DEVELOPMENT AND DISPOSITION AGREEMENT  
(NEWTOWN TINY HOME)  
(South Rita Lane)  
Ordinance No: ____________  
No. C2019-______________  

THIS DEVELOPMENT AND DISPOSITION AGREEMENT is entered into between the CITY OF TEMPE, an Arizona municipal corporation (“CITY”), and NEWTOWN COMMUNITY DEVELOPMENT CORPORATION, an Arizona non-profit corporation (“Newtown”), as of this ___ day of ________, 2019 (the “Effective Date”).

RECITALS

A. The City is authorized to enter into Development and Disposition Agreements pursuant to A.R.S. § 9-500.05. This Agreement is a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such.

B. The City owns the vacant lot legally described in Exhibit “A” attached hereto and made a part hereof (the “Project Property”), also known as 1443 and 1444 South Rita Lane, Tempe, Arizona.

C. The City issued Request for Qualifications #17-153 dated June 13, 2017 (“RFQ”) for the construction of affordable housing on the Project Property to serve as a model for small-scale affordable and sustainable housing based on a tiny home community model. Newtown responded to the RFQ, and was granted exclusive negotiation rights with respect to the development of the Project Property.

D. Pursuant to the terms and conditions hereafter set forth, City grants Newtown exclusive development rights over the Project Property and Newtown agrees to develop the Project Property in accordance with this Agreement.
NOW, THEREFORE, in consideration of the premises, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, parties agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “Affordable Housing” means residential units that are affordable to households with income at or below eighty percent (80%) of area median income as determined in accordance with the Community Development Block Grant (“CDBG”) rules and regulations of the U.S. Department of Housing and Urban Development (“HUD”).

1.2 “Certificate of Occupancy” means either (a) a certificate of occupancy (final, temporary, shell, conditional or otherwise) for any buildings or other improvements constructed as part of the Project issued by the Community Development Department and City Public Works Department of the City of Tempe, or (b) a certificate of completion in the form of Exhibit “F” hereto issued by the City of Tempe Community Development Department certifying that a building or other improvement constructed on a Parcel has been substantially completed.

1.3 “City” means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.4 “Development Plan” means the proposal for development of the Project Property dated ____________, 2017, submitted by Newtown in response to the RFQ, as modified by the planning and development review process.

1.7 “Eligible Household” means an income qualified household pursuant to federal law, which is creditworthy and ready and able to purchase the Affordable Housing product built on the Property.

1.8 “Improvements” means all public and private improvements which may be constructed from time to time on any parcel comprising the Project Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Newtown or the City, as the case may be, pursuant to the terms of this Agreement.

1.10 “Newtown” means Newtown Community Development Corporation, an Arizona non-profit corporation.

1.11 “Preference” means that if an Affordable Housing unit is available for purchase by two equally creditworthy Eligible Households, if one of the households (1) currently resides in Tempe and that household (2) currently receives a rental subsidy from the City of Tempe or
from a nonprofit agency affiliated with the City of Tempe, then the Tempe Eligible Household shall be preferred assuming that the preference is in accordance with fair housing law and policy. Otherwise, all Affordable Housing units shall be offered to creditworthy Eligible Households on a “first come, first serve” basis. There will be an affirmative marketing campaign to actively recruit eligible households.

1.12 “Project” means the construction of thirteen (13) residential dwelling units, each at approximately 600 square feet, and an approximate 900 square foot community room, on the Project Property in accordance with the Development Plan.

1.13 “Project Property” means the real property which is legally described in Exhibit “A” attached hereto and incorporated herein by this reference.

1.14 “Schedule of Performance” means the schedule of performance attached hereto as Exhibit “D”.

ARTICLE II
DEVELOPMENT PLAN

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date and continue through the completion and sale of the Improvements constituting part of the Project, unless sooner cancelled as provided in Sections 7.1 through 7.4 and 8.1.

2.2 General Cooperation. City agrees to use its reasonable best efforts to assist Newtown and its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate. To further the commitment of City and Newtown to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Newtown shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City (“City Representative”) shall be LeVon Lamy, and the initial representative for Newtown (“Newtown Representative”) shall be Allen Carlson. Both the City Representative and the Newtown Representative shall be available at reasonable times to discuss and review the performance of the City and Newtown under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in Section 9.1.

2.3 Restrictions on Use of Project Property. Newtown shall use the Project Property solely to develop housing. Every reasonable effort will be made to ensure 100% of the housing units will be attainable for households to rent or purchase with incomes at or below 80%. However, a minimum of 51% of the housing units will be available for rental or purchase to families at 80% Annual Median Income (AMI) or below in accordance with the Development Plan, using Newtown’s community land trust. To ensure long term affordability, all units constructed will be sold through Newtown’s Community Land Trust (CLT). Income eligible buyers purchase the improvements only (the house) and enter into a 99-year renewable ground
lease. The ground lease requires owner-occupancy, and/or CLT approved rental activities for income eligible households and contains resale restrictions. The home can only be sold (transferred) to another income-eligible buyer; and there are shared appreciation provisions to assist in ensuring affordable sales prices for future buyers. The project property cannot be removed from the CLT without the mutual consent of the City of Tempe City Council and the Board of Directors for Newtown.

2.3.1 Period of Affordability. As stipulated in 2.3, the land will be maintained in the CLT. To comply with Federal Funding utilized in the acquisitions and construction of the project Newtown will ensure a minimum twenty (20) year period of affordability, Newtown shall encumber the Project Property with restrictive covenants, CC&R’s, or other appropriate documents reasonably acceptable to and approved in advance by City, which restrict ownership of the Affordable Housing units (whether resulting from the initial sale or any subsequent resale) to Affordable Housing Households for a period not less than twenty (20) years from the date of the initial sale of the property to an income eligible household. The CC&R’s need to be recorded on the Project Property immediately after the Property is conveyed to Newtown.

2.3.2. Monitoring of Sales Transactions. During the term of this Agreement, staff from City’s Human Services Department (or the designated successor(s) thereof) shall monitor all sales transactions for compliance with income eligibility and programmatic requirements. Prior to consummation of any sale of the Improvements, Newtown shall provide City with information regarding buyer’s income for verification of compliance with this Section 2.2. Unless City rejects such buyer within twenty (20) days after receipt of the foregoing information, the sale of the Improvements to that buyer shall be deemed to comply with Section 2.2 of this Agreement.

2.3.3 Schedule of Performance. The planning and development of the Project Property shall be achieved pursuant to the Schedule of Performance attached hereto as Exhibit “D”. Newtown and City agree to use their best efforts to ensure that development of the Project Property occurs in accordance with the Schedule of Performance.

2.4 Approvals. The City hereby agrees that, in connection with all approval requests relating to the construction of any Improvements that only customary plan or review requirements will be imposed on Newtown, consistent with City’s normal process, and that no extraordinary plan or review requirements will be imposed.

2.5 Development Plan. Newtown shall at its sole cost and expense, develop the Project Property in general conformance with the Development Plan and the Schedule of Performance, which must at a minimum comply with the Restrictions on Use set forth in Section 2.3 hereof. Development of the Property shall be consistent with and governed by the provisions, requirements, and restrictions of the applicable zoning and land use laws and ordinances, including any PAD approved for all or any portion of the Property. The Development Plan sets forth the current plan for development of the Property, and reflects Newtown’s general intent regarding development of the Property. City reserves the right to review and approve any changes to the Development Plan, as well as the specific locations and design features of the buildings and structures to be constructed on the Property, separate and
apart from any review or approval required as part of any re-zoning or other land use modifications or approvals Newtown may request.

2.6 Fee Rebates and/or Waivers; Conditions. City and Developer agree that the development of the Project is the first of its kind in Tempe, and the purpose of the development is to increase the supply of energy-efficient, affordable housing convenient to transit for low- and moderate-income persons. For the purposes of increasing the energy-efficiency and affordability of the Project, the City Agrees to rebate or waive a portion of its fees or taxes as more fully explained in this Section 2.6. City and Developer agree that, for the purposes of maximizing the energy-efficiency and affordability of the homes, the City shall rebate all Planning and Zoning Fees, Building Safety Plan Review and Revision Fees, Engineering Review and Revision Fees, and Building Permit Fees identified under Chapter 35 Zoning and Development Fees in Appendix A – Schedule of Fees and Charges, in the Tempe City Code, and, Buildings and Building Regulations Table 1-A Building Permit Fees of Appendix A- Schedule of Fees and Charges, in the Tempe City Code, pertaining to the initial construction of the Project. Developer shall only be entitled to a rebate of the foregoing fees that are associated with the initial construction of the Project and a successful issuance of the Certificate(s) of Occupancy for all units.

ARTICLE III
CONVEYANCE OF PROPERTY

3.1 Conveyance. The City shall retain fee title to the Project Property until Newtown obtains the civil improvement plan approval and submits a formal request for conveyance as hereinafter provided. When Newtown desires to acquire the Project Property, and so long as Newtown is not in breach under this Agreement, Newtown shall deliver a written notice to the City, specifying the date by which the closing of the conveyance transaction is desired. Unless otherwise provided under this Agreement, the close of escrow and transfer of title shall take place no later than the date requested in the written notice delivered by Newtown, but in no event shall the close of escrow occur, and transfer of title take place sooner than the first business day following thirty (30) days after the Tempe City Council has approved by ordinance the sale of the Project Property at a regularly scheduled City Council meeting. Upon the execution of this Agreement, the City and Newtown shall open an escrow with Great American Title Agency, Inc. (7720 N. 16th St., Ste 450, Phoenix, AZ 85020, Commercial Escrow Officer) or any other title company chosen by the parties (“Escrow Agent”), who shall issue a preliminary title report concerning the Project Property within ten (10) days of opening escrow, hold all documents, receive all monies, and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions.

3.2 Form of Deed; Form of Deed of Trust; and CC&Rs. City shall convey fee simple title to the Project Property to Newtown by special warranty deed, in substantially the form attached hereto as Exhibit “E”, subject to all liens and encumbrances of record. Prior to the close of escrow, City shall use its best efforts to remove any matters of record that are reasonably objected to by Newtown, so that marketable title to the Project Property may be delivered at the close of escrow. However, the Project Property is being conveyed in its “AS IS”
condition and without any representation or warranty except as otherwise expressly set forth in this Agreement. Newtown shall sign the deed of trust in substantially the form attached hereto as Exhibit “H” (the “Deed of Trust”). Immediately after recordation of the special warranty deed, the Deed of Trust shall be recorded, followed immediately thereafter by the recording of the CC&Rs referenced in Section 2.3.1 above.

3.3 Agreement to Sell, Purchase Price and Other Considerations. Subject to all terms, covenants and conditions of this Agreement, the City will sell to Newtown and Newtown will purchase from the City and pay the City $10.00 (Ten Dollars) (the “Purchase Price”) for each parcel of the Project Property. Newtown will pay the Purchase Price in cash, certified check or other financial arrangement at the closing of each such conveyance.

3.4 Prorations. All real property taxes and assessments shall be prorated between the City and Newtown as of the date of closing of the conveyance of the Project Property to Newtown, based upon the latest available information.

3.5 Escrow Fees. The City shall pay the cost of a standard coverage title insurance policy and any required endorsements. The City and Newtown shall each bear their own costs, including attorney’s fees, in connection with the negotiations, due diligence, investigation and conduct of the transaction. The City shall pay all of Escrow Agent’s customary escrow fees and recording fees.

ARTICLE IV
OBLIGATIONS

4.1 Newtown agrees to:

4.1.1 Utilize normal and customary practices and procedures for the development of the Project, and provide a level of service that is consistent with the level of service for similar programs administered by it in the community.

4.1.2 Maintain records pertaining to this Agreement and the Project Property for five (5) years in accordance with 24 CFR 570 Subpart J.

4.1.3 Comply with the requirements and standards of Office of Management and Budget (“OMB”) in accordance with 2 CFR § 200 and the HUD implementing regulations in accordance therewith as such may be amended or revised. Such compliance will be subject to monitoring from time to time by the City or by the Department of Housing and Urban Development.

4.1.4 Maintain records of all ethnic and racial statistics of persons and families benefited in the performance of its services on the Project Property, including, but not limited to, the number of low and moderate income persons (51%-80% of median income), the number of very low income persons (31%-50% of median income) and the number of extremely low
income persons (0-30% of median income) and households assisted in accordance with federal income limits, the number of elderly (over 62 years of age) and individuals with disabilities, family size, and number of female heads of households.

4.1.5 Provide City with written reports of its activities quarterly, or as otherwise requested by the City and a final report when this Agreement terminates, setting forth the demographic information stated in Section 4.1.4 (above), as well as the activities, program accomplishments, new program information and current statistics on expenditures and activities. City and the United States Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining performance to Project documents and papers, and the right to examine financial records.

4.1.6 Give all notices and comply with all laws, ordinances, rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If Newtown observes that any of the Agreement documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify City, in writing, and any necessary changes shall be accomplished by appropriate written modification as deemed necessary by City.

4.2 Newtown acknowledges that the funds, in part, utilized by City to acquire the Project Property were received by City pursuant to the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570 (the “Act”) and that expenditure of these funds must comply with the Act and all pertinent regulations issued by agencies of the federal government. Newtown agrees to comply fully with all federal, state and local laws and court orders applicable to its operation whether or not referred to in this Agreement.

4.3 Newtown and its subcontractors shall abide by all regulations pursuant to the Immigration and Naturalization Reform Act of 1986, specifically as it relates to employment and client services, and such other provisions as may be applicable, including A.R.S. § 23-214(A). Should Newtown perform any work knowing it to be contrary to applicable laws, ordinances, rules building codes and/or regulations, it shall assume full responsibility therefore, and shall bear all costs incurred due to its negligence. The certification for such compliance is attached as Exhibit “G” to this Agreement.

4.4 Newtown shall acknowledge the contributions of the City of Tempe CDBG Program in all published literature, brochures, programs, fliers, etc., during the term of the Agreement.

4.5 Newtown agrees to comply with Section 319 of Public Law 101-121, (31 U.S.C. § 1352). The certification for such compliance is attached as Exhibit “B” to this Agreement. Newtown agrees to comply with all requirements applicable to use of CDBG funds, including those referenced in the additional certifications set forth in Exhibit “C” hereto.

4.6 Newtown agrees that City of Tempe residents who currently receive a housing subsidy from the City shall be given preference in the process used to select homebuyers for units within the Project, as defined here (or as described in paragraph 1.11).
4.7 City agrees to:

4.7.1 Provide technical assistance to Newtown in satisfying its obligation to comply with applicable federal guidelines governing the use of CDBG funds.

4.7.2 If applicable, complete all environmental review requirements as described in 24 CFR Part 58.

4.7.3 A portion of the funds used by City to acquire the Property were received pursuant to the Act and expenditure of these funds must comply with the Act and all pertinent regulations issued by agencies of the federal government. Accordingly, City hereby agrees to comply with all applicable laws, rules and regulations adopted by HUD and applicable to the acceptance and disposition of CDBG funds.

ARTICLE V
NON-DISCRIMINATION

5.1 Newtown shall not discriminate against any employee or applicant for employment because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran.

5.2 Newtown shall take affirmative action in employment to ensure that employees are treated during employment, without regard to their gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran. The scope of non-discrimination shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training.

5.3 Newtown agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of nondiscrimination as described in this Agreement.

5.4 Newtown shall not discriminate against any applicant for service because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran. Newtown shall, in all solicitations or advertisements, state that all qualified applicants will receive consideration for employment of service without regard to gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran.
ARTICLE VI
INDEMNIFICATION

6.1 Liability and Indemnification. Newtown shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees and agents from any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance or breach of this Agreement by Newtown.

ARTICLE VII
DEFAULT; REMEDIES; TERMINATION

7.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance attached hereto as Exhibit “D”, and such breach continues for a period of thirty (30) days after written notice thereof given by the non-defaulting party specifying in reasonable detail the nature of such breach.

7.2 Newtown’s Remedies. If City is in breach under this Agreement and fails to cure any such breach within the time period required therefore as set forth in Section 7.1 above, then Newtown shall have the right to terminate this Agreement upon written notice delivered to the City, and may, in addition, pursue any and all other rights and remedies provided by law.

7.3 City’s Remedies; Right to Foreclose. If Newtown is in breach under this Agreement by failing to develop the Project Property in accordance with the Schedule of Performance attached hereto as Exhibit “D”, or failing to comply with the sale requirements set forth in Article II, and Newtown thereafter fails to cure any such breach within the time period described in Section 7.1 above, then the City shall have the right to terminate this Agreement immediately upon written notice to Newtown and, if it so elects, within one hundred-eighty (180) days after notice of termination, to foreclose upon the Deed of Trust.

7.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Newtown shall have no further rights to develop the Project Property.

ARTICLE VIII
CONFLICT OF INTEREST; REPRESENTATIVES
NOT INDIVIDUALLY LIABLE
8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, including A.R.S. § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

8.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Newtown, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Newtown or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE IX
GENERAL PROVISIONS

9.1 Notices. All notices, demands and other communications to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given upon personal delivery or three business days after deposit in the United States mail, registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

To Newtown: Allen L. Carlson
Executive Director
Newtown Community Development Corporation
511 W. University Drive #4
Tempe, AZ 85281

To the City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to: City Attorney
City of Tempe
21 E. 6th Street, Suite 201
Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. As used in this Agreement, "business day" shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government, the City or the State of Arizona.

9.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under
the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Newtown and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Newtown shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years’ experience in mediating or arbitrating disputes relating to residential property development. The cost of any such mediation shall be divided equally between the City and Newtown. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

9.4 Successors and Assigns. This Agreement shall run with the Property and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Upon prior written notice to City, Newtown may assign its interest in this Agreement, in whole or in part, to any entity that it controls or is under common control with Newtown. Neither Newtown nor any permitted assignee of Newtown may otherwise assign its interest in this Agreement without prior written consent of City, which consent may be reasonably withheld by City.

9.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

9.6 Attorneys’ Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys’ fees, which shall be determined by the court and not by the jury.

9.7 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

9.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

9.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.
9.10 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

9.11 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST: ______________________________
Carla Reece, City Clerk

APPROVED AS TO FORM: ______________________________
Judith R. Baumann, City Attorney

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

By: ______________________________
Mark W. Mitchell, Mayor

STATE OF ARIZONA )
)ss
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this ____ day of _________________, 2019, by Mark W. Mitchell, the Mayor of the City of Tempe.

_________________________________________________________________________
Notary Public
“NEWTOWN”

Newtown Community Development Corporation,
an Arizona non-profit corporation

By_______________________________________
    Allen L. Carlson, Executive Director

STATE OF ARIZONA  )
Fo  ss
COUNTY OF MARICOPA  )

The foregoing instrument was acknowledged before me this ____ day of
__________________, 2019, by Allen L. Carlson, the Executive Director of Newtown Community
Development Corporation.

_______________________________
Notary Public
LIST OF EXHIBITS

Exhibit “A” - Legal Description of Project Property
Exhibit “B” - Certification: SECTION 319 OF PUBLIC LAW 101-121
Exhibit “C” - Additional CDBG Certifications
Exhibit “D” - Schedule of Performance
Exhibit “E” - Form of Special Warranty Deed
Exhibit “F” - Certificate of Completion
Exhibit “G” - Immigration and Regulations Certifications
Exhibit “A”
Legal Description of Project Property

1443 South Rita Lane
1444 South Rita Lane
CERTIFICATION
SECTION 319 OF PUBLIC LAW 101-121

THE UNDERSIGNED CERTIFIES, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment of modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature       Date
__________________________________   ______________ ____

NAME:  __________________________________
TITLE:  __________________________________
Exhibit “C”

ADDITIONAL CDBG CERTIFICATIONS

In accordance with the Housing and Community Development Act of 1974, as amended, and with 24 CFR 570.303 of the Community Development Block Grant regulations, Newtown certifies that:

1. It possesses legal authority to enter into a written agreement with the City and;

2. CDBG funds will be conducted and administered in compliance with:

   Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. § 2000d et seq.);

   and

   Titles I and II (as applicable to the City) of the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and all regulations issued pursuant thereto.

3. The Fair Housing Act (42 U.S.C. § 3601-20);

   a. It will affirmatively further fair housing;

   b. It has developed its final statement/proposal of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families.

   c. It has developed or is following a City of Tempe's Community Development Plan, for the period specified in its proposal, that identifies community development and housing needs and specifies both short and long-term community development objectives that have been developed in accordance with the primary objective and requirements of the Act;

4. It is in compliance with the City of Tempe's current Consolidated Plan/Action Plan which has been approved by HUD pursuant to 24 CFR § 570.306 and Part 91, and that any housing activities will be consistent with the Consolidated Plan;

5. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. §§ 4601 - 4655) as required under 24 CFR § 570.606(b) and federal implementing regulations; and it is following a residential anti-displacement and relocation assistance plan as required under section 104(d) of the Act and in § 570.606(c); and it will comply with the relocation requirements of § 570.606(d) governing optional relocation assistance under 42 U.S.C. § 4605 section 105(a) (11) of the Act;
6. It has adopted and is enforcing:
   
   a. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
   
   b. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

7. To the best of its knowledge and belief:
   
   a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
   
   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and
   
   c. It will require that language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly;

8. It will or will continue to provide a drug-free workplace by:
   
   a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

9. Establishing an ongoing drug-free awareness program to inform employees about:
   
   a. The dangers of drug abuse in the workplace;
   
   b. The grantee's policy of maintaining a drug-free workplace;
c. Any available drug counseling, rehabilitation, and employee assistance programs; and

d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

10. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by item 12:

a. Notifying the employee in the statement required by paragraph 12 that, as a condition of employment under the grant, the employee will:

   (i) Abide by the terms of the statement; and

   (ii) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

11. Notifying the Agency in writing, within ten calendar days after receiving notice under subparagraph 14(a)(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

12. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 14(a)(ii), with respect to any employee who is convicted:

   a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701, et seq.); or

   b. Requiring such employee to participate satisfactory in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

13. Making a good faith effort to maintain drug-free workplace through implementation of paragraphs 12, 13, 14, 15 and 16.
14. It will comply with the other provisions of the Housing and Community Development Act and with other applicable laws.

__________________________________
Signature                      Date

______________________________REPRESENTING:

__________________________________
NAME:  __________________________________

__________________________________
TITLE:   __________________________________
Exhibit “D”
Schedule of Performance

1. Submit for Preliminary Site Plan Review  March 30, 2018 (done)
3. Submit Complete Application for Construction Permits  December 31, 2019
4. Complete Construction of Project  June 30, 2021
Exhibit “E”
Example of Special Warranty Deed

SPECIAL WARRANTY DEED

The CITY OF TEMPE, an Arizona Municipal Corporation, as grantor, hereby conveys to Newtown Community Development Corporation, an Arizona non-profit corporation, as grantee, pursuant and subject to the terms, conditions and reservations contained in that certain Development and Disposition Agreement dated _____________, 2019, fee simple title to the following described real property:

See Exhibit A attached hereto and incorporated herein

SUBJECT TO current real property taxes and other assessments; patent reservations; and all easements, rights of way, covenants, conditions, restrictions and other matters as may appear of record or which an accurate survey or inspection would reveal.

AND Grantor hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters above set forth.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed on this _____ day of ____________, 2019.

CITY OF TEMPE,
an Arizona municipal corporation

By: ________________________
    Mark W. Mitchell, Mayor

ATTEST:

________________________
Carla Reece, City Clerk

APPROVED AS TO FORM:

________________________
Judith R. Baumann, City Attorney
STATE OF ARIZONA  
)  
) ss.

COUNTY OF MARICOPA  

On this _____ day of _______________, 20__, before me, the undersigned officer, personally appeared ____________________________________________________, who acknowledged him/herself to be _________________________________________ of the CITY OF TEMPE, an Arizona municipal corporation:
____ whom I know personally;
____ whose identity I verified on the basis of his/her ________________________________________________________________,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: _________________________________________________________
Notary Public
Exhibit “F”

Certificate of Completion

When recorded, return to
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

CERTIFICATE OF COMPLETION

In accordance with the terms of the Development and Disposition Agreement dated __________, 2018, by and between the CITY OF TEMPE (CITY) and Newtown Community Development Corporation, and recorded __________ at Recorders No. __________, this Certificate of Completion is issued for the building located on the following described parcel of land:

Construction of improvements was initiated on or about __________, and was completed on or about __________, as evidenced by the Letter of Compliance attached as Exhibit A.

Dated: ________________.

Respectfully,

____________________________________
Community Development Manager
City of Tempe, Arizona
STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

The foregoing Certificate of Completion, consisting of two (2) pages, was acknowledged before me this ______ day of ______________, 20__, by ______________________________ the Community Development Manager of the City of Tempe, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

____________________________

Notary Public

My Commission Expires:

____________________________
Exhibit “G”
IMMIGRATION LAW AND REGULATIONS CERTIFICATION

The President’s Executive Order 13465 of June 6, 2008 and Arizona Revised Statutes (A.R.S.) Section 41-4401, require the City of Tempe to ensure that each government entity, contractor and subcontractor it conducts business with complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214, Subsection A. All governmental entities, vendors, contractors and subcontractors MUST certify use of the E-Verify system established by the Department of Homeland Security.

All applicants must certify compliance with items 1 and 2 below.

1. The government entity, organization or company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States Immigration laws. The government entity, organization or company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the County if such inspection is requested; and

2. By the date of the delivery of the product and/or performance of services, the government entity, organization or company shown below will have implemented or will be in the process of implementing the E-Verify program for all newly hired employees in the United States who will perform work on behalf of the Maricopa County.

I certify that the government entity, organization or company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name: __________________________________________
Date: ___________________________________________________________________

Authorized Signature: _______________________________________________________
Telephone Number: _________________________________________________________
Printed Name: ______________________________________________________________
Title: _____________________________________________________________________
Exhibit “H”
DEED OF TRUST

WHEN RECORDED RETURN TO:
City of Tempe

DEED OF TRUST, SECURITY AGREEMENT
AND FINANCING STATEMENT
(South Rita Lane)
No. C2019-____

TRUSTOR: NEWTOWN COMMUNITY DEVELOPMENT CORP.,
an Arizona non-profit corporation

TRUSTOR'S MAILING ADDRESS: 511 West University Drive, #4
Tempe, Arizona 85281
Attn: Allen L. Carlson, Executive Director

BENEFICIARY: CITY OF TEMPE,
an Arizona municipal corporation
BENEFICIARY’S
MAILING ADDRESS: 31 East 5th Street
Tempe, Arizona 85281
Attn: City Attorney

TRUSTEE: Great American Title Agency, Inc.
7720 North 16th Street, Suite 450
Phoenix, Arizona 85020
Attn: Commercial Escrow Officer

TRUSTOR HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO
TRUSTEE, IN TRUST, WITH POWER OF SALE, ALL THAT CERTAIN PROPERTY AND
ALL BUILDINGS AND ALL OTHER IMPROVEMENTS NOW OR HEREAFTER
CONSTRUCTED THEREON SITUATED IN THE COUNTY OF MARICOPA, STATE OF
ARIZONA, DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF BY REFERENCE (the "Premises"), TOGETHER WITH ALL OF THE
FOLLOWING (which, together with the Premises, are, except where the context otherwise
requires, herein collectively called the "Trust Property"): (a) all appurtenances and all estates
and right of Trustor in and to the Premises, including all water and water rights flowing through,
belonging or in any way appertaining to the Premises, and all of Trustor's water rights that are
personal property under Arizona law, including but not limited to, all type 2 non-irrigation
grandfather rights, and including all rights (but none of the duties) of Trustor as declarant under
any presently recorded declaration of covenants, conditions and restrictions affecting the
Premises; (b) all right, title and interest of Trustor in and to all streets, roads, alleyways and
public places, opened or proposed, and all easements and rights of way, public or private,
apparnten to, adjoinning or now or hereafter used in connection with, the Premises; (c) all
buildings, improvements and fixtures, and all furniture, fixtures, appliances, equipment, building
materials and other personal property in which Trustor now has, or at any time hereafter
acquires, an interest and which are now or at any time hereafter attached to or situated in, on or
about the Premises or used in connection with the Premises, or activities conducted on or about
the Premises and all renewals, replacements, substitutions and proceeds thereof and additions or
accessions thereto, including without in any manner limiting the generality of the foregoing, all
heating, refrigeration, cooling and ventilation equipment; (d) all of Trustor's interest in all leases,
occupancy agreements and use agreements whether written or oral now or hereafter existing with
respect to all or any portion of the Premises, all of the rents, issues and profits of the Trust
Property or arising from the use or enjoyment of all or any portion thereof, all security deposits
arising from the use or enjoyment of all or any portion of the Trust Property, and all utility
deposits made to procure and maintain utility services to the Trust Property or any portion
thereof; and (e) any and all awards, payments or other amounts, including interest thereon, which
may be made with respect to the Trust Property as a result of injury to, or decrease in the value
of, the Trust Property or as a result of the exercise of the right of eminent domain or conveyances
made in lieu of the exercise of such right.

THE INDEBTEDNESS AND OBLIGATIONS SECURED BY THIS DEED OF
TRUST.
1. This conveyance is made for the purpose of securing, in such order of priority as Beneficiary may elect:

1.1 Performance of the following obligations arising under that certain Development and Disposition Agreement between Trustor, as Developer, and Beneficiary, dated as of ____________, 2019 [c2019-___] and recorded on ________, 2019 as Document No. 2019-____________, Maricopa County Recorder (the “Agreement”): (a) Trustor’s obligations under the Agreement to construct the Project (as defined in the Agreement) being constructed on the Premises pursuant to the terms of the Agreement. Capitalized terms not otherwise defined in this Deed of Trust shall have the meanings ascribed to them in the Agreement.

1.2 Performance of each agreement of Trustor herein contained;

1.3 Performance of all agreements of Trustor to pay fees and charges to Beneficiary, whether or not herein set forth; and

1.4 Payment of any and all indebtedness or obligation of every kind or nature, direct or indirect, now or hereafter owing by Trustor to Trustee and/or Beneficiary, it being understood that this instrument shall stand as security for all such indebtedness whether or not the same shall be similar or dissimilar or related or unrelated to the indebtedness described in Section 1.1 above.

2. TRUSTOR’S COVENANTS.

2.1 Trustor agrees to: (a) take reasonable care of the Trust Property; (b) maintain said property in good repair and condition; (c) replace all items of real and personal property in which Beneficiary has a security interest and which may wear out, or be lost, damaged or destroyed; (d) complete or restore promptly and in a good and workmanlike manner any building which may be constructed thereon or any existing building which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; (e) comply in all material respects with all laws affecting the Trust Property or requiring any alterations or improvements to be made thereon; (f) commit or permit no waste; (g) do no act which would unduly impair or depreciate the value of the Trust Property as security; (h) do no act which would impair or abandon any water or other rights of whatever nature now or hereafter appurtenant to the Trust Property; (i) do no act which would remove or demolish any building on the Trust Property; and (j) permit no condition to exist on or with respect to the Trust Property which would wholly or partially invalidate any insurance thereon.

2.2 Trustor agrees to insure and keep insured, at Trustor's sole cost and expense, all buildings and improvements on or used in connection with the Trust Property, whether now existing or hereafter erected or placed upon said property at any time, and public liability insurance with respect to all activities conducted upon or about the Trust Property. Such insurance shall be for a term and in form and content and with such companies as may be satisfactory to Beneficiary, and shall be in an amount or in amounts acceptable to Beneficiary, and be maintained against loss or damage by fire, water, wind, riot, civil commotion, and all other such hazards and risks, whether of a similar or dissimilar nature, as are or at the time shall be customarily assured against by persons, firms or companies operating like properties in the
locality of the Trust Property. Trustor shall deliver to Beneficiary the policy or policies maintained (or certificates therefor), together with written evidence showing payment of the premium therefor. All such policies shall name Beneficiary as an additional insured and provide that the insurer shall provide Beneficiary with not less than thirty (30) days advance notice of any cancellation, termination, lapse or nonrenewal, and, except in the case of public liability policies, contain a standard non-contributory mortgagee loss payable clause or similar mortgagee loss payable endorsement pursuant to which the insurer waives as against Beneficiary any defense arising from the misconduct, fraud or criminal action of the principal insured with respect to any loss.

2.3 Except as provided in Section 7.7, Trustor agrees to pay when due all taxes, assessments, water dues or assessments and other charges of every type or nature assessed, or which may be assessed, against the Trust Property or any part thereof or upon the interest of the Beneficiary in said property or upon any personal property located upon the Premises or used in connection therewith, and to pay, when due, any other tax (including corporate taxes), assessment, charge, claim or encumbrance that is or might become a lien prior to the lien of this Deed of Trust, or which might have priority in distribution of the proceeds of a judicial sale.

2.4 Except as provided in Section 7.7, Trustor agrees to cause all mechanics' or materialmen's liens filed against the Trust Property to be released, and to discharge all such liens, or to obtain and record a surety bond, pursuant to A.R.S. § 33-1004 to discharge any and all liens, within thirty (30) days of the date that Trustor or Beneficiary receives notice of same, whichever occurs first.

2.5 Except as provided in Section 7.7, Trustor agrees to cause any lien or encumbrance filed against the Trust Property (other than those granted hereby or pursuant hereto in favor of Beneficiary) to be released within thirty (30) days of the date that Trustor or Beneficiary receives notice of the same, whichever occurs first.

2.6 Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear, or which Beneficiary or Trustee may defend, and in any suit brought by Beneficiary to foreclose this Deed of Trust in which Beneficiary prevails as against Trustor, including any suit that is resolved by settlement. Trustee or Beneficiary may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as either may, in its sole and absolute discretion, deem advisable, and may settle or compromise the same in so far as either has rights in the Trust Property and, in that regard and for any of such purposes, may expend and advance such sums of money as either may deem necessary.

2.7 The owners of Trustor shall not sell, pledge or assign their interests in Trustor in violation of the terms of the Agreement.
2.8 Trustor agrees to pay all sums expended by Beneficiary or Trustee in protecting the security of this Deed of Trust (including expenditures and advances made pursuant to Section 2.6 above), and, in addition, to pay all reasonable costs, fees and expenses incurred, assessed, charged, or expended by Beneficiary or Trustee in connection with this Deed of Trust and the power of sale contained herein, with interest from date of assessment, charge, or expenditure at the rate of 14% per annum, compounded daily. Trustor shall make such payment immediately and without demand unless Beneficiary shall elect that payment shall be in monthly installments over a period of time (to be specified by Beneficiary), in which case payments shall be made in such installments.

3. COVENANTS REGARDING THE SECURITY AGREEMENT.

3.1 To the extent any property covered by this Deed of Trust consists of an interest in personal property or fixtures covered by the Arizona Uniform Commercial Code, this Deed of Trust shall constitute a security agreement and is intended to create a security interest in such property in favor of Beneficiary. This Deed of Trust shall be self-operative with respect to such property, but Trustor shall execute and deliver on demand such security agreements, financing statements and other instruments as Beneficiary may request with respect to any such property. The filing of any financing statement relating to any personal property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

3.2 Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all personal property covered by such security interests, are encumbered as one unit, and that upon default by Trustor hereunder, this Deed of Trust and such security interests, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and all of the Premises (both realty and personalty) may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions of A.R.S. § 33-810(A).

3.3 Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary’s interest, if Trustor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the leases, rents, personalty, fixtures, plans and other documents in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary’s security interests and rights in or to any of the collateral, and (d) while any Default exists, to perform any obligation of Trustor hereunder; however: (i) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (ii) any sums advanced by Beneficiary in such performance shall be added to and included in the indebtedness and shall bear interest at the default rate; (iii) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (iv)
Beneficiary shall not be liable to Trustor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

4. COVENANTS REGARDING THE ASSIGNMENT OF LEASES AND RENTS.

4.1 Trustor has represented to Beneficiary that the Trust Property is required for the proper operation of Trustor’s actual or proposed business. Trustor shall not lease or let the Trust Property or any portion thereof without Beneficiary's prior written consent. If Beneficiary does consent to any such lease, Sections 4.2-4.10 shall be applicable.

4.2 Trustor hereby assigns to Beneficiary all existing and future leases, including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Trust Property (the "Leases"). Trustor hereby further assigns to Beneficiary all guaranties of tenants' performance under the Leases. Prior to an Event of Default (hereafter defined), Trustor shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise. Trustor has delivered to Beneficiary copies of all existing Leases and shall promptly deliver to Beneficiary copies of all Leases executed in the future.

4.3 All of the rents, royalties, bonuses, issues, profits, revenue, income, and other benefits derived from the Trust Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Trust Property, together with any and all rights that Trustor may have against any tenant under such leases or any subtenants or occupants of any part of the Trust Property (hereinafter called the "Rents"), are hereby absolutely and unconditionally assigned to Beneficiary, to be applied by Beneficiary in payment of the indebtedness secured hereby. Prior to an Event of Default (hereinafter defined), Trustor shall have a license to collect and receive all Rents as trustee for the benefit of Beneficiary and Trustor, and Trustor shall apply the funds so collected first to the payment of the Indebtedness in such manner as Beneficiary elects and thereafter to the account of Trustor.

4.4 The assignment of Leases herein provided is intended to be absolute and unconditional for the purpose of, among others herein contained, conferring on Beneficiary the rights of Trustor, and shall extend to and cover any and all extensions and renewals of existing and future Leases and to any and all present and future rights against guarantors of any such obligations and to any and all rents, issues and profits and deposits collected under the Leases or other rentals. This assignment shall neither impair nor diminish the obligations of Trustor under the Leases nor obligate or impose upon Beneficiary any duty or liability under any of the Leases, or under or by reason of this assignment. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Trust Property by Beneficiary, be deemed to constitute Beneficiary a "mortgagee in possession," nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Trust Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Trustor by any lessee and not
delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to person or property in or about the Trust Property.

4.5 Trustor shall and does hereby agree to indemnify and to hold Beneficiary harmless from any liability, loss or damage which it might incur under any of the Leases, or under or by reason of this assignment, and from any claims and demands whatsoever which may be asserted against Beneficiary by reason of an alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases.

4.6 Trustor shall, if requested, give Beneficiary separate specific assignments of rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. Unless otherwise specified by Beneficiary in writing, all existing and future Leases for the use or occupancy of all or any part of the Premises shall be subject to the prior written consent of Beneficiary and shall be inferior to the lien of this Deed of Trust. Trustor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any Leases to this Deed of Trust.

4.7 Trustor shall not, without the prior written consent of Beneficiary first obtained, collect, accept or anticipate any rent from any lessee or tenant for a period of time in excess of one month prior to the due date or accrual of such rent, whichever is less. Trustor shall not, without the prior written consent of Beneficiary first obtained, further assign the rents, issues or profits or deposits from, or relating to, the Trust Property, and any such assignment without the prior written consent of Beneficiary shall be null, void and of no force or effect. Trustor agrees that no settlement for damages for termination of any of the Leases under the federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Beneficiary, and any check in payment of such damages shall be made payable to both Trustor and Beneficiary. Trustor hereby assigns any such payment to Beneficiary, to be applied to the indebtedness secured hereby as Beneficiary may elect and agrees to endorse any check for such payment to the order of Beneficiary.

4.8 Beneficiary is hereby authorized to notify all lessees and tenants of the Premises of the existence of this assignment. Trustor hereby authorizes and directs the lessees and tenants of the Premises that upon an event of default as specified in Section 5 hereof and upon written notice from Beneficiary, all payments required under Leases, or in any way respecting same, shall be made directly to Beneficiary as they become due. Beneficiary is hereby authorized to give such notification in the event of any breach or default by Trustor hereof, and such notification may be given thereafter at any time during which said default remains uncured. Trustor hereby relieves said lessees and tenants from any liability to Trustor by reason of said payments being made to Beneficiary. Nevertheless, until Beneficiary in writing notifies such lessees and tenants to make such payments to Beneficiary, Trustor shall be entitled to collect all such rents and/or payments.

4.9 All rents and deposits collected by Trustor shall be applied in the following manner: First, to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made; Second, to the payment of any
amounts due and owing to Beneficiary under the terms of any indebtedness secured hereby; Third, to the payment of current operating costs and expenses (including repairs, maintenance and acquisitions of property and expenditures for capital improvements reasonably necessary to preserve and protect the Trust Property) arising in connection with the Premises; Fourth, to Trustor or its designee. All rents and deposits collected by Beneficiary may be applied to the items above listed in any manner that Beneficiary deems advisable and without regard to the aforesaid priorities. Receipt by Beneficiary of such rents, issues, and profits and deposits shall not constitute a waiver of any right that Beneficiary may enjoy under this Deed of Trust or under the laws of the State of Arizona, nor shall the receipt and application thereof cure any default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust and the laws of the State of Arizona.

4.10 There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Trust Property without the prior written consent of Beneficiary.

5. EVENTS OF DEFAULT.

5.1 The following shall be events of default hereunder: (a) any sum owing hereunder or under the Contract is not paid as agreed; (b) the breach by Trustor of any covenant contained herein or in the Contract or any document secured hereby; (c) Trustor sells, assigns, conveys or alienates the Trust Property or any part thereof, or any interest therein, or is divested of title or any interest therein in any manner, in violation of the DDA; (d) without the prior written consent of Beneficiary, Trustor grants any easement or dedication, files any plat, condominium declaration, or restriction or enters into any lease, unless such action does not affect the Trust Property; (e) Trustor abandons any of the Trust Property; (f) Trustor dissolves or liquidates; (f) the holder of any lien or security interest on the Trust Property institutes foreclosure or other proceedings for the enforcement of its remedies hereunder; (h) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Trustor, or any partnership of which Trustor is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (i) Trustor makes an assignment for the benefit of creditors, is not paying debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (j) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Trustor or any partnership of which Trustor is a partner; (k) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Trustor, and such issuance is not bonded against within ninety (90) days; (l) any change in control of Trustor (including a change in those persons who are its managers, controlling members, partners or shareholders), its merger or consolidation (whether in one transaction or in a series of transactions) with or into any other entity, the sale, lease, transfer or other disposition of all or a substantial part of its assets, including any sale and leaseback transaction without the prior written consent of Beneficiary (which consent may be granted or withheld in Beneficiary’s unfettered discretion); (m) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material.
omission, by Trustor under the Contract or any document delivered or information provided to Beneficiary in connection therewith; or (n) the dissolution or termination of existence of Trustor.

6. REMEDIES.

6.1 In the event of default, the Trustee or Beneficiary or both shall have the rights described in Sections 6.2-6.11, in addition to all other rights provided herein and/or provided by law or equity.

6.2 Trustee or Beneficiary shall have the right to declare all principal indebtedness, with interest and any other sums secured hereby, immediately due and payable, without notice or demand; provided, however, that should the Beneficiary, upon default of the Trustor, exercise its option to declare the entire amount of the principal immediately due and payable, and should such acceleration be revoked by agreement or operation of law, then such indebtedness shall be payable in accordance with the original schedule therefor unless otherwise agreed to between Trustor and Beneficiary.

6.3 Trustee or Beneficiary shall have the right to cause the Trust Property or any part thereof to be sold as described in Sections 6.3.1-6.3.6 hereof.

6.3.1 Beneficiary may proceed as if all of the Trust Property were real property, or Beneficiary may elect to treat any of the Trust Property which consists of a right in action or which is property that can be severed from the Premises without causing structural damage thereto as if the same were personal property, and dispose of the same, separate and apart from the sale of real property, the remainder of the Trust Property being treated as real property.

6.3.2 Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest.

6.3.3 Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest. Should Beneficiary elect to cause any of the Trust Property to be disposed of as personal property, it may dispose of any part thereof in any manner now or hereafter permitted by the Arizona Uniform Commercial Code or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the Arizona Uniform Commercial Code. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is made, and if
such notice is sent to Trustor as provided in Section 6.15 hereof, it shall constitute reasonable notice to Trustor.

6.3.4 Should Beneficiary elect to sell the Trust Property which is real property or which Beneficiary has elected to treat as real property, upon such election Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property or any portion thereof specified by Beneficiary at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Trust Property consists of several lots or parcels, Beneficiary may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Upon any sale Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession.

6.3.5 In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts, and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

6.3.6 Beneficiary and/or Trustee shall apply the proceeds of any sale or disposition hereunder to payment of the following: (a) the expenses of such sale or disposition, together with Trustee's fees and reasonable attorneys' fees, and the actual cost of publishing, recording, mailing and posting notice; (b) the cost of any search or other evidence of title procured in connection therewith; (c) the payment of all amounts secured by this Deed of Trust, including the proportionate share of costs incurred by Beneficiary in performing and administering the Contract to the extent allocable to the portion of the Property subject to this Deed of Trust; and (d) the remainder, if any, to the person or persons legally entitled thereto in the order of their priority.

6.4 Trustee or Beneficiary shall have the right to foreclose this Deed of Trust by court action.

6.5 Trustee or Beneficiary shall have the right to send notifications to any and all lessees and tenants under Leases that all rents shall be paid to Beneficiary. Thereafter, Beneficiary shall be entitled to collect the rents until Trustor cures all events of default and may apply the rents collected at its sole discretion to the maintenance of the Trust Property or the payment of the indebtedness secured hereby.

6.6 Trustee or Beneficiary shall have the right to enter upon and take possession of all or any part of the Trust Property, either in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, without regard to the adequacy of
any security for the indebtedness secured hereby. Trustor shall on demand peaceably surrender possession of the Trust Property to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may (to the extent allowable by law) operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all rents, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall not be subject to any liability, charge, or obligation therefor to Trustor, other than for willful misconduct, and shall be entitled to operate any business then (to the extent allowable by law) being conducted or which could be conducted thereon or therewith at the expense of and for the account of Trustor (and all net losses, costs and expenses thereby incurred shall be advances governed by Section 2.8), to the same extent as the owner thereof could do, and to apply the Rents to the costs and expenses of such operation and then to the indebtedness secured hereby.

6.7 Trustee or Beneficiary shall have the right to collect, in addition to all other indebtedness due hereunder, the costs of title searches in preparation for foreclosure with respect to the Trust Property and reasonable attorneys’ fees incurred as a result of such default or in pursuit of any remedy therefore whether or not suit be commenced, which costs and fees shall be secured by this Deed of Trust.

6.8 At any time after the recording by Trustee of notice of trustee's sale, or after the institution of foreclosure proceedings, upon application of Beneficiary, a receiver may be appointed by any court of competent jurisdiction to take charge of all the Trust Property, to manage, operate and carry on any business then being conducted or that could be conducted on the Premises, to carry on, protect, preserve, replace and repair the Trust Property, and receive and collect all rents and to apply the same in the following manner: First, to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made; Second, to the payment of any amounts due and owing to Beneficiary under the terms of any indebtedness secured hereby; Third, to the payment of current operating costs and expenses (including repairs, maintenance and acquisitions of property and expenditures for capital improvements reasonably necessary to preserve and protect the Trust Property) arising in connection with the Premises; Fourth, to Trustor or its designee. All rents and deposits collected by Beneficiary may be applied to the items above listed in any manner that Beneficiary deems advisable and without regard to the aforesaid priorities. Receipt by Beneficiary of such rents, issues, and profits and deposits shall not constitute a waiver of any right that Beneficiary may enjoy under this Deed of Trust or under the laws of the State of Arizona, nor shall the receipt and application thereof cure any default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust and the laws of the State of Arizona.

6.9 Upon an event of default hereunder, Beneficiary shall have the right, but not the obligation, to assign all of Trustor's right, title and interest in and to all policies of insurance and any unearned premiums paid thereon to any receiver of the Trust Property or any purchaser thereof at a foreclosure sale, and Beneficiary is hereby appointed attorney-in-fact for Trustor to so assign and transfer said policies.
6.10 To the extent permitted by law, Trustor shall be and remain liable for any deficiency remaining after sale, either pursuant to the power of sale or judicial proceedings. Beneficiary shall have, in addition to all other rights and remedies provided herein and at law or in equity, the rights and remedies afforded by A.R.S. §§ 33-701 et seq. In the event Trustor fails or refuses to surrender possession of the Trust Property after any Trustee's sale, Trustor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Beneficiary.

7. GENERAL PROVISIONS.

7.1 Trustor represents and warrants that it: (a) is duly organized, validly existing under the laws of the state of its organization and in good standing under the laws of the state of its organization and the laws of each state in which it conducts business, (b) has complied with all conditions prerequisite to its lawfully doing business in the state where the Trust Property is situated, and (c) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

7.2 Trustor represents and warrants that it is the lawful owner in fee simple of the Trust Property free and clear of all liens and encumbrances whatsoever except those "Permitted Exceptions" appearing in Exhibit "A" hereto, which have been approved by Beneficiary and that it has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust. Notwithstanding anything to the contrary contained herein, if the Beneficiary hereafter agrees to subordinate the lien of this Deed of Trust to any other encumbrance (the "Prior Indebtedness"), Sections 7.2.1-7.2.3 apply:

7.2.1 Trustor shall make all payments of principal and interest on the Prior Indebtedness as they become due.

7.2.2 Without the prior written consent of Beneficiary, Trustor shall not consent or agree to or request any increase in the amount of the Prior Indebtedness, any extension of time for the payment thereof, any reduction in any payment required thereon, or any postponement, modification or indulgence thereof, and shall not sign a renewal note or notes therefor.

7.2.3 Should there occur any default in any payment or performance of the Prior Indebtedness: (a) Beneficiary, without notice to or demand upon Trustor, and without releasing Trustor from any obligation, may pay or perform the Prior Indebtedness in such manner and to such extent as it may deem necessary, and may enter upon the Trust Property for such purposes; (b) Beneficiary, at any time and from time to time, may prepay the Prior Indebtedness in whole or in part together with all premiums, penalties or other payments required in connection with any such prepayment; (c) Beneficiary shall be entitled, without any grace period, to immediately exercise its rights and remedies set forth herein for an event of
default; and (d) the exercise of any right or authority herein granted with respect to such default shall not cure nor waive any default hereunder occasioned by such default.

7.3 Trustor represents and warrants to Beneficiary that: (i) The Trust Property shall not be used, to manufacture, store or dispose of toxic or hazardous substances, materials or wastes regulated by any applicable Environmental Law; (ii) Trustor shall make no use of the Trust Property that violates any applicable Environmental Law; (iii) Trustor will not cause or permit any person to violate any applicable Environmental Law so as to affect the Trust Property; and (iv) it has received no notice from any governmental agency of any violation of any applicable Environmental Law. Trustor shall promptly, within 48 hours, notify Trustee and Beneficiary: (A) of any notice received by Trustor from a governmental agency concerning a violation of any applicable Environmental Law; (B) upon becoming aware of any use, storage or release of hazardous or toxic substances under, from or about the Trust Property, (C) of any proceeding, inquiry or notice from any governmental authority with respect to the use or presence of any hazardous or toxic substances on the Trust Property or the migration thereof to or from other property; (D) of all claims made or threatened by any third party against Trustor or the Trust Property relating to loss or injury from any hazardous or toxic substance; (E) upon discovery of any occurrence or condition on any property adjoining or in the immediate vicinity of the Trust Property that would cause the Trust Property to be subject to restrictions on ownership, occupancy, transferability or use under any applicable Environmental Law; and (F) upon obtaining knowledge of any incurrence of expense by a Governmental Authority or others in connection with the assessment, containment or removal of any hazardous or toxic substances located on, under, from or about the Trust Property or any property adjoining or in the immediate vicinity thereof. Trustor agrees: (i) not to permit any environmental lien to be placed against the Trust Property; (ii) to provide Beneficiary with copies of all communications with governmental agencies enforcing Environmental Laws concerning the Trust Property; (iv) Beneficiary may, from time to time and at Trustor's expense, conduct such inspections, audits and tests concerning the Trust Property's compliance with applicable Environmental Laws as Beneficiary shall deem appropriate; (v) except as permitted in written agreements between Trustor and Beneficiary not to change the operation or use of the Trust Property in any manner without notice to Beneficiary; and (vi) not to change the operation or use of the Trust Property in any manner if Beneficiary considers that such change may increase its potential liability under applicable Environmental Laws. In the event the Trust Property or any condition existing thereon is ever determined by any court or governmental agency to be in violation of any law, ordinance or regulation which requires correction or clean-up under any applicable Environmental Law, Trustor shall indemnify and hold Trustee and Beneficiary harmless from all expense, damages and penalties incurred or arising by virtue of such condition or violation. Beneficiary, at its option, but without obligation so to do, may correct such condition or violation and in doing so shall conclusively be deemed to be acting reasonably and for the purpose of protecting the value of its collateral, and , all costs of correcting such condition or violation shall be payable to Beneficiary by Trustor upon demand, shall be secured hereby, and shall bear interest from the date expended by Beneficiary until paid at the highest rate from time to time applicable to the Contract. "Applicable Environmental Laws" as used herein shall include with respect to the Trust Property all Federal, State of Arizona and local laws, ordinances and regulations relating to environmental protection, occupational health and safety, public health and safety or public nuisance or menace, including, without limitation, the Resource

7.4 Should the Trust Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, flood or in any other manner (and such damage shall not be cured through rebuilding or repair), Beneficiary shall be entitled to all compensation, awards, insurance proceeds or other payments in respect thereof, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary who may, after deducting therefrom all its expenses, including attorneys' fees, release any monies so received by it or apply all or any part thereof on any indebtedness secured thereby, notwithstanding that such obligation may not then be due and payable. Trustor agrees to execute further assignments of any compensation, awards, rights of action and proceeds as Beneficiary or Trustee may require.

7.5 At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and any promissory notes secured hereby for endorsement, and without affecting the liability of Trustor for payment of the indebtedness secured hereby, Trustee may: (a) reconvey any part of said property; (b) consent to the making of any map or plat thereof; (c) join in the grant of any easement thereon; or (d) join in any extension agreement or any agreement subordinating the lien or charge thereof.

7.6 At all times during the life of this Deed of Trust, Beneficiary or Trustee shall have the right to go in and upon the Trust Property and to inspect such property at any reasonable time, in order to determine whether the provisions of this Deed of Trust are being kept and performed.

7.7 Trustor may contest in good faith the validity or amount of any tax, assessment, charge, levy, indebtedness, lien or encumbrance against the Trust Property (other than those granted hereby in favor of Beneficiary) by appropriate proceedings provided by law, including payment thereof under protest, upon furnishing to Beneficiary proof satisfactory to Beneficiary of Trustor's possession of cash reserves sufficient to indemnify Beneficiary against any sale, forfeiture, loss of, or creation of a lien against the Trust Property. Upon a final determination (which, in the case of a judgment, shall mean a final judgment not subject to appeal or further appeal) with respect to any such contested tax, assessment, charge, levy, indebtedness, lien or encumbrance, Trustor, will promptly pay any sums found to be due by it thereon. If required by Beneficiary and if the bond required by Section 2.4 has not been posted, Trustor shall deposit into a non-interest-bearing account controlled by Beneficiary such amounts as Beneficiary may require to discharge any and all such mechanics’ or materialmen's liens.
However, Trustor need not secure the release of a mechanics' or materialman's lien against the
Trust Property or obtain such a bond, if the priority of Beneficiary's lien on the Trust Property
over such lien is insured by Beneficiary's title insurance policy and the title insurer reaffirms
such priority to Beneficiary in writing.

7.8 If Trustor, through action or inaction, in any way impairs or threatens to
impair the security of this Deed of Trust, or fails to pay any claim, lien or encumbrance which
shall be prior to this Deed of Trust, or to pay, when due, any tax or assessment, or any insurance
premium required hereunder, or to keep the Trust Property in repair, then Beneficiary or Trustee,
at their option, without any obligation so to do, without notice to or demand upon Trustor, and
without releasing Trustor from any obligation hereunder, may pay said claims, liens,
encumbrances, taxes, assessments or premiums, with right of subrogation thereunder, and may
take any action which Beneficiary or Trustee deems necessary to protect the security of this
Deed of Trust. Trustor will pay to Beneficiary or Trustee, immediately and without demand, all
sums of money advanced or expended by Beneficiary or Trustee pursuant to this paragraph,
together with interest thereon on each such advance or expenditure at the highest rate contracted
to be paid on any of the indebtedness secured hereby, and all such sums and interest thereon shall
be secured by this Deed of Trust.

7.9 Trustor hereby waives to the fullest extent permissible by law the right to
plead any statute of limitations as a defense to any contract or agreement secured hereby.
Trustor waives any requirements of presentment, demands for payment, notices of nonpayment
or late payment, protest, notices of protest, notices of dishonor, and all other formalities. No
offset or claim that Trustor now or may in the future have against Beneficiary shall relieve
Trustor from paying installments or performing any other obligation herein or secured hereby.
Trustor waives all rights or privileges it might otherwise have to require Trustee or Beneficiary
to proceed against or exhaust the assets encumbered hereby or by any other security document or
instrument securing any promissory note or to proceed against any guarantor of such
indebtedness, or to pursue any other remedy available to Beneficiary in any particular manner or
order under the legal or equitable doctrine or principle of marshaling or suretyship, and further
agrees that Trustee or Beneficiary may proceed, in the event of default against any or all of the
assets encumbered hereby or by any other security document or instrument securing any
promissory note, in such order and manner as Beneficiary in its sole discretion may determine.
Any Trustor that has signed this Deed of Trust as a guarantor, surety or accommodation party, or
that has subjected its property to this Deed of Trust to secure the indebtedness of another hereby
expressly waives the benefits of the provisions of A.R.S. §§ 12-1641 and 12-1642, and waives
any defense arising by reason of any disability or other defense of Trustor or by reason of the
cessation from any cause whatsoever of the liability of Trustor.

7.10 By accepting payment of any sum secured hereby after its due date,
Beneficiary does not waive its right either to require prompt payment when due of all other sums
so secured or to declare default for failure so to pay. No delay by Beneficiary or Trustee in
exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver
of such right or remedy or preclude the exercise thereof during the continuance of any default
hereunder.
7.11 Beneficiary shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance with respect to the Trust Property incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Trustor hereby expressly assumes full responsibility therefor and any liability, to, or of, Beneficiary, if any, thereunder.

7.12 Upon written request of Beneficiary stating that all sums and other obligations secured hereby have been paid or performed in accordance with their respective terms, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

7.13 Beneficiary may require Trustee to reconvey, release and discharge from the operation of this Deed of Trust any part or parts of the property described in this Deed of Trust given to secure payment of the indebtedness evidenced by the Contract in accordance with the procedure set forth therein. Trustee shall execute and deliver unto Beneficiary a written reconveyance and release upon receiving from the Beneficiary a written request therefor. Said written request shall include a description of the property to be reconveyed and released, and a declaration that the Beneficiary is the owner and holder of the debt mentioned in this Deed of Trust. The partial reconveyance or release executed by the Trustee shall identify this Deed of Trust and describe the property to be reconveyed or released. A partial reconveyance or release executed and delivered by the Trustee under authority of this paragraph shall not affect or impair the security remaining under this Deed of Trust.

7.14 Trustor hereby requests that a copy of any notice of default and every notice of sale hereunder be mailed to it as provided by law at the address set forth above. Trustor may, from time to time, change the address to which notice of default and sale hereunder shall be sent by both recording a request therefor and sending a copy of such request to Beneficiary. Except as otherwise required by statute, every notice, demand or request to Trustor shall be deemed to have been given upon deposit of such written notice, demand or request in the United States mail, registered or certified, addressed to Trustor at the address set forth above. Beneficiary may change its address for notices set forth above by sending a written notice thereof to Trustor.

7.15 Trustor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered in the content of this Deed of Trust or in the execution or acknowledgment hereof. In addition, Trustor shall do such further acts as may be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Deed of Trust, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the lien and security interest hereof.

7.16 The plural of any word herein used shall include the singular, and the singular of any word shall include the plural, wherever such inclusion shall not be inconsistent with the context of this agreement.
7.17 Time is of the essence hereof. If more than one Trustor, Borrower, is named herein, the word "Trustor" shall mean all and any one or more of them severally and collectively. All liability hereunder shall be joint and several. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of any note or notes evidencing the indebtedness secured hereby.

7.18 Each covenant, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with Trustor being the Mortgagor and Beneficiary being the Mortgagee.

7.19 In any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of either the request or Beneficiary's judgment.

7.20 This Deed of Trust cannot be modified except by agreement, in writing, signed by Trustor and Beneficiary.

7.21 The acceptance by Trustee of this trust shall be evidence when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The trust created hereby is irrevocable by Trustor.

7.22 This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Arizona.

7.23 This Deed of Trust, and the provisions hereof, shall be binding upon the parties hereto and their respective personal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date and year first above written.

[signature page]
Trustor:

NEWTOWN COMMUNITY DEVELOPMENT CORPORATION, an Arizona non-profit corporation

STATE OF ARIZONA )
) ss.
County of Maricopa )

On this _____ of ____________, 2019, before me, the undersigned Notary Public, personally appeared ________________, who acknowledged that he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

________________________________________
Notary Public

My Commission Expires:
Exhibit A

Legal Description of Premises