

# EXHIBIT

## "A"

### CONTRACT FOR SALE OF REAL PROPERTY

THIS CONTRACT FOR SALE OF REAL PROPERTY (referred to herein as the "**Contract**") is made by and between the **City of Round Rock**, a Texas home-rule municipality, with offices located at 221 East Main Street, Round Rock, Texas (referred to herein as the "**Seller**") and **TOTKN, LLC**, a Texas limited liability company, 1011 Westland Ridge Road, Dripping Springs, Texas 78620 (referred to herein as the "**Purchaser**"), on the terms and conditions which are set forth in this Contract.

#### ARTICLE I PURCHASE AND SALE

1.01 Land. Seller is the owner of the following described 18.414 acre tract of land (the "**Land**") described as follows:

18.414 acres of land out of the Ephraim Evans Survey, Abstract No.212, City of Round Rock, Williamson County, Texas, being out of that certain 38.58 acre tract conveyed to McNeil Laboratories, Inc., by Warranty Deed recorded in Volume 657, Page 655, Deed Records, Williamson County, Texas

1.02 Property. Purchaser desires to purchase and Seller desires to convey the Land together with all related rights, titles, interests, mineral interests in or under the surface of the Land, and any improvements located on the Land (the Land and related rights, appurtenances, and improvements described above are collectively referred to as the "**Property**"). The term Property does not include the score boards currently on the Land, which are considered tangible personal property.

1.03 Removal of Tangible Personal Property. All tangible personal property must be removed from the Land by Seller within 14 days after the Closing Date or the tangible personal property will be deemed abandoned by Seller and become the property of the Purchaser. Upon Seller's abandonment of tangible personal property, Purchaser may keep or dispose of the abandoned tangible personal property.

1.04 Purchaser's Intended Use of Property. Purchaser proposes to use the Property to construct and operate a restaurant, bar (serving beer, wine and spirits as approved by the Texas Alcoholic Beverage Commission) music venue and amphitheater with amplified sound and to have seasonal and temporary retail sales on the Property ("**Purchaser's Intended Use**"). Purchaser's Intended Use will be operated similar to Purchaser's existing business known as the Nutty Brown Café and Amphitheater currently located at Hwy. 290 West and Nutty Brown Road in Dripping Springs, Texas. Purchaser's Intended Use is a critical consideration in Seller's decision to enter into this Contract.

## ARTICLE II SALES PRICE

2.01 Amount and Payment of Purchase Price. The purchase price for the Property will be the sum of One Million, One Hundred Thousand and no/100 Dollars (\$1,100,000.00), which will be payable by Purchaser in cash at the closing ("**Purchase Price**").

## ARTICLE III PURCHASER'S OBLIGATIONS

3.01 Conditions to Purchaser's Obligations. Purchaser's obligations under this Contract are subject to Seller complying with all of the covenants, agreements, and conditions required by this Contract, and the satisfaction of each of the following conditions (any of which may be waived in whole or in part by Purchaser at or before the closing):

- (1) All the representations and warranties of Seller set forth in this Agreement shall be true and correct as of the Effective Date and on the Closing Date.
- (2) The City Council of Seller has approved and adopted in a public meeting a Planned Unit Development Agreement and ordinance governing the development of the Property ("**PUD**") on terms and conditions approved by both Seller and Purchaser in substantially the form attached hereto as Exhibit "A" .

If any of the foregoing conditions are not satisfied or waived in writing by Purchaser prior to the Closing Date (as defined below), Purchaser may terminate this Agreement by delivery of a written termination notice to Seller on or before the Closing Date, in which event the Escrow Deposit shall be promptly returned to Purchaser free of claims by Seller.

3.02 Preliminary Title Report. Within twenty-one (21) days after the Effective Date, Seller shall deliver or cause to be delivered to Purchaser, at Seller's cost, a Commitment for Title Insurance ("**Title Commitment**") from Georgetown Title Company at 1717 N. Mays St., Round Rock, TX 78664 ("**Title Company**"). The Title Commitment shall set forth the status of the title of the Property and show all liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and any other matters affecting the Property. The Title Company shall furnish a copy of all documents referred to in the Title Commitment, including, but not limited to, deeds, lien instruments, plats, reservations, restrictions, and easements ("**Title Review Documents**").

3.03 Survey. Purchaser may, at its option, cause to be prepared, a current Category 1A, Condition II survey or surveys of the Property acceptable to the title company for the purposes of issuing the Title Commitment ("**Survey**") prepared by a registered or licensed public surveyor. At Closing, the City will reimburse Purchaser for the cost of the Survey up to a maximum of \$2,500.

3.04 Title Objections. On or before the date that is ten (10) business days after Purchaser's receipt of the Title Commitment, the Title Review Documents, and the Survey, Purchaser shall provide Seller with written notice of any objection to the exceptions shown on the Title Commitment or any condition of the Land as revealed by the Survey. All objections raised by Purchaser in the manner herein provided are hereafter called "**Title Objections**". Seller may remedy or remove all Title Objections within ten (10) business days after delivery of Purchaser's notice of such Title Objections, or may elect not to do so. In the event Seller does not cause the removal of any one or more of the Title Objections within such time period, Purchaser may, on or before the date that is fifteen (15) days after delivery of Purchaser's notice of such Title Objections: (a) terminate this Contract in its entirety by giving Seller written notice of termination, whereupon Seller shall have the right to retain the Independent Contract Consideration, and the Escrow Deposit shall be immediately returned to Purchaser, and thereafter neither Purchaser nor Seller shall have any further rights, remedies or obligations hereunder, except those that expressly survive termination of this Contract; (b) extend the time period for curing the matters which are the subject of the Title Objections for any period of time up to but not in excess of thirty (30) days; or (c) waive, in writing, any uncured Title Objections. If Purchaser elects to extend the cure period under clause (b) of the preceding sentence and the Title Objections have not been cured by the end of the extended cure period, Purchaser may thereafter elect to proceed under clause (a) or (c) of the preceding sentence. If Purchaser fails to make a written election of whether to terminate this Contract or waive the Title Objections within fifteen (15) days after delivery of Purchaser's notice of such Title Objections, then Purchaser shall be deemed to waive all Title Objections, which will become Permitted Exceptions. The term "**Permitted Exceptions**" as used herein shall include and be limited to: (a) all exceptions reflected on Schedule B and C of the Title Commitment and all matters reflected on the Survey which are not timely objected to by Purchaser during the objection period herein provided; and (b) all exceptions reflected on Schedule B and C of the Title Commitment and all matters reflected on the Survey which Purchaser previously objected to but subsequently waived.

#### ARTICLE IV REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER

4.01 Representations and Warranties. Seller represents and warrants to Purchaser, as of the Effective Date and as of the Closing Date (as hereinafter defined), as follows:

- (1) Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.
- (2) Condemnation. There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property or any part of it and to the best knowledge of Seller, there is no such proceeding or assessment contemplated by any governmental authority.
- (3) Applicable Laws. Seller has complied with all applicable laws, ordinances, regulations, and restrictions relating to the Property, or any part of it.

(4) Authority to Sign. The person or persons executing this Contract on behalf of Seller have full power and authority to execute this Contract, and to bind Seller to the terms hereof.

(5) Environmental Condition. In this subsection, “Environmental Laws” means the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”) and other federal laws governing the environment as are in effect on the date of this Contract together with their implementing regulations and guidelines as of the date of this Contract, and all state, regional, county, municipal and other local laws, regulations, and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials in effect as of the date of this Contract.

In this subsection, “Hazardous Materials” means any substance which is (i) designated, defined, classified, or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant, or contaminant under any Environmental Law in effect as of the date of this Contract, (ii) petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) friable asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials.

To the best of Seller’s knowledge, there has not been any violation of Environmental Laws related to the Property or the presence or release (other than as permitted by law) of Hazardous Materials on or from the Property except as disclosed in the Environmental Assessment Report, or other studies and information relating to the environmental condition of the Property delivered by Seller to Purchaser or made available for Purchaser’s review.

(6) Effect of Purchaser’s Knowledge. Despite anything contained in this Contract to the contrary, Seller shall have no liability for breaches of any representations, warranties, or certifications (referred to herein individually as a “**Representation**” and collectively as the “**Representations**”) that Seller makes in this Contract or in any of the documents or instruments required to be delivered by Seller (and Purchaser shall not bring any lawsuit or other legal action against Seller or pursue any other remedies against Seller) if, at closing, Purchaser, its officers, employees, shareholders, members, partners, or agents had knowledge of the breach by Seller (including, without limitation, knowledge gained by Purchaser or any such related party in the course of its due diligence as to a fact or circumstance which, by its nature, indicates that a Representation was or has become untrue or inaccurate), and Purchaser elects to proceed to close the transaction contemplated by this Contract. In addition, if any update to Seller’s warranties and representations discloses a matter or circumstance that is material and adverse to Purchaser and not otherwise permitted under this Contract, Seller shall not be in

default under this Contract (unless the representation or warranty was untrue at the time it was made) and shall have no liability as a result thereof, and Purchaser's sole right and remedy as a result thereof shall be the right to terminate this Contract by giving written notice to Seller, and thereupon all of the Escrow Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations under this Contract, with the exception of the Surviving Covenants.

(7) Access to Public Highways. The Property has free access to and from public highways, streets or roads and, to Seller's best knowledge, there is no pending or threatened governmental proceeding that would impair or result in the termination of such access.

## **ARTICLE V CLOSING**

5.01 Subject to the Purchaser's Conditions for Closing (as defined in Section 3.01 above) being satisfied, the closing will be held at the offices of the Title Company, Texas on or before sixty (60) days following the Effective Date (herein referred to as the "**Closing Date**"), but the parties may mutually agree in writing for closing at a different date, time and/or place.

5.02 At the closing Seller will:

(1) Deliver to Purchaser a properly executed and acknowledged Special Warranty Deed, such Special Warranty Deed shall convey title in fee simple to all of the Property, free of all liens, encumbrances, conditions, easements, assessments, and restrictions, except for the following:

(a) General real estate taxes accruing on and after the Closing Date, and subsequent years not yet due; and

(b) Any Permitted Exceptions approved by Purchaser.

(2) Deliver to Purchaser a Texas Owner's Title Policy, issued by the Title Company, in Purchaser's favor in the full amount of the sales price, insuring Purchaser's fee simple title to the Property subject to the title exceptions listed above, to any other exceptions approved in writing by Purchaser, and to the standard printed exceptions contained in the usual form of Texas Owner's Title Policy, with the following exceptions:

(a) The boundary and survey exceptions may be deleted at the expense of Purchaser;

(b) The exception as to restrictive covenants will be endorsed "None of Record;" and

(c) The exception as to the lien for taxes will be limited to the year of closing and will be endorsed "Not Yet Due and Payable."

(3) Deliver to Purchaser possession of the Property.

- 5.03 At the closing, Purchaser will pay the sales price by cash, wire transfer or certified funds.
- 5.04 General real estate taxes for the current year relating to the Property, insurance and utility charges, if any, will be prorated as of the Closing Date and will be adjusted in cash at the closing. If the closing occurs before the tax rate is fixed for the current year, the apportionment of taxes will be on the basis of the tax rate for the preceding year applied to the latest assessed valuation. All special taxes or assessments to the Closing Date will be paid by Seller.
- 5.05 All costs and expenses of closing in consummating the sale and purchase of the Property will be paid as follows:
- (1) Owner's Title Policy paid by Seller;
  - (2) Title Company fees paid by each party equally;
  - (3) Survey paid by Purchaser, subject to a \$2,500 reimbursement from Seller;
  - (4) Filing fees for Special Warranty Deed paid by Purchaser;
  - (5) Title curative matters, if any, paid by Seller; and
  - (6) Attorney's fees paid by each party respectively.

#### **ARTICLE VI REAL ESTATE COMMISSIONS**

6.01 Seller and Purchaser agree that there are no real estate commissions earned or due as a result of this transaction. If any commission becomes due, it shall be the sole obligation of the Purchaser.

6.02 Purchaser has been advised that it should have the abstract covering the Property examined by an attorney of Purchaser's own selection, or that Purchaser should be furnished with or obtain a policy of title insurance. By signing this Contract, Purchaser acknowledges receipt of this notice.

#### **ARTICLE VII ESCROW DEPOSIT AND INDEPENDENT CONTRACT CONSIDERATION**

7.01 For the purpose of securing the performance of Purchaser under the terms of this Contract, Purchaser has delivered to the Title Company the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00) (the "**Escrow Deposit**") which will be paid by the Title Company to Seller in the event Purchaser breaches this Contract as provided in Article IX

of this Contract. At the closing, the Escrow Deposit will be paid over to Seller and applied to the sales price.

- 7.02 On or before the Effective Date, Purchaser shall deliver to the Title Company cash the sum of \$1,000.00 (the “**Independent Contract Consideration**”), which amount has been bargained for and agreed to as consideration for Purchaser’s exclusive option to purchase the Property and the right of investigation and inspection granted herein, and for Seller’s execution and delivery of this Contract. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Contract, and is nonrefundable in all events. However, at Closing, the Independent Contract Consideration shall be credited towards the Purchase Price.

**ARTICLE VIII  
BREACH BY SELLER**

- 8.01 If Seller fails to fully and timely perform any of its obligations under this Contract or fails to consummate the sale of the Property for any reason except Purchaser’s default, Purchaser may: (1) enforce specific performance of this Contract; or (2) request that the Escrow Deposit be returned by the Title Company to Purchaser.

**ARTICLE IX  
BREACH BY PURCHASER**

- 9.01 In the event Purchaser fails to consummate the purchase of the Property, if Seller is not in default under this Contract Seller may, as its sole and exclusive remedy, exercise its right to receive the Escrow Deposit from the Title Company, as liquidated damages for the failure of Purchaser to perform the duties imposed on Purchaser by the terms of this Contract. In the event Seller exercises its right to receive the Escrow Deposit, Seller agrees to accept this cash payment as total damages and as Seller’s only remedy under this Contract in the event of Purchaser’s default.

**ARTICLE X  
MISCELLANEOUS**

- 10.01 Assignment of Contract. Except as provided below, this Contract may not be assigned without the express written consent of Seller. Purchaser has the right to assign this Contract to a business entity owned and controlled by Purchaser.

- 10.02 Survival of Covenants. Any of the representations, warranties, covenants, and agreements of the parties, including specifically Section 11.09 below, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transactions contemplated by this Contract, will survive the closing.
- 10.03 Notice. Any notice required or permitted to be delivered under this Contract will be deemed received when sent by United States mail, postage prepaid, certified mail/return receipt requested, addressed to either Seller or Purchaser, as appropriate, at the address set forth below the signature of that party.
- 10.04 Texas Law to Apply. This Contract will be construed in accordance with the laws of the State of Texas, and all obligations of the parties created under this Contract are performable in Williamson County, Texas. Exclusive jurisdiction and venue shall lie in Williamson County, Texas.
- 10.05 Parties Bound. This Contract will be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted by this Contract.
- 10.06 Legal Construction. In case any one or more of the provisions contained in this Contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.
- 10.07 Prior Contracts Superseded. This Contract constitutes the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Contract.
- 10.08 Time of Essence. Time is of the essence in this Contract.
- 10.09 Purchase As Is.

PURCHASER ACKNOWLEDGES THAT PURCHASER HAS BEEN PROVIDED SUFFICIENT OPPORTUNITY TO INSPECT, EXAMINE, AND INVESTIGATE THE PROPERTY AND TO REVIEW TITLE AND SURVEY MATTERS RELATED TO THE PROPERTY, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN ARTICLE V; PURCHASER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS RELYING SOLELY ON PURCHASER'S OWN INSPECTIONS, EXAMINATIONS, AND INVESTIGATIONS OF THE PROPERTY IN MAKING THE DECISION TO PURCHASE THE PROPERTY AND IS ACCEPTING THE PROPERTY IN ITS "AS IS, WHERE IS" CONDITION "WITH ALL FAULTS" AND DEFECTS AS OF THE CLOSING DATE AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR



ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN ARTICLE IV; SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION THE WATER, STRUCTURAL INTEGRITY, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT ON THE PROPERTY, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (H) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY OR ANY OTHER ENVIRONMENTAL MATTER OR CONDITION OF THE PROPERTY; OR (J) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER CONTAINED IN ARTICLE IV, ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF THAT INFORMATION; SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION OF THE PROPERTY, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON EXCEPT FOR THE EXPRESS REPRESENTATIONS SET FORTH IN ARTICLE IV. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER IS A SOPHISTICATED AND EXPERIENCED PURCHASER OF PROPERTIES SUCH AS THE PROPERTY AND HAS BEEN DULY REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION OF THIS CONTRACT. SELLER HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE ANY OF THE PROPERTY.

The Effective Date of this Contract is the date the fully executed Contract, Escrow Deposit, and Independent Contract Consideration is received by the Title Company.

**SELLER**

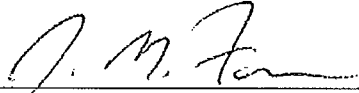
**City of Round Rock, Texas**

Signature: \_\_\_\_\_  
Craig Morgan, Mayor  
221 East Main Street  
Round Rock, TX 78664

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

**PURCHASER**

**TOTKN, LLC, a Texas limited liability company**

Signature: By:  \_\_\_\_\_  
**James Michael Farr, Manager**  
1011 Westland Ridge Road  
Dripping Springs, Texas

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

**RECEIPT**

Receipt of [ ] copy of Contract and [ ] \$25,000 Escrow Deposit, and [ ] \$1,000 Independent Contract Consideration is acknowledged.

Georgetown Title Company, Inc.

By: \_\_\_\_\_  
Escrow Agent

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