

SECOND ADDENDUM TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

(SOUTHEAST CORNER OF 1ST AVENUE AND
MACDONALD, MESA, AZ, LOT 1)

This Second Addendum to Purchase and Sale Agreement (“**Second Addendum**”) is effective as of June ____, 2018, (“**Effective Date**”) by and between City of Mesa, an Arizona municipal corporation (“**Seller**”) and MHA III, LLC, an Arizona limited liability company (“**Buyer**”), successor in interest to Mesa Housing Associates II, LLC (“**Original Buyer**”). Seller and Buyer are referred to collectively as the “**Parties**.”

RECITALS

A. On February 25, 2016, Original Buyer and Seller entered into that certain Development Agreement which was recorded in the Official Records of the Maricopa County, Arizona Recorder’s Office as Document No. 2016-0119249 on February 25, 2016; and on December 19, 2016, Buyer and Seller entered into that certain Amended and Restated Development Agreement (the “**Development Agreement**”) which was recorded in the Official Records of the Maricopa County, Arizona Recorder’s Office as Document No. 2016-0940132 on December 21, 2016 and that restates and replaces the prior development agreement.

B. On February 25, 2016, pursuant to the Development Agreement, Buyer and Seller entered into that certain Purchase and Sale Agreement and Escrow Instructions (Southeast Corner of 1st Avenue and MacDonald, Mesa, AZ Lot 1–Affordable Housing Project) and subsequently on December 19, 2016 Buyer and Seller entered into that certain Addendum to Purchase and Sale Agreement and Escrow Instruction (Southeast Corner of 1st Avenue and MacDonald, Mesa, AZ Lot 1–Affordable Housing Project), which are collectively referred to as the “**Purchase and Sale Agreement**”, for certain real property described therein (the “**Property**”). All capitalized terms used herein that are not defined shall have the meaning given in the Purchase and Sale Agreement.

C. Pursuant to the Purchase and Sale Agreement, Original Buyer and Seller opened an escrow with Security Title Agency under Escrow No. 48160171-048-VB.

D. On February 25, 2016, Original Buyer assigned its rights under the Development Agreement and the Purchase and Sale Agreement with Escrow Instructions to Buyer.

E. On or before the Market Rate Election Date, Buyer deposited the earnest money as required by Section 2.2 of the Purchase and Sale Agreement to purchase and develop the Property under the Market Rate Purchase provisions of the Purchase and Sale Agreement and Development Agreement.

F. In conjunction with a First Amendment to Development Agreement, entered into simultaneously herewith, Buyer and Seller wish to amend the Purchase and Sale Agreement to extend the Closing date, to allow for the purchase of additional property, and to make other amendments as set forth in this Second Addendum.

AMENDMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

1. Extension of Closing. The Parties agree to extend the dates in Section 3.5(b) by eighteen (18) months. Accordingly, Subsection 3.5(b) is amended to state, in its entirety as follows:
 - (b) The Closing shall occur no later than December 28, 2019. Provided further, that notwithstanding any provision to the contrary and any notice or cure provisions of this Agreement shall not apply to the following: if this transaction has not closed, for any reason or no reason whatsoever, on or before January 5, 2020, this Agreement shall automatically terminate and shall be of no further force or effect, the Earnest Money shall be delivered to the Seller, Buyer shall be solely responsible for the payment of any Escrow fees, and Buyer and Seller shall have no further obligations or liabilities under this Agreement other than those obligations or liabilities which, by their terms, survive the termination of this Agreement.

2. Additional Property. Buyer's Development of the Market Rate Project may require up to 9,100 square feet (approximately 45 feet by 202 feet) of additional property on the southern edge of the Property ("**Additional Property**"), which is owned by Seller. A depiction of the Additional Property is set forth on Exhibit 1 attached hereto. Buyer may purchase and close on the Additional Property simultaneously with the Closing on the Property under the following terms and conditions:
 - a. Buyer must notify Seller and Escrow Agent in writing not less than 120 days prior to Closing that Buyer intends to purchase and close on the Additional Property with the Closing of the Property. On or before such 120-day notice, Buyer must provide to Seller documentation as to how the Additional Property will be developed with additional amenities (the "**Additional Amenities**").
 - b. The purchase price for the Additional Property shall be based on the final area of the Additional Property requested by Buyer at the price of \$8.00 per square foot. The purchase price for the Property will be adjusted at such time to include the purchase price of the Additional Property.
 - c. The sale of the Additional Property is subject to Buyer's compliance with all terms of the Purchase Agreement and simultaneous Closing (i.e., same day closing) on the Property and Additional Property. If Buyer does not simultaneously Close on the Property and Additional Property, Buyer shall have no right to purchase the Additional Property.
 - d. Prior to Closing, Buyer, at its sole cost and expense, must satisfy all lot line adjustment or platting requirements necessitated by the sale of the Additional Property.
 - e. Prior to Closing, Buyer must establish to Seller's satisfaction and approval, through its City Manager in his sole and absolute discretion, how the purchase of the

Additional Property benefits the development, how the Additional Amenities will assist in marketing or increasing the value of the project, and when the Additional Amenities will be completed as part of the project. If Seller so approves, Seller will provide written notice to Escrow Agent prior to Closing if this condition precedent to Closing on the Additional Property is satisfied; if Seller does not approve, Buyer shall have no right or entitlement, whatsoever, to purchase the Additional Property.

3. Phasing and Required Permits to Close. Buyer may phase the development of the project on the Property (and Additional Property, if applicable) as allowed in paragraph 2 of the First Amendment to Amended and Restated Development Agreement. If Buyer intends to phase the development, Buyer must provide written notice 120 days prior to Closing of its intent to phase the development. Buyer shall, subject to compliance with the City of Mesa's platting requirements, replat the Property into one or more legal lots to incorporate the Additional Property. In addition, Section 4.3(b) of the Purchase and Sale Agreement is amended to state as follows:

- (b) Receipt of Building Permits for Re-designed Project. Buyer's obligation to Close under this Agreement shall be contingent upon: (i) the City's approval (in its role as permitting agency) of revised plans and specifications for the market rate apartments acceptable to Buyer and Seller; and (ii) Buyer's payment for building permits for construction of such market rate apartments; provided, however, if Buyer timely gives notice of its intent to phase the development as allowed in paragraph 2 of the First Amendment to Amended and Restated Development Agreement, Buyer may satisfy the requirement of "(ii)" in the prior sentence by the following: Buyer's non-refundable payment in full for building permits for construction of at least one phase of the development so long as the building plans for all phases (including the Additional Amenities, if Buyer purchases the Additional Property) of the development have received final review and approval by the City. If Buyer is not satisfied with the City's conditions on, or building permits for, the market rate apartments, Buyer may, at any time prior to the Closing Date, terminate this Agreement by delivering written notice to Seller and Escrow Agent. In that event, the Earnest Money shall be paid to Seller, Buyer shall be solely responsible for the payment of any Escrow fees, and Buyer and Seller shall have no further obligations or liabilities under this Agreement, other than those obligations or liabilities which, by their terms, survive the termination of this Agreement.

4. General Provisions.

- a. The Recitals set forth above are true and complete in all respects and are fully incorporated into this Second Addendum.
 - b. Other than as expressly set forth in this Second Addendum, the Agreement is not amended in any manner.
 - c. Each person executing this Second Addendum represents and warrants that he or she has the requisite authority to bind the party on whose behalf this Second Addendum is being executed.

- d. This Second Addendum may be executed in any number of counterparts, whether by original, copy, or telecopy signature, and each counterpart of this Second Addendum so executed shall, taken together, comprise one and the same original document.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

SELLER:

CITY OF MESA, an Arizona municipal corporation

By: _____
City Manager or designee

BUYER:

MHA III, LLC
an Arizona limited liability company

By: Urban Housing Partners VI, LLC
Its: Member

By: Marshall Urban Development Company
Its: Member

By: _____
Name: Todd Marshall
Its: President

The undersigned Escrow Agent accepts the terms of the Agreement as modified by this Second Addendum

By: _____
Name: _____
Its: _____

“Escrow Agent”

EXHIBIT 1
TO
SECOND ADDENDUM TO PURCHASE AND SALE AGREEMENT

(Depiction of Additional Property)

