

# Community Land Trust in the Southern Berkshires

## RESIDENTIAL LEASE AGREEMENT

LOCATION: [CUSTOMIZE]

LESSEE: [CUSTOMIZE]

**Location**

**Recitals**

**Definitions**

**Section 1: Leasing the Land**

**Section 2: Term of the Lease and Obligations of Successor Parties**

**Section 3: Purpose and Use of Leasehold**

**Section 4: Fees, Taxes and Monthly Charges**

**Section 5: Improvements, Ownership, Transfer and Encumbrances**

**Section 6: Financing**

**Section 7: Liability, Insurance, Damage and Destruction, Eminent Domain**

**Section 8: Default and Termination**

**Section 9: Continuation of Lease on Death of Lessee**

**Section 10: Lessee Responsibility Upon Divided Household**

**Section 11: Mediation and Arbitration**

**Section 12: General Provisions**

**Addendum: Permitted Mortgage**

**Addendum: Lease Fee Summary of Monthly Charges**

**Attachment: Land Use Plan**

**Attachments for Forest Row Association:**

- a. Forest Row Association By-Laws**
- b. Forest Row Association Agreement**
- c. Forest Row Association Policies**
- d. Forest Row Association Multiple Agreement**

## LOCATION

This Lease Agreement (hereinafter "Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Community Land Trust in the Southern Berkshires, Inc. (hereinafter referred to as "Lessor"), a non-profit corporation organized under the laws of the Commonwealth of Massachusetts with an office in the town of Egremont, County of Berkshire, Commonwealth of Massachusetts and \_\_\_\_\_ (hereinafter referred to as "Lessee").

The entire site of which the Leasehold is a part is described as follows:

[CUSTOMIZE]

## RECITALS

As Lessor, the Community Land Trust in the Southern Berkshires holds land on behalf of the community for homes, farms and businesses to ensure permanent access, control, affordability and stewardship.

Lessor and Lessee 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 of the buildings and other improvements on the land now being leased.

Lessor and Lessee 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, Lessor and Lessee agree on all of the terms and conditions of this lease as set forth below.

## DEFINITIONS

Lessor and Lessee agree on the following definitions of key terms used in this Lease.

**LAND USE PLAN:** The Land Use Plan is a map that specifies locations, dimensions and boundaries of things on the land, including but not limited to buildings, driveways, electric and telephone utilities, wells and water pipes, septic fields, solar panels, common areas and conservation easements.

**LEASEHOLD:** The area of land shown on the Land Use Plan that is being leased by the Lessor to the Lessee. It is this Leasehold that is the subject of this Lease Agreement and which is herein leased to the Lessee.

**IMPROVEMENTS:** The residential structure and other permanent improvements located on the Leasehold and owned by the Lessee, including the buildings, fences, driveway and other improvements described in the Bill of Sale (or other document verifying transfer of ownership to Lessee), and all permanent improvements added thereafter by Lessee at the Lessee's expense.

**LAND MANAGEMENT PLAN:** The Land Management Plan is a narrative that explains the qualitative and quantitative values associated with using the land, including but not limited to soil quality, erosion and water quality, wetlands protection, wildlife protection, mowing, tree care, snow plowing, agriculture production and safety. Not all lease agreements include a land management plan.

**LEASE FEE:** The monthly fee that the Lessee pays to the Lessor for the continuing use of the Leasehold and any additional amounts that the Lessor charges to the Lessee for reasons permitted by this Lease.

**LEASE CHANGE FEE:** The fee that the Lessee pays the Lessor to make a change to the Lease Agreement; for example, to change to the name of the Lessee.

**PRIMARY RESIDENCE:** A person's primary residence is the dwelling where they usually live. A person can only have one primary residence at any given time, though they may share the residence with other people. A person's primary residence is where they are registered to vote, the address on their driver's license and on a U.S. passport.

**FIRST OPTION PURCHASE PRICE:** The maximum price the Lessee is allowed to receive for the sale of the aforesaid improvements and the Lessee's right to possess, occupy and use the Leasehold, as defined later in this Lease.

**LOCAL REPLACEMENT COST LESS DETERIORATION, OBSOLESCENCE AND DAMAGE:** The formula for determining the First Option Purchase Price, which is the cost to construct the buildings and other improvements in the current local economy given material costs and labor costs, adjusted for deterioration, obsolescence and damage to the buildings/improvements over time. This formula is intended to remove the market price of the land from any calculation of sale price.

**PERMITTED MORTGAGE:** A Permitted Mortgage is from a bank or public lending institution or other organization subject to government regulations and direct government supervision. The Permitted Mortgage requires the permission of the Lessor as such Permitted Mortgagee may be exempted from some of the obligations of the Lessee under the terms of this lease. A private mortgage or a loan holding the leasehold as collateral does not require the permission of the Lessor and such private mortgagee is obligated to

all of the terms of this lease the same as the Lessee.

## **Section 1: Leasing the Land**

### **1.1 THE LESSOR AGREES TO LEASE TO THE LESSEE**

The Lessor hereby leases unto the Lessee and the Lessee accepts from the Lessor, each in consideration of the obligations of the other and upon the terms and conditions herein set forth, sole possession, occupancy and use of said Leasehold. Lessee is the owner of improvements located on said Leasehold.

### **1.2 THE LESSOR RETAINS MINERAL RIGHTS**

The Lessor reserves to itself, its successors and assigns all the oil, gas, coal and other minerals including water and soil and all rights to the same of whatever nature upon, in and under the Leasehold, together with the right to extract, mine, and remove there from 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 Lessee. Any extraction, mining and removing of said minerals shall require the written consent of the Lessee and shall be subject to the obligation of the Lessor not to interfere with the use of the Leasehold by the Lessee pursuant to this Lease and to return the surface on the Leasehold property to its original state, and provided that the Lessee shall have the right to so much of the minerals so extracted, mined, or removed as may be reasonably necessary for use by the Lessee on the Leasehold itself, but not for the purpose of selling the minerals or for any exportation purpose.

## **Section 2: Term of the Lease and Obligations of Successor Parties**

### **2.1 TERM OF LEASE IS 98 YEARS**

This Lease shall remain in effect for 98 years, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless ended sooner or renewed as provided elsewhere in this Lease.

### **2.2 LESSEE MAY RENEW LEASE**

Unless said term is sooner terminated, the Lessee shall have the option to renew this lease agreement upon terms as may be mutually agreed upon by both parties.

### **2.3 IF LESSOR DECIDES TO SELL THE LEASED LAND**

If the Lessor who is the owner of the land leased under this agreement ever transfers ownership of the land, whether voluntarily or involuntarily, to any other person or institution, this Lease shall not cease, but shall remain binding on the new landowner as

well as the Lessee. The terms, rights and obligations of the entire Lease, or any renewal hereof, shall be binding upon the named parties, or upon any successors. If the Lessor agrees to transfer the leased land to any person or institution other than a nonprofit corporation, charitable trust, government agency or other institution or organization, the Lessee shall have a right of first refusal to purchase the leased land.

### **Section 3: Purpose and Use of Leasehold**

#### **3.1 LESSEE MAY USE THE LEASEHOLD ONLY FOR RESIDENTIAL PURPOSES**

Lessee shall use the leased land only for residential purposes. The purpose of this Lease is to facilitate the possession, use and occupancy of the Leasehold by the Lessee as a primary residence, including, if the leasehold owner is a business, for employee housing. Residential use may include a home office, studio, workshop or other space for a home-based business or small-scale agriculture. Lessee shall not use the Leasehold for any commercial or mercantile purposes.

#### **3.2 LESSEE MUST USE THE LEASEHOLD IN COMPLIANCE WITH THE LAW**

Lessee shall use the Leasehold in compliance with applicable zoning bylaws and building codes, safety regulations, and any other local, state and federal law. Lessee shall obtain and post as required all necessary permits from local, state, federal and other authorities. Lessee shall not cause any public nuisance. All waste must be recycled, if possible, and otherwise disposed of in a safe and sanitary manner as determined by the local board of health and other regulating agencies. The Leasehold must be maintained in the condition that is required to maintain the insurance coverage required by this Lease.

#### **3.3 ALL BUILDING PERMITS REQUIRE LESSOR APPROVAL**

Any activity on the Leasehold that requires a building permit must have advance approval in writing from the Lessor. The signature of the Lessor on the building permit constitutes such approval.

#### **3.4 SEPTIC FIELD MUST BE WITHIN LEASEHOLD BOUNDARIES**

If the Leasehold is required by local, state or federal regulation to have a septic system, the septic system must be within the boundaries of the Leasehold as shown on the Land Use Plan map. Existing systems at the time of the signing of this lease, as shown on the Land Use Plan, are grandfathered by right, until or unless there is a change of ownership, or a new use, or a necessity to build a new system.

#### **3.5 ENERGY EFFICIENCY IS ENCOURAGED**

The Lessor encourages the Lessee to use energy efficient design, materials, appliances and processes, and to use renewable energy whenever possible.

#### **3.6 LAND USE PLAN AND LAND MANAGEMENT PLAN**

The Lessee shall maintain the ecological, agricultural and horticultural integrity of the landscape of the Leasehold and shall cooperate with the Lessor to develop, implement,

and amend from time to time, as needed the Land Use Plan and, if one exists, the Land Management Plan. Mutually agreeable land use consultants may be employed to set forth the natural characteristics of the land, pertinent ecological principles, appropriate water conservation measures and sound land management practices.

### 3.7 FENCES AND ROADS

The Lessor must approve fences other than those around gardens. If the Lessee shares a driveway or roadway with other leaseholders, the Lessee may be required to share maintenance or snow plowing costs. The Lessee shall be responsible for the maintenance of fences, roads and any other facilities leased, constructed and used by Lessee.

### 3.8 WAIVER OF USE RESTRICTIONS

The Lessee agrees to secure written consent from the Lessor 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 Lessee engage in a use of the Leasehold that the Lessor judges requires written consent, the Lessor shall notify the Lessee in writing of the necessity of securing consent. On notice, the Lessee 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. 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 Lessor within 30 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 Lessor so justifies, the Lessee 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 the law.

### 3.9 LESSEE IS RESPONSIBLE FOR USE BY OTHERS

The Lessee shall be responsible for the use of the leasehold by all residents and visitors and anyone else using the leased land with the Lessee's permission and shall make all such people aware of the restrictions on use set forth in this Lease.

### 3.10 LESSEE MUST OCCUPY THE HOME FOR AT LEAST EIGHT MONTHS EACH YEAR

The Lessee shall occupy the home on the Leasehold as a primary residence for at least eight (8) months of each year of this Lease, unless otherwise agreed by the Lessor. The months need not be contiguous, but do have to be within the calendar year. A Lessee may have only one primary residence. Voter registration, a driver's license or a U.S. passport will be considered evidence of the Lessee's legal address. For a business providing housing for employees, the leasehold must be occupied by at least one person for whom it is their primary residence eight months each year.

### 3.11 LEASED LAND MAY NOT BE SUBLEASED

The Lessee shall not sublease the Leasehold, or sell or otherwise convey any of Lessee's rights under this Lease.

### 3.12 LESSOR HAS A RIGHT TO INSPECT THE LEASED LAND

The Lessor may inspect any part of the leased land except the interiors of fully enclosed buildings, at any reasonable time, after notifying the Lessor at least 24 hours before the planned inspection. In an emergency, the Lessor may inspect any part of the leased land except the interiors of fully enclosed buildings, after making reasonable efforts to inform the Lessee before the inspection. If the Lessor has received notice of the Lessee's intent to sell, then the Lessor has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. The Lessor must notify the Lessee at least 24 hours before carrying out such inspection.

### 3.13 LESSEE HAS A RIGHT TO QUIET ENJOYMENT

The Lessee has the right to quiet enjoyment of the leased land. The Lessor has no desire or intention to interfere with the personal lives, associations, expressions, or actions of the Lessee in any way not permitted by this Lease.

### 3.14 SHARED WATER SUPPLY RESTRICTION

If the Leasehold water supply is a private shared water source, the number of bedrooms in the house may be restricted. For purposes of this section town tax assessor records will be the official determination of the number of bedrooms in the house.

## **Section 4: Fees, Taxes and Monthly Charges**

### 4.1 LEASE FEE, TAXES AND SHARED COSTS

The Lessee shall pay a monthly Lease Fee to the Lessor. The monthly Lease Fee payment shall be calculated in a separate document drawn between the Lessor and Lessee. See Addendum: Lease Fee Summary of Monthly Charges for the calculation of these charges as of the date of this Lease. The fee will include the Lessee's portion of town taxes on the buildings/improvements and the land, as well as shared costs incurred in managing the land of which the Leasehold is a part if applicable. Monthly charges for shared costs may include a management fee for office and staff, fees for bookkeeping, water and sewer, driveway maintenance, snow plowing, mowing or insurance. These shared expenses are derived from the Land Use Plan and, if one exists, the Land Management Plan, as well as this Lease Agreement. All tax bills and invoices for additional monthly charges for shared expenses will be available for the Lessee's review.

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

- a) An assessment for the lessee's portion of town taxes, both taxes on buildings and improvements owned by the lessee and a portion of taxes on the land.

- b) An assessment for lessee's share of costs incurred by the Land Trust in managing the land, common improvements, and lease agreements of the Site. This shall include, but not be limited to insurance on the land, maintenance and upkeep on commonly used driveways, commonly established sewage and water facilities, commonly used play areas and garden and recreation areas, and other physical management responsibilities of the Land Trust as specified in the management plans prepared by the Land Trust in cooperation with lessees of any portion of the Site. It shall also include a fee for organizational expenses involved with the Land Trust's meeting its responsibilities to oversee that the terms of the lease are met. This organizational expenses fee shall show as a "management" expense item under the "Management Budget" and shall be \$40 per month per leasehold with the right of increase as follows: it is agreed that the rate of increase of the "management" line item in the "Management Budget" shall not exceed the rate of increase of the Federal Consumer Price Index, with the date of December 31, 2001 being the base-line date for such computations.
- c) Land Use Fee -- The Land Use Fee, or ground rent, is the estimated value for land rent in fair market rental rates for year round apartment and house rentals in the region. 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 Federal Consumer Price Index, with the date of December 31, 2000 being the base-line date for such computations.

#### 4.3 EDUCATION FEE

Community Land Trust Educational Fee: In addition to the actual costs connected with site management and the land use fee, the lessee 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 people in the region. This portion of the Lease Fee Assessment shall not vary through time.

#### 4.4 WHEN THE MONTHLY FEES ARE TO BE PAID

The Lease Fee, Land Use Fee, Education Fee and all other fees and monthly charges shall be payable to Lessor on the first day of each month for as long as this Lease remains in effect. Failure to pay monthly Lease Fees is a violation of the terms of this Lease and may result in legal action against the Lessee.

#### 4.5 LESSOR CAN COLLECT UNPAID FEES WHEN HOME IS SOLD

In the event that any amount of payable Lease Fee or any other monthly charges or fees remains unpaid when the home is sold, the outstanding amount shall be paid to Lessor out of any proceeds from the sale that would otherwise be due to the Lessee. The Lessor shall have, and the Lessee hereby consents to, a lien upon the home for any unpaid sums. 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; and



(c) liens for real property taxes and other governmental assessments or charges against the home.

#### 4.6 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.

#### 4.7 LEASE CHANGE FEES

The Lessee shall pay the Lessor for any costs incurred in making changes or modifications to the Lease Agreement for assignment or transfer of the leasehold.

#### 4.8 UNPAID FEES

Fees more than 90 days overdue shall accrue interest at the rate of 12% per annum. In the event that Lessor commences any action to recover any amount due from a Lessee, or commences any action to enforce any of the terms of this Lease, Lessee shall be responsible for Lessor's fees, costs and attorney's fees.

### **Section 5: Improvements, Ownership, Transfer and Encumbrances**

#### 5.1 LESSEE OWNS THE BUILDINGS AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND

All structures, including the house, fixtures, outbuildings, fences, driveway and other improvements purchased, constructed or installed by the Lessee on any part of the leased land at any time during the term of this Lease shall be property of the Lessee. Title to the home shall be and remain vested in the Lessee. The Lessee shall bear full responsibility for any taxes due on buildings and improvements.

## 5.2 LIMIT OF OWNERSHIP RIGHTS

The Lessee's rights of ownership are limited by certain provisions of this Lease, including provisions regarding the sale of the buildings/improvements by the Lessee and the Lessor's option to purchase them.

## 5.3 LESSEE PURCHASES BUILDINGS WHEN SIGNING LEASE

Upon the signing of this Lease, the Lessee is simultaneously purchasing the buildings and improvements located on the Leasehold, as described in the Bill of Sale or other document verifying transfer of ownership of buildings and improvements.

## 5.4 THE RIGHT TO REMOVE THE BUILDINGS FROM THE LAND

The Lessee has the right to sever physically and remove any of the buildings or improvements at any time provided such removal does no substantial harm to the Leasehold premises in the process. Should harm or damage be caused, it will be rectified, corrected or repaired to substantially the same condition as prior to such harm. Such right is contingent on the Lessee being current on all payments owed by them to the Lessor.

## 5.5 ENCUMBERANCE AND SEVERING THE BUILDINGS

The Lessee shall have the right to encumber the buildings with a mortgage, or pledge, sell or transfer (hereinafter referred to as "transfer") title to any buildings and improvements made to or on the Leasehold, provided the Lessee is current in payments to the Lessor. If in arrears to the Lessor, the Lessee shall secure written consent from the Lessor prior to any such transfer. Such a transfer shall be conditional by its express written terms upon physical severance of the buildings from the Leasehold within two months of the date of the transfer agreement.

If physical severance does not occur within two months of such transfer agreement, the transfer shall become null and void as of that date. The Lessee is entitled to mortgage the Lessee interest in the building and improvements, and to grant to such mortgagee all of the Lessee's rights in and to the Leasehold estate. The Lessee has the right to sell, transfer or otherwise dispose of the Lessee's interests to such mortgagee in lieu of foreclosure. However, such transfer shall be subject to Lessor's right of first refusal as provided in the next paragraph. All mortgages must include a copy of this Lease Agreement and the amount of any mortgage or the sum total of multiple mortgages shall not exceed the First Option Purchase Price as determined in this Section 5.

## 5.6 PROCESS FOR TRANSFER OF OWNERSHIP OF BUILDINGS AND IMPROVEMENTS WITHOUT SEVERANCE

The Lessor shall retain the First Option to Purchase all buildings and improvements on the Leasehold. The Lessee shall inform the Lessor in writing with first notice of the Lessee's intention to sell without severance. From the date of first notice to the Lessor, the Lessee has 60 days to arrive at a proposed sale price based on the formula and process described in Section 5.7.

When the buildings have been appraised and a sale price has been established using the process described in Section 5.7, the Lessee shall send to the Lessor the Seller Letter, a template for which shall be provided to the Lessee by the Lessor, with the offered sale price. The offered price may be less than the appraisal, but not more. From the date of receipt of the Seller Letter, the Lessor has 60 days to A.) Accept the offer to purchase at the offered price, B.) Make a counter offer based on additional appraisals, or C.) Release the option.

#### 5.7 CALCULATING THE FIRST OPTION PURCHASE PRICE

The formula for determining the First Option Purchase Price is the cost to construct the buildings and other improvements, given material costs and labor costs in the current local economy, adjusted for deterioration, obsolescence and damage. The “adjustment for deterioration, obsolescence and damage” is calculated by subtracting the value of the current building state from the value of new building costs. For example, if a new 20-year roof costs \$10,000 and the actual roof is ten years old, the adjustment to the value of the roof is 50%. This formula is intended to remove the market price of the land from any calculation of sale price.

For the purposes of determining this value the Lessee shall appoint a licensed or certified appraiser with at least two years of experience. The cost of this appraiser will be borne by the Lessee. The appraiser shall be required to use the Lessor’s current Appraisal Form to ensure all appraisals of the buildings/improvements are based on the same format and comparable. A copy of the appraiser’s completed and signed Appraisal Form shall be included with the Seller Letter when sent to the Lessor.

The Lessor may then exercise the First Option to Purchase at the offer price in the Seller Letter. Or at its sole discretion, and upon written notice to the Lessee, shall engage two additional licensed or certified appraisers using the same Appraisal Form. Copies of the two additional appraisals shall be provided to the Lessee. If the three appraisals are within 10% of each other, they shall be averaged. If they are not within 10% of each other, a meeting or telephone conference with all three appraisers will be held to enable them to consult with each other and arrive at an agreed price. The Lessee shall accept a sale price that is the average of all three appraisals or the price established by the three appraisers in consultation with each other.

If the three appraisers cannot agree to a price, two additional licensed or certified appraisers will be hired. Of the five appraisals, the highest appraisal and the lowest appraisal will be discarded and the middle three will be averaged to arrive at a sale price. The Lessee shall accept this sale price.

If more than one appraisal is required to arrive at a sale price, the Lessor and the Lessee will share the cost of the appraisals equally.

#### 5.8 ASSIGNMENT OF LESSOR'S OPTION TO PURCHASE

The Lessor may at its sole discretion elect to assign the option to purchase the buildings/improvements to a buyer.

#### 5.9 HOME INSPECTION

A home inspection by a licensed home inspector shall be completed within twenty-one (21) days of the Lessor's notice to the Lessee of exercising the option to purchase. If the home inspection report, which shall be made available to the Lessee, reveals information or conditions, which were not discovered by the appraisers and factored into their appraisal, then the sale price may require adjustment.

#### 5.10 PURCHASE AND SALE AGREEMENT

The Lessor or the Lessor's assignee shall negotiate a purchase and sale agreement with the seller, which establishes terms, conditions, contingencies, a timeframe and a closing date for the sale.

#### 5.11 FAILURE OF LESSOR TO EXERCISE OPTION TO PURCHASE

Should the Lessor or the Lessor's assigned buyer fail to exercise its option and follow through with closing the sale, the Lessee may find a buyer and the Lessor shall negotiate a lease substantially the same as this lease with the buyer. If the buyer offers the Lessee a price above the adjusted price as determined in Section 5.7 above, the Lessee, after obtaining written agreement from the Lessor may sell the buildings and improvements at the offered price with the difference between the adjusted value and the sale price returning to the Lessor at the time of sale at which the Lessor shall be represented.

#### 5.12 TRANSFER FOR SECURITY PURPOSES

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 meet the requirements of a Permitted Mortgage as set forth in Addendum: Permitted Mortgage.

#### 5.13 TRANSFER AS GIFT

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 successful negotiation and execution of a new Lease substantially the same as this lease between the Lessor and the transferee.

#### 5.14 TERMINATION OF LEASE WITHOUT TRANSFER

In the event this Lease shall terminate, the Lessee or Lessee 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 the buildings/improvements. The Lessee shall notify the Lessor of intent with regard to this responsibility within 30 days following termination, at which time the Lessor shall have the First Option to Purchase as described above. Should the Lessor fail to exercise its purchase option, the Lessor may,

nevertheless, place the buildings and improvements up for sale, consistent with the provisions above.

If no acceptable buyer is found within 270 days of the termination of this lease, the Lessor shall have the right to assume ownership of and title to all buildings and improvements. In such an event, the Lessor shall sell the buildings and improvements and shall convey to the Lessee the proceeds from such sale, up to the amount of the equity accrued by the Lessee as determined above, minus the costs of the sale, the amount of land taxes owed since termination and any debts owed by the Lessee to the Lessor.

## **Section 6: Financing**

### **6.1 PERMISSION TO MORTGAGE**

The Lessee is permitted to mortgage the buildings/improvements and rights to possess and use the Leasehold as defined in this lease agreement. A Permitted Mortgage is from a bank or public lending institution subject to government regulations and direct government supervision. The Permitted Mortgage requires the permission of the Lessor as such Permitted Mortgage may be exempted from some of the obligations of the Lessee under the terms of this lease. A private mortgage or loan holding the leasehold as collateral does not require the permission of the Lessor and such private mortgagee is obligated to all of the terms of this lease the same as the Lessee.

### **6.2 BY SIGNING LEASE, LESSOR GIVES PERMISSION FOR ORIGINAL MORTGAGE**

By signing this Lease, Lessor gives written permission for any mortgage or deed of trust signed by the Lessee effective on the day this Lease is signed for the purpose of financing Lessee's purchase of the buildings and is disclosed to Lessor.

### **6.3 IN THE EVENT OF FORECLOSURE, ANY PROCEEDS IN EXCESS OF THE PURCHASE OPTION PRICE WILL GO TO LESSOR**

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

If this Lease is terminated by foreclosure, then upon thus assuming title to the buildings, Lessor shall pay to Lessee an amount equal to the Purchase Option Price less the total amount of the remaining balance on the Permitted Mortgage (if any), any unpaid Lease Fee and any other amounts owed to the Lessor under the terms of this Lease, and all

reasonable costs (including reasonable attorney fees) incurred by Lessor in pursuit of its remedies under this Lease.

## **Section 7: Liability, Insurance, Damage and Destruction, Eminent Domain**

### **7.1 LESSEE MUST DEFEND LESSOR AGAINST ALL CLAIMS OF LIABILITY**

Lessee shall defend, indemnify and hold Lessor 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. Lessee waives all claims against Lessor for injury or damage on or about the leased land. However, Lessor shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of Lessor or Lessor's agents or employees.

### **7.2 LESSEE SHALL PAY ALL ASSESSMENTS AGAINST THE LEASEHOLD**

The Lessee shall pay all service bills, utility charges, liens, taxes or other governmental assessments charged against the Leasehold.

### **7.3 LESSEE SHALL HOLD LESSOR HARMLESS**

The Lessee shall safeguard the Leasehold against damage, waste or trespass and shall hold harmless the Lessor from any liability or loss thus incurred. If the Lessee violates any term or condition of this Lease Agreement, the Lessee shall hold harmless the Lessor for any damage, expense, or loss incurred in connection with such violation, and any subsequent termination of this Lease Agreement.

### **7.4 LESSEE SHALL REIMBURSE LESSOR**

In the event the Lessor shall be required to pay any sum whatsoever in behalf of the Lessee's responsibility or liability, the Lessee shall reimburse the Lessor for any sums thus paid, and reasonable expenses caused thereby.

### **7.5 LESSEE MUST INSURE THE BUILDINGS AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE**

Lessee shall, at Lessee's expense, maintain comprehensive hazard, casualty and liability insurance and keep the buildings continuously insured against all risks of physical loss, for the full replacement value of the buildings and in any event in an amount that will not incur a coinsurance penalty. The Lessor shall be named as an additional insured in said policies together with Lessee and at the election of the Lessee, together with other interested parties. The Lessee shall provide the Lessor with a copy of all hazard, casualty and liability insurance policies.

### **7.6 NO HAZARDOUS USE ALLOWED**

Lessee covenants and agrees that Lessee will not do or permit anything hazardous to be done in or upon the Leasehold, or to bring anything or keep anything hazardous therein, which shall increase the rate of insurance on the Leasehold or on the buildings/improvements above the standard rate applicable for the use to which Lessee has agreed to devote the Leasehold. Lessee

further agrees that in the event the Lessee shall violate the terms of this paragraph, Lessee will promptly reimburse the Lessor for any costs incurred due to such hazardous use.

#### 7.7 IN THE EVENT OF CONDEMNATION OF LAND AND BUILDINGS

In the event of condemnation by the town, state or federal government, or other authorities, all compensation and damages with respect to the land, appraised as if free of any lease and entirely unencumbered, shall be payable to the Lessor, its successor or assigns. Any compensation for loss of buildings or improvements owned by the Lessee shall be paid to the Lessee, up to the full amount of the assigned value (local replacement cost less deterioration, obsolescence and damage). The Lessor shall be paid any balance above local replacement cost less deterioration, obsolescence and damage.

#### 7.8 LOSS OF LAND

In the event that title to the Leasehold premises shall have been lost by condemnation, forced sale or eminent domain, the Lessor 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 to current Lessees.

### **Section 8: Default and Termination**

#### 8.1 WHAT HAPPENS IF LESSEE FAILS TO MAKE PAYMENTS TO THE LESSOR THAT ARE REQUIRED BY THE LEASE

It shall be an event of default if Lessee fails to pay the Lease Fee, Land Use Fee, Education Fee, or other charges required by the terms of this Lease, and Lessee does not cure such failure within thirty (30) days of written notice of same.

#### 8.2 WHAT HAPPENS IF LESSEE VIOLATES OTHER (NON-MONETARY) TERMS OF THE LEASE

It shall be an event of default if Lessee fails to abide by any other requirement or restriction stated in this Lease, and Lessee does not cure such failure within thirty (30) days after being notified. However, if Lessee has begun to cure such default within the 30-day cure period and is continuing such cure with due diligence but cannot complete the cure within the cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure.

#### 8.3 WHAT HAPPENS IF LESSEE 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 Lessee is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Lessee 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 Lessee's interest in the Leasehold by a court of competent jurisdiction, or if a petition is filed for the reorganization of Lessee under any provisions of the Bankruptcy Act now or hereafter enacted, or if Lessee 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.

#### 8.4 A DEFAULT (UNCURED VIOLATION) GIVES LESSOR THE RIGHT TO TERMINATE THE LEASE

In the case of any of the events of default described above, Lessor may terminate this lease and initiate summary proceedings under applicable law against Lessee, and Lessor shall have all the rights and remedies consistent with such laws and resulting court orders to enter the Leasehold and buildings and repossess the entire Leasehold and buildings, and expel the Lessee and those claiming rights through the Lessee. In addition, Lessor shall have such additional rights and remedies to recover from Lessee arrears of fees and damages from any preceding breach of any covenant of this Lease. If this Lease is terminated by Lessor pursuant to an Event of Default, then, as provided above, upon thus assuming title to the buildings, Lessor shall pay to Lessee an amount equal to the Purchase Option Price calculated in accordance with Section 5 above, as of the time of reversion of ownership, less the total amount of the remaining balance on the Permitted Mortgage (if any), any unpaid Lease Fee and any other amounts owed to the Lessor under the terms of this Lease and all reasonable costs (including reasonable attorney fees) incurred by Lessor in pursuit of its remedies under this Lease.

#### 8.5 A DEFAULT (UNCURED VIOLATION) GIVES LESSOR THE RIGHT TO EXERCISE ITS PURCHASE OPTION

In the case of any of the events of default described above, Lessee hereby grants to the Lessor (or its assignee) the option to purchase the buildings for the Purchase Option Price as such price is defined above. Within 30 days after the expiration of any applicable cure period as established above or within 30 days after any of the events constituting an Event of Default above, Lessor shall notify the Lessee and any Permitted Mortgagee of its decision to exercise its option to purchase. Not later than 90 days after the Lessor gives notice to the Lessee of the Lessor's intent to exercise its option, the Lessor or its assignee shall purchase the buildings for the Purchase Option Price.

#### 8.6 WHAT HAPPENS IF LESSOR DEFAULTS

Lessor shall in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform such obligations within 60 days, or such additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any such obligation.

#### 8.7 LESSEE MAY TERMINATE LEASE AT ANY TIME

The Lessee may terminate this Lease at any time and for any reason, provided the Lessee gives the Lessor at least 90 days notice, in writing of the intention to terminate. Lessee may not terminate so long as there is an outstanding Permitted Mortgage or other mortgage approved by Lessor against the Leasehold.



## **Section 9. Continuation of Lease on Death of Lessee**

Upon the death of the last surviving Lessee, the Lessor shall agree, upon request of an executor of the estate of the Lessee, to continue this Lease Agreement by assigning it on the same terms, with the same requirements of residency as stated in Section 3.11, to one or more of the following:

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

## **Section 10: Lessee Responsibility Upon Divided Household**

In the event of a divided household in which one or more of the Lessees of this Lease has failed to occupy the Leasehold for at least eight 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 above and including full responsibility for all fees due the Lessor 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 Lessor that accountability for use of the Leasehold remains with the resident users of the 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.

## **Section 11: Mediation and Arbitration**

### **11.1 MEDIATION FOR DISPUTE RESOLUTION**

Mediation is a form of alternative dispute resolution in which a neutral third person helps the parties reach a voluntary resolution of a dispute. It is an informal, confidential and flexible process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. It can help resolve a Lessee/Lessor dispute and other matters in a less adversarial setting.

The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do. Mediation can result in a legally enforceable contract agreed to, in writing, by the parties.

Mediation is recommended as the first step toward resolving Lessee/Lessor disputes. Both parties shall agree upon the selected mediator and both parties shall share equally the cost of the mediation.

#### 11.2 ARBITRATION FOR DISPUTE RESOLUTION

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

#### 11.3 COST SHARE FOR ARBITRATION

Lessee and Lessor shall each pay one half (50%) of any costs incurred in carrying out arbitration in which the parties have agreed to engage, unless such costs are provided for differently by the arbitration panel.

#### 11.4 ARBITRATION PROCESS

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.

#### 11.5 ARBITRATION PANEL DECISION MAKING

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.

#### 11.6 ARBITRATION IS BINDING

The decisions and awards of the arbitration panel shall be binding, and judgment may be entered thereon in any court having jurisdiction.

### **Section 12: General Provisions**

#### 12.1 NOTICE BY MAIL REQUIRED

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, or by nationally recognized overnight courier signature required, 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.

#### 12.2 REASONABLE CONSENT

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.

#### 12.3 NO WAIVER OF OPTION

The failure of the Lessor 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.

#### 12.4 RECEIPT OF FEES

The receipt by the Lessor of any Lease Fee payment, with the knowledge of the Lessee's breach of any covenant hereof, shall not be deemed a waiver of the Lessor's remedies for such breach.

#### 12.5 RIGHT TO PROSECUTE OR DEFEND

The Lessor shall have the right, but shall be under no duty, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate or necessary for the protection of the title to, possession of, or any other interest in the Leasehold.

#### 12.6 MEMBERSHIP IN COMMUNITY LAND TRUST IN THE SOUTHERN BERKSHIRES

The Lessee shall maintain membership in good standing in the Community Land Trust in the Southern Berkshires, as provided in the Articles of Incorporation and the Bylaws of that corporation.

#### 12.7 PARTIES BOUND

This agreement sets forth the entire agreement between the parties hereto; it is binding upon and inures 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 in interest.

#### 12.8 SEVERABILITY AND DURATION OF LEASE

If any part of this Lease is found to be 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 Lessee or Lessor 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 Lessor'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.

#### 12.9 GOVERNING LAW

This Lease shall be interpreted in accordance with and governed by the laws of the Commonwealth of Massachusetts. 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 Lessor or Lessee.

#### 12.10 MEMBERSHIP IN FOREST ROW ASSOCIATION

Lessee agrees, as a requirement of this lease, to execute and be a party to (1) The Forest Row Association Agreement, and (2) (as to lessees of multiple units) The Multiple Unit Agreement, which lessee acknowledges receiving, reviewing and executing, prior to or contemporaneously with this lease.

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

\_\_\_\_\_ Lessor, Community Land Trust in the Southern Berkshires

\_\_\_\_\_ Lessee

Commonwealth of Massachusetts

Berkshire County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of the Community Land Trust of Southern Berkshire, proved to me through satisfactory evidence of identification, being (check whichever applies): ( ) driver’s license or other state or federal governmental document bearing a photographic image; ( ) oath or affirmation of a credible witness known to me who knows the above signatory; or ( ) my own personal knowledge of the identity of the signatory, to be the person(s) whose name is signed above, and acknowledged the foregoing to be signed by her, as her free act and deed, voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Commonwealth of Massachusetts

Berkshire County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, being (check whichever applies): ( ) driver’s license or other state or federal governmental document bearing a photographic image; ( ) oath or affirmation of a credible witness known to me who knows the above signatory; or ( ) my own personal knowledge of the identity of the signatory, to be the person(s) whose name is signed above, and acknowledged the foregoing to be signed by her, as her free act and deed, voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

### **Addendum: Permitted Mortgage**

#### **1. WHAT IS A PERMITTED MORTGAGE?**

A Permitted Mortgage is from a bank or public lending institution or other organization subject to government regulations and requires the prior permission of the Lessor as such Permitted Mortgagee may be exempted from some of the obligations of the Lessee under the terms of this lease. A Permitted Mortgage amount may not exceed the First Option Purchase Price of the leasehold as determined in Section 5.

#### **2. NOTIFICATION TO LESSOR OF THE PERMITTED MORTGAGE**

The Lessee shall provide the Lessor with copies of the Permitted Mortgage document as fully executed by the Permitted Mortgagee.

#### **3. LIABILITY INSURANCE AND THE PERMITTED MORTGAGEE**

Section 7.5 requires the Lessee to carry comprehensive hazard, casualty and liability insurance for the full replacement value of the property. The Lessee's Permitted Mortgagee shall be named as an additional insured, as shall the Lessor. The insurance policy may provide, at the election of the Permitted Mortgagee, that in the event of casualty, proceeds from such policy shall be first paid to the Permitted Mortgagee. Such insurance policies shall provide that the same may not be cancelled or coverage reduced without prior written notice to the Lessor and the Permitted Mortgagee. If the Lessee shall elect not to renew the insurance policy, Lessee shall send Lessor and Permitted Mortgagee written notice at least thirty (30) days prior to the expiration of such policy, accompanied by copies of the new insurance policy the Lessee proposes to substitute for the un-renewed policy.

#### **4. TAXES AND THE PERMITTED MORTGAGEE**

If the Lessee obtains a Permitted Mortgage and the Permitted Mortgagee requires the Lessee to pay taxes to the Permitted Mortgagee and the Permitted Mortgagee holds the tax moneys in escrow and commits to pay the taxes directly to the town, then the Lessor agrees that the Lessee may make such payments to the Permitted Mortgagee instead of to the Lessor. In such case, upon request of Lessee, the Lessor agrees to promptly send the applicable tax bills in its possession to such Permitted Mortgagee. In the event that the Permitted Mortgagee fails to pay to the taxing authority the applicable taxes when due, the Lessee upon demand of Lessor shall pay such taxes directly to Lessor.

#### **5. LESSEE DEFAULT AND THE PERMITTED MORTGAGEE**

In the event of any default in the terms of this lease as defined in Section 8, written notice of such default shall be given by the Lessor to the Lessee with a copy to Lessee's Permitted Mortgagee.

#### **6. IN LESSEE DEFAULT, LESSOR HAS FIRST RIGHT TO PURCHASE**

In the event that Lessee's lease is terminated by default the Permitted Mortgagee shall be entitled to receive a new lease from the Lessor, providing that the Lessor, prior to providing a new lease, shall have the opportunity to effectuate a purchase of the

defaulting Lessee's interest and to satisfy the Lessee's obligations to the Permitted Mortgagee within sixty (60) days of notice to the Permitted Mortgagee of such default.

**7. IN LESSEE DEFAULT, PERMITTED MORTGAGEE HAS THE RIGHT TO CURE**

In the event of a default by the Lessee, the Permitted Mortgagee shall be allowed to do all acts required of the Lessee in the Lessee's stead to cure such default, providing that prior to such cure, the Permitted Mortgagee shall notify the Lessee and Lessor of intent to cure and the time and manner of such cure. The right of the Permitted Mortgagee to cure shall be in the same manner and method as required of the Lessee.

**8. IN LESSEE DEFAULT, PERMITTED MORTGAGEE MAY TAKE OVER THIS LEASE**

In the event of a default or a pending default, where an assignment of the Lessee's interest to the Permitted Mortgagee is contemplated, the Permitted Mortgagee may accept such assignment; providing further that in such event the Permitted Mortgagee agrees to give notice of same to Lessor, and the Lessor shall have the option to assume same by paying all obligations of the defaulting Lessee. Permitted Mortgagee shall then have the right to acquire and convey, assign, transfer to and exercise any right, remedy or privilege granted to Lessee by this lease or otherwise by law, subject to other provisions, if any in said Permitted Mortgagee limiting any exercise of any such right, remedy or privilege; and the Permitted Mortgagee may rely upon and enforce any provisions of the lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

**9. IF LESSOR TERMINATES LEASE**

If the Lessor elects to terminate the lease, then the Permitted Mortgagee shall have the right 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 Lessee's interest in the Leasehold by foreclosure of its mortgage or otherwise.

**10. IF THE LEASE IS TRANSFERRED FROM LESSEE TO PERMITTED MORTGAGEE IN FORECLOSURE**

In the event of (1) Lessee's default and (2) Lessor's failure to purchase as provided herein, or failure to satisfy all claims of the Permitted Mortgagee, and (3) such Permitted Mortgagee proceeds under its mortgage with a foreclosure sale, Permitted Mortgagee shall conduct said sale in accord with the provisions of the General Laws of the Commonwealth of Massachusetts. In the event Permitted Mortgagee is the purchaser at such foreclosure, as purchaser and owner the Permitted Mortgagee shall be free to sell the buildings/improvements and rights to possess and use the Leasehold to any purchaser at the best possible price, in its discretion. This provision for foreclosure sale by the Permitted Mortgagee, after exhaustion of rights specified herein for the benefit of the Lessor, shall apply to all provisions in this lease relating to foreclosure by such Permitted Mortgagee.

#### 11. LIMITS OF LIABILITY OF PERMITTED MORTGAGEE

Permitted Mortgagee shall not, as a condition to the exercise of its rights hereunder, be required to assume personal liability for the payment and performance of the obligations of Lessee hereunder, and any such payment or performance or other act by Permitted Mortgagee hereunder 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 Leasehold and buildings/improvements after judicial or non-judicial foreclosure of the mortgage; provided, however, in the event the Permitted Mortgagee transfers the Leasehold and buildings/improvements to a purchaser (other than Permitted Mortgagee at any judicial foreclosure sale or trustee's sale of Lessee's interests hereunder), 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 thereunder.

#### 12. LESSEE MAY NOT CANCEL LEASE WITH OUTSTANDING MORTGAGE

Lessee shall have no right to cancel the lease so long as Lessee's Permitted Mortgage remains outstanding, even in the event that the Leasehold is damaged or destroyed. The lease may not be cancellable because of pending foreclosure proceedings so long as such proceedings are prosecuted diligently, subject only to the right of the Lessor to purchase the defaulting Lessee's interest. During the period a Permitted Mortgage is in place, the Lessor shall not accept a voluntary surrender of the lease without the prior written consent of the Permitted Mortgagee.

#### 13. IN THE CASE OF MERGER OF LESSOR AND LESSEE ESTATES

In the event the same person or persons shall acquire title to the estates of both the Lessee and Lessor, no merger of said estates shall occur without prior written notice to the Permitted Mortgagee. In the event that the estate of the Lessor is owned at any time by the Lessee (regardless of a merger), or by any person in which Lessee has a direct or indirect interest, the Permitted Mortgagee shall not be obligated to cure any default of the Lessee hereunder as condition to the forbearance by the Lessor in the exercise of Lessor remedies as herein provided.

#### 14. PERMITTED MORTGAGEE RIGHT TO APPROVE LEASE AMENDMENTS

Any amendments to this lease shall be subject to the written approval of the Permitted Mortgagee, which approval shall not be unreasonably withheld or delayed. The passage of thirty (30) days after submittal to Permitted Mortgagee of such requested amendments without approval or disapproval by Permitted Mortgagee shall be deemed approval.

#### 15. THIS SECTION IS BINDING UPON SUCCESSORS AND ASSIGNS

The provisions set forth in this Addendum shall be binding upon and inure to the benefit of the successors, assigns and personal representatives of Lessor, Lessee and Permitted Mortgagee.

#### 16. OFFICIAL ADDRESS OF PERMITTED MORTGAGEE

Whenever in this Addendum notice is to be given to the Permitted Mortgagee, such notice shall be given in the manner set forth for notices in Section 12.1, and provided to



the Permitted Mortgagee at the address given by the Permitted Mortgagee to the Lessor by written notice to Lessor.

**17. IN THE EVENT OF CONDEMNATION**

In the event of condemnation involving a total taking, the Lessee's share of the amount paid on account of such condemnation shall be payable to the Permitted Mortgagee to the extent only of the remaining balance on the Permitted Mortgage; and in the event of a partial taking, the amount payable shall be applied first to restoration and any excess to the Permitted Mortgage. Any condemnation payments paid to the Lessor shall be paid to the Permitted Mortgagee in proportion to the Permitted Mortgagee's interest in the condemnation proceeds.

**18. LEASEHOLD IS FREE OF PRIOR PERMITTED MORTGAGES**

Lessor warrants that the Leasehold estate interest granted to Lessee is free of any prior Permitted Mortgage and that any mortgage of record held by Lessor shall be released as to Lessee's Leasehold estate.

**19. PROTECTION OF PERMITTED MORTGAGEE**

This lease shall supersede any mortgage from time to time encumbering the Leasehold, whether executed and delivered prior to or subsequent to the date of this lease. Lessor agrees that it will not execute any mortgage encumbering the Leasehold unless (1) there is contained therein a subordination provision in confirmation of the foregoing agreement and (2) Lessor has obtained the prior written approval of the Permitted Mortgagee.

**Addendum: Lease Fee Summary of Monthly Charges**

[CUSTOMIZE]

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