

**Land Stewardship Program**  
*A Project of the North-Missoula Community Development Corporation*  
**Master Ground Lease**

Grantor: North Missoula Community Development Corporation (NMCDC) Land Stewardship Program

Grantees: **XXXXXXXXXXXX**, leaseholder identified in Notice of Ground Lease, recorded separately in reference to this Master Ground Lease

Real Property Affected:  
Real Property Described in Notice of Ground Lease, recorded separately in reference to this Master Ground Lease

This Master Ground Lease shall be effective only in conjunction with a Notice of Ground Lease recorded separately in reference to this document.

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- Exhibit C DEED TO IMPROVEMENTS ONLY
- Exhibit D PERMITTED MORTGAGES
- Exhibit E FIRST REFUSAL
- Exhibit F RIDER

**NMCDC COMMUNITY LAND TRUST  
MASTER GROUND LEASE**

THIS LEASE (“this Lease” or “the Lease”) entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between North-Missoula Community Development Corporation (“NMCDC” or “Owner”), a Montana non-profit corporation whose address is 1500 Burns Street, Missoula, Montana 59802, and \_\_\_\_\_ as Homeowner (also sometimes referred to as “Lessee”).

**RECITALS**

- A.** The Owner is organized exclusively for charitable purposes, including; the development and preservation of decent, affordable housing and the creation of homeownership opportunities for low and moderate income people who would otherwise be unable to afford homeownership.
- B.** A goal of the Owner is to create and preserve affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes.
- C.** The real property described in this Lease has been acquired and is being leased by Owner in furtherance of this goal.
- D.** The Homeowner shares the purposes of Owner and has agreed to enter into this Lease not only to obtain the benefits of homeownership, but also to further the charitable purposes of Owner.
- E.** Homeowner and Owner recognize the special nature of the terms of this Lease, and each of them, with the independent and informed advice of legal counsel, accepts these terms, including those terms and conditions that affect the marketing and resale price of the property now being purchased by the Homeowner.
- F.** Homeowner and Owner understand that the terms and condition of this Lease further their shared goals over an extended period of time and through a succession of owners.

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

## **DEFINITIONS**

Homeowner and Owner agree on the following definitions of key terms used in this Lease:

**Base Price:** the total price that is paid for the Home by the Homeowner.

**Declarations:** Means the recorded Declarations, and any amendments or restatements thereof, with respect to the project of which the Leased Land and Home are a part.

**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 Owner.

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

**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 C, DEED TO IMPROVEMENTS ONLY, and all permanent improvements added thereafter by Homeowner at Homeowner’s expense.

**Income-Qualified Buyer:** “Income-Qualified Person” shall mean a person or group of persons whose household income does not exceed 80% of the median household income for Missoula 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. Whenever it is necessary to determine whether a person is an Income-Qualified Person, the following documents must be provided to the Owner:

- (I) Copies of the federal income tax returns filed by the person with respect to the immediately preceding two (2) calendar or fiscal years;
- (II) Written verification of the person's employment and salary from all of the person's current employers;
- (III) Copies of the person's paystubs from the last three months immediately preceding the month in which these documents are submitted to the Owner; and



(IV) Any other information that the Owner may reasonably demand, in light of the financial and employment status of the person.

**Leased Land:** the parcel of land, described in Exhibit B, LEGAL DESCRIPTION OF LEASED LAND, that is leased to the Homeowner (Lessee).

**Maximum Resale 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.

**Notice of Ground Lease:** The document that is filed in the public record for each specific transaction. The Notice of Ground Lease references this Master Lease and contains the information filled into blank spaces that pertain to the agreement between the Homeowner and Owner.

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

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

Attached as Exhibit A, HOMEOWNERS'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, in particular Article 10), and a Letter of Acknowledgment from the Homeowner's legal counsel, setting forth their review and understanding of this Lease and related documents for this transaction.

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

2.1 OWNER LEASES THE LAND TO HOMEOWNER: The Owner hereby leases to the Homeowner, and Homeowner hereby accepts, the right and associated responsibilities to possess, occupy and use the

Leased Land (described in the attached Exhibit B LEASED LAND) in accordance with the terms of this Lease. Owner has furnished to Homeowner a copy of the most current title report, if any, obtained by Owner for the Leased Land, and Homeowner accepts exclusive use of the Leased Land in its condition "as is" as of the signing of this Lease.

2.2 MINERAL RIGHTS NOT LEASED TO HOMEOWNER: The Owner does not lease to Homeowner the right to remove from the Leased Land any minerals lying beneath the Leased Land's surface and other extractive resources on the Land, including sand, rock and gravel. Ownership of such minerals remains with Owner, but the Owner 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 75 YEARS: The term of this Lease shall remain in effect for 75 years which is the maximum term permitted by the Montana Code Annotated, Section 70-26-110, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 21\_\_\_\_, unless ended sooner or renewed as provided below.

3.2 HOMEOWNER MAY RENEW LEASE FOR ANOTHER 75 YEARS: Homeowner may renew this Lease for one additional period of 75 years. The Owner 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 75-year period, the Owner shall give Homeowner a written notice that states the date of the expiration of the first 75-year period and the conditions for renewal as set forth in the following paragraph. The Expiration Notice shall also describe any changes that the Owner 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 notice, the Homeowner shall give the Owner written notice irrevocably exercising the option to extend; (b) this Lease shall be in effect on the last day of the current 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 75-year term.

When Homeowner has exercised the option to renew, Homeowner and Owner 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 13.12 below. Owner shall record this memorandum in accordance with the requirements of law promptly after the beginning of the renewal period.

**3.3 WHAT HAPPENS IF OWNER DECIDES TO SELL THE LEASED LAND:** If ownership of the Leased Land is ever transferred by Owner (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 Owner agrees to transfer the Leased Land to any person or institution other than a nonprofit 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 E, FIRST REFUSAL. Any sale or other transfer contrary to this Section 3.3 shall be null and void. Nothing in this section is intended to restrict Owner's ability to grant mortgages or indentures on the land.

1       **3.4 IF HOME IS NOT YET CONSTRUCTED:** If this Lease is executed before or during the course of construction, the Lease shall not be deemed effective until and unless construction is complete, a certificate of occupancy has been issued and the Title to the Home has been transferred to the Homeowner.

**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 incidental to residential use that are permitted by local zoning law, exhibit as otherwise prohibited or restricted by any applicable Declarations.

**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 nuisance to others. Homeowner shall maintain all parts of

the Home and Leased Land in a 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 9 MONTHS EACH YEAR: Homeowner shall occupy the Home for at least 9 months of each year of this Lease, unless otherwise agreed by Owner. Occupancy by a Homeowner's child, spouse or other persons approved by Owner shall be considered occupancy by the Homeowner . Neither compliance with the occupancy requirement nor Owner'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 OWNER'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 Owner. Homeowner agrees that Owner 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 tenant shall not be more than the amount of the Ground Lease Fee charged the Homeowner by Owner, plus an amount approved by Owner to cover Homeowner's costs in owning the Home, including but not limited to the cost of taxes, insurance and mortgage interest.

(c) The Tenant occupying the Home under an approved sublease must be approved by Owner as income-eligible. Such approval is only to ensure that the Home continues to be occupied by an income-eligible household and is in no way a guarantee of credit worthiness or the tenant's ability to pay rent.

(d) The Homeowner is allowed to sublease portions of the Home if the Homeowner uses the Home as their primary residence.

4.6 OWNER HAS A RIGHT TO INSPECT THE LEASED LAND: Owner 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 3 regular inspections may be carried out in a single year, except in the case of an emergency or where Owner has reason to believe Homeowner is in violation of this Lease. In an emergency, Owner 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 Owner has received an Intent-to-Sell Notice (as described in Section 10.4 below), then Owner has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to the sale. Owner must notify the Homeowner at least 24 hours before carrying out such inspection. Owner has no obligation to protect Homeowner's interests in the land or residence by arranging for or making repairs, even when the Homeowner is absent.

4.7 HOMEOWNER HAS A RIGHT TO QUIET ENJOYMENT: Homeowner has the right to quiet enjoyment of the Leased Land. Owner 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, and the applicable Declarations.

## **ARTICLE 5: Fees**

5.1 AMOUNT OF FEES: The Homeowner shall pay a monthly ground lease fee in an amount equal to the sum of: **thirty-dollars (\$30.00)** in return for the continuing right to possess, occupy and use the Leased Land.

5.2 WHEN FEES ARE TO BE PAID: The Fee shall be payable to the Owner, at the Owner's principal address, on the fifteenth day of each month (the "Due Date") for as long as this Lease remains in effect, unless the Fee is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Mortgagee. A two dollar (\$2) late fee will be payable to the Owner for every

day after such fifteenth day the Lease Fee is delinquent until the Lease Fee is paid in full. If any monthly Lease Fee is not paid within thirty days after it is due, then the Homeowner will pay interest on the Lease Fee from the date it was due to the date it is paid at the rate of ten percent (10%) per year. If the Lease commences on a day other than the first of the month, a pro-rata portion of the Lease Fee shall be paid for the balance of the month at the time the Lease is executed.

5.3 ADJUSTMENT OF LEASE FEE: (a) In order to keep the Lease Fee reasonably current with anticipated inflation, the amount specified in Section 5.1 will be increased or decreased on the fifth anniversary of the date of this Lease, and on January 1st every 5 years thereafter, by five dollars (\$5.00).

5.4 OWNER MAY REDUCE OR SUSPEND FEES TO IMPROVE AFFORDABILITY: Owner in its sole discretion may reduce or suspend the Fees due 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 Owner before becoming effective.

5.5 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 ground lease Fee described in section 5.1 shall be increased to an amount calculated by Owner to equal the fair rental value of the Leased Land for use not restricted by the suspended provisions. Such increase shall become effective upon Owner's written notice to Homeowner. Thereafter, for so long as these restrictions are not reinstated in the Lease, Owner may further increase the amount of such Fee, provided that the amount of the 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 year.

5.6 OWNER CAN COLLECT UNPAID FEES WHEN HOME IS SOLD: In the event that any amount of payable Fee remains unpaid when the Home is sold, the outstanding amount of payable Fee, including any interest as provided above, shall be paid to Owner out of any proceeds from the sale that would otherwise be due to Homeowner. Owner shall have, and the Homeowner hereby consents to, a lien upon the Home for any unpaid Fee. Such lien shall be prior to all other liens and encumbrances on the Home except (a) Permitted Mortgages as defined in section 8.1 below, and (b) liens for real

property taxes and other governmental assessments or charges against the Home. Such liens may be enforced and foreclosed as provided in Montana Code Annotated §§ 70-23-607 and -608, and Title 71, chapter 3, part 5, Montana Code Annotated.

#### **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 or utility assessments that relate to the Home and the Leased Land (including any taxes relating to Owner's interest in the Leased Land). Homeowner will be responsible for contracting and paying for all utility services furnished to the Land and Home during the term of this lease, including but not limited to electric, gas, water, sewer, garbage and telephone service. Owner will not be responsible for providing any utilities or other services to the Land or Home.

**6.2 OWNER WILL PASS ON ANY TAX BILLS IT RECEIVES TO HOMEOWNER:** In the event that the local taxing authority bills Owner for any portion of the taxes on the Home or Leased Land, Owner shall notify Homeowner of any taxes due 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, Owner shall join in contesting such taxes. All costs of such proceedings shall be paid by the Homeowner.

**6.4 IF HOMEOWNER FAILS TO PAY TAXES, OWNER MAY INCREASE FEES:** In the event that Homeowner fails to pay the taxes or other charges described in Section 6.1 above, Owner may increase the Ground Lease Fee to offset the amount of taxes and other charges owed by Homeowner. Upon collecting any such amount, Owner 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.

6.6 PERSONAL PROPERTY TAXES: The Homeowner will be responsible for paying all personal property taxes payable with respect to the Homeowner's personal property in Missoula County on or before the date that those taxes are due, in order to prevent those personal property taxes from becoming a lien on the Home, the Homeowner's rights under this Lease, or the Land.

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

7.1 HOMEOWNER OWNS THE HOME AND ALL OTHER IMPROVEMENTS ON THE LEASED LAND: All structures, including the house, fixtures, permanently installed equipment 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 the 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 Owner's option to purchase the Home. In addition, Homeowner shall not remove any part of the Home from the Leased Land without Owner's prior written consent (Exhibit G, Agreement not to Remove Improvements).

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. In the event the Home has yet to be constructed, the Homeowner shall sign the Lease and simultaneously enter into a Construction Contract to build a Home to be located on the Leased Land.

7.3 CONSTRUCTION AND ALTERATION 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 by the Homeowner; (b) all construction shall be performed in a professional manner and shall comply with all applicable laws and regulations, and the applicable Declarations; (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 Owner.



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

(a) a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;

(b) a list of the necessary materials, with quantities needed;

(c) a statement of who will do the work.

If Owner finds it needs additional information, it shall request such information from Homeowner within two weeks of receipt of Homeowner's request. Owner 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 Owner 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 Owner's title to the Leased Land. Homeowner shall not permit any statutory or similar lien to be filed against the Home, which remains more than 30 days after it has been filed. Homeowner shall take action to discharge any lien attaching to the Leased Land or the Home created by or through the actions or omissions of Homeowner, 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 Owner of such failure. Owner 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 Owner to discharge such liens shall be treated as an additional Fee payable by Homeowner upon demand.

**7.5 HOMEOWNER IS RESPONSIBLE FOR SERVICES, MAINTENANCE AND REPAIRS:**

Homeowner hereby assumes responsibility for furnishing all services, utilities or facilities on the Leased Land, including but not limited to electric, gas, water, sewer, garbage and telephone services.

Owner shall not be required to furnish any services, utilities 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. Homeowner is responsible for disposal of waste in a safe and sanitary manner.

7.6 WHEN LEASE ENDS, OWNERSHIP REVERTS TO OWNER, WHICH SHALL REIMBURSE HOMEOWNER: Upon the expiration or termination of this Lease, ownership of the Home shall revert to Owner. Upon thus assuming title to the Home, the Owner shall promptly pay an amount up to the Maximum Purchase Price to the Homeowner and Permitted Mortgagee(s), as follows:

FIRST, Owner shall pay any Permitted Mortgagee(s) the full amount owed to such mortgagee(s) by Homeowner in so far as that amount does not exceed the Maximum Purchase Price. In no event shall the total amount that Owner is required to pay Permitted Mortgagees be greater than the Maximum Purchase Price;

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

## **ARTICLE 8: Financing**

8.1 HOMEOWNER CANNOT MORTGAGE THE HOME WITHOUT OWNER'S PERMISSION:

The Homeowner may mortgage the Home only with the written permission of Owner. Any mortgage or deed of trust permitted in writing by Owner is defined as a Permitted Mortgage, and the holder of such a mortgage or deed of trust is defined as a Permitted Mortgagee. The Mortgage must be a first lien on all or any of the residence and the Homeowner's leasehold estate.

8.2 BY SIGNING LEASE, OWNER GIVES PERMISSION FOR ORIGINAL MORTGAGE. By signing this Lease, Owner 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 Owner, 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 Owner 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. Owner may also require Homeowner to submit additional information. Owner will not permit such a mortgage loan if the loan increases Homeowner's total mortgage debt to an amount that is either greater than 80% of the then current Maximum Sales Price, calculated in accordance with Article 10 below, or 80% of the appraised value, whichever is less, or if the terms of the transaction otherwise threaten the interests of either the Homeowner or Owner. At the time the new Permitted Mortgage is secured, and as part of Owner's approval process, this Lease may be amended to include the following information, which is here left intentionally blank:

- (a) the Maximum Sales Price is \$\_\_\_\_\_.
- (b) less any remaining existing mortgages (\$ \_\_\_\_\_),
- (c) for a new mortgage not to exceed \$\_\_\_\_\_.

8.4 OWNER IS REQUIRED TO PERMIT A “STANDARD PERMITTED MORTGAGE.” Owner shall be required to permit any mortgage for which the mortgagee has signed a “Standard Permitted Mortgage Agreement” as set forth in Exhibit D: Permitted Mortgages, Part C, and for which the loan secured thereby does not increase Homeowner's total mortgage debt to an amount greater than 80% of the then current Maximum Resale Price, calculated in accordance with Article 10.8 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 D 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 Owner 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 D 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 OWNER. Homeowner and Owner recognize that it would be contrary to the purposes of this agreement if Homeowner could receive more than the Maximum Sale Price as the result of the foreclosure of a mortgage. Therefore, Homeowner hereby irrevocably assigns to Owner 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 Maximum Sale Price, calculated as described in Section 10.8 below. Homeowner authorizes and instructs the Permitted Mortgagee, or any party conducting any sale, to pay such excess amount directly to Owner. If, for any reason, such excess amount is paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to Owner.

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### 3 **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 OWNER AGAINST ALL CLAIMS OF LIABILITY.**

Homeowner shall defend, indemnify and hold Owner 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 Owner for injury or damage on or about the Leased Land.

However, Owner shall remain liable for injury or damage due to the grossly negligent or intentional acts or omissions of Owner or Owner's agents or employees.

**9.3 HOMEOWNER MUST REIMBURSE OWNER.** In the event Owner shall be required to pay any sum that is the Homeowner's responsibility or liability, the Homeowner shall reimburse Owner 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, maintain continuously in effect liability insurance covering the Land and its appurtenances in the amount of not less than Three Hundred Thousand Dollars (\$300,000.00) for injury to or death of any one person; and Three Hundred Thousand Dollars (\$300,000.00) for injury to or death of any number of persons in one occurrence; and Three Hundred Thousand Dollars (\$300,000.00) for property damage. The dollar amounts of this coverage shall be adjusted upon the Owner's demand given not more often than annually, upon 30 day notice to the Homeowner, to the amount of coverage typically maintained by responsible landowners in the area at the time of the adjustment. Such insurance shall specifically insure Homeowner against all liability assumed under this Lease, as well as all liability imposed by law, and shall also insure Owner as an additional insured so as to create the same liability on the part of insurer as though separate policies had been written for Owner and Homeowner.

Homeowner shall provide Owner with copies of all policies and renewals of policies. All policies shall also contain endorsements providing that they shall not be canceled, reduced in amount or coverage or otherwise modified by the insurance carrier involved without at least thirty (30) days prior written notice to Owner. Owner shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance.

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.

9.5 WHAT HAPPENS IF HOME IS DAMAGED OR DESTROYED: Except as provided below, or in the Declarations, 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 80% of necessary repairs and that Homeowner cannot otherwise afford to cover the balance of the cost of repairs, then Homeowner shall notify Owner of this problem, and Owner may then in its sole discretion 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 Owner.

If Homeowner and Owner cannot agree on a way of restoring the Home in the absence of adequate insurance proceeds, then Homeowner may give Owner 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 Owner for any amounts owed under this Lease;

FIFTH, to the Homeowner, up to an amount equal to the Maximum Resale 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 Owner.

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 Owner.

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 GROUND 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, Owner may reassess 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 RESERVED

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

10.1 INTENT OF THIS ARTICLE IS TO PRESERVE AFFORDABILITY: Homeowner purchased the Home at a below market price and the Homeowner and Owner 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 OWNER OR INCOME-QUALIFIED PERSONS: Homeowner may transfer the Home only to Owner or an Income-Qualified Person as

defined above or otherwise only as explicitly permitted by the provisions of this Article 10. All such transfers shall be subject to Owner's review and purchase option rights set forth in 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.

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 Owner within 90 days of the date of death. Upon receiving such notice Owner 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 the Homeowner listed below as (a), (b) and (c) provided that a copy of the ground lease and the signed copy of the Letter of Attorney's Acknowledgment (as described in Article 1 above) are submitted to Owner to be attached to the Lease when it is transferred to such heirs.

- (a) the spouse of the Homeowner; or
- (b) the child or children of the Homeowner.
- (c) any other heirs, legatees or devisees of Homeowner.

Upon inheritance of the home any heirs, legatees or devisees of the Homeowner shall occupy the Home in accordance with Article 4. If residency requirements cannot be met, any heir, legatees or devisees shall not be entitled to retain possession of the Home and 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 Owner, 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 OWNER HAS AN OPTION TO PURCHASE THE HOME. Upon receipt of an Intent-to-Sell Notice from Homeowner, Owner shall have the option to purchase the Home at a price up to the Maximum Resale 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 Owner elects to purchase the Home, the Owner shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the Notice of Exercise of Option) within 60 days of the receipt of the Intent-to-Sell Notice, or the Option shall expire. Having given such notice, Owner may either proceed to purchase the Home directly or may assign the Purchase Option to an Income-Qualified Person.

The purchase (by Owner or Owner's assignee) must be completed within 90 days of Owner'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 Owner and Homeowner.

Homeowner may recommend to Owner a prospective buyer who is an Income-Qualified Person and otherwise eligible and is prepared to submit income verification documents required in Section 10.2 of this lease, and the Homeowner's Letters of Agreement and Attorney's Acknowledgment indicating informed acceptance of the terms of this Lease. Owner shall make reasonable efforts to arrange for the assignment of the Purchase Option to such person unless Owner determines that its charitable mission is better served by retaining the Home for another purpose or transferring the Home to another party. A copy of the buy-sell agreement entered into between the Homeowner and the prospective buyer must be provided to the Owner. No sale or other disposition shall be effective unless and until Owner, within thirty (30) days of receipt of all of the documents listed in the paragraph above, approves the sale, confirming 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.

**10.6 IF PURCHASE OPTION EXPIRES, HOMEOWNER MAY SELL ON CERTAIN TERMS:** If the Purchase Option has expired or if Owner has failed to complete the purchase within the 90-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 Maximum Resale Price. If Homeowner has made diligent verifiable

efforts to sell the Home for at least 6 consecutive months after the expiration of Owner's Purchase Option (or 6 months after the expiration of such 60-day purchase option period) and the Home is still not under contract, Homeowner may then sell the Home, for a price no greater than the then applicable Maximum Resale Price, to any party regardless of whether that party is an Income-Qualified Person.

**10.7 AFTER ONE YEAR OWNER SHALL HAVE POWER OF ATTORNEY TO CONDUCT SALE:**

If Owner does not exercise its option and complete the purchase of the Home as described above, and if Homeowner(a) is not then residing in the Home and (b) continues to hold the Home 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 Owner its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Lease, sell the Home, and pay to the Homeowner the proceeds of sale, after payment of: Owner's costs of sale, any permitted mortgages and liens, and any other sums owed Owner by Homeowner.

**10.8 MAXIMUM RESALE PRICE EQUALS THE LESSER OF THE OPTIONS STATED BELOW:**

In no event may the Home be sold for a price that exceeds the Maximum Resale Price, and the Maximum Resale Price is not a guarantee, but is a maximum price. The Maximum Resale Price shall be **the lesser of the below two options**, A or B, plus added value as defined in the Added Value Policy.

A) Formula Resale price using the following formula:

1. the amount of the Homeowner's Base Price \_\_\_\_\_, plus
2. simple interest at a rate of 1.5% annually.

B) A Consumer Price Index Resale Price as calculated using the Consumer Price Index inflationary change, calculated from the base price in the month and year of Homeowner's purchase of the home to the month and year of the Homeowner's listing of the home for sale. The increase standard calculation shall be derived from the Bureau of Labor Statistics online calculator or any

successor: <https://data.bls.gov/cgi-bin/cpicalc.pl>

**Added Value Policy:**

- (a) the value of Owner-approved living space (bedroom, bathroom, finished basement, finished

attic space, porch or deck) or the addition of a garage (either attached or detached) to the Home in accordance with Section 7.3 calculated as:

- (1) the lower of the above resale prices as calculated by either A or B,
- (2) divided by the original square footage,
- (3) multiplied by 50%
- (4) multiplied by the approved additional living space square footage

Other construction on the Home, such as interior remodeling or replacement of a roof, a carpet, or other building element, shall be considered maintenance rather than capital improvement.

In no event shall the addition of Added Value result in a Maximum Resale Price that is unaffordable to Income-Qualified Purchasers.

10.9 RESERVED

10.10 QUALIFIED PURCHASER SHALL RECEIVE NEW LEASE: Owner 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 Homeowner at that time for land not previously leased by Owner.

10.11 RESERVED

10.12 LEASE TRANSFER FEE: At the closing of Homeowner's sale of the Residence, Homeowner shall pay Owner a Lease Transfer Fee to compensate Owner for the costs associated with administering this Lease and preparing a new lease for the purchaser of the Residence. The Lease Transfer Fee shall be one percent (1%) of the sales price of the Residence and shall be paid by Homeowner at the closing. Homeowner authorizes the closing agent to withhold the Lease Transfer Fee and pay it to Owner from Homeowner's sale proceeds.

## **ARTICLE 11: DEFAULT**

11.1 WHAT HAPPENS IF HOMEOWNER FAILS TO MAKE PAYMENTS TO OWNER THAT ARE REQUIRED BY THE LEASE: It shall be an event of default if Homeowner fails to pay the Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a

Permitted Mortgagee within 30 days after notice of such failure is given by Owner to Homeowner and Permitted Mortgagee.

11.2 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 60 days after notice of such failure is given by Owner to Homeowner and Permitted Mortgagee. However, if Homeowner or Permitted Mortgagee, in Owner's sole judgment, has made a good faith effort 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, Owner may extend the cure period for as much additional time as may be reasonably required to complete the cure.

11.3 MONETARY REMEDIES FOR NONMONETARY LEASE VIOLATIONS:

Owner may issue a Finding of Violation, if Homeowner has violated a rule, term or condition of this Lease, and may impose a monetary penalty up to \$1,000 per material violation. Owner may add the amount of the monetary penalty to the Ground Lease Fee to be paid either in a single monthly payment, or amortized over no more than one year, unless Owner's board of trustees authorizes a longer period of time.

11.4 DEFAULT AS A RESULT OF JUDICIAL PROCESS: It shall be an event of default if: (a) the estate hereby created is taken on execution or by other process of law, or (b) Homeowner is judicially declared bankrupt or insolvent according to law, or (c) any assignment is made of the Home for the benefit of creditors, or (d) 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 (e) a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or (f) Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted that provides a plan for a debtor to settle, satisfy or extend the time for payment of debts.

11.5 A DEFAULT (UNCURED VIOLATION) GIVES OWNER THE RIGHT TO TERMINATE THE LEASE OR EXERCISE ITS PURCHASE OPTION:

(a) **TERMINATION:** In an event of default described above, in addition to all other rights and remedies available to Owner at law or in equity, Owner may terminate this lease and initiate summary proceedings under applicable law against Homeowner, and Owner 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, Owner 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 Owner pursuant to an event of default, then, as provided in Section 7.6 above, upon thus assuming title to the Home, Owner shall pay to Homeowner and any Permitted Mortgagee an amount up to the Maximum Resale Price calculated in accordance with Section 10.8 above, as of the time of reversion of ownership, less the total amount of any unpaid Ground Lease Fee and any other amounts owed to Owner under the terms of this Lease and all reasonable costs (including reasonable attorneys' fees) incurred by Owner in pursuit of its remedies under this Lease.

If Owner elects to terminate the Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above and the attached Exhibit D 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 addition to all other rights and remedies available to Owner at law or in equity, in an event of default described above, Homeowner hereby grants to Owner (or its assignee) the option to purchase the Home for an amount up to the Maximum Resale Price as such price is defined in Article 10 above. Within 30 days after the expiration of any applicable cure period as established in Sections 11.1, 11.2 or 11.3 above or within 30 days after any of the events constituting an Event of Default under Section 11.4 above, Owner shall notify the Homeowner and the Permitted Mortgagee(s) of its decision to exercise its option to purchase under this Section 11.5 (b). Not later than 90 days after Owner gives notice to the Homeowner of Owner's intent to exercise its option under this Section 11.5 (a), Owner or its assignee shall purchase the Home for an amount up to the Maximum

Resale Price.

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

#### **ARTICLE 12: Mediation and Arbitration**

12.1 MEDIATION AND ARBITRATION ARE PERMITTED: 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.

12.2 HOMEOWNER AND OWNER SHALL SHARE IN THE COST OF ANY MEDIATION OR ARBITRATION: Homeowner and Owner 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 13: GENERAL PROVISIONS**

13.1 RESERVED

13.2 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 OWNER: North Missoula Community Development Corporation, 1500 Burns Street, Missoula, MT 59802.

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

Address: \_\_\_\_\_

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.

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

13.4 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 Owner 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 Owner'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 that 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 20 years after the death of the last survivor of the following persons: \_\_\_\_\_ (here intentionally left blank, and in the Memorandum of Lease would include an identifiable group, e.g. children living as of the date of this Lease or any of the directors or employees of a specified corporation.)

13.5 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, Owner 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 E. FIRST REFUSAL. Any sale or transfer contrary to this section, when applicable, shall be null and void.

13.6 WAIVER: The waiver by Owner at any time of any requirement or restriction in this Lease, or the failure of Owner 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. Owner may

grant waivers in the terms of this Lease, but such waivers must be in writing and signed by Owner before being effective.

The subsequent acceptance of Fee payments by Owner 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 Owner's knowledge of such preceding breach at the time of acceptance of such Ground Lease Fee payment.

13.7 OWNER'S RIGHT TO PROSECUTE OR DEFEND: Owner 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 Owner, Homeowner shall give Owner all reasonable aid in any such action or proceeding.

13.8 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.

13.9 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.

13.10 PARTIES BOUND: This Lease sets forth the entire agreement between Owner 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 Owner and Homeowner or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

13.11 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of the State of Montana, Missoula County and the City of Missoula. 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 Owner or Homeowner.

13.12 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 Owner'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.

13.13 COMPUTATION OF TIME: Whenever the last day for the exercise of any privilege or the discharge of any duty under this agreement shall fall upon a Saturday, a Sunday, or any public or legal holiday, whether state or federal, the party having the privilege or duty shall have until 5:00 p.m. on the next regular business day to exercise the privilege or discharge the duty.

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

Owner:

NMCDC Land Stewardship Program:

\_\_\_\_\_  
(NMCDC's duly authorized agent)

Lessee/Homeowner: **XXXXXXXXXXXX**

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

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

STATE OF MONTANA )

COUNTY OF MISSOULA     )     ss.  
  )

On this day personally appeared before me, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that, as Executive Director of NMCDC, he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(print name) \_\_\_\_\_  
Notary Public in and for the State of Montana

My

Appointment Expires \_\_\_\_\_

**Exhibit A**

**1.1.1 HOMEOWNER’S LETTER OF AGREEMENT AND**

**1.1.2 ATTORNEY’S LETTER OF ACKNOWLEDGMENT**

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**Homeowner’s Letter of Agreement**

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

This letter is given to North Missoula Community Development Corporation (NMCDC) to become an exhibit to a Lease between NMCDC (Owner) and me. I will be leasing a parcel of land from NMCDC and will be buying the home that sits on that parcel of land. I will therefore become what is described in the Lease as “the Lessee or 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 NMCDC Land Stewardship Program homeowner, now and in the future.

In particular I understand and agree with the following points.

One of the goals of NMCDC is to keep NMCDC homes affordable for low to medium income households from one NMCDC homeowner to the next. I support this goal as a NMCDC homeowner.

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 NMCDC 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 NMCDC to promote resident ownership of NMCDC 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 spouse, child or children or another heir, legatee, or devisee after my death, and that they can own the home for as long as they want to live in it as long as they qualify in accordance with Article 4, and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.

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

Sincerely

---

**Letter of Attorney’s Acknowledgment**

Date \_\_\_\_\_

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 the North Missoula Community Development Corporation. 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 Ground Lease conveying the "Leased Land" to the Client;
- c) other written materials provided by NMCDC.

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 their own judgment and upon their investigation of the facts. The advice and information provided by me was an integral element of such investigation.

Name:

Title:

Firm/Address:

**Exhibit B**  
**LEGAL DESCRIPTION OF LEASED LAND**

**Exhibit C**  
**DEED TO IMPROVEMENTS ONLY**

**Exhibit D**  
**PERMITTED MORTGAGES**

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

**A. OBLIGATIONS OF PERMITTED MORTGAGEE.** Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted or modified by a rider to this Lease signed by the Homeowner and Owner 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 Owner. Upon receiving a copy of the notice of default and within that period of time in which the Homeowner a right to cure such default (the “cure period”), Owner 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 Owner of its intention to do so, and Owner 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 NMCDC written notice of such acquisition and NMCDC 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, NMCDC must give written notice to the Permitted Mortgagee of NMCDC’s intent to purchase the Home within thirty (30) days following NMCDC’s receipt of the Permitted Mortgagee’s notice. NMCDC must then complete the purchase of the Home within sixty (60) days of having given written notice of its intent to purchase. If NMCDC 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 NMCDC’s interest in the Leased Land, or as assigning any form of liability to NMCDC 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 NMCDC or any subsequent Mortgagee of NMCDC’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 NMCDC or NMCDC'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 NMCDC's consent to such Permitted Mortgage shall be without any liability on the part of NMCDC 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. NMCDC 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 Owner, 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 Owner 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, Owner 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 Owner'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 Owner 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 Owner, Homeowner and the Permitted Mortgagee.

**5.** Owner 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 Owner sends a notice of default under the Lease to Homeowner, Owner 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 Owner by a written notice to Owner 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.

**Exhibit E**  
**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.

**Exhibit F**  
**RIDER**

