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**GROUND LEASE<sup>1</sup>**

between

**[COMMUNITY LAND TRUST CORPORATION]**

and

**[JANE DOE AND JOHN DOE]**

for property located at

[1234 Main Street  
\_\_\_\_\_, Nebraska]

Dated as of \_\_\_\_\_, 20\_\_

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<sup>1</sup> 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.

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## GROUND LEASE

**THIS GROUND LEASE** (this “Lease”) is made and entered into as of \_\_\_\_\_, 20\_\_ between [**COMMUNITY LAND TRUST CORPORATION**] (“CLT”), as lessor, and [**JANE DOE AND JOHN DOE**, a married couple], as the lessee ([individually and collectively,] the “Lessee”). CLT and the Lessee are collectively called the “Parties.”

### RECITALS

WHEREAS, CLT is organized for charitable purposes, including developing and preserving decent, affordable housing for low- and moderate-income people, combating community deterioration and promoting neighborhood stability, and creating home-ownership opportunities for low- and moderate-income people who otherwise would be denied such opportunities because of limited financial resources; and

WHEREAS, the Land described in Exhibit A of this Lease has been acquired and is being leased by CLT in furtherance of these purposes; and

WHEREAS, CLT and the Lessee recognize the special nature of the terms and conditions of this Lease, and each, with the independent and informed advice of legal counsel, freely accepts the terms and conditions, including, without limitation, such terms and conditions as might affect the marketability or resale price of any residential structures or other improvements on the leased premises; and

WHEREAS, CLT and the Lessee understand and accept that the terms and conditions of this Lease further the parties’ shared goals over an extended period of time and through a succession of owners;

NOW, THEREFORE, in consideration of the foregoing recitals, of the mutual promises of the parties and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I

#### LETTER OF ACKNOWLEDGMENT/ATTORNEY’S DECLARATION

Attached to this Lease as Exhibits B and C, respectively, are a Letter of Acknowledgment of the Lessee and a Declaration of the Lessee’s legal counsel, setting forth their review and understanding of the terms and conditions contained in this Lease, and of Article X in particular, and of the related documents for this transaction.<sup>2</sup>

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<sup>2</sup> This Lease is a sophisticated variation of an ownership structure that is not commonly used for homes. So, it is important that the Lessee review this Lease and related documents with a lawyer so that the Lessee will understand the significance of the structure, and in particular the limitations on the Lessee’s ability to resell the property for the highest price.

## ARTICLE II

### LEASED LAND

**Section 2.01. Land.** In consideration of the obligation of the Lessee to pay rent as provided in this Lease, and in consideration of the other terms, provisions and covenants hereof, CLT hereby leases to the Lessee certain real estate located in the [\_\_\_\_\_] of \_\_\_\_\_], [\_\_\_\_\_] County, Nebraska, commonly known as [\_\_\_\_\_] , as further described in Exhibit A, exclusive of any Improvements (as defined in Section 7.01 below) thereon (the “Land”). CLT has furnished to the Lessee a title report for the Land, and the Lessee accepts title to the Land in its condition “as is” as of the date of execution of this Lease (including all items identified in the title report).

**Section 2.02. Reservation of Mineral Rights.** CLT 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. CLT shall not extract any resources by going onto the Land during the term of this Lease.

**Section 2.03. Nondisturbance.** This Lease shall be subordinate to any mortgage which CLT may hereinafter grant on the Land. It is a condition to such subordination that if any such mortgage is foreclosed, this Lease shall continue and the Lessee’s rights under this Lease shall not be disturbed so long as the Lessee is not in default beyond any applicable notice, grace or cure period.<sup>3</sup> [CLT will use commercially reasonable efforts to provide to the Lessee within 30 days following the date of this Lease an agreement from each existing mortgage holder (if any) that if the mortgage is foreclosed, this Lease shall continue and the Lessee’s rights under this Lease shall not be disturbed, so long as the Lessee is not in default beyond any applicable notice, grace or cure period.<sup>4</sup>]

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<sup>3</sup> This means that a mortgage on CLT’s interest in the Land will be superior in rights to this Lease, but if the mortgage is foreclosed, this Lease and the Lessee’s right to occupy the Land will continue as long as the Lessee is not in default.

<sup>4</sup> If there is a mortgage on CLT’s interests at the time it enters into this Lease, the mortgage will automatically be superior to this Lease, even if the Lessee does not consent. Consequently, an existing mortgagee must agree in order to adequately protect the interests of a lessee. Although the language in brackets is often used in other circumstances, it would be appropriate for a lessee to insist that the existing mortgagee provide the required agreement as a condition to closing the transaction. So, even if there may be circumstances in which there is an existing mortgage of CLT’s interests, CLT may elect to delete the bracketed language and instead undertake to obtain the required agreement from its mortgagee in connection with the closing in recognition of the Lessee’s legitimate concerns.

## ARTICLE III

### DURATION OF LEASE

**Section 3.01. Term.** The term of this Lease shall commence on \_\_\_\_\_, 20\_\_ (the “Commencement Date”) and terminate on December 31, \_\_\_\_ [89 years],<sup>5</sup> unless terminated sooner or extended in accordance with the provisions of this Lease.

**Section 3.02. Lessee’s Option To Extend.** The Lessee may extend the principal term of this Lease for one additional period of 89 years,<sup>6</sup> subject to all of the provisions of this Lease. The Lessee’s right to exercise the option to extend is subject to the following conditions: this Lease shall be in effect at the time notice of exercise is given and on the last day of the current term, and there shall not then be an Event of Default by the Lessee (as defined in Article XII below) under this Lease or under any loan documents between the Lessee and any Permitted Mortgagee (as defined in Article VIII below). In order to extend the term of this Lease, the Lessee shall give CLT written notice, not more than 365 or less than 180 days before the last day of the current term, irrevocably exercising the option to extend. Each party shall then execute a memorandum, in mutually agreeable recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum or notice of lease.

**Section 3.03. Change of Lessor; Lessee’s Right To Purchase.** In the event that ownership of, or title to, the Land is conveyed or transferred, voluntarily or involuntarily, by CLT to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. In addition, in the event CLT desires 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, the Lessee shall have a right of first refusal to purchase the Land. This right shall be as specified in Exhibit D of this Lease, construed appropriately to be applicable to such a transfer by CLT.

## ARTICLE IV

### USE OF LAND

**Section 4.01. Residential Use Only.** The Lessee shall use, and shall cause all occupants of them to use, the Land and the Improvements (as defined in Article VII below) only for residential use as permitted by applicable zoning law. In addition, transfers of the Lessee’s interest under this Lease, whether such transfer is the voluntary act of the Lessee or occurs by the operation of law, shall be subject to the restrictions contained in this Lease, including Article X

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<sup>5</sup> It is possible that certain interests created by this Lease, particularly the option to repurchase the Improvements, could be classified as nonvested interests and thus could possibly be invalid under the “rule against perpetuities.” See NE ST 76-2002. As discussed in footnote 1, NE ST 76-205(9) should prevent this result. However, as additional protection, we recommend limiting the term of this Lease to 89 years since NE ST 76-2002 provides that a nonvested interest is invalid unless the “interest either vests or terminates within 90 years after its creation.”

<sup>6</sup> See comment in footnote 4 regarding the protection against application of the rule against perpetuities. Note that it is very unlikely that this option will ever be relevant, since in most circumstances a successor lessee will enter into a new Ground Lease that will start a new 89-year term (see Sections 10.03 and 10.05(c)).

and Article XI. The Lessee acknowledges and agrees that the foregoing limitations, all other conditions and restrictions contained in this Lease, and any conditions and restrictions set forth in Exhibit E of this Lease are essential to the fulfillment of the purposes of CLT and are conditions and restrictions on the use of the Land intended to run the full term of this Lease.

**Section 4.02. Occupancy.** The Lessee shall occupy the Land for at least eight months<sup>7</sup> of each calendar year during the term of this Lease, unless otherwise agreed by CLT. Occupancy by children or other immediate family members or dependents of the Lessee, without any obligation to pay rent or provide services in lieu of rent to the Lessee, shall be deemed occupancy by the Lessee. Storage of personal property does not constitute occupancy.

**Section 4.03. Inspection.** CLT may inspect any portion of the Land at any reasonable time and in any reasonable manner, upon at least 24 hours' notice to the Lessee, except in the event of emergency; in such event no notice shall be required, provided that CLT shall have made reasonable efforts to give advance notice to the Lessee.

**Section 4.04. Lessee's Right to Peaceful Enjoyment.** Subject to the terms, covenants, conditions, restrictions, reservations and provisions of this Lease, so long as the Lessee pays and performs all of its obligations under this Lease, the Lessee has the right to not be disturbed in its possession of the Land by CLT, any management agent contracted by CLT, or any other person lawfully claiming a right to possession through or under CLT. This is not a personal covenant of CLT but will instead be construed as a covenant running with the Land for the benefit of the Lessee.

**Section 4.05. Condition of Leased Land; Compliance With Law.** The Lessee shall maintain the Land and the Improvements in good, safe and habitable condition in all respects, shall maintain all fixtures and components of the Improvements in good working order, and shall maintain the Land and the Improvements in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction. The Lessee shall also make all necessary, appropriate or required repairs to and replacements of the Land and the Improvements. In furtherance of the foregoing, it is agreed that (a) CLT has no obligation or duty, whether express, implied or otherwise, to maintain or make any repairs to or replacements of any portion of the Land or the Improvements except only to the extent (if any) expressly and specifically stated in this Lease, and (b) any duty or obligation imposed (expressly, impliedly or otherwise) upon CLT by any applicable law, ordinance, rule or regulation in regard to the upkeep, maintenance, repair or replacement of any portion of the Land or the Improvements is unconditionally and fully waived by the Lessee and the responsibility for performing and observing each such duty or obligation is assumed and accepted by the Lessee.<sup>8</sup>

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<sup>7</sup> CLT should decide what occupancy requirement is most appropriate given its own circumstances (including any requirements that may be imposed as a result of any CLT financing and/or insurance policies).

<sup>8</sup> This Lease should not be subject to the Uniform Residential Landlord and Tenant Act (NE ST 76-1401 et seq.) since the "dwelling units" are owned by the Lessee, not leased, and the Land by itself is not covered. However, if there is a future determination that this Lease is in fact subject to this Act, CLT will need to cure any material noncompliance with the rental agreement or with the Act by making all repairs and doing what is necessary to keep the premises in fit and habitable condition no later than 14 days after notice from the tenant identifying a materially non-complying provision in order to avoid liability under this Act.

## ARTICLE V

### RENT

#### **Section 5.01. Monthly Rent.**

(a) In consideration of the possession, continued use and occupancy of the Land, the Lessee shall pay to CLT monthly rent (the "Monthly Rent") in the initial amount of \$\_\_\_\_\_, subject to annual increases calculated by CLT as set forth below based on the Consumer Price Index, beginning with the first payment due after the anniversary of the Commencement Date. (For example, if the Commencement Date is March 15, then any annual adjustment to the Monthly Rent will be effective with the payment due on April 1).

(b) The adjusted Monthly Rent shall be equal to the greater of (i) the Monthly Rent then in effect, and (ii) the sum of (A) the Monthly Rent then in effect and (B) the product of such Monthly Rent and the percentage change in the Consumer Price Index for All Urban Consumers - Midwest Region (1982-84=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI") for the last available month immediately preceding the date of adjustment over the CPI for the last available month immediately preceding the Commencement Date. If this index shall cease to be published, then CLT shall designate a reasonable substitute index for purposes of this Lease.

(c) CLT shall determine the adjusted Monthly Rent each year on the anniversary of the Commencement Date and shall promptly notify the Lessee of the amount of the Monthly Rent that will be due during the following year. Notwithstanding Section 5.01(a), if the Monthly Rent is increased for a particular year, the Lessee will not be in default with respect to payment of Monthly Rent if it pays the increase in the Monthly Rent by the later of (x) the first payment due after the applicable anniversary of the Commencement Date, and (y) within 10 days after CLT provides notice of the increased Monthly Rent.

(d) For purposes of this Lease, "Rent" means the Monthly Rent together with any other amounts payable to CLT by the Lessee hereunder (the "Additional Rent").

**Section 5.02. Payment of Monthly Rent.** The Monthly Rent shall be payable, in advance, at CLT's principal place of business on the first day of each month of each year of the term of this Lease, or at such other place as CLT may designate. In the event this Lease commences between any of the monthly payment dates, a pro rata portion of the Monthly Rent shall be paid for the balance of such month at the time of execution of this Lease.

**Section 5.03. Reduction, Delay or Waiver of Monthly Rent.** CLT in its sole discretion may reduce, delay or waive entirely the Monthly Rent at any time and from time to time in consideration of the personal hardship or incapacity of the Lessee or the Lessee's general ability to pay. The intent of this Section is to foster continued occupancy by the Lessee despite

the occurrence of unforeseeable financial and personal hardship, if reasonably possible. Any such reduction, delay or waiver must be in writing and signed by CLT before it will be effective.

**Section 5.04. Increase to Market Rent.** In the event of any circumstance which suspends or invalidates the provisions of Article X and Article XI limiting transfers of the Improvements, then during such portions of the term of this Lease as the Lessee shall not be required to comply with the provisions of Article X and Article XI, the Base Rent shall be increased to an amount calculated by CLT to equal the fair rental value of the Land for use not so restricted. In such event, upon CLT's election exercised by not less than 30 days' notice to the Lessee, the Base Rent shall be as specified in such notice.

## ARTICLE VI

### TAXES AND ASSESSMENTS

**Section 6.01. Payment of Land Taxes.** The Lessee shall pay all charges assessed against and levied upon the Land ("Land Taxes"), including, but not limited to, any form of real estate tax or assessment, ad valorem tax or gross receipts tax, or other charge or levy imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof (collectively, "Taxes").

**Section 6.02. Lessee's Responsibility for Taxes and Assessments on Improvements.** Notwithstanding the generality of Section 6.01, the Lessee is responsible for payment of all Taxes, no matter how designated, that relate to the Improvements ("Improvement Taxes").

**Section 6.03. Tax Escrow.** So long as the Lessee is not in default under this Lease, the Lessee shall be permitted to pay directly all Land Taxes and Improvement Taxes, but from and after notice (by the taxing authority having jurisdiction or by CLT) that the Lessee is delinquent in payment of any such Taxes, CLT may require that some or all of such payments be made to CLT as Additional Rent, with payment due monthly with the Monthly Rent in an amount (the "Tax Payment") determined by CLT based on its estimates of the Taxes to be escrowed so that CLT will hold a sufficient amount to pay all such Taxes not less than 30 days prior to the date on which such items become due and payable.<sup>9</sup> Provided the Lessee has paid the Monthly Rent and Tax Payments promptly and fully in accordance with this Lease and further provided that CLT has sufficient funds to pay all escrowed Taxes when due, CLT shall use the Tax Payments paid by the Lessee to pay the Taxes that were escrowed. Otherwise, CLT in its discretion may use the Tax Payments to pay some or all of the Taxes or may continue to hold some or all of the Tax Payments as security. CLT shall keep Tax Payments in a tax escrow account. Such tax escrow account may contain funds collected for such purpose from other lessees of CLT. The Lessee

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<sup>9</sup> Some CLT leases provide for monthly tax escrow payments as a matter of course, and others rely on the Lessee's mortgagee to escrow and assure payment of taxes. This Lease allows the Lessee to pay taxes directly (which would include payment by the Lessee's mortgagee from its own tax escrow) and requires payments of estimated taxes to CLT only after there has been a default in tax payments. It also contemplates that CLT might elect to escrow only part of the taxes. For example, a CLT might begin escrowing Land Taxes where the Lessee's mortgagee is escrowing for Improvement Taxes (so that they are being paid on a timely basis) but not the Land Taxes.

shall not be entitled to any interest on the payments made. CLT may from time to time at its sole discretion change the number and/or location of the tax escrow account.

**Section 6.04. Lessee's Right To Contest.** The Lessee shall have the right to contest the amount or validity of any taxes or assessments on the Improvements or on the Land. CLT shall, upon written request by the Lessee, join in any such proceedings if the Lessee shall reasonably determine that it shall be necessary or convenient for CLT to so join in order for the Lessee to prosecute such proceedings. All costs and expenses of such proceedings shall be paid by the Lessee. Notwithstanding the foregoing, taxes or assessments against or including the Land shall be contested only with the concurrence of CLT.

**Section 6.05. Payments in Event of Delinquency.** To the extent any Taxes are not collected as part of a monthly Tax Payment, the Lessee shall pay promptly, when due, such Taxes directly to the taxing authority having jurisdiction. The Lessee shall also pay directly, when due, any and all other service bills, utilities charges or other governmental assessments charged against the Improvements. In the event that the Lessee fails to pay any Taxes or other charges specified in this Article VI which are not otherwise part of the monthly Tax Payment, CLT may increase the monthly Tax Payment by the Lessee so that the total sum collected will offset the cost of any delinquent and current Taxes or other charges and make such payments in a timely manner.

**Section 6.06. Proof of Compliance.** Upon their payment, each party will furnish evidence satisfactory to the other documenting the payment of all Taxes, assessments and charges paid by such party as required or permitted by the provisions of this Lease. A photocopy of a paid receipt for such charges showing payment prior to the due date shall be the usual method of furnishing such evidence.

## ARTICLE VII

### IMPROVEMENTS

**Section 7.01. Ownership.** Any and all buildings, structures, fixtures and other improvements purchased by the Lessee or constructed or placed by the Lessee upon any part of the Land at any time during the term of this Lease (the "Improvements") shall be and remain the property of the Lessee. Title to such Improvements shall vest in the Lessee. The Lessee's exercise of the rights of ownership is subject and subordinate, however, to the provisions of this Lease, and in particular Section 7.06 and Article X below, regarding the disposition of Improvements by the Lessee and CLT's option to purchase the Improvements. In addition, the Lessee shall not sever or move the Improvements from the Land.

Notwithstanding the foregoing prohibition on severance of Improvements, the Lessee shall have the right to remove any non-permanent Improvements, including, but not limited to, playground equipment, above-ground swimming pools, dog kennels and planters. The Lessee may not remove any fences, garage or carport from the Land. Removal of other Improvements may be undertaken only with the prior written consent of CLT, which CLT in its discretion may withhold for any reason.

**Section 7.02. Purchase of Improvements by Lessee.** CLT 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 to this Lease as Exhibit F.

**Section 7.03. Construction and Alteration.** Any construction in connection with an existing or new Improvement is subject to the following conditions:

- (a) all costs shall be borne and paid for by the Lessee;
- (b) all construction shall be performed in a workmanlike manner and shall comply with all applicable laws, ordinances and regulations, including the requirements of local and state public health authorities;
- (c) all construction must be consistent with the permitted uses set forth in Article IV;
- (d) the exterior (including height) of existing Improvements shall not be increased or expanded and material modifications shall not be made to the interior of existing Improvements, nor shall any new Improvements be constructed, without the prior written consent of CLT; and
- (e) the Lessee shall furnish to CLT a copy of any plans and building permits for such construction prior to commencing construction.

[In connection with a major alteration permitted in accordance with Section 7.03(d), CLT, in its sole discretion, may agree with the Lessee to designate a mutually agreeable “Stipulated Alteration Value,” which shall be used for purposes of calculating the Purchase Option Price pursuant to Section 10.08.]<sup>10</sup>

**Section 7.04. Prohibition of Liens.** CLT has not required any new Improvements or other construction or alterations permitted pursuant to Section 7.03,<sup>11</sup> and no lien for services, labor or materials resulting from the Lessee’s capital improvements shall attach to CLT’s title to, or its interest in, the Land or to any other property owned by CLT. The Lessee shall not suffer or permit any construction, vendor’s, mechanic’s, laborer’s or materialman’s statutory or similar lien to be filed against the Land, the Improvements or any interest of CLT or the Lessee which remains more than 60 days after being filed, and the Lessee shall cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If the Lessee fails to cause such lien to be discharged within 60 days after it has been filed, then, in addition to any other right or remedy of CLT, CLT may,

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<sup>10</sup> On the one hand, it can be argued that a lessee should get the benefit of the increase in value that results from its own investment. On the other hand, the benefit will often be difficult to determine and there is the overriding objective of maintaining affordability. So, this provision does not require CLT to give the Lessee any credit but permits CLT to agree for those cases where CLT would like to provide an incentive for the Lessee to make the investment.

<sup>11</sup> If CLT requires any improvements, its interests may be subject to construction or mechanic liens if CLT is a party to the improvement contract and if the claimant records a lien within 120 days after final furnishing of services or materials. Nonconsensual liens do not arise against the real estate merely by reason of improvements thereon. *See* NE ST 52-125 et seq.

but shall not be obligated to, discharge the same by paying the amount in question. The Lessee in good faith and at the Lessee's own expense may contest the validity of any such asserted lien, provided the Lessee has furnished a bond in an amount set by statute or otherwise sufficient to release the Land from such lien. Any amounts paid by CLT in respect of such liens shall be deemed to be an Additional Rent payable by the Lessee upon demand.

**Section 7.05. Maintenance and Services.** The Lessee shall, at the Lessee's sole expense, maintain the Land and all Improvements in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental agencies and entities having jurisdiction and all insurance companies insuring all or any part of the Land or Improvements. CLT shall not be required to furnish any services or facilities, including, but not limited to, heat, electricity, air conditioning or water, or to make any repairs to the Land or Improvements, and the Lessee hereby assumes the full and sole responsibility for furnishing all services or facilities.

**Section 7.06. Disposition of Improvements Upon Expiration of Lease Term.** Upon the expiration of the term of this Lease as such term may be extended or earlier terminated in accordance with this Lease, the Lessee shall yield up and surrender the Improvements together with the Land to CLT and, if the Lessee is not then in default of any provisions of this Lease, CLT shall accept the same "as is." The Lessee shall simultaneously convey title to the Improvements to CLT by delivery of a deed [and bill of sale] in the form[s] attached hereto as Exhibit F, and CLT shall promptly pay to the Lessee as consideration for the Improvements an amount equal to the Purchase Option Price calculated in accordance with Section 10.08 as of the time of such conveyance of title.

## ARTICLE VIII

### LEASEHOLD MORTGAGE FINANCING

**Section 8.01. Permitted Mortgage Only.** The Lessee may mortgage, pledge or encumber the Lessee's interest in this 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 this Lease or, with the approval of CLT 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 this 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 CLT of such fact and CLT shall have the right, but not the obligation, within 120 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 120-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 Mortgagee or to commence to foreclose under the Permitted Mortgagee 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 CLT of its intention to do so prior to initiating foreclosure proceedings or taking a deed in lieu of foreclosure and CLT 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. Nothing in this subsection (d) 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 CLT or to CLT's interest in the Land, but will look solely to the Lessee, the leasehold estate created by this 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 CLT; and

(f) provides that in the event any part of the Improvements are 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 this Lease.

**Section 8.02. CLT's Consent to Permitted Mortgage.** Prior to closing by the Lessee on any financing encumbering this Lease or the Improvements, the Lessee shall furnish to CLT true and complete copies of the note, mortgage and any other documents relating to this Lease or the Improvements to be executed in connection with the transaction represented by such mortgage. The Lessee shall use best efforts to ensure that such documents are furnished to CLT at least 10 days prior to the anticipated closing date.

Notwithstanding anything to the contrary contained in this Lease, CLT shall be required to consent to such mortgage if:

- (a) the mortgage so submitted is a Permitted Mortgage as defined by the provisions of this Lease;
- (b) the mortgage is a first lien on the Improvements and on the Lessee's interest in this Lease; and
- (c) at the time of such submission and at the time proposed by the Lessee for the execution of such documents, neither an Event of Default as defined in Section 12.01 below nor circumstances which with notice or passage of time or both would result in an Event of Default exist.

CLT shall provide written notice of its consent to the Permitted Mortgagee.

If the proposed Permitted Mortgagee requests modifications to this Lease for the benefit of the Permitted Mortgage, the proposed Lease modifications shall be provided to CLT at least 10 days prior to the anticipated closing date. CLT may accept, reject or propose alternate modifications in its sole and absolute discretion, except that CLT shall be required to accept a modification in the form attached as Exhibit J,<sup>12</sup> [unless (a) CLT is subject to restrictions in connection with any sources of financing that are inconsistent with any of the terms set forth therein (including, but not limited to, a requirement that CLT maintain the restrictions on transfer set forth in this Lease for a period of time), or (b) CLT reasonably determines that consenting to the terms set forth therein could adversely affect its status as a tax-exempt organization as described in Section 501(c)(3) of the Internal Revenue Code.] Any modifications agreed to by CLT and the Permitted Mortgagee shall be set forth in Exhibit I to this Lease.

**Section 8.03. Rights of Permitted Mortgagee.** CLT shall give notice to each Permitted Mortgagee upon the occurrence of an Event of Default as defined in Section 12.01 below. Any Permitted Mortgagee shall, without requirement of consent by CLT, have the right, but not the obligation, to:

- (a) cure any default under this Lease in accordance with Section 12.01 below, take possession of the Land and Improvements if necessary to do so to effect the cure, and perform any obligation required under this Lease, such cure or performance by a Permitted Mortgagee being effective as if the same had been undertaken and performed by the Lessee;
- (b) upon the occurrence of a default under the Permitted Mortgage, and subject to Section 8.01 above, acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to the Lessee by this Lease or otherwise by law, subject to

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<sup>12</sup> FNMA guidelines will require execution of a rider to this Lease that, among other things, terminates the transfer restrictions if the mortgage is foreclosed, since those terms are not built into the body of the lease. If CLT's financing requires that the property remain subject to restrictions for a designated period of time, it may not be able to agree to those terms. However, since these terms are going to be required by most of the financial institutions willing to finance the Lessee, this Lease includes the FNMA rider as an exhibit and requires CLT to agree to the rider, unless CLT's financing and/or adverse effects on its tax-exempt status preclude agreeing to these terms.

the provisions, if any, in the Permitted Mortgage which may limit any exercise of any such right, remedy or privilege; and

(c) rely upon and enforce as a third party beneficiary hereunder any provisions of this Lease to the extent that such provisions are for the benefit of the Permitted Mortgagee.

A Permitted Mortgagee shall not, as a condition to the exercise of its rights under this Lease, be required to assume personal liability for the payment and performance of the obligations of the Lessee under this Lease. Any such payment or performance or other act by the Permitted Mortgagee under this Lease shall not be construed as an agreement by the Permitted Mortgagee to assume such personal liability. A Permitted Mortgagee shall not become personally liable for the Lessee's obligations under this Lease unless and until it becomes the owner of the leasehold estate by foreclosure, deed in lieu of foreclosure or otherwise, and thereafter a Permitted Mortgagee shall remain liable for such obligations only so long as it remains the owner of the leasehold estate. A Permitted Mortgagee shall not become responsible for any obligations of the Lessee which are not set forth in this Lease, or any document expressly referenced in this Lease, while it is the owner of the leasehold estate by foreclosure, deed in lieu of foreclosure or otherwise. In the event the Permitted Mortgagee subsequently assigns the leasehold estate and transfers the Improvements, any such transferee shall be required to enter into a written agreement in favor of CLT assuming any and all obligations and liabilities of the Lessee under this Lease, and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under this Lease.

In the event that title to the estates of CLT and the Lessee in the Land and Improvements shall be acquired at any time by the same person or persons, no merger of said estates shall occur without the prior written consent of the Permitted Mortgagee, and the Lessee shall take any action reasonably required by the Permitted Mortgagee to assure compliance with this provision so long as the Permitted Mortgagee owns any interest in the Improvements or in the Permitted Mortgage. In the event that, at any time while the Permitted Mortgage is outstanding, the estate of CLT is owned at any time by the Lessee (regardless of a merger), or by any person in which the Lessee has a direct or indirect interest, the Permitted Mortgagee shall not be obligated to cure any default of the Lessee under this Lease as a condition to the forbearance by CLT in the exercise of CLT's remedies as provided in this Lease.

**Section 8.04. Approval of Amendments.** No amendment to this Lease shall be binding upon a Permitted Mortgagee without the written approval of the Permitted Mortgagee, which approval shall not be unreasonably withheld or delayed. The passage of 30 days after submittal to the Permitted Mortgagee of a proposed amendment (together with a written notice to the Permitted Mortgagee regarding the effect of its failure to respond) without approval or disapproval by the Permitted Mortgagee shall be deemed approval of such proposed amendment by the Permitted Mortgagee.

**Section 8.05. New Lease to Permitted Mortgagee.** If this Lease is terminated for any reason, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall give prompt notice thereof to any Permitted Mortgagee and may exercise its option either to purchase the Permitted Mortgage as provided in

Section 8.01(d) above or to purchase the Lessee's interest in the Improvements in accordance with Article X, or if CLT does not exercise either of such options, then at the Permitted Mortgagee's request CLT 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 an Income-Qualified Family) not more than 30 days after the request of the Permitted Mortgagee.<sup>13</sup> Such lease shall be for the remainder of the term of this Lease and shall be effective as of the date of such termination, rejection or disaffirmance and upon all the terms and provisions contained in this Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within 60 days after the giving of such notice by CLT. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or by the party designated by the Permitted Mortgagee to be the Lessee under the new lease, and the Permitted Mortgagee shall have cured all defaults under this Lease which can be cured by the payment of money. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as this Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, the Lessee and the Permitted Mortgagee.

**Section 8.06. No Termination During Foreclosure.** CLT shall have no right to terminate this Lease, except as pursuant to Article X, during such time as the Permitted Mortgagee has provided written notice to CLT that it has commenced foreclosure in accordance with the provisions of this Lease and is diligently pursuing the same. Nothing contained in this Lease shall be deemed to require the Permitted Mortgagee to continue with any foreclosure or other proceedings, or, if the Permitted Mortgagee or receiver shall acquire possession of the Improvements and the Land, to continue such possession, provided that CLT shall have a right to terminate this Lease notwithstanding a pending foreclosure at any time that the Permitted Mortgagee is not diligently pursuing foreclosure.

**Section 8.07. Notice.** Whenever in this Article notice is to be given to a Permitted Mortgagee, such notice shall be given in the manner set forth in Section 13.03 of this Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in Section 13.03 of this Lease.

**Section 8.08. Costs of Permitted Mortgage.** The Lessee shall pay to CLT at CLT's option, as Additional Rent under this Lease, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by CLT in connection with any Permitted Mortgage.

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<sup>13</sup> Note that this means that CLT may be required to continue as landlord for a long period with a tenant that is not an Income-Qualified Family, and thus is required to continue to own the property even though it no longer furthers CLT's purposes. If the transfer restrictions have been removed, then the ability to charge a market rental rate under Section 5.04 will help mitigate this issue. CLT also has an opportunity to regain control of the property in connection with a subsequent sale by the tenant under the right of first refusal in Section 13.02 (which allows CLT to purchase the Lessee's interests on the same terms as the proposed buyer). However, if CLT has concerns about this situation, it may want to consider other alternatives—for example, trying to incorporate the right to "put" (i.e. sell) the Land and CLT's interest in this Lease to any market rate tenant—as an alternative to executing a new lease. However, in exploring alternatives, it will be important to consider whether a proposed approach will adversely affect the ability of the Lessee to finance the purchase of the Improvements.

## ARTICLE IX

### LIABILITY, INSURANCE, DAMAGE AND DESTRUCTION, EMINENT DOMAIN

**Section 9.01. Lessee's Liability.** From and after the date of this Lease, the Lessee assumes sole responsibility and liability to any and all persons and authorities related to its possession, occupancy and use of the Land.

**Section 9.02. Indemnification of CLT.** The Lessee shall defend, indemnify and hold CLT harmless against all liability and claims of liability for damage or injury to person or property from any cause on or about the Land. The Lessee waives all claims against CLT for damage or injury to persons or property on or about the Land arising, or asserted to have arisen, on or about the Land from any cause whatsoever. Notwithstanding the foregoing two sentences, CLT shall remain liable (and the Lessee shall not indemnify and defend CLT against or waive such claims of liability) for damage or injury due to the grossly negligent or intentional acts or omissions of CLT or its agents or employees.

**Section 9.03. Payment by CLT.** In the event CLT shall be required to pay any sum whatsoever which is the Lessee's responsibility or liability, the Lessee shall reimburse CLT for such payment and for reasonable expenses caused thereby upon demand.

#### **Section 9.04. Insurance.**

(a) **Casualty Insurance.** The Lessee shall, at the Lessee's sole expense, keep all Improvements continuously insured against loss or damage by fire and the extended coverage hazards for the full replacement value of such Improvements.

(b) **Liability Insurance.** The Lessee shall, at the Lessee's sole expense, maintain continuously in effect liability insurance covering the Improvements and the Land and its appurtenances in the amounts of not less than \$\_\_\_\_\_ for injury to or death of any one person, \$\_\_\_\_\_ for injury to or death of any number of persons in one occurrence; and \$\_\_\_\_\_ for property damage. The dollar amount of each such coverage shall be adjusted upon CLT's demand, given not more often than biennially upon 30 days' notice to the Lessee. This adjustment shall not exceed the percentage of increase (if any) of the CPI over the period since the last adjustment in the dollar amount. Such insurance shall specifically insure the Lessee against all liability assumed under this Lease, as well as all liability imposed by law, and shall also insure CLT as an additional insured so as to create the same liability on the part of the insurer as though separate policies had been written for CLT and the Lessee.

(c) **Certificates of Insurance.** The Lessee shall provide CLT with a certificate of insurance for all policies and policy renewals. Original policies (or certificates thereof) shall be delivered to the Permitted Mortgagee. All casualty insurance policies shall provide for any losses to be payable to any Permitted Mortgagee, as its interests may appear, pursuant to a standard mortgagee clause or endorsement. The Lessee and CLT irrevocably authorize and direct the Permitted Mortgagee to accept and hold all casualty insurance proceeds for application in accordance with the provisions of

this Lease (and, to the extent not inconsistent with the requirements of this Lease, the provisions of the Permitted Mortgage). All policies shall also contain endorsements providing that they shall not be canceled, reduced in amount or coverage or otherwise modified by the insurance carrier involved without at least 30 days' prior written notice being given to CLT. CLT shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance. Any Permitted Mortgagee shall have the right to participate in any adjustment or settlement of any losses for the purpose of protecting its rights under this Lease.

**Section 9.05. Damage or Destruction.** Except as provided below in this Section 9.05, in the event of fire or other casualty to any Improvements, the Lessee shall forthwith commence, and thereafter diligently and continuously prosecute to completion, and all insurance proceeds shall be applied first to the repair of such damage and the restoration of such Improvements to their condition immediately prior to such damage and the balance shall be allocated according to this Section 9.05. All such repairs and restoration shall be completed as promptly as possible. The Lessee shall also promptly take all steps necessary to assure that the Land shall be and remain safe and the damaged Improvements do not constitute a hazard or danger to persons or property from the time of the fire or other casualty.

In no event shall the Monthly Rent be suspended or abated unless CLT, in its sole discretion, decides to do so in consideration of the personal hardship or incapacity of the Lessee.

If the Lessee, using reasonable judgment and in reliance upon professional estimates and advice, determines that such full repair and/or restoration is physically impossible, or (provided that the Lessee has fulfilled all of the hazard insurance requirements set forth in Section 9.04 above) that the available insurance proceeds are not more than 80% of the cost of such repair and/or restoration, then the Lessee may terminate this Lease by written notice to CLT, given not later than 60 days after the occurrence of a fire or other casualty which causes substantial damage to the Improvements. Such termination notice shall not, however, be effective until 60 days after the date upon which it is received by CLT. During such time CLT shall have the opportunity to seek an adjustment from the insurer so as to increase the amount of available insurance proceeds, arrange for such repair and/or restoration at a cost sufficiently low so that the insurance proceeds equal or exceed 80% of the cost of repairs, or design a partial restoration of the Improvements which would be sufficient to provide the Lessee with Improvements of reasonably equivalent quality and reasonably useable by the Lessee, with a floor area not less than 80% of the Improvements as they existed immediately prior to such fire or other casualty; in any of the foregoing cases, CLT may render the Lessee's termination notice null and void by written notice of such action to the Lessee within such additional 60-day period. If CLT fails to so nullify the termination notice, then this Lease shall terminate at the expiration of such 60-day period after CLT's receipt of the Lessee's termination notice, and any proceeds of insurance payable to the Lessee on account of such fire or other casualty shall be paid as follows:

*FIRST*, to the expenses of their collection;

*SECOND*, to any Permitted Mortgagee(s), so that the paramount lien is paid in full (or to the extent of available proceeds) before any amount is paid to subsequent liens;

*THIRD*, to the expenses of enclosing or razing the remaining Improvements and clearing debris;

*FOURTH*, to the Lessee, up to (a) the Purchase Option Price as of the day prior to the loss, less (b) amounts paid to any Permitted Mortgagee(s) and with respect to the Improvements pursuant to the second and third clauses; and

*FIFTH*, the balance, if any, to CLT.

**Section 9.06. Eminent Domain and Public Dedication.** In the event of:

(a) A taking of all the Land by reason of eminent domain or other action of public authority prior to the expiration of the term of this Lease, this Lease shall terminate as of the date the Lessee is thereby required to give up possession of the Land, and the entire amount of any award(s) paid shall be allocated according to the same proportion as that calculated for a casualty according to the preceding Section 9.05.

(b) A taking (as aforesaid) of a portion of the Land, then the proceeds paid or payable by reason of such taking shall be allocated as follows:

(i) If the taking affects only a portion of the Land and not the Improvements, and if the remainder of the Land has not been reduced in size so as to create a nonconforming use, all of the proceeds shall be allocated to CLT and the Base Rent shall be reduced accordingly.

(ii) If part, but not all, of the Improvements are taken and the remaining Improvements may reasonably be restored to a residential use consistent with this Lease, CLT shall receive that portion of the proceeds awarded for taking of the Land. The portion of the award allocated for the taking of Improvements shall be allocated first to the cost of repair and restoration of the remaining Improvements and the balance as follows:

(A) The "Improvement Award Percentage" shall be calculated by dividing the total amount of the award for Improvements by the total value of the Improvements as determined by the condemnation appraisal.

(B) The positive or negative change in value in the Improvements shall be determined by subtracting the original appraised value of the Improvements (as shown in Section 10.08 of this Lease) from the value of the Improvements as shown in the condemnation appraisal.

(C) The portion of the award for Improvements allocated to CLT shall be determined by multiplying the Improvement Award Percentage times CLT subsidy (original appraisal value minus the Lessee's original purchase price) plus 75% of any positive Appreciation.

(D) The balance of the Award for Improvements shall be distributed to the Lessee and the Permitted Mortgagee as required by the terms of the Permitted Mortgage.

Any and all proceedings brought by a party in connection with the claim or claims for damages as a result of any taking referred to in this Section shall be conducted by and at the sole expense of such party. Any Permitted Mortgagee shall have the right to participate in any condemnation proceeding for the purpose of protecting its rights under this Lease. If any provision of law now or hereafter in effect shall require that said proceedings be brought by or in the name of any owner or lessee of the Land, such party shall join in such proceedings or permit the same to be brought in its name. Each party covenants and agrees to do any and all acts and to execute any and all documents which may be required to enable the other to maintain such proceedings. If any party required to join in the proceedings shall incur any cost or expense in connection with such proceedings, such party shall be entitled to reimbursement for the reasonable amount of such cost or expense and the same shall likewise constitute a charge against any award.

## ARTICLE X

### TRANSFER, SALE OR DISPOSITION OF IMPROVEMENTS

**Section 10.01. Intent and Effect.** It is the intent of CLT and of the Lessee, and the effect of this Lease, to permit the free alienation of the Lessee's interest in the Land and Improvements, subject to certain limitations on price (outlined in this Article X) and subsequent purchaser entering into a lease in the same form as this Lease, which limitations are designed to foster the charitable purposes outlined in the recitals and in the Lessee's Letter of Acknowledgment by (a) conserving the CLT subsidy; (b) limiting the inflationary effect of any appreciation in the value of the Improvements; and (c) restricting resale of the Lessee's interests to other Income-Qualified Families.

**Section 10.02. Income-Qualified Families.** An "Income-Qualified Family" shall mean a family whose income does not exceed 80% of the area median gross income, adjusted for family size. Family income shall be determined in a manner consistent with determinations of lower-income families and area median gross income under Section 8 of the U.S. Housing Act of 1937, as amended (the "Section 8 Program"). If the Section 8 Program is terminated, determinations under a comparable federal or State of Nebraska program identified by CLT shall be used; if CLT does not designate a comparable program, then determinations shall continue to be made under the Section 8 Program regulations as in effect immediately before termination.

**Section 10.03. Transfers to Income-Qualified Families.** The Lessee may sell, transfer or otherwise dispose of its interest in the Land and the Improvements only to members of an Income-Qualified Family, as defined above. However, such transfers shall be subject to CLT's review and purchase option rights set forth in this Article X and subject to the transferee entering into a lease with CLT in the same form as this Lease. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below or in violation of such price limitations, 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 under Section 10.04 below in accordance with the terms of this Lease, shall be null and void.

**Section 10.04. Transfer to Lessee's Heirs.** Upon receipt of notice from the executor of the decedent's estate given within 90 days of the death of the Lessee, CLT shall, unless for good cause shown, consent to a transfer of the Improvements to, and an assumption of this Lease by, one or more of the following possible heirs of the Lessee:

- (a) the spouse of the Lessee;
- (b) the child or children of the Lessee; or
- (c) member(s) of the Lessee's [household] who have resided upon the Land for at least one year prior to the Lessee's death.

Any other person or persons who are heirs, legatees or devisees of the Lessee must demonstrate to CLT's reasonable satisfaction that they meet the definition of Income-Qualified Families in Section 10.02 above, and if any such person is unable to do so, then such person shall not be entitled to possession of the Land in accordance with the provisions of this Lease, and CLT shall be entitled to exercise its repurchase right as provided in this Article X.

**Section 10.05. Notice to CLT.**

(a) ***If Prospective Buyer Is Known.*** 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, in each event that the Lessee contemplates a transfer of its interest in the Land as set forth in this Lease, together with a sale, transfer or disposition of the Improvements to a particular third party, then not less than 60 days prior to the contemplated closing thereof the Lessee shall give CLT notice of the proposed transfer substantially in the form of Exhibit G. Such notice shall include evidence that the purchase price does not exceed the Purchase Option Price, together with the following or comparable items: (i) the tax return of the buyer for the immediately preceding year; (ii) a current verification of the buyer's employment; (iii) the pay stubs of the buyer for the three months immediately preceding the month in which notice is given to CLT; and (iv) a Letter of Acknowledgment from the buyer and a Declaration of the buyer's legal counsel in form and substance similar to that of Exhibits B and C, respectively.

No assignment, sale, transfer or other disposition shall be effective unless and until CLT confirms in writing within 45 days of receipt of such notice and accompanying documentation that such assignee or buyer is an Income-Qualified Family and that the purchase price does not exceed the Purchase Price Option. If CLT fails to respond in writing within 45 days of its receipt of such notice, such failure on the part of CLT shall be deemed to constitute a denial of such status.

(b) ***If Prospective Buyer Is Not Known.*** If the Lessee intends to offer the Improvements for sale but has no specific person intended or committed to purchase the Improvements, then the Lessee shall give CLT notice containing a detailed listing of the

terms and conditions of such intended sale. Within 45 days of CLT's receipt of such notice, CLT shall either:

(i) exercise its option to purchase on the terms and within the time period set forth in Sections 10.06 and 10.07 below;

(ii) locate an interested purchaser and obtain from such purchaser a binding commitment to purchase from the Lessee; or

(iii) notify the Lessee that the Lessee is free to sell the Improvements and assign its interest in this Lease in the open market to any qualified purchaser at not more than the then applicable Purchase Option Price (as defined in Section 10.08 below).

(c) **New Lease.** Upon a sale of the Improvements to a buyer in accordance with this Section 10.05, CLT shall enter into a new lease of the Land with the buyer upon all the terms and provisions contained in this Lease.

**Section 10.06. CLT'S Option To Purchase.** Upon receipt of any notice given in accordance with Section 10.05 above (an "Intent to Sell Notice"), CLT shall have the option to purchase the Improvements at the Purchase Option Price set forth in Section 10.08 below. Such price is designed to further the goals and purposes set forth in this Lease by helping to preserve the affordability of the Improvements to succeeding Income-Qualified Families while taking fair account of the investment of labor and capital by the Lessee.

**Section 10.07. Period for Exercise.** If CLT elects to exercise the purchase option set forth in Section 10.06 above, CLT shall:

(a) notify the Lessee of its election to purchase within 45 days of the receipt of the Intent to Sell Notice; and

(b) exercise the foregoing option to purchase within 60 days of CLT's notice of election to purchase or its option will expire. CLT's notice of election shall include CLT's determination of the Purchase Option Price.

**Section 10.08. Purchase Option Price.** The Purchase Option Price (the "POP" or "Purchase Price Option") shall be equal to<sup>14</sup> the lesser of (a) the current appraisal value of the Improvements (as determined below) or (b) the sum of (i) the Lessee's Purchase Price as stipulated below, plus (ii) 25% of the increase in market value of the Improvements (without regard to the market value of the Land), if any, calculated in the manner described below, [plus (iii) 75% of the aggregate Stipulated Alteration Values designated pursuant to Section 7.03].

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<sup>14</sup> This is just one example of a formula that can be used to determine the Purchase Price Option. CLT should tailor this provision to best accomplish its goals, taking into consideration its own market conditions. A useful discussion of CLT's options can be found in: "A Survey of Nationwide Community Land Trust Resale Formulas and Ground Leases: A Report Prepared for the Madison Area Community Land Trust" (April 2002).

The parties agree that the Lessee's Purchase Price for the Improvements existing on the Land as of the commencement of the term of this Lease is \_\_\_\_\_. For purposes of calculating the POP, the "increase in market value of the Improvements" shall be determined by subtracting the amount of the appraised value of the Improvements at the time of the Lessee's purchase (which amount is \_\_\_\_\_, as documented by the appraiser's report attached as Exhibit H) from the amount of the appraised value of the Improvements at the time of the Lessee's Intent to Sell Notice, to be determined as provided below.

At the time of the giving of the Lessee's Intent to Sell Notice, the Lessee shall submit to CLT, at the Lessee's expense, an appraisal (the "Appraisal") of the Improvements by a qualified appraiser. Within 10 days of receipt of the Appraisal from the Lessee, CLT shall either (a) accept the Appraisal as accurately representing the market value of the Improvements for purposes of calculating the POP, or (b) commission a second appraisal by a qualified appraiser, at CLT's expense, and submit a copy of this second appraiser's report to the Lessee within 45 days of the giving of Intent to Sell Notice. If a second appraisal is commissioned and results in an appraised value which is not less than 90% or more than 110% of the amount of the first appraisal, the amount to be used in determining the "increase in market value of the Improvements" shall be the average of the two appraised values. If the amount of the second appraisal is more than 10% greater or less than the first, the two appraisers shall then select a third qualified appraiser, who shall choose the one of the two prior appraisal amounts that more closely represents the market value of the Improvements as of the date of the Notice of Intent to Sell. The cost of the third appraiser shall be shared equally by CLT and the Lessee.

**Section 10.09. CLT'S Power of Attorney To Conduct Sale.** In the event CLT does not exercise its option to purchase as set forth above and the Lessee (a) is not then residing in the Improvements, and (b) continues to hold the Improvements out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of giving of the Intent to Sell Notice, the Lessee hereby appoints CLT its attorney in fact to seek a buyer, negotiate a reasonable price which furthers the goals set forth in this Lease, sell the Improvements, satisfy liens on the Improvements and distribute proceeds of the sale, minus CLT's costs of sale and reletting and any other sums owed CLT by the Lessee, in accordance with the provisions of Section 10.08 above.

**Section 10.10. Lease Termination on Purchase.** This Lease shall terminate upon conveyance of the Improvements to CLT.

## ARTICLE XI

### ASSIGNMENT AND SUBLEASE

Except as otherwise provided in Article VIII regarding Permitted Mortgages and Article X regarding transfers, and below in this Article, the Lessee shall not assign, sublease, sell or otherwise convey any of the Lessee's rights under this Lease without the prior written consent of CLT. The Lessee agrees that CLT shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth in this 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 terms and provisions of this Lease;

(b) in the case of a sublease, the rental or occupancy fee charged the sublessee shall not be more than that amount charged the Lessee by CLT, 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 Article X of this Lease.

Any provision of this Lease to the contrary notwithstanding, this 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 CLT's consent.

The execution and delivery of any Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Mortgagee be deemed an assignee or transferee of this 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 this Lease.

Any assignment of CLT's interest shall be governed by the provisions of Section 3.03 of this Lease.

## ARTICLE XII

### DEFAULT

**Section 12.01. Events of Default.** It shall be an Event of Default if:

(a) ***Monetary Default.*** The Lessee shall fail to pay the Monthly Rent or any other charge or payment for which the Lessee is responsible under this Lease within 30 days after CLT has sent to the Lessee notice of such failure to pay, and (where a recorded Permitted Mortgage is then in effect) the specified payment(s) is(are) not paid by the Permitted Mortgagee within 30 days after a subsequent notice from CLT to the Permitted Mortgagee of the Lessee's failure to make the payment(s) within the initial 30-day grace period;

(b) ***Nonmonetary Default.*** The Lessee shall fail to perform or observe any other term or condition of this Lease and the failure is not cured by the Lessee within 30 days after notice of the failure from CLT to the Lessee, and (where a recorded Permitted Mortgage is then in effect) the failure is not cured by the Permitted Mortgagee within 60 days after a subsequent notice from CLT to the Permitted Mortgagee of the

Lessee's failure to perform or observe within the initial 30-day grace period. However, in the case where the Lessee or Permitted Mortgagee has commenced to cure the failure within the appropriate period and is continuing such cure with all due diligence but cannot by the exercise of due diligence cure the failure within such period, the time to cure the failure shall be extended for such additional period as may be reasonably required under the circumstances to complete such cure; or

(c) ***Default Resulting From Judicial Process or Insolvency.*** Any interest or estate of the Lessee in the Land shall be taken on execution or by other process of law, or if the Lessee shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of the Lessee for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of the Lessee's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of the Lessee under any provisions of the Bankruptcy Act now or hereafter enacted, or if the Lessee shall file a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts and the Lessee fails to vacate or stay any of the foregoing within 30 days after CLT has sent to the Lessee notice of such default.

Upon occurrence of an Event of Default, CLT may immediately or at any time thereafter terminate this Lease, initiate summary proceedings against the Lessee, or both, and CLT shall have all other rights and remedies provided by Nebraska law. If this Lease is terminated by CLT or if CLT reenters the Land pursuant to an Event of Default, the Lessee agrees to pay and be liable for any unpaid Rent, damages which may be due or sustained prior to or in connection with such termination or reentry, and all reasonable costs, fees and expenses, including, without limitation, reasonable attorneys' fees, incurred by CLT in pursuit of its remedies under this Lease. Any of the Lessee's property that remains at the Land after termination of this Lease or termination of the Lessee's right to possession of the Land may be handled, removed or stored by CLT at the risk, cost and expense of the Lessee, and in no event or circumstance shall CLT be responsible for the value, preservation or safekeeping of such property. The Lessee shall pay to CLT, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in CLT's possession or under CLT's control. Any such property of the Lessee not retaken from storage by the Lessee within 30 days after the end of the Lease term, however terminated, shall, at CLT's option, be conclusively presumed to have been conveyed by the Lessee to CLT, without the need for a separate bill of sale and without further payment or credit by CLT to the Lessee.

#### **Section 12.02. CLT'S Default.**

(a) If CLT shall fail to pay property taxes, assessments or other land use charges that CLT is obligated to pay by the last date permitted for such payments before delinquency and after at least 30 days have elapsed following CLT's receipt of a notice of default from the Lessee or Permitted Mortgagee, the Lessee or Permitted Mortgagee may pay the unpaid taxes or assessments and all sums so paid shall be credited against the installment(s) of Monthly Rent next due.

(b) CLT shall in no event be in default in the performance of any of its obligations under this Lease unless and until CLT shall have failed to perform such obligations within 60 days, or such additional time as is reasonably required to correct any default, after notice by the Lessee to CLT properly specifying wherein CLT has failed to perform any such obligation.

**ARTICLE XIII**

**GENERAL PROVISIONS**

**Section 13.01. Lessee’s Membership In CLT.** [The Lessee under this Lease shall be entitled to membership in CLT as a Lessee Member, so long as the Lessee remains a leaseholder of CLT under this Lease.]<sup>15</sup>

**Section 13.02. Right of First Refusal in Lieu of Option.** If the provisions of the option set forth in Article X shall be terminated, or for any reason become unenforceable, CLT 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. Such right shall be as specified in Exhibit D of this Lease. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

**Section 13.03. Notices.** All notices, requests, demands and other communications which are required or permitted to be given under this Lease will be in writing and will be deemed to have been duly given (a) upon receipt if delivered in person, or (b) within three business days if mailed, first class certified, registered or express mail, return receipt requested and postage prepaid, or (c) the following business day if sent by recognized overnight courier, with proof of delivery requested and charges prepaid, to:

CLT: [Community Land Trust Corporation]

\_\_\_\_\_

\_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

the Lessee:

[John and Jane Doe]

\_\_\_\_\_

\_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

or to such other address as a party may specify by written notice to the other party.

<sup>15</sup> This provision needs to be coordinated with the organizational structure of CLT.

**Section 13.04. Severability and Duration.** If any Article, Section, paragraph, subparagraph or clause of this Lease shall be unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other Article, Section, paragraph, subparagraph or clause, or give rise to any cause of action of either party to this Lease against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. The intention of the parties is that their respective options to purchase and all other rights and options under this Lease shall continue in full force and effect for the duration of the term of this Lease and any renewal thereof, and such options and other rights shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting its duration, the time period for the exercise of such option or right shall be construed to expire within 90 years after its creation.<sup>16</sup>

**Section 13.05. Waiver.** CLT's failure to exercise any remedy available to it, or its failure to take action with respect to, any breach of any term, covenant, condition, provision, restriction or reservation contained in this Lease, shall not be deemed to be a waiver of such term, covenant, condition, provision, restriction or reservation or subsequent breach of the same, or of any other term, covenant, condition, provision, restriction or reservation herein contained. CLT may grant waivers in the terms of this Lease, but any such waiver must be in writing and signed by CLT before being effective.

The subsequent acceptance of Monthly Rent payments under this Lease by CLT shall not be deemed to be a waiver of any preceding breach by the Lessee of any term, covenant, condition, provision, restriction or reservation of this Lease, other than the failure of the Lessee to pay the particular Monthly Rent so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Monthly Rent payment.

**Section 13.06. CLT'S Right To Prosecute or Defend.** CLT shall have the right, but shall be under no duty or obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate or necessary to the protection of its title to, and the Lessee's occupancy, use and possession of or interest in, the Land. Whenever requested by CLT, the Lessee shall give CLT all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses or prosecuting or defending such action or proceeding.

**Section 13.07. Construction.** Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

**Section 13.08. Captions and Table of Contents.** The captions and table of contents appearing in this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms, covenants, conditions, provisions, restrictions or reservations of this Lease.

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<sup>16</sup> It is possible that certain rights might be invalidated by the rule against perpetuities, which provides that unvested property interests are invalid unless either of the following tests is met: "(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive. (b) The interest either vests or terminates within 90 years after its creation." So, this provision was included to provide additional assurance that this will not be a problem.

**Section 13.09. Exhibits.** The exhibits attached to this Lease, Exhibits A through J, inclusive, are, by their reference, incorporated in and made a part of this Lease.

**Section 13.10. Parties Bound.** This Lease sets forth the entire agreement between the parties with respect to the leasing of the Land; it is binding upon and inures to the benefit of the parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by the parties to this Lease or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

**Section 13.11. Governing Law.** This Lease shall be interpreted in accordance with and governed by the laws of the State of Nebraska.

**Section 13.12. Recording.** The parties agree, as an alternative to recording this Lease, to execute a Notice of Lease or Short Form Lease in form recordable and complying with applicable law and reasonably satisfactory to CLT's attorneys. In no event shall such document set forth the rent or other charges payable by the Lessee under this Lease, and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease and is not intended to vary the terms and conditions of this Lease.

**Section 13.13. Estoppel Certificate.** CLT shall, from time to time, within 10 days of receipt of written notice from a Permitted Mortgagee, certify by written instrument duly executed and acknowledged, to a Permitted Mortgagee this Lease has not been amended, this Lease is in full force and effect, and neither party is in default thereunder except as stated, and shall certify as to the existence of any offsets, counterclaims or defenses on the part of the Lessee.

**Section 13.14. Counterparts.** This Lease is executed in two counterparts, each of which shall constitute one and the same instrument.

**Section 13.15. Certificates of CLT and Lessee.** Either party shall, at any time and from time to time, upon not less than 20 days' prior notice from the other party, execute and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the Monthly Rent and other charges have been paid in advance, and stating whether or not, to the best knowledge of the signer of such statement, the other party is in default in observing or performing any covenant or agreement contained in this Lease and, if there be a default, specifying each such default, it being intended that any such statement delivered pursuant to this Section 13.15 may be relied upon by the other party or any purchaser, assignee, subtenant or mortgagee of its estate.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first written above.

CLT:

[COMMUNITY LAND TRUST  
CORPORATION]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

LESSEE:

\_\_\_\_\_  
[Jane Doe]

\_\_\_\_\_  
[John Doe]

SAMPLE

## EXHIBIT J

### (FNMA RIDER)<sup>17</sup> UNIFORM COMMUNITY LAND TRUST GROUND LEASE RIDER

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (this “Rider”) is made this \_\_\_\_ day of \_\_\_\_\_ and is incorporated into and shall be deemed to amend and supplement the community land trust Ground Lease dated as of \_\_\_\_\_ by and between \_\_\_\_\_, as lessor (the “Lessor”), and \_\_\_\_\_, as lessee (the “Lessee”) (the “CLT Ground Lease”). The CLT Ground Lease covers the leased premises located at \_\_\_\_\_ (the “Leased Premises”), as further described therein. The CLT Ground Lease, as amended by this Rider, shall hereafter be referred to as the “Lease,” unless otherwise indicated.

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to secure Fannie Mae financing in the form of a mortgage or deed of trust given this \_\_\_\_ day of \_\_\_\_\_ by the Lessee to \_\_\_\_\_ (the “Specified Mortgage”). The Specified Mortgage is recognized by the Lessor as a “Permitted Mortgage” (or as such concept is otherwise defined) under the CLT Ground Lease, and the holder of the Specified Mortgage (the “Specified Mortgagee”) is recognized as a “Permitted Mortgagee” (or as such concept is otherwise defined) under the CLT Ground Lease.

**Additional Covenants.** Notwithstanding anything to the contrary contained in the CLT Ground Lease, and in addition to the covenants and agreements made in the CLT Ground Lease, the Lessor and the Lessee further covenant and agree, so long (but only so long) as the Specified Mortgagee, its successors and assigns shall have an interest in the Leased Premises, as a holder of the Specified Mortgage or as an owner of the Lessee’s interest pursuant to any sale after or in lieu of foreclosure, the following provisions shall apply to the CLT Ground Lease as modifications thereof:

**Section 1. No Assignment or Transfer.** The making of the Specified Mortgage shall not be deemed to constitute an assignment or transfer of the Lease or leasehold estate so as to require the Specified Mortgagee to assume the performance of any of the Lessee’s obligations under the Lease.

**Section 2. Status of the Fee Estate.** The Lessor represents and warrants that there is no existing mortgage on the fee estate, and so long as the Specified Mortgage shall remain on the Leased Premises, the Lessor and the Lessee shall not subordinate the Lease to any mortgage or lien that may hereafter be placed on the fee estate. Notwithstanding the foregoing, a state or local government entity (the “Government Entity”) may hold a prior recorded interest (represented by recorded covenants, a mortgage or deed of trust or other lien) on the fee estate if the Government Entity has entered into an agreement (which agreement has been approved in writing by the Specified Mortgagee) that provides, among other conditions, in the event the

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<sup>17</sup> Form provided with the caveat that it may not be current and so should be confirmed with local FNMA representatives.

Government Entity (including its successors and assigns) succeeds to the interest of the Lessor under the Lease by any remedy available to the Government Entity by law or pursuant to its lien, the Government Entity and the Lessee agree to recognize one another under all the terms of the Lease and this Rider. Such recognition must include, but is not limited to, the provisions of this Rider whereby all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b) limitation on assignment of, or sublease under, the Lease, (c) the price at which the leasehold estate may be transferred, and (d) the income of successive transferees, assignees or successors shall, in the event of foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. The Specified Mortgage shall constitute a first leasehold lien on the Leased Premises and shall have priority over the Lessor's reversionary interest. If the Lessor conveys title to the fee estate while the Specified Mortgage remains on the Leased Premises, the Lease shall remain in effect with the same priority thereto.

**Section 3. Termination, Forfeiture and Modification of Lease.** There shall be no termination, forfeiture or modification of the Lease, except as provided in this Rider, without the prior written consent of the Specified Mortgagee. The Lessor and the Lessee shall amend the Lease from time to time as reasonably requested by the Specified Mortgagee, as long as the requested changes do not change the periodic fee, charge or payment due the Lessor for the rights accorded the Lessee under the Lease (the "Ground Lease Fee") and do not materially or adversely affect the rights of the Lessor or the Lessee or their respective interests in the Leased Premises. An adjustment of the Ground Lease Fee may be made by the Lessor as provided in the Lease, without prior approval of the Specified Mortgagee, so long as written notice has been delivered to the Specified Mortgagee at least 60 days prior to the effective date of such adjustment with respect to adjustments other than those (a) that were scheduled at the time the Specified Mortgage was given, and (b) reflecting routine, periodic updates to variable expenses such as property taxes and liability insurance premiums; provided, however, that the Specified Mortgagee shall have the right to arbitrate (as provided herein) any dispute as to an adjustment of the Ground Lease Fee.

**Section 4. New Lease.** In the event the Lessee's interest in the Lease has been terminated, forfeited or surrendered as provided in the Lease, and the Specified Mortgage remains outstanding, a new Lease shall automatically be created between the Lessor and the Specified Mortgagee, which Lease shall be for the remainder of the term of the Lease, with the same priority thereto, and shall be subject to the same terms of the Lease as would be applicable pursuant to Section 5(a) below where the Specified Mortgagee had accelerated its note, foreclosed on the Specified Mortgage, taken an assignment in lieu of foreclosure or exercised its other remedies for default.

**Section 5. Mortgage Default or Foreclosure.** Subject to the following, upon the occurrence of an event of default under the Specified Mortgage (as determined by the Specified Mortgagee—an "Event of Default"), and without the consent of the Lessor, the Specified Mortgagee shall be permitted to accelerate its note, foreclose on the Specified Mortgage, take an assignment in lieu of foreclosure or exercise its other remedies for default. Further:

(a) Upon the occurrence of an Event of Default under the Specified Mortgage, the Lessee shall immediately notify the Lessor of such Event of Default and shall submit to the Lessor copies of all notices the Lessee received from the Specified Mortgagee relating thereto. The Specified Mortgagee and the Lessor shall endeavor to communicate and cooperate in efforts to deal with the circumstances of the Event of Default and the actions the parties may take relating thereto; provided, however, the Specified Mortgagee shall have no obligation to give formal legal notice of the Event of Default to the Lessor.

(b) The Lessee and the Specified Mortgagee agree that the Lessor shall have the right, but not the obligation, to cure an Event of Default in the Lessee's name and on the Lessee's behalf. If such cure is not effective and continuing, nothing herein shall be construed to prevent or delay the Specified Mortgagee from its pursuit of foreclosure and any other available remedies. The Lessee shall be responsible to the Lessor for all payments made, and expenses incurred, by the Lessor in curing such default.

(c) Should the Lessor not choose to cure an Event of Default as specified above, the Lessor shall nevertheless have the option to purchase the leasehold estate from the Specified Mortgagee for the full amount owing to the Specified Mortgagee under the Specified Mortgage as of the date of closing of the purchase, upon written notice given by the Specified Mortgagee (the "Mortgagee Option Notice") not later than 60 days following acquisition of title to the leasehold estate by the Specified Mortgagee by foreclosure or by an assignment in lieu of foreclosure; provided, however, the Specified Mortgagee may give such written notice following the occurrence of an Event of Default under the Specified Mortgage and prior to the completion of foreclosure proceedings. If the Lessor elects to exercise such option to purchase, the Lessor shall give written notice to the Specified Mortgagee of the Lessor's intent to purchase the leasehold estate (the "Lessor Option Notice") within 45 days following the Specified Mortgagee's giving of the Mortgagee Option Notice; provided, however, at the option of the Lessor, in the event the Mortgagee Option Notice is given prior to the completion of foreclosure proceedings by the Specified Mortgagee, the Lessor shall, within such 45-day period, be able to give a written notice to the Specified Mortgagee that it will delay giving the Lessor Option Notice until a date that is not later than 30 days following written notice from the Specified Mortgagee of its acquisition of title to the leasehold estate.

The Lessor shall complete the purchase of the leasehold estate within 60 days of giving the Lessor Option Notice. If the Lessor does not complete the purchase within the allotted 60 days, the Specified Mortgagee shall be free to sell the leasehold estate to another person or entity. Further, if the Lessor does not complete the purchase within the allotted 60 days, the Lessor agrees to pay to the Specified Mortgagee its costs of holding the property from the date of the Lessor Option Notice until the expiration of such 60-day period. If the Lessor does not purchase the leasehold estate as described herein, the leasehold estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.

(d) In the event of foreclosure or assignment in lieu of foreclosure which results in the conveyance of the leasehold estate from the Lessee, any adjustment of the

Ground Lease Fee to reflect then current fair market rental value as provided in the Lease shall be subject to the approval of the Specified Mortgagee. The Specified Mortgagee and the Lessor shall attempt to resolve any dispute concerning such adjustment of the Ground Lease Fee, through the normal interaction of the parties, or through formal mediation, as the case may warrant. If the dispute remains unresolved, the Specified Mortgagee and the Lessor shall submit the dispute as to the fair market rental value to binding arbitration.

(e) In the event the Specified Mortgagee acquires title to the leasehold estate through foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, all provisions of the Lease regarding (i) occupancy of the Leased Premises as a primary residence by the Lessee, (ii) any limitation on the assignment of, or sublease under, the Lease, (iii) any obligation to target certain populations in marketing the leasehold estate to potential transferees, (iv) the price at which the leasehold estate may be transferred, and (v) the income of successive transferees, and their successors and assigns, shall be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. The foregoing sentence shall not be construed to invalidate other Lease provisions regarding permitted use of the Leased Premises. Any transfer or assignment of the property encumbered by the Specified Mortgage as provided for in this paragraph shall be deemed a permitted sale, transfer or assignment of the Lease and the leasehold estate. Further, in such event, the leasehold estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.

**Section 6. Lease Default.** There shall be no forfeiture or termination of the Lease except for (a) the nonpayment of amounts due under the Lease, and (b) violation of one or more provisions of the Lease addressing the following: (i) prohibition or restrictions on the sale or transfer of the Lessee's interest (however, nonsale transfers resulting from marriage, divorce, death of a spouse, or a transfer otherwise permitted by applicable federal law may not constitute a basis for default under the Lease, though the Lessor may require such transferee to agree to assume the transferor's obligations under the Lease), and (ii) requirement that the Lessee occupy the Leased Premises as primary residence; provided, however, such forfeiture or termination shall be subject to the Specified Mortgagee's right to cure a monetary default or otherwise foreclose or take an assignment of the Leasehold estate in lieu of foreclosure with respect to the Lessee's monetary or nonmonetary default. Notwithstanding the foregoing, nothing herein shall be construed to require the Specified Mortgagee to cure any nonmonetary default. Further, the Specified Mortgagee shall become subrogated to any and all rights of the Lessee with respect to such curing of a default. If the Lessee's default shall be cured as provided in the Lease, and the Specified Mortgagee shall discontinue its foreclosure or assignment in lieu of foreclosure proceedings, the Lease shall continue in full force and effect as if the Lessee had not defaulted. A default by the Lessee under the Lease shall constitute a default under the Specified Mortgage.

**Section 7. Lease Default Notice.** Notwithstanding the notice requirements provided in the Lease, no default notice by the Lessor shall be deemed to have been given unless and until a copy thereof shall have been so given to the Specified Mortgagee.

**Section 8. Insurance.** All insurance policies covering the Improvements shall by endorsement name the Specified Mortgagee as an additional insured and loss payee and provide the Specified Mortgagee with 30 days' cancellation notice.

**Section 9. Casualty and Condemnation.** If the Leased Premises are destroyed or taken to such an extent that the Lease is to be terminated, the insurance proceeds or condemnation award, as the case may be, shall be applied first in an amount sufficient to satisfy the Specified Mortgage. Upon the termination of the Lease as a result of a partial destruction or a condemnation of less than the entire Leased Premises, the total insurance proceeds or condemnation award, as the case may be, shall be paid to an appointed trustee, who shall first apply such insurance proceeds or condemnation award in accordance with the Specified Mortgage for restoration of the Improvements (if such trustee determines that the Improvements may reasonably be restored to a residential use consistent with the Lease), with the balance of such insurance proceeds or condemnation award to be allocated between the Lessor and the Lessee as otherwise provided in the Lease. The Specified Mortgagee shall be entitled to participate in (a) the adjustment of all casualty losses and (b) all condemnation proceedings and settlement discussions. Any insurance proceeds or condemnation award shall be applied in accordance with the Specified Mortgage. The Specified Mortgagee shall also be entitled to participate in the adjustment of the Ground Lease Fee as a result of a partial destruction or taking.

**Section 10. Force Majeure.** The Lessee shall not be in default where performance is delayed or prevented by "Acts of God," war, civil commotion, strikes, labor disputes or the like.

**Section 11. Easements and Alterations.** Additions to and alterations in the Improvements may be made as provided in the Lease, as long as the value of the Leased Premises and the Improvements is not diminished. The Lessor, as owner of the Leased Premises only, shall join in all easements, permits and applications necessary for such development of the Leased Premises and the Improvements as is permitted under the Lease, provided that the Lessor shall have no liability or obligation under such easement, permit or application.

**Section 12. Arbitration.** The Specified Mortgagee shall have the right to participate in any arbitration or legal proceedings between the Lessor and the Lessee. Any arbitration proceedings shall be conducted in accordance with arbitration statutes applicable in the state where the Leased Premises are located.

**Section 13. Merger.** If the estates of the Lessor and the Lessee are at any time owned by the same person, so long as the Specified Mortgagee has any interest in the security or in the Specified Mortgage, such person shall take all necessary steps to ensure that the Specified Mortgage constitutes a first lien on the combined estate.

**Section 14. Sublease.** There shall be no modification, cancellation or surrender of any subleases or prepayment of rent thereunder without the consent of the Specified Mortgagee. If the Specified Mortgagee forecloses on the Leased Premises, or takes an assignment in lieu of foreclosure, all subtenants shall attorn to such Specified Mortgagee or its assignee.

**Section 15. Estoppel Certificate.** The Lessor shall, from time to time, with 10 days' written notice from the Specified Mortgagee, certify by written instrument, duly executed and acknowledged, to such Specified Mortgagee that the Lease has not been amended, the Lease is in full force and effect, and neither party is in default thereunder and shall certify as to the existence of any offsets, counterclaims or defenses on the part of the Lessee.

**Section 16. Conflict.** In the event of a conflict between the terms and provisions of this Rider and the terms and provisions of the Lease, the terms and provisions of this Rider shall control.

BY SIGNING BELOW, the Lessor and the Lessee accept and agree to the terms and conditions of this Rider.

IN WITNESS WHEREOF, the parties have executed this Rider at \_\_\_\_\_, on the day and year first written above.

LESSOR:

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

LESSEE:

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

(Add notaries)