

**CONSTRUCTION AND SALES AGREEMENT**

**THIS CONSTRUCTION AND SALES AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Contract Date”), by and between:

**NEW EARTH LIVING, LLC**, a New York limited liability Company, with an office address at 619 Five Mile Drive, Ithaca, New York 14850 (“Seller”),

and

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ (“Buyer”).

**Background Information**

A. Seller is the owner of a certain tract of real property, Lot Number \_\_\_\_\_, Amabel Development, with a lot size being approximately \_\_\_\_\_, being a portion of the parcel of approximately 11.025 acres of land now known as No. 619 Five Miles Drive, located in the Town of Ithaca, County of Tompkins, State of New York and being known as Tax Parcel Number 31.-2-28, as shown on a map attached hereto as Exhibit “A” (“Property”).

B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller, all of Seller’s right, title and interest in the Property, at the price and on the terms and conditions hereinafter set forth.

**Statement of Agreement**

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the foregoing Background Information and as follows:

**ARTICLE I**  
**PURCHASE AND SALE OF PROPERTY**

1.01 On the terms and conditions set forth below, and in consideration of Buyer’s delivery to Tompkins Trust Company (“Escrow Agent”) of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_,000.00), (said amount together with interest accrued thereon shall be referred to as the “Deposit”), and Buyer’s payment of the Purchase Price, as defined in Article II below, Seller hereby agrees to convey the Property to Buyer. The Deposit shall be held and disbursed by Escrow Agent in accordance with the provisions of this Agreement and any escrow agreement provided by Escrow Agent.

**ARTICLE II**  
**PURCHASE PRICE**

2.01 The total purchase price for the Property shall be \_\_\_\_\_ Thousand Dollars [(\$\_\_\_\_\_,000.00)], plus any additional sums for change orders or extras as provided herein, which extras shall be paid for in advance and when ordered ("Purchase Price"), payable to Seller at Closing (as defined in Article VIII below), in immediately available funds or by cashier's check, adjusted by all prorations, credits (including the Deposit), allowances and other adjustments specifically provided for herein. The Purchase Price includes membership in the Amabel Homeowners Association, Inc.

2.02 The Purchase Price shall be paid by the Buyer to the Seller as follows:

(a)	<p>Deposit</p> <p>Upon the signing of this Agreement, Buyer shall provide Seller the Deposit, which shall be deposited with the Escrow Agent's in an account maintained with Tompkins Trust Company, entitled ["Amabel Escrow Account"]. Upon the Buyer's removal of all contingencies, the Deposit becomes non-refundable. The Deposit will be credited to the Buyer at Closing (as further defined herein).</p>	\$ _____
(c)	<p>Balance of Purchase Price</p> <p>Upon delivery of the deed of the Property to Buyer, the balance of the Purchase Price in cash (for any amount not exceeding \$1,000.00), or by official check payable to the Seller issued by any federally insured depository financial institution having an office in the State of New York, or issued from an escrow account from an attorney currently admitted to practice in the State of New York, or by wire transfer approved by the Seller, or as otherwise reasonably directed by the Seller. The Seller is not required to accept any check not payable directly to Seller.</p>	\$ _____
	<b>TOTAL PURCHASE PRICE (lines (a) and (b) combined)</b>	<b>\$ _____</b>

**ARTICLE III**  
**CONSTRUCTION**

3.01 At Buyer’s election below, Seller shall construct upon the Property in accordance with the applicable zoning restrictions the following selected single family residence, together with any selected options:

<b>TWO STORY HOMES</b>					
<b>Selection</b>	<b>Floor Plan</b>	<b>Detail</b>	<b>Square Feet</b>	<b># Bedrooms</b>	<b># Baths</b>
<input type="checkbox"/>	Brin		1270	2	1.5
<input type="checkbox"/>	Brin	Master Suite on Floor 2	1270	2	2.5
<input type="checkbox"/>	Cora		1368	3	1.5
<input type="checkbox"/>	Drea		1616	3	1.5
<input type="checkbox"/>	Drea	Master Suite on Floor 2	1616	3	2.5
<input type="checkbox"/>	Brin	A or B Master Suite	1646	3	2.5
<input type="checkbox"/>	Brin	C or D Master Suite	1737	3	2.5
<input type="checkbox"/>	Cora	A or B Master Suite	1744	4	2.5
<input type="checkbox"/>	Cora	C or D Master Suite	1835	4	2.5
<input type="checkbox"/>	Drea	A or B Master Suite	1992	4	2.5
<input type="checkbox"/>	Drea	C or D Master Suit	2083	4	2.5

<b>SINGLE STORY HOMES</b>					
<b>Selection</b>	<b>Floor Plan</b>	<b>Detail</b>	<b>Square Feet</b>	<b># Bedrooms</b>	<b># Baths</b>
<input type="checkbox"/>	Emory	A or B Master Suite	1184	1	1.5
<input type="checkbox"/>	Emory	C or D Master Suite	1275	1	1.5

<b>OPTIONAL SELECTIONS</b>	
<input type="checkbox"/>	Carport with added storage
<input type="checkbox"/>	Carport without storage
<input type="checkbox"/>	Vegetative Privacy Fence

Seller shall construct the above selections in accordance with those certain plans and specifications attached to this Contract as Exhibit “B” and made a part hereof, as approved and initialed by both Buyer and Seller (“Plans and Specifications”). Seller shall retain the Plans and Specifications.

3.02 Seller shall furnish all the materials and perform all of the work as shown on the attached Exhibit “B”. Any changes in the Plans and Specifications shall be listed on a Change Authorization form to be signed by the Buyer and Seller. The cost of the changes and alterations shall be agreed to in writing by Buyer and Seller. The cost of the changes or any extras beyond the purchase price set forth herein shall be paid by the Buyer in advance when ordered.

3.03 Seller reserves the right to substitute terms and materials contained in the Plans and Specifications with items and materials of equal quality. In addition, the Seller shall determine the grading, elevation, drainage, tree removal and site plan to ensure compliance with municipal specifications. If undesirable soil or building conditions are encountered prior to or during the construction on said Property, Buyer agrees to select an alternative lot with the approval of the Seller and to relocate to said alternative lot. The Seller shall obtain and pay for all permits, certificates and licenses necessary for the performance of the work hereunder and shall comply with all relevant statutes, ordinances, codes and regulations and shall maintain Workers' Compensation insurance in accordance with the laws of the State of New York.

3.04 Buyer agrees to make prompt selection of materials, color or style where same is required under this Agreement or the Plans and Specifications in order that work may progress without delay. If Buyer fails to make timely selection, then Seller is empowered to do so and continue with completion of construction.

3.05 The obligations of Seller contained in this Agreement for the commencement and completion of construction shall not be effective until such time as Seller is able to obtain a building permit from the Town of Ithaca and such permit is in fact issued.

3.06 Seller shall not be responsible for any delay in the commencement or completion of construction resulting from strikes, labor difficulties, government restrictions on the sale of materials, fire, weather, acts of God or other events beyond the control of Seller. In the event of any such delay, the Closing Date shall be extended for a time equal to the time of the said delay. Under no circumstances shall Seller be responsible or liable for any changes in mortgage provisions or interest rates sustained by Buyer from any proposed lending institution resulting from delays caused for whatever reasons.

#### **ARTICLE IV** **CONTINGENCIES**

4.01 The Attorney for the Seller and the Attorney for the Buyer will each have three (3) business days from the Contract Date to declare this Agreement null and void. Each party shall be responsible for the timely delivery of this Agreement to its own attorney. The failure to notify the other party in writing within said period will constitute an automatic removal of this contingency and will be deemed an approval of this Agreement.

4.02 This Agreement is contingent upon Buyer obtaining a written mortgage commitment for a residential mortgage loan in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for a term of \_\_\_\_\_ (\_\_\_) years ("Commitment"), within 45 days of the Contract Date ("Commitment Date"). Buyer agrees to apply for a written mortgage commitment within seven (7) days of the Contract Date. Once the Buyer accepts the Commitment, the Buyer shall be deemed to have waived the right to terminate by reason of this contingency. The Buyer shall furnish the Seller with a copy of the Commitment, executed by the Buyer, promptly after receipt thereof, and the Buyer hereby

authorizes the Seller's attorney to receive a copy of the Commitment. If Buyer cannot obtain the Commitment due to financial non-qualification, either party may cancel this Agreement in writing without any further liability to the other, and the Deposit shall be returned to the Buyer. The conditions of the Commitment shall not be deemed contingencies of this Agreement.

4.03 The Agreement is further contingent upon Buyer securing a firm Contract for the sale of Buyer's property located at \_\_\_\_\_ ("Sales Contract"), within sixty (60) days of the Contract Date. If Buyer is unable to obtain a Sales Contract by such date, then either Buyer or Seller may cancel this Agreement by written notice to the other. If Seller receives another acceptable offer to purchase the Property during this time period, Seller may notify Buyer in writing that Seller desires to accept the other offer and Buyer will have two (2) business days to remove this sale contingency by written notice to the Seller. If Buyer does not remove this contingency after receiving notice from Seller, Buyer's rights under this Agreement shall end and Seller shall be free to accept the other offer to purchase the Property and Buyer's Earnest Money Deposit shall be returned. To ensure a coordinated execution of this Agreement, the Buyer agrees to list for sale within five (5) days of the Contract Date Buyer's property located at \_\_\_\_\_, with \_\_\_\_\_.

**ARTICLE V**  
**TITLE DOCUMENTS**

5.01 At Closing, Seller shall tender to Buyer a Warranty Deed with Lien Covenant conveying good and marketable title in fee simple to the Property, free and clear of all liens and encumbrances except as otherwise provided herein. Notwithstanding, the Property shall be subject to covenants, easements and restrictions of record common to the tract or subdivision, provided the same has not been violated, and further provided that none of the easements encroach on the improvements.

5.02 Seller shall also furnish and pay for the cost and delivery to the attorney for the Buyer at least ten (10) days prior to the Closing, fully guaranteed tax, title and United State District Court searches dated or redated subsequent to the Contract Date, and for the continuation of said tax, title and United States District Court searches to and including the Closing Date (as defined in Article VIII below), and for an Instrument Survey map dated or redated subsequent to the Contract Date.

5.03 Seller shall also furnish and pay for the cost and delivery to the attorney for the Buyer at least ten (10) days prior to Closing, a copy of the Seller's charter documents filed with the New York State Department of State, a copy of Seller's operating agreement with all amendments thereto, a current certificate of good standing to do business in the State of New York, and a resolution authorizing the sale, execution and delivery of the deed and related title documents.

**ARTICLE VI**

**RECORDING COSTS, MORTGAGE TAX, TRANSFER TAX AND CLOSING ADJUSTMENTS**

6.01 Buyer shall pay for recording the deed, the mortgage, the mortgage tax, and filing the RP-5217 form.

6.02 Seller shall pay (unless previously paid) for the town building permit, and the cost of all municipal services and public utility charges (if any), and the cost of the required real estate transfer tax stamps.

6.03 The current taxes computed on a fiscal year basis excluding any delinquent items, interest and penalties, will be prorated and adjusted between Seller and Buyer as of the Closing Date.

**ARTICLE VII**  
**POSSESSION AND INSPECTION**

7.01 Buyer shall have possession and occupancy of the Property as of the Closing and transfer of title. Acceptance of transfer of title or occupancy by the Buyer shall be deemed to constitute an acknowledgment of the satisfactory performance of the Seller under this Agreement, except for punchlist items to be completed post-closing as set forth in section 7.02 below. No pre-possession or storage is allowed under any circumstances.

7.02 After the Seller receives a certificate of occupancy for the Property and before the transfer of title to or occupancy by Buyer, the Buyer shall arrange for a pre-closing inspection of the residence with the Seller to determine the extent, if any, of repairs, corrections or further installations required to be made. Seller shall be responsible to make those repair, corrections or further installations within a reasonable time after transfer and to honor the warranties contained in this Agreement. No escrow shall be established or held to secure Seller's obligation to make such repairs, corrections or further installations.

**ARTICLE VIII**  
**CLOSING**

8.01 The purchase and sale of the Property shall be closed ("Closing") within thirty (30) days after removal of all contingencies to this Agreement and the receipt of the certificate of occupancy for the Property ("Closing Date").

8.02 The Closing shall take place in the county in which the Property is located. Priority for the location shall be given first to the office of the attorney for the mortgage lending institution, next to the office of the attorney for the Seller, next to the office of the attorney for the Buyer, and next in the office of the county clerk in which the Property is located.

8.03 The Seller will deliver to the Buyer at Closing and upon payment of the Purchase Price the appropriate executed deed as set forth herein, together with all appropriately

executed documents required by the clerk of the county in which the Property is located, certification to inform the Buyer whether or not withholding is required pursuant to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), and all other appropriately executed documents reasonably required by the Buyer or the lending institution for the Buyer. In addition, the Seller shall deliver all estimated capital gains taxes (if required by the clerk of the county in which the Property is located), applicable transfer taxes, and applicable recording fees including the filing of the Form TP-584 and any miscellaneous documents necessary and appropriate for Seller to deliver good and marketable title. The Buyer shall specifically assume financial responsibility for the recording of the deed, survey, equalization and assessment documentation, and all fees and taxes associated with the Buyer's financing.

**ARTICLE IX**  
**CERTIFICATE OF OCCUPANCY**

9.01 Seller agrees to deliver to Buyer a Certificate of Occupancy issued by the Town of Ithaca, State of New York as soon as practicable.

**ARTICLE X**  
**RISK OF LOSS**

10.01 Risk of loss or damage to the Property by fire or other casualty until Closing is assumed by the Seller. If any damage occurs prior to transfer of title and Seller determines that it cannot repair or restore such loss or damage, this Agreement shall terminate without any further liability of the parties, and the Buyer shall have the Deposit returned.

**ARTICLE XI**  
**BUYER'S DEFAULT**

11.01 If Buyer fails to fulfill Buyer's duties and obligations according to the terms of this Agreement, all deposits made by the Buyer may be retained by the Seller. Retention of any deposit shall not limit Seller from commencing an action for damages or seeking any other remedies allowed in law or equity. SELLER AND PURCHASER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON BUYER'S DEFAULT AND THAT THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW.

**ARTICLE XII**  
**MARKETABILITY OF TITLE**

12.01 The deed and other documents delivered by Seller shall be sufficient to convey good and marketable title in fee simple to the Property free and clear of all liens and encumbrances except as otherwise provided herein. If Buyer raises written objection to Seller's

title to the Property which, if valid, would make the title of the Property unmarketable, Seller shall have the right to cancel this Agreement by giving written notice of the cancellation to the Buyer and by returning the Deposit. However, if Seller is able to correct the problem which Buyer objects to prior to Closing, or if Seller is able to obtain at its cost a commitment for title insurance to insure Buyer's interest and the interest of any lender granting a mortgage to Buyer for the purchase of the Property, then the Agreement shall continue in force.

**ARTICLE XIII**  
**REPRESENTATIONS AND WARRANTIES**

13.01 This Agreement constitutes the entire agreement between the Seller and the Buyer and supersedes all prior or other agreements and representations in connection with this sale and purchase. This Agreement cannot be modified except in a writing signed by both parties. All of the terms, covenants, provisions and conditions in this Agreement shall be binding upon and inure to the benefit of the parties and their assigns. This Agreement shall be construed in accordance with the laws of the State of New York.

13.02 There shall be delivered to Buyer on or before the Closing Date all manufacturers' warranties pertaining to the appliances installed in the residence.

13.03 **NEW YORK STATE HOUSING MERCHANT IMPLIED WARRANTY AS SET FORTH AND DEFINED IN ARTICLE 36 (B) OF THE NEW YORK STATE GENERAL BUSINESS LAW, SECTION 777-a SHALL APPLY TO THIS AGREEMENT.** The Seller makes no other warranties, express or implied, in connection with this Agreement or the construction of the resident and all such other warranties hereby expressly excluded.

**ARTICLE XIV**  
**HOMEOWNER'S ASSOCIATION**

14.01 The Amabel Homeowners Association (HOA) will be established to maintain the common areas of the Amabel development. The fees are estimated to be [\$\_\_\_\_\_] per month and are subject to change. Buyer acknowledges receipt of a copy of the CPS #7 filing for the Amabel Homeowners Association, Inc. which was filed with the New York State Attorney General.

**ARTICLE XV**  
**ADJOINING PROPERTY DISCLOSURE**

15.01 Seller discloses that any adjoining property is subject to the applicable zoning of the Town Ithaca, State of New York, and may be subject to future property development. This includes, but is not limited to, town controlled easements, right of ways, inter-community connectivity, as well as, emergency vehicle access to ensure the general health, safety, and welfare of town residents.



**ARTICLE XVI**  
**ACCESS TO BUILDING SITE BY BUYER**

16.01 Buyer agrees not to enter upon the building site (lot) during the time of construction without a representative of the Seller being present. Reasonable inspections shall be allowed, by the Seller, upon reasonable notice and at mutually agreed upon times.

16.02 Buyer agrees to hold harmless the Seller from any liability whatsoever to Buyer or Buyer's invitees and/or licensees arising out of any entry upon the building site (lot) which is unaccompanied by a representative of Seller.

**ARTICLE XVII**  
**COMMISSIONS**

17.01 Buyer represents that no broker has been contracted or engaged by Buyer in connection with the procurement of this Agreement except as otherwise set forth herein. Should this representation be contrary to fact, Buyer shall pay any commission due and hold the Seller harmless from any claim or liability therefor arising out of the acts or inactions of the Buyer. This representation shall survive Closing and delivery of the deed to Buyer.

**ARTICLE XVIII**  
**NOTICES**

18.01 Notice Procedure. Any notices required hereunder shall be in writing, shall be transmitted by (a) personal service, (b) reputable overnight delivery service, (c) facsimile (confirmed receipt), (d) certified mail, postage prepaid, return receipt requested, or (e) electronic transmission, and, in the case of transmission pursuant to the foregoing items (a)-(c), shall be addressed to the parties as follows:

(a) If intended for Seller, to:

New Earth Living, LLC  
619 Five Mile Drive  
Ithaca, New York 14850  
Attn: Susan Cosentini

with a copy to:

Hancock Estabrook, LLP  
Gateway Center  
401 E. State Street, Suite 304  
Ithaca, New York 14850

Attn: Carrie J. Pollak, Esq.  
cpollak@hancocklaw.com

(b) If intended for Buyer, to:

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

with a copy to:

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

18.02 Any notice given by electronic transmission shall be addressed to the intended recipient's electronic transmission address set forth above. Either party to this Agreement may change its address for notice purposes by giving notice thereof to the other party hereto, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof. Any notice required or permitted to be given by a party hereto may be given by such party's attorney with the same force and effect as if given by said party.

**ARTICLE XIX**  
**GENERAL PROVISIONS**

19.01 This Agreement is being executed and delivered in the State of New York and shall be construed and enforced in accordance with the laws of the State of New York. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby consent to the jurisdiction of the courts in the State of New York.

19.02 This Agreement constitutes the entire contract between the parties hereto, and may not be modified except by an instrument in writing signed by the parties hereto, their respective heirs, legal representatives, successors and assigns.

19.03 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

19.04 In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

19.05 No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such

waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.

19.06 The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

19.07 This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same document.

**ARTICLE XX**  
**LIFE OF OFFER**

20.01 This offer is good until \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ [a/p].m. Buyer agrees not to withdraw this offer during that period of time.

***[Signature Page Follows]***

**SIGNATURE PAGE  
TO  
CONSTRUCTION AND SALES AGREEMENT**

**BUYER:** I hereby submit this purchase offer, which includes Exhibits, for the Property.

THIS OFFER SHALL TERMINATE IF NOT ACCEPTED BY SELLER ON OR BEFORE:

\_\_\_\_\_.

I understand that this legal instrument binds the Buyer when signed and delivered to the Seller, and binds the Seller when accepted and delivered to the Buyer.

_____	_____	_____	_____
Buyer	Date	Buyer	Date
_____	_____	_____	_____
Buyer	Date	Buyer	Date

**SELLER:**

I hereby accept the purchase offer, which includes Exhibits, as submitted by the Buyer and understand this is now a binding contract.

I hereby accept the purchase offer subject to the modifications and/or revisions set forth in this Agreement or the attached Exhibits. I understand this is a binding legal instrument when signed by me but does not create a binding contract with the Buyer unless and until the Buyer accepts these modifications/revisions.

**New Earth Living, LLC**

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

**EXHIBIT "A"**

**PROPERTY MAP**

**EXHIBIT "B"**

**PLANS AND SPECIFICATIONS**