



# COMMUNITY LAND TRUST MANUAL

## Legal Considerations for 501(c)(3) Tax-Exempt Organizations

**AUTHORED BY**  
MICHIGAN COMMUNITY RESOURCES  
CLT LEGAL TEAM

**MADE POSSIBLE BY THE GENEROUS SUPPORT OF**  
THE MICHIGAN STATE BAR FOUNDATION  
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## DISCLAIMER

THIS GUIDE PROVIDES BASIC INFORMATION FOR NONPROFITS ABOUT LAWS AND REGULATIONS RELATED TO COMMUNITY LAND TRUSTS. THIS GUIDE IS A BRIEF PRIMER ON THE TOPIC AND SHOULD BE USED FOR INFORMATIONAL PURPOSES ONLY.

CONSULT A KNOWLEDGEABLE ATTORNEY BEFORE YOU START CONTRACTING, DRAFTING LEGAL DOCUMENTS, OR ESTABLISHING A NEW ENTITY.

THIS GUIDE IS NOT LEGAL OR FINANCIAL ADVICE. WE ENCOURAGE YOU TO DO YOUR OWN RESEARCH AND MEET WITH THE FINANCIAL AND LEGAL PROFESSIONAL OF YOUR CHOOSING PRIOR TO DEVELOPMENT OF A CLT.

IF YOUR NONPROFIT ORGANIZATION HAS A SPECIFIC QUESTION OR LEGAL NEED, PLEASE CONTACT MICHIGAN COMMUNITY RESOURCES OR CONSULT WITH YOUR ATTORNEY.

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501(c)(3) Tax-Exempt Organizations

## Acknowledgements

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Michigan Community Resources wishes to thank the members of the CLT Legal Team and their law firms for volunteering their time and expertise to the preparation of this guide.

## The Michigan State Bar Foundation

The Michigan State Bar Foundation provides leadership and grants to improve access for all to the justice system, including support for civil legal aid to the poor, law-related education, and conflict resolution. The Michigan State Bar Foundation was established in 1947 by lawyers and judges to help the legal profession meet its responsibilities to the public. Since then, the Foundation has made more than 1,817 grants totaling over \$180 million to educate the public about the importance of the rule of law, train young people in peaceful conflict resolution and assist those in need with critical civil legal services.

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## Michigan Community Resources

The mission of Michigan Community Resources is to support and empower nonprofit community-based organizations working in low-income communities, with an emphasis on community and economic development, by providing pro bono legal services and technical assistance. Originally known as Community Legal Resources, we grew from a legal service provider for nonprofits to a comprehensive support organization for low-income communities in Michigan. We provide the legal, community organizing, and urban planning skills and resources that community-based organizations and low-income communities need to revitalize and thrive.

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# CONTENTS

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- 01 INTRODUCTION
- 04 HOMEBUYER'S GUIDE TO CLTS
- 10 A PRIMER FOR LOCAL OFFICIALS
- 14 A PRIMER FOR LOCAL ASSESSORS
- 16 A PRIMER FOR FINANCIAL INSTITUTIONS
- 20 A PRIMER FOR TITLE COMPANIES
- 22 COMMERCIAL LAND USE
- 26 SAMPLE BYLAWS
- 36 SAMPLE ARTICLES OF INCORPORATION
- 40 SAMPLE GROUND LEASE
- 88 SAMPLE PURCHASE AGREEMENT







# INTRODUCTION

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A COMMUNITY LAND TRUST (CLT) IS A PRIVATE, NONPROFIT CORPORATION CREATED TO PROVIDE SECURE AFFORDABLE ACCESS TO LAND AND HOUSING FOR THE BENEFIT OF THE COMMUNITY.

Michigan Community Resources, home of Community Legal Resources (CLR), is proud to present this updated version of the Community Land Trusts Manual (CLT Manual). The original CLT Manual was published by CLR in 2006 after the year-long Community Land Trusts Project which brought together a team of highly skilled volunteer attorneys and experts to develop the original versions of some of the tools found in this manual.

In late 2016, through a grant from the Michigan State Bar Foundation, CLR brought together a new team of attorneys and experts – some from the 2016 project and some new additions – to update the manual to reflect changes in law and procedure during the 10 year life of the original CLT Manual.

A community land trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to land and housing for people who are otherwise priced out of the housing market.

CLTs are unique in that they treat the land and the buildings on the land differently. CLTs permanently own the land on which homes and other structures or facilities are build, while individuals own the homes (and/or structures/facilities) on the land pursuant to a long-term (usually 89 year) renewable ground lease.

CLTs involve unique real estate, taxation, and other legal strategies that must be adapted to Michigan law in order for CLTs to achieve success in the state.



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## **ADDITIONAL ASSISTANCE**

Thanks to a dedicated pool of volunteer attorneys, CLR is available to assist nonprofit organizations with many of their legal needs. Organizations with questions about any of the materials presented in this manual or other legal questions can contact Michigan Community Resources through their website, <http://www.mi-community.org>.

# HOME BUYER'S GUIDE TO COMMUNITY LAND TRUSTS

*This guide is an aid to understanding the relationship between a Community Land Trust and a homebuyer. This guide is not a legally binding document. Prospective homebuyers should carefully review the ground lease, the purchase agreement, and the other legal documents which establish the rights and obligations of the homebuyer and the Community Land Trust.*

## WHAT IS A COMMUNITY LAND TRUST?

A community land trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT enables people who would otherwise be priced out of the housing market to own a home.

CLTs are unique in that they separate ownership of land and homes. CLTs permanently own the land on which homes and other structures or facilities are built, while individuals own the home (or other structure/facility) on the land pursuant to a long-term (usually 89-year) renewable ground lease.

The ground lease entered into by every CLT homeowner requires that owners live in their homes as their primary residences. CLT homeowners and their descendants have a right to occupy and use the leased land for as long as they wish, provided that they abide by the terms of the ground lease. In exchange for an initial subsidy from the CLT that is built into the price of the home, the terms of the ground lease place some limitations on the resale of the home—preventing resale to a household that does not qualify as low- or moderate-income, and limiting the sales price to keep it affordable. The lease lays out a “resale formula” that determines the maximum allowable price that may be charged upon resale of the home. Each CLT designs its own resale formula to give homeowners a fair return for their investment, while keeping the price affordable for subsequent lower income buyers. In addition, the CLT has the right to buy back each home for an amount limited by the CLT’s resale formula.

Typically, CLTs are used in neighborhoods that are experiencing or are expected to experience gentrification. In many communities today, population growth and economic investment are driving up real estate prices so that fewer low- and moderate-income workers are able to afford to buy homes or rent in the communities where they work. Limited public funds are available to subsidize housing costs for lower income households. And the gap between the amount of subsidy needed and the amount of subsidy available for affordable housing continues to widen as housing costs soar.

According to the U.S. Census, from 1990 to 2000 the median value of owner-occupied homes increased by 97% in the State of Michigan. While housing prices have escalated, government funding for affordable housing has decreased and private funders are unable to subsidize these projects at the level previously supported by the government. While CLTs do not build equity for low-income communities as fast as conventional homeownership would, CLTs are designed to serve a population that otherwise would not have homeownership opportunities in the current conventional market. In addition, the initial investment in the affordability of the housing is preserved for future owners, thereby maximizing the utility of that investment.



CLTs are being developed in a growing number of communities—in expanding metropolitan areas from Cleveland, Ohio to Portland, Oregon; in university communities from State College, Pennsylvania, to Boulder, Colorado; and in expensive resort communities from the Florida Keys to the San Juan Islands of Washington State. In Michigan, CLTs have been formed in Traverse City, Boyne City, and Oceana County, among others.

## THE “BASICS” OF A CLT DEAL

The deal that a CLT homeowner makes with the Community Land Trust is the ability to purchase an affordable house now in exchange for giving up a portion of the future appreciation of the home when the CLT homeowner sells the home later. Here is a brief outline of the typical terms of a CLT purchase:

1. The homeowner purchases the house but not the land (which results in a lower purchase price).
2. The homeowner leases the land from the CLT.
3. The term of the lease is usually 89 years; the lease can be renewed once for another 89 years.
4. When the homeowner sells his/her house, a portion of the appreciated value stays with the land under the ground lease, so the home price is affordable for the next buyer.
5. The CLT home can be inherited by immediate family members.

## CLT HOMEOWNERSHIP

CLT homeowners have exclusive ownership of their home and enter into a ground lease with the CLT for the exclusive right to occupy the land on which their home is situated. CLT homeowners are responsible for the maintenance and upkeep of their home and its land consistent with the terms of the ground lease. Upon resale, a CLT homeowner will not receive 100% of the increase in the home's value since purchase. Under the terms of the ground lease, the CLT homeowner will receive only some portion of the CLT home's increase in value since purchase.

## THE HOME PURCHASE

CLT homeowners purchase their homes in a traditional manner.

### 1. THE OFFER TO PURCHASE

An offer to purchase is a legal document describing the CLT homebuyer's wish to purchase a CLT home. The main difference between a typical offer to purchase and a CLT offer is that the CLT homebuyer is buying the house but not the land.

### 2. FINANCING

CLT homeowners, although purchasing the CLT home at a reduced/affordable price, will almost always need to seek a loan from a commercial lender in order to buy the CLT home. CLTs make an effort to work with and educate local lenders regarding the nature of CLTs so financing will be available to potential CLT homebuyers.

### 3. THE CLOSING

The closing is where the buyer pays the purchase price and the buyer and seller

sign all the papers that ensure that the buyer legally and officially owns the house. A CLT closing is similar to other home purchase closings in many respects. The main difference is that in addition to all the loan documents and deeds, a CLT closing involves signing the CLT Ground Lease.

Upon completion of the purchase of a CLT home, the CLT homebuyer will receive and record a deed and/or bill of sale conveying the “improvements” (including, among other things, the CLT house) from the CLT to the CLT homebuyer.

## THE GROUND LEASE

At the same time that the CLT homeowner purchases the home/improvements, the CLT homeowner will enter into a ground lease between the CLT (as landlord) and the CLT homeowner (as tenant). The ground lease will typically be for a term of 89 years and be renewed by the tenant. The purpose of the ground lease is to retain the CLT’s right to constrain the resale price of the CLT home.

An outline of a standard Community Land Trust Ground Lease is provided elsewhere in this Community Land Trusts Guide. Although each local CLT may modify the standard CLT Ground Lease to meet its needs and to best serve the local community and the CLT homebuyers, the basic components of the CLT Ground Lease remain the same.

Why is the CLT Ground Lease so many pages? Eighty-nine years (the period of the lease) is a long time, so the CLT Ground Lease tries to address all the possible contingencies that could happen in that time.

## RESALE OF A CLT HOME

The applicable terms for resale or inheritance of a CLT home will be found in the Ground Lease. The basic element of a Community Land Trust’s mechanism for preserving the affordability of a CLT home is the Resale Formula. Typically, the Resale Formula limits the CLT homeowner to some percent of the gain in value of the CLT home. When the CLT homeowner wants to sell their home s/he is limited by the Resale Formula in their Ground Lease which determines the Purchase Option Price. The Resale Formula typically provides that the Purchase Option Price is equal to:

- (a) What the CLT homeowner paid for the CLT home when s/he first bought it; plus:
- (b) The discounted cost of certain improvements the homeowner made to the home through licensed contractors at the homeowner’s expense that will benefit the future owner. For example, if ten years before the date of the sale the homeowner installed a new roof with a 40 year warranty, the homeowner may recover 75% of the cost of installing the roof: and/or
- (c) Some percentage (usually between 20 - 35%, but varying widely based on community need) of the appreciation in value of the CLT home. Appreciation is determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home from the current appraised value of the CLT home at the time the CLT homeowner seeks to resell.

## CONSULTING WITH AN ATTORNEY

The CLT Ground Lease typically requires the CLT homebuyer to consult with

### EXAMPLE [Assuming CLT homeowner retains 25% of the appreciation in value of the CLT home]

- CLT homeowner paid CLT \$90,000 when it purchased the CLT home.
- At the time of purchase the CLT home was appraised at \$105,000.
- At the time CLT homeowner seeks to resell the CLT home, the appraised value is \$125,000—an appreciation in value of \$20,000.
- Twenty-five percent (25%) of \$20,000 is \$5,000.
- The homeowner spent \$10,000 on qualified improvements and is entitled to a \$5,000 credit for the remaining value of those improvements.
- The Purchase Option Price equals what the CLT homeowner originally paid (\$90,000) plus the remaining value of qualified improvements (\$5,000) plus twenty-five percent of the appreciation in value (\$5,000).

Therefore, in this example, the CLT homeowner can resell the CLT home (to either the CLT or another low-income purchaser) for the Purchase Option Price of \$100,000.

an attorney. The attorney is required to go over the ground lease with the CLT homebuyer to make sure that the CLT homebuyer is entering into the agreement with a complete understanding of the terms of the CLT Ground Lease.

## THE COMMUNITY LAND TRUST

The Community Land Trust (a nonprofit 501(c)(3) corporation) has an interest in the long-term preservation of the CLT home - both its physical structure and its affordability. The CLT is governed by a board of directors. The CLT operates consistently with its articles of incorporation (filed with the State of Michigan) and its bylaws (adopted by the CLT's members or board of directors). A CLT homeowner (or prospective CLT homebuyer) can request a copy of the CLT's bylaws.

Typically, a CLT is a membership organization where all CLT homeowners are members. In addition, members of the community are often members. The structure of the CLT will be described in the CLT's bylaws.

Meetings of the CLT board of directors are meetings of a private entity, and not subject to the Open Meetings Act, which requires government agencies to allow public attendance at meetings.

## FREQUENTLY ASKED QUESTIONS

### How much control do I give up by not owning the land beneath my house?

Ground tenants—homeowners, farm owners, or business owners—retain most of the rights and responsibilities that go with ownership. CLT control is generally limited to areas where the CLT has a long-term interest. For example, it is vital to the CLT to preserve affordability of housing units. Most leases also prohibit absentee ownership of housing because it is generally not in the community interest. Also, CLTs want to protect the condition of the land and buildings which would be left at the end of the lease term.

### Will banks and other financial institutions make loans for homes on leased land?

Yes. There are dozens of banks, housing finance agencies, and other mortgage lenders who lend to CLT homeowners. When first approached, lenders may be concerned that a CLT will inhibit their ability to foreclose in the event of a default and make it difficult to remarket the property in a timely manner. CLTs have been able to negotiate mortgage agreements that address the legitimate concerns of lenders and also protect the CLT's long-term interest in the property by allowing the CLT to step in and cure a default, when necessary, to prevent the property from being sold on the open market.

### Do CLTs pay property taxes?

Yes. Residents pay taxes on their homes as they own them and the CLT pays property taxes on the land. CLTs can qualify for exemption from federal and state income taxes, but they usually pay local real estate taxes on the land they own. The cost of these taxes is covered by lease fees paid to the CLT by those using the land. (In some cases CLTs and the homeowner may request an assessment based on the resale value of the home as determined by the CLT's resale formula rather than the market value of the property.)

### **What happens if a lessee wants to move away from the CLT?**

After giving the CLT adequate notice, a lessee may sell the improvements to an eligible buyer, transfer the lease, and move away. Since CLTs commonly retain an option to buy all improvements on CLT land, a homeowner who wishes to leave may sell his/her house to the CLT. The CLT will, in turn, sell this house and lease the land to a new person.

### **How is the resale price of a home determined?**

Each CLT has a formula that will determine the maximum amount to be paid when a homeowner sells his or her home. The formula may take into account some of the value of certain types of improvements made by the homeowner, and it may allow the price to be adjusted for inflation. Generally, the aim is to give the homeowner a fair return while limiting the price to insure the home will be affordable for the next low-income owner.

### **Isn't a mixed ownership arrangement of this sort—with buildings owned by one party and the land by another—pretty rare?**

Not as rare as you may think. The separation of land and buildings and the leasing of land to the owner of the buildings is an old, established and widely-used mechanism. Many substantial commercial buildings are on leased land, perhaps the most famous of these being Rockefeller Center in New York City. There are large areas where people own homes on leased land: Baltimore, Maryland; Davis County, California; and many other regions. It is now becoming more common for developers to establish residential projects on leased land.

### **Does the CLT ever sell its land?**

Very rarely. Once the CLT has acquired a parcel of land, its intent is to hold it indefinitely—never again allowing the land to be bought and sold as a commodity. Most CLTs structure their bylaws to require the consent of all affected leaseholders and a supermajority of the board and membership for the corporation ever to sell any of its land. There have been situations, however, when CLTs have found it necessary or prudent to sell a parcel of land—for example, exchanging land that is not appropriate for the CLT's purposes for land that is, or selling off some land to avoid losing the rest.

### **What happens to the CLT's land and lease arrangements if the CLT is dissolved?**

If a CLT is dissolved and ownership of the land is transferred, the new owner is obligated to honor the long-term lease agreements between the CLT and its leaseholders. Should the land ever be offered to a non-charitable buyer, the resident has the right of first refusal to buy the land.

## How does CLT home ownership compare with other home ownership?

Land trust homeownership is essentially the same as other homeownership except that the land that CLT homes are located on is owned by the CLT, which is usually a membership organization.

### The Same

- The homeowner secures a loan from a lender.
- The homeowner accumulates equity.
- The homeowner may will the home to heirs (both the home and the lease may be inherited).
- The homeowner may make alterations and improvements at the homeowner's own expense.
- The homeowner receives federal mortgage tax deduction.
- The homeowner may enjoy the types of rights that renters are frequently precluded from having pets, planting a garden, repainting the house, etc.
- The homeowner repairs and maintains the home.

### Different

- The homeowner (and all subsequent buyers) must meet income qualifications at the time of purchase.
- The purchase price is lower, usually 20-30% below the market rate, because the land is not included.
- The homeowner will accumulate a restricted amount of equity from ownership of the home.
- The CLT owns the land, and the homeowner leases the land from the CLT for a nominal fee, plus real estate taxes on the land.
- The homeowner agrees to live in the home as a primary residence most of the time.
- The homeowner will sell the CLT home at an affordable price, helping the next family of modest means to become homeowners.

## How are CLTs different from conservation land trusts?

They are similar in many ways. Both CLTs and conservation land trusts control land use for the benefit of people in the future as well as the present, but they tend to be concerned with different types and uses of land. Conservation trusts are primarily concerned with controlling rights to undeveloped land in order to preserve open space, ecologically fragile or unique environments, wilderness, or productive forest or agricultural land. CLTs, on the other hand, are primarily concerned with acquiring developed or developable land for specific community uses—particularly residential use. These concerns are not mutually exclusive, and some land trusts combine these purposes, preserving some land in a natural state while leasing other land for development. All land trusts have an ethic of land stewardship; they try to assure that land will be developed and used to benefit stated community goals.

# COMMUNITY LAND TRUST: A PRIMER FOR LOCAL OFFICIALS

A Community Land Trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to homeownership for people who might otherwise be priced out of the housing market and helps stabilize communities facing gentrification or high foreclosure rates. The following primer provides information for local officials on the laws and regulations that apply to property in a CLT. These laws and regulations change the way that property is assessed for property tax purposes. However, other than land use restrictions that affect tax assessments, the policies in a CLT don't necessarily affect the applicability or enforceability of laws that govern land use and property ownership.

## LENDER ISSUES FOR CONSIDERATION

### ZONING

The development of CLT housing does not differ from the development of any other type of affordable or market-rate housing. Therefore, all applicable local zoning laws and regulations will apply. Some statutes that may apply to CLTs, depending on the type of housing provided or where housing is located within a municipality, are as follows:

- Federal Fair Housing Act, 42 U.S.C. 3604
- The Michigan Condominium Act, MCL 559.101 et. seq.
- NREPA environmental protection for wetlands, MCL 324.101 et. seq.
- Local Historic Districts Act, MCL 399.202.

### BUILDING PERMITS AND COMPLIANCE WITH MUNICIPAL CODES

The acquisition, development, and sale of CLT housing does not differ from the acquisition, development, and sale of any other type of affordable or market rate housing. Therefore, all applicable building permits and compliance with local building, safety, and other codes and regulations will apply. If the CLT is located in a city, city officials may exercise certain powers over areas in a CLT if they are blighted under the Home Rule City Act, MCL 117.4q, 117.4r. If the homes in a CLT are condominiums or mobile homes, additional land use controls may apply under MCL 559.101 et seq., esp. MCL 559.153, MCL 559.146 and the Mobile Home Commission Act (MHCA), MCL 125.2301 et seq.

### LAND DIVISION ACT

The nature of a CLT housing development does not exempt a development from compliance with the Land Division Act, MCL 560.101 et seq. Under the Land Division Act, local officials may "require copies of agreements, covenants or other documents showing the manner in which areas to be reserved for the common use of the residents of the subdivision are to be maintained." MCL 560.258. However, if the CLT housing consists of condominiums or mobile homes, the Land Division Act does not apply.

### TRANSFER OF PROPERTY/RECORDING OF DEEDS

The CLT will remain the owner of the land occupied by the CLT home. At the time of the initial sale to the CLT homeowner, the CLT will issue a warranty deed for



the improvements (i.e., the home) and will execute a long term (usually 89 years), renewable ground lease with the CLT homeowner for the land on which the CLT home sits. The recorded warranty deed for the improvements will reference the ground lease and a “Memorandum of Lease” will be recorded along with the warranty deed to place the interest of the homeowner in the land of record. Among other things, this makes the homeowner’s interest financeable and insurable. Deeded restrictions and covenants are firmly enforced in Michigan law. They will override a later enacted zoning ordinance application, even if the land is rendered valueless. See, e.g., *City of Huntington Woods v City of Detroit*, 279 Mich App 603 (2008).

## TAXATION

Community land trust properties are issued two tax bills. The first is to the homeowner for the value of the improvements, and the second is to the CLT for the value of the land. See *Wycoff v. Gavriloff Motors, Inc.*, 362 Mich. 582, 585, 107 N.W.2d 820, 822 (1961). The CLT may, via the ground lease, provide that the CLT homeowner will pay the bill for the taxes on the property. The tax levied on the improvements should reflect the restricted market value of the improvements given the restrictions on resale price imposed by the CLT in the CLT ground lease. Similarly, the tax levied on the land should reflect the limitations on use or resale of the land imposed by the ground lease and the substantially below-market ground lease rentals.

A sale of the improvements will be a “transfer” of that property for purposes of Proposal A. Mich. Const. 1963 art. 9, §3. However, because of the restrictions on transfer that apply to the property, the increase in taxable value resulting from the transfer should be limited in accordance with the resale formula in the ground lease. See *Lochmoor Club v. City of Grosse Pointe Woods*, 10 Mich. App. 394, (1968). The taxable value of the land will not be affected since the CLT continues as the owner.

## FINANCING

CLT homeowners, although purchasing the CLT home at a reduced price, will almost always need to seek a loan from a commercial lender in order to buy the CLT home. CLTs make an effort to work with and educate local lenders regarding the nature of CLTs so financing will be available to potential CLT homebuyers.

Because all CLT programs have the purpose of promoting, or at least preserving, the availability of affordable housing, federally regulated depository institutions can expect to receive Community Reinvestment Act (CRA) credit for participation in, and financial support of, these programs.

CLT-related mortgages are increasingly accepted in secondary markets. State housing agencies are often willing to purchase them, and Federal National Mortgage Association (FNMA), commonly called Fannie Mae, offers a CLT program. The increasing acceptability of CLTs is demonstrated by the fact that Federal Housing Administration (FHA) insurance is available for CLT purchase mortgages, and financing has also become available under the Rural Services 502 program. Of course, financial institutions may hold the mortgages, instead of selling a CLT mortgage.

When first approached, lenders may be concerned that a CLT will inhibit their ability to foreclose in the event of a default and make it difficult to remarket the property in a timely manner. CLTs have been able to negotiate mortgage agreements that address the legitimate concerns of lenders and also protect the CLT’s long-term interest in the property by allowing the CLT to step in and cure a default, when necessary, to prevent the property from being sold on the open market without price restrictions to retain the home’s affordability. Loan workout regulations such as the Making Home Affordable Program and Regulation Z apply in the same way to CLT properties.

## TITLE

The instruments used to perform the sale of CLT property are a ground lease of the land and a deed for the improvement on the land (generally, the house/structures). What will be recorded is usually a memorandum of ground lease and a warranty deed, both extending from the CLT to the CLT homeowner. The memorandum will typically set forth the restrictions on title including a reservation of mineral rights, the right to purchase retained by the CLT, the duration of the lease, and use and transfer restrictions.

As a consequence of the transaction, title to the land will continue to be held in the CLT, subject to the lessee-homeowner's leasehold interest in that land. Title to the improvements will vest in the homeowner. The homeowner's leasehold interest in the land and ownership interest in the improvements may both be given as security for a loan so a mortgage may be recorded.

A homeowner may sell his or her interest to another qualified purchaser. At that time, usually the original lease will be terminated and a new lease will be executed by the CLT and the new purchaser. The selling homeowner will also execute a deed for the improvements to the new purchaser.

The deed will recite the consideration paid for the improvements on the land and will be subject to transfer tax based on that consideration. The tax that the homeowner pays on the value of the improvements will also be uncapped at this point.

Generally, CLT transactions are insurable like other residential transactions. The primary difference is related to the nature of the ground lease. Therefore, an endorsement will be added to the both the owner's and the loan policy to reflect the nature of the interest insured as being a leasehold owner's interest or a mortgage secured by the leasehold interest in the land and the full ownership of the improvements.

## CONTROL AND ACCOUNTABILITY OF THE CLT HOMEOWNER

Leaseholders retain most of the rights that go with ownership. CLT control is generally limited to areas where the CLT has a long-term interest. For example, it is vital to the CLT to preserve affordability of housing units. Most CLT ground leases also prohibit absentee ownership of housing. Also, CLTs want to protect the condition of the land and buildings which would be left at the end of the lease term. Courts can enforce termination of a lease and the CLT's reclamation of the premises if residents violate the terms of the lease.

## DISSOLUTION OF THE CLT

If a CLT is dissolved and ownership of the land is transferred, the new owner is obligated to honor the long-term lease agreements between the CLT and its leaseholders. Typically, if the CLT ever offers the land for sale to a non-charitable buyer, the CLT homeowner will have the right of first refusal to buy the land.



# COMMUNITY LAND TRUST: A PRIMER FOR LOCAL ASSESSORS

A Community Land Trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to homeownership for people who might otherwise be priced out of the housing market and helps stabilize communities facing gentrification or high foreclosure rates. The guidelines and restrictions that apply to property located in a CLT change the way that property is assessed for property tax purposes. The following primer provides information for local assessors as to considerations that may change the taxable valuation of properties located in a CLT.

## ISSUES FOR CONSIDERATION

### ASSESSING CLT PROPERTY

A CLT residence typically consists of a building on leased land. Under Michigan law, the improvements and the underlying land are each assessed as real property, and should be assessed separately to the respective owners.

The long term lease that is the central feature of the CLT structure affects the True Cash Value of both the underlying land and the improvements. It is well established under Michigan case law that significant restrictions on the transferability of property, and therefore on its marketability, may reduce the assessable value of that property. *Menard, Inc. v. City of Escanaba*, No. 325718, 2016 WL 3022785 (Mich. Ct. App. 2016). In *Helin v. Grosse Pointe Twp.*, 329 Mich. 396, 407–408; 45 NW2d 338 (1950), our Supreme Court recognized that deed restrictions in property that prohibited its use for an “apartment house, multiple residence, or institutional purposes” would have an effect on the value of the property. Accordingly, it would be error to fail to consider “deed restrictions in establishing assessments [.]” *Kensington Hills Dev. v. Milford*, 10 Mich. App 368, 372; 159 NW2d 330 (1967). This Court emphasized further in *Lochmoor Club v. Grosse Pointe Woods*, 10 Mich. App 394, 397–398; 159 NW2d 756 (1968), that all factors, including “restrictions imposed” on property must be considered in determining a property’s TCV.”.

### ASSESSMENT OF LAND

The underlying land owned by the CLT is burdened with a lease that typically has a term of 89 years. Under the terms of the lease, the CLT will receive an amount of rent that is not set at the market rate but at a minimal rate consistent with a reduced housing cost for the benefit of the low-income or moderate-income homeowner. A purchaser of the land would not pay market price for property that is subject to a permanent commitment of this type. The assessment of the land should accordingly reflect the reduction in value resulting from the existence of the long-term lease.

### ASSESSMENT OF IMPROVEMENTS

The CLT homeowner owns the improvements, including the structure, out buildings, and any site improvements, in fee simple. However, the CLT homeowner is also a party to the CLT ground lease. This fact has two major implications for the assessment of the homeowner’s property.

First, because the homeowner does not own the underlying land, sale prices of comparable properties in which the land is included are not reliable indicators of the value of the homeowner’s property. Second, and more importantly, because the



ground lease restricts the price at which the homeowner may resell the improvements, the market value (and therefore, likely, the assessable value) of the improvements is likewise restricted.

Once the CLT is established, it is a condition precedent to the purchase of the improvements by a potential CLT homeowner that he or she enter into the ground lease. This is not optional. Having purchased the improvements (meaning the house/structures) at a discount to the price that would otherwise apply to a residence that included the land, the CLT homeowner is required by the ground lease, if he or she intends to resell the improvements, to first offer them for resale to the CLT at a formula-set price. The formula permits the CLT homeowner to recover his or her investment in the improvements plus a predetermined but limited percentage of their appreciation in value.

This contractual obligation has the effect of fixing the market value of the improvements at the formula price—the owner cannot sell it for more, and a potential purchaser has no incentive to pay more. It follows that the assessable value of the improvements, even if uncapped as a result of a sale, cannot logically or legally exceed the formula price.

## **HOMESTEAD ISSUES**

A CLT homeowner is required by the ground lease to reside in the property. As a result, the homeowner is entitled to claim the improvements as his or her personal residence for purposes of the homestead exemption.

# COMMUNITY LAND TRUST: A PRIMER FOR FINANCIAL INSTITUTIONS

A Community Land Trust (CLT) is a nonprofit organization which holds land for the purpose of meeting certain community needs as defined by its mission. CLTs are often used to create stable, affordable housing in areas facing blight, foreclosure, or gentrification. Purchasing a home without a mortgage loan is not an option for most Americans. As such, the availability of mortgage loans for CLT transactions is critical. The following primer provides financial institutions a guide for reviewing a CLT ground lease to confirm there are no roadblocks to making a mortgage loan.

## IS THE GROUND LEASE “FINANCEABLE”?

In a CLT transaction, like other types of ground lease transactions, the terms of the lease can vary tremendously based on a variety of factors. In general, however, there are a handful of very specific issues that are typically important to lenders in determining whether the ground lease is financeable. While a wise lender in a CLT transaction will review all of the terms of the ground lease carefully, it will want to focus on the following key issues.

### GROUND LEASE TERM

A lender will typically want to be sure that the term of the ground lease extends safely beyond the loan’s scheduled maturity date. This is because, upon expiration of the ground lease term, the tenant will lose its right of possession, full ownership rights will be returned to the ground landlord, and the loan will become effectively unsecured. In the model ground lease included with these materials, the initial term is 89 years and includes a renewal option for an additional 89 years. This is significantly longer than the typical thirty-year residential mortgage term. Regardless, however, as the term progresses, a lender will need to be mindful of the remaining term of the applicable ground lease in relation to the proposed mortgage loan term.

Some ground leases may grant the lender the right to exercise renewal options on the owner’s behalf. The inclusion of such language may allow the lender to count the renewal term in the overall term, thus avoiding the foregoing issue. If not specifically provided for in the terms of the ground lease, a lender should require such a right in a separate agreement with the ground lessor or through a modification of the ground lease.

### GROUND RENT

In addition to scheduled monthly mortgage loan payments, a CLT homeowner will be required to pay ground rent and any other amounts payable under the ground lease. While ground rents in CLT transactions are typically below market, they nonetheless constitute an additional monthly cost payable by the homeowner. The lender will need to consider all of these payment obligations in underwriting its loan and confirming the borrower’s ability to make loan payments. This includes any ground rent increases that may occur during the term of the ground lease (for example, ground rents may rise over time to keep pace with inflation).

### PERMITTED MORTGAGES

The ground lease should include language that specifically permits the homeowner to mortgage its interest in the property. Such language may specifically define what constitutes a permitted mortgage and whether such a mortgage can be given with or without the approval of the ground landlord. For example, the ground lease might



permit a first priority mortgage while barring further subordinate mortgages. It might also limit the types of financial institutions that qualify as permitted mortgagees. If language permitting the requested mortgage is not included in the ground lease, the lender is advised to seek written consent from the landlord before proceeding.

The ground lease may also permit the ground lessor to encumber its fee interest in the land by mortgage. To govern the respective rights of the two lenders, the leasehold lender may wish to consider entering into an agreement with any current fee mortgage holder or obtaining the ability to enter into an agreement with any future fee mortgage holder.

## **NOTICE AND CURE RIGHTS; TERMINATION; FORECLOSURE**

Lenders should be cognizant that an uncured default by the ground tenant could result in termination of the ground lease itself. As a result, a well-drafted ground lease should grant a permitted lender the right to receive notice of any default by the ground tenant from the ground landlord. Thereafter, the lender should have specific rights to cure the ground tenant's default in order to protect itself against the ultimate termination of the ground lease. The ground lease should be reviewed to understand the scope and duration of cure rights, and to confirm that, while there is a right to cure, there is no obligation. Section 8.3 of the model ground lease includes example notice and cure provisions.

Similarly, the ground lease should require that any permitted mortgage include language granting the CLT landlord both (a) the right to receive notice and cure any homeowner mortgage loan default and (b) the right to repay the loan in advance of a foreclosure or assignment-in-lieu of foreclosure in exchange for an assignment of the mortgage loan. Lenders should review the scope and duration of these rights as well. In this context, notice and cure rights may be seen as a credit enhancement in the sense there is another party that may be willing to cure a mortgage default.

A lender should also consider what happens if the ground lease is terminated or if the homeowner files for bankruptcy and rejects its ground lease. In such a situation, the lender should have the right to enter a new ground lease with the CLT on substantially the same terms as previously existed between the homeowner and the CLT.

Finally, a lender should understand that a ground lease mortgage can be foreclosed in Michigan in the same fashion as a typical mortgage of a fee interest. Foreclosure-by-advertisement and judicial foreclosure options are available remedies depending upon the specifics of any given default situation.

## **ASSIGNMENT AND SUBLETTING**

Ground leases often include detailed provisions governing the ground tenant's ability to assign and sublet its ground lease interest. These provisions are generally crafted as an outright bar to assignment and subletting that is subject to specific exceptions or conditions under which the CLT will grant consent. From a lender's perspective, it is important that this language clearly allow the ground lease to be assigned in connection with a foreclosure or assignment-in-lieu of foreclosure without the CLT's consent.

## **CASUALTY AND CONDEMNATION**

The ground lease should include detailed provisions addressing the full or partial loss of the property as a result of casualty and condemnation. Generally, insurance proceeds should be available to rebuild and restore the damaged home after a casualty. If, however, insurance proceeds are not allocated for this purpose, they should instead be used to repay the mortgage loan.

In the case of condemnation of all or substantially all of the property, the ground

lease should terminate and the award should be used to repay the loan. In the case of a smaller, partial condemnation, the ground lease should include detailed language allocating the award in a manner that is reasonable in light of the amount of land condemned.

Another approach (which is taken by Fannie Mae) is to require that if the casualty or condemnation results in lease termination, then the proceeds or award must be used to repay the loan. But if the ground lease is not so terminated, then the proceeds should be used to restore the property in accordance with applicable mortgage provisions.

### **GROUND LEASE AMENDMENT**

The ground lease should include language that makes any amendment entered into without the lender's consent non-binding. The lender may permit so-called "deemed approval" language whereby its own failure to respond to a request to approve an amendment within a stated period of time will result in automatic approval. Such language benefits the borrower and its ground landlord, as it avoids significant delays that can be caused by drawn out lender approval processes. Not all lenders will approve such a clause, and the effects of including or not including a deemed approval clause should be considered by the individual lender.

### **ESTOPPEL CERTIFICATES**

Finally, a well-drafted ground lease should grant a mutual right to the parties to receive estoppel certificates. This gives some measure of assurance that the ground lease has not been amended (or gives a list of amendments), that rent has been paid current, and that there are no defaults. A lender should require that its borrower obtain such an estoppel certificate in advance of closing that includes language specifically allowing the lender to rely on the estoppel certificate.

## **LENDER CONSIDERATIONS BEYOND THE GROUND LEASE**

### **TITLE INSURANCE**

A lender's ALTA 2016 loan policy of title insurance should include ALTA endorsement 13.1-06, which addresses valuation of the insured estate for purposes of computing loss or damage in the event of a policy claim. For more information, please see the separate CLT Primer for Title Insurers.

### **APPRAISAL**

A lender should confirm that its appraiser is fully advised of the nature of the estate being appraised, as it is different (and will likely have a lower value) than a full fee estate in the land and improvements. This will ensure that the appraisal does not overstate the value of the property, and thereby result in a loan size that is larger than it should be.

### **SECONDARY MORTGAGE MARKET**

A lender may wish to sell the CLT ground lease mortgage loan on the secondary market, as opposed to holding the loan on its own books. As these loans are becoming more common, there has been increased understanding and acceptance of their peculiarities in the secondary markets. For example, Fannie Mae offers a CLT program (see [www.fanniemae.com](http://www.fanniemae.com) for details). Notably, Fannie Mae produces a form Community Land Trust Ground Lease Rider designed to ensure the applicable ground lease meets Fannie Mae's requirements.







# COMMUNITY LAND TRUST: A PRIMER FOR TITLE COMPANIES

A Community Land Trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to homeownership for people who might otherwise be priced out of the housing market and helps stabilize communities facing gentrification or high foreclosure rates. CLT transactions, like any other residential sale or mortgage refinance, will almost certainly require title insurance. As ground leases are relatively unusual in residential transactions, it is important for title insurers to understand certain key peculiarities. The following primer, while not a legally binding document, summarizes the key issues for both owner's and lender's policies of title insurance.

## INSURABLE INTERESTS

CLT transactions are insurable just like any other residential real estate transaction. There are, however, several key differences that title insurers should closely review and understand. First and foremost, a CLT transaction is a ground lease transaction. At closing, the homeowner will be vested with fee title to the improvements (the home itself and any fixtures), as well as a leasehold estate in the land. In addition to its own underwriting guidelines, a wise title insurer will review the ground lease, together with any amendments or assignments, to understand fully the nature and scope of the homeowner's leasehold interest. In addition to the typical review of record title, the title insurer will also want to confirm that the ground lessor held fee title to the property on the date it leased the improvements to the ground lessor.

## WHAT GETS RECORDED?

At closing of the CLT transaction, the title insurer should expect and require that the parties record both a memorandum of ground lease and a warranty or covenant deed to the improvements. The memorandum of ground lease will place certain key ground lease provisions of record. For example, the lease term, use restrictions, transfer restrictions and purchase options or rights of first refusal should be in the public records. But the ground lease itself should generally not be recorded in order to avoid making confidential terms (e.g., amount of rent payable) public.

## VARIATIONS IN FORM OF POLICY

For both owners' and lenders' title insurance policies, title insurers will normally use their standard ALTA 2006 policy forms. Such policies will vary from typical residential policies in certain respects. First, item 2 of Schedule A of both policies should describe a leasehold estate by making reference to the recorded memorandum of ground lease, as well as a fee estate in all improvements located on the land. Second, Schedule B of both policies should include (in addition to any new mortgage and any other instruments of record) a specific exception for the CLT's fee interest in the land, as ground leased to the homeowner, pursuant to the ground lease and as evidenced by the memorandum of ground lease. Third, the insurer should include an ALTA 13-06 form endorsement on the owner's policy and an ALTA 13.1-06 form endorsement on the lender's policy. These endorsements address valuation of the insured estate for purposes of computing loss or damage in the event of a policy claim. Finally, it is worth noting that amounts of insurance should be determined in the same fashion as policies insuring pure fee interests.

## TRANSFER TAXES

In a typical residential purchase transaction, Michigan transfer taxes (both State and County) are paid on the total value of the property (improvements and land). In a CLT transaction, however, the State transfer tax (\$3.75 per \$500 or fraction thereof) and the County transfer tax (\$0.55 per \$500 or fraction thereof) are payable on the total value of the fee interest in the improvements (and not on the value of the leasehold interest). In both statutes, written instruments evidencing leases are expressly exempt from taxation. See M.C.L. § 207.526(e) and MCL § 207.505(e). In addition, as in any other transaction, the purchase price paid should be recited on either the deed or a real estate transfer tax valuation affidavit.

## REAL PROPERTY TAXES

CLT properties are typically issued two tax bills for real property. The first is issued to the homeowner for the value of the improvements. The second is issued to the CLT for the value of the land. But the obligation to pay property tax on the land may be shifted from the CLT to the homeowner by the terms of the ground lease. In any event, at closing the tax will likely be prorated between buyer and seller. Further, a property transfer affidavit should also be filed. Since the homeowner will be required to reside in the home by the ground lease, the homeowner should be entitled to claim the personal residence exemption and obtain homestead property tax treatment. For further discussion of property taxes and assessing issues, please see *Community Land Trusts: A Primer for Local Assessors*, elsewhere in this manual.

## ESTOPPEL CERTIFICATES

Finally, title insurers (as well as lenders) may wish to receive an estoppel certificate from the CLT (as ground lessor) which indicates that the ground lease is in full force and effect, attaches a complete copy of lease and any amendments, and certifies that the ground lessee is in compliance with the lease and not in default. Moreover, if a loan policy is requested and if ground lessor consent is required to permit the mortgage, the estoppel might include an express consent to the mortgage. The right to request such an estoppel may be included within the ground lease itself.

# COMMUNITY LAND TRUSTS AND COMMERCIAL LAND USE

## CLT FOR COMMERCIAL USES—OVERVIEW

Community Land Trusts are a legal mechanism that, when used effectively, may empower communities to control and protect local property conditions and values. This legal mechanism was used historically by community groups to protect low-income families and individuals from being inequitably priced out of their communities (comparable to a type of rent control). In the last several decades, however, government and community leaders have discovered that controlling property value is not the only way to encourage a stable and healthy community. In addition to maintaining fair-housing costs, functional communities must be able to assure long-term access to commercial services for their residents and visitors alike.

A CLT can be an effective tool for promoting local ownership and control over commercial resources. Rather than restrict property prices through government regulation, a CLT empowers residents and shareholders to make real estate decisions that best serve the needs of their community. In some cases, this will be an affordability requirement, but in others it may be to allow for upward price pressures and the subsequent increased rents flowing to the CLT.

The legal mechanisms discussed below are available to property owners, regardless of whether the ownership is divided into a CLT. A community group might find the CLT model useful for securing financing, providing local wealth development strategies, or simply offering a mechanism for local control and decision-making.

## COMMERCIAL USE RESTRICTIONS AND COVENANTS

The most common means for assuring long-term access to commercial services is by regulating commercial land use via: (1) lease agreements or (2) building and use restrictions.

### LEASES

A simple yet effective way for a community to protect and regulate commercial services is by purchasing commercial property and incorporating desirable regulations directly into commercial lease agreements. The advantages of decentralizing a property-control plan in this manner is that it provides communities flexibility. The shorter the terms on a community's lease agreements, the more a community can respond to changing social conditions in subsequent leases. And, because leases are such a simple legal mechanism for controlling a property's use, they are tools that can easily be adopted by Community Land Trusts.

Under this structure, a CLT can use a commercial lease to control the cost of rent, help businesses hold down operating costs, and incentivize commercial activity, while also restricting undesirable business types. In addition, a CLT could obligate its commercial tenants to limit pricing or to rebate some or all its profits or revenues above a certain level (much as percentage rent operates in the traditional retail or restaurant lease) as a way of assuring community access to services at affordable prices or of funding the CLT's operations. Further, for-profit retail businesses typically do not want to own the property in which they operate because rent is deductible against income taxes and tends to exceed the value of depreciation (which a property owner can take on its tax return). For this reason, businesses often form a partnership or limited liability company for the sake of owning the real estate and of leasing it to the business. In this way, the company collects its rent deductions and the newly formed entity can claim the depreciation on its tax return. Such a corporate structure is not readily adaptable to a CLT unless the CLT wants to operate a business. Therefore, leasing property provides tax incentives to the tenant and the CLT.

With that said, relying exclusively on leases to assure long-term access to commercial services comes with disadvantages because it is hard to maintain a set of values over time. The beliefs held by today's leaders might not be the same beliefs held by



tomorrow's leaders. In other words, because the regulations and protections on a property lapse at the end of the lease, one cannot guarantee that a community's values will be protected into the future in future leases.

## DEED RESTRICTIONS

To protect a set of values more permanently, a property owner can also regulate the uses of its commercial property by attaching building and use restrictions directly to the property. This is a helpful device for CLTs not interested in maintaining commercial property as it allows a CLT to permanently control the use of its commercial properties but also to sell the property and to return it to the free market. To attach a deed restriction, a CLT must acquire the property and, prior to selling it, file the deed restriction with the County Register of Deeds in the County where the property is located. Upon this filing, the restriction is generally permanent and will bind all current and future owners of the land.

These "deed restrictions" can be used to (1) prohibit certain commercial or business activities (i.e. property may not be used for the sale of tobacco or alcohol), (2) affirm and mandate certain activities (i.e. property must be used "for the selling of books"), or to create obligations (i.e. property owners must pay a monthly fee of \$100 to the Save the Owl Foundation etc.) Regardless, deed restrictions provide some level of guarantee that certain matters will or will not occur and these guarantees will bind all current and future property owners. See *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich. 206 (2007).

Although a powerful tool for protecting commercial use in a community, building and use restrictions often create unpredictable effects. As time passes and a community changes, recorded restrictions become less effective and often become an obstacle to healthy communities - especially considering drafters cannot envision all the ways in which communities, land owners, and businesses will change with time. This is especially a concern because once a deed restriction has attached, it is very difficult for it to be removed. Therefore, a CLT, before placing a building or use restriction on commercial properties in its community must weigh the risk of unintended consequences against the certitude of protecting its community.





# SAMPLE DOCUMENTS

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BYLAWS  
ARTICLES OF  
INCORPORATION  
GROUND LEASE  
PURCHASE AGREEMENT

The following pages provide general guidelines for structuring a typical Community Land Trust.

THE LANGUAGE IN THE FOLLOWING SAMPLE DOCUMENTS IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT TAKE THE PLACE OF LEGAL ADVICE. PROSPECTIVE PARTIES SHOULD CAREFULLY REVIEW AND EDIT THE LANGUAGE BELOW AS NECESSARY TO ACCURATELY PORTRAY THE ORGANIZATION.



# SAMPLE BYLAWS

The bylaws of an organization should be tailored to the needs of that specific organization and drafted in conjunction with the Articles of Incorporation. It is strongly recommended that an organization consult with an attorney to aid in making decisions about organizational structure and the other necessary components of its bylaws.

**THE FOLLOWING LANGUAGE IS A SAMPLE ONLY AND SHOULD NOT TAKE THE PLACE OF LEGAL ADVICE. PROSPECTIVE BOARD MEMBERS SHOULD CAREFULLY REVIEW AND EDIT THE LANGUAGE BELOW AS NECESSARY TO ACCURATELY PORTRAY THE ORGANIZATION.**

## BYLAWS OF \_\_\_\_\_

### ARTICLE 1: Name and Purposes

1.1 **NAME.** The name of this organization is \_\_\_\_\_ (the "corporation").

1.2 **PURPOSES.** The purposes for which the corporation is organized are:

\_\_\_\_\_.

### ARTICLE 2: Membership

2.1 **VOTING MEMBERSHIP.** Subsequent to the first annual meeting, the Voting Members of the corporation shall have full voting rights and be comprised of two classes: \_\_\_\_\_

\_\_\_\_\_.

(A) **THE LESSEE MEMBERS.** All persons who lease land or housing from the corporation or who lease or own housing that is located on land leased by another entity from the corporation are entitled to be Lessee Members. However, only one person (eighteen years of age or older) per lessee household will serve as a Lessee Member at any time. Until such time as there are at least **[insert minimum number]** actual Lessee Members, the Board of Directors may appoint other persons to serve as Lessee Members, and in so doing shall select persons who can reasonably be expected to represent the interests of Lessee Members. Such Board-appointed Lessee Members shall remain Lessee Members until the earlier of their resignation from membership or such time as there are at least **[insert minimum number]** actual Lessee Members.

(B) **The General Members,** who shall be those persons who (i) are not Lessee Members or members of their household, (ii) are eighteen years of age or older, and (iii) have complied with the following requirements:

(1) Either appointment as an initial member in the Actions of Incorporators or submission of a membership application, including a signed statement of support for the purposes of the corporation, in a form to be determined by the Board of Directors; and

[List the purposes for which the CLT will operate. The purposes listed here should mirror the purposes set forth in the Articles of Incorporation.]

[There are no mandatory requirements for membership in a CLT. The following provisions detail perhaps the **most** common membership model. This model seems to be favored because it allows for input from various stakeholders in the community, which is important to ensure community involvement. A CLT could, however, provide for different requirements for membership. The membership structure generally should act in concert with the structure of the board of directors described below.]

[The minimum number of actual Lessee Members necessary to dispense with Board-appointed Lessee Members will vary from organization to organization.]





(2) Payment of dues as established by the Board for the current calendar year (or qualification for a waiver of dues).

**2.2 REQUIREMENTS FOR CONTINUING VOTING MEMBERSHIP.** To maintain Voting Membership beyond a person's first year of Voting Membership, a person must either be a Lessee Member (either actual or Board-appointed) or have paid dues established for the current calendar year (or qualified for a waiver of dues).

**2.3 MEMBERSHIP DUES.** Annual membership dues shall be assessed for each calendar year by the Board at a meeting preceding that year. If no such action is taken to assess dues for a given year, the dues for that year shall be as established for the previous year. The Board may waive the payment of annual dues or establish reduced dues for low-income individuals.

**2.4 RIGHTS OF VOTING MEMBERS.** Every Voting Member shall have the right to participate in meetings of the membership, to cast one vote on all matters properly put before the membership (or the class of membership to which the Voting Member belongs) as provided in these bylaws, to nominate and participate in the election of the Board of Directors as provided by these bylaws, to serve on the Board of Directors or on committees if chosen, and to receive notices and minutes of membership meetings and annual reports of the corporation.

**2.5 NONVOTING MEMBERS.** The Board may by resolution adopt policies and procedures for nonvoting members, who may include (but need not be limited to) persons who have paid the annual dues established for the current calendar year but who do not wish to be Voting Members. Nonvoting members shall have no right to vote on any matter, including their status as members.

## **2.6 MEMBERSHIP MEETINGS**

**(A) NOTICE OF MEETINGS.** Written notice of every membership meeting shall be given to all Voting Members and shall include a proposed agenda for the meeting. Notice shall be sent at least ten and not more than 60 days prior to a meeting.

**(B) ANNUAL MEETINGS.** Subsequent to the first annual meeting, each annual meeting of the members (for reports to the membership by the Board of Directors and officers, the election of directors, and the transaction of other business) shall be held in the fourth quarter of each year. The location and specific time of the annual meeting shall be determined by the Board of Directors. Notice of the annual meeting shall include a list of those persons nominated for the Board of Directors as provided in Article 3 of these bylaws.

**(C) REGULAR MEETINGS.** Regular meetings may be scheduled by the Voting Membership at such times and places as they shall establish at any duly-called meeting.

**(D) SPECIAL MEETINGS.** Special membership meetings may be called by the Board of Directors and shall be called by the President of the corporation at the written request, addressed to the President, of at least one-tenth of the Voting Members. At a special meeting, only those matters stated on the agenda, as included in the notice of the meeting, may be acted upon by the membership.

**(E) MINUTES.** Minutes of all membership meetings shall be recorded by the Secretary of the corporation or by another person designated by the Board of

Directors. Minutes for every meeting shall be approved by the Voting Members at the next membership meeting.

[Some organizations may wish to impose specific quorum requirements for Members' meetings—for example, requiring that a quorum requires the presence of at least 20% of the Voting Members.]

(F) *QUORUM AND VOTING*. Except as otherwise required by law, the Articles of Incorporation, or these bylaws, a quorum at any meeting of the members shall consist of those Voting Members present in person or by proxy at the meeting. Members may vote at any duly-called meeting in person or by proxy.

### **ARTICLE 3: Board of Directors**

[There are no requirements for the composition of the board of directors of a CLT. These provisions detail perhaps the most common variation: the tripartite framework.

This model seems to be favored because it allows for input from various stakeholders in the community, which is important to ensure community involvement. A CLT could, however, structure the board with fewer categories of directors or different requirements for each category. In addition, directors could be appointed in a different manner. For example, a sponsoring nonprofit could appoint the directors.

Finally, while the provisions describe a board comprised of twelve directors, that number may need to be altered depending on the number of members in the organization. Keep in mind that the number of members on a tripartite board must be a multiple of three.]

3.1 *NUMBER OF DIRECTORS; VOTING*. Except for the initial Board named in the Actions of Incorporators, the Board of Directors shall consist of twelve directors. Each director shall have one vote on all matters that come before the Board unless these bylaws specify that voting on a matter shall be by category of director.

3.2 *COMPOSITION OF THE BOARD*. There shall be three categories of directors, each consisting of four directors, or one-third of the total Board. The three categories shall be Lessee Directors, General Directors, and Public Directors.

3.3 *NOMINATION OF DIRECTORS*. For all regular elections subsequent to the first annual meeting of the membership, directors shall be nominated as follows:

#### **(A) LESSEE DIRECTORS**

(1) Lessee Members may nominate Lessee Directors to the Board from among themselves. These nominations must either be submitted in writing to the Secretary of the corporation at least 30 days prior to the annual membership meeting or be made from the floor at the meeting.

(2) If the number of nominations for Lessee Director received under paragraph (1) above is less than the number of Lessee Director seats to be filled, the Board of Directors may nominate enough candidates so that the total number of candidates is sufficient to fill the number of seats to be filled. In making nominations, the Board shall select actual Lessee Members to the extent they are available to serve on the Board of Directors. If there are not enough Lessee Members available to serve, the Board may select persons who can reasonably be expected to represent the interests of Lessee Members.

#### **(B) GENERAL DIRECTORS**

(1) General Members may nominate General Directors to the Board from among themselves. These nominations must either be submitted in writing to the Secretary of the corporation at least 30 days prior to the annual membership meeting or be made from the floor at the meeting.

(2) If the number of nominations for General Director received under paragraph (1) above is less than the number of General Director seats to be filled, the Board of Directors may nominate enough candidates so that the total number of candidates is sufficient to fill the number of seats to be filled.

(C) *PUBLIC DIRECTORS*. At least 30 days prior to the annual meeting of the membership, the Board of Directors shall elect Public Directors to the Board. Public Directors are, generally, businesses, organizations, even people who are influential in the community but do not reside in the community so that they may



have some representation in the community if the Board sees fit to give them that voice.

**(D) NOTICE OF NOMINATIONS AND OF ELECTION OF PUBLIC DIRECTORS.**

A list of all persons nominated for Lessee Director and for General Director as well as a list of the persons elected by the Board as Public Directors shall be included with the notice of the annual meeting of the members.

**3.4 ELECTION OF LESSEE DIRECTORS AND GENERAL DIRECTORS.** Lessee Directors and General Directors shall be elected in accordance with the following procedures.

**(A) VOTING BY CLASS.** At the annual meeting of members, separate votes shall be taken for the Lessee Directors and for the General Directors. If a person has been nominated in more than one category and is then elected in one category, that person's name shall be removed from the list of nominees in the remaining category. Only Lessee Members may vote to elect Lessee Directors, and each Lessee Member may vote for as many nominees in this category as there are Lessee Director seats to be filled. Similarly, only General Members may vote to elect General Directors, and each General Member may vote for as many nominees in this category as there are General Director seats to be filled.

**(B) ELECTION BY PLURALITY VOTE.** In each of the two categories, positions shall be filled by those candidates receiving the largest numbers of votes in the category, though such numbers may constitute less than a majority of the total votes cast in the category.

**3.5 VACANCIES**

**(A) APPOINTMENT TO FILL VACANCIES.** If any director vacates his or her term or is removed from the Board, the remaining directors in that category may appoint a person to fill the vacancy or decide to leave the position vacant until the next annual meeting (of the membership or the Board, as the case may be), provided the Board still includes at least three directors in each category. Appointments to fill vacancies shall be by a majority of the directors remaining in the applicable category.

**(B) Qualifications of Replacements.** Any person appointed to fill a vacancy on the Board of Directors must be a person who can be reasonably expected to represent the interests of the constituents in the category (Lessee, General, or Public) in which the vacancy occurs.

**(C) TERM OF REPLACEMENTS.** A replacement director appointed by the Board shall serve out the remaining term of the person who has vacated the position.

**3.6 LOW-INCOME REPRESENTATION.** In their actions regarding the nomination and election of directors and appointment of people to fill vacancies on the Board of Directors, the membership and the Board shall at all times assure that at least one third of the Board is maintained for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations.

[Optional: use for an organization that wishes to qualify as a CHDO.]

### 3.7 TERMS OF DIRECTORS

(A) *TERMS OF FIRST ELECTED DIRECTORS.* After the election of Lessee Directors and General Directors at the first annual meetings of the membership and the Board, each director (including the Public Directors) shall be assigned, by mutual agreement or by lot, to a one-year or two-year term. In each of the three categories of directors, two directors shall be assigned a one-year term and two shall be assigned a two-year term.

(B) *TERMS OF SUCCESSOR DIRECTORS.* Except as otherwise provided in these bylaws, each director shall serve a full term of two years.

(C) *COMMENCEMENT OF TERMS.* The term of office of a regularly elected Lessee Director or General Director shall commence at the adjournment of the annual membership meeting at which the director is elected. Similarly, the term of office of a Public Director shall commence at the adjournment of the annual membership meeting following the Board meeting at which the Public Director was elected. The term of office of a director appointed by the Board to fill a vacancy shall begin at the time of the appointment.

(D) *REELECTION.* No person shall serve as a director for more than three full consecutive terms. After a year's absence from the Board, however, a person who has served three full consecutive terms may return to the Board.

3.8 *RESIGNATION.* Any director may resign at any time by giving written notice to the President. Unless otherwise specified in the notice, such resignation shall be effective upon the receipt of notice by the President.

### 3.9 REMOVAL

(A) *Lessee Directors and General Directors.* A Lessee Director or General Director may be removed with or without cause:

- (1) at any meeting of the members, by the affirmative vote (in person or by proxy) of a majority of all members in the class that elected the director, or
- (2) at any meeting of the Board of Directors, by (i) the majority vote of the class of directors to which the director belongs and (ii) the majority vote of either remaining class of directors.

(B) *PUBLIC DIRECTORS.* A Public Director may be removed with or without cause by a two-thirds vote of the full Board of Directors, at any meeting of the Board.

### 3.10 MEETINGS OF THE BOARD OF DIRECTORS

(A) *NOTICE OF MEETINGS.* Except as provided below for emergency meetings, written notice of a Board meeting shall be sent to all directors at least five days prior to the meeting. The Board may by resolution adopt policies and procedures for delivery of written notice by electronic means, which may include delivery by electronic mail or facsimile transmission.

(B) *WAIVER OF NOTICE.* Any director may waive any notice required by these bylaws, either before or after the meeting. Any director who was not sent notice of a Board meeting but attends the meeting shall be considered to have

waived notice of the meeting, unless the director objects at the beginning of the meeting that the meeting was not duly called.

(C) *ANNUAL MEETING.* The annual meeting of the Board of Directors may be held immediately following the annual membership meeting and must be held no later than six weeks following the annual membership meeting.

(D) *VOTING MEETINGS.* The Board of Directors shall meet no less often than quarterly, at such times and places as the Board may establish.

(E) *SPECIAL MEETINGS AND EMERGENCY MEETINGS.* Special meetings of the Board may be called by the President, and shall be called by the President at the written request of any three directors or at least one-tenth of the Voting Members. Notice must be given as provided in paragraph (a) above, unless any three directors determine in writing that the matter at hand constitutes an emergency. When so determined, an emergency meeting may be called on one day's notice. Notice of emergency meetings, including an announcement of the agenda, shall be given by telephone or in person to all directors. At any special or emergency meeting of the Board, only those matters included in the announced agenda may be acted upon unless all the directors are present at the meeting and unanimously agree to take action on other matters

### 3.11 PROCEDURES FOR MEETINGS OF THE BOARD OF DIRECTORS

(A) *ATTENDANCE AT MEETINGS BY THIRD PARTIES; EXECUTIVE SESSIONS.* The Board may by resolution adopt policies and procedures for attendance by third parties at Board meetings and for the Board's going into executive session.

(B) *QUORUM AND VOTING REQUIREMENTS.* A majority of the directors then in office and a majority of any committee appointed by the Board constitutes a quorum for the transaction of business. The vote of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board or the committee (provided that, as to Board meetings, at least one director from each of the three categories of directors is present), except as a different or larger vote may be required by law, the Articles of Incorporation, or these bylaws. A member of the Board or of a committee may participate in a meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another. Participation in a meeting in this manner constitutes presence in person at the meeting.

(C) *MINUTES.* Minutes of all Board meetings shall be recorded by the Secretary or by such other person as the Board may designate and shall be approved by the Board at a subsequent meeting. All minutes of Board meetings shall be kept on permanent record by the corporation and shall be open for inspection by any member of the corporation.

3.12 *ACTION WITHOUT A MEETING.* Any action required or permitted at any meeting of the Board of Directors or a committee thereof may be taken without a meeting, without prior notice, and without a vote, if all of the directors or committee members entitled to vote thereon consent in writing. The written consents shall be filed with the minutes of the proceedings and shall have the same effect as a vote for all purposes.

3.13 **DUTIES OF THE BOARD OF DIRECTORS.** The Board of Directors shall carry out the purposes of the corporation, implement the decisions of the Voting Membership, and be responsible for the general management of the affairs of the corporation in accordance with these bylaws.

3.14 **COMPENSATION.** Directors shall not receive anything of more than nominal value from the corporation for serving as a director other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by the director in his or her capacity as a director. Notwithstanding the foregoing, the corporation may purchase insurance as provided in section 8.5 and provide reasonable compensation to a director for services which are beyond the scope of the director's duties as a director.

#### **ARTICLE 4: Officers**

4.1 **DESIGNATION.** The officers of the corporation shall be President, Secretary, and Treasurer. The Board also may appoint a Vice President and establish such additional offices as it deems necessary or desirable.

4.2 **APPOINTMENT.** The officers of the corporation shall be appointed at the annual meeting of the Board. A vacancy occurring in any office shall be filled by the Board for the unexpired term.

4.3 **TERM.** The officers shall hold office until the next annual meeting of the Board after their election, unless, before such time, they resign or are removed from office.

4.4 **REMOVAL FROM OFFICE.** The officers shall serve at the pleasure of the Board of Directors and may be removed at any time by the affirmative vote of a majority of the full Board.

4.5 **PRESIDENT.** The President shall be the chief executive officer of the corporation, and, as such, under the direction of the Board of Directors shall have power, on behalf of the Board, to perform all acts, execute and deliver all documents, and take all steps that the President may deem necessary or desirable in order to effectuate the actions and policies of the Board.

4.6 **VICE PRESIDENT.** In the absence or disability of the President, the Vice President (if one is appointed) shall perform the duties and exercise the powers of the President and shall perform such other duties as the Board of Directors shall prescribe.

4.7 **SECRETARY.** The Secretary (or, in the Secretary's absence or incapacity, an Assistant Secretary if one is appointed) shall send or cause to be sent all required notices of meetings of the Board of Directors, shall receive and attend to all correspondence of the Board of Directors, shall have custody of all documents belonging to the corporation (except as otherwise provided in these bylaws or by resolution of the Board) and of the corporate seal (if any), and shall perform such other duties as usually pertain to the office or as shall be determined from time to time by the Board of Directors.

4.8 **TREASURER.** The Treasurer (or, in the Treasurer's absence or incapacity, an Assistant Treasurer if one is appointed) shall see that an accounting system is maintained that will give a true and accurate accounting of the financial transactions of the corporation, shall render reports from time to time as requested by the Board

of Directors of the Treasurer's activities and the financial condition of the corporation, and shall perform such other duties as usually pertain to the office or as shall be determined from time to time by the Board of Directors.

## **ARTICLE 5: Stewardship of Land**

**5.1 PRINCIPLES OF LAND USE.** The Board of Directors shall oversee the use of land owned by the corporation and shall convey the right to use such land so as to facilitate access to affordable housing by low-income [or low- and moderate-income] people. In so doing, the Board shall seek to assure that the use of land owned by the corporation is consistent with the corporation's purposes.

**5.2 SALE OF LAND.** The sale of land does not conform with the philosophy and purposes of the Corporation. Accordingly, land shall not be sold except in extraordinary circumstances, and then only in accordance with the following guidelines.

(A) A parcel of land may be sold pursuant to a resolution adopted by an affirmative vote by at least two thirds of the entire Board of Directors at a regular or special Board meeting, provided that (i) the Corporation has owned the parcel for no more than sixty (60) days at the time the vote is taken, (ii) the parcel is not leased to any party, and (iii) the resolution states that the location or character of the parcel is determined to be such that the charitable purposes of the Corporation are best served by selling the land and applying the proceeds to the support of other activities serving those purposes.

(B) In all other circumstances a parcel of land may be sold only with:

(1) An affirmative vote by at least two thirds of the entire Board of Directors at a regular or special Board meeting, provided that written notice of such meeting has described the proposed sale and the reasons for the proposal; and

(2) The approval of two thirds of the Regular Members present at a regular or special Membership Meeting, a quorum being assembled, provided that written notice of such meeting has described the proposed sale and the reasons for the proposal.

(C) If any of the Corporation's land is to be sold to any person or entity other than a not-for-profit corporation or public agency sharing the purposes of the CLT, any ground lessees on that land shall have the opportunity to exercise a right of first refusal to purchase the land that they have been leasing from the CLT.

[This provision could be structured to be more or less restrictive depending on the needs of the CLT. Keep in mind, however, that CLTs are generally formed to preserve land for one purpose or another. So, providing for lenient restrictions on the sale of land may defeat the long-term goals of the CLT.]

## **ARTICLE 6: Ownership of Improvements and Limitations on Resale**

**6.1 OWNERSHIP AND IMPROVEMENTS; PRESERVATION OF AFFORDABILITY.** In accordance with the purposes of the Corporation, the Board of Directors shall take appropriate measures to promote and facilitate the ownership of housing and other improvements on the Corporation's land by low-income [or low and moderate income] people. These measures may include, but are not limited to, provisions for the sale of housing to such people; provisions for financing the acquisition of housing by such people, including direct loans by the Corporation; and provision for grants or other subsidies that will lower the cost of housing for such people.

**6.2 RESTRICTIONS ON RESALE TO PRESERVE AFFORDABILITY.** It is a purpose of the Corporation to preserve the affordability of housing and other improvements for low-income [or low and moderate income] people in the future. Accordingly, when land is leased for such purpose, the Board of Directors shall assure that, as a condition of the lease, housing on the land may be resold only to the Corporation or to another low-income [or low or moderate income] person and only for a price limited by a “resale formula” as described in Section 6.3 below. However, notwithstanding the foregoing, the Board of Directors may choose, for reasons consistent with the charitable purposes of the Corporation, to lease certain parcels of land for uses that do not require continued affordability for low-income [or low or moderate income] people, and in such cases the resale restrictions described above shall not be required as a condition of the lease.

[There are no requirements for the resale formula adopted by a CLT. As described in Section 6.3(a) and (b), however, there are two competing concerns that are generally taken into account: (1) compensating the seller for the amount of money the seller has actually invested in the property and/or some portion of the increased value of the property and (2) ensuring that the property retains its affordable quality for future buyers.]

As to the first factor, many CLTs compensate sellers for the value of improvements the seller made to the property while living there. Some CLTs allow the seller to benefit from any increase in the value of the property that occurred while the seller was living in the property. So, for example, the CLT might give the seller some percentage of the increase in value based on a survey of the value of similar properties in the area.]

**6.3. THE RESALE FORMULA.** Whenever its purpose is to preserve affordability, the Corporation shall restrict the price that ground lessees may receive when they sell housing and other improvements located on the land that is leased to them by the Corporation. The same policy shall be applied in the case of condominium units stewarded by the Corporation, regardless of whether the land is owned by the Corporation. A policy establishing such restrictions in the form of a “resale formula” shall be adopted by the Board of Directors and the Regular Members of the Corporation, in accordance with the following principles:

(A) To the extent possible, the formula shall allow the seller to receive a price based on the value that the seller has actually invested in the property being sold, including the seller’s labor, and/or some reasonable percentage of the increase in value of the property.

(B) To the extent possible, the formula shall limit the price of the property to an amount that will be affordable for other low-income [or low and moderate income] people at the time of the transfer of ownership.

**6.4. PROCEDURES FOR ADOPTION OF THE RESALE FORMULA.** The adoption of the resale formula shall require:

(A) An affirmative vote by at least two thirds of the entire Board of Directors at any regular or special Board meeting, provided that written notice of such meeting has set forth the proposed formula with an explanation thereof; and

(B) An affirmative vote by at least two thirds of the Regular Members present at any regular or special Membership meeting, a quorum being assembled, provided that written notice of such meeting has set forth the proposed formula with an explanation thereof.

**6.5. Procedures for Altering the Resale Formula.** The consistent long-term application of a resale formula is essential to the purposes of the Corporation. Accordingly, the resale formula shall not be altered unless the Board of Directors and Regular Members of the Corporation determine that the current formula presents an obstacle to the achievement of the purposes of the Corporation. In such event, the resale formula may be altered only by a two-thirds vote of the entire Board of Directors and a two thirds vote of the Regular Members present at a Membership meeting, as described above for the adoption of the formula.

## **ARTICLE 7: Amendment of Articles of Incorporation and Bylaws**

7.1 The articles of incorporation may be amended only by the affirmative vote



of both classes of Voting Members present at any duly-called membership meeting, provided that (a) the written notice of the meeting set forth the text of or a summary of the proposed amendment and (b) at least one-third of each class of Voting Members is in attendance at the meeting in person or by proxy.

7.2 These bylaws may be amended only as follows:

(A) For all bylaw provisions other than sections 3.9, 7.1, and 7.2 (which may be amended only by the Voting Members), by the affirmative vote of two-thirds of the full Board of Directors, provided that (1) the written notice of the meeting set forth the text of or a summary of the proposed amendment and (2) at least one-half of each class of directors voted in the affirmative, or

(B) For all bylaw provisions, by the affirmative vote of both classes of Voting Members present at any duly-called membership meeting, provided that (1) the written notice of the meeting set forth the text of or a summary of the proposed amendment and (2) at least one-third of each class of Voting Members is in attendance at the meeting in person or by proxy.

## **ARTICLE 8: Miscellaneous Provisions**

8.1 **FISCAL YEAR.** The fiscal year of the corporation shall be the calendar year.

8.2 **CHECKS, ETC.** All checks, drafts, endorsements, notes and evidences of indebtedness of the corporation shall be signed by such officers or agents of the corporation and in such manner as the Board of Directors from time to time may determine. Endorsements for deposits to the credit of the corporation shall be made in such manner as the Board may from time to time determine.

8.3 **LOANS BY THE CORPORATION.** No loans or advances shall be contracted on behalf of the corporation, and no note or other evidence of indebtedness shall be issued in its name, except as authorized by the Board of Directors. Any such authorization shall relate to specific transactions.

8.4 **CONTRACTS AND BORROWINGS BY THE CORPORATION.** The Board shall adopt policies and procedures governing the execution of contracts entered into by the corporation and borrowings made by the corporation.

8.5 **INDEMNIFICATION.** Each person who is or was a director, officer, or member of a committee of the corporation and each person who serves or has served at the request of the corporation as a director, officer, partner, employee, or agent of any other corporation, partnership, joint venture, trust, or other enterprise shall be indemnified by the corporation to the fullest extent permitted by the laws of the State of Michigan as they may be in effect from time to time. The corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification to any employee, non-director volunteer, or agent of the corporation to the fullest extent provided under the laws of the State of Michigan as they may be in effect from time to time. The corporation may purchase and maintain insurance on behalf of any such person against any liability asserted against and incurred by such person in any such capacity or arising out of his status as such, whether or not the corporation would have power to indemnify such person against such liability under the preceding sentences.

# SAMPLE ARTICLES OF INCORPORATION

*The Articles of Incorporation language in this document is meant to be used in conjunction with the standard Articles of Incorporation form used by the state of Michigan. The form is titled ARTICLES OF INCORPORATION For use by Domestic Nonprofit Corporations (CSCL/CD-502) and can be found on the website of the Michigan Department of Licensing and Regulatory Affairs (LARA). The direct link to the form is [https://www.michigan.gov/documents/lara/502\\_08-15\\_527692\\_7.pdf](https://www.michigan.gov/documents/lara/502_08-15_527692_7.pdf) (accurate at the time of publication of this manual). These sample Articles can be filled into the form or attached as an addendum. There is no sample language for Article I, as the language on the form is sufficient. The sample language includes several instances where the entity will need to choose between alternative clauses and delete the unwanted option.*

**THE FOLLOWING LANGUAGE IS A SAMPLE ONLY AND SHOULD NOT TAKE THE PLACE OF LEGAL ADVICE. PROSPECTIVE PARTIES SHOULD CAREFULLY REVIEW AND EDIT THE LANGUAGE BELOW AS NECESSARY TO ACCURATELY PORTRAY THE ORGANIZATION.**

## ATTACHMENT TO ARTICLES OF INCORPORATION FOR \_\_\_\_\_

### ARTICLE II

The purposes for which the corporation is organized are:

A. To receive and administer funds and to operate exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or comparable provisions of subsequent legislation (the "Code"), and in particular:

- (1) To provide opportunities for low-income [or low- and moderate-income] people to secure housing that is decent and affordable.
- (2) To preserve the quality and affordability of housing for future low-income [or low- and moderate-income] residents of the community.
- (3) To combat community deterioration in economically disadvantaged neighborhoods by promoting the development, rehabilitation, and maintenance of decent housing in these neighborhoods; by promoting economic opportunities for low-income residents of these neighborhoods; by making land available for projects and activities that improve the quality of life in these neighborhoods; and by assisting residents of these neighborhoods in improving the safety and well-being of their community.

[There are no purposes by which a CLT must abide. The purposes described herein are merely suggestions. Each organization should determine for itself the purposes for which it intends to operate. The purposes above focus on maintaining affordable housing in the community. This is the most common reason CLTs are created. Some CLTs, however, may choose to focus on promoting agriculture or some other purpose in addition to or instead of the purposes defined above.]



(4) To protect the natural environment and to promote the ecologically sound use of land and natural resources and the long-term health and safety of the community.

(5) To serve the public welfare by engaging in the activities identified above; by promoting housing opportunities for low-income [or low- and moderate-income] people generally; and by educating individuals and the general public concerning housing for low-income [or low- and moderate-income] people.

B. To acquire, own, dispose of, and deal with real and personal property and interests therein and to apply gifts, grants, bequests, and devises and their proceeds in furtherance of the purposes of the corporation.

C. To do such things and to perform such acts to accomplish its purposes as the Board of Directors may determine to be appropriate and as are not forbidden by section 501(c)(3) of the Code, with all the power conferred on nonprofit corporations under the laws of the State of Michigan.

### **ARTICLE III, Line 3.c.**

3. c. The corporation is to be financed under the following general plan: contributions from individuals and organizations, revenue from activities related to its exempt purposes, income from the investment of its funds, and other sources that may be available.

### **ARTICLE VI**

A. No member of the Board of Directors of the corporation who is a volunteer director and no volunteer officer, as those terms are defined in the Michigan Nonprofit Corporation Act, as amended (the "Act"), shall be personally liable to the corporation for monetary damages for a breach of the director's or officer's fiduciary duty. However, this provision shall not eliminate or limit the liability of a director or officer for any of the following:

- (1) the amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled,
- (2) intentional infliction of harm on the corporation, its shareholders, or members,
- (3) a violation of section 551 of the Act,
- (4) an intentional criminal act,
- (5) a liability imposed under section 497(a),
- (6) a breach of the director's or officer's duty of loyalty to the corporation,
- (7) acts or omissions not in good faith or that involve a knowing violation of law,
- (8) an act or omission occurring before the filing of these articles of incorporation, or
- (9) an act or omission that is grossly negligent.

B. The corporation shall assume all liability to any person, other than the corporation, for all acts or omissions of a volunteer director occurring on or after the filing of these articles of incorporation and incurred in the good faith performance of the volunteer

director's duties. However, the corporation shall not assume any liability to the extent the assumption is inconsistent with the status of the corporation as an organization described in section 501(c)(3) of the Code.

C. The corporation shall assume all liability for all acts or omissions of a volunteer officer or other nondirector volunteer, as those terms are defined in the Act, occurring on or after the effective date of the filing of these articles of incorporation if all of the following are met:

- (1) the volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority,
- (2) the volunteer was acting in good faith,
- (3) the volunteer's conduct did not amount to gross negligence or willful and wanton misconduct,
- (4) the volunteer's conduct was not an intentional tort, and
- (5) the volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the Insurance Code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.3135 of the Michigan Compiled Laws.

However, the corporation shall not assume any liability to the extent the assumption is inconsistent with the status of the corporation as an organization described in section 501(c)(3) of the Code.

D. If the Act is amended after the filing of these articles of incorporation to authorize the further elimination or limitation of the liability of directors, officers, or nondirector volunteers of nonprofit corporations, then the liability of the corporation's directors, officers, and nondirector volunteers, in addition to the limitation, elimination, and assumption of personal liability contained in this Article, will be assumed by the corporation or eliminated or limited to the fullest extent permitted by the Act as so amended, except to the extent such limitation, elimination, or assumption of liability is inconsistent with the status of the corporation as an organization described in section 501(c)(3) of the Code. No amendment or repeal of this Article will apply to or have any effect on the liability or alleged liability of any such person for any acts or omissions occurring prior to the effective date of any such amendment or repeal.

#### **ARTICLE VII**

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to the corporation's directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II above.

#### **ARTICLE VIII**

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code, or the corresponding section of any future federal tax code.

## **ARTICLE IX**

Upon termination or dissolution of the corporation, any assets lawfully available for distribution shall be distributed to one or more qualifying organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or described in any corresponding provision of any successor statute) that have a charitable purpose which, at least generally, includes a purpose similar to the terminating or dissolving corporation.

The organization to receive the assets of the corporation hereunder shall be selected by the discretion of a majority of the managing body of the corporation. If its members cannot so agree, then the assets shall be disposed of by the circuit court of the county in which the principal office of the corporation is then located. The court, upon a finding that this section is applicable, shall select the qualifying organization or organizations to receive the assets to be distributed, giving preference, if practicable, to an organization or organizations located within the State of Michigan that has a charitable purpose which, at least generally, includes a purpose similar to the terminating or dissolving corporation.

In the event that the court shall find that this section is applicable but that there is no qualifying organization known to it which has a charitable purpose, which, at least generally, includes a purpose similar to this corporation, then the court shall direct the distribution of its assets lawfully available for distribution to the Treasurer of the State of Michigan to be added to the general fund.

# SAMPLE GROUND LEASE

THE FOLLOWING LANGUAGE IS A SAMPLE ONLY AND SHOULD NOT TAKE THE PLACE OF LEGAL ADVICE. PROSPECTIVE PARTIES SHOULD CAREFULLY REVIEW AND EDIT THE LANGUAGE BELOW AS NECESSARY TO ACCURATELY PORTRAY THE ORGANIZATION.

**GROUND LEASE**  
**Executed By and Between**  
**[COMMUNITY LAND TRUST CORPORATION]**  
**and**  
**[JANE DOE AND JOHN DOE]**  
**on**  
\_\_\_\_\_, 20\_\_  
**for property located at**  
**[1234 MAIN STREET**  
\_\_\_\_\_, **MICHIGAN]**

## TABLE OF CONTENTS

### RECITALS

### DEFINITIONS

**ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.**

### **ARTICLE 2: Leasing of Rights to the Land**

- 2.1 CLT LEASES THE LAND TO HOMEOWNER:
- 2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER

### **ARTICLE 3: Term of Lease, Change of Land Owner**

- 3.1 TERM OF LEASE IS 89 YEARS
- 3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 89 YEARS
- 3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND

### **ARTICLE 4: Use of Leased Land**

- 4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES
- 4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW
- 4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS
- 4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST \_\_ MONTHS EACH YEAR
- 4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT CLT'S PERMISSION
- 4.6 CLT HAS A RIGHT TO INSPECT THE LEASED LAND
- 4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT



## **ARTICLE 5: Lease Fee**

- 5.1 AMOUNT OF LEASE FEE
- 5.2 WHEN THE LEASE FEE IS TO BE PAID
- 5.3 HOW THE AMOUNT OF THE LAND USE FEE HAS BEEN DETERMINED
- 5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY
- 5.5 FEES MAY BE INCREASED FROM TIME TO TIME
- 5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED
- 5.7 IF PAYMENT IS LATE, INTEREST CAN BE CHARGED
- 5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD

## **ARTICLE 6: Taxes and Assessments**

- 6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS
- 6.2 CLT WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER
- 6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES
- 6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE
- 6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF

## **ARTICLE 7: The Home**

- 7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND
- 7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE
- 7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS
- 7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME
- 7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS
- 7.6 A REPAIR RESERVE FUND IS ESTABLISHED TO SUPPORT FUTURE REPAIRS
- 7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER

[This section must either be completed in accordance with the CLT's repair reserve policy, or omitted entirely.]

## **ARTICLE 8: Financing**

- 8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT'S PERMISSION
- 8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE
- 8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES.
- 8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE"
- 8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE
- 8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE
- 8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT

## **ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain**

- 9.1 HOMEOWNER ASSUMES ALL LIABILITY
- 9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY
- 9.3 HOMEOWNER MUST REIMBURSE CLT
- 9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST

MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND  
9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED  
9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE  
9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED  
9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME

## **ARTICLE 10: Transfer of the Home**

### **Version 1**

For situations in which: the Homeowner has no absolute right to identify buyer and can only recommend buyer; an “improvements-only appraisal-based formula” is used; and the original base price is not greater than the original appraised value of the Home.

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY  
10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS  
10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER  
10.4 HOMEOWNER’S NOTICE OF INTENT TO SELL  
10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL  
10.6 CLT HAS AN OPTION TO PURCHASE THE HOME  
10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS  
10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE  
10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE  
10.10 HOW THE FORMULA PRICE IS CALCULATED  
10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE  
10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE  
10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER

### **Version 2**

For situations in which: the Homeowner has a right to identify a buyer; an “improvements-only appraisal-based formula” is used; and the original base price is not greater than the original appraised value of the Home.

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY  
10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS  
10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER  
10.4 HOMEOWNER’S NOTICE OF INTENT TO SELL  
10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL  
10.6 HOMEOWNER HAS A RIGHT TO DESIGNATE A BUYER  
10.7 CLT MAY EXERCISE PURCHASE OPTION IF HOMEOWNER DOES NOT SELL TO A QUALIFIED BUYER  
10.8 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS  
10.9 AFTER ONE YEAR, CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE

[Four possible versions of Article 10 are presented in the Appendix at the end of this chapter. These versions differ with regard to three important variables: (1) whether the homeowner is given an absolute right to select an income-qualified buyer, (2) the type of resale formula that is used, and (3) whether the original Base Price is (or may be) greater than the original appraised value of the Home. No one of these versions is offered as THE model. Every CLT must make important decisions before adopting one of these versions (or its own variation of one of these versions).]



10.10 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE

10.11 HOW THE FORMULA PRICE IS CALCULATED

10.12 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE

10.13 PURCHASER MAY BE CHARGED A TRANSFER FEE

10.14 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER

### **Version 3**

For situations in which: the Homeowner has no absolute right to identify buyer and can only recommend buyer; a “compound appraisal-based formula” is used; and the original base price is greater than the original appraised value of the Home.

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER

10.4 HOMEOWNER’S NOTICE OF INTENT TO SELL

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL

10.6 CLT HAS AN OPTION TO PURCHASE THE HOME

10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS

10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE

10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER’S OWNERSHIP INTEREST OR FORMULA PRICE

10.10 HOW THE FORMULA PRICE IS CALCULATED

10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE

10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE

10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER

### **Version 4**

For situations in which: the Homeowner has no absolute right to identify buyer and can only recommend buyer; a “fixed-rate” or “indexed” formula is used; and the original base price is greater than the original appraised value of the Home.

Three versions of section 10.10 are presented for three different “indexed formulas.”

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY

10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS

10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER

10.4 HOMEOWNER’S NOTICE OF INTENT TO SELL

10.5 CLT HAS AN OPTION TO PURCHASE THE HOME

10.6 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS

10.7 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE

10.8 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER’S OWNERSHIP INTEREST OR FORMULA PRICE

10.9 HOW THE VALUE OF HOMEOWNER’S OWNERSHIP INTEREST IS DETERMINED

- 10.10 HOW THE FORMULA PRICE IS CALCULATED
- 10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE
- 10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE
- 10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER

**ARTICLE 11: Reserved**

**ARTICLE 12: Default**

- 12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE REQUIRED PAYMENTS TO THE CLT
- 12.2 WHAT HAPPENS IF HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE
- 12.3 WHAT HAPPENS IF HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS
- 12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION

**ARTICLE 13: Mediation and Arbitration**

- 13.1 MEDIATION AND ARBITRATION ARE PERMITTED
- 13.2 HOMEOWNER AND CLT SHALL SHARE COST OF ANY MEDIATION OR ARBITRATION

**ARTICLE 14: General Provisions**

- 14.1 HOMEOWNER'S MEMBERSHIP IN CLT
- 14.2 NOTICES
- 14.3 NO BROKERAGE
- 14.4 SEVERABILITY AND DURATION OF LEASE
- 14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION
- 14.6 WAIVER
- 14.7 CLT'S RIGHT TO PROSECUTE OR DEFEND
- 14.8 CONSTRUCTION
- 14.9 HEADINGS AND TABLE OF CONTENTS
- 14.10 PARTIES BOUND
- 14.11 GOVERNING LAW
- 14.12 RECORDING

**Exhibits That Must Be Attached**

- Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGMENT
- Exhibit LEASED LAND
- Exhibit DEED
- Exhibit PERMITTED MORTGAGES
- Exhibit FIRST REFUSAL

**Other Exhibits to be Attached as Appropriate**

- Exhibit ZONING
- Exhibit RESTRICTIONS
- Exhibit INITIAL APPRAISAL

**APPENDIX: Alternative versions of Article 10**

## GROUND LEASE

THIS LEASE ("this Lease" or "the Lease") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ COMMUNITY LAND TRUST ("CLT") and \_\_\_\_\_ ("Homeowner").

### RECITALS

A. The CLT is organized for public welfare 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.

B. The Leased Land described in this Lease has been acquired and is being leased by the CLT in furtherance of this goal.

C. The Homeowner shares the purposes of the CLT and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of the CLT.

D. Homeowner and CLT recognize the special nature of the terms of this Lease, and each of them accepts these terms, including those terms that affect the marketing and resale price of the property now being purchased by the Homeowner.

E. Homeowner and CLT agree that the terms of this Lease further their shared goals over an extended period of time and through a succession of owners.

NOW THEREFORE, Homeowner and CLT agree on all of the terms and conditions of this Lease as set forth below.

**DEFINITIONS:** Homeowner and CLT agree on the following definitions of key terms used in this Lease.

**Leased Land:** the parcel of land, described in Exhibit: LEASED LAND, that is leased to the Homeowner.

**Home:** the residential structure and other permanent improvements located on the Leased Land and owned by the Homeowner, including both the original Home described in Exhibit: DEED, and all permanent improvements added thereafter by Homeowner at Homeowner's expense.

**Base Price:** the total price that is paid for the Home by the Homeowner (including the amount provided by a first mortgage loan but not including subsidy in the form of deferred loans to the Homeowner).

**Purchase Option Price:** the maximum price the Homeowner is allowed to receive for the sale of the Home and the Homeowner's right to possess, occupy and use the Leased Land, as defined in Article 10 of this Lease.

**Lease Fee:** The monthly fee that the Homeowner pays to the CLT for the continuing use of the Leased Land and any additional amounts that the CLT charges to the Homeowner for reasons permitted by this Lease.

**Permitted Mortgage:** A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage

\*[Limits on the ability of a property owner to sell the property (referred to as "restraints on alienation") may be unenforceable based on certain legal principles (for example, the "rule against perpetuities," as noted in footnote 5). However, MCLA 554.381 provides: "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes," with "public welfare purposes" defined in MCLA 554.382 as "all lawful purposes beneficial to the public as a whole." So, this recital is intended to reinforce the position that based on these provisions the restrictions in this Lease should be valid and enforceable. Note that this provision must be coordinated with the CLT's organizational documents, and should be tailored as necessary to protect the CLT's 501(c)(3) status.]

the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

*Event of Default:* Any violation of the terms of the Lease unless it has been corrected ("cured") by Homeowner or the holder of a Permitted Mortgage in the specified period of time after a written Notice of Default has been given by CLT.

**ARTICLE 1: Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment are Attached as Exhibits.**

Attached as Exhibit HOMEOWNER'S LETTER OF AGREEMENT AND ATTORNEY'S LETTER OF ACKNOWLEDGMENT and made part of this Lease by reference are a Letter of Agreement from the Homeowner, describing the Homeowner's understanding and acceptance of this Lease (including the parts of the Lease that affect the resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

**ARTICLE 2: Leasing of Rights to the Land**

**2.1 CLT LEASES THE LAND TO HOMEOWNER:** The CLT hereby leases to the Homeowner, and Homeowner hereby accepts, the right to possess, occupy and use the Leased Land (described in the attached Exhibit LEASED LAND) in accordance with the terms of this Lease. CLT has furnished to Homeowner a copy of the most current title report, if any, obtained by CLT for the Leased Land, and Homeowner accepts title to the Leased Land in its condition "as is" as of the signing of this Lease.

**2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER:** CLT does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface. Ownership of such minerals remains with the CLT, but the CLT shall not remove any such minerals from the Leased Land without the Homeowner's written permission.

**2.3 NON-DISTURBANCE:** This Lease shall be subordinate to any mortgage which the CLT may hereinafter grant on the Leased Land. It is a condition to such subordination that if any such mortgage is foreclosed, this Lease shall continue and Homeowner's rights under this Lease shall not be disturbed so long as Homeowner is not in default beyond any applicable notice, grace or cure period. [The CLT will use its reasonable efforts to provide to Homeowner within thirty (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 Homeowner's rights under this Lease shall not be disturbed, so long as Lessee is not in default beyond any applicable notice, grace or cure period.]\*

**ARTICLE 3: Term of Lease, Change of Land Owner**

**3.1 TERM OF LEASE IS 89 YEARS:** This Lease shall remain in effect for 89 years\*, beginning on the \_\_\_ day of \_\_\_\_\_, 20\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless ended sooner or renewed as provided below.

**3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 89 YEARS:** Homeowner may renew this Lease for one additional period of 89 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 89-year period, CLT shall give Homeowner

\*[ If there is a mortgage on the CLT's interests at the time it enters into this Lease, the mortgage will automatically be superior to this Lease, even if the Homeowner does not consent. Consequently, an existing mortgagee must agree in order to adequately protect the interests of a Homeowner. Although the language in brackets is often used in other circumstances, it would be appropriate for a Homeowner 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 the CLT's interests, the 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 Homeowner's legitimate concerns.]

\*[It is possible that certain interests created by this Lease could be classified as nonvested interests and thus could possibly be invalid under the "rule against perpetuities." See MCLA 554.71 et seq. As discussed in footnote 1, MCLA 554.381 should prevent this result. However, as additional protection, we recommend limiting the term of this Lease to eighty-nine years, since MCLA 554.72 provides that a nonvested interest is invalid unless the "interest either vests or terminates within 90 years after its creation."]

a written notice that states the date of the expiration of the first 89-year period and the conditions for renewal as set forth in the following paragraph (“the Expiration Notice”). The Expiration Notice shall also describe any changes that CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner’s desire to renew (“the Renewal Notice”); (b) this Lease shall be in effect on the last day of the original 89-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 89-year term.

When Homeowner has exercised the option to renew, Homeowner and CLT shall sign a memorandum stating that the option has been exercised. The memorandum shall comply with the requirements for a notice of lease as stated in Section 14.12 below. The CLT shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

**3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND:** If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new land-owner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

#### **ARTICLE 4: Use of Leased Land**

**4.1 HOMEOWNER MAY USE THE HOME ONLY FOR RESIDENTIAL AND RELATED PURPOSES:** Homeowner shall use, and allow others to use, the Home and Leased Land only for residential purposes and any activities related to residential use that were permitted by local zoning law when the Lease was signed, as indicated in the attached Exhibit ZONING.

[To be added when needed: Use of the Leased Land shall be further limited by the restrictions described in the attached Exhibit RESTRICTIONS.]

**4.2 HOMEOWNER MUST USE THE HOME AND LEASED LAND RESPONSIBLY AND IN COMPLIANCE WITH THE LAW:** Homeowner shall use the Home and Leased Land in a way that will not cause harm to others or create any public nuisance. Homeowner shall dispose of all waste in a safe and sanitary manner. Homeowner shall maintain all parts of the Home and Leased Land in safe, sound and habitable condition, in full compliance with all laws and regulations, and in the condition that is required to maintain the insurance coverage required by Section 9.4 of this Lease.\*

**4.3 HOMEOWNER IS RESPONSIBLE FOR USE BY OTHERS:** Homeowner shall be responsible for the use of the Home and Leased Land by all residents and visitors and anyone else using the Leased Land with Homeowner’s permission and shall make all such people aware of the restrictions on use set forth in this Lease.

**4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST \_\_ MONTHS EACH YEAR:** Homeowner shall occupy the Home for at least \_\_\_\_\_ months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner’s child,

\*[This Lease should not be subject to the Landlord and Tenant Relationships Act (MCLA 554.602 et seq.) since the “residential premises” are owned by the Homeowner, not leased, and the Leased Land by itself is not covered. However, if there is a future determination that this Lease is in fact subject to this Act, the CLT will need to cure any non-compliance with the Act by sending a notice voiding or modifying any non-complying provisions (such as the allocation of responsibility for habitability of the property) no later than 20 days after notice from the tenant identifying a “non-complying” provision in order to avoid liability under this Act.

This Lease also should not be subject to the Truth in Renting Act (MCLA 554.631 et seq.), which regulates security deposits, based on the reasoning in *Penokie v Colonial Townhouses Cooperative, Inc.*, 140 Mich. App. 740, 366 N.W.2d 31 (1985) (finding that this Act is not applicable to a shareholder/tenant of a cooperative). In addition, as long as the CLT does not require a security deposit, most of this Act is not relevant in any event.]

spouse, domestic partner, or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

**4.5 LEASED LAND MAY NOT BE SUBLEASED WITHOUT CLT'S PERMISSION.** Except as otherwise provided in Article 8 and Article 10, Homeowner shall not sublease, sell or otherwise convey any of Homeowner's rights under this Lease, for any period of time, without the written permission of CLT. Homeowner agrees that CLT shall have the right to withhold such consent in order to further the purposes of this Lease.

If permission for subleasing is granted, the sublease shall be subject to the following conditions.

a) Any sublease shall be subject to all of the terms of this Lease.

b) The rental or occupancy fee charged the sub-lessee shall not be more than the amount of the Lease Fee charged the Homeowner by the CLT, plus an amount approved by CLT to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

**4.6 CLT HAS A RIGHT TO INSPECT THE LEASED LAND:** The CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Homeowner at least 24 hours before the planned inspection. No more than [4] regular inspections may be carried out in a single year, except in the case of an emergency. In an emergency, the CLT may inspect any part of the Leased Land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Homeowner before the inspection.

If the CLT has received an Intent-To-Sell Notice (as described in Section 10.4 below), then the CLT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The CLT must notify the Homeowner at least 24 hours before carrying out such inspection.

**4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT:** Homeowner has the right to quiet enjoyment of the Leased Land. The CLT has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Homeowner in any way not permitted by this Lease.

## **ARTICLE 5: Lease Fee**

**5.1 AMOUNT OF LEASE FEE:** The Homeowner shall pay a monthly Lease Fee in an amount equal to the sum of (a) a Land Use Fee of \$\_\_\_\_ to be paid in return for the continuing right to possess, occupy and use the Leased Land, plus (b) a Repair Reserve Fee of \$\_\_\_\_ to be held by the CLT and used for the purpose of preserving the physical quality of the Home for the long term in accordance with Section 7.6 below.

**5.2 WHEN THE LEASE FEE IS TO BE PAID:** The Lease Fee shall be payable to CLT on the first day of each month for as long as this Lease remains in effect, unless the Lease Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee.

**5.3 HOW THE AMOUNT OF THE LAND USE FEE HAS BEEN DETERMINED:** The

amount of the Land Use Fee stated in Section 5.1 above has been determined as follows. First, the approximate monthly fair rental value of the Leased Land has been established, as of the beginning of the Lease term, recognizing that the fair rental value is reduced by certain restrictions imposed by the Lease on the use of the Land. Then the affordability of this monthly amount, plus the amount of the Repair Reserve Fee, for the Homeowner has been analyzed and, if necessary, the Land Use has been reduced to an amount considered to be affordable for Homeowner.

**5.4 CLT MAY REDUCE OR SUSPEND THE LEASE FEE TO IMPROVE AFFORDABILITY:** CLT may reduce or suspend the total amount of the Lease Fee for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by CLT.

**5.5 FEES MAY BE INCREASED FROM TIME TO TIME:** The CLT may increase the amount of the Land Use Fee and/or the Repair Reserve Fee from time to time, but not more often than once every [5] years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Land is located, or, if none, for urban areas the size of \_\_\_\_\_,

**5.6 LAND USE FEE WILL BE INCREASED IF RESTRICTIONS ARE REMOVED:** If, for any reason, the provisions of Article 10 regarding transfers of the Home or Sections 4.4 and 4.5 regarding occupancy and subleasing are suspended or invalidated for any period of time, then during that time the Land Use Fee shall be increased to an amount calculated by CLT to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions, but initially an amount not exceeding \_\_\_\_ dollars. Such increase shall become effective upon CLT's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, the CLT may, from time to time, further increase the amount of such Land Use Fee, provided that the amount of the Land Use Fee does not exceed the fair rental value of the property, and provided that such increases do not occur more often than once in every [5] years.

**5.7 IF PAYMENT IS LATE, INTEREST CAN BE CHARGED:** If the CLT has not received any monthly installment of the Lease Fee on or before the date on which the such installment first becomes payable under this Lease (the "Due Date"), the CLT may require Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by CLT, at a rate not to exceed \_\_\_\_\_. [Specify either a fixed %, an index such as prime rate of a particular institution, or a legally established limit]. Such interest shall be deemed additional Lease Fee and shall be paid by Homeowner to CLT upon demand; provided, however, that CLT shall waive any such interest that would otherwise be payable to CLT if such payment of the Lease Fee is received by CLT on or before the thirtieth (30th) day after the Due Date.

**5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD:** In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded

before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below; and (c) liens for real property taxes and other governmental assessments or charges against the Home.

#### **ARTICLE 6: Taxes and Assessments**

**6.1 HOMEOWNER IS RESPONSIBLE FOR PAYING ALL TAXES AND ASSESSMENTS:** Homeowner shall pay directly, when due, all taxes and governmental assessments that relate to the Home and the Leased Land (including any taxes relating to the CLT's interest in the Leased Land).

**6.2 CLT WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER:** In the event that the local taxing authority bills CLT for any portion of the taxes on the Home or Leased Land, CLT shall pass the bill to Homeowner and Homeowner shall promptly pay this bill.

**6.3 HOMEOWNER HAS A RIGHT TO CONTEST TAXES:** Homeowner shall have the right to contest the amount or validity of any taxes relating to the Home and Leased Land. Upon receiving a reasonable request from Homeowner for assistance in this matter, CLT shall join in contesting such taxes. All costs of such proceedings shall be paid by Homeowner.

**6.4 IF HOMEOWNER FAILS TO PAY TAXES, CLT MAY INCREASE LEASE FEE:** In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, CLT may increase Homeowner's Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, CLT shall pay the amount collected to the taxing authority in a timely manner.

**6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF:** When either party pays taxes relating to the Home or Leased Land, that party shall furnish satisfactory evidence of the payment to the other party. A photocopy of a receipt shall be the usual method of furnishing such evidence.

#### **ARTICLE 7: The Home**

**7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND:** All structures, including the house, fixtures, and other improvements purchased, constructed, or installed by the Homeowner on any part of the Leased Land at any time during the term of this Lease (collectively, the "Home") shall be property of the Homeowner. Title to the Home shall be and remain vested in the Homeowner. However, Homeowner's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale or leasing of the Home by the Homeowner and the CLT's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without CLT's prior written consent.

**7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE:** Upon the signing of this Lease, Homeowner is simultaneously purchasing the Home located at that time on the Leased Land, as described in the Deed, a copy of which is attached to this Lease as Exhibit: DEED.

**7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS:** Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner



and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

For any construction requiring CLT's prior written consent, Homeowner shall submit a written request to the CLT. Such request shall include:

- a written statement of the reasons for undertaking the construction;
- a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- a list of the necessary materials, with quantities needed;
- a statement of who will do the work;

If the CLT finds it needs additional information it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. The CLT then, within two weeks of receiving all necessary information (including any additional information it may have requested) shall give Homeowner either its written consent or a written statement of its reasons for not consenting. Before construction can begin, Homeowner shall provide CLT with copies of all necessary building permits, if not previously provided.

**7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME:** CLT has not required any new improvements or other construction or alterations permitted pursuant to Section 7.3.\* No lien of any type shall attach to the CLT's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Land or the Home which remains more than 60 days after it has been filed. Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If Homeowner fails to discharge such lien within the 60-day period, then Homeowner shall immediately notify CLT of such failure. CLT shall have the right to discharge the lien by paying the amount in question. Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Leased Land from such lien. Any amounts paid by CLT to discharge such liens shall be treated as an additional Lease Fee payable by Homeowner upon demand.

\*[If the CLT requires any improvements, then its interests are subject to construction liens even though it does not contract for the improvements. See MCLA 570.1107.]

**7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS:** Homeowner hereby assumes responsibility for furnishing all services or facilities on the Leased Land, including but not limited to heat, electricity, air conditioning and water. CLT shall not be required to furnish any services or facilities or to make any repairs to the Home. Homeowner shall maintain the Home and Leased Land as required by Section 4.2 above and shall see that all necessary repairs and replacements are accomplished when needed.

**7.6 A REPAIR RESERVE FUND IS ESTABLISHED TO SUPPORT FUTURE REPAIRS: \***

**7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER:** Upon the expiration or termination of this Lease, ownership of the Home shall revert to CLT. Upon thus assuming title to the Home, CLT shall promptly pay Homeowner and Permitted Mortgagee(s), as follows:

\*[This section must either be completed in accordance with the CLT's repair reserve policy, or omitted entirely. See Commentary on this Section 7.6.]

FIRST, CLT shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner;

SECOND, CLT shall pay the Homeowner the balance of the Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease. The Homeowner shall be responsible for any costs necessary to clear any additional liens or other charges related to the Home which may be assessed against the Home. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorney's fees incurred by the CLT.

## **ARTICLE 8: Financing**

**8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT's PERMISSION:** The Homeowner may mortgage the Home only with the written permission of CLT. Any mortgage or deed of trust permitted in writing by the CLT is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee.

**8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE.** By signing this Lease, CLT gives written permission for any mortgage or deed of trust signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Home.

**8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES.** If, at any time subsequent to the purchase of the Home and signing of the Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Home (to refinance an existing Permitted Mortgage or to finance home repairs or for any other purpose), Homeowner must inform CLT, in writing, of the proposed terms and conditions of such mortgage loan at least 15 business days prior to the expected closing of the loan. The information to be provided to the CLT must include:

- the name of the proposed lender;
- Homeowner's reason for requesting the loan;
- the principal amount of the proposed loan and the total mortgage debt that will result from the combination of the loan and existing mortgage debt, if any;
- expected closing costs;
- the rate of interest;
- the repayment schedule;
- a copy of the appraisal commissioned in connection with the loan request.

CLT may also require Homeowner to submit additional information. CLT will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount greater than \_\_\_% of the then current Purchase Option Price, calculated in accordance with Article 10 below, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or the CLT.

**8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE."** The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted

Mortgages, Part C,” and for which the loan secured thereby does not increase Homeowner’s total mortgage debt to an amount greater than \_\_\_% of the then current Purchase Option Price, calculated in accordance with Article 10 below.

**8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE.**

Any Permitted Mortgagee shall be bound by each of the requirements stated in “Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee,” which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

**8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE.**

Any Permitted Mortgagee shall have all of the rights and protections stated in “Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee,” which is made a part of this Lease by reference.

**8.7 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO CLT.**

Homeowner and CLT recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Purchase Option Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to CLT all net proceeds of sale of the Home that would otherwise have been payable to Homeowner and that exceed the amount of net proceeds that Homeowner would have received if the property had been sold for the Purchase Option Price, calculated as described in Section 10.10 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to CLT. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to CLT.

**ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain**

**9.1 HOMEOWNER ASSUMES ALL LIABILITY.** Homeowner assumes all responsibility and liability related to Homeowner’s possession, occupancy and use of the Leased Land.

**9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY.**

Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT’s agents or employees.

**9.3 HOMEOWNER MUST REIMBURSE CLT.**

In the event the CLT shall be required to pay any sum that is the Homeowner’s responsibility or liability, the Homeowner shall reimburse the CLT for such payment and for reasonable expenses caused thereby.

**9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND.**

Homeowner shall, at Homeowner’s expense, keep the Home continuously insured against “all risks” of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease.

Thereafter, if the CLT determines that the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

Should the Home lie in a flood hazard zone as defined by the National Flood Insurance Plan, the Homeowner shall keep in full force and effect flood insurance in the maximum amount available.

The Homeowner shall also, at its sole expense, maintain in full force and effect public liability insurance using ISO Form HO 00 03 or its equivalent in the amount of \$\_\_\_\_\_ per occurrence and in the aggregate. The CLT shall be named as an additional insured using ISO Form HO 04 41 or its equivalent, and certificates of insurance shall be delivered to the CLT prior to the commencement of the Lease and at each anniversary date thereof.

The dollar amounts of such coverage may be increased from time to time at the CLT's request but not more often than once in any one-year period. CLT shall inform the Homeowner of such required increase in coverage at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. The amount of such increase in coverage shall be based on current trends in homeowner's liability insurance coverage in the area in which the Home is located.

**9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED.** Except as provided below, in the event of fire or other damage to the Home, Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the Leased Land is safe and that the damaged Home does not constitute a danger to persons or property.

If Homeowner, based on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than the full cost of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify CLT of this problem, and CLT may then help to resolve the problem. Methods used to resolve the problem may include efforts to increase the available insurance proceeds, efforts to reduce the cost of necessary repairs, efforts to arrange affordable financing covering the costs of repair not covered by insurance proceeds, and any other methods agreed upon by both Homeowner and CLT.

If Homeowner and CLT cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give CLT written notice of intent to terminate the Lease. The date of actual termination shall be no less than 60 days after the date of Homeowner's notice of intent to terminate. Upon termination, any insurance proceeds payable to Homeowner for damage to the Home shall be paid as follows.

FIRST, to the expenses of their collection;

SECOND, to any Permitted Mortgagee(s), to the extent required by the

Permitted Mortgage(s);

THIRD, to the expenses of enclosing or razing the remains of the Home and clearing debris;

FOURTH, to the CLT for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Purchase Option Price, as of the day prior to the loss, less any amounts paid with respect to the second, third, and fourth clauses above;

SIXTH, the balance, if any, to the CLT.

**9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE.** If all of the Leased Land is taken by eminent domain or otherwise for public purposes, or if so much of the Leased Land is taken that the Home is lost or damaged beyond repair, the Lease shall terminate as of the date when Homeowner is required to give up possession of the Leased Land. Upon such termination, the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds.

In the event of a taking of a portion of the Leased Land that does not result in damage to the Home or significant reduction in the usefulness or desirability of the Leased Land for residential purposes, then any monetary compensation for such taking shall be allocated entirely to CLT.

In the event of a taking of a portion of the Leased Land that results in damage to the Home only to such an extent that the Home can reasonably be restored to a residential use consistent with this Lease, then the damage shall be treated as damage is treated in Section 9.5 above, and monetary compensation shall be allocated as insurance proceeds are to be allocated under Section 9.5.

**9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED.** In the event of any taking that reduces the size of the Leased Land but does not result in the termination of the Lease, CLT shall reassess the fair rental value of the remaining Land and shall adjust the Lease Fee if necessary to assure that the monthly fee does not exceed the monthly fair rental value of the Land for use as restricted by the Lease.

**9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME.** If this Lease is terminated as a result of damage, destruction or taking, CLT shall take reasonable steps to allow Homeowner to purchase another home on another parcel of leased land owned by CLT if such home can reasonably be made available. If Homeowner purchases such a home, Homeowner agrees to apply any proceeds or award received by Homeowner to the purchase of the home. Homeowner understands that there are numerous reasons why it may not be possible to make such a home available, and shall have no claim against CLT if such a home is not made available.

## **ARTICLE 10: Transfer of the Home**

[Four possible versions of Article 10 are presented in the Appendix at the end of this Agreement. A CLT may adopt one or another version (or a variation of a version) depending on: (a) the specific resale formula used, (b) whether the Homeowner is to have an absolute right to select an income-qualified buyer, and (c) the relationship of the base price to the market value of the Home.]

## **ARTICLE 11: RESERVED**

## **ARTICLE 12: DEFAULT**

**12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE:** It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

**12.2 WHAT HAPPENS IF HOMEOWNER VIOLATES OTHER (NONMONETARY) TERMS OF THE LEASE:** It shall be an event of default if Homeowner fails to abide by any other requirement or restriction stated in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

**12.3 WHAT HAPPENS IF HOMEOWNER DEFAULTS AS A RESULT OF JUDICIAL PROCESS:** It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home or Homeowner's interest in the Leased Land by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files 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.

**12.4 A DEFAULT (UNCURED VIOLATION) GIVES CLT THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:**

a) **TERMINATION:** In the case of any of the events of default described above, CLT may terminate this lease and initiate summary proceedings under applicable law against Homeowner, and CLT shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leased Land and Home and repossess the entire Leased Land and Home, and expel Homeowner and those claiming rights through Homeowner. In addition, CLT shall have such additional rights and remedies to recover from Homeowner arrears of rent and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by CLT pursuant to an Event of Default, then, as provided in Section 7.7 above, upon thus assuming title to the Home, CLT shall pay to Homeowner and any Permitted Mortgagee an amount equal to the Purchase Option Price calculated in accordance with Section 10.9 above, as of the time of reversion of ownership, less the total amount of any unpaid Lease Fee and any other amounts owed to the CLT under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by CLT in pursuit of its remedies under this Lease.

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Homeowner's interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

b) **EXERCISE OF OPTION:** In the case of any of the events of default described above, Homeowner hereby grants to the CLT (or its assignee) the option to purchase the Home for the Purchase Option Price as such price is defined in Article 10 above. Within thirty (30) days after the expiration of any applicable cure period as established in Sections 12.1 or 12.2 above or within 30 days after any of the events constituting an Event of Default under Section 12.3 above, CLT shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 12.4(b). Not later than ninety (90) days after the CLT gives notice to the Homeowner of the CLT's intent to exercise its option under this Section 12.4(a), the CLT or its assignee shall purchase the Home for the Purchase Option Price.

**12.5 WHAT HAPPENS IF CLT DEFAULTS:** CLT shall in no event be in default in the performance of any of its obligations under the Lease unless and until CLT has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Homeowner to CLT properly specifying CLT's failure to perform any such obligation.

**ARTICLE 13: Mediation and Arbitration**

13.1 Nothing in this Lease shall be construed as preventing the parties from utilizing any process of mediation or arbitration in which the parties agree to engage for the purpose of resolving a dispute.

13.2 Homeowner and CLT shall each pay one half (50%) of any costs incurred in carrying out mediation or arbitration in which the parties have agreed to engage.

**ARTICLE 14: GENERAL PROVISIONS**

**14.1 HOMEOWNER'S MEMBERSHIP IN CLT:\*** The Homeowner under this Lease shall automatically be a regular voting member of the CLT.

\*[This provision needs to be coordinated with the organizational structure of the CLT.]

**14.2 NOTICES:** Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to CLT: \_\_\_\_\_ (name of CLT)  
with a copy to: \_\_\_\_\_ (CLT's attorney)

If to Homeowner: \_\_\_\_\_ (name of Homeowner)

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

**14.3 NO BROKERAGE:** Homeowner warrants that it has not dealt with any real estate broker other than \_\_\_\_\_ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than \_\_\_\_\_, Homeowner shall defend CLT against such claim with counsel

of CLT's selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

**14.4 SEVERABILITY AND DURATION OF LEASE:** If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Homeowner or CLT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that CLT's option to purchase and all other rights of both parties under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and 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 the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:\*

\*[NOTE: List an identifiable group of people, e.g., "The children living as of the date of this Lease of any of the directors or employees of a specified corporation."]

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**14.5 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION:** If the provisions of the purchase option set forth in Article 10 of this Lease shall, for any reason, become unenforceable, CLT shall nevertheless have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner. Such right shall be as specified in Exhibit FIRST REFUSAL. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

**14.6 WAIVER:** The waiver by CLT at any time of any requirement or restriction in this Lease, or the failure of CLT to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Lease. CLT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by CLT before being effective.

The subsequent acceptance of Lease Fee payments by CLT shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Lease, other than the failure of the Homeowner to pay the particular Lease Fee so accepted, regardless of CLT's knowledge of such preceding breach at the time of acceptance of such Lease Fee payment.

**14.7 CLT'S RIGHT TO PROSECUTE OR DEFEND:** CLT shall have the right, but shall have no obligation, to prosecute or defend, in its own or the Homeowner's name, any actions or proceedings appropriate to the protection of its own or Homeowner's interest in the Leased Land. Whenever requested by CLT, Homeowner shall give CLT all reasonable aid in any such action or proceeding.

**14.8 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.

**14.9 HEADINGS AND TABLE OF CONTENTS:** The headings, subheadings 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 or conditions of this Lease.



**14.10 PARTIES BOUND:** This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the benefit of these 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 CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

**14.11 GOVERNING LAW:** This Lease shall be interpreted in accordance with and governed by the laws of Michigan. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against CLT or Homeowner.

**14.12 RECORDING:** The parties agree, as an alternative to the recording of this Lease, to execute a so-called 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 state the rent or other charges payable by Homeowner 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.

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

\_\_\_\_\_  
[CLT]

By: \_\_\_\_\_  
Its duly authorized agent

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Homeowner Name]

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
Witness

[Notarize signatures]

## Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGMENT

### Sample Letter of Agreement

To \_\_\_\_\_ Community Land Trust ("the CLT")

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

This letter is given to the CLT to become an exhibit to a Lease between the CLT and me. I will be leasing a parcel of land from the CLT and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as a "the Homeowner."

My legal counsel, \_\_\_\_\_, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a CLT homeowner, now and in the future.

In particular, I understand and agree with the following points.

One of the goals of the CLT is to keep CLT homes affordable for lower income households from one CLT homeowner to the next. I support this goal as a CLT homeowner and as a member of the CLT.

The terms and conditions of my Lease will keep my home affordable for future "income-qualified persons" (as defined in the Lease). If and when I want to sell my home, the lease requires that I sell it either to the CLT or to another income-qualified person. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for such income-qualified persons.

It is also a goal of the CLT to promote resident ownership of CLT homes. For this reason, my Lease requires that, if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.

I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

As a CLT homeowner and a member of the CLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely,

**Sample  
Letter of Attorney's Acknowledgment**

I, \_\_\_\_\_, have been independently employed by \_\_\_\_\_ (hereinafter "the Client") who intends to purchase a house and other improvements (the "Home") on land to be leased from Community Land Trust. The house and land are located at \_\_\_\_\_.

In connection with the contemplated purchase of the Home and the leasing of the land, I reviewed with the Client the following documents:

- a) this Letter of Attorney's Acknowledgment and a Letter of Agreement from the Client;
- b) a proposed Deed conveying the Home to the Client;
- c) a proposed Ground Lease conveying the "Leased Land" to the Client;
- d) other written materials provided by the CLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. In my review of these documents my purpose has been to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Firm/Address \_\_\_\_\_

**Exhibit DEED**

**Sample  
Deed**

Between

LOCAL LAND TRUST (Grantor), a not-for-profit corporation having its principal offices at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_,

JOHN AND MARY DOE (Grantees), residing at \_\_\_\_\_, \_\_\_\_\_.

Witnesseth

That Grantor, in consideration of one dollar and other good and valuable consideration paid by Grantees, does hereby grant and release unto Grantees, their heirs, or successors and assigns forever,

THE BUILDINGS AND OTHER IMPROVEMENTS ONLY, as presently erected on the Land described in Schedule "A" attached hereto and made a part hereof.

It is the intention of the parties that the real property underlying the buildings and other improvements conveyed herein remain vested in Grantor and that this warranty deed convey only such buildings and other improvements as are presently erected upon the subject Land.

In witness whereof, as authorized agent of Grantor, I hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

\_\_\_\_\_

[Notarize signature]

[Signature]

## Exhibit PERMITTED MORTGAGES

The rights and provisions set forth in this Exhibit shall be understood to be provisions of Section 8.2 of the Lease. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

**A. OBLIGATIONS OF PERMITTED MORTGAGEE.** Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.

2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.

3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT's intent to purchase the Home within thirty (30) days following CLT's receipt of the Permitted Mortgagee's notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.

4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.

5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT's interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.

6. The Permitted Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner, Homeowner's interest in the Leased

Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that CLT's consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

7. In the event any part of the Security is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Permitted Mortgagee in accordance with the provisions of ARTICLE 9 hereof.

8. CLT shall not be obligated to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.

**B. RIGHTS OF PERMITTED MORTGAGEE.** The rights of a Permitted Mortgagee as referenced under Section 8.6 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Any Permitted Mortgagee shall, without further consent by CLT, have the right to (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance being effective as if it had been performed by Homeowner; (b) acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Homeowner by this Lease or otherwise by law, subject to 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 any provisions of the Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

2. A Permitted Mortgagee shall not be required, as a condition to the exercise of its rights under the Lease, to assume personal liability for the payment and performance of the obligations of the Homeowner under the Lease. Any such payment or performance or other act by Permitted Mortgagee under the Lease shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee actually takes possession of the Home and Leased Land. In the event Permitted Mortgagee does take possession of the Home and Leased Land and thereupon transfers such property, any such transferee shall be required to enter into a written agreement assuming such personal liability and upon any such assumption the Permitted Mortgagee shall automatically be released from personal liability under the Lease.

3. In the event that title to the estates of both CLT and Homeowner are acquired at any time by the same person or persons, no merger of these estates shall occur without the prior written declaration of merger by Permitted Mortgagee, so long as Permitted Mortgagee owns any interest in the Security or in a Permitted Mortgage.

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of

the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the 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, Homeowner and the Permitted Mortgagee.

5. The CLT shall have no right to terminate the Lease during such time as the Permitted Mortgagee has commenced foreclosure in accordance with the provisions of the Lease and is diligently pursuing the same.

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner's default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the 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 said Section 14.2 of the Lease.

7. In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, Sections 10.1 through 10.11 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. Before becoming effective, any amendments to this Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

**C. STANDARD PERMITTED MORTGAGE AGREEMENT.** A Standard Permitted Mortgage Agreement, as identified in Section 8.4 of this Lease, shall be written as follows, and shall be signed by Mortgagee and Homeowner.

This Agreement is made by and among:

\_\_\_\_\_ (Mortgagee) and  
\_\_\_\_\_ ("Homeowner"),

Whereas:

\_\_\_\_\_ CLT (the "CLT") and Homeowner have entered, or are entering, into a ground lease ("the Lease"), conveying to Homeowner a leasehold interest in the Land located at \_\_\_\_\_ ("the Leased Land"); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land ("the Home").

The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the "Mortgage") in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached hereto as Schedule A.

The Ground Lease states that the Homeowner may mortgage the Leased Land only with the written consent of CLT. The Ground Lease further provides that CLT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein ("the Stipulated Conditions").

Now, therefore, the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below.

*Stipulated Conditions:*

- 1) If Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Mortgage, the Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Mortgagee.
- 2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee's loans and to take assignment of the Mortgage.
- 3) If the Mortgagee acquires title to the Home and Homeowner's interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner's interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT's intent to make such purchase within thirty (30) days following the CLT's receipt of the Mortgagee's notice of such acquisition of the Home and Homeowner's interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner's interest in the Leased Land to another person;
- 4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Mortgage.
- 5) Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT's interest in and to the Lease, or their respective





## Exhibit FIRST REFUSAL

Whenever any party under the Lease shall have a right of first refusal as to certain property, the following procedures shall apply. If the owner of the property offering it for sale ("Offering Party") shall within the term of the Lease receive a bona fide third party offer to purchase the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

a) Offering Party shall give written notice of such offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder shall have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. Such Notice of Intent to Purchase shall be given in writing to the Offering Party within the Election Period.

b) If Holder exercises the right to purchase the property, such purchase shall be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.

c) Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party shall have the right (subject to any other applicable restrictions in the Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within such one-year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

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## Other Exhibits to be Attached as Appropriate

**Exhibit LAND** [Correct legal description of area of Leased Land and appurtenant title rights and obligations.]

**Exhibit ZONING** [Setting forth applicable zoning restrictions as of the commencement of the Lease]

**Exhibit RESTRICTIONS** [To be attached when necessary to stipulate use restrictions not included under Zoning]

**Exhibit INITIAL APPRAISAL** [To be attached if Lease contains an “appraisal-based” resale formula]

## APPENDIX: Four Versions of Article 10

### Article 10: Version 1

For situations in which:

the Homeowner has no absolute right to identify a buyer and can only recommend a buyer;

an “improvements-only appraisal-based formula” is used; and

the original base price is not greater than the original appraised value of the Home.

### ARTICLE 10: Transfer of the Home

**10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY:** Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

**10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS:** Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed \_\_\_\_\_ percent (\_\_\_%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

**10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER:** If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that a Letter of Agreement and a Letter of Attorney’s Acknowledgment (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

the spouse of the Homeowner; or

the child or children of the Homeowner; or

member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article 10.

**HOMEOWNER’S NOTICE OF INTENT TO SELL:** In the event that Homeowner wishes to sell Homeowner’s Property, Homeowner shall notify CLT in writing of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

**10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL:** No later than ten (10) days after CLT’s receipt of Homeowner’s Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The



Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. The Appraisal shall state the values contributed by the Leased Land and by the Home (consisting of improvements only) as separate amounts. Copies of the Appraisal are to be provided to both CLT and Homeowner.

**10.6 CLT HAS AN OPTION TO PURCHASE THE HOME.** Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

**10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

**10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:** If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus

CLT's costs of sale and any other sums owed CLT by Homeowner.

**10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE:** In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the value of the Home (consisting of improvements only) as determined by the Appraisal commissioned and conducted as provided in 10.5 above or (b) the price calculated in accordance with the formula described below (the Formula Price).

**10.10 HOW THE FORMULA PRICE IS CALCULATED:** The Formula Price shall be equal to Homeowner's Base Price, as stated below, plus 25% of the increase in market value of the Home, if any, calculated in the way described below.

Homeowner's Base Price: The parties agree that the Homeowner's Base Price for Homeowner's Property as of the signing of this Lease is \$\_\_\_\_\_.

Initial Appraised Value: The parties agree that the appraised value of the Home at the time of Homeowner's purchase (the Initial Appraised Value) is \$ \_\_\_\_\_, as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL.

Increase in Market Value: The increase in market value of the Home equals the appraised value of the Home at time of sale, calculated according to Section 10.5 above, minus the Initial Appraised Value.

Homeowner's share of Increase in Market Value: Homeowner's share of the increase in the market value of the Home equals twenty-five percent (25%) of the increase in market value as calculated above.

Summary of Formula Price: The Formula Price equals Homeowner's Base Price plus Homeowner's Share of Increase in Market Value.

**10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE:** The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

**10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE.** In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than \_\_\_% of the Purchase Option Price.

**10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER:** The Homeowner is required to make necessary repairs when she voluntarily transfers the Home as follows:

The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.

The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the

Homeowner, and the CLT within 10 days after receiving the Inspection Report.

Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.

Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. [Add the following sentence only if provision is made for a repair reserve: Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]

Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

## Article 10: Version 2

For situations in which:

the Homeowner has a right to identify a qualified buyer;

an "improvements-only appraisal-based formula" is used; and

the original base price is not greater than the original appraised value of the Home.

## ARTICLE 10: Transfer of the Home

**10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY:** Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

**10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS:** Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

"Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed \_\_\_\_\_ percent (\_\_\_%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

**10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER:** If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner's estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner's rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as "a," "b," or "c," provided that a Letter of Agreement and a Letter of Attorney's Acknowledgment (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

the spouse of the Homeowner; or

the child or children of the Homeowner; or

member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney's Acknowledgment as provided above, must demonstrate to CLT's satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article 10.

**10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL:** In the event that Homeowner wishes to sell the Home, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice).

**10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL:** No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though



title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. The Appraisal shall state the values contributed by the Leased Land and by the Home (consisting of improvements only) as separate amounts. Copies of the Appraisal are to be provided to both CLT and Homeowner.

**10.6 HOMEOWNER HAS A RIGHT TO DESIGNATE A QUALIFIED BUYER:**

Homeowner may, no later than ten days following receipt of the Appraisal, notify CLT in writing that Homeowner has identified a prospective buyer. If Homeowner has thus identified a prospective buyer, then, within thirty (30) days of receipt of the Appraisal, Homeowner shall furnish to CLT, or cause to be furnished to CLT, the following information and documents: (1) the number of people in the prospective buyer's household, (2) such documentation of household income as CLT's policies then require for confirmation of a buyer's income-eligibility, (3) Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease, in form and substance similar to the letters in Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S ACKNOWLEDGEMENT attached hereto; and (4) a statement of the price and other proposed terms of sale.

No sale or other disposition shall be effective unless and until CLT, within thirty (30) days of receipt of all of the documents listed in the paragraph above, confirms in writing that the prospective buyer is an income-qualified person who understands and accepts the terms of the Lease and that the price and other terms of sale are consistent with the terms of the Lease. If CLT determines that the proposed buyer or proposed sale are not permitted under the terms of the Lease, then CLT shall respond with written notice to Homeowner of this determination. If CLT fails to respond in writing within thirty (30) days of its receipt of the required documents, such failure shall be deemed to constitute approval of the sale.

Upon receipt of CLT's approval as described above, Homeowner may proceed to sell the Home to the prospective buyer. Simultaneously with the closing of such sale, CLT shall issue a new Lease as provided in Section 10.11 below). Homeowner shall complete such sale within sixty (60) days of receipt of approval of the proposed sale.

**10.7 CLT MAY EXERCISE PURCHASE OPTION IF HOMEOWNER DOES NOT SELL TO A QUALIFIED BUYER:**

Upon receipt of an Intent to Sell Notice from Homeowner, CLT shall have the option to purchase said Home (the Purchase Option) at the Purchase Option Price calculated as set forth below, unless Homeowner has identified a prospective buyer and is proceeding to seek approval of such buyer and to sell to such buyer in accordance with the provisions of Section 10.6 above. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment of labor and capital by the Homeowner. Homeowner and CLT agree to cooperate in furthering such purposes by facilitating the sale of the Home to an Income-Qualified Person. Such purposes are understood to be accomplished, without CLT having otherwise exercised the Purchase Option, if the Home is sold, in accordance with Section 10.6 above, to a buyer identified by Homeowner. CLT shall not exercise the purchase option directly during such time as Homeowner is proceeding to sell to a prospective buyer in accordance with Section 10.6.

The CLT may exercise the Purchase Option within a forty-five (45) day period beginning ten days after Homeowner's receipt of the Appraisal unless Homeowner has, during such ten-day period, given notice identifying a prospective buyer. If

Homeowner has identified a prospective buyer but for any reason the sale to such prospective buyer cannot be completed, then CLT may exercise the Purchase Option within a forty-five (45) day period beginning at such time as it is established that sale to such prospective buyer cannot be completed. In either case, to exercise the Purchase Option, CLT shall, within the applicable forty-five-day period, notify Homeowner in writing of its election to purchase the Home (“Notice of Exercise of Purchase Option”).

If CLT gives Notice of Exercise of Purchase Option to Homeowner, CLT shall then complete the purchase of the Home within sixty (60) days of the date on which it gives such notice. If CLT either fails to give such notice within the time permitted or fails to complete the purchase within the time permitted, Homeowner may sell the Home as provided in Section 10.8 below.

Purchase of the Home pursuant to the Purchase Option may be accomplished by CLT’s giving Notice of Exercise of Purchase Option and thereupon assigning the Option to an Income-Qualified Person who then completes the purchase of the Home within sixty days of the date of the exercise of the purchase option. The time permitted for the completion of the purchase of the Home may be extended by mutual agreement of CLT and Homeowner.

**10.8 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.7 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

**10.9 AFTER ONE YEAR, CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:** If CLT does not exercise its option and complete the purchase of Homeowner’s Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner’s Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT’s costs of sale and any other sums owed CLT by Homeowner.

**10.10 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE:** In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the value of the Home (consisting of improvements only) as determined by the Appraisal commissioned and conducted as provided in 10.5 above or (b) the price calculated in accordance with the formula described below (the Formula Price).

**10.11 HOW THE FORMULA PRICE IS CALCULATED:** The Formula Price shall be equal to Homeowner’s Base Price, as stated below, plus 25% of the increase in market value of the Home, if any, calculated in the way described below.

Homeowner’s Base Price: The parties agree that the Homeowner’s Base Price for

Homeowner's Property as of the signing of this Lease is \$\_\_\_\_\_.

Initial Appraised Value: The parties agree that the appraised value of the Home at the time of Homeowner's purchase (the Initial Appraised Value) is \$ \_\_\_\_\_, as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL.

Increase in Market Value: The increase in market value of the Home equals the appraised value of the Home at time of sale, calculated according to Section 10.5 above, minus the Initial Appraised Value.

Homeowner's share of Increase in Market Value: Homeowner's share of the increase in the market value of the Home equals twenty-five percent (25%) of the increase in market value as calculated above.

Summary of Formula Price: The Formula Price equals Homeowner's Base Price plus Homeowner's Share of Increase in Market Value.

**10.12 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE:** The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. Such new Lease shall be substantially the same as this Lease in the rights, benefits and obligations assigned to Homeowner and CLT.

**10.13 PURCHASER MAY BE CHARGED A TRANSFER FEE.** In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than \_\_\_% of the Purchase Option Price.

**10.14 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER:** The Homeowner is required to make necessary repairs when she voluntarily transfers the Home as follows:

The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.

The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.

Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.

Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. [Add the following sentence only if provision

is made for a repair reserve: Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]

Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.



## ARTICLE 10: Transfer of the Home

**10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY:** Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

**10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS:** Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed \_\_\_\_\_ percent (\_\_\_%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

**10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER:** If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that a Letter of Agreement and a Letter of Attorney’s Acknowledgment (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

the spouse of the Homeowner; or

the child or children of the Homeowner; or

member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

**10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL:** In the event that Homeowner wishes to sell Homeowner’s Property, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

**10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL:** No later than ten (10) days after CLT’s receipt of Homeowner’s Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to the

## Article 10: Version 3

For situations in which:

the Homeowner has no absolute right to identify buyer and can only recommend buyer;

a “compound appraisal-based formula” is used; and

the original base price is greater than the original appraised value of the Home.

Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

**10.6 CLT HAS AN OPTION TO PURCHASE THE HOME.** Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

**10.7 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.6 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

**10.8 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:** If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

**10.9 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF**

**HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE:** In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale as calculated in line "d" of Section 10.10 below or (b) the Formula Price calculated in accordance with Section 10.10 below.

**10.10 HOW THE FORMULA PRICE IS CALCULATED:** The Formula Price shall be equal to (a) the amount of Homeowner's Base Price (as stated below), plus (b) 25% of any increase in the appraised value of Homeowner's Ownership Interest (as calculated below).

**Homeowner's Base Price:** The Parties agree that the price paid by Homeowner upon the execution of this lease (Homeowner's Base Price) is \$\_\_\_\_\_. (Homeowner's Base Price equals Homeowner's Ownership Interest at time of purchase.)

**Initial Appraised Value of Home and Leased Land:** The parties agree that the total appraised value of Home and Leased Land at the time of Homeowner's purchase (the Initial Appraised Value) is \$ \_\_\_\_\_, as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL,

**Ratio of Homeowner's Base Price to Initial Appraised Value.** The parties agree that the Ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage, is \_\_\_%.

**Appraised Value of Homeowner's Ownership Interest at Resale.** The appraised value of Homeowner's Ownership Interest at time of resale equals the appraised value of Home and Leased Land at resale, determined in accordance with Section 10.5, multiplied by the Ratio of Homeowner's Base Price to Initial Appraised Value (\_\_\_%) as calculated in line "c" above.

**Increase in Appraised Value of Homeowner's Ownership Interest:** The increase in appraised value of Homeowner's Ownership Interest equals the appraised value of Homeowner's Ownership Interest at resale determined in accordance with paragraph "d" above minus the Homeowner's Base Price stated in line "a" above.

**Homeowner's share of Increase in Appraised Value of Homeowner's Ownership Interest:** Homeowner's share of the increase in the appraised value of the Homeowner's Ownership Interest equals twenty-five percent (25%) of the increase in the appraised value of Homeowner's Ownership Interest as calculated in line "e" above.

**Formula Price:** The Formula Price equals Homeowner's Base Price (line "a") plus Homeowner's share of Increase in the appraised value of the Homeowner's Ownership Interest (line "f")

**10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE:** The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

**10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE.** In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying

out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than \_\_\_% of the Purchase Option Price.

**10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER:**

The Homeowner is required to make necessary repairs when she voluntarily transfers the Home as follows:

The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.

The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.

Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.

Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. [Add the following sentence only if provision is made for a repair reserve: Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]

Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.



## ARTICLE 10: Transfer of the Home

**10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY:** Homeowner and CLT agree that the provisions of this Article 10 are intended to preserve the affordability of the Home for lower income households and expand access to homeownership opportunities for such households.

**10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS:** Homeowner may transfer the Home only to the CLT or an Income-Qualified Person as defined below or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers are to be completed only in strict compliance with this Article 10. Any purported transfer that does not follow the procedures set forth below, except in the case of a transfer to a Permitted Mortgagee in lieu of foreclosure, shall be null and void.

“Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed \_\_\_\_\_ percent (\_\_\_%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

**10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER:** If Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of Homeowner’s estate shall notify CLT within ninety (90) days of the date of the death. Upon receiving such notice CLT shall consent to a transfer of the Home and Homeowner’s rights to the Leased Land to one or more of the possible heirs of Homeowner listed below as “a,” “b,” or “c,” provided that a Letter of Agreement and a Letter of Attorney’s Acknowledgment (as described in Article 1 above) are submitted to CLT to be attached to the Lease when it is transferred to the heirs.

the spouse of the Homeowner; or

the child or children of the Homeowner; or

member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney’s Acknowledgment as provided above, must demonstrate to CLT’s satisfaction that they are Income-Qualified Persons as defined above. If they cannot demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

**10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL:** In the event that Homeowner wishes to sell Homeowner’s Property, Homeowner shall notify CLT, in writing, of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

**10.5 UPON RECEIVING NOTICE, CLT HAS AN OPTION TO PURCHASE THE HOME.** Upon receipt of an Intent-to-Sell Notice from Homeowner, CLT shall have the option to purchase the Home at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the

## Article 10: Version 4

For situations in which:

the Homeowner has no absolute right to identify buyer and can only recommend buyer;

a “fixed-rate” or “indexed” formula is used; and

the original base price is greater than the original appraised value of the Home.

affordability of the Home for succeeding Income-Qualified Persons while taking fair account of the investment by the Homeowner.

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five (45) days of the receipt of the Intent-to-Sell Notice, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by CLT or CLT's assignee) must be completed within sixty (60) days of CLT's Notice of Exercise of Option, or Homeowner may sell the Home and Homeowner's rights to the Leased Land as provided in Section 10.7 below. The time permitted for the completion of the purchase may be extended by mutual agreement of CLT and Homeowner.

Homeowner may recommend to CLT a prospective buyer who is an Income-Qualified Person and is prepared to submit Letters of Agreement and Attorney's Acknowledgement indicating informed acceptance of the terms of this Lease. CLT shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person, unless CLT determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party.

**10.6 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if CLT has failed to complete the purchase within the sixty-day period allowed by Section 10.5 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

**10.7 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:** If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b) continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

**10.8 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OF HOMEOWNER'S OWNERSHIP INTEREST OR FORMULA PRICE:** In no event may the Home be sold for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be the lesser of (a) the Appraised Value of Homeowner's Ownership Interest at Resale calculated in accordance with Section 10.9 below or (b) the Formula Price calculated in accordance with Section 10.10 below. If CLT does not choose to commission an appraisal to determine the appraised value of Homeowner's Ownership Interest, then the Purchase Option Price shall be the Formula Price.

**10.9 HOW THE VALUE OF HOMEOWNER'S OWNERSHIP INTEREST IS**

**DETERMINED:** If CLT believes that the value of Homeowner's Ownership Interest at Resale may be less than the Formula Price, CLT may, within \_\_\_ days of receiving Homeowner's Notice of Intent to Sell, commission a market valuation of the Leased Land and the Home to be performed by a duly licensed appraiser acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner.

CLT and Homeowner agree that, at the time when Homeowner purchased the Home and executed the Lease with the CLT, the appraised market value of the Home and Leased Land was \$\_\_\_\_\_ (the "Initial Value"), as documented by the appraiser's report attached to this Lease as Exhibit INITIAL APPRAISAL. CLT and Homeowner further agree that Homeowner's Base Price was \$ \_\_\_\_\_, and that this amount equals \_\_\_% of the Initial Value (the Ratio of Base Price to Initial Value)

The Value of Homeowner's Ownership Interest at Resale then equals the appraised value of the Home and Leased Land at resale multiplied by the Ratio of Base Price to Initial Value.

**10.10 HOW THE FORMULA PRICE IS CALCULATED:**

**Option 1: CPI Formula**

The Formula Price shall be equal to (a) the amount of Homeowner's Base Price (which CLT and Homeowner agree is \$\_\_\_\_\_) plus (b) an amount equal to the Homeowner's Base Price multiplied by the total percentage of increase, since the date this Lease was signed, in the Consumer Price Index, as determined and published by the US Department of Labor or such successor agency as may publish such index, for urban wage earners and clerical workers for the urban area in which the Home is located, or, if none, for urban areas the size of \_\_\_\_\_. The parties agree that when the Lease was signed the Consumer Price Index number (the Original Number) was \_\_\_\_\_. To determine the percentage of increase in the Index, the Original Number shall be subtracted from the most recently published Index number, and the remainder shall then be divided by the Original Number.

**Option 2: AMI Formula**

The Formula Price shall be equal to (a) the amount of Homeowner's Base Price (which CLT and Homeowner agree is \$\_\_\_\_\_) plus (b) an amount equal to the Homeowner's Base Price multiplied by the total percentage of increase, since the date this Lease was signed, in the area median household income (AMI) for a family of four for the \_\_\_\_\_ Standard Metropolitan Statistical Area [or \_\_\_\_\_ county], as calculated and published by the US Department of Housing and Urban Development or such successor agency as may publish such information. The parties agree that when the Lease was signed the MHI for a family of four in such area [or county] (the Original MHI) was \_\_\_\_\_. To determine the percentage of increase in the MHI, the Original MHI shall be subtracted from the then most recently published MHI, and the remainder shall then be divided by the Original MHI.

**Option 2: Fixed-Rate Formula**

[Three versions of 10.10 are presented for three different "indexed formulas"—one for a CPI-based formula, one for an AMI-based formula and one for a fixed-rate formula.

Use only one option.]

The Formula Price shall be equal to the amount of Homeowner's Base Price (which CLT and Homeowner agree is \$\_\_\_\_\_) plus interest at a rate of \_\_\_% compounded annually.

**10.11 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE:** The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article 10. The terms of such lease shall be the same as those of new leases issued to homebuyers at that time for land not previously leased by the CLT.

**10.12 PURCHASER MAY BE CHARGED A TRANSFER FEE.** In the event that Homeowner sells the home to a party other than the CLT (whether directly to such party or as a result of CLT's assignment of its Purchase Option to such party), the price to be paid by such purchaser shall include in addition to the Purchase Option Price, at the discretion of the CLT, a transfer fee to compensate the CLT for carrying out its responsibilities with regard to the transaction. The amount of the transfer fee shall be no more than \_\_\_% of the Purchase Option Price.

**10.13 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER:** The Homeowner is required to make necessary repairs when she voluntarily transfers the Home as follows:

The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.

The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.

Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.

Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. [Add the following sentence only if provision is made for a repair reserve: Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]

Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.



# SAMPLE PURCHASE AGREEMENT

**THE FOLLOWING LANGUAGE IS A SAMPLE ONLY AND SHOULD NOT TAKE THE PLACE OF LEGAL ADVICE. PROSPECTIVE PARTIES SHOULD CAREFULLY REVIEW AND EDIT THE LANGUAGE BELOW AS NECESSARY TO ACCURATELY PORTRAY THE ORGANIZATION.**

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("this Agreement" or "the Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ [Entity Name], COMMUNITY LAND TRUST ("CLT"), a Michigan nonprofit corporation, whose address is \_\_\_\_\_ ("Seller"), and \_\_\_\_\_, [a single woman/man or a married couple] ("Homeowner(s)"), whose address is \_\_\_\_\_, ([individually or collectively] "Buyer(s)").

### 1. Sale of Improvements

(a) Seller owns certain land and related rights (the "Land") commonly known as [street address], located in [county] County, Michigan more specifically described as follows:

[Insert the legal description and tax parcel identification number]

(b) Seller has constructed/There are certain improvements upon or under the Land, being [insert description of what has been constructed] (the "Improvements").

(c) For the purchase price of \$[dollar amount] (the "Purchase Price"), Buyer agrees to purchase and Seller agrees to sell the Improvements located on the Land, which consists of any of the following items that exist on or under the Land on the day of closing: (1) the house and any attached or separate garage or other structure on the Land and everything in them, (2) all landscaping and plant materials (trees, shrubs, grass), (3) driveway, (4) sidewalks, (5) patio, (6) porch, (7) exterior lighting, (8) mailbox, (9) fencing (if any), and (10) all utility equipment whether underground or aboveground (including water laterals, sanitary sewer laterals, and electric/phone/cable lines, unless they are specifically owned by a municipality or the utility provider). The Land and the Improvements are referred to as the "Property."

(d) Seller shall convey title to the Improvements to Buyer by delivery of a warranty deed ("Deed") on receipt of the Purchase Price.

(e) Seller and Buyer agree that any personal property located on the Land at the date of closing owned by Seller (including any personal property located in the house) is being sold together with the Improvements and that the consideration for the personal property is contained in the Purchase Price for the Improvements.

(f) Seller is selling only the Improvements and not the Land. Therefore title will be conveyed only as to the Improvements.

## 2. Earnest Money Deposit

On the Effective Date of this Agreement, Buyer shall make an earnest money deposit of \$[ ] (the "Deposit") which shall be held by the [name of title insurance company or agent] (the "Title Company"), and which shall be applied toward the Purchase Price at closing of the sale.

## 3. Lease of the Land

The Land will be leased to Buyer under a long-term ground lease (the "Ground Lease") to be signed at closing. See Exhibit A - Outline of Ground Lease. Some of the key provisions of the Ground Lease include the following: Buyer is responsible for:

upkeep on the entire Property, including the Land; paying all property taxes and special assessments covering both the Land and the Improvements; and paying rent for the Land to Seller. In addition, there are restrictions on Buyer's right to resell the house and other Improvements that are designed to maintain the affordability of the house over a long period of years. [Some of these restrictions and obligations will also be documented in a "Restrictive Covenants Agreement" that will be recorded in the land records of \_\_\_\_\_ County.]

## 4. Title

(a) As evidence of title, Seller, at Seller's expense, agrees to furnish Buyer within ten (10) days after the Effective Date, a commitment for title insurance issued by the Title Company in an amount not less than the Purchase Price, with the policy to be issued pursuant to the commitment insuring Buyer's interests in the Improvements (other than the Improvements which are personal property) and leasehold interest in the Land.

(b) Buyer shall have fifteen (15) days following receipt of the commitment to notify Seller in writing of all objections (the "Title Objections") which Buyer may have to any exception reported in the commitment. Seller shall have thirty (30) days from the date Seller receives all Title Objections (a) to remedy the title defects identified in the Title Objection or (b) to refund the Deposit in full termination of this Agreement. If Seller is willing and able to comply with the requirements in the commitment and to remedy any such defects within the time specified, as evidenced by written notification, revised commitment, or endorsement to commitment, Buyer agrees to complete the sale within fourteen (14) days after receipt of a revised commitment or endorsement to commitment, subject to any other contingency contained in this Agreement. If Seller is unable or elects not to furnish satisfactory title within the time specified, the Deposit shall be immediately refunded in full termination of this Agreement, unless Buyer elects in writing within forty (40) days from the date Seller receives all Title Objections to proceed with the sale, accepting such title as Seller is able to convey.

(c) Buyer agrees to accept title to the Improvements and to lease the Land subject to: (1) all existing-building-and-use restrictions, utility easements, and zoning ordinances, (2) all exceptions reported in the commitment that are not subject to an uncured Title Objection, and (3) the conditions in this Agreement, [the Restrictive Covenants Agreement], and the Ground Lease.

## 5. New Mortgage

Buyer agrees that Buyer will apply for mortgage financing within five (5) days after the Effective Date (as defined below) of this Agreement, and Buyer shall use Buyer's best efforts, in good faith, to obtain financing and will promptly comply with the lender's request for necessary information required to process the loan application. Failure to obtain mortgage approval within forty-five (45) days after the Effective Date shall cause this Agreement to be terminated at the option of Seller or Buyer by written notice to the other within fifteen (15) days after such party determines that Buyer has not received the required mortgage approval. Upon such termination, the Deposit will be returned to Buyer in full termination of this Agreement.

## 6. Inspection Contingency:

(a) Buyer, at the Buyer's option, may inspect the Improvements and the Land including, but not limited to, their plumbing, sewage disposal, heating and electrical systems; foundations; drainage; grading; and construction by a contractor/professional inspector of Buyer's own choice and at Buyer's own expense within fifteen (15) days after the Effective Date.

(b) Buyer acknowledges and agrees that if Buyer obtains a professional inspection of the Property, the report of the contractor/professional inspector, be it oral or written, shall be deemed an amendment to the Seller's Disclosure Statement, which Buyer acknowledges receiving on or before the Effective Date, and which amendment Buyer acknowledges receiving prior to this Agreement becoming a "binding purchase agreement" as meant under the Michigan Seller Disclosure Act (MCL 565.951 et seq.).

(c) Unless Buyer notifies Seller, in writing, within twenty (20) days after the Effective Date that Buyer has had the Land and Improvements inspected and has substantial cause to be dissatisfied with the results of such inspections, and which writing shall specifically recite the causes of such dissatisfaction ("Dissatisfaction Notice"), Buyer will be conclusively presumed to accept the condition of the Property "AS IS, WHERE IS, WITH ALL FAULTS." If Buyer duly notifies Seller of Buyer's dissatisfaction, Seller shall have the option of providing for the repair of the items specifically objected to in writing or terminating this Agreement and returning the Deposit to Buyer. If Seller does not notify Buyer of its election within five (5) days after receipt from Buyer of the Dissatisfaction Notice, then it will be deemed that Seller is terminating this Agreement.

(d) For the purpose of this Property Inspection Contingency, no individual cause for dissatisfaction costing less than [five hundred dollars (\$500.00)] to repair (unless there are other individual causes for dissatisfaction which together exceed One Thousand Dollars (\$1000.00)), as determined by the reasonable estimate of Seller's contractor, shall constitute "substantial cause to be dissatisfied."

## 7. Lead-Based Paint Inspection Contingency:

(a) Buyer acknowledges that, prior to signing this Agreement, Buyer has received and reviewed a copy of the Lead-Based Paint Seller's Disclosure Form completed by Seller, the terms of which are incorporated in this Agreement by this reference, and a copy of the pamphlet entitled, "Protect Your Family From Lead In Your Home."

(b) If Buyer has elected to conduct a lead-based paint risk assessment or



inspection of the Improvements, this Agreement shall be contingent on Buyer signifying within [number] days after the Effective Date that Buyer is satisfied with the result of the Lead-Based Paint risk assessment or inspection. Unless Buyer timely notifies Seller in writing of Buyer's dissatisfaction with the condition of the Improvements based on such lead-based paint risk assessment or inspection, this contingency shall be deemed waived and Buyer will be conclusively presumed to accept the Improvements with such lead-based paint as may be present and with the obligation to remediate lead-based paint as required by applicable law, regulation, or prudent protection of health. If Buyer timely gives Seller written notice of Buyer's dissatisfaction with the results of the Lead-Based Paint risk assessment or inspection, this Agreement shall terminate and the Deposit shall be refunded to Buyer.

[Federal regulations require a ten (10) day period or other mutually agreed on period of time.]

(c) The risk assessment or inspection is to be made at Buyer's expense. Buyer shall be responsible for the repair and restoration of the Improvements as a result of any damage caused by any inspections ordered by Buyer. Buyer shall indemnify and hold Seller harmless from any claims or damage arising from any such risk assessments or inspections.

(d) Buyer acknowledges and agrees that if Buyer obtains such a Lead-Based Paint risk assessment or inspection, the report of the contractor/inspector, be it oral or written, shall be deemed an amendment to the Seller's Disclosure Statement.

## **8. Ground Lease [and Restrictive Covenants Agreement] Contingency:**

The Land will be leased to Buyer under the Ground Lease to be executed at Closing between Seller and Buyer in the form provided to Buyer by Seller within five (5) days after the Effective Date (subject to any changes that may be agreed to by both Buyer and Seller). Before Seller will convey title to the Improvements and enter into the Ground Lease with Buyer and before Buyer is obligated to purchase the Improvements and enter into the Ground Lease, Buyer must review and agree to the terms of the Ground Lease [and the Restrictive Covenants Agreement] and return a signed copy of the "Letter of Acknowledgment" (see Exhibit B of the Ground Lease) to Seller no later than the time of closing. Additionally, Buyer's attorney must review the terms of purchase under this Agreement and the Ground Lease [and the Restrictive Covenants Agreement] and discuss them with Buyer to ensure that Buyer clearly understands the terms of the transaction and the "Attorney's Declaration" (see Exhibit C of the Ground Lease) and return a signed copy of the Attorney's Declaration to Seller no later than the time of closing.

\*[Optional: Additionally, Buyer must be a "First Time Homeowner" (as defined below).]

## **9. Buyer Eligibility Contingency:**

In order for Buyer to qualify to purchase the Improvements under this Agreement, Buyer must be a "Low or Moderate Income Family" (as defined below).\* [Both of these/This] condition[s] must be true and accurate up to and including the closing under this Agreement. In the event that [either of these/this] condition[s] is not met, then this Agreement will terminate, and the Deposit will be returned to Buyer.

["First Time Homeowner" shall mean: (a) either the husband(s) and/or wife(ves) has had no ownership in a principal residence during the three (3) year period preceding the closing under this Agreement; or (b) a single parent who has only owned a proportionate share with a former spouse while married; or (c) an individual who is a displaced homemaker and has only owned a principal residence with a spouse; or (d) an individual who has only owned a

"Low or Moderate Income Family" shall mean a family whose income does not exceed fifty per cent (50%) 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

principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; or (e) an individual who has only owned a property that was not in compliance with State, local, or model building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.]

Michigan program identified by the Seller shall be used; and if the Seller 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. [CONFORM TO GROUND LEASE DEFINITION IF DIFFERENT]

#### **10. Condition of Property:**

Seller agrees to maintain the Property in substantially the same condition in which it existed as of the Effective Date until the closing. Seller and Buyer agree that Buyer shall be permitted to conduct a walk-through inspection of the Property within 48 hours before the closing to enable Buyer to confirm that the Property is in the same condition as existed on the Effective Date. If Buyer is not then satisfied that the Property has been maintained by Seller as required under this Agreement, Buyer shall have the right to delay the closing until the Property is returned to the required condition. If Seller fails or refuses to return the Property to the required condition within fourteen (14) days after Buyer's written demand for same, Buyer shall have the right (but not the obligation) to terminate this Agreement and the Deposit paid by Buyer shall be immediately returned to Buyer or proceeding to closing [without reduction in the Purchase Price].

#### **11. Closing**

(a) Closing shall take place at the office of the Title Company or such other place as the parties may mutually agree. If title can be conveyed in the condition required under this Agreement and all contingencies have been satisfied or waived, closing shall take place on a date and time as is mutually agreeable to the parties and as dictated by the ability and availability of Buyer's lender, if any, to close, provided, however, that closing shall occur not later than [date].

*(B) DOCUMENTS.* The parties agree that Seller shall prepare the [Deed], [the Bill of Sale], [the Restrictive Covenants Agreement], [a memorandum of the Ground Lease for recording], and the Ground Lease. The [Deed], [the Bill of Sale], [the Restrictive Covenants Agreement,] [the memorandum of Ground Lease] ,and the Ground Lease shall be executed and delivered at closing.

*(C) PAYMENT.* Payment of the Purchase Price shall be made in cash, by title company check, or by wire transfer.

*(D) CLOSING COSTS.* The cost of the closing, including any settlement, document preparation, or disbursement fee of the Title Company, and the fees for recording the [Restrictive Covenants Agreement] and the [memorandum of] Ground Lease shall be borne by Seller and Buyer equally. Seller shall pay the required real estate transfer tax, the cost of Buyer's leasehold commitment and policy of title insurance, and recording fees relative to the discharge of Seller's mortgage, if any. Buyer shall pay the cost of recording the Deed. At closing, the parties shall execute closing statements prepared by the Title Company and all required income or other tax reporting as provided by the Title Company.

*(E) TAXES AND PRORATED ITEMS.* All taxes and current installments of assessments which have become a lien on the Property as of the date of closing shall be paid by Seller. All current property taxes shall be prorated between Seller and Buyer as of the date of closing on a due-date basis assuming payment in advance (e.g., taxes due July 1 will be treated as if paid for the period July 1 through the following June 30, and taxes due December 1 shall be treated as



if paid for the period December 1 through the following November 30). Buyer shall be responsible for the payment of all property taxes and installments of assessments falling due after the date of closing without regard to lien date. Current dues and assessments under the Ground Lease, if any, shall also be prorated between Seller and Buyer as of the date of closing on a due date basis. Seller shall pay the cost of all utilities and service charges through and including the date of transfer of possession and occupancy to Buyer. Buyer shall pay the cost of all utilities and service charges after the date of transfer of possession and occupancy to Buyer.

(F) *POSSESSION.* Seller shall deliver possession of the Property to Buyer at closing.

## **12. Buyer's Default:**

In the event of material default by Buyer under this Agreement, Seller may, as Seller's sole option, terminate this Agreement and retain the Deposit as liquidated damages.

## **13. Seller's Default:**

In the event of material default by Seller under this Agreement, Buyer may, at Buyer's option, elect to do one of the following: (1) enforce the terms of this Agreement through an order of specific performance, or (2) demand and be entitled to an immediate refund of the Deposit in full termination of this Agreement, or (3) if and only if specific performance is not available due to impossibility attributable to the acts or omissions of Seller, pursue any other legal or equitable remedy available to Buyer.

## **14. Binding Agreement:**

This Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.

## **15. Time of the Essence:**

Time is of the essence of this Agreement. Either Buyer or Seller may waive this provision in writing as to a particular time requirement.

## **16. Entire Agreement/Written Agreements Only:**

This Agreement and the documents to be delivered in connection with the closing, including the Ground Lease [and the Restrictive Covenants Agreement], contain the entire agreement between Seller and Buyer. There are no agreements, representations, statements, or understandings which have been relied on by Seller or Buyer which are not stated in this Agreement or the Ground Lease. IT IS THE PARTIES' INTENT IN THEIR DEALINGS THAT IF IT IS NOT IN WRITING, IT IS NOT ENFORCEABLE. This Agreement (and written and signed addenda, if any) cannot be modified, altered, or otherwise amended without a writing being duly signed or initialed, as the case may be, by both Seller and Buyer. The parties agree that facsimile signatures and duly initialed changes are legally enforceable provided the applicable writing contains such signature or initials of all parties to this Agreement.

**17. Effective Date:**

The effective date of this Agreement, i.e., the date on which the timing provisions and contingencies of this Agreement begin (the "Effective Date"), shall be the date on which the last person to sign this document shall have signed the document and delivered a fully executed copy to the other person.

ACCORDINGLY, Seller and Buyer have executed this Purchase Agreement as of the date(s) written below.

**SELLER:**

**BUYER:**

**[COMMUNITY LAND TRUST]**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_

**Dated:** \_\_\_\_\_



