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**AMENDED AND RESTATED
GROUND LEASE**

Title

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AMENDED AND RESTATED GROUND LEASE

between

MADISON AREA CLT CORPORATION and its successors and assigns ("Lessor")

and

MACLT TROY GARDENS RESIDENTIAL PARCEL, LLC and its successors and assigns
("Lessee")

of the "Leased Premises" legally described as:

Lot Two (2) of Certified Survey Map No. 11685 recorded in the Dane County, Wisconsin
Register of Deeds Office in Volume 71 of Certified Survey Maps, Page 238, as Document No.
4165022 in the City of Madison, Dane County, Wisconsin

PREFACE

This Ground Lease is adapted from the model ground lease written by the Institute for Community Economics, 57 School Street, Springfield, Massachusetts and included in its *Community Land Trust Legal Manual* published in 2002. See www.iceclt.org. The Institute for Community Economics provides technical assistance for community land trusts throughout the United States, one of which is Madison Area CLT Corporation. Madison Area CLT Corporation is the original Lessor under the terms of this Ground Lease. This Ground Lease was also drafted with reference to the Federal National Mortgage Association Announcement 06-03, dated March 22, 2006, which amends its Selling and Servicing Guides and is entitled *Properties Subject to Resale Restrictions or Located on Land Owned by Community Land Trusts*. These two resources will provide context and background useful to a reader of this Ground Lease.

TABLE OF CONTENTS

ARTICLE 1 : ORIGINAL LEASE.....	3
ARTICLE 2 : DEMISE OF LEASED PREMISES	3
2.1 PREMISES	3
2.2 RESERVATION OF MINERAL RIGHTS	3
ARTICLE 3 : DURATION OF LEASE	4
3.1 PRINCIPAL TERM.....	4
3.2 LESSEE’S OPTION TO EXTEND.....	4
3.3 CHANGE OF LESSOR; LESSEE’S RIGHT TO PURCHASE	5
ARTICLE 4 : USE OF LEASED PREMISES	6
4.1 PRIMARILY RESIDENTIAL USE ONLY	6
4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW	6
4.3 RESPONSIBLE FOR OTHERS.....	6
4.4 OCCUPANCY	7
4.5 INSPECTION	7
4.6 LESSEE’S RIGHT TO PEACEFUL ENJOYMENT.....	7
4.7 CONDOMINIUM DEVELOPMENT	7
ARTICLE 5 : GROUND LEASE FEE.....	8
5.1 GROUND LEASE FEE.....	8
5.2 PAYMENT OF GROUND LEASE FEE	9
5.3 CALCULATION OF GROUND LEASE FEE	9
5.4 REDUCTION, DELAY OR WAIVER OF GROUND LEASE FEE	9
5.5 ADJUSTMENT OF GROUND LEASE FEE.....	10
ARTICLE 6 : TAXES AND ASSESSMENTS	11
6.1 TAXES AND ASSESSMENTS	11
6.2 TAXES ON LEASED PREMISES	12
6.3 LESSEE’S RIGHT TO CONTEST	12
6.4 PAYMENTS IN EVENT OF DELINQUENCY	12
6.5 PROOF OF COMPLIANCE	13
ARTICLE 7 : IMPROVEMENTS	13
7.1 OWNERSHIP	13
7.2 CONSTRUCTION AND ALTERATION.....	13
7.3 PROHIBITION OF LIENS.....	14
7.4 MAINTENANCE AND SERVICES.....	14
7.5 DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM	15
ARTICLE 8 : FINANCING.....	15
8.1 PERMITTED MORTGAGE	15
8.2 RIGHTS OF PERMITTED MORTGAGEE	16

8.3	AMENDMENTS SUBJECT TO APPROVAL BY PERMITTED MORTGAGEE	16
ARTICLE 9 : LIABILITY, INSURANCE, DAMAGE AND DESTRUCTION, EMINENT DOMAIN		
	EMINENT DOMAIN	17
9.1	LESSEE'S LIABILITY	17
9.2	INDEMNIFICATION OF LESSOR.....	17
9.3	PAYMENT BY LESSOR.....	18
9.4	INSURANCE.....	18
9.5	DAMAGE OR DESTRUCTION.....	19
9.6	EMINENT DOMAIN AND PUBLIC DEDICATION.....	20
9.7	REASSESSMENT OF RENTAL VALUE	22
9.8	RELOCATION OF LESSEE.....	22
ARTICLE 10 : ASSIGNMENT AND SUBLEASE.....		
10.1	BY LESSEE.....	22
10.2	BY LESSOR.....	23
ARTICLE 11 : DEFAULT		
11.1	MONETARY DEFAULT BY LESSEE.....	23
11.2	NONMONETARY DEFAULT BY LESSEE	23
11.3	DEFAULT BY LESSEE RESULTING FROM JUDICIAL PROCESS.....	24
11.4	REMEDY.....	24
11.5	DEFAULT BY LESSOR.....	25
ARTICLE 12 : MEDIATION		
ARTICLE 13 : GENERAL PROVISIONS		
13.1	MEMBERSHIP OF EACH OWNER IN CLT	25
13.2	NOTICES.....	26
13.3	NO BROKERAGE	26
13.4	SEVERABILITY AND DURATION OF LEASE.....	26
13.5	WAIVER.....	27
13.6	LESSOR'S RIGHT TO PROSECUTE OR DEFEND	28
13.7	CONSTRUCTION.....	28
13.8	CAPTIONS AND TABLE OF CONTENTS	28
13.9	PARTIES BOUND	28
13.10	GOVERNING LAW.....	29
13.11	RECORDING	29
Exhibit A: PERMITTED MORTGAGES		A-1
Exhibit B: FIRST REFUSAL		B-1
Exhibit C: RESTRICTIONS.....		C-1

AMENDED AND RESTATED GROUND LEASE

THIS LEASE (“this Lease” or “the Lease”) made and entered into this 6th day of September, 2006, by and between **MADISON AREA CLT CORPORATION**, a Wisconsin nonstock corporation (“the CLT”) and its successors and assigns (“Lessor” or “the Lessor”), and **MACLT TROY GARDENS RESIDENTIAL PARCEL, LLC**, a Wisconsin limited liability company and its permitted successors and assigns (“Lessee” or “the Lessee”).

RECITALS:

WHEREAS, Lessor and Lessee entered into that certain Ground Lease effective as of April 18, 2006 (“Original Lease”) and they wish to amend and restate the entire Original Lease as hereinafter provided; and

WHEREAS, the CLT 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 otherwise would be denied such opportunities because of limited financial resources; and

WHEREAS, a goal of the CLT is to stimulate the conveyance of decent, affordable housing among low- and moderate-income people by providing access to housing for such persons at affordable prices through the long-term leasing of land under said housing; and

WHEREAS, the Leased Premises described in this Lease have been acquired and are being leased by the CLT in furtherance of these charitable purposes; and

WHEREAS, the Lessee shares the purposes and goals of the CLT and has agreed to enter into this Lease not only to obtain those benefits to which the Lessee is entitled under this Lease, but also to further the charitable purposes of the Lessor; and

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease, and each of them, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions that may affect the marketing and resale price of any Improvements on the Leased Premises; and

WHEREAS, it is mutually understood and accepted by Lessor and Lessee that the terms and conditions of this Lease further their shared goals over an extended period of time and through a succession of owners;

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: ORIGINAL LEASE

The Original is hereby superseded and replaced in its entirety by this Lease, effective as of the date hereof.

ARTICLE 2: DEMISE OF LEASED PREMISES

2.1 **PREMISES:** The Lessor, in consideration of the rents reserved and the terms and conditions of this Lease, does hereby demise and leave unto Lessee, and Lessee does hereby take and hire from Lessor, the property (referred to in this Lease as the "Leased Premises") described on the cover page of this Lease and incorporated herein. Lessor has furnished to Lessee a copy of the most current, if any, title report previously obtained by Lessor for the Premises, and Lessee accepts title to the Leased Premises in their condition "as is" as of the execution of this Lease.

2.2 **RESERVATION OF MINERAL RIGHTS:** Lessor reserves to itself all the minerals and other extractive resources of the Leased Premises. This reservation shall not diminish the right of the Lessee under this Lease to occupy and freely use the Leased Premises. Any eventual extraction by the Lessor of minerals or other extractive resources shall be carried out with as little disruption to the Lessee as is reasonably possible. In instances requiring a disruption of the Lessee's right of use and occupancy of the Leased Premises, the Lessor shall not make such extraction without the consent of the Lessee.

ARTICLE 3: DURATION OF LEASE

3.1 **PRINCIPAL TERM:** The term of this Lease shall be 98 years, commencing on the 18th day of April, 2006, and terminating on the 17th day of April, 2104, unless terminated sooner or extended as provided below.

3.2 **LESSEE'S OPTION TO EXTEND:** Lessee may extend the principal term of this Lease for one (1) additional period of 98 years, subject to all the provisions of this Lease; provided that Lessor may make changes to the terms of the Lease for the renewal period prior to the beginning of such renewal period but only if these changes do not materially and adversely impair Lessee's rights under the Lease. Not more than 365 nor less than 180 days before the last day of the current term, Lessor shall give Lessee written notice, stating the date of expiration of the Lease, describing any changes that Lessor intends to make to the terms of the Lease as permitted above, and reiterating the conditions for renewal as set forth immediately below ("the Expiration Notice").

Lessee's right to exercise the option to extend is subject to the following conditions: (a) within sixty (60) days of receipt of the Expiration Notice, Lessee shall give Lessor written notice, irrevocably exercising the option to extend ("the Extension Notice"); (b) this Lease shall be in effect at the time the Extension Notice is given and on the last day of the term; and (c) there shall not be an Event of Default by Lessee under this Lease at the time the Extension Notice is given and on the last day of the term.

When Lessee has rightfully exercised the option to extend, each party shall execute a memorandum, in mutually agreeable recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum or notice of lease, and such memorandum or notice of lease shall be recorded in accordance with the requirements of law on or promptly after the commencement of such renewal period of the Lease.

3.3 CHANGE OF LESSOR; LESSEE'S RIGHT TO PURCHASE: In the event that ownership of the land comprising the Leased Premises ("the Land") is conveyed or transferred (whether voluntarily or involuntarily) by Lessor to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. However, in the event Lessor desires or attempts to convey the Land to any person or entity other than a nonprofit corporation, a subsidiary or affiliate of a nonprofit corporation (including, without limitation, a limited liability company in which the members are nonprofit corporations, charitable trusts or government agencies), charitable trust, governmental agency or other similar entity sharing the goals described in the Recitals above (or as security for a mortgage loan or to a mortgagee upon foreclosure or deed in lieu of foreclosure), the Lessee shall have a right of first refusal to purchase the Land. This right shall be as specified in the attached Exhibit B FIRST REFUSAL. Any sale or other transfer contrary to this section 3.3 shall be null and void.

Any sale, transfer, assignment, mortgage or other conveyance by Lessor shall at all times be subject and subordinate to the terms of this Lease. Any transfer of title to the Land shall automatically be deemed to be an assignment to, and assumption by, the transferee of all of Lessor's rights, titles, interests, obligations and liabilities in, to and under this Lease. The transferor and transferee shall provide written notice of any such transfer to Lessee promptly upon any such transfer, together with the full name and address of the transferee. Notwithstanding the foregoing, Lessor shall not assign this Lease, except to the holder of a mortgage on the Land or upon transfer of the Land. Upon assignment of this Lease to any transferee of the Land, the transferor shall automatically be released from any and all liability hereunder.

ARTICLE 4: USE OF LEASED PREMISES

4.1 PRIMARILY RESIDENTIAL USE ONLY: Lessee shall use, and shall cause all occupants, including all owners of any of the Improvements located or to be located on the Leased Premises ("Owners") and each of their household members, tenants, guests, and invitees, to use, the Leased Premises and Improvements only for the purposes that are currently permitted by applicable zoning law, that being primarily residential purposes and certain incidental activities related to residential use, or such other use as may be permitted in writing by Lessor following written request by Lessee. In addition, use of the Leased Premises shall be further limited by the restrictions set forth in the attached Exhibit C RESTRICTIONS.

4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW: Lessee shall, and shall cause each Owner to, use the Leased Premises in a manner so as not to cause actual harm to others or create any nuisances, public or private; and shall dispose of any and all waste in a safe and sanitary manner. Lessee shall maintain, or cause the Owners to maintain, the Leased Premises and Improvements in good, safe, and habitable condition in all respects, except

for normal wear and tear, in full compliance with all applicable laws and regulations, and in such condition as is required to maintain the insurance coverage required by section 9.4 of this Lease.

4.3 RESPONSIBLE FOR OTHERS: Lessee shall provide a copy of this Lease to each Owner. Lessee shall cause each Owner to be responsible for his, her or its use of the Leased Premises and that of all residents and their families, friends and visitors and anyone else using the Leased Premises with his, her or its consent.

4.4 OCCUPANCY: Lessee shall cause each Owner to occupy the residential unit, if any, owned by the Owner for at least eight months of each year of this Lease, unless otherwise agreed in writing by Lessor. Occupancy by children or other immediate family members or dependents of Lessee shall be considered occupancy by Lessee.

4.5 INSPECTION: Lessor may inspect any portion of the Leased Premises, except the interiors of the Improvements, at any reasonable time and in any reasonable manner, upon at least twenty-four hours' oral notice to Lessee. In the event of emergency, Lessor may inspect any portion of the Leased Premises, except the interiors of the Improvements, without notice provided the Lessor shall have made reasonable efforts to give advance notice to Lessee.

4.6 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT: Lessee has the right to undisturbed enjoyment of the Leased Premises, and Lessor has no desire or intention to interfere with the personal lives, associations, expressions, or actions of Lessee or the Owners, subject to the provisions of this Lease.

4.7 CONDOMINIUM DEVELOPMENT: Lessee shall develop and construct a condominium development on the Leased Premises, including thirty residential units and one non-residential unit for use for purposes acceptable to Lessor. The condominium declaration and plat, the architectural drawings and specifications for the condominium development, and the articles of incorporation, bylaws and rules of the condominium association for the condominium development ("Association"), and all amendments to any of them, shall be subject to the written approval by Lessor, in its sole reasonable discretion, before they become effective or are implemented. The Association shall be Troy Gardens Condominium Association, Inc., a Wisconsin nonstock corporation, unless otherwise approved in writing by Lessor. Only the Improvements, and not the Leased Premises, shall be subject to the condominium declaration. Lessor shall, upon request from Lessee, consent to, and execute such documentation as may be necessary or convenient to implement, easements in favor of public utility providers through the Leased Premises as may be necessary or convenient to develop and construct the condominium development. Lessee shall not, and shall cause the Owners to not, terminate the condominium declaration without the prior written consent of Lessor. This Ground Lease shall automatically terminate upon the effective date of any termination of the condominium declaration. The Association may not be dissolved or replaced as the condominium association without the prior written consent of Lessor.

ARTICLE 5: GROUND LEASE FEE

5.1 GROUND LEASE FEE: In consideration of the possession, continued use, and occupancy of the Leased Premises, Lessee shall pay to Lessor a monthly ground lease fee (“the Ground Lease Fee”), initially equal to the aggregate of:

- (a) Fifty Dollars (\$50.00) multiplied by the number of residential units included in the Improvements that are subject to “Restrictions” (that are in effect at the time the Ground Lease Fee is payable and are imposed by the CLT or a government entity) on the transfer, sale or other disposition of the unit and which are intended to make the unit affordable by low-income or moderate income persons; plus
- (b) Fifty Dollars (\$50.00) multiplied by the number of residential units included in the Improvements that are not subject to Restrictions.

Lessor shall notify Lessee from time to time and upon request by Lessee of the number of residential units included in the Improvements that fall into the categories described in the preceding two paragraphs. The Ground Lease Fee shall be payable commencing upon issuance of the first occupancy permit by the city of Madison for a residential unit which is a part of the Improvements, and no Ground Lease Fee shall be payable or shall accrue until then.

5.2 PAYMENT OF GROUND LEASE FEE: The Ground Lease Fee shall be payable in advance to Lessor, at the address specified in this Lease as Lessor’s address, on the first day of each month for as long as this Lease remains in effect. If the Ground Lease Fee first becomes payable on a day other than the first of the month, a pro-rata portion of the Ground Lease Fee shall be paid for the balance of that month.

5.3 CALCULATION OF GROUND LEASE FEE: The Ground Lease Fee specified in section 5.1 above has been calculated as follows. First, an amount approximating the monthly fair rental value of the Leased Premises has been established, current as of the commencement of the Lease term, recognizing that use of the Leased Premises is restricted by some of the provisions of the Lease. Then, the affordability of this monthly amount for the Lessee has been analyzed and, if necessary, the amount has been reduced to yield the amount stated in section 5.1 above, which has been determined to be affordable for Lessee.

5.4 REDUCTION, DELAY OR WAIVER OF GROUND LEASE FEE: Lessor may reduce, delay or waive entirely the Ground Lease Fee at any time and from time to time for the purpose of ensuring affordable monthly housing costs for some or all of the Owners. Any such reduction, delay, or waiver must be in writing and signed by Lessor before being effective.

5.5 ADJUSTMENT OF GROUND LEASE FEE: The Ground Lease Fee stated in section 5.1 above, as adjusted in the way provided below, shall be applicable during the term of this Lease.

In order to keep the Ground Lease Fee reasonably current, the amount specified in section 5.1 shall be adjusted as of January 1st each year during the term of the Lease. Each September, Lessor shall obtain from the city of Madison the most recent equalized assessed value of each residential unit which is included in the Improvements. Five percent (5%) of aggregate equalized assessed value of the units subject to Restrictions as of the 1st day of that September shall be calculated, divided by twelve and then divided by the number of units subject to Restrictions, and that amount shall be substituted as of the adjustment date for the amount set forth in section 5.1(a). Five percent (5%) of aggregate equalized assessed value of the units not subject to Restrictions as of the 1st day of that September shall be calculated, divided by twelve and then divided by the number of units not subject to Restrictions, and that amount shall be substituted as of the adjustment date for the amount set forth in section 5.1(b). Notwithstanding the foregoing, Lessor may choose at any time to charge less Ground Lease Fee than provided for above, but doing so shall not prejudice Lessor's right to thereafter charge the amount provided for above.

Lessor shall notify Lessee on or before each October 1st of the new Ground Lease Fee amount. If Lessee does not state objections within thirty (30) days after receipt of this notice, the Ground Lease Fee shall then be as stated by Lessor in the notice. The exclusive bases for objection by Lessee shall be a good faith belief that Lessor incorrectly applied the formula to be used to calculate the new Ground Lease Fee amount or that incorrect numbers were used by Lessor to recalculate the amount of the new Ground Lease Fee. If Lessee does state objections on one or both of these two bases, and Lessor and Lessee are then unable to agree on a recalculated Ground Lease Fee within fifteen (15) days of Lessor's receipt of Lessee's objection, the dispute shall be resolved according to the mediation process set forth in Article 12 below, except that each party shall endeavor to ensure that the mediator(s) has experience in the valuation of real estate. Upon the final determination of the recalculated Ground Lease Fee in accordance with the terms of this section, Lessor shall maintain in its file a notarized certification of the amount of such recalculated Ground Lease Fee and the process by which it was determined.

If, during the term of this Lease, the concept of equalized assessed value is no longer in use under Wisconsin law, Lessor shall use another index, to be selected by Lessor in its sole reasonable discretion, to calculate adjustments to the Ground Lease Fee. The substituted index shall approximate the concept of equalized assessed value as closely as reasonably possible.

ARTICLE 6: TAXES AND ASSESSMENTS

6.1 TAXES AND ASSESSMENTS: Lessee shall be responsible for payment of all taxes and governmental assessments that relate to the Leased Premises. Lessee shall also pay directly, when due, all other service bills, utility charges, or other governmental assessments charged against the Leased Premises, as well as all premiums which become payable for the insurance policies Lessee is required to maintain hereunder. Lessee shall be responsible for payment of all taxes, governmental assessments, service bills, utility charges, or other governmental assessments charged to any Improvements not owned by any individual Owner. Each Owner shall be responsible for payment of all taxes, governmental assessments, service

bills, utility charges, or other governmental assessments charged to the Improvements owned by such Owner.

6.2 **TAXES ON LEASED PREMISES:** On or before the first day of each month during the term of this Ground Lease, Lessee shall pay to Lessor, in addition to the Ground Lease Fee, one-twelfth of such amount as may be determined by Lessor from time to time as a reasonable estimate of the aggregate amount that Lessee is responsible to pay during that year under section 6.1 with respect to the Leased Premises. Lessor shall hold such funds in escrow and shall not pay interest on the escrowed funds. Lessor shall apply the escrowed fund to Lessee's obligations under section 6.1 with respect to the Leased Premises only. Any deficiency in the amount payable shall be paid to Lessor by Lessee in sufficient time to allow for timely payment of such amounts. To the extent escrowed funds exceed the aggregate amount of Lessee's obligations under 6.1 with respect to the Leased Premises, Lessor shall hold the funds for application to the obligations that will accrue during the subsequent year. In the event that the local taxing authority bills Lessor for the taxes or assessments on the Leased Premises, Lessor shall deliver a copy of the bill to Lessee.

6.3 **LESSEE'S RIGHT TO CONTEST:** Lessee shall have the right to contest the amount or validity of any taxes or assessments relating to the Improvements or Leased Premises. Lessor shall, upon written request by Lessee, join in any such proceedings if Lessee reasonably determines that it is necessary or convenient for Lessor to do so. All costs and expenses of such proceedings, including all incurred by Lessor, shall be paid by Lessee.

6.4 **PAYMENTS IN EVENT OF DELINQUENCY:** In the event that Lessee fails to pay the taxes or other charges specified in section 6.1 above, Lessor may increase, but shall not be obligated to increase, Lessee's Ground Lease Fee in an amount that will offset the cost of any delinquent and current taxes or other charges relating to the Improvements and Leased Premises, including all interest, penalties, and costs of collection. Upon collecting any such amount, Lessor shall pay the amount collected to the taxing authority in a timely manner.

6.5 **PROOF OF COMPLIANCE:** Concurrently with the payment of any taxes, assessments, and charges required or permitted by the provisions of this Lease, each party shall furnish evidence satisfactory to the other documenting the payment. A photocopy of a receipt for such charges showing payment prior to the due date shall be the usual method of furnishing such evidence.

ARTICLE 7: IMPROVEMENTS

7.1 **OWNERSHIP:** It is agreed that all buildings, structures, fixtures, and other improvements purchased by the Lessee or constructed or placed by the Lessee on any part of the Leased Premises at any time during the term of this Lease ("the Improvements") shall be property of the Lessee. It is agreed that all buildings, structures, fixtures, and other improvements purchased by an Owner or constructed or placed by an Owner on any part of the Leased Premises at any time during the term of this Lease (also part of "the Improvements") shall be property of such Owner. Title to such Improvements shall be and remain vested in the Lessee or one or more of the Owners. However, Lessee's and the Owners' exercise of the rights of ownership is subject to the provisions of this Lease. In addition, neither Lessee nor any

Owner shall sever or move any of the Improvements from the Land without Lessor's prior written consent.

7.2 CONSTRUCTION AND ALTERATION: Any construction in connection with an existing or new Improvement is subject to the following conditions: (a) all costs shall be borne and paid for by the Lessee or an Owner; (b) all construction shall be performed in a workerlike manner and shall comply with all applicable laws and regulations; (c) all construction shall be consistent with the permitted uses set forth in Article 4; (d) new Improvements (excluding any Improvements located within a condominium unit following initial construction thereof) shall not be constructed without the prior written consent of Lessor, who, however, shall not unreasonably withhold such consent; and (e) Lessee shall furnish to Lessor a copy of any plans and all building permits for such construction prior to commencing construction.

7.3 PROHIBITION OF LIENS: Except for mortgage liens in effect as of April 31, 2006, no lien of any type shall attach to the Lessor's title to the Land or to Lessee's interest in the Leased Premises or to any other property owned by the Lessee. Neither Lessee nor any Owner shall permit any statutory or similar lien to be filed against the Leased Premises, the Improvements (other than mortgage liens granted by an Owner against a condominium unit owned by that Owner), or any interest of Lessor or Lessee that remains more than sixty (60) days after it has been filed. Lessee shall cause any such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or as otherwise permitted by law. If Lessee fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the lien by paying the amount in question. Lessee or any Owner may, at Lessee's or such Owner's expense, contest the validity of any such asserted lien, provided Lessee or the Owner has furnished a bond in an amount sufficient to release the Leased Premises from such lien. Any amounts paid by Lessor to discharge such liens shall be deemed to be an additional Ground Lease Fee payable by Lessee upon demand.

7.4 MAINTENANCE AND SERVICES: Lessee shall, at the sole expense of Lessee and Owners, maintain the Leased Premises and all Improvements as required by section 4.2 above. Lessor shall not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises or Improvements, and Lessee hereby assumes the sole responsibility for furnishing, or causing Owners to furnish, all services or facilities.

7.5 DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term of this Lease, as such term may be extended or sooner terminated in accordance with this Lease, Lessee and each Owner shall surrender the Improvements together with the Leased Premises to the Lessor. Ownership of the Improvements shall thereupon transfer to Lessor, provided, however, that Lessor shall promptly pay to each Owner as consideration for the Improvements an amount equal to the fair market value of that portion of the Improvements then owned by such Owner, or, if lower, the purchase price payable by an income qualified purchaser of the Owner's property under the terms of the Restrictions in effect with respect to an Owner's portion of the Improvements as of such date. Lessor shall be entitled to deduct from the amount otherwise payable to an Owner a pro rata portion (calculated

in accordance with the relationship the price payable to the Owner bears to the aggregate amount of the prices payable to all Owners) of any unpaid Ground Lease Fee including any charges that may have been added to the Ground Lease Fee in accordance with this Lease.

ARTICLE 8: FINANCING

8.1 **PERMITTED MORTGAGE:** Except for any mortgages and security interests in existence as of April 30, 2006, Lessee shall not mortgage or otherwise grant any security interest in, or any lien upon, the Leased Premises or Lessee's leasehold interest therein. Notwithstanding the foregoing, in order to finance the initial construction, or subsequent reconstruction following destruction by fire or other casualty, of all or substantially all of the Improvements, Lessee may, with the prior written consent of Lessor, which shall not be unreasonably withheld or delayed, mortgage or otherwise grant security interests in, or a lien upon, Lessee's leasehold interest in the Leased Premises (but Lessor shall not be obliged to join in or subordinate the Lease or its interest in the Leased Premises to any such mortgage, security interest or lien). Each Owner shall nonetheless be free to mortgage or otherwise grant security interests in any portion of the Improvements owned by such Owner.

Not less than thirty (30) days prior to the date on which Lessee requests Lessor's consent to a mortgage to be effective, Lessee shall furnish to Lessor copies of every document to be executed in connection with the transaction represented by such mortgage. Lessor may choose to consent to any mortgage, and in so doing shall designate such mortgage as a "Permitted Mortgage." However, Lessor shall not consent to a mortgage unless: (a) at the time such copies of documents are submitted and at the time proposed by Lessee for the execution of such documents, no default is then outstanding; and (b) the mortgage so submitted is a Standard Permitted Mortgage as defined in the attached Exhibit A PERMITTED MORTGAGES. Lessee shall pay to Lessor at Lessor's option, as additional Ground Lease Fee, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any Permitted Mortgage.

8.2 **RIGHTS OF PERMITTED MORTGAGEE:** Any holder of a Permitted Mortgage ("Permitted Mortgagee") shall without requirement of consent by the Lessor have the rights identified and defined in the attached Exhibit A PERMITTED MORTGAGES.

8.3 **AMENDMENTS SUBJECT TO APPROVAL BY PERMITTED MORTGAGEE:** Any amendments to this Lease shall be subject to the written approval of Permitted Mortgagee, which approval shall not be unreasonably withheld or delayed. The passage of thirty (30) days after submittal to Permitted Mortgagee of a proposed amendment without approval or disapproval by Permitted Mortgagee shall be deemed approval thereof.

8.4 **AGREEMENT CONCERNING LEASE:** There is an Agreement Concerning Amended and Restated Ground Lease ("Side Agreement") among Madison Area CLT Corporation, MACLT Troy Gardens Residential Parcel, LLC and Capitol Bank which has been executed on or about the date hereof, and which is to be recorded in the office of the Dane County, Wisconsin Register of Deeds. The Side Agreement relates to this Lease. Upon repayment of the Loans described in the Side Agreement, it shall terminate and be of no further force or effect.

**ARTICLE 9: LIABILITY, INSURANCE, DAMAGE AND DESTRUCTION,
EMINENT DOMAIN**

9.1 **LESSEE'S LIABILITY:** Lessee assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy, and use of the Leased Premises.

9.2 **INDEMNIFICATION OF LESSOR:** Lessee shall defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises. Lessee waives all claims against Lessor for such injury or damage. However, Lessor shall remain liable (and Lessee shall not indemnify and defend Lessor against such liability or waive such claims of liability) for injury or damage due to the grossly negligent or intentional acts or omissions of Lessor or Lessor's agents or employees.

9.3 **PAYMENT BY LESSOR:** In the event the Lessor shall be required to pay any sum that is the Lessee's responsibility or liability, the Lessee shall reimburse the Lessor for such payment and for reasonable expenses caused thereby.

9.4 **INSURANCE:** Lessee shall, at Lessee's sole expense, keep, and shall cause each Owner, at the Owner's sole expense, to keep, and maintain in effect all insurance required by the Association's Bylaws. The Association shall not amend its Bylaws in any respect without the prior written consent of Lessor.

If at any time during the term of this Lease the Association is not the Lessee or the Association does not have relevant insurance provisions in its Bylaws, the then provisions of this paragraph shall become effective. Lessee shall, at Lessee's sole expense, keep all Improvements continuously insured against loss or damage by fire and the extended coverage hazards for the full replacement value of such Improvements. Lessee shall, at Lessee's sole expense, maintain continuously in effect liability insurance covering the Leased Premises and Improvements in the amounts of not less than two million dollars (\$2,000,000.00) for injury to or death of any one person; and two million dollars (\$2,000,000.00) for injury to or death of any number of persons in one occurrence; and four million five hundred thousand dollars (\$4,500,000.00) for property damage. The dollar amounts of this coverage shall be adjusted at two-year intervals, beginning on the date this Lease is signed, or upon Lessor's demand given not more often than annually, upon 30 days' notice to Lessee. This adjustment shall be equal to the percentage of change (positive or negative), over the period in question, of the Consumer Price Index for urban wage earners and clerical workers for the urban area in which the Leased Premises are located, or, if none, for urban areas the size of Madison, Wisconsin, or such other index as reasonably measures adjustments in coverage amounts for the applicable type of insurance. Such index is maintained by the Office of Prices and Living Conditions of the Bureau of Labor Statistics, of the U.S. Department of Labor. Such insurance shall specifically insure Lessee and each of Lessee's mortgagees against all liability assumed under this Lease, as well as all liability imposed by law, and shall also insure Lessor and each of its mortgagees as additional insureds so as to create the same liability on the part of insurer as though separate policies had been written for Lessor, Lessee and Lessor's mortgagees.

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

9.5 DAMAGE OR DESTRUCTION: In the event of fire or other damage to the Improvements, the repair of such damage and the restoration of the Improvements shall be handled as provided in the Association's Bylaws.

If at any time during the term of this Lease the Association is not the Lessee or the Association does not have relevant damage or destruction provisions in its Bylaws, then the provisions of the remainder of this section shall become effective. Except as provided below, in the event of fire or other damage to the Improvements, Lessee shall take all steps necessary to ensure the repair of such damage and the restoration of the Improvements to their condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Lessee shall, and shall cause the Owners to, also promptly take all steps necessary to ensure that the Leased Premises are safe and that the damaged Improvements do not constitute a danger to persons or property.

If Lessee, using reasonable judgment and relying 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 eighty percent (80%) of the cost of repair and restoration (provided Lessee has fulfilled all the hazard insurance requirements set forth in section 9.4 above), then Lessee may terminate this Lease by written notice to Lessor given not later than sixty (60) days after the event that caused the damage. However, such termination shall not be effective until forty-five (45) days after the date upon which the notice is received by Lessor. During this 45-day period Lessor may seek an adjustment from the insurer so as to increase the available insurance proceeds to an amount covering at least 80 percent of the cost of repair and restoration. If successful in securing such adjustment, Lessor may render Lessee's termination notice null and void by written notice to Lessee within such 45-day period. If Lessor fails to nullify the termination notice in this way, then this Lease shall terminate at the expiration of the 45-day period, and any insurance proceeds payable to Lessee on account of such damage shall be paid as provided below.

The insurance proceeds shall be paid first to cover any expenses of collecting the proceeds. Remaining proceeds shall be paid to the Lessee (or its Permitted Mortgagee to the extent required by the Permitted Mortgage), the Owners and Lessor, as their respective interests may appear under the terms of all relevant contracts.

9.6 EMINENT DOMAIN AND PUBLIC DEDICATION: In the event of a taking of the Leased Premises, or any portion thereof, the applicable provisions of the Association's Bylaws shall control.

If at any time during the term of this Lease the Association is not the Lessee or the Association does not have relevant provisions in its Bylaws, the then provisions of the

remainder of this section shall become effective. In the event of a taking of the Leased Premises, either in its entirety or to such extent that the Improvements are lost or damaged beyond repair, by reason of eminent domain or other action of public authority prior to the expiration of this Lease, the Lease shall terminate as of the date Lessee is required to give up possession of the Leased Premises or Improvements, and 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 Premises that does not result in damage to the Improvements or substantial reduction in the usefulness or desirability of the Improvements for residential purposes, then any monetary compensation for such taking shall be allocated entirely to Lessor.

In the event of a taking of a portion of the Leased Premises that results in damage to the Improvements only to such an extent that the Improvements can reasonably be restored to a use consistent with this Lease, the Lessor may in its discretion allocate some or all the monetary compensation to enable Lessee to accomplish such a restoration. Any balance remaining after or in the absence of such allocation shall be allocated as provided above for a taking of the entire Leased Premises.

Any and all proceedings brought by a party in connection with any damages as a result of any taking referred to in this section shall be conducted at the sole expense of such party. If any provision of law requires that such proceedings be brought by or in the name of any owner or lessee of the premises, such party shall join in such proceedings or permit the same to be brought in its name. Each party agrees to do all acts and to execute all documents that may be required to enable the other to maintain such proceedings. If the party required to join in the proceedings incurs any cost or expense in doing so, such party shall be entitled to reasonable reimbursement and this entitlement shall constitute a first charge against any award.

9.7 REASSESSMENT OF RENTAL VALUE: In the event of any taking that reduces the size of the Leased Premises but does not result in the termination of the Lease, Lessor shall reassess the fair rental value of the remaining Premises and shall adjust the Ground Lease Fee if necessary to ensure that the monthly fee does not exceed the monthly fair rental value of the premises for use as restricted by the Lease.

9.8 RELOCATION OF LESSEE: In the event of a termination of this Lease as a result of damage, destruction or taking, Lessor shall take reasonable steps to grant Lessee a leasehold interest, similar to the interest created by this Lease, in another tract that it owns, if such other tract can reasonably be made available. In accepting such a leasehold interest, Lessee agrees to contribute any proceeds or award received by Lessee to purchase or develop Improvements on such tract. Lessor's failure to supply such a leasehold interest shall not give rise to any cause of action by Lessee against Lessor.

ARTICLE 10: ASSIGNMENT AND SUBLEASE

10.1 BY LESSEE: Except as otherwise provided in Article 8 (including the Exhibit A PERMITTED MORTGAGES), Lessee shall not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor.

Any transfer of member or other ownership or equity interests in Lessee, except to Owners, shall be deemed a conveyance hereunder. Lessee may assign all of its rights, titles, interests, obligations and liabilities in, to an under this Lease to the Association. Lessee agrees that Lessor shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth in this Lease. If permission is granted, any assignment or sublease shall be subject to the following conditions.

Any such assignment or sublease shall be subject to all the terms of this Lease.

In the case of a sublease, the rental or occupancy fee charged the sublessee shall not be more than that amount charged the Lessee by the Lessor, plus an amount approved by Lessor to cover costs to Lessee for the Improvements.

10.2 BY LESSOR: Lessor may sell, transfer, give, mortgage, or otherwise convey the Land in accordance with the provisions of section 3.3 hereof.

ARTICLE 11: DEFAULT

11.1 MONETARY DEFAULT BY LESSEE: It shall be an event of default if Lessee fails to pay the Ground Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Lessee or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by Lessor to Lessee and Permitted Mortgagee. However, if Lessee shall make a good faith partial payment of at least two thirds (2/3) of the amount owed during such initial 30-day period, then such period shall be extended one additional 30-day period.

11.2 NONMONETARY DEFAULT BY LESSEE: It shall be an event of default if Lessee fails to abide by any other material term or condition in this Lease, and such failure is not cured by Lessee or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by Lessor to Lessee and Permitted Mortgagee. However, in the case where the Lessee or Permitted Mortgagee has commenced to cure such default within such 60-day period and is continuing such cure with all due diligence but cannot by the exercise of due diligence cure such default within such period, such period shall be extended for such additional period as may be reasonably required under the circumstances to complete such cure.

11.3 DEFAULT BY LESSEE RESULTING FROM JUDICIAL PROCESS: It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Lessee is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Lessee for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of Lessee's property by a court of competent jurisdiction, or if a petition is filed for the reorganization of Lessee under any provisions of the Bankruptcy Act now or hereafter enacted, or if Lessee files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

11.4 REMEDY: In the case of any of the events of default described above, and except as provided in section 4.7, Lessor may not terminate this Lease, but may bring the matter for review and determination by mediation or by a court of competent jurisdiction. The

Lessee agrees to pay and be liable for any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with such default, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lessor in pursuit of its remedies under this Lease.

The Permitted Mortgagee shall have the right (subject to Article 8 above) to cure any monetary default by Lessee.

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

ARTICLE 12: MEDIATION

: Should any grievance or dispute arise between Lessor and Lessee concerning the terms of this Lease that is not resolved within thirty (30) days, either party may submit the matter for mediation under any process provided therefor by the Dane County Bar Association or the State Bar of Wisconsin. Each party shall cooperate with any such mediation process. Each party shall initially bear its own expenses incurred in connection with the mediation process, and the parties shall initially share evenly the charges of any mediator or Bar Association. The mediator may require the party against which a decision is made to reimburse the other party for its expenses and share of the charges. The decision of the mediator shall be binding upon the parties and may be filed with the Dane County Circuit Court for judgment and enforcement in accordance with Section 703.25, Wisconsin Statutes and other applicable law at the expense of the party against which the decision is made.

ARTICLE 13: GENERAL PROVISIONS

13.1 **MEMBERSHIP OF EACH OWNER IN CLT:** Each Owner shall automatically be a regular voting member of the CLT.

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 Lessor: Madison Area CLT Corporation
305 South Paterson Street
Madison, Wisconsin 53703
Attention Executive Director

If to Lessee: MACLT Troy Gardens Residential Parcel, LLC
305 South Paterson Street
Madison, Wisconsin 53703
Attention Executive Director of Madison Area CLT Corporation, Sole Member

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: Lessee warrants that it has not engaged any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers said to be engaged by Lessee, Lessee shall defend the claim against Lessor with counsel of Lessor's selection and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any 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 Lessee or Lessor against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that their respective rights under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and such rights shall be considered to be coupled with an interest. In the event it shall have been determined by a court of competent jurisdiction that any of the interests conveyed or assigned or purported to be conveyed or assigned herein are void as against any rule against perpetuities or Chapter 700 of the Wisconsin Statutes, or its successor, the life or lives of such interest or interest shall be deemed without any further action on the part of any party to be the longest life or lives possible without violation of any such rule or statute, as it is the intention of the parties hereto that the interest conveyed herein shall not be in violation of any such rule or statute.

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

The subsequent acceptance of Ground Lease Fee payments by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Ground Lease Fee payment.

13.6 LESSOR'S RIGHT TO PROSECUTE OR DEFEND: Lessor shall have the right, but shall be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee shall give Lessor all reasonable aid in any such action or proceeding.

13.7 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.

13.8 CAPTIONS AND TABLE OF CONTENTS: The captions 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.

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

13.10 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Wisconsin. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

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

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

**MACLT TROY GARDENS
RESIDENTIAL PARCEL, LLC**
By Madison Area CLT Corporation,
Sole Member

MADISON AREA CLT CORPORATION

By: Gregory Rosenberg
Gregory Rosenberg,
Executive Director

By: Gregory Rosenberg
Gregory Rosenberg, Executive Director

001157

STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

This instrument was acknowledged before me on September 6, 2006 by Gregory Rosenberg, to me known to be the Executive Director of Madison Area CLT Corporation, the sole member of MACLT Troy Gardens Residential Parcel, LLC, and to me known to be the person who executed the foregoing instrument and acknowledged the same.

Sharene J. Wilcox

(Signature)

Sharene J. Wilcox

(Printed Name)

Notary Public, Dane County, Wisconsin

My commission expires: 11/22/2009

[SEAL]

This instrument was drafted by Timothy J. Radelet, Foley & Lardner LLP, 150 East Gilman Street, Post Office Box 1497, Madison, Wisconsin 53701-1497; (608) 258-4219.

EXHIBIT A: PERMITTED MORTGAGES

The provisions set forth in this Exhibit shall be understood to be provisions of Article 8 of the Lease to which the Exhibit is attached and in which the Exhibit is referenced. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. **STANDARD PERMITTED MORTGAGE:** A "Standard Permitted Mortgage," as identified in section 8.1 of the Lease to which this Exhibit is attached, shall be a mortgage that meets the following requirements.

1. Such Mortgage shall run in favor of either (a) a so-called institutional lender such as, but not limited to, a federal, state, or local housing finance agency, a bank (including savings and loan association or insured credit union), an insurance company, a pension and/or profit-sharing fund or trust, or any combination of the foregoing, the policies and procedures of which institutional lender are subject to direct governmental supervision, or (b) a "community development financial institution" as certified by the U.S. Department of the Treasury, or similar nonprofit lender to housing projects for low- and moderate-income persons.
2. Such Mortgage shall be a first lien on all or any of the Improvements and the Lessee's interest in the Leased Premises (the "Security").
3. Such Mortgage and related documentation shall provide, among other things, that in the event of a default in any of the mortgagor's obligations thereunder, the holder of such Mortgage shall notify Lessor of such fact and Lessor shall have the right (but shall not have the obligation) within 120 days after its receipt of such notice, to cure such default in the mortgagor's name and on mortgagor's behalf, provided that current payments due the holder during such 120-day period (or such lesser time period as may have been required to cure such default) are made to the holder, and shall further provide that said holder shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by such Mortgage or to commence to foreclose under the Mortgage on account of such default.
4. Such Mortgage and related documentation shall provide, among other things, that if after such cure period the holder intends to accelerate the note secured by such Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of this Lease, the holder shall first notify Lessor of its intention to do so and Lessor shall have the right, but not the obligation, upon notifying the holder within thirty (30) days of receipt of said notice from said holder, to pay off the indebtedness secured by such Mortgage and to acquire such Mortgage.
5. Such Mortgage and related documentation shall provide, among other things, that, in the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure, upon acquisition of title to the Improvements and the Lessee's interest in the Leased Premises by the Permitted Mortgagee, the Permitted Mortgagee shall give the Lessor written notice of such acquisition and the Lessor shall have an option to purchase the Improvements and acquire the Lessee's

interest in the Leased Premises from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage; provided, however, that the Lessor gives written notice to the Permitted Mortgagee of the Lessor's intent to purchase the Improvements and acquire the Lessee's interest in the Leased Premises within thirty (30) days following the Lessor's receipt of the Permitted Mortgagee's notice of such acquisition of the Improvements and Lessee's interest; further provided that Lessor shall complete the purchase of the Improvements and acquisition of Lessee's interest in the Leased Premises within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the Lessor does not complete the purchase within such period, the Permitted Mortgagee shall be free to sell the Improvements and transfer the Lessee's interest in the Leased Premises to another person;

6. Such Mortgage and related documentation shall not contain any provisions other than provisions generally contained in mortgages used for similar transactions in the Madison, Wisconsin area by institutional mortgagees.
7. Such Mortgage and related documentation shall not contain any provisions which could be construed as rendering Lessor or any subsequent holder of the Lessor's interest in and to this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.
8. Such Mortgage and related documentation shall contain provisions to the effect that the holder of such Mortgage shall not look to Lessor or Lessor's interest in the Leased Premises, but will look solely to Lessee, Lessee's interest in the Leased Premises, the Improvements, or such other buildings and improvements which may from time to time exist on the Leased Premises, for the payment of the debt secured thereby or any part thereof. (It is the intention of the parties hereto that Lessor's consent to such Mortgage shall be without any liability on the part of Lessor for any deficiency judgment.)
9. Such Mortgage and related documentation shall provide that 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 holder of the Mortgage in accordance with the provisions of Article 9 hereof.
10. Such Mortgage and related documentation shall contain nothing that obligates Lessor to execute an assignment of the Ground Lease Fee or other rent payable by Lessee under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE: The rights of a holder of a Permitted Mortgage ("Permitted Mortgage") as referenced under section 8.2 of the Lease to which this Exhibit is attached shall be as set forth below.

1. Permitted Mortgagee shall without requirement of consent by the Lessor have the right, but not the obligation, to:

- (a) cure any default under this Lease, and perform any obligation required under this Lease, such cure or performance by a Permitted Mortgagee being effective as if it had been undertaken and performed by Lessee;
 - (b) acquire and convey, assign, transfer, and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in said 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 Permitted Mortgagee.
2. Permitted Mortgagee shall not, as a condition to the exercise of its rights under the Lease, be required to assume personal liability for the payment and performance of the obligations of the Lessee 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 Security and the premises. In the event Permitted Mortgagee does take possession of the Security and thereupon transfers the Security, 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 Lessor and Lessee shall be 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. In the event that the estate of Lessor is owned at any time by Lessee (regardless of a merger), or by any person in which Lessee has a direct or indirect interest, Permitted Mortgagee shall not be obligated to cure any default of Lessee under the Lease as condition to the forbearance by Lessor in the exercise of Lessor's remedies as provided in the Lease.
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, Lessor shall enter into a new lease of the Leased Premises with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to Lessor'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 Lessor 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 Lessee thereunder, and the Permitted Mortgagee shall have cured all defaults under the Lease which can be cured by the payment of money. Any new lease made pursuant to this section shall have the same priority with respect to

EXHIBIT B: FIRST REFUSAL

Whenever any party under the Ground 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 Ground Lease receive a bona fide, third-party offer to purchase the property that 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 Ground 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 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 a renewed right of first refusal in said property.