

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

**AGENDA DATE:** December 5, 2023

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Karina Brasgalla, (915) 212 - 1570 Elizabeth Triggs,  
(915) 212 - 0094

**DISTRICT(S) AFFECTED:** District 4

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

**SUBJECT:**

An ordinance authorizing the City Manager to sign a contract of sale with Worldwide LLC, a Delaware limited liability company for the sale of approximately 1,039 acres of property situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; Known As Tax Parcels 78427 And 13470.

**BACKGROUND / DISCUSSION:**

This ordinance would authorize the City Manager to effectuate the sale of 1,039 acres of City-owned property located in Northeast El Paso, North of Stan Roberts Sr. Ave. and West of US Highway 54. The purchase price is set at \$8,156.25 per acre.

Section 253.0125 of the Texas Local Government Code authorizes a municipality to transfer real property with an entity that has entered into a Chapter 380 economic development agreement. Under the proposed terms of the 380 Agreement, Worldwide LLC will make certain real and personal property improvements necessary to establish a data center. Total estimated costs to be invested by Worldwide LLC for real and personal property improvements is \$800,000,000.

Note that under Section 7.6 of City Charter, the proceeds from the sale of capital assets shall be used for the purchase of other capital assets or to retire bonded debt.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE WITH WURLDWISE LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR THE SALE OF APPROXIMATELY 1,039 ACRES OF PROPERTY SITUATED IN SECTION 3, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILROAD SURVEY, ABSTRACT NO. 2381 AND SECTION 4, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILROAD SURVEY, ABSTRACT NO. 9862, CITY OF EL PASO, EL PASO COUNTY, TEXAS FURTHER BEING PORTIONS OF TRACTS OF LAND DESCRIBED IN DEEDS TO CITY OF EL PASO RECORDED IN VOLUME 1176, PAGE 504, AND VOLUME 1186, PAGE 178, DEED RECORDS, EL PASO COUNTY, TEXAS; KNOWN AS TAX PARCELS 78427 AND 13470.**

**WHEREAS**, the City of El Paso (“**City**”) is a municipal corporation organized and existing under the laws of the State of Texas and is the owner of approximately 1,039 acres of property situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78127 and 13470 (the “**Property**”); and

**WHEREAS**, the City entered into a Chapter 380 Economic Development Program Agreement (the “**380 Agreement**”) with Worldwide LLC, a Delaware limited liability company (“**Company**”) on the 4<sup>th</sup> day of December, 2023 in order to facilitate the establishment of a hyperscale data processing center, as defined in Title 20 of the El Paso Municipal Code, which will contribute to the creation and growth of a regional information and data value chain, creating opportunities in highly related sectors and technologies, including highly specialized advanced manufacturing and clean energy opportunities, while also diversifying and expanding the local tax base and creating quality job opportunities, both directly and indirectly; and

**WHEREAS**, Section 253.0125 of the Texas Local Government Code (the “**Code**”) authorizes a municipality that has entered into an economic development agreement with an entity, as authorized by Chapter 380 of the Code, to transfer to that entity real property or interest in real property for consideration; and

**WHEREAS**, such consideration must be provided in the form of an agreement between the parties that requires the entity to use the property in a manner that primarily promotes a public purpose of the municipality relating to economic development (the “**Contract of Sale**”); and further requires that the Contract of Sale include provisions under which the municipality is granted sufficient control to ensure that the public purpose is accomplished and the municipality receives the return benefit; and

**WHEREAS**, the City Council has found that the conveyance of the City’s Property to the Company is in the public interest because it will facilitate the creation and growth of a regional information and data

value chain, creating opportunities in highly related sectors and technologies, while also diversifying and expanding the local tax base and creating quality job opportunities; and

**WHEREAS**, the Contract of Sale and related Chapter 380 Agreement between the City and Company provide provisions under which the City is granted sufficient control to ensure that the public purpose relating to economic development is accomplished as a result of the conveyance; and

**NOW THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager is authorized to sign, on behalf of the City of El Paso, the Contract of Sale between the City and Company, for the sale of approximately 1,039 acres of real property situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78127 and 13470; and that the City Manager is further authorized to sign all documents necessary to effectuate this transaction, as approved by the City Attorney's Office.

**PASSED AND ADOPTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

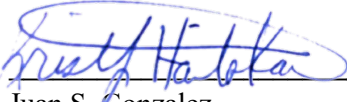
**THE CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor


**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

 /for/  
\_\_\_\_\_  
Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth K. Triggs, Director  
Economic & International Development

**ORDINANCE NO.** \_\_\_\_\_

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[This document is a draft document for discussion purposes only and is not intended to be and shall not be deemed to be contractually binding in any way on any person. This document does not obligate any person to negotiate in good faith or proceed to completion and execution of a final agreement. No person is bound by any provision of this document until this document has been mutually executed by the Buyer and Seller.]

THE STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO       )

## CONTRACT OF SALE

This Contract of Sale (“**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”) between the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“**Seller**”) and Wurldwide 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. **SALE AND PURCHASE.** 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. Approximately 1,039 acres of real property situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in the deeds to City of El Paso recorded in Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas; known as Tax Parcels 78427 and 13470, as further described in **Attachment “A”**, the “**Property**”.
2. The groundwater estate related to the Property, including the Groundwater (as defined herein below) and Groundwater Rights (as defined herein below) are reserved by and for the Seller. The term “**Groundwater**” shall mean the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, formations, and horizons beneath the surface of the Property. The term “Groundwater” shall not include water delivered to Buyer by El Paso Water (defined below) pursuant to the W&WW Agreement (defined below), surface water, and Buyer-managed reservoirs and aquifers permitted pursuant to the W&WW Agreement. The term “**Groundwater Rights**” shall mean, subject to the following sentence, (1) the right to access, test, capture, explore for, drill for, develop, withdraw, produce, store, treat, transport or otherwise acquire and beneficially use, the Groundwater beneath the Property from adjacent land; and (2) the right to apply for and obtain all permits, licenses, or other governmental authorizations relating to any of the foregoing, including but not limited to any permit issued by a groundwater conservation district or other governmental entity existing now or in the future and having jurisdiction over the Groundwater and/or the exploration, drilling, production, use, storage, treatment, reuse, recharge or transport of Groundwater that may be necessary for the exercise of the Seller's limited rights therein, but only from adjacent land. The term “Groundwater Rights” shall expressly exclude any rights granted by El Paso Water to Buyer pursuant to the W&WW Agreement, including the right for Buyer to manage, store, recharge, and withdraw water from reservoirs and aquifers. Seller irrevocably waives all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such Groundwater Rights, including without limitation the right

to enter upon all or any part of the surface of the Property for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the Groundwater. Seller may only produce such Groundwater from land adjacent to the Property, provided that such production does not interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property, and further provided that the drilling for such Groundwater shall enter the Property at a depth greater than 400 feet.

- B. **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT.** Seller and Buyer entered into a Chapter 380 Economic Development Program Agreement authorized by Chapter 380 of the Texas Local Government Code on the 4<sup>th</sup> day of December, 2023 (the “**380 Agreement**”) to facilitate the establishment of a hyperscale data processing center, as defined in Title 20 of the El Paso Municipal Code, which will contribute to the creation and growth of a regional information and data value chain, creating opportunities in highly related sectors and technologies, including highly specialized advanced manufacturing and clean energy opportunities, while also diversifying and expanding the local tax base and creating quality job opportunities, both directly and indirectly. Seller and Buyer agree that the purposes for which the Property will be developed and used is consistent with the purposes of the 380 Agreement and will further the public purpose of the municipality relating to economic development, and thus Seller has concluded that the conveyance of the Property is permitted as authorized by Section 253.025 of the Texas Local Government Code.

## **SECTION 2. PURCHASE PRICE AND TITLE COMPANY.**

- A. **PURCHASE PRICE.** The Buyer will pay the Seller a total amount of **\$8,156.25** per acre or portion thereof for each acre included in the Property (“**Purchase Price**”). As of the Effective Date, Buyer has commissioned at Buyer’s expense a survey for the purpose of determining the land area of the Property and shall, prior to the end of the Inspection Period, as described by Section 4(C)(1) of this Agreement, provide Seller a copy of same. The Purchase Price above is to be paid by the Buyer to the Seller through the Title Company selected by the Buyer (“**Title Company**”) at the Closing of this Agreement.
- B. **ACCESS DEPOSIT.** As of the Effective Date, Buyer has previously deposited **\$333,600** to Seller (“**Access Deposit**”), pursuant to the terms and conditions of that certain Temporary Right of Entry dated April 18, 2022 (as amended, the “**Access Agreement**”). Buyer and Seller irrevocably stipulate and agree that the Access Deposit shall constitute adequate consideration of Seller’s execution and delivery of this Agreement and for Buyer’s right to review and inspect the Property. If the sale of the Property is in accordance with the provisions in this Agreement, then the Access Deposit shall be credited against 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. **WARRANTIES.** To the best of the Seller’s knowledge the Seller 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 and Seller is in exclusive possession of the entire Property and no other party occupies any portion of the Property or has any valid claim or interest in possessing the Property or any portion thereof, whether by reason of agreement, lease, farm lease or license, cell phone tower lease, adverse possession, prescriptive easement or establishment of a boundary by acquiescence;

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 claims, actions, or legal proceedings pending before any judicial or quasi-judicial body, and there is neither threat thereof nor any basis therefor, with respect to the Property (or any portion thereof);
5. The Seller has not received any notices of (i) condemnation or taking of all or any portion of the Property by eminent domain, or (ii) with the exception of water and wastewater impact fees as authorized by Chapter 15.22 of the El Paso Municipal Code and adopted pursuant to Chapter 395 of the Texas Local Government Code, special assessments that would affect the Property;
6. There are no unpaid utility bills or unfulfilled maintenance contracts regarding the Property;
7. The Property is in compliance with all existing laws, rules, regulations, ordinances and orders of all federal, state and local authorities having jurisdiction over the Property;
8. Seller has not received any written or oral communication alleging that, with respect to the Property, Seller is in violation of any environmental law; and
9. Seller has provided Buyer with all material documents in its possession relating to the Property, and such documents do not contain any untrue statement of a material fact or fail to state a material fact necessary to make the statements contained therein not materially misleading.
10. LIMITATIONS ON WARRANTY The warranties provided in this section of the Agreement will survive for one year following the date of conveyance as shown in the executed Special Warranty Deed signed by the Seller. Except for the 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 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). Notwithstanding anything to the contrary in this Agreement, the Seller shall have no liability for breaches of any representations, warranties and certificates which are made by the Seller in this Agreement or in any of the documents or instruments required to be delivered by Seller under this Agreement if the Buyer or its employees, managers, contractors or agents ("Buyer Parties") had knowledge of such breach at Closing where Buyer elects to proceed to close the transaction contemplated by this Agreement. 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 of which the Buyer Parties had knowledge prior to Closing, but Buyer's remedies shall be as set forth in this Agreement. The terms and provisions of this Section survive the Closing.

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

1. Within 10 business days of the Effective Date, the Seller will deliver the following documents to the Buyer, to the extent such items are in Seller's possession or control or in the possession or control of Seller's agents, auditors, independent contractors or representatives:
  - 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;
  - c. All environmental reports of the Property and the improvements on the Property; and
  - d. All documents and information regarding the Property, including without limitation, all surveys, plats and plans, drawings and specifications (including without limitation, CAD drawings and aerial photographs), title commitments, title policies, prior title abstracts, insurance information, property condition and/or environmental reports, leases, agreements, and other materials, books and records pertinent to the ownership, operation, occupancy, use, or management of 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.
3. Seller shall not (i) directly or indirectly lease, sell, franchise, assign or create any right, title or interest whatsoever in or to the Property (including entering into any occupancy agreement), (ii) take any action, create, commit, permit to exist or suffer any acts which would (A) give rise to a variance from the current legal description of the Property, except as expressly provided herein (and in no event may the size of the Property or boundaries thereof be changed), or (B) cause the creation of any lien, charge or encumbrance, or (iii) enter into any agreement to do any of the foregoing without Buyer's prior written consent (which consent may be withheld in Buyer's sole and absolute discretion). Seller shall promptly notify Buyer of any change in any condition with respect to the Property or any portion thereof or of any event or circumstance of which Seller obtains knowledge after the Effective Date which (i) materially, adversely affects the Property or any portion thereof or the use or operation of the Property or any portion thereof, (ii) makes any representation or warranty of Seller to Buyer under this Agreement untrue or misleading, or (iii) makes any covenant or agreement of Seller under this Agreement incapable or less likely of being performed, it being expressly understood that Seller's obligation to provide information to Buyer under this Section shall in no way relieve Seller of any liability for a breach by Seller of any of its representations, warranties, covenants or agreements under this Agreement.
4. Except as otherwise specifically set forth herein, Seller shall not take any actions with respect to the development of the Property without Buyer's prior written consent. Seller hereby agrees to cooperate with Buyer (including, if necessary or helpful, through the execution of applications, owner's affidavits, and other documents) in Buyer's efforts to obtain such governmental approvals, including approval of any rezoning of the Property as a planned unit development or otherwise, special use permits, variances and waivers of development standards, site plan approval, design reviews, platting and subdivision approval and other approvals as Buyer deems necessary or appropriate to permit Buyer to develop and/or operate the Property as Buyer wishes. Seller shall, at Buyer's cost, reasonably cooperate with Buyer and any municipality or utility in obtaining the appropriate extension of required utility services to the Property. At the request of Buyer, Seller agrees to appear at public hearings, city staff meetings or other meetings related to Buyer's development activities. Seller shall not, without

Buyer's prior written consent, which consent shall be in Buyer's sole discretion: (i) execute or otherwise agree to any deed restrictions, restrictive covenants or other documents affecting the use of all or any portion of the Property, (ii) establish or consent to the establishment of any special association, community association, property owners' association, architectural control committee or any other such committee having jurisdiction over all or any portion of the Property, (iii) apply for or consent to any change or modification with respect to the zoning, development or use of any portion of the Property; (iv) consent to any special assessment affecting the Property, or (v) make any public comment regarding the Property except as explicitly set forth in Section 7(E).

5. Neither Seller nor any person acting on behalf of Seller shall offer, entertain, solicit or negotiate with respect to any inquiries or proposals relating to the possible direct or indirect acquisition of the Property or any portion thereof (or any other form of transaction having a similar effect) or make any information about the Property or any portion thereof available (for purpose of sale or finance) to any person other than Buyer during the term of this Agreement.
6. The Seller is responsible for Seller's share of all closing costs related to this transaction ("**Closing Costs**"). For purposes of this Agreement, Closing Costs include, but are not limited to, the following:

<b>COST</b>	<b>RESPONSIBLE PARTY</b>
Title Commitment required to be delivered pursuant to Section 4(C)(2)	Buyer
Basic premium for Title Policy required to be delivered pursuant to Section 4(C)(2)	Seller
Premium for any upgrade of Title Policy for any extended or additional coverage and any endorsements desired by Buyer, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges	Buyer
Costs of Survey and/or any revisions, modifications or recertifications thereto	Buyer
Recording fees	Seller
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Buyer: ½ Seller: ½
All other closing costs, expenses, charges, and fees	Buyer

#### C. RIGHTS.

1. The Buyer may select the Title Company that will assist with the sale of the Property. Either party may 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. As consideration for Seller's agreement to sell the Property to Buyer and Seller's cooperation with Buyer as set forth in Section 3(b)(4) above, Buyer agrees to Develop (defined below) the Property within 5 years of the Closing (the "**Development Deadline**"). Notwithstanding the foregoing, Seller is authorized to issue a letter to Buyer to extend the Development Deadline for up to an additional year in Seller's sole discretion. For purposes of this section, "**Develop**" shall mean (a) funding, commencing, and completing construction of the Stan Roberts Sr. Ave. Improvements pursuant to the terms set forth in the 380 Agreement; and (b) funding and commencing construction of infrastructure improvements to the site in the form of roads, electric connections, water connections, sewer connections, or fiber optic connections; and/or funding and commencing on-site construction activities such as grading, landscaping, soil stabilization, or drainage; and (c) expending at least \$5,000,000.00 in the construction of said improvements and/or on-site construction activities identified in Subsection (b) of this paragraph. If Buyer fails to Develop the Property on or before the Development Deadline, Seller shall have the right, as its sole and exclusive remedy, to elect either to (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 \$5,000,000.00 ("**Liquidated Damages**," and collectively with the Springing Repurchase Right the "**Seller Election Remedies**"). No later than 60 days after the Development Deadline, Buyer shall provide Seller evidence that Buyer has Developed the Property in accordance with this Agreement (the "**Development Report**"). If, in the Seller's reasonable determination, Buyer has not Developed the Property by the Development Deadline, then within 30 days after receipt of the Development Report, Seller shall give written notice to Buyer of Buyer's failure to timely Develop the Property ("**Development Remedies Notice**"). Buyer shall have a period of sixty (60) days ("**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 sole 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 remedies hereunder. If Buyer fails to Develop the Property within the Development Cure Period, then within 30 days after the expiration of the Development Cure Period, Seller shall give a second written notice to Buyer (the "**Second Notice**") informing Buyer that Seller is electing either the Springing Repurchase Right or the Liquidated Damages. If Seller elects the Springing Repurchase Right in the Second 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 30 days and no more than 90 days after Buyer's receipt of the Second 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 Second Notice, then Buyer shall pay the Liquidated Damages to Seller by wire transfer of valid funds within 60 days of the Second 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 Second 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 Developing the Property; (b) the failure of Seller to timely deliver the Development Remedies Notice to Buyer; or (c) the failure of Seller to timely deliver the Second 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, confirming that such termination or expiration has occurred, and such 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 CONSTRUCTION. IN THE EVENT BUYER FAILS TO DEVELOP 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.

2. AFTER THE CLOSING, THE BUYER WILL BE RESPONSIBLE FOR ALL ENVIRONMENTAL MATTERS THAT ARISE, EVEN IF SUCH ENVIRONMENTAL MATTERS WERE KNOWN BEFORE THE CLOSING. AFTER THE CLOSING, THE BUYER RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM LIABILITY FROM ENVIRONMENTAL PROBLEMS THAT AFFECT THE PROPERTY, 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.
3. Each party agrees that there is no broker, finder, or intermediary with whom it has dealt in connection with this transaction. Both parties agree to indemnify each other against all claims for fees, commissions or other compensation claimed to be due to any broker, finder, or intermediary with whom the indemnifying party may have dealt in connection with this transaction.
4. The Buyer is responsible for Buyer's share of all Closing Costs related to this transaction set forth in Section 3(B)(6).

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

1. INSPECTION. The Buyer may inspect the Property through April 18, 2024 ("**Inspection Period**"). Buyer shall have 2 options to extend the Inspection Period by 180 days each (each, an "**Extension Option**"). To exercise an Extension Option, Buyer shall deliver written notice of such exercise to Seller and Title Company prior to the expiration of the then-current Inspection Period (as the same may be extended hereunder), and at the same time, Buyer shall deposit with Title Company an additional **\$83,400** (each, an "**Extension Deposit**"). The Title Company will hold the Extension Deposit in an escrow to be applied as provided by this Agreement. If Buyer timely exercises an Extension Option, the Inspection Period shall be extended for an additional period of 180 days, the Extension Deposit shall be non-refundable to Buyer but shall be credited against the Purchase Price at Closing. Commencing on the Effective Date and continuing until the earlier to occur of the termination of this Agreement or Closing, Buyer and its employees, agents and consultants shall have the right, at all reasonable

times, to enter upon the Property for the purpose of making inspections, assessments, evaluations and studies, and conducting such tests as it deems advisable, including but not limited to geotechnical studies, seismic studies, soil tests, environmental (including Phase I and/or Phase II environmental site assessments) and ecological studies, wetlands assessment and feasibility studies to develop plans and budgets for development of the Property and otherwise determine that the Property meets the criteria and requirements of Buyer. Phase II environmental site assessments may include drilling and sampling of soil, soil vapor, and groundwater. The Access Agreement is hereby terminated in its entirety and neither party shall have any further obligations thereunder. 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 are acceptable to the Seller. The Seller disclaims any warranties regarding the condition of the Property and/or the suitability of the Property. The Buyer may terminate this Agreement during the Inspection Period in accordance with Section 5(A)(1). 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. THE BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'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.

2. **TITLE INSURANCE.** The Buyer will, at the Buyer's sole expense, order a current commitment for Title Insurance for the Property within thirty (30) 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 update an existing survey at the Buyer's expense within ninety (90) days of the Effective Date of this Agreement. If the metes and bounds description of the Property in the survey obtained by the Buyer are different from the ones described in Attachment "A", then the parties shall use the updated survey to describe the Property in this Agreement.
4. **TITLE REVIEW PERIOD.** The Buyer may review the commitment for title insurance and the survey within 90 days of receiving the commitment for title insurance and the updated 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 ("**Objections**"), if any. Seller shall, at Seller's sole cost and expense, remove or cause the removal of all of the following (or in the alternative, obtain for Buyer, at Seller's sole cost and expense, title insurance coverage insuring over the following, in form and substance satisfactory to Buyer in its sole discretion): (a) any and all rights of parties in possession; (b) all exceptions to title and survey matters created by Seller on or after the Effective Date without the prior written consent of Buyer (which consent may be withheld in Buyer's sole and absolute discretion); (c) any and all liens and encumbrances, including but not limited to monetary liens, affecting the Property which secure an obligation to pay money or can be removed by payment of a liquidated sum of money (other

than installments of real estate taxes or assessments not delinquent as of the Closing); (d) any mechanic's, materialman's, or similar liens, or right to such liens, whether or not shown by the public records, (e) easements or claims of easements not shown in the chain of title or by the public records, and (f) all taxes and assessments due and payable for any period prior to the Closing (the foregoing clauses (a) through (f), collectively, the "**Obligatory Removal Exceptions**"). If the Buyer does not send the Seller a written notice with the Objections within the Title Review Period, then the parties will proceed with the purchase and sale of the Property in accordance with the provisions of this Agreement. 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 all of the Objections before the Closing Date. If the Seller elects this option, then the Seller will cure all of the Objections before the Closing Date; or
  - b. Notify the Buyer that the Seller will not cure all of the Objections, in which case Buyer may, in its sole discretion, either (i) terminate this Agreement and recover the Extension Deposit, or (ii) take title to the Property subject to the Objections; however, to the extent Seller refuses to remove any Obligatory Removal Exceptions, Buyer shall receive a credit against the Purchase Price for any expenses incurred or reasonably expected to be incurred by Buyer in removing all such Obligatory Removal Exceptions. Failure by Seller to respond to the Objections within the time period set forth above shall be deemed an election by Seller not to cure the Objections.
  - c. In either case, if reasonably requested by Seller, Buyer and Seller shall extend the Closing Date to allow additional time for Seller to remove or cause the removal of such Objections. If Buyer elects to extend the Closing Date under the foregoing clause and the Objections are not subsequently cured to the satisfaction of Buyer within a reasonable amount of time following such election, then Buyer may elect either of the options set forth in the immediately preceding subsection.
5. **WATER RIGHTS.** Seller acknowledges that Buyer may establish redundant and/or back up water and wastewater resources to serve the Property in accordance with applicable laws and subject to the terms and conditions of the W&WW Agreement. If Buyer so elects to establish redundant and/or backup water sources by (i) collecting rainwater on the Property, or (ii) otherwise lawfully storing water on the Property for potential use as needed, Seller acknowledges that Seller shall not be entitled to access, capture, or otherwise acquire and beneficially use such redundant and/or backup water collected and/or stored by Buyer. Seller acknowledges that Buyer may construct any infrastructure or install any equipment necessary for such purposes.

## **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. The Buyer may afford the Seller a certain time to cure any defects on the Property that are discovered and notified to the Seller during the Inspection Period in accordance with Section 4(C)(4). The Seller may cure the defects notified by the Buyer or Buyer may choose to terminate this Agreement if the Seller refuses to cure the defects in accordance with Section

4(C)(4). If the Agreement is terminated under this provision, then the Seller will refund, or direct the Title Company to refund, the Extension Deposit 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 a 10 calendar day opportunity to cure. If the Seller terminates this Agreement pursuant to this provision, then the Seller may keep the Access Deposit and the Extension Deposit made by the Buyer. Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine and the Access Deposit and the Extension Deposit are a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. If the Buyer terminates this Agreement for cause, then Buyer may, in its sole and absolute discretion, either (a) file a *lis pendens* and/or seek specific performance to cause Seller to convey the Property to Buyer pursuant to the terms and conditions of this Agreement, or (b) recover the Access Deposit and Extension Deposit and such will be the Buyer's sole remedy under this Agreement. Seller acknowledges that the Property is unique in nature and that this Agreement relates to an interest in real property; and, accordingly, that Buyer shall be entitled to specific performance of this Agreement. In the event any action is brought by either party hereto against the other party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing party shall be entitled to recover from the other party the reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including, without limitation, the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding.
3. **TERMINATION DURING TITLE REVIEW PERIOD.** If during the Title Review Period, Buyer decides to terminate this Agreement in accordance with Section 4(C)(4), then Buyer will send a written termination notice to Seller, and Seller will refund, or direct the Title Company to refund, the Extension Deposit to Buyer.
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 refund, or direct the Title Company to refund, the Extension Deposit to the Buyer.

## **SECTION 6. CLOSING.**

- A. **CLOSING DATE.** 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") within 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 special warranty deed (“**Deed**”) conveying the title to the Property 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;
  4. All Closing Costs attributable to Seller; and
  5. Any other items requested by the Title Company and Buyer reasonably necessary to provide clear title and finalize the closing of this Agreement, including without limitation, a gap indemnity and any title affidavits confirming, inter alia, the absence of any mechanics’, materialmans’, or similar liens on, or parties in possession of, all or any portion of the Property requested by Title Company.
- 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 Access Deposit being held by Seller and the Extension Deposit that is being held by the Title Company;
  2. All Closing Costs attributable to Buyer; and
  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 Land and Improvements. 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. The provisions of this Section 6(D) shall survive Closing for a period of 12 months.
- 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.
- F. **BUYER’S CONDITIONS PRECEDENT TO CLOSING.** The obligation of Buyer to render performance under this Agreement is subject to the following conditions precedent (and conditions concurrent, with respect to deliveries and requirements required at Closing) (collectively, “Buyer’s Conditions”):
1. Water and Wastewater Agreement. Buyer and El Paso Water Utilities Public Service Board (“**El Paso Water**”) shall have entered into a written agreement acceptable to Buyer in Buyer’s sole and absolute discretion pursuant to which El Paso Water shall have agreed to provide water and wastewater service to the Property (“**W&WW Agreement**”), and as of Closing, such

W&WW Agreement shall be in full force and effect, all applicable appeals periods shall have run, and El Paso Water shall not be in default thereunder nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both.

2. Power Purchase Agreement. Buyer and El Paso Electric Company (“**El Paso Electric**”) shall have entered into a written agreement pursuant to which El Paso Electric shall have unconditionally agreed to provide electricity service to the Property in quantities and upon rates, terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion, and as of Closing, such agreement shall be in full force and effect, all applicable appeals periods shall have run, and El Paso Electric shall not be in default thereunder, nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both.
3. Development Agreement and/or Incentive Programs. Buyer, shall have entered into (a) an agreement with the City of El Paso (the “**City**”) pursuant to which the City shall have agreed to provide Buyer with certain economic development incentives (“**City EDA**”); and (b) an agreement with the County pursuant to which the County shall have agreed to provide Buyer with certain economic development incentives (“**County EDA**”, and collectively with the City EDA, are the “**EDAs**”), in each case on terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion. As of Closing the EDAs shall be in full force and effect, all applicable appeals periods shall have run, and neither the City nor the County shall be in default thereunder nor shall there have occurred any event or omission that would constitute a default but for the passage of time or giving of notice or both under either of the EDAs.
4. Title. The Title Company shall be prepared and irrevocably committed to issue to Buyer the Title Policy with no Obligatory Removal Exceptions. The Title Policy shall otherwise be in form and substance acceptable to Buyer.
5. Permits. Buyer shall have received all Permits and other approvals required (a) for the commencement of construction of improvements on the Property in accordance with the plans developed and adopted by Buyer, in its sole discretion, (b) for the disturbance of the ground at the Property and the grading of the Property, and (c) to operate the improvements in the manner contemplated by Buyer once complete, and all applicable appeals periods with respect to such Permits shall have run. “**Permits**” means approvals, licenses, permits, consents, certificates, registrations, exemptions, waivers, or other authorizations required by applicable law.
6. Subdivision. Seller shall have procured final approval of, and shall have filed in the El Paso County, Texas real estate records, a subdivision or summary plat which creates the Land as a legally subdivided parcel (“**Subdivision**”) upon terms and conditions acceptable to Buyer in its sole discretion and all applicable appeals periods shall have run. Buyer shall select and retain the engineer(s) and other consultants to prepare the materials to be submitted and filed with respect to the Subdivision.
7. Water Line Easement. Seller shall have delivered to Title Company a properly executed and acknowledged permanent easement agreement in favor of Buyer (the “**Water Line Easement**”) that is sufficient to allow Buyer or its utility provider to install and maintain water and wastewater lines and other equipment to serve the Property and Buyer’s infrastructure and equipment located on or adjacent to the Property and not less than 30 feet in width for its entire length.

8. No Moratoria. No moratorium, statute, regulation, ordinance, or federal, state, county or local legislation, or order, judgment, ruling or decree of any governmental agency or of any court shall have been enacted, adopted, issued, entered or pending which would adversely affect Buyer's intended use of the Property.
9. Actions, Suits, etc. As of the Closing Date, there shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings that could adversely affect the operation or value of the Property or Seller's ability to perform its obligations under this Agreement.
10. Waiver of Surface Rights. No later than 3 Business Days prior to the Closing Date, if there has been any prior severance or reservation of all or any portion of the mineral estate or subsurface rights with respect to the Property, Seller shall provide a waiver of all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such mineral reservation, including without limitation the right to enter upon all or any part of the surface of the Land for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the mineral estate, executed and acknowledged by all owners, holders or lessees of any portion of the mineral estate in form acceptable to Buyer for recordation in the official records of the County.
11. No Default. Seller shall have kept, performed and observed each and every agreement and obligation on its part to be kept, performed and observed hereunder; all of Sellers' covenants, representations and warranties herein shall be true and correct in all material respects on, and as if made on, the Closing Date.
12. Abandonment of Electrical Easement. Seller shall have abandoned, or caused to be abandoned, that certain electric transmission utility easement between Seller, as grantor, and the El Paso Electric Company and Mountain States Telephone and Telegraph Company, their successors and assigns ("**El Paso Electric**") as grantee, recorded May 15, 1957 in Volume 1343, Page 54, of the Official Public Records of El Paso County, Texas (the "**Electrical Easement**"). Seller agrees to obtain from El Paso Electric a release of any easement or other rights of El Paso Electric to the Electrical Easement or in any way relating to the Electrical Easement in recordable form and in substance satisfactory to remove such easement(s) or other such rights as encumbrances to title of the Property, as determined by the Title Company.
13. Stan Roberts Sr. Ave. Improvements. Seller shall have executed and obtained any instruments reasonably necessary to permit Buyer to develop the Stan Roberts Sr. Ave. Improvements pursuant to the terms set forth in the 380 Agreement, including but not limited to a quitclaim deed from the County of El Paso to Seller conveying any rights, title, and interest in the portion of Stan Roberts Sr. Avenue that Buyer will develop pursuant to the terms of the 380 Agreement.

Buyer may, in its sole and absolute discretion, waive conditionally or absolutely the fulfillment of any one or more of these conditions, or any part thereof, at any time; provided, that any waiver or declaration shall be binding upon Buyer only if made in a writing signed by Buyer. Any waiver shall not affect Buyer's ability to pursue any remedy to which it may be entitled hereunder. If Buyer's obligations under this Agreement are excused by reason of the failure of one or more of Buyer's Conditions, then upon written notice from Buyer to Seller and Title Company of Buyer's election to terminate this Agreement, Seller and Title Company shall immediately disburse to Buyer the Extension Deposit.

## 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. INDEPENDENT CONTRACTOR RELATIONSHIP. 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 (i) both postmarked and delivered by certified mail or (ii) by electronic mail with a confirming copy being forwarded by a reputable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below. All mailed notices are considered received 3 business days after the postmark date. 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 Email: <a href="mailto:CityManager@elpasotexas.gov">CityManager@elpasotexas.gov</a>
Copy:	The City of El Paso Attn: City Attorney P.O. Box 1890 El Paso, Texas 79950-1890 Email: <a href="mailto:CityAttorney@elpasotexas.gov">CityAttorney@elpasotexas.gov</a>
Copy:	City of El Paso Attn: Director of Economic Development P.O. Box 1890 El Paso, Texas 79950-1890 Email: <a href="mailto:EDCompliance@elpasotexas.gov">EDCompliance@elpasotexas.gov</a> Telephone: 915-212-0094
To the Buyer:	Worldwide LLC c/o Winstead PC 500 Winstead Building 2728 N. Harwood Street Dallas, Texas 75201 Attn: Harrison Papaila

Email: [hpapaila@winstead.com](mailto:hpapaila@winstead.com)  
Telephone: 214-745-5328

Copy:

Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: Paul Wageman  
Email: [pwageman@winstead.com](mailto:pwageman@winstead.com)  
Telephone: 214-745-5173

- E. **CONFIDENTIALITY.** 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).
- F. **GOVERNING LAW.** This Agreement is governed by Texas law.
- G. **VENUE; WAIVER OF JURY TRIAL.** The venue for disputes regarding this Agreement between the parties will be federal courts of the Northern District of Texas, Dallas Division, except in the limited instance where said federal courts do not have jurisdiction over the applicable dispute, in which case venue shall instead exclusively lie in El Paso County, Texas. The provisions of this Section shall survive the termination of this Agreement and the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment. BUYER AND SELLER EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. BUYER AND SELLER AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT EITHER OF THEM MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.
- 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.** Subject to Section 5(A)(4), 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 the Buyer's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other. Notwithstanding the foregoing, Buyer shall have the right, at Buyer's expense, to assign and transfer all, or any part of its interest in, this Agreement to any affiliate controlling, controlled by or under common control with the Buyer (and upon such assignment the assigning entity shall be relieved of its covenants, commitments and obligations hereunder) without the consent of Seller.
- N. **THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for 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. A scanned or photocopy signature on this Agreement, any amendment hereto, any non-recorded Closing Document, or any notice delivered hereunder will have the same legal effect as an original signature.
- Q. **FURTHER ASSURANCES.** In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at or after Closing any and all such further acts, instruments, deeds and assurances as may be reasonably required to consummate the transactions contemplated hereby. Without limiting the foregoing, Seller hereby expressly agrees to, diligently and in good faith, cooperate with Buyer and provide any assistance as shall be reasonably requested by Buyer in connection with Buyer's efforts to cause the satisfaction of Buyer's Conditions.
- R. **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 party or parties to this Agreement to be bound by such change, modification or termination.

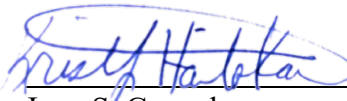
EXECUTED by Seller the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SELLER**


**CITY OF EL PASO, TEXAS**

\_\_\_\_\_  
Cary Westin  
Interim City Manager

**APPROVED AS TO FORM:**

 /for/  
\_\_\_\_\_  
Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Elizabeth Triggs, Director  
Economic and International Development

EXECUTED by Buyer the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BUYER**

**WORLDWIDE LLC,**  
a Delaware limited liability company

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

**ATTACHMENT "A"**  
**PROPERTY DESCRIPTION**

Being a tract of land situated in Section 3, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 2381 and Section 4, Block 80, Township 1, Texas and Pacific Railroad Survey, Abstract No. 9862, City of El Paso, El Paso County, Texas further being portions of tracts of land described in deeds to City of El Paso recorded In Volume 1176, Page 504, and Volume 1186, Page 178, Deed Records, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 2 Inch pipe found In concrete marking the common corner of Section 3, 4, 9, and 10, Block 80, Township 1, Thence, North 02 degrees 06 minutes 58 seconds East, along the common line of said Sections 3 and 4, a distance of 220.30 feet to a 1 /2 inch capped iron rod found (unreadable) for corner on the North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529) (variable width right-of-way), said corner being THE POINT OF BEGINNING;

Thence North 86 degrees 45 minutes 26 seconds West, along the South line of the herein described tract and said North right-of-way line of Stan Roberts Sr. Avenue (Farm to Market Road 2529), a distance of 5,279.75 feet to a 1/2 inch iron rod found for the Southwest corner of the herein described tract, called to be on the West line of said Section 4 and the East line of Section 5, Block 80, Township 1;

Thence North 02 degrees 06 minutes 25 seconds East, along the West line of the herein described tract and the common line of said Section 4 and Section 5, a distance of 4,894.97 feet to a 5/8 inch iron rod found for the Northwest corner of the herein described tract and the Southwest corner of a called 36.3628 acre tract within said Section 4 described In a deed to El Paso Electric Co., recorded In Volume 1226, Page 0532, Deed Records, El Paso, Texas;

Thence South 87 degrees 08 minutes 05 seconds East, along the North line of the herein described tract and the South line of said 36.3628 acre tract a distance of 5,279.39 feet to a 5/8 inch iron rod found on the called common line of said Sections 3 and 4 and being the Southeast corner of said 36.3628 acre tract In said Section 4 and the Southwest corner of a 36.4457 acre tract within said Section 3 to said El Paso Electric Co. recorded in said Volume 1226, Page 0532;

Thence along the North line of the herein described tract and a South line of said 36.4457 acre tract the following (3) three courses and distances:

South 87 degrees 07 minutes 56 seconds East, a distance of 5,179.86 feet to a El Paso Electric marker In concrete found for corner;

South 51 degrees 37 minutes 43 seconds East, a distance of 124.06 feet to a 5/8 Inch Iron rod found for an ell corner of the herein described tract and Southeast corner of said El Paso Electric Co. tract;

North 02 degrees 08 minutes 29 seconds East, passing through at a distance of 72.13 feet a 3/4 inch iron pipe found for reference, passing through a 2 inch iron pipe found at a distance of 372.37 feet, a total distance of 373.43 feet to a point for corner on the called Texas and New Mexico State Line and the South right-of-way line of State Line Drive for the most Northerly Northwest corner of the herein described tract. and the Northeast corner of said 36.4457 acre tract;

Thence South 87 degrees 10 minutes 50 seconds East, along a North line of the herein described tract and in the called Texas and New Mexico State Line, along the South right-of-way line of said State Line Drive, a distance of 18.23 feet to a 1/2 inch iron rod found for the Northeast corner of the herein described tract and being the Northwest corner of a tract of land described in a deed to El Paso Electric Company, recorded in Volume 1314, Page 1466, said Deed Records;

Thence South 02 degrees 19 minutes 11 seconds West, along the common line of called Section 2 and said Section 3, a distance of 2,736.66 feet to a 1/2 inch iron rod found for the most Easterly Southeast corner of the herein described tract and the Northeast corner of a tract of land described in a deed to Samuel A. Mendoza, recorded In Document Number 20180001261, Official Public Records, El Paso County Texas from which a 5/8 inch iron rod found bears South 03 degrees 34 minutes 10 seconds East, a distance of 5.70 feet;

Thence North 87 degrees 05 minutes 39 seconds West, along a South line of the herein described tract and the North line of said Mendoza Tract, a tract of land to the Mullen Family Limited Partnership, recorded in Document Number 20160048262, said Official Public Records, and Bernard A. Goldberg and E. Molly Goldberg Trustees, recorded in 20050055318, said Official Public Records, a distance of 2,644.56 feet to a 1/2 inch iron rod found for an ell corner of the herein described tract and the Northwest corner of said Goldberg Tract, from which a 1/2 inch iron rod found for reference bears North 22 degrees 48 minutes 51 seconds East, a distance of 10.30 feet;

Thence South 02 degrees 13 minutes 07 seconds West, along an East line of the herein described tract and the West line of the said Goldberg Tract and said Mullen Tract, a distance of 2,095.99 feet to a 1/2 inch iron rod found for the North most Southeast corner of the herein described tract and the Northeast corner of a called 1.054 acre tract described In a deed to El Paso Electric Co., recorded In Volume 1043, Page 100 of said Deed Records;

Thence North 86 degrees 43 minutes 50 seconds West, along a South line of the herein described tract, and the North Line of said El Paso Electric Co. tract, a distance of 417.18 feet to an iron rod with cap (unreadable) found for an ell corner of the herein described tract and the Northwest corner of said El Paso Electric Tract;

Thence South 02 degrees 09 minutes 10 seconds West. along an East line of the herein described tract, passing at a distance of 110.57 feet to a 2 inch Epeco Aluminum cap found for the Northwest corner of a tract of land described in a deed to the El Paso Electric Co., recorded in Volume 1338, Page 506, said Deed Records, continuing along said course for a total distance of 417.68 feet to a 5/8 Inch Iron rod with cap stamped "Olsson" set in the North right-of-way line of said Stan Roberts Sr. Avenue for a South most Southeast corner of the herein described tract;

Thence North 86 degrees 45 minutes 16 seconds West, along the South line of the herein described tract and the North Right-of-way Line of said Stan Roberts Sr. Avenue, passing through at a distance of 675.59 feet, a 1/2 Inch Iron rod found, continuing along said course for a total distance of 2,222.58 feet to the POINT OF BEGINNING, containing 45,256,585 Square Feet or 1,038.948 Acres of Land.

**ATTACHMENT "B"**  
**SPECIAL WARRANTY 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):

The real property in El Paso County, as more particularly described in Attachment "A".

CONSIDERATION

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

RESERVATION FROM CONVEYANCE

Grantor reserves, retains, and does not convey by this deed the Groundwater (as defined herein below) and Groundwater Rights (as defined herein below). The term "**Groundwater**" shall mean the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, formations, and horizons beneath the surface of the Property. The term "Groundwater" shall not include water delivered to Grantee by El Paso Water Utilities Public Service Board ("**El Paso Water**") pursuant to the \_\_\_\_\_ between El Paso Water and Grantee dated \_\_\_\_\_ (the "**W&WW Agreement**"), surface water, and Grantee-managed reservoirs and aquifers permitted pursuant to the W&WW Agreement. The term "**Groundwater Rights**" shall mean, subject to the following sentence, (1) the right to access, test, capture, explore for, drill for, develop, withdraw, produce, store, treat, transport or otherwise acquire and beneficially use, the Groundwater beneath the Property from adjacent land; and (2) the right to apply for and obtain all permits, licenses, or other governmental authorizations relating to any of the foregoing, including but not limited to any permit issued by a groundwater conservation district or other governmental entity existing now or in the future and having jurisdiction over the Groundwater

and/or the exploration, drilling, production, use, storage, treatment, reuse, recharge or transport of Groundwater that may be necessary for the exercise of the Grantor's limited rights therein, but only from adjacent land. The term "Groundwater Rights" shall expressly exclude any rights granted by El Paso Water to Grantee pursuant to the W&WW Agreement, including the right for Grantee to manage, store, recharge, and withdraw water from reservoirs and aquifers. Grantor irrevocably waives all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use all or any part of the surface of the Property for any purpose in connection with such Groundwater Rights, including without limitation the right to enter upon all or any part of the surface of the Property for purposes of exploring for, mining, drilling, producing, transporting, marketing, storing or any other purposes incident to the development or the production of the Groundwater. Grantor may only produce such Groundwater from land adjacent to the Property, provided that such production does not interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property, and further provided that the drilling for such Groundwater shall enter the Property at a depth greater than 400 feet.

#### EXCEPTIONS TO CONVEYANCE

See permitted exceptions attached to this Deed as Attachment "B"

#### EXCEPTIONS TO WARRANTY

Conveyance of the Property is an "as is, where is and with all faults" transaction and that the Grantor 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).

#### WARRANTY AND CONVEYANCE

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and exceptions to warranty, GRANTS, BARGAINS, 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 when the claim is by, through, or under Grantor but not otherwise, subject to the permitted exceptions attached to this Deed as Attachment "B" and the reservations from conveyance.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:  
CITY OF EL PASO

\_\_\_\_\_, City Manager

STATE OF TEXAS                    )  
COUNTY OF EL PASO)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission expires: \_\_\_\_\_