

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: July 2, 2024
PUBLIC HEARING DATE: July 16, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER: Karina Brasgalla, (915) 212-0094

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 1 - Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

An Ordinance authorizing the conveyance of real property owned by the City of El Paso to VTRE Development, LLC for the purchase price of \$18,720,000. Such real property legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, Page 5 of the plat records of El Paso County, Texas.

BACKGROUND / DISCUSSION:

The City of El Paso desires to sell a 43.594-acre parcel located at the southeastern intersection of Interstate 10 and Paseo Del Norte in El Paso's west side, to VTRE Development, LLC in accordance with Chapter 272 of TLGC. The city deems that doing so would generate economic benefits for the region, support key industry expansion, and is in accordance with the Project and Financing Plan for TIRZ #10. As part of this purchase agreement, the purchaser will agree to purchase the property for no less than \$18,600,000. The purchaser will also pay up to \$600k for traffic signal construction at Paseo Del Norte near North Desert Boulevard.

PRIOR COUNCIL ACTION:

On March 2, 2021, City Council approved a Contract of Sale with VTRE Development LLC for the same property. In late 2022, VTRE requested termination for convenience due to a change in development plans.

AMOUNT AND SOURCE OF FUNDING:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY OWNED BY THE CITY OF EL PASO TO VTRE DEVELOPMENT, LLC FOR THE PURCHASE PRICE OF \$18,720,000. SUCH REAL PROPERTY LEGALLY DESCRIBED AS A PORTION OF LOT 1, BLOCK 1, EL PASO WEST, AS FILED IN BOOK 57, PAGE 5 OF THE PLAT RECORDS OF EL PASO COUNTY, TEXAS.

WHEREAS, Chapter 3(c) of the El Paso City Charter requires conveyances of real property to be exercised through an ordinance;

WHEREAS, Chapter 272 of the Texas Local Government Code allows a municipality to sell real property without notice and bidding requirements provided that the sale not be for less than fair market value as determined by an appraisal, the land is located in a reinvestment zone designated as provided by law and the municipality desires to have it developed under a project plan adopted by the municipality for the zone; and

WHEREAS, the City of El Paso (“Seller”) has obtained an appraisal for the Property the subject of this Agreement; and

WHEREAS, the Seller has created Tax Increment Reinvestment Zone No. 10 (TIRZ 10) pursuant to Chapter 311 of the Texas Tax Code; and

WHEREAS, the Property is located within TIRZ 10; and

WHEREAS, the Seller desires to have the Property developed under the project plan adopted by the City of El Paso for TIRZ 10.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS,

That the City Manager, or designee, is authorized to effectuate the sale and closing of the property legally described as portion of Lot 1, Block 1, El Paso West, as filed in Book 57, page 5 of the Plat Records of El Paso County, Texas. Such property being owned by the City of El Paso. Further, the City Manager or designee is authorized to: (1) execute a Contract of Sale with VTRE Development, LLC for the sale of the property, (2) sign any and all documents related and/or necessary to effectuate the sale and closing of the property, (3) exercise all rights and obligations as provided in the Contract of Sale, (4) sign any contract amendments that do not affect the sale price, and (5) sign any documents necessary to effectuate any rights or obligations in relation to the sale and closing of the property.

PASSED AND ADOPTED this ____ day of _____ 2024.


CITY OF EL PASO:

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
Municipal Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Karina Brasgalla, Interim Director
Economic & International Development

ORDINANCE NO. _____

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT OF SALE

This Contract of Sale (“**Agreement**”) is made this ____ day of _____, 2024 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“**Seller**”) and VTRE Development, LLC, a Delaware limited liability company (“**Buyer**”). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

The parties agree as follows:

SECTION 1. SALE AND PURCHASE AND CONVEYANCE OF THE PROPERTY.

A. Subject to the terms of this Agreement, the Seller will sell to the Buyer and the Buyer will purchase from the Seller the property described as follows:

1. A 43.594 Acre parcel located at the SEC of Interstate 10 and Paseo Del Norte legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, page 5 of the Plat Records of El Paso County, Texas, as further described in **Attachment “A”**, the “**Property**”. The Property shall include the parcel, an assignment of written service and maintenance contracts and other written contracts affecting the Property (“**Service Contracts**”) which the Buyer elects to assume, personal property and all intangibles (including names, permits, warranties, licenses, and agreements related to the Property). Except for agreements that are terminable upon 30 days written notice, but in no event later than Closing, without penalty, Seller shall not enter into any new leases or Service Contracts, or amend, extend or renew any existing leases or Service Contracts, or otherwise modify the status of title (except to cure Buyer’s title objections), without the Buyer’s written consent. To the extent they are terminable prior to Closing, all leases and Service Contracts that the Buyer does not expressly elect to assume shall be terminated at or prior to Closing. The parties shall identify which leases and Service Contracts are not terminable at Closing prior to expiration of the Inspection Period.

SECTION 2. PURCHASE PRICE AND TITLE COMPANY.

- A. **PURCHASE PRICE.** At the Closing, the Buyer will pay the Seller a total amount of \$18,720,000 for the Property (“**Purchase Price**”). The Purchase Price above is to be paid by the Buyer to the Seller through Lone Star Title Company of El Paso, Inc. (“**Title Company**”) at the Closing of this Agreement. Buyer, working with the Title Company, has the right to select the underwriter for the title insurance.
- B. **DEPOSIT.** The Buyer will submit a check to the Title Company in the amount of \$50,000 (“**Initial Deposit**”), within seven (7) calendar days after the Effective Date. The Title Company will hold the Initial Deposit in an escrow to be applied as provided by this Agreement. If the sale of the Property is in accordance with the provisions in this Agreement, then the Title Company will apply the Initial Deposit to the Purchase Price of the Property at Closing.

- C. **TITLE COMPANY.** The Title Company will act as the escrow holder in this transaction. The Seller will deliver signed copies of this Agreement to the Title Company which will serve as instructions for the closing of this transaction.

SECTION 3. SELLER'S WARRANTIES, OBLIGATIONS, AND RIGHTS.

- A. **REPRESENTATIONS AND WARRANTIES.** To the best of the Seller's knowledge the Seller represents and warrants to the Buyer that:

1. The Seller has the full right to convey the Property, as such the Buyer's rights to the Property conveyed through this Agreement will not be adversely affected by a superior title;
2. No leasehold rights or interests have been granted and are currently in effect involving the Property;
3. No work has been performed on the Property or any materials have been provided for work on the Property that could result in a mechanic's or materialman's lien;
4. There are no pending claims of damage to property or injury to person occurring on the Property;
5. The Seller has not received any notices of condemnation regarding the Property;
6. The Seller has not received any notices that the Property is contaminated or threatened with contamination by any hazardous substances or hazardous materials; and
7. There are no unpaid utility bills or unfulfilled maintenance contracts regarding the Property.
8. **LIMITATIONS ON REPRESENTATIONS AND WARRANTIES; AS IS SALE.** The representations and warranties provided in this section of the Agreement will survive for one calendar year following the date of conveyance as shown in the executed Special Warranty Deed signed by the Seller. Except for the representations and warranties made above and in the Special Warranty Deed executed by the Seller, the Buyer agrees that the conveyance of the Property is an "as is, where is and with all faults" transaction and that the Seller disclaims all other representations and warranties pertaining to the condition of the Property available under law whether express or implied including but not limited to any representations and warranties pertaining to the nature and condition of water, soil, geology, or other environmental hazards or conditions (including the presence of asbestos). Notwithstanding anything to the contrary in this Agreement, the Seller shall have no liability for breaches of any representation and warranties which are made by the Seller under this Agreement if the Buyer or its employees, managers, contractors or agents ("Buyer Parties") had actual knowledge of such breach at Closing where Buyer shall not otherwise have the right to bring any lawsuit or other legal action against Seller, nor pursue any other remedies against Seller, as a result of the breach of such Seller's representations and warranties of which the Buyer Parties had actual knowledge prior to Closing, but Buyer's sole

remedy shall be to terminate this Agreement before the Closing Date in which event the Deposit shall be returned to Buyer. The terms and provisions of this Section survive Closing.

B. OBLIGATIONS. The Seller will comply with the following obligations:

1. Within ten (10) business days of the Effective Date, the Seller will deliver the following documents to the Buyer, if such documents exist:
 - a. Any “as-built” plans for any improvements on the Property, if any;
 - b. Tax bills showing the amount of the current real property tax and the assessed value of the land; and
 - c. All environmental reports of the Property and the improvements on the Property;
 - d. All documents pertaining to the development, ownership, or operation of the Property, including but not limited to, any leases, licenses or other agreements permitting any party to possess, occupy or enter into all or any portion of the Property, service contracts, any existing survey(s); and
 - e. Any documentation or information regarding water, sanitary sewer, gas and other utilities serving the Property.
2. If the Seller has contracted a real estate broker or agent to represent the Seller in the transaction of this Agreement, then the Seller is responsible for the payments of that contract.

C. RIGHTS.

1. The Title Company will assist with the sale of the Property. The Seller will forward this Agreement to the Title Company to be used at escrow instructions.

SECTION 4. BUYER’S WARRANTIES, OBLIGATIONS, AND RIGHTS.

A. WARRANTIES. The Buyer warrants that:

1. There will be no unpaid bills or claims in connection with the inspection of the Property.

B. OBLIGATIONS. The Buyer will comply with the following obligations:

1. If the Closing shall occur, then at the time of its development of the Property, the Buyer shall install a traffic signal at the approximate location indicated on **Attachment “A”**. The Buyer shall, and the Seller shall cause its Street and Maintenance Department and any other applicable departments to, cooperate and coordinate on such installation. The

Buyer shall pay the costs of installing such traffic signal up to the amount of \$600,000, and the Seller shall pay any such costs in excess of \$600,000. Prior to the Closing, the Seller shall take the necessary actions to approve the foregoing expenditure and allocate municipal funds thereto and will provide to Buyer reasonably supporting evidence that Seller has taken such actions. This Section 4(B)(1) shall survive the Closing.

2. As soon as is reasonably practicable following the Effective Date, Buyer will commence preparation of each of a Detailed Site Development Plan and a set of building permit plans for Buyer's planned development of the Property and will endeavor to submit same to the City of El Paso's Planning and Inspections Department prior to the expiration of the Inspection Period. Notwithstanding the foregoing, nothing contained in this Agreement is intended as, or may be construed as, an express or implied agreement, commitment, promise, or guarantee by Seller that any permits or approvals will be issued except in accordance with the Seller's customary review and approval process.
3. Buyer agrees to commence Development (defined below) of the Property within 5 years (60 months) following the Closing (the "**Development Deadline**"). Notwithstanding the foregoing, Seller shall have the right to extend the Development Deadline for one, 12 month period, in Seller's reasonable discretion, upon written notice to Buyer on or prior to the Development Deadline. For purposes of this section, "**Development**" or "**Developed**" shall mean (a) commencing or completing installation of the traffic signal as described in Section 4.B.1.; and/or (b) commencing construction of infrastructure improvements to the site, which may include, but is not limited to, the commencement or completion of construction of new roadways or modifications to existing roadways, installing, altering, or extending electrical, water, sewer, fiber optic and other utility connections intended to serve the Property; and/or (c) commencing on-site construction activities such as grading, landscaping, soil stabilization, or drainage. If Buyer fails to commence Development of the Property on or before the Development Deadline, Seller shall have the right, as its sole and exclusive remedy, to either (a) repurchase the Property from Buyer (the "**Springing Repurchase Right**"), in accordance with the terms and conditions set forth herein, or (b) demand payment of liquidated damages in an amount equal to \$3,000,000.00 ("**Liquidated Damages**"). The Springing Repurchase Right and Liquidated Damages are together referred to herein as the "**Seller Election Remedies**", and each as a "**Seller Election Remedy**". If, in Seller's reasonable determination, Buyer has not commenced Development of the Property by the Development Deadline (as extended, if applicable), Seller shall give written notice to Buyer of Buyer's failure to timely commence Development of the Property ("**Development Remedies Notice**"). Buyer shall have a period of sixty (60) days following receipt of the Development Remedies Notice ("**Development Cure Period**") to either negotiate with Seller a revised development plan for the Property to be memorialized by a separate written agreement ("**Revised Development Plan**") or provide sufficient evidence of Development. If, in Seller's reasonable discretion, Buyer provides sufficient evidence to Seller that Buyer has Developed the Property, or if Buyer and Seller enter into a Revised Development Plan, then Seller's right to exercise the Seller Election Remedies shall terminate and Seller shall have no further rights or remedies hereunder. If Buyer fails to commence Development of the Property within the Development Cure Period, then within thirty (30) days after the expiration of the

Development Cure Period, Seller shall give a second written notice to Buyer (the “**Election Remedies Notice**”) informing Buyer that Seller is electing either the Springing Repurchase Right or the Liquidated Damages, which notice shall state whether Seller elects to exercise either the Springing Repurchase Right remedy or the Liquidated Damages remedy (the “**Election**”). If Seller fails to provide an Election Remedies Notice on or before forty-five (45) days after the expiration of the Development Cure Period, then Seller is deemed to have elected to pursue the Liquidated Damages remedy. If Seller elects the Springing Repurchase Right in the Election Remedies Notice, the notice shall set forth the closing date on which Seller shall take title to the Property pursuant to special warranty deed (the “**Repurchase Closing Date**”), provided that the Repurchase Closing Date shall be no earlier than 60 days and no more than 120 days after Buyer’s receipt of the Election Remedies Notice. Upon the Repurchase Closing Date, Seller shall pay to Buyer, by wire transfer of valid funds, an amount equal to 100% of the Purchase Price paid by Buyer to Seller pursuant to this Agreement, as adjusted by prorations for real estate taxes in accordance with the proration terms set forth herein. If Seller elects to receive the Liquidated Damages in the Election Remedies Notice, then Buyer shall pay the Liquidated Damages to Seller by wire transfer of valid funds within 60 days of the Election Remedies Notice (the “**Damages Payment Date**”). Notwithstanding any statement to the contrary herein, if Buyer and Seller enter into a Revised Development Plan prior to the Repurchase Closing Date or the Damages Payment Date, as applicable, then the Election Remedies Notice shall be void, the Seller Election Remedies shall automatically terminate, and Seller shall not have any further right to the Springing Repurchase Right or the Liquidated Damages. The Seller Election Remedies shall automatically terminate upon the earlier of (a) Buyer commencing Development of the Property; or (b) the failure of Seller to timely deliver the Development Remedies Notice to Buyer. If requested by Seller, at Closing the parties shall each execute and deliver a memorandum evidencing Seller’s Springing Repurchase Right, which shall be filed of record in the appropriate records of El Paso County, Texas. Upon the termination or expiration of the Springing Repurchase Right, Buyer shall have the right to record a memorandum, to be executed by Seller and Buyer, confirming that such termination or expiration has occurred, and such termination memorandum may be conclusively relied upon by all interested parties as to the termination or expiration of the Springing Repurchase Right. Additionally, upon Buyer’s request, Seller agrees to provide to Buyer an affidavit in recordable form confirming that the Springing Repurchase Right has terminated or expired. **BUYER AND SELLER AGREE THAT THE LIQUIDATED DAMAGES SET FORTH IN THIS SECTION DO NOT CONSTITUTE A PENALTY BUT RATHER CONSTITUTE THE PARTIES’ BEST ESTIMATE AS TO ACTUAL DAMAGES THAT MAY BE INCURRED UPON THE FAILURE OF BUYER TO TIMELY COMMENCE DEVELOPMENT. IN THE EVENT BUYER FAILS TO COMMENCE DEVELOPMENT BY THE DEVELOPMENT DEADLINE, THE SELLER ELECTION REMEDIES SHALL BE SELLER’S SOLE AND EXCLUSIVE REMEDY AND BUYER’S SOLE LIABILITY. THE PARTIES HEREBY AGREE THAT THE LIQUIDATED DAMAGES DESCRIBED HEREIN ARE REASONABLE AND REFLECT THE BARGAINED FOR RISK ALLOCATION AGREED TO BY THE PARTIES.**

4. AFTER THE CLOSING AND EXCEPT WITH RESPECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE SELLER CONTAINED

IN THIS AGREEMENT (AS LIMITED BY THE SECOND SENTENCE OF SECTION 3(A)(8)): (A) BUYER RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM LIABILITY FROM ENVIRONMENTAL PROBLEMS THAT AFFECT THE PROPERTY REGARDLESS OF WHETHER SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY WERE A RESULT OF THE SELLER'S NEGLIGENCE, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE; (B) THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE ACTS OR OMISSIONS OF BUYER OR ITS REPRESENTATIVES; AND (C) THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE SELLER IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE ACTS OR OMISSIONS OF BUYER OR ITS REPRESENTATIVES.

5. If the Buyer has contracted a real estate broker, agent, finder, or other party for the transaction of this Agreement, then the Buyer is responsible for the payments of that contract.

C. RIGHTS. The Buyer is responsible for all costs associated with exercising the following rights:

1. INSPECTION. The Buyer may inspect the Property for a period of 120 calendar days after the Effective Date of this Agreement ("Inspection Period"). The Buyer will be responsible for all expenses related to the inspection or any other examination of the Property. The Buyer will ensure that its representatives, agents, consultants, or any other persons related to the inspection of the Property, if any, have general liability insurance of at least \$500,000.00 and property damage insurance of at least \$500,000.00 during the Inspection Period. The Buyer will ensure the insurance policies are with an insurance provider that is licensed in the State of Texas and is reasonably acceptable to the Seller. Except as expressly set forth in this Agreement, the Seller disclaims any warranties regarding the condition of the Property and/or the suitability of the Property. During the Inspection Period, the Buyer may pursue all permits, entitlements, etc., as may be necessary for its use and development, and the Seller will cooperate with the Buyer in connection with such efforts (Buyer acknowledging that these pursuits will not result in an ownership interest in the Property by Buyer until the closing of the sale of the Property. The Buyer may terminate this Agreement at any time during the Inspection Period in accordance with Section 5(A)(1). If the Agreement is not terminated under Section 5(A)(1), then the parties will proceed to close on the

sale and purchase of the Property. Failure to close on the Property is a material breach by the party responsible for the failure to close. The Buyer acknowledges that the Buyer was given an opportunity to inspect the Property, and is relying on information gathered during the inspection and not information provided to the Buyer by the Seller. The Buyer acknowledges that the information the Buyer has obtained about the Property has been from a variety of sources and that the Seller makes no representation as to the accuracy of that information. If the Closing does not occur, the Buyer will restore the Property to substantially the condition the Property was prior to any inspections or due diligence done by the Buyer. EXCEPT TO THE EXTENT ARISING OUT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SELLER AND THE SELLER'S OFFICER'S AND EMPLOYEES, THE BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE SELLER AND THE SELLER'S OFFICER'S AND EMPLOYEES FROM ANY THIRD PARTY CLAIMS RELATED TO ANY INSPECTIONS PERFORMED BY THE BUYER OR THE BUYER'S EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS. SUCH INDEMNIFICATION RESPONSIBILITY ON BUYER INCLUDES THE OBLIGATION TO PAY FOR ALL ATTORNEY'S FEES AND COURT COSTS INCURRED BY THE SELLER. THE BUYER SHALL INCUR NO LIABILITY TO THE SELLER FOR THE DISCOVERY OF EXISTING CONDITIONS AT THE PROPERTY DURING ANY INSPECTIONS PERFORMED BY THE BUYER OR THE BUYER'S EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS. The Buyer may extend the Inspection Period for up to two (2) additional periods of 30 calendar days each provided that the Buyer provides the Seller advance written notice prior to the expiration of the Inspection Period and the Seller makes an additional deposit in the amount of \$25,000 with the Title Company (each, an "**Extension Deposit**" and together, the "**Extension Deposits**"; with the Initial Deposit, the "**Deposit**") which will be applied to the Purchase Price upon the purchase and sale of the Property.

2. **TITLE INSURANCE.** The Buyer will, at the Buyer's sole expense, order a current commitment for Title Insurance for the Property within five (5) days of the Effective Date of this Agreement. The Buyer will send a copy of the title commitment and any documents related to title insurance to the Seller.
3. **SURVEY.** The Buyer may obtain a new survey or update an existing survey at the Buyer's expense within thirty (30) days of the Effective Date of this Agreement. If the metes and bounds description of the Property in the survey obtained by the Buyer is different from the legal description of the Property set forth on **Attachment "A"**, then the parties may use the new survey to describe the Property in this Agreement.
4. **TITLE REVIEW PERIOD.** The Buyer may review the commitment for title insurance, title exception documents and the survey for a period of 30 calendar days after receiving the commitment for title insurance, title exception documents and the survey ("**Title Review Period**") and send a written notice to the Seller, before the expiration of the Title Review Period, listing the Buyer's objections, if any. If the Buyer does not send the Seller a written notice with the Buyer's objections within the Title Review Period, Buyer shall be deemed to have waived any objections and all exceptions to coverage listed in Schedule B of the title commitment will become permitted exceptions. If the Seller receives objections from the Buyer, then the Seller will perform one of the

following within 10 calendar days of receiving Buyer's objections:

- a. Notify the Buyer that the Seller will cure the Buyer's objections before the Closing Date. If the Seller elects this option, then the Seller will cure the Buyer's objections before the Closing Date;
- b. Notify the Buyer that the Seller will cure the Buyer's objections, however the Seller and the Buyer must agree to postpone the Closing Date to afford the Seller a reasonable period of time to cure the Buyer's objections. The Seller or the Buyer may terminate this Agreement in accordance with Section 5(A)(3)(a) if the Buyer refuses to postpone the Closing Date or waive the objections. If the parties agree to postpone the Closing Date, then the parties will set a new Closing Date and proceed with the sale and purchase of the Property; or
- c. Notify the Buyer that the Seller will not cure the Buyer's objections in which case Buyer may terminate this Agreement in accordance with Section 5(A)(3)(b).

If this Agreement is not terminated under Section 5(A)(3), then the parties will proceed to close on the sale and purchase of the Property. Failure to close on the Property is a material breach by the party responsible for the failure to close. The Buyer shall not be required to object to, and the Seller shall satisfy, all requirements set forth on Schedule C of the title commitment.

SECTION 5. TERMINATION.

A. This Agreement may be terminated as provided in this Section.

1. **TERMINATION DURING INSPECTION PERIOD.** The Buyer may terminate this Agreement for any reason at any time only during the Inspection Period by providing written notice to the Seller. If Buyer fails to terminate this Agreement in writing prior to the expiration of the Inspection Period, Buyer will be deemed to have waived its right to terminate this Agreement pursuant to this Section 5(A)(1) and the transaction will proceed in accordance with the other provisions of this Agreement. If the Agreement is terminated under this provision, then the Seller will direct the Title Company to refund half of the Deposit and, if applicable, the Extension Deposit(s), to the Buyer.
2. **TERMINATION FOR CAUSE.** Either party may terminate this Agreement before or on the Closing Date if the other party fails to fulfill the obligations of this Agreement following written notice allowing for 10 calendar day opportunity to cure. If the Seller terminates this Agreement pursuant to this provision, then the Seller may keep the Deposits and, if applicable, the Extension Deposit(s), made by the Buyer as Seller's sole and exclusive remedy. If Seller fails to fulfill its obligations of this Agreement and fails to cure the same within such time period, then Buyer may, as its sole remedy, either pursue specific performance of this Agreement, or terminate this Agreement and the Seller will direct the Title Company to refund the Deposit to the Buyer.

3. TERMINATION DURING TITLE REVIEW PERIOD.

- a. Termination pursuant to Section 4(C)(2)(b) of the Agreement. If the Buyer refuses to postpone the Closing Date or waive the objections, then either party may terminate this Agreement by written notification. The Seller will direct the Title Company to refund to the Buyer any Deposit made by the Buyer under this Agreement.
 - b. Termination pursuant to Section 4(C)(2)(c) of the Agreement. If the Seller refuses to cure any title objections, then the Seller will notify the Buyer and Buyer may terminate this Agreement under this Section. The Seller will direct the Title Company to refund to Buyer any Deposit made by the Buyer under this Agreement.
4. TERMINATION FOR CASUALTY. If any damages occur to the Property before the Closing Date due to fire or another casualty, then the parties may mutually agree to postpone the Closing Date to allow the Seller time to repair the damages. The Buyer may only terminate this Agreement if the repairs to the Property by the Seller will lead to the Closing Date being postponed. If the Buyer does not want to postpone the Closing Date to allow the Seller to remedy the damages, then the Buyer may terminate this Agreement by sending a termination notice to the Seller after becoming aware of the damages to the Property. If the Buyer terminates this Agreement under this provision, then the Seller will direct the Title Company to refund the full deposit to the Buyer.

SECTION 6. CLOSING.

- A. Provided that the parties have not terminated this Agreement, the parties will meet all the obligations of this Agreement, including finalizing the sale and transfer of the Property (“**Closing**”) on the date thirty (30) calendar days following the expiration of the Inspection Period or such earlier date as may be specified by the Buyer by not less than five calendar days advance written notice to the Seller (“**Closing Date**”). A party’s failure to meet all the obligations of this Agreement by or on the Closing Date is a breach of this Agreement.
- B. SELLER’S OBLIGATIONS. Before or on the Closing Date the Seller will deliver the following to the Buyer through the Title Company:
1. A fully executed deed (“**Deed**”) conveying to the Buyer fee simple title to the Property subject to the exceptions approved or deemed approved by the Buyer pursuant to this Agreement, in the form included in this Agreement as **Attachment “B”**;
 2. The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;
 3. All keys or other access devices in the possession of the Seller or its agents to the locks located on the Property, if any; and
 4. Any other items requested by the Title Company reasonably necessary to finalize the closing of this Agreement.

- C. **BUYER'S OBLIGATIONS.** At the closing of this Agreement the Buyer will deliver the following to the Seller through the Title Company:
1. The Purchase Price minus the Deposit that is being held by the Title Company.
 2. All Closing costs shown on the approved settlement statement. The Buyer is responsible for paying all costs and fees associated with the closing of this Agreement, including any Title Company escrow fees. The Buyer will be responsible for paying any fees related to recording the Deed.
 3. Any other items requested by the Title Company to finalize the closing of this Agreement.
- D. **TAXES.** General real estate taxes, if any, for the then current year relating to the Property will be prorated on midnight before the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property. Within 30 Business Days after the actual taxes for the year in which the Closing occurs are determined, Seller and Buyer shall adjust the proration of such taxes and Seller and Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller.
- E. **POSSESSION.** Possession of the Property will be transferred to the Buyer from the Seller at the Closing of this Agreement, as such the Buyer acknowledges that the risk of loss transfers along with the possession of the Property.

SECTION 7. GENERAL PROVISIONS.

- A. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- B. **RELATIONSHIP BETWEEN THE PARTIES.** This Agreement does not create an employee-employer relationship between the Buyer and the Seller. As such, the Seller is not subject to the liabilities or obligations the Buyer obtains under the performance of this Agreement.
- C. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or City of El Paso holiday, the date for performance thereof shall be extended to the next business day.

D. NOTICES. The parties will send all notices required by this Agreement in writing both postmarked and delivered by (i) certified mail, or (ii) USPS Priority Mail or (iii) USPS Priority Mail Express Overnight. All notices sent by certified mail are considered received 5 calendar days after the postmark date. All notices sent by USPS Priority Mail or USPS Priority Mail Express Overnight are considered delivered when delivery is confirmed by USPS. The parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

Seller:	The City of El Paso Attn: City Manager P. O. Box 1890 El Paso, Texas 79950-1890
Copy:	The City of El Paso Attn: City Attorney P.O. Box 1890 El Paso, Texas 79950-1890
Copy:	City of El Paso Attn: Capital Assets Manager P.O. Box 1890 El Paso, Texas 79950-1890
To the Buyer:	VTRE Development, LLC 5844 John Hickman Parkway Suite 150 Frisco, TX 75034 Attn: Executive Vice President
Copy:	VTRE Development, LLC 4900 Main Street, Suite 400 Kansas City, MO 64112 Attn: President

E. CONFIDENTIALITY. The Buyer acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act). The parties acknowledge that this Agreement may not be kept confidential. To the extent allowed by law, Seller agrees that upon Seller's receipt of a public records request for disclosure of any documents related to this transaction (other than this Agreement and attachments to this Agreement), the Seller will (i) give Buyer prior notice (at all of the addresses specified above) sufficient to allow Buyer to seek a protective order or other appropriate remedy, and (ii) disclose only such information as is required by applicable law.

- F. **GOVERNING LAW.** This Agreement is governed by Texas law.
- G. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- H. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- I. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- J. **GOVERNMENTAL FUNCTIONS.** The parties agree that the Seller is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the Seller is entering into this Agreement as a governmental entity performing a governmental function.
- K. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement.
- L. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.
- M. **SUCCESSORS AND ASSIGNS.** This Agreement is binding on the Seller and the Buyer, and their successors and assigns. Seller may not assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the Buyer. Buyer may assign this Agreement without Seller's consent to a user that has engaged Buyer to represent Buyer in connection with the development of the Property, but such assignment shall not relieve Buyer of its liability hereunder.
- N. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries of this Agreement.
- O. **REPRESENTATIONS AND WARRANTIES.** The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- P. **COUNTERPARTS.** The parties may execute this Agreement in counterparts.
- Q. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties. No agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the parties to this Agreement to be bound by such change, modification or termination.
- R. **WAIVER OF CONSEQUENTIAL DAMAGES.** Neither Buyer nor Seller will be liable for consequential, indirect, or special damages in connection with this Agreement.

EXECUTED by City the ____ day of _____, 2024.

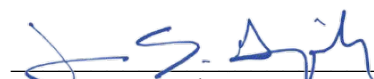
SELLER:

CITY OF EL PASO, TEXAS

By: _____

Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Karina Brasgalla, Interim Director
Economic and International Development

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2024,
by **Cary Westin**, as Interim City Manager of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures Continue on Following Page)

EXECUTED by Buyer the 25 day of June, 2024.

VTRE DEVELOPMENT, LLC, a Delaware limited liability company

By: [Signature]
David M. Harrison, President

ACKNOWLEDGEMENT

Missouri
THE STATE OF ~~TEXAS~~ §
Jackson §
COUNTY OF ~~EL PASO~~ §

This instrument was acknowledged before me on this 25 day of June, 2024, by **David M. Harrison**, as **President** of **VTRE Development, LLC**, a Delaware limited liability company, on behalf of the company.

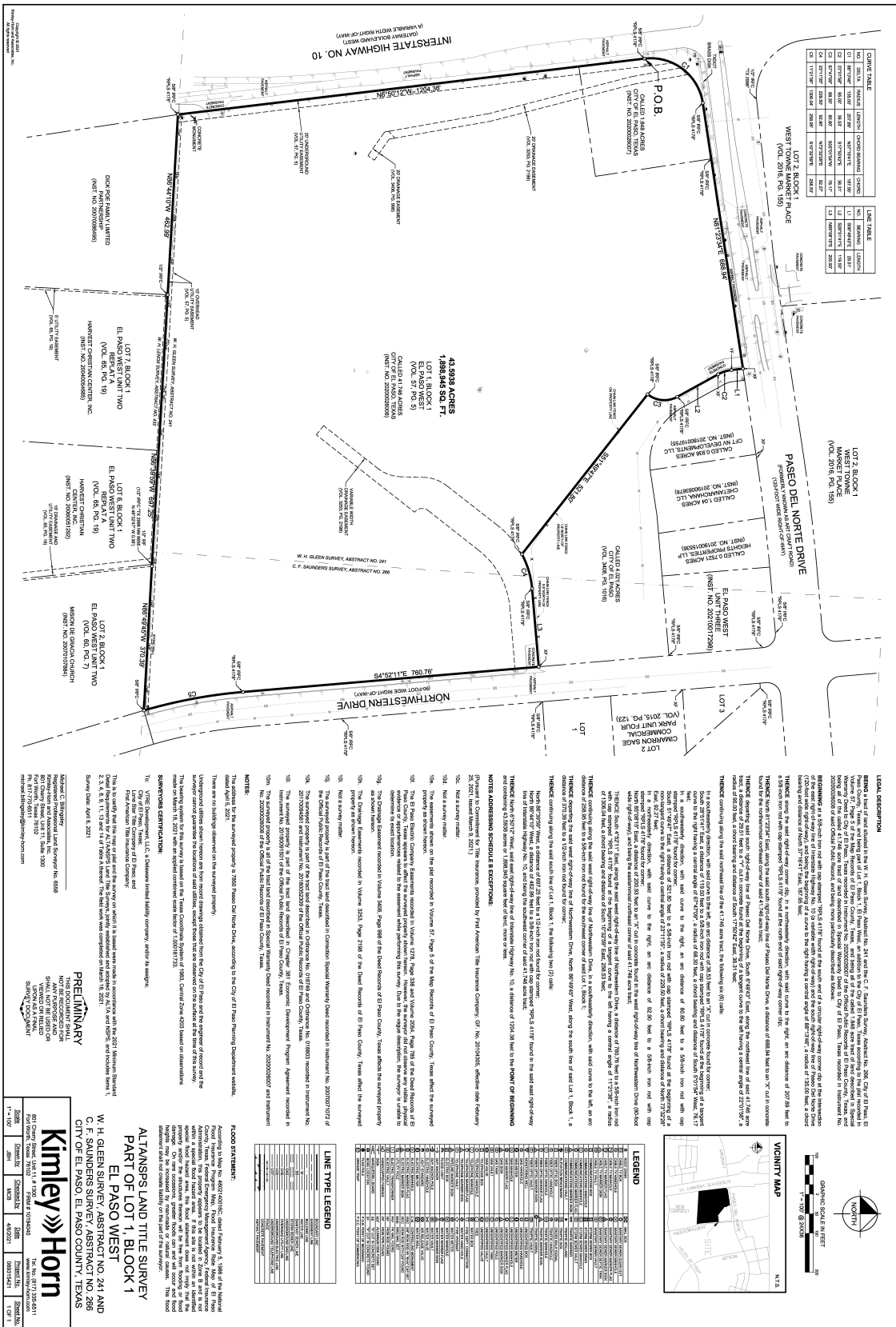
[Signature]
Notary Public, State of ~~Texas~~ Missouri

My commission expires:

12/4/27



PROPERTY DESCRIPTION



SITE PLAN



ATTACHMENT “C”

FORM OF DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Effective Date: _____, 20

Grantor: **[Grantor name]**

Grantor’s Mailing Address: [Grantor mailing address]

Grantee: **[Grantee Name]**

Grantee’s Mailing Address: [Grantee mailing address]

PROPERTY (INCLUDING ANY IMPROVEMENTS):

A 43.594 Acre parcel legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, page 5 of the Plat Records of El Paso County, Texas, as more particularly described in **Attachment “A”**.

CONSIDERATION

\$10.00 and other valuable consideration, receipt of which is hereby acknowledged.

EXCEPTIONS TO CONVEYANCE

See permitted exceptions attached to this Deed as Attachment “B”

RESERVATIONS TO CONVEYANCE

None

EXCEPTIONS TO WARRANTY

Except as expressly set forth in the purchase contract between Grantor and Grantee, conveyance of the Property is an “as is, where is and with all faults” transaction and that the Seller disclaims all other warranties pertaining to the condition of the Property available under law whether express or implied including but not limited to any warranties pertaining to the nature and condition of water, soil, geology, or other environmental hazards or conditions (including the presence of asbestos or lead paint).

REVERSION

Grantor grants all the described real property to Grantee and heirs of Grantee so long as the property is timely developed in accordance with Section 4.B.3 of the Contract of Sale.

WARRANTY AND CONVEYANCE

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and exceptions to warranty, GRANTS, SELLS, and CONVEYS to the GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever. The GRANTOR binds the GRANTOR and the GRANTOR'S successors and assigns to warrant and forever defend all and singular the Property to the GRANTEE and the GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by through or under Grantor and Grantee, but not otherwise.

IN WITNESS WHEREOF this Special Warranty Deed is executed this ____ day of ____
_____, 2024.

GRANTOR:

CITY OF EL PASO

By: _____
Cary Westin, Interim, City Manager

ACKNOWLEDGEMENT

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2024, by
_____, City Manager, City of El Paso.

Notary Public in and for the State of Texas
Notary's Printed Name: _____

My Commission expires: _____

AFTER RECORDING, RETURN TO: