

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This First Amendment to Purchase and Sale Agreement (this "Amendment") is made and entered into effective as of the 1st day of September, 2020, by and between **PURSUANT VENTURES DEVELOPMENT, LLC**, a Texas limited liability company ("Seller"), and **THE CITY OF SAN MARCOS**, a home-rule municipality ("City").

W I T N E S S E T H :

WHEREAS, Seller and the City heretofore entered into that certain Purchase and Sale Agreement (the "Contract") dated effective as of December 2, 2019, pursuant to the terms of which Seller agreed to sell and the City agreed to buy the Sportsplex Property, as more particularly described therein; and

WHEREAS, Seller and the City now desire to amend the Contract as more particularly described below.

NOW, THEREFORE, for and in consideration of the promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the City hereby agree as follows:

A G R E E M E N T S :

1. Master Site. The definition of "Master Site" in Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:

“**Master Site**” means that certain real property containing approximately 70.894 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 in **Exhibit A** hereto, including a portion 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.”

2. Escrowed Funds. The following is hereby added to Section 11 of the Contract as a new subsection h.:

“h. *Disbursement of Escrowed Funds*. Pursuant to the terms of the Underlying Contract, in the event Seller fails to timely commence, pursue, or complete construction of such Public Improvements in accordance with the terms of the Underlying Contract, then the City and Seller hereby acknowledge and agree that (i) following such failure, Outlet West

Investors, Ltd., a Texas limited partnership (“OWI”) has the right (but not the obligation), pursuant to the Underlying Contract, to elect to construct those certain Public Improvements as more particularly described in that certain Construction Funding (Escrow) Agreement dated August 6, 2014 (the “**2014 Construction Funding Agreement**”); (ii) if OWI elects to construct such Public Improvements following such failure, OWI shall send written notice of such election to Seller, with a copy to the City; and (iii) following delivery of such notice from OWI of its election to become the constructing party, OWI shall have the right to obtain disbursement of the Escrowed Funds (or any balance thereof) from the City to pay for the applicable portion of the costs of the Public Improvements in accordance with the terms of the 2014 Construction Funding Agreement. Upon request of OWI or the Seller, the City and Seller hereby agree to execute a mutually acceptable tri-party agreement by and among OWI, Seller, and the City acknowledging the Escrowed Funds and any other fiscal held by the City for the construction of those certain Public Improvements to be constructed from the centerline of Cottonwood Creek to (and along) Centerpoint Road shall be disbursed to Seller (or OWI, if OWI is the constructing party) for the costs related to such Public Improvements.”

3. SPP. Section 12.c. of the Contract is hereby deleted in its entirety and replaced with the following:

“c. *SPP*. Seller shall submit its SPP application for the Project to the City within fourteen (14) months following the Effective Date of this Contract, subject to Excusable Delays.”

4. Lease; Parkland Dedication. In accordance with Section 13 of the Contract, the City requested guidance from the Attorney General of the State of Texas regarding the financing structure for the Sportsplex as set forth in this Contract and the Lease. The Attorney General has provided its final comments, all of which have been addressed by the City. As such, Section 13 of the Contract is hereby deleted in its entirety and replaced with the following:

“**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 to the Lease as **Exhibit E**), wherein SMBI shall lease the Sportsplex Property and shall 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. Seller and the City hereby agree and acknowledge (a) in accordance with that certain Resolution No _____ dated _____, 2020, as approved by the City Council for the City of San Marcos, the City shall dedicate the Sportsplex Land as parkland following the Closing of this transaction and the full execution of the Lease; and (b) subject to the foregoing parkland dedication, the

financing structure outlined and detailed in this Contract and in the Lease, in the form attached as **Exhibit E** to the Contract, is acceptable and no revisions to the Lease are required.”

5. **Exhibit A.** Exhibit A to the Contract is hereby deleted in its entirety and replaced with **Exhibit A** attached hereto.
6. **Recitals; Defined Terms.** The recitals set forth above are incorporated herein as if fully set forth herein. Capitalized terms not defined in this Amendment have the meanings ascribed thereto in the Contract.
7. **Conflict.** In the event of any conflict between the provisions of this Amendment and the Contract, the provisions of this Amendment shall control.
8. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which will be deemed an original, which together will constitute one and the same agreement. This Amendment may be executed by facsimile or electronic email signature.
9. **Ratification.** Except as amended hereby, the Contract remains in full force and effect and is ratified and affirmed by each of Seller and Buyer.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment to be effective as of the date set forth above.

CITY:

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

By: _____

Name: _____

Title: _____

SELLER:

PURSUANT VENTURES DEVELOPMENT,
LLC, a Texas limited liability company

By: _____

Tyler M. Sibley, Manager

EXHIBIT A

Description of the Master Site; Depiction of the Master Site

METES AND BOUNDS DESCRIPTION:

BEING A 70.894 ACRE [3,088,160 SQUARE FEET] TRACT OUT OF THE EDWARD BURLESON SURVEY NUMBER 18, ABSTRACT NUMBER 63, HAYS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 109.22 ACRE TRACT, DESCRIBED TO OUTLET WEST INVESTORS, LTD, RECORDED IN VOLUME 1486, PAGE 887 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS [O.P.R.H.C.T.], AND BEING ALL OF A CALLED 4.18 ACRES, DESCRIBED AS A DRAINAGE EASEMENT TRACT, PER LOWMAN RANCH SUBDIVISION, SECTION 2, RECORDED IN VOLUME 13, PAGE 384 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS [P.R.H.C.T.] ; SAID 70.894 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE WEST CORNER OF SAID REMAINDER TRACT, SAME BEING THE NORTH CORNER OF A CALLED 92.95 ACRE TRACT, RECORDED IN VOLUME 276, PAGE 313 [O.P.R.H.C.T.], AND ALSO BEING IN THE SOUTHEAST LINE OF THE UNION PACIFIC RAILROAD COMPANY TRACT, A CALLED 200 FOOT WIDE STRIP OF LAND AS DESCRIBED IN VOLUME 41, PAGE 23 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS [D.R.H.C.T.];

THENCE N46°39'17"E, WITH THE NORTHWEST LINE OF SAID REMAINDER TRACT, SAME BEING THE SOUTHEAST LINE OF SAID RAILROAD TRACT, PASSING AT A DISTANCE OF 1,902.74 FEET, A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE WEST CORNER OF A CALLED 17.85 ACRE TRACT, AND A CALLED 5.88 ACRE DRAINAGE EASEMENT TRACT, RECORDED IN VOLUME 4389, PAGE 592, AND CONTINUING FOR A TOTAL DISTANCE OF 1,983.01 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET FOR THE NORTH CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE NORTH CORNER OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT, BEARS N46°39'17"E, A DISTANCE OF 79.95 FEET;

THENCE OVER AND ACROSS SAID REMAINDER TRACT THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

- 1) S46°27'01"E, ALONG THE CENTERLINE OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT, PASSING AT A DISTANCE OF 576.43 FEET, A CHISELED "+" IN CONCRETE ON TOP OF A BRIDGE CULVERT, SET FOR REFERENCE, AND CONTINUING FOR A TOTAL DISTANCE OF 577.67 FEET TO A CALCULATED POINT,**
- 2) N43°34'23"E, FOR A DISTANCE OF 79.83 FEET TO A 1/2-INCH IRON ROD WITH "5687" CAP, FOUND FOR AN EXTERIOR CORNER OF THE HEREIN DESCRIBED TRACT, SAME BEING ON THE NORTHEAST LINE OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT,**

3) S46°27'01"E, WITH A NORTHEAST LINE OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT, A DISTANCE OF 66.86 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET,

4) S52°15'58"E, CONTINUING WITH THE NORTHEAST LINE OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT, A DISTANCE OF 302.69 FEET TO A FOUND 1/2-INCH IRON ROD (BENT),

5) N44°07'24"E, A DISTANCE OF 218.45 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND IN THE SOUTHWEST LINE OF LOT 2 OF LOWMAN RANCH SUBDIVISION, SECTION 2, RECORDED IN VOLUME 18, PAGE 17 [P.R.H.C.T.], FROM WHICH A 1/2-INCH IRON ROD, FOUND FOR THE WEST CORNER OF SAID LOT 2, BEARS N46°06'09"W, A DISTANCE OF 294.28 FEET;

THENCE WITH THE LINES COMMON TO SAID LOT 2 AND SAID REMAINDER TRACT, THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1) S46°06'09"E, A DISTANCE OF 79.85 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE SOUTH CORNER OF SAID LOT 2,

2) N44°10'40"E, A DISTANCE OF 163.49 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR AN ANGLE POINT, AND

3) N72°59'43"E, A DISTANCE OF 138.60 FEET TO A MAG NAIL WITH "DOUCET" SHINER, SET FOR THE EAST CORNER OF SAID LOT 2, SAME BEING IN THE SOUTHWEST RIGHT-OF-WAY LINE OF CENTERPOINT ROAD, A VARIABLE WIDTH RIGHT-OF-WAY, PER VOLUME 2917, PAGE 616, [O.P.R.H.C.T.] AND VOLUME 18, PAGE 17 [P.R.H.C.T.] ;

THENCE WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID CENTERPOINT ROAD, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S45°57'33"E, FOR A DISTANCE OF 46.94 FEET TO A MAG NAIL WITH "DOUCET" SHINER, SET AT THE BEGINNING OF A CURVE TO THE RIGHT, AND

2) WITH SAID CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 44.07 FEET, A RADIUS OF 4,930.00 FEET, A DELTA ANGLE OF 00°30'44", AND A CHORD WHICH BEARS S45°31'09"E, FOR A DISTANCE OF 44.07 FEET, TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE EAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE WITH THE SOUTHEAST LINES OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT AND OVER AN ACROSS SAID REMAINDER TRACT THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1) S72°56'49"W, A DISTANCE OF 161.57 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET

2) S44°07'46"W, A DISTANCE OF 388.71 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET AT THE BEGINNING OF A CURVE TO THE RIGHT, AND

3) WITH SAID CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 129.28 FEET, A RADIUS OF 130.00 FEET, A DELTA ANGLE OF 56°58'48", AND A CHORD WHICH BEARS S72°37'05"W, FOR A DISTANCE OF 124.02 FEET TO A POINT ON THE SOUTH LINE OF SAID 5.88 ACRE DRAINAGE EASEMENT TRACT, SAME BEING ON THE NORTHEAST LINE OF SAID 4.18 ACRE TRACT, FROM WHICH A 1/2-INCH IRON ROD WITH "DOUCET", SET FOR REFERENCE, BEARS S78°02'57"E, A DISTANCE OF 1.17 FEET;

THENCE S50°37'34"E, WITH THE NORTHEAST LINE OF SAID 4.18 ACRE TRACT AND A SOUTHEAST LINE OF SAID REMAINDER TRACT, A DISTANCE OF 96.86 FEET TO A 1/2-INCH IRON ROD WITH "BRYN" CAP, FOUND AT THE NORTHERLY NORTHEAST CORNER OF SAID 4.18 ACRE TRACT, SAME BEING ON THE NORTH LINE OF LOT 1, A CALLED 5.81 ACRE TRACT, OF SAID LOWMAN RANCH SUBDIVISION, SECTION 2;

THENCE WITH THE LINES COMMON TO SAID LOT 1 AND SAID 4.18 ACRE DRAINAGE EASEMENT TRACT THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S42°55'45"W, A DISTANCE OF 131.15 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET

2) S44°35'32"E, A DISTANCE OF 263.15 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE SOUTH CORNER OF SAID LOT 1, SAME BEING THE EAST CORNER OF SAID 4.18 ACRE TRACT, ALSO BEING IN THE NORTHWEST RIGHT-OF-WAY LINE OF GREGSON'S BEND, A 60 FOOT WIDE RIGHT-OF-WAY, AS DESCRIBED IN PLATS RECORDED IN VOLUME 7, PAGE 150, VOLUME 7, PAGE 215, VOLUME 7, PAGE 275, VOLUME 9, PAGE 62, AND VOLUME 14, PAGE 158, [P.R.H.C.T.], AND SAME BEING A POINT IN A CURVE TO THE LEFT;

THENCE WITH THE SOUTHEAST LINE OF SAID 4.18 ACRE EASEMENT TRACT AND THE NORTHWEST RIGHT-OF-WAY LINE OF SAID GREGSON'S BEND, THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

1) WITH SAID CURVE TO THE LEFT, HAVING AN ARC LENGTH OF 118.31 FEET, A RADIUS OF 360.00 FEET, A DELTA ANGLE OF 18°49'48", AND A CHORD WHICH BEARS S52°54'58"W, FOR A DISTANCE OF 117.78 FEET, TO A FOUND 1/2-INCH IRON ROD, FROM WHICH A 1/2-INCH IRON ROD, FOUND AT A POINT OF TANGENCY IN THE SOUTHEAST RIGHT-OF-WAY LINE OF GREGSON'S BEND, SAME BEING IN THE NORTH LINE OF LOT 1D, A CALLED 4.00 ACRE TRACT, DESCRIBED IN PLAT OR MAP THEREOF RECORDED IN VOLUME 12, PAGE 306 [P.R.H.C.T.], BEARS S46°40'54"E, A DISTANCE OF 59.92 FEET,

2) S43°35'02"W, A DISTANCE OF 199.87 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND AT THE START OF A CURVE TO THE LEFT,

3) WITH SAID CURVE TO THE LEFT, HAVING AN ARC LENGTH OF 111.13 FEET, A RADIUS OF 360.00 FEET, A DELTA ANGLE OF 17°41'15", AND A CHORD WHICH BEARS S34°43'23"W, FOR A DISTANCE OF 110.69 FEET, TO A FOUND 1/2-INCH IRON ROD WITH "BYRN" CAP,

4) S25°57'04"W, A DISTANCE OF 277.95 FEET TO A 1/2-INCH IRON ROD (BENT), FOUND AT THE START OF A CURVE TO THE RIGHT,

5) WITH SAID CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 293.35 FEET, A RADIUS OF 503.00 FEET, A DELTA ANGLE OF 33°24'56", AND A CHORD WHICH BEARS S42°36'21"W, FOR A DISTANCE OF 289.21 FEET, TO A FOUND 1/2-INCH IRON ROD WITH "BYRN" CAP, FROM WHICH A 1/2-INCH IRON ROD, FOUND AT A POINT OF TANGENCY IN THE SOUTHEAST RIGHT-OF-WAY LINE OF GREGSON'S BEND, SAME BEING IN THE NORTHWEST LINE OF LOT 4, A CALLED 4.06 ACRE TRACT, DESCRIBED IN PLAT OR MAP THEREOF RECORDED IN VOLUME 14, PAGE 158 [P.R.H.C.T.], BEARS S30°48'18"E, A DISTANCE OF 60.09 FEET,

6) S59°25'00"W, A DISTANCE OF 40.54 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET AT THE START OF A CURVE TO THE RIGHT, AND

7) WITH SAID CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 40.46 FEET, A RADIUS OF 25.00 FEET, A DELTA ANGLE OF 92°44'15", AND A CHORD WHICH BEARS N73°50'48"W, FOR A DISTANCE OF 36.19 FEET, TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND IN THE NORTHEAST RIGHT-OF-WAY LINE OF COMMERCIAL LOOP, A 60 FOOT WIDE RIGHT-OF-WAY PER VOLUME 9, PAGE 62 [P.R.H.C.T.];

THENCE WITH THE LINES COMMON TO SAID REMAINDER TRACT, AND THE RIGHT-OF-WAY OF SAID COMMERCIAL LOOP, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) S61°56'40"W, A DISTANCE OF 70.19 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND AT THE START OF A CURVE TO THE LEFT, AND

2) WITH SAID CURVE TO THE LEFT, HAVING AN ARC LENGTH OF 122.99 FEET, A RADIUS OF 1,245.00 FEET, A DELTA ANGLE OF 05°39'36", AND A CHORD WHICH BEARS S30°44'00"E, FOR A DISTANCE OF 122.94 FEET, TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE EASTERLY NORTH CORNER OF LOT 3 OF PLAT RECORDED IN SAID VOLUME 9, PAGE 62 [P.R.H.C.T.], AND ALSO BEING AT THE START OF A CURVE TO THE LEFT;

THENCE WITH THE LINES COMMON TO SAID LOT 3, TO SAID REMAINDER TRACT, AND THE NORTHWEST LINE OF LOT 5 OF PLAT RECORDED IN VOLUME 17, PAGE 134 [P.R.H.C.T.], THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) WITH SAID CURVE TO THE LEFT, HAVING AN ARC LENGTH OF 44.68 FEET, A RADIUS OF 25.00 FEET, A DELTA ANGLE OF 102°23'45", AND A CHORD WHICH

BEARS N85°09'56"W, FOR A DISTANCE OF 38.97 FEET, TO CHISELED "+" IN CONCRETE, FOUND FOR AN ANGLE POINT,

2) S43°33'40"W, PASSING AT A DISTANCE OF 21.40 FEET, A 1/2-INCH IRON ROD, FOUND FOR REFERENCE, AND PASSING AT A DISTANCE OF 335.34 FEET, A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE COMMON NORTH CORNER OF SAID LOT 3 AND SAID LOT 5, AND CONTINUING FOR A TOTAL DISTANCE OF 678.88 FEET TO A 1/2-INCH IRON ROD WITH "BYRN" CAP, FOUND FOR THE NORTHWEST CORNER OF SAID LOT 5, SAME BEING IN THE NORTHEAST LINE OF SAID 92.95 ACRE TRACT, AND ALSO BEING THE SOUTH CORNER OF SAID REMAINDER TRACT AND THE TRACT DESCRIBED HEREIN;

THENCE WITH THE LINES COMMON TO SAID REMAINDER TRACT AND SAID 92.95 ACRE TRACT, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1) N45°50'11"W, A DISTANCE OF 850.32 FEET TO A 1/2-INCH IRON ROD WITH "DOUCET" CAP, SET, AND

2) N45°50'47"W, A DISTANCE OF 772.32 FEET BACK TO THE POINT OF BEGINNING OF THERE HEREIN DESCRIBED TRACT, AND CONTAINING 70.894 ACRES [3,088,160 SQUARE FEET].

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.

