

**PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS  
(155 S. HIBBERT ROAD, MESA, AZ)**

**AGREEMENT DATE:** \_\_\_\_\_, 2016

**“SELLER”:** CITY OF MESA, an Arizona municipal corporation  
Address: 20 East Main Street, Suite 650  
Post Office Box 1466  
Mesa, Arizona 85211-1466  
Attn: Kim Fallbeck  
Real Estate Services Administrator  
Telephone: (480) 644-2521  
Email: Kim.Fallbeck@mesaaz.gov

**“BUYER”:** ARTSPACE MESA, LP, an Arizona limited partnership  
Address: 250 Third Avenue, Suite 400  
Minneapolis, Minnesota 55401  
Attn: Rachel Robinson  
Telephone: (602) 333-9102  
E-mail: [Rachel.robinson@artspace.org](mailto:Rachel.robinson@artspace.org)

**“ESCROW AGENT”:** SECURITY TITLE AGENCY  
Address: 1630 S, Stapley Dr., Suite 125  
Mesa, AZ 85204  
Attn: Vicki Bartlett  
Telephone: (480) 874-7420  
Email: vbartlett@SecurityTitle.com  
Escrow Number: \_\_\_\_\_

**“PROPERTY”:** The real property which is generally located at 155 S. Hibbert Road, Mesa, Arizona, (APN 138-66-090) and which consists of approximately 1.7 acres, as more specifically depicted and legally described in the attached Exhibit A.

**RECITALS**

Seller (as “**City**”), Buyer (as “**Partnership**”), and Artspace Projects, Inc., an Arizona nonprofit corporation (as “**Developer**”), entered into that certain Development Agreement dated as of \_\_\_\_\_, 2016 (the “**Development Agreement**”). All capitalized terms not otherwise described herein shall have the meanings ascribed to them in the Development Agreement.

## ARTICLE 1 AGREEMENT OF THE PARTIES

1.1 Incorporation, Parties, Defined Terms in the Lease Agreement. All of the foregoing Recitals are hereby incorporated as agreements of the Seller and Buyer. Seller and Buyer may be referred to collectively as the “**Parties**” or individually as a “**Party.**”

1.2 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to convey to Buyer and Buyer agrees to buy the Property on the terms and conditions set forth in this Purchase and Sale Agreement and Escrow Instructions (155 S. Hibbert Road, Mesa, AZ) (the “**Agreement**”) and the Development Agreement.

## ARTICLE 2 PURCHASE PRICE AND APPRAISAL

2.1 Purchase Price. Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller according to the terms and conditions of this Agreement for the following consideration: Buyer’s development of the Property into the Project (as defined in the Development Agreement) for the purpose of (i) providing affordable, low income housing in the downtown area for a minimum of twenty (20) years in accordance with the Housing and Urban Development (“HUD”) requirements for low income housing tax credits; (ii) benefitting the Seller’s residents by having the Buyer work in partnership with local community organizations and institutions, such as the Mesa Public Schools, the Mesa Arts Center, the i.d.e.a. Museum and the AZ Museum of Natural History and other local/national arts education entities to seek strong partnerships that support and add value to the school districts, Mesa’s youth and to support efforts to promote Seller’s downtown as a thriving area for entrepreneurs, artists, students and creative businesses; (iii) developing under-utilized property in the downtown area; (iv) facilitating transit-oriented sustainable housing within the downtown area; (v) helping to ensure light rail is a catalyst to create sustainable, transit-oriented development and economies in downtown Mesa; (vi) creating an innovative, art-centered, quality-focused, eclectic blend of old and new and to build on the Seller’s investment in the Mesa Arts Center and its museums (collectively, the “**Purchase Price**”).

2.2 Appraisal. Buyer agrees to obtain an appraisal of the Property, at its sole cost and expense and within the Inspection Contingency Period.

## ARTICLE 3 ESCROW

3.1 Establishment of the Escrow. An escrow for this transaction (the “**Escrow**”) shall be established with Escrow Agent, and Escrow Agent is engaged to administer the Escrow.

3.2 Execution of Agreement and Opening Date. The date of the Opening of Escrow (“**Opening of Escrow**” or “**Opening Date**”) will be the date on which the last of the following has occurred: (i) Escrow Agent has received this Agreement executed by Buyer and Seller, and (ii) Escrow Agent has accepted this Agreement as its escrow instructions by executing this Agreement on the signature page. Escrow Agent is instructed to insert the date of the Opening of Escrow in the signature portion of this Agreement.

3.3 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Seller and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent's engagement. If there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement will control.

3.4 Escrow Cancellation Charges. If the Escrow fails to close because of Seller's default, Seller will pay all customary escrow cancellation charges. If the Escrow fails to close because of Buyer's default or cancellation of this Agreement for any reason other than the default of Seller, Buyer will pay all customary escrow cancellation charges. If the Escrow fails to close for any other reason, Seller and Seller will each pay one-half of all customary escrow cancellation charges.

3.5 Closing. The completion of the purchase and sale transaction described in this Agreement shall be deemed to occur once the Deed (as defined herein) to the Property has recorded in the official records of the Maricopa County, Arizona Recorder (the “**Closing**” or “**Close of Escrow**”). The Closing shall occur no earlier than as provided in the 2016 Qualified Allocation Plan (“**QAP**”).

## **ARTICLE 4 CONTINGENCIES**

### 4.1 Title and Survey Contingency.

(a) Survey. Seller has had an ALTA survey of the Property prepared by a civil engineer or registered land surveyor licensed in the State of Arizona (the “**Survey**”) which shows the boundaries of the Property and excludes any portions of the Property lying within any existing dedicated roads and public rights-of-way, and all easements, encroachments and other matters affecting the Property. The Survey shall be certified to be accurate, complete and correct to Buyer, Seller and Escrow Agent. Seller shall provide Escrow Agent and Buyer with a draft of the unsigned Survey within five (5) days after Opening of Escrow. The Surveyor will update and revise the Survey as may be required by Buyer and its financing partners.

(b) Commitment for Title Insurance. Escrow Agent shall provide Buyer and Seller within five (5) business dates following the Opening Date with a commitment for the issuance of an ALTA extended owner's title insurance policy (2006 Form) in an amount to be provided by Buyer insuring Buyer's interest in the Property

(the “**Commitment**”) together with legible copies of all Schedule B items and the vesting deed.

(c) Title and Survey Objections.(i) Buyer shall have 20 calendar days from the Opening Date (“**Title and Survey Feasibility Period**”) in which to examine the Commitment and the Survey either provided by Seller or obtained by Buyer and to give written notice to Seller and Escrow Agent of its disapproval, which may be made in Buyer’s sole and absolute discretion, of the matters contained therein (the “**Objection Matters**”). If Buyer fails to give notice of disapproval of any Objection Matters upon the expiration of the Title and Survey Feasibility Period, Buyer shall be deemed to have accepted the Commitment and Survey, as applicable, and all matters disclosed therein.

(ii) In the event Seller gives timely written notice of objection to any Objection Matters, Seller, at Seller’s own expense, shall have the right, but not the obligation, to attempt to remove, satisfy or otherwise cure any Objection Matters so objected to by the expiration of any of the Title and Survey Feasibility Period. Seller may cure the Objection Matters only by causing the removal of record of the Objection Matters, modifying of record the Objection Matters, obtaining a commitment from Escrow Agent to eliminate the Objection Matters from the Title Policy, or causing Escrow Agent to issue an endorsement insuring Buyer against loss or damage from the Objection Matters or to provide other affirmative assurances to Buyer with regard to the Objection Matters. Within **10** days after receipt of Seller’s notice of objection, Seller shall give written notice to Seller and Escrow Agent informing Seller of Seller’s election with respect to such Objection Matters. If Seller fails to give written notice of election within such **10** day period, Seller shall be deemed to have elected not to attempt to cure the Objection Matters.

(iii) If Seller elects or is deemed to have elected not to cure any Objection Matters, or, if after electing to attempt to cure the same, Seller determines that it is unwilling or unable to remove, satisfy or otherwise cure any such Objection Matters by the end of Title and Survey Feasibility Period, Buyer’s sole remedy hereunder in such event shall be either: (i) to accept title to the Property subject to the Objection Matters as if Buyer had not objected thereto, or (ii) to terminate this Agreement in writing to Seller and Escrow Agent within **5** days after receipt of Seller’s written notice of election (or Seller’s deemed election not to attempt to cure the Objection Matters), whereupon neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Buyer fails to give timely written notice of its election to terminate this Agreement, Buyer shall be deemed to have elected to accept title subject to such Objection Matters.

(iv) At the Closing, Escrow Agent shall be unconditionally and irrevocably committed to furnish to Buyer an ALTA extended coverage owner's policy of title insurance, subject only to such exceptions as Buyer has approved ("**Title Policy**"), in the amount requested by Buyer insuring Buyer's fee simple title to the Property and such other endorsements as are requested by Buyer and are available in the State of Arizona ("**Endorsements**").

(v) Notwithstanding the foregoing, Seller acknowledges that Seller is a governmental entity that has, or may have, public utility improvements, public utility easements, and/or may have permitted other utilities and telecom providers to place public improvements (the "**Public Improvements**") (such as pipes, conduits, utility lines, cable lines and other public infrastructure) on, over, under and across the Property. Seller agrees that all existing easements for Public Improvements (the "**Existing Easements**") shall not merge with the provisions of any closing documents and that all such easements shall survive the Closing. Seller further agrees that, if there are no easements for such existing Public Improvements, Seller shall be entitled to retain rights (the "**Public Facility Easement**"), in the form of the City of Mesa standard Public Utility and Facility Easement and/or Public Utility Easement forms, on, over, under and across that portion of the Property that is reasonably necessary to provide for repair and maintenance of, continued use of, and access to the existing Public Improvements. Any Existing Easements shall be deemed an approved Title Exception; and any Public Facility Easement granted by Seller to Seller at Closing shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Property by or in favor of Seller. The terms and conditions of this Section shall survive the Closing and will not merge with the provisions of any closing documents.

4.2 Inspection Contingency. Buyer and Seller agree that Buyer shall have the right to review the physical condition of the Property and to cancel this Agreement ("**Inspection Contingency**") on the following terms and conditions:

(a) Seller agrees to provide Buyer with the following items that are in Seller's actual possession within **5** days following the Opening Date of this Agreement: copies of any and all leases, rent rolls, agreements, property or service contracts related to the Property; building plans; specifications; soils and other reports; lead-based paint information, environmental reports including but not limited to any Phase I and/or Phase II Environmental Site Assessment; surveys; investigations; findings and studies of the Property; and copies of all third party warranties, guaranties and indemnifications related to the Property. Seller expressly does not warrant the truthfulness or accuracy of any fact, finding, conclusion, or opinion included in any of the materials provided by Seller to Buyer pursuant to this paragraph.

(b) Buyer and its agents shall have **30 calendar days** from the Opening Date or such longer period as may be required by the City of Mesa or ADOH, if applicable, to

complete any federally-required environmental review required to be prepared pursuant to the conditions of Buyer's financing and as described in Subparagraph (c) below ("**Inspection Feasibility Period**"), in which to access the Property, upon reasonable notice to Seller and to conduct all tests that Seller may deem necessary. Buyer shall have the right through the expiration of the Inspection Feasibility Period to inspect all physical conditions of the Property, including but not limited to all improvements, if any, and soils thereon, and to notify Seller in writing that Buyer disapproves the same. Failure by the Buyer to so notify Seller in writing of any objection to the condition of the Property by the end of the Inspection Feasibility Period shall be deemed satisfaction of the Inspection Contingency. If Buyer objects to any items provided by Seller hereunder, it shall notify Seller in writing of its objection on or before the end of the Inspection Feasibility Period, and this Agreement shall be automatically cancelled. In that event, Buyer and Seller shall have no further obligations hereunder.

(c) Notwithstanding any other provisions of this Agreement if Buyer will be using federal funds to develop the Property, Seller shall have no obligation to Close Escrow, unless and until Buyer and/or ADOH, as may be applicable, has provided Seller with a written notification that: **(1)** the federally required environmental and archeological review is complete and accepted and its request for release of funds has been approved and, subject to any other contingency contained herein, **(i)** the Close of Escrow may proceed, or **(ii)** the Close of Escrow may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the Property; or **(2)** it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not requested. Seller shall use its best efforts to conclude the environmental review of the Property expeditiously. If Buyer objects to any items disclosed by the federally required environmental review, it shall notify Seller and Escrow Agent in writing, and this Agreement shall be automatically cancelled. In that event, Buyer and Seller shall have no further obligations hereunder.

4.3 Receipt of Low Income Housing Tax Credits Contingency. As of the Application Submittal Date, the sole contingency to cancellation of this Agreement and the Escrow shall be Buyer's receipt of LIHTCs, as may be awarded to Buyer by ADOH under its **2016 QAP**. If Buyer fails to receive a **2016** award of LIHTCs, it shall promptly notify Escrow Agent and Seller in writing, and this Agreement and the Escrow shall be immediately terminated.

## **ARTICLE 5**

### **CLOSING DOCUMENTS; TITLE POLICIES**

5.1 Seller's Closing Documents. Seller will deposit the following documents into Escrow for delivery to Buyer at the Closing, each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed. A Special Warranty Deed (the “**Deed**”) for conveyance of the Property.

(b) Title Insurance Affidavit. An Owner’s Affidavit or Declaration from Seller to the Escrow Agent and Title Insurer.

(c) Additional Documents. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

5.2 Buyer's Closing Documents. On or before the Closing, Buyer will deposit into the Escrow such documents and instruments, signed and properly acknowledged by Buyer, if appropriate, as may be reasonably required by Seller or Escrow Agent as may be necessary or appropriate to acquire all of the Property and/or otherwise in order to effectuate the provisions of this Agreement and the Closing for delivery to Seller at the Closing, each of which will have been duly executed and, where appropriate, acknowledged.

5.3 Title Policy. At the Closing, Escrow Agent will provide Buyer, at Buyer’s sole cost and expense (except for Endorsements issued to cure Objection Matters, which shall be Seller’s cost), with an ALTA extended coverage owner's policy of title insurance (2006 Form) (the “**Title Policy**”) in such amount as may be requested by Owner, effective as of the Closing, insuring Buyer title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and the approved Title Exceptions. The Title Policy shall contain Endorsements, if any, that Seller has agreed to obtain to cure Objection Matters of Buyer and shall also contain any Endorsements requested by Buyer which Title Insurer has agreed to issue. Seller shall have no obligation to provide endorsements to the Title Policy which are not approved for issuance by Title Insurer. Seller will satisfy Escrow Agent's standard requirements for issuance of such policy, other than those, if any, within Buyer's control. Buyer must satisfy all of Escrow Agent's requirements for issuance of any title insurance endorsements requested by Buyer.

## **ARTICLE 6 CLOSING THE TRANSACTION**

### **6.1 Closing Costs and Prorations.**

(a) Escrow Fees. Buyer shall pay all of the Escrow fee.

(b) Recording Fees. Buyer will pay the cost of recording the Deed and recording the Public Facility Easement (if any). Seller will pay the cost of removing liens, encumbrances or other title matters if Seller elects to remove such other title matters. Buyer will pay the cost of removing liens, encumbrances or other title matters if Buyer elects to remove such matters. Recording fees for any new loan(s) obtained by Buyer shall be paid by Buyer.

(c) Taxes and Assessments. All taxes, real estate taxes, special assessment and improvement district liens, irrigation district assessments, and improvement assessment fees, if any, will be prorated between Seller and Buyer through the Closing Date.

(d) Miscellaneous Closing Costs. Any other fees, recording costs, charges or expenses incidental to the sale and transfer of the Property to Buyer not provided for above will be paid by Buyer and Seller, as is customary for real estate transactions consummated in Maricopa County, Arizona, as determined by Escrow Agent.

6.2 Payments and Disbursements to be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the Escrow by appropriate charges and credits to Buyer and Seller. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the Escrow. Escrow Agent is authorized to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction.

6.3 Buyer's Obligation to Deposit Additional Funds. On or before the Closing, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all closing costs and other amounts payable by, or otherwise chargeable to, Buyer.

6.4 IRS Reporting at Closing. Escrow Agent agrees to be the designated "reporting person" under Section 6045(e) of the Code with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B.

6.5 Recording of Documents. At the Closing, the Deed and the Public Facility Easement (if any) shall be recorded by Escrow Agent in the Official Records.

## **ARTICLE 7 ADDITIONAL COVENANTS**

7.1 Possession. Possession of the Property will be delivered to Buyer upon the Closing.

7.2 Risk of Loss. The risk of loss or damage to the Property until the Closing will be borne by Seller.

7.3 Condemnation. Seller shall promptly notify Buyer if all or a portion of the Property becomes subject to a pending action for condemnation. If all or a material portion of the Property is condemned (or sold and conveyed in lieu of condemnation) prior to the Closing or if the Property is subject to a pending action for condemnation of all or a material portion of the Property which is not consummated prior to Closing, Buyer may cancel this Agreement by giving written notice of cancellation to Seller. If condemnation or a sale in lieu thereof of less than a material portion of the Property



occurs prior to the Close of Escrow (or the Property is subject to a pending action to condemn less than a material portion thereof) or if Buyer elects to close the Escrow notwithstanding the taking or pending action for taking more than a material portion of the Property prior to the Closing, Buyer will receive all awards or payments made by the condemning authority to which Seller would otherwise be entitled (with Seller to credit or reimburse Buyer with any such amounts received by it prior to Closing) and will proceed to close the Escrow and pay the total Sales Price for the Property, including any condemned portion thereof. If Buyer elects to proceed with the Closing notwithstanding the condemnation action, Seller may not accept any settlement in the condemnation action without Buyer's consent, which consent may not be unreasonably withheld and Buyer may participate in the condemnation proceedings.

#### 7.4 Brokerage.

(a) Broker. Seller represents and warrants Seller has not dealt with any broker in connection with the transaction contemplated by this Agreement. Buyer represents and warrants that Buyer has not dealt with any broker in connection with the transaction contemplated by this Agreement.

(b) Brokerage Indemnification. If any person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the Party under whom the finder or broker is claiming shall be fully responsible for all Claims related thereto and, to the extent authorized by law, shall indemnify and hold the other Party and the other Party's Related Parties harmless for, from, and against any Claims related thereto. This indemnity will survive the Closing or the termination of this Agreement.

### **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties of Seller. Seller represents and warrants that:

(a) The person or persons executing this Agreement on behalf of Seller are duly authorized to do so and thereby bind Seller hereto without the signature of any other party.

(b) Seller has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement.

(c) Seller has received all consents, including the consent of its Council, to this Agreement and the Development Agreement and no additional approval or consents of either the Council or any third parties or governmental authorities are required in order for Seller to consummate the transactions contemplated hereby.

(d) This Agreement is valid, binding and enforceable in accordance with its terms.

(e) Seller is not prohibited from consummating the transaction contemplated by any law, regulation, agreement, order, or judgment.

(f) Seller has no knowledge of, and has received no notifications from any city, county, state, or other governmental authority having jurisdiction over the Property requiring any work to be done on the Property or alleging, any violation of an applicable ordinance, rule, regulation, or law with respect to the Property.

(g) Seller owns fee simple title to the Property subject only to the matters described in Schedule B of the Title Commitment.

(h) During the period of time that Seller has owned the Property, neither Seller nor its agents have stored, dumped, or transported any hazardous substances on the Property. During the period of time that Seller has owned the Property, Seller has not received notice from any governmental agency requiring any environmental clean-up or remediation on or to the Property.

(i) Seller has no knowledge of any litigation, assessment proceedings, investigations, condemnation, environmental, zoning or other land-use regulation proceedings either instituted or planned to be instituted, with respect to the Property.

(j) Seller has received no notice and has no knowledge of any actual or threatened claim, demand, damage, action, litigation or other proceedings affecting the Property.

(k) Seller shall not permit any additional liens or encumbrances to record against the Property from the Agreement Date up to and including the Closing Date.

8.2 Inaccuracies. If a matter represented or warranted by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or because of a cause other than Seller's intentional breach of this Agreement, then such inaccuracy shall not constitute a default by Seller under this Agreement, but will constitute a failure of a condition to Closing only if such inaccuracy materially increases the Buyer's good faith estimate of the cost or time to develop the Property. Failure of such a condition to Closing shall entitle Buyer to terminate this Agreement at Closing, whereupon both parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If Buyer does not elect to so terminate, Buyer shall timely proceed to Closing and the failure of such condition to Closing shall be deemed waived.

8.3 Representations and Warranties of Buyer. Buyer represents that:

(a) The person or persons executing this Agreement on behalf of Buyer are duly authorized to do so and thereby bind Buyer hereto without the signature of any other party.

(b) Buyer has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement. Buyer is a duly formed Arizona limited partnership.

(c) This Agreement is valid, binding, and enforceable in accordance with its terms.

(d) To the best of Buyer's actual knowledge, the execution, delivery, and performance of this Agreement by Buyer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement, license, security agreement or other instrument to which Buyer is a party, or any judgment, decree, order, statute, rule or governmental regulation.

(e) Other than the Council approval, no approvals or consents by third parties or governmental authorities are required in order for Buyer to consummate the transactions contemplated hereby.

8.4 Survival. Each of the representations and warranties contained in this Agreement, whether made by Seller or Buyer, shall be true and correct as of the Closing (subject to modification as expressly permitted by this Agreement) and shall survive the Closing and the delivery of the Deed to Buyer for a period of twelve (12) months.

**ARTICLE 9  
RELEASE**

Except as is otherwise expressly provided in this Agreement, Seller hereby specifically disclaims any warranty (oral or written) concerning (i) the nature and condition of the Property and its suitability for any and all activities and uses Buyer may elect to conduct on the Property; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located on the Property; (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise; (iv) the compliance of the Property or its operation with any laws, rules, ordinances or regulations of any government or other body, it being specifically understood Buyer shall have full opportunity during the Inspection Feasibility Period, to determine for itself the condition of the Property; and (v) any other matter whatsoever except as expressly set forth in this Agreement. Except as is otherwise expressly provided in this Agreement the sale of the Property as provided for in this Agreement is made on a strictly "AS IS" "WHERE IS" basis as of the Closing Date. Except as otherwise expressly provided in this Agreement Buyer expressly acknowledges, in consideration of the agreements of Seller in this Agreement, SELLER MAKES NO

WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE PROPERTY. BUYER SPECIFICALLY ACKNOWLEDGES BUYER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER, EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. FURTHER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. § 9601, *ET SEQ.* ("CERLA"); THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, *ET SEQ.* ("RCRA"); AND THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT, 42 U.S.C. § 9601, *ET SEQ.* ("SARA") OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY. BUYER REPRESENTS TO SELLER BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER SHALL ASSUME THE RISK OF ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND

ENVIRONMENTAL CONDITIONS, THAT MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER AGREES SHOULD ANY CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEANUP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE FOREGOING INDEMNITY SHALL NOT APPLY TO MATTERS RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY. THE TERM OF THIS INDEMNITY PROVIDED FOR HEREIN WILL COMMENCE OF THE DATE BUYER TAKES TITLE TO THE PROPERTY AND SHALL CONTINUE UNTIL THE EARLIER OF THE EXPIRATION OF THE COMPLIANCE PERIOD OR THE TRANSFER OF THE PROPERTY FROM BUYER TO A NON-AFFILIATE OF BUYER.

BUYER ACKNOWLEDGES AND AGREES THE PROVISIONS CONTAINED IN THIS ARTICLE 9 WERE A MATERIAL FACTOR IN SELLER'S ACCEPTANCE OF THE PURCHASE PRICE AND SELLER WAS UNWILLING TO SELL THE PROPERTY TO BUYER UNLESS SELLER WAS RELEASED AS EXPRESSLY SET FORTH ABOVE. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT, AND SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS ARTICLE 9 WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

## ARTICLE 10 GENERAL PROVISIONS

10.1 Effect of Cancellation. If Buyer timely delivers notice to Seller and Escrow Agent of its election to cancel the Agreement for failure to satisfy any of the Contingencies described in Paragraphs 4.1 and 4.2 or any of the provisions described in **Paragraph 7.2 and 7.3** (casualty or condemnation) or **Paragraph 8.1** (breach of Seller representation or warranty), termination shall be immediate, and Seller shall be solely responsible for any outstanding Escrow fees. If Buyer timely delivers notice to Seller and Escrow Agent of its election to cancel the Agreement for failure to satisfy the Contingency described in **Paragraph 4.3**, termination shall be immediate and Buyer shall be solely responsible for the payment of any Escrow fees. Other than as set forth in this Agreement, neither party will have any further rights or obligations under this Agreement. If Seller materially breaches this Agreement, Buyer's sole remedy shall be, in Buyer's sole discretion, to cancel this Agreement and the Escrow. In that event, Seller shall be solely responsible for the payment of all outstanding Escrow fees, and neither party will have any obligation to the other.

10.2 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

(a) "Affiliate" means, with respect to Buyer, any company, partnership, or corporation which (i) directly or indirectly controls Buyer, (ii) is directly or indirectly controlled by Buyer, or (iii) is directly or indirectly controlled by a company or corporation which directly or indirectly controls Buyer, where "control" means the right to exercise votes attaching to more than fifty percent (50%) of the voting shares of the company, partnership or corporation in question.

(b) "Claims" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

(c) "Days," except if otherwise expressly indicated, means calendar days and not business days.

(d) "Business Day" or "business day" shall mean those days of the week on which the Seller's business offices are open to the public, thereby excluding Fridays, Saturdays, Sundays, and City of Mesa holidays.

(e) "Related Parties" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

10.3 Assignment. Buyer may not assign or transfer its rights under this Agreement without the prior written consent of Seller, which may be given or withheld in Seller's sole discretion. Notwithstanding the foregoing, Buyer shall be entitled to assign its rights under this Agreement to an Affiliate. In connection with any assignment approved by Seller or to an Affiliate of Buyer as permitted herein, (a) the assignee shall assume the obligations of Buyer hereunder pursuant to an assignment agreement which inures to the benefit of and is enforceable by Seller, and (b) Seller shall be provided with an executed copy of the assignment agreement at least fifteen (15) days prior to the Closing.

10.4 Binding Effect. The provisions of this Agreement are binding upon and will inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

10.5 Attorneys' Fees. In any suit, action, or proceeding (a) to enforce and/or defend this Agreement or any modification hereof; (b) to interpret this Agreement or any modification hereof; and/or (c) arising out of or having its roots in this Agreement or any modification hereof, the Prevailing Party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs of suit, and other costs and expenses incurred by the non-breaching party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted, together with any other relief granted by the court, whether or not any judgment is entered. "Prevailing Party" within the meaning of this Section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

10.6 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

10.7 Governing Law, Jurisdiction, Venue. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement may only be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). Seller and Buyer irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

10.8 Time. Time is of the essence of this Agreement.

10.9 Notices. Notices will be in writing and will be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid. Notices will be delivered or addressed to Seller and Seller at the addresses set forth on the first page of this Agreement or at such other address or number as a party may designate in writing. The date notice is deemed to have been given, received and become effective will be (a) the date on which the notice is delivered, if notice is given by personal delivery, (b) two (2) days following the date of deposit in the mail, if the notice is sent through the United States mail, or (c) the date of actual receipt if given by express delivery service. Any notice to be given by any party hereto may be given by the counsel for such party. Any notice to be given to Escrow Agent shall be sent to the address set forth on the first page of this Agreement.

10.10 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

10.11 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (Arizona Time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Friday, Saturday, Sunday or legal holiday of the City of Mesa, the time for performance or taking such action will be extended to the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday of the City of Mesa.

10.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

10.13 Entire Agreement. This Agreement, which includes the following Exhibits:

Exhibit A	Legal Description of the Property
-----------	-----------------------------------

This Agreement, its Exhibits, and the definition of terms of the Lease incorporated herein constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

10.14 Compliance with State Law Restrictions. The obligations of the Seller, pursuant to the provisions of this Agreement which require the expenditure of funds, do not constitute a general obligation or indebtedness of Seller within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate the Seller to make any expenditure from proceeds of ad valorem taxes or obligations to which any



general taxing authority is pledged or from its general fund unless the expenditure has been duly budgeted if and to the extent required by law, and such expenditure is within all budget and expenditure limitations of, and is not in conflict with, the Constitution or laws of the State of Arizona.

10.15 Construction. The terms and provisions of this Agreement represent the results of negotiations among the parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the executed Agreement or any earlier draft of the same.

10.16 Severability. If any provision of this Agreement is unenforceable, the remaining provisions shall nevertheless be kept in effect.

10.17 No Partnership. Any and all provisions, implications, or interpretations of or from this Agreement to the contrary notwithstanding, no partnership, joint venture or other relationship is created, implied or acknowledged between or among the Parties.

10.18 Applicability of Certain Statutes. Notice is hereby given of the applicability of A.R.S. § 38-511. Buyer understands and agrees that pursuant to the provisions of A.R.S. § 38-511, Seller may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract or agreement on behalf of Seller is at any time while the contract or any extension thereof is in effect an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

10.19 Nondiscrimination. Buyer and Seller agree to comply with all applicable state and Federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date first above written.

**SELLER:**

CITY OF MESA, an Arizona municipal corporation

By: \_\_\_\_\_  
City Manager or designee

**BUYER:**

ARTSPACE MESA, LP, an Arizona limited partnership

By: Artspace Mesa Lofts, LLC, an Arizona limited liability company  
Its: General Partner

By: Artspace Projects, Inc., a Minnesota nonprofit corporation

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

The undersigned Escrow Agent accepts the engagement to handle the Escrow on the terms and conditions described herein.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“Escrow Agent”

OPENING DATE: \_\_\_\_\_

## **Exhibit A**

### Legal Description of the Property

