

**SOUTHPARK CITY HOMES
TOWNHOME PURCHASE AND SALE AGREEMENT**

SELLER: SARATOGA SOUTHPARK VENTURES, LLC

PURCHASER: _____

Address: _____

_____ ; Telephone: () _____

Mobile: _____

AGREEMENT DATE: _____ (Per Signature Page Below)

PROPERTY: Lot # _____, Phase _____, SouthPark City Homes, Mecklenburg County, North Carolina (the "Lot") as shown on the subdivision plat thereof recorded in the Mecklenburg County Public Registry ("Map"), together with the townhome residence and all other improvements and landscaping (the "Townhome") constructed on the Lot or to be constructed on the Lot pursuant to the plans and specifications hereinafter described (collectively, the Lot and the Townhome are hereinafter referred to as the "Property"). If construction of the Townhome has not been completed and/or the Map has not been recorded in the Mecklenburg County Registry as of the Agreement Date, all depictions of the Property and all or any portion of Southpark City Homes are approximate and subject to change based upon field conditions, governmental requirements and other factors; provided, however, no such changes shall materially detrimentally affect the accessibility, general location or size of the Property.

PROPERTY ADDRESS: _____

1. Purchase and Sale. Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller.

2. Purchase Price. The Purchase Price for the Property is \$ _____ and shall be paid as follows:

(a) \$ _____ Deposit paid to Saratoga SouthPark Ventures, LLC ("Escrow Agent") upon delivery of this Townhome Purchase and Sale Agreement ("Agreement"). The Deposit shall be deposited in a non interest-bearing escrow account maintained by Escrow Agent. The Deposit shall be credited to Purchaser at and in the event of Closing. Otherwise, disposition of the Deposit shall be as provided in **Paragraph 5** below.

(b) The balance of the Purchase Price shall be paid at Closing by wired funds or by certified check or cashiers check drawn by a bank located in the Charlotte, North Carolina, metropolitan area in United States currency.

3. Closing.

(a) The Closing of the transaction contemplated under this Agreement (the "Closing") shall take place on the "Scheduled Closing Date," which shall be the date communicated by Seller to Purchaser that the Townhome will be substantially completed and that a certificate of occupancy will be issued; provided, however, the date specified by Seller shall not be sooner than five (5) business days after the date Seller gives Purchaser the foregoing notice, and provided further that the Closing shall not take place until a certificate of occupancy has been issued and the Townhome is clean, substantially complete and ready to occupy.

(b) The Closing shall take place at the office of Seller's counsel or at such other place in the Charlotte, North Carolina, metropolitan area mutually agreed upon by Seller and Purchaser.

(c) The Closing shall be deemed to have occurred on the date Seller receives all funds due from Purchaser, as shown on the applicable Closing Statement, and Purchaser has executed all necessary closing documents.

(d) Time is of the essence as to the Scheduled Closing Date. If Purchaser is unable or unwilling to close on the Scheduled Closing Date provided for in **Paragraph 3(a)**, Purchaser shall be in default under this Agreement. In the event of such default, Seller shall have the option to exercise all of its rights and remedies as provided in this Agreement for Purchaser's default or to postpone the Closing to allow Purchaser additional time to perform hereunder.

4. Additional Documents. Purchaser acknowledges that it has received, read, understood and agreed to each of the documents listed below; as further evidence of its receipt from Seller of such documents, Purchaser has initialed on the line corresponding to each document:

(a) Declaration of Covenants, Conditions and Restrictions for SouthPark City Homes (as amended, supplemented and assigned from time to time, the "Declaration," terms with the first letter capitalized used but not defined in this Agreement to have the meanings given them in the Declaration)

(b) This Agreement, including all pages hereof and each and every page of any exhibit or attachment hereto not included in said pages (which may include, without limitation, illustrative site plan, floor plan, preliminary plat, Southpark City Homes Association, Inc. ("SPCHA") budget and Plans and Specifications).

Purchaser acknowledges that Seller has certain rights following recording to amend the provisions of the Declaration from time to time, and Purchaser agrees to be bound by the provisions of the Declaration as amended.

5. Deposit; Liquidated Damages. In the event Purchaser breaches this Agreement, the Deposit, together with any and all sums of money paid or payable by Purchaser to Seller pursuant to **Paragraph 21** below, shall be promptly disbursed by Escrow Agent to Seller upon written request by Seller (Purchaser's consent to such disbursement being hereby irrevocably given by Purchaser) as liquidated damages and Seller's sole remedy and relief, and this Agreement shall thereafter be of no further force or effect. In the event Seller breaches this Agreement, or in the event Seller elects to terminate this Agreement prior to the Construction Commencement Date (as defined in **Paragraph 19** below) as a result of either an alleged breach by either Purchaser or Seller hereunder or a dispute between the parties regarding the obligations of either or both of them hereunder or for any other reason whatsoever ("Seller's Pre-Construction Termination Right"), the Deposit, together with any and all sums of money paid by Purchaser to Seller pursuant to **Paragraph 21** below, shall be returned to Purchaser together with interest thereon at the rate of one and one-half percent (1.5%) per annum (prorated over the applicable time

period) as liquidated damages and Purchaser's sole remedy and relief, and this Agreement shall thereafter be of no further force or effect. The amounts identified above in this **Paragraph 5** as liquidated damages are not intended as a penalty and have been agreed upon by Seller and Purchaser after due deliberation and discussion, and the same constitute good faith estimates of the damages of the party which would be entitled thereto pursuant to this Agreement, the respective parties' actual damages being difficult, if not impossible, to ascertain. Notwithstanding the foregoing, in the event after the Construction Commencement Date (as defined in **Paragraph 19** below) Seller breaches this Agreement (for the sake of clarity, it being specifically understood and agreed that Seller's exercise of Seller's Pre-Construction Termination Right shall not constitute a breach of this Agreement by Seller), Purchaser shall also have the right, at its option, at any time prior to Purchaser's receipt of the return of funds provided for above, to bring an action against Seller for the specific performance of Seller's obligation to substantially complete the Townhome.

6. Real Estate Commission. Purchaser and Seller warrant to each other that no real estate broker or other person, other than the person(s) or firm(s) named in the signature space of this Agreement as Listing Broker and Selling Broker (collectively, the "Brokers"; each, a "Broker"), will claim a real estate commission, finder's fee or similar charge in connection with this Agreement. Should any other claim for such commission, fee or charge be established, the parties hereby agree that the party responsible for the creation of such claim shall indemnify and hold the other party harmless from all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees) with respect thereto. In any event, no commission, fee or charge shall be earned or due and payable to the Brokers if this transaction fails to close for any reason whatsoever. The terms and provisions in this **Paragraph 6** shall survive the termination or settlement of this Agreement (as the case may be) indefinitely.

7. Prorations and Adjustments.

(a) Ad valorem taxes on the Property shall be prorated between the parties on a calendar year basis as of the date of Closing.

(b) Purchaser shall pay in advance at Closing the Working Capital Contribution required pursuant to the terms of the Declaration (1/6 of the amount of the Annual Assessment levied by the SPCHA as of the date of Closing) and the pro rata portion of SPCHA assessments on the Property from the date of Closing through the end of the applicable billing period. Thereafter, Purchaser shall pay assessments in accordance with the Declaration and the SPCHA policies.

8. Closing Expenses; New Loan. Seller shall pay for the preparation of the deed, for the excise tax (revenue stamps) required by law, and for the cost of Seller's own attorneys. At Closing, Seller shall provide Purchaser with a termite soil treatment guarantee and a certificate of occupancy. Purchaser shall pay for recording the deed, for any title insurance obtained by Purchaser, for all costs with respect to any loan obtained by Purchaser, and for Purchaser's own attorneys. Seller shall have no obligation to pay any discount fee or other charge in connection with Purchaser's loan.

9. Deed. At Closing, Seller shall deliver to Purchaser fee simple marketable title to the Property by general warranty deed or special warranty deed (as determined by Seller in its discretion), subject to (and together with, as the case may be) the following exceptions:

(a) All easements, restrictions, conditions and covenants of record, including, but not limited to, the easements, restrictions, conditions and covenants set forth in the Declaration and the rules and regulations, if any, promulgated thereunder.

- (b) Water, electric, gas, telephone, drainage, cable television and other easements and matters shown on the recorded plat(s) of the Property or as otherwise would be disclosed by a current, accurate physical survey of the Property.
- (c) Matters of zoning and the lien of the current year's city/county ad valorem property taxes (to be prorated at Closing).

10. Completion of Development. Purchaser acknowledges that as of the date of this Agreement and as of the date of Closing, certain of the roads, utilities and amenities in SouthPark City Homes may not be complete and that there may be certain inconveniences until construction of such facilities is complete, and Purchaser hereby waives all claims with respect thereto. Purchaser further agrees to assume all risks and indemnify and save Seller and Listing Broker harmless with respect to Purchaser's entry onto the Property or surrounding land while such facilities or the Townhome are under construction. The terms and provisions in this **Paragraph 10** shall survive the termination or settlement of this Agreement (as the case may be) indefinitely.

11. Assignment of Interest. Neither party may assign this Agreement without the prior written consent of the other, which consent such other party shall have the right to grant or withhold in its sole and absolute discretion.

12. Listing Broker's Representation of Seller. Listing Broker, a registered North Carolina real estate broker, has a real estate brokerage listing with Seller and is participating in the consummation of this Agreement solely in its capacity as a real estate broker and as an agent of Seller. Listing Broker is not representing or acting as an agent for Purchaser.

13. Entire Agreement; Severability. This Agreement contains the entire understanding of the parties and there are no representations, inducements or other provisions other than those specifically expressed or referred to herein. All changes, additions or deletions hereto must be in writing and signed by Purchaser and Seller. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

14. Survival. Except as otherwise specifically provided in this Agreement, no covenants, representations, warranties, agreements or other terms or provisions set forth herein shall survive the termination or settlement of this Agreement (as the case may be); and, with respect to any claims Purchaser may have against Seller following the Closing, Purchaser's rights and remedies shall be limited solely and exclusively to those rights and remedies provided to Purchaser under that certain Limited Warranty Agreement to be delivered by Seller to Purchaser at the Closing. Provisions that by their terms shall be binding upon the Purchaser and survive the Closing shall run with title to the Property and be binding upon subsequent owners of the Property.

15. Governing Law. This Agreement shall be governed by and construed under the laws of the State of North Carolina.

16. Third-Party Beneficiaries. Provisions in this Agreement which expressly or implicitly purport to benefit Listing Broker and/or the Architectural Control Committee shall be enforceable by Listing Broker and/or the Architectural Control Committee (as the case may be) to the same extent as if Listing Broker and/or the Architectural Control Committee (as the case may be) were parties to this Agreement. The terms and provisions in this **Paragraph 16** shall survive the termination or settlement of this Agreement (as the case may be) indefinitely.

17. Purchaser's Personal Items. Unless otherwise agreed to in writing by Seller and Purchaser, Purchaser may not place any household goods or other material on the Property until the construction of the Townhome has been substantially completed by Seller and accepted by Purchaser and Closing has occurred.

18. Materials. If construction of the Townhome has not been completed as of the Agreement Date, subject to Seller's exercise of Seller's Pre-Construction Termination Right Seller shall cause the Townhome to be constructed on the Lot substantially in accordance with the plans and specifications attached hereto which hereby made a part of this Agreement. **IN THE EVENT OF A CONFLICT BETWEEN ANY MARKETING MATERIALS OR RENDERINGS IN REGARD TO THE TOWNHOME OR THE LOT OR ALL OR ANY PORTION OF SOUTHPARK CITY HOMES (INCLUDING, WITHOUT LIMITATION, THE ILLUSTRATIVE SITE PLAN AND/OR PRELIMINARY PLAT ATTACHED HERETO) AND THE MAP AS RECORDED IN THE MECKLENBURG COUNTY REGISTRY THE PLANS AND SPECIFICATIONS ATTACHED HERETO OR THE LANDSCAPING ON THE PROPERTY AS ACTUALLY INSTALLED OR THE COMMON IMPROVEMENTS DESCRIBED IN THE DECLARATION AS ACTUALLY CONSTRUCTED, THE MAP AS RECORDED IN THE MECKLENBURG COUNTY REGISTRY THE PLANS AND SPECIFICATIONS ATTACHED HERETO, (C) THE LANDSCAPING ON THE PROPERTY AS ACTUALLY INSTALLED AND THE COMMON IMPROVEMENTS DESCRIBED IN THE DECLARATION AS ACTUALLY CONSTRUCTED SHALL CONTROL, PURCHASER HEREBY WAIVING ANY AND ALL CLAIMS PURCHASER MAY HAVE AGAINST SELLER, LISTING BROKER OR BOTH OF THEM ARISING OUT OF ANY SUCH CONFLICT.** If Seller is unable to obtain the exact materials specified in the plans and specifications through Seller's ordinary or usual sources of supply, Seller shall have the right to substitute materials of similar pattern, design and quality.

19. Construction Commencement Date. As used in this Agreement, the "Construction Commencement Date" shall refer to the date upon which the pouring of the footings for the Townhome has begun.

20. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Purchaser and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and vice versa, as appropriate.

21. Change Orders. While Seller shall not be required to make changes to the Townhome being constructed from the attached plans and specifications, the cost of any alterations, additions, omissions, or deviations requested by Purchaser and agreed to in writing by both parties on the form of Change Order attached hereto shall be paid for by Purchaser in advance.

22. Architectural Review; Disclaimer and Waiver. As set forth in the Declaration, plans and specifications for all Improvements must be submitted to the Architectural Control Committee for review and approval before the commencement of construction. Changes in the plans and specifications or any such other items must be re-approved by the Architectural Control Committee. Purchaser acknowledges that the Architectural Control Committee shall have the right, in its sole and absolute discretion, to approve, conditionally approve or disapprove all or any part of plans and specifications and other items to be submitted to the Architectural Control Committee for review and approval. Purchaser acknowledges and agrees (i) to be bound by the terms and provisions set forth in Section 6 of Article IX of the Declaration (which provides for a limitation of liability of the Architectural Control Committee relative to the review of plans, specifications and other items under the Declaration) and (ii) that the approval of plans, specifications or other items by the Architectural Control Committee or their agents under or pursuant to the Declaration shall not impose any liability or responsibility on the Architectural Control Committee with respect to either (a) the compliance or noncompliance of any such plans, specifications,

or other items (including any improvements or structures erected pursuant thereto) with applicable zoning ordinances, industry standards, industry practices, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations, or (b) defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials). Nothing in this **Paragraph 22** shall be deemed or construed to waive or relinquish any rights of Seller or any other party or entity under the Declaration.

23. Arbitration of Disputes. Subject to the right of Seller to exercise Seller’s Pre-Construction Termination Right (as described in **Paragraph 5** above), any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The decision made or award rendered by the arbitrator or arbitrators shall be final and any judgment upon the decision made or award rendered by the arbitrator or arbitrators shall be entered in a state court in Mecklenburg County, North Carolina. Provided, however, and notwithstanding any term or provision herein to the contrary, in no event shall Purchaser or Seller (as the case may be) recover damages (including direct, indirect, compensatory, consequential, special, punitive, treble or otherwise) by any decision(s) or award(s) of any and all arbitrators hereunder which exceed (in the aggregate) the amount Purchaser or Seller (as the case may be) would otherwise be entitled to as liquidated damages pursuant to **Paragraph 5** above. The party hereunder demanding arbitration of any controversy, dispute or claim arising out of this Agreement or any breach or alleged breach of this Agreement shall file a written notice of such demand with the other party and with the American Arbitration Association. Such written notice shall be given not later than sixty (60) days after the controversy, dispute or claim arises or the breach or alleged breach of this Agreement occurs, and the three (3) year statute of limitations specified in North Carolina General Statutes § 1-52(1) shall apply. Neither the parties to this Agreement nor the arbitrator or arbitrators may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement, (ii) the existence of an arbitration proceeding under this Agreement, or (iii) the results of any arbitration proceeding under this Agreement; provided, however, the filing of a civil action in a state court in Mecklenburg County, North Carolina, confirming an arbitration decision or award pursuant to this **Paragraph 23** shall not be deemed a violation of this confidentiality provision. The terms and provisions in this **Paragraph 23** shall survive the Closing of the sale and purchase of the Property as contemplated in this Agreement. Nothing in this **Paragraph 23** shall limit or impair Purchaser’s right to specific performance of Seller’s obligation to substantially complete the Townhome as set forth in **Paragraph 5** above.

24. Mineral and Oil and Gas Rights Disclosure. Mineral rights and/or oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral rights and/or oil and gas rights from the owner or by reservation of the mineral rights and/or oil and gas rights by the owner. If mineral and/or oil and gas rights are or will be severed from the Property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface mineral and/or oil and gas resources on or from the Property either directly from the surface of the Property or from a nearby location. With regard to the severance of mineral rights and/or oil and gas rights, Seller makes the following disclosures (Buyer to initial each disclosure below):

_____	1. Mineral rights were severed from the Property by a previous owner.	Yes _____	No _____	No Representation ____X____
_____	2. Seller has severed the mineral rights from the Property.	Yes _____	No __X__	
_____	3. Seller intends to sever the mineral rights from the Property prior to transfer of title to Buyer.	Yes _____	No __X__	

_____	4. Oil and gas rights were severed from the	Yes	No	No Representation
Buyer Initials	Property by a previous owner.	_____	_____	___X___
_____	5. Seller has severed the oil and gas rights from	Yes	No	
Buyer Initials	the Property.	_____	__X__	
_____	6. Seller intends to sever the oil and gas rights	Yes	No	
Buyer Initials	from the Property prior to transfer of title to	_____	__X__	
	Buyer.			

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Agreement Date indicated below.

THIS AGREEMENT SHALL BECOME A BINDING CONTRACT ONLY WHEN IT HAS BEEN SIGNED BELOW BY BOTH PURCHASER AND SELLER AND ANY CHANGES HAVE BEEN INITIALED BY BOTH PARTIES.

SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT ANY AND ALL PROVISIONS OF THIS AGREEMENT (INCLUDING EACH AND EVERY ADDENDUM AND ATTACHMENT HERETO) COMPLETED, MODIFIED, REWRITTEN OR CHANGED BY OR THROUGH LISTING BROKER OR SELLING BROKER WERE SO COMPLETED, MODIFIED, REWRITTEN OR CHANGED PURSUANT TO THE SPECIFIC JOINT AUTHORIZATION AND DIRECTION OF SELLER AND PURCHASER.

PURCHASER:

SELLER:

SARATOGA SOUTHPARK VENTURES, LLC

 Print Name: _____ (Seal)

By: _____
 Name: Raymond W. Wetherington
 Title: Manager

 Print Name: _____ (Seal)

Address:

 Telephone No.: _____

Offer Date: _____

Agreement Date: _____

LISTING BROKER:

By: _____

Its: _____

NC Real Estate License No.: _____

SELLING BROKER: (please print)

Firm Name: _____

Address: _____

Phone No. _____

By: _____

Firm Representative

Print Name: _____

NC Real Estate License No.: _____

PLANS AND SPECIFICATIONS

[TO BE PROVIDED]

ILLUSTRATIVE SITE PLAN

[TO BE ATTACHED]

FORM OF CHANGE ORDER

[TO BE PROVIDED]