

Real Estate Sales Contract

(123 Heiman St., 121 Heiman St., 1154 E. Commerce St., 1164 E. Commerce, and 1172 E. Commerce)

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Authorizing Ordinance: 2019-__ - __ - ____

Seller: The City of San Antonio (the “City”)

Address: City of San Antonio, P.O. Box 839966, San Antonio, TX 78283-3966

Type of Entity: Texas Municipal Corporation

Seller’s Counsel: Victoria Shum

Address: City Attorney’s Office, City of San Antonio,

P.O. Box 839966, San Antonio, TX 78283-3966

Phone: 210-207-8994

Email: victoria.shum@sanantonio.gov

Fax: 210-207-4004

Buyer: East Commerce Realty LLC

Address: 1100 NE Loop 410, Suite 400
San Antonio, TX 78209

Phone: (210) 841-3202

Email: dthomas@reatares.com

Type of Entity: Limited liability company

Buyer's Counsel: Ashley Farrimond, Kaufman & Killen, Inc.

Address: 100 W. Houston Street, Suite 1250,
San Antonio, TX 78205

Phone: (210) 448-9981

Email: ashley@kk-lawfirm.com

Property: Lots 30, 32, 33, 34, and 35, Block 1, New City Block 679, St. Paul's Square, C.D.B.G. No. 2035 Subdivision, Unit 1, City of San Antonio, Bexar County, Texas in shown by Plat in **Exhibit A** within the Historic St. Paul's Square in Council District 2.

Title Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Purchase Price: One Million Seven Hundred Fifty Eight Thousand Eighty 00/100 Dollars (\$1,758,080.00)

Earnest Money: _____

Option Fee: _____

Surveyor: N/A

Surveyor Category: N/A

Effective Date: The later of: (a) the effective date of the Authorizing Ordinance; and (b) the date a representative of the Title Company signs a receipt for this fully executed contract (“**Effective Date**”).

County for Performance: Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

1.01	Earnest Money Deadline	3	Days after the Effective Date
1.02	Option Fee Deadline	3	Days after the Effective Date
1.03	Delivery of Title Commitment	15	Days after the Effective Date
1.04	Buyer’s Objection Deadline	10	Days after receipt of (i) Title Commitment, (ii) legible copies of instruments references in the Title Commitment
1.05	Seller’s Cure Notice Deadline	35	Days after Buyer’s Objection Deadline
1.06	Buyer’s Termination Deadline	60	Days after the Effective Date
1.07	End of Inspection Period	180	Days after the Effective Date
1.08	Closing Date	7	Days after Buyer’s Termination Deadline or such earlier time mutually agreed upon by both parties

1.09 Closing Time

10:00 AM

The above deadlines may be altered by the mutual agreement of the parties in writing. The Director of the Center City Development and Operations Department may consent to such changes on behalf of Buyer without further authorization of City Council.

2. Closing Documents.

2.01 At closing, Seller will deliver the following items:

Deed Without Warranty (showing no exceptions or reservations other than those referenced in Sections 4 and 6 below, and Permitted Exceptions);

IRS Non-foreign Person Affidavit; and

Evidence of Seller's authority to close this transaction.

2.02 At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction;

Deceptive Trade Practices Act waiver; and

Purchase Price

Signed Equity Interest Agreement

2.03 The documents listed above are collectively known as the "**Closing Documents.**" Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit C.**

3. Exhibits.

The following are attached to and are incorporated into this Agreement for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Form of Deed

Exhibit D – Form of Equity Interest Agreement

4. Purchase and Sale of Property.

4.01 *Exchange.* Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Agreement are the consideration for the formation of this Agreement.

4.02 *Additional Interests.* The Property includes all improvements situated on it, together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the land; and all rights of ingress and egress thereto (collectively, the "**Additional Interests**"); except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller may hold by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use.

Seller's Equity Interest. As inducement for the Seller to sell and convey the Properties to Buyer, Seller and Buyer shall enter into an Equity Interest Agreement, which is attached hereto and incorporated as **Exhibit D**, which shall survive Closing, whereby for a period of seven (7) years, Seller shall be compensated upon the initial re-sale of any property interest in the Property by the Buyer in an arms-length transaction subject to a credit for capital investment.

5. Mandatory Membership in Property Owners' Association.

5.01 *Notice of Membership.* Although Seller is not obligated to provide notice of mandatory membership in the St. Paul's Square Association ("Association") pursuant to the Texas Property Code § 5.102, the following notice is hereby given by Seller to Buyer:

You are obligated to be a member of the Association. Restrictive covenants governing the use and occupancy of the property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the

property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

You are obligated to pay assessments to the Association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of your property.

Texas Property Code § 207.003 entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

5.02 *Subdivision Information.* Within twenty (20) days after the effective date of this Agreement, Seller shall obtain, pay for, and deliver the Subdivision Information to Buyer. "Subdivision Information" means: (i) a current copy of the restrictions applying to the subdivision and bylaws and rules of the Association, and (ii) a resale certificate, all of which are described by Texas Property Code § 207.003. If Seller delivers the Subdivision Information, Buyer may terminate this Agreement within three (3) days after Buyer receives the Subdivision Information or prior to closing, whichever occurs first, and the Earnest Money will be refunded to Buyer. If Buyer does not receive the Subdivision Information, Buyer, as Buyer's sole remedy, may terminate this Agreement at any time prior to closing and the Earnest Money will be refunded to Buyer.

5.03 *Material Changes.* If Seller becomes aware of any material changes in the Subdivision Information, Seller shall promptly give notice to Buyer. Buyer may terminate the contract prior to closing by giving written notice to Seller if: (i) any of the Subdivision Information provided was not true; or (ii) any material adverse change in the Subdivision Information occurs prior to closing, and the earnest money will be refunded to Buyer.

5.04 *Deposits for Reserves.* Buyer shall pay any deposits for reserves required at closing by the Association.

5.05 *Authorization.* Seller authorizes the Association to release and provide the Subdivision Information and any updated resale certificate if requested by Buyer, the Title

Company, or any broker to this sale. If Buyer does not require the Subdivision Information or an updated resale certificate, and the Title Company requires information from the Association (such as the status of dues, special assessments, violations of covenants and restrictions, and a waiver of any right of first refusal), Seller shall pay the Title Company the cost of obtaining the information prior to the Title Company ordering the information.

5.06 *Fees.* Except as provided in Sections 5.02, 5.04, and 5.05, Buyer shall pay any and all Association fees or other charges associated with the transfer of the property not to exceed \$1,700.00, and Seller shall pay any excess.

5.07 *Notice to Buyer Regarding Repairs by Association.* The Association may have the sole responsibility to make certain repairs to the Property. If Buyer is concerned about the condition of any part of the Property which the Association is required to repair, Buyer will not sign this Agreement unless Buyer is satisfied that the Association will make the desired repairs.

6. Earnest Money and Option Fee.

6.01 *Earnest Money.* Buyer shall deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline. Title Company shall execute and deliver to both Buyer and Seller an earnest money receipt substantially in the form attached at the end of this agreement.

6.02 *Investment Option.* Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money shall be paid to the party that becomes entitled to the Earnest Money. Accrued interest shall be a credit against the purchase price at closing.

6.03 *Option Fee.* For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller the Option Fee no later than the Option Fee Deadline, Seller grants Buyer the unrestricted right to terminate this Agreement by giving notice of termination to Seller within ten (10) days after the Effective Date of this Agreement ("**Option Period**"). If Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this Agreement and Buyer shall not have the unrestricted right to terminate this Agreement. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded. The Option Fee will be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

7. Title and Survey.

7.01 *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

7.02 *Title Commitment; Title Policy.* “**Title Commitment**” means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the land. The effective date stated in the Title Commitment must be after the Effective Date of this Agreement. “**Title Policy**” means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

7.03 *Delivery of Title Commitment.* Seller must deliver the Title Commitment to Buyer by the deadlines stated in Section 1.

7.04 *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objection to any of them (“**Buyer's Objections**”). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer either approves or is deemed to have approved are “**Permitted Exceptions.**”

7.05 *Seller's Timely Notice.* If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's Objections before closing (“**Cure Notice**”). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this Agreement is terminated, whereupon all Earnest Money shall be returned to Buyer. In the absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Buyer's Objections that Seller has agreed to cure in the Cure Notice.

7.06 *Seller's Deadline.* At or before Closing, Seller must resolve the items that are listed in Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, and under Seller after the Effective Date of this Agreement, and cure the Buyer's Objections that Seller has agreed to cure.

8. Inspection Period.

8.01 *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;
- b. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;
- e. Seller may request copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors but shall be responsible for and accept any cost of preparing such reports for Seller's use or review. Buyer may not unreasonably withhold its permission for providing such reports; and
- f. Buyer must abide by any other reasonable entry rules imposed by Seller.

8.02 *Buyer's Right to Terminate.* Buyer may terminate this Agreement for any reason by notifying Seller before the end of the Inspection Period.

8.03 *Buyer's Indemnity and Release of Seller.*

- a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation or other cost or expense associated with existing conditions discovered by Buyer's inspection.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

9. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

10. Conditions until Closing; No Recording of Contract.

10.01 *Maintenance and Operation.* Until the Closing Date, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Nothing in this paragraph shall prevent the Buyer from applying for and obtaining a demolition permit affecting the Property.

10.02 *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this Agreement if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen (15) days after Buyer's discovery of such casualty or Buyer's receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). If Buyer does not terminate this Agreement, Seller will convey the Property to Buyer in its damaged condition.

10.03 *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after discovery by Buyer of such condemnation action or receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10.04 *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

11. Termination.

11.01 Disposition of Earnest Money after Termination.

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five (5) days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five (5) days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

11.02 Duties after Termination. If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

12. Closing.

12.01 Closing. This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions at closing.

- e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, the earnest money shall be returned to Buyer.

12.02 *Transaction Costs.*

a. Buyer will pay:

- i. the additional premium for the "survey/area and boundary deletion" in the Title Policy;
- ii. the escrow fee charged by Title Company;
- iii. the costs to prepare the deed;
- iv. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
- v. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
- vi. the costs to obtain certificates or reports of ad valorem taxes;
- vii. the costs to deliver copies of the instruments described in Section 2 entitled Closing Documents; and
- viii. Buyer's expenses and attorney's fees.

b. Seller will pay:

- i. the basic charge for the Title Policy;
- ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Buyer's expense; and
- iii. Seller's expenses and attorney's fees.

- c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10.
- d. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten (10) days of notice of Buyer's invoice.
- e. *Post-closing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make post-closing adjustments to correct the errors within fifteen (15) days of receipt of notice of the errors.

13. Default and Remedies.

13.01 *Seller's Default.* If Seller fails to perform any of its obligations under this Agreement or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date ("**Seller's Default**"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Buyer may terminate this Agreement by giving notice to Seller on or before the expiration of the Inspection Period and have the Earnest Money returned to Buyer.
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this Agreement.

13.02 *Buyer's Default.* If Buyer fails to perform any of its obligations under this Agreement ("**Buyer's Default**"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination.* Seller may terminate this Agreement by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this Agreement and Seller terminates this Agreement in

accordance with the previous sentence, Buyer will reimburse Seller for Seller's actual out-of-pocket expenses incurred to perform its obligations under the Agreement within ten (10) days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

- b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this Agreement. If title to the Property is awarded to Buyer, the conveyance will be subject to only the Permitted Exceptions.

14. Prohibited Interests in Contracts.

14.01 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in §2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited "financial interest" in a contract with the City or in the sale to City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- a. A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- b. An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or
- c. An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

14.02 Buyer warrants and certifies, and this Agreement is made in reliance thereon, that:

- a. none of the above listed individuals or entities is a party to this Agreement; and
- b. Buyer has tendered to Seller a Discretionary Contracts Disclosure Statement in compliance with the City of San Antonio Code of Ethics.

15. Dispute Resolution.

15.01 As a condition precedent to bringing any action arising out of or relating to this Agreement or any aspect thereof, including an action for declaratory relief but not an action

specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02 Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

15.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

15.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

15.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic, and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

15.06 Mediator fees must be borne equally.

15.07 The parties need not mediate before going to court for either party to seek emergency injunctive relief.

16. Miscellaneous Provisions.

16.01 *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** Provided, however, the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02 *Severability.* If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

16.03 *Successors*. This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

16.04 *Integration*. **This written Agreement represents the final agreement between the parties relating to the conveyance of the property from Seller to Buyer and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the parties.**

16.05 *Modification*.

16.05.01 This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion, or (ii) any other term hereof.

16.05.02 The Director or designee of the City's Center City Development & Operations Department may, without further City Council action, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

16.06 *Third Party Beneficiaries*. This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

16.07 *Notices*. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three (3) days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

16.08 *Pronouns*. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

16.09 *Captions*. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

16.10 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

16.11 *Further Assurances*. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this Agreement.

16.12 *Assignment*. With Seller's consent, which is not to be unreasonably withheld, Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer can, directly or indirectly, direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise. Any other assignment is void.

16.13 *Survival*. The obligations of this Agreement that cannot be performed before termination of this Agreement or before the Closing Date survive termination of this Agreement or closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this Agreement, the Closing Documents control.

16.14 *Ambiguities Not to Be Construed against Party Who Drafted Contract*. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

16.15 *No Special Relationship*. The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

16.16 *Confidentiality*. The parties will keep confidential this Agreement, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

16.17 *Waiver of Consumer Rights.* Buyer waives its rights under the Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection, Buyer voluntarily consents to this waiver.

16.18 *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

16.19 *Administrative Agreements.* The Director or designee of City's Transportation and Capital Improvements Department may, without further City Council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

16.20 *City Process.* Nothing in this Agreement obligates the City to take any particular action(s) or make any particular decision(s) regarding sale of the Property, or regarding any issues raised by the City's consideration of a sale of the Property, except as stated in this Agreement, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission or any department of the City. Nor shall this Agreement be deemed to constitute any prejudgment or predetermination of any matters related to the sale or development of the Property, including any related discretionary action(s), waiver of any permit requirements, reduced fees or abbreviation of any city procedures. Seller will cooperate with Buyer in such matters to the extent allowed by law and as directed by its governing body. Buyer understands that there is no agreement or guarantee related to the outcome or approval of any application that Buyer may submit for the Property.

17. Public Information.

Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

[SIGNATURES ON NEXT PAGE]

Executed as of the dates set forth below to be effective as the Effective Date defined above.

Buyer:
East Commerce Realty LLC,
a limited liability company

Seller:
City of San Antonio,
a Texas Municipal Corporation

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

Assistant City Attorney

Exhibit B: Representations

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a Texas Municipal Corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received or issued any notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received or issued any notices that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received or issued any notices of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit B, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

This Agreement is an arms-length contract between the parties. The purchase price was bargained on the basis of an "as is, where is" transaction and reflects the agreement of the parties that there are no representations, disclosures, or express or implied warranties, except for the warranty of title stated in the Closing Documents and Seller's representations to Buyer set forth in Section A of this Exhibit B.

The Property will be conveyed to Buyer in an "as is, where is" condition, with all faults. All warranties are disclaimed.

The provisions of this Section B regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

C. Environmental Matters

After closing, as between Buyer and Seller, the risk of liability or expense for environmental problems, even if arising from events before closing, will be the sole responsibility of Buyer, regardless of whether the environmental problems were known or unknown at closing. Once closing has occurred, Buyer indemnifies, holds harmless, and releases 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. Buyer indemnifies, holds harmless, and releases Seller from any liability for environmental problems affecting the Property arising as the result of Seller's own negligence or the negligence of Seller's representatives. Buyer indemnifies, holds harmless, and releases 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 Sellers in this type of transaction new liabilities for environmental problems affecting the Property.

The provisions of this Section C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

D. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is a limited liability company, duly organized, validly existing, and in good standing under the Laws of the state of Texas with authority to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Buyer that might affect Buyer's ability to perform its obligations under this contract.

Exhibit C: Form of Deed

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all 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.

The State of Texas §
 §
County of Bexar §

Deed Without Warranty With Vendor's Lien

Authorizing Ordinance: City of San Antonio

Statutory Authority: Local Government Code § 272.001(a)

SP No./Parcel:

Grantor: City of San Antonio

Grantor's Mailing Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvement Management Services) (Bexar County)

Grantee: East Commerce Realty LLC

Grantee's Mailing Address (including county): 1100 NE Loop 410, Suite 400
San Antonio, TX 78209
Bexar County

Consideration: \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and the further consideration of the execution and delivery by the Grantee of that certain Equity Interest Agreement authorized by Ordinance 2019-.

Property: Lots 30, 32, 33, 34, and 35, Block 1, New City Block 679, St. Paul's Square, C.D.B.G. No. 2035 Subdivision, Unit 1, City of San Antonio, Bexar County, Texas in shown by Plat in **Exhibit A**

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date hereof, in and to the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold unto Grantee, Grantee's successors and assigns forever, **without any express or implied warranty whatsoever, including but not limited to warranties of title, condition, or character.**

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties herein.

Restrictions, Exceptions, Reservations, and Conditions To Conveyance: This conveyance is explicitly subject to the following:

A. Easements: All recorded and unrecorded easements, whether or not open and obvious.

B. Restrictions: All covenants and restrictions affecting the Property, including the same covenants and restrictions as described and per Deed conveying the property to the City of San Antonio, recorded in [], Real Property Records, Bexar County, Texas. However, Grantor acknowledges that by conveying the Property to Grantee, all benefits created by the covenants and restrictions described above transfer with the Property to the Grantee.

C. Exceptions: All instruments affecting the Property, whether or not recorded.

This conveyance does not relieve Grantee of any building, zoning, or other city-imposed requirements, or other land use restrictions applicable to the Property or the obligation to pay any real estate taxes that may otherwise be due.

D. Reservations:

It is expressly agreed and stipulated that a vendor's lien is retained by the Grantor against the Property until the obligations ("Obligations") as set forth in the Equity Interest Agreement authorized by Ordinance 2019-_____ secured by the vendor's lien retained herein by Grantor are fully performed and paid, whereupon this Deed Without Warranty with Vendor's Lien shall become absolute.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

Setting out the specific restrictions and disclaimers does not imply that the property is free of other encumbrances or adverse claims or conditions. Grantor specifically disclaims any such implication.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

Approved as to Form:

City Attorney

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was this day acknowledged before me by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date: _____

Notary Public, State of Texas

My commission expires: _____

After recording, please return to:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Center City Development and Operations)

Exhibit D: Draft Equity Interest Agreement

EQUITY INTEREST AGREEMENT

This Equity Interest Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas municipal corporation (“City”) acting by and through its City Manager or designee, pursuant to the Authorizing Ordinance referenced below and East Commerce Realty LLC (“EC Realty”).

RECITALS

WHEREAS, EC Realty approached the City regarding the purchase of five (5) properties from the City, commonly described as 123 Heiman St., 121 Heiman St., 1154 E. Commerce St., 1164 E. Commerce, and 1172 E. Commerce St (collectively, the “Properties”), as further described by Plat in **Attachment A** as part of a larger master plan to reinvigorate St. Paul’s Square; and

WHEREAS, as inducement for the City to convey the Properties to EC Realty, EC Realty plans on significantly investing in the renovation of the buildings in line with the proposed revitalization efforts at St. Paul’s Square; and

WHEREAS, Ordinance 2019-09-_____ (“Authorizing Ordinance”) authorized the sale and conveyance of the Properties to EC Realty; and

WHEREAS, in order to secure the due and punctual payment and performance of all of the EC Realty’s obligations as and when the same become due and payable, the City and EC Realty enter into this Agreement to be bound to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described which is the basis of the plan described in the real estate purchase agreement approved by City Council through the Authorizing Ordinance. This Agreement is intended to survive closing.

AGREEMENT

1. **Security.** The equity is held by the City in the Property and the obligations created hereby are secured by and evidenced by this Agreement.
2. **Term.** For seven (7) years following the conveyance of the Properties from City to EC Realty, should EC Realty sell any property interest in the Property in an arms-length transaction, City shall be entitled to compensation (“Equity Compensation”) in the following amounts:

Any Interest in the Properties Sold or Conveyed by EC Realty Within:	Amount of Equity Compensation Due to City
Months 0-12	\$1,300,000
Months 13-24	\$1,040,000
Months 25-36	\$910,000
Months 37-48	\$780,000
Months 49-60	\$650,000
Months 61-72	\$520,000
Months 73-84	\$390,000

3. **Credit for Capital Investment.** The amount of Equity Compensation shall be reduced by the amount of documented capital investment in the Properties (“Capital Investment”) made by EC Realty subsequent to the closing date as defined by the real estate purchase agreement approved by the Authorizing Ordinance. Capital Investment shall include any costs incurred by EC Realty in improving the Properties. Following submission of Capital Investment documentation, the City shall review and may verify the amount of Capital Investment credit to be applied against the Equity Compensation, resulting in the final amount due (“Obligations”) to City from EC Realty.
4. **Foreclosure.** In the event of foreclosure, the Equity Compensation shall be guaranteed in accordance with **Attachment B**. Any payment due and owing to the City shall be calculated in accordance with Sections 2 and 3 above, taking into account the month in which EC Realty is no longer the owner of the Properties and the credit for the Capital Investment.
5. **Default and Cure Period.** In the event EC Realty fails to comply with the its obligations herein, such non-compliance shall be deemed a default. The City shall provide EC Realty with written notice as to the nature of the default (the “Notice of Default”) and grant EC Realty a thirty (30) day period from the receipt of Notice of Default to cure such default (the “Cure Period”). Should EC Realty fail to cure the default within the Cure Period, City may: (i) terminate this Agreement by written notice delivered to EC Realty, as appropriate, (ii) enforce specific performance of this Agreement, and/or (iii) enforce any other remedy available at law or in equity for such default.
6. **Termination.** This Agreement may be terminated by written agreement. At such time, the City and EC Realty shall agree upon termination conditions, including the repayment of funds and the effective date of termination. Notwithstanding the forgoing, EC Realty shall not be relieved of its obligation to pay Equity Compensation under this Agreement,

nor shall EC Realty be relieved of any liability to City for actual damages due to City by any breach by EC Realty of any terms of this Agreement.

7. **Retention and Accessibility of Records.** The City reserves the right to confirm EC Realty's compliance with the terms and conditions of this Agreement.
8. **Notice.** Any notices required in this Agreement must be in writing and shall be deemed to have been delivered if:

(a) delivered in person to the address designated below;

(b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to the designated address; or

(c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, for delivery to the designated address.

Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. Either Party may designate different or additional addresses by giving the other Party no less than ten (10) calendar days advance written notice.

If intended for CITY, to:

CITY of San Antonio
Attn: Director
Center CITY Development Office
P.O. Box 839966
San Antonio, TX 78283-3966

If by delivery, to:

Director of Center CITY Development Office
CITY Clerk
CITY of San Antonio
100 Military Plaza
San Antonio, TX 78205

If intended for EC Realty, to:

Don Thomas, founding partner
REATA Real Estate Services
1100 NE Loop 410, Suite 400
San Antonio, Texas 78209

With a copy to:

Michael Jersin, Partner/CEO
REATA Real Estate Services
1100 NE Loop 410, Suite 400
San Antonio, Texas 78209

With a copy to:

David Adelman
AREA Real Estate, LLC
1221 Broadway, Suite 104
San Antonio, Texas 78215

9. The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in §2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a prohibited “financial interest” in a contract with the City or in the sale to City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
- a. A City officer or employee, his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
 - b. An entity in which the officer or employee, or his or her parent, child, or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or
 - c. An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.

EC Realty warrants and certifies, and this Agreement is made in reliance thereon, that:

- a. none of the above listed individuals or entities is a party to this Agreement; and
- b. EC Realty has tendered to City a Discretionary Contracts Disclosure Statement in compliance with the City of San Antonio Code of Ethics.

10. **Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

11. **Pronouns.** In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.
12. **Captions.** Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.
13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.
14. **Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this Agreement.
15. **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.
16. **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
17. **Confidentiality.** The parties will keep confidential this Agreement, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.
18. **Waiver of Consumer Rights.** Buyer waives its rights under the Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq. of the Texas Business and Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of its own selection, Buyer voluntarily consents to this waiver.

19. **Incorporation by Reference.** All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.
20. **Public Information.** Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

[Signature Page to Follow]

East Commerce Realty LLC,
a limited liability company

By: _____

Printed
Name: _____

Title: _____

Date: _____

City of San Antonio,
a Texas Municipal Corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Approved As To Form:

Assistant City Attorney

**ATTACHMENT A
THE PROPERTIES**

**ATTACHMENT B
PERSONAL GUARANTY**