

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made and entered into as of _____, 2021 between New Braunfels Waterpark, LLC ("Landlord") and the City of New Braunfels ("Tenant").

WHEREAS, Landlord owns certain land located near the Comal River in the proximity of the Weir Dam and desires to lease the land to City; and Tenant owns certain other land adjacent to Elizabeth Street and desires to lease such property to Landlord.

NOW, THEREFORE, in consideration of the following promises and conditions, the parties agree as follows:

1. DEFINITIONS AND CERTAIN BASIC PROVISIONS. For purposes of this Lease, the following terms and definitions shall be applicable; provided however, in the event there is any conflict between these Basic Lease Provisions and the balance of the Lease, the latter shall control:

- (a) Premises: Real property located near the Comal River in the proximity of the Weir Dam and as more fully described on Exhibit A.
- (b) Use: Ingress and egress to and from the Comal River around the Weir Dam downstream from the tube shoot owned and/or operated by Tenant.
- (c) Term: Ten (10) years from the Commencement Date.
- (d) Commencement Date: May 1, 2021
- (e) Termination Date: April 30, 2031
- (f) Consideration: The reciprocal lease by Tenant to Landlord of Tenant's land (the "Elizabeth Street Lease").
- (g) Landlord' Address for Notice: 381 East Austin Street, New Braunfels, Texas 78130
- (h) Tenant's Address for Notice: 550 Landa Street, New Braunfels, Texas 78130

2. PREMISES.

a. Premises: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in Section 1(a) of this Agreement. Tenant agrees to lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date, and Landlord agrees to lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

b. As Is Condition: Tenant accepts the Premises in its present condition "AS IS" and "WHERE IS" with all existing defects and faults as a result of the inspections and investigations by Tenant, and Tenant deems the Premises currently suitable for Tenant's Use.

3. **USE.**

a. Use of the Premises: Tenant shall occupy and use the Premises for the sole purpose set forth in Section 1(b) of this Agreement, and Tenant will not use or permit the Premises or any portion thereof to be used for any other purpose, without the prior written consent of Landlord. Tenant shall not use the Premises for any purpose other than the purpose as stated in this Agreement. Tenant shall not create a nuisance, permit any waste, or use the Premises in any way that is unreasonably dangerous or hazardous.

b. Compliance with Laws: Tenant shall obey all laws, ordinances, orders, and rules and regulations applicable to the use, condition and occupancy of the Premises. Tenant shall not allow a lien to be placed on the Premises.

4. **TERM.** The Term of this Lease shall be for the period designated in Section 1(c) of this Lease, commencing on the date set forth in Section 1(d) of this Agreement.

5. **RENEWAL OPTION.** Tenant has the option to extend the term for an additional five (5) year term on the same terms and conditions set forth in this lease. The option to extend for an additional five (5) year term shall be exercised by written notice delivered to Landlord not less than six (6) months before the Termination Date. Tenant's rights under this renewal option are contingent upon the lease of the property described in Exhibit A also being renewed for an additional five (5) year term in accordance with its provisions.

6. **CONSIDERATION.** Contemporaneously with entering into this Agreement, Landlord and Tenant are entering into a separate lease agreement for property Tenant leases to Landlord. The transactions contemplated therein are to close contemporaneously with the transactions contemplated herein and all such transactions shall be deemed to occur simultaneously, and no such transaction shall be deemed to be consummated unless all such transactions have been duly consummated.

7. **UTILITIES.** Tenant shall pay for all utility services used by Tenant.

8. **REPAIRS.** Tenant shall repair, replace, and maintain any portion of the Premises, normal wear and tear excepted. Tenant shall repair any damage to the Premises caused by Tenant.

9. **ALTERATIONS.** Any physical additions or improvements to the Premises made by Tenant will become property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear and tear excepted.

10. **ASSIGNMENT.** Tenant shall not assign the Agreement or sublease any portion of the Premises without Landlord's written consent, which consent shall not be unreasonably withheld or delayed.

11. **INSURANCE AND INDEMNIFICATION.** Tenant shall maintain and keep in force the following insurance coverages and to the extent allowed by law, shall indemnify, protect and defend the Lessor from claims which may arise out of or in connection with Lessee's use of the Property:

- a. Commercial property insurance written on a causes of loss—special form covering the buildings located on the subject Property with all proceeds payable to Tenant, naming Landlord as “additional insured.”
- b. Commercial property insurance written on a causes of loss—special form (formerly known as “all risks” form) covering Tenant's personal property, fixtures, and leasehold improvements on the subject Property, and naming Landlord as “Building Owner Loss Payable.”
- c. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering Landlord's operations within the Property, naming Landlord, as “additional insured,” and having limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.
- d. Business auto liability insurance written on an occurrence basis and having a combined single limit of not less than \$1,000,000.
- e. Workers' compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy.
- f. All coverages set forth above must contain a waiver of subrogation in favor of the Landlord.
- g. All coverages set forth above shall not exclude sexual abuse or sexual molestation of underage children.

The required insurance shall be written so that the Landlord will be notified in writing, in the event of cancellation, restrictive amendment or non-renewal at least thirty (30) days prior to action. Certificates of Insurance, and copies of additional insured and waiver of subrogation in favor of Landlord endorsements shall be filed with the Landlord at the annual commencement date of this Lease. All required insurance shall be written with the Lessor as an additional insured. In any event, the Tenant is fully responsible for all losses arising out of, resulting from or connected with its (and by extension the public's) use of the Premises under this Lease whether or not the losses are covered by insurance. All insurance required under this section shall be primary over any other insurance coverage the Landlord may have. The burden of maintaining proper insurance coverage and compliance with this subsection lies solely with the Tenant.

12. **CONDEMNATION/SUBSTANTIAL OR PARTIAL TAKING.**

- a. If the Premises cannot be used for the purposes contemplated by this Agreement because of condemnation or purchase in lieu of condemnation, this Agreement shall terminate.
- b. If there is a condemnation or purchase in lieu of condemnation and this Agreement is not terminated, Landlord shall, at Landlord's expense, restore the Premises, and the Other Lease will be adjusted as may be fair and reasonable.
- c. Tenant will have no claim to the condemnation award or proceed in lieu of condemnation.

13. **DEFAULT.**

- a. Default by Landlord (Events): Defaults by Landlord are failing to comply with any provision of this Agreement within thirty (30) days after written notice.
- b. Default by Landlord (Tenant's Remedies): Tenant's remedies for Landlord's default are to sue for damages or terminate this Agreement, whereupon the Elizabeth Street Lease will also terminate.
- c. Default by Tenant (Events): Defaults by Tenant are failing to comply with any provision of this Agreement within thirty (30) days after written notice.
- d. Default by Tenant (Landlord's Remedies): Landlord's remedies for Tenant's default are to terminate this Agreement by written notice or sue for damages.
- e. Default/Waiver/Mitigation: It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or as provided by law. Landlord and Tenant have a duty to mitigate damages.

14. **HOLDOVER**: If Tenant does not vacate the Premises following termination of the lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without consent of the Landlord, will extend the term.

15. **ALTERNATIVE DISPUTE RESOLUTION**. Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

16. **ATTORNEY'S FEES**. If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees court and other costs.

17. **CHOICE OF LAW AND VENUE**. This Agreement is governed by, and is to be construed in accordance with, the laws of the State of Texas, and the parties agree to the jurisdiction and venue of the courts of Comal County.

18. **ENTIRE AGREEMENT**. This lease including exhibits, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease or to any expressly mentioned exhibits and riders not incorporated in writing in this lease.

19. **AMENDMENT**. This lease may be amended only by instrument in writing signed by Landlord and Tenant.

20. **LIMITATION OF WARRANTIES**. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Agreement, and there are no warranties that extend beyond those expressly stated in the Agreement.

21. **NOTICES**. The parties shall give all notices and communications between the parties in writing by (a) personal delivery, (b) a nationally-recognized, next-day courier service, (c) first-class registered or certified mail, postage prepaid, or (d) electronic mail to the party's address specified in this Agreement, or to the address that a party has notified the other to be that party's address for the purposes

of this section. A notice given under this agreement will be effective on the other party's receipt of it, or if mailed, on the earlier of the other party's receipt of it or the fifth business day after mailing it via next-day courier or first-class registered or certified mail.

To Landlord:

381 E. Austin Street
New Braunfels, TX 78130

To Tenant:

550 Landa Street
New Braunfels, TX 78130

22. **ABANDONED PROPERTY.** Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

23. **EFFECT OF TERMINATION.** Termination of this Agreement automatically terminates the Other Lease.

24. **CONDITION TO LEASE.** This Agreement is expressly conditioned on the contemporaneous execution and delivery of the Elizabeth Street Lease between the parties with respect to the premises described or depicted on Exhibit B attached hereto.

25. **LANDLORD'S USE OF PREMISES:** Landlord reserves the right to use the Premises in a manner consistent with Tenant's use and rights under this Agreement.

[REMAINDER OF PAGE LEFT BLANK]

Signed by Landlord and Tenant with an effective date of _____, 2021.

BY: TENANT
CITY OF NEW BRAUNFELS

By: _____

Name: _____

Title: _____

BY: LANDLORD
NEW BRAUNFELS WATERPARK, LLC

By: _____

Name: _____

Title: _____

Exhibit "A"
Comal Weir Dam Property



10/20/2021, 10:02:44 AM

Parcels

Council Districts

District 5

City Limits

City Limits

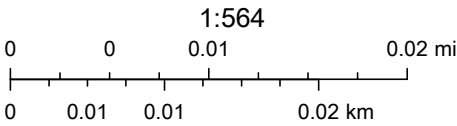
Streets

Ortholmagery

Red: Band_1

Green: Band_2

Blue: Band_3



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Exhibit "B"
Elizabeth Ave Property



10/20/2021, 9:52:04 AM

Parcels

Council Districts

District 3

District 4

District 5

City Limits

City Limits

Streets

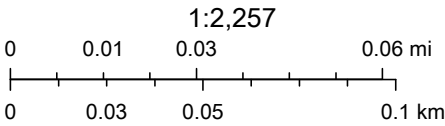
Addresses

Ortholmagery

Red: Band_1

Green: Band_2

Blue: Band_3



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