



# PRIMER

REVISED 2015



# Table of Contents

Section One	<a href="#"><u>Acknowledgment</u></a>
Section Two	<a href="#"><u>About the Florida CLT Institute and this Primer</u></a>
Section Three	<a href="#"><u>FAQ</u></a>
Section Four	<a href="#"><u>Model Ground Lease from National CLT Network (2011)</u></a> <a href="#"><u>Community Land Trust Ground Lease Rider</u></a>
Section Five	<a href="#"><u>Sample Warranty Deed for Florida</u></a>
Section Six	<a href="#"><u>Ad Valorem/Property Taxes in Florida</u></a>
Section Seven	<a href="#"><u>Financing for the CLT Homebuyer in Florida</u></a>
	<a href="#"><u>Local Government’s Role in Florida</u></a>
	<a href="#"><u>Housing Element Law</u></a>
	<a href="#"><u>Surplus Lands Law</u></a>
Section Eight	<a href="#"><u>Local Government Innovation - Pinellas Case Study</u></a>
	<a href="#"><u>Benefit of Using CLT to Implement Inclusionary Zoning</u></a>
	<a href="#"><u>Sample CLT SHIP Strategy for LHAP</u></a>
	<a href="#"><u>Saving Taxpayer Dollars by Using a CLT</u></a>
	<a href="#"><u>Practice Tips for Community Land Trusts</u></a>
	<a href="#"><u>The Obligations of the CLT to the Homebuyer in Florida</u></a>
Section Nine	<a href="#"><u>Education for the CLT Homebuyer</u></a>
	<a href="#"><u>Maintenance and Reserve Funds</u></a>
	<a href="#"><u>Data Management for Community Land Trusts</u></a>
Section Ten	<a href="#"><u>A Sampling of Community Land Trust Accomplishments in Florida</u></a>

# Introduction

With limited public funds and the enormous gap between the average income of Florida's workforce and the cost of housing, Florida's communities are looking to new tools to meet the housing needs of Florida's residents. A tool that an increasing number of Florida communities are looking to is the community land trust.

A community land trust (CLT) refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the private non-profit corporation that acquires and holds title to the land and manages the ground leases on that property for the benefit of that community.<sup>1</sup>

This approach involves permanent CLT ownership of land, which in some cases is used to develop affordable housing and in other cases is leased to lower-income households, who are assisted in buying the homes located on the CLT land. In the context of owner-occupied housing, the CLT will transfer title of the house to the buyer while retaining title to the underlying land. The purchase becomes more affordable because the transfer of title to the homeowner does not include purchasing the land (in some parts of Florida, the costs of land dwarfs the costs of the actual building). The CLT then leases the underlying land to the new homeowner at a subsidized rate (usually utilizing a 99 year ground lease). The CLT then manages the ground leases for the properties.

The CLT ground lease contains a resale provision which ensures the property will be affordable in perpetuity. The owner of a CLT home is not permitted to sell the home on the open market. The long term goal of the CLT is to remove housing from the speculative market so that homes remain permanently affordable. The home must be sold to a new low-income buyer at an affordable price, which is determined by a resale formula found in the ground lease.

The resale provision in the ground lease should provide a reasonable return to the homeowner. Typically, the sales price will include whatever monies the homeowner paid in equity at closing (down payment) as well as all principal payments made on the mortgage, and an appreciation based on the resale formula. The appreciation of the home's value will typically be far less than standard market appreciation because the cap on appreciation keeps the homes affordable to new homebuyers.

In addition to a below market appreciated sales price, a CLT home is made more affordable to low income homebuyers through the use of financial subsidies either in the construction of the homes or as monies directly provided to the homebuyer (i.e., down payment or closing cost assistance or both). If the CLT home was allowed to be sold at the market appreciated sales price, the government or other subsidy provider would have to expend an even greater amount of subsidy to make such homeownership available to the next homebuyer, which is a drain on already depleting public resources.

<sup>1</sup> Community land trusts bear no relation to Florida Land Trusts (Ch. 689, Fla. Stat.) in which land may be held in trust for the benefit of another. Moreover, there is no statutory construct for community land trust in Florida.

# Acknowledgement



The Florida Community Land Trust Institute began in January, 2000, as a collaboration between two statewide nonprofit organizations, 1000 Friends of Florida and the Florida Housing Coalition. Our first Primer was produced in 2002 and updated in 2008. With the volunteer efforts of the members of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar we created the Florida Supplement to the ICE Legal Manual in 2006.

At that time the Institute for Community Economics (ICE) was the national voice for community land trusts in the United States and the growing community of community land trusts and CLT lenders used the Model Ground Lease produced by ICE along with the Model Lease Rider approved by Fannie Mae for that Model Ground Lease. In 2008, ICE had ceased to exist as an independent organization, and its intellectual property, including its rights to the Community Land Trust Legal Manual, had been transferred to Equity Trust, Inc., which agreed to share these rights with the National CLT Network (Network) so that the Network could undertake a further revision and expansion of the material.

With a great deal of assistance from the old guard at ICE, including Kirby Smith and John Davis, the CLT Network developed and published the current iteration of the Model Ground Lease (2011), which is included in this Primer. The National CLT Network provides a tremendous on-line library to support the work of community land trusts across the nation. [www.cltnetwork.org](http://www.cltnetwork.org).

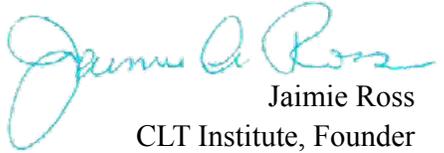
Since the founding of the Florida Community Land Trust Institute in January 2000, the legislative successes we have had in support of community land trusts in Florida, and the large number of CLTs that have been developed throughout our state, makes Florida a national leader in the movement to create a permanent stock of affordable housing. We could not have done this without the very hard work at the grassroots level from local government staff, elected officials, lenders, nonprofit developers, and advocates for affordable housing- there are many. In particular, I would like to formally express our gratitude to the following for their contribution to the cause and to the development of this Primer:

**Marcia Barry-Smith; Suzanne Cabrera; Evelyn Dobson; Chuck Elsesser; Barbara Inman; Anthony Jones; Cindee La-Course Blum; and Mandy Spangler.**

In addition, many thanks to Hannibal Square Community Land Trust; Community Housing Trust of Sarasota County; Habitat for Humanity of Key West & the Lower Florida Keys, and Neighborhood Renaissance for providing a sampling of community land trust accomplishments in Florida with photos. There are several other community land trusts in Florida doing wonderful work and we regret that we could not include a sampling from all of them. We will, however, have those stories on our website [www.flhousing.org](http://www.flhousing.org), as well as an electronic version of this Primer.

We owe a special gratitude to BankUnited and Florida Community Bank who jointly provided the funds to produce and print this updated Primer specifically to support Community Land Trusts in Florida.



  
Jaimie Ross  
CLT Institute, Founder  
Florida Housing Coalition, President/CEO

# About the Florida Community Land Trust Institute and This Primer

The Florida Community Land Trust Institute is a program of the Florida Housing Coalition which began in January, 2000. The Florida Housing Coalition is a statewide nonprofit providing training and technical assistance in Florida for more than 25 years.

In regard to community land trusts in Florida, we provide assistance to government and nonprofit entities with:

- Assessing whether a community land trust is appropriate for your community and if so, which model makes the most sense for your community;
- Understanding the terms of the ground lease and options for resale provisions;
- Start up for the nonprofit community land trust;
- Capacity building for the nonprofit community land trust;
- All manner of real property development and financing issues.

The 2011 CLT Technical Manual is the best source for providing a comprehensive, practical guide for ongoing operation of a CLT, as well as start up for CLTs and can be found at [www.cltnetwork.org](http://www.cltnetwork.org). There is however an important caveat: the national manual has been prepared for general use and does not address state specific laws.

The Florida Community Land Trust Institute worked with the Affordable Housing Committee of the Florida Bar to develop a Florida Supplement to the 2002 ICE Legal Manual. The 2011 CLT Technical Manual serves to replace the 2002 Legal Manual. The Florida Supplement to the National Legal Manual was keyed to the 2002 Legal Manual and has not been modified to key to the 2011 CLT Technical Manual. Revising the Florida Supplement to key to the 2011 Technical Manual may be undertaken in the future. It is therefore, particularly important for anyone interested in starting or operating a CLT in Florida to obtain legal counsel from a Florida lawyer with expertise in Florida corporate and real property law. Legal Counsel is important to engage for the protection of both the CLT and for the CLT homebuyer.

At this time, this Florida CLT Primer should be used as the supplement to the 2011 CLT Technical Manual for anyone in Florida interested in starting, operating, or supporting a Community Land Trust in Florida.

Unless otherwise attributed, all articles in this Primer have been written by Jaime Ross. Please feel free to reprint or copy with attribution as follows:

“This material was written by Jaimie Ross, president of the Florida Housing Coalition. For more information, please contact the Florida Community Land Trust Institute at 850/878/4219”.

# Community Land Trusts FAQs

## WHAT EXACTLY IS A COMMUNITY LAND TRUST?

A community land trust refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the nonprofit organization that holds title to the land and manages the ground leases on community land trust properties. Frequently, the nonprofit organization is already involved with developing or maintaining affordable housing in the community it serves, and can adapt easily from producing and selling the house with the land to selling the house together with a 99 year leasehold interest in the land.

## WHAT IS THE ROLE OF LOCAL GOVERNMENT WHEN FORMING A CLT?

A growing number of local governments recognize that CLTs can play an important role as stewards of community resources and that property and funds allocated to a CLT can benefit not only present community residents but future residents as well. In addition to providing construction financing and down payment assistance to buyers of CLT homes, through housing programs such as SHIP, local governments can support CLT activities by providing land on which the housing can be built, and ongoing administrative support to the CLT that is providing services which would otherwise fall upon the local government to perform. Local government support will greatly enhance the initial and long-term affordability for its residents; a community land trust provides an essential service in meeting present and future community needs.

## HOW LARGE AN AREA DOES A CLT SERVE?

A CLT can serve a single neighborhood or particular geographical area. It can also serve an entire county, or even span several counties. How a CLT's territory is defined is shaped by the immediate interests of its founders, market characteristics which involve household income, land values and sales prices, and availability of affordable housing opportunities. In Florida, it is important to be mindful of the variety of submarkets, each with unique economic conditions and political climate. The decisions that go into tailoring the end product, resale provisions, and caps on appreciation and equity sharing arrangements must take these factors into consideration.

## HOW DOES THE CLT MAKE SURE THAT THE HOME WILL BE AFFORDABLE AND AVAILABLE FOR OTHER LOWER INCOME HOUSEHOLDS?

The terms of the 99 year ground lease place limitations on the resale of the home - preventing resale to a household that is not eligible under the terms of the ground lease (for example, the ground lease may provide that the home must be sold to very low, low, or moderate income households). The lease includes a "resale formula" that determines the maximum allowable price. In the typical ground lease, if a family member who inherits the CLT property is not income eligible, they may continue to live in the property but can only sell it to someone who is income eligible at the restricted resale price.

## HOW DO RESALE FORMULAS WORK?

Each CLT - given its own goals and local circumstances - designs its own resale formula to set maximum prices that are as fair as possible to the seller while staying affordable for the next buyer. There are several types, but the majority of CLTs use what are called "appraisal-based" formulas. These formulas set the maximum price as the sum of what the seller paid for the home plus a certain percentage of any increase in market value (as measured by appraisals). Variations on these and other types of formulas are possible. Most local groups starting CLT programs spend a good deal of time examining the various possibilities before deciding on a formula that is right for them.

## IS IT REALLY FAIR TO RESTRICT RESALE PRICES FOR LOWER INCOME CLT HOMEOWNERS WHEN HIGHER INCOME CONVENTIONAL HOMEOWNERS CAN SELL FOR MARKET-RATE PRICES?

If a potential homebuyer has the financial ability to purchase a fee simple home of their choice there would be no reason for them to purchase a CLT home unless it was for personal philosophy- in the same way that some homebuyers are choosing to move to much smaller living spaces, not because they can't afford the larger home, but because they want to be part of the movement to reduce personal carbon footprint.

Setting aside the desire to be part of the CLT movement, and assuming the issue of homeownership is strictly financial, a homebuyer who could qualify for fee simple homeownership should not opt for a CLT as the return on investment is much lower for CLT homeownership. The return on the sale of a CLT home is indeed fair because the alternative is the return on renting- which is zero. Homeownership through a CLT provides many advantages not enjoyed by tenants - long-term security, a chance to build substantial assets through affordable monthly payments, and the opportunity to leave these benefits to their children. But, as with any investment, potential buyers should look at the advantages and disadvantages of all their options, and make their own decision after fully understanding the CLT model, including advice from legal counsel.

## HOW DO PROPERTY TAXES WORK?

Thanks to a multi-year legislative campaign by the Florida Community Land Trust Institute and Representative Keith Fitzgerald, Florida CLT homeowners will receive a property tax bill based on the resale restricted value of their property, not the higher value that would have attached to the property had it not been resale restricted. This law passed in 2009 and can be found in section 193.018, Florida Statutes.

Typically, the homebuyer is responsible for the real property taxes on both the land and the home. The ground lease provisions adopted by the CLT will usually provide either that the real property taxes are spread out over 12 months and paid to the CLT together with the nominal ground lease fee, or the homebuyer will simply be responsible for paying the bills each year. Usually, the homebuyer's first mortgage lender will have an escrow account for taxes and insurance. In some jurisdictions, there will be one tax bill for the land and the house and in others the tax office may send two bills. If a separate bill is sent for the land, it will most likely be sent to the CLT, as it is the title holder of record, but the ground lease will provide that the homeowner is responsible for the taxes on both the land and the house. A 99 year ground lease is treated as the functional equivalent of ownership in Florida, and therefore, the tax bill for the land may be sent directly to the homeowner, as the public records will reflect that the homeowner is the lessee under a 99 year ground lease.

## HOW ARE COMMUNITY LAND TRUSTS DIFFERENT FROM CONSERVATION LAND TRUSTS AND FLORIDA LAND TRUSTS?

Conservation trusts are concerned with preserving open space, ecologically fragile, or unique natural environments. CLTs, on the other hand, are concerned with acquiring developed or developable land to preserve affordable community residential use. These concerns are not mutually exclusive, and some land trusts, notably in Vermont, combine these purposes, preserving some land in a natural state while leasing other land. The Florida Land Trust Act is found in Chapter 689, Florida Statutes and is concerned with ownership and transfer of ownership by a "trustee". There is no statutory framework for Community Land Trusts beyond all the laws that pertain to Florida Not For Profit Corporations found in Chapter 617, Florida Statutes, and a few statutory references which are included in the Florida Community Land Trust Primer.

The Florida CLT Institute is a program of the Florida Housing Coalition. Attorney at Law, Jaimie Ross, President/CEO of the Florida Housing Coalition established the Florida CLT Institute in January 2000. Training and technical assistance on community land trusts is also provided by the Florida Housing Coalition.

**For more information, call the Florida Housing Coalition at 850-878-4219, or email [ross@flhousing.org](mailto:ross@flhousing.org).**

**Chapter 11-A**  
**THE 2011 CLT NETWORK MODEL GROUND LEASE**

**TABLE OF CONTENTS**

**RECITALS**

**DEFINITIONS**

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

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

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

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

- 3.1 TERM OF LEASE IS 99 YEARS
- 3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS
- 3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND

**ARTICLE 4: Use of Leased Land**

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

**ARTICLE 5: Lease Fee**

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

**ARTICLE 6: Taxes and Assessments**

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

6.5 PARTY THAT PAYS TAXES MUST SHOW PROOF

**ARTICLE 7: The Home**

7.1 HOMEOWNER OWNS THE HOUSE AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND

7.2 HOMEOWNER PURCHASES HOME WHEN SIGNING LEASE

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS

7.4 HOMEOWNER MAY NOT ALLOW STATUTORY LIENS TO REMAIN AGAINST LEASED LAND OR HOME

7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS

7.6 A REPAIR RESERVE FUND IS ESTABLISHED TO SUPPORT FUTURE REPAIRS

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

7.7 WHEN LEASE ENDS, OWNERSHIP REVERTS TO CLT, WHICH SHALL REIMBURSE HOMEOWNER

**ARTICLE 8: Financing**

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT CLT'S PERMISSION

8.2 BY SIGNING LEASE, CLT GIVES PERMISSION FOR ORIGINAL MORTGAGE

8.3 HOMEOWNER MUST GET SPECIFIC PERMISSION FOR REFINANCING OR OTHER SUBSEQUENT MORTGAGES.

8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE"

8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE

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

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

9.1 HOMEOWNER ASSUMES ALL LIABILITY

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY

9.3 HOMEOWNER MUST REIMBURSE CLT

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

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED

9.6 WHAT HAPPENS IF SOME OR ALL OF THE LAND IS TAKEN FOR PUBLIC USE

9.7 IF PART OF THE LAND IS TAKEN, THE LEASE FEE MAY BE REDUCED

9.8 IF LEASE IS TERMINATED BY DAMAGE, DESTRUCTION OR TAKING, CLT WILL TRY TO HELP HOMEOWNER BUY ANOTHER CLT HOME

**ARTICLE 10: Transfer of the Home**

*[Four possible versions of Article 10 are presented in the Appendix at the end of this chapter. These versions differ with regard to three important variables: (1) whether the homeowner is given an absolute right to select an income-qualified*

*buyer, (2) the type of resale formula that is used, and (3) whether the original Base Price is (or may be) greater than the original appraised value of the Home. No one of these versions is offered as THE model. Every CLT must make important decisions before adopting one of these versions (or its own variation of one of these versions).*

### **Version 1**

*For situations in which:*

- a) the Homeowner has no absolute right to identify buyer and can only recommend buyer;*
- b) an "improvements-only appraisal-based formula" is used; and*
- c) the original base price is not greater than the original appraised value of the Home.*

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

### **Version 2**

*For situations in which:*

- a) the Homeowner has a right to identify a buyer;*
- b) an "improvements-only appraisal-based formula" is used; and*
- c) the original base price is not greater than the original appraised value of the Home.*

- 10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY
- 10.2 HOMEOWNER MAY TRANSFER HOME ONLY TO CLT OR QUALIFIED PERSONS
- 10.3 THE HOME MAY BE TRANSFERRED TO CERTAIN HEIRS OF HOMEOWNER
- 10.4 HOMEOWNER'S NOTICE OF INTENT TO SELL
- 10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL
- 10.6 HOMEOWNER HAS A RIGHT TO DESIGNATE A BUYER

- 10.7 CLT MAY EXERCISE PURCHASE OPTION IF HOMEOWNER DOES NOT SELL TO A QUALIFIED BUYER
- 10.8 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS
- 10.9 AFTER ONE YEAR, CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE
- 10.10 PURCHASE OPTION PRICE EQUALS LESSER OF APPRAISED VALUE OR FORMULA PRICE
- 10.11 HOW THE FORMULA PRICE IS CALCULATED
- 10.12 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE
- 10.13 PURCHASER MAY BE CHARGED A TRANSFER FEE
- 10.14 HOMEOWNER REQUIRED TO MAKE NECESSARY REPAIRS AT TRANSFER

### **Version 3**

*For situations in which:*

- a) *the Homeowner has no absolute right to identify buyer and can only recommend buyer;*
- b) *a "compound appraisal-based formula" is used; and*
- c) *the original base price is greater than the original appraised value of the Home.*

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

### **Version 4**

*For situations in which:*

- a) *the Homeowner has no absolute right to identify buyer and can only recommend buyer;*
  - b) *a "fixed-rate" or "indexed" formula is used; and*
  - c) *the original base price is greater than the original appraised value of the Home.*
- Three versions of section 10.10 are presented for three different "indexed formulas."*

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

**ARTICLE 11: Reserved**

**ARTICLE 12: Default**

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

**ARTICLE 13: Mediation and Arbitration**

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

**ARTICLE 14: General Provisions**

- 14.1 HOMEOWNER'S MEMBERSHIP IN CLT

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

**Exhibits That Must Be Attached**

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

**Other Exhibits to be Attached as Appropriate**

- Exhibit ZONING
- Exhibit RESTRICTIONS
- Exhibit INITIAL APPRAISAL

**APPENDIX: Alternative versions of Article 10**

## MODEL CLT LEASE

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

**RECITALS**

- A.** The CLT is organized exclusively for charitable purposes, including the purpose of providing homeownership opportunities for low and moderate income people who would otherwise be unable to afford homeownership.
- B.** A goal of the CLT is to preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C.** The Leased Land described in this Lease has been acquired and is being leased by the CLT in furtherance of this goal.

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

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

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

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

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

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

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

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

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

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

*Permitted Mortgage:* A mortgage or deed of trust on the Home and the Homeowner's right to possess, occupy and use the Leased Land granted to a lender by the Homeowner with the CLT's Permission. The Homeowner may not mortgage the CLT's interest in the Leased Land, and may not grant any mortgage or deed of trust without CLT's Permission.

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

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

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

resale of the Home), and a Letter of Acknowledgment from the Homeowner's attorney, describing the attorney's review of the Lease with the Homeowner.

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

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

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

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

3.1 TERM OF LEASE IS 99 YEARS: This Lease shall remain in effect for 99 years, beginning on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER CAN RENEW LEASE FOR ANOTHER 99 YEARS: Homeowner may renew this Lease for one additional period of 99 years. The CLT may change the terms of the Lease for the renewal period prior to the beginning of the renewal period but only if these changes do not materially and adversely interfere with the rights possessed by Homeowner under the Lease. Not more than 365 nor less than 180 days before the last day of the first 99-year period, CLT shall give Homeowner a written notice that states the date of the expiration of the first 99-year period and the conditions for renewal as set forth in the following paragraph ("the Expiration Notice"). The Expiration Notice shall also describe any changes that CLT intends to make in the Lease for the renewal period as permitted above.

The Homeowner shall then have the right to renew the Lease only if the following conditions are met: (a) within 60 days of receipt of the Expiration Notice, the Homeowner shall give CLT written notice stating the Homeowner's desire to renew ("the Renewal Notice"); (b) this Lease shall be in effect on the last day of the original 99-year term, and (c) the Homeowner shall not be in default under this Lease or under any Permitted Mortgage on the last day of the original 99-year term.

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

3.3 WHAT HAPPENS IF CLT DECIDES TO SELL THE LEASED LAND: If ownership of the Leased Land is ever transferred by CLT (whether voluntarily or involuntarily) to any other person or institution, this Lease shall not cease, but shall remain binding on the new landowner as well as the Homeowner. If CLT agrees to transfer the Leased Land to any person or

institution other than a non-profit corporation, charitable trust, government agency or other similar institution sharing the goals described in the Recitals above, the Homeowner shall have a right of first refusal to purchase the Leased Land. The details of this right shall be as stated in the attached Exhibit FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void.

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

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

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

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

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

4.4 HOMEOWNER MUST OCCUPY THE HOME FOR AT LEAST \_\_ MONTHS EACH YEAR: Homeowner shall occupy the Home for at least \_\_\_\_\_ months of each year of this Lease, unless otherwise agreed by CLT. Occupancy by Homeowner's child, spouse *for domestic partner, in states with such legislation* or other persons approved by CLT shall be considered occupancy by Homeowner. Neither compliance with the occupancy requirement nor CLT's permission for an extended period of non-occupancy constitutes permission to sublease the Leased Land and Home, which is addressed in Section 4.5 below.

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

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

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

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

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

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

#### **ARTICLE 5: Lease Fee**

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

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

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

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

**5.5 FEES MAY BE INCREASED FROM TIME TO TIME:** The CLT may increase the amount of the Land Use Fee and/or the Repair Reserve Fee from time to time, but not more often than once every \_\_\_ years. Each time such amounts are increased, the total percentage of increase since the date this Lease was signed shall not be greater than the percentage of increase, over the same period of time, in the Consumer Price Index for urban wage earners

and clerical workers for the urban area in which the Leased Land is located, or, if none, for urban areas the size of \_\_\_\_\_,

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

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

**5.8 CLT CAN COLLECT UNPAID FEES WHEN HOME IS SOLD:** In the event that any amount of payable Lease Fee remains unpaid when the Home is sold, the outstanding amount of payable Lease Fee, including any interest as provided above, shall be paid to CLT out of any proceeds from the sale that would otherwise be due to Homeowner. The CLT shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Lease, (b) Permitted Mortgages as defined in section 8.1 below, and (c) liens for real property taxes and other governmental assessments or charges against the Home.

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

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

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

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

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

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

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

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

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

7.3 CONSTRUCTION CARRIED OUT BY HOMEOWNER MUST COMPLY WITH CERTAIN REQUIREMENTS: Any construction in connection with the Home is permitted only if the following requirements are met: (a) all costs shall be paid for by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations; (c) all changes in the Home shall be consistent with the permitted uses described in Article 4; (d) the footprint, square-footage, or height of the house shall not be increased and new structures shall not be built or installed on the Leased Land without the prior written consent of CLT.

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

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

d) a statement of who will do the work;

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

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

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

**7.6 A REPAIR RESERVE FUND IS ESTABLISHED TO SUPPORT FUTURE REPAIRS:**  
*[This section must either be completed in accordance with the CLT's repair reserve policy, or omitted entirely. See Commentary on this Section 7.6.]*

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

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

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

**ARTICLE 8: Financing**

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

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

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

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

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

**8.4 CLT IS REQUIRED TO PERMIT A "STANDARD PERMITTED MORTGAGE."** The CLT shall be required to permit any mortgage for which the mortgagee has signed a "Standard Permitted Mortgage Agreement" as set forth in "Exhibit: Permitted Mortgages, Part C," and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than     % of the then current Purchase Option Price, calculated in accordance with Article 10 below.

**8.5 A PERMITTED MORTGAGEE HAS CERTAIN OBLIGATIONS UNDER THE LEASE.** Any Permitted Mortgagee shall be bound by each of the requirements stated in "Exhibit: Permitted Mortgages, Part A, Obligations of Permitted Mortgagee," which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted or modified by a Rider to this Lease signed by the Homeowner and the CLT to modify the terms of the Lease during the term of the Permitted Mortgage.

8.6 A PERMITTED MORTGAGEE HAS CERTAIN RIGHTS UNDER THE LEASE. Any Permitted Mortgagee shall have all of the rights and protections stated in "Exhibit: Permitted Mortgages, Part B, Rights of Permitted Mortgagee," which is made a part of this Lease by reference.

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

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

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

9.2 HOMEOWNER MUST DEFEND CLT AGAINST ALL CLAIMS OF LIABILITY. Homeowner shall defend, indemnify and hold CLT harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Land. Homeowner waives all claims against CLT for injury or damage on or about the Leased Land. However, CLT shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of CLT or CLT's agents or employees.

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

9.4 HOMEOWNER MUST INSURE THE HOME AGAINST LOSS AND MUST MAINTAIN LIABILITY INSURANCE ON HOME AND LEASED LAND. Homeowner shall, at Homeowner's expense, keep the Home continuously insured against "all risks" of physical loss, using Insurance Services Office (ISO) Form HO 00 03, or its equivalent, for the full replacement value of the Home, and in any event in an amount that will not incur a coinsurance penalty. The amount of such insured replacement value must be approved by the CLT prior to the commencement of the Lease. Thereafter, if the CLT determines that the replacement value to be insured should be increased, the CLT shall inform the Homeowner of such required increase at least 30 days prior to the next date on which the insurance policy is to be renewed, and the Homeowner shall assure that the renewal includes such change. If Homeowner wishes to decrease the amount of replacement value to be insured, Homeowner shall inform the CLT of the proposed change at least 30 days prior to the time such change would take effect. The change shall not take effect without CLT's approval.

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

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

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

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

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

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

FIRST, to the expenses of their collection;

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 11: RESERVED**

#### **ARTICLE 12: DEFAULT**

**12.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO THE CLT THAT ARE REQUIRED BY THE LEASE:** It shall be an event of default if Homeowner fails to pay the Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of

such failure is given by CLT to Homeowner and Permitted Mortgagee. However, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.

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

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

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

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

If CLT elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit: Permitted Mortgages) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the

Permitted Mortgagee or its designee to acquire Homeowner’s interest in the Home and the Leased Land by foreclosure of its mortgage or otherwise.

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

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

**ARTICLE 13: Mediation and Arbitration**

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

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

**ARTICLE 14: GENERAL PROVISIONS**

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

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

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

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

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

14.3 NO BROKERAGE: Homeowner warrants that it has not dealt with any real estate broker other than \_\_\_\_\_ in connection with the purchase of the Home. If any claim is made against CLT regarding dealings with brokers other than \_\_\_\_\_, Homeowner shall defend CLT against such claim with counsel of CLT’s selection and shall reimburse CLT for any loss, cost or damage which may result from such claim.

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

---

***NOTE: List an identifiable group of small children, e.g., the children living as of the date of this Lease of any of the directors or employees of a specified corporation.***

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

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

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

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

14.8 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

14.9 HEADINGS AND TABLE OF CONTENTS: The headings, subheadings and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.10 PARTIES BOUND: This Lease sets forth the entire agreement between CLT and Homeowner with respect to the leasing of the Land; it is binding upon and inures to the

benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by CLT and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

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

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

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

\_\_\_\_\_ (CLT)

\_\_\_\_\_  
Witness

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

\_\_\_\_\_ (Homeowner):

\_\_\_\_\_  
Witness

***[notarize signatures]***

**Exhibit LETTERS OF AGREEMENT AND ATTORNEY'S  
ACKNOWLEDGMENT**

***Sample***  
**Letter of Agreement**

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

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

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

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

In particular I understand and agree with the following points.

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

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

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

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

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

Sincerely

***Sample***

**Letter of Attorney's Acknowledgment**

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

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

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

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

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

Name

Date

Title

Firm/Address

**Exhibit DEED**

*Sample*  
**Deed**

**Between**

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

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

**Witnesseth**

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

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

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

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

\_\_\_\_\_  
signature

[notarize signature]

**Exhibit: PERMITTED MORTGAGES**

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

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

1. If Permitted Mortgagee sends a notice of default to the Homeowner because the Homeowner has failed to comply with the terms of the Permitted Mortgage, the Permitted Mortgagee shall, at the same time, send a copy of that notice to the CLT. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner has a right to cure such default (the "cure period"), the CLT shall have the right to cure the default on the Homeowner's behalf, provided that all current payments due the Permitted Mortgagee since the notice of default was given are made to the Permitted Mortgagee.
2. If, after the cure period has expired, the Permitted Mortgagee intends to accelerate the note secured by the Permitted Mortgage or begin foreclosure proceedings under the Permitted Mortgage, the Permitted Mortgagee shall first notify CLT of its intention to do so, and CLT shall then have the right, upon notifying the Permitted Mortgagee within thirty (30) days of receipt of such notice, to acquire the Permitted Mortgage by paying off the debt secured by the Permitted Mortgage.
3. If the Permitted Mortgagee acquires title to the Home through foreclosure or acceptance of a deed in lieu of foreclosure, the Permitted Mortgagee shall give CLT written notice of such acquisition and CLT shall then have an option to purchase the Home from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage. To exercise this option to purchase, CLT must give written notice to the Permitted Mortgagee of CLT's intent to purchase the Home within thirty (30) days following CLT's receipt of the Permitted Mortgagee's notice. CLT must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If CLT does not complete the purchase within this 60-day period, the Permitted Mortgagee shall be free to sell the Home to another person.
4. Nothing in the Permitted Mortgage or related documents shall be construed as giving Permitted Mortgagee a claim on CLT's interest in the Leased Land, or as assigning any form of liability to the CLT with regard to the Leased Land, the Home, or the Permitted Mortgage.
5. Nothing in the Permitted Mortgage or related documents shall be construed as rendering CLT or any subsequent Mortgagee of CLT's interest in this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt secured by the Permitted Mortgage or any part thereof.
6. The Permitted Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner, Homeowner's interest in the Leased Land, and the Home for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties

hereto that CLT's consent to such the Permitted Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)

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

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

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

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

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

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

4. If the Lease is terminated for any reason, or in the event of the rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, CLT shall enter into a new lease for the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to CLT's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to CLT for such new lease within sixty (60) days after the effective date of such termination,

rejection or disaffirmance, as the case may be. Such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Homeowner thereunder. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Land as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by CLT, Homeowner and the Permitted Mortgagee.

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

6. In the event that CLT sends a notice of default under the Lease to Homeowner, CLT shall also send a notice of Homeowner’s default to Permitted Mortgagee. Such notice shall be given in the manner set forth in Section 14.2 of the Lease to the Permitted Mortgagee at the address which has been given by the Permitted Mortgagee to CLT by a written notice to CLT sent in the manner set forth in said Section 14.2 of the Lease.

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

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

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

*This Agreement is made by and among:*

\_\_\_\_\_ (Mortgagee) and  
\_\_\_\_\_ (“Homeowner”),

**Whereas:**

- a) \_\_\_\_\_ CLT (the “CLT”) and Homeowner have entered, or are entering, into a ground lease (“the Lease”), conveying to Homeowner a leasehold interest in the Land located at \_\_\_\_\_ (“the Leased Land”); and Homeowner has purchased, or is purchasing, the Home located on the Leased Land (“the Home”).
- b) The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the “Mortgage”) in the Leased Land and Home, all as more particularly set forth in the Mortgage, attached

*hereto as Schedule A.*

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

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

***Stipulated Conditions:***

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

2) *If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify CLT of its intention to do so and CLT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the Mortgagee loans and to take assignment of the Mortgage.*

3) *If the Mortgagee acquires title to the Home and Homeowner's interest in the Leased Land through foreclosure or acceptance of a deed in lieu of foreclosure, the Mortgagee shall give the CLT written notice of such acquisition and the CLT shall have an option to purchase the Home and Homeowner's interest in the Leased Land from the Mortgagee for the full amount owing to the Mortgagee; provided, however, that the CLT notifies the Mortgagee in writing of the CLT's intent to make such purchase within thirty (30) days following the CLT's receipt of the Mortgagee's notice of such acquisition of the Home and Homeowner's interest in the Leased Land; further provided that CLT shall complete such purchase within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the CLT does not complete the purchase within such period, the Mortgagee shall be free to sell the Home and Homeowner's interest in the Leased Land to another person;*

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

5) *Nothing in the Mortgage shall be construed as rendering CLT or any subsequent holder of the CLT's interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.*

6) *The Mortgagee shall not look to CLT or CLT's interest in the Leased Land, but will look solely to Homeowner and Homeowner's interest in the Leased Land and the Home for the payment of the debt secured by the Mortgage. (It is the intention of the parties hereto that CLT's consent to the Mortgage shall be without any liability on the part of CLT for any deficiency judgment.)*

7) *In the event that any part of the Leased Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.*

8) *Nothing in the Mortgage shall obligate CLT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.*

By:

\_\_\_\_\_ for Mortgagee                      Date: \_\_\_\_\_

\_\_\_\_\_ for Homeowner/Mortgagor      Date: \_\_\_\_\_

**Exhibit FIRST REFUSAL**

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

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

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

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

future offer, all as aforesaid. If a sale is consummated within such one-year period, the purchaser shall purchase subject to the Holder having a renewed right of first refusal in said property.

### **Other Exhibits to be Attached as Appropriate**

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

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

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

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

## **APPENDIX: Four Versions of Article 10**

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

#### **Article 10: Version 1**

*For situations in which:*

- a) the Homeowner has no absolute right to identify a buyer and can only recommend a buyer;*
- b) an "improvements-only appraisal-based formula" is used; and*
- c) the original base price is not greater than the original appraised value of the Home.*

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

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

"Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed \_\_\_\_\_ percent (\_\_\_%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for

household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

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

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

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

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

**10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL:** No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. The Appraisal shall state the values contributed by the Leased Land and by the Home (consisting of improvements only) as separate amounts. Copies of the Appraisal are to be provided to both CLT and Homeowner.

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

If CLT elects to purchase the Home, CLT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within forty-five

(45) days of the receipt of the Appraisal, or the Option shall expire. Having given such notice, CLT may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of

sale in a CLT-approved escrow account. ***[Add the following sentence only if provision is made for a repair reserve:*** Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]

- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

### **Article 10: Version 2**

*For situations in which:*

- a) *the Homeowner has a right to identify a qualified buyer;*
- b) *an "improvements-only appraisal-based formula" is used; and*
- c) *the original base price is not greater than the original appraised value of the Home.*

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

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

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

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

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

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

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

**10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL:** No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to CLT and Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Leased Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. The Appraisal shall state the values contributed by the Leased Land and by the Home (consisting of improvements only) as separate amounts. Copies of the Appraisal are to be provided to both CLT and Homeowner.

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

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

CLT fails to respond in writing within thirty (30) days of its receipt of the required documents, such failure shall be deemed to constitute approval of the sale.

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

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

The CLT may exercise the Purchase Option within a forty-five (45) day period beginning ten days after Homeowner's receipt of the Appraisal unless Homeowner has, during such ten-day period, given notice identifying a prospective buyer. If Homeowner has identified a prospective buyer but for any reason the sale to such prospective buyer cannot be completed, then CLT may exercise the Purchase Option within a forty-five (45) day period beginning at such time as it is established that sale to such prospective buyer cannot be completed. In either case, to exercise the Purchase Option, CLT shall, within the applicable forty-five-day period, notify Homeowner in writing of its election to purchase the Home ("Notice of Exercise of Purchase Option").

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

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

**10.8 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if CLT has failed to complete the purchase

within the sixty-day period allowed by Section 10.7 above, Homeowner may sell the Home to any Income-Qualified Person for not more than the then applicable Purchase Option Price. If Homeowner has made diligent efforts to sell the Home for at least six months after the expiration of the Purchase Option (or six months after the expiration of such sixty-day period) and the Home still has not been sold, Homeowner may then sell the Home, for a price no greater than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-Qualified Person.

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

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

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

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

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

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

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

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

**10.12 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE:** The CLT shall issue a new lease to any person who purchases the Home in accordance with the terms of this Article

10. Such new Lease shall be substantially the same as this Lease in the rights, benefits and obligations assigned to Homeowner and CLT.

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

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

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. ***[Add the following sentence only if provision is made for a repair reserve:*** Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

**Article 10: Version 3**

*For situations in which:*

- a) *the Homeowner has no absolute right to identify buyer and can only recommend buyer;*
- b) *a “compound appraisal-based formula” is used; and*
- c) *the original base price is greater than the original appraised value of the Home.*

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

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

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

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

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner’s household who have resided in the Home for at least one year immediately prior to Homeowner’s death.

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

10.4 HOMEOWNER MUST GIVE NOTICE OF INTENT TO SELL: In the event that Homeowner wishes to sell Homeowner’s Property, Homeowner shall notify CLT, in writing,

of such wish (the Intent-to-Sell Notice). This Notice shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

10.5 AFTER RECEIVING NOTICE, CLT SHALL COMMISSION AN APPRAISAL: No later than ten (10) days after CLT's receipt of Homeowner's Intent-to-Sell Notice, CLT shall commission a market valuation of the Leased Land and the Home (The Appraisal) to be performed by a duly licensed appraiser who is acceptable to the Homeowner. CLT shall pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Home were held in fee simple absolute by a single party, disregarding all of the restrictions of this Lease on the use, occupancy and transfer of the property. Copies of the Appraisal are to be provided to both CLT and Homeowner. *[Statement re. separate appraised values for land and improvements omitted.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.
- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. ***[Add the following sentence only if provision is made for a repair reserve:*** Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or

(ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

#### **Article 10: *Version 4***

*For situations in which:*

- a) the Homeowner has no absolute right to identify buyer and can only recommend buyer;*
- b) a "fixed-rate" or "indexed" formula is used; and*
- c) the original base price is greater than the original appraised value of the Home.*

*Three versions of section 10.10 are presented for three different "indexed formulas."*

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

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

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

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

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

Any other heirs, legatees or devisees of Homeowner, in addition to submitting Letters of Agreement and Attorney's Acknowledgment as provided above, must demonstrate to CLT's satisfaction that they are Income-Qualified Persons as defined above. If they cannot

demonstrate that they are Income-Qualified Persons, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article.

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

***[Provision for required appraisal omitted.]***

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

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

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

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

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

**10.7 AFTER ONE YEAR CLT SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:** If CLT does not exercise its option and complete the purchase of Homeowner's Property as described above, and if Homeowner (a) is not then residing in the Home and (b)

continues to hold Homeowner's Property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Intent to Sell Notice, Homeowner does hereby appoint CLT its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the property, and pay to the Homeowner the proceeds of sale, minus CLT's costs of sale and any other sums owed CLT by Homeowner.

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

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

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

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

***[Three versions of 10.10 are presented below – one for a CPI-based formula, one for an AMI-based formula and one for a fixed-rate formula.]***

**10.10 [CPI Formula] HOW THE FORMULA PRICE IS CALCULATED:** The Formula Price shall be equal to (a) the amount of Homeowner's Base Price (which CLT and Homeowner agree is \$ \_\_\_\_\_) plus (b) an amount equal to the Homeowner's Base Price multiplied by the total percentage of increase, since the date this Lease was signed, in the Consumer Price Index, as determined and published by the US Department of Labor or such successor agency as may publish such index, for urban wage earners and clerical workers for the urban area in which the Home is located, or, if none, for urban areas the size of

\_\_\_\_\_. The parties agree that when the Lease was signed the Consumer Price Index number (the Original Number) was \_\_\_\_\_. To determine the percentage of increase in the Index, the Original Number shall be subtracted from the most recently published Index number, and the remainder shall then be divided by the Original Number.

**OR**

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

**OR**

10.10 **[Fixed-Rate Formula]** HOW THE FORMULA PRICE IS CALCULATED: The Formula Price shall be equal to the amount of Homeowner's Base Price (which CLT and Homeowner agree is \$\_\_\_\_\_) plus interest at a rate of \_\_\_% compounded annually.

\*\*\*

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

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

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

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

- a) The person purchasing the Home ("Buyer") shall, prior to purchasing the Home, hire at her sole expense a building inspector with a current Home Inspector license from the \_\_\_\_\_ [licensing agency] to assess the condition of the Home and prepare a written report of the condition ("Inspection Report"). The Homeowner shall cooperate fully with the inspection.
- b) The Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and the CLT within 10 days after receiving the Inspection Report.

- c) Homeowner shall repair specific reported defects or conditions necessary to bring the Home into full compliance with Sections 4.2 and 7.5 above prior to transferring the Home.
- d) Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, the CLT may allow the Homeowner to pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In such event, either (i) 150% of the unpaid estimated cost of repairs or (ii) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a CLT-approved escrow account. ***[Add the following sentence only if provision is made for a repair reserve:*** Also, upon Homeowner's written request, CLT may, at its discretion, agree to release funds from the Repair Reserve Fund to cover some or all of the cost of such repairs, provided that such use of the Reserve is in full compliance with Section 7.6 above.]
- e) Homeowner shall allow CLT, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.
- f) Upon sale or other transfer, Homeowner shall either (i) transfer the Home with all originally purchased appliances or replacements in the Home in good working order or (ii) reduce the Purchase Option Price by the market value of any such appliances that are not left with the Home in good working order.

## Community Land Trust Ground Lease Rider

[For use with CLT ground leases substantially based on either the Institute for Community Economics or the National Community Land Trust Network model ground lease as identified in Fannie Mae's *Selling Guide*]

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (the "Rider") is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and amends and supplements a certain ground lease (referred to herein as "the CLT Ground Lease") dated \_\_\_\_\_ that is by and between \_\_\_\_\_ as lessor (herein referred to as "the "Lessor" but may otherwise be referred to in the CLT Ground Lease as the "CLT") and \_\_\_\_\_, as lessee (herein referred to as "the "Lessee" but may otherwise be referred to in the CLT Ground Lease as "Homeowner"). This Rider shall be deemed incorporated into the CLT Ground Lease, and the CLT Ground Lease as amended by this Rider, shall hereafter be referred to as the "Lease," unless otherwise indicated.

The CLT Ground Lease is a long-term lease of the Lessor's fee interest in the land located at \_\_\_\_\_, referred to herein as the "Leased Land," as improved by a residential structure or unit, referred to herein as the "Improvements." The Leased Land and the Improvements are collectively referred to herein as the "Leased Premises."

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to obtain Fannie Mae financing in the form of a mortgage or deed of trust given this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Lessee to \_\_\_\_\_ (the "Specified Mortgage"), and the interest of the Specified Mortgagee in the Leased Premises as secured by such mortgage or deed of trust may be referred to herein as the "Leasehold Estate." The Specified Mortgage is recognized by Lessor as a "Permitted Mortgage" (or as such concept is otherwise defined) under the CLT Ground Lease, and the holder of the Specified Mortgage (the "Specified Mortgagee") is recognized as a "Permitted Mortgagee" (or as such concept is otherwise defined) under the CLT Ground Lease.

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

**A. No Assignment or Transfer.** The making of the Specified Mortgage shall not be deemed to constitute an assignment or transfer of the Lease or Leasehold Estate so as to require the Specified Mortgagee to assume the performance of any of the Lessee's obligations under the Lease.

**B. Status of the Fee Estate.** The Lessor represents and warrants that there is no existing mortgage on the fee estate, and so long as the Specified Mortgage shall remain on the Leased Premises, the Lessor and the Lessee shall not subordinate the Lease to any mortgage or lien that may hereafter be placed on the fee estate. Notwithstanding the foregoing, a state- or local-government entity ("Government Entity") may hold a prior recorded interest (represented by recorded covenants, a mortgage or deed of trust, other lien) on the fee estate if the Government Entity has agreed that in the event it (including its successors and assigns) succeeds to the interest of the Lessor under the Lease by any remedy available to the Government Entity by law or pursuant to its lien, the Government Entity shall recognize all the terms of the Lease and this Rider as though the Government Entity were acting as the Lessor. Such recognition

must include, but is not limited to, the provisions of this Rider whereby all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b) limitation on assignment of, or sublease under, the Lease, (c) the price at which the Leasehold Estate may be transferred, and (d) the income of successive transferees, assignees or successors, shall, in the event of foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. Further, in such event of the Government Entity succeeding to the interests of the Lessor, the Lessee hereby agrees to recognize the Government Entity as exercising all rights and privileges of the Government Entity as lessor under the Lease and this Rider.

Such agreement by the Government Entity may be evidenced by the agreement between the Government Entity and the Lessor under which the Government Entity's prior recorded interest is derived, or by use of a recognition agreement derived from a sample the Specified Mortgagee may obtain from Fannie Mae. Irrespective of any interest by a Government Entity, the Specified Mortgage shall constitute a first leasehold lien on the Leased Premises, and shall have priority over the Lessor's reversionary interest. If the Lessor conveys title to the Leased Land while the Specified Mortgage remains on the Leased Premises, the Lease shall remain in effect with the same priority thereto.

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

**D. New Lease.** In the event the Lessee's interest in the Lease has been terminated, forfeited, or surrendered as provided in the Lease, and the Specified Mortgage remains outstanding, a new Lease shall automatically be created between the Lessor and the Specified Mortgagee, which Lease shall be for the remainder of the term of the Lease, with the same priority thereto, and shall be subject to the same terms of the Lease as would be applicable pursuant to Section E.1. below where the Specified Mortgagee had accelerated its note, foreclosed on the Specified Mortgage, taken an assignment in lieu of foreclosure, or exercised its other remedies for default.

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

Further:

1. Upon the occurrence of an Event of Default under the Specified Mortgage, the Lessee shall immediately notify the Lessor of such Event of Default and shall submit to Lessor copies of all notices the Lessee received from the Specified Mortgagee relating thereto. The Specified Mortgagee

and the Lessor shall endeavor to communicate and cooperate in efforts to deal with the circumstances of the Event of Default and the actions the parties may take relating thereto; provided, however, the Specified Mortgagee shall have no obligation to give formal legal notice of the Event of Default to the Lessor.

2. The Lessee and the Specified Mortgagee agree that the Lessor shall have the right, but not the obligation, to cure an Event of Default in the Lessee's name and on the Lessee's behalf. If such cure is not effective and continuing, nothing herein shall be construed to prevent or delay the Specified Mortgagee from its pursuit of foreclosure and any other available remedies. The Lessee shall be responsible to the Lessor for all payments made, and expenses incurred, by the Lessor in curing such default.
3. Should the Lessor not choose to cure an Event of Default as specified above, the Lessor shall nevertheless have the option to purchase from the Specified Mortgagee its interest in the Leasehold Estate on the Leased Premises for the full amount owing to the Specified Mortgagee under the Specified Mortgage as of the date of closing of the purchase, upon written notice given by the Specified Mortgagee (the "Mortgagee Option Notice") not later than 60 days following acquisition of title to the Leasehold Estate by the Specified Mortgagee by foreclosure or by an assignment in lieu of foreclosure; provided, however, the Specified Mortgagee may give such written notice following the occurrence of an Event of Default under the Specified Mortgage and prior to the completion of foreclosure proceedings. If the Lessor elects to exercise such option to purchase, the Lessor shall give written notice to the Specified Mortgagee of the Lessor's intent to purchase the Leasehold Estate (the "Lessor Option Notice") within 45 days following the Specified Mortgagee's giving of the Mortgagee Option Notice; provided, however, at the option of the Lessor, in the event the Mortgagee Option Notice is given prior to the completion of foreclosure proceedings by the Specified Mortgagee, the Lessor shall, within such 45-day period, be able to give a written notice to the Specified Mortgagee that it will delay giving the Lessor Option Notice until a date that is not later than 30 days following written notice from the Specified Mortgagee of its acquisition of title to its interest in the Leasehold Estate on the Leased Premises.

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

4. In the event of foreclosure or assignment in lieu of foreclosure, which results in the conveyance of the Leasehold Estate on the Leased Premises from the Lessee, any adjustment of the Ground Lease Fee to reflect then current fair market rental value as provided in the Lease, shall be subject to the approval of the Specified Mortgagee. The Specified Mortgagee and the Lessor shall attempt to resolve any dispute concerning such adjustment of the Ground Lease Fee, through the normal interaction of the parties, or through formal mediation as the case may warrant. If the dispute remains unresolved, the Specified Mortgagee and the Lessor shall submit the dispute as to the fair market rental value to binding arbitration.
5. In the event the Specified Mortgagee acquires title to the Leasehold Estate on the Leased Premises through foreclosure or assignment in lieu of foreclosure of the Specified Mortgagee, all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b)

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

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

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

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

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

Mortgagee shall also be entitled to participate in the adjustment of the Ground Lease Fee as a result of a partial destruction or taking.

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

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

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

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

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

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

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

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

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

LESSOR:

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

Title: \_\_\_\_\_

LESSEE:

\_\_\_\_\_

\_\_\_\_\_

(Add notaries)

This Instrument Was Prepared By: \_\_\_\_\_

Record and Return To: \_\_\_\_\_

**WARRANTY DEED**

THIS WARRANTY DEED made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between **Community Land Trust, a Florida Nonprofit Corporation**, (the “Grantor”), whose mailing address is \_\_\_\_\_, and **BETTY BUYER**, (the “Grantee”), whose mailing address is \_\_\_\_\_.

**WITNESSETH:**

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee the real property (the “Property”) located in \_\_\_\_\_ County, Florida, and more particularly described as follows:

LOT 1, BLOCK 20 OF XYZ SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK ABC AT PAGE 1234 OF THE PUBLIC RECORDS OF \_\_\_\_\_ COUNTY, FLORIDA.

Folio No:       XX-XXXX-XXX-XXXX

This warranty deed is being delivered in connection with the grant of a lessee’s ground leasehold interest in the land on which is situated the real property being conveyed hereby pursuant to that Lease Agreement between Grantor, as Lessor, and Grantee, as Lessee, a memorandum of which is being recorded concurrently herewith. Following the delivery of this warranty deed and the execution of the Lease Agreement, grantee shall be an owner of a leasehold interest in the land and a fee interest in the residential structure and any and all improvements and fixtures situated on such land.

The conveyance made under this warranty deed shall be subject to the matters listed on EXHIBIT B attached hereto and made a part hereof.

**SUBJECT TO:**

1. All easements, conditions, covenants, restrictions, reservations, limitations and agreements of record, provided this instrument shall not re-impose same.
2. Real estate taxes for the year 20\_\_ and all subsequent years.
3. Existing applicable governmental building and zoning ordinances and other governmental regulations.

TOGETHER with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to the Property.

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property; and that Grantor does hereby fully warrant the title to the Property and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed on the day and year first above written.

Witnesses:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Community Land Trust

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name of Witness

**ACKNOWLEDGMENT**

STATE OF FLORIDA )

) SS:

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 20\_\_ by \_\_\_\_\_--SELLER, who is personally known to me or presented a \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

## Ad Valorem Taxes

There are several questions to be addressed in regard to ad valorem taxation in Florida. The community land trust model envisions that the land will have one assessment and the improvements will have another.

The first question is will the 501(c)(3) that owns the land be exempt from ad valorem taxes pursuant to Section 196.1978, Florida Statutes?

It appears the answer to that question will be “no”. Although the Community Land Trust ostensibly meets the criteria of Section 196.1978, Florida Statutes, as a 501 ( c)(3) providing housing to income qualified individuals, the CLT will most likely not be exempt from ad valorem taxes on the land. This is because the homeowner has a 99 year leasehold interest in the land, which the courts have held to be the functional equivalent of ownership.<sup>1</sup> Fortunately, pursuant to a similar line of reasoning, as well as Section 222.05, Florida Statutes, the homeowner will enjoy homestead exemption on its leasehold property.

**But how will the value of the home be assessed?**

This was the thorniest issue for community land trust homeowners. The fair market value of the community land trust home should clearly consider the resale formula which substantially restricts the value of the home upon sale by the owner. The owner has bought the house subject to the terms of the resale restriction and is therefore unable to sell the community land trust home for a price similar to the selling price of an identical home next door, not subject to a resale restriction. While it makes a great deal of legal and common sense for appraisers to reduce the assessed value of the home based on the resale restriction, some county appraisers did, and others did not.

The Florida Community Land Trust Institute is able to report legislative success on this issue, making Florida a national leader on the issue of real property taxation for community land trusts. Florida Statute 193.018 was enacted in 2009, directing the property appraisers to use the resale restricted value for the home. Section 193.018, Florida Statutes is printed in its entirety on the following page.

At the same time, another change was made to Florida’s ad valorem tax laws commonly referred to as the “Habitat Amendment”. Found in Florida Statute 196.196, this statute provides tax exemption to the community land trust as any other 501 (c) (3) when in the process of readying land for affordable housing use. The tax exemption does not continue once a homeowner is in the house. It applies to the land when it is in the process of being improved/built on for a future affordable homeowner or if the CLT leased the home, rather than sells it. Florida’s ad valorem statute allows tax exempt entities to be exempt from real property taxes when the property they own is being used to provide affordable rental housing, as affordable housing is a charitable use.

<sup>1</sup>See Mikos v. King’s Gate Club, Inc, 426 So.2d 74 (Fla.2nd DCA, 1983); Leon Co. Educational Facilities v. Hartsfield, 698 So. 2d 526 (Fla.1997).

# Real Property Taxes

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.—

- (1) As used in this section, the term “community land trust” means a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.
- (2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.
- (3) In arriving at just valuation under s. 193.011, a structural improvement, condominium parcel, or cooperative parcel providing affordable housing on land owned by a community land trust, and the land owned by a community land trust that is subject to a 99-year or longer ground lease, shall be assessed using the following criteria:
  - (a) The amount a willing purchaser would pay a willing seller for the land is limited to an amount commensurate with the terms of the ground lease that restricts the use of the land to the provision of affordable housing in perpetuity.
  - (b) The amount a willing purchaser would pay a willing seller for resale-restricted improvements, condominium parcels, or cooperative parcels is limited to the amount determined by the formula in the ground lease.
  - (c) If the ground lease and all amendments and supplements thereto, or a memorandum documenting how such lease and amendments or supplements restrict the price at which the improvements, condominium parcels, or cooperative parcels may be sold, is recorded in the official public records of the county in which the leased land is located, the recorded lease and any amendments and supplements, or the recorded memorandum, shall be deemed a land use regulation during the term of the lease as amended or supplemented.

History.—s. 16, ch. 2009-96; s. 2, ch. 2011-15.



# Memo

January 4, 2015

To: All Lenders  
From: Marcia Barry-Smith  
Former CRA Officer & Residential Lending Manager, BankAtlantic  
RE: Why Banks Should Finance CLT Homes

When I first heard about them, I wanted nothing to do with Community Land Trusts. I felt that Wealth Building for the person of low to moderate income was now being taken away from them. This just wasn't fair!

Then, during the housing 'bubble', I realized that the homes that had been subsidized for low and middle-income families were rising in value so rapidly, with no built-in controls, the stock of "affordable" houses was disappearing.

Many first time homebuyers had received grants and subsidies previously, enabling them to purchase their then affordable homes. After 5 -7 years, these grants were 'forgiven' so when they sold their home, they would extract excess profit, stripping all the equity. In addition, the house that was once attainable was now out of the affordable price range for the new round of aspiring homebuyers. I thought,

"What can we do to avoid this crisis in the future?"

Then came my 'Aha!' moment – an epiphany: The answer was the Community Land Trust model with its built-in controls that limit appreciation for subsidized housing; strives to allocate appreciation fairly among the homeowners and thus creates a stock of quality affordable housing in perpetuity.

This revelation made a convert out of me. As a CRA Officer and Residential Lending manger of a large bank at the time, I immediately adopted this model as key to the Bank's CRA mission. The loans performed well and earned commendation from the regulators. I tell Community and Affordable Housing advocates that we need to protect housing stock for future generations with the same passion Environmentalists protect clean air and water."

## Lender Benefits to Providing a CLT Mortgage

As a lender you want to provide loans to homeowners who are low risk – those who will make timely payments and properly maintain their properties. This minimizes risk for delinquency, or foreclosure, while maximizing the ability to easily sell the home if needed.

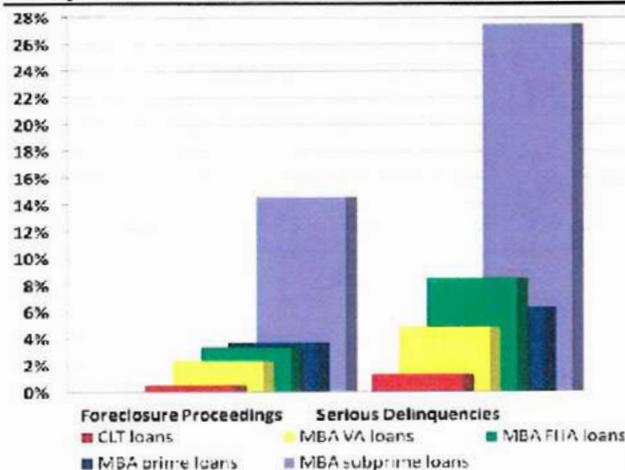
The CLT Model for homeownership supports these factors, which make an owner “low risk”, in the following ways:

- Home loans are required to be affordable
- Loans that can compromise a first mortgage, refinance & HELOCs, are not allowed
- Prospective buyers receive ongoing financial education and counseling
- Maintenance of the property is monitored
- CLTs typically have a waitlist of eligible buyers in the event of a resale or foreclosure

Additionally, lenders may receive the benefit of CRA credit for providing loans for the purchase of a CLT home. A study done of 2010 loans, comparing the performance of loans for conventional home purchases to loans for CLT purchases indicates a very favorable trend for lower income households.

Conventional Homeownership	CLT Homeownership
50% of lower income & minority homeowners DID NOT retain homeownership for 5 years (Reid 2005)	90% of lower income & minority homeowners retained homeownership for 5 years (The Urban Institute, 2010)
8.57% of Q4 2010 mortgage loans were seriously delinquent - across all incomes (MBA 2011)	1.3% of Q4 2010 mortgage loans held by CLT homeowners were seriously delinquent (Thaden, 2011)
4.63% of Q4 2010 mortgage loans were in foreclosure – across all incomes (MBA, 2011)	0.46% of Q4 2010 mortgage loans held by CLT homeowners were in foreclosure proceedings (Thaden 2011)

**Q4 2010 rates of foreclosure proceedings & serious delinquencies in CLT loans & MBA loans (Thaden, 2011)**



## Community Land Trust Model = Innovative and Complex Practices

### **Definition - § 11.22(b)(5) Innovative or flexible lending practices**

**Q. § 11.22(b)(5)—1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?***

**A1.** In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals.

For example:

In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.

(Source: Federal Register Notice containing Interagency Questions and Answers (PDF).  
<http://www.ffiec.gov/cra/default.htm>)

Banks engaged in supporting the stewardship model of the Community Land Trust may find additional opportunity for CRA credit. Supporting efforts in pre- and post-financial counseling, and homebuyer education workshops, can qualify as 'CRA Technical Service' based on CRA regulations.



The CLT's investment in the stewardship, and long-term success, of their community provides low risk/maximum benefit to participating financial institutions.

## The Value of an Experienced Appraiser

Using an experienced appraiser will benefit lender by providing assurance that the value of the property is accurate.

The Appraiser must be knowledgeable regarding extracting the value of the land from the value of the improvements. This is key to:

- (a) Fannie Mae acceptance of the loan if for sale in the secondary market
- (b) County Appraiser's real estate tax structure
- (c) LTV formula calculation for underwriting.
- (d) Better Buyer understanding of the transaction and its value

## Required Documentation

Documentation including the following forms and disclosures are standard for the submission of CLT loans.

- Universal Residential Loan Application
- Good Faith Estimate
- Truth in Lending Disclosure Statement
- HUD-1 Settlement Statement
- The Note
- Mortgage or Deed of Trust
- Deed
- Occupancy Affidavit
- IRS Form W-9
- Errors and Omission Agreement
- Name Affidavit (if applicable)
- Compliance Agreement
- Borrower Certification & Authorization
- First Payment Letter
- Escrow Account Statement (if applicable)
- Flood Affidavit
- Anti-Coercion
- Waiver of Borrower's Rights

In addition, the loan officer/processor is also required to complete and furnish the following, specific documents for closing CLT Loans:

- CLT Pre-purchase Workshop Certificate
- Fannie Mae Rider
- Purchase & Sale Agreement
- Ground Lease Agreement; which includes exhibits -
  - Standard Permitted Mortgage
  - Letter of Agreement & Attorney's Acknowledgement



Marcia Barry-Smith, President & CEO of MBS Consulting Services, Inc. has over 25 years experience in banking, including Senior Vice President and CRA Officer for BankAtlantic, and is highly regarded in the national arena as an expert in Community Development and Outreach. While serving as Executive Director of the BankAtlantic Foundation, Marcia managed all aspects of its efforts to assist charities and community groups with grants and other support, including outreach programs, employee volunteerism, community investment and civic involvement with non-profits.

### To Contact-

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 Phone: 954-557-6815  
[www.facebook.com/MBSCSInc](http://www.facebook.com/MBSCSInc)

# Role of Local Government

Florida’s 1985 Growth Management Act requires every local government in the state to adopt a housing element that addresses adequate and affordable housing for all of its current and anticipated populations. Local governments must ensure that adequate sites are available for affordable housing, including housing for those with special needs, and the most vulnerable populations.

While local governments are not expected to build affordable housing, they are required to assist the private sector to do so. To that end, local governments may provide funds to developers seeking state and federal monies, waive or pay impact fees when possible, expedite all permitting for affordable housing, and sometimes adopt regulatory incentives such as linkage fees or inclusionary zoning ordinances.

Affordable housing is defined in state statute— Ch. 420.004, Florida Statutes. The concern about affordability is grounded in the fact that when low income/low wealth families spend more than half their income on housing they are housing “insecure”—they can be one missed paycheck away from crisis. Over 920,000 very low income Floridians spend more than half their monthly income on housing costs. Florida has the third highest homeless population in the nation.

The League of Cities and Florida Association of Counties, following the passage of the 1985 Growth Management Law viewed the Housing Element Requirement as an “unfunded mandate”. This was in part what led to the adoption of the William E. Sadowski Affordable Housing Act in 1992.

The Sadowski Act increased the documentary stamp tax and dedicated that revenue to state and local housing trust funds.

- Approximately 70% goes to LGTF: SHIP- distributed on population based formula.
- Approximately 30% goes to SHTF: SAIL (State Apartment Incentive Loan program) and other programs.
- Florida generates over \$250 million in housing trust fund monies annually.

The following pages provide:

- (1) The Florida Housing Element Statute;
- (2) Florida Local Government Leadership with CLTs;
- (3) Florida Surplus Lands Law
- (4) How CLTs can Help with Inclusionary Zoning;
- (5) How CLTs can Save Florida Taxpayer Dollars
- (6) Sample SHIP strategy for CLTs

# Florida's Housing Element Law

## 163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

- 
- (f) 1. A housing element consisting of principles, guidelines, standards, and strategies to be followed in:
- a. The provision of housing for all current and anticipated future residents of the jurisdiction.
  - b. The elimination of substandard dwelling conditions.
  - c. The structural and aesthetic improvement of existing housing.
  - d. The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(3)(h), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this subparagraph shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.
  - e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.
  - f. The formulation of housing implementation programs.
  - g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.
2. The principles, guidelines, standards, and strategies of the housing element must be based on data and analysis prepared on housing needs, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or cost to income ratio, and shall show the number of dwelling units that are substandard. The data and analysis shall also include the methodology

used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction.

3. The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.

4. State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job creation, and economic solutions to address a portion of their affordable housing concerns.

# Surplus Lands Law

In 2006, the Florida Legislature passed requirements for counties and municipalities to identify surplus lands they owned that were suitable for affordable housing. The requirements are found in two statutes: §125.379 for counties, and §166.0451 for municipalities. These properties are a valuable resource for community land trusts; they specifically favor the use of the land for affordable housing in perpetuity.

## Overview of the Statutes

Beginning in 2007, each county and municipality was required to prepare an “inventory list” of properties to which it holds fee simple title, and which are “appropriate for use” as affordable housing. After reviewing and possibly revising the list, the governing body adopts it in a resolution. The lists must be updated every three years. The statutes authorize three disposition methods:

1. A property “may be offered for sale [without use restrictions] and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing,”
2. “. . . Sold [to a developer, low-income homeowner, etc.] with a restriction that requires the development of the property as permanent affordable housing,”
3. “. . . Donated to a nonprofit housing organization for the construction of permanent affordable housing.”

## How do Local Governments Acquire Surplus Lands?

Many surplus properties are acquired through escheatment of tax-delinquent properties, a process that takes five years in Florida. Escheatment essentially clears the title to a property; F.S. §197.502(8) states that “all tax certificates, accrued taxes, and liens of any nature against the property shall be deemed canceled.” If an escheated property is located within the boundaries of a municipality, the county must either use it for purposes specified in F.S. §197.592(3), or convey it to the municipality. County-held liens of record on the property are eliminated by conveyance to a municipality.

In addition to escheatment, local governments acquire surplus properties by foreclosing on code enforcement liens. In other cases, the city or county may no longer have a use for a property that it purchased many years ago.

## Tips for Community Land Trusts

- Work with county and city departments to ensure that appropriate criteria are used to identify suitable lands for affordable housing.
- Get involved and stay involved in the process for identifying and disposing of surplus properties.
- Provide input for use of proceeds when surplus land is sold for purposes other than affordable housing.

# Local Government Innovation: Preserving Subsidy and Affordability with a CLT

By: Anthony Jones, President/CEO, Bright Community Trust



After serving local government for almost 30 years, as the Director of Community Development for Pinellas County, and overseeing the administration of over \$40 million dollars in federal, state, and local funding, I helped launch the Pinellas County Land Trust in 2008. Why? Because I realized that if local government continues to put financial subsidy into the development of affordable housing that does not remain affordable in perpetuity we would continue to lose subsidy, lose affordable homes, and never come close to meeting the affordable housing needs in the community. I saw the community land trust as a way to preserve both public subsidy (costing less in taxpayer funds) and providing opportunities for permanently affordable homeownership and rental housing that benefits the residents directly served and the community at large.

## Rethinking how subsidy is provided.

In 2005, a broad-based Community Housing Workgroup convened by the Pinellas County Commission made a series of findings related to the affordable housing crisis. One of those was that while the community had been fairly effective at producing affordable housing, preservation of that housing, and the associated subsidies, continued to be at risk. There had been a significant loss due to price appreciation, condo conversion, and expiring use covenants on affordable rental housing. The loss had displaced working families from whole neighborhoods. Preservation of affordable housing was clearly as high a priority as producing it.

The Workgroup found that permanently affordable housing programs, such as the Burlington Community Land Trust, were especially effective in preserving affordability. The County Commission directed staff to research forming a Community Land Trust for Pinellas County. Bright Community Trust (then known as Pinellas Community Housing Foundation) was formed in May 2008 as a 501(c)(3) non-profit subsidiary of the Housing Finance Authority of Pinellas County. The founding purpose was to stem the loss of affordable housing units and prevent displacement of working families in areas experiencing rapidly rising prices.



Also in 2008, Congress passed the Housing and Economic Recovery Act creating the Neighborhood Stabilization Program. The County Commission saw this as an important tool to increase affordable housing while stabilizing home values in at-risk neighborhoods. The Commission wanted to invest in both single family homeownership and affordable rental housing; they recognized that the Community Land Trust would preserve their investments.

#### **Using the CLT for Homeownership Housing.**

Following the Burlington Vermont model, all single family homes receiving subsidy were placed into the Community Land Trust. They were renovated and sold to working families using an equity sharing model. The price of the land was removed from the transaction, significantly increasing affordability. Homebuyers enjoyed all the benefits of homeownership in a heavily discounted, completely renovated or newly constructed property. They received a reasonable return on their investment and agreed to pass a share of any price appreciation on to the next homebuyer who would meet the same affordability requirements.

#### **Using the CLT for Rental Housing.**

Preserving rental housing for the Pinellas workforce was also a heavy focus of Pinellas County's NSP program. In the past, rental housing had been supported primarily by providing soft mortgage gap financing. However, as properties went into foreclosure or changed hands, they were often lost to the affordable market. One very large property was converted to condos. Another went to foreclosure sale and the subsequent owner raised rents far above affordable levels. These events clearly illustrated the need to have a stronger preservation strategy. Past strategies tried to preserve affordability at the end of the period when the owner had many options from which to choose. The community land trust model preserved the affordability from the beginning.

The County then changed its subsidy strategy. Instead of providing the classic soft second mortgage, the County purchased the land and put it into the community land trust with the developer given a 99 year ground lease. This was a win for both sides. The developer had no land costs, making financing costs much lower. And, the value of the land increased the equity brought to the table. For the local government, affordability was preserved up front and in perpetuity. Future purchasers would have to respect the County's affordability covenants. The County also had great leverage if properties were not properly managed or maintained.

#### **Local Government Leadership.**

I am so passionate about the importance of community land trusts that I currently serve as the Executive Director of the Bright Community Trust, the successor nonprofit for the Pinellas County CLT, which had its genesis as an idea initiated and supported by a local government. Today the Bright Community Trust stewards over 520 apartments and over 35 owner-occupied homes. The program continues to grow with close to 60 additional rental and 20 home ownership units expected to come into service by mid 2016. Properties currently serve the full range of affordable housing needs from homeless populations up to 120% of area median income.

When the Community Housing Workgroup was formed, one of the first discussions was to define government's role in housing. One of those roles was to provide leadership. Bright Community Trust is an example of how that leadership can result in successful replicable models that allow the non-profit sector to do what they do best, while preserving public investment.

# Inclusionary Zoning and Community Land Trusts Preserving Subsidy and Affordability with a CLT

By: Jaimie Ross, President/CEO, Florida Housing Coalition



## Backdrop

Housing choice is increased and community schools become more diverse as affordable housing is included in new development, redevelopment, and growth areas. Every local government receiving federal dollars, such as Community Development Block Grant funds, has a legal obligation to affirmatively further fair housing within its jurisdiction<sup>1</sup>. Inclusionary housing policies:

1. Affirmatively further fair housing and avoid disparate impact liability from exclusionary housing practices;
2. Assist local government in meeting its legal responsibilities under the local government comprehensive plan housing element law<sup>2</sup>; and
3. Mitigate the effects of traditional zoning, which allows exclusionary land use practices such as large minimum lot sizes in suburban areas.

The term “Inclusionary zoning”, while commonly used, is a misnomer; it is not zoning in the traditional sense of dividing allowable land uses into different districts. It is a land use ordinance or land development policy that requires developers of market rate units to include some percentage of affordable, lower-cost units, within their development. They may be homeownership units, rental units, or some combination of the two. Concurrent objectives for an inclusionary land use ordinance are: (1) to increase the supply of affordable housing in general; and (2) to create housing in areas of opportunity.

Montgomery County, MD, is known as the “granddaddy” of inclusionary zoning, since it enacted its ordinance in the 1970s and has produced over 14,000 affordable homes, known as “moderately priced dwelling units”.



Inclusionary housing ordinances and policies can be found throughout the United States, from the Northeast to the Southwest. California has the greatest number of inclusionary zoning ordinances in the nation. It is estimated that there are approximately 400 such ordinances in the United States. The oldest inclusionary zoning ordinance in Florida is in the City of Key West and the oldest linkage fee ordinance in Florida is in the City of Winter Park<sup>3,4,5</sup>. In Florida, inclusionary ordinances have been adopted primarily in South Florida cities and in counties, but can also be found in slower growth areas, including the City of Tallahassee.

### The Basics about an Inclusionary Land Use Ordinance

Inclusionary land use ordinances vary a great deal from one jurisdiction to another, but tend to have several elements in common:

- A threshold number of market-rate units that activates the inclusionary requirement for a corresponding percentage of affordable units;
- A requirement that the affordable units are comparable in quality and aesthetics to the market-rate units, so that even if they are smaller or of a different type, they will blend into the community;
- Incentives to assist the private sector in providing the affordable units, such as an increase in allowable density<sup>6</sup>; or financial subsidy to the housing developer or the affordable homebuyer; and
- Requirement for long term affordability.

### How Does a Community Land Trust Help?

#### 1. Ensuring Long Term or Perpetual Affordability.

First, and foremost, there is no point in adopting an inclusionary land use ordinance unless there is a requirement for long term affordability. If the term of affordability is short, for instance five or ten years, the consequence will be a windfall to the lucky family who happens to own the unit at the time the price restriction expires. In this case, an affordable property that would not have existed within a market-rate development, but for the inclusionary requirement, could be sold at a price that is not affordable to a family having the same income characteristics of the family that currently owns the home. The public benefit created by the inclusionary land use ordinance and any public subsidy which may have been put into the unit will be lost.

If the affordable units required under the inclusionary land use policy are deeded or leased to the Community Land Trust, the public benefit which was the foundation of the policy or ordinance will be retained, since the Community Land Trust will ensure continued affordability under the terms of the 99 year ground lease.

#### 2. Administration of the Program.

Whether the affordable units are “for-sale” or “for lease”, someone will have to income qualify the potential homebuyers or renters. Income qualification, homebuyer pre and post counseling, and maintaining a pipeline of income qualified homebuyers is the business of a Community Land Trust. Even if the property is not going to be placed under a 99 year ground lease, the Community Land Trust has the skills to provide the income qualification services needed for the developer and the local government, ensuring that residents living in the units produced pursuant to the inclusionary land use ordinance are income eligible. Relieving the market rate developer from the obligation to ensure that the units remain in compliance with resale restrictions and income eligibility requirements is a substantial benefit to the market rate developer and greatly assists the local government.

<sup>1</sup> In addition to the affirmative duty to provide for adequate housing for their present and future residents under the Housing Element requirements of Chapter 163 Part II, Florida Statutes, all entitlement communities have an affirmative duty to further fair housing under the Federal and state Fair Housing Act. See 42 U.S.C. Sections 3601-3631, and F.S. 760.20-760.37.

<sup>2</sup> The Housing Element requirements of the 1985 Growth Management Act include that every local government have adequate sites for affordable housing and provide for housing all its current and future anticipated populations, including special needs populations. See Chapter 163.3177 (6)(f), Florida Statutes.

<sup>3</sup> Florida has broad local home rule powers. Florida statutes give all counties the power to adopt comprehensive plans, establish zoning regulations, establish housing programs and perform any other acts not inconsistent with law Section 125.01 (1), Florida Statutes.

<sup>4</sup> In response to a concern that inclusionary zoning ordinances might be challenged under Florida's state statute prohibiting price and rent control, the 2001 Florida Legislature carved out an exception to the price and rent control statutes for land use mechanisms used to increase the supply of affordable housing, specifically citing "inclusionary housing ordinances".

- Section 166.0415 Affordable housing.—Notwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.
- Section 125.01055 Affordable housing.—Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

<sup>5</sup> Linkage fees are a means for local governments to collect monies to help support affordable housing construction. These fees, collected from nonresidential and (in some cases) market-rate residential development, are placed in a trust fund for others to use in building the lower-cost homes. Linkage fees are a recognition that the low-wage workers employed in the nonresidential development and serving the residents of the market rate and upper-end residential homes need adequate housing within the community that they can afford; it a recognition that affordable housing an essential basic necessity for a healthy community. In Winter Park Florida linkage fees have supported the development of affordable housing, including housing produced by the Hannibal Square Community Land Trust in Winter Park.

<sup>6</sup> Expedited permitting is another type of developer incentive. Florida provides funds to every local government through the collection and distribution of documentary stamp revenue, and requires, in turn, that those local governments expedite all permits for affordable housing.

Florida also requires, through the Development of Regional Impact (DRI) process (Chapter 380, Florida Statutes), that large commercial developments ensure affordable housing for the employees they generate, especially when the community lacks adequate affordable housing for those workers. This DRI statute operates as a combination linkage fee and inclusionary zoning ordinance. Unfortunately, the DRI statute has been largely ineffective at producing affordable housing, since the DRP process is time consuming, costly, and arduous. By contrast, inclusionary housing ordinances require no expensive studies from the developers, and can be easily and equitably applied in a routine fashion. Furthermore, they can be drafted to apply to both residential and commercial developments.

# Model SHIP Strategy for Retaining Public Subsidy Through a CLT

Provided by Florida Community Land Trust Institute

In an effort to get the most public benefit out of every SHIP dollar, SHIP funds are loaned rather than granted in virtually all homeownership strategies. By making a loan in contrast to a grant, the SHIP program is able to recapture the SHIP funds upon resale and use those funds to help another family. **This is clearly good public policy.**

**An even better public policy is one that uses a one-time investment of SHIP dollars to create a home that remains in the affordable housing stock in perpetuity.**

Under the normal economic environment of rising prices, the SHIP monies recovered from a loan made five to ten years earlier are to get a similarly income homeownership, as the gap and the cost of the house will

By using SHIP to support homeownership, the local retained in the home that to a similarly income eligible rise in home prices. This community land trust home affordable upon resale.



typically not enough eligible family into between the family income now be greater.

Community Land Trust government subsidy is continues to be affordable family regardless of the is because the price of a is required to remain

A way to get even more public benefit out of every SHIP dollar is to create permanently affordable homes. SHIP funds can be used to meet several set-asides at the same time by providing funds to nonprofit organizations/developers for the purpose of writing down the cost of a home that will sold to an income eligible family subject to a 99 year ground lease, which requires the home to be affordable in perpetuity and provides the right of repurchase to the Community Land Trust in the event of default by the homebuyer.

### Sample SHIP Strategy for Community Land Trust Homeownership:

Name of the Strategy: Community Land Trust Homeownership

a. **Summary of the Strategy:**

To provide down payment assistance to buyers of newly constructed or existing community land trust homes. The down payment assistance will be used to write down the purchase price of the property. Home rehabilitation is also an eligible use, as needed when purchasing existing homes. Up to \$ may be spent to address health & safety concerns, fix code violations and increase energy efficiency.

b. **Fiscal Years Covered (for example):** 2015, 2016, 2017

c. **Income Categories to Be Served:** Very low, low, and moderate income

d. **Maximum Award (must be equal to maximum on the Housing Delivery Goals Charts):**

e. **Terms of the Award: Recapture and Default.** Assistance is provided as a deferred payment loan.

**Interest Rate/Term:** 0% interest

**Forgiveness/Repayment:** Provided the home continues to be occupied by an income eligible household, the SHIP monies will not be subject to recapture upon resale.

**Default/Recapture:** Default is defined as the failure to make required payments on a loan secured by a first mortgage which leads to foreclosure and/or loss of property ownership. In the event of default on the first mortgage or the terms of the ground lease, the Community Land Trust must notify \_\_\_\_\_ County/City whether it intends to exercise its right of repurchase. In the event the CLT is not willing or able to exercise its right of repurchase, it shall transfer its right of repurchase to \_\_\_\_\_ County/City, giving \_\_\_\_\_ County/City the right, but not the obligation to foreclose.

f. **Recipient Selection Criteria:** First qualified, first served after completion of first time homebuyer class that contains a community land trust component. The recipient must be able to show and attest to a clear understanding of the difference between fee simple homeownership and community land trust homeownership. Also, the buyer must contribute \$ to closing costs. If needed, a waiting list of qualified applicants will be maintained in chronological order (or state if there is a funding order that prioritizes applicants with special needs, teachers, essential services personnel, or other categories).

g. **Sponsor Selection Criteria and duties, if applicable:** The SHIP funds may also be made available directly to a Community Land Trust serving \_\_\_\_\_ County/City. In that event, the CLT shall follow the criteria in this SHIP strategy, but the CLT shall be operating as a sub-recipient, and not on behalf of the County/City.

Include qualification system and selection criteria for applications for Awards to eligible sponsors \_\_\_\_\_ County/City will issue a Request for Qualifications to choose eligible Community Land Trusts as subrecipients of SHIP purchase assistance.

- h. **Additional Information:** Community Land Trusts are tax exempt nonprofit organizations that perform a charitable mission. They are key partners for increasing the stock of affordable homeownership without losing the subsidy that is provided to the income eligible household.

The Community Land Trust transfers title to the homebuyer but retains ownership of the land beneath the improvements. The CLT provides a 99 year ground lease for the use of the land to the homebuyer. A memorandum of that ground lease is recorded in the public records immediately following the deed. The terms of the ground lease restrict the resale of the property to an income eligible household and provide a right of repurchase to the CLT in the event of default.

The CLT has a stewardship role that continues in perpetuity to assure that the CLT home remains in the County/City's affordable housing stock. The monies provided to the community land trust homebuyer are used to write down the purchase price of the home. By taking the cost of the land out of the purchase price and by further writing down the purchase price in an amount equal to the SHIP funds provided by the County/City, the cost of the home is significantly reduced, creating an affordable opportunity for homeownership for the first family who purchases and for each family that purchases thereafter. The stewardship role of the CLT, its mission, and its vested interest in the property by virtue of retaining ownership of the land provides a safety net for the homeowner and substantially decreases the risk of foreclosure compared to fee simple ownership.

The Florida Legislature has recognized the public benefit of community land trusts in creating permanent affordability by providing direction in regard to assessment for real property taxes in Section 193.018, Florida Statutes, which requires the assessment to consider the resale restricted value of the community land trust home.

# Community Land Trusts: A Tool for Reducing the Need for Tax Dollars

Financial subsidy for the development of new construction or the rehabilitation/preservation of existing housing whether homeownership or rental, is the primary way that housing is made affordable. These financial subsidies are derived either by the federal Low Income Housing Tax Credit program (which reduces tax revenue available to the Treasury) or through direct appropriation of tax revenues generated at the federal, state, and local level, such as HOME, CDBG, SAIL, and SHIP. Government agencies administer these dollars to help meet the housing needs in their communities.

One way that government is able to stretch these tax dollars is through leverage with private sector funding; Florida has been doing an excellent job of using government funding to leverage private monies with SAIL and SHIP. But Florida continues to lose ground in the affordable housing battle. Florida is a beautiful state surrounded by water on three sides; the desirability of our lifestyle drives an increase in population and pushes the prices of our housing upward while the incomes of our workforce remain relatively low.

## How Does a CLT Save Taxpayer Money?

Under traditional homeownership subsidy programs, the subsidized home can be sold at the market appreciated sales price, with recapture of the original subsidy upon resale. Because of market appreciation, the recaptured subsidy is wholly inadequate for the local government to get another family into homeownership. The local government or other subsidy provider must then expend an even greater amount of subsidy to provide a homeownership opportunity to the next homebuyer. It is this massive drain on already depleted public resources which is driving local governments to increasingly explore the CLT option.

Using a community land trust is a way to stop losing ground both figuratively and literally. The nonprofit CLT retains ownership of the land to remove this subsidized housing from the speculative market so that the homes remain permanently affordable.

The CLT approach results in permanent nonprofit ownership of the land, which is leased to lower-income households, who are assisted in buying homes developed on the CLT land. The CLT will transfer title of the house to an income qualified buyer but retains title to the underlying land. By excluding the price of the land (which in some parts of Florida, dwarfs the costs of the improvements), and arranging additional subsidies to assist the buyer to purchase the house (such as SHIP), the overall purchase price is made affordable and the monthly mortgage PITI payments are often more affordable than renting.

In return for the significant subsidies required to develop this affordable homeownership opportunity, the CLT imposes resale restrictions through the 99 year ground lease on the improvements which ensure that the property will remain affordable in perpetuity. The owner of a CLT home is required to sell to a similarly qualified buyer at a restricted price, determined by a resale formula found in the ground lease.

The restricted resale price mandated by the ground lease will commonly include whatever monies the homeowner paid in equity at closing (down payment) as well as all principal payments made on the mortgage, and limit the appreciation to one quarter of what the appreciation would have been for fee simple homeownership.

By dramatically limiting the appreciation, the homes remain affordable to new homebuyers without significant additional subsidies.

The CLT model of homeownership is clearly not for everyone. If a family can purchase a home without substantial subsidy they should certainly be encouraged to do so. The resale restrictions would prove extremely frustrating to a home owner who could have purchased a market priced home and realized full appreciation. However, for many working families homeownership is completely out of reach and will remain so for the foreseeable future. The CLT model provides the attributes of homeownership, including mortgage interest and property tax deductions, freedom from rent increases and evictions, coupled with long term affordability, and limits only the wealth building potential of a private market home.



### Preserving Public Subsidy Reduces the Amount of Subsidy Needed in the Future.

Example to illustrate the preservation of the affordable housing subsidy.

In this example, the subsidy is:

- (1) Land donated to the CLT and;
- (2) SHIP down-payment assistance for the homebuyer to additionally reduce the cost of the home.

Local Government donates land to CLT valued at \$30,000

CLT constructs home on that land at a cost to CLT of \$100,000

Total value of property is land plus improvements- \$130,000 (appraised value)

CLT sells to homebuyer without including the value of the land for a PP of \$110,000

(CLT retains 10% development fee of \$10,000)

#### At First Sale:

10% down- \$11,000 at closing is provided:

Buyer brings \$3,850 (based on 3.5%) in their own funds;

SHIP provides \$7,150 in down payment/closing cost assistance, to reduce the amount of the mortgage financing needed (based on 90% loan) to \$99,000

Monthly mortgage payments for homebuyer are therefore based on \$99,000 loan- this is approximate, as it does not include taxes and insurance.

#### At Resale:

Home value has appreciated to \$130,000

Homeowner gets 25% of that appreciation:  $\$130,000 \text{ minus } 110,000 = 20,000 \times .25 = \$5,000$

Homeowner also gets the return of his/her funds brought to closing- \$3,850 for a total in cash to seller of \$8,850

#### Resale to New CLT Homeowner:

New purchase price (continues to leave the value of the land out): \$130,000

Minus SHIP funds which were provided to first homebuyer, which remains with the house for the benefit of the new homebuyer

$\$130,000 - \$7,150 = \$122,850$

**The original subsidy provided by local government in the form of donated land and assistance to reduce the costs at closing for the homebuyer are retained in the property to enable the next income qualified family to move in with little or no additional subsidy needed.**

# The Obligations of the Community Land Trust to the Homebuyer

By: Charles Elsesser, Esq., Executive Director, Community Justice Project



There are a number of reasons why the Community Land Trust (and its attorney) must be far more concerned than the normal seller in ensuring that the buyers in a Community Land Trust purchase are fully informed and counseled prior to the purchase transaction.

The legal structure of the Community Land Trust purchase and sale is different from that which most residential buyers had ever previously experienced. As opposed to the transfer of a fee simple interest with which most buyers, even first time buyers, are generally familiar, the CLT purchase and sale involves the transfer of a leasehold interest in the land and a fee simple transfer of the improvements alone. Many attorneys may have difficulty understanding this concept; unsophisticated buyers will undoubtedly need a great deal of explanation.

Additionally, in a Community Land Trust purchase buyer is severely restricted in the resale price through the option to repurchase and resale restrictions incorporated in the long term lease. During an economic period in which one's investment in their own home is also seen as a major wealth building and retirement vehicle, it is extremely difficult for many potential buyers to grasp the idea of limited return on equity.

As a result of the expectation of asset growth, one of the greatest threats to the stability of a CLT can come from within as purchasers, who were not fully aware of the CLT structure at the time of purchase, may want to cash out their equity in a rapidly escalating real estate market.

By the nature of the transaction, the CLT is providing purchasers with an opportunity to own a home which would otherwise have been unaffordable to them. The purchasers, by virtue of the CLT marketing efforts, may be less educated or less sophisticated than wealthier purchasers of market rate real estate. The opportunity to own their own can often cause purchasers to overlook or ignore "the details" of a transaction, regardless as to how well it is explained. This can result in buyers, fairly or unfairly, feeling taken advantage of - post purchase - when they fully understand the details of the CLT process.

Given that the CLT's goal is the long term benefit of the initial and subsequent purchasers through a non-speculative residential real estate market, and that the long term involvement of the purchasers in the CLT itself is a vital element of the process, it is extremely important that the purchasers emerge from the purchase and sale transaction fully informed and satisfied with all aspects of the purchase transaction.

## CLT Use of Standardized Purchase and Sale Disclosures

Protection for the CLT begins with a standardized set of disclosures which must be read and reviewed by the purchaser. The CLT attorney should recommend that those disclosures, or any adapted version utilized by the CLT, not only be utilized as standardized disclosures but also as a fundamental part of any pre-purchase counseling process.

### **Pre-Purchase Information and Counseling**

For the reasons mentioned above it is vitally important that there be extensive pre-purchase materials explaining the nature of the program and that CLTs require purchasers to participate in a pre-purchase orientation and counseling program. However, this pre-purchase process raises a number of legal concerns for the Community Land Trust and its attorney. Community Land Trusts in Florida are selling an extremely novel and complex form of ownership with severe limitations on appreciation to unsophisticated buyers. Consequently, the CLTs can run into difficulty either for failing to fully disclose the nature of the transaction or for disclosing it inaccurately.

### **Community Land Trust Liability for Inaccurate Disclosures**

Generally, a purchaser can rely upon a representation of a seller, even when investigation may have revealed its falsity. Where the seller is significantly more knowledgeable and sophisticated regarding the real property involved, the seller is held to an even higher standard in representations to the buyer. Given the dramatic difference in knowledge between the seller and the buyer in a CLT transaction, the CLT must assume that it will be held to an extremely high standard with respect to the accuracy and completeness of its disclosures.

### **Community Land Trust Liability for Failure to Disclose**

In Florida, where a seller of a home knows of facts materially affecting the value of a property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer. *Johnson v. Davis*, 480 So.2d 625 (Fla.1985). This doctrine has been held to apply to zoning ordinances which materially affect the value. Given the uniqueness of the CLT structure and the impact of the CLT restrictions on what would be considered the common expectations of a purchaser, a purchaser who failed to understand the nature of the transaction may well claim that they were misled, despite the fact that all of the restrictions are contained within the documents themselves. Thus particular efforts must be undertaken to insure the purchaser fully understands all of the elements of the transaction.

### **Attorney Review of Written Marketing and Orientation Materials**

In addition to the utilization of standardized disclosures, Community Land Trusts will commonly use many other printed materials in its marketing and orientation efforts. All of these must be carefully reviewed by the attorney for the Community Land Trust as they must accurately reflect the transaction that the purchaser in Florida is entering into. Materials copied from CLTs in other states (or even from other parts of Florida) may not accurately reflect the transaction as it is structured in this CLT. It must be remembered that, for most purchasers, all that they know about the Community Land Trust transaction is what they have learned from the Community Land Trust itself. This creates a relationship in which the accuracy of the representations of the CLT, particularly the written representations, are extremely important.

### **Attorney Review of Buyer Orientation and CLT Staff Training**

A significant portion of any CLT's Buyer Marketing and Orientation process is going to be unwritten, whether formal or informal. While it may be wise for an attorney to initially monitor any formal orientation session, the most efficient means for controlling the quality and accuracy of unwritten communication is through comprehensive and thorough CLT staff training. The attorney for the CLT should ensure that the CLT has

implemented a staff training that ensures that all staff possess a thorough and accurate knowledge of the CLT process as it operates in Florida.

### Referral of the Buyer to Counsel

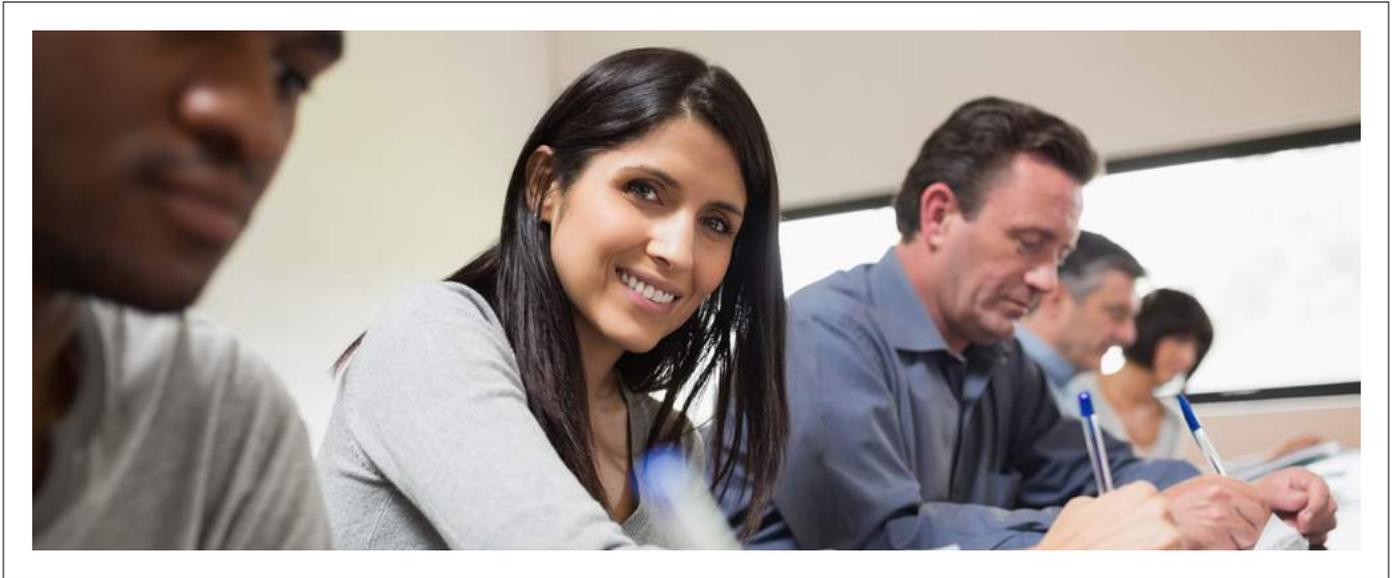
The Community Land Trust itself is not required to refer an unrepresented buyer to an attorney. However, given the disparate levels of sophistication and the unfamiliarity of most buyers with the Community Land Trust vehicle, it would be good practice for any Community Land Trust to ensure that all purchasers are represented in the purchase. However, the Community Land Trust must keep in mind two potential areas of concern. First, any actual referral system creates a possible conflict of interest if the attorney representing the purchaser, in any way, depends upon the CLT for payment. Second, relatively few attorneys in Florida are going to be familiar with the CLT vehicle and that unfamiliarity may translate into concerns which either delay the transaction or cause unwarranted misgivings on the part of the purchaser. One possibility which obviates both concerns is a pro bono project in which the local real estate bar provides attorneys willing to represent low income households in these transactions and these attorneys are, in turn, provided with CLE in the mechanics of the Community Land Trust.

While independent representation by a knowledgeable attorney certainly assists greatly in ensuring that the buyer is fully informed and knowledgeable concerning the transaction he/she is entering into, we would continue to recommend that the Community Land Trust independently ensure itself that the buyer is fully informed through thorough orientation or some similar process.

### Post-Purchase Counseling

Although not legally required, an ongoing program of post-purchase counseling is vital to a successful CLT. Many of the elements of the CLT structure, particularly the resale restrictions, do not affect the buyer until years after the purchase. If the concepts and benefits of the CLT structure are not reinforced through post-purchase counseling/training, the CLT community can suffer when years later members are suddenly reminded that they cannot sell their homes for the same amount as their neighbors across the street.

***CHARLES ELSESSER** is a founding lawyer with the Community Justice Project. He is a civil rights attorney who worked for the past eighteen years with Florida Legal Services, specializing in housing litigation and policy advocacy on behalf of community and resident organizations. Chuck served on the Affordable Housing Committee of the RPPTL Section of the Florida Bar that produced the Florida Supplement to the ICE Community Land Trust Legal Manual. He is a member of the Florida Housing Coalition board of directors, and has been nationally recognized for his work.*



## Education for the CLT Homebuyer

First Time Homebuyer Counseling needs to be significantly expanded when the homebuyer is purchasing a Community Land Trust Home, as the CLT form of homeownership is substantially different from fee simple homeownership, as discussed in the article by Charles Elsesser on the CLT’s Legal Obligations to the Homebuyer (on page 82), and throughout this Primer.

The following five pages are an excerpt from the 24 page South Florida Community Land Trust Homebuyer Guide, which is also available in Spanish and Creole. We have included just a few of those pages to serve as an example of how the SFCLT explains the restriction on resale to prospective homebuyers, including a short exam. Immediately following the SFCLT example is a two page exam taken from the MBS Consulting Coursework for prospective CLT homebuyers.

The Florida Community Land Trust Institute recommends that homebuyers take an exam at the conclusion of the pre-purchase class that proves the homebuyer understands the difference between the potential return on a fee simple property compared to the return on a resale restricted property. To be clear, it is not because we believe CLT homeownership benefits should be compared to fee simple benefits—it is not. As stated elsewhere in this Primer, CLT homeownership benefits should be compared to the benefits of renting. But for all the practical motivations articulated in the article by Charles Elsesser, it is in the best interest of both the CLT and the CLT homebuyer that there are no misunderstandings about what CLT homeownership is and what it is not.

Post-purchase counseling is also highly recommended, as it is recommended for fee simple first time homebuyers and to ensure that the CLT homeowner understands the continuing role of the CLT, the mutual obligations between the CLT homeowner and the CLT, and the value of participating in the community land trust, either as a lessee board member or a general member of the community land trust. A fully informed CLT homeowner tends to be the most engaged in the CLT and an emissary for the mission of creating permanent affordable housing.



SFCCLT  
South Florida Community Land Trust

# WELCOME HOME

## SOUTH FLORIDA COMMUNITY LAND TRUST HOMEBUYER GUIDE

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Updated: June 2015

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**SOUTH FLORIDA COMMUNITY LAND TRUST**

**GROUND LEASE REVIEW  
AND  
ONE-ON-ONE CLT BUYER EDUCATION**

**Buyer(s):** \_\_\_\_\_

**Property Address:** \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

**Fee Simple Appraised Value:** \_\_\_\_\_

**Date of Review:** \_\_\_\_\_

\_\_\_\_\_  
Homebuyer Signature Date

\_\_\_\_\_  
Homebuyer Signature Date

\_\_\_\_\_  
SFCLT Signature Date

## Selling Your Home – A Scenario

Imagine you've been living in your home for a few years now and you've decided that you're ready to move out and sell. You know that the resale value is restricted and the appreciation in value will be shared between you and SFCLT in order to pass on the opportunity to buy an affordably priced home to another deserving buyer.

You're curious about what the resale price will be and how much of the appreciation in value you'll get back. Below is an example of how to figure that out.

Let's imagine that your home is now appraised at **\$200,000**. Remember, your home's maximum resale price equals the original purchase price plus the homeowner's share of appreciation.

### SELLING YOUR HOME – A RESALE EXAMPLE

*Maximum Resale Price = Original Purchase Price + (Appreciation x 25% x Ownership Share)*

1. Homeowner's Purchase Price	\$ 130,000
2. Initial Appraised Value	\$ 170,000
3. Ownership Share Ratio of Homeowner's Base Price to Initial Appraised Value (Divide line 1 by line 2)	76 %
4. Appraised Value at Time of Resale:	\$ 200,000
5. Total Appreciated Value: (Subtract line 2 from line 4)	\$ 30,000
6. Portion of Appreciated Value to be shared: (Multiply line 5 by line 3)	\$ 22,800
7. Homeowner's Share of Appreciated Value: (Multiply line 6 by 25%)	\$ 5,700
8. Resale Formula Price: (Add lines 1 and 7)	\$ 135,700

**DON'T FORGET:** In addition to your share of the appreciated value, you will also get back 1) your initial downpayment (less any repayable downpayment assistance you may have received) and 2) any reductions you've made in the principle balance of your loan!

## LET'S REVIEW



Now that you know more about the CLT model and are considering homeownership, take the time to complete this review sheet regarding the information you have learned.

**How would you describe the CLT model to a friend?**

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**What are some of the advantages of the CLT model?**

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**How is the CLT model different from traditional homeownership?**

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**What is the purpose of the ground lease?**

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**What do you need to do to prepare for homeownership?**

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**What is the purpose of the resale formula and how does it work?**

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**When do you need to notify the CLT?**

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Homebuyer Signature

Date

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SFCLT Signature

Date

1) What does CLT stand for? Community Land Trust

2) Give an example of how a CLT Home Purchase is similar to a traditional home purchase:

- Mortgage is with the bank
- Homeowner pays property taxes and hazard insurance
- Homestead Exemption
- Homeowner receives federal tax deductions for mortgage interest and property taxes
- Homeowner can make improvements to home

3) Give an example of how a CLT Home Purchase differs to a traditional home purchase:

- CLT homeowner builds limited equity
- CLT home purchase price is below market price
- CLT homeowner leases the land, for 99 years, at a nominal price
- CLT homeowner must sell to another qualified, low income, buyer at a predetermined price

*(#2 and #3 – slide 15, looking for at least one example in own words)*

4) What are the 5 main benefits to owning a CLT Home?

- AFFORDABILTIY
- MORTGAGE
- COMMUNITY
- SUPPORT
- STABILITY

*(#4 – slide 13 in own words)*

5) Are you allowed to sell your CLT home? **Yes** or No (circle one)

6) The CLT Home Purchase Price is established by using a **Resale** Formula (fill in the blank)

7) Resale Formulas may vary slightly between CLTs, but the CLT Homeowner will receive **25** % of the shareable appreciated value at resale (Fill in the blank)

Use the following information to answer Question #8 -

**Original Purchase Price = \$70,000**

**Appreciated Value (at Resale) = \$110,000**

**Total Appreciation Value = *Appreciated Value – Original Purchase Price***

**Homeowner's Share of Appreciation = *Total Appreciation Value x 25%***

**Resale Price = *Original Purchase Price + Homeowner's Share of Appreciation***

8) Use the above information to determine:

- a) The Total Appreciation Value: **\$40,000** ( $\$110,000 - \$70,000$ )
- b) The Homeowner's Share of Appreciation: **\$10,000** ( $\$40,000 \times 25\%$ )
- c) The Resale Price: **\$80,000** ( $\$70,000 + \$10,000$ )

9) What is the name of the CLT presenting this workshop?

# Maintenance and Repair Reserves: Keeping the CLT Home in Good Condition

By: Cindee La-Course Blum, Executive Director, Palm Beach County CLT

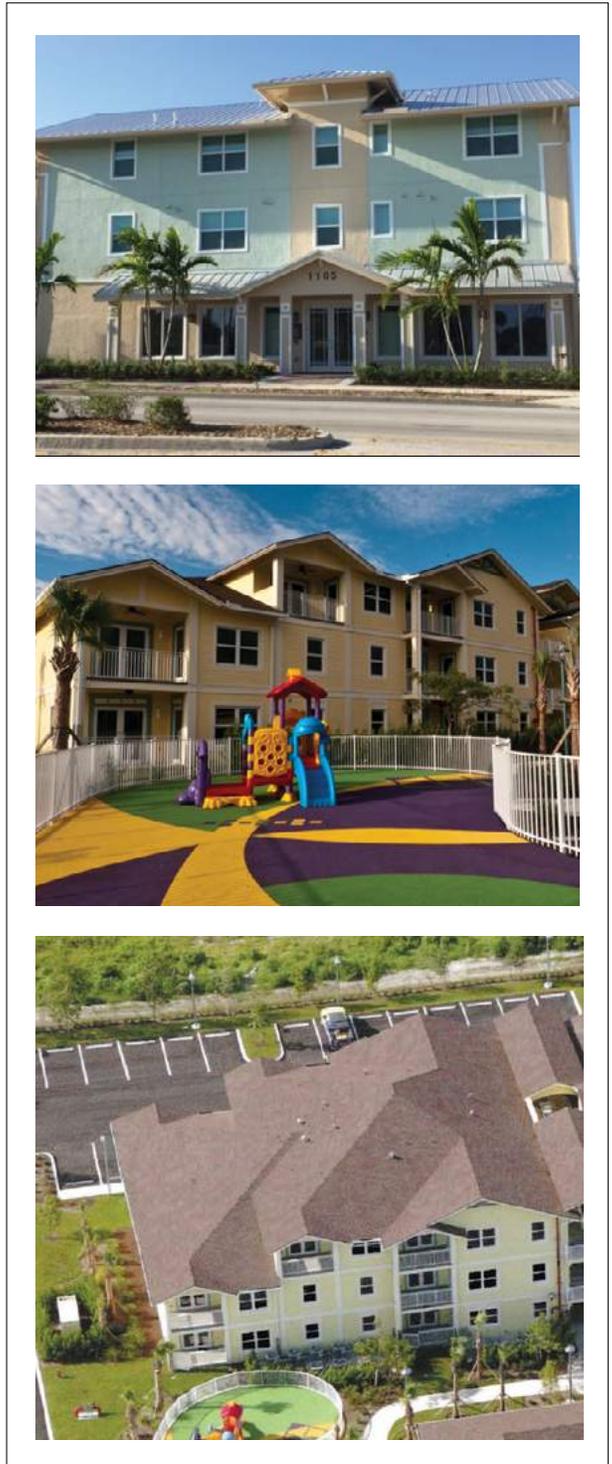


The core mission of a CLT is to preserve affordability for generations. That necessarily entails stewardship that helps maintain the CLT property in good condition for resale. Because the resale formula does not typically consider the condition of the house in the resale price, some CLTs are revising their resale formulas to include incentives for maintenance and amending their ground leases to increase seller accountability for maintaining the home. Maintenance incentives in the resale formula can be as simple as adding compensation in the resale price for certain improvements. Seller accountability for home maintenance can be strengthened in the ground lease by adding certain requirements for the condition of the home at resale. A more reliable way of avoiding costs to the CLT for fixing up the home for resale is to establish a maintenance and repair reserve; in this way needed repairs are budgeted for so that the affordable property is kept in good condition over the long term.

## Funding the Maintenance and Repair Reserve

Funding the anticipated capital needs of a home can be a challenge, especially to homeowners with limited incomes. This has led CLTs to establish maintenance and repair reserves both to assist homeowners in affording the maintenance that comes along with homeownership and to preserve the resources that were used to create the affordable housing. Many CLTs with a maintenance repair reserve collect a monthly maintenance/repair fee. However, a fee can be also capitalized when the unit is constructed or brought into the program and/or collected at resale.

The most recent version of the National Model CLT Ground Lease (the 2011 version included in this Primer) includes a repair reserve fee “to be held by the CLT and used for the purpose of preserving the physical quality of the Home for



the long term” in its definition of the ground lease fee. It then leaves a placeholder section to describe the particular CLT’s repair reserve fee program.

Monthly fees can vary depending on the reasonable expectation of need for replacement reserves based on the quality of the structure, the durability of the materials and equipment in the home, and condition of the unit/development. The monthly fee may be incorporated into the amount of mortgage a buyer will qualify for upfront, which would likely mean that a larger subsidy is needed upfront to keep the monthly payments affordable.

Some CLTs add a certain percentage to the buyer’s price over the seller’s formula price to fund the reserve at resale. In some cases, a portion of these funds are used for maintenance and repair and a portion is used for administration. If this approach is taken, the CLT will not be able to rely upon the resale fee to cover 100% of the administration costs.

Once the type of reserve fee is established, it is then necessary to determine whether the fee will be collected for a specific unit or if it will go into a large pool to fund repairs. The latter is usually more of an emergency fund for homeowners, allowing the CLT to better carry out its stewardship role of assisting homeowners who are facing unexpected repair costs.

#### **Administration of the Repair Reserve**

Typically, CLTs implementing a maintenance/repair reserve fund have a separate fee for each unit. When separate funds are maintained for particular units, it needs to be determined whether any remaining funds can be withdrawn by the homeowner at resale or whether the funds remain with the unit. If the purpose of the fund is to cover damage to the unit rather than to cover capital expenses then it makes sense to refund any unused funds at resale. However, CLTs commonly view the funds as a way to cover anticipated capital improvements as major systems and equipment reach the end of their lifespan.

While a particular homeowner may not need to draw on the reserve during the time they own their home, their contributions to the reserve fund is covering the wear and tear on major systems of the unit that accrues during their tenure. A downside to keeping the reserve fund with the unit is that it may disincentivize the current homeowner from undertaking the needed preventative maintenance tasks to avoid or delay certain types of repairs.

A best practice is to be clear from the start as to what type of maintenance or repairs are eligible for the reserve fund. Some CLTs include an itemized list of eligible capital repairs on major components over time and some include a non-inclusive list so that other needed repairs are eligible provided they meet certain criteria.

Many CLTs decide what their goal is with the maintenance/repair reserve fund and design their programs around that. It is also possible, and perhaps ideal, to take a mixed methods approach in addressing the long term maintenance and preservation needs of the affordable housing resource that would include incentives in the resale formula, seller accountability in the ground lease, and maintenance/repair reserves.

# Data Management for Community Land Trusts

By: Suzanne Cabrera, President/CEO, Housing Leadership Council of Palm Beach County, Inc.



Individual CLT organizations find themselves spending a great deal of time digging for answers to simple questions about their program and pulling information together for a report. Having one database to store applicant and program information can be a great investment. Most of the CLT organizations operate with minimal staff who have to keep track of a great deal of information about applicants, homeowners and their overall portfolio.

The ideal time to invest in a data management system may be when your organization has a smaller, more manageable portfolio of units. There is a great deal to consider when choosing a data management solution including how much will the initial investment cost, upgrades, maintenance fees and training. In Florida it may be important to have a cloud based storage system as most organizations would be paralyzed by an extended power outage due to a hurricane or other major storm. Finding out how other organizations in your area manage and track their data is also important as many funders are looking for partnership based initiatives to encourage efficiency and avoid duplication. This way when you are applying for a large multi-year grant from a national funder you'll be able to answer that simple question – how many CLT units are in your area?

The South Florida CLT Network\* is using HomeKeeper; it is a powerful web-based Salesforce.com App created for affordable home ownership programs with long-term affordability restrictions. It stores all your information in one place so you can easily access the data for reporting, closings and a complete picture of your entire portfolio. HomeKeeper can also collect performance data that can be forwarded to the HomeKeeper National Data Hub, which aggregates the data and generates Social Impact Reports. These reports will give your organization insight into how your program relates to others in your area and across the country. HomeKeeper is designed to help increase program transparency, improve operations, and maximize impact. <http://myhomekeeper.org/tour/features/features-in-depth>.

Key Features include:

- Property / Unit Tracking
- Grant and Loan Tracking
- Application and Homebuyer Information Management
- Transaction Details and Workflow Management
- Eligibility Certification Documentation
- Owner Monitoring and Compliance Tracking
- Resale Price Formula Tracking
- Loan and Subsidy Tracking
- Program Management and Evaluation Reporting

\*The South Florida CLT Network is a local consortium of housing organizations in Palm Beach and Broward County that use long term deed restriction (30 years plus), land trusts, shared equity and subsidy preservation as strategies to provide affordable housing options in the community.



The Community Land Trust of Palm Beach County, Inc.

# Community Land Trust Accomplishments: Palm Beach County

Through the commitment of its all volunteer Board of Directors, the dedication of its staff, and support of its members, the CLT of Palm Beach County has been able to accomplish the following:



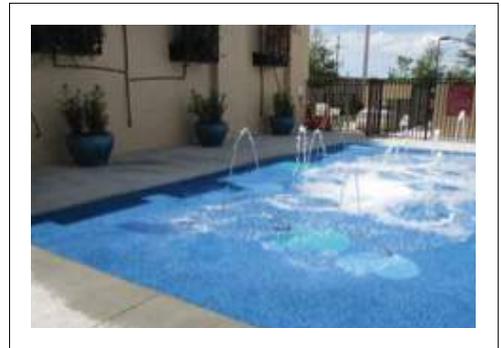
- Davis Landings, a 25 unit affordable multi-family rental community in suburban Lake Worth. The project was financed with \$5.7 million in Federal Neighborhood Stabilization 2 (NSP2) Program Funds passed through by Palm Beach County Department of Economic Sustainability. The development attained a Florida Green Building certification and includes such amenities as a community room, a playground/tot lot, an outdoor grilling area, exercise walking path and onsite property management. 25% of the units are set aside for households with incomes at or below 30% AMI. 55% of the units are set aside for households with incomes at or below 50% AMI and 65% of units are aside for households with incomes at or below 60% AMI.



- The acquisition and rehabilitation of 20 vacant and foreclosed single family homes in the urban redevelopment area of Palm Beach County for resale under the community land trust model of homeownership. The project was financed with \$1.02 million in Federal Neighborhood Stabilization 1 (NSP1) and \$2.4 in Federal Neighborhood Stabilization 2 (NSP2) funds passed through by Palm Beach County Department of Economic Sustainability. All units were rehabbed at a minimum for hurricane hardening and energy efficiency. 10 of the units are set aside for families with incomes at or below 120% of the AMI and 10 of the homes are set aside for families with incomes at or below 50% of the AMI. These units are resold under the community land trust model of homeownership thereby ensuring they remain affordable in perpetuity.



- Lajoya Villages**, a 55 unit multi-family affordable rental development in Lake-Worth Florida. To develop this project, the CLT of PBC partnered with a private partner, Realtex Southeast. The \$11 million dollar project was financed with 4% tax credits and tax exempt bonds, NSP2 funding from the Lake Worth CRA, a HOME loan with Palm Beach County, and grants from the Federal Home Loan Bank of Atlanta, the Community Foundation of Palm Beach and Martin Counties, and the Housing Partnership. Project amenities include a community garden, art studio, splash area and picnic area, history labyrinth, living wall, metal roof and high energy efficiency appliances. Twenty five percent of the units are set aside for households with incomes at or below 50% of the AMI. The remaining units are set aside for households with incomes at or below 60% of the AMI. Ten percent of the units are set aside for veterans. Construction was complete in April 2015 and the project is fully leased.



- The CLT of Palm Beach County is in the process of developing **Davis Landings West**, a 24 unit CLT homeownership community just west of Davis Landings. Project financing includes a \$1,440,000 Federal HOME Loan through Palm Beach County, \$132,551 in impact fee assistance from Palm Beach County, \$500k Predevelopment Loan from Florida Housing Finance Corporation and \$3.4 million in private financing from the Housing Finance Authority of Palm Beach County. Construction is scheduled to begin in November 2015.





# Community Land Trust Accomplishments: Bright Community Trust

*In the words of Bright Community Trust Homeowners:*

“I am a veteran. Most importantly, I needed to feel safe and peaceful. Finally, at the age of 52, I found my home.”

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“Before I purchased, I was a single mom for ten years and struggling. Then I found the man of my dreams, we were engaged with a baby on the way. Purchasing was stress enough and the thought of having to do major repairs to a home that was just purchased made my stomach ache.

I was excited to have found this place and able to focus on my wedding.

Thanks Bright Community Trust!”

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“I can honestly say that someone was looking out for me. I am a hard working middle class worker and a single father. My daughter’s mother and I had recently divorced; I had to find a home for my daughter. I wanted her to have her own room, feel safe and create a stable environment. Owing on my own was worrisome; not having a second income, a second person to rely on if things went wrong. I decided to bite the bullet and start looking. I expected to experience the same as when I purchased my first home; dead ends. But that wasn’t the case, I got lucky.

I purchased the first house my Realtor showed me! It was move-in ready, newly renovated, clean and I was able to afford it. My daughter and I love our home and the responsibility of owning a home is well worth the rewards.”



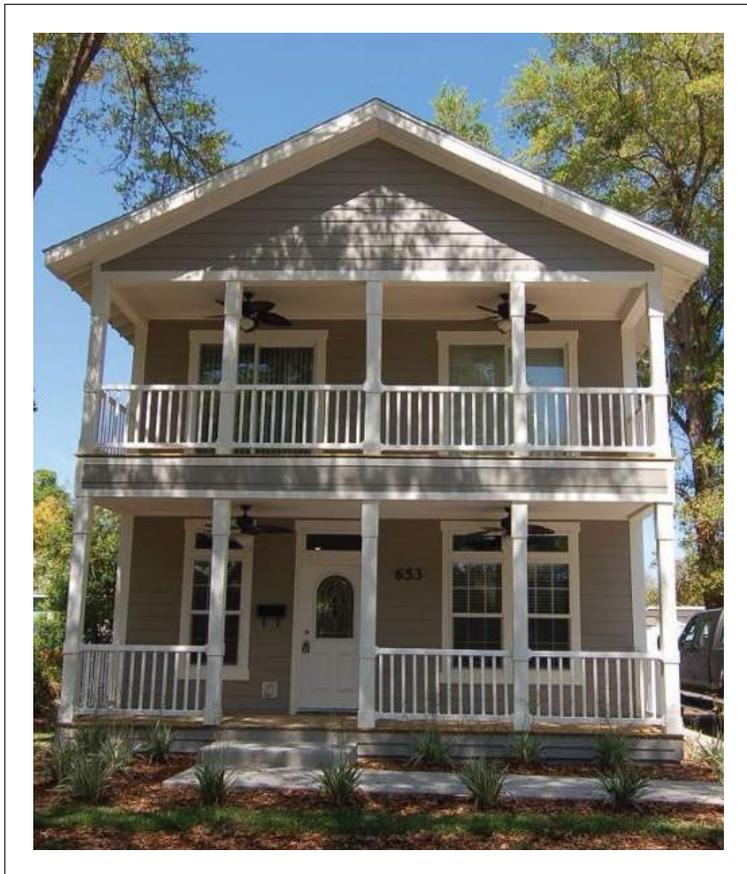
# Community Land Trust Accomplishments: Hannibal Square

Since November 2014, the Hannibal Square Community Land Trust has celebrated:

- 10 amazing years!
- 21 homes provided
- 0 foreclosures
- 1 resale
- Currently finishing 2nd veteran home for a disabled veteran.



These pictures are some of our beautiful properties:





## Community Land Trust Accomplishments: Community Housing Trust of Sarasota County, Inc.



“We never thought that it would be possible to own a home. We spent the weekend building a swing set for our son!”

- CHT homeowner, JL

“I’m very happy with my house, the neighborhood, my neighbors and overall with the process of obtaining my 1st home.”

- CHT Homeowner, BT

“As my disability advances, it will be important to me to own a home. I’m near public transportation, I know the house, and I know the neighbors.”

- CHT Homeowner



# Community Land Trust Accomplishments:

## Habitat for Humanity of Key West & the Lower Florida Keys, Inc.

Key West & the Lower Florida Keys Habitat put all of our homes built in 2010 into our Land Trust. When we recycle a home on our other development, we will move the home into the Land Trust. It is critical for us to preserve in perpetuity all affordable home ownership that we partner to create.





## Community Land Trust Accomplishments: Delray Beach Community Land Trust

Sarah Ferrer was getting frustrated.

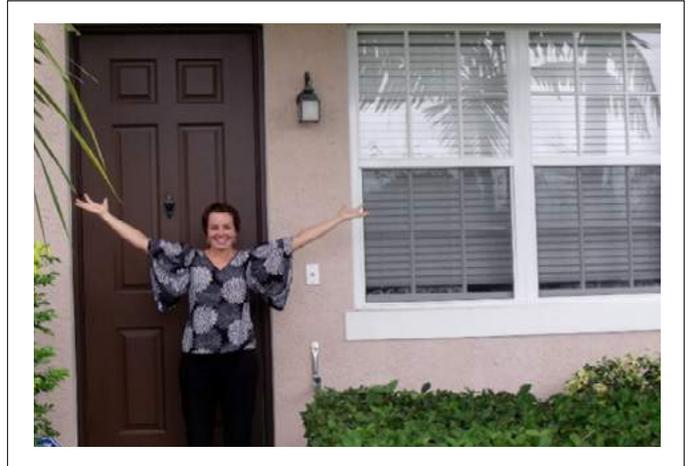
Despite having a good job as the community relations specialist for the Drug Abuse Foundation of Palm Beach County, Sarah and her long-time boyfriend, Balarama Almeida, couldn't find a home they could afford. While they searched, they lived with Sarah's parents in a spare bedroom, a situation that was less than ideal. "We really wanted a place to call our own," she said.

Then Sarah heard about the Community Land Trust and the opportunity to buy a home that was affordable.

Because she owns just the building, not the property below it, Sarah was able to get the home she always wanted with a very reasonable mortgage. "One of the things about the Land Trust is that they make sure you're in a home you can afford," she said.

For Sarah and Balarama, the townhome is more than just a place to live. To them, it symbolizes stability and moving forward into the next chapters of their lives. "Having a home gives you that feeling of progress," Sarah says.

"Now we're able to make life plans because we have stability."



The Dosina family (low income, 4 member household) completed a homebuyer application in 2012, with the dream of owning a new home. But all they could afford was a loan in the amount of \$60,000.00 which was insufficient to purchase a home in the community. With pre-purchase counseling, they took the necessary steps to strengthen their financial position and in 2014 the Dosina's received a pre-qualification from Florida Community Bank in the amount of \$110,000.00. After more than two and a half years on April 14, 2015 they successfully achieved their dream of home ownership through the Delray Beach Community Land Trust.



# Community Land Trust Accomplishments:

## Neighborhood Renaissance Helped Single Mom to Purchase Home

Neighborhood Renaissance helped Janita Finley, a radiology clerk to purchase a newly built Community Land Trust home for her and her daughter Brandy through a Lease - Purchase Program. The program allowed Ms. Finley to rent her home for 3 years while she saved the money she needed for down payment and closing costs. This property is located in the Northwood neighborhood of West Palm Beach and is part of the agency's Community Land Trust (CLT). United Way provided a 2-1 match for each dollar of Ms. Finley's down payment savings and Palm Beach County provided SHIP funds to help construct the homes.

### About Neighborhood Renaissance, Inc.

Founded in 1992, Neighborhood Renaissance is a proven community based organization dedicated to building and supporting strong economies and diverse communities in Palm Beach County (PBC) through the development of quality homes that are within the financial reach of low and moderate-income working families. We have a history of working with residents, government, and businesses to reclaim troubled properties while helping families to become economically self-sufficient. Our efforts have helped over 100 families to become homeowners. We have built or rehabilitated over 140 homes. In the past 4 years we reinvested over \$18.5 million to help build stronger neighborhoods.

Our targeted efforts in Northwood resulted in a nationally recognized Model Block that added 40 owner occupied homes, rehabbed 14 properties and completed comprehensive neighborhood improvements for an investment of over \$8 mil. To keep homes affordable for generations to come, we created a Community Land Trust that helped 15 low-income families to purchase homes. In the past year, we reclaimed 14 distressed properties in the Northwood area for low and moderate-income first-time homebuyers.

To help breathe new life into the Westgate Community Redevelopment Area we built 13 green certified homes on vacant lots for low-income home buyers in partnership with Palm Beach County. We also acquired and renovated 85 distressed homes through a \$15 million Neighborhood Stabilization Program for the county's Urban Redevelopment Area (URA) that was hard hit by foreclosures.

New initiatives include a partnership with the City of Boynton Beach for the Poinciana Model Block, which includes streetscape improvements and 13 new homes that are underway. We are also working with the Lake Worth Community Redevelopment Agency to develop the West Village, 11 affordable work/live flats for artists with ground floor commercial/gallery space. In addition, we are working to develop a 40 unit affordable rental community located in the county's URA.

-Terri Murray, Executive Director – Neighborhood Renaissance





## Florida Community Land Trust Institute

A PROGRAM OF THE  
**Florida Housing Coalition**

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