35'28" W, at a distance of 21.70 feet, a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found bears S 46°24'32" E, a distance of 0.49 feet, and continuing for a total distance of 356.89 feet to a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found at the west corner of said Lot 3, Lowman Ranch Subdivision, Section 1, and the north corner of Lot 5, Section 1, Lowman Ranch Subdivision of record in Volume 17, Page 134, Plat Records of Hays County, Texas, for an angle point in the southeast line of the tract described herein;

THENCE S 43°32'32" W, continuing across the said 109.22 acre tract, with the northwest line of said Lot 5, Section 1, Lowman Ranch Subdivision, with the southeast line of the tract described herein, a distance of 322.26 feet to a ½-inch iron rod with a plastic cap stamped "BYRN SURVEY" found at the west corner of said Lot 5, Section 1, Lowman Ranch Subdivision, in the southwest line of the said 109.22 acre tract and the northeast line of the said 29.07 acre tract, for the south corner of the tract described herein, from which a 3/8-inch iron rod found in the southwest line of the said 109.22 acre tract at the northeast corner of the said 29.07 acre tract, same being an angle point in the southwest line of said Lot 5, Section 1, Lowman Ranch Subdivision and the north corner of Lot 13, South Park Commercial Subdivision of record in Volume 4, Page 59, Plat Records of Hays County, Texas bears S 45°19'13" E, a distance of 172.98 feet;

THENCE with the southwest line of the said 109.22 acre tract and the northeast line of the said 29.07 tract, with the southwest line of the tract described herein, the following three (3) courses and distances:

1. N 45°12'23" W, a distance of 147.03 feet to a cedar fence post found at an angle point,
2. N 45°53'12" W, a distance of 1024.34 feet to a cedar fence post found, and

62.48 Ac.
Edward Burleson Survey No. 18, A-63,
Hays County, Texas

Job No. 070199-01-001
FN1965(en)
Page 3 of 3

3. N 45°57'03" W, a distance of 451.51 feet to the **POINT OF BEGINNING** and containing 62.48 acres of land more or less.

BEARING BASIS: Texas Coordinate System, NAD 83, South Central Zone, Grid.


BOWMAN WORD FILE: FN1965(en)
BOWMAN REF PLAN NO.: 3557
H:\Survey_FieldNotes\FN-1900s\FN1965(en).doc

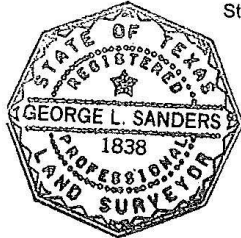
THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF TRAVIS §

That I, George L. Sanders, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the months of November and December 2016, under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 27th of January, 2017 A.D.

Bowman Consulting Group, Ltd.
Austin, Texas 78746


George L. Sanders
Registered Professional Land Surveyor No. 1838
State of Texas



Depiction of Master Site

Note: This is intended to be a general depiction only of the Master Site and components thereof described in the Contract; the final location, configuration, and size of the proposed tracts will be updated at such time as the final approvals (e.g., plat, plan approvals, permits, etc.) are obtained. The uses shown hereon are subject to change.



EXHIBIT B

Public Improvements

Those certain Public Improvements as generally shown on Exhibit A and to be further defined as part of the plat and SPP process.

EXHIBIT C

Form of Special Warranty Deed

AFTER RECORDING, RETURN TO:

Corridor Title
Attn; Laura Dupont
133 W. San Antonio Street, Suite 100
San Marcos, TX 78666

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 WHICH 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.

SPECIAL WARRANTY DEED

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

That PURSUANT VENTURES DEVELOPMENT, LLC, a Texas limited liability company (“**Grantor**”), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid by the Grantee herein named, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of which no lien, express or implied, is retained, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto THE CITY OF SAN MARCOS, TEXAS, a home-rule municipality (“**Grantee**”), that certain tract of real property in Hays County, Texas, as more particularly described on Exhibit “A” attached hereto (the “**Land**”), together with Grantor’s interest, if any, in and to (i) all and singular the estates, rights, privileges, (ii) easements and appurtenances, (iii) any adjacent streets, alleys and right-of-ways, and (iv) improvements, plans, permits, applications, and utility and development rights, in each case solely to the extent belonging or in any way

appertaining to the Land (the foregoing being the “**Appurtenances**,” and together with the Land, the “**Property**”).

TO HAVE AND TO HOLD the Property, together with any and all improvements located thereon and all of the rights, privileges, easements and appurtenances to the extent belonging or appertaining to the Property and such improvements, in anywise belonging, unto Grantee, its successors and assigns forever; and Grantor does hereby bind himself, his heirs, executors, administrators, successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor has made no representation or warranty, express or implied, upon which Grantee has relied, as to the condition of the Property, the fitness of the Property for any intended use or purpose, the existence of any hazardous or toxic materials in or on the Property or any other environmental condition of the Property, the availability of utilities or other services to the Land, the workmanship or materials used in the improvements on the Property, or the present or future income that may be generated from the Property, except for the warranty of title set forth in this deed. Grantee acknowledges that it is relying solely upon its investigation and examination of the Property and is satisfied with the condition thereof, and agrees that the Property is being conveyed to Grantee “AS IS” and “WITH ALL FAULTS,” with any and all latent and patent defects, except for the warranty of title set forth in this deed.

This conveyance is made by Grantor and accepted by Grantee subject to the reservations and encumbrances and other matters described on Exhibit “B” attached hereto.

Ad valorem taxes for the year 2019 have been prorated as of the date hereof, and Grantee assumes and agrees to pay all taxes for the year 2019, as well as any subsequent years during Grantee’s ownership of the Property.

(Signature Page Follows)

(Signature Page To Special Warranty Deed)

EXECUTED to be effective this the __ day of _____, 2019.

GRANTOR:

PURSUANT VENTURES DEVELOPMENT, LLC,
a Texas limited liability company,

By:_____

Name: _____

Title: _____

STATE OF TEXAS §

§

§

COUNTY OF TRAVIS §

§

This instrument was acknowledged before me on _____, 2019, by _____, as _____ of Pursuant Ventures Development, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

GRANTEE'S ADDRESS:

Attn: _____

EXHIBIT A
to Special Warranty Deed

Legal Description

EXHIBIT B
to Special Warranty Deed

Reservations from Conveyance and Permitted Exceptions

Reservations from Conveyance:

Grantor has no rights in, and the conveyance of the Property does not include, any oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it. Notwithstanding the foregoing, Grantor hereby waives all right to use the surface of the Property in relation to the foregoing mineral rights, including without limit all rights of ingress and egress to and from the surface of the Property; provided however that nothing shall restrict or prohibit the pooling or unitization of the portion of the mineral estate owned by Grantor with land other than the Property; or the exploration or production of the oil, gas and other minerals by means of wells that are drilled or mines that are opened on land other than the Property but enter or bottom below the surface of the Property, provided that these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property from time to time.

The Property excludes any Appurtenances to the extent belonging or in any way appertaining to any other tract of real property owned by Grantor or an affiliate of Grantor.

Permitted Exceptions:

[To be inserted]

EXHIBIT D

Form of Bill of Sale

BILL OF SALE

This Bill of Sale, Assignment and Assumption (this “**Agreement**”) is made as of _____, 2019, by and between PURSUANT VENTURES DEVELOPMENT, LLC, a Texas limited liability company (“**Assignor**”), and THE CITY OF SAN MARCOS, TEXAS, a home-rule municipality (“**Assignee**”).

WITNESSETH:

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged Assignor hereby agree as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee the following:

(a) All of the equipment, machinery, furniture, furnishings, supplies and other tangible personal property and fixtures (“**Personalty**”), if any, owned by Assignor, and located on, and used in connection with the management, maintenance or operation of that certain land and improvements located in Hays County, Texas as more particularly described in **Exhibit A** attached hereto and made a part hereof (“**Real Property**”).

(b) All of Assignor's intangible personal property to the extent related to the Real Property and the improvements located thereon (the “**Improvements**”), including: (1) the plans and specifications and all other architectural and engineering drawings for the Improvements, if any (to the extent assignable); (2) active warranties and guaranties (if any and to the extent assignable); (3) contract rights related to the construction, operation, or ownership of the Real Property, if any (but only to the extent assignable and only to the extent Assignor's obligations occurring, accruing or arising after the date of this Agreement thereunder are expressly assumed by Assignee pursuant to this Agreement); governmental entitlements, permits, approvals, licenses, or similar documents, if any (to the extent assignable); and (4) all utility deposits, if any, to the extent assignable (collectively the “**Intangible Personal Property**”).

The Personalty and Intangible Personal Property being transferred and conveyed hereunder excludes any Personalty or Intangible Personal Property belonging or in any way appertaining to other real property or improvements owned by Assignor or an affiliate of Assignor.

2. This Bill of Sale, Assignment and Assumption is given pursuant to that certain Purchase and Sale Agreement (the “**Purchase Agreement**”) dated as of _____, 2019, between Assignor and Assignee, providing for, among other things, the conveyance of the Real Property and Improvements thereon.

3. Assignee hereby accepts the assignment of the Personalty and the Intangible Personal Property and agrees to assume and discharge, in accordance with the terms thereof, all of the obligations thereunder from and after the date hereof.

4. To the full extent permitted at law, Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform any of the foregoing obligations arising from and accruing on or after the date hereof.

5. To the full extent permitted at law, Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the obligations of Assignor under the Contracts assigned to Assignee, to the extent arising from and accruing prior to the date hereof.

6. This Bill of Sale, Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

7. This Bill of Sale, Assignment and Assumption shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES AND NOTARY CERTIFICATIONS ON FOLLOWING PAGES]

EXECUTED as of _____, 2019.

ASSIGNEE:

THE CITY OF SAN MARCOS, TEXAS, a
home-rule municipality

By: _____

Name: _____

Title: _____

ASSIGNOR:

PURSUANT VENTURES DEVELOPMENT,
LLC, a Texas limited liability company,

By: _____

Name: _____

Title: _____

Exhibit A Real Property
Exhibit B Contracts

EXHIBIT E

Form of Lease

[See attached]

EXHIBIT F

Form of Escrow Agreement

[See attached]

ESCROW AGREEMENT

Date: _____, 20__

“City”: City of San Marcos, Texas

City’s Mailing Address: Attn: City Manager
630 E. Hopkins
San Marcos, Texas 78666
Email: _____

“Seller”: Pursuant Ventures Development, LLC

Seller’s Mailing Address: Attn: Tyler Sibley
415 N. Guadalupe Street, #400
San Marcos, Texas 78666
Email: tylersibley1@gmail.com

With a copy to:
Metcalf Wolff Stuart & Williams, LLP
221 W. 6th Street, Suite 1300
Austin, Texas 78701
Attn: Steve Metcalfe
Email: smetcalfe@mwswtexas.com

With a copy to:
[contact info for Seller’s Lender to be inserted]

“Escrow Agent”: Corridor Title, LLC
Attn: Cindy Carroll
Escrow Agent's Mailing Address: 133 W. San Antonio, Suite 100
San Marcos, Texas 78666
Email: cindy@corridortitle.com

“Sportsplex Property”: That certain real property containing approximately _____ (__) acres of land situated in San Marcos, Hays County, Texas, such land being described on **Exhibit A-1** attached hereto (the “Sportsplex Land”), together with any and all improvements located on the Sportsplex Land, including the Sportsplex (as defined below), and all of the rights, privileges, easements and appurtenances to the extent belonging or appertaining to the Sportsplex Land or Sportsplex, but not to the extent belonging or appertaining to any other portion of the Master Site or any other property within the Master Site. The “Sportsplex” means an outdoor sports and recreation facility consisting of (i) eight (8) multi-purpose athletic fields with synthetic turf that will provide the ability to interchange the configurations of the playing areas to accommodate different

age ranges and various outdoor sports, such as baseball, softball, lacrosse, flag football and others, (ii) concession areas, (iii) covered seating and (iv) community play space to be constructed on the Sportsplex Land in accordance with the Plans and Specifications (as defined in the Contract).

“Master Site”: That certain real property containing approximately 62.48 acres of land, such land being a portion of a 109.22 acre tract of land out of the Edward Burleson Survey, No. 18, Abstract No. 63, Hays County, Texas; which Master Site includes the land described as Tracts 10, 11, and 12 in **Exhibit A-2** hereto (including the Sportsplex Land), as well as any land located to the centerline of Cottonwood Creek, along with any land occupied by the streets to be constructed as part of the Public Improvements (as defined in the Contract), including Transportation Way and Commercial Loop and the existing detention pond, as such land is further described and shown on **Exhibit A-2** attached hereto.

Seller and City have entered into a Purchase and Sale Agreement (the “Contract”) dated ___, 2019, whereby Seller has agreed to sell and City has agreed to purchase the Sportsplex Property, and as a condition of such purchase, Seller has agreed to construct the Sportsplex on the Sportsplex Land and those certain Public Improvements on portions of the Master Site prior to the closing of the sale of the Sportsplex Property. All capitalized terms contained in this Escrow Agreement shall have the same meaning as in the Contract unless otherwise noted in this Escrow Agreement. References to “Parties” herein shall mean the City and Seller and references to a “Party” herein shall mean the City or Seller, as applicable. The Purchase Price to be paid by the City to the Seller is the aggregate sum of (i) the cost of the Sportsplex Land and (ii) the cost of the Sportsplex, as further set forth in the Contract. Additionally, the City will initially pay for a portion of the Public Improvements Cost, as set forth in the Contract.

Purpose of Escrow:

1. Seller has agreed, as part of the sale of the Sportsplex Property to the City, to construct the Sportsplex on the Sportsplex Land and to construct certain Public Improvements on portions of the Master Site, all as further described in the Contract. Pursuant to the Contract, the City is obligated to deposit the Escrow Deposit (defined below) with Escrow Agent to secure the City’s obligations under the Contract, including (a) payment of the Purchase Price for the Sportsplex Property and (b) payment of the City’s Escrow Deposit Share (as defined below) of the Public Improvements Cost (as defined in the Contract). The “City’s Escrow Deposit Share” means and refers to 50% of the remaining Public Improvements Cost after the Escrowed Funds (as defined in the Contract) have been fully disbursed and applied against the Public Improvements Cost. The City and Seller have elected to have the Escrow Agent hold the Escrow Deposit pending the release of such funds in accordance with the terms of the Contract.
2. With respect to the performance of the Parties hereto and Escrow Agent, time is of the essence in the performance of all terms and provisions of this Escrow Agreement.

Escrow Deposit:

3. To secure the City's obligations under the Contract, the City is obligated to deposit with Escrow Agent the sum of \$_____ (the "Escrow Deposit"), which Escrow Deposit is equal to the sum of (a) \$_____ (the "Sportsplex Funds") and (b) \$_____ (the "Public Improvements Funds"). The Sportsplex Funds shall be held by Escrow Agent in an interest-bearing escrow account (the "Sportsplex Account") and the Public Improvements Funds shall be held by Escrow Agent in a separate interest bearing escrow account (the "Public Improvements Account"). The City shall deposit the Escrow Deposit with the Escrow Agent within ninety (90) days of Seller's receipt of its SPP for the Project and Public Infrastructure (as defined in and as further set forth in the Contract).
4. The Escrow Deposit shall be invested by the Escrow Agent in a manner reasonably acceptable to the City and Seller, and all interest earned on such deposit shall be considered part of the Escrow Deposit.
5. In the event the Escrow Deposit is insufficient for the Purpose set out below (other than due to Escrow Agent's breach of this Escrow Agreement or its gross negligence or willful misconduct), any and all adjustments will be made between City and Seller in accordance with the terms of the Contract, without recourse on Escrow Agent.

Term of Escrow and Disbursement Instructions:

6. Disbursement of Sportsplex Funds.
 - a. Approximately thirty (30) days prior to the estimated date of Substantial Completion, Seller shall notify the City and Escrow Agent in writing of the anticipated date of Substantial Completion and the anticipated Closing Date (the "Initial Closing Notice"). Unless the City provides written notice to Seller and Escrow Agent on or before the date that is five (5) business days prior to the anticipated Closing Date set forth in such Initial Closing Notice of a Seller default, then the City shall be deemed to have consented to the proposed Closing Date. Seller shall deliver written notice (the "Final Closing Notice") to the City and Escrow Agent at least three (3) business days prior to the Closing Date, which Closing Notice shall include: (i) certification from Seller that the Sportsplex is Substantially Complete, (ii) the final punch list items (such list to be prepared in accordance with the terms of the Contract) and 110% of the estimate of costs to complete such punch list (the "Punch List Estimate"), and (iii) the final Closing Documents executed by Seller and to be executed by the City and delivered to the Escrow Agent for Closing as set forth in the Contract. Within three (3) business days of receipt of such Final Closing Notice, so long as Escrow Agent has not received a written objection from the City within two (2) business days following receipt of such Final Closing Notice, Escrow Agent shall release from the Sportsplex Account an amount equal to the difference between (y) the Sportsplex Funds and (z) the Punch List Estimate, and transfer the amount so released to Escrow Agent's general escrow account, such amount to be disbursed by Escrow Agent on the Closing Date as part of the Purchase Price for the Sportsplex Property in accordance with the Contract and the closing statements executed by Seller and the City.

- b. Upon completion of the outstanding punch list items, Seller shall deliver written notice of such completion to City and Escrow Agent and, unless Escrow Agent receives a written objection from the City (“Objection Notice”) related to the completion of the punch list items within three (3) business days of Seller’s completion notice, Escrow Agent shall release to Seller the full retention amount (i.e. the Punch List Estimate) being held in the Sportsplex Account by Escrow Agent.

7. Disbursement of Public Improvements Funds.

- a. As construction of the Public Improvements occurs, Seller may request a disbursement (a “Disbursement”) of proceeds of the Public Improvements Funds for payment or reimbursement of the Public Improvements Cost. Seller shall deliver to the Escrow Agent and the City a duly executed application for payment (a “Disbursement Request”) specifying the total amount of the Disbursement (and the retention amount, if any to the extent required by the Contract), the Public Improvements for which the Disbursement is requested and the documents set forth below. The Escrow Agent shall deliver the requested Disbursement (subject to the 10% retention, if applicable) to Seller only upon satisfaction of all conditions of this subparagraph 7.a. unless Escrow Agent receives an Objection Notice to the Disbursement from City within five (5) business days following Escrow Agent’s receipt of the Disbursement Request (said 5 business day period, the “Objection Period”). If the Escrow Agent receives City’s Objection Notice prior to the expiration of the Objection Period, then Escrow Agent shall withhold the portion of the requested Disbursement specified in such Objection Notice until the dispute has been resolved and written evidence of such resolution from Seller and City is delivered to the Escrow Agent. If the Escrow Agent (i) does not receive an Objection Notice from the City prior to the expiration of the Objection Period or (ii) receives a waiver by City of the Objection Period, then City is deemed to have approved the Disbursement and Disbursement Request, and Escrow Agent shall deliver the Disbursement to Seller. Disbursements will be made on a business day. Nothing in this Escrow Agreement shall limit the City’s obligations under the Contract. Each Disbursement Request shall include: (a) copies of each underlying invoice which is the subject of the Disbursement; and (b) a statement from Seller as to the City’s Escrow Deposit Share of the applicable Public Improvements Cost included in such Disbursement Request and any retainage (all as set forth in the Contract); and (c) for any Disbursement Request related to Disbursement of all or any portion of the retention amount, notice from Seller that the City has given final acceptance of the applicable Public Improvements.
- b. In the event construction of any Future Phases is commenced on the Future Phases Land within three (3) years following the Closing Date, then, Seller shall have the right to seek reimbursement following the Closing Date from the City for the portion of the Public Improvements Cost that was not previously reimbursed to Seller by the City as part of the City’s Initial Share of Public Improvements Cost, by delivering a request for reimbursement to the City (“Reimbursement Request”). To the extent there is any remaining balance in the Public Improvements Account or Sportsplex Account at the time Seller delivers such Reimbursement Request, then Seller shall simultaneously submit a copy of such Reimbursement Request to Escrow Agent, which

Reimbursement Request shall include (i) copies of each underlying invoice which is the subject of the Reimbursement Request; and (ii) a copy of a building permit or equivalent for all or a portion of such Future Phases; and (iii) certification from Seller that site work on the Future Phases Land for the development of the Future Phases has commenced. The Escrow Agent shall deliver the requested reimbursement to Seller only upon satisfaction of all conditions of this subparagraph 7.b. unless Escrow Agent receives an Objection Notice to the Reimbursement Request from the City within five (5) business days following Escrow Agent's receipt of the Reimbursement Request. If the Escrow Agent receives City's Objection Notice within such 5 business day period, then Escrow Agent shall withhold the portion of the requested Disbursement specified in such Objection Notice until the dispute has been resolved and written evidence of such resolution from Seller and City is delivered to the Escrow Agent. If the Escrow Agent (i) does not receive an Objection Notice from the City prior to the expiration of such 5 business day period or (ii) receives a waiver by City of the 5 business day objection period, then City is deemed to have approved the Reimbursement Request, and Escrow Agent shall deliver the Disbursement to Seller. Disbursements will be made on a business day. Nothing in this Escrow Agreement shall limit the City's obligations under the Contract or Seller's right to see reimbursement as set forth in Section 11.g. of the Contract to the extent funds are not available in the Public Improvements Account.

8. The term of this Escrow Agreement shall extend until the date upon which the Escrow Deposit has been fully disbursed pursuant to the terms of this Escrow Agreement, but in no event later the last day of the 48th calendar month following the Closing Date (the "Expiration Date").
9. If any funds remain in escrow as of the Expiration Date of this Escrow Agreement, such funds are to be released by Escrow Agent to the City without any recourse or liability to Escrow Agent and with notice to Seller and Seller's Lender.

Escrow Fees.

10. Escrow Agent will not charge any fees for holding the Escrow Deposit.
11. Seller and City (subject to written consent from Seller's Lender) may at any time agree to replace the Escrow Agent upon ten (10) days' advance written notice thereof to Escrow Agent then acting (but such notice may be waived by Escrow Agent), together with written instructions respecting the Escrow Deposit. Upon such replacement and delivery of the Escrow Deposit, Escrow Agent will be released from all liability arising thereafter (but not before then) under this Escrow Agreement.

Duties of Escrow Agent.

12. Under this Escrow Agreement, Escrow Agent is a depository only and shall have no liability for the holding, investment, disbursement, application or other disposition of any monies and/or documents received by Escrow Agent other than to comply with the specific

instructions, terms and provisions expressly set forth and/or provided for in this Escrow Agreement.

13. Escrow Agent shall not be required to be bound by notice of any default of any person, or to take any action with respect to such default involving any expense or liability on the part of Escrow Agent, unless notice in writing is given to an officer of Escrow Agent of such default and unless Escrow Agent is indemnified in a manner satisfactory to it against any such expense or liability. These instructions shall not be subject to rescission or modification except upon receipt by Escrow Agent of written instructions of Seller and City or their successors in interest and no such modification shall be effective unless and until consented to in writing by Escrow Agent and approved by Seller's Lender.

Adverse Claims.

14. If an Objection Notice is given, Escrow Agent shall withhold the portion of the requested Disbursement specified in such Objection Notice until the dispute has been resolved and written evidence of such resolution from Seller and City is delivered to Escrow Agent. Escrow Agent shall be entitled to interplead into a court of competent jurisdiction in Hays County, Texas the amount of any requested Disbursement with respect to which any dispute exists. Seller and the City equally shall pay the reasonable attorneys' fees and court costs incurred by Escrow Agent in connection with such interpleader proceeding.
15. The prevailing party in any litigation concerning this Escrow Agreement shall be entitled to recover from the non-prevailing party all court costs and reasonable attorneys' fees incurred by such prevailing party in connection with such litigation.

Exculpation and Indemnity.

16. Escrow Agent undertakes to perform such duties as are specifically set forth herein, and may, absent manifest error, rely on any written notice, instrument or signature believed by it to be genuine and to have been signed or presented by the proper Party or Parties. Escrow Agent will not be bound by any notice or demand, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless received by it in writing from the applicable Party or Parties. Escrow Agent is hereby authorized in the event of conflicting instructions from the Parties and any good faith doubt as to the course of action it should take under this Escrow Agreement, to (i) refrain from acting until Escrow Agent receives written agreement from the Parties resolving any conflict, or (ii) as provided in Paragraph 14, interplead the funds in the Escrow Account into a court of competent jurisdiction in Hays County, Texas.
17. Escrow Agent will not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or within the rights or powers conferred upon it hereunder. If Escrow Agent makes a written request for directions from Seller or City concerning a matter for which Seller or City is responsible in accordance with the terms of this Escrow Agreement, Escrow Agent may await such directions without incurring liability. Escrow Agent has no duty to act in the absence of such requested directions, but

may, in its commercially reasonable discretion, take such action as it reasonably deems appropriate to carry out the purposes of this Escrow Agreement. Escrow Agent is not a party to or bound by any agreement that may be deposited under, evidenced by, or which arises out of this Escrow Agreement. Escrow Agent shall be protected in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine and to be signed by the proper Party or Parties.

18. Seller and City hereby jointly and severally agree, to the extent permitted by law, to defend, indemnify and hold harmless the Escrow Agent from and against any and all claims, demands, causes of action, losses, liabilities, damages, costs and expenses, including, without limitation, actual court costs, and reasonable attorneys' fees, incurred or suffered by the Escrow Agent in connection with the performance of its obligations under this Escrow Agreement or otherwise arising, directly or indirectly, by reason of this Escrow Agreement, except to the extent any such claims, demands, causes of actions, losses, liabilities, damages, costs or expenses are incurred or suffered by the Escrow Agent as a result of its breach of its express obligations under this Escrow Agreement or its own gross negligence or willful misconduct. The obligations of indemnity of Seller and City set forth in the immediately preceding sentence shall survive the expiration or any termination of this Escrow Agreement and shall be performable in San Marcos, Hays County, Texas.

Additional Terms.

19. *Severability.* If any portion of this Escrow Agreement is held by a court of proper jurisdiction to be invalid or inoperative, then so far as is reasonable and possible, the remainder of the Escrow Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.
20. *Notices.* Any notices required or permitted to be given under this Escrow Agreement shall be in writing and shall be deemed to be given when deposited with a nationally or regionally recognized overnight courier service guaranteeing next business day delivery, or when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or when delivered via electronic mail deemed given at the time and date when the transmission was sent.
21. *Entire Agreement.* This Escrow Agreement together with the exhibits attached hereto contains the complete agreement of the Parties hereto related to the subject matter hereof and cannot be amended or modified except by written agreement signed by Seller, the City, and Escrow Agent (and Seller's Lender).
22. *Governing Law.* This Escrow Agreement and the obligations under this Escrow Agreement shall be construed in accordance with, governed by, and shall be subject to, the laws of the State of Texas. Escrow Agent and the Parties hereto agree that the venue of any litigation arising in connection with this Escrow Agreement or in respect of any of the obligations of the Parties or Escrow Agent under this Escrow Agreement, shall, to the extent permitted by law, be in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

23. *Counterparts.* This Escrow Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all of which counterparts, taken together, shall constitute one and the same agreement. Signatures may be exchanged by electronic transmission, with original signatures to follow. Each Party hereto and the Escrow Agent shall be bound by its own electronically transmitted signature and shall accept the electronically transmitted signature of the other signatories hereto.
24. *Assignment.* Neither Seller nor the City may assign this Escrow Agreement to any other person or entity without the prior written consent of the other Party, and no assignment permitted hereunder shall operate to release the assigning Party of its liabilities or obligations under this Escrow Agreement without the express written consent of the other Party. Notwithstanding the foregoing, Seller may assign this Escrow Agreement without the consent of, but upon written notice to, the City to (i) any affiliated or related entity under common control or ownership with Seller at any time to which Seller also assigns its interest in the Contract and (ii) to any lender providing financing for the acquisition, development and construction of the Master Site, Sportsplex or Public Improvements as security for Seller's obligations pursuant to such financing (herein referred to as "Seller's Lender"). Subject to this restriction on assignment, this Escrow Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of Seller, and the successors and assigns of Seller, and the City, and the successors and assigns of the City.
25. *Contract.* Seller and the City acknowledge and agree that this Escrow Agreement is intended to implement the terms and provisions of the Contract with respect to the Escrow Deposit and this Escrow Agreement shall not modify or limit the terms and provisions of the Contract. Without limiting the generality of the foregoing, nothing in this Escrow Agreement shall affect the rights and obligations of Seller and the City regarding the payment of the Purchase Price for the Sportsplex Property or payment of the City's share of the Public Improvements Cost.
26. *Third Party Beneficiary.* The Parties and Escrow Agent hereto acknowledge and agree that Seller's Lender shall be a third-party beneficiary of this Escrow Agreement and Seller shall be permitted to collaterally assign this Escrow Agreement to Seller's Lender as additional security for such Seller's Lender loan to Seller as further described in Paragraph 24.

[Signature Page(s) to Follow]

[SIGNATURE PAGE TO ESCROW AGREEMENT]

City:

City of San Marcos, Texas
A Texas home rule municipality

Seller:

Pursuant Ventures Development, LLC
A Texas limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Escrow Agent:
Corridor Title, LLC

By: _____
Name: Patrick M. Rose
Title: President

Exhibit A-1
Sportsplex Land

[legal description of Sportsplex Land to be attached before execution of Escrow Agreement]

Exhibit A-2
Master Site

[legal description of Master Site to be attached before execution of Escrow Agreement]