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MEMORANDUM OF GROUND LEASE¹

THIS MEMORANDUM OF GROUND LEASE² is made by and between _____ with an address of _____, as Lessor, and _____, with an address of _____, as Lessee, and refers to a certain Ground Lease dated by and between the same parties (the “Lease”).

AGREEMENT

In consideration of the premises and the mutual agreements of the parties and other good and valuable consideration contained in the Lease, the receipt and sufficiency of which are hereby acknowledged, the Lessor has leased the property (hereinafter defined and described) to the Lessee, and the parties hereto agree as follows:

Section 1. Definitions; Interpretation. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Lease.

Section 2. Land. The Lessor has leased and the Lessee has hired that parcel of land, exclusive of any Improvements thereon in the City of _____, _____ County, State of Nebraska, more particularly described as follows:

[Legal Description] (the “Land”)

The Lessor reserves to itself all the minerals and other extractive resources. This reservation shall not diminish the right of the Lessee under this Lease to occupy and freely use the Land. The Lessor shall not extract any minerals or other extractive resources from the Land during the Lease term.

¹ This document is a product of the Community Legal Resources Community Land Trust Project of Michigan, adapted to reflect Nebraska law where applicable. This document is intended to provide general information and is not a substitute for legal advice.

² The Ground Lease is an extended, complex document. It is therefore recommended that the Lease itself not be recorded. However, the existence and numerous terms within the Lease have significant impact on the title to the property. This Memorandum of Ground Lease should be recorded at the local Register of Deeds to put any subsequent purchaser on notice of the existence of the Lease and of the nature of the transaction. A serious purchaser will want to and should see the Lease.

Any and all buildings, structures, fixtures and other improvements purchased, constructed or placed upon any part of the Land by the Lessee, at any time during the Lease term (the "Improvements") shall be and remain the property of the Lessee. Title to such Improvements and fixtures shall vest in the Lessee, and to the extent that any such Improvements and fixtures are owned by the Lessor, such Improvements and fixtures are hereby conveyed and warranted by the Lessor to the Lessee subject to the terms of the Lease. The Lessor is simultaneously selling and conveying to the Lessee the Improvements now located on the Land and described in the Deed, the form of which is attached hereto as Exhibit A. The Land and the Improvements herein described shall be collectively referred to as the "Property."

Section 3. Lease Term and Disposition of Improvements Upon Expiration of Lease Term. The term of the Lease shall commence on _____ and terminate on _____, unless terminated sooner or extended in accordance with the Lease provisions.

Section 4. Subordination and Nondisturbance. The Lease shall be subordinate to any mortgage now on the Land or which the Lessor may hereafter grant on the Land. If such mortgage is foreclosed, it is a condition to such subordination that the Lease shall continue and the Lessee's rights thereunder shall not be disturbed so long as the Lessee is not in default beyond any applicable notice, grace or cure period.

Section 5. Lessee's Right To Purchase. In the event that ownership of, or title to, the Land is voluntarily or involuntarily conveyed or transferred by the Lessor to any other person or entity, the Lease shall remain binding and unaffected. In the event the Lessor attempts to sell, convey or otherwise transfer the Land to any person or entity other than to a nonprofit corporation, charitable trust, governmental agency or other similar entity sharing the goals and objectives set forth in the recitals above, or as security for a mortgage loan, the Lessee shall have a right of first refusal to purchase the Land. Any sale or other transfer of the Land contrary to this Section shall be null and void.

Section 6. Use and Transfer Restrictions. As permitted by applicable zoning law, the Lessee shall use, and shall cause all occupants of the Property to use, the Property only for residential use. Subject to the terms, covenants, conditions, restrictions, reservations and provisions of the Lease, and so long as the Lessee is not in default thereunder, the Lessor covenants that the Lessee has the right not to be disturbed in its possession of the Land by the Lessor, its agents or successors.

The Lessee may sell, transfer or otherwise dispose of its Property interest only to members of a Low or Moderate Income Family, as defined in the Lease. However, such transfers shall be subject to the Lessor's review and purchase option rights set forth in Article X of the Lease and subject to the transferee entering into a lease in the same form as the Lease with the Lessor. Any purported sale, transfer or other disposition to any other person or entity completed without following the procedures set forth in the Lease, except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure or at a foreclosure sale or proceeding, or a disposition to heirs as described in accordance with the terms of the Lease, shall be null and void. Upon a sale of the Improvements to a qualified buyer in

accordance with the Lease terms, the Lessor shall enter into a new lease of the Land with the buyer which shall include all the terms and provisions contained in the Lease.

Upon Lessor's receipt of any notice of intent to sell the Improvements by the Lessee, the Lessor shall have the option to purchase the Improvements at the Purchase Option Price stated in the Lease. Such price is intended to advance the goals and purposes set forth in the Lease by helping to preserve the affordability of the Improvements to succeeding Low or Moderate Income Families while taking fair account of the Lessee's labor and capital investments. If the provisions of this option shall, for any reason, become unenforceable, the Lessor shall nevertheless have a right to first refusal to purchase the Improvements at the highest documented bona fide purchase price offer made to the Lessee. Any sale or transfer contrary to this Section, when applicable, shall be null and void. The Lease shall terminate upon conveyance of the Improvements to the Lessor.

The restrictions and conditions of the Lease and any conditions and restrictions set forth in an Exhibit to the Lease are crucial to the fulfillment of the Lessor's purpose and are conditions and restrictions on the use of the Land which are intended to run the full Lease term.

Section 7. Permitted Mortgage Only. The Lessee may mortgage, pledge or encumber the Lessee's interest in the Lease pursuant solely to a Permitted Mortgage. A "Permitted Mortgage" is a mortgage which:

(a) runs in favor of either (i) a so-called "institutional lender" such as, but not limited to, a federal, state or local housing finance agency, a bank, savings and loan association insured credit union, mortgage company, community development corporation or agency, any other corporation or organization subject to supervision and regulation by the Office of Financial and Insurance Services or other regulatory agency of the State of Nebraska or the United States, an insurance company, an educational institution or a state, municipal or similar public employee's welfare, pension and/or profit-sharing fund or trust or any combination or consortium of the foregoing the policies and procedures of which are subject to direct governmental supervision, or (ii) a "community loan fund" or similar nonprofit lender to housing projects for low- or moderate-income persons;

(b) is a first lien on all or any of the Improvements or the Lessee's interest in the Lease or, with the approval of the Lessor and provided that there is no violation of the first mortgage on the Improvements, is a junior lien on all or any of the Improvements or the Lessee's interest in the Lease;

(c) provides, among other things, that in the event of a default in any of the mortgagor's obligations thereunder, the Permitted Mortgagee (as defined below) shall notify the Lessor of such fact and the Lessor shall have the right, but not the obligation, within 30 days after its receipt of such notice, to cure such default in the mortgagor's name and on the mortgagor's behalf, provided that current payments due the Permitted Mortgagee and/or due for taxes or insurance during such 30-day period (or such lesser time period as may have been required to cure such default) are made when due to the Permitted Mortgagee or to the taxing authority or insurer (as the case may be), and

further provides that the Permitted Mortgagee shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by such Permitted Mortgage or to commence to foreclose under the Permitted Mortgage or take a deed-in-lieu of foreclosure on account of such default;

(d) provides, among other things, that if the Permitted Mortgagee intends to initiate foreclosure proceedings or to take a deed-in-lieu of foreclosure under the Permitted Mortgage, the Permitted Mortgagee shall notify the Lessor of its intention to do so prior to initiating foreclosure proceedings or taking a deed-in-lieu of foreclosure, and the Lessor shall have the right, but not the obligation, within 30 days of receipt of said notice from the Permitted Mortgagee, to pay to the Permitted Mortgagee a sum equal to the outstanding indebtedness secured by the Permitted Mortgage and in exchange to receive from the Permitted Mortgagee an assignment without representation, warranty or other obligation of all its rights, title and interest in, to and under the Permitted Mortgage; and nothing in this paragraph shall prohibit the Permitted Mortgagee from initiating foreclosure proceedings under the Permitted Mortgage during said 30-day period (as long as such proceedings are not completed during said 30-day period), but the Permitted Mortgagee shall not take a deed-in-lieu of foreclosure during said 30-day period;

(e) contains provisions to the effect that the holder of the Permitted Mortgage (a "Permitted Mortgagee") shall not look to the Lessor or to the Lessor's interest in the Land, but will look solely to the Lessee, the leasehold estate created by the Lease, the Improvements or such other buildings and improvements as may from time to time exist on the Land, for the payment of the debt secured by such Permitted Mortgage or any part thereof and that the Permitted Mortgage shall be entirely without recourse to the Lessor; and

(f) provides that in the event any part of the Improvements is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over in accordance with the provisions of Article IX of the Lease.

Section 8. New Lease to Permitted Mortgagee. If for any reason the Lease is terminated, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, the Lessor shall give prompt notice thereof to any Permitted Mortgagee and may exercise its option either to purchase the Permitted Mortgage as provided in Section 6 of this Memorandum or to purchase the Lessee's interest in the Improvements in accordance with Article X of the Lease or, if the Lessor does not exercise either of such options, then at the Permitted Mortgagee's request, the Lessor shall enter into a new lease of the Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee if the designated party is an affiliate of the Permitted Mortgagee or qualifies as a member of a Low or Moderate Income Family), not more than 30 days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the Lease term and shall be effective as of the termination date, rejection or disaffirmance and upon all the Lease terms and provisions.

Section 9. No Termination During Foreclosure. Except as pursuant to Article X of the Lease, the Lessor shall have no right to terminate the Lease, during such time as the Permitted

Mortgagee has provided written notice to the Lessor that it has commenced foreclosure in accordance with the Lease provisions and is diligently pursuing the same.

Section 10. Assignment and Sublease. Except as otherwise provided regarding Permitted Mortgages and transfers, and below in this Section, the Lessee shall not assign, sublease, sell or otherwise convey any of the Lessee's rights under the Lease without the prior written consent of the Lessor. The Lessee agrees that the Lessor shall have broad and complete discretion to withhold such consent in order to further the mutual purposes and goals set forth in the Lease. If permission is granted, any assignment or sublease shall be subject to the following conditions:

- (a) any such assignment or sublease shall be subject to all of the Lease terms and provisions;
- (b) in the case of a sublease, the rental or occupancy fee charged the sublessee shall not be more than the amount charged by the Lessor to the Lessee, plus a pass-through of actual costs to the Lessee for the Improvements (such as debt service costs under a Permitted Mortgage);
- (c) the written consent of the Permitted Mortgagee, if any, must be obtained; and
- (d) in the case of an assignment, the total consideration for such assignment and the related sale or transfer of the Improvements shall not exceed the Purchase Option Price as calculated in accordance with the terms of the Lease.

Any contrary provision of the Lease notwithstanding, the Lease, including the right of first refusal described in the preceding Section, may be assigned by the Permitted Mortgagee by foreclosure sale, deed in lieu of foreclosure or otherwise and by any purchaser at the foreclosure sale without the Lessor's consent.

The execution and delivery of any Permitted Mortgage shall not be deemed to constitute an assignment or transfer of the Lease, nor shall any Permitted Mortgagee be deemed an assignee or transferee of the Lease so as to require the Permitted Mortgagee to assume responsibility for the performance of any agreements on the part of the Lessee to be performed under the Lease.

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