

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

AGREEMENT DATE: _____, 2019

SELLER: CITY OF MESA, an Arizona municipal corporation
Address: 20 East Main Street, Suite 500
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: DESERT VISTA 100, LLC, an Arizona limited liability company
Address: 3321 E. Baseline Road
Gilbert, AZ 85234
Attn: Jeff Blandford
Telephone: (480) 892-4492
E-mail: legacycanyonproperties@outlook.com

ESCROW AGENT: SECURITY TITLE AGENCY
Address: 1630 S, Stapley Dr., Suite 125
Mesa, AZ 85204
Attn: Kerry Hemphill
Telephone: (480) 345-6345
Email: Kerry.Hemphill@SecurityTitle.com
Escrow Number: _____

PROPERTY: APNs 141-39-001M, 141-39-001N and 141-39-001P, approximately 132+/- acres, legally described in the attached **Exhibit A** (the “**Property**”), located on the northwest corner of Recker and Thomas Roads in Mesa, Arizona, excluding approximately 2.7 acres at the end of Star Valley Road that the City uses for a sewer lift station (the “**Retained Property**”).

1. **Effect of Agreement.** Seller hereby agrees to sell the Property and Buyer hereby agrees to purchase the Property on the terms and conditions set forth in this Agreement.
2. **Purchase Price.** The total purchase price which Buyer agrees to pay for the Property is Twenty-One Million, One Hundred Thousand and 00/100 Dollars (\$21,100,000.00) (the “**Purchase Price**”). The Purchase Price shall be payable as follows:

(a) Buyer has deposited with Seller, and Seller has deposited with Escrow Agent, the sum of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “**Initial Earnest Money**”). Buyer has also deposited with the Escrow Agent the sum of Eight Hundred and Five Thousand and 00/100 Dollars (\$805,000.00) (the “**Additional Earnest Money Deposit**,” and together with the Initial Earnest Money deposit, the “**Earnest Money**”). The Earnest Money shall be applied against the Purchase Price at the Close of Escrow (as hereinafter defined).

(b) At the Closing, Buyer shall deposit with Escrow Agent the amount of Twenty Million, Forty-Five Thousand and 00/100ths Dollars (\$20,045,000.00), minus any additional deposits made, in cash or by wire transfer of immediately available funds.

3. **Earnest Money Provisions.**

(a) All Earnest Money, and additional deposits, required by this Agreement shall be deposited by wire transfer or other form of immediately available funds to the account of Escrow Agent. Escrow Agent is hereby instructed to deposit all Earnest Money, and any additional deposits, in a federally-insured money market or similar account, subject to immediate withdrawal, at a bank or savings and loan institution located in Maricopa County, Arizona (an “**Approved Investment Account**”). Upon Closing, the Earnest Money, any additional deposits and interest earned thereon shall be credited to the Purchase Price.

(b) Escrow Agent shall disburse the Purchase Price, including the Earnest Money, any additional deposits and interest earned thereon, to Seller on the Closing Date, less any funds required to take into account the prorations and other adjustments required of Seller by this Agreement. If the Earnest Money and additional deposits are forfeited to Seller as provided in this Agreement, such amounts, with any interest earned thereon, shall be paid immediately to Seller. If Buyer is entitled at any time to a refund of Earnest Money and additional deposits held in Escrow, any interest earned thereon shall be paid to Buyer.

(c) If Buyer cancels or terminates this Agreement, as permitted under the terms of this Agreement, prior to the end of the Feasibility Period, the Earnest Money and interest earned thereon shall be returned to Buyer. If Buyer fails to terminate this Agreement before the end of the Feasibility Period, the Earnest Money and interest earned thereon shall be absolutely non-refundable to Buyer, in consideration for Seller giving and granting Buyer the right to purchase the Property as described in this Agreement, and for taking the Property off the market, and not as a penalty.

4. **Escrow.**

(a) **Establishment of the Escrow.** An escrow for this transaction (the “**Escrow**”) is established with Security Title Agency, 1630 S. Stapley Drive, Suite 125, Mesa, Arizona 85204, Kerry Hemphill, escrow officer (the “**Escrow Agent**”), and Escrow Agent is engaged to administer the Escrow.

(b) **Opening Date.** Within five (5) business days after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement to Escrow Agent. The date that this Agreement is delivered to Escrow Agent is referred to in this Agreement

as the “**Opening Date.**” Escrow Agent shall notify Buyer and Seller in writing of the Opening Date.

(c) **Acceptance of Escrow.** By accepting the Escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent.

(d) **Escrow Instructions.** This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer 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.

(e) **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.

(f) **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 Buyer will each pay one-half of all customary Escrow cancellation charges.

5. **Information to be Provided.**

(a) **Diligence Materials and Property Information.** Seller has made available, on the City's website, and in hard copy, information about the Property, including but not limited to appraisal reports, title reports, maps, data, communications and zoning and annexation files (collectively, the “**Property Information**”). During the Feasibility Period, Seller will continue to maintain the website that discloses the Property Information and will continue to make hard copy records of the Property Information available for Buyer's inspection at the Seller's municipal offices at Mesa City Plaza, 20 East Main Street, Suite 150 (the City Clerk's offices), in Mesa. Seller provides the Property Information without representation or warranty of any kind, express or implied. Buyer shall be responsible, at Buyer's sole expense, to undertake any additional investigation desired by Buyer concerning the condition of the Property pursuant to the terms of the Access Agreement attached hereto as **Exhibit B.**

(b) **Right to Enter and Inspect the Property.** From time to time prior to the Closing, Buyer may enter the Property with Buyer's representatives, contractors, and agents to examine the Property, conduct soil tests, environmental studies, engineering feasibility studies, and other tests and studies, and to plan the proposed development of the Property; provided, however, Buyer shall restore, to Seller's satisfaction, any damage it causes to the Property to a condition equal to or

better than the condition prior to causing such damage. Any entry upon the Property and all examinations and investigations shall be at the sole risk and expense of Buyer. Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including without limitation, attorneys' fees and disbursements), suffered or incurred by Seller that arises out of or in connection with any entry upon the Property or investigations or other activities conducted thereon by Buyer or Buyer's representatives, or any liens or encumbrances filed or recorded against the Property as a consequence of the investigations or any and all other activities undertaken by Buyer or Buyer's representatives. Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth herein shall survive any termination of this Agreement.

(c) **Legal Description for the Property.** Seller has prepared the legal description for the Property set forth in Exhibit A, which was delivered to Escrow Agent. Within the Feasibility Period, Buyer shall provide Seller a current ALTA Survey of the Property. Seller will provide Buyer with the City's requirements for the dimensions and location of the Retained Property. In addition, within the Feasibility Period, the Parties will act in good faith to agree upon a final legal description for the Property which will exclude (i) the Retained Property required by Seller, and (ii) the Easements. If the Parties are unable to agree upon a final legal description for the Property prior to the end of the Feasibility Period, this Agreement shall automatically terminate, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(d) **Preliminary Title Report.** Escrow Agent shall provide Buyer and Seller as soon as possible following the Opening Date with: (i) a commitment for an owner's title insurance policy covering the Property to be issued by the Title Insurer to Buyer (the "**Report**"), which Report shall show the status of title to the Property as of the date of the Report and contain the express commitment of the Title Insurer to issue the Title Policy, and (ii) legible copies of all documents referred to in the Report.

(e) **Survey.** Buyer shall have a current ALTA survey of the Property (the "**Survey**") prepared by a registered land surveyor, licensed in the State of Arizona, satisfactory to Seller and Buyer, prior to expiration of the Feasibility Period. The Survey will include a legal description and depiction and indicate the acreage of the Property. The Survey shall be certified to be accurate, complete and correct to Buyer, Seller, and Title Insurer. Buyer shall provide Seller with three (3) copies of the Survey and Escrow Agent with one (1) copy of the Survey.

(f) **Public Easements.** There are public improvements (e.g., water, sewer, electric, etc.) on the Property; accordingly, Seller shall retain rights, in the form of easements on, over, under and across the Property to provide for repair and maintenance of, continued use of, and access to, the existing pipes, conduits, utility lines and other facilities and infrastructures located either on the Property, or on adjacent property owned by Seller. The nature of the easements, the form of easement grant and the exact descriptions of all easement premises (collectively, the "**Easements**") shall in Seller's standard forms for such easements. Seller, at its sole election, may either reserve the Easements, or require Buyer to grant the Easements to Seller (and/or any other named parties in the approved easement grants), at no cost to Seller, at Closing, either by

instrument, by map of dedication or by plat. Any reserved Easement shall be deemed an Approved Title Exception; and any Easement granted by Buyer 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 Buyer. If the location, area, terms and conditions of the Easements are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) prior to Closing, either Party may terminate this Agreement by delivery of written notice to the other Party, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(g) **Zoning and General Plan Amendment.** As part of this transaction, Buyer will seek the Mesa City Council's approval for both of the following:

(i) **Minor General Plan Amendment.** Buyer shall, at its sole expense, prepare and file an application for a Minor General Plan Amendment to change the character area designation of the Property to a character area that allows residential development.

(ii) **Re-Zoning and Site Plan.** Buyer shall, at its sole expense, prepare and file an application to re-zone the Property to a residential zoning district. As part of the re-zoning, Buyer agrees the Property will be developed after sale with all of the following features: (1) high quality materials, finishes, design and architectural details; (2) buffer zones of undeveloped property or open space south of the northern boundary of the Property and east of the western boundary of the Property to provide an appropriate separation from the existing uses on adjacent properties; (3) landscaping similar to the City's Desert Uplands landscape palette; (4) residential amenities similar to those in the adjacent Red Mountain Ranch community; and (5) density of development similar to that of the adjacent Red Mountain Ranch community.

(iii) **City's Approval Authority.** Buyer acknowledges that Seller is a municipal entity and its agreement to sell the Property in this transaction is separate from, and does not affect, the City's separate powers and authority as a governmental entity including but not limited to the authority to review applications for general plan amendments and re-zoning and site plan review. Buyer further acknowledges and agrees that City approvals for a minor general plan amendment, re-zoning and site plan review, and other City processes contemplated by this Agreement, or necessary to close this transaction, shall be obtained at Buyer's sole cost and expense, and shall be processed by the City according to its usual and customary practices and timelines.

(iv) **Council's Discretion.** City decisions related to the development activities listed in Paragraphs 5(g)(i) and 5(g)(ii), are approved by the Mesa City Council in the Council's sole and absolute discretion. Should the Council deny Buyer's requests, or any one of them, such a denial shall not be a default or breach by the City under this Agreement, and if the Council does not approve Buyer's requests, or any one thereof, money damages shall not be assessed against the City.

6. **Conditions to Close.** The parties' obligation to close this transaction is subject to the satisfaction (or waiver in writing), of the following conditions on and as of the Closing, unless an earlier date is specified:

(a) **Conditions to Buyer's Obligation to Close.** Buyer's obligation to close this transaction is subject to the satisfaction (or waiver in writing), of the following conditions on and as of the Closing, unless an earlier date is specified:

(i) **Title Review.** Buyer shall be satisfied with the status of title to the Property as disclosed by the Report and the Survey. In that regard, Buyer shall have until: (i) the later of ten (10) Business Days following the Opening Date or ten (10) Business Days following its receipt of the Survey and Report; and (ii) (10) Business Days following any supplemental title report (collectively, the "**Title Review Period**") to approve or disapprove the status of title as shown by the Survey, Report, or supplemental title report, as applicable; provided further, that the Title Review Period shall not extend the Feasibility Period or affect when the Earnest Money becomes nonrefundable and payable to Seller. If Buyer is dissatisfied with any exception to title as shown in the Report, Survey, or supplemental title report that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice either by removal of any disapproved matters, exceptions, or objections; or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions, and objections within two (2) Business Days following receipt of Buyer's notice ("**Seller's Title Cure Period**"). If Seller does not remove such matters, exceptions and objections before the expiration of the Seller's Title Cure Period, then, Buyer's sole and exclusive remedies shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the second (2nd) Business Day following expiration of the Seller's Title Cure Period. Seller shall have no obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Report, Survey, or supplemental title report to which Buyer has made an objection.

(ii) **Buyer's Investigations; Entitlements; Feasibility Period.** Buyer shall have until 5:00 P.M. (Local Arizona Time) on _____, 2020 (twelve (12) months following the Opening Date) (the "**Feasibility Period**") to complete the development activities set forth in Paragraphs 5(g)(i) and 5(g)(ii) and conduct an investigation and inspection of the Property (subject to the obligation, which Buyer confirms, to restore any damage caused by its activities and to indemnify Seller as provided in the Access Agreement). Buyer's investigation may include, among other things: (1) the physical condition of the Property; (2) the environmental condition of the Property; and (3) the feasibility of Buyer's anticipated development of the Property and matters related thereto. If Buyer is not satisfied with its investigations and inspections with respect to the Property and this transaction, or if the Buyer does not complete the development activities described in Paragraphs 5(g)(i) and 5(g)(ii), or for any reason or no reason whatsoever, then Buyer will have the right, exercisable in its sole discretion, to cancel this Agreement by

delivering written notice of cancellation to Seller and Escrow Agent prior to the end of the Feasibility Period, in which case all Earnest Money deposited with Escrow Agent prior to cancellation, and all interest accrued thereon, up to the date of cancellation, shall be returned to Buyer.

(b) **Conditions to Seller's Obligations to Close.** Seller's obligation to close this transaction is subject to the satisfaction (or waiver in writing), of the following conditions on and as of the Closing, unless an earlier date is specified:

(i) **Council Approval of Sale.** The City of Mesa Council's approval of the sale of the Property prior to Closing.

(ii) **Council's Approval of Development Activities.** The City of Mesa Council's approval of the re-zoning and general plan amendment referenced in Paragraphs 5(g)(i) and 5(g)(ii).

(iii) **Council Discretion; No Money Damages.** City decisions referenced herein that are approved by the Mesa City Council, are considered and decided in the Council's sole and absolute discretion. Should the Council deny Buyer's requests, or any one of them, such a denial shall not be a default or breach by the City under this Agreement, and money damages shall not be assessed against the City for the Council's failure to approve Buyer's requests, or any one thereof.

7. **Closing the Transaction.** The Closing of this transaction shall occur, as set forth in this Section 7, after the completion of all of the following events: (1) Buyer has obtained an approval for re-zoning and a site plan of the Property as described in Paragraph 5(g)(i), (2) Buyer has obtained an approval of a minor general plan amendment for the Property as described in Paragraph 5(g)(ii), (3) the Parties have agreed upon a legal description of the Property that excludes the Retained Property as described in Paragraph 5(c), and (4) the Parties agree on the location, area, terms and conditions of the Easements as described in Paragraph 5(f). After the completion and satisfaction of the closing requirements set forth in Sections 7(1), 7(2), 7(3) and 7(4) above, Buyer and Seller shall promptly, in writing, inform Escrow Agent that these closing requirements have been satisfied. The Closing shall occur no later than five (5) Business Days after Buyer and Seller provide the written notice to Escrow Agent that the closing requirements described in 7(1), 7(2), 7(3) and 7(4) have been satisfied (the "**Closing Date**"); provided, however, if the above requirements 7(1), 7(2), 7(3) and 7(4) have not been satisfied by _____, 2020 (fifteen (15) months after the Opening Date) (the "**Closing Deadline**"), then this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement. The City Manager, in his sole discretion, and upon Buyer's written request, may extend the Closing Deadline for a period of time not to exceed thirty (30) days per extension, with a maximum of three (3) extensions. Notwithstanding anything to the contrary, no notice or cure period shall apply to this Section 7.

8. **Closing; Closing Documents.**

(a) **Deliveries and Actions By Seller.** At Closing, Seller shall execute and acknowledge before a notary, as appropriate, and deliver to Escrow Agent, on Buyer's account, the following:

(i) A special warranty deed with respect to the Property in the form attached as **Exhibit C** (the "Deed");

(ii) Proof of authorization by the Mesa City Council to enter into this Agreement and the transactions contemplated hereby, documents, assignments or certificates on behalf of Seller to act for and bind Seller, as reasonably may be required by Buyer; and

(iii) Any other items or documents referred to in this Agreement or affecting the conveyance of the Property to Buyer that may be reasonably requested by Buyer or Escrow Agent or that may be necessary to carry out the purpose and intent of this Agreement.

(b) **Deliveries and Actions by Buyer.** At Closing, Buyer shall execute and acknowledge before a notary, as appropriate, and deliver to Escrow Agent, on Seller's account, the following:

(i) The remainder of the Purchase Price and other funds referenced in Paragraph 1(b);

(ii) On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for recordation by Escrow Agent, the Easements in the form(s) and with the terms approved by Seller.

(iii) Proof of Buyer's authority to enter into this Agreement and the transactions contemplated hereby, and proof of the power and authority of the individuals executing and/or delivering any instruments, documents, assignments or certificates on behalf of Buyer to act for and bind Buyer, as reasonably may be required by Seller; and

(iv) Any other items or documents referred to in this Agreement or affecting the conveyance and sale of the Property to Buyer that may be reasonably requested by Seller or Escrow Agent or that may be necessary to carry out the purpose and intent of this Agreement.

(c) **Escrow Fees and Closing Costs.** Buyer shall pay all escrow and recording fees, including but not limited to recording fees for documents transferring interest to Buyer, such as the Deed, and for removing liens, encumbrances. Any other closing costs not provided for above will be paid by Buyer. Each party shall pay its own attorneys' fees.

(d) **Prorations.** Property taxes, improvement liens and assessments for the Property ("taxes"), if any, shall be prorated to the Closing.

(e) **Title Policy.** At the Closing, and subject to Buyer's compliance with the terms of this Agreement including but not limited to obtaining an ALTA Survey of the Property, Seller will provide Buyer with a standard coverage owner's policy of title insurance (the "Title Policy")

issued by _____ (the “**Title Insurer**”), in the amount of the Sales Price, effective as of the Closing, insuring Buyer that fee simple 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. Buyer, if it desires, may obtain an ALTA extended policy of title insurance, which cost shall be paid by Buyer. The Title Policy shall contain endorsements, if any, that Seller has agreed to obtain to cure title objections of Buyer made pursuant to Section 6(a) and shall also contain any endorsements requested by Buyer that 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.

9. **Recording and Filing of Documents.** At the Closing, the Deed shall be recorded by Escrow Agent in the Maricopa County Recorder’s Office.

10. **Representations and Warranties.** Seller acknowledges, represents and warrants to Buyer that the following are true as of the Execution Date and will be true as of the Closing, and in entering into this Agreement Buyer is relying upon, the following:

(a) **Litigation.** As of the date hereof, to the best of Seller's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction, the Property or the operations of Seller on the Property.

(b) **Authority.** Subject to Seller’s City Council’s approval of this transaction and the express terms and limitations in this Agreement, 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.

(c) **No Other Agreements.** Seller has not granted any options or rights of first refusal to purchase all or any part of the Property.

(d) **Taxes and Assessments.** To Seller’s actual knowledge, there are no taxes or assessments (special, general or otherwise) affecting the Property, or any portion thereof, except as disclosed in the Report or any amendment to same.

(e) **Compliance.** As of the date hereof, to the best of Seller’s actual knowledge, Seller has received no written notice of any noncompliance with any Federal, state or local laws, regulations and orders relating to environmental matters with respect to the Property.

(f) If used in this Paragraph 10, “**Seller’s knowledge**” or similar phrase shall mean the actual current knowledge of Real Estate Services Administrator Kimberly Fallbeck, without independent investigation or inquiry and specifically negating the concepts of constructive or imputed knowledge. Notwithstanding anything herein to the contrary, Mrs. Fallbeck is not a Party

to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect

11. **Representations and Warranties of Buyer.** Buyer acknowledges, represents and warrants to Seller that the following are true as of the Execution Date and will be true as of the Closing, and in entering into this Agreement Seller is relying upon, the following:

(a) Except as set forth in this Agreement, including Section hereof, and in any written disclosures to be made by Seller to Buyer: (i) neither Seller nor its agents, attorneys, or representatives has made any warranties, representations, or promises of any nature, express or implied, oral or written, concerning the Property or any matters related thereto including, the value of the Property, the suitability of the Property for Buyer's intended use, or the merchantability of the Property; and (ii) the Property is being transferred in its "AS IS, WHERE IS" condition.

(b) Buyer is purchasing the Property based upon its independent review of the Property.

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

(d) 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.

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

(f) 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 by which Buyer is bound.

12. **Survival of Representations.** Each of the representations and warranties contained in Paragraphs 10 and 11, 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 with respect to the Property and the delivery of deeds between the parties for a period of one (1) year after the Closing.

13. **Seller's Disclaimer.** 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 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 ANOTHER PARTY.

BUYER ACKNOWLEDGES AND AGREES THE PROVISIONS CONTAINED IN THIS SECTION 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 SECTION WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

14. **Remedies.**

(a) **Seller's Remedies.** If Buyer fails to perform, when due, any act required by this Agreement to be performed prior to the Closing, but after the expiration of the Feasibility Period, then Seller's sole and exclusive remedy shall be to cancel this Agreement, without further liability

hereunder. Immediately following Seller's cancellation as described herein and without further instructions from Buyer, the Earnest Money shall be released by Escrow Agent to Seller in payment of the liquidated damages amount payable to Seller pursuant to this Section 14. Following such cancellation and payment of the liquidated damage amount, both parties shall be relieved of and released from any further liability under this Agreement, except that in addition to payment of the liquidated damage amount, (i) the indemnification obligations of Buyer set forth in this Agreement shall survive the cancellation and shall be performable and owing by Buyer to Seller; and (ii) Seller shall also have the right (if it is the prevailing party) to collect from Buyer all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Seller if Buyer disputes Seller's right to cancel this transaction and receive liquidated damages as provided herein.

(b) **Buyer's Remedies.** If Seller breaches any of the terms or provisions of this Agreement or otherwise defaults hereunder at or prior to the Closing, Buyer may:

(i) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; or

(ii) cancel this Agreement, and following Buyer's cancellation, and without further instructions from Seller, the Earnest Money shall be released by Escrow Agent to Buyer.

In any event, Buyer hereby waives any right to recover exemplary, special, indirect, consequential, or other damages on account of any such breach or default.

(c) **Post Closing Remedies.** The limitations on remedies contained in Paragraphs 14(a) and (b) above shall apply only to any defaults under this Agreement arising prior to the date of Closing. The remedies of the parties hereto for the breach of any agreements, covenants or warranties which this Agreement specifically provides are to survive the Closing shall be limited to the right to recover from the breaching party the actual damages reasonably incurred by the non-breaching party resulting from the breach, and/or such equitable relief as may be appropriate under the circumstances, the parties each hereby waiving its right to recover indirect, consequential, special or other damages caused by the other's breach.

(d) **Notice of Breach; Remedies.** In the case of an alleged breach of this Agreement by either Party, the Party shall not be considered to be in breach and no remedies may be pursued for such breach until a written notice describing the alleged breach and the action required to cure the breach has been given to the allegedly defaulting Party and such Party has failed to cure the default within ten (10) days thereafter. Notwithstanding any contrary provision of this Agreement, the provisions of Article 14 shall not limit the Parties' rights in connection with any indemnity granted pursuant to this Agreement or the Access Agreement, or limit Seller's rights to collect any amounts payable by Buyer to Seller pursuant to Section 2.1.

15. **Miscellaneous Provisions.**

(a) **Assignment and Transfers.** Buyer may not assign or transfer its rights under this Agreement without the prior written consent of City, which consent may be given or withheld in City's reasonable discretion; provided, however, that the foregoing restriction will not apply to a

one-time Transfer to an Affiliate of Buyer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Buyer; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Buyer arising in or under this Agreement, including but not limited to all obligations of Indemnity herein. No voluntary or involuntary successor in interest to Buyer shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and not voidable. In this Paragraph 15(a), "Affiliate," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(b) **Notices.** Any notice, consent, approval, waiver, election or other communication (a "**Notice**") that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be either hand-delivered, sent by registered or certified United States mail, return receipt requested, postage prepaid or sent by Federal Express, Airborne, U.P.S. or other similar nationally recognized overnight courier, addressed to the respective parties at the addresses below:

To Seller: City of Mesa
P.O. Box 1466
Mesa, Arizona 85211-1466
Attention: Kim Fallbeck
E-mail: Kim.fallbeck@mesaaz.gov

With a copy to: City of Mesa
P.O. Box 1466
Mesa, Arizona 85211-1466
Attention: James N. Smith, City Attorney
E-mail: Jim.smith@Mesaaz.gov

To Buyer: Desert Vista 100, LLC
3321 E. Baseline Road
Gilbert, Arizona 85234
Attention: Jeff Blandford
Email: legacycanyonproperties@outlook.com

And to: Tom Lemon
Email: tlemon@blandfordhomes.com

With a copy to: Gibson Knecht PC
James S. Gibson
7250 North 16th Street, Suite 412
Phoenix, Arizona 85020
jgibson@gklawaz.com

To Escrow Agent: Security Title Agency
1630 S. Stapley Drive, Suite 125
Mesa Arizona 85204
Attention: Kerry Hemphill
E-mail: Kerry.Hemphill@SecurityTitle.com

Any notice shall be deemed to have been delivered and received (i) the date of delivery, if hand delivered or sent by nationally recognized overnight courier, and (ii) three (3) days after the date of mailing, if mailed by registered or certified mail. Any party may, from time to time, change the address to which notices shall be sent by like notice given to the other party, except that no party may change its address to other than a street address. Any notice given that does not conform to this Paragraph 15(b) shall be effective only upon receipt. Any notice to be given by any party hereto may be given by legal counsel for such party. Counsel for the parties may give simultaneous notice hereunder to the opposing party and its counsel.

(c) **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between Seller and Buyer, and supersedes all other agreements

between the parties on the subject matter hereof. There are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning the Property other than those set forth in this Agreement. No subsequent agreement shall be binding upon Seller or Buyer unless in writing and signed by both parties.

(d) **Headings.** The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered in interpreting the provisions of this Agreement.

(e) **Binding Effect.** All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors and assigns of the parties.

(f) **Time of Essence.** Time is of the essence of this Agreement.

(g) **Severability of Provisions.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be held to be invalid or prohibited, such provision shall be ineffective only to the extent of such prohibition or invalidation, but shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

(h) **Counterparts.** This Agreement may be executed by signing counterparts of this instrument, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

(i) **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.

(j) **Survival.** The representations, warranties and covenants contained in this Agreement shall be effective on the date of this Agreement and on the Closing Date, shall not merge in the Deed or any other document and, where specified in this Agreement, shall survive the Closing.

(k) **Business Day.** If the final day of any period or any date of performance under this Agreement falls on a Friday, Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day that is not a Friday, Saturday, Sunday or legal holiday.

(l) **Attorneys' Fees.** In the event of litigation involving this Agreement, the unsuccessful party shall pay to the predominantly prevailing party all costs of suit, including reasonable arbitrators' and attorneys' fees, investigative fees and the fees of expert witnesses.

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

(n) **Possession.** At the Closing, Seller shall deliver possession of the Property to Buyer.

(o) **Risk of Loss.** The risk of loss or damage to the Property and all liability to third persons until the Closing will be borne by Seller.

(p) **Broker**

(i) **No Broker.** Buyer warrants that Buyer has not dealt with any broker in connection with this transaction. Seller warrants that Seller has not dealt with any broker in connection with this transaction.

(ii) **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 or other liability related thereto and, to the extent authorized by law, shall indemnify and hold the other party and the other party harmless for, from and against any claims or other liability related thereto. The indemnity set forth in this Paragraph 15(p) will survive the Closing, and the cancellation or termination of this Agreement.

(q) **Construction.** The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto. When used herein, the terms "include" and "including" shall not be limiting and mean "including without limitation."

(r) **A.R.S. § 38-511.** In the event a conflict of interest was to be found in the negotiation of this Agreement, this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

(s) **IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to § 6045(e) of the Code only to the extent such provisions apply to sellers of real property. Escrow Agent shall prepare and file IRS Form 1099-S and shall otherwise comply with the provisions of § 6045(e) of the Code only to the extent such provisions apply to sellers of real property. Escrow Agent shall indemnify, protect, hold harmless and defend Seller, Buyer and their respective attorneys for, from and against any and all claims, actions, costs, loss, liability or expense arising out of or in connection with the failure of Escrow Agent to comply with the provisions of this Paragraph 13(s).

16. **Offer and Acceptance.** The terms set forth herein shall constitute an offer from Buyer to purchase the Property and shall not be binding upon Seller until this Agreement has been duly executed by Buyer and on behalf of Seller by a duly authorized representative of Seller.

17. **Email Acceptance.** The parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Agreement, by transmitting a signed copy of the signature page hereof, email, to Escrow Agent and the other party hereto (including the persons entitled to copies of notices to such other party pursuant to the Agreement). Notwithstanding any such emailing of signed copies of the signature page hereof, the emailing party shall cause Escrow Agent to receive at least one original signed copy of this entire Agreement within three (3) business days of its transmission of such emailed copy or emailed signature page. If only one signed copy of this Agreement is so delivered to Escrow Agent by either party hereto, such original signed document shall be distributed to the other party at such other party's direction.

IN WITNESS WHEREOF, the parties hereto have executed this Real Estate Purchase and Sale Agreement and Escrow Instructions as of the date and year first above written.

SELLER:

**CITY OF MESA, ARIZONA, A
MUNICIPAL CORPORATION**

By: _____
Christopher J. Brady
Its City Manager

BUYER:

**DESERT VISTA 100, LLC, AN
ARIZONA LIMITED LIABILITY
COMPANY**

By: _____
Name: _____
Its: _____

ESCROW AGENT:

Accepted and agreed to this ____ day of _____, 2019.

Security Title Agency

By: _____
Kerry Hemphill
Its: Escrow Agent

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
ACCESS AGREEMENT

EXHIBIT C
(Special Warranty Deed)