

FISCHER PARK RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (this "Agreement") sets forth the essential terms of the settlement agreement between the City of New Braunfels, Texas (the "City") and YOSSO GROUP INC., DBA SPEC PLAY, a California, Corporation ("SPEC"), (collectively, "Parties") of all claims that have been or could be asserted by the Parties related to the installation of playground equipment at Fischer Park, New Braunfels, Texas.

AGREEMENT

1. SPEC was retained by the City to supply certain playground equipment at Fischer Park, New Braunfels, Texas. SPEC was required to use certain natural materials created and manufactured by WholeTrees' Architectures & Structures, LLC to create a nature play area known as the Fischer Park Nature Play Space ("Project"). Since installation began, various disputes between the Parties arose. The City and SPEC wish to resolve and settle all of the claims between them that have been or could be asserted by virtue of the Project.

2. **NOW, THEREFORE**, in consideration of the foregoing, the Parties agree as follows:

Release. The City, on behalf of itself, and on behalf of its administrators, elected officials, officers, employees, successors, managers, representatives, constituents, assigns, insurers, and attorneys, acknowledges that upon completion of the items set forth in "Section 5. Consideration," the City does and will hereby fully release and forever discharge SPEC and its respective parent entities, affiliates, predecessors, successors in interest, assigns, subsidiaries, divisions, employees, officers, directors, property managers, members, insurers, shareholders, agents, attorneys, and all persons or entities acting by, through, under, or in concert with them (hereinafter "Releasees"), of and from any manner of action or actions, claims, demands, and causes of action of every kind, nature, or description whatsoever, in law or in equity, suits, debts, liens, contracts, agreements, promises, torts, liabilities, injuries, damages, losses, costs or expenses, of any nature whatsoever, fixed or contingent, which the City now has or may hereafter have against SPEC relating exclusively to and/or arising out of the claims that have been or could be made related to the Project, provided however, this release shall not impair the City's authority to enforce its ordinances against SPEC for new violations of applicable City ordinances that arise or occur on or after the date on which this release is executed by the parties hereto.

SPEC, on behalf of itself, and on behalf of its administrators, officials, officers, employees, successors, managers, representatives, constituents, assigns, insurers, and attorneys, acknowledges that upon completion of the items set forth in "Section 5. Consideration," SPEC does and will hereby fully release and forever discharge the City and its respective administrators, elected officials, officers, employees, successors, managers, representatives, constituents, assigns, insurers, and attorneys, and all persons or entities acting by, through, under, or in concert with them (hereinafter "Releasees"), of and from any manner of action or actions, claims, demands, and causes of action of every kind, nature, or description whatsoever, in law or in equity, suits, debts, liens, contracts, agreements, promises, torts, liabilities, injuries, damages, losses, costs or expenses, of any nature whatsoever, fixed or contingent, which SPEC now has or may hereafter

have against the City relating exclusively to and/or arising out of the claims that have been or could be made related to the Project.

Notwithstanding the foregoing, nothing shall prohibit SPEC, or its directors, managers, owners, successors, assigns, or other authorized representatives acting on its behalf, from pursuing claims or seeking damages against other entities for any costs or expenses incurred by SPEC, or its directors, managers, owners, successors, assigns, or other authorized representatives acting on its behalf, in relation to the alleged deficiencies asserted in or arising out of this Project, provided however, that SPEC shall indemnify and hold harmless the City and its elected officials, officers, employees, administrators, successors, managers, representatives, constituents, assigns, insurers, and attorneys from any claims against the City arising from or out of any subsequent litigation that SPEC might bring against such other entities.

3. Remediation Plans. SPEC shall perform or cause to be performed the work described in “Section 5. Consideration,” as stated herein. The City shall approve such work, provided such work complies with all City code requirements, applicable ASTM standards, and manufacturer’s guidelines, as applicable, including specifications set forth in the document attached hereto as Exhibit “A,” – Berliner Palmetto Saucer ASTM/CSA SON.578.01, and incorporated herein for all purposes. Should any new issue or deficiency arise on the Project, upon receipt of notice of said issue or deficiency, the City shall notify SPEC within three (3) business days of the discovery of said issue or deficiency and SPEC shall be given twenty (20) business days to submit to the City a plan for remediation and request for approval, provided however, in no event will the date by which all repairs/remediations be extended beyond May 31, 2025, except by further written agreement of the Parties. If SPEC has not completed all repairs/remediations that is the subject of this Agreement by May 31, 2025, this Release shall be null and void and of no further force and effect in the absence of a written agreement between the Parties extending the deadline.

4. Future Enforcement. In consideration of the above, nothing in this release shall be construed to impair the City’s authority to enforce its ordinances against SPEC for new violations of applicable City ordinances that arise or occur on or after the date on which this release is executed by the parties hereto. The City further shall release SPEC from all claims that have been or could have asserted, which arise out of same nucleus of operative facts set forth in this Agreement. If the repairs/remediation described herein are not timely completed by SPEC, or if applicable approvals, if any, are not timely issued by the City, this Agreement may be terminated by either Party, and the Parties shall proceed with the Litigation and/or appellate proceedings, or SPEC may seek specific performance of the City’s obligations under this Agreement. The parties shall concurrently release any claims, litigation, or appeals that they have against the other as part of SPEC’s release obligations. The Parties hereto agree that while this Agreement is in effect and being performed, it is subject to the City’s authority to enforce its ordinances against SPEC, or its agents or representatives, for new violations of applicable City ordinances that arise or occur on or after the date on which this release is executed.

5. Consideration.

a. In exchange for the City remitting \$58,005.70 to SPEC upon the successful completion of applicable remediation of the Project, Chad Thompson of Thompson Recreation, LLC, shall install or re-install one Berliner Palmetto Saucer Swing in accordance with the manufacturer's specifications as depicted in the document attached hereto as Exhibit "A."

b. Two business days prior to commencement of any work on the Project, Chad Thompson of Thompson Recreation shall send written email notice to the City through Chad Donegan, Parks Director, at CDonegan@newbraunfels.gov, so that applicable City personnel may be present during the installation or re-installation work of any portion of the Project.

c. Upon the completion of construction work on the Project, SPEC shall provide to the City age-appropriate playscape signage indicating that all equipment located in the Project is suitable for ages five to twelve (5-12) years old.

d. Upon acceptance of the installation or re-installation of one Berliner Palmetto Saucer swing by the City, which shall be installed or re-installed pursuant to the specifications set forth in Exhibit "A," attached hereto, and which acceptance shall not be unreasonably withheld by the City, the City shall remit the \$58,005.70 balance to SPEC in a manner acceptable to the Parties within twenty-four (24) hours of the acceptance of said work.

e. All work set forth herein shall be completed by SPEC, by and through Chad Thompson of Thompson Recreation, on or before May 31, 2025.

6. Non-Admission of Liability. It is understood and agreed that this Settlement Agreement constitutes a compromise of a disputed claim and said compromise (1) is made solely to prevent further involvement in what is anticipated to be expensive and time-consuming litigation, (2) is made without regard to the merit or lack of merit of any of the claims asserted, and (3) that SPEC expressly denies any liability to the City and vice versa. Neither this document nor any consideration given hereunder is to be construed as an admission of any liability, express or implied, on the part of SPEC or the City.

7. No Strict Construction. The language of this document shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any party given rights hereunder, regardless of who drafted or is principally responsible for drafting this document or any specific term or condition hereof. This Agreement shall be deemed to have been drafted by all parties given rights herein, and no person, firm or party hereto shall urge otherwise.

8. Headings and References. The captions and headings of the Sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one

gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Section, subsection, exhibit, and schedule references are to this Agreement as originally executed unless otherwise specified. Any reference herein to any statute, rule, regulation, or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation, or agreement as it may be modified, varied, amended, or supplemented from time to time. Any reference herein to any person shall be deemed to include the heirs, personal representatives, successors, and permitted assigns of such person.

9. **Authority to Execute This Agreement.** Each Party represents and warrants that it has the authority to execute this Agreement. The City represents that the terms of the Agreement have been duly approved by City Council or other necessary and authorized City officials.

10. **Representation.** Each Party represents and warrants that, in entering into this Agreement, it has had an opportunity to fully investigate all of the claims that they are releasing herein, it has relied on the advice of its own attorneys and/or other representatives, that the terms of this Agreement have been read completely and explained to it by its attorneys and/or other representatives and that the terms of this Agreement are fully understood and voluntarily accepted by it. Each Party further acknowledges that (i) no representation or promise not expressly contained in this Agreement has been made by any Party to any other Party or to their agents, participants, employees, representatives, or attorneys, and (ii) this Agreement has not been entered into on the basis of any such promise or representation, express or implied, other than as set forth in this Agreement. Each Party represents and warrants that the terms and provision of this paragraph will specifically preclude the assertion that they have been fraudulently induced to enter into this Agreement.

11. **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of Texas without regard to the principles of choice of law or conflicts of law of that state or of any other jurisdiction and in the event of litigation between the Parties, venue shall be in Comal County, Texas.

12. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written.

13. **Survival.** The covenants, releases, and indemnifications contained in this Agreement shall survive the full performance of this Agreement.

14. **No Modification.** This Agreement can be amended, modified, or terminated only by a writing executed by each of the Parties.

15. **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties and specifically on any successor owner of the Property.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for the purpose of effectuating the Agreement, but all of which together shall constitute one and the same instrument. Any faxed counterpart of this Agreement shall be deemed to be an original, but the Party delivering a facsimile counterpart further shall immediately deliver to each of the other Parties an original counterpart.

17. **Notice.** All correspondence, notices, or demands under this Agreement shall be sent to the Parties and/or their counsel, as required herein at the following addresses:

To SPEC:

SPEC PLAY
David Yosso, Owner
121 Industrial Way Suite 1
Belmont, CA 94002

with a copy to:

Aric Williams
2173 Salk Avenue, Suite 250
Carlsbad, CA 92008
(tel) 310-909-8979

To the City:

The City of New Braunfels
Attn: City Manager
550 Landa St.
New Braunfels, Texas 78130
(tel) 830-221-4000

With a copy to:

Bradford E. Bullock
Messer Fort, PLLC
4201 W. Parmer Lane, Suite C150
Austin, Texas 78727
Email: brad@txmunicipallaw.com
Phone: (512) 930-1317

The Parties or their counsel shall promptly notify the other Parties and counsel of any change of address by written notice specifically referring to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have each approved and executed this Agreement on the dates set forth opposite their respective signatures.

[SIGNATURE PAGES FOLLOW]

READ AND AGREED:

THE CITY OF NEW BRAUNFELS, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

READ AND AGREED:

SPEC PLAY

By: D.Y. _____
Name: David Yosso on behalf of
YOSSO GROUP INC., DBA SPEC PLAY
Title: Principal, Owner _____
Date: 3/18/25 _____

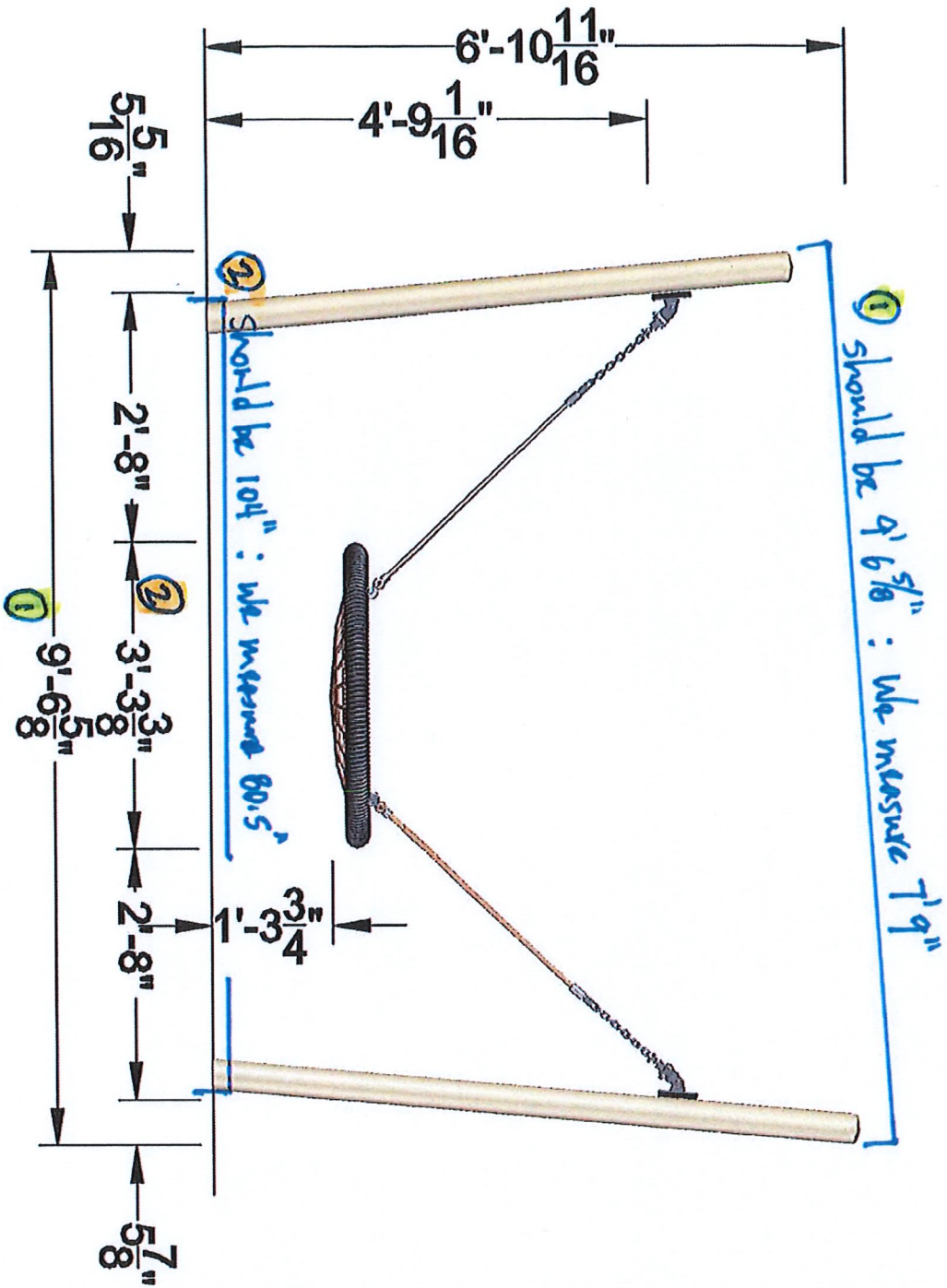


Exhibit "A"

Palmetto Saucer
ASTM/CSA

SON.578.01

Dimensions (view 1) From height of fall
(-) 9'-7" x 3'-4" x 6'-7" (-) 4'-9"

Maximum spacer required
(-) 21'-7" x 19'-11" (m) 28.18

Format

Date: 31.05.2018
Change (Name): 1.

Name: C.Bader
Scale:

2.

3.

4.

Please note: Current edition is for conceptual purposes only and is subject to change.

Exhibit "A"