

AGREEMENT AND PLAN OF MERGER

by and among

ARSP LLC,

AS ACQUISITION LLC

and

ARTSPACE MARKETPLACE, INC.

Dated as of August 6, 2014

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of August 6, 2014 (this "Agreement"), by and among ARSP LLC, a Delaware limited liability company ("Parent"), AS Acquisition LLC, a Delaware limited liability company and a wholly-owned subsidiary of Parent ("Merger Sub"), and Artspace Marketplace, Inc., a Delaware corporation (the "Company").

RECITALS

The board of directors of the Company has approved and declared advisable this Agreement and the merger of Merger Sub with and into the Company (the "Merger") upon the terms and subject to the conditions set forth in this Agreement.

Accordingly, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), at the Effective Time (a) Merger Sub shall be merged with and into the Company, (b) the separate corporate existence of Merger Sub shall cease and the Company shall continue its corporate existence under Delaware law as the surviving corporation in the Merger (the "Surviving Corporation") and (c) the Surviving Corporation shall become a wholly-owned subsidiary of Parent. By virtue of the Merger, (i) all of the issued and outstanding shares of Series B preferred stock, par value \$0.001 per share, of the Company (the "Series B Preferred Stock") will be converted into the right to receive their pro rata portion of the excess of \$4.25 million less the Debt Pay-off Amount (the "Merger Consideration"), (ii) the holders of the issued and outstanding shares of common stock, par value \$___ per share, of the Company (the "Common Stock") and the issued and outstanding shares of Series A preferred stock, par value \$___ per share (the "Series A Preferred Stock") will be canceled and will not receive any consideration in the Merger.

Section 1.2 Closing. Subject to the satisfaction or waiver of all of the conditions to closing contained in Article VI, the closing of the Merger (the "Closing") shall take place at 10:00 [REDACTED] on August 14, 2014, provided that the conditions (other than any conditions that by their nature are to be satisfied at the Closing) have been satisfied or waived in accordance with this Agreement by such date, or (b) at such other time or on such other date as Parent and the Company may agree. The date on which the Closing occurs is referred to as the "Closing Date."

Section 1.3 Deposit. On the date hereof, Parent [shall pay][has paid] a cash deposit of \$500,000 (the "Deposit") to Pillsbury Winthrop Shaw Pittman LLP (the "Escrow Agent"), which will separately agree with each of the parties to this Agreement to hold and dispose of the Deposit in accordance with the terms of this Agreement. At the Closing, the Deposit shall be released by the Escrow Agent and used to pay the Merger Consideration in accordance with Section 1.4.

Section 1.4 Payment of Outstanding Loans and Merger Consideration. Upon the Closing, Parent shall (a) on behalf of the Company pay to each of the creditors listed on Exhibit A the amount necessary to discharge the Company's indebtedness in full (the aggregate amount paid to such creditors, the "Debt Pay-off Amount") and shall receive from each such creditor a letter in the form of Exhibit B acknowledging payment in full of all indebtedness owed thereto; and (b) pay to _____ (the "Paying Agent") by wire transfer of immediately available funds the amount of the Merger Consideration less the Deposit, which shall distribute such amount (together with the Deposit) among the holders of the Series B Preferred Stock pro rata in accordance with their respective holdings thereof. Upon payment of such amount to the Paying Agent, Parent's and Merger Sub's obligation to pay the Merger Consideration shall be discharged, it being understood that neither Parent nor Merger Sub have any obligation in respect of the distribution of the Merger Consideration among the holders of the Class B Preferred Stock.

Section 1.5 Effective Time. Immediately following the Closing, Parent and the Company shall cause a certificate of merger (the "Certificate of Merger") to be executed, signed, acknowledged and filed with the Secretary of State of the State of Delaware as provided in Section 251 of the DGCL. The Merger shall become effective when the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such other subsequent date or time as Parent and the Company may agree and specify in the Certificate of Merger in accordance with the DGCL (the "Effective Time").

Section 1.6 Effects of the Merger. The Merger shall have the effects set forth in Section 259 of the DGCL.

Section 1.7 Certificate of Incorporation. The certificate of incorporation of the Surviving Corporation shall, at the Effective Time, be amended to read in its entirety [as set forth on Exhibit C].

Section 1.8 Bylaws. The bylaws of the Company in effect immediately prior to the Effective Time shall be, from and after the Effective Time, the bylaws of the Surviving Corporation.

ARTICLE II

EFFECT OF THE MERGER ON CAPITAL STOCK

At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holder of any shares of capital stock of Merger Sub or the Company:

Section 2.1 Conversion of Merger Sub Capital Stock. Each membership interest of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and non-assessable share of common stock, par value \$__ per share, of the Surviving Corporation.

Section 2.2 Conversion of Series B Preferred Stock. Each share of the Series B Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive the Merger Consideration, without interest, divided by the total number of outstanding shares of Series B Preferred Stock. All shares of Series B Preferred Common Stock that have been so converted shall be canceled automatically and shall cease to exist, and the holders of certificates which immediately prior to the Effective Time represented those shares ("Certificates") shall cease to have any rights with respect to those shares, other than the right to receive the Merger Consideration upon surrender of their Certificates.

Section 2.3 Cancellation of Common Stock and Series A Preferred Stock. Each share of the Series A Preferred Stock and Common Stock issued and outstanding immediately prior to the Effective Time shall upon the Merger be canceled automatically, without consideration, and shall cease to exist, and the holders of certificates which immediately prior to the Effective Time represented those shares shall cease to have any rights with respect thereto.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub that:

Section 3.1 Organization and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. The Company has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as now conducted.

Section 3.2 Corporate Authorization.

(a) The Company has all necessary corporate power and authority to enter into this Agreement and, subject to adoption of this Agreement by the affirmative vote of (i) the holders of a majority of the outstanding shares of the Company (Common Stock, Series A Preferred Stock and Series B Preferred Stock voting together

as a class), (ii) the holders of at least a majority of the outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, voting together as a single class, and (iii) the holders of at least a majority of the outstanding shares of the Series B Preferred Stock (collectively, the “Requisite Company Vote”), to consummate the transactions contemplated by this Agreement.¹

(b) The board of directors of the Company has unanimously adopted resolutions: (a) approving and declaring advisable the Merger, this Agreement and the transactions contemplated by this Agreement; (b) declaring that it is in the best interests of the stockholders of the Company that the Company enters into this Agreement and consummate the Merger upon the terms and subject to the conditions set forth in this Agreement; (c) declaring that the consideration to be paid to the stockholders of the Company in the Merger is fair to those stockholders; (d) directing that adoption of this Agreement be submitted to a vote at a meeting of the stockholders of the Company; and (e) recommending to the stockholders of the Company that they adopt this Agreement (the “Company Board Recommendation”).

(c) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Company, subject to the Requisite Company Vote.

Section 3.3 Enforceability. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

Section 3.4 Liabilities. Exhibit A sets forth a true and complete list of all outstanding indebtedness of the Company, including the name of the creditor and amount required to be paid to discharge such indebtedness in full upon the Closing. There are no material liabilities or obligations of any kind, whether accrued, contingent or otherwise (collectively, “Liabilities”) of the Company, other than the indebtedness set forth on Exhibit A, Liabilities disclosed in the consolidated balance sheet of the Company as of _____, 2014, and other Liabilities arising in the ordinary course of business of the Company after such date.

Section 3.5 Voting.

(a) The Requisite Company Vote is the only vote of the holders of any class or series of the capital stock of the Company necessary (under the Company organizational documents, the DGCL, other applicable laws or otherwise) to approve and adopt this Agreement, the Merger and the other transactions contemplated by this Agreement.

¹ Should we also require a majority vote of the Common Stock, although not required by the certificate of incorporation?

(b) All stockholders of the Company have waived any dissenters' rights or rights of appraisal under applicable law in respect with the Merger.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT

Parent represents and warrants to the Company that:

Section 4.1 Organization and Power. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of Parent and Merger Sub has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as now conducted.

Section 4.2 Corporate Authorization. Each of Parent and Merger Sub has all necessary corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery and performance of this Agreement by each of Parent and Merger Sub and the consummation by each of Parent and Merger Sub of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of Parent and Merger Sub.

Section 4.3 Enforceability. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and constitutes a legal, valid and binding agreement of each of Parent and Merger Sub, enforceable against each of them in accordance with its terms.

ARTICLE V

COVENANTS

Section 5.1 Public Announcements. Parent and the Company shall consult with each other before issuing any press release or otherwise making any public statements about this Agreement or any of the transactions contemplated by this Agreement. Neither Parent nor the Company shall issue any such press release or make any such public statement prior to such consultation, except to the extent required by applicable laws, in which case that party shall use its reasonable commercial efforts to consult with the other party before issuing any such release or making any such public statement.

Section 5.2 Fees, Costs and Expenses. Whether or not the Merger is consummated, all expenses (including those payable to representatives) incurred by any party to this Agreement or on its behalf in connection with this Agreement and the transactions contemplated by this Agreement ("Expenses") shall be paid by the party incurring those Expenses, except as otherwise provided in Section 7.5.

Section 5.3 Conversion to Asset Sale. If requested by Parent, the parties will discuss in good faith the conversion of the transactions contemplated by this Agreement into a sale of all of the business, assets and liabilities of the Company to Merger Sub, and the Company will not unreasonably object to a restructuring of the transactions if and to the extent that (a) an asset sale can be accomplished on the same timetable as is contemplated for the Closing, (b) the economic consequences of an asset sale for the creditors listed on Exhibit A and the shareholders of the Company are equivalent to those applicable under the Merger and (c) provision is made for the orderly wind-up and liquidation of the Company following the consummation of the asset sale at no incremental cost to the shareholders of the Company.

ARTICLE VI

CONDITIONS

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The obligation of each party to this Agreement to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the condition that this Agreement shall have been duly adopted by the Requisite Company Vote.

Section 6.2 Conditions to Obligations of Parent and Merger Sub. The obligations of each of Parent and Merger Sub to effect the Merger are also subject to the satisfaction (or waiver by Parent) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects, as though made on and as of the Closing Date.

(b) Performance of Obligations. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Officer's Certificate. Parent shall have received a certificate, signed by the chief executive officer of the Company, certifying as to the matters set forth in Section 6.2(a) and Section 6.2(b).

Section 6.3 Frustration of Closing Conditions. None of the parties to this Agreement may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was caused by such party's failure to use commercially reasonable efforts to consummate the Merger and the other transactions contemplated by this Agreement.

ARTICLE VII

TERMINATION AND WAIVER

Section 7.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time by mutual written consent of Parent and the Company.

Section 7.2 Termination by Either Parent or the Company. This Agreement may be terminated by either Parent or the Company at any time prior to the Effective Time:

(a) if the Merger has not been consummated by the close of business on August 15, 2014, except that the right to terminate this Agreement under this clause shall not be available to any party to this Agreement whose failure to fulfill any of its obligations has been a principal cause of, or resulted in, the failure to consummate the Merger by such date;

(b) if the Requisite Company Vote has not been obtained; or

(c) if any law or court order prohibits consummation of the Merger.

Section 7.3 Termination by Parent. This Agreement may be terminated by Parent at any time prior to the Effective Time if:

(a) the Company breaches any of its representations, warranties, covenants or agreements contained in this Agreement, which breach (i) would give rise to the failure of a condition set forth in Section 6.2(a) or Section 6.2(b) and (ii) has not been cured by the Company within 2 business days after the Company's receipt of written notice of such breach from Parent; or

(b) the Parent's due diligence review of the Company and its business reveals, prior to Closing, that any of the Company's database, assets and liabilities (taken as a whole), or technology platform materially differs from what has been represented to Buyer in the information listed on Exhibit D.

Section 7.4 Effect of Termination. If this Agreement is terminated pursuant to this Article VII, it shall be of no further force and effect, with no liability on the part of any party to this Agreement (or any stockholder, director, officer, employee, agent or representative of such party), except that (a) if such termination results from the willful (i) failure of any party to perform its obligations or (ii) breach by any party of its representations or warranties contained in this Agreement, then such party shall be liable for any liabilities incurred or suffered by the other parties as a result of such failure or breach; and (b) Section 5.2, this Section 7.4, Section 7.5 and Article VIII of this Agreement shall survive any termination of this Agreement.

Section 7.5 Expenses and Deposit Following Termination.

(a) Except as set forth in this Section 7.5, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid in accordance with the provisions of Section 5.2.

(b) The Escrow Agent shall release the Deposit:

(i) to the Company if this Agreement is validly terminated by the Company pursuant to Section 7.2(a) as a result of a material breach of this Agreement by Parent;

(ii) to Parent if this Agreement is validly terminated by Parent pursuant to Section 7.1, Section 7.2 or Section 7.3.

Section 7.6 Extension; Waiver. At any time prior to the Effective Time, Parent and Merger Sub, on the one hand, and the Company, on the other hand, may (a) extend the time for the performance of any of the obligations of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained in this Agreement or in any document delivered under this Agreement or, (c) subject to applicable laws, waive compliance with any of the covenants or conditions contained in this Agreement. Any agreement on the part of a party to any extension or waiver shall be valid only if set forth in an instrument in writing signed by such party. The failure of any part to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Interpretation. Headings in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. Definitions shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references in this Agreement to Articles, Sections and Exhibits shall refer to Articles and Sections of, and Exhibits to, this Agreement unless the context shall require otherwise. The words “include,” “includes” and “including” shall not be limiting and shall be deemed to be followed by the phrase “without limitation.” Unless the context shall require otherwise, any agreements, documents, instruments or laws defined or referred to in this Agreement shall be deemed to mean or refer to such agreements, documents, instruments or laws as from time to time amended, modified or supplemented, including (a) in the case of agreements, documents or instruments, by waiver or consent and (b) in the case of laws, by succession of comparable successor statutes. All references in this Agreement to any particular law shall be deemed to refer also to any rules and regulations promulgated under that law. References to a person also refer to its predecessors and permitted successors and assigns.

Section 8.2 Survival. None of the representations and warranties contained in this Agreement or in any instrument delivered under this Agreement shall survive the Effective Time. This Section 8.2 shall not limit any covenant or agreement of the parties to this Agreement which, by its terms, contemplates performance after the Effective Time.

Section 8.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware..

Section 8.4 Submission to Jurisdiction. The parties to this Agreement (a) irrevocably submit to the personal jurisdiction of the federal courts of the United States of America located in the State of Delaware and the Court of Chancery of the State of Delaware and (b) waive any claim of improper venue or any claim that those courts are an inconvenient forum. The parties to this Agreement agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.6 or in such other manner as may be permitted by applicable laws, shall be valid and sufficient service thereof.

Section 8.5 Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each party to this Agreement certifies and acknowledges that (a) no Representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications of this waiver, (c) such party makes this waiver voluntarily, and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 8.5.

Section 8.6 Notices. Any notice, request, instruction or other communication under this Agreement shall be in writing and delivered by hand or overnight courier service or by facsimile or email:

If to Parent or Merger Sub, to:

Facsimile: _____

Attention: _____

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas

New York, NY 10019
Facsimile: 1 212 492 0030
Attention: David K. Lakhdir
email: [REDACTED]

If to the Company, to:

Facsimile: _____
Attention: _____

with a copy to:

Facsimile: _____
Attention: _____

or to such other persons, addresses or facsimile numbers or email addresses as may be designated in writing by the person entitled to receive such communication as provided above. Each such communication shall be effective (a) if delivered by hand, when such delivery is made at the address specified in this Section 8.6, (b) if delivered by overnight courier service, the next business day after such communication is sent to the address specified in this Section 8.6, or (c) if delivered by facsimile or email, when such facsimile or email is transmitted to the facsimile number or email addressed specified in this Section 8.6 and appropriate confirmation is received.

Section 8.7 Entire Agreement. This Agreement (including the Exhibits to this Agreement) constitutes the entire agreement and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties to this Agreement with respect to the subject matter of this Agreement. No representation, warranty, inducement, promise, understanding or condition not set forth in this Agreement has been made or relied upon by any of the parties to this Agreement.

Section 8.8 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions of this Agreement. If any provision of this Agreement, or the application of that provision to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted for that provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision and (b) the remainder of this

Agreement and the application of that provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of that provision, or the application of that provision, in any other jurisdiction.

Section 8.9 Rules of Construction. The parties to this Agreement have been represented by counsel during the negotiation and execution of this Agreement and waive the application of any laws or rule of construction providing that ambiguities in any agreement or other document shall be construed against the party drafting such agreement or other document.

Section 8.10 Assignment. This Agreement shall not be assignable by operation of law or otherwise.

Section 8.11 Remedies. Except as otherwise provided in this Agreement, any and all remedies expressly conferred upon a party to this Agreement shall be cumulative with, and not exclusive of, any other remedy contained in this Agreement, at law or in equity. The exercise by a party to this Agreement of any one remedy shall not preclude the exercise by it of any other remedy.

Section 8.12 Specific Performance. The parties to this Agreement agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

Section 8.13 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, all of which shall be one and the same agreement. This Agreement shall become effective when each party to this Agreement shall have received counterparts signed by all of the other parties.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties to this Agreement as of the date first written above.

ARSP LLC

By: _____
Name: Keith Fox
Title: Manager

AS ACQUISITION LLC

By: _____
Name: Keith Fox
Title: Manager

ARTSPACE MARKETPLACE, INC.

By: _____
Name: Catherine Levene
Title: President and CEO

Exhibit A: Creditors of the Company

<u>Lender Name and Address</u>	<u>Amount Owed*</u>	<u>Wire Instructions</u>

*includes all accrued interest, premium and other amounts owed as of August 14, 2014.

Exhibit B: Form of Pay-off Letter

[to be inserted]

Exhibit C: Amended Certificate of Incorporation

[to be inserted]

Exhibit D: Written Information Furnished by Company to Parent

1. All items uploaded by Seller to Dropbox virtual data room
2. Emails (including attachments) to Keith Fox, John Murphy and Eileen Alexanderson from Catherine Levene and other senior management and from Greg Budin & Associates
3. Access to quickbooks reports and other online reports and databases furnished by Seller