

WHEN RECORDED RETURN TO:

City of Mesa (Kimberly Fallbeck)
20 East Main Street
Mesa, AZ 85211

WITH A COPY TO:

LOTZAR LAW FIRM, PC
6262 N. Scottsdale Road, Suite 455
Scottsdale, Arizona 85251

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of _____, 2016, by and between ARTSPACE PROJECTS, INC., a Minnesota nonprofit corporation ("**Developer**"); ARTSPACE MESA, LP, an Arizona limited partnership ("**Partnership**"); and the CITY OF MESA, an Arizona municipal corporation (the "City"). Developer, Partnership and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS

A. Developer is a Minnesota nonprofit corporation and an experienced low income housing tax credit developer who is developing the Project (as hereinafter defined) whose mission is to create, foster and preserve affordable space for Artists and arts organizations.

B. City owns approximately 1.7 acres of undeveloped real property located at 155 S. Hibbert Road, in Mesa, Arizona, which is more particularly described in in Exhibit A attached hereto and which is located within the Transit Oriented Development Corridor.

C. Developer is a non-profit real estate developer specializing in creating, owning and operating affordable live/work spaces in perpetuity for whose developments nationwide have proven themselves to be economic development and revitalization tools for communities they are built within and the residents become engaged, active and committed members of their neighborhoods.

D. Developer intends to develop its campus to be open, welcoming and a safe gathering space in downtown Mesa for its residents and also for the public at large

E. Developer will benefit City's residents by working 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 Downtown Mesa as a thriving area for entrepreneurs, artists, students and creative businesses.

F. Upon the terms and conditions described herein, City desires to convey the Property to Partnership subject to the terms of this Agreement and the Purchase and Sale Agreement in exchange for developing new affordable live/work space with an Artist Preference and their Families to live and work in the downtown area of the City, the value of which is equal to or greater than the value of the Property. Developer and Partnership will actively promote the Project to artistically creative Veterans.

G. Developer proposes to develop a minimum of 48 units of affordable, live/work space on the Property, including at least 1,200 square feet of ground floor commercial space with 2 floors of residential units above it and 2 other buildings having 3 floors of residential units (1, 2 and 3-bedroom) together with the Community Space (the "**Project**") pursuant to the terms of this Agreement, the 2016 QAP and the other Project financing documents.

H. The Project will be financed with a combination of LIHTCs and both construction and permanent financing sources and will be rented to individuals with an Artist Preference and their Families with Annual Incomes at or below 60% of the area median gross income for the Phoenix metropolitan area, as will be restricted by the LIHTC LURA and the other Project financing documents.

I. The conveyance of the Property to Partnership and Partnership's construction of the Project will facilitate City's development of its downtown area and will benefit City and its residents by: (i) developing under-utilized property in the downtown area; (ii) facilitating transit-oriented sustainable housing within the downtown area; (iii) providing affordable housing in the downtown area; (iv) helping to ensure light rail is a catalyst to create sustainable, transit-oriented development and economies in downtown Mesa; and (v) creating an innovative, art-centered, quality-focused, eclectic blend of old and new and to build on the City's investment in the Mesa Arts Center and its museums.

J. In order to accomplish the purposes described in this Agreement, City and Partnership intend to enter into a purchase and sale agreement for the Property (the "Purchase and Sale Agreement") in substantially the form attached hereto as Exhibit B.

K. The City finds that the proposed Project and the fulfillment generally of this Agreement, which is made pursuant to A.R.S § 9.500.05, and the Purchase and Sale Agreement are in the vital and best interest of the City and the health, safety and welfare of its residents.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement, the Parties agree as follows:

ARTICLE I

Definitions

The following terms, except where the context indicates otherwise, shall have the respective meanings set forth below.

“ADOH” means the Arizona Department of Housing, the State of Arizona’s LIHTC allocating agency.

“Agreement Date” means the date on this first page of this Agreement.

“Application” means the application to be submitted by Partnership to ADOH for a 2016 allocation of LIHTCs on or before March 1, 2016.

“Annual Income” means the anticipated total income from all sources, as defined in 24 CFR 5.609, to be received by the family head and spouse and each additional member of the household during a twelve month period.

“Artist Preference” is a tenant selection preference applied to a pool of qualifying prospective tenants by which to provide a preference for acceptance into Project rental units to qualified applicants who have a commitment to and/or participate in the creative arts.

“Artists” means tenants who are involved in artistic or literary activities.

“A.R.S.” means the Arizona Revised Statutes, as amended.

“Authorized City Representative” means the person designated to act on behalf of the City.

“Authorized Project Team Representative” means the person designated to act on behalf of the Developer and Partnership.

“Building” means that certain apartment building and all other structures, improvements, equipment, fixtures and facilities described or shown in the Plans and Specifications forming a part of the Project that will hereafter be located on the Property.

“CFR” means the United States Code of Federal Regulations as it may be amended from time to time during the term of this Agreement.

“City” means the City of Mesa, an Arizona municipal corporation or any municipal corporation or authority succeeding to its rights and obligations under this Agreement.

“Commercial Space” means the minimum 1,200 square feet of ground floor square footage which Commercial Space Partnership and Developer will actively pursue creative and art-related businesses as tenants who will serve as a community partners that seek to have an active retail business which will be open to residents and the public on a regular basis during the daytime and evenings.

“Commercial Space Partnership” means a to-be-created Arizona partnership which will be an affiliate of Developer and which will own the Commercial Space.

“Community Space” means the open air courtyard and the approximately 3,500 square feet of interior gallery and other space available to Project residents and open to the public as provided in Section 4.1G hereof.

“Completion Date” means the date of completion of the construction of the Project as that date shall be certified pursuant to Section 4.1D hereof. The Completion Date for the Project shall be no later than that required under the QAP, the Code or by ADOH and the Partnership’s financing partners.

“Compliance Period” means the compliance period for the Project that begins with the first year of the Project’s Tax Credit Period, the first taxable year in which the Partnership claims LIHTCs for the Project, and lasts for a maximum of twenty (20) consecutive years, as more fully described in Section 2.2.

“Construction Period” means the period between the beginning of construction, which is the issuance of a grading permit and the start of grading on the Property for the Project and the Completion Date.

“Contractor” means the general contractor, licensed and bondable under Arizona law, selected by Developer to complete the work of construction of the Project.

“Council” means the Council of the City or any successor governing body of the City.

“Equity Financing” means those certain capital contributions to be received from Partnership’s limited partner for Project development in exchange for the LIHTCs that will be received in installments generally tied to the Project’s construction progress.

“Escrow Agent” means Security Title Agency located at 1630 S. Stapley Dr., Suite 125, Mesa, AZ 85204.

“Family” means one or more individuals residing in a household.

“General Partner” means Artspace Mesa Lofts, LLC, an Arizona limited liability company.

“HUD” means the United States Department of Housing and Urban Development.

“IRS Code” means the Internal Revenue Code of 1986, as amended.

“LIHTC” means the low income housing tax credit issued under Code § 42.

“LIHTC LURA” means that certain Declaration of Affirmative Land Use and Restrictive Covenants Agreement to be executed between ADOH and Partnership pursuant to Section 42(h)(6) of the Code and recorded against the Project after its completion.

“Limited Partner” means Partnership’s limited partner pursuant to its amended and restated limited partnership agreement to be executed by and between Partnership’s General Partner and its Limited Partner on or before the closing of the Project’s Equity Financing.

“Low-income families” refers to households earning Family Income of 60% or less of area median income, adjusted for family size for the area, as determined by HUD.

“Official Records” means the official records of the Maricopa County, Arizona Recorder.

“Party” means City, Partnership and Developer when referred to individually and “Parties” when referred to collectively.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and special assessments on the Project contested or not then delinquent; (ii) utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions that shall not materially interfere with or impair Developer’s or Partnership’s use of the Project (or if no operations are being conducted therein, the operations for which the Project was designed; (iii) land use restrictions resulting from governmental regulations on the use and occupancy of the Project, including but not limited to the LIHTC LURA; (iv) any judgment lien against Partnership, so long as the finality of such judgment is being contested and execution thereof is stayed by appropriate proceedings promptly initiated and diligently conducted; (v) such minor defects, irregularities, encumbrances, easements, rights-of-way, reservations, patents, and clouds on title as normally exist with respect to properties similar in character to the Project that, in the aggregate, do not materially impair the Property affected thereby for the purpose for which it is acquired or is held by Developer; (vi) the liens of the Partnership’s financing partners

that record in the Official Records on the same date as the deed from City to Partnership records; and (vii) such other liens as may be consented to in writing by City.

“Person” means any natural person, firm association, trust, partnership, corporation or public body.

“Phase 1” means that certain Phase I Environmental Site Assessment dated February, 2015 and prepared by Conestoga-Rovers & Associates for City, and all updates thereto obtained by Developer and Partnership.

“Plans and Specifications” means the plans and specifications for the Project as approved by City.

“Project” means the multi-family housing development and other related on-site and off-site improvements, equipment and related rights therein described in the Recitals above, to be constructed upon the Property, including the Building, the Community Space and the Commercial Space. .

“Property” means the unimproved real property located at 155 S. Hibbert Road, in Mesa, Arizona, as legally described on Exhibit A attached hereto and incorporated herein by reference, and those improvements thereon (if any), interests in real estate and other rights described in this Agreement and any instrument supplementing or amending this Agreement together with all additions thereto and substitutions therefor, less such real estate and interests in real estate as may be acquired through the exercise of the power of eminent domain as provided herein.

“QAP” means the 2016 Qualified Allocation Plan administered by ADOH and signed into law by the Governor of the State of Arizona.

“Transit Oriented Development Corridor” means the land area generally within 1320 feet of future light rail line and high capacity transit station areas and represents the general distance that most individuals are willing to walk to transit stops. This area is expected to primarily have a medium-density residential character with a mix of commercial and office use.

“Sustainable Development” means generally, a pattern of resource use that aims to meet human needs while preserving the environment so that these human needs can be met not only in the present, but also for generations to come and means, more specifically, a description of the products, approaches or methods that are used to meet these general resource aims. The QAP awards points for a project that is constructed in accordance with one of three available Sustainable Developments paths chosen by an applicant: (1) the Gold certification path for the LEED for Homes program, (2) a performance-based path for energy efficiency based on the Home Energy Rating System, and (3) a prescriptive-based path.

“Transfer” means (i) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law) of the Property; (ii) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law) that is not a Permitted Encumbrance; (iii) the withdrawal, retirement, removal or involuntary resignation of the General Partner; (iv) the Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code; or (v) the voluntary or involuntary dissolution of Partnership.

ARTICLE II PURPOSES AND TERM

Section 2.1. Purposes. The purposes of this Agreement are (i) to facilitate and encourage the redevelopment of the City’s downtown; (ii) to facilitate the construction of affordable live/work spaces with an Artist Preference and their Families in compliance with the Mesa General Plan and the Central Main Plan; and (iii) to set forth the requirements and restrictions on the use and development of the Property according to the terms of this Agreement and the Purchase and Sale Agreement.

Section 2.2. Term. The term of this Agreement shall commence on the date of approval and execution by City and noted on the first page hereof and shall continue through the expiration of the Compliance Period, at which time the Developer’s obligations hereunder shall be deemed fully satisfied and the Parties hereto shall execute a full release of record of this Agreement. Notwithstanding the foregoing, this Agreement will terminate prior to the expiration of the Compliance Period upon any of the following conditions:

- a. Failure of any of the contingencies described in the Purchase and Sale Agreement and notice by Partnership to City of its election to not take title to the Property and submission to the City of a form of release of this Agreement for execution by the Partnership and the Parties hereto and recordation in the Official Records; or
- b. A Transfer of the Property after Partnership has taken title to it and prior to the expiration of the Compliance Period. If the Transfer was one that occurred by operation of law, including but not limited to a foreclosure or deed in lieu of foreclosure of the Property or the dissolution of the Partnership or General Partner, the release shall be automatic and there shall be no need for a writing executed by the Parties hereto or the Partnership.
- c. Only after Year 15 of the Compliance Period, upon the written consent of the City Manager.

ARTICLE III PURCHASE AND SALE OF PROPERTY

City agrees to sell the Property to Partnership for the purposes of constructing and operating the Project on the terms of the Purchase and Sale Agreement. An escrow for the Purchase and Sale of the Property shall be opened with Escrow Agent, and the closing of the transfer to the Property shall be subject to such contingencies as are described in the Purchase and Sale Agreement. Partnership shall have a due diligence period as described in the Purchase and Sale Agreement to investigate the status of title and other matters of record and in which to make a physical inspection of the Property and to ensure the completion and approval of any federally-required environmental review of the Property. Developer shall be responsible for obtaining all financing contemplated for development of the Project. City and Developer acknowledge that a portion of such financing is intended to be provided by the sale of LIHTC. The obligations of Developer with respect to the Project are contingent upon the Developer receiving an award of LIHTC as applied for by Developer on or before March 1, 2016 and Developer's acceptance of such LIHTC pursuant to applicable State laws and regulations and such other funding necessary to complete the Project. Developer agrees to timely and diligently pursue and complete all requirements for its funding of the Project. Developer shall, prior to close of escrow on the Property, demonstrate that it has committed funding necessary to complete the Project described herein. Developer shall notify City whether its contingencies as herein set forth have been satisfied. Any notice regarding contingencies stating less than full satisfaction or waiver shall be deemed to be notice that contingencies have not been satisfied. The only remaining contingency that shall be unsatisfied as of the Application Submittal Date shall be the receipt of LIHTCs, as may be awarded to Buyer by ADOH under its **2016 QAP**. The closing of the transfer of the Property to Partnership shall occur simultaneously with the closing of the Equity Financing and the other Project financing sources as set forth herein.

ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.1 Representations, Warranties and Covenants of Developer and Partnership. Developer and Partnership represent, warrant and covenant to the City as of the Agreement Date:

A. Subject to the terms of this Agreement and as a material consideration of City for the sale of the Property to Partnership, Developer and Partnership shall use commercially reasonable efforts to finance and construct a minimum of 48 live-work units of rental housing on the Property, which financing shall close no later than the close of escrow for the purchase of the Property pursuant to the Purchase and Sale Agreement. The live-work units shall be developed in a combination of 1-, 2- and 3-bedroom units with on-site amenities, and preference shall be first given to tenants who are Artists and their Families. Developer shall also cause the Commercial Space Partnership to construct at least 1200 square feet of Commercial Space. Partnership

shall comply with all rent and income restrictions imposed by ADOH pursuant to the LIHTC LURA or by HUD, if applicable, and any and all restrictions and regulations associated with any of its other financing sources.

B. Developer shall construct all on-site improvements ("On-Site Improvements") and off-site improvements ("Off-Site Improvements") in compliance with the applicable zoning for the Property, design review approval and the approved Plans and Specifications for the Project. All required storm water retention facilities shall be constructed on-site in accordance the engineering/storm water plans of the Project approved by City.

C. Partnership shall pay all applicable taxes, development fees and permit, plan review and inspection fees. Prior to commencement of construction of the Project, Partnership shall provide to City one or more payment and performance bonds in the amount of 100% of the estimated cost (as approved by City) of the construction of the Project. The bonds may be multiple-obligee bonds in favor of the Partnership's Project financing partners and City.

D. The Project shall be constructed in accordance with the particular Sustainable Development path selected by Partnership in the Application, and Developer shall cause Partnership to certify to City at Completion that the Project was so constructed.

E. Developer and Partnership shall comply with all federal, state and local laws and regulations in the construction and operation of the Project and, at Partnership's cost shall cause any environmental remedial work to be performed during work on the Property in accordance with standards set by the Arizona Department of Environmental Quality. Developer and Partnership shall indemnify, defend, and hold harmless City, the Council, and their respective employees, agents, contractors, licensees or assignees (each, individually, an "Indemnified Party") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties by reason of an environmental contamination or remediation on the Property. 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 Partnership takes title to the Property and shall continue until the earlier of the expiration of the Compliance Period or the Transfer of the Property.

F. Developer and Partnership shall cause the manager for the Project (i) to participate in the Mesa Police Department's Crime Free Rental Housing Program and obtain certification of completion of training within one (1) year of execution of this Agreement, and (ii) to require all occupants of the Project to sign a Crime Free Lease Annex (or the Spanish translation of that addendum) at the time their leases are

executed.

http://www.crime-free-association.org/lease_addendums_az_english.htm

G. No later than 90 days before Completion, Partnership shall adopt, and continuously thereafter maintain, a management plan for the Project. The Management Plan shall address the requirements of this Agreement and such items as are commonly addressed in residential multifamily management plans, such as leasing standards, maintenance standards and fair housing. The Management Plan shall include provisions for opening the Project's Community Space to the general public a minimum of four (4) days per year and advertisement of such open Project days. The Management Plan may be prepared by the property management company and approved by City, which approval shall not be unreasonably withheld. The Management Plan will be compliant with all requirements of ADOH and the Fair Housing Act.

H. Partnership shall develop and implement a recycling and waste reduction program for the Housing Development Project and agrees to use City utility services for the Project provided at standard rates for other users in a similar customer classification except such rates may be reduced as follows:

Energy rates to be paid by Developer at a fifty percent (50%) reduction in the standard rates for the first three (3) years after the issuance of a certificate of occupancy for the Project.

Water rates to be paid by Developer at a fifty percent (50%) reduction in the standard rates for the first three (3) years after the issuance of a certificate of occupancy for the Project.

I. Developer and Partnership shall comply with all applicable laws, including law and regulations applicable to the Project.

J. Developer has the full right, power and authorization to enter into and perform this Agreement and all of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

K. Partnership has the full right, power and authorization to enter into and perform this Agreement and all of the obligations and undertakings of Partnership under this Agreement, and the execution, delivery and performance of this Agreement by Partnership has been duly authorized and agreed to in compliance with the organizational documents of Partnership.

L. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

M. Neither Developer nor Partnership knows of any litigation, proceeding or investigation pending or threatened against or affecting Developer, or either of them, or Partnership which could have a material adverse effect on Developer's or Partnership's performance under this Agreement that has not been disclosed in writing to the other Parties.

N. The execution, delivery and performance of this Agreement by Developer and Partnership is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer or Partnership is a party or to which Developer or Partnership is otherwise subject.

O. Neither Developer nor Partnership has paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of consultants, brokers, architects, engineers and attorneys.

P. Developer and Partnership have been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

Q. Developer and Partnership agree that if the carryover allocation requirements of ADOH are not timely satisfied or if the Completion Date has not been met as required by the QAP or ADOH, then City shall have the right to require transfer of the Property back to City by execution of a Special Warranty Deed. Developer and Partnership agree to execute a Special Warranty Deed upon demand from City if the deadlines set forth herein are not met.

R. As part of the sale of the Property, Developer and Partnership agree to designate a three bedroom unit in the Project as a "HOME Match Unit". The Home Match Unit will meet and comply with all of the HOME regulations for projects utilizing LIHTCs. The HOME Match Unit will be operated and monitored consistent with other HOME-assisted units utilizing LIHTCs during the Compliance Period.

Section 4.2 Representations of City. City represents and warrants to Developer and Partnership that, as of the Agreement Date:

A. City's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the procedural requirements of City Code and Arizona Open Meeting Law.

B. All City consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

D. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which City is a party or is otherwise subject.

ARTICLE V INDEMNIFICATION

Developer and Partnership shall indemnify, defend, pay and hold harmless City, Council members, and their respective employees, agents, contractors, licensees or assignees (each, individually, an "Indemnified Party") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Developer and Partnership in any proceedings of City pertaining to this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Indemnified Parties by reason of any of the foregoing events, then Developer and Partnership, upon prompt written notice from the Indemnified Party will, at Developer's and Partnership's sole cost and expense, resist or defend such claim, action or proceeding, in the Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed. The provisions of this section shall survive the termination or expiration of this Agreement.

ARTICLE VI GENERAL PROVISIONS

Section 6.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records not later than ten (10) days after the Agreement Date.

Section 6.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City:

City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211
Facsimile: 480-644-2175
Attn: City Manager

With a copy to:

Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: City Attorney

Developer:

Artspace Projects, Inc.
250 Third Avenue North, Suite 250
Minneapolis, Minnesota 55401
Attn: Greg Handberg, Senior Vice
President, Properties

Partnership:

Artspace Mesa, LP
c/o Artspace Projects, Inc.
250 Third Avenue North, Suite 400
Minneapolis, Minnesota 55401
Attn: Heidi Zimmer, Property Development

With a copy to:

Lotzar Law Firm, P.C.
7150 E. Camelback Road, Suite 455
Scottsdale, Arizona 85251
Attn: Mary Sue Lotzar

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

Section 6.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason.

Section 6.4 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Developer and Partnership, or a municipal corporation within Arizona with respect to City and that the individuals executing this Agreement on behalf of their

respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

Section 6.5 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the “Defaulting Party”) then the other Party (the “Non-Defaulting Party”) may provide written notice to perform to the Defaulting Party (the “Notice of Default”). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

Section 6.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

Section 6.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

Section 6.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

Section 6.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

Section 6.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

Section 6.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins

to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

Section 6.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

Section 6.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A: Legal Description of the Property
Exhibit B: Purchase and Sale Agreement

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

Section 6.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

Section 6.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

Section 6.16 Proposition 207 Waiver. Developer and Partnership hereby waives and releases City from any and all claims under A.R.S. § 12-1134 et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

Section 6.17 E-Verify. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 23-214, Developer and Partnership represent and warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. City retains the legal right to

randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

Section 6.18 Prior Appropriation. Pursuant to A.R.S. § 42-17106, City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

“City”

CITY OF MESA, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

ATTEST:

Dee Ann Mickelsen, City Clerk

APPROVED AS TO FORM

James N. Smith, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

PARTNERSHIP:

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: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, the _____ of ARTSPACE PROJECTS, INC., a Minnesota nonprofit corporation, the sole member of Artspace Mesa Lofts, LLC, an Arizona limited liability company and the general partner of Artspace Mesa, LP, an Arizona limited partnership.

Notary Public

My commission expires:

EXHIBIT A
TO DEVELOPMENT AGREEMENT
(Legal Description)

EXHIBIT B
TO DEVELOPMENT AGREEMENT
(Purchase and Sale Agreement)