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## ISLAND HOUSING TRUST GROUND LEASE

THIS LEASE (this "Lease") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between ISLAND HOUSING TRUST CORPORATION, a Massachusetts non-for-profit corporation ("IHT") and \_\_\_\_\_ ("Homeowner").

The value of this Lease is equal to the total payments due under the Lease, of \$50.00 per month over a term of 99 years, or \$59,400

- Article 1: Letters of Stipulation and Acknowledgement
- Article 2: Leasing of Leased Premises
- Article 3: Duration of Lease
- Article 4: Use of Leased Premises
- Article 5: Ground Lease Fee
- Article 6: Taxes and Assessments
- Article 7: Improvements
- Article 8: Financing
- Article 9: Liability, Insurance, Damage and Destruction, Eminent Domain
- Article 10: Transfer, Sale, or Disposition of Improvements
- Article 11: Assignment and Sublease
- Article 12: Default
- Article 13: Dispute Resolution Process
- Article 14: General Provisions

The following Exhibits are attached hereto and made a part of this Lease:

- Exhibit A - Letter(s) of Stipulation of Homeowner
- Exhibit B - Letter of Acknowledgement of Homeowner's Attorney
- Exhibit C - Leased Premises (Legal Description of Property)
- Exhibit D - First Refusal
- Exhibit E - Bill of Sale
- Exhibit F - Permitted Mortgages
- Exhibit G - Restrictions (if applicable)

### RECITALS

WHEREAS, IHT 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 IHT 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 IHT in furtherance of these charitable purposes; and

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

WHEREAS, IHT and Homeowner 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 (as such term is hereinafter defined in Section 7.1), on the Leased Premises; and

WHEREAS, it is mutually understood and accepted by IHT and Homeowner 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 IHT and Homeowner, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IHT and Homeowner agree as follows:

## **DEFINITIONS**

**“Added Value”**: the adjustment to the Base Price provided in Section 10.10 with respect to Additions to the Improvements that increase household size and are confirmed by IHT in the form of a Certificate of Added Value as provided in Section 7.3.

**“Addition”**: the construction of additional bedrooms and bathrooms to the Improvements as described in Section 7.3.

**“AMI”**: the median area household income for Dukes County, Massachusetts, as determined by HUD or any successor agency that publishes the relevant indices, or other comparable index for the region in the event that publication of the AMI is discontinued as provided in Section 10.10.

**“Appraisal”**: a market valuation of the Leased Premises and the Improvements performed by a duly licensed appraiser as provided in Section 10.9.

**“Base Price”** equals the Purchase Price that is paid for the Improvements by the Homeowner (including the first purchase money Permitted Mortgage) plus the Added Value, if any.

**“Certificate of Added Value”**: the certificate issued by IHT confirming that an Addition to the Improvements qualifies for Added Value.

**“Dispute”**: Any controversy or claim between IHT and Homeowner arising out of or relating to this Lease, or the breach thereof.

**“Event of Default”**: any of the events of default by the Homeowner described in Sections 12.1, 12.2 and 12.3.

**“Formula Price”**: the Base Price (the Purchase Price plus the Added Value,) plus the Inflation Adjustment, calculated as described in Section 10.10.

**“Ground Lease Fee”**: the fee prescribed by Section 5.1 and as it may be adjusted from time to time as provided in Article 5.

**“Improvements”**: the original house described in Exhibit E, Bill of Sale, and any fixtures and improvements purchased, constructed or installed by the Homeowner on any part of the Leased Premises at any time during the term of this Lease.

**“Income-qualified Person”**: a person or group of persons whose household income does not exceed \_\_\_\_\_percent of the AMI for Dukes County as calculated and adjusted for household size from time to time by HUD or any successor agency that publishes the relevant indices.

**“Intent to Sell Notice”**: the notice to be delivered by the Homeowner in contemplation of an assignment of the Lease or a Transfer of the Improvements as provided in Section 10.4.

**“HUD”**: the U.S. Department of Housing and Urban Development.

**“Land”**: the land comprising the Leased Premises.

**“Leased Premises”**: the property described in Exhibit C, Leased Premises.

**“Permitted Heirs”**: any of one or more possible heirs of the Homeowner listed in Section 10.3.

**“Permitted Mortgage” and Permitted Mortgagee**: a mortgage on the Improvements and the Homeowner’s right to possess, occupy, and use the Leased Premises granted to a lender by the Homeowner with IHT’s written permission and satisfying the terms described in Section A of Exhibit F, Permitted Mortgages. The original lender(s) and any subsequent holder of a Permitted Mortgage is a Permitted Mortgagee.

**“Purchase Option”**: IHT’s option to purchase the Improvements at the Purchase Option Price calculated in Section 10.5.

**“Purchase Option Price”**: the maximum price for the Transfer of the Improvements as provided in Section 10.8.

**“Purchase Price”**: the agreed-upon purchase price for the Improvements as stated in Section 10.10.

**“Transfer”**: a sale, transfer or other disposition of the Improvements to a third party (any of the foregoing being a “Transfer”) other than a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure or a transfer to Permitted Heir(s) as provided in Section 10.3.

## **ARTICLE 1: Letters of Stipulation and Acknowledgment**

Attached and made part of this Lease by reference are Exhibit A, Letter of Stipulation of Homeowner, and Exhibit B, Letter of Acknowledgment of Homeowner's Attorney, setting forth their respective review and understanding of this Lease (in particular, Article 10, regarding the Transfer of the Improvements) and related documents for this transaction.

## **ARTICLE 2: Leasing of Leased Premises**

*2.1 PREMISES:* IHT, 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 in the attached Exhibit C, Leased Premises. IHT has furnished to Homeowner a copy of the most current, if any, title report previously obtained by IHT for the Leased Premises, and Homeowner accepts title to the Leased Premises in their condition "as is" as of the execution of this Lease.

*2.2 RESERVATION OF MINERAL RIGHTS:* IHT reserves to itself all the minerals and other extractive resources of the Leased Premises. This reservation shall not diminish the right of Homeowner under this Lease to occupy and freely use the Leased Premises. No extraction by IHT of minerals or other extractive resources shall be carried out without Homeowner's prior written consent, which consent shall not be unreasonably withheld.

## **ARTICLE 3: Duration of Lease**

*3.1 TERM:* The term of this Lease shall be ninety-nine (99) years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and terminating on the \_\_\_\_\_ day of \_\_\_\_\_, 21\_\_\_\_, unless terminated sooner as provided below.

*3.2 CHANGE OF IHT; HOMEOWNER'S RIGHT TO PURCHASE:* In the event that ownership of the Land is conveyed or transferred (whether voluntarily or involuntarily) by IHT to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. However, in the event IHT desires or attempts to convey the Land to any person or entity other than a nonprofit corporation, charitable trust, municipality, governmental agency or other similar entity sharing the goals described in the Recitals above (or as security for a mortgage loan), Homeowner shall have a right of first refusal to purchase the Land. This right shall be as specified in the attached Exhibit D, First Refusal. Any sale or other transfer of the Land contrary to this Section, when applicable, shall be null and void.

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

*4.1 RESIDENTIAL USE ONLY:* Subject to the restrictions set forth in Exhibit G, if applicable, Homeowner shall use, and shall cause all occupants to use, the Leased Premises and Improvements only for residential purposes and any incidental activities related to residential use that are permitted by applicable law and regulations.

**4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW:** Homeowner shall use the Leased Premises in a manner so as not to cause harm to others or create any nuisances, public or private; and shall dispose of any and all waste in a safe, sanitary and lawful manner. Homeowner shall maintain the Leased Premises and Improvements in good, safe, and habitable condition in all respects, 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:** Homeowner shall be responsible for the use of the Leased Premises by all residents and their families, friends, and visitors; and anyone else using the Leased Premises with their consent and shall make all such people aware of the spirit, intent, and appropriate terms of this Lease.

**4.4 OCCUPANCY:** Homeowner shall occupy the Leased Premises for at least eleven (11) months of each year of this Lease, unless otherwise agreed by IHT.

**4.5 INSPECTION:** IHT may inspect any portion of the Leased Premises except the interior(s) of Homeowner's Improvements, at any reasonable time, upon at least forty-eight (48) hours' oral notice to Homeowner. In the event of emergency, IHT may inspect any portion of the Leased Premises except the interior(s) of Homeowner's Improvements without notice provided IHT shall have made reasonable efforts to give advance notice to Homeowner. If IHT has received an Intent-to-Sell Notice as described in Section 10.4, then IHT has the right to inspect the interiors of all fully enclosed buildings to determine their condition prior to sale. IHT must notify the Homeowner orally or in writing at least 24 hours before carrying out such inspection.

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

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

**5.1 GROUND LEASE FEE:** In consideration of the possession, continued use, and occupancy of the Leased Premises, Homeowner shall pay to IHT a monthly Ground Lease Fee of fifty (\$50.00) dollars per month.

**5.2 PAYMENT OF GROUND LEASE FEE:** The Ground Lease Fee shall be payable to IHT, at the address specified in this Lease as IHT's address, on the first day of each month for as long as this Lease remains in effect, unless, with IHT's prior written consent, the Ground Lease Fee is to be escrowed by a Permitted Mortgagee, in which case payment shall be made as specified by that Mortgagee. If this Lease commences 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 the month at the time this Lease is executed.

**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 market rental value of the Leased Premises has been established, current

as of the commencement of the lease term, recognizing that the use of the Leased Premises is restricted by some of the provisions of this Lease. Then the affordability of this monthly amount for Homeowner 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 Homeowner.

*5.4 REDUCTION, DELAY OR WAIVER OF GROUND LEASE FEE:* IHT 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 Homeowner. Any such reduction, delay, or waiver must be in writing and signed by IHT before being effective and no such adjustment or waiver in one instance will be binding in other instances.

*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. However, in the event that, for any reason, the provisions of Article 10 or Article 11 regarding Transfers of the Improvements or Section 4.4 regarding occupancy are suspended or invalidated for any period of time, then during that time, at the option of IHT, the Ground Lease Fee shall be increased to an amount reasonably calculated by IHT to equal the fair rental value of the Leased Premises for use not restricted by the provisions of the suspended portions of this Lease. In such event, IHT shall notify Homeowner of the amount calculated in this way, and the Ground Lease Fee shall then be this amount as of the first day of the month immediately following such notice.

In order to keep the Ground Lease Fee reasonably current, the amount specified in Section 5.1 (and the amount specified in the preceding paragraph) shall be subject to adjustment every five years during the term of this Lease, provided any increase in the Ground Lease fee shall not exceed an effective annual increase of three percent (3%). At such intervals, the amount shall be recalculated through such reasonable process as IHT shall choose, based upon the standards set forth in Sections 5.3 and 5.4 above. IHT shall notify Homeowner promptly upon recalculation of the new Ground Lease Fee amount. Upon the final determination of the recalculated Ground Lease Fee in accordance with the terms of this Section, IHT shall maintain in its file a certification of the amount of such recalculated Ground Lease Fee and the process by which it was determined.

5.6 In the event that any amount of payable Ground Lease Fee remains unpaid when the Improvements are sold and this Lease is terminated or assigned to another party, the amount of payable Ground Lease Fee shall be paid to IHT out of any proceeds from the sale of the Improvements otherwise due to Homeowner at the time of such sale. IHT shall have, and the Homeowner hereby consents to, a lien upon the Improvements for any unpaid Ground Lease Fee. Such lien shall be prior to all other liens and encumbrances on the Improvements except (a) liens and encumbrances recorded before the recording of the Lease, (b) Permitted Mortgages, and (c) liens for real property taxes and other governmental assessments or charges against the Improvements.

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

**6.1 TAXES AND ASSESSMENTS:** Homeowner shall be responsible for payment of all taxes and governmental assessments that relate to the Improvements and the Leased Premises. Homeowner shall also pay directly, when due, all other service bills, utility charges, or other governmental assessments charged against the Leased Premises.

**6.2 TAXES ON LEASED PREMISES:** In the event that the local taxing authority bills IHT for the taxes on the Leased Premises, IHT shall pass the responsibility for this expense to Homeowner and Homeowner shall promptly pay this bill.

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

**6.4 PAYMENTS IN EVENT OF DELINQUENCY:** In the event that Homeowner fails to pay the taxes or other charges specified in Section 6.1 above, IHT may increase, but shall not be obligated to increase, Homeowner'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. Upon collecting any such amount, IHT shall pay the amount collected to the taxing authority in a timely manner or reimburse itself for any payments made by it on Homeowner's behalf.

**6.5 PROOF OF COMPLIANCE:** Concurrently with the payment of any taxes, assessments, and charges required or permitted by the provisions of this Lease, IHT may require Homeowner to furnish evidence satisfactorily documenting the payment of such charges. 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 Improvements purchased by Homeowner or constructed or placed by Homeowner on any part of the Leased Premises at any time during the term of this Lease shall be property of Homeowner. Title to such Improvements shall be and remain vested in Homeowner. However, Homeowner's exercise of the rights of ownership is subject to the provisions of this Lease, including but not limited to provisions regarding the disposition of Improvements by Homeowner and IHT's option to purchase the Improvements. In addition, Homeowner shall not sever or move the Improvements from the Land.

**7.2 PURCHASE OF IMPROVEMENTS BY HOMEOWNER:** Homeowner is simultaneously purchasing the Improvements now located on the Leased Premises and described in the Bill of Sale, the form of which is annexed to this Lease as Exhibit E, Bill of Sale.

**7.3 ALTERATION AND ADDITIONS:** 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 Homeowner; (b) all construction shall be performed in a workman 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; and (d) the addition of bedroom(s) and bathroom(s) intended to qualify for Added Value as determined in Section 10.10 below shall not be constructed without prior review by IHT as described in the following paragraph.

If Homeowner wishes to undertake construction of an Addition with the intention of providing for a larger household size and thereby qualifying for Added Value, Homeowner shall, prior to undertaking the Addition, submit to IHT a written request for a confirmation that the Addition will qualify for Added Value. Such request shall include a description of the proposed Addition and reasonably detailed drawings indicating the intended expansion and reconfiguration of the Improvements. IHT may request additional information if it finds such information will be necessary for a reasonable determination. IHT shall deliver a conditional confirmation that the Addition will result in Added Value if all of the following conditions will be met: (a) the total number of rooms to be designated as bedrooms upon the completion of Addition will be increased, (b) the total living area within the Improvements will increase by at least 100 square feet and have at least one bathroom for every two bedrooms, and (c) all rooms to be designated as bedrooms upon the completion of the Addition shall be approved as bedrooms under applicable building codes. If all such conditions will not be met, IHT may, at its sole discretion, give or refuse to give a conditional confirmation that the Addition will nonetheless qualify for Added Value. Any conditional confirmation shall become a final confirmation only upon Homeowner's delivery to IHT of all building permits necessary for the Addition. Upon delivery of the permits necessary for final confirmation, IHT shall issue a "Certificate of Added Value" and shall give Homeowner one copy of such Certificate and shall file another copy of such Certificate in its permanent records.

*7.4 PROHIBITION OF LIENS:* Except for Permitted Mortgages, no lien of any type shall attach to IHT's title to the Land or to IHT's interest in the Leased Premises or to any other property owned by IHT. Homeowner shall not permit any statutory or similar lien to be filed against the Leased Premises, the Improvements, or any interest of IHT or Homeowner that remains more than sixty (60) days after it has been filed. Homeowner 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 Homeowner fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, IHT may, but shall not be obligated 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 in an amount sufficient to release the Leased Premises from such lien. Any amounts paid by IHT to discharge such liens shall be deemed to be an additional Ground Lease Fee payable by Homeowner upon demand.

*7.5 MAINTENANCE AND SERVICES:* Homeowner shall, at Homeowner's sole expense, maintain the Leased Premises and all Improvements as required by Section 4.2 above. IHT 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 Homeowner hereby assumes the sole responsibility for furnishing all services or facilities.

#### *7.6 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, ownership of the Improvements together with the Leased Premises shall revert to IHT. Upon assuming title, IHT shall promptly pay as consideration for the Improvements to Homeowner and the Permitted Mortgagee(s) as follows:

FIRST, IHT shall pay the Permitted Mortgagee(s) the full amount due to such Mortgagee(s) by the Homeowner; and

SECOND, IHT shall pay an amount equal to IHT's Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less (i) the amount paid to the Permitted Mortgagee(s) as stated above; and (ii) the total amount of any earned but unpaid Ground Lease Fee including any charges that may have been added to the Ground Lease Fee in accordance with this Lease.

The Homeowner shall be responsible for any deficiency with respect to the amount due under any Permitted Mortgage(s) and any costs necessary to clear any additional liens or other charges which may be assessed against the Improvements. If the Homeowner fails to clear such liens or charges, the balance due the Homeowner shall also be reduced by the amount necessary to release such liens or charges, including reasonable attorneys' fees incurred by IHT.

### **ARTICLE 8: Financing**

*8.1 PERMITTED MORTGAGE:* Homeowner may mortgage the Leased Premises or grant a security interest in the Improvements, either for the purchase or refinance of Improvements located thereon, only with the prior written consent of IHT and only pursuant to a mortgage or other security instrument satisfying all of the requirements for a Permitted Mortgage. By signing this Lease, IHT gives written permission for any mortgage signed by the Homeowner effective on the day this Lease is signed for the purpose of financing Homeowner's purchase of the Improvements.

*8.2 RIGHTS AND OBLIGATIONS OF PERMITTED MORTGAGEE:* Any Permitted Mortgagee shall without requirement of consent by IHT have the rights identified and defined in Section B of the attached Exhibit F, Permitted Mortgages. Any Permitted Mortgagee shall be bound by each of the requirements stated in Exhibit F, Permitted Mortgages, which is made a part of this Lease by reference, unless the particular requirement is removed, contradicted, or modified by a rider to this Lease signed by the Homeowner and the IHT to modify the terms of the Lease during the term of the Permitted Mortgage.

*8.3 REFINANCING OR OTHER SUBSEQUENT MORTGAGES:* If, at any time subsequent to the purchase of the Improvements and the signing of this Lease, the Homeowner seeks a loan that is to be secured by a mortgage on the Improvements (to refinance an existing Permitted Mortgage or to finance an Addition or home repairs or for any other purpose), the Homeowner must inform IHT in writing, of the proposed terms and conditions of such mortgage as follows: Not less than thirty (30) days (or such shorter period as may be approved by IHT) prior to the date on which Homeowner requests IHT's consent to a mortgage or other security instrument to be effective,

Homeowner shall provide to IHT a completed “Lending Criteria For Island Housing Trust: checklist (which IHT shall provide on its website and promptly upon written request of the Homeowner) . IHT may choose to consent to any mortgage and/or security interest, and in so doing shall designate such mortgage and/or security interest as a “Permitted Mortgage.” However, IHT shall be required to consent to a mortgage and/or security interest only if:

- (a) at the time proposed by Homeowner for the execution of such mortgage and/or security interest, no default under this Lease is then outstanding; and
- (b) the mortgage and/or security interest so submitted is a Permitted Mortgage.
- (c) the Homeowner and any mortgage so submitted comply with IHT’s Refinancing Procedure (which IHT shall provide on its website and promptly upon written request of the Homeowner) in effect at that time.

Homeowner shall pay to IHT at IHT’s option, as additional Ground Lease Fee, all fees, costs, and expenses, including, without limitation, reasonable attorneys’ fees, incurred by IHT in connection with any Permitted Mortgage.

*8.4 REMOVAL OF CERTAIN PROVISIONS PURSUANT TO FORECLOSURE:* In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a bill of sale to a Permitted Mortgagee in lieu of foreclosure or other remedy exercised by a Permitted Mortgagee the effect of which is to divest Homeowner of title to the Leasehold Premises or the Improvements after default by Homeowner under such Permitted Mortgagee’s lending documents in accordance with the provisions of this Lease, at the election of the Permitted Mortgagee all or parts of the provisions of Article 10, Sections 10.1 through 10.12, inclusive, and Article 14, Section 14.5 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security (as such term is defined in the attached Exhibit F), so foreclosed upon or transferred.

*8.5 IHT’S RIGHT TO PROCEEDS IN EXCESS OF PURCHASE OPTION PRICE:* The parties recognize that it would be contrary to the fundamental concept of this Lease and an incentive to abuse Homeowner’s authorization to encumber its leasehold interest with a Permitted Mortgage if Homeowner could realize more than the Purchase Option Price as the result of any foreclosure of any mortgage. Accordingly, Homeowner hereby irrevocably assigns to IHT any and all net proceeds of sale of the Improvements remaining after payment of costs of foreclosure and satisfaction of the lien of any Permitted Mortgagee which would otherwise have been payable to Homeowner, to the extent such net proceeds exceed the net proceeds that Homeowner would have received had the property been sold for the Purchase Option Price, and authorizes and instructs the Permitted Mortgagee or any party conducting any sale to pay the amount of said excess proceeds directly to IHT. In the event that, for any reason, such excess proceeds are paid to Homeowner, Homeowner hereby agrees to promptly pay the amount of such excess proceeds to IHT.

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

**9.1 HOMEOWNER'S LIABILITY:** Homeowner assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy, and use of the Leased Premises and/or the Improvements.

**9.2 INDEMNIFICATION OF IHT:** Homeowner shall defend, indemnify, and hold IHT 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. Homeowner waives all claims against IHT for such injury or damage. However, IHT shall remain liable (and Homeowner shall not indemnify and defend IHT against such liability or waive such claims of liability) for injury or damage due to the negligent or intentional acts or omissions of IHT or IHT's agents or employees.

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

**9.4 INSURANCE:** Homeowner shall, at Homeowner's sole expense, keep all Improvements continuously insured against loss or damage under the comprehensive special form of insurance for the full replacement value of such Improvements. The dollar amounts of this coverage shall be adjusted at two (2)-year intervals, beginning on the date this Lease is signed, or upon IHT's demand given not more often than annually, upon thirty (30) days' notice to Homeowner. This adjustment to the coverage shall be equal to the adjusted building replacement cost, excluding design or permit fees, excavation, site prep, and other underground work.

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

Homeowner shall, at Homeowner's sole expense, maintain continuously in effect personal liability insurance covering the Leased Premises and Improvements in the amounts of not less than five hundred thousand dollars (\$500,000) for injury or death to persons or property damage to property of others. Homeowner shall name IHT as an additional insured on said personal liability policy.

The dollar amounts of such coverages may be increased from time to time at IHT's request but not more than once in any 12-month period. The amount of such coverage shall be based on current trends in homeowner's liability insurance in the area in which the Improvements are located.

Homeowner shall provide IHT with copies of all policies and renewals of policies. All 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 Homeowner. IHT shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance.

**9.5 DAMAGE OR DESTRUCTION:** Except as provided below, in the event of fire or other damage to the Improvements, Homeowner 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. Homeowner shall 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 Homeowner, 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 Homeowner has fulfilled all the hazard insurance requirements set forth in Section 9.4 above), then Homeowner may terminate this Lease by written notice to IHT given not later than sixty (60) days after the event that caused the damage. However, such termination shall not be effective until ninety (90) days after the date upon which the notice is received by IHT. During this ninety (90) day period, IHT may seek an adjustment from the insurer so as to increase the available insurance proceeds to an amount covering at least eighty percent (80%) of the cost of repair and restoration. If successful in securing such adjustment, IHT may render Homeowner's termination notice null and void by written notice to Homeowner within such ninety (90) day period. If IHT fails to nullify the termination notice in this way, then this Lease shall terminate at the expiration of the ninety (90) day period, and any insurance proceeds payable to Homeowner 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 first to Permitted Mortgagee to the extent required by the Permitted Mortgage, with the balance then paid to the Homeowner, provided that the total amount paid to the Homeowner and the Permitted Mortgagee does not exceed the then applicable Purchase Option Price (as of immediately prior to the damage) calculated according to the provisions of Article 10 below. The balance of such proceeds, if any, shall be paid to IHT.

*9.6 EMINENT DOMAIN AND PUBLIC DEDICATION:* 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, this Lease shall terminate as of the date Homeowner 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 IHT.

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 residential use consistent with this Lease, IHT may in its discretion allocate some or all the monetary compensation to enable Homeowner 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 Homeowner 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 this Lease, IHT shall reassess the fair rental value of the remaining Leased 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 this Lease.

**9.8 RELOCATION OF HOMEOWNER:** In the event of a termination of this Lease as a result of damage, destruction or taking, IHT may, but shall not be obligated to grant Homeowner 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, Homeowner agrees to contribute any proceeds or award received by Homeowner to purchase or develop Improvements on such tract. IHT's failure to supply such a leasehold interest shall not give rise to any cause of action by Homeowner against IHT.

## **ARTICLE 10: Transfer, Sale, or Disposition of Improvements**

**10.1 INTENT:** It is the understanding of the parties that the terms of this Lease, and in particular of this Article 10, are intended to preserve the affordability of the Improvements for lower-income households and expand access to homeownership opportunities for such households.

**10.2 TRANSFERS TO INCOME-QUALIFIED PERSONS:** Homeowner may Transfer its interest in the Leased Premises or the Improvements only to IHT or an Income-qualified Person or otherwise only as explicitly permitted by the provisions of this Article 10. All such Transfers shall be subject to the price limitations set forth herein, including, without limitation, those set forth in Article 11, and to IHT's review and purchase option rights, as hereinafter set forth in this Article 10. Any purported Transfer done without following the procedures set forth below or in violation of such price limitations (except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure in accordance with Section 8.3 above) shall be null and void.

**10.3 TRANSFER TO HOMEOWNER'S HEIRS:** In the event of the death of the Homeowner, upon receipt of notice from the personal representative of the decedent's estate duly appointed by a formal probate proceeding, given within ninety (90) days of the death of Homeowner (or the last surviving joint or co-owner of the Improvements) IHT shall, unless for good cause shown, consent to a transfer of the Improvements and an assumption of this Lease to and by one or more of the possible heirs of Homeowner

listed below as “a” or “b” [“a, “b” or “c”] \*(each such party hereinafter a “Permitted Heir” and, collectively, “Permitted Heirs”), provided that a Letter of Stipulation and a Letter of Acknowledgment of legal counsel (similar to those described in Article 1 of this Lease), setting forth such Permitted Heirs’ review, understanding and acceptance of the terms of this Lease, are submitted to IHT to be attached to this Lease when it is transferred to such Permitted Heir(s).

- a. the spouse of Homeowner; or
- b. or Homeowner’s domestic partner, who is one of two people, the other being Homeowner, who maintain the same permanent residence and have a close and committed personal relationship involving shared responsibilities for each other’s welfare as evidenced by financial interdependence, and expressing the intention for their relationship to be permanent. [; or
- c. ]

Any other heirs-at-law, legatees, or devisees of Homeowner who are Income-qualified Persons must, in addition to submitting Letters of Stipulation and Acknowledgment as provided above, demonstrate to IHT’s reasonable satisfaction that they are Income-qualified Persons, or, if unable to do so, shall not be entitled to possession of the Improvements and Leased Premises and must Transfer the Improvements and Leased Premises in accordance with the provisions of this Article 10.

Notwithstanding the foregoing, Homeowner may make a recommendation in its will or other written instrument that this Lease be transferred to the party specified therein upon the death of Homeowner, which recommendation IHT may, but shall not be obligated to, accept, as IHT may elect, in its sole discretion.

*10.4 HOMEOWNER’S NOTICE OF INTENT TO SELL:* Except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure, in the event that Homeowner contemplates an assignment of its interest herein or a Transfer of the Improvements, Homeowner shall notify IHT, in writing, of such wish in an Intent-To-Sell Notice which shall include a statement as to whether Homeowner wishes to recommend a prospective buyer as of the date of the Notice.

*10.5 IHT’S PURCHASE OPTION:* Upon receipt of an Intent to Sell Notice from Homeowner, IHT shall have the Purchase Option to purchase the Improvements at the Purchase Option Price calculated in Section 10.8 below.

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\* Paragraph “c” , providing for other classes of Permitted Heirs, such as children, may be applicable in certain circumstances. For example, if allowed by the Town affordable housing restriction.

The Purchase Option is designed to further the purpose of preserving the affordability of the Improvements for succeeding Income-qualified Persons while taking fair account of the investment by Homeowner.

If IHT elects to purchase the Improvements, IHT shall exercise the Purchase Option by notifying Homeowner, in writing, of such election (the "Notice of Exercise of Option") within forty-five (45) days of the receipt of the Intent-To-Sell Notice or forty-five (45) days following IHT's receipt of an appraisal carried out in accordance with Section 10.9, whichever shall be the later to occur, or the Purchase Option shall expire. Having given such Notice, IHT may either proceed to exercise the Purchase Option directly by purchasing the Improvements, or may assign the Purchase Option to an Income-qualified Person.

The purchase (by IHT or IHT's assignee) must be completed within sixty (60) days of IHT's Notice of Exercise of Option, or Homeowner may sell the Improvements as provided in Section 10.6 below. The time permitted for the completion of the purchase may be extended by mutual agreement of IHT and Homeowner.

Homeowner may recommend to IHT a prospective buyer who is an Income-qualified Person and is prepared to submit Letters of Stipulation and Acknowledgment indicating informed acceptance of the terms of this Lease. IHT may, but shall not be obligated to, accept, such recommendation from Homeowner, as IHT may elect, in its sole discretion.

*10.6 IF PURCHASE OPTION EXPIRES:* If the Purchase Option has expired or if IHT has failed to complete the purchase within the 60-day period allowed by Section 10.5 above, Homeowner may Transfer the Improvements and this Lease to any Income-qualified Person, for not more than the then applicable Purchase Option Price. If, six months after the expiration of the Purchase Option or the expiration of said 60-day period, the Improvements still have not been Transferred, Homeowner may Transfer the Improvements and this Lease, for not more than the then applicable Purchase Option Price, to any party regardless of whether that party is an Income-qualified Person.

*10.7 IHT'S POWER OF ATTORNEY TO CONDUCT SALE:* In the event IHT does not exercise its Purchase Option and complete the purchase of the Improvements as set forth above, and Homeowner (a) is not then residing in the Improvements and (b) continues to hold the Improvements out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one (1) year of the giving of the Intent to Sell Notice, Homeowner does hereby appoint IHT its attorney in fact to seek a buyer; negotiate a reasonable price that furthers the goals set forth in this Lease; and Transfer the Improvements and distribute proceeds of sale, minus IHT's costs of sale and reletting and any other sums owed IHT by Homeowner.

*10.8 PURCHASE OPTION PRICE:* In no event may the Improvements be Transferred for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be equal to the lesser of (a) the value of the Improvements as determined by the Appraisal commissioned and conducted at the discretion of IHT as provided in 10.9 below or (b) the price calculated in accordance with the formula described in Section 10,10 below (the "Formula Price").

**10.9 APPRAISAL:** No later than ten (10) days after IHT's receipt of Homeowner's Intent-To-Sell Notice, a market valuation of the Leased Premises and the Improvements (the "Appraisal") may be commissioned at the discretion of IHT to be performed by a duly licensed appraiser selected by the IHT and reasonably acceptable to the Homeowner. IHT shall commission and pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Improvements were held in fee simple absolute, disregarding the restrictions of this Lease on the use of the Land and the Transfer of the Improvements (other than restrictions contained in Exhibit C, if applicable, that would apply to the Land and any improvements thereon irrespective of this Lease). The Appraisal shall state the values contributed by the Land and by the Improvements as separate amounts. Copies of the Appraisal are to be provided to both IHT and Homeowner.

**10.10 CALCULATION OF THE FORMULA PRICE:** The Formula Price shall be equal to the Base Price (Homeowner's Purchase Price plus the Added Value,) plus the Inflation Adjustment, calculated as described below.

- *Base Price:* The parties agree that the Base Price is the Purchase Price plus the Added Value.
- *Homeowner's Purchase Price Plus Added Value, if Applicable:* The parties agree that Homeowner's Purchase Price for the Improvements existing on the Leased Premises as of the commencement of the term of this Lease is

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- *Added Value:* shall be recognized if Homeowner has increased the number of bedrooms (and bathrooms if required under Section 7.3) in the Improvements by the addition of an Addition with the result that a Certificate of Added Value has been issued by IHT in accordance with Section 7.3 hereof. For purposes of determining the Added Value, a household of two shall be deemed an appropriate size household for a one bedroom dwelling, a household of three shall be deemed an appropriate size household for a two bedroom dwelling, a household of four shall be deemed an appropriate size household for a three bedroom dwelling, and a household of five shall be deemed an appropriate sized household for a four bedroom dwelling.

The parties agree that, at the time of Homeowner's purchase, the Improvements contained \_\_\_\_\_ bedrooms and provided an appropriate size dwelling for a household of \_\_\_\_\_. If, at the time of resale, the number of bedrooms (and bathrooms if required under Section 7.3) has been increased, and IHT has issued a Certificate of Added Value, the amount of the Added Value shall be determined as follows:

1. The dollar amount most recently reported by HUD at the time of resale as being \_\_\_\_\_% of AMI for a household of \_\_\_\_\_ (as such household size is stated above) shall be subtracted from the dollar amount most recently reported by HUD at the time of resale as being \_\_\_\_\_% of AMI for the household size appropriate for the increased number of bedrooms, thus determining the difference between the two dollar amounts. This difference shall then be divided by the aforementioned dollar amount reported by HUD for the smaller household size. The quotient of this operation shall be rounded to three (3) decimal places.

2. The resulting quotient shall be multiplied by the amount of Homeowner's Purchase Price. The product of this operation shall be the Added Value.

- *Inflation Adjustment:* The parties agree that the Inflation Adjustment is defined as the sum of two parts: (1) Homeowner's Purchase Price, times the percent change in the AMI since the time of purchase, as may be applicable, and (2) the Added Value times the percent change in the AMI since the time of the Addition. The Base Price plus the Inflation Adjustment shall be the Formula Price. In any event, and in order to balance years of anomaly in the AMI, the percent change in AMI shall not be greater than an average of four percent (4%) per year. If the percent change in AMI is greater than an average of four percent (4%) per year during the period of ownership or since the time of the Addition, the percent change in AMI shall be figured as four percent (4%) per year. In the event that HUD no longer continues to determine and promulgate an AMI or comparable figure for the region, IHT shall reasonably select another measure of the change in consumer costs in Dukes County over the relevant time period, such other measure shall in that case be used to determine the percent change to be applied.

The Purchase Option Price determines the maximum price for which the Improvements can be sold and is NOT a guarantee of expected sale price.

*10.11 NEW LEASE:* An Income-qualified Person who purchases the Improvements in accordance with the provisions of this Article 10 shall enter into a new Lease from IHT, which new Lease shall be substantially the same as this Lease in the rights, benefits and obligations assigned to Homeowner and IHT

*10.12 DEFERRED MAINTENANCE AND CONDITION OF IMPROVEMENTS AT TIME OF SALE:* It is expected and understood that the Homeowner maintain the Improvements in good, safe and habitable condition as outlined in Sections 4.2 and 7.5 throughout the term of the Lease. At the time of Transfer, Homeowner agrees to Transfer the Improvements in good, safe and habitable condition.

IHT shall use the requirements of the mortgage lender for the person purchasing the Improvements as the basis for identifying deferred maintenance problems, if any, that must be corrected prior to sale of the Improvements. Homeowner shall complete, or cause to be completed, all required repairs identified by the mortgage lender's requirements. All work must be completed in a professional manner and prior to closing. Homeowner shall bear the full cost of said repairs. All costs that cannot be paid in advance by Homeowner shall be paid from Homeowner's proceeds at closing.

*10.13 MONITORING FEE:* IHT shall be entitled to a fee of one percent of the established sale price of the unit for the services performed monitoring the resale and transfer of this Lease. This fee shall be paid by the buyer of Homeowner's interest as a closing cost at the time of closing.

## **ARTICLE 11: Assignment and Sublease**

Except as otherwise provided in Article 8 (including Exhibit F, Permitted Mortgages) and Article 10, Homeowner shall not assign, sublease, sell, or otherwise Transfer or convey any of Homeowner's rights under this Lease without the prior written consent of IHT. Homeowner agrees that IHT 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 or other Transfer shall be subject to the following conditions.

a) Any such assignment or sublease shall be subject to all the terms of this Lease, including, without limitation, all prohibitions, restrictions and other provisions applicable to the sale, assignment, sublease or other Transfer of the Improvements and/or this Lease as provided herein

b) In the case of sublease, the Leased Premises and Improvements shall not be leased or subleased to any third party who is not qualified by IHT or IHT's agent as an Income-qualified Person. In the case of a sublease, the rental or occupancy fee charged the sublessee shall not be more than that amount charged Homeowner by IHT, plus an amount approved by IHT to cover cost to Homeowner for the Improvements. All rents, profits or proceeds from such transaction which exceed the carrying costs of the Improvements as determined by IHT in its sole and absolute discretion shall be paid to and be the property of the IHT.

c) In the case of an assignment, the total consideration for such assignment and the related Transfer of the Improvements shall not exceed the Purchase Option Price as calculated in accordance with Article 10 above.

## **ARTICLE 12: Default**

*12.1 MONETARY DEFAULT BY HOMEOWNER:* It shall be an Event of Default if Homeowner fails to pay the Ground Lease Fee or other charges required by the terms of this Lease and such failure is not cured by Homeowner or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by IHT to Homeowner and Permitted Mortgagee. However, if Homeowner shall make a good faith partial payment of at least two thirds (2/3) of the amount owed during such initial thirty (30)-day period, then such period shall be extended one additional thirty (30)-day period. The full amount of the delinquent Lease Fee or other charges must be paid at the end of this additional period. This paragraph may be used to extend payment deadlines no more than once in every twelve (12)-month period.

*12.2 NONMONETARY DEFAULT BY HOMEOWNER:* It shall be an Event of Default if Homeowner fails to abide by any other material term or condition in this Lease, and such failure is not cured by Homeowner or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by IHT to Homeowner and Permitted Mortgagee. However, in the case where Homeowner or Permitted Mortgagee has commenced to cure such default within such sixty (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.

**12.3 DEFAULT BY HOMEOWNER 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 Homeowner is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Homeowner for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of Homeowner's property by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts. Rights exercised by a Permitted Mortgagee shall not constitute a default under this Section 12.3.

**12.4 TERMINATION:** In the case of any of the Events of Default described above, IHT may terminate this Lease and initiate summary proceedings against Homeowner. Pursuant to such proceedings, without demand or notice, IHT may enter any part of the Leased Premises, repossess the entire Leased Premises, expel Homeowner and those claiming rights through Homeowner and remove their effects without being guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant. If this Lease is terminated by IHT, or if IHT reenters the Leased Premises pursuant to an Event of Default, Homeowner agrees to pay and be liable for any earned but unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with such termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by IHT in pursuit of its remedies under this Lease.

If IHT elects to terminate this Lease, then the Permitted Mortgagee shall have the right (subject to Article 8 above) to re-instate this Lease to the maximum extent necessary so as to enable the Permitted Mortgagee to exercise any or all of its rights under its mortgage.

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

### **ARTICLE 13: Dispute Resolution Process**

Any Dispute shall be resolved as follows:

**13.1 SMALL CLAIMS COURT:** Disputes that fall within the jurisdiction of the Massachusetts small claims courts shall be brought only in small claims court in Dukes County. The parties are encouraged to seek mediation through the small claims court if mediation is offered to the parties.

**13.2 SUMMARY PROCESS:** Notwithstanding the provisions of sections 13.1 and 13.3, if IHT claims a right of possession of the leased premises, IHT may elect to bring an action for summary process under MG.L. c. 239 in any court of competent jurisdiction.

In any such action, IHT may join any additional claims it may have against the Homeowner as are permitted by applicable law or court rule. IHT may demand arbitration as described in section 13.3 below. If a suit has been filed, the parties shall have no right to arbitration for that issue unless by mutual consent.

**13.3 ARBITRATION:** Disputes which are not submitted to small claims under section 13.1 above, and which are not brought as a summary process action under section 13.2 above shall be settled by final and binding arbitration before a single arbitrator administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

#### **ARTICLE 14: General Provisions**

**14.1 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

IHT: Island Housing Trust Corporation, P.O. Box 779, West Tisbury, MA 02575 (name of IHT)

with a copy to: \_\_\_\_\_ (IHT’s attorney)

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

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

**14.2 NO BROKERAGE:** Homeowner warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against IHT relative to dealings with brokers, Homeowner shall defend the claim against IHT with counsel of IHT’s selection and save harmless and indemnify IHT on account of loss, cost or damage which may arise by reason of any such claim.

**14.3 SEVERABILITY AND DURATION OF:** 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 IHT against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is the intention of the parties that their respective options to purchase and all other rights under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and such options and other rights shall be considered to be coupled with an interest. Further, the parties intend such options and other rights to be ones arising out of a non-donative transfer within the meaning of M.G.L. c. 190B, section 2-901 as the same is now in effect and therefore not subject to any limitations otherwise imposed by said law. In the event any such option or right shall be construed to be subject to any

rule of law limiting the duration of such option or right, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the following persons:

The grandchildren living as of the date hereof of any of the directors or employees of the Island Housing Trust.

*14.4 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION:* If the provisions of the purchase option set forth in Article 10 of this Lease shall become unenforceable for any reason other than termination following the exercise of rights of a Permitted Mortgagee under its mortgage, IHT shall nevertheless have a right of first refusal to purchase the Improvements. This right shall be as specified in the attached Exhibit D, First Refusal. Any sale or Transfer contrary to this Section, when applicable, shall be null and void.

*14.6 WAIVER:* The waiver by IHT at any given time of any term or condition of this Lease, or the failure of IHT 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 this Lease. IHT may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by IHT before being effective.

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

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

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

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

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

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

14.12 RECORDING: The parties agree that the entire Lease including exhibits and any subsequent amendments thereto, shall be recorded at the Registry of Deeds in the County where the Improvements are located.

14.13 HOMEOWNERS: Notwithstanding anything herein to the contrary, Homeowner under this Lease shall at all times be one or more natural persons and any transfer by Homeowner of its interest hereunder to a corporation, trust, partnership or any other entity in violation of the foregoing prohibition shall be deemed null and void.

IN WITNESS WHEREOF, the parties have executed this Lease at Vineyard Housing Office, 346 State Road, Vineyard Haven, MA on the day and year first above written.

Island Housing Trust Corporation,

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_, its duly authorized agent

\_\_\_\_\_  
\_\_\_\_\_  
Witness

Homeowner:

\_\_\_\_\_  
\_\_\_\_\_  
Witness

Homeowner:

COMMONWEALTH OF MASSACHUSETTS

County of Dukes, ss

On this \_\_\_\_ day of \_\_\_\_, 202\_\_, before me, the undersigned notary public, personally appeared Philippe Jordi, Executive Director of Island Housing Trust Corporation, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document [IHT], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of Dukes, ss.

On this \_\_\_\_ day of \_\_\_\_, 202\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document [Homeowner], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_

Notary Public

Print Name:

My commission expires:

Exhibit A to the Island Housing Trust Ground Lease dated \_\_\_\_\_

LETTER OF STIPULATION OF HOMEOWNER

To: Island Housing Trust (“IHT”)

Date: \_\_\_\_\_, 202\_\_

This letter is given to IHT to become an exhibit to a Lease between IHT and me. I will be leasing a parcel of land from IHT and will be buying the home that sits on that parcel of land. I will therefore become what is described here as an “IHT 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 an IHT homeowner, now and in the future.

In particular I understand and agree with the following points.

- One of the goals of IHT is to keep IHT homes affordable for lower-income households from one IHT homeowner to the next. I support this goal as an IHT 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 IHT 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 IHT to promote resident ownership of IHT 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.
- As an IHT homeowner it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely,

**Exhibit B to the Island Housing Trust Ground Lease dated \_\_\_\_\_**

**LETTER OF ACKNOWLEDGEMENT OF HOMEOWNER'S ATTORNEY**

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

In connection with the contemplated purchase of the house and other improvements and leasing of the land, I reviewed with the Client the following documents relating to the transaction:

- a. this Letter of Acknowledgment and a Letter of Stipulation from the Client
- b. a proposed Bill of Sale conveying the house and other improvements to the Client
- c. a proposed Ground Lease and Exhibits conveying the "Leased Premises" to the Client
- d. an Permitted Mortgage Agreement between my client and \_\_\_\_\_ - in the form required by IHT and
- e. other written materials provided by the IHT or documents related to the financing of the purchase, including:

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. My advice and review have been given 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 [his][her][their] own judgment and upon [his][her][their] investigation of the facts. The full and complete advice and information provided by me was an integral element of such investigation.

Name \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Firm/Address \_\_\_\_\_

Exhibit C to the Island Housing Trust Ground Lease dated \_\_\_\_\_

**LEASED PREMISES (LEGAL DESCRIPTION OF THE PROPERTY)**

Property Description

Leased Premises Description

**Exhibit D to the Island Housing Trust Ground Lease dated \_\_\_\_\_**

**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.

d. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

**Exhibit E to the Island Housing Trust Ground Lease dated \_\_\_\_\_**

**BILL OF SALE**

The **ISLAND HOUSING TRUST CORPORATION**, a Massachusetts not-for-profit corporation with a principal office located in Tisbury, Massachusetts, and a mailing address of P.O. Box 779, West Tisbury, MA 02575 (the "Grantor"), for \_\_\_\_\_ and 00/100 (\$\_\_\_\_\_.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, sell, transfer and deliver unto the said \_\_\_\_\_, having a mailing address of \_\_\_\_\_, MA (the "Grantee"), the following goods and chattels:

All of Grantor's right, title and interest in certain site and to the buildings, structures and other improvements belonging to Grantor and affixed to, attached to or placed upon or within that certain parcel of real estate more particularly described by \_\_\_\_\_ [and recorded with the Dukes County Registry of Deeds] [and filed with the Dukes County Registry District of the Land Court] as \_\_\_\_\_ (the "Real Property Parcel").

Pursuant to that certain Ground Lease (the "Ground Lease") of even date herewith, from Grantor, as the lessor, to Grantee, as lessee, Grantor has ground leased the Real Property Parcel to Grantee. This Bill of Sale is intended to convey only the right, title and interest of Grantor in and to the buildings, structures and other improvements located on the aforesaid Real Property Parcel and is subject and subordinate in all respects to the terms and provisions of the Ground Lease. In no event shall this grant be construed to be a grant of the Real Property Parcel, which Real Property Parcel is the subject of the Ground Lease.

Grantor and Grantee agree that this Bill of Sale, and the goods and chattels granted, sold, transferred and delivered pursuant hereto, are subject to and are encumbered by the terms and provisions of \_\_\_\_\_; and, the Ground Lease described in the preceding paragraph; and any and all other restrictions of record, to the extent in force and applicable.

Grantor hereby covenants with the Grantee that said Grantor is the lawful owner of the said goods and chattels; that they are free from all encumbrances (other than as stated above), and that said Grantor has good right to sell the same as aforesaid; and that said Grantor will warrant and defend the same against the lawful claims and demands of all persons.

**IN WITNESS WHEREOF** the said **ISLAND HOUSING TRUST CORPORATION** has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by Philippe Jordi its Executive Director this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Signed and sealed in the presence of:

ISLAND HOUSING TRUST CORPORATION,

\_\_\_\_\_

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

Witness

Philippe Jordi, its Executive Director,  
as aforesaid

**Exhibit F to the Island Housing Trust Ground Lease dated \_\_\_\_\_**

**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. Any Permitted Mortgagee shall be bound by each of the following requirements unless the particular requirement is removed, contradicted, or modified by a rider to this Lease signed by the Homeowner and the IHT to modify the terms of the Lease during the term of the Permitted Mortgage. All terminology used in this Exhibit shall have the meaning assigned to it in the Lease.

A. PERMITTED MORTGAGE: A “Permitted Mortgage,” as identified in Section 8.1 of the Lease to which this Exhibit is attached, shall be a mortgage or other security instrument(s) securing obligations to a Permitted Mortgagee, as defined below, (“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 Homeowner’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 there under, the holder of such Mortgage shall notify IHT of such fact and IHT 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 IHT of its intention to do so and IHT 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 acquisition of title to the Improvements and the Homeowner’s

interest in the Leased Premises by the Permitted Mortgagee by foreclosure sale or the delivery of bill of sale and assignment of the Lease to a Permitted Mortgagee in lieu of foreclosure, the Permitted Mortgagee shall give the IHT written notice of such acquisition and the IHT shall have an option to purchase the Improvements and acquire the Homeowner's interest in the Leased Premises from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage, together with all other costs, fees, expenses, or transfer charges (including, without limitation, attorney fees) incurred or to be incurred by the Permitted Mortgagee in conveying the Improvements and the Leasehold Premises to IHT ; provided, however, that the IHT gives written notice to the Permitted Mortgagee of the IHT's intent to purchase the Improvements and acquire the Homeowner's interest in the Leased Premises within thirty (30) days following the IHT's receipt of the Permitted Mortgagee's notice of such acquisition of the Improvements and Homeowner's interest; further provided that IHT shall complete the purchase of the Improvements and acquisition of Homeowner'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 IHT does not complete the purchase within such period, the Permitted Mortgagee shall be free to sell the Improvements and transfer the Homeowner's interest in the Leased Premises to another person;

6. Such Mortgage and related documentation shall not contain any provisions other than provisions customarily contained in mortgages used for residential real estate transactions in Dukes County by institutional mortgagees.
7. Such Mortgage and related documentation shall not contain any provisions which could be construed as rendering IHT or any subsequent holder of the IHT'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 IHT or IHT's interest in the Leased Premises, but will look solely to Homeowner, Homeowner'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 IHT's consent to such Mortgage shall be without any liability on the part of IHT 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 of the Lease.
10. Such Mortgage and related documentation shall contain nothing that obligates IHT to execute an assignment of the Ground Lease Fee or other rent payable by Homeowner under the terms of this Lease.

B. RIGHTS OF PERMITTED MORTGAGEE: The rights of a holder of a Permitted Mortgage ("Permitted Mortgagee") 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 IHT 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 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 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 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 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 IHT and Homeowner 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 IHT is owned at any time by Homeowner (regardless of a merger), or by any person in which Homeowner has a direct or indirect interest, Permitted Mortgagee shall not be obligated to cure any default of Homeowner under the Lease as condition to the forbearance by IHT in the exercise of IHT's remedies as provided in the Lease.
4. In the event the Homeowner's interest in the Lease has been terminated, forfeited, or surrendered as provided in the Lease, and the Permitted Mortgage remains outstanding, a new Lease shall automatically be created between the IHT and the Permitted Mortgagee, which Lease shall be for the remainder of the term of the Lease, with the same priority thereto, and shall be subject to the same terms of the Lease as would be applicable where the Permitted Mortgagee had accelerated its note, foreclosed on the Permitted Mortgage, taken an assignment in lieu of foreclosure, or exercised its other remedies for default.

5. The IHT 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 IHT sends a notice of default under the Lease to Homeowner, IHT 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 that has been given by the Permitted Mortgagee to IHT by a written notice to IHT sent in the manner set forth in said Section 14.2 of the Lease.
7. Before becoming effective, any amendments to the Lease must be approved in writing by Permitted Mortgagee, which approval shall not be unreasonably withheld. If Permitted Mortgagee has neither approved nor rejected a proposed amendment within 60 days of its submission to Permitted Mortgagee, then the proposed amendment shall be deemed to be approved.

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

*This Agreement is made by and among:*

\_\_\_\_\_ (Mortgagee)  
 \_\_\_\_\_ ("Homeowner"), and  
 Island Housing Trust Corporation ("IHT").

**Whereas:**

- a) *"IHT and Homeowner have entered, or are entering, into a ground lease ("the Lease"), conveying to Homeowner a leasehold interest in the Land located at \_\_\_\_\_ ("the Land") as further described in the Lease; and Homeowner has purchased, or is purchasing, the Improvements located on the Land ("the Improvements")."*
- b) *The Mortgagee has been asked to provide certain financing to the Homeowner, and is being granted concurrently herewith a mortgage and security interest (the "Mortgage") in the Land and the Improvements, all as more particularly set forth in the Mortgage recorded with the Dukes County Registry of Deeds herewith.*
- c) *The Lease states that the Homeowner may mortgage the Land only with the written consent of IHT. The Lease further provides that IHT is required to give such consent only if the Mortgagee signs this Standard Permitted Mortgage Agreement and thereby agrees to certain conditions that are stipulated herein ("the Stipulated Conditions")."*

d). IHT would be unwilling to consent to the Mortgage unless the Homeowner and the Mortgagee agree to the inclusion of the Stipulated Conditions among the terms and conditions of the Mortgage.

**Now, therefore,** the Homeowner/Mortgagor and the Mortgagee hereby agree that the terms and conditions of the Mortgage shall include the Stipulated Conditions stated below and IHT hereby consents to the Mortgage with the Stipulated Conditions and confirms that the Mortgage is a Permitted Mortgage and that the original and any subsequent holder of the Mortgage is a Permitted Mortgagee and shall have all of the rights and obligations of a Permitted Mortgagee under the Lease.

Any capitalized term not defined in this Agreement shall have the meaning assigned to it in the Lease.

**Stipulated Conditions:**

- 1). In the event of a default in any of the Homeowner/Mortgagor's under the Mortgage, the Mortgagee shall notify IHT of such fact and IHT shall have upon receiving a copy of the notice of default the right (but not the obligation) within 120 days after its receipt of such notice, to cure such default in the Homeowner's name and on Homeowner's behalf, provided that current payments due the Mortgagee during such 120-day period (or such lesser time period as may have been required to cure such default) are made to the Mortgagee, and shall further provide that said Mortgagee 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.
- 2) If, after such cure period, the Mortgagee intends to accelerate the note secured by the Mortgage or initiate foreclosure proceedings under the Mortgage, in accordance with the provisions of the Lease, the Mortgagee shall first notify IHT of its intention to do so and IHT shall have the right, but not the obligation, upon notifying the Mortgagee within thirty (30) days of receipt of said notice, to purchase the indebtedness secured by such Mortgage and acquire such Mortgage.
- 3) If the Mortgagee acquires title to the Improvements and Homeowner's interest in the Land by foreclosure sale or the delivery of bill of sale and assignment of the Lease to a Permitted Mortgagee in lieu of foreclosure, the Permitted Mortgagee shall give IHT written notice of such acquisition and IHT shall have an option to purchase the Improvements and Homeowner's interest in the Land from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage, together with all other costs, fees, expenses or transfer charges (including, without limitation, attorney fees) incurred or to be incurred by the Permitted Mortgagee in conveying the Improvements and Land to IHT; provided, however, that IHT notifies the Mortgagee in writing of IHT's intent to make such purchase within thirty (30) days following IHT's receipt of the Mortgagee's notice of such acquisition of the Improvements and Homeowner's interest in the Land; further provided that IHT shall complete such purchase within sixty (60) days of having given written notice of its intent to

*purchase; and provided that, if IHT does not complete the purchase within such period, the Mortgagee shall be free to sell the Improvements and Homeowner's interest in the Land to another person;*

- 4) Nothing in the Mortgage or related documents shall be construed as giving the Mortgagee a claim on IHT's interest in the Land, or as assigning any form of liability to IHT with regard to the Land, the Improvements, or the Mortgage.*
- 5) Nothing in the Mortgage shall be construed as rendering IHT or any subsequent holder of IHT's interest in and to the Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such note and such Mortgage or any part thereof.*
- 6) The Mortgagee shall not look to IHT or IHT's interest in the Land, but will look solely to Homeowner and Homeowner's interest in the Land and the Improvements for the payment of the debt secured by the Mortgage or any part thereof. (It is the intention of the parties hereto that IHT's consent to the Mortgage shall be without any liability on the part of IHT for any deficiency judgment.)*
- 7) In the event that any part of the Land is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over to the Mortgagee in accordance with the provisions of Article 9 of the Lease.*
- 8) Nothing in the Mortgage shall obligate IHT to execute an assignment of the Lease Fee or other rent payable by Homeowner under the terms of this Lease.*
- 9) The parties agree that this Agreement, shall be recorded simultaneously with the recording of the Mortgage at the Registry of Deeds in Dupes County.*
- 10) This Agreement is binding on all successors in interest to the Mortgagee.*
- 11) This Agreement may only be amended with the written consent of IHT.*

*By:*

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

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

\_\_\_\_\_ *for IHT*                                      *Date:* \_\_\_\_\_