

**RESOLUTION NO. 2015-91R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH HUMPTY DUMPTY SSM, LTD. FOR THE REDEVELOPMENT OF SPRINGTOWN SHOPPING CENTER THAT PROVIDES INCENTIVES OVER TEN YEARS IN THE FORM OF ANNUAL REFUNDS OF A PORTION OF NEW PROPERTY AND SALES TAXES GENERATED FROM THE REDEVELOPMENT AND THAT WAIVES CERTAIN SIGN AND DEVELOPMENT STANDARDS UNDER THE CITY'S LAND DEVELOPMENT CODE; AND DECLARING AN EFFECTIVE DATE.**


**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Chapter 380 Economic Development Incentive Agreement with Humpty Dumpty SSM, Ltd. (the "Agreement") is hereby approved.


**PART 2.** The City Manager is authorized to execute the Agreement on behalf of the City.

**PART 3.** This resolution shall be in full force and effect from and after its passage.

**ADOPTED** on July 21, 2015.

  
Daniel Guerrero  
Mayor

Attest:

  
Jamie Lee Pettijohn  
City Clerk

## **CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

As of July 21, 2015 (the "Effective Date") this Chapter 380 Economic Development Incentive Agreement is entered into between the City of San Marcos, Texas (the "City"), a Texas municipal corporation, and Humpty Dumpty SSM, Ltd. (the "Owner"). The Owner and the City are collectively referred to as the "Parties."

### **ARTICLE 1. RECITALS**

**Section 1.01.** The Owner owns and operates a retail shopping center commonly known as Springtown Mall or Springtown Shopping Center ("Springtown") bounded by IH-35 North, Thorpe Lane and Springtown Way (the "Site"). A boundary map of the Site is attached hereto as **Exhibit "A,"** and made a part hereof for all purposes. For purposes of this Agreement, the terms "Springtown" and "Site" exclude the pad sites currently occupied by Logan's and IHOP restaurants, and the former Applebee's restaurant pad site.

**Section 1.02.** In recent years Springtown's anchor tenants relocated to newer retail centers, while other tenants also vacated. As a result, Springtown has experienced a decline in overall maintenance and repair, and property value and sales tax generation.

**Section 1.03.** The Owner has made an initial capital investment of at least \$13,550,000.00. In furtherance of the redevelopment of Springtown, the Owner intends to make additional capital investment of at least \$14,000,000.00, resulting in a substantial increase in property value and sales tax generation.

**Section 1.04.** The Owner intends to enter into lease agreements with anchor, junior anchor and other tenants to restore full occupancy of the Site. The Owner estimates that Springtown tenants will provide tenant capital investment of at least \$7,000,000.00, contributing further toward a substantial increase in property value and sales tax generation.

**Section 1.05.** The City seeks to promote local economic development and to stimulate business and commercial activity in the City. The redevelopment of Springtown will advance the City's interests by attracting new and retaining existing business, creating jobs, increasing sales and property tax revenues and enhancing the image of the City.

**Section 1.06.** The City is authorized under Chapter 380 of the Texas Local Government Code ("Chapter 380") to offer certain economic development incentives for public purposes, including promotion of local economic development and the stimulation of business and commercial activity in the City.

**Section 1.07.** For the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement with the understanding that the incentives provided hereunder will be the only incentives offered for Springtown during the term of this Agreement.

## ARTICLE 2. DEFINITIONS

**Section 2.01.** “*Additional Property Taxes*” are the City’s share of the ad valorem taxes received from the Hays County Tax Assessor-Collector each calendar year during the Term on the value of all Real Property Improvements on the Site (defined below) attributable to the Site and added after the Effective Date in excess of the Base Tax Year Value.

**Section 2.02.** “*Additional Sales Taxes*” means the Sales Tax Revenue received by the City in 2015 and each subsequent calendar year during the Term in excess of the Base Sales Tax Value.

**Section 2.03.** “*Base Tax Year Value*” means the ad valorem tax value, as established by the Hays Central Appraisal District for calendar year 2015, of the Real Property Improvements on the Site as of January 1, 2015.

**Section 2.04.** “*Base Sales Tax Value*” means the Sales Tax Revenue for calendar year 2014.

**Section 2.05.** “*Grant Payments*” means the City’s payments to the Owner once per calendar year each year during the Term of an amount equal to the percentage of Additional Property Taxes and Additional Sales Taxes generated from within the Site during the full calendar year immediately preceding the year in which the payment is made, according to the Schedule in Section 4.02.

**Section 2.06.** “*Personal Property*” means all materials, supplies, equipment, inventory or other personal property on the Site subject to ad valorem taxes.

**Section 2.07.** “*Site*” means the real property within the city limits of the City of San Marcos, Texas owned by the Owner, the legal description of which is shown in **Exhibit “A,”** attached hereto and made a part of this Agreement for all purposes. The boundaries of the Site may be amended from time to time, subject to the advance written approval of the City.

**Section 2.08.** “*Real Property Improvements*” means such improvements to real property on the Project Site, other than Personal Property, subject to ad valorem tax assessment.

**Section 2.09.** “*Sales Tax Revenue*” means the City’s share of local sales tax revenue generated from business and retail activity on the Site and paid to the City by the Texas Comptroller of Public Accounts.

**Section 2.10.** The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31 of the tenth year from the calendar year for which Grant Payments are first requested (unless terminated sooner, as provided in this Agreement), except that the Owner’s obligation to submit a Compliance Certificate and the City’s obligation, if any, to complete the Grant Payments due under this Agreement shall continue until satisfied. Thus, if the Owner requests a Grant Payment as early as 2016 (based upon revenues generated in 2015),

the end of the Term would be December 31, 2025. If, on the other hand, the Owner requests its first Grant Payment in 2019 (based on revenues generated in 2018), the end of the Term would be December 31, 2028.

### **ARTICLE 3. OBLIGATIONS OF OWNER**

**Section 3.01. Site Redevelopment.** The Owner shall redevelop the site as a “Class A” retail shopping center. For purposes of this Agreement, “Class A” shall mean that the development will have a tenant mix and finished building, landscape, parking and site improvements designed to attract such tenant mix, similar in character to that within the existing developments at 1890 Ranch in Cedar Park, Texas, University Oaks in Round Rock, Texas, and Southpark Meadows in Austin, Texas. It is expressly understood that storage rental facilities are inconsistent with the meaning of a “Class A” retail shopping center under this paragraph, and no portion of the Site shall include storage rental facilities.

**Section 3.02. Capital Investment.** The Owner shall make a capital investment for redevelopment of the Site, including land acquisition cost, and all land development costs, of at least \$27,500,000.00. This investment shall be verified by actual receipts for costs expended by the Owner, together with associated invoices or other documentation, such as HUD-1 Settlement Statements, provided to the City by the Owner. For purposes of this Agreement, land development costs are customary costs and expenses incurred by the Owner for land acquisition, architectural, engineering and construction management services, building demolition and demising, new construction, exterior improvements, parking lot improvements, landscape improvements, signage, and the Owner contribution to interior and exterior improvements for tenants within the Site. For purposes of this Agreement, land development costs shall not include, inventory, leasing or real estate sales commissions or interest carry.

**Section 3.03. Tenant Capital Investment.** The Owner shall facilitate capital investment by tenants on the Site, including all land development costs, currently estimated to be approximately \$7,000,000.00. The tenants on the Site are not parties to this Agreement and the Owner does not have access to or control over each tenant’s capital investment expenditures.

**Section 3.04. Sign Installation.** After the Effective Date, the Owner shall be eligible to submit one or more sign permit applications and to receive a permit from the City for installation of signs substantially in accordance with the height and area specifications and locations in **Exhibit “B.”** The City Manager of the City, or the City Manager’s designee shall, first, determine whether final sign plans are substantially in accordance with **Exhibit “B”** before any associated sign permit may be issued by the City. The architectural styles of the signs in **Exhibit “B,”** however, are conceptual. Accordingly, the actual architectural style may vary from the drawings in **Exhibit “B”** provided that such signage is of the same general architectural design character. For the avoidance of any doubt, the square footage stated for each sign in **Exhibit “B”** refers to the maximum amount of square footage for the sign panels on one side of a sign. Except as specifically waived by the City under Article 4 of this Agreement, the installation of such signs shall comply with the requirements of all City of San Marcos processes, approvals, procedures, ordinances, rules, regulations and standards governing the installation of signs, including, but not limited to, the location requirements under Section 6.3.1.7 of the (“LDC”).

**Section 3.05. Compliance with Laws.** In connection with the redevelopment of Springtown and the Site, the Owner shall comply with all applicable local, state and federal laws, ordinances, statutes, rules, regulations and standards.

#### **ARTICLE 4. ECONOMIC DEVELOPMENT INCENTIVE PROVIDED BY THE CITY**

**Section 4.01. Grant Payments.** Subject to other terms and conditions in this Agreement and the Owner's compliance with this Agreement, the City will make Grant Payments to the Owner in the manner set forth in this Article.

**Section 4.02. Ten-Year Payment Period.** Beginning as soon as the calendar year 2016, but no later than calendar year 2019, the Owner may apply for up to ten (10) consecutive annual Grant Payments. Upon application by the Owner, the City shall make such Grant Payments to the Owner, in accordance with the following schedule:

<b>Year</b>	<b>Additional Property Taxes %</b>	<b>Additional Sales Taxes %</b>
1	100	90
2	100	90
3	80	80
4	80	80
5	60	60
6	60	60
7	40	40
8	40	40
9	20	20
10	20	20

As an example, if Year 1 is 2019, the Owner could apply for and receive a Grant Payment in an amount equal to 100 percent of the Additional Property Taxes and 90 percent of the Additional Sales Taxes generated on the Site in 2018, with subsequent Grant payments similarly being made according to the percentages above. With each application for a Grant Payment, the Owner shall provide to the City a compliance certificate, in the form attached hereto as **Exhibit "C"** (the "**Compliance Certificate**") to verify the Owner's compliance with the terms of this Agreement.

**Section 4.03. Reduction in Grant Payments.** In the event that the Owner's capital investment, as defined in Section 3.02, is less than \$27,500,000.00, the annual Grant Payments to the Owner will be reduced proportionate to the percentage of capital investment that can be verified by actual receipts provided to the City by the Owner. For example, if the maximum possible Grant Payment in Year 1 was \$1,000,000.00 and the Owner met the target capital investment of \$27,500,000.00, then the maximum possible Grant Payment to the Owner would be \$1,000,000.00. If, however, the Owner's capital investment was only \$26,125,000.00, which is 95 percent of the required capital investment, then the Grant Payment to the Owner would be reduced by five percent resulting in a Grant Payment of \$950,000.00. Notwithstanding the

requirements of Section 3.02, if the Owner fails to meet the minimum capital investment within the time prescribed therein, but subsequently meets the minimum capital investment requirement, the Owner will be eligible to receive the maximum possible annual Grant Payment for any years after the year in which the capital investment target is satisfied (but, there shall be no retroactive payments to offset any prior reduced Grant Payments).

**Section 4.04. Reduction in Grant Payments Due to Relocation of Existing Business.**

In the event that the Owner facilitates the relocation of a business from an existing location within the City limits San Marcos to the Site, each annual Grant Payment to the Owner shall be reduced by an amount equal to the sum of sales taxes and ad valorem property taxes attributable to the relocated business at the previous location paid to the City during the calendar year immediately preceding the relocation, but any increase in sales and ad valorem taxes above such sum will be included in calculating the amount of any Grant Payment due to the Owner.

**Section 4.05. Time for Making Payment.** In accordance with Section 4.02, the Owner may request, in writing to the City Manager, initiation of Grant Payments. The City shall not be required to make a Grant Payment during any applicable calendar year unless and until:

- a. the Owner has submitted a compliance certificate, in the form attached hereto as **Exhibit “C”** (the “**Compliance Certificate**”), together with all information the City may request to verify the Owner’s compliance with the terms of this Agreement;
- b. Additional Property Taxes for the prior calendar year are received by the City from the Hays County Tax Assessor-Collector;
- c. Additional Sales Taxes for the prior calendar year are received by the City from the Texas Comptroller of Public Accounts; and
- d. funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City’s ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied and the Owner is, otherwise, in compliance with this Agreement, the City shall pay to the Owner any Grant Payments due within 30 days after the last to occur of the events in subsections (a), (b), (c) and (d) of this Section.

**Section 4.06. Waiver of Certain Land Development Code Sign Requirements.**

Subject to the Owner’s compliance with this Agreement, the City waives the following requirements of the LDC applicable to the signs in **Exhibit “B”**:

- a. The requirement that on-premises attached signs not extend vertically above the highest point of the roofline under Section 6.3.3.2(a)(1) is waived in order to allow such greater height for the on-premises attached sign labeled “F.”
- b. The limitation on the number of signs permitted along a street frontage

under Section 6.3.3.3(a) is waived in order to allow three signs labeled “A,” “B” and “C,” along boundary of the Site that fronts I-35 North.

c. The provision for one monument sign in addition to a freestanding sign along a street frontage in excess of 400 feet under Section 6.3.3.3(a)(4)a.4. is waived in order to allow all three signs labeled “A,” “B” and “C,” along boundary of the Site that fronts I-35 North to be freestanding signs.

d. The limitation of one attached sign and one space on a freestanding sign per tenant under applicable standards of Chapter 1, Article 6, Division 3, is waived to allow individual tenants of Springtown to have space on more than one freestanding sign and on the attached building sign labeled “F” in addition to one attached building sign in front of the tenant’s premises.

e. To the extent any sign in **Exhibit “B”** or any other sign in Springtown will advertise a business or tenant of Springtown located on a lot other than the lot where the sign is situated, such sign would be considered an off-premises sign. Thus, the requirements of Section 6.3.3.4 normally applicable to off-premises signs are waived to allow such off-premises sign. Any such off-premises sign, however, may not advertise a business, tenant, service, product or message of any type that is not directly related to the availability, use or occupancy of space at Springtown.

**Section 4.07. Waiver of Certain Land Development Code Site Development Requirements.** Subject to the Owner’s compliance with this Agreement, the City waives the following requirements of the LDC:

- a. Impervious Cover, Max %: Table 4.1.6.1
- b. Required Landscape Area Standards: Sec 6.1.1.4
- c. Parking Area Screening: Sec 6.1.2.2
- d. Lighting and Glare Standards: Sec 6.5.2.1(d)
- e. Sidewalks: Sec 7.4.2.3
- f. Material Standards: Sec 4.4.2.1
- g. Minimum Rear Yard: Sec. 4.2.2.7(d)3, for “Lot D,” as shown in **Exhibit “A”**

Notwithstanding the foregoing waivers, it is understood and agreed by the Owner that: (i) existing sidewalks shall either remain, subject to periodic repair and replacement, or may be realigned as necessary to facilitate development of the Site; and (ii) the total existing landscaped area within the Site may be rearranged, but shall not be decreased.

**Section 4.08. Waivers Limited.** Except as specifically stated above, the City grants no other waivers of requirements under the LDC, and all signs and improvements installed by the Owner in connection with the redevelopment of Springtown, shall conform in every other respect to the requirements of the LDC and other applicable ordinances, rules, regulations and standards of the City.

**Section 4.09. Subject to Funding.** The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment, the Owner may, at its option, terminate this Agreement effective upon written notice to the City, subject to any unpaid Grant Payment properly due to the Owner for which a lawful appropriation of funds has occurred. **The Owner 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 and satisfy its obligations under this Agreement, but the City shall be obligated to make any Grant Payment that is included in a budget approved by the City Council of the City.**

## **ARTICLE 5. DEFAULT, TERMINATION AND REMEDIES**

**Section 5.01. Default; Termination or Suspension of Payments.** Except as otherwise provided herein, at any time during the Term of this Agreement that the Owner is not in compliance with its obligations under this Agreement, the City may send written notice of such non-compliance to the Owner. If such non-compliance is not cured within 90 days after the Owner's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 90 days and a cure is not begun within such 90-day period and, thereafter, continuously and diligently pursued to completion on a schedule approved by the City (in either event, a "**Cure**"), then the City may, at its sole discretion and option, terminate this Agreement or withhold Grant Payments otherwise due for the calendar year or years in which the non-compliance occurred and continues.

**Section 5.02. Non-Termination Election by City.** If the City elects to withhold Grant Payments under Section 5.01 rather than to terminate the Agreement, then, upon a Cure by the Owner, the Owner will be eligible to receive Grant Payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. However, a Grant Payment withheld by the City shall be deemed forfeited by the Owner and the City shall not be liable for retroactive payment of such forfeited Grant Payment. For example, if the Owner is in default and has not effected a Cure in the year 2020, the Owner will not receive a Grant Payment in 2021. The Owner will, however, be eligible to receive a Grant Payment in 2022 if the default is Cured in 2021. Except as to circumstances arising from an event of *force majeure*, the Term shall not be extended as a result of any Cure period agreed to by the City under this Section.

**Section 5.03. Termination for Misrepresentation.** Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to the Owner if the Owner, its officers or signatories to this Agreement misrepresented or misrepresent any material fact or information: (i) upon which



the City relied in entering into this Agreement; (ii) upon which the City relies in making a Grant Payment to the Owner; or (iii) as an inducement for the City to make a Grant Payment to the Owner.

**Section 5.04. Other Remedies.** Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the City may pursue such remedies as are available at law or in equity for breach of contract. Similarly, with regard to violations of applicable ordinances of the City, the City may seek such relief as is available for violation so such ordinances, including fines and injunctive relief.

**Section 5.05. Offset.** The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by the Owner.

**Section 5.06. Force Majeure.** A *force majeure* event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

**Section 5.07. Status of Signs and Waivers Upon Termination.** Upon termination of this Agreement, the Owner agrees that the waivers of standards under the LDC granted by the City shall automatically expire and no signs or improvements may be installed after the date of termination except as permitted under the provisions of the LDC or successor ordinances and regulations then in effect.

**Section 5.08. Fast Track Permitting.** City shall review Springtown permit applications on a “fast track” basis using a one-stop-shop review process.

## **ARTICLE 6. INFORMATION**

**Section 6.01. Information.** The Owner shall, at such times and in such form as the City may reasonably request from the City, provide information concerning the performance of the City’s obligations under this Agreement.

**Section 6.02. Annual Compliance Certification.** Beginning in calendar year 2016 and continuing each calendar year thereafter during the Term, the Owner shall submit to the City, on or before March 1 of each such year, a duly executed Compliance Certificate in substantially the form attached as **Exhibit “C”** certifying that the Owner is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor. After receiving a timely submitted Compliance Certificate, the City shall have 30 days to notify the Owner in writing of any questions that the City may have concerning any of the information in the Compliance Certificate, and the Owner shall diligently work in good faith to respond to such questions to the City’s reasonable satisfaction.

**Section 6.03. Review of Records.** The Owner agrees that the City will have the right to review the business records of the Owner that relate to its performance under this Agreement in order to determine the Owner's compliance with the terms of this Agreement. Such review shall occur at any reasonable time and upon at least seven days' prior notice to the Owner. To the extent reasonably possible, the Owner shall make all such records available in electronic form or otherwise available to be accessed through the internet.

**Section 6.04. Public Information.** Subject to the requirements of the Texas Public Information Act (the "Act"), or order of a court of competent jurisdiction, the Owner may be required to disclose or make available to the City any information relating to this Agreement. The Owner agrees to cooperate with the City in response to any request for information under the Act or court order. The City will endeavor to provide the Owner with advance notice of any such request for information or court order so that the Owner may seek any relief to which the Owner believes it is entitled. The City's obligations under this Section do not impose a duty upon the City to challenge any court order or ruling of the Texas Attorney General to release information in response to a specific request for information under the Act.

## **ARTICLE 7. REPRESENTATIONS OF OWNER**

**Section 7.01. Organization.** The Owner is a duly organized, validly existing Limited Partnership, in good standing under the laws of the State of Texas and is authorized to conduct business or own real property in the State of Texas. The activities that the Owner proposes to carry on at the Site may lawfully be conducted by the Owner.

**Section 7.02. Authority.** The execution, delivery and performance by the Owner of this Agreement are within the Owner's powers and have been duly authorized.

**Section 7.03. Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

**Section 7.04. No Defaults.** The Owner is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which they are parties or by which they or any of their property is bound that would have any material adverse effect on the Owner's ability to perform under this Agreement.

**Section 7.05. Full Disclosure.** Neither this Agreement nor any schedule or Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

## **ARTICLE 8. MISCELLANEOUS**

**Section 8.01. Entire Agreement.** This Agreement, including the Recitals and the Exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes any prior understandings or written or oral agreements between the Parties.

**Section 8.02. Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

**Section 8.03. Assignment; Successors.** Owner may assign this Agreement in whole or in part only with the advance written consent of the City.

**Section 8.04. Notices.** All notices required by this Agreement will be delivered to the following by certified mail or electronic mail transmission:

**City:**

City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
E-mail: citymanagerinfo@sanmarcostx.gov

**Owner:**

Humpty Dumpty SSM, Ltd.  
c/o Endeavor Real Estate Group  
500 West 5<sup>th</sup> Street, Suite 700  
Austin, Texas 78701

**With copies to:**

Buck Cody  
Endeavor Real Estate Group  
500 West 5th Street, Suite 700  
Austin, Texas 78701  
bcody@endeavor-re.com

Chris Ellis  
Endeavor Real Estate Group  
500 West 5th Street, Suite 700  
Austin, Texas 78701  
cellis@endeavor-re.com

David Armbrust  
Armbrust & Brown, PLLC  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701

darmbrust@abaustin.com

Each party will notify the other party in writing of any change in information required for notice under this paragraph.

**Section 8.05. Applicable Law and Venue.** This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

**Section 8.06. No Liability.** The Owner agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to any matter arising under this Agreement.

**Section 8.07. No Waiver of Immunity or Liability.** Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

**Section 8.08. No Joint Venture.** It is understood and agreed between the parties that the City and the Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

**Section 8.09. Third Party Beneficiaries.** This Agreement is for the exclusive benefit of the Parties and no third party may claim any right, title or interest in any benefit arising under this Agreement. Among other things, no third party having an ownership interest in any lot on which an off-premises sign is located may pursue any claim against the City asserting the right to allow the continued the use of any such sign or any claim against the City for lost revenues due to the removal of any such sign under this Agreement.

**Section 8.10. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

**Section 8.11. Agreement not a Permit.** The Owner acknowledges and agrees that this Agreement, and the waivers granted herein, do not constitute a permit under Chapter 245 of the Texas Local Government Code. For any signs proposed to be installed under this Agreement, the Owner shall be required to apply for such permits from the City as are required under

applicable ordinances of the City, subject to the waivers set forth in Part 3 above.

**Section 8.12. Binding on Successors; Recording.** This Agreement is binding on all successors and assigns of the Owner and shall run with the Site. The Owner hereby grants its consent to the City to record this Agreement, a memorandum of this Agreement or other instrument against the Site providing notice of the waivers granted and limitations on such waivers under this Agreement in the Official Public Records of Hays County, Texas.

**Section 8.13. Estoppel.** Upon written request by the Owner, the City shall execute and deliver to the Owner an estoppel certificate **certifying** as follows: (a) whether this Agreement is unmodified and in full force and effect (or if modified, disclosure of such modifications and whether this Agreement is in full force and effect as modified); (b) whether to the City's knowledge, the Owner is in default under this Agreement; and (c) any other reasonable factual inquiries a party may request regarding this Agreement.

**[SIGNATURES ON NEXT PAGE]**

EXECUTED to be effective as of the Effective Date.

**CITY OF SAN MARCOS:**

By: [Signature]  
Jared Miller, City Manager  
Steve Parker, Acting City Manager  
**HUMPTY DUMPTY SSM, LTD.:**  
By: EGP Retail Management, L.L.C., BN  
its general partner

By: [Signature]  
Name: Bryce Miller  
Title: EVP

**ACKNOWLEDGMENTS**

THE STATE OF TEXAS    §  
                                      §  
COUNTY OF HAYS       §

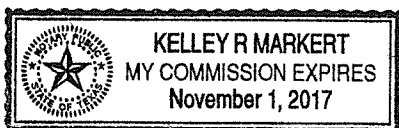
This instrument was acknowledged before me on the 28 day of July, 2015,  
by ~~Jared Miller~~, City Manager of the City of San Marcos, in such capacity, on behalf of said  
municipal corporation.  
Steve Parker, Acting City Manager



[Signature]  
Notary Public, State of Texas

THE STATE OF TEXAS    §  
                                      §  
COUNTY OF TRAVIS    §

This instrument was acknowledged before me on the 10<sup>th</sup> day of August, 2015,  
by Bryce Miller, EVP of EGP Retail Management, L.L.C.,  
general partner of Humpty Dumpty SSM, Ltd., in such capacity, on behalf of said entity.



[Signature]  
Notary Public, State of Texas

## EXHIBIT A

### SITE DESCRIPTION

0.955 ACRE OF LAND, MORE OR LESS, SITUATED IN THE J.M. VERAMENDI LEAGUE NO. 2, IN HAYS COUNTY, TEXAS, AND BEING THE SAME PROPERTY CONVEYED IN DEEDS RECORDED IN VOLUME 393, PAGE 47, AND VOLUME 393, PAGE 55, DEED RECORDS, HAYS COUNTY, TEXAS; FOR WHICH A MORE PARTICULAR DESCRIPTION BY METES AND BOUNDS IS AS FOLLOWS:

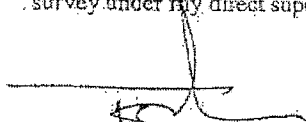
**BEGINNING** at a 1/2" iron rod found on the northwesterly R.O.W. of Interstate Highway 35, for the S.E. corner hereof, from which point a 1/2" iron rod found at the intersection of the northwesterly R.O.W. of Interstate Highway 35 and the northerly R.O.W. of M.K.T. Railroad R.O.W. bears S39°41'00"W at a distance of 333.79 feet;

**THENCE** the following four (4) courses and distances crossing the Remainder of STM Partners, LTD. Clerk No. 9908146 tract as depicted on PLAT OF SPRINGTOWN V SUBDIVISION, in the city of San Marcos, Hays County, Texas, a recorded in Volume 9, Page 83 of the plat records of Hays County, Texas:

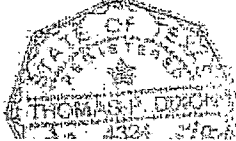
1. N83°05'00"W for a distance of 186.41 feet to a P.K. nail set in asphalt for the S.W. corner hereof;
2. N07°05'03"E along a common party wall for a distance of 199.03 feet to a P.K. nail set in concrete;
3. S83°05'00"E for a distance of 124.12 feet to a spindle set in asphalt;
4. S50°19'00"E for a distance of 159.61 feet to a P.K. nail found on the northwesterly R.O.W. of Interstate Highway 35 for the most easterly, N.E. corner hereof;

**THENCE** S39°41'00"W for a distance of 133.82 feet to the **POINT OF BEGINNING**, containing 0.955 acre of land.

I, the undersigned do hereby certify that the field notes hereon were prepared from an actual on-the-ground survey under my direct supervision and that they are true and correct to the best of my knowledge.



Thomas P. Dixon R.P.L.S. 4324



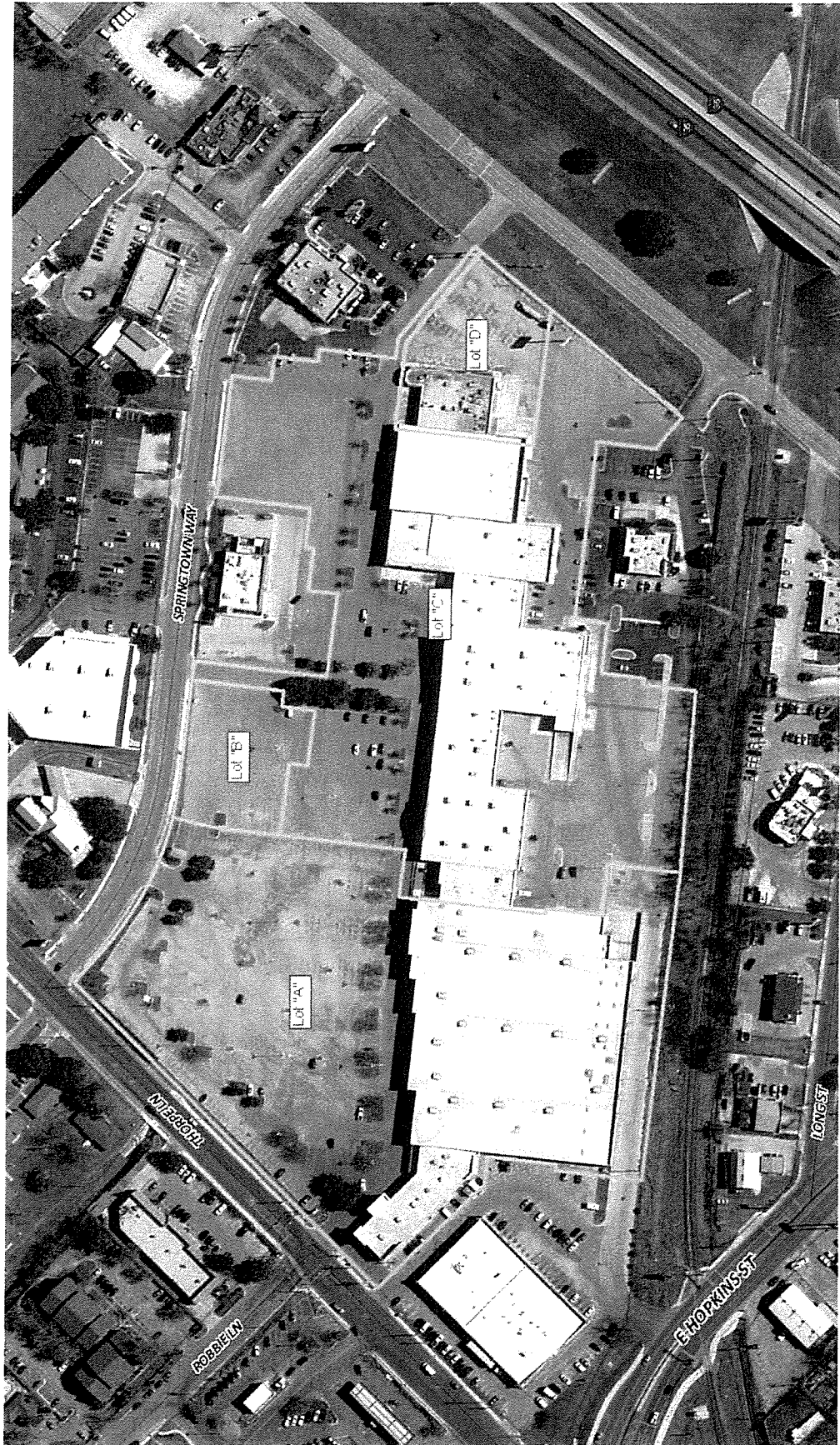
P.O. Box 160176  
Austin, Texas 78716

Tract 1: Lot 1, SPRINGTOWN IV SUBDIVISION, according to the map or plat thereof, recorded in Book 8, Page 199, Plat Records, Hays County, Texas.

Tract 2: Lot 5, SPRINGTOWN VI SUBDIVISION, according to the map or plat thereof, recorded in Book 9, Page 278, Plat Records, Hays County, Texas.

Tract 6: Lot 1, SPRINGTOWN V SUBDIVISION, according to the map or plat thereof, recorded in Book 9, Page 83, Plat Records, Hays County, Texas.

Tract 7: Lot 2, SPRINGTOWN IV SUBDIVISION, according to the map or plat thereof, recorded in Volume 8, Page 199, Plat Records, Hays County, Texas.

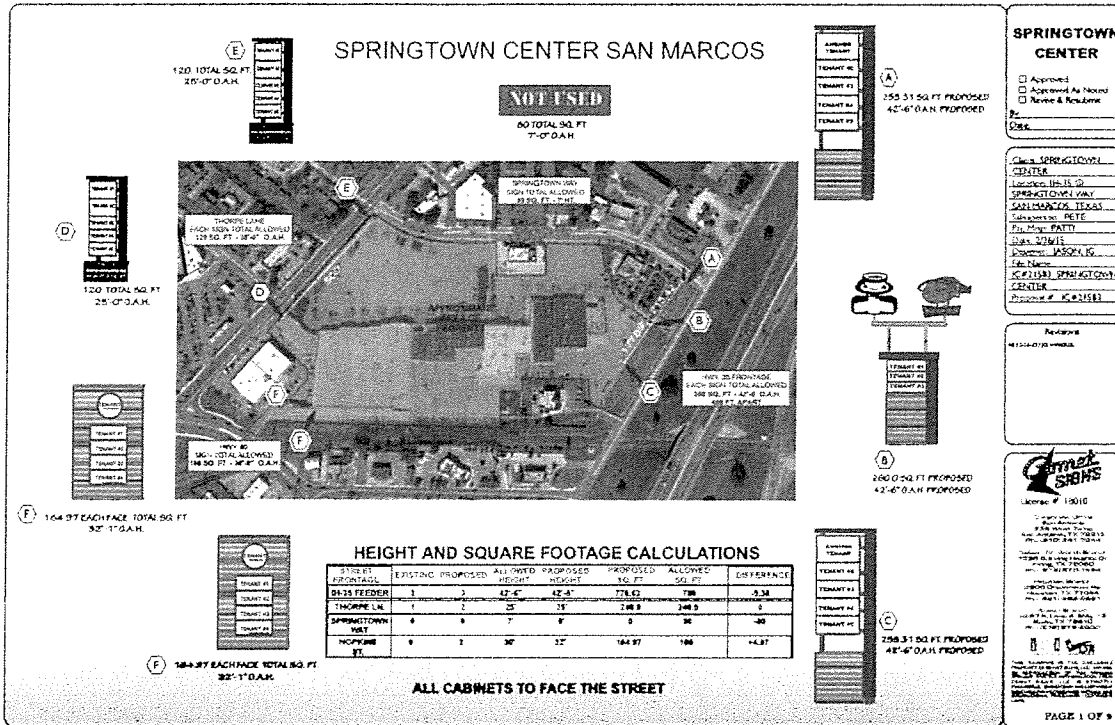




**EXHIBIT “B”**

**Signage**

[Next Page]



#### SPRINGTOWN CENTER

☐ Approved  
☐ Approved As Noted  
☐ Revert & Resubmit

By: \_\_\_\_\_ Date: \_\_\_\_\_

City: SPRINGTOWN CENTER  
 Location: 1615 S. SPRINGTOWN WAY  
 SAN MARCOS, TEXAS  
 Subdivider: PITE  
 P.I. Map: PATTI  
 Date: 05/11  
 Designer: JASON IG  
 Job Name: K&J1581 SPRINGTOWN CENTER  
 Project #: K&J1581

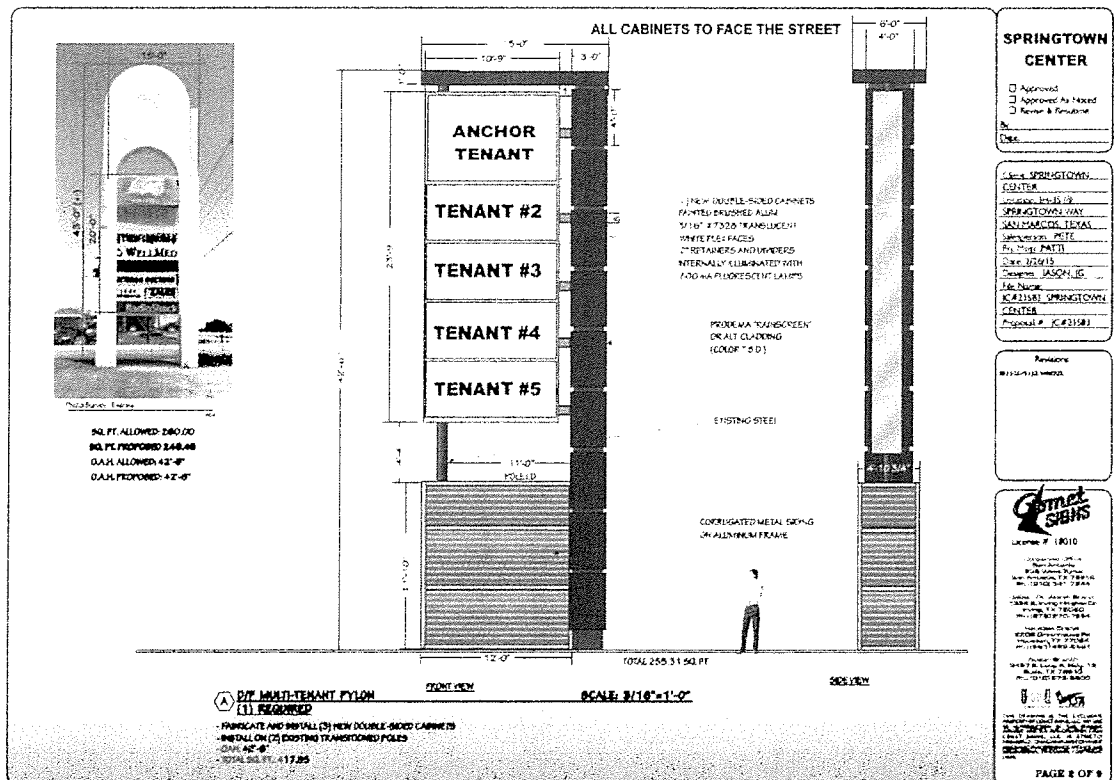
Revisions:  
 #1: 05/11/11 JIG

**Contract Signs**  
 License # 18010

Professional Engineer  
 State of Texas  
 No. 0000000000  
 Exp. 12/31/11  
 Seal: [Blank]

Professional Architect  
 State of Texas  
 No. 0000000000  
 Exp. 12/31/11  
 Seal: [Blank]

PAGE 1 OF 9



#### SPRINGTOWN CENTER

☐ Approved  
☐ Approved As Noted  
☐ Revert & Resubmit

By: \_\_\_\_\_ Date: \_\_\_\_\_

City: SPRINGTOWN CENTER  
 Location: 1615 S. SPRINGTOWN WAY  
 SAN MARCOS, TEXAS  
 Subdivider: PITE  
 P.I. Map: PATTI  
 Date: 05/11  
 Designer: JASON IG  
 Job Name: K&J1581 SPRINGTOWN CENTER  
 Project #: K&J1581

Revisions:  
 #1: 05/11/11 JIG

**Contract Signs**  
 License # 18010

Professional Engineer  
 State of Texas  
 No. 0000000000  
 Exp. 12/31/11  
 Seal: [Blank]

Professional Architect  
 State of Texas  
 No. 0000000000  
 Exp. 12/31/11  
 Seal: [Blank]

PAGE 2 OF 9





D/F MULTI-TENANT PYLON  
(1) REQUIRED  
FABRICATE AND INSTALL (1) NEW DOUBLE-SIZED CABINET  
INSTALL ON (2) EXISTING STEEL PILES  
OAH 30'-0"  
TOTAL SQ FT 120.0

SCALE: 3/16"=1'-0"

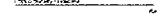
☐ Approved  
☐ Approved As Noted  
☐ Review & Resubmit  
 By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Class SPRINGTOWN  
 CENTER  
 Location: 11/15/05  
 SPRINGTOWN HWY  
 SAN MARCOS TEXAS  
 Submitter: PETE  
 Pet Name: PATI  
 Date: 7/20/15  
 Designer: JASON NG  
 Site Name:  
 K#21581 SPRINGTOWN  
 CENTER  
 Proposal #: K#21583

## REVIEWS

**Gumet SIGNS**  
License # 18010  
10000 Highway 100  
Box 10000  
San Antonio, TX 78201  
Tel. 512 351-7800  
Address: 10000 Highway 100  
Box 10000  
San Antonio, TX 78201  
Tel. 512 351-7800  
Gumet SIGNS  
10000 Highway 100  
Box 10000  
San Antonio, TX 78201  
Tel. 512 351-7800

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S&L FT. ALLOWED: 250.00  
S&L FT. PROPOSED: 248.45  
O.A.H. ALLOWED: 4' 8"  
O.A.H. PROPOSED: 4' 8"



**C DIFF MULTI-TENANT PYLON**

**(1) REQUIRED**

- FABRICATE AND INSTALL (1) NEW DOUBLE-SIDED CANNISTER  
INSTALL ON (1) EXISTING PIPE AND (1) ADDITIONAL PIPE  
DIA. 42" Ø  
TOTAL 90. FT. 240.00

SCALE: 3/16"=1'-0"

☐ Approved  
☐ Approved As Faxed  
☐ Power & Personnel

By \_\_\_\_\_  
Date \_\_\_\_\_

Class: SPRINGTOWN  
CENTER  
Location: Rt. 45 @  
SPRINGTOWN, KY  
SW. MARCOS, TEXAS  
Salvage: PETE  
By: Mike PATTI  
Date: 1/24/13  
Design: JASON, KY  
Job Name:  
K-21580 SPRINGTOWN  
CENTER  
Approved: K-21580

#### Revisions

**Gourmet SIGNS**  
 License # 18010  
 Computerized Gift Certificates  
 8001 Highway 174 East  
 Rockwall, TX 75087  
 (972) 701-3471 750-84

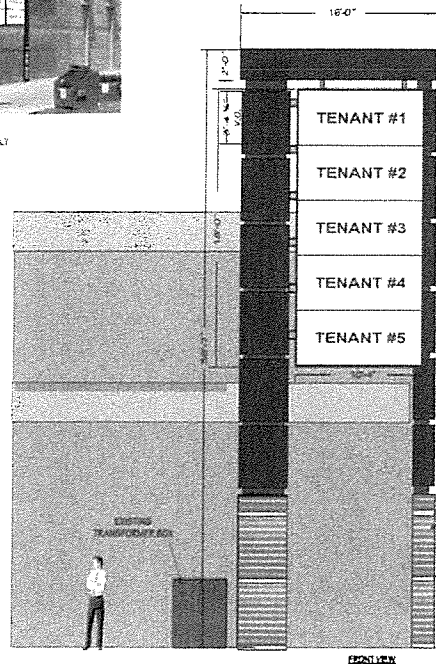
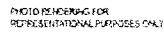
**Graphic Arts & More**  
 15038 S. Inwood Hampshire Dr.  
 Irving, TX 76038  
 (972) 973-8720 75-84

**Mastercard Branch**  
 29400 Chippendale  
 Houston, TX 77058  
 (713) 971-0848 80-81

**Mastercard Branch**  
 404 E. Loop W. Ste. 200  
 Dallas, TX 75201  
 (214) 757-8300

PAGE 5 OF 9





FALSE WALL  
CONSTRUCTED BY  
OWNER

NEW SINGLE-SIDED CABINETS PAINTED BLACK  
36" H X 32" TRANSLUCENT  
WHITE FLEX FACES, 2" RETAINERS,  
INTERIALLY ILLUMINATED WITH 600 mA  
FLUORESCENT LAMPS.

PROBLEMA "KANSKREENT"  
OF AET CLADDING  
STRUCTURE BY OWNER  
(COLLECTED)

CORRUGATED METAL SIDING  
ON ALUMINUM FRAME (BY OWNER)

162.00 EACH FACE TOTAL 502 FT

**OPTION #2**

**F MULTI-TENANT SINGLE FACED CABINETS**  
**(3) REQUIRED**

- FACTORATE AND INSTALL (1) NEW SINGLE-SIDED LED ILLUMINATED CABINETS
- INSTALL ON (2) EXISTING WALLS
- OAK 30" T
- TOTAL SQ FT: 168.00

SCALE: 3/16"=1'-0"

By: \_\_\_\_\_  
Date: \_\_\_\_\_

13-1 SPRINGTOWN  
 CENTER  
 Location: H-35-3  
 SPRINGTOWN WAY  
 SAN MARCOS, TEXAS  
 Supervisor: PETE  
 Pkg. Mgmt. PARTI  
 Date: 3/26/15  
 Designer: JASON, IG  
 File Name:  
 IC#21583 SPRINGTOWN  
 CENTER  
 Proposal # IC#21583

Permanente  
01-26-01: MOLA

**Signet Signs**  
 License # 18010  
 Commercial Office  
 1000 W. 10th Street  
 San Antonio, TX 78204  
 Tel: (214) 241-7864  
 Toll-free: 1-800-451-7864  
 1000 W. 10th Street  
 San Antonio, TX 78204  
 Tel: (214) 241-7864  
 Houston Branch  
 4500 Greenway  
 Houston, TX 77056  
 Tel: (713) 662-6207  
 Austin Branch  
 1400 W. Loop South  
 Austin, TX 78703  
 Tel: (512) 772-2000

**PAGE 8 OF 9**

**EXHIBIT "C"**  
**Form of Compliance Certificate**

**CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
ANNUAL COMPLIANCE CERTIFICATE**

From: [Name of Owner]

To: City of San Marcos  
Attn: City Manager  
630 East Hopkins Street  
San Marcos, TX 78666

Report Date:

Reporting Period: \_\_\_\_\_ to \_\_\_\_\_

**Real Property Improvements:**

	Base Tax Year Value	Reporting Period Value of all Improvements	Added Property Tax Value
Taxes Paid			

**Sales Taxes:\***

	Base Year Sales Taxes	Reporting Period Sales Taxes	Added Sales Tax Value
Taxes Paid			

\* The amounts inserted above reflect the final calculations following the process described in this paragraph below. The City will file such forms and applications with the Texas Comptroller of Public Accounts for purposes of receiving Confidential Sales and Use Tax Information Reports necessary to calculate Additional Sales Taxes each year. The City will provide copies of all monthly or other periodic reports it receives from the Comptroller, subject to any confidentiality requirements under applicable laws. To the extent complete information necessary to calculate Additional Sales Taxes is unavailable to the City, the Owner shall cooperate with the City to provide such information to which the Owner has access and the Parties will reconcile all data available in order to determine the amount of Additional Sales Taxes generated for the reporting period. The City Manager may designate one or more persons to act or receive information on the City's behalf under this paragraph.

Property Tax Portion of Grant Payment = ____% X Added Property Taxes	Amount
Sales Tax Portion of Grant Payment = ____% X Added Sales Taxes	Amount
Total Grant Payment	Total

By signature of the authorized representative below, the Owner hereby certifies that it is in full compliance with the Chapter 380 Economic Development incentive Agreement with the City of San Marcos dated July 7, 2015, except as otherwise indicated.

Please explain any non-compliance with Agreement and reasons therefor and measures being taken to cure.

The City Manager may agree to an amendment to this form from time to time, provided such amended form shall be

substantially similar in reporting the information necessary to confirm compliance with the Chapter 380 Agreement and to calculate the Grant Payments.

Upon request of the City Manager, the Owner shall supplement this form with such information as is reasonably necessary for the City to audit or verify the information reported by the Owner.

The Owner acknowledges and agrees that it is a recipient of public funds. As such, the City has a special right of access to information related to the Owner's performance under the Chapter 380 Agreement. Certain information of the Owner may be subject to disclosure under the Texas Public Information Act. While the City may notify the Owner of certain requests for information from third parties, the City shall have no obligation to assert exceptions to disclosure of such information to the Texas Attorney General or other authority having jurisdiction on behalf of the Owner.

I, \_\_\_\_\_[Insert name and title], certify that the foregoing information is true and correct and that the Owner has complied with all terms and conditions of the Chapter 380 Agreement.

\_\_\_\_\_  
[Name and Title]

\_\_\_\_\_  
Date

Email: \_\_\_\_\_

Phone: \_\_\_\_\_