

**REAL ESTATE PURCHASE AGREEMENT**

**Contract Date:** See Section 30 below  
**SELLER:** City of Peoria, an Arizona municipal corporation  
**BUYER:** LSP Peoria Development, LLC., a Missouri limited liability company  
**ESCROW AGENT:** Leisa Small, Old Republic Title  
  
**LOCATION:** East side of Lake Pleasant Parkway south of Avenida del Sol

**ESCROW NUMBER/ESCROW:** \_\_\_\_\_

**RECITALS**

- A. Seller is the owner of certain real property located along the east side of Lake Pleasant Parkway south of Avenida del Sol, in Peoria, Arizona (the "Property") and more particularly described on Exhibit "A" hereto.
- B. Buyer desires to purchase the Property from Seller for the amount of Twelve Thousand Dollars (\$12,000.00) (the "Purchase Price").
- C. Soon after the date of this Agreement, the parties desire to record certain documents affecting the Property (the "Closing").

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises and representations contained herein, Seller and Buyer agree as follows:

**TERMS OF AGREEMENT**

1. Agreement. This Real Estate Purchase Agreement ("Agreement") may be supplemented by the printed form Escrow Instructions ("Escrow Instructions") to which it is attached and shall be construed together with the Escrow Instructions as a single document (collectively referred to as the "Agreement"); in the event of any inconsistency between any provision in this Agreement and any provision in the Escrow Instructions, the provision in this Agreement shall prevail. Upon the execution of the Escrow Instructions and this Agreement by Seller and Buyer, same shall constitute a binding contract between Seller and Buyer for (a) the purchase and sale of the Property and (b) the grant of an easement(s) for drainage, sidewalk, public utilities and municipal utilities.

2. Opening of Escrow and Close of Escrow. Escrow shall be opened when (i) one fully executed or counterparts of this Agreement executed by Seller and Buyer, respectively, have been delivered to Escrow Agent ("Opening of Escrow"). Escrow Agent shall advise Seller and Buyer, in writing, of the Opening of Escrow and the date thereof. Consummation of the purchase of the Property contemplated hereby (the "Close of Escrow" or "Closing Date") shall take place on or before October 18, 2024, and shall automatically terminate without any further notices, three business days later unless otherwise extended by mutual agreement of the parties. At or before Close of Escrow, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement shall be deposited in Escrow on or before 5:00 p.m. Arizona Time on the Closing Date.

3. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed by Seller to Buyer upon Close of Escrow by Seller's special warranty deed ("Deed"), warranting title to the Property to be conveyed thereby to be a fee simple absolute estate free and clear of all matters, claims, liens, and encumbrances except: (i) taxes not yet due and payable at Close of Escrow (subject to proration as hereinafter provided); (ii) reservations in patents from the United States or the State of Arizona; and (iii) any other matters disclosed by the preliminary title report (or any amended report) which are deemed waived or approved by Buyer in accordance with subsection 7(a). Escrow Agent shall issue or cause to be issued a standard coverage owner's policy of title insurance in the amount of the Purchase Price, for which Seller shall bear the cost.

4. Possession. Upon Close of Escrow, Seller shall vacate the Property and deliver possession to Buyer, and all risk of loss of, or damage to, the Property from any source shall, at that time, pass to and become the sole responsibility of Buyer.

5. Payment of Purchase Price. The Purchase Price for the Property shall be Twelve Thousand Dollars (\$12,000.00) payable by or before the Close of Escrow.

6. [Intentionally Left Blank.]

7. Closing; Fees, Taxes, and Assessments; Costs.

(a) At Close of Escrow, a Standard ALTA Owner's Policy of title insurance in the amount of the Purchase Price insuring Buyer's title to the Property shall be issued by Escrow Agent through its authorized underwriter(s) and the title insurance premium shall be paid out of the Purchase Price proceeds, subject to the usual printed exceptions contained in such title insurance policies, those matters which appear as exceptions in Schedule B of the Commitment (as defined in Section 8 below) and which are not objected to or are waived in the manner described in said Schedule B, and any other matters approved in writing by Buyer ("Title Policy"). In the event Buyer desires an ALTA Extended Policy the additional cost shall be borne by Buyer.

(b) At Close of Escrow, the recording fees with respect to the Deed, the Easement, the Affidavit of Value and any escrow fees and charges shall be paid by Seller. All non-delinquent real property taxes and any other assessments to or against the Property shall be paid by Seller prorated to Close of Escrow based upon the most recent assessments.

(c) At Close of Escrow, Seller shall deliver the Deed and each and every document, agreement, and/or instrument reasonably required by the Escrow Agent in connection with the Closing.

(d) At Close of Escrow, Buyer shall deliver the Purchase Price and all other sums to be paid by Buyer hereunder, the Easement and each and every other document, agreement and/or instrument reasonably required by Escrow Agent in connection with the Closing.

8. Buyer's Contingencies. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (any or all of which may be waived by Buyer in a writing signed by Buyer or its duly authorized agent):

(a) Status of Title. Escrow Agent, as soon as is reasonably possible after execution of this Agreement, shall provide Buyer and Seller with a preliminary report of the title to the Property (the "Commitment"), disclosing all matters of record and Escrow Agent's requirements for both closing the Escrow created by this Agreement and issuing the Title Policy described in Section 7 of this Agreement (the Commitment also shall be suitable to serve as the basis for issuance of an ALTA extended form coverage lender's title insurance policy). At such time as Buyer receives the Commitment (and any amended report adding additional title exceptions), Buyer shall have ten (10) business days after receipt of the Commitment to object in writing to any matter shown in the Commitment. If Buyer fails to object within the ten (10) business days, the condition of title to the Property shall be deemed approved by Buyer. In the event Buyer does object in writing to any matter disclosed in the Commitment, Seller shall attempt in good faith and using due diligence, to remove such objection before Close of Escrow. If any such matter cannot be removed after Seller's attempts to do so, Seller shall so notify Buyer, in writing, and Buyer shall elect within five (5) business days after receipt of Seller's notice to either: (i) cancel this Agreement and receive the return of all Earnest Money paid, together with any interest accrued thereon; or (ii) close the Escrow waiving and taking title subject to such matters. Failure to give notice to Seller of Buyer's election shall constitute an election to waive the objection and close the Escrow.

(b) Environmental Contamination and Assessment of Property. Seller will disclose to Buyer, within five (5) days of Opening of Escrow, any knowledge or information it has with regard to any current or historical environmental contamination of the Property. Notwithstanding Seller's obligation to disclose, Buyer shall have until the expiration of the Investigation Period to obtain a Phase I Environmental Assessment (the "Assessment"). If the Assessment indicates that a Phase II Environmental

Assessment ("Phase II") is warranted, the Buyer will not be required to close the Escrow pending completion of the Phase II, and the Close of Escrow may be extended by sixty (60) days for Buyer to obtain the Phase II. If the Phase II concludes contamination exists, the Buyer may elect to cancel this Agreement. Moreover, in no event shall an "as is" clause set forth within this Agreement affect the application of federal, state or local law regarding environmental contamination and Seller's responsibility for remediating same, including remediation that may be required after Close of Escrow.

(c) Investigation. Buyer shall have fifteen (15) days from the Opening of Escrow (the "Investigation Period") to conduct such other tests and investigations, other than those described in paragraphs (a) and (b) above, as Buyer deems at its discretion to be material to its determination whether the Property is suitable for Buyer's purposes. Upon prior reasonable notice to Seller, Seller shall permit access to the Property by Buyer to inspect and perform any such tests during the Investigation Period. Buyer must obtain Seller's written consent prior to conducting any invasive testing on the Property, which consent shall not unreasonably be withheld. Buyer shall conduct all such inspections, investigations, and tests and be responsible for returning the Property to substantially the condition in which it was prior to the time of any entry. In the event Buyer fails to notify Seller by the conclusion of the Investigation Period that the Property or any part thereof is not suitable for its purposes, then Buyer shall be deemed to have accepted the Property and waived any objections relating to matters within the scope of this subparagraph (c). In the event Buyer does so notify Seller, however, Seller shall undertake to remediate such conditions to Buyer's reasonable satisfaction or to terminate this Agreement, whereupon Buyer and Seller shall have no further obligations hereunder, other than liabilities or obligations arising under the indemnity provisions of Section 17. Buyer agrees to indemnify, defend, and hold harmless Seller for, from, and against any and all claims arising out of Buyer's exercise of the rights granted by this Section, including, without limitation, any claims relating to mechanics' or materialmen's liens as a result of Buyer's activities pursuant to this Agreement.

9. No Warranties. Except as otherwise set forth herein, Buyer agrees that the Property shall be purchased in an "as-is" condition. Seller makes no warranty as to the sufficiency of the Property for Buyer's purposes or any purpose whatsoever, the physical condition of the Property or any work or improvements which might be required for any reason whatsoever, the square footage or acreage contained within the Property, except as expressly set forth elsewhere in this Agreement or within the separate escrow instructions included as a part of this Agreement. Nothing herein abrogates Seller's duty to disclose known material conditions affecting the Property and the consideration to be paid by Buyer.

10. Seller's Warranties. Seller warrants, represents, and covenants (with the understanding that Buyer is relying on said warranties, representations and covenants) that:

(a) Seller's Authority. Seller has full power and authority to enter into and perform under this Agreement in accordance with its terms. Upon execution of this Agreement this Agreement shall be binding and enforceable on Seller.

(b) Other Leases or Agreements. Seller warrants that there are no unrecorded leases or other agreements which may affect Buyer's ability to take title to or possession of the Property.

(c) Bankruptcy or Insolvency. Seller warrants that it is not the subject of a bankruptcy or insolvency proceeding.

(d) Labor, Materials and Mechanic's Liens. Seller warrants that payment in full will be made prior to Close of Escrow for all labor, professional services, materials, machinery, fixtures, or tools furnished within the one hundred fifty (150) days immediately preceding the Close of Escrow in connection with any construction, alteration or repair of any improvement to or on the Property.

11. Water Rights. At Close of Escrow, Seller shall, without further act, be deemed to have assigned, transferred, conveyed, and set over unto Buyer all of the grandfathered water rights, if any, with respect to the Property.

12. Buyer's Representations and Warranties. Buyer warrants, represents, and covenants (with the understanding that Seller is relying on said warranties, representations, and covenants) that:

(a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms.

(b) Buyer acknowledges that consummation of this transaction shall constitute its acknowledgment that it has independently inspected and investigated the Property. Except as otherwise agreed herein, Buyer agrees to accept the Property in its present condition "as is," subject to the warranties, covenants and agreements set forth in this Agreement.

(c) Buyer acknowledges that the Property is encumbered with existing City of Peoria and public utility company uses, and represents and warrants to Seller that Buyer has inspected the Property and has entered into this contract based upon Buyer's inspection and that Seller made no representations or warranties regarding the condition of the Property for Buyer's specific purposes.

13. Brokerage. Seller and Buyer agree as follows:

(a) Mutual Warranties. Buyer warrants and represents that it has not dealt with any party who is or may be legally entitled to a brokerage commission, finder's fee, or other like payment in connection with this Agreement. Seller warrants and represents that it has not dealt with any party who is or may be legally entitled to a brokerage commission, finder's fee, or other like payment in connection with this Agreement. Each party, on demand, agrees to indemnify and hold the other harmless for, from, and against any and all loss, cost, damage, claim, liability, and expense (including but not limited to court costs and reasonable attorneys' fees) that may result if the indemnifying party's warranty and representation set forth above proves to be untrue, incomplete, or misleading.

(b) Survival. The provisions of this Paragraph 13 shall survive Close of Escrow (but not the termination) of this Agreement.

14. Survival of Representations and Warranties. All representations and warranties contained in this Agreement are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Close of Escrow and execution, delivery, and recordation of the Deed. In the event that any representation or warranty by a party is untrue, the other party shall have all rights and remedies available at law, in equity, or as provided in this Agreement.

15. No Assumption of Seller's Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller, or relating in any way to the Property.

16. Indemnification and Liabilities. Subject to the limitations and other provisions contained in this Agreement, Seller shall, and it hereby does, indemnify and agree to pay, defend, and hold harmless Buyer from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Seller pertaining in any manner to the Property for the period of time prior to the Close of Escrow. Buyer does not agree to assume any liability, encumbrance, or obligation of any kind or character whatsoever relating in any manner to all or any part of the Property: (i) except as specifically provided herein; and (ii) except that Buyer agrees to pay, defend, indemnify, and hold harmless Seller from any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Buyer, Buyer's agents and employees.

17. Condemnation; Risk of Loss. In the event of the condemnation (or sale in lieu of condemnation) of any part of the Real Property prior to Close of Escrow, Buyer shall have the right either: (i) to cancel this Agreement by written notice to Seller and Escrow Agent in which event there shall be returned to Buyer the Earnest Money and all interest thereon, all documents shall be returned to the party who deposited them and thereafter this Agreement shall be of no further force or effect whatsoever.

18. Remedies.

(a) In the event of default by Buyer, Seller's sole remedy shall be to cancel this Agreement and to retain the Earnest Money (together with all accrued interest) as liquidated damages; Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of the Buyer's default; that the amount of the Earnest Money deposit paid by Buyer is a reasonable estimate of the Seller's damages in case of Buyer's default; and that Seller shall retain said Earnest Money as its damages and, thereafter, neither party shall have any further obligations to the other under this Agreement.

(b) In the event of default by Seller, Buyer may elect to cancel this Agreement by written notice to Seller and Escrow Agent, in which event Escrow Agent shall return to Buyer all Earnest Money (plus any accrued interest earned thereon), together with all other documents Buyer has deposited with Escrow Agent in connection with this Escrow, in which case Buyer and Seller shall have no other rights or obligations under this Agreement.

19. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Seller: Henry Darwin, City Manager  
City of Peoria  
8401 West Monroe Street  
Peoria, AZ 85345

With a copy to: Emily Jurmu, City Attorney  
Buyer's Counsel: City of Peoria  
8401 West Monroe Street  
Peoria, AZ 85345

To Buyer: LSP Peoria Development, LLC.  
c/o Brett Roubal  
4022 S. Lone Pine, Suite 150  
Springfield, MO 65804

To Escrow Agent: Leisa Small, Commercial Escrow Officer  
Old Republic Title  
2375 E. Camelback Road, Suite 180  
Phoenix, AZ 85016

or at any other address designated by Buyer, Seller, or Escrow Agent, in writing.

20. Attorneys' Fees. In the event suit is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and court costs.

21. Intended Agreement. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

22. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Buyer and Seller.

23. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the

other party or Escrow Agent any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

24. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all parties hereto.

25. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa or in the Federal District Court in and for the District of Arizona.

26. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

27. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

28. Counterparts. This Agreement may be executed in any number of counterparts, all the counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.

29. Special Variations From Escrow Instructions. Notwithstanding anything in the Escrow Instructions to the contrary: (i) Seller shall pay, in full and at Closing, any existing improvement lien assessments on or relating to the Property unless otherwise agreed by the parties; and (ii) Escrow Agent shall pro-rate taxes on the basis of the latest available tax statement.

30. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

31. Time is of the Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

32. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be

extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

33. Foreign Tax Withholdings. Seller agrees to comply with IRS reporting requirements. Seller shall provide to Buyer and Escrow Agent at Closing appropriate affidavits stating that it is not a foreign person or a non-resident alien and that no withholding is required pursuant to Internal Revenue Code ("IRC") § 1445. In the event such affidavits are not forthcoming or in the event either Escrow Agent or Buyer knows or has reason to know that they are false, Escrow Agent is hereby irrevocably authorized and directed to withhold 10% of Seller's proceeds of the purchase price pursuant to IRC § 1445.

34. Conflict of Interest. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

35. Easement. The Buyer will grant Seller an easement(s) to allow for the existing improvements/uses (drainage, sidewalk, public utilities and municipal utilities) to remain within the Property (described in Exhibit A).

36. Recitals. The Recitals set forth on page 1 of this Agreement are incorporated herein as though fully set forth herein.

[Signatures Appear on Following Pages]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

SELLER:

CITY OF PEORIA,  
an Arizona municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Henry Darwin, City Manager

ATTEST:

By: \_\_\_\_\_  
Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Emily Jurmu, City Attorney



**EXHIBIT "A"**

**(Property)**

That portion of the parcel described in Maricopa County Recorder's Office Document No. 00-0503099A, located in Section 8, Township 4 North, Range 1 East of the Gila and Salt River Meridian, being 15.00 feet wide and lying northwesterly to the following described EASEMENT line:

**LINE DESCRIPTION:**

COMMENCING at a stone, as per GLO notes, marking the South Quarter corner of Section 8, Township 4 North, Range 1 East, Gila and Salt River Meridian, from which a stone, as per GLO notes, marking the North quarter corner of said Section 8, bears North 00 degrees 36 minutes 38 seconds West, 5231.34 feet, and from which a M.C.D.O.T. brass cap in hand hole marking the Southeast corner of said Section 8, bears South 89 degrees 06 minutes 45 seconds East, 2587.45 feet;

Thence South 89 degrees 06 minutes 45 seconds East, 1869.63 feet along the South line of said Section 8, to the POINT OF BEGINNING, being on a line parallel with and 115.00 feet measured perpendicular easterly to the existing right of way centerline of Lake Pleasant Road; the existing right of way centerline of Lake Pleasant Road, as shown on the unrecorded Record of Survey prepared for the City of Peoria, by TBE Group, Inc., project "LAKE PLEASANT PARKWAY", and sealed on January 8, 2001;

Thence North 24 degrees 45 minutes 59 seconds East, 66.58 feet along said line parallel with and 115.00 feet measured perpendicular easterly to the existing right of way centerline of Lake Pleasant Road;

Thence North 65 degrees 14 minutes 01 West, 20.00 feet to a line parallel with and 95.00 feet easterly to said existing right of way centerline of Lake Pleasant Road;

Thence North 24 degrees 45 minutes 59 seconds East, 1575.90 feet along said parallel line to a tangent curve concentric with and 95.00 feet easterly to said existing right of way centerline of Lake Pleasant Road;

Thence 120.37 feet along said concentric tangent curve concave northwesterly and having a radius of 1527.39 feet and a central angle of 4 degrees 30 minutes 55 seconds, to the east line of said Section 8 and the POINT OF TERMINATION, from which a 1 inch iron bar, marking the East Quarter corner of said Section 8, bears North 00 degrees 03 minutes 44 seconds West, 1017.60 feet.