

Community Land Trust Ground Lease Rider

(For Use with ground leases based on the Institute for Community Economics Model Ground Lease Only)

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (the "Rider") is made this _____ day of _____, _____, and is incorporated into, and shall be deemed to amend and supplement the community land trust ground lease dated _____ by and between _____ as lessor (the "Lessor") and _____, as lessee (the "Lessee") ("the CLT Ground Lease"). The CLT Ground Lease covers the leased premises located at _____ (the "Leased Premises"), as further described therein. The CLT Ground Lease, as amended by this Rider, shall hereafter be referred to as the "Lease," unless otherwise indicated.

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to secure Fannie Mae financing in the form of a mortgage or deed of trust dated _____, _____, by Lessee to _____ (the "Specified Mortgage"). 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, or other lien) on the fee estate **if** the Government Entity has entered into an agreement (which agreement has been approved in writing by the Specified Mortgagee) that provides, among other conditions, in the event the Government Entity (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 and the Lessee agree to recognize one

another under all the terms of the Lease and this Rider. 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. 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 fee estate 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. No Termination of CLT Ground Lease.** Upon the occurrence of an event of default under the CLT Ground Lease, as long as the Specified Mortgagee cures monetary defaults under the CLT Ground Lease and institutes and diligently pursues foreclosure of the leasehold estate created by the CLT Ground Lease, or acquires title to the leasehold estate through foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, Lessor agrees not to terminate the CLT Ground Lease, initiate summary proceedings against the Lessee, or repossess the Leased Premises. After the Specified Mortgagee's acquisition of title to the leasehold estate through foreclosure or assignment in lieu of foreclosure, the Lessor agrees that the Specified Mortgagee may, by written notice to the Lessor, automatically create a new Lease 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 CLT Ground 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 only be obliged to give formal legal notice of the Event of Default to the Lessor as required by the CLT Ground Lease.
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 the leasehold estate from the Specified Mortgagee 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 the leasehold estate.
The Lessor shall complete the purchase of 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 the leasehold estate 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 the property from the date of the Lessor Option Notice until the expiration of such 60-day period. If the Lessor does not purchase 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 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 through foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, 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 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 property 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 and the Improvements is not diminished. The Lessor, as owner of the Leased Premises only, shall join in all easements, permits and applications necessary for such development of the Leased Premises and the Improvements 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 agree to continue as a tenant to the 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)