

20-01-01396

CAUSE NO. \_\_\_\_\_

**GANAS HOLDINGS, LLC**

**Plaintiff,**

**v.**

**SPORTS PRO DEVELOPMENT, LLC  
AND JUAN C. PADILLA**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**Montgomery County - 410th Judicial District Court**

**MONTGOMERY COUNTY, TEXAS**

**\_\_\_\_ JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, Ganas Holdings, LLC ("Ganas") files this Original Petition against Defendants Sports Pro Development, LLC ("SPD") and Juan C. Padilla ("Padilla") for damages and other relief as follows:

**I. DISCOVERY, PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rules of Civil Procedure 190.4.

2. Plaintiff is a limited liability company with its principal place of business in Dallas County, Texas.

3. Defendant Sports Pro Development, LLC is a Texas limited liability company with its principal place of business at 6700 Woodlands Pkwy, Suite 230-23, The Woodlands, TX 77382. SPD can be served through its registered agent, Jambrina CPA, PC, located at 433 North Loop W, Houston, Texas 77008.

4. Defendant Juan C. Padilla is SPD's Sole Manager. On information and belief, Padilla is a resident of Montgomery County, Texas, and his principal place of business is 6700 Woodlands Pkwy, Suite 230-23, The Woodlands, TX 77382

5. The court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements. Plaintiff seeks over \$500,000.00 but less than \$1,000,000.00.

6. Venue is proper in Montgomery County, Texas because Defendants are residents of Montgomery County, Texas.

## **II. FACTS AND OVERVIEW**

7. This case is simple, and liability is clear. Plaintiff and Defendant SPD entered into a May 31, 2019 Credit Agreement and Promissory Note, signed by Plaintiff, on the one hand, and SPD's Padilla, on the other. The agreements are attached as Exhibit 1 to the Affidavit of Daniel Chu, which is attached hereto as Exhibit A. The Credit and Agreement and Note were executed by SPD, notarized, and delivered to Ganas, for which Ganas provided valuable consideration. Pursuant to the Credit Agreement and Note, Ganas cumulatively loaned SPD \$500,000 in two tranches during 2019, at 5% annual interest. SPD was obligated to repay the borrowed funds on the Commitment Date, which is defined in the operative agreements as December 20, 2019. On the Commitment Date, the obligation matured and became due and payable, but SPD failed to repay the borrowed funds as owed.

8. Ganas made repeated inquiries to Padilla asking when SPD would cure its breach. Padilla made repeated, and as it turns out intentionally misleading statements to buy time or otherwise allay Ganas' inquiries. Padilla's conduct was such that it became clear to Ganas that there had been no intention to repay the funds from the very formation of the contracts.

9. As such, SPD has breached its contractual obligation to repay Ganas the borrowed funds, which has damaged Ganas in the amount of \$515,486.11 (as of January 31, 2020), plus any additional interest, prejudgment and post-judgment interest, attorneys' fees, and court costs.

Additionally, Ganas hereby sues SPD and its Sole Manager Padilla for fraudulent inducement and constructive trust.

### **III. CAUSES OF ACTION**

#### **A. BREACH OF CONTRACT – SPD**

1. Ganas incorporates the preceding paragraphs as if fully set forth herein.
2. The Credit Agreement and Promissory Note are valid and enforceable contracts between Ganas and SPD. SPD executed the agreements and delivered them to Ganas, Ganas gave value for the agreements, Ganas is the holder of and entitled to enforce the Credit Agreement and Promissory Note, Ganas fully performed, SPD's obligations under these contracts matured and SPD defaulted thereunder, and Ganas has been damaged by SPD's refusal to honor its contractual obligations to repay Ganas the borrowed funds, plus interest, for which Ganas now sues, including attorneys' fees and costs of suit.

#### **B. SUIT ON A SWORN ACCOUNT – BREACH OF PROMISSORY NOTE – SPD**

3. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.
4. The allegations contained herein constitute breach of a promissory note because the Plaintiff is the legal owner and holder of a promissory note signed by SPD that carries a balance as described herein.
5. As noted above, for valuable consideration, SPD executed a promissory note promising to pay Ganas the sum thereon together with interest, all of which is provided for in the promissory note. SPD has failed to repay the funds borrowed from Ganas, for which Ganas hereby sues. As shown in the Affidavit of Daniel Chu, which is incorporated herein as Exhibit A, Ganas has kept a systematic record of the transactions between Ganas and SPD, and all lawful

offsets, payments and credits have been applied to the liquidated account there were none), and the liquidated amount remains unpaid.

6. As a result of SPD's failure and refusal to pay the promissory note, Plaintiff has been required to retain the undersigned legal counsel to institute and prosecute this action. Plaintiff is, therefore, entitled to recover the additional sum as compensation for its attorneys' fees rendered in instituting and prosecuting this action.

7. As a natural and probable result of, or as a proximate cause of SPD's breach, Ganas has suffered actual damages in the amount of \$515,486.11 (as of January 31, 2020), plus pre-judgment and post-judgment interest, attorneys' fees and court costs.

**C. FRAUDULENT INDUCEMENT – SPD AND PADILLA**

8. Padilla, on SPD's behalf, represented during negotiations with Ganas, that SPD intended to and would be able meet its repayment obligations. Ganas only entered into the Credit Agreement and Promissory Note based upon SPD's and Padilla's representations that SPD intended to repay the funds borrowed from Ganas. These representations were false, and not only because SPD did not repay as promised, but because Padilla, through a series of misrepresentations, attempted to string along Ganas. SPD and Padilla knew their representations were false when made, they intended Ganas to rely upon those representations, and Ganas in fact relied upon those representations. As a result, SPD and Padilla's fraud caused Ganas injury for which it now sues, including exemplary damages and costs of suit.

**D. CONSTRUCTIVE TRUST**

9. As a result of actual fraud by SPD and Padilla, they have taken money rightfully owed to Ganas. As a result, Ganas seeks a constructive trust over all monies taken by SPD and/or Padilla and to any money disbursed by either of them. SPD and Padilla have refused to return or

disclose to Ganas what happened to its money. Upon information and belief, SPD and Padilla took the money and have disbursed it. Because of Defendants' wrongful conduct, Ganas asks the Court for a constructive trust over all funds given by Ganas to SPD and/or Padilla and to trace the proceeds to any eventual holder of Ganas's funds and order its return.

#### **IV. CONDITIONS PRECEDENT**

10. All conditions precedent to Plaintiff's claim for relief have been satisfied, performed, excused, or waived.

#### **V. REQUESTS FOR DISCLOSURE**

11. Plaintiff requests that Defendants disclose the information required under Rule 194 of the Texas Rules of Civil Procedure within fifty-days of the service of this request.

#### **VI. PRAYER**

Plaintiff respectfully requests that the Court enter a judgment against Defendant SPD and Padilla awarding the following to Plaintiff:

1. Actual damages consisting of the borrowed funds plus interest as the amount due under the Credit Agreement and Promissory Note;
2. All pre-judgment interest and post-judgment interest thereon as allowed by law at the highest rate allowed by law or the contracts;
3. Exemplary damages;
4. Reasonable attorneys' fees;
5. Costs of suit; and
6. Such other and further relief, general or special, at law or in equity, to which Plaintiff may be justly entitled.

Dated: July 28, 2019

**BRADLEY ARANT BOULT CUMMINGS LLP**

By: /s/ Richard A. Sayles  
**RICHARD A. SAYLES**  
State Bar No. 17697500  
[dsayles@bradley.com](mailto:dsayles@bradley.com)  
**E. SAWYER NEELY**  
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Dallas, Texas 75270  
(214) 939-8700 (Telephone)  
(214) 939-8787 (Facsimile)

**ATTORNEYS FOR PLAINTIFF GANAS  
HOLDINGS, LLC**

**AFFIDAVIT OF DANIEL CHU**

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**COUNTY OF DALLAS**

Before me, the undersigned authority, on this day, appeared Daniel Chu, who after being by me first duly sworn, upon his oath deposed and stated the following are true and correct:

1. My name is Daniel Chu. I am the President of Plaintiff Ganas Holdings, LLC ("Ganas"), and, in that capacity, I am authorized to make this Affidavit. Through my position as Ganas' President, I have personal knowledge of the facts stated herein and they are true and correct.
2. Plaintiff's claims against Defendant Sports Pro Development, LLC ("SPD"), as stated in its petition, arise out of the business dealings between the parties, involving a May 31, 2019 Credit Agreement and Promissory Note, which are attached hereto as Exhibit 1 to this Affidavit. Ganas furnished \$500,000 as Lender to SPD as Borrower. The Credit Agreement and Promissory Note were executed by SPD and delivered to Ganas, Ganas provided valuable consideration for the note by SPD, Ganas was and remains the owner and holder of the note, the note matured on December 20, 2019, SPD has defaulted, and the amount of \$515,486.11 (as of January 31, 2020) remains due and unpaid.
3. A systematic record has been kept. The borrowed funds set forth in these contracts were just and true and were provided to SPD in accordance with the terms of the Credit Agreement and Promissory Note. All just and lawful offsets, payments and credits have been applied to the borrowed funds, of which there were none, and the account remains unpaid despite maturity of SPD's repayment obligation.
4. As Ganas' President, it is my responsibility to oversee the collection of this outstanding debt and, as such, I am familiar with the Credit Agreement, Promissory Note, and SPD's indebtedness to Ganas. Ganas's records show that the total sum of \$515,486.11 (as of January 31, 2020) is due under the Credit Agreement and Promissory Note, exclusive of pre-judgment and post-judgment interest, attorneys' fees and costs.

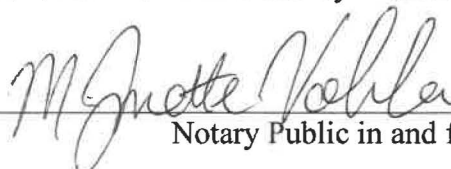
FURTHER AFFIANT SAYETH NOT.



Daniel Chu  
President, Ganas Holdings, LLC

SUBSCRIBED AND SWORN TO before me by Daniel Chu, on this the 27<sup>th</sup> day of

January, 2020



Notary Public in and for the State of Texas

## CREDIT AGREEMENT

This Credit Agreement, dated as of May 31, 2019 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is among Sports Pro Development, LLC ("SPD"), as borrower, and Ganas Holdings, LLC ("Ganas"), as lender.

### RECITALS

WHEREAS, SPD has requested that GANAS make a Loan to SPD pursuant to the terms set forth in this Agreement;

WHEREAS, GANAS has agreed to make the Loan to SPD upon the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

#### Section 1.01 Definitions

Whenever used herein, unless the context otherwise requires, the following words and phrases shall have the following meanings:

"2019 Season Games" means all games played July 4, 2019 to December 31, 2019, and time of or during this agreement

"Affiliate" means, with respect to any Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Applicable Law" means, with respect to any Person, all existing and future applicable laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority, and applicable judgments, decrees, injunctions, writs, orders or action of any Governmental Authority.

"Borrower" means SPD in its capacity as borrower under this Agreement.

"Closing Date" means May 31, 2019.

"Commitment" means (a) \$300,000 as of the Closing Date through July 30, 2019 and (b) \$200,000 from July 31, 2019 through the Commitment Termination Date; provided that the Commitment shall automatically be reduced to zero on the earliest to occur of the Commitment Termination Date and the Termination Date.

"Commitment Termination Date" means December 20, 2019.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Dollars" or "\$" means the lawful currency of the United States.

"Electronically Transmit" or "Electronic Transmission" means an image of the document is transmitted by facsimile machine, by electronic mail using a .pdf format, or otherwise in a form that provides a commercially

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acceptable image and is acceptable to GANAS or a message is transmitted by email, facsimile, or similar means acceptable to GANAS.

**"Ganas"** means Ganas Holdings, LLC, a Delaware limited liability company.

**"GAAP"** means generally accepted accounting principles in the United States.

**"Governmental Authority"** means the government of the United States, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**"Indemnified Party"** has the meaning set forth in Section 5.03

**"Interest Rate"** means an interest rate per annum equal to 5.0% per annum.

**"Lender"** means GANAS in its capacity as lender under this Agreement.

**"Loan"** has the meaning set forth in Section 2.01.

**"Material Adverse Effect"** means, with respect to each Loan Party, any event, development or circumstance that has had or could be expected to have a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of such Loan Party or such Loan Party and its Subsidiaries taken as a whole, (b) the ability of such Loan Party to perform any of its obligations under the Transaction Documents to which it is a party, (c) the Collateral, or the Lender's Liens on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Lender under any of the Transaction Documents.

**"Note"** means a promissory note in the form of *Exhibit A*.

**"Obligations"** means (a) all unpaid principal of and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Borrower to the Lender or any Indemnified Party arising under this Agreement or the other Transaction Documents and (b) all debts, liabilities and obligations, including repurchase obligations, of any Loan Party to GANAS pursuant to the terms of any receivables purchase agreement.

**"Organization Documents"** means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate or articles of formation or organization and the limited liability company agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

**"Person"** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Proceeding"** means any investigation, action, suit, proceeding, proceeding, claim or dispute, at law, in equity, in arbitration or before any Governmental Authority

**"Property"** means, with respect to any Person, all assets and property of such Person, including the following: (a) all accounts; (b) all chattel paper; (c) all copyrights and intellectual property; (d) all documents; (e) all equipment; (f) all fixtures; (g) all general intangibles; (h) all instruments; (i) all inventory; (j) all investment property; (k) all letters of credit, letter of credit rights and supporting obligations; (l) all deposit accounts and all cash or cash equivalents; (m) all commercial tort claims; (n) all contracts; (o) all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related to any of the foregoing and any

general intangibles at any time evidencing or relating to any of the foregoing; (p) to the extent not otherwise included, all accessions to and all substitutions for and replacements, insurance proceeds, supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing; and (q) all proceeds of the foregoing.

**"Records"** means, with respect to a Receivable, all contracts, books, records and other documents or information (including computer programs, tapes, disks, software and related property and rights, to the extent legally transferable) relating to such Receivable or the related Obligor.

**"Related Parties"** means, with respect to any Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

**"Related Security"** means, with respect to any Receivable, (a) the security interest in the related Financed Vehicle, (b) any proceeds from claims on any related Insurance Policy or refunds in connection with extended service agreements relating to such Receivable, (c) any other property securing such Receivable and (d) all proceeds of the foregoing.

**"Restricted Payment"** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any option, warrant or other right to acquire any such Equity Interests of the Borrower.

**"Simple Interest Method"** means the method of calculating interest due on a receivable on a daily basis based on the actual outstanding principal balance of the receivable on that date.

**"Solvent" and "Solvency"** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can be expected to become an actual or matured liability.

**"SPD"** means Sports Pro Development, LLC, a Texas limited liability company.

**"State"** means any state of the United States or the District of Columbia.

**"Subsidiary"** means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

**"Taxes"** means any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"Termination Date"** means the earliest to occur of (a) the Commitment Termination Date and (b) the date of the declaration of the Termination Date pursuant to **Error! Reference source not found.****Error! Reference source not found.**, following the occurrence of a Termination Event.

**"Termination Event"** has the meaning set forth in **Error! Reference source not found.****Error! Reference source not found.**

**"Title Sponsorship Rights"** means that SPD shall (i) announce each game attached in Exhibit A in a form similar to the following: "Team A vs. Team B brought to you by Tricolor;" (b) prominently display logos and names as provided by Lender on ALL marketing and promotional collateral including, but not limited to, print, radio, TV, internet and social media, provided that Lender shall have final sign off on all such advertising material; (iii) provide signage at each game as agreed to between the parties; (iv) provide 100 premium tickets to each 2019 Season Game to Lender; and (v) provide the option for Lender to purchase the same rights for any game in the 2020 season at a cost of \$10,000 per game. Notwithstanding anything contained herein to the contrary, for games played outside of Texas, Borrower shall have the right to substitute a company of its choice as the title sponsor upon no less than 30 days' written notice.

**"Total Liabilities"** means, with respect to any Person, without duplication, all current and non-current liabilities, including all Subordinated Debt, as of the date of the determination thereof.

**"Transaction Documents"** means this Agreement, the Note, the Guaranty Agreements, the Powers of Attorney, the Funding Requests, the Reports and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Lender in connection with this Agreement or the transactions contemplated hereby.

**"UCC"** means the Uniform Commercial Code as the same may, from time to time be in effect in the State of New York; provided that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, the Secured Party's security interest or lien on the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement relating to such perfection, priority or remedies and for purposes of definitions related to such provisions; provided further, that to the extent that UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 shall govern..

**"United States"** means the United States of America.

**"Unmatured Termination Event"** means any event that, with the giving of notice or the lapse of time, or both, would become a Termination Event.

#### **Section 1.02 Interpretation**

All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document delivered pursuant hereto unless otherwise defined therein. Terms defined in the UCC and not otherwise defined in this Agreement are used as defined in the UCC. Except as otherwise expressly provided herein, references to any law or regulation refer to that law or regulation as amended from time to time and include any successor law or regulation. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns permitted hereby, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein

to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and references to any paragraph, subsection, clause or other subdivision within any Section or definition refer to such paragraph, subsection, clause or other subdivision of such Section or definition, (e) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, (f) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding", (g) the word "or" is not exclusive, and (h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Headings are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

## ARTICLE II. LOANS

### Section 2.01 Loans

On the terms and conditions set forth in this Agreement, the Lender shall make the following Loans to SPD: (i) on the Closing Date, the Lender shall make a Loan of \$250,000 and (ii) on or before July 31, 2019, the Lender shall make a Loan of an additional \$250,000 (each, a "Loan") to the Borrower.

### Section 2.02 Note and Payments

(a) The Loans made by the Lender shall be evidenced by a Note executed by the Borrower and delivered to the Lender. The principal of and interest on the Loans shall be payable on the Commitment Termination Date in accordance with ~~Error! Reference source not found.~~ unless payable earlier pursuant to the terms of this Agreement.

(b) The Borrower shall pay interest on the unpaid principal amount of each Loan for the period from the date the Loan is made until the date that such Loan shall be paid in full. Interest shall accrue during such period on all Loans outstanding at a rate per annum equal to the Interest Rate. Interest shall be calculated on the basis of the actual number of days in the related Interest Period divided by 360.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under Applicable Law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, shall be limited to the Maximum Rate.

(d) On the Commitment Termination Date, the Borrower will deposit (in immediately available funds) into the account so designated by the Lender an amount equal to the total amount of all Loans and interest due and outstanding.

(e) Unless otherwise expressly provided herein, all amounts to be paid or deposited to the Lender shall be paid or deposited in accordance with the terms hereof no later than 11:00 a.m., New York, New York time, on the day when due in Dollars in immediately available funds to the account designated by the Lender.

(f) All payments hereunder shall be made without setoff or counterclaim and in such amounts as may be necessary in order that all such payments shall not be less than the amounts otherwise specified to be paid under this Agreement and the other Transaction Documents.

### ARTICLE III. CONDITIONS

#### Section 3.01 Closing Date

The obligations of the Lender under this Agreement shall not become effective until the date on which each of the following conditions is satisfied in the sole discretion of the Lender.

(a) **Transaction Documents.** The Lender (or its counsel) shall have received from each party thereto a counterpart of this Agreement and the other Transaction Documents signed on behalf of such party.

(b) **Due Diligence.** The Lender and its counsel shall have completed all business and legal due diligence, the results of which shall be acceptable to the Lender.

(c) **Other Documents.** The Lender shall have received such other certificates, documents, instruments and agreements as the Lender shall request in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

### ARTICLE IV. BORROWER OBLIGATIONS

**Section 4.01 Sponsorship Rights.** SPD shall provide to Ganas Title Sponsorship Rights for all games in the 2019 Season Games.

### ARTICLE V. REPRESENTATIONS AND WARRANTIES

SPD represents and warrants to the Lender that at all times:

#### Section 5.01 Existence, Qualification and Power

SPD, who is not a natural person (a) is duly organized or formed, validly existing and, as applicable, in good standing under Applicable Law of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under this Agreement to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under Applicable Law of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license.

#### Section 5.02 Authorization; No Contravention

The execution, delivery and performance by Borrower of this Agreement, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of the Organization Documents of Borrower; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any contractual obligation to which the Borrower is a party or affecting such Borrower or the properties of such Borrower or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Borrower or its property is subject; or (c) violate Applicable Law.

#### Section 5.03 Approvals and Consents

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Borrower of the Agreement.

**Section 5.04 Enforceability**

This Agreement has been duly executed and delivered by Borrower. This Agreement constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**Section 5.05 Proceedings**

There are no Proceedings pending or, to the knowledge of Borrower after due and diligent investigation, threatened or contemplated, by or against Borrower.

**Section 5.06 Compliance with Laws**

Borrower is in compliance with the requirements of Applicable Law.

**Section 5.07 Taxes**

Borrower has filed all United States, state and other Tax returns and reports required to be filed, and have paid all United States, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against Borrower.

**Section 5.08 No Default**

Borrower is not in default under or with respect to any contractual obligation or indebtedness.

**Section 5.09 Insurance**

Borrower maintains with financially sound and reputable insurance companies insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

**Section 5.10 Capacity to Perform**

Borrower has the knowledge, experience and systems, financial and operational capacity to timely perform each of its obligations under this Agreement.

**Section 5.11 Solvency**

Borrower is Solvent.

**Section 5.12 Material Adverse Change**

There has been no event, development or circumstance with respect to Borrower that has had or could be expected to have a material adverse effect on (a) the business, assets, property, condition (financial or otherwise) or prospects of Borrower or Borrower and its Subsidiaries taken as a whole or (b) the validity or enforceability of any of this Agreement or the rights or remedies of the Lender hereunder.

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## ARTICLE VI. MISCELLANEOUS

### Section 6.01 Notices

All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by Electronic Transmission, as to each party, at its address set forth on *Schedule A*. All such notices and other communications (a) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (b) sent by Electronic Transmission shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (by return Electronic Transmission or other written acknowledgement), provided that if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient. Any party hereto may change its address, email address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

### Section 6.02 Amendments and Waivers

This Agreement nor any provision hereof may be waived, amended or modified except in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the parties hereto. No failure or delay by the Lender in exercising any right or power hereunder or under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder and under this Agreement are cumulative and are not exclusive of any rights or remedies that the Lender would otherwise have.

### Section 6.03 Indemnification

Borrower shall indemnify the Lender, and each Related Party of the Lender (each such Person being called an "Indemnified Party"), against, and hold each Indemnified Party harmless from, any and all losses, claims, damages, penalties, incremental Taxes, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnified Party, incurred by or asserted against any Indemnified Party arising out of, in connection with, or as a result of (a) the execution or delivery of the Agreement or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Agreement or any other transactions contemplated hereby, (b) any Loan or the use of the proceeds therefrom or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnified Party is a party thereto; provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. To the extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any other Transaction Document, any Loan or the use of the proceeds thereof. All amounts due under this Section shall be payable not later than ten days after written demand therefor.

### Section 6.04 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Lender may at any time assign or sell participations in all or any portion of its rights and obligations under this Agreement. The Lender may at any time pledge or assign a security interest in all or any portion

of its rights under this Agreement to secure obligations of the Lender; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto. The Lender may disclose to assignees, participants or pledgees or any prospective assignee, participant or pledgee, any information it has pertaining to the transactions contemplated by this Agreement.

#### **Section 6.05 Survival**

All covenants, agreements, representations and warranties made by Borrower pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid.

#### **Section 6.06 Counterparts; Integration; Effectiveness**

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby. Delivery of an executed counterpart of a signature page of this Agreement by Electronic Transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **Section 6.07 Severability**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

#### **Section 6.08 Governing Law**

THE TRANSACTION DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

#### **Section 6.09 Jurisdiction**

Each Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York in any action or proceeding arising out of or relating to the Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement against Borrower or its properties in the courts of any jurisdiction. Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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**Section 6.10 Waiver of Jury Trial**

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

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EXHIBIT A  
FORM OF NOTE

May [ ], 2019

FOR VALUE RECEIVED, the undersigned, SPORTS PRO DEVELOPMENT, LLC (the "Borrower"), promises to pay to the order of GANAS HOLDINGS, LLC (the "Lender"), at the office of the Lender set forth in the Credit Agreement, dated as of May 31, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Sports Pro Development, LLC, as borrower, and Ganas Holdings, LLC, as lender, in lawful money of the United States and in immediately available funds, the principal amount of up to FIVE HUNDRED THOUSAND DOLLARS (\$500,000), and to pay interest at such office, in like money, from the date hereof on the unpaid principal amount of the Loans from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The Lender is authorized to record, on the schedules annexed hereto and made a part hereof or on other appropriate records, the date and the amount each Loan made under the Credit Agreement, each continuation thereof, the funding period for such Loan and the date and amount of each payment or prepayment of principal thereof. Any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of the Borrower hereunder or under the Credit Agreement in respect of the Loans.

This note is made part of the Credit Agreement, and is entitled to the benefits thereof. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed thereto in the Credit Agreement. This note is subject to periodic pay downs and optional and mandatory prepayment as provided in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SPORTS PRO DEVELOPMENT, LLC

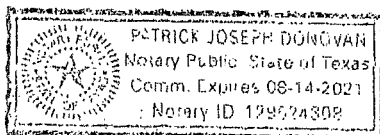
By:  
Name:  
Title:

*[Signature]*  
Juan C. Padilla  
Sole Manager

Before me, (insert the name and character of the officer), on this day personally appeared JUAN CARLOS PADILLA, known to me (or proved to me on the oath of \_\_\_\_\_ or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 31<sup>st</sup> day of May, (year) 2019.

(Personalized Seal)

*[Signature]*  
Notary Public's Signature



SCHEDULE A  
NOTICE INFORMATION

BORROWER

Sports Pro Development, LLC  
[ ] 6700 Woodlands Parkway 230-234  
[ ] The Woodlands 77382  
Attention: [ ] Juan Padilla  
Telephone Number: [ ] 832-589 6024  
Email: [ ] jsp.spdc@gmail.com

LENDER

Ganas Holdings, LLC  
1111 W. Mockingbird Lane, Suite 1500  
Dallas, TX 75247  
Attention: Daniel Chu  
Telephone Number: 424.290.2200  
Facsimile Number: 424.290.2700  
Email: [dchu@tricolor.com](mailto:dchu@tricolor.com)

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

SPORTS PRO DEVELOPMENT, LLC

By:

Name:

Title:

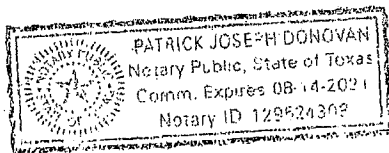
*[Signature]*  
Jorge Padilla  
Sales Manager

State of Texas

County of MONTGOMERY

Before me, (insert the name and character of the officer), on this day personally appeared JUAN CARLOS PADILLA, known to me (or proved to me on the oath of \_\_\_\_\_ or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 21<sup>st</sup> day of MAY, (year). 2017

(Personalized Seal)



*[Signature]*  
Notary Public's Signature

GANAS HOLDINGS, LLC

By:

Name: Daniel Chu

Title: President

Before me, (insert the name and character of the officer), on this day personally appeared Daniel Chu, known to me (or proved to me on the oath of \_\_\_\_\_ or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, (year).

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature