

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of _____, 20___, by the City of Independence, Missouri, a constitutional charter city and political subdivision under the laws of the State (the “City” and the “Seller”), and Englewood Arts, a Missouri Nonprofit Corporation (the “Purchaser”). (Seller and Purchaser are sometimes referred to herein individually as a “Party”, and collectively as the “Parties”).

RECITALS

WHEREAS, Seller is the owner of the property now known as the CMH Building Project located at 10901 East Winner Road, Independence, Missouri 64052, as further described in **Exhibit A** together with any buildings and improvements thereon, and all personal property used in the operation of the buildings and improvements, including, if any, all mechanical systems, fixtures and equipment, heating, ventilating and air-conditioning equipment, electrical systems and lighting, plumbing equipment and fixtures, floor coverings, storm windows and doors, screens and awnings, and keys (collectively, the “Property”).

WHEREAS, Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined above in the introduction and recitals to this Agreement, the following terms when used in this Agreement shall have the meanings set forth in this Section 1.1.

“Business Day” means any day other than a Saturday, Sunday or federal legal holiday.

“Closing” means the closing of the transactions described in this Agreement, as described in Section 8.1.

“Deposit” has the meaning set forth in Section 3.2(a).

“Due Diligence Period” has the meaning set forth in Section 4.1.

“Seller Due Diligence Materials” has the meaning set forth in Section 4.2.

“Title Commitment” has the meaning set forth in Section 5.1.

Section 1.2. Rules of Construction. The following rules shall apply to the construction and interpretation of this Agreement:

(a) Singular words shall connote the plural as well as the singular, and plural words shall connote the singular as well as the plural, and the masculine shall include the feminine, as the context may require.

(b) All references in this Agreement to particular articles, sections, subsections or clauses (whether in upper or lower case) are references to articles, sections, subsections or clauses of this Agreement. All references in this Agreement to particular exhibits or schedules (whether in upper or lower case) are references to the exhibits and schedules attached to this Agreement, unless otherwise expressly stated or clearly apparent from the context of such reference.

(c) The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(d) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and not solely to the provision in which such term is used.

(e) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without limitation.”

(f) The term “sole discretion” with respect to any determination to be made a Party under this Agreement shall mean the sole and absolute discretion of such Party, without regard to any standard of reasonableness or other standard by which the determination of such Party might be challenged.

(g) Each Party and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any rules of construction requiring that ambiguities are to be resolved against the Party which drafted the Agreement or any exhibits hereto shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

ARTICLE II. THE PROPERTY

Section 2.1. Description of the Property. Subject to the terms set forth in this Agreement and any related documents, at the Closing, Seller shall sell to Purchaser, and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in and to the Property, with such legal description included hereto as Exhibit A to be verified by the Title Company.

ARTICLE III. PURCHASE PRICE; PRORATIONS

Section 3.1. Purchase Price. The purchase price for the Property is One Hundred Sixty-Five Thousand Dollars (\$165,000) (the “Purchase Price”), which shall be paid to Seller at Closing.

Section 3.2. Deposit

(a) Upon mutual execution and delivery of this Agreement, Purchaser shall deposit with Alpha Title Guaranty, Inc., Lee’s Summit, Missouri (the “Title Company”), the sum of Sixteen Thousand Five Hundred Dollars (\$16,500) (the “Deposit”) by cashier’s check.

(b) Refundable. The Deposit shall be refundable to Purchaser, except as otherwise expressly provided in this Agreement.

(c) Interest on Deposit. All interest accrued on the Deposit shall be credited to Seller.

(d) Disbursement of Deposit to Seller. At Closing, Purchaser shall receive a credit against the Purchase Price in the amount of the Deposit.

(e) Refund of Deposit to Purchaser. If this Agreement is terminated and Purchaser is entitled to a refund of the Deposit, then Title Company shall, upon written notice from Purchaser, disburse the Deposit to Purchaser no later than two (2) Business Days after such written notice.

Section 3.3. Payment of Purchase Price. At Closing, Purchaser shall pay to Title Company by cashier's check available funds an amount equal to the Purchase Price, less the Deposit then held by the Title Company, adjusted at Closing for closing costs and other agreed expenses.

Section 3.5. Other Costs.

(a) Seller's Transaction Costs. Seller shall not be responsible for any additional costs or expenses not set forth in this Agreement.

(b) Purchaser's Transaction Costs. In addition to the other costs and expenses to be paid by Purchaser as set forth elsewhere in this Agreement, Purchaser shall pay for the following items in connection with this transaction: (i) the fees and expenses incurred by Purchaser in connection with any inspections or other due diligence activities; (ii) all title charges and survey costs, including the premium on the Title Policy, as well as for any updates and reliance letters with respect to any environmental, engineering, zoning and other similar third-party reports (if any) that are included in the Seller Due Diligence Materials (to the extent that Purchaser obtains or requests Seller to obtain such updates or reliance letters); (iii) any sales or similar tax and recording charges payable in connection with the conveyance of the Property; (iv) any title insurance fees and expenses for any loan title insurance policies, recording charges or other amounts payable in connection with any financing obtained by Purchaser; (v) all closing fees and expenses incurred by Purchaser; (vi) the costs for obtaining any title endorsements and extended coverage to the Title Policy; (vii) the fees and expenses of its own attorneys, accountants, advisors and consultants; and (viii) all charges for recording and/or filing the deed.

(c) Survival. The Parties' obligations pursuant to the terms and conditions of this Section 3.5 shall survive the Closing and any termination of this Agreement.

**ARTICLE IV.
PURCHASER'S DUE DILIGENCE**

Section 4.1. Due Diligence Period.

(a) Purchaser shall have a period of thirty (30) days following the execution of this Agreement (the "Due Diligence Period") to complete the Purchaser's due diligence.

(b) Termination During Due Diligence Period. Purchaser may terminate this Agreement at any time during the Due Diligence Period for any reason whatsoever in Purchaser's sole discretion by providing written termination notice to Seller, whereupon the Agreement shall terminate without further recourse to either party and the Deposit shall be promptly returned to Purchaser.

(c) Effect of Due Diligence Period Closing. At the end of the Due Diligence Period, Purchaser is considered to have accepted the Property in its existing condition. In the absence of a written termination notice, Purchaser shall be deemed to have completed all inspections and other due diligence necessary to accept this Agreement and proceed to Closing.

Section 4.2. Seller Due Diligence Materials. Within ten (10) days after execution of this Agreement, Seller shall provide Purchaser with the following documents, if in Seller's possession and not otherwise publicly available: the current title insurance policy, survey, plans and specifications for the Property, environmental reports, and structural and mechanical reports (the "Seller Due Diligence Materials"). Purchaser acknowledges and agrees that any Seller Due Diligence Materials delivered or to be delivered by Seller or any party on Seller's behalf, or consultants to Purchaser, are for informational purposes only and without representation or warranty of any kind or nature as to the truth, accuracy or completeness thereof. Purchaser acknowledges that its determination to proceed with purchase of the Property shall be made solely in reliance on its own reviews, audits and inspections and written materials produced in connection therewith during the Due Diligence Period and no reliance is made on the Seller Due Diligence Materials. Any Seller Due Diligence Materials shall be promptly returned to Seller upon request, in the event the Purchaser shall not purchase the Property as herein contemplated.

Section 4.3. Inspections; Survey. Purchaser acknowledges that Seller has provided the opportunity for Purchaser to make inspections (including but not limited to any soil tests, environmental tests or audits, foundation and mechanical inspections and such other inspections or surveys as Purchaser may reasonably request) and that Purchaser may conduct its own investigation of the condition of the Property, to the extent Purchaser deems such an investigation to be necessary or appropriate. Purchaser agrees that any inspections or tests that Purchaser deems appropriate or necessary, including all subterranean or other invasive testing shall be subject to Seller's consent, which shall not be unreasonably withheld or delayed. Purchaser's access and testing shall be completed in the presence of an authorized agent of Seller. Any alterations to the Property shall be restored by Purchaser at its sole cost and expense to the prior existing condition. Purchaser shall have the right to conduct environmental inspections of the Property at its expense to satisfy itself with the absence of oil, asbestos, hazardous materials and/or hazardous substances on or about the Property. Purchaser may complete at its sole cost and expense during the Due Diligence Period a current ALTA Survey. Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, costs, demands and expenses, including without limitation, reasonable attorney's fees, court costs and other legal expenses, resulting from any inspections. Purchaser's obligations imposed by this paragraph shall survive termination of this Agreement.

Section 4.4. Representations. Purchaser acknowledges that neither Seller nor any party on Seller's behalf has made, nor do they hereby make, any representations as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Property except as expressly set forth in this Agreement. Purchaser agrees to assume full responsibility for completing Purchaser's due diligence in such a manner as to answer all questions necessary to make the decision to purchase the Property.

ARTICLE V. TITLE TO THE PROPERTY

Section 5.1. Title Insurance.

(a) Title Commitment. Seller shall within fifteen (15) days after this Agreement is entered deliver to Purchaser a commitment for an ALTA form owner's policy of title insurance naming Purchaser as the proposed insured, in the full amount of the Purchase Price, issued by a national title insurance company (the "Title Commitment"), which shall be subject to Purchaser's review during the Due Diligence Period.

(b) Encumbrances and Defects in Title. If the Title Commitment evidences any encumbrances on Seller's title or any defects on Seller's title to which Purchaser objects, Purchaser shall notify Seller within ten (10) days after receipt of the Title Commitment and copies of documents

referenced in schedules to the Title Commitment and the Deposit shall be promptly returned to Purchaser.

Section 5.2. The Deed. At Closing, Seller shall deliver to Purchaser at Closing a General Warranty Deed in substantially the form attached hereto as **Exhibit B.**

ARTICLE VI. CONDITION OF THE PROPERTY

Section 6.1. Property Sold “As Is”. Purchaser acknowledges and agrees that the purchase of the Property shall be on an “as is”, “where is”, “with all faults” basis, subject to ordinary wear and tear from the effective date of this Agreement until Closing, and Seller has no obligation to repair any damage to or defect in the Property, replace any of the Property or otherwise remedy any matter affecting the condition of the Property.

Section 6.2. Condition of Property. The Property shall be maintained in its current condition and shall be delivered at the Closing in the same condition as it is in at the time of expiration of the Due Diligence Period. If, before Closing, all or any part of the Property is destroyed or materially damaged after the Due Diligence Period, Seller shall promptly provide written notice to Purchaser of such event. Upon notice of such occurrence, Purchaser may re-inspect the Property and may, by written notice to Seller within 10 days after receiving Seller’s notice, terminate this Agreement and the Deposit shall be promptly returned to Purchaser.

ARTICLE VII. PURCHASER’S REPRESENTATIONS AND WARRANTIES

Section 7.1. Purchaser’s Representations and Warranties. Purchaser represents, warrants and agrees as follows:

(a) **Organization and Power.** Purchaser is duly formed, validly existing and in good standing under the laws of the State of Missouri, is qualified to do business in the State of Missouri.

(b) **Authority and Binding Obligation.** (i) Purchaser has full power and authority to execute and deliver this Agreement and all other documents to be executed and delivered by Purchaser pursuant to this Agreement (the “Purchaser Documents”), and to perform all obligations of Purchaser arising under each of the Purchaser Documents, (ii) the execution and delivery by the signer(s) on behalf of Purchaser of each of the Purchaser Documents, and the performance by Purchaser of its obligations under each of the Purchaser Documents, has been, or will be when executed and delivered, duly and validly authorized by all necessary action by Purchaser, and (iii) each of the Purchaser Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditor’s rights or equity principles generally.

ARTICLE VIII. CLOSING

Section 8.1. Closing. The closing of this Agreement shall be held at the offices of the Title Company on the earlier to occur of the 30th day following the end of the Due Diligence Period, or if said day falls on a weekend or legal holiday, the next Business Day thereafter, or at such other time and place as the Parties may mutually agree. Possession of the Property shall be delivered to Purchaser at the time of Closing.

Section 8.2. Closing Deliveries.

(a) Seller's Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Purchaser all of the (i) documents, each of which shall have been duly executed by Seller and acknowledged (if required), and (ii) other items, set forth in this Section 8.2(a) (the "Seller Closing Deliveries"), as follows:

1. A General Warranty Deed in the form of **Exhibit B**;
2. Such other documents and instruments as may be reasonably requested by Purchaser or the Title Company in order to consummate the transaction described in this Agreement.

(b) Purchaser's Deliveries. At the Closing, Purchaser shall deliver to Seller all of the (i) documents, each of which shall have been duly executed by Purchaser and acknowledged (if required), and (ii) other items, set forth in this Section 8.2(b) (the "Purchaser Closing Deliveries"), as follows:

1. The Purchase Price to be paid by Purchaser;
2. Such other documents and instruments as may be reasonably requested by Seller or the Title Company in order to consummate the transaction described in this Agreement.

ARTICLE IX. TERMINATION; DEFAULT; EFFECT

Section 9.1. Termination. If this Agreement is terminated by either Party pursuant to a right expressly given in this Agreement, Purchaser shall be entitled to an immediate return of the Deposit, and this Agreement shall thereafter become void and have no effect, without any liability on the part of any Party other than the provisions in this Agreement which expressly survive termination of this Agreement.

Section 9.2. Default. Seller or Purchaser shall be in default under this Agreement if either fails to comply with any material covenant, agreement or obligation within any time limits required by this Agreement. Following a default by either Seller or Purchaser under this Agreement, the non-defaulting party shall have the following remedies:

(a) Purchaser Default. If Purchaser defaults, Seller may terminate this Agreement by written notice to Purchaser, and retain the Deposit as liquidated damages as Seller's sole remedy (the parties recognizing that it would be extremely difficult to ascertain the extent of actual damages cause by Purchaser's default, and that the Deposit represents as fair an approximation of such actual damages as the parties can now determine), and Seller and Purchaser shall have no further rights or obligations under this Agreement, except those which expressly survive such termination.

(b) Seller Default. If Seller defaults, Purchaser may (i) specifically enforce this Agreement and recover damages suffered by Purchaser as a result of the delay in the acquisition of the Property; or (ii) terminate this Agreement by written notice to Seller, and, at Purchaser's option, pursue any remedy and damages available at law or in equity. If Purchaser elects to terminate this Agreement pursuant to this paragraph, the Deposit shall be returned to Buyer.

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 10.1. Notices.

(a) Method of Delivery. All notices, requests, demands and other communications required to be provided by any Party under this Agreement (each, a "Notice") shall be in writing and delivered, at

the sending Party's cost and expense, by (i) personal delivery, (ii) Federal Express or other reputable overnight courier service, or (iii) facsimile transmission, with a verification copy sent on the same day by any of the methods set forth in clauses (i) or (ii) to the recipient Party at the following address or facsimile number:

If to Seller: Independence City Hall
Attn: Adam Norris, Assistant City Manager
111 E Maple Ave
Independence, MO 64050

If to Purchaser: Englewood Arts Center
Attn: Monte Short, Englewood Arts, Executive Director
10900 E Winner Rd
Independence, Mo 64052

(b) Receipt of Notices. All Notices sent by a Party under this Agreement shall be effective upon (i) delivery, personally or by facsimile, as the case may be, to the address or facsimile number of the recipient Party, provided that such delivery is made prior to 5:00 p.m. (local time for the recipient Party) on a Business Day, otherwise the following Business Day, or (ii) the attempted delivery, personally or by facsimile, as the case may be, of such Notice if (A) such recipient Party refuses delivery of such Notice, or (B) such recipient Party is no longer at such address or facsimile number, and such recipient Party failed to provide the sending Party with its current address or facsimile number pursuant to Section 15.1(c), or (iii) one (1) Business Day after such Notice is deposited with an overnight delivery service for overnight delivery.

Section 10.2. Time is of the Essence. Time is of the essence of this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any Notice or item required under this Agreement shall expire on a day other than a Business Day, such time period shall be extended automatically to the next Business Day.

Section 10.3. Assignment. Purchaser shall not assign this Agreement or any interest therein (or any direct or indirect interest in Purchaser) to any Person, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

Section 10.4. Governing Law. This Agreement shall be governed by, interpreted under and construed and enforced in accordance with, the laws of the State of Missouri, without reference to conflicts of laws principles.

Section 10.5. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, (i) such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected term or provision at any other time or in any other jurisdiction, and (ii) in lieu of each term or provision that is invalid or unenforceable, a term or provision shall be added as part of this Agreement as similar as possible to such invalid or unenforceable term or provision while being valid and enforceable.

Section 10.6. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties hereto, and shall supersede any other agreements and understandings (written or oral) between the Parties on or prior to the date of this Agreement with respect to the transaction described in this Agreement.

Section 10.7. Amendments, Waivers and Termination of Agreement. No amendment or modification to any terms or provisions of this Agreement, waiver of any covenant, obligation, breach or default under this Agreement or termination of this Agreement (other than as expressly provided in this Agreement), shall be valid unless in writing and executed and delivered by each of the Parties.

Section 10.8. Execution of Agreement. A Party may deliver executed signature pages to this Agreement by facsimile transmission to any other Party, which facsimile copy shall be deemed to be an original executed signature page. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Purchase and Sale Agreement as of the day and year above written.

Seller:

CITY OF INDEPENDENCE, MISSOURI

By: _____
City Manager

[SEAL]

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **ZACHARY C. WALKER** and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

Purchaser:

**ENGLEWOOD ARTS,
A Missouri Nonprofit Corporation**

By: _____
Name: _____

[SEAL]

ATTEST:

By: _____
Name: _____

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of **ENGLEWOOD ARTS, A Missouri Nonprofit Corporation**, and that the seal affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said Corporation.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

Exhibit A

[Legal Description]

All that part of the Northeast 1/4 of Section 9, Township 49, Range 32, in Independence, Jackson County, Missouri, described as follows: Beginning at a point 348 feet East and 50 feet South, of the Northwest corner of said 1/4 Section; thence East 160 feet, thence South 195 feet; thence West 160 feet; thence North 195 feet to the point of beginning.

Exhibit B

Form of General Warranty Deed

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made as of _____, 2019, from **CITY OF INDEPENDENCE MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “Grantor”), having its mailing address as follows: 111 E Maple Ave, Independence, Missouri 64050, to **ENGLEWOOD ARTS**, a Missouri Nonprofit Corporation (the “Grantee”), 10900 E Winner Rd, Independence, Missouri 64052.

WITNESSETH, THAT THE GRANTOR, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations to it paid by the Grantee (the receipt of which is hereby acknowledged) does by these presents, **SELL** and **CONVEY** unto the Grantee, its successors and assigns, the lots, tracts or parcels of land described as follows:

All that part of the Northeast 1/4 of Section 9, Township 49, Range 32, in Independence, Jackson County, Missouri, described as follows: Beginning at a point 348 feet East and 50 feet South, of the Northwest corner of said 1/4 Section; thence East 160 feet, thence South 195 feet; thence West 160 feet; thence North 195 feet to the point of beginning.

TO HAVE AND TO HOLD, the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any way appertaining unto the Grantee and unto its successors and assigns forever; the Grantor hereby covenanting that the premises are free and clear from any encumbrance done or suffered by Grantor, except for those easements, restrictions, reservations and other agreements and matters of record and rights of the public in and to the parts thereof in streets, roads or alleys; and that Grantor will warrant and defend the title to the premises to Grantee and to Grantee’s successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor, except as provided above.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Grantor has executed this General Warranty Deed as of the day and year above written.

GRANTOR:

CITY OF INDEPENDENCE, MISSOURI

By: _____
City Manager

[SEAL]

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **ZACHARY C. WALKER** and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____