

# INDIAN LINE FARM LEASE AGREEMENT

COMMUNITY LAND TRUST IN THE SOUTHERN BERKSHIRES, INC.

Lease To: \_\_\_\_\_

The Community Land Trust in the Southern Berkshires, Inc., a non-profit corporation organized under the laws of the Commonwealth of Massachusetts with an office in the town of Great Barrington, County of Berkshire and Commonwealth of Massachusetts (hereinafter referred to as "Land Trust") and \_\_\_\_\_ and \_\_\_\_\_ (hereinafter referred to as "Lessees"), hereby agree as follows:

## 1. Leasehold Property

- 1.1 The Land Trust hereby leases unto the Lessees and the Lessees accept from the Land Trust, each in consideration of the obligations of the other and upon the terms and conditions hereinafter set forth, sole possession, occupancy and use of a certain parcel of land (hereinafter designated as the "Leasehold") situated on the easterly side of Jug End Road in the town of Egremont, County of Berkshire, Commonwealth of Massachusetts, said Leasehold located as shown on the copy of the Indian Line Farm Land Use Plan attached hereto. Lessees are the owners of improvements located on said Leasehold, which is described as follows: Beginning at an iron bar found in the assumed easterly sideline of Jug End Road marking the northwesterly corner of the parcel being described; thence the following three (3) courses and distances along said assumed easterly sideline of Jug End Road: S 06-44-26 E 154.16 feet to a point; S 02-57-44 W 62.83 feet to a point; S 02-57-44 W 195.00 feet to an iron pipe found; thence the following three (3) courses and distances along land now or formerly of Duryea: S 80-07-23 E 205.36 feet to an iron pipe found; S 78-41-59 E 105.10 feet to a nail set in the ground; S 02-53-08 E 93.32 feet to an iron pipe found; thence the following single course and distance along land now or formerly of Spurr: S 72-02-26 E 242.80 feet to an iron pipe found; thence the following two (2) courses and distances along land now or formerly of John A. and Elvie B. Schneider: S 73-25-37 E 374.42 feet to an iron pipe found; S 72-22-17 E 277.26 feet to an iron pipe found; thence the following single course and distance along land now or formerly of Donald J. Schneider: S 72-37-29 E 651.47 feet to an iron pipe found, such pipe also marking the northwesterly corner of land now or formerly of McGovern; thence the following eight (8) courses and distances along land now or formerly of the Commonwealth of Massachusetts, Division of Fisheries and

Wildlife: N 05-13-30 W 229.91 feet to an iron bar found; N 65-30-05 W 424.17 feet to an iron bar found; N 43-22-28 W 478.75 feet to an iron bar found; N 74-58-11 W 398.73 feet to an iron bar found; N 74-55-45 W 398.87 feet to a point; N 74-00-24 W 30.50 feet to a point; N 83-17-13 W 230.96 feet to an iron bar found and along a curve to the right having a radius of 30.00 feet an arc length of 38.23 feet to the point and place of beginning. Containing 16.69 acres and being that land more particularly shown on a plan entitled "Plan of Land in Egremont, Massachusetts Surveyed for The Nature Conservancy, June 7, 1999" recorded in the Berkshire Southern District Registry of Deeds.

- 1.2 In order to make a clear distinction between improvements on the Leasehold which are owned by the Lessees and the ownership of natural resources which may be located on the Leasehold, the Land Trust reserves to itself, its successors and assigns all the oil, gas, coal and other minerals including water and all rights to the same of whatever nature upon, in and under the Leasehold, together with the right to extract, mine, and remove therefrom any or all of the same including the right of access to and use of such portions of the surface of the Leasehold as may be necessary for the extraction, mining, and removing of said minerals with the exception of any portions improved by the Lessees. Any extraction, mining and removing of said minerals shall require the written consent of the Lessees and shall be subject to the obligation of the Land Trust not to interfere with the use of the Leasehold by the Lessees pursuant to this lease and to return the surface on the Leasehold property to its original state, and provided that the Lessees shall have the right to so much of the minerals so extracted, mined, or removed as may be reasonably necessary for use by the Lessees on the Leasehold itself, but not for the purpose of selling the minerals or for any exportation purpose.

Further the Land Trust reserves to itself, its successors and assigns all the soil on the leasehold and all rights to the same of whatever nature upon, in and under the Leasehold, but withholds its right to extract, mine, and remove such soil. The withholding of this right is done so because of the agricultural and horticultural provisions of this lease, one purpose of which is to improve soil quality. The Land Trust expressly recognizes that all such soil improvements made during the term of the lease are the part of the equity of the Lessees. The Lessees shall have the right to transfer the value of this equity to a new Lessee under terms later outlined in this lease, but under no conditions shall remove the soil itself.

## **2. Term of the Lease and Obligations of Successor Parties**

### **2.1 Term of the Lease**

- A. The term of this lease agreement shall be for a period of 98 (ninety-eight) years beginning at noon on the fourteenth day of June 1999, and ending at noon on the fourteenth day of June 2097 unless sooner terminated as provided elsewhere in this lease.
- B. Unless said term is sooner terminated, the Lessees shall have the option to renew this lease agreement upon these terms or upon such modification of these terms as may be mutually agreed upon by both parties.

## 2.2 Obligations of Successor Parties

- A. In the event that ownership of or title to the Leasehold should be conveyed by the Land Trust to any other person or entity, this lease agreement shall not cease, but shall remain binding and unaffected.
- B. The terms, rights and obligations of this lease agreement or of any renewal hereof, shall be binding upon the named parties, or upon any successor or successors to either.

## 3. Purpose and Utilization of the Leasehold

- 3.1 The primary purpose of this lease agreement is to facilitate the possession, use and occupancy of the Leasehold by the Lessees for the purpose of residence, agriculture and/or horticulture. The Leasehold shall consist of constructed dwellings (with any appurtenances) to be used as the primary residences and home places of the residents of the Leasehold, including such ancillary life support uses of the Leasehold as described below. The Leasehold shall also consist of constructed buildings and land to be used for the purpose of agriculture and/or horticulture. Lessees shall not employ the Leasehold for any other purposes except those herein described.
- 3.2 The lessees during the term of this lease agreement, shall use or permit the use of the Leasehold property and any improvements thereto only for residential, agricultural and/or horticultural purposes, or uses ancillary and secondary to such purposes. It is understood that the residential use of the Leasehold by the Lessees shall include the construction and/or occupation of dwellings on the premises by the Lessees as their usual year round dwelling (except as agreed upon in writing by the Land Trust), and not for investment resale or seasonal use. The Lessees reserve the right to sub-lease portions of the Leasehold for use by other residents of the Leasehold, provided that such use is entirely consistent with the provisions of this lease, and provided that the Lessees remain resident on the leasehold. Ancillary or secondary uses may include studios and/or workshops and other productive and creative work upon the Leasehold land conducted by or for

residents of the Leasehold; and "life support" uses to include activities ancillary and appurtenant to the primary uses such as utilities for use; construction and maintenance of driveways, farmways and access ways; and similar activities designed to support and enhance the lives of the residents of the Leasehold, subject, however, to any limitations or conditions set forth hereinafter.

- 3.3 In short, the Lessees shall use the Leasehold premises and Leasehold interest only as a homestead (except as agreed upon in writing by the Land Trust). Use as a "homestead", in this context, shall mean use as a primary residence by the Lessees and other residents of the Leasehold and for related cottage industries including agriculture and/or horticulture and productive or creative work in the home, studio or workshop, conducted by or for residents of the Leasehold.
- 3.4 Lessees shall use a 15.36 acre portion of the Leasehold premises in accordance with the terms of a perpetual Conservation Restriction running to \_\_\_\_\_ which is attached to and made a part of the Lease. The portion of the Leasehold premises which is subject to said Conservation Restriction is shown as the Tillable Agricultural Land, the Buffer Area, The Farmstead Area "A" and that portion of the Hillside Pasture shaded in blue, as shown on the Indian Line Farm Land Use Plan. The Plan and the Conservation Restriction are recorded with the Berkshire Southern District Registry of Deeds.
- 3.5 Lessees shall retain the right to construct additional structures, or expansions of existing structures, whether for residential or agricultural use, pursuant to section 3.1 of this lease and in compliance with the Conservation Restriction referenced above. Use of the Leasehold for cottage industries shall be in accordance with applicable laws and regulations. Such uses may include but are not limited to: raising of crops and foods for animal and human consumption; u-pick gardens; and the raising of trees and nursery products. Structures may be used as, but are not limited to: storage, shelter for animals, growing of plants, value-added processing of farm raised products, and retail sale of agricultural products, as well as educational and community-based activities, including classes, meetings, agro-tourism, and similar activities.
- 3.6 Any new construction to take place on the Leasehold, for residential or agricultural use, and regardless of whether such construction includes entirely new structures or significant alterations of existing structures, shall conform in all respects to the applicable housing and/or building regulations of the Town of Egremont and the Commonwealth of Massachusetts, and shall obtain all necessary permits from local, state, federal and other authorities.
- 3.7 Lessees shall undertake to maintain the integrity of the landscape and quality of the soil of the Leasehold, shall cultivate and utilize the Leasehold consistent with

this responsibility and shall implement the Land Management Plan for the entire Leasehold, which is a part of this lease. The Land Management Plan sets forth the natural characteristics of the land, pertinent ecological principles, and sound management practices to be followed. Lessees shall use the Leasehold premises pursuant to this Plan and in an ecologically sound manner, maintaining the purity of water and air resources, the productivity of the soil, and the integrity of the landscape, and disposing of any wastes in a safe and sanitary manner. The Lessees shall cooperate with the Land Trust to amend this Land Management Plan from time to time as needed with the help of mutually agreeable land use consultants. Both the Lessees and the Land Trust must agree in writing to any changes in the Plan before such changes take effect.

- 3.8 Agricultural/horticultural/aquacultural practices employed on the Leasehold shall meet the requirements of the NOFA Massachusetts Organic Certification Program, published by the Northeast Organic Farming Association/Massachusetts Chapter, Inc. on January 15, 1997, which publication shall be, hereby, a part of this lease agreement. However, excepting from above, the Lessees shall in no way be required, under this lease, to actually become certified by the Northeast Organic Farming Association or to meet the NOFA standards for product labeling. Lessees shall additionally conduct all agricultural/horticultural activity permitted pursuant to this lease in conformance with all applicable laws or regulations, and shall obtain all necessary permits, such as burning permits, from local, state, federal and other authorities.
- 3.9 Lessees shall be responsible for the maintenance of fences, driveways, farmways and any other facilities and/or structures on the Leasehold.
- 3.10 Lessee shall use the Leasehold premises in a socially responsible manner, causing no harm and creating no nuisance to neighbors. Lessees take responsibility for the use of the Leasehold premises by members of their families, employees, renters, friends or visitors.
- 3.11 The Lessees agree to secure written consent from the Land Trust for any uses of the Leasehold or improvements thereon which are not consistent with the terms of this lease, or about which there may be reasonable doubt as to their consistency with the terms of this lease. Should the Lessees engage in a use of the Leasehold that the Land Trust judges requires written consent, the Land Trust shall notify the Lessees in writing of the necessity of securing consent. On notice, the Lessees shall forthwith cease and desist from such use until such consent has been secured, and shall return the Leasehold property to its previous condition if consent is not thereafter granted by the Land Trust. Any such request for consent to a particular use of or waiver of any restriction of the lease shall be either

granted or refused by the Land Trust within thirty days after receipt thereof, and if not granted within said 30 days shall be deemed denied. Should a change in circumstances occur which in the sole judgment of the Land Trust so justifies, the Lessees may receive in unusual situations consent for a use that is clearly not consistent with the terms of this lease, providing further that no use of the Leasehold shall be inconsistent with or in violation of applicable laws and regulations of the Town of Egremont, the Commonwealth of Massachusetts, and the United States of America.

**4. Lease Fee Assessment**

A lease fee to the Land Trust from the Lessees shall be paid monthly, or upon billing by the Land Trust, which monthly lease fee payment shall be calculated in a separate document drawn between the Land Trust and Lessees but in all cases that fee shall contain the following:

- A. An assessment for the entire amount of real estate taxes assessed by the Town of Egremont on the Leasehold property. The Lessees shall be responsible for payment of taxes, both taxes on the land (title to which is held by the Land Trust) and taxes on all improvements.
- B. An assessment for direct costs incurred by the Land Trust in managing the Leasehold, referred to as the Management Fee. This shall include, but not be limited to, liability insurance on the land, any mandatory assessments by the Town of Egremont against the Leasehold such as recycling fees, and a yearly contribution to the Egremont Volunteer Fire Department equal to the suggested household contribution by the Fire Department. In the determination of the Management Fee the Land Trust's administrative fee for managing the Leasehold shall be limited to \$40 per month for the entire Leasehold, and shall be effective at the date of execution of this lease. This administrative portion of the lease fee may be reassessed by the Land Trust periodically in view of inflation. It is agreed that the rate of increase of the administrative fee shall not exceed the rate of increase of the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics, such index further defined by the subtitle "All Urban Consumers (CPI-U)" with a geographic coverage equal to "U.S. City Average", and an index component "All items" with the standard reference base period of "1982-84 = 100". The reference period from which changes in the price index will be measured shall be equal to the index for the month and year of the execution of this lease agreement.

- C. Land Use Fee -- The Land Use Fee is the estimated value for land rent in fair market rental rates for year round apartment and house rentals in the Southern Berkshire area. This portion of the Lease Fee shall be \$75 per month for the entire Leasehold, and shall be effective ten years from the date of execution of this lease. This portion of the lease fee may be reassessed by the Land Trust periodically in view of inflation and changes in fair market rentals for year round residents in the region. It is agreed that the rate of increase of the Land Use Fee shall not exceed the rate of increase of the Consumer Price Index, as defined in Section 4.b. above. The reference period from which changes in the price index will be measured shall be equal to the index for the month and year of the execution of this lease agreement.
- D. Community Land Trust Organization Fee: In addition to the actual costs connected with Leasehold management and the land use fee, the Lessees shall pay an additional fee of five dollars per month to the Land Trust to cover the educational work of the Land Trust in its effort to serve more South County residents. This portion of the Lease Fee Assessment shall not vary through time.
- E. The Lessees, if required by a lending authority to obtain an insurance policy for the Leasehold, shall be directly responsible for the payment of such insurance policy premiums associated with the Leasehold. As a condition of this lease, the Lessees shall be minimally required to maintain homeowner's liability insurance for \$500,000 from the same insurance company holding the Land Trust's liability insurance policy on the land, and the Lessees shall be directly responsible for the payment of such homeowner's liability insurance policy premiums.

**5. Payment of Development and Improvement Costs**

The costs of development and improvement of the leasehold subsequent to the date of this lease agreement shall be incurred and borne solely by the lessee, unless otherwise provided, in a manner consistent with the terms of this lease.

**6. Improvements: Ownership, Transfer and Encumbrances**

6.1 The Lessees shall own all buildings and improvements, including residential improvements as well as agricultural and/or horticultural improvements, made to or on the Leasehold premises by them, at their expense or on their behalf, upon the conditions hereinafter provided. The Lessees shall bear full responsibility for any taxes due on buildings and improvements.

- 6.2 The Lessees shall notify the Land Trust, in writing, of their intention to undertake any major construction or improvement upon or to the Leasehold premises. Such notice shall include a plan describing fully the proposed construction or improvement and its potential impact on the Leasehold premises and the surrounding environment, and shall be given at least 60 days before construction or improvement is to begin. Any proposed construction shall be consistent with attached Land Use Plan.
- 6.3 The Lessees have the right physically to sever and remove any of their buildings or improvements at any time, provided such removal does no substantial harm to the Leasehold premises in the process and, should harm or damage be caused, it will be rectified, corrected or repaired to substantially the same condition as prior to such harm, and provided the Lessees are current in any payment owed by them to the Land Trust.
- 6.4 The Lessees shall have the right to mortgage, pledge, sell or transfer (hereinafter referred to as "transfer") their title to any buildings and improvements made to or on the Leasehold, provided they are current in all assessments due to the Land Trust. Such transfer of title to buildings and improvements shall expressly not encumber the underlying land. If in arrears to the Land Trust, the Lessees shall secure written consent from the Land Trust prior to any such transfer. Such a transfer shall be conditional by its express written terms upon physical severance within two months thereof of such buildings and improvements that are severable without substantial damage to the Leasehold property unless transfer without severance is undertaken pursuant to the paragraph below. The Lessees are under obligation seasonably to inform all prospective transferees and creditors of this provision. If physical severance pursuant hereto shall not occur within two months of such transfer, the transfer shall become null and void as of that date. Lessees are entitled to mortgage their interest in buildings and improvements and to grant to such mortgage all of Lessees' rights in and to the Leasehold estate of the Lessees but shall expressly not include the underlying land: such entitlement of the Lessees shall include the right to sell, transfer or otherwise dispose of Lessees' interests to such mortgage in lieu of foreclosure; such transfer shall be subject to Land Trust's right of first option as provided herein.
- 6.5 Such transfer need not be conditioned on physical severance of improvements under the following conditions:
- A. First Option. The Land Trust shall retain a first option to purchase all buildings and improvements at their local replacement cost less depreciation, obsolescence and damage. The Lessees shall inform the Land Trust in writing of their intention to sell improvements without severance and shall

state the terms and conditions of sale. Within 60 days of notification by Lessees, the Land Trust shall accept the offer, make a counter offer or release the option. The Lessees shall accept an offer from the Land Trust that equals the local replacement costs of improvements less depreciation, obsolescence and damage. For the purposes of determining this value the Lessees shall appoint an appraiser with at least five years of experience as a contractor, realtor or insurance agent. Within two weeks, the Land Trust will appoint 2 more appraisers from each of the two other remaining fields with at least five years experience in the field. These three appraisers shall be instructed to prepare a written appraisal of the local replacement costs less depreciation, obsolescence and damage of the improvements for sale. The appraisers shall be instructed not to include the site value in their appraisal, nor any value (or the lack thereof) of the requirements of the lease, but rather the value of the improvements alone independent of the site, and shall be instructed to return their written appraisals to the Land Trust within 30 days. The cost of the appraisals shall be borne by the Lessees and may be added to the sales cost. The average of the three appraisals shall constitute the adjusted sale value.

- B. Should the Land Trust fail to exercise its option or fail to offer the adjusted sale value as determined above, the Lessees may find a buyer and the Land Trust shall negotiate a lease with the potential buyer, such lease being, in all respects, except the name of Lessee(s) and the date of execution thereof, identical to the then current lease. If the buyer offers the Lessees a price above the adjusted price as determined in 6.5A above, the Lessees, after obtaining written agreement from the Land Trust may sell the buildings and improvements at the offered price with the difference between the adjusted value and the sale price returning to the Land Trust at the time of sale.
- C. If the transfer is a mortgage, pledge, or other transaction made for security purposes only, such transfer need not be conditioned on physical severance if the documents evidencing the transfer are limited to the Lessees' interest in buildings and improvements and to Lessees' rights in and to the Leasehold estate without encumbering the underlying land.
- D. If the transfer is a gift, such transfer need not be conditioned on physical severance if the transfer is by its express written terms conditioned upon the execution of a new lease agreement between the Land Trust and the transferee. The Land Trust shall offer a new lease being, in all respects, except the name of the Lessee(s) and the date of execution thereof, identical

to the then current lease agreement. Other changes in the lease may be made if mutually agreed upon by the Land Trust and the transferee.

- 6.6 In the event this lease shall terminate, the Lessees (or their heirs, unless they shall lease these premises, as provided hereinafter) shall have the responsibility to sever or to sell or to otherwise transfer ownership of and title to any buildings or improvements. The lessee shall notify the Land Trust of their intent with regard to this responsibility within 30 days following termination, and:
- A. The Land Trust shall have the right to purchase all buildings and improvements at their local replacement costs less deterioration, obsolescence and damage in a manner consistent with 6.5A above.
  - B. Should the Land Trust fail to exercise its purchase option, the Lessees may, nevertheless, place the buildings and improvements up for sale, consistent with the provisions of 6.5B above.
  - C. If no acceptable buyer is found within 270 days of the termination of this lease, the Land Trust shall have the right to assume ownership of and title to all buildings and improvements. In such an event, the Land Trust shall sell the buildings and improvements and shall convey to the Lessees the proceeds from such sale, up to the amount of the equity accrued by the Lessees as determined in 6.5A above, minus the costs of the sale, the amount of real estate taxes owed since termination and any debts owed by the Lessees to the Land Trust.

## 7. **Inspection**

The Land Trust, its grantors, or its assigns shall have the right to inspect the Leasehold and the lessee's use of them at any reasonable time and in any reasonable manner, provided however that at least forty-eight hours written notice is given by the Land Trust to the lessee, and that the reasons for such inspection are explained. In the event of a public health or safety emergency, the right to forty-eight hours written notice shall be waived.

## 8. **Liabilities and Responsibilities**

8.1 From the date of this lease agreement, the Lessees shall assume sole responsibility and liability to any and all persons and authorities related to the possession, occupancy and use of the Leasehold, including all improvements thereon. See addendum for additional provisions regarding liability and hazard insurance.

- 8.2 The Lessees shall pay all service bills, utilities charges, taxes or other governmental assessments charged against the Leasehold.
- 8.3 The Lessees shall safeguard the Leasehold against damage, waste or trespass and shall hold harmless the Land Trust from any liability or loss thus incurred.
- 8.4 In the event the Land Trust shall be required to pay any sum whatsoever on behalf of the Lessees' responsibility or liability, the Lessees shall reimburse the Land Trust for any sums thus paid, and reasonable expenses caused thereby.

**9. Compensation in the event of condemnation**

- 9.1 In the event of condemnation by the Town, State, Federal Government, or other authorities all compensation and damages with respect to the land, appraised as if free of their lease and entirety unencumbered, shall be payable to the Land Trust, its successor or assigns. Any compensation for loss of buildings or improvements owned by the Lessees, as provided in Section 6 above, shall be paid to the Lessees, up to the full amount of the assigned value (replacement cost, less depreciation and obsolescence), and any balance above such value shall be retained by the Land Trust.
- 9.2 In the event that title to the Leasehold premises shall have been lost by condemnation, forced sale or eminent domain, the Land Trust shall make reasonable efforts to apply whatever portion of the compensation is necessary to the purchase of suitable new lands and shall grant a similar Leasehold interest in the new lands.

**10. Termination**

- 10.1 The Lessees may terminate this lease at any time and for any reason, provided they give the Land Trust at least 90 days notice, in writing of their intention to terminate. Lessees may not terminate so long as they have an outstanding mortgage against the buildings or improvements or other Leasehold interests.
- 10.2 The Land Trust may terminate this lease, at its discretion, in the event the Lessees shall have:
  - A. Violated any of the provisions or conditions of this lease, including expressly sections 3, 5, 6, 8, and 15. If the Lessees have violated any term or condition of this lease, the Lessees shall hold harmless the Land Trust for any damage, expense, or loss incurred in connection with such violation, and any subsequent termination of this lease, as provided herein.
  - B. Abused the Leasehold premises by using them in any manner seriously detrimental to the land itself, the surrounding community or the inherent

interests of future leaseholders that may not be included in sections 3, 5, 6, 8 and 15 of the lease.

- C. Failed to pay the lease fee or other costs assessed by the Land Trust (or failed to request and receive a reduction or waiver of the fees from the Land Trust) within 30 days of notification that it is overdue.
- D. Failed to occupy the Leasehold premises for at least six months of each year, unless otherwise agreed by the Land Trust. (The Land Trust shall make reasonable arrangements with the Lessees for necessary absences, provided the Lessees has guaranteed a firm intention to return to the Leasehold premises.)
- E. Failed to comply with any ruling or judgment made through the process of arbitration of disputes or grievances hereinafter provided.
- F. The Land Trust shall not terminate the lease without first giving to the Lessees a 30 day notice, citing the cause of termination, and an opportunity to correct the default (or, if correction cannot reasonably be completed within 30 days, to begin and then continue promptly to complete such correction). The Lessees may request arbitration (as provided in Section 14 following) of any issues relating to the cause of termination at any time within the 30 day period before termination occurs.

10.3 In event of such termination by the Land Trust, no such termination shall be effectuated until Lessees' mortgage is satisfied, which may be accomplished by the Land Trust paying same or by Land Trust selling the Lessees buildings, improvements, and other Leasehold interests to pay same. The satisfaction of all mortgage obligations by the Land Trust on behalf of the Lessee shall not exceed the "adjusted sale value" of buildings and improvements as defined in Section 6.5, Paragraph A of this document.

10.4 If and when their lease shall be terminated, the Lessees shall leave the Leasehold peacefully and quietly within 30 days, without damaging or defacing the Leasehold or improvements thereon in any way. During this time, all provisions of this lease agreement shall remain in effect. Notwithstanding the above the procedures described in Clause 6.6 relative to the transfer of improvements on a leasehold at the termination of a lease shall remain in effect.

#### **11. Continuation of Lease on Death of Lessee**

Upon the death of the last surviving Lessee, the Land Trust shall agree, upon request of an executor of the estate of the Lessees, to continue this Lease by assigning it on the same terms to one or more of the following:

- A. Heir(s) or beneficiary(s) of the Lessees.
- B. The spouse of the Lessees; or
- C. The child or children of the Lessees; or
- D. Member(s) of the Lessees' household or residential group who have resided upon the Leasehold for at least one year.

## **12. Lessees Responsibility Upon Divided Household**

In the event of a divided household in which one or more of the Lessees of this lease have failed to occupy the Leasehold for at least six months of a twelve-month period, and in the event that no party to the lease has requested a termination of the lease, then full authority and responsibility as Lessee shall automatically devolve upon the remaining resident Lessee or resident Lessees, including the right to transfer all improvements on the Leasehold owned by the Lessee under the provisions of Section 6 of the lease and including full responsibility for all fees due the Land Trust under the provisions of this lease. This provision shall not apply to issues of ownership of improvements amongst multiple Lessees, but only to issues of management of assets and rights amongst multiple Lessees in the event of a divided household. The purpose of the provision is to ensure the principle of the Land Trust that accountability for use of a Leasehold remain with the resident users of a Leasehold. In the event a mortgage is outstanding under which such Lessees are joint obligors, the foregoing clause shall not impair or limit their obligation to such mortgagee.

## **13. Conveyance of Title by Land Trust**

In the event that the Leasehold should be conveyed by the Land Trust to another entity having similar purposes, this lease shall remain binding and unaffected except by the said change in identity. Any other conveyance of the Leasehold property (unless by condemnation in paragraph 9 above) shall be in accordance with the provisions of the by-laws of the Land Trust regarding the sale of the land, and shall require the written consent of the lessee.

## **14. Arbitration**

14.1 Should any disputes or grievances arise between parties to this lease, concerning their respective rights and duties under the terms of the lease which cannot be resolved in normal interaction, the following arbitration procedure shall be used: Either party may, by written notice to the other, appoint one arbitrator. Within ten days after such notification, the other party shall, by written notice to the former, appoint a second arbitrator (and in default of such appointment, the first arbitrator shall be the sole arbitrator). These first two arbitrators shall appoint a

third arbitrator within ten days. Any and all of the arbitrators so chosen shall be persons with at least five years of significant experience in Community Land Trust activities or work, or shall be professional arbitrators. The sole arbitrator or three arbitrators (as the case may be) shall constitute the arbitration panel.

- 14.2 The arbitrator(s) shall meet and give each party an opportunity to present their case and evidence and witnesses, if any, in the presence of the other. As soon as possible after the hearing(s), the arbitration panel shall make a written report of its finding and decisions (by majority vote), including a personal statement by each arbitrator of his/her vote and reasons for it. Arbitration should begin, if possible, within 30 days of the appointment of the arbitration panel, and judgment should be rendered within 30 days of that date.
- 14.3 The parties to this lease shall share equally the cost of arbitration unless such costs are provided for differently by the arbitration panel.
- 14.4 The decisions and awards of the arbitration panel shall be binding, and judgment may be entered thereon in any court having jurisdiction.

## 15. **Miscellaneous Provisions**

- 15.1 Rights to civil liberties, privacy and quiet enjoyment: the Land Trust may not interfere with the personal lives, associations, expressions or actions of the Lessees, except insofar as they involve the terms and conditions of this lease. The Land Trust hereby expressly recognizes the rights of the Lessees under this lease to the quiet enjoyment of their Leasehold, to their right of privacy therein, and to their rights to be guaranteed from infringement on their basic civil liberties (including due process rights of notice and to a hearing on violations) which rights Land Trust solemnly undertakes shall not be unreasonably abridged under the guise of enforcement of the terms of this lease, or by any other means.
- 15.2 Whenever this lease shall require that either party gives notice to, or be advised by, the other, that notice shall be given in writing mailed, by registered or certified mail, return receipt requested, to the last known address of the party to be notified, and such written notice shall also be delivered in person, if possible. Notice shall be deemed given on the date on which it is delivered or mailed.
- 15.3 Whenever either party to this lease asks for the consent of the other in accordance with the provisions of this lease, that consent must be given or refused, within 30 days, if that is reasonably possible, unless otherwise provided. If a well-informed judgment requires a longer period, all reasonable steps must be taken to begin that process within 30 days of the request, and continue it promptly to completion.

- 15.4 The failure of the Land Trust to insist, in any one or more instances, upon a strict performance of any of the covenants or conditions of this lease, or to exercise any right or option herein contained, shall not be construed as a waiver of the option to do so, but such covenants, rights and options shall continue in full force and effect. No waiver of any one covenant, right or option shall be deemed a waiver of any other.
- 15.5 The receipt of the Land Trust of any lease fee payment, with the knowledge of the Lessees' breach of any covenant hereof, shall not be deemed a waiver of the Land Trust's right to remedies for such breach.
- 15.6 Both parties agree to submit any disputes concerning their respective rights and duties under the terms of this lease to arbitration (as provided in Section 14 above) before any legal action is taken.
- 15.7 If any clause or provision of this lease shall be adjudged invalid, such fact shall not affect the validity of any other clause or provision, or give rise to any cause of action in favor of either party as against the other.
- 15.8 The Land Trust shall have the right, but shall be under no duty, to prosecute or defend, in its own or the lessee's name(s), any actions or proceedings appropriate or necessary for the protection of the title to, possession of, or any other interest in the Leasehold.
- 15.9 The Lessees shall maintain membership in good standing in the Community Land Trust in the Southern Berkshires, as provided in the Articles of Incorporation and the By-Laws of that corporation. However, in no event shall membership fees in the Community Land Trust in the Southern Berkshires for the Lessees exceed \$100 annually.
- 15.10 This agreement and its attachments as described in 15.11, sets forth the entire agreement between the parties hereto; it is binding upon and insures to the benefit of the parties hereto and, in accordance with the provisions hereof, their respective successors in interest. This agreement may be altered or amended only by a writing executed by the parties hereto or their legal representatives or, in accordance with the provisions hereof, their successors and interest.
- 15.11 At its execution this agreement includes the following attachments:  
Addendum to the Lease Agreement;  
Indian Line Farm Land Use Plan;  
Indian Line Farm Land Management Plan;  
NOFA Massachusetts Organic Certification Program standards, published by the Northeast Organic Farming Association/Massachusetts Chapter, Inc. on January 15, 1997; and a Conservation Restriction running to \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

LESSEE

\_\_\_\_\_

LESSEE

\_\_\_\_\_

COMMUNITY LAND TRUST IN THE SOUTHERN BERKSHIRES, INC.

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

President

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

Treasurer

**Schumacher Center for a New Economics**

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**Berkshire Community Land Trust**

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