

## RESIDENCE PURCHASE AGREEMENT

This RESIDENCE PURCHASE AGREEMENT (this “*Agreement*”) is entered into this \_\_ day of \_\_\_\_\_, 20\_\_ (the “*Effective Date*”) by and between NEWTOWN COMMUNITY DEVELOPMENT CORPORATION, an Arizona non-profit corporation (“*Seller*”) and \_\_\_\_\_ (collectively, “*Buyer*”).

### SUMMARY OF TERMS

<b>SELLER:</b>	<p>NEWTOWN COMMUNITY DEVELOPMENT CORPORATION, an Arizona non-profit corporation</p> <p><u>Contact Information:</u></p> <p>Address: <u>2106 East Apache Boulevard, Suite 112</u></p> <p>City: <u>Tempe</u> State: <u>Arizona</u> Zip Code: <u>85281</u></p> <p>Attention: _____</p> <p>Phone: <u>(480) 517-1589</u></p> <p>Email: _____</p>
<b>BUYER:</b>	<p>_____</p> <p><u>Contact Information:</u></p> <p>Address: _____</p> <p>City: _____ State: _____ Zip Code: _____</p> <p>Attention: _____</p> <p>Phone: ( ) _____ - _____</p> <p>Email: _____</p>
<b>GROUND LEASED LOT:</b>	<p>The “<i>Ground Leased Lot</i>” consists of that certain residential lot, numbered _____, located in the Tempe Micro Estates development of Tempe, Arizona, as more particularly described and/or depicted on <u>Exhibit A</u> attached hereto and incorporated herein by this reference. The single-family residence to be constructed by Seller on the Ground Leased Lot and all improvements related thereto (collectively, the “<i>Residence</i>”).</p> <p>Buyer understands that Buyer is purchasing the Residence only, and has no ownership interest in the Ground Leased Lot.</p> <p>Buyer’s initials: _____</p>
<b>CONTRACT PRICE:</b>	<p>The total contract price to be paid by Buyer to Seller for the improvement of the Residence (the “<i>Contract Price</i>”) shall be _____ Dollars (\$_____).</p>
<b>DEPOSIT:</b>	<p>The “<i>Deposit</i>” shall consist of One-Thousand Four-Hundred Dollars (\$1,400). The Deposit shall be applied to the Contract Price at the Closing. It shall be paid in two installments, the first, Four Hundred Dollars (\$400), due at <b>Conditional Sale</b> and the second, One-Thousand Dollars (\$1,000), due at <b>Affirmation of Purchase</b>.</p>

<b>ESCROW AGENT:</b>	<b>First American Title</b> <b>Heidi Dombrowski</b> <b>20860 N. Tatum Blvd #100</b> <b>Phoenix, AZ 85050</b> <b>hdombrowski@firstam.com</b> <b>(480) 515-4369</b>
----------------------	--

**STANDARD TERMS AND CONDITIONS**

1. Scope of Work.

1.1 Contract Documents. Seller shall cause the Residence to be constructed in accordance with the plans and specifications therefor (collectively, the “**Contract Documents**”). Buyer acknowledges receipt of a copy of the Contract Documents.

\_\_\_\_\_

Buyer initials

1.2 Purchase and Sale. Buyer agrees to buy and Seller agrees to sell to Buyer the Residence, which is located on the Ground Leased Lot, and has an address of \_\_\_\_\_. Buyer is not buying, and Seller is not selling, any right title and interest in the Ground Leased Lot, other than the leasehold interest pursuant to the Community Land Trust Ground Lease, which Seller, as the landlord, and Buyer, as the tenant, will execute on the Closing.

1.3 Seller’s Duties. Seller shall cause \_\_\_\_\_ (“**Builder**”) to furnish or cause to be furnished the material, labor, equipment, tools and supervision necessary to construct the Residence for Buyer on the Ground Leased Lot in accordance with the Contract Documents (collectively, the “**Scope of Work**”). Seller shall cause the Scope of Work to be carried out in a good and workmanlike manner, in accordance with industry standards for homes of a similar nature and quality as the Residence, and in accordance with all applicable laws and regulations.

1.4 Permits. Seller shall cause Builder to obtain or cause to be obtained all necessary governmental and utility company approvals of the Contract Documents and all permits for construction of the Residence. The cost of the building permits and any other necessary permits shall be included in the Contract Price.

1.5 Ownership of the Contract Documents. The Contract Documents are instruments of service and shall remain Seller’s and Builder’s property and shall not be modified and/or reused by Buyer for any purpose. Buyer shall be permitted to retain copies, including reproducible copies and CADD copies, of the Contract Documents for information and reference in connection with Buyer’s use and occupancy of the Residence.

2. Contract Price and Payment.

2.1 Payment of the Contract Price. On or before the Effective Date, Buyer shall deliver the Deposit to Seller and acknowledges that the same is non-refundable to Buyer, except only in the event of a default by Seller hereunder, or as otherwise provided herein. Buyer shall pay the rest of the Contract Price on or before the Closing.

2.2 Financing. NO CONTINGENCY. Yes /No  If this is a cash transaction and not contingent on financing. Buyer agrees to provide within five (5) calendar days from the Effective Date of this Agreement financial statements or other written verification of Buyer's ability to purchase the Residence with cash. If Buyer does not (in Seller's sole judgement, based on the documentation provided by Buyer to Seller) have the financial ability to purchase the Residence with cash, then Seller may terminate this Agreement by refunding Buyer any paid Deposit within 30 days of Seller's decision to terminate this Agreement.

2.3 Financing. LOAN CONTINGENCY. Yes /No  If this sale is contingent upon Buyer qualifying for a loan for the full purchase price of the Residence. A Loan Approval is attached or shall be delivered to Seller within \_\_\_\_\_ days after acceptance of this Agreement. Buyer agrees to supply all documentation required by the lender. Buyer instructs the lender to send copies of such approval to Seller. Buyer authorizes the lender to provide loan status updates to Seller. Any appraisal required by Buyer's lender shall be paid by Buyer at its sole cost.

2.4 If Buyer properly makes and pursues the loan application as provided herein but is unable to provide Seller with a copy of a written loan commitment reasonably satisfactory to Seller within the number of days specified in Section 2.3 above, or if Buyer is at any time disapproved for such loan (and Buyer does not cancel or withdraw his/her loan application), then Seller, at its sole discretion, may cancel this Agreement by written notice to Buyer, in which event Seller shall refund any paid Deposit(s) made by Buyer. If Buyer properly makes and pursues the loan application as provided herein but is unable to obtain mortgage loan financing, despite Buyer's good faith efforts to do so, and Buyer is not otherwise in default under this Agreement, and further provided that Buyer provides Seller with documentation from Buyer's lender that the loan has been declined, Buyer may cancel this Agreement by giving written notice to Seller within five (5) days after the above-referenced documentation from Buyer's lender is received by Buyer, in which event Seller shall refund any paid Deposit(s) by check within in thirty (30) days of receipt by the Seller of the Buyer's written notice of cancellation.

2.5 Closing Costs. BUYER UNDERSTANDS AND AGREES THAT IN ADDITION TO THE TOTAL CASH TO CLOSE (WHICH AMOUNT IS SPECIFIED AS THE CONTRACT PRICE), BUYER SHALL PAY OTHER FEES AND CLOSING COSTS. Customary closing costs of a Buyer of a single family residence, including but not limited to items such as loan fees, loan closing costs and all other related sums, attorneys' fees, escrow for taxes and insurance, recording fees, documentary stamp taxes on the note, intangible taxes, credit reports and PMI insurance, if applicable, charged by Buyer's lender or otherwise customary for a Buyer at closing. Buyer and Seller shall each pay one half (1/2) of the standard leasehold title insurance policy at the Closing. Buyer shall be responsible for any additional premium amounts in association with any endorsements requested by Buyer and any extended coverage to the basic leasehold title insurance policy. Also, current expenses of the Ground Leased Lot and Residence (for example: taxes, special assessments and current monthly assessments to one or more homeowner's or similar associations) will be adjusted between Seller and Buyer as of the Closing date. Buyer shall reimburse Seller for any prepaid expenses of the Ground Leased Lot and/or Residence such as utility deposits, insurance premiums, cable fees, assessments and capital contributions made to one or more homeowner's or similar associations paid by Seller in advance and/or for the month in which the Closing occurs.

2.6 The cost of any modifications or changes which are incurred by Seller as a result of changes in building codes, government rules, regulations or requirements, or the enforcement of the same, after the Effective Date of this Agreement, shall be paid by Buyer at the Closing.

3. Escrow. Promptly following the Effective Date, Seller and Buyer shall establish an escrow account (the "*Escrow*") with Escrow Agent and provide Escrow Agent with a fully executed copy of this

Agreement. This Agreement shall constitute escrow instructions to Escrow Agent from Seller and Buyer. In addition, Seller and Buyer shall execute such additional escrow instructions as Escrow Agent reasonably requests. If there is any inconsistency between this Agreement and such additional escrow instructions, the provisions of this Agreement shall govern.

4. Placement of Residence on the Ground Leased Lot and Grading and Soil Conditions. The placement of the Residence shown on the preliminary site plan for the Ground Leased Lot is approximate and the actual layout of the Residence may vary. Seller and/or Builder has the right to cause the Residence on the Ground Leased Lot to be oriented in accordance with the Builder's normal construction practices and any requirements imposed by the City, Maricopa County, or other governmental agency having jurisdiction; however, Seller and/or Builder will keep Buyer apprised in advance of any anticipated significant deviation from the placement shown in Exhibit B, and will discuss same with Buyer before effecting such changes. Seller makes no representation as to the condition of any vegetation that may exist on the Ground Leased Lot or surrounding the Ground Leased Lot or as to the condition or existence of such vegetation upon delivery of the Residence to Buyer. Because of the prevalence of expansive soil conditions in Arizona, the Residence will be constructed in accordance with recommendations made in a soils report prepared by a licensed engineer with the goal of minimizing the effects of expansive soils, if present. The possible problems caused by expansive soils include, without limitation, the following: upward movement of foundation and floor slab systems, cracking of concrete, flooring surfaces, drywall and stucco, and misalignment of doors and windows. The Ground Leased Lot has been or will be graded in accordance with an approved grading plan for the Ground Leased Lot. Failure by Buyer to maintain the grades and contours of the Ground Leased Lot may result in upward movement or settlement of the foundations and concrete, which may result in extensive and costly repairs to the Residence. Any damage to the Residence, including cracking of concrete, stucco and/or drywall resulting from changes by Buyer to the grading of the Ground Leased Lot shall be excluded from any and all warranties provided by Builder.

5. Construction.

5.1 Commencement of Construction. On or before the date that is \_\_\_\_\_ days following the Effective Date of this Agreement, Seller shall cause Builder to construction of the Residence to commence. Buyer shall promptly execute all documents reasonably required, on such forms as Builder may require, subject to Buyer's review and reasonable approval. All material and labor will be supplied by subcontractors and/or suppliers approved by Builder. Seller shall require Builder to complete the work in substantial conformance with the Contract Documents. Notwithstanding the foregoing, however, due to the nature of construction, Buyer acknowledges that minor deviations and variations from the Contract Documents may exist in the Residence, including, without limitation, (i) substitution by Builder of materials, equipment and appliances of substantially equal or better quality; (ii) minor style, lot orientation and color changes; (iii) minor variances in room and space dimensions and window, door and other improvement locations; and (iv) changes in the Contract Documents as may be required by applicable law or governmental agency with jurisdiction, upon approval by Buyer, not to be unreasonably withheld, conditioned or delayed. Seller and/or Builder reserves the right to make changes to the Residence and/or to make deviations from the Contract Documents that Seller and/or Builder, upon consultation with Buyer, deems reasonably necessary. Buyer acknowledges that renderings, floor plans and other drawings shown to Buyer prior to substantial completion of the Residence may not be drawn to scale. Seller and/or Builder reserves the right to substitute materials and make changes to the Residence and/or to deviate from the Contract Documents to the extent necessary, in Seller and/or Builder's sole and absolute discretion, to accommodate job site conditions, governmental conditions, availability of materials, and practicality of design or other circumstances, which, in Seller and/or Builder's sole and absolute discretion, warrant alteration or deviation from the Contract Documents, provided that any substitution of materials or equipment results in the use of materials or equipment that are substantially

comparable in quality and appearance, as determined by Seller and/or Builder, and provided that Seller and/or Builder shall consult with Buyer should any material changes be contemplated. To the extent required or requested by Buyer, or by any lender to Buyer, Seller shall cause Builder to provide evidence that, provided that Buyer has complied with its financial obligations hereunder, neither Builder nor any contractor nor any other party supplying goods or labor for the construction has or will have or enforce any mechanic's or materialman's liens, or other similar charge, against the Residence or the Ground Leased Lot; and, to the extent any such have been filed or exist, Seller and/or Builder will obtain the release thereof and will defend, indemnify and hold Buyer harmless from all such claims.

5.2 Completion of Construction. Buyer acknowledges that normal construction schedules may be affected by, among other things, weather conditions and the availability of labor, materials and qualified subcontractors, and therefore, neither Seller nor Builder have or will guarantee a completion date. Neither Seller nor Builder shall be held responsible for estimated completion dates, which Buyer may receive from Seller or Builder, contractors, or their agents, employees, subcontractors or suppliers. Notwithstanding the foregoing to the contrary, subject to extensions for delays that are beyond the reasonable control of Seller or Builder, Seller shall cause Builder to use commercially reasonable efforts to cause the Scope of Work to be substantially complete and the Residence delivered to Buyer on or before the date that is \_\_\_\_\_ (\_\_\_\_\_) months following the Effective Date of this Agreement. For purposes of this Agreement, the Scope of Work shall be deemed to be "substantially complete" upon the later to occur of (i) completion of the final inspection and approval of the Residence by the applicable municipality or county in which the Residence is located, which inspection, once passed, shall be deemed to confirm that the Residence is built in substantial conformance with applicable county or city regulations, per the Contract Documents; or (ii) issuance of a certificate of occupancy for the Residence.

5.3 Materials Used in Construction. Materials used in the Scope of Work, including, but not limited to, paint, stucco, roof material, concrete, block, stone, brick, tile, granite, wood, carpet, laminate, cabinets, cultured marble, etc., may differ depending on age, density, type of finish, dye mixtures, textures, designs, porosity, place of origin and other factors, and many such finishes will change as they are exposed to the elements. Such variations are typical and should be expected by Buyer. Neither Seller nor Builder, nor any contractor, nor their suppliers or subcontractors guarantee exact matches. Buyer acknowledges that the R-value of the insulation to be installed in the Residence may vary in certain areas of the Residence due to design or construction constraints such as location of studs, corners, windows, doors, points where roof trusses are attached to walls, etc. Buyer shall, at the final inspection described below, be entitled to inspect the Residence. At such inspection, Buyer shall provide Builder with written notice of any material deviations Buyer believes to exist, that were not previously communicated to Buyer, between the Contract Documents and the Residence as constructed. If Buyer fails to provide Builder with such notice and accepts delivery of the Residence, Buyer shall be deemed to have agreed to accept the Residence as constructed, except for any latent items which Buyer reasonably could not have discovered at that time, and subject to all changes and deviations from the Contract Documents, and to have waived any and all right and claim against Builder with respect to any such changes and deviations from the Contract Documents, again, except for latent items which Buyer reasonably could not have discovered at that time. Nothing in this section shall abrogate Builder's warranty obligations set forth in Section 7 below.

5.4 No Buyer Work Prior to Substantial Completion. Prior to substantial completion of the Work and delivery of the Residence to Buyer, Buyer shall not provide materials, subcontractors or supplies to the Residence or perform or cause to be performed any work on or make any modifications to the Residence, without Seller's and Builder's prior written approval, in Seller and Builder's sole and absolute discretion. Buyer's subcontractors may only work in the Residence and Buyer may only install or provide materials for the Residence after substantial completion of the Work and delivery of the

Residence to Buyer. If Buyer violates the restrictions set forth in this Section, then in addition to being in default under this Agreement, Builder's warranty shall, at Builder's option, be deemed to be void, with respect to any items of Work affected by Buyer's conduct, and the Contract Price increased by any cost incurred by Builder to do any restorative or other type of corrective or additional work as a result.

5.5 Final Residence Inspection. Prior to substantial completion of the Scope of Work and delivery of the Residence to Buyer, Seller and Buyer shall schedule an inspection of the Residence to review the features and operation of the Residence. If the parties are unable to schedule such final inspection prior to the date specified by Builder for substantial completion of the Scope of Work and delivery of the Residence to Buyer, the parties shall nonetheless proceed with the delivery of the Residence to Buyer and the parties shall thereafter endeavor to arrange a final inspection of the Residence. At the inspection, Builder shall compile a list of all mutually agreed upon existing defects and deficiencies in the Scope of Work (the "**Punch List**"). Failure by Buyer to attend the agreed upon scheduled inspection of the Residence shall be deemed a waiver by Buyer of any Punch List objections, provided, however, that the Builder shall cooperate with Buyer in scheduling an alternate date if events cause the Buyer to need to reschedule. The existence of any such Punch List items shall not entitle Buyer to cancel this Agreement or withhold any funds otherwise due to Seller. Within a reasonable period of time following delivery of the residence to Buyer, Seller shall cause Builder to remedy or cause to be remedied the items on the Punch List in accordance with industry standards, provided Buyer agrees to provide Builder, any contractor and their representatives' reasonable access to the Residence during normal business hours. Builder shall have no responsibility to make any repairs or replacements resulting from damage to the Residence caused by Buyer, its movers, employees, invitees or contractors or any other occupants of the Residence.

5.6 Change Orders. Except as expressly provided herein to the contrary, changes in the Scope Work may only be accomplished after execution of this Agreement and the Contract Documents, and without invalidating this Agreement or the Contract Documents, by written change order, executed by Buyer, Seller, and Builder. If Buyer, Seller, or Builder requests, or one of the parties believes that a change is necessary (a "**Change**"), then the parties shall comply with the following procedure to reflect a Change in the Work:

(a) The party requesting or noting the Change shall write a description of the Change and give such description to the other party (the "**Change Notice**");

(b) Before proceeding with the Change, unless excused by an emergency involving safety or property damage, Seller and/or Builder shall provide Buyer with a fixed-price estimate of the cost of the requested Change;

(c) Buyer, Seller, and Builder shall execute a Change Order, on Builder's standard form, confirming their agreement with the Change, the fixed-price cost, and the extension of the estimated substantial completion date, if applicable. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation. Notwithstanding the foregoing to the contrary, in no event shall Seller or Builder be required to accept and agree upon a Change.

## 6. Representations, Warranties and Covenants.

6.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows:

(a) Seller has full right, power and authority to enter into this Agreement and the transactions and conveyances contemplated herein.

(b) Seller is a validly existing non-profit corporation, organized under the laws of the state of Arizona and is authorized to transact business and is in good standing under the laws of the state of Arizona.

6.2 Buyer's Representations, Warranties and Covenants. Buyer represents and warrants to Seller as follows:

(a) Buyer has full right, power and authority to enter into this Agreement and the transactions and conveyances contemplated herein.

(b) Buyer is not: (i) acting, directly or indirectly for, or on behalf of, any person, group, entity or nation named by any Executive Order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, or nation pursuant to any Law that is enforced or administered by the Office of Foreign Assets Control, and is not engaging in this Transaction, directly or indirectly, on behalf of, or instigating or facilitating this Transaction, directly or indirectly, on behalf of, any such person, group, entity or nation, nor (ii) engaged in any dealings or transactions, directly or indirectly, in contravention of any United States, international or other applicable money laundering regulations or conventions, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. § 1 et seq., as amended), or any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

6.3 Damage or Destruction of Residence. Seller shall bear the risk of loss to the Ground Leased Lot and the Residence for all reasons other than Builder's intentional misconduct until Closing. Notwithstanding the foregoing, Buyer may elect to purchase and maintain his own liability insurance, including Builders risk, flood, fire and casualty insurance upon the Residence, to the full insurable value.

7. Builder's Warranty. Seller shall cause Builder to warrant the Scope of Work for a period of one (1) year after the date of substantial completion to be free from material defects in materials and workmanship in conformance with the Contract Documents. The warranty contained in this Agreement is the only warranty applicable to the Scope of Work and this Agreement that is to be provided by Seller. All other warranties, including warranties of merchantability, fitness for a particular purpose, habitability and workmanship, whether expressed or implied are hereby disclaimed and excluded from this Agreement. If Buyer gives Builder written notice of any such defective or nonconforming Work within said two (2) year period, Seller shall cause Builder to correct or cause the correction of such Scope of Work at Builder's expense; provided, that the foregoing warranty shall not apply to any materials or equipment covered by manufacturer's warranty, all of which shall be assigned by Builder to Buyer, to the extent assignable. Notwithstanding anything to the contrary contained herein, in no event shall Seller be responsible for providing any warranty to Buyer and Buyer agrees and acknowledges that Buyer shall look to Builder for curing any warranty items.

8. Closing. Seller shall deliver possession of the Residence on the Closing. The "**Closing**" will occur \_\_\_\_\_ days after the Scope of Work is substantially completed in accordance with Section

5.2, above. No later than one (1) Business Day before the Closing, Buyer will deliver to Escrow Agent, a signed Community Land Trust Ground Lease, a signed and acknowledged memorandum of the Community Land Trust Ground Lease, in recordable form, and any other documents required by law and/or reasonably requested by Seller or Escrow Agent. On or before the Closing, Seller will deliver to Escrow Agent a duly signed deed or bill of sale, as set forth on Exhibit E attached to the Community Land Trust Ground Lease, and any other documents required by law and/or reasonably requested by Escrow Agent. It is a condition precedent to Seller's obligation to close that Buyer is not in default of this Agreement and has delivered to Escrow Agent all required Closing documents.

**ESCROW SHALL NOT CLOSE UNTIL THE CITY OF TEMPE OR COUNTY OF MARICOPA ISSUES ITS OCCUPANCY CLEARANCE AND ALL SUBDIVISION IMPROVEMENTS ARE COMPLETE.**

9. Notices. Any notices and demands required or permitted by this Agreement or by law shall be given in writing addressed to the parties as set forth in the Summary of Terms, and delivered by (a) hand delivery, or (b) reputable overnight carrier (such as Federal Express, DHL or UPS) for next Business Day receipt by the addressee, or (c) United States mail, registered or certified, postage prepaid, return receipt requested, or (d) fax, evidenced by the machine generated receipt from the sender's device, or (e) email. Notice shall be deemed given upon receipt if sent in accordance with subpart (a) above, or upon the next Business Day if sent in accordance with subpart (b) above, or two Business Days following the date sent if sent in accordance with subpart (c) above, or as of the machine-stamped date and time on the sent message if sent by in accordance with subpart (d) or (e) above.

10. Default; Remedies.

10.1 Buyer Default. IF BUYER SHALL BREACH ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, AND SUCH BREACH IS NOT CURED WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF WRITTEN NOTICE THEREOF FROM SELLER, OR IF BUYER SEEKS RELIEF UNDER BANKRUPTCY OR INSOLVENCY LAWS OF THE UNITED STATES, SELLER MAY CAUSE BUILDER TO STOP THE SCOPE OF WORK UNTIL SUCH BREACH HAS BEEN CURED AND MAY TERMINATE THIS AGREEMENT AND RETAIN THE DEPOSIT AND ANY OTHER FUNDS RECEIVED FROM BUYER OR BUYER'S LENDER AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR THE ACCEPTANCE OF THIS AGREEMENT AND PERFORMING ALL OTHER ACTIONS UNDER THIS AGREEMENT, AND NOT AS A PENALTY. BUYER AND SELLER ACKNOWLEDGE THAT IT WOULD BE IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES SUFFERED BY SELLER IF BUYER DEFAULTS AND THAT THE DEPOSIT AND SUCH OTHER FUNDS ARE A REASONABLE GOOD FAITH ESTIMATE OF THE DAMAGES THAT SELLER MAY SUFFER UNDER THE CIRCUMSTANCES.

10.2 Seller Default. If Seller shall breach any of the terms of this Agreement regarding the performance of the Scope of Work or delivery of a deed or bill of sale (as set forth in Exhibit E of the Community Land Trust Ground Lease), Buyer shall provide written notice of such breach to Seller, whereupon Seller shall have thirty (30) days to cure such breach. If Seller fails to cure such breach within such time period, Buyer may elect to terminate this Agreement and, as Buyer's sole and exclusive remedy, receive a refund of the Deposit.

11. General Provisions.

11.1 Time. Time is of the essence in connection with this Agreement, and failure to timely comply with the provisions hereof shall be a material breach of this Agreement.



11.2 Assignment. Buyer may not assign this Agreement to any other party without the prior written consent of Seller, in Seller's sole and absolute discretion. Any attempted assignment shall be voidable by Seller.

11.3 Interpretation. This Agreement shall be construed as a whole and in accordance with the fair meaning of its language, and shall not be construed for or against either party. Each party has cooperated and participated in the drafting and preparation of this Agreement, and therefore, in any construction to be made of this Agreement or any of its terms, both parties shall be construed to be equally responsible for the drafting and preparation of the same. Captions and Section headings are for convenience and shall not be used in construing meaning.

11.4 Inurement. This Agreement and escrow instructions and its terms shall inure to the benefit of and be binding upon the parties, their respective heirs, personal representatives, permitted assigns, and other successors in interest.

11.5 Entire Agreement. This Agreement and any Exhibits or Riders attached hereto and the Community Land Trust Ground Lease Agreement contain the entire agreement between the parties, and no promise, representation, warranty or covenant not included in this Agreement or any such referenced Exhibits, Riders or the Community Land Trust Ground Lease Agreement has been or is relied upon or made by either party. No modifications or amendments of this Agreement shall be of any force or effect unless made in writing and executed by both Buyer and Seller. In the event that any litigation arises hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the State of Arizona.

11.6 Construction Area. Federal Government OSHA standards require anyone on a construction site to wear certain protective clothing and safety devices, including, but not limited to, hard hats and safety glasses, and to the extent Builder permits Buyer on the Residence during construction, Buyer shall comply with such requirements. Neither Seller nor Builder nor any contractor shall have any responsibility or liability for any injury or loss resulting from or occurring during any entrance by Buyer or its guests or invitees on any construction area of the Residence, and Buyer shall indemnify Seller and any contractor from any and all loss, damages, claims, liability or responsibility resulting from any such entry by Buyer or its guests or invitees. Any communication regarding the construction of the Residence must be handled directly between Buyer and Seller, and Buyer shall not make any direct contact with any workmen, suppliers, superintendents or subcontractors of Builder or any contractor or their employees.

11.7 Attorneys' Fees. In the event any action (whether judicial [with or without jury], mediation or arbitration) is filed, as between Buyer and Seller, the "substantially prevailing" (defined below) party therein shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees and costs from the party not prevailing. The "***substantially prevailing***" party shall be the party who is entitled to costs of suit, whether or not the suit proceeds to final judgment.

11.8 Waiver of Covenants, Conditions, Remedy. The waiver by one party of the performance of any covenants, conditions, undertakings, or promises shall not invalidate this Agreement, nor shall it be considered a waiver by it of any other covenant, condition, undertaking, or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions in this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

11.9 Survivability of this Agreement. All representations and warranties, and obligations and other agreements that are performable or relate to a period after the Closing, shall survive the Closing, and shall not be merged therein. Except as provided in the immediately preceding sentence or where otherwise expressly stated to survive termination, upon expiration or termination of this Agreement neither party will have any further obligations hereunder.

11.10 Partial Invalidity. If any term, covenant, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, provided the material benefit of the party's bargain intended under this Agreement is still obtainable by such party after giving effect to the application of such determination.

11.11 Applicable Law. This Agreement shall be interpreted and construed according to the laws of the State of Arizona, without regard or reference to the application of its rules, and determinations or application of its conflicts of law.

11.12 No Joint Venture. Nothing contained herein shall be construed to create, either explicitly or by implication, any manner of co-ownership, partnership or joint venture, between Buyer or Seller.

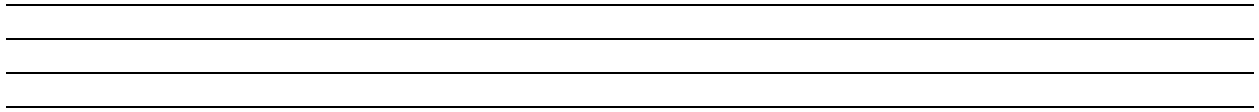
11.13 Calculation of Dates and Times. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State of Arizona, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m. Arizona time.

11.14 Business Day. For purposes of this Agreement, the term "***Business Day***" means any day that is not a Saturday, Sunday, legal holiday, or other day on which commercial banks in Phoenix, Arizona are authorized or required by law to remain closed.

11.15 Addenda. This Agreement consists of \_\_\_\_\_ pages and the following addenda, which are attached hereto and by reference made a part of this agreement:

- \_\_\_\_\_ Buyer Disclosure
- \_\_\_\_\_ Community Land Trust Ground Lease Agreement
- \_\_\_\_\_ Conditional Sales Addendum

11.16 Additional Terms. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**IN WITNESS WHEREOF**, each party hereto has caused this Agreement to be duly executed to be effective as of the day and year first above written.

**BUYER:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**SELLER:**

NEWTOWN            COMMUNITY            DEVELOPMENT  
CORPORATION, an Arizona non-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ACKNOWLEDGMENT AND ACCEPTANCE

Receipt of an original of the foregoing Agreement and its Exhibits is acknowledged, and we agree to act as Escrow Agent under and pursuant to the terms and conditions of the Agreement.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Officer

**EXHIBIT A**

LEGAL DESCRIPTION OF GROUND LEASED LOT

**EXHIBIT B**

PLACEMENT OF GROUND LEASED LOT

[Site plan showing location of the Lot to be attached.]

**CONDITIONAL SALES ADDENDUM**

The following shall constitute an Addendum to, and become a part of, that Purchase Contract dated \_\_\_\_\_, 20\_\_\_\_, by and between Newtown CDC as Seller and \_\_\_\_\_ as Buyer pertaining to Lot \_\_\_\_\_, Tempe Micro Estates, (Development Name)

**Notwithstanding anything contained in the Purchase Contract, said contract shall be subject to the following conditions:**

1. Buyers will be given a copy of the **draft** Subdivision Disclosure Report (Public Report) filed by Seller with the Arizona Department of Real Estate prior to signing this conditional sales contract.
2. All money paid by the Buyer will be deposited and held in a neutral escrow.
3. Sales will not close until the final Subdivision Disclosure Report has been issued and delivered to the Buyer(s).
4. Upon receiving the final Subdivision Disclosure Report, Buyer will have the right to either cancel or affirm the decision to purchase within ten (10) days after which time the contract becomes null and void and all money paid by the Buyer shall be returned to the Buyer within 5 business days.
5. No escrow closing or occupancy date will be agreed to until after Buyers receipt of the final Subdivision Disclosure Report and their affirmation of the purchase contract.
6. At any time prior to the issuance of the final Subdivision Disclosure Report, the Buyer shall have the right to cancel the contract.
7. Should Buyer elect to cancel the contract, all money paid by the Buyer shall be returned to Buyer within 5 business days.
8. Until such time as the final Subdivision Disclosure Report is issued and the Buyer's right to cancel has lapsed, Seller shall have no cancellation rights.
9. Buyers cancellation or affirmation of purchase shall be on page 2 of this Addendum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**SELLER**

**BUYER(S)**

By \_\_\_\_\_

\_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_

**Buyers Cancellation or Affirmation of Purchase**

Buyer(s), having received a copy of the final Subdivision Disclosure Report issued by the State of Arizona Department of Real Estate pertaining to Tempe Micro Estates, do(es), by signing below, hereby elect to cancel or affirm the Purchase Contract.

I (we) hereby elect to **CANCEL**

\_\_\_\_\_  
\_\_\_\_\_

I (we) hereby elect to **AFFIRM** and understand that our earnest and down payment money will be held in or transferred from the neutral escrow depository as agreed to in the purchase contract.

\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.