

## **AGREEMENT**

This **AGREEMENT** (this "Agreement") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality ("hereinafter referred to as the "Town"); **380 SAVANA, LLC**, a Texas limited liability company, **PC REAL ESTATE, LLC**, a Texas limited liability company; **V&T REAL ESTATE, LLC**, a Texas limited liability company (hereinafter referred to as the "Owner"); and **SIMPLE KICKING SOLUTIONS, LLC**, a Texas limited liability company (hereinafter referred to as "Licensee"), for the purposes and considerations stated below:

**WHEREAS**, the Licensee has entered into a Texas Fireworks Lease Agreement with the Owner, a copy of which is attached hereto as **Exhibit A**, concerning a fireworks stand located on certain real property at 26878 East University Drive, 2.191 acres within the Town's extraterritorial jurisdiction, Denton County, Texas, (hereinafter referred to as the "Property"); and

**WHEREAS**, on or about November 15, 2005, the Town approved Ordinance No. 740, providing for the Limited Purpose Annexation of a 44.204-acre tract of Land; and

**WHEREAS**, the Town, Owner, and Licensee now desire to extend the ability to sell fireworks from the Property for one winter season from **December 20, 2023 to January 1, 2024**.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, Owner, and Lessee agree as follows:

### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

### **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date and shall continue thereafter until midnight on **January 1, 2024**, with forty-eight (48) hours granted to vacate said property at the conclusion of the winter firework season, unless terminated sooner under the provisions of this Agreement.

### **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town, Owner, and Licensee.

- (c) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (d) **Licensee.** The word “Licensee” means Simple Kicking Solution, LLC, a Texas limited liability company, whose address is 3634 Granada Avenue, Dallas, Texas 75205.
- (e) **Owner.** The word “Owner” means Buckman Partnership, Ltd, a Texas limited partnership, whose address for purposes of this Agreement is 7400 Gaylord Parkway, 3<sup>rd</sup> Floor, Frisco, Texas 75034.
- (f) **Property.** The word “Property” means the fireworks stand generally located at 26878 East University Drive, 2.191 acres within the Town’s extraterritorial jurisdiction, Denton County, Texas.
- (g) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (h) **Town.** The word “Town” means the Town of Little Elm, Texas, a Texas home-rule municipality, whose address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

#### **SECTION 4. OBLIGATIONS OF OWNER AND LESSEE.**

Owner and Lessee covenant and agree with the Town that, while this Agreement is in effect, it shall comply with the terms and conditions listed below:

- (a) **Sales of Fireworks from the Property.** Owner and Lessee agrees that the current fireworks stand located on the Property shall not exceed the boundaries of said property. Further, the Owner and Licensee agree that consistent with Section 2154.202 of the Texas Occupations Code that the Owner and Licensee may sell fireworks from the Property for the following firework seasons:
  - (1) beginning **December 20, 2023** and ending at midnight on **January 1, 2024**.
- (b) **Cease Sale of Fireworks.** Owner and Licensee agree that the Owner and Licensee shall cease the sale of fireworks from the Property, and shall not be authorized to sell fireworks from the Property following the conclusion of this Agreement.
- (c) **Compliance with State Rules and Regulations.** Owner and Licensee agree to comply with all state rules and regulations regarding the sale of fireworks including Title 28, Chapter 34, Rules 34.80 to 34.832 of the Texas Administrative Code, and Chapter 2154 of the Texas Occupations Code, as amended.
- (d) **Texas Sales and Use Tax Permit.** Licensee agrees to submit or cause to be submitted to the Texas State Comptroller's office all sales and use taxes collected from the fireworks stand located on the Property under Taxpayer number 3-20594-5312-9 or other Texas sales

and use tax permit approved by the Town. This includes the State's sales tax at the rate of 6.25%, the Town of Little Elm's local sales and use tax at the rate of 1.00%, the Little Elm Type A economic development sales tax at the rate of 0.50%, and the Little Elm Type B economic development sales tax at the rate of 0.25%, and the Little Elm street maintenance sales and use tax at the rate of 0.25%, for a total sale and use rate of 8.25%.

## **SECTION 5. OBLIGATIONS OF TOWN.**

The Town covenants and agrees with Owner and Lessee that, while this Agreement is in effect, it shall allow the Owner and Lessee to sell fireworks at the fireworks stand currently located on the Property during the Term of this Agreement, with proof of proper permit from Denton County.

## **SECTION 6. MUTUAL RELEASE.**

In consideration of the premises, mutual promises and covenants contained herein, Town, Owner and Licensee and their predecessors, successors, assigns, affiliates, elected officials, employees, consultants, agents and legal representatives hereby release and forever discharge each other, jointly and severally, each and all of them, of and from any and all debts, liabilities, claims, controversies, causes of action and demands of every kind and character whatsoever that they may now have against each other civil or criminal, currently existing and arising out of any events or dealings between said parties prior to the execution of this Agreement relating to the issues, claims, counterclaims, defenses and allegations which were raised or could have been raised in connection with Property, or which could be raised in the future following the conclusion of this Agreement concerning the enforcement of the Town's ordinance prohibiting the sale of fireworks from the Property.

## **SECTION 7. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Owner warrants and represents that the individual

or individuals executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. Licensee warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same. Town warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Town:                      Town of Little Elm, Texas  
   100 W. Eldorado Parkway  
   Little Elm, Texas 75068  
   Attn: Matt Mueller, Town Manager  
   214.975.0405

If to Owner:                      Buckman Partnership, Ltd.  
   7400 Gaylord Parkway, 3<sup>rd</sup> Floor  
   Frisco, Texas 75034.  
   Attn: \_\_\_\_\_  
   Telephone: \_\_\_\_\_

If to Licensee:                      Simple Kicking Solutions, LLC  
   3634 Granada Avenue  
   Dallas, Texas 75205  
   Attn: James Hairston Jr., Owner  
   214.707.8780

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**[The Remainder of this Page Intentionally Left Blank]**

**THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.**

**TOWN:**

**TOWN OF LITTLE ELM, TEXAS,**  
a Texas home-rule municipality,

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

Curtis Cornelious, Mayor

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

**ATTEST:**

\_\_\_\_\_  
Caitlan Biggs, Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert F. Brown, Town Attorney

**STATE OF TEXAS**

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**COUNTY OF DENTON**

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Curtis Cornelious, Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of the Texas municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**OWNER:**

**BUCKMAN PARTNERSHIP, LTD.,**  
a Texas limited partnership,

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**STATE OF TEXAS**

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**COUNTY OF DENTON**

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, \_\_\_\_\_ of Buckman Partnership, Ltd., a Texas limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**LICENSEE:**

**SIMPLE KICKING SOLUTIONS, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**STATE OF TEXAS**

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**COUNTY OF DENTON**

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by James Hairston, Jr., owner of Simple Kicking Solutions, LLC, a Texas limited liability company, on behalf of said Texas company.

\_\_\_\_\_  
Notary Public, State of Texas



***Exhibit A***

[License Agreement]