

**CAUSE NO. 19-03-03708**

<b>GUADALUPE PAULINA DIAZ,</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	
<b>SPORTS PRO DEVELOPMENT, LLC.,</b>	<b>§</b>	<b>OF MONTGOMERY COUNTY, TEXAS</b>
<b>JUAN CARLOS PADILLA AZARCOYA</b>	<b>§</b>	
<b>INDIVIDUALLY, AND</b>	<b>§</b>	
<b>KARLA PAMANES, INDIVIDUALLY</b>	<b>§</b>	
	<b>§</b>	<b>284TH JUDICIAL COURT</b>
	<b>§</b>	

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**PLAINTIFF'S FIRST AMENDED PETITION AND REQUEST FOR DISCLOSURE**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, GUADALUPE PAULINA DIAZ, Plaintiff, and files this First Amended Petition and Request for Disclosure complaining of and about against Defendants, SPORTS PRO DEVELOPMENT, LLC., JUAN CARLOS PADILLA AZARCOYA, INDIVIDUALLY and KARLA PAMANES, INDIVIDUALLY, and for cause of action would show to the Court as follows:

**I. DISCOVERY CONTROL PLAN; REQUEST FOR DISCLOSURE**

1. Plaintiff intends to conduct discovery under Level 2 of TEX. R. CIV. PROC.190.
2. Pursuant to Rule 194 of the TEX. R. CIV. PROC., Defendants are hereby requested to disclose within 50 days of service of this request the information and material described in Rule 194.2.

**II. PARTIES**

3. Plaintiff, GUADALUPE PAULINA DIAZ, an individual, is a resident of Montgomery County, Texas.

4. Defendant, SPORTS PRO DEVELOPMENT, LLC. (“Sports Pro”) is a Texas limited liability company and registered and conducting business in the State of Texas, and may be served with citation by serving its registered agent for service: Juan Carlos Padilla Azarcoya, 25211 Grogans Mill Road, #330B, The Woodlands, TX 77380 or by serving any manager, member or corporate officer of Sports Pro (wherever they may be found) or the Secretary of the State of Texas.

5. Defendant, JUAN CARLOS PADILLA AZARCOYA (“Mr. Padilla”) is a Texas resident and he may be served with process by serving him at the following address: 6 Desert Rose Place The Woodlands, TX 77382 or wherever he may be found.

6. Defendant, KARLA PAMANES (“Ms. Pamanes”) is a Texas resident and she may be served with process by serving her at the following address: 6 Desert Rose Place The Woodlands, TX 77382 or wherever she may be found.

### **III. JURISDICTION AND VENUE**

7. This is a suit for damages with said damages being within the jurisdictional monetary limits of this Court.

8. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000. TEX. R. CIV. PROC. 47(c)(4).

9. The Court has jurisdiction over this action in that it is based in contract and the damages sought exceed the minimum jurisdictional limits of this Court.

10. Venue is proper in Montgomery County, Texas pursuant to Section 15.002 of the Texas Civil Practice & Remedies Code. In particular, all or a substantial part of the events or omissions giving rise to the claim occurred in Montgomery County, Texas.

#### IV. FACTS

11. On December 21, 2018, the Defendants SPORTS PRO, MR. PADILLA, and MS. PAMANES, executed and delivered two **Promissory Notes** to GUADALUPE PAULINA DIAZ dated December 21, 2018, whereby SPORTS PRO promised to pay the principal sum of THREE HUNDRED AND FIFTY THOUSAND AND 00/100 DOLLARS (\$350,000), on January 31, 2019, plus \$500 per day thereafter and in the second Promissory Note, SPORTS PRO promised to pay the principal sum of FIFTY TWO THOUSAND AND FIVE HUNDRED AND 00/100 DOLLARS (\$52,500), on January 31, 2019, plus \$500 per day thereafter (both promissory notes collectively, the “Notes”). The Notes also requested the agreed rate of eighteen percent (18.0%) for any overdue payment past January 31, 2019 in each promissory note. A true and correct copy of the Notes are attached hereto as **Exhibit A** and **Exhibit B** and are incorporated herein by reference. Further, Mr. Padilla and Ms. Pamenes each personally guaranteed payment of the Notes under the agreement. GUADALUPE PAULINA DIAZ is the legal owner and holder of the Notes.

12. Subsequent to the execution of the Notes, Defendant SPORTS PRO failed to pay the amount due as agreed in the Notes and defaulted upon its Notes obligations by failing to make payments as agreed. Specifically, Defendant SPORTS PRO:

a. failed to deliver or cause to be delivered to GUADALUPE PAULINA DIAZ her payment in the sum of \$350,000 on or before January 31, 2019 as it promised and as required by the Notes.

b. failed to deliver or cause to be delivered to GUADALUPE PAULINA DIAZ her payment in the sum of \$52,500 on or before January 31, 2019 as it promised and as required by the Notes.

13. Because of this default, by letter dated February 15, 2019, SPORTS PRO, MR. PADILLA and MS. PAMENES were provided formal notice of default, demand for payment of sums then past due in accordance with the provisions of the Notes and notice of intention to accelerate the indebtedness evidenced by the Notes in the event of their failure to timely cure the event(s) of default. A true and correct copy of the February 15, 2019 notice letter is attached hereto as **Exhibit C** and incorporated herein by reference.

14. On May 24, 2019, Plaintiff and Defendants agreed to and duly executed a **Compromise Settlement and Release Agreement** whereby Defendants agreed to pay the total sum of Five Hundred Fifty-Two Thousand Seven Hundred Fifty Dollars and 00/100 Cents (\$552,750) (the "Settlement Proceeds"). The settlement agreement was filed with this Court on or around June 2019. See **Exhibit D**.

15. To date, Defendants have failed to deliver or cause to be delivered \$500,000 and have only paid the total of \$52,750.

16. Plaintiff's counsel made multiple requests to Defendant's counsel, for tender of the Settlement Proceeds.; those requests were ignored. Finally, weeks later, Defendants still have not honored the settlement agreement. Thus, Plaintiff is forced to bring suit for breach of contract.

## **V. CAUSES OF ACTION**

### **Count No. 1 - Breach of Contract and Breach of Personal Guaranty**

17. Plaintiff reasserts and incorporates by reference all of the above numbered paragraphs.

18. Plaintiff has entered into valid and enforceable contractual agreements with the Defendants (See Exhibits A-D).

19. Defendants have breached those contracts by failing to pay Plaintiff the amounts owed in accordance with the attached agreements.

20. Defendants' breach caused injury to which has resulted in over \$500,000 in breach of contract damages, plus interest, expenses, court costs, and attorney's fees.

**Count No. 2 – Quantum Meruit**

21. Plaintiff asserts and incorporates by reference all of the facts set forth in the foregoing paragraphs of this Petition.

22. In the alternative to other counts, Defendants accepted financial contributions from Plaintiff without fully compensating Plaintiff.

23. Plaintiff provided Defendants with valuable services of financial contributions. Defendants accepted these financial contributions and were provided for the Defendants' benefit.

24. Defendants knew or should have known that Plaintiff expected to be compensated when Defendant accepted Plaintiff's financial contributions.

25. Because Plaintiff expected compensation, Defendant's acceptance of Plaintiff's services and financial contributions without payment resulted in over \$500,000 in damages, the approximate amount of unpaid financial contributions, plus interest, expenses, and attorney's fees.

**Count No. 3 – Promissory Estoppel**

26. Plaintiff reasserts and incorporates by reference all of the facts set forth in the foregoing paragraphs of this Petition.

27. In the alternative to other counts, Defendants made a promise to Plaintiff that Defendants did not keep. Defendants promised Plaintiff that Defendants would pay the amounts as evidenced in the Promissory Notes.

28. Plaintiff reasonably and substantially relied on Defendants' promise. Defendants knew, or reasonably should have known, that Plaintiff would rely on Defendants' promise.

29. The injustice to Plaintiff can only be avoided if Defendants' promise is enforced. Plaintiff's reliance on Defendants' promise resulted injury to Plaintiff in the amount in excess of \$500,000.00 the contract amount of the Promissory Notes.

#### **Count No. 4 – Unjust Enrichment**

30. Plaintiff reasserts and incorporates by reference all of the facts set forth in the foregoing paragraphs of this Petition. 3

31. In the alternative to other counts, Defendants were unjustly enriched by the value of the compensations that Plaintiff was entitled to receive, which amounts to over \$500,000.

#### **VI. DAMAGES**

32. As a direct and proximate result of Defendants breach of contract, Plaintiff, GUADALUPE PAULINA DIAZ, sustained damages described herein and is entitled to an award of damages including contract and actual damages.

#### **VII. CONDITIONS PRECEDENT**

33. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, GUADALUPE PAULINA DIAZ, respectfully prays that the Defendants, SPORTS PRO DEVELOPMENT LLC, JUAN

CARLOS PADILLA AZARCOYA and KARLA PAMANES be cited to appear and answer herein and that upon a final hearing of the cause, judgement be entered for the Plaintiff against Defendants, for damages in an amount within the jurisdictional limits of the Court, together with pre-judgment interest (from the date of injury throughout the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

LUIS F. HESS, PLLC

By: /s/ Claudia J. Martinez

CLAUDIA JOVEL MARTINEZ

State Bar No. 24078761

[claudia@luishesslaw.com](mailto:claudia@luishesslaw.com)

LUIS F. HESS

State Bar No. 24076436

[luis@luishesslaw.com](mailto:luis@luishesslaw.com)

282 Ed English Drive, Suite 6D

Shenandoah, TX 77385

Ph: 281-205-8540

Fax: 832-200-3518

ATTORNEYS FOR PLAINTIFF,  
GUADALUPE PAULINA DIAZ

**Certificate of Service**

I certify that a true copy of this Plaintiff's First Amended Petition and Request for Disclosure was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on July 10, 2019.

/s/ Claudia J. Martinez  
CLAUDIA JOVEL MARTINEZ

[ X ] Via e-mail: plivingston@sbcglobal.net

PHILLIP R. LIVINGSTON, P. C.

Attorney Phillip R. Livingston

2950 Unit Drive., #37056

Houston, Texas 77237-4704



# "Exhibit A"

## PROMISSORY NOTE

\$350,000.00 USD

Montgomery County, Texas

12-21-2018

FOR VALUE RECEIVED, the undersigned, **SPORTS PRO DEVELOPMENT LLC, JUAN CARLOS PADILLA AZARCOYA**, with Texas Driver's License 37207268, and **KARLA PAMANES** with Texas Driver's License 37872895, and (individually or collectively, "Maker"), having the former Maker having an address at 25211 GROGANS MILL ROAD #330B, THE WOODLANDS, TX 77380, and the latter Makers having an address at 6 Desert Rose Place, The Woodlands, TX 77382 jointly and severally promises to pay to the order of **GUADALUPE PAULINA DIAZ ORDAZ**, with a Mexican Passport # G13914557, and any successors and assigns ("Payee"), the principal amount of THREE HUNDRED AND FIFTY THOUSAND DOLLARS AND 00/100 CENTS (\$350,000.00 USD). Payment can be made directly to Payee or to the any other person or business designated by the Payee.

The principal of this Promissory Note ("Note") is due and payable in full on JANUARY 31<sup>st</sup>, 2019. No additional extensions are permitted. No grace period is permitted. The single payment is to be deposited directly to Payee's bank account in Morgan Stanley Smith Barney (account # 406-111-72) on JANUARY 31<sup>st</sup>, 2019. Late fees and additional interests begin to accrue on this note if full payment is not made on JANUARY 31<sup>st</sup>, 2019.

All payments and prepayments of principal must be made in U.S. currency in immediately available funds at the address of Payee indicated above or at a place the holder of this Note designates in writing to Maker. Payments by check or draft do not constitute payment in immediately available funds until the required amount is actually received by Payee in full. If any payment of principal under this Note becomes due on a day that is not a Business Day (defined below), the payment must be made on the next Business Day, and this extension of time must be included in computing interest in connection with the payment. The term "Business Day" means any day other than a Saturday, Sunday, or any other day on which banks are closed.

All past-due installments of principal will bear interest at an annual rate ("Default Interest Rate") equal to eighteen percent (18%), or the maximum rate is under Texas law (whichever is lower). During the existence of an Event of Default (defined below), the entire unpaid balance of principal will, at the option of the holder of this Note, bear interest at the Default Interest Rate. Despite the foregoing, if at any time the interest rate that this Note bears exceeds the Highest Lawful Interest Rate (defined below), the rate of interest that this Note bears will be limited to the Highest Lawful Interest Rate. The term "Highest Lawful Interest Rate" means the greater of (a) the maximum rate of interest permitted at the time under any federal law applicable to the indebtedness evidenced by this Note or (b) the "weekly ceiling" in effect at the time as that term is defined in Texas Finance Code Chapter 303, as amended ("Act"), and that would be applicable to the indebtedness evidenced by this Note under the Act. The parties acknowledge that the date of this Note is the date on which the indebtedness evidenced by this Note has been contracted for.

Maker's Initials Here:

JCP

Payee's Initials Here: \_\_\_\_\_

The occurrence of any one of the following is a default under this Note ("Event of Default"):

1. Maker's failure to pay any installment of principal or interest on this Note or on any other indebtedness of Maker to Payee when due.
2. Maker's failure to fully and timely perform, observe, or keep all covenants, agreements, and conditions contained in this Note or in any other Loan Document with third parties.
3. Maker: (a) makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, (b) generally is not paying its debts as they become due, (c) has a receiver, trustee, or custodian appointed for, or take possession of, all or substantially all of its assets, in a proceeding brought either by or against it, and the appointment is not discharged or possession is not terminated within twenty (20) days after the effective date of the appointment or possession or it consents to or acquiesces in the appointment or possession, (d) files a petition for relief under the Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws (collectively called "Applicable Bankruptcy Law"), or an involuntary petition for relief is filed against it under any Applicable Bankruptcy Law and the involuntary petition is not dismissed within thirty (30) days after it is filed, or an order for relief naming Maker is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization, or other relief of debtors now or later existing is requested or consented to by Maker, (e) fails to have discharged within a period of twenty (20) days any attachment, sequestration, or similar writ levied on any of its property, or (f) fails to pay within twenty (20) days any final money judgment against it.

Following an Event of Default, the holder of this Note may, at its option, without further notice or demand, (a) declare the outstanding principal balance of and the accrued but unpaid interest under this Note at once due and payable, (b) foreclose any liens securing payment under this Note, (c) pursue any and all other rights, remedies, and recourses available to it under this Note or under any other Loan Document, including but not limited to any such rights, remedies, or recourses available at law or in equity, or (d) pursue any combination of the foregoing. Any homes, automobiles, bank accounts, or other assets of value will serve as collateral on this note.

The failure to exercise the option to accelerate the maturity of the indebtedness evidenced by this Note or any other right, remedy, or recourse available to the holder of this Note on the occurrence of an Event of Default does not constitute a waiver of the holder's right to exercise the same at that time or at any later time with respect to that Event of Default or any other Event of Default. The rights, remedies, and recourses of the holder as provided in this Note and available under applicable law or in equity are cumulative and concurrent and may be pursued separately, successively, or together as often as necessary, at the sole discretion of the holder. The acceptance by the holder of any payment under this Note that is less than the payment in full of all amounts due and payable at the time of the payment will not (a) constitute a waiver of or impair, reduce, release, or extinguish any right, remedy, or recourse of the holder, or nullify any prior exercise of any right, remedy, or recourse, or (b) impair, reduce, release, or extinguish the obligations of any party liable under this Note or any other document executed

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in connection with this Note as originally provided in these documents.

Except as otherwise set forth in this Note, Maker waives demand, presentment for payment, notice of nonpayment or nonperformance, protest, notice of protest, notice of dishonor, notice of intent to accelerate, notice of acceleration, and all other notice of any kind, filing of suit and diligence in collecting on this Note or enforcing any of the security for this Note, and consents to all extensions that from time to time may be granted by the holder of this Note and to all partial payments on this Note, whether before or after maturity.

If this Note is not paid when due, whether at maturity or by acceleration or otherwise, or if this Note is placed in the hands of an attorney for collection, or is collected in whole or in part by suit or through probate, bankruptcy, or other legal proceedings of any kind, Maker agrees to pay, in addition to all other amounts payable under this Note, all costs and expenses of collection, including but not limited to attorney fees, , and it shall also generate – in addition to interests- a daily penalty fee per day of delay of full and timely payment, of \$500.00 (five hundred dollars).

Despite any contrary provisions in this Note, or in any other document executed in connection with this Note, or in any other agreement or commitment, whether written or oral, expressed or implied, the holder of this Note cannot charge or be entitled to receive or collect as interest an amount greater than the maximum permitted by applicable law to be charged to the person, partnership, firm, or corporation primarily obligated to pay this Note. If any construction of this Note, or any and all other papers, agreements, or commitments, indicates a different right given to the holder to ask for, demand, or receive any larger amount as interest, it is a mistake in calculation or wording, which this clause will override and control; it being the intention of the parties that this Note and all other instruments executed in connection with this Note will comply with applicable law, and that proper adjustment will automatically be made accordingly. If the holder ever receives, collects, or applies as interest any amount in excess of the maximum permitted by applicable law, the excess amount will be applied to the reduction of the unpaid principal balance of this Note, in the inverse order of maturity, and not to interest, and if this Note is paid in full, any remaining excess will be refunded to Maker. In determining whether the interest paid or payable, under any specific contingency, exceeds the maximum permitted by applicable law, Maker and the holder will, to the maximum extent permitted under applicable law, (a) characterize any no principal payment as an expense, fee, or premium rather than as interest, (b) exclude voluntary prepayments and their effects, and (c) amortize, prorate, allocate, and spread the total amount of interest throughout the entire term of this Note (including any renewals or extensions) so that the interest rate is uniform throughout the entire term of this Note and does not exceed the maximum permitted by applicable law. The provisions of this paragraph control all existing and future agreements between Maker and the holder.

This Note is executed and delivered in the State of Texas and intended to be performed in Montgomery County, Texas, and except to the extent that the laws of the United States may preempt or govern the terms of this Note, this Note will be governed by and construed in accordance with the laws of the State of Texas. Maker irrevocably agrees that if there is any dispute involving this Note or any other instruments executed in connection with this Note,

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venue for the dispute will be proper in any court of competent jurisdiction in Montgomery County, Texas.

This Note and all the covenants, promises, and agreements contained in it are binding on and inure to the benefit of the respective heirs, devisees, legal and personal representatives, successors, and assigns of the holder of this Note and the Maker.

All notices, requests, consents, demands, and other communications that are required or that any party wants to give under this Note or under any other Loan Document must be in writing and, unless otherwise specifically provided in the other Loan Document, will be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized courier with proof of delivery, by prepaid registered or certified U.S. mail, addressed to the party to whom directed at the address specified in the first paragraph of this Note (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by fax. Any notice or communication will be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided in this Note, or, in the case of fax, on receipt. Despite the foregoing, no notice of change of address will be effective except on receipt, and service of a notice required by Texas Property Code Section 51.002, as amended, will be considered complete when the requirements of that statute are met. This paragraph must not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or on any person in any situation or for any reason.

**THIS NOTE AND THE OTHER DOCUMENTS EXECUTED IN CONNECTION WITH IT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED as of DECEMBER 21<sup>st</sup>, 2019

**MAKER:**

Signature: 

Name: JUAN CARLOS PADILLA AZARCOYA  
of behalf of SPORTS PRO DEVELOPMENT  
LLC

Title: Director, Member of SPORTS PRO  
DEVELOPMENT LLC

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Maker's Initials Here: \_\_\_\_\_

**MAKER:**

Signature: \_\_\_\_\_

Name: JUAN CARLOS PADILLA AZARCOYA

Title: Self

**MAKER:**

Signature: \_\_\_\_\_

Name: KARLA PAMANES

Title: Self

STATE OF Texas §  
COUNTY OF Montgomery §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared SPORTS PRO DEVELOPMENT LLC, JUAN CARLOS PADILLA AZARCOYA, and KARLA PAMANES on behalf of herself or himself, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledge to me that they executed it for the purposes and consideration expressed in it.

GIVEN UNDER MY HAND SEAL OF OFFICE, this 21 Day of December, 2018.

\_\_\_\_\_  
Notary Public – State of Texas



**Return to: After Recording, Return To:**

Luis F. Hess Law PLLC  
250 Ed English Drive Building 3- Unit C  
Shenandoah, TX 77385

Maker's Initials Here: JCA

Payee's Initials Here: \_\_\_\_\_

# "Exhibit B"

## PROMISSORY NOTE

\$52,500.00 USD

Montgomery County, Texas

12-21-2018

FOR VALUE RECEIVED, the undersigned, **SPORTS PRO DEVELOPMENT LLC, JUAN CARLOS PADILLA AZARCOYA**, with Texas Driver's License 37207268, and **KARLA PAMANES** with Texas Driver's License 37872895, and (individually or collectively, "Maker"), having the former Maker having an address at 25211 GROGANS MILL ROAD #330B, THE WOODLANDS, TX 77380, and the latter Makers having an address at 6 Desert Rose Place, The Woodlands, TX 77382 jointly and severally promises to pay to the order of **GUADALUPE PAULINA DIAZ ORDAZ**, with a Mexican Passport # G13914557, and any successors and assigns ("Payee"), the principal amount of FIFTY TWO THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$52,500.00 USD). Payment can be made directly to Payee or to the any other person or business designated by the Payee.

The principal of this Promissory Note ("Note") is due and payable in full on JANUARY 31<sup>st</sup>, 2019. No additional extensions are permitted. No grace period is permitted. The single payment is to be deposited directly to Payees bank account in Morgan Stanley Smith Barney (account # 406-111-72) on JANUARY 31<sup>st</sup>, 2019. Late fees and additional interests begin to accrue on this note if full payment is not made on JANUARY 31<sup>st</sup>, 2019.

All payments and prepayments of principal must be made in U.S. currency in immediately available funds at the address of Payee indicated above or at a place the holder of this Note designates in writing to Maker. Payments by check or draft do not constitute payment in immediately available funds until the required amount is actually received by Payee in full. If any payment of principal under this Note becomes due on a day that is not a Business Day (defined below), the payment must be made on the next Business Day, and this extension of time must be included in computing interest in connection with the payment. The term "Business Day" means any day other than a Saturday, Sunday, or any other day on which banks are closed.

All past-due installments of principal will bear interest at an annual rate ("Default Interest Rate") equal to eighteen percent (18%), or the maximum rate is under Texas law (whichever is lower). During the existence of an Event of Default (defined below), the entire unpaid balance of principal will, at the option of the holder of this Note, bear interest at the Default Interest Rate. Despite the foregoing, if at any time the interest rate that this Note bears exceeds the Highest Lawful Interest Rate (defined below), the rate of interest that this Note bears will be limited to the Highest Lawful Interest Rate. The term "Highest Lawful Interest Rate" means the greater of (a) the maximum rate of interest permitted at the time under any federal law applicable to the indebtedness evidenced by this Note or (b) the "weekly ceiling" in effect at the time as that term is defined in Texas Finance Code Chapter 303, as amended ("Act"), and that would be applicable to the indebtedness evidenced by this Note under the Act. The parties acknowledge that the date of this Note is the date on which the indebtedness evidenced by this Note has been contracted for.

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Payee's Initials Here: \_\_\_\_\_

The occurrence of any one of the following is a default under this Note ("Event of Default"):

1. Maker's failure to pay any installment of principal or interest on this Note or on any other indebtedness of Maker to Payee when due.
2. Maker's failure to fully and timely perform, observe, or keep all covenants, agreements, and conditions contained in this Note or in any other Loan Document with third parties.
3. Maker: (a) makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, (b) generally is not paying its debts as they become due, (c) has a receiver, trustee, or custodian appointed for, or take possession of, all or substantially all of its assets, in a proceeding brought either by or against it, and the appointment is not discharged or possession is not terminated within twenty (20) days after the effective date of the appointment or possession or it consents to or acquiesces in the appointment or possession, (d) files a petition for relief under the Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws (collectively called "Applicable Bankruptcy Law"), or an involuntary petition for relief is filed against it under any Applicable Bankruptcy Law and the involuntary petition is not dismissed within thirty (30) days after it is filed, or an order for relief naming Maker is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization, or other relief of debtors now or later existing is requested or consented to by Maker, (e) fails to have discharged within a period of twenty (20) days any attachment, sequestration, or similar writ levied on any of its property, or (f) fails to pay within twenty (20) days any final money judgment against it.

Following an Event of Default, the holder of this Note may, at its option, without further notice or demand, (a) declare the outstanding principal balance of and the accrued but unpaid interest under this Note at once due and payable, (b) foreclose any liens securing payment under this Note, (c) pursue any and all other rights, remedies, and recourses available to it under this Note or under any other Loan Document, including but not limited to any such rights, remedies, or recourses available at law or in equity, or (d) pursue any combination of the foregoing. Any homes, automobiles, bank accounts, or other assets of value will serve as collateral on this note.

The failure to exercise the option to accelerate the maturity of the indebtedness evidenced by this Note or any other right, remedy, or recourse available to the holder of this Note on the occurrence of an Event of Default does not constitute a waiver of the holder's right to exercise the same at that time or at any later time with respect to that Event of Default or any other Event of Default. The rights, remedies, and recourses of the holder as provided in this Note and available under applicable law or in equity are cumulative and concurrent and may be pursued separately, successively, or together as often as necessary, at the sole discretion of the holder. The acceptance by the holder of any payment under this Note that is less than the payment in full of all amounts due and payable at the time of the payment will not (a) constitute a waiver of or impair, reduce, release, or extinguish any right, remedy, or recourse of the holder, or nullify any prior exercise of any right, remedy, or recourse, or (b) impair, reduce, release, or extinguish the obligations of any party liable under this Note or any other document executed

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in connection with this Note as originally provided in these documents.

Except as otherwise set forth in this Note, Maker waives demand, presentment for payment, notice of nonpayment or nonperformance, protest, notice of protest, notice of dishonor, notice of intent to accelerate, notice of acceleration, and all other notice of any kind, filing of suit and diligence in collecting on this Note or enforcing any of the security for this Note, and consents to all extensions that from time to time may be granted by the holder of this Note and to all partial payments on this Note, whether before or after maturity.

If this Note is not paid when due, whether at maturity or by acceleration or otherwise, or if this Note is placed in the hands of an attorney for collection, or is collected in whole or in part by suit or through probate, bankruptcy, or other legal proceedings of any kind, Maker agrees to pay, in addition to all other amounts payable under this Note, all costs and expenses of collection, including but not limited to attorney fees, , and it shall also generate – in addition to interests- a daily penalty fee per day of delay of full and timely payment, of \$500.00 (five hundred dollars).

Despite any contrary provisions in this Note, or in any other document executed in connection with this Note, or in any other agreement or commitment, whether written or oral, expressed or implied, the holder of this Note cannot charge or be entitled to receive or collect as interest an amount greater than the maximum permitted by applicable law to be charged to the person, partnership, firm, or corporation primarily obligated to pay this Note. If any construction of this Note, or any and all other papers, agreements, or commitments, indicates a different right given to the holder to ask for, demand, or receive any larger amount as interest, it is a mistake in calculation or wording, which this clause will override and control; it being the intention of the parties that this Note and all other instruments executed in connection with this Note will comply with applicable law, and that proper adjustment will automatically be made accordingly. If the holder ever receives, collects, or applies as interest any amount in excess of the maximum permitted by applicable law, the excess amount will be applied to the reduction of the unpaid principal balance of this Note, in the inverse order of maturity, and not to interest, and if this Note is paid in full, any remaining excess will be refunded to Maker. In determining whether the interest paid or payable, under any specific contingency, exceeds the maximum permitted by applicable law, Maker and the holder will, to the maximum extent permitted under applicable law, (a) characterize any no principal payment as an expense, fee, or premium rather than as interest, (b) exclude voluntary prepayments and their effects, and (c) amortize, prorate, allocate, and spread the total amount of interest throughout the entire term of this Note (including any renewals or extensions) so that the interest rate is uniform throughout the entire term of this Note and does not exceed the maximum permitted by applicable law. The provisions of this paragraph control all existing and future agreements between Maker and the holder.

This Note is executed and delivered in the State of Texas and intended to be performed in Montgomery County, Texas, and except to the extent that the laws of the United States may preempt or govern the terms of this Note, this Note will be governed by and construed in accordance with the laws of the State of Texas. Maker irrevocably agrees that if there is any dispute involving this Note or any other instruments executed in connection with this Note,

Maker's Initials Here:



Payee's Initials Here:



venue for the dispute will be proper in any court of competent jurisdiction in Montgomery County, Texas.

This Note and all the covenants, promises, and agreements contained in it are binding on and inure to the benefit of the respective heirs, devisees, legal and personal representatives, successors, and assigns of the holder of this Note and the Maker.

All notices, requests, consents, demands, and other communications that are required or that any party wants to give under this Note or under any other Loan Document must be in writing and, unless otherwise specifically provided in the other Loan Document, will be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized courier with proof of delivery, by prepaid registered or certified U.S. mail, addressed to the party to whom directed at the address specified in the first paragraph of this Note (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by fax. Any notice or communication will be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided in this Note, or, in the case of fax, on receipt. Despite the foregoing, no notice of change of address will be effective except on receipt, and service of a notice required by Texas Property Code Section 51.002, as amended, will be considered complete when the requirements of that statute are met. This paragraph must not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or on any person in any situation or for any reason.

**THIS NOTE AND THE OTHER DOCUMENTS EXECUTED IN CONNECTION WITH IT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED as of DECEMBER 21<sup>st</sup>, 2019

**MAKER:**

Signature: 

Name: JUAN CARLOS PADILLA AZARCOYA  
of behalf of SPORTS PRO DEVELOPMENT  
LLC

Title: Director, Member of SPORTS PRO  
DEVELOPMENT LLC

Maker's Initials Here: 

Maker's Initials Here: \_\_\_\_\_

Maker's Initials Here: \_\_\_\_\_

**MAKER:**

Signature: \_\_\_\_\_

Name: JUAN CARLOS PADILLA AZARCOYA

Title: Self

**MAKER:**

Signature: \_\_\_\_\_

Name: KARLA PAMANES

Title: Self

STATE OF Texas §

COUNTY OF Montgomery §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared SPORTS PRO DEVELOPMENT LLC, JUAN CARLOS PADILLA AZARCOYA, and KARLA PAMANES on behalf of herself or himself, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledge to me that they executed it for the purposes and consideration expressed in it.

GIVEN UNDER MY HAND SEAL OF OFFICE, this 21 Day of December, 2018.

\_\_\_\_\_  
Notary Public – State of Texas



**Return to: After Recording, Return To:**

Luis F. Hess Law PLLC  
250 Ed English Drive Building 3- Unit C  
Shenandoah, TX 77385

Maker's Initials Here: \_\_\_\_\_

Payee's Initials Here: \_\_\_\_\_

# "Exhibit C"

## DEMAND NOTICE

February 15, 2019

### VIA CERTIFIED MAIL, COURIER, OR HAND DELIVERY

Juan Carlos Padilla Azarcoya and Karla Pamanees  
25211 Grogans Mill Road #330B  
The Woodlands, TX 77382

### *RE: SECURITY AGREEMENT, PROMISSORY NOTE*

Dear Juan Carlos Padilla and Karla,

You had signed a guaranty security agreement and a promissory note back on or around December 21, 2018. The terms of the note state that you will upwards of \$350,000.00 USD back to Guadalupe Paulina Diaz ("the creditor") by the end of January 31, 2019. However, to date, we have not received any additional payments.

While you have provided some updates about the status of selling your assets or refinancing your homes to do a cash payout, we still have not seen sufficient evidence that you will be able to meet this obligated deadline. If you fail to meet this obligation, then the full amount will be due on the note plus an eighteen (18%) interest rate as each day passes plus any other state remedies that exist within the note. A demand for full payment will be made. By not performing as promised, you are breaching a contractual obligation.

If we must conduct litigation, the amount owed by you will be adjusted upward to reflect the additional time and expense incurred for collecting on the amount owed. In the event of litigation, we will request attorney fees

- (A) Under Texas Civil Practice & Remedies Code chapter 38. Chapter 38 of the Texas Civil Practice and Remedies Code allows recovery of attorneys' fees in breach of contract cases in addition to the amount of a valid claim. TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (West 2008). In order to recover fees, a party must (1) prevail on the breach of contract claim, and (2) recover damages. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 666 (Tex. 2009); *Mustang Pipeline Co.*, 134 S.W.3d at 201; *Green Int'l, Inc. v. Solis*, 951 S.W.2d 384, 390 (Tex. 1997). The requirement of damages is implied from the statute's language, "in addition to the amount of a valid claim," the claimant must recover some amount on that claim. *MBM Fin. Corp.*, 292 S.W.3d at 666.; or
- (B) Under the provisions of section of the contract, which provides that you agree to pay for any legal costs with enforcing the terms of the contract (i.e., promissory note) following a default by you.

We are providing this letter for you because of the Section 38.001 of the Texas Civil Practice and Remedy Code. This section provides that a person may recover reasonable attorney's fees, in addition to

the amount of a valid claim and costs, if the claim is for rendered services, performed labor, furnished materials, a suit on a sworn account or . . . an oral or written contract. Tex. Civ. Prac. & Rem. Code 38.001.

A party must (1) prevail on a cause of action for which attorney's fees are recoverable, and (2) recover damages. *Green Int'l, Inc. v. Solis*, 951 S.W.2d 384, 390 (Tex. 1997).

The claimant must present the claim to the opposing party or to a duly authorized agent of the opposing party and payment for the just amount owed must not have been tendered before the expiration of the 30th day after the claim is presented. See Tex. Civ. Prac. & Rem. Code Ann. 38.002.

The prevailing party is the one vindicated by the judgment rendered. See *Taylor Elec. Servs., Inc. v. Armstrong Elec. Supply Co.*, 167 S.W.3d 522, 532 (Tex. App.-Fort Worth 2005, no pet.). In determining the prevailing party, the focus is the successful party on the merits of the case. *Id.* A party can be the prevailing party entitled to attorney's fees even where the amount recovered is offset by an amount awarded to the opposing party. *Id.* at 533 (citing *Blizzard v. Nationwide Mut. Fire Ins. Co.*, 756 S.W.2d 801, 806 (Tex. App.-Dallas 1988, no writ)).

Therefore, after we win a lawsuit enforcing the repayment terms of the contract, we will obtain a favorable judgment that also requires you to pay for out attorney fees (which may climb well above \$75,000 USD in this type of litigation matter). Once we have obtained a judgment against you, we will use all legal means to collect including seizing your properties, vehicles, bank accounts, and retirement accounts and using those assets to satisfy the judgment.

I look forward to hearing from you soon.

Very truly yours,

**/s/ Luis F. Hess**

**Representative for Guadalupe Paulina Diaz**

# "Exhibit D"

## COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

THIS COMPROMISE SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of May 15, 2019 (the "Effective Date") by and between Guadalupe Paulina Diaz ("Creditor") and Sports Pro Development LLC, Juan Carlos Padilla Azarcoya and Karla Pamanes (each a "Debtor" and collectively the "Debtors"). The Creditor and the Debtors collectively shall be known as "the Parties". The Parties hereby agree as follows:

### Recitals

WHEREAS, this Agreement arises from two Promissory Notes ("Notes"), executed and delivered on December 21, 2018 by and between the Parties, whereby the Debtors agreed to pay the principal sum of \$402,500 to the Creditor by January 31, 2019 plus an interest of 18% on any amount not timely paid plus penalties and damages.

WHEREAS, a dispute exists between the Parties, concerning the consideration delivered by Creditor to Debtors, for the failure of the Debtors to deliver or cause to be delivered any payments to the Creditor under the Notes and what the total amount, if any, is due to the Creditor;

WHEREAS, to avoid the expense and inconvenience of litigation and other related expenses, the Parties make this Agreement to compromise and settle the Dispute. Without admission of fault of either Party, and for the sole purpose of preventing the cost of any impending litigation, the Parties desire to enter into this Agreement;

WHEREAS, the Parties understand and agree that this Agreement is a compromise, is not an admission of any liability, and the Parties being released have consistently denied any and all liability; and

NOW, THEREFORE, for an in consideration of the recitals set forth above, the covenants, terms, conditions and releases herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties warrant, represent and agree to the following terms:

### Article I Settlement

1.1 Payment. Debtors shall pay Creditor the total sum of Five Hundred Fifty-Two Thousand Seven Hundred Fifty Dollars and 00/100 Cents (\$552,750.00 USD) (the "Settlement Proceeds"). The payment will be broken into several payments. The fee repayment is as such:

1.1.1 May 17, 2019: \$52,750 USD;

1.1.2 May 31, 2019: \$150,000 USD;

1.1.3 June 28, 2019: \$175,000 USD;

1.1.4 July 31, 2019: 175,000 USD.

1.1.5 All payments will be paid to the Creditor via wire-transfer or check made payable to "Guadalupe Paulina Diaz" for the amount listed on the fee repayment schedule. The Settlement Proceeds is the total sum owed by Debtor under this Agreement. Creditor's timely receipt of such payments and the clearing of such

check or bank wire transfers, are conditions to Debtor's obligations under this Agreement.

- 1.2 Suspension of Discovery: While payments are being made by the Debtors, both parties will suspend the discovery process pending the completion of the payments. If the Debtors fail to meet payment schedule as found in Clause 1.1, then the parties may resume the discovery process. In the event discovery resumes, the parties shall have thirty (30) days from the date of resumption of discovery to make and serve responses to the outstanding discovery requests.
- 1.3 Failure to Pay: If the Debtors fail to meet the payment schedule as found in Clause 1.1, then the Creditors may request a court to enforce this settlement agreement.

## **Article II Release**

- 21 Release. Upon Creditor's receipt of the total Settlement Proceeds, each Party does hereby release and discharge the other Party and its officers, directors, members, attorneys, affiliates, owners, partners, guarantors, employees, agents, representatives, successors and assigns from any and all accounts, claims, actions, demands, rights, suits, damages, costs, expenses or attorney's fees of any nature arising out of or related to the Performance Agreement prior to the Effective Date; provided, however, no Party will be released from its obligations under this Agreement or from its obligations under the Notes arising on or after the Effective Date.
- 22 Dismiss with Prejudice. Once the payment is made in full, each party will dismiss with prejudice all claims and counterclaims within five business days of the final payment made to the Creditor. Creditor's counsel shall prepare an appropriate Joint Motion and Agreed Order of Dismissal for execution and entry in the litigation.

## **Article III Miscellaneous**

- 3.1 No Assignment and Transfer. The Creditor and Debtors represent and warrant that they have not assigned or transferred all or part of the claims, demands, actions, or causes of action arising from or in any way relating to the circumstances and conditions made the basis of this action, to any person, firm, or corporation.
- 3.2 Ownership. The Parties represent and warrant that they are the full and sole owners of the claims, demands, actions, or causes of action arising from or in any way relating to the circumstances and conditions made the basis of this Agreement.
- 3.3 Attorney Fees. All attorney fees and other costs associated with this matter shall be borne by the Party incurring same.

- 3.4 Governing Law. This Agreement was negotiated in and shall be governed by the laws of the State of Texas.
- 3.5 Authorization. Each Party represents that it has the right and authority to execute this Agreement, and that it has not sold, assigned, transferred, conveyed or otherwise disposed, in whole or in part, of any of the claims, demands, obligations or causes of action referred to in this Agreement.
- 3.6 Entire Agreement. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. This Agreement supersedes any prior, contemporaneous, or subsequent oral agreements or understandings of the Parties and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of the Parties. No variations, amendments, modifications or changes to this Agreement shall be binding upon any of the Parties unless in writing and duly and fully executed by all Parties. The Parties agree that this Agreement contains the integrated whole of all agreements and understandings between the Parties.
- 3.7 Successors and Assigns. This Agreement shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each Party.
- 3.8 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for Creditor, to:

Luis Hess, PLLC  
282 Ed English Drive  
Building 6 Unit D  
The Woodlands, TX 77385  
Tel: 281-205-8540  
Fax: 832-200-3518

If intended for Debtors, to:

Phillip R Livingston, PC  
2950 Unity Dr., #37056  
Houston, TX 77237  
713-783-6919  
832-266-0282 fax

- 3.9 Remedies. If either Party breaches this Agreement, the other Party must give written notice of breach and thirty (30) days to cure such breach. In the event the breaching party fails to cure within such time period, the other Party may exercise any remedies

available to it at law or equity, including, without limitation, injunctive relief and mandamus.

- 3.10 Severability. Should any portion of the Agreement be rendered illegal, invalid or void by a court of competent jurisdiction such section(s) shall be severed from this Agreement still maintaining the intent of the Agreement and all remaining sections shall remain in full force and effect.
- 3.11 Counterparts. This Agreement may be executed in multiple counterparts, with the same effect as if all Parties hereto had signed the same counterpart. All counterparts shall be construed together and shall constitute one agreement.
- 3.12 No Reliance. Neither Party is relying on any promise, undertaking or understanding not expressly set forth herein.
- 3.13 Compromise Not an Admission. The Parties are entering into this Agreement solely for the purpose of avoiding the burdens, inconveniences, and expenses of further disputes and litigation between themselves, and this Agreement shall not be construed or deemed to be an admission of concession by any party as to the merits of any claim or defense or an admission or concession of any wrongdoing, liability, or culpability which is expressly denied.
- 3.14 Understanding. The Parties represent that they fully understand this Agreement and its terms, and, with this full understanding, voluntarily enter into this Agreement as evidenced by signing it below.
- 3.15 Legal Competence. The Parties hereto expressly represent and warrant that they are legally competent to execute this Agreement and that they do so of their own free will and accord without reliance on any representations of any kind or character not expressly set forth herein.
- 3.16 No Duress. The Parties expressly represent and warrant that this Agreement has been freely and voluntarily entered into and they did not execute this Agreement under duress of any kind, from any Party or person, regardless of whether they are a signatory hereto.
- 3.17 Joint Efforts. This Agreement has been prepared by the joint efforts of the Parties or the attorneys for the Parties and each Party acknowledges and agrees that the general rule of contract construction providing that the provisions of a contract are to be strictly construed against the drafter of the agreement is hereby waived.
- 3.18 No Waiver. No waiver of any of the terms of this Agreement shall be binding unless in writing and signed by all Parties hereto. No waiver of any terms of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- 3.19 Further Instruments. The Parties expressly covenant and agree that they will each execute such other and further instruments and documents as are or may become



necessary or convenient to effectuate and carry out this Agreement.

3.20 Electronically Transmitted Signatures. Signatures to this Agreement, any amendment hereof, delivered electronically via facsimile, .pdf, .jpeg, .TIF, .TIFF or similar electronic format shall be deemed an original signature and fully effective as such for all purposes.

EXECUTED this the 24<sup>th</sup> day of May, 2019.

GUADALUPE PAULINA DIAZ


By: 

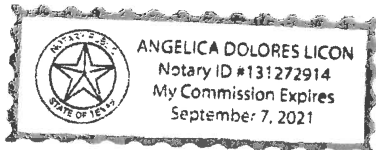
Name: Guadalupe Paulina Diaz

Title: Creditor / Plaintiff.

Sworn to or affirmed and subscribed before me this the 24<sup>th</sup> day of May, 2019, by Guadalupe Paulina Diaz, who is personally known or produced \_\_\_\_\_ as identification.

[Seal]

  
Notary Public, State of Texas



EXECUTED this the 15<sup>th</sup> day of May, 2019.

SPORTS PRO DEVELOPMENT, LLC.  
A Texas limited liability company

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

Name: Juan Carlos Padilla Azarcoya

Title: President

JUAN CARLOS PADILLA AZARCOYA

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

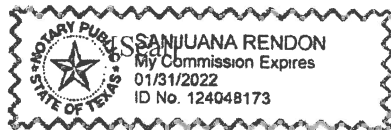
Name: Juan Carlos Padilla Azarcoya

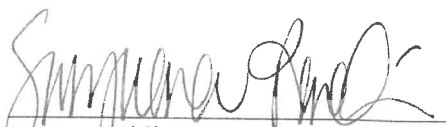
KARLA PAMANES

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

Name: Karla Pamanes

Sworn to or affirmed and subscribed before me this the 15<sup>th</sup> day of May, 2019, by Juan Carlos Padilla Azarcoya and Karla Pamanes, who are personally known to me.



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