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

DEPARTMENT: **Engineering & Construction Management**

AGENDA DATE: **Introduction:** **December 11, 2012**
Public Hearing: **December 18, 2012**

CONTACT PERSON/PHONE: Irene D. Ramirez, P.E., Interim City Engineer

DISTRICT AFFECTED: 8

SUBJECT:

An **Ordinance** authorizing the City Manager to execute a contract of sale between the City of El Paso and *El Paso Motorsports, Inc.* for the sale of a surplus City-owned property located at 6212 Fiesta Drive, a vacant residential lot.

BACKGROUND / DISCUSSION:

The vacant lot at 6212 Fiesta Drive is the site of one of three homes on Fiesta Drive that were irreparably damaged by the flood event of 2006 and bought out by the City as part of its emergency buyout program. Subsequently, all three houses were demolished. Two lots are currently included in the design for a public park. The subject lot is not needed for the proposed park and is being sold off as surplus property. An independent appraisal ordered by the City established a market value of $31,500.00, the minimum acceptable offer for the open bidding process (Bid No. 2012-059). The successful bidder, *El Paso Motorsports, Inc.*, submitted a proposal to purchase the land for $32,000.00 plus bid advertising and closing cost expenditures.

PRIOR COUNCIL ACTION:

No prior council action on this transaction.

AMOUNT AND SOURCE OF FUNDING:

N/A – this is a revenue-generating transaction.

BOARD / COMMISSION ACTION:

(N/A)

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

DEPARTMENT HEAD: _____

Information copy to appropriate Deputy City Manager

RCAfiestaCOSordinance

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE WITH EL PASO MOTOSPORTS, INC., DBA SUN CITY BUILT FOR THE SALE OF THE PROPERTY AT 6212 FIESTA DRIVE, EL PASO, TEXAS IN THE AMOUNT OF $32,000.00

WHEREAS, the City of El Paso is the owner of Lot 365, Block 25, Coronado Hills Section 2, El Paso County, Texas, according to the plat thereof recorded in Volume 8, Page 40, Real Property Records, municipally known and numbered as 6212 Fiesta Drive, El Paso, El Paso County, Texas;

WHEREAS, the City determined to sell this property and has received an independent appraisal of the market value of its interest in the property;

WHEREAS, in accordance with Texas Local Government Code Section 272.001, the City of El Paso advertised and solicited bids for the sale of the property; and

WHEREAS, El Paso Motorsports, Inc., dba Sun City Built submitted the highest bid for the property in the amount of $32,000.00.

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

That the City Manager is hereby authorized to sign, on behalf of the City of El Paso, contract of sale with El Paso Motorsports, Inc., dba Sun City Built for the sale of the Lot 365, Block 25, Coronado Hills Section 2, El Paso County, Texas, municipally known and numbered as 6212 Fiesta Drive, El Paso, El Paso County, Texas in the amount of $32,000.00 and City Manager is further authorized to sign all documents necessary to effectuate this transaction.

PASSED AND APPROVED on this the _____ day of _____, 2012.

THE CITY OF EL PASO

ATTEST:

_____
John F. Cook,
Mayor

_____
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

ORDINANCE _____

CONTRACT OF SALE

between

CITY OF EL PASO

SELLER

AND

EL PASO MOTORSPORTS, INC.
a Texas Corporation, dba Sun City Built

BUYER

FOR

6212 Fiesta Drive
El Paso, Texas

CONTRACT OF SALE

This Contract of Sale (the ***Contract***) is made and entered into as of the Effective Date by and between **CITY OF EL PASO, TEXAS** (***Seller***), and **EL PASO MOTORSPORTS, INC.**, a Texas corporation, dba Sun City Built (***Buyer***).

ARTICLE I
DEFINED TERMS

1.1 **Definitions**. As used herein, the following terms have the meanings set forth below:

"Business Day" means any day, other than a Saturday or Sunday, on which national banks in El Paso, Texas, are open for business.

"Buyer's Objection Letter" has the meaning assigned to such term in Section 4.3 hereof.

"Closing" means consummation of the sale and purchase of the Property contemplated by this Contract by the deliveries required under Section 7.2.

"Closing Date" means the date on which the Closing will be held as specified in Section 7.1.

"Cure Period" has the meaning assigned to such term in Section 4.4 hereof.

"Deed" has the meaning assigned to such term in Section 7.2(a)(ii) hereof.

"Earnest Money Deposit" means the money, plus any accrued interest thereon, deposited by Buyer in escrow with the Title Company at the time and in the amount specified in Section 3.2 hereof.

"Effective Date" means the date upon which the City Manager signs this contract on behalf of Buyer.

"Existing Survey" has the meaning assigned to such term in Section 4.2 hereof.

"Improvements" means the buildings and other improvements located on the Land and all fixtures and other property owned by Seller that is affixed to the Land.

"Inspection Period" means the period commencing on the Effective Date and ending 30 Business Days after Seller provides written notification it has completed demolition and site preparation as provided in Section 4.6 hereof.

"Inspections" has the meaning assigned to such term in Section 4.7 hereof.

"Land" means that certain tract of land located in El Paso County, Texas, described as on **Exhibit A** appended hereto, together with all rights appurtenant thereto.

"Liabilities" means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unfixed, unliquidated, unsecured, unmatured, unaccrued,

unasserted, contingent, conditional, inchoate, implied, vicarious, joint, several or secondary liability, and strict liability including strict liability arising under ***environmental laws).***

"Ownership Documents" has the meaning assigned to such term in Section 5.2(a) hereof.

"Permitted Exceptions" means (i) those exceptions or conditions that affect or may affect title to the Property that are approved or deemed to be approved by Buyer.

"Personal Property" means all (i) furnishings, furniture, appliances, equipment, machinery and other personal property owned by Seller and located on or used in connection with the ownership, maintenance or operation of the Land or the Improvements; (ii) all plans and specifications, if any, in the possession of Seller which were prepared in connection with the construction or renovation of any of the Improvements; and (iii) all licenses, permits and warranties, if any, for the benefit of Seller, now in effect with respect to any portion of the Land or the Improvements.

"Property" means, collectively, the Land, Improvements and the Personal Property.

"Purchase Price" means the total consideration to be paid by Buyer to Seller for the purchase of the Property.

"Seller's Title Cure Period" has the meaning assigned to such term in Section 4.4 hereof.

"Survey" has the meaning assigned to such term in Section 4.2 hereof.

"Title Company" means Stewart Title Company, 415 N. Mesa Street, El Paso, Texas, Attn: Linda Kirby.

"Title Commitment" has the meaning assigned to such term in Section 4.1 hereof.

"Title Review Period" has the meaning assigned to such term in Section 4.3 hereof.

"Title Policy" has the meaning assigned to such term in Section 4.5 hereof.

1.2 **Other Defined Terms**. Certain other defined terms have the respective meanings assigned to them elsewhere in this Contract.

ARTICLE II
AGREEMENT AND CONDITIONS OF PURCHASE AND SALE

2.1 On the terms and conditions stated in this Contract, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, the Property.

2.2 The following conditions will be applicable to the Seller's sale of the Property:

(a) A restrictive covenant that the Buyer, its successors or assigns, will not for a period of seventy-five (75) years discard, place or store upon such land, any radioactive material

or other materials which would contaminate or otherwise damage the ground water supply or resources of the City of El Paso.

(b) Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Any mitigation of any conditions on the Property, including archeological sites or, without limitation, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for their determination of the nature and extent of any archeological sites, or without limitation, any adverse environmental conditions by their complete inspection of the Property.

(c) Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the City or its water and/or stormwater utility (El Paso Water Utilities and its Public Service Board).

(d) All ground water, water rights, or rights to surface water shall be reserved to the Seller (including the right to drill a well and produce therefrom any quantity of ground water), subject to all easements restrictions, reservations, right of ways, dedications, and other encumbrances of record or apparent upon the real property.

ARTICLE III
PURCHASE PRICE

3.1 **Purchase Price**. The total purchase price to be paid by Buyer for the Property shall be the appraised value, which is estimated to be THIRTY TWO THOUSAND AND NO/100 DOLLARS ($32,000.00) (the "**Purchase Price**"). The Purchase Price, net of all prorated amounts allocated to Seller as set forth in this Contract, shall be payable to Seller through the Title Company at the Closing by wire transfer of immediately available federal funds.

3.2 **Earnest Money Deposit**. As a part of his offer, Buyer has submitted to the Seller a check in the amount of the Three Thousand Two Hundred and NO/100 Dollars ($3,200.00) and, within five (5) Business Days following the Effective Date of this Agreement, the Seller shall deposit such funds with the Title Company as Earnest Money (the "**Earnest Money Deposit**") as follows:

The Earnest Money Deposit shall be held by the Title Company in escrow to be applied or disposed of as provided in this Contract, and shall be invested in an interest-bearing account at a financial institution in El Paso, Texas, reasonably acceptable to Seller and Buyer, and all interest earned thereon shall become a part thereof. If the purchase and sale hereunder are consummated in accordance with the terms of this Contract, the entire Earnest Money Deposit shall be applied to the Purchase Price at Closing.

ARTICLE IV
TITLE AND SURVEY AND INSPECTION OF PROPERTY

4.1 **Title Commitment**. Within five (5) Business Days following the Effective Date, Seller agrees to order, at Buyer's sole cost and expense, a current commitment for Title Insurance for the Property (the "**Title Commitment**"), a copy of which shall be furnished to Seller and Buyer. The Title Commitment shall contain the express commitment of the Title Company to issue a Texas Form T-1 Owner Policy of Title Insurance for the Property, which shall otherwise be in form and content consistent with Section 4.5 hereof. The Title Commitment shall be accompanied by copies of all instruments that create or evidence title exceptions affecting the Property.

4.2 **Survey**. Seller has obtained a new survey or an update of any existing survey at Buyer's cost (any such updated survey or new survey being herein called the "**Survey**"). The parties agree that the Survey must satisfy the following requirements unless waived in writing by Seller and Buyer: The Survey shall (i) be an accurate Category 1A Land Title Survey of the Property by a surveyor registered under the laws of the State of Texas, which Survey shall be prepared in accordance with the *Manual of Practice for Land Surveying in Texas* and shall show the number of acres contained in the Property to the nearest one thousandth (1/1000th) of an acre; (ii) contain a legally sufficient description of the metes and bounds of the Property; (ii) be dated no more than two (2) years prior to the Closing Date and (iii) certified to Seller, Buyer and the Title Company. The parties agree to use the metes and bounds description of the Land contained in the Survey, if different from that appended hereto as **Exhibit A,** for purposes of describing the Property in the warranty deed conveying to Buyer title to the Property.

4.3 **Review of Title Commitment and Survey**. Buyer shall have a period of 10 Business Days following its receipt of the Title Commitment and the Survey (the "**Title Review Period**") in which to review the Title Commitment and the Survey and give written notice to Seller specifying Buyer's objections, if any, to the Title Commitment, the Survey (the "**Buyer's Objection Letter**"). If Buyer fails to give the Buyer's Objection Letter to Seller prior to the expiration of the Title Review Period, then all exceptions to title shown on Schedule B but not on Schedule C of the Title Commitment are deemed to be Permitted Exceptions. Except as the Buyer may direct, all items on Schedule C can never be deemed to be Permitted Exceptions and must be removed by Seller at Seller's sole cost as a precondition to closing and Buyer shall have no obligation to object to them.

4.4 **Seller's Obligation to Cure; Buyer's Right to Terminate**. If Buyer delivers to Seller the Buyer's Objection Letter before the end of the Title Review Period, then Seller may, but is not obligated to, within 10 Business Days of the date of receipt of such letter (the "**Cure Period**"), give written notice ("**Seller's Title Cure Notice**") to Buyer of Seller's intention to satisfy none, some or all of Buyer's objections concerning Schedule B items. It is expressly understood that in no event shall Seller be obligated or required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any matter contained in Buyer's Objection Letter. If Seller fails to timely give Buyer the Seller's Title Cure Notice or if Seller fails or refuses to satisfy any or all of Buyer's objections, then

Buyer, as its sole and exclusive right and remedy, shall notify Seller in writing within 10 Business Days after the expiration of the Cure Period, that either:

(a) Buyer waives its right to further object to any objections it has asserted which Seller has failed or refused to satisfy in which event those objections asserted by Buyer shall be deemed Permitted Exceptions and waived by Buyer and the parties shall proceed to close this transaction;

(b) Buyer may in its sole discretion agree to extend the Cure Period to allow Seller additional time to cure objections; or

(c) Terminate this Contract, in which event the Title Company shall return to Buyer the Earnest Money Deposit as provided herein, and Seller and Buyer shall have no further obligations, one to the other, with respect to the subject matter of this Contract except as otherwise provided herein.

4.5 **Title Policy**. At the Closing, or as soon thereafter as the Title Company can issue the same, the parties shall cause, at Buyer's sole cost and expense, a standard T-1 form Owner Policy of Title Insurance (the "**Title Policy**") to be furnished to Buyer by the Title Company. The Title Policy shall be issued by the Title Company and shall insure that Buyer has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy shall contain no exceptions other than Permitted Exceptions and shall provide that:

(a) The survey exception may be amended, at Buyer's expense, to except only "shortages in area";

(b) The exception for rights of parties in possession shall be deleted;

(c) All ground water, water rights, or rights to surface water shall be reserved to the City of El Paso and will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record apparent upon the property.

(d) The tax exception shall be limited to taxes for the year of Closing and subsequent years not yet due and payable; and

(e) A restrictive covenant that the Buyer, its successors or assigns, will not for a period of seventy-five (75) years discard, place or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City of El Paso.

(f) Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the City or its water and/or stormwater utility (El Paso Water Utilities and its Public Service Board).

(g) Unless waived by Buyer, all exceptions, conditions, or requirements described in Schedule C of the Title Commitment shall be released and satisfied prior to or at Closing and such items and requirements shall not be exceptions to the Owner Title Policy to be provided by Seller.

4.6 **Demolition.** Following the Closing, Buyer shall, at Buyer's sole cost and expense, cause the Improvements to be demolished, if any, and cause all refuse to be removed from the land and properly disposed of, and the site graded and prepared as development ready.

4.7 **Inspection.**

(a) Buyer, at Buyer's expense, shall have the right during the Inspection Period to make such physical examinations, studies, appraisals, inspections, engineering, environmental and insurance underwriting tests and investigations (the "**Inspections**") of the Property as Buyer may deem advisable. Seller shall reasonably cooperate with Buyer in making the Property reasonably available for Buyer's Inspections. Buyer may also reinspect the Property prior to Closing to verify that the Project has remained in similar physical shape, ordinary wear and tear excepted, as the Property was during the Inspection Period. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer relating to such inspection and its other due diligence shall be at the sole cost and expense of Buyer. Buyer agrees to be responsible and liable for any claims or damages, including mechanic's and materialmen's liens and reasonable attorneys' fees incurred by Seller, caused or arising out of or in connection with Buyer's Inspections of the Land and/or Improvements. Buyer shall require its representatives, agents, consultants and contractors ("**Buyer Representatives**") entering upon the Property for any purpose to obtain and maintain during in the Inspection Period general liability insurance in an amount not less than $500,000.00 and property damage insurance in an amount not less than $500,000.00, with an insurance carrier which is licensed in the State of Texas and is reasonably acceptable to Seller. The provisions of this Section shall survive the Closing or the earlier termination of this Contract. If Buyer elects to terminate this Contract in accordance with the terms hereof, Buyer shall provide Seller with copies of all documents, tests and reports generated from Buyer's Inspection within five (5) Business Days following the date of Buyer's termination.

(b) If Buyer has not terminated this Contract (i) during the Inspection Period or (ii) within 10 Business Days after the expiration of the Cure Period as provided in Section 4.4(b), then Buyer waives its right to terminate this Contract. If Buyer terminates this Contract during the Inspection Period or within 10 Business Days after the expiration of the Cure Period, then, in either event, the Earnest Money Deposit shall be returned to Buyer, and thereafter Seller and Buyer shall have no further obligations to each other with respect to the subject matter of this Contract except as otherwise expressly provided herein.

ARTICLE V
REPRESENTATIONS, COVENANTS, AND AGREEMENTS OF SELLER

5.1 **Representations of Seller**. The Seller represents, to the extent allowed by law, to Buyer that to its knowledge as of the Effective Date and as of the Closing Date as follows:

(a) Seller has the full right, power, and authority to sell and convey to Buyer the Property as provided in this Contract and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Contract and to carry out Seller's obligations hereunder has been, or on the Closing Date will have been, taken, and this Contract constitutes a valid and binding obligation of the Seller, enforceable in accordance with its terms;

(b) On the Effective Date, and as of the date of Closing, there are no adverse or other parties in possession of the Property or who have any leasehold rights in the Property;

(c) Seller has removed all of Seller's inventory, goods, supplies and furniture, and all personal possessions from the Property, and left the Property free and clear of all personal possessions and debris;

(d) No action has been taken, suffered or permitted by or on behalf of the Seller, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialman's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; and no liens or lien claims, choate or inchoate, arising from the City's actions or otherwise, exist or can exist for the benefit of the mechanic or materialman in regard to the Property; and except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller;

(e) There is no litigation pending or threatened, affecting the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property;

(e) Seller has not received written notice of any pending condemnation action with respect to all or any portion of the Property and there are no existing condemnation or other legal proceedings affecting the existing use of the Property by any governmental authority having jurisdiction over or affecting all or any part of the Property;

(f) At the Closing, there will be no unpaid bills or claims in connection with any repair of the Improvements or other work performed or material purchased in connection with the Improvements;

(g) No one will have the right to occupy the Property after the Closing Date and no contracts of any kind, including contracts for maintenance, security, disposal, or fire suppression will survive the Closing;

(h) Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act or the Tax Reform Act of 1986, and Buyer is not obligated to withhold any portion of the Purchase Price for the benefit of the Internal Revenue Service;

(i) While the Seller owned the Property, the Property was exempt from ad valorem taxes;

(j) All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property have been complied with; and

5.2 **Agreements of Seller**. Seller covenants and agrees with Buyer as follows:

(a) **Ownership Documents**. Within 5 Business Days following the Effective Date, Seller shall deliver to Buyer the following items (the "**Ownership Documents**") with respect to the Property, to the extent in the possession or under the reasonable control of Seller:

(i) Any "as-built" plans and specifications for the Improvements and a copy of the results of all physical inspections, all structural, mechanical, engineering or soil reports, if any, prepared with respect to the Property;

(ii) A copy of current real estate and personal property tax bills or other documentation showing the amount of current real property taxes and the assessed value of the Land and Improvements; and

(iii) A copy of all environmental reports, inspections or assessments, if any, of the Land and Improvements.

If the parties fail to consummate the transaction described herein for any reason other than the Seller's default, Buyer agrees to return to Seller all materials delivered by or on behalf of Seller pursuant to or in connection with this Contract within 10 Business Days of such event.

5.3 **Pre-Closing Claims**. The Seller agrees that the Buyer's acceptance of title to the Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the Seller in connection with the Property. The

Seller hereby expressly disclaims any and all liability to third parties that have any claims against the Seller.

5.4 **Condition of Property Prior to Closing.** Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Buyer.

5.5 **"AS IS, WHERE IS" SALE.** THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE PROPERTY AS IS WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE HABITABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY THE SELLER. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE AN INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

5.6 **Survival.** All agreements of Seller made in this Contract shall survive the execution and delivery the documents and Closing, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

ARTICLE VI
REPRESENTATIONS, WARRANTIES
OF BUYER

6.1 **Buyer's Representations**. Buyer hereby represents and warrants to Seller as of the date of this Contract and as of the Closing Date as follows:

(a) Buyer has the full right, power, and authority to purchase the Property as provided in this Contract and to carry out Buyer's obligations hereunder, and all requisite action necessary to authorize Buyer to enter into this Contract and to carry out Buyer's obligations hereunder has been, or on the Closing Date will have been, taken, and this Contract constitutes a valid and binding obligation of the Buyer, enforceable in accordance with its terms; and

(b) At the Closing, there will be no unpaid bills or claims in connection with any of the Inspections.

6.2 **Environmental Matters.** AFTER CLOSING, BETWEEN THE SELLER AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE THE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING 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. **THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE SELLER'S REPRESENTATIVES.** 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.

6.3 Use of the Property/**Compliance with Laws in Development of Site.**

(a) The Buyer represents to the City that it intends to use the Property for Residential Use and in accordance with the conditions in Exhibit "B", attached hereto and made a part hereof for all purposes.

(b) Buyer agrees that, at its own expense, it will comply with all federal, state and local laws and regulations now in force or which may hereafter be in force relating to the development of the site, including the approval of any design, location and improvements by any departments of the City in accordance with applicable planning processes.

6.4 **Survival Beyond Closing**. The representations, warranties, undertakings and agreements of Buyer contained herein survive the Closing and are not merged therein.

ARTICLE VII
CLOSING

7.1 **Date and Place of Closing**. Provided that Buyer has not terminated this Contract as herein provided and all of the other conditions of this Contract shall have been satisfied prior to or on the Closing Date, the Closing of this transaction shall take place at a time agreed by the parties at the offices of the Title Company 20 Business Days after the expiration of the Inspection Period (the "**Closing Date**"), or such earlier date as may be specified by Buyer by not less than 5 Business Days advance written notice to Seller.

7.2 **Items to be Delivered at Closing**

(a) **Seller**. At the Closing, Seller shall deliver or cause to be delivered to Buyer or the Title Company, the following items fully executed by Seller or Buyer, as the case may be, and acknowledged where so indicated by all necessary parties in respect to the Property:

(i) The Title Policy, in the form specified in Section 4.5 hereof (unless waived by Buyer in accordance with the provisions of Section 4.5);

(ii) A Special Warranty Deed (the "**Deed**"), duly executed and acknowledged by Seller, conveying title to the Land and Improvements, in substantially the form of **Exhibit C** appended hereto, subject only to the Permitted Exceptions;

(iii) An affidavit, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Seller's United States identification number and that each of Seller is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by Seller;

(iv) The environmental reports, test results and disposal documentation with regard to the demolition and removal of asbestos from the site, if any;

(v) All keys or other access devices in the possession of Seller or their agents to the locks located at the Project; and

(vi) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

(b) **Buyer**. At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Title Company, the following items:

(i) The Purchase Price, less the Earnest Money being held by the Title Company which is applicable to the Purchase Price, payable by wire transfer as required by Section 3.1 hereof;

(ii) Appropriate evidence of authorization reasonably satisfactory to Seller and the Title Company for the consummation of the transaction contemplated by this Contract; and

(iii) Any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.3 **Prorations**. The following items shall be adjusted or prorated between Seller and Buyer as set forth below:

(a) **Taxes**. General real estate taxes for the then current year relating to the Property shall be prorated as of midnight preceding 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.

7.4 **Recalculation of Prorations**. In the event the Closing does not occur and fund as of 12:00 noon, local time, on the Closing Date, all prorations shall extend to the midnight of the following day.

7.5 **Possession**. Possession of the Property shall be delivered to Buyer by Seller at the Closing subject to the rights of any approved third parties under the Permitted Exceptions.

7.6 **Costs of Closing**. Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Contract. Buyer shall pay for the premium for Title Policy and all endorsements requested by Buyer; all real estate tax searches; UCC searches; the cost of the Survey; its own engineering inspections as well as for the charges attributable to recording the Deed. The Buyer shall pay the cost of any Title Company escrow fees and any other closing costs. Any other expenses that are incurred by

either party that are expressly identified herein as being the responsibility of a particular party shall be paid by such party.

7.7 **Provisions of Article VII to Survive Closing**. The provisions of this Article VII survive the Closing.

ARTICLE VIII
DEFAULTS AND REMEDIES

8.1 **Default of Buyer**. If the Buyer has not terminated this Contract pursuant to any of the provisions hereof authorizing such termination, and Buyer defaults hereunder and fails to perform any of the covenants and/or agreements contained herein which are to be performed by Buyer, Seller shall be entitled to receive the Earnest Money Deposit as Seller's sole and exclusive remedy, as liquidated damages, due to the inconvenience of ascertaining and measuring actual damages, and the uncertainty thereof.

8.2 **Default of Seller**. If Seller fails or refuses to consummate the sale of the Project to Buyer pursuant to this Contract at the Closing, or Seller fails to perform any of its other obligations hereunder for any reason other than Buyer's failure to perform Buyer's obligations under this Contract, then Buyer may, as Buyer's sole and exclusive right and remedy for any such default, either (i) Buyer may terminate this Contract by giving written notice thereof to Seller and the Title Company and Seller shall deliver all of the Earnest Money Deposit to Buyer and thereafter neither party hereto shall have any further rights or obligations hereunder; and (ii) Seller will absorb any of the costs the Seller may have incurred in preparation for the conveyance of the Property.

8.3 **Effect of Termination.** Upon termination of this Contract under this Section 8 or pursuant to any other provision of this Contract, no party thereafter shall have any further obligations to the other hereunder except for the payment of any sums or damages upon termination as provided herein and except for any covenants and obligations which expressly survive such termination.

ARTICLE IX
BROKERAGE COMMISSIONS

9.1 **Representations Concerning Brokerage Commission**. Seller hereby represents and warrants to Buyer that it has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction contemplated hereby. Buyer hereby represents and warrants to Seller that Buyer has not contracted or entered into any agreement with any real estate broker, agent, finder, or other party in connection with this transaction.

ARTICLE X
CASUALTY OR CONDEMNATION

10.1 **Right of Termination**. Seller agrees to give Buyer and Title Company prompt notice of any fire or other casualty affecting the Project or of any actual or threatened taking or condemnation of all or any portion of the Project. If, prior to the Closing, there shall occur damage to the Project caused by fire or other casualty, then Seller or Buyer shall have the right to postpone the Closing Date or terminate this Contract by written notice delivered to the other party within 30 Business Days after Buyer has received notice from Seller of that event or the date of the fire or other casualty or Seller's receipt of notice of taking or condemnation, whichever shall first occur. If this Contract is terminated pursuant to this Section 10.1, the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations under this Contract, or to each other with respect to the subject matter of this Contract. Notwithstanding the foregoing, in the event that the cost of repairing or restoring such damage shall be covered by available insurance and such cost shall be less than $10,000, then Buyer shall proceed to Closing and Seller shall assign at Closing to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss insurance and, in addition, Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

10.2 **Postponement of Closing**. In the event that Buyer gives notice to postpone the Closing Date pending a determination of the nature and extent of such damage or destruction and the availability and adequacy of insurance proceeds, the postponement shall be in effect for an additional 20 Business Days after the 30 Business Day period that Buyer has to give notice of its desire to postpone (the ***Damages Determination Period***).

10.3 **Insurance for Repair**. If the cost to repair or replace the damage is reasonably estimated by the Seller's insurance adjuster to exceed $10,000, then at Buyer's election and in its sole discretion, Buyer may elect to proceed with the Closing and at the Closing, Seller shall assign to Buyer its right, title and interest in the insurance proceeds available to repair or restore the damage or destruction and to any applicable rent loss proceeds, and Seller shall credit the Purchase Price with the amount of any deductible under such insurance policy(s).

ARTICLE XI
MISCELLANEOUS

11.1 **Notices**. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered (i) if personally delivered, upon receipt; (ii) if sent by expedited prepaid reputable overnight delivery, the next business day after delivery to such service; (iii) if sent by United States registered or certified mail, return receipt requested, postage prepaid, 3 Business Days after having been deposited in the United States Postal Service, properly addressed as follows (or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other party in the manner provided for in this Section):

Seller:	City Manager City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196	Copy:	City Attorney City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196
Copy:	Engineering-Capital Assets 2 Civic Center Plaza El Paso, Texas 79901-1196		
Buyer:	Tracy McIntyre, President El Paso Motorsports, Inc. dba Sun City Built 903 Thunderbird El Paso, TX 79912		

11.2 **Governing Law**. This Contract is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement, and interpretation of this Contract. This Contract is performable in, and the exclusive venue for any action brought with respect hereto shall lie in El Paso County, Texas, where the Property is located.

11.3 **Entirety and Amendments**. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Project, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

11.4 **Parties Bound**. This Contract is binding upon and inure to the benefit of Seller and Buyer, and their respective permitted successors and assigns.

11.5 **Saturday, Sunday or Legal Holiday**. If any date set forth in this Contract for the performance of any obligation by Buyer or Seller or for the delivery of any instrument or notice should be on other than a Business Day, the compliance with such obligations or delivery is deemed accepted on the next following Business Day.

11.6 **Time is of the Essence**. It is expressly agreed by Seller and Buyer that time is of the essence with respect to this Contract.

11.7 **Exhibits**. The Exhibits which are referenced in, and attached to, this Contract are incorporated in and made a part of this Contract for all purposes. If one or more Exhibits to be attached to this Contract are not so attached or are incomplete upon the Effective Date, then Seller agrees to prepare or complete any such Exhibits and furnish Buyer with a copy of same. Buyer have the right to approve the form and contents of each such Exhibit supplied by Seller within 5 Business Days of receipt thereof in its sole and absolute discretion. Buyer reserves the right to terminate this Contract should Buyer not approve the form and content of such Exhibits, provided, however, such Exhibits shall be deemed accepted by Buyer if Buyer fails to provide

Seller of any written objections to such Exhibits submitted by Seller within 10 Business Days following receipt of the same.

11.8 **Attorney's Fees**. If either party hereto shall be required to employ an attorney to bring suit to enforce or defend the rights of such party hereunder, the prevailing party in such suit shall be entitled to recover its reasonable attorney's fees and costs, in addition to any other relief to which it or they may be entitled.

11.9 **Expiration of Offer**. The execution by the Buyer hereto and delivery to the Seller of an executed counterpart of this Contract shall constitute an offer to purchase the Property upon the terms stated herein. If a counterpart of this Contract executed by the Seller is not approved by the City Council of the City of El Paso and executed by the Buyer within 3 Business Days thereafter without modification, the offer contained in this Contract shall be null and void.

11.10 **Severability**. If for any reason any provision of this Contract is held to violate any applicable law, and so much of this Contract is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Contract which shall remain in full force and effect.

11.11 **Assignment**. Buyer may assign this Contract in whole, but not in part, without Seller's consent, provided, however, Buyer shall give Seller written notice of any such assignment not less than one (1) Business Day prior to such assignment together with a copy of the assignee's written agreement to assume and perform the obligations of Seller hereunder, and no assignment shall discharge or release the assigning party from any obligation or liability hereunder, whether arising before or after such assignment. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11.12 **Multiple Counterparts**. This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and either of the parties hereto may execute this Contract by signing any such counterpart.

11.13 **Electronic Signature**. Delivery of an executed counterpart signature pages of the Contract by facsimile or electronic mail is effective as delivery of an original of an executed counterpart signature page.

11.14 **No Third Party Beneficiary**. Except as otherwise expressly provided herein, this Contract is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary or otherwise.

11.15 **Effect of Headings.** The subject headings of sections and subsections of this Contract included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.16 **Recording.** Neither this Contract, nor any memorandum or evidence hereof shall be recorded in any public records without the prior written consent of both parties.

[Signatures Begin on Next Page]

EXECUTED by Seller the ___ day of _____, 2012.

SELLER:

CITY OF EL PASO, TEXAS

By:_____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

[Signatures Continue on Next Page]

EXECUTED by Buyer the 5th day of December, 2012.

BUYER

El Paso Motorsports, Inc.
a Texas corporation, dba Sun City Built

By: _____
Tracy McIntyre
President

Receipt of a fully executed copy of the Contract and a check, subject to collection for the Earnest Money Deposit received this ___ day of _____, 2012.

STEWART TITLE COMPANY

By:_____
Printed Name: _____
Title: _____

EXHIBITS

Exhibit A	-	Description of Land
Exhibit B	-	Conditions of Use
Exhibit C	-	Form of Special Warranty Deed

EXHIBIT "A"

A portion of Lot 365, Block 25, CORONADO HILLS, SECTION TWO, an addition to the City of El Paso, El Paso County, Texas, according to map or plat thereof recorded in Volume 8, Page(s) 40, of the Plat Records of El Paso County, Texas, more particularly described by metes and bounds as follows:

BEGINNING at the Southeast corner of Lot 365 and also being the Southwest corner of Lot 364 in Block 25;

THENCE Westerly along a curve to the left, said curve has a central angle of 14°19'28", a radius of 280 feet and a long chord bearing North 51°40'58" West 69.82 feet to the Southwest corner of Lot 365 and also being the Southeast corner of Lot 366 in Block 25;

THENCE North 31°09'18" East 118.93 feet to a point on the Northerly line of CORONADO HILLS SUBDIVISION, SECTION #2;

THENCE South 66°53'50" East 8.12 feet to a pipe;

THENCE South 64°45'15" East 70.70 feet to a pipe;

THENCE South 38°03'00" East 25.04 feet to a point on the Westerly line of said Lot 364 in Block 25;

THENCE South 45°28'46" West 131.27 feet to the PLACE OF BEGINNING.

EXHIBIT B

CONDTITIONS OF USE

On August 21, 2007, the City Council passed a resolution indicating certain properties that have been identified for sale by City staff that may have a potential impact on the surrounding properties may have certain restrictions placed on the sale of the identified parcel.

The site is zoned R-3 (Residential District – Moderate to High Density) located in a Westside neighborhood, and commonly known as 6212 Fiesta and has the following restrictions as condition of sale:

1. The proposed use will enhance the value and use of the ownership of the surrounding properties.

2. Successful Offeror cannot sell or assign this contract without the written consent of the City during a three-year period following the date of closing.

3. All renovations required by City Code will be applied for and completed within 12 months as identified in the contract of sale or warranty deed.

4. Between the date of closing and the completion of all renovations, the Buyer shall keep the property clean and properly secured and in compliance with City Code.

5. If, at its sole discretion, the City determines that the Buyer has not complied with the terms and conditions related to the sale, the City reserves the right to enforce the restriction(s) in accordance with the provisions of the contract of sale or deed, which may include an option by the City to re-purchase the property for the original sales amount since the Buyer's failure to comply with the terms and conditions resulted in non-continuity of safety and quality of life improvements in the surrounding neighborhood.

EXHIBIT C

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: _____, 2012

Grantor: **THE CITY OF EL PASO, A MUNICIPAL CORPORATION**

Grantor's Mailing Address: City of El Paso, #2 Civic Center Plaza, El Paso County, El Paso, Texas 79901-11962

Grantee: **El Paso Motorsports, Inc.,** a Texas corporation, dba Sun City Built

Grantee's Mailing Address: 903 Thunderbird, El Paso, Texas 79912

Consideration: TEN and 00/100 DOLLARS ($10.00), and other valuable consideration, receipt of which is hereby acknowledged.

Property (including any improvements):

Lot 365, Block 25, Coronado Hills Section 2, El Paso County, Texas according to the plat thereof recorded in Volume 8, Page 40, Real Property Records, El Paso County, Texas, municipally known and numbered as 6212 Fiesta Drive, El Paso, El Paso County, Texas and being more particularly described by the metes and bounds as shown as Exhibit "A-1".

USE RESTRICTIONS

For a period of seventy-five (75) years from the date of conveyance, the GRANTOR, its successors and assigns, will not discard, place or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the groundwater supply or resources of the City of El Paso.

This Section is intended to create and does create a restrictive covenant and it is the intent of GRANTOR to convey to GRANTEE the GRANTOR's Interest subject to this restrictive covenant. Violation or breach of the restrictive covenant herein shall give the City of El Paso, Texas the right to institute any proceeding at law or in equity to recover any sum due to the City of El Paso under the terms of this Covenant. If the City of El Paso institutes an action to recover

such sum, GRANTEE and its successors in title agree to pay all costs of collection, including cost costs and reasonable attorney's fees.

RESERVATION AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

All ground water, water rights, or rights to surface water shall be reserved to the GRANTOR (including the right to drill a well and produce therefrom any quantity of ground water), subject to all easements restrictions, reservations, right of ways, dedications, and other encumbrances of record or apparent upon the real property.

Easements for water and wastewater lines, if not located in public streets, shall be reserved to GRANTOR now or at any time in the future in which such easements may be required and shall be provided at no cost to the City or its water and/or stormwater utility (El Paso Water Utilities and its Public Service Board).

GRANT AND CONVEYANCE:

The GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, and 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, except as to the Reservations From and Exceptions to Conveyance, when the claim is by, through, or under the GRANTOR but not otherwise.

The GRANTOR has executed and delivered this Deed, and the GRANTEE, by recording this Deed, has accepted this Deed and has purchased the Property "AS IS, WHERE IS" AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE HABITABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN

INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY THE SELLER. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE AN INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

AFTER CLOSING, BETWEEN THE SELLER AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE THE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING 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. **THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE SELLER'S REPRESENTATIVES.** 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.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED the ____ day of _____, 2012.

[Signatures Being on Next Page]

GRANTOR:
CITY OF EL PASO

_____
Joyce Wilson, City Manager

STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the ___ day of _____, 2012, by Joyce Wilson, City Manager, City of El Paso.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ___ day of _____, 2012.

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