

Special Meeting Agenda
Tolland Non-Profit Housing Corporation
Remote - Zoom
Thursday, November 18, 2021 at 7:00 p.m

1. Call to Order
2. Other Business
 - 2.1. Approve Assignment of Ground Lease – 57 Rolling Meadow Drive
3. Approval of Minutes – November 4, 2021 Regular Meeting
4. Adjournment

To Join Zoom Meeting, either click:

<https://us06web.zoom.us/j/84753594158?pwd=emVieTliNTZSM2pncTU0QnJ5eHQxdz09>

Or call: 1-646-876-9923 and input:

Meeting ID: 847 5359 4158

Passcode: 11182021

GROUND LEASE

THIS GROUND LEASE (this "Lease") made and entered into this _____ day of _____, 1997, by and between the **TOLLAND NON-PROFIT HOUSING CORPORATION**, a non-profit corporation with its principal place of business at the Hicks Memorial Building, Tolland Green, Tolland, Connecticut 06084 ("Lessor") and _____ of _____, Connecticut ("Lessee").

WHEREAS, the goal of Lessor is to stimulate the conveyance of decent, affordable housing among Qualified People (as herein defined) by providing access for such people to land at affordable prices through the long-term leasing of land; and

WHEREAS, Lessee shares the purposes and goals of Lessor and has agreed to enter into this Lease to obtain the benefits of decent and affordable housing for itself; and

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease and, with the independent advice of legal counsel (counsel's acknowledgment attached hereto as Exhibit "B") freely accept said terms and conditions, including, without limitation, such terms and conditions as might affect the marketability or resale price of any Improvements (as herein defined) on the Leased Premises (as herein defined); and

WHEREAS, Lessor desires to sell and Lessee desires to purchase the Improvements currently located on the Leased Premises for the aggregate sum of _____ (\$ _____) DOLLARS; and

WHEREAS, it is mutually understood and accepted by Lessor and Lessee that the terms and conditions of this Lease further the parties' shared goal of preserving access to land and the availability of decent, affordable housing and home ownership opportunities for Qualified People over an extended period of time and through a succession of owners.

NOW, THEREFORE, in consideration of the foregoing recitals (the "Recitals"), of the mutual promises of the parties hereto contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEMISE OF LEASED PREMISES

1.1 **Leased Premises.** Lessor, in consideration of the User Fee (as herein defined) reserved and the terms, conditions, covenants and agreements herein, does hereby demise and lease unto Lessee, and Lessee does hereby take and hire from Lessor, that certain real property consisting of a certain piece, parcel or tract of land located in Tolland, Connecticut, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, but specifically excluding the

Improvements (the "Leased Premises"). As referred to in this Lease, the term "Improvements" shall mean any and all buildings, structures, installations for sewers and water, paving, outside lighting, facilities for the distribution of electricity and water and all other improvements now or hereafter situated on the Leased Premises, it being understood that the title to the Improvements shall be, subject to the provisions of this Lease, vested in Lessee during the Term (as herein defined) of this Lease. Lessee accepts title to the Leased premises in their "as is" condition as of the date hereof.

ARTICLE II. DURATION OF LEASE

2.1 **Principal Term and Commencement.** The term of this Lease shall be 99 years, commencing on the _____ day of _____, 199____ and terminating on the day of _____, 20____, unless terminated sooner as provided herein (the "Principal Term").

2.2 **Lessee's Option to Extend.**

(a) Lessee shall have an option to extend the Principal Term of this Lease for one successive period of 99 years (individually and collectively, the "Option Term"), exercisable as hereinafter provided and subject to all of the provisions of this Lease and to the following conditions:

(i) This Lease shall be in effect at the time notice of exercise is given; and

(ii) Lessee shall not then be in default under any provision of this Lease or any loan documents between Lessee and any Permitted Mortgagee (as herein defined).

(b) In order to extend the Principal Term of this Lease, Lessee shall give Lessor written notice, not more than 365 nor less than 180 days before the last day of the Principal Term or each Option Term, as the case may be, irrevocably exercising the option to extend. Each party shall then, at the request of the other, execute a notice of lease, in recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective notice of lease.

(c) The Principal Term, together with the Option Term, is hereinafter referred to as the "Term."

2.3 **Change of Lessor: Lessee's Right to Purchase.** In the event that ownership of and title to the Leased Premises is conveyed by Lessor to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. If Lessor offers to sell or convey the Leased Premises to any person or entity other than a non-profit corporation, charitable trust, governmental agency or other similar entity sharing the goals and objectives set forth in the Recitals, Lessee shall have a right of first refusal to purchase the Leased Premises free from the terms, covenants and restriction of this Lease upon the same terms and conditions offered to such other person or terms and conditions offered to such other person or entity. Lessor shall give written notice of such

offer to Lessee, including all relevant terms and conditions thereof , and Lessee shall have thirty (30) days to accept or reject such offer. Lessee's failure to accept such offer within such thirty (30) day period shall be deemed a rejection by Lessee. If Lessee accepts such offer, the sale of the Leased Premises by Lessor to Lessee shall be evidenced by an agreement in form and substance satisfactory to Lessor; provided, however, that the terms of such agreement shall be at least as favorable to Lessee as those terms offered by Lessor to such other person or entity. Upon the conveyance of the Leased Premises by Lessor to Lessee, this Lease shall terminate automatically.

ARTICLE III. USE OF LEASED PREMISES

3.1 Residential Use Only.

(a) Lessee shall, subject to the terms and conditions set forth in this Lease, construct upon the Leased Premises a single family residence, if the same is not built on the Leased Premises as of the date of this Lease (or if the same shall be destroyed and needs to be subsequently rebuilt), and such residence shall be used as Lessee 's primary residence. Such residence shall conform with all applicable state and federal statutes and regulations and with all applicable municipal ordinances, regulations, and codes, and, in the case of a rebuilding shall be built within the pre-existing foundation footprint, and shall not be enlarged beyond said footprint without the prior written approval of Lessor, which approval Lessor may withhold in its absolute and sole discretion. In the case of a rebuilding, plans and specifications for the residence shall be submitted to Lessor for its prior written approval, which approval shall not be unreasonably withheld. After approval of said plans and specifications, Lessee may thereafter select a contractor of its choice to build said Improvements. Any changes in the plans and specifications shall require Lessor's prior written approval, which approval shall not be unreasonably withheld or delayed.

Except for a reconstruction of a destroyed or partially destroyed building, Lessee may not expand or enlarge its residence beyond the existing foundation footprint; provided however that if Lessee's residence is a cape-style house and does not already have an attached one car garage, then upon submission of plans and specifications as aforesaid, Lessee may enlarge its foundation footprint for the purposes of constructing a one car attached garage. Lessee may also improve its residence with a deck and/or patio area, provided it submits a scaled drawing and list of materials to Lessor for approval.

(b) Lessee may excavate upon the Leased Premises for the purpose of constructing, reconstructing, or repairing the improvements described in this paragraph 3.1. Lessee may also excavate for the purpose of installing or repairing any well, underground utilities, and septic tank, including leach field, if the same are necessary for the use of the Improvements as a residence. Furthermore, Lessee may pave, lay asphalt upon, or otherwise use a portion of the Leased Premises for the purpose of constructing other Improvements, but only limited to, driveways, walkways, storage sheds and recreational structures, such as an above ground pool, swing sets, playhouses, etc. Lessee also shall cause all occupants of the Leased Premises and the Improvements to use the same only for residential purposes and such incidental activities related to

residential use as are permitted by the Zoning Regulations and ordinances of the Town of Tolland, as amended from time-to time.

(c) Lessee agrees and acknowledges that the foregoing limitations, all other conditions and restrictions contained herein are essential to the fulfillment of the purposes of this Lease and are conditions and restrictions on the use of the Lease Premises and the Improvements intended to run during the Term of this Lease.

3.2 Responsible Use.

(a) Lessee shall (i) use the Leased Premises and the Improvements in a manner so as not to cause harm or create any nuisances, public or private, and (ii) dispose of any and all waste on the Leased Premises in a safe and sanitary manner.

(b) No unregistered vehicle shall be allowed on the Leased Premises, except that a single unregistered vehicle may be allowed for a period of thirty (30) days pending registration for purposes of repair. At the end of said period, Lessor has the right without notice to cause said vehicle to be removed from the Leased Premises and stored elsewhere at Lessee's sole expense.

3.3 Responsible for Others. Lessee shall be responsible for the proper use of the Leased Premises and the Improvements by members of Lessee's family, their friends or visitors, or anyone else using the Leased Premises and the Improvements with their consent. Lessee shall make its family and such friends, visitors and other persons aware of the spirit, intent and appropriate terms of this Lease.

3.4 Occupancy. Lessee shall occupy the Improvements for at least eight (8) months of each calendar year during the Term of this Lease, unless otherwise agreed to in writing by Lessor. For purposes of this paragraph 3.4, occupancy by Lessee's children or other immediate family members or dependents shall be deemed to be occupancy by Lessee. Failure of Lessee or said family members or dependents to occupy the Improvements as required by this paragraph shall not be grounds to terminate this Lease but shall entitle Lessor to exercise the option to purchase the Improvements as provided in paragraph 9.6. Notwithstanding the foregoing, the aforesaid eight (8) month period shall be tolled during the ninety (90) day period set forth in paragraph 9.5.

3.5 Inspection. Lessor may inspect any portion of the Leased Premises and the Improvements at any reasonable time and in any reasonable manner upon at least twenty-four (24) hours notice to Lessee, except in the event of an emergency, no notice shall be required.

3.6 Lessee's Right to Peaceful Enjoyment. Lessee has the right to undisturbed enjoyment of the Leased Premises, and Lessor has no desire or intention to interfere with the personal lives, associations, expressions, or actions of Lessee, subject, however, to the terms, covenants, conditions, provisions, restrictions, and reservations of this Lease.

3.7 Condition of Leased Premises. Lessee agrees that Lessee shall maintain the Leased Premises and the Improvements in good, safe and habitable condition in all respects, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental

authority with jurisdiction over matters concerning the condition of real or personal property.

ARTICLE IV. USER FEE

4.1 **Amount of User Fee.** In consideration of the possession, continued use and occupancy of the Leased Premises, Lessee shall pay to Lessor an annual fee, subject to adjustments as herein- after provided, as follows (the "User Fee"):

(a) An amount equal to: (i) annual real estate taxes, with respect to the Leased Premises only, which would have been payable for such period if Lessee were the fee simple owner of the Leased Premises; and (ii) a pro rata portion of Lessor's cost of insurance, administrative staff, accounting costs, legal fees, and other costs incurred by Lessor as part of its normal and customary overhead and maintenance costs (the "Overhead Allocation"). Initially Lessee's pro rata portion of the Overhead Allocation shall be equal to 1/4 of the aforementioned costs, however the same may be adjusted annually by Lessor should Lessor subsequently develop additional properties. The initial Overhead allocation shall at not exceed the lesser of twelve percent (12%) of the site value or the permitted mortgage interest rate at the time of underwriting, less two percent (2%), times the site value. The Overhead Allocation shall not increase during the first three years of the lease term, nor shall the Overhead Allocation increase more frequently than once every twelve months. No annual increase shall exceed two percent (2%) of the original site value. The Overhead Allocation shall never exceed twelve percent (12%) of the initial site value.

4.2 **Adjustment of User Fee.** If the resale restrictions set forth in Article IX are waived pursuant to paragraph 9.10, then Lessor may, at its option, adjust the User Fee from time to time to reflect the then current fair market value as determined by an appraiser selected by Lessor in its sole discretion and at its sole expense of the Leased Premises and the Improvements not subject to such resale restrictions (the "Fair Market Value"). In any event, the User Fee for each remaining year of the Term of this Lease, as adjusted pursuant to this paragraph 4.2, shall not exceed twelve percent (12%) of the Fair Market Value.

4.3 **Payment of User Fee.** The User Fee shall be payable in advance on the first day of each month, in equal monthly installments to Lessor, c/o Treasurer, Tolland Non-Profit Housing Corporation, Hicks Memorial Building, Tolland Green, Tolland, Connecticut 06084, during the Term of this Lease; provided further that if Tenant's Mortgagee permits, the User Fee (or such portion thereof as shall be agreed upon between the Mortgagee and Landlord) shall be paid to said mortgagee, to be held in escrow, and to be paid over to Landlord not less frequently than on a semi-annual basis.

4.4 **Reduction, Delay, or Waiver of User Fee.** At its sole discretion, Lessor may reduce, delay, or waive entirely the User Fee at any time in consideration of the personal hardship or incapacity of Lessee, or Lessee's general ability to pay the User Fee. The intent of this paragraph is to foster occupancy by Lessee despite the occurrence of unforeseeable financial and personal hardship.

4.5 **Failure to Pay User Fee/Interest.** In the event that Lessee fails to pay the User Fee and

such failure continues for thirty (30) days, then Lessee shall be entitled to interest on the unpaid User Fee at a rate of one and one-half percent (1-1/2%) per month, or partial month, until such time as the User Fee plus interest thereon shall be paid in full. Any partial payments shall be credited first to interest and then to the User Fee. The interest charge shall be in addition to any other right or remedy which Lessor may have against Lessee.

ARTICLE V. TAXES AND ASSESSMENTS

5.1 **Lessee's Responsibility for Taxes and Assessments on the Improvements.** Lessee shall be responsible for all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and all service bills and utility charges and all fines, penalties, and similar charges applicable to the foregoing, and all interest and costs with respect thereto, that relate to the Improvements (collectively, the "Taxes"). Lessee shall pay promptly when due such Taxes directly to the appropriate taxing authority. Subject to the rights of any Permitted Mortgagee (as herein defined), Lessor shall have the right to require Lessee to make monthly payments to Lessor with respect to the Taxes equal to one-twelfth (1/12) of the Taxes payable by Lessee hereunder.

5.2 **Lessee's Right to Contest.** Lessee shall have the right to contest the amount or validity of any of the Taxes for which Lessee is responsible pursuant to paragraph 5.1 with the appropriate taxing authority for the Town of Tolland. Lessor shall have the right, but not the obligation, to join in any such proceedings. All costs and expenses of such proceedings shall be paid by Lessee. Lessee shall continue to pay the Taxes while the same are being contested.

5.3 **Payments in Event of Delinquency.** If Lessee fails to pay the Taxes as required under this Lease, Lessor shall have the right to increase the User Fee by the amount of such Taxes so that Lessor may make such payments on behalf of Lessee in a timely manner.

5.4 **Proof of Compliance.** In the month following the payment of the Taxes as required by this Lease, Lessor or Lessee, as the case may be, upon paying such Taxes will upon written request by the nonpaying party furnish evidence satisfactory to the other documenting such payment. A photocopy of a paid receipt for such charges showing payment prior to the due date thereof shall be the usual method of furnishing such evidence.

ARTICLE VI. IMPROVEMENTS

6.1 **Ownership.** It is expressly understood and agreed that any and all of the Improvements purchased by Lessee or reconstructed, replaced, or maintained by Lessee upon any part of the Leased Premises shall be and remain property of Lessee, and title thereto shall be and remain vested in Lessee during the Term of this Lease. On the expiration of the Term of this Lease, or on the date of any earlier expiration or termination of this Lease, ownership of the Improvements, together with any alterations, additions and/or installations with respect thereto, shall revert to, and vest in, Lessor automatically, without the necessity of any further act or deed by Lessee. In

confirmation thereof, Lessee shall promptly execute and deliver to Lessor any instrument, in recordable form, that Lessor may request to evidence such vesting of title in Lessor, and Lessee hereby irrevocably constitutes and appoints Lessor as its attorney-in-fact for Lessee to execute and deliver any such instrument for and on behalf of Lessee. Lessee has the right hereunder to construct the Improvements subject to the terms hereof and applicable law. It is expressly agreed that the Improvements may not be severed from the Leased Premises without the express written permission of Lessor. Lessee acknowledges that Lessee's exercise of the rights of ownership of the Improvements is subject to the provisions hereof, in particular to Article IX, regarding the disposition of the Improvements by Lessee and Lessor's option to purchase the Improvements.

6.2 **Purchase of Improvements by Lessee.** Lessor hereby grants, bargains, sells, and confirms in fee simple to Lessee, as grantee, the Improvements now located on the Leased Premises and more particularly described in Exhibit "C" attached hereto, subject, however, to all of the terms, covenants and conditions of this Lease, for the aggregate purchase price of \$ _____ (\$ _____) DOLLARS, the receipt of which is hereby acknowledged by Lessor.

6.3 **Construction and Alteration.** Any construction in connection with the Improvements permitted under this Lease is subject to the following conditions: (a) all costs shall be borne and paid for by Lessee; (b) all construction shall be performed in a workmanlike manner and shall comply with all applicable laws, ordinances and regulations, including the requirements of local and state public health authorities; (c) all construction must be consistent with the permitted uses set forth in Article III; (d) all construction must not be hazardous; and (e) all plans and specifications for the Improvements must be submitted to Lessor for its prior written approval, which approval shall not be unreasonably withheld or delayed beyond thirty (30) days.

6.4 **Prohibition of Liens.**

(a) No lien, charge or order for services, labor or materials resulting from Lessee's capital improvements with respect to the Leased Premises shall attach to Lessor's title to the Leased Premises or to any other lands owned by Lessor. Lessee shall not suffer or permit any vendor's mechanic's, laborer's, or materialman's statutory or any other lien to be filed against the Leased Premises or the Improvements. Lessee shall within sixty (60) days after notice of any such filing cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If Lessee shall fail to cause such lien to be discharged within such sixty (60) day period, then, in addition to any other right or remedy of Lessor, Lessor may, but shall not be obligated to, discharge the same by paying the amount in question. Lessee, in good faith and at Lessee's expense, may contest the validity of any such asserted lien, provided Lessee has furnished a bond in an amount set by statute or otherwise sufficient to release the Leased Premises and such other property owned by Lessor and subject to such lien from such lien. Any amounts paid by Lessor hereunder shall be deemed to be an additional User Fee payable by Lessee upon demand.

(b) Lessee shall indemnify Lessor for and save Lessor harmless against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable attorney's fees, resulting from such liens, charges, or orders. Nothing in this Lease shall be deemed or construed in any

way to constitute the consent or request of Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific alteration to or repair of the Leased Premises and the Improvements.

6.5 **Maintenance and Repairs.** Lessee shall, at all times during the Term of this Lease, and at Lessee's own cost and expense, keep and maintain the Improvements and the Leased Premises in repair and in good condition (ordinary wear and tear excepted) and shall use all reasonable precautions to prevent waste, damage, or injury to the Leased Premises and the Improvements during the Term of this Lease. Lessee shall, at Lessee's sole expense, maintain the Leased premises and the Improvements in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental agencies and entities with jurisdiction and all insurance companies insuring all or any part of the Leased Premises or the Improvements. Lessor shall not be required to furnish any services or facilities, including, but not limited to, heat, electricity, air conditioning or water, or to make any repairs to the Leased Premises or the Improvements, and Lessee hereby assumes the full and sole responsibility for furnishing all services or facilities. **Notwithstanding the foregoing, nothing herein contained shall be construed to as to limit Lessor's statutory warranty on the initial Improvements which have been constructed by Lessor and which are being purchased by Lessee pursuant to paragraph 6.2 hereof.**

ARTICLE VII. FINANCING

7.1 **Permitted Mortgages Only.** Unless otherwise consented to in writing by Lessor, such consent to be in Lessor's sole and absolute discretion, Lessee shall not mortgage, pledge or encumber its interest under this Lease or in the Leased Premises or the Improvements, or any portion thereof or interest therein, except through a Permitted Mortgage. For the purposes of this Lease, a "Permitted Mortgage" shall be a first mortgage:

(a) which shall run in favor of either (i) 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), an insurance company, a pension and/or profit-sharing fund or trust, or any combination of the foregoing, the policies and procedures of such institutional lender are subject to direct governmental supervision, or (ii) a "community loan fund," and which has a first lien on the Improvements (collectively, "Permitted Mortgagee");

(b) which shall provide, among other things, that, in the event of a default in any of the mortgagor's obligations thereunder, Permitted Mortgagee thereunder shall notify Lessor in writing of such fact and Lessor shall notify Permitted Mortgagee within forty-five (45) days of receipt of such written notice of Lessor's intent to cure such default (the "Notice Period"). If Lessor elects in its sole discretion to cure such default, then Lessor shall, within thirty (30) days after the last day of the Notice Period, cure such default in the mortgagor's name and on mortgagor's behalf (the "Cure Period"), provided that current payments due Permitted Mortgagee during the Notice Period and the Cure Period (or such lesser time period as may have been required to cure such default) are made to Permitted Mortgagee, and shall further provide that Permitted Mortgagee shall not have the right, unless such default shall not have been cured within such time, to accelerate the note

secured by such Permitted Mortgage or to commence foreclosure proceedings under such Permitted Mortgage on account of such default;

(c) which shall provide, among other things, that if after such cure period, Permitted Mortgagee intends to accelerate the note secured by such Permitted Mortgage or commence foreclosure proceedings under the Permitted Mortgage, all in accordance with this paragraph 7.1, Permitted Mortgagee shall first notify Lessor of its intention to do so and Lessor shall have the right, but not the obligation, upon notifying Permitted Mortgagee within thirty (30) days of receipt of said notice from Permitted Mortgagee, to pay off the indebtedness secured by the Permitted Mortgage and to acquire the interest of Permitted Mortgagee in and to the Leased Premises and the Improvements;

(d) which shall provide that Permitted Mortgagee shall (i) use reasonable efforts to sell the Improvements pursuant to any sale, during, after or in lieu of foreclosure to a purchaser who is a Qualified Person (as defined herein), and (ii) comply with the provisions of paragraph 9.10 of this Lease; and

(e) which shall be in an amount equal to or less than Lessee's Cost (as defined in paragraph 9.8(c)1(b)).

7.2 Permitted Mortgage Documentation. Not less than ten (10) days prior to the date on which Lessee shall request Lessor's consent to a mortgage, Lessee shall furnish to Lessor true and correct copies of each and every document and instrument to be executed in connection with the transaction represented by such mortgage and, notwithstanding anything to the contrary contained herein, Lessor shall not be required to consent to such mortgage unless:

(a) the mortgage so submitted shall be a Permitted Mortgage;

(b) at the time of such submission and at the time proposed by Lessee for the execution of such documents, no Event of Default (as herein defined) shall then be outstanding under this Lease;

(c) such Permitted Mortgage and related documentation shall contain no provisions which shall or could be construed as rendering Lessor or any subsequent holder of Lessor's interest in and to this Lease, or their respective heirs, executors, successors or assigns, personally liable for the payment of the debt evidenced by such Permitted Mortgage or any part thereof;

(d) Permitted Mortgagee shall not look to Lessor but will look solely to Lessee, Lessee's leasehold estate hereunder or the Improvements for the payment of the debt secured thereby or any part thereof (it being the intention of the parties hereto that Lessor shall consent to such Permitted Mortgage for the sole and exclusive purpose of allowing Lessee to obtain financing for the acquisition, construction or rehabilitation of the Improvements without any liability on the part of Lessor for any of such indebtedness, including, without limitation, any liability in connection with a deficiency judgment);

(e) such Permitted Mortgage and related documentation shall provide that, in the event any part of the Improvements is taken in condemnation or by right of eminent domain, the proceeds of the award shall be paid over by the holder of the Permitted Mortgage in accordance with the provisions of Article VIII; and

(f) nothing contained in the Permitted Mortgage or such related documentation shall obligate Lessor to execute an assignment of the User Fee, or other fees or charges payable by Lessee to Lessor under this Lease.

7.3 Rights of Permitted Mortgagee.

(a) A permitted Mortgagee shall have the right, but not the obligation, without Lessor's consent to:

- (i) cure any default under this Lease, and to perform any obligation required hereunder in each case within thirty (30) days after the expiration of any applicable cure period afforded to Lessee under this Lease, and any such cure or performance by Permitted Mortgagee shall be effective as if the same had been undertaken and performed by Lessee;
- (ii) acquire, convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee under this Lease or otherwise by law, subject to the provisions, if any, in said Permitted Mortgage limiting any exercise of any such right, remedy or privilege; and
- (iii) rely upon and enforce any provisions of this Lease to the extent that such provisions are for the benefit of Permitted Mortgagee.

(b) A Permitted Mortgagee shall not, as a condition to the exercise of its rights hereunder, be required to assume personal liability for the payment and performance of the obligations of Lessee hereunder, except that the same shall be responsible for the payment of the User Fee and Taxes on the Improvements during its period of ownership, and the Leased Premises shall continue to be subject to any unpaid User Fees and Taxes due and owing prior to the Permitted Mortgagee's ownership. Any such payment or performance or other act by Permitted Mortgagee hereunder shall not be construed as an agreement by Permitted Mortgagee to assume such personal liability except to the extent Permitted Mortgagee takes possession of the Improvements and assumes Lessee's leasehold estate hereunder or collects fees or rentals from Lessee; provided, however, that if Permitted Mortgagee transfers the Improvements, the transferee thereof (other than Permitted Mortgagee as the result of a judicial foreclosure sale or trustee's sale of Lessee's interest hereunder) shall be required to enter into a written agreement assuming such personal liability, and upon any such assumption Permitted Mortgagee shall automatically be released from personal liability hereunder.

7.4 **Amendments to Lease.** Any amendments to this Lease shall be subject to the written approval of Permitted Mortgagee, which approval shall not be unreasonably withheld or delayed. Any such amendments shall be sent to Mortgagee by certified or registered mail, return receipt requested with delivery effective upon being deposited in the United States Mail. The passage of thirty (30) days after submittal to Permitted Mortgagee of any such amendments without approval or disapproval by Permitted Mortgagee shall be deemed approval thereof.

7.5 **Cancellation of Lease.** Lessor shall have no right to cancel this Lease if Permitted Mortgagee has commenced foreclosure proceedings under a Permitted Mortgage and is diligently pursuing the same.

7.6 **Suspension of Rights.** Notwithstanding anything contained in this Lease to the contrary, in the event of a foreclosure of a Permitted Mortgage by a Permitted Mortgagee or the delivery of a deed in lieu of foreclosure to a Permitted Mortgagee, at the election of such Permitted Mortgagee, the provisions of paragraph 3.4 shall be suspended during the period of Permitted Mortgagee's ownership.

7.7 **Successors.** The provisions set forth in this Article VI shall be binding upon and inure to the benefit of the successors, assigns and personal representatives of Lessor, Lessee, and any Permitted Mortgagee.

7.8 **Notice.** Whenever in this Article notice is to be given to Permitted Mortgagee, such notice shall be given in the manner set forth in paragraph 13.1 at the address given by Permitted Mortgagee to Lessor by written notice to Lessor sent in the manner set forth in paragraph 13.1.

7.9 **Expenses.** Lessee shall pay to Lessor on demand at Lessor's option, as additional User Fee hereunder, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any payment by Lessor of, or cure by Lessor of any default under, any Permitted Mortgage.

7.10 **No Merger.** The ownership of both the fee simple title to the Leased Premises and Lessee's leasehold estate hereunder by the same owner will not, without the prior written consent of Permitted Mortgagee, effect a merger of such estates at any time that either estate is encumbered by a mortgage.

ARTICLE VIII. LIABILITY, INSURANCE, DAMAGE AND DESTRUCTION EMINENT DOMAIN

8.1 **Lessee's Liability.** Lessee assumes sole responsibility and liability, to any and all persons and authorities, relating to its possession, occupancy or use of the Leased Premises and the Improvements.

8.2 Indemnification of Lessor.

(a) Lessee shall indemnify and save harmless Lessor against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architects' and attorneys' fees, that may be imposed upon or incurred by or asserted against Lessor by reason of any of the following occurring during the Term of this Lease:

(i) any work or thing done in, on or about the Leased Premises, the Improvements, or any part thereof;

(ii) any use, nonuse, possession, occupation, condition, operation, or maintenance of the Leased Premises, the Improvements, or any part thereof or any street, sidewalk, parking area, curb, utility, passageway, or space adjacent thereto;

(iii) any negligence on the part of Lessee or Lessee's family, or any of Lessee's agents, contractors, servants, employees, subtenants, licensees, or invitees;

(iv) any accident, injury, or damage to any person or property occurring in, on, or about the Leased Premises, the Improvements or any part thereof or any street, alley, sidewalk, curb, passageway, or space adjacent thereto;

(v) any failure by Lessee to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Lease on its part to be performed or complied with; and

(vi) any tax attributable to the execution, delivery, or recording of this Lease or any modification hereof.

(b) If any action or proceeding is brought against Lessor by reason of any such claim, then Lessee, upon written notice from Lessor, shall at Lessee's sole expense resist or defend such action or proceeding by counsel approved by Lessor in writing, such approval not to be unreasonably withheld. The agreements and obligations provided in this paragraph shall survive the Term of this Lease.

(c) Notwithstanding the foregoing, Lessor shall remain fully liable (and Lessee shall not indemnify and defend Lessor against nor waive such claims of liability) for damage or injury due to the gross negligence or intentional acts or omissions of Lessor or Lessor's agents or employees, or for any claims pertaining to the construction of the initial Improvements.

8.3 Payment by Lessor.

(a) In the event Lessor is required to pay any sum whatsoever on behalf of Lessee, Lessee shall upon demand by Lessor reimburse Lessor therefor and for reasonable expenses caused thereby.

(b) Lessee shall, at Lessee's sole expense, keep the Improvements continuously insured against loss or damage by fire for their full replacement value. In the event that construction is in process at any time on a material Improvement, fire insurance shall be carried on such Improvement during the course of construction with so-called "builder's risk" coverage in completed value form.

(c) Lessee shall, at Lessee's sole expense, maintain continuously in effect (i) bodily injury liability insurance covering the Leased Premises and the Improvements in the amount of Five Hundred Thousand Dollars (\$500,000) for injury to or death of any one person, and Five Hundred Thousand Dollars (\$500,000) for injury to or death of any number of persons in one occurrence, (ii) property damage liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000), and (iii) such other insurance in such amounts as may from time to time be reasonably required by Lessor or any Permitted Mortgagee against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated. The dollar amount of each such coverage shall be adjusted at least every two years from the date hereof, or upon Lessor's demand with thirty (30) days notice to Lessee. This adjustment shall be equal to the percentage of change (positive or negative) over the period since the last adjustment in the Consumer Price Index for medical care paid by All Urban Wage Earners who live in urban areas the size of Tolland, Connecticut. Such index is maintained by the Office of Prices and Living Conditions of the Bureau of Labor Statistics, of the U.S. Department of Labor. If said index ceases to be readily available, Lessor at its sole discretion, shall choose a CPI index that closely

approximates the medical care index. Such insurance shall specifically insure Lessee against all liability assumed hereunder, as well as all liability imposed by law, and shall also insure and name Lessor as an additional insured so as to create the same liability on the part of insurer as though separate policies had been written for Lessor and Lessee.

(d) Lessee shall provide Lessor with copies of all insurance policies required hereunder and all renewals thereof. All insurance policies required hereunder shall contain endorsements providing that they shall not be cancelled, reduced in amount or coverage, or otherwise modified by the insurance carrier thereof without first giving Lessor not less than thirty (30) days prior written notice. Lessor shall be entitled to participate in the settlement or adjustment of any losses covered by such insurance policies. Lessor and the State of Connecticut, Department of Housing shall be named as an additional insured in all of the foregoing insurance policies.

(e) Lessee shall not violate or permit to be violated any of the conditions or provisions of any insurance policy provided for in this Article, and Lessee shall so perform and satisfy the requirements of the companies writing such policies so that at all times such companies or other insurance companies satisfactory to Lessor will be willing to write and/or to continue such insurance.

(f) All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurers of recognized responsibility, which are licensed to do business in the State of Connecticut. Any insurance provided for in this Article may contain a normal deductible clause consistent with the type of policy issued. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, originals of the policies, or copies of the policies if the originals have been lodged with a Permitted Mortgagee, bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Lessor of such payment shall be delivered by Lessee to Lessor. Each policy of insurance procured pursuant to this paragraph shall contain, if obtainable, a waiver by the insurer of the right of subrogation against Lessor for the negligence of Lessor.

8.4 Damage or Destruction.

(a) In the event of fire or other casualty to any of the Improvements, Lessee shall promptly give written notice thereof to Lessor and forthwith commence, and thereafter diligently and continuously prosecute to completion, the repair of the damage and restoration of such Improvements to a condition substantially similar to their condition immediately prior to such damage, but in no event shall said repair or restoration result in an enlargement of the Improvements pre-existing foundation footprint. All such repairs and restoration shall be completed as promptly as possible and the plans and specifications in connection therewith shall be approved in writing by Lessor within thirty (30) days of submission and the Building Inspector of the Town of Tolland. Lessee shall also promptly take all steps necessary to assure that the Leased Premises shall be and remain safe and the damaged Improvements shall not constitute a hazard or danger to persons or property.

(b) In no event shall the User Fee be suspended or abated or this Lease terminated unless

Lessor, in its sole discretion, decides to do so in consideration of the personal hardship or incapacity of Lessee. The intent of this paragraph is to foster occupancy by Lessee despite the occurrence of unforeseeable financial and personal hardship. In the case of extreme hardship, Lessor reserves to itself, at its sole discretion, the right to suspend or modify the provisions of this Lease.

8.5 **Eminent Domain and Public Dedication.**

(a) In the event of a taking of the entire Leased Premises by reason of eminent domain or other action of public authority prior to the expiration of the Term of this Lease, this Lease shall forthwith terminate and the entire amount of any award(s) paid shall be allocated as follows:

(i) First to the then Permitted Mortgagee(s), the amount required to pay and discharge the Permitted Mortgage(s) in full.

(ii) Second to Lessor and Lessee, the amount of any administrative and other out-of-pocket expenses incurred by Lessor or Lessee, as the case may be, in connection with preliminary, pre-appeal filings and responses in connection with such action.

(iii) Third, to Lessor to the extent of any unpaid User Fees.

(iv) The balance, if any, of said award(s) shall be allocated between Lessee and Lessor according to the same proportion as that of the relative values of: (x) the Improvements at a value equal to that price which Lessor would be obligated to pay to Lessee for the Improvements assuming that Lessor exercised its option to purchase the same pursuant to Paragraph 9.6 of this Lease, to (y) the total value of all of the Leased Premises and the Improvements. If a dispute arises in connection with this allocation, the entire matter shall be submitted to arbitration as provided in this Lease. (v) Lessee shall receive any relocation payments payable by a condemning authority to a tenant in the normal course.

(b) In the event of a taking (as aforesaid) of less than the entire Leased Premises, then the proceeds paid or payable by reason of such taking shall be allocated as follows:

(i) First, if the then Permitted Mortgagee(s) so require, such proceeds shall be applied against the Permitted Mortgage indebtedness.

(ii) Second, if the Improvements may reasonably be restored to a residential use consistent with this Lease, Lessor may in its discretion allocate any or all of the remainder of such proceeds to Lessee for the repair and restoration of the remaining improvements.

(iii) Third, to Lessor to the extent of any unpaid User Fees.

(iv) Any remainder after the use of such proceeds as set forth in paragraph

8.5(b)(I) or (ii), shall be allocated to Lessor and Lessee in accordance with an allocation made as provided in paragraph 8.5(a)(iii).

(c) Any and all proceedings brought by Lessee in connection with the claim or claims for damages as a result of any taking referred to in this paragraph 8.5 shall be conducted by and at the sole expense of Lessee. If any provision of law now or hereafter in effect shall require that said proceedings be brought by or in the name of any owner of the Leased Premises, Lessor shall join in such proceedings or permit the same to be brought in its name. Lessor covenants and agrees to do any and all acts and to execute any and all documents which may be required to enable Lessee to maintain such proceedings. If Lessor shall incur any cost or expense in connection with such proceedings, Lessor shall be entitled to reimbursement for the reasonable amount thereof and same shall likewise constitute a first charge against any award after payment to Permitted Mortgagee as provided herein. Notwithstanding the foregoing, if Lessor is not required to bring such proceedings as aforesaid, but nevertheless voluntarily joins therein, Lessor shall pay for its own costs and expenses.

8.6 **Sole Remedy.** The remedies specified in paragraph 8.5 shall constitute Lessee's sole remedy in the event of a taking of any or all of the Leased Premises by reason of eminent domain or other action of public authority and shall not give rise to any cause of action by Lessee against Lessor for damages.

ARTICLE IX. TRANSFER, SALE OR DISPOSITION OF IMPROVEMENTS

9.1 **Intent and Acknowledgment.** The terms and conditions of this Article have been freely accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of Lessor and Lessee set forth herein to create and preserve access to land, decent and affordable housing and home ownership opportunities for Qualified People who are often denied such opportunities for lack of financial resources. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Improvements by making them affordable to Qualified People who, absent such provisions, would be unable to afford them. It is expressly agreed that this paragraph is merely a statement of intent and does not create any additional rights in the favor of Lessee.

9.2 **Definitions.**

(a) **Qualified Households.** As referred to herein, the terms "Qualified Households" and "Qualified Families" shall be defined as households that: (i) have gross family income at or below the U.S. Department of Housing and Urban Development's ("HUD") Hartford PMSA median family income guidelines by family size for very low, low and moderate income families which are promulgated and adjusted by HUD; and (ii) constitute "first time" home buyers, as such term is defined under the appropriate Connecticut Housing Finance Authority (CHFA) guidelines, or if CHFA is no longer in existence, then under the appropriate guidelines of said successor agency. If such HUD guidelines are no longer available, Lessor will determine another appropriate

index to satisfy the intent of this paragraph. As referred to herein, the terms "Qualified People", "Qualified Person", or "Qualified Residents" shall mean members of Qualified Households or Qualified Families.

Lessee agrees to provide Lessor with such information as may be reasonably requested by Lessor in order to verify that the Lessee constitutes a Qualified Household. Such information shall include, but not be limited to, the household's most recent federal and state income tax returns, certified by Lessee to be true, accurate, and complete.

9.3 **Transfer.** Lessee may, in accordance with and subject to the provisions of this Lease, sell, transfer, or otherwise dispose of the Improvements and its leasehold interest under this Lease.

9.4 **Notice to Lessor.** Except in the case of a sale, transfer or other disposition to a Permitted Mortgagee by deed in lieu of foreclosure, in the event Lessee contemplates the sale, transfer or disposition of any or all of the Improvements to a third party, then Lessee shall give Lessor written notice thereof and within sixty (60) days of Lessor's receipt of such notice Lessor shall:

(a) exercise its option to purchase such Improvements on the terms and within the time period set forth in paragraphs 9.4, 9.5, 9.6, 9.7, 9.8 and 9.9;

(b) (i) locate a Qualified Person, (ii) obtain from such Qualified Person a binding commitment to purchase the Improvements from Lessee for no more than the then applicable Purchase Option Price (as herein defined), subject, however, to all the terms, covenants and conditions of this Lease, including, without limitation, the resale restrictions set forth herein and to close such purchase within ninety (90) days of the date of such commitment, and (iii) notify Lessee thereof in writing; or

(c) notify Lessee in writing that it is free to sell such Improvements in the open market to any party for no more than the then applicable Purchase Option Price, subject, however, to all the terms, covenants and conditions of this Lease including, without limitation, the resale restrictions set forth herein.

9.5 **Transfer to Lessee 's Heirs.**

(a) If within ninety (90) days of the death of Lessee (or the last surviving co-owner of the Improvements) Lessor receives notice thereof from the executor of Lessee's, or such co-owner's, estate, Lessor shall, unless for good cause shown, agree to the transfer of the Improvements, subject to the terms and covenants of this Lease, to one or more of the following persons:

(i) the spouse of Lessee; or

(ii) any other person or person who are heirs, legatees or devisees of Lessee and meet the definition of Qualified Resident.

In consenting to the transfer, Lessor shall act according to the expressed wishes, if any, of Lessee to the extent consistent with this Lease.

(b) In the event that the persons listed in paragraphs 9.5(a) (I), (ii), and (iii) do not exist, Lessor shall have the rights set forth in paragraph 9.4.

9.6 **Lessor 's Option to Purchase.** Upon receipt of notice in accordance with paragraph 9.4, or upon Lessee's violation of Paragraph 3.4, Lessor shall have the exclusive option to purchase the Improvements as set forth in paragraph 9.4 at a price which is equal to the Purchase Option Price. Such price is designed to ensure that the Improvements remain affordable to succeeding Qualified Households.

9.7 **Period for Exercise.** Lessor must exercise the foregoing option to purchase within sixty (60) days after (a) it learns of each violation of paragraph 3.4 or (b) its receipt of each written notice under paragraph 9.4 from Lessee, as the case may be, or such option will expire with respect to each such violation or notice.

9.8 **Lessor 's Option to Purchase Improvements.**

(a) The terms and conditions of this Article have been freely accepted by the parties each with the independent and informed advice of legal counsel. The preemptive option contained herein exists solely in the furtherance of the goal of perpetual occupancy of the Leased Premises by and resale among Qualified Households. It is the express intent of the parties that the terms and conditions of said option will enhance the marketability of the Improvements through sale at an affordable price to another Qualified Household.

(b) Whenever Lessee desires to sell the Improvements, Lessee shall notify Lessor in accordance with Article IX and paragraph 13.1. A market valuation of the Improvements presently located on the Leased Premises shall be performed by a mutually acceptable, licensed property appraiser at the sole cost of Lessee. If Lessor and Lessee cannot agree upon the selection of an appraiser, Lessor and Lessee shall each select an appraiser, the cost thereof to be borne by Lessor and Lessee, respectively, and such appraisers shall select a third appraiser at the sole cost of Lessee. The appraised value of the Improvements as determined by such appraisers shall be the appraised value which is the median of such three appraised values.

(c) Lessor shall have the option to purchase the Improvements for a price (the "Purchase Option Price") designed to ensure that the Improvements are affordable to Qualified Households equal to Lessee's Cost (as hereinafter defined) plus Lessee's Share of Appreciation (as hereinafter defined), all as determined by the formula below:

1. **Calculation of Market Value Appreciation**

(a) The appraised value of the Improvements on or about the date of Lessee's notification to Lessor of its desire to sell as determined determined by an appraiser selected in accordance with paragraph 9.S(b) above: = _____

(b) Less the purchase price of the Improvements as set forth in paragraph 6.2 or the purchase price paid by any successor lessee hereunder, or if Lessee's primary residence has not been constructed on the Leased Premises as of the date of this Lease, the appraised value of such Improvement together with the other Improvements as determined by an appraiser selected by Lessor and Lessee in accordance with paragraph 9.8(b), or by Permitted Mortgagee in connection with a Permitted Mortgage, as of the earlier of the date a certificate of occupancy is issued for such Improvements or the date of such Permitted Mortgage ("Lessee's Cost"): = _____

(c) Equals the total amount of appreciation in the value of the Improvements during the period of ownership by Lessee:

= _____

2. **Calculation of Lessee's Share of Appreciation.**

(a) Appreciation as calculated in 1(c) above:

(b) Multiplied by: _____ x

50%

(c) Equals Lessee's share of appreciation ("Lessee's Share of Appreciation"): = _____

3. **Calculation of Purchase Option Price to Purchase Improvements:**

(a) Lessee's Cost as set forth in paragraph 9.8(c)l(b): _____

(b) Plus Lessee's Share of Appreciation as set forth in paragraph 9.8(c)2(c): + _____

(c) Equals the Purchase Option Price to be paid by Lessor, a Qualified Person located by Lessor pursuant to paragraph 9.4, or a non-Qualified Person located by Lessee pursuant to paragraph 9.4: = _____

Lessee freely agrees that the Purchase Option Price constitutes a fair return to it and/or its successors for the opportunity to enter the local home-ownership marketplace which, prior to execution of this Lease, remained foreclosed to them as a matter of limited financial resources. Lessee's disagreement with the calculation of the Purchase Option Price can be appealed under Article XII (Arbitration) of this Lease.

9.9 **Right of First Refusal in Lieu of Option.** If the provisions of the option set forth herein shall, for any reason, become unenforceable, Lessor shall, nevertheless, have a right of first refusal to purchase the Improvements at the highest documented bona fide purchase price offer made to Lessee. Such right shall be exercised by Lessor within the time periods set forth in paragraph 9.4 triggered by the receipt by Lessor of a notice from Lessee of such bona fide offer, which notice shall include all of the terms of such offer.

9.10 **Waiver of Resale Restrictions in the Case of Foreclosure.**

Notwithstanding any provision in this Lease to the contrary, Article IX and Section 3.4 shall terminate and have no further force and effect upon the occurrence of one of the following events:

(a) Title to the Improvements and Lessee's leasehold interest hereunder and equity of redemption are acquired by a holder of a Permitted Mortgage or HUD by the foreclosure of a Permitted Mortgage or a mortgage insured by HUD or by deed or assignment in lieu of foreclosure of a Permitted Mortgage or a HUD insured mortgage; or

(b) A mortgage insured by HUD is assigned to HUD.

ARTICLE X. ASSIGNMENT AND SUBLEASE

Except as otherwise provided in Article VII regarding Permitted Mortgages and Article IX

regarding transfers, Lessee shall not assign, sublease, sell or otherwise convey any of Lessee's rights or interests under this Lease without the prior written consent of Lessor. Lessee agrees that Lessor shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth herein.

ARTICLE XI. DEFAULT

11.1 Events of Default.

(a) It shall be an "Event of Default" under this Lease if:

(i) Lessee shall fail to pay the User Fee or other charges for which provision is made herein within thirty (30) days after Lessor has sent to Lessee notice of such failure and such failure is not cured by a Permitted Mortgagee within thirty (30) days after receipt of a subsequent notice from Lessor to such Permitted Mortgagee of Lessee's failure within the initial 30-day grace period. However, if Lessee shall make a good faith partial payment of the User Fee during such initial 30-day grace period, then such period shall be extended one additional 30-day period;

(ii) Lessee shall fail to perform or observe any other term or condition in this Lease, and such failure is not cured by Lessee or a Permitted Mortgagee within one hundred twenty (120) days after notice thereof from Lessor to Lessee and such Permitted Mortgagee. However, in the case where Lessee or Permitted Mortgagee has commenced to cure such failure within such one hundred twenty (120) day period and is continuing such cure with all reasonable due diligence but cannot by the exercise of due diligence cure such failure within such period, such period may be extended for an additional period of thirty (30) days to complete the cure of such failure.

(iii) If the estate hereby created shall be taken on execution or by other process of law, or if Lessee shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Lessee for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Lessee's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Lessee under any provisions of the Bankruptcy Code now or hereafter enacted, or if Lessee shall file a petition for such organization, 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; or

(iv) If Lessee conveys its interest in the Leased Premises or the Improvements, or any part thereof, to anyone in violation of the terms and conditions of this Lease.

(b) In any of said cases and upon the expiration of any applicable cure period, Lessor may immediately or at any time thereafter, initiate summary proceedings or any other appropriate legal proceedings against Lessee. Pursuant to such proceedings, without demand or notice, Lessor may enter into and upon the Leased Premises and the Improvements or any part thereof and repossess the same, and expel Lessee and those claiming through or under Lessee and remove its or their effects without being guilty of any manner of trespass, and without prejudice to any other remedies available to Lessor. Upon entry as aforesaid, Lessor shall have the right, by notice to Lessee, to terminate this Lease.

11.2 **New Lease to Permitted Mortgagee.** If this Lease shall be terminated for any reason, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, Lessor agrees upon written request by any Permitted Mortgagee within sixty (60) days after such termination to enter into a new lease of the Leased Premises with Permitted Mortgagee, or with any party designated by Permitted Mortgagee, subject to Lessor's reasonable approval, not more than thirty (30) days after such request of the Permitted Mortgagee. Such lease shall be for the remainder of the Principal Term or the Option Term, as the case may be, of this Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in this Lease. Further, Permitted Mortgagee (a) shall make a written request to Lessor for such new lease within thirty (30) days after the effective date of such termination, rejection or disaffirmance, as the case may be, and such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by Permitted Mortgagee or the party designated by Permitted Mortgagee to be the Lessee thereunder and (b) shall have cured all defaults under this Lease which can be cured by the payment of money. Any new lease made pursuant to this paragraph shall have the same priority with respect to other interests in the Leased Premises as this Lease. The provisions of this paragraph shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full effect thereafter to the same extent as if this paragraph were an independent contract made by Lessor and Permitted Mortgagee.

11.3 **No Surrender.** During the period a Permitted Mortgage is in place, Lessor shall not accept a voluntary surrender of this Lease without the prior written consent of such Permitted Mortgagee.

11.4 **Waiver.**

(a) If Lessor does not elect to terminate this Lease following a default by Lessee and the failure by Lessee or by any Permitted Mortgagee to cure such default, Lessee's liability and obligations shall continue as set forth herein for the remainder of the Principal Term or the Option Term, as the case may be, of this Lease.

(b) The failure of Lessor to exercise its right to terminate this Lease for any act or omission by Lessee that constitutes an Event of Default shall not be deemed to be a waiver by Lessor of any of its rights hereunder.

11.5 **Lessor's Default.** Lessor shall in no event be in default in the performance of any of Lessor's obligations hereunder unless and until Lessor shall have failed to perform such

obligations within sixty (60) days, or such additional time as is reasonably necessary to correct any such default, after written notice by Lessee to Lessor properly specifying Lessor's failure to perform such obligations.

ARTICLE XII. ARBITRATION

12.1 **Arbitration Process.** Should any grievance or dispute arise between Lessor and Lessee concerning the terms of this Lease which cannot be resolved by normal interaction, the following arbitration procedure shall be used:

(a) Lessor or Lessee shall notify the other by written notice of its selection of a disinterested arbitrator. Within fifteen (15) days of receipt of such written notice, the other party may by written notice to the initiator of the arbitration process appoint a disinterested arbitrator of its own choice. These two arbitrators shall select a third arbitrator of their own choice. If the other party fails to timely name an arbitrator in response to the receiving of the written notice from the initiator, the party seeking arbitration shall be entitled to its reasonable cost, including attorney's fees, to obtain compliance with the foregoing procedure.

(b) The arbitrator or arbitrators shall hold a hearing within thirty (30) days after the selection of the third arbitrator. At the hearing Lessor and Lessee shall have an opportunity to present evidence and question witnesses in the presence of each other.

(c) As soon as reasonably possible, and in no event later than fifteen (15) days after the hearing the arbitration panel shall make a written report to Lessor and Lessee of its findings and decisions. The arbitrators shall decide the dispute or claim in accordance with this Lease, and the substantive law of the State of Connecticut. The decisions and awards of the majority of the arbitration panel shall be binding and final between Lessor and Lessee.

12.2 **Arbitration Before Legal Action.** Both parties agree to submit any disputes concerning their respective rights and duties under the terms of this Lease to arbitration, as provided above, and expressly waive their right to a civil trial, except as herein provided. Judgment upon the arbitral award may be entered in any court having jurisdiction over the parties or the Leased Premises. Notwithstanding the foregoing, arbitration shall not be required prior to filing suit or taking other legal action based upon an Event of Default under paragraphs 11.1(a)(I) or 11.1(a)(ii).

12.3 **Costs.** Each party shall bear its own costs, if any, in any arbitration pursuant to this Article and share equally the costs in connection with third arbitrator; provided, however, that the arbitration panel shall have the power to award all or a portion of costs against a party found to have pursued the grievance or dispute in bad faith or for undue delay.

ARTICLE XIII. GENERAL PROVISIONS

13.1 **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 Lessor:

Tolland Non-Profit Housing Corporation
Hicks Memorial Building
Tolland Green
Tolland, Connecticut 06084
Attention: President

If to Lessee:

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

13.2 **No Brokerage.** In no event shall Lessee subject Lessor's interest or Lessor to the payment of a real estate brokerage commission. Lessor and Lessee agree that no broker brought about this Lease or was involved in the negotiation hereof.

13.3 **Invalid Provisions.** If any clause, Article, paragraph, or subparagraph of this Lease shall be unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other clause, Article, paragraph, or subparagraph, or give rise to any cause of action of either party to this Lease against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law.

13.4 **Waiver.**

(a) The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of any term, covenant, condition, provision, restriction or reservation herein contained, shall not be deemed to be a waiver of such term, covenant, condition, provision, restriction, or reservation of subsequent breach of same, or of any other term, covenant, condition, provision, restriction, or reservation herein contained. Lessor may waive any of the terms of this Lease, but such waiver must be in writing and signed by Lessor before it becomes effective.

(b) The subsequent acceptance of payments of the User Fee hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, condition, provision, restriction, or reservation of this Lease, other than the failure of Lessee to make the payment of the User Fee so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such payment.

13.5 **Lessor's Right to Prosecute or Defend.** Lessor shall have the right, but shall be under no duty or obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate or necessary to the protection of its title to, and Lessee's occupancy, use, and possession of or interest in the Leased Premises and the Improvements. Whenever requested by Lessor, Lessee shall give Lessor all reasonable aid in any such action or proceeding.

13.6 **Construction.** Whenever in this Lease a pronoun is used, it shall be construed to represent either the singular or the plural, and the masculine, feminine or neuter, as the case shall demand.

13.7 **Captions.** The captions appearing in this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms, covenants, conditions, provisions restrictions, or reservations of this Lease.

13.8 **Parties Bound.** This Lease (a) sets forth the entire agreement between the parties hereto with respect to the leasing of the Leased Premises, and (b) is binding upon and inures to the benefit of the parties hereto and, in accordance with the provisions hereof, the irrespective successors in interest, heirs and assigns.

13.9 **Governing Law.** This Lease shall be interpreted in accordance with and governed by the laws of the State of Connecticut. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

13.10 **Recording of Lease.** It is the intention of the parties hereto that a notice of this Lease be recorded in the Tolland Land Records, and said parties hereby agree to execute such notice.

13.11 **Counterparts.** This Lease may be executed in counterparts, each of which shall be considered a duplicate original with one original to Lessor to be placed on file at its office at Tolland Town Hall, Tolland, Connecticut, and one original to Lessee.

13.12 **Saving Clause.** If for any reason the Term of this Lease, or any renewal thereof, or any substantive provision thereof, shall be found to be unenforceable, illegal or violative of public policy, this Lease shall automatically be amended to conform to the applicable decision, and each party hereto expressly agrees to execute any amendment necessary to effectuate the goals and purposes of this Lease.

13.13 **Surrender of the Leased Premises; Holding Over.**

(a) Lessee shall on the last day of the Principal Term or the Option Term, as the case may be, of this Lease, or upon the sooner termination of this Lease, peaceably and quietly surrender and deliver to Lessor the Leased Premises, the Improvements, and Lessee's leasehold interest hereunder free and clear of any and all liens, encumbrances, charges, exceptions, easements, and restrictions placed upon said leasehold and Improvements by anyone other than Lessor or without the consent of Lessor. Lessee shall leave the Leased Premises and the Improvements upon surrender in good condition and such that no portion of the Leased Premises and the Improvements shall constitute a nuisance or hazard or could become a nuisance or a hazard. Upon written request by Lessor, Lessee shall execute all necessary documents and instruments, including, without limitation, a quitclaim deed of the Improvements, to consummate such surrender.

(b) If Lessee retains possession of the Leased Premised or any part thereof after the expiration of the Principal Term or the Option Term, as the case may be, or earlier termination hereof without the written consent of Lessor, Lessee's occupancy shall be under all of the terms and conditions of this Lease, except that: (i) Lessee shall be a tenant at will, terminable at any time by Lessor on thirty (30) days' notice; (ii) the monthly User Fee shall equal 200% of the monthly User Fee payable for the month immediately preceding such expiration or termination; and (iii) Lessee shall indemnify and hold Lessor harmless for all damages sustained and liabilities incurred by Lessor as a result of Lessee's continued occupancy of any part of the Leased Premises beyond such expiration or termination date.

13.14 **Estoppel Certificates.** Lessor and Lessee agree, at any time and from time to time upon not less than ten (10) days' prior written notice from the other, to execute and deliver to the requesting party (without cost or expense to the requesting party) a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modifications), certifying the dates to which the User Fee has been paid, stating whether or not, to the best knowledge of the certifying party, the requesting party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which the certifying party may have knowledge, and stating whether, to the best knowledge of the certifying part, there exist any setoffs or defenses to the enforcement of this Lease by the requesting party or any claims by the certifying party against the requesting party, it being intended that any such statement delivered pursuant thereto may be relied upon by any other person with whom the requesting party may be dealing.

13.15 **Waiver of Right to Jury Trial.** Lessee waives a trial by jury of any and all issues arising in any action or proceeding between the parties hereto, or their successors, heirs and assigns under or connected with this Lease or any of its provisions.

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

Witnessed by:

**HOUSING
CORPORATION**

**LESSOR:
TOLLAND NON-PROFIT**

_____ By: _____

Its

LESSEE:

Cassandra Santoro

From: John Beck <jbeck@siegeloconnor.com>
Sent: Tuesday, November 9, 2021 5:23 PM
To: Cassandra Santoro
Subject: [EXTERNAL]FW: Tolland Non-Profit Housing Corporation

Cassandra,

Please include the email below in the packet for the upcoming TNPHC special meeting.

John Beck

From: Vianca T. Malick <vmalick@dctlaw.com>
Sent: Tuesday, November 09, 2021 4:04 PM
To: John Beck <jbeck@siegeloconnor.com>
Cc: John Tunila <Jtunila@dctlaw.com>
Subject: RE: Tolland Non-Profit Housing Corporation

Hi John:

Please see our thoughts on your questions below:

1. On the residential use issue do you think that section 3.1 is broad enough so we don't have to amend the Ground Lease?

Section 3.1 (a) states that the use is as a primary residence complying with all applicable municipal ordinances, regulations and codes. The language in Section 3.1 (b) provides: "to use the same only for residential purposes and such incidental activities related to residential use as are permitted by the zoning regulations and ordinances of the Town of Tolland, as amended from time to time."

In general, a home business is not something that is typically viewed as incidental to a residential property especially if it requires a special permit. However, the Section 2.2 of the Tolland zoning regulations define home occupation as "[a] business use or combination of business uses which is *clearly incidental* and secondary to the residential use of the premises and conducted for profit by one or more residents within a dwelling or within an accessory building on the same lot." So if the TNPHC does not want to amend its lease, home occupation may be covered under the lease as it is currently written since the Town considers home occupation incidental to residential use.

2. What would be the process to amend the Ground Lease? Can the Town unilaterally amend the Ground Lease to allow an ancillary use subject to the Town's zoning regulations? Do we have to get any approvals or consents from the other tenants?

In order to amend the lease as to future tenants (i.e. the standard ground lease moving forward), the new lease would have to be approved by the Town Council as the sole member of the corporation. However, if the TNPHC wants to amend the leases currently in place it would require approval from the Council and tenant consent as well as approval from any permitted mortgagee pursuant to Section 7.4 of the lease. Additionally, the ground lease was drafted by the State, so any amendment to the lease may require approval from the State pursuant to the assistance agreement executed by the Town and TNPHC in order to obtain the initial funding for Rolling Meadow.

3. Another subject is crumbling foundations. The Ground Lease provides that the tenant is responsible for all improvements, including septic, well, foundation, etc. We'd like to provide some sort of assistance to tenants who may have crumbling foundations. Not all of the costs of a crumbling foundation are reimbursable to the applicant for a crumbling foundation grant from the State. We're thinking of having the tenant apply for the crumbling foundation grant money and having the Non-Profit reimburse tenants for the tenant's out of pocket expenses that are not covered by the grant. For example the testing costs which I'm told are over \$1,000 are not reimbursable and are a condition to the grant application. Alternatively, can the Town apply for the grant monies directly and then do the work? My recollection is that the "homeowner" needs to be the applicant.

According to the website, the homeowner has to apply for the grant so I do not believe the TNPHC can apply on their behalf. In terms of creating a fund to assist the tenants, I am not sure how funding for the TNPHC is handled in relation to the Town, however it would be consistent with the purpose outlined in the TNPHC's Certificate of Incorporation. This might be a question for the finance department to make sure that any grant program is consistent with municipal financing laws and does not conflict with anything already in place.

Sincerely,

Vianca T. Malick, Esq.
Diana, Conti & Tunila, LLP
1091 Main Street
Manchester, CT 06040
860-643-2181
vmalick@dctlaw.com

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From: John Beck [<mailto:jbeck@siegeloconnor.com>]
Sent: Friday, November 5, 2021 10:29 AM
To: John Tunila <jtunila@dctlaw.com>
Subject: RE: Tolland Non-Profit Housing Corporation

John,

On the residential use issue do you think that section 3.1 is broad enough so we don't have to amend the Ground Lease?

Section 3.1 (a) states that the use is as a primary residence complying with all applicable municipal ordinances, regulations and codes. The language in Section 3.1 (b) provides: "to use the same only for residential purposes and such incidental activities related to residential use as are permitted by the zoning regulations and ordinances of the Town of Tolland, as amended from time to time."

So, on second thought I think the Lease would allow for a home business, assuming the tenant gets the appropriate special permit from the Town.

Please confirm.

John

From: John Tunila <jtunila@dctlaw.com>
Sent: Friday, November 05, 2021 8:12 AM
To: John Beck <jbeck@siegelconnor.com>
Cc: roland.cardin@snet.net; edwinlugo2625@gmail.com; nancyorris@hotmail.com; christina.rivera1487@gmail.com
Subject: RE: Tolland Non-Profit Housing Corporation

John:

Interesting issues from a legal perspective. I will take a look and report back.

Have a good weekend. For me the battle against the leaves will continue.

John G. Tunila, Esq.
Diana, Conti & Tunila, LLP
1091 Main Street
Manchester, CT 06040
Direct Dial: 860-783-8610
Tel: 860-643-2181
Fax: 860-647-7950

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~~~~~\_/\_)\*~~~~~  
Sail Fast, Sail Far...

**Dictated with Dragon Naturally Speaking voice recognition system.**

---

**From:** John Beck [<mailto:jbeck@siegelconnor.com>]  
**Sent:** Thursday, November 4, 2021 8:08 PM  
**To:** John Tunila <[jtunila@dctlaw.com](mailto:jtunila@dctlaw.com)>  
**Cc:** [roland.cardin@snet.net](mailto:roland.cardin@snet.net); [edwinlugo2625@gmail.com](mailto:edwinlugo2625@gmail.com); [nancyorris@hotmail.com](mailto:nancyorris@hotmail.com); [christina.rivera1487@gmail.com](mailto:christina.rivera1487@gmail.com)  
**Subject:** Tolland Non-Profit Housing Corporation

John,

The Non-Profit would like to explore amending the existing Ground Lease to allow residents to have a home business use, subject to the Town's zoning regulations. That way tenants would not be in a worse position than other residents in the Town who can apply via a special permit for a home business.

What would be the process to amend the Ground Lease? Can the Town unilaterally amend the Ground Lease to allow an ancillary use subject to the Town's zoning regulations? Do we have to get any approvals or consents from the other tenants?

Another subject is crumbling foundations. The Ground Lease provides that the tenant is responsible for all improvements, including septic, well, foundation, etc. We'd like to provide some sort of assistance to tenants who may have crumbling foundations. Not all of the costs of a crumbling foundation are reimbursable to the applicant for a crumbling foundation grant from the State. We're thinking of having the tenant apply for the crumbling foundation grant money and having the Non-Profit reimburse tenants for the tenant's out of pocket expenses that are not covered by the grant. For example the testing costs which I'm told are over \$1,000 are not reimbursable and are a condition to the grant application. Alternatively, can the Town apply for the grant monies directly and then do the work? My recollection is that the "homeowner" needs to be the applicant.

John Beck

## **Tolland Non-Profit Housing Corporation**

### **Special Meeting Minutes**

Remote - Zoom on Thursday, November 4, 2021 at 7PM

#### In attendance:

John Beck, President; Roland Cardin, Vice-President; Nancy Orris, Secretary; Edwin Lugo.

Absent: Christina Rivera

1. Call to Order: The meeting was called to order by John Beck at 7:05 PM.

2. Business:

Election of Officers - Roland Cardin made a motion to re-elect the same officers as the previous year as follows: John Beck- President; Roland Cardin - Vice-President and Nancy Orris, Secretary. Edwin Lugo seconded the motion. The motion passed unanimously.

2021 Financial Statement – John Beck led a review of the 2021 year-end Financial Statement submitted by Christopher Jordan (Finance Department) of the Town of Tolland. John Beck made a motion to accept the 2021 Financial Statement. Roland Cardin seconded the motion. The motion passed unanimously.

Approval of 2022 Schedule – the next meeting is scheduled for Thursday, November 22, 2022 at 7PM in Council Chambers . John Beck made a motion to approve the schedule. Edwin Lugo seconded the motion. The motion passed unanimously.

Complaint Regarding Signage – A complaint was discussed regarding the posting of a sign for a beauty salon business on a mailbox at Rolling Meadow Drive. The Ground Lease states that property in the subdivision is exclusively for residential use. Roland Cardin and John Beck suggested amendments to the Ground Lease and Regulations that would allow subdivision residents to apply for a Special Permit From the Town of Tolland to conduct business on their property. John Beck will seek advice from Attorney John Tunila regarding the process of making amendments to the Ground Lease and Regulations.

Foundation Inquiry – A tenant on Rolling Meadow Drive has inquired about crumbling damage to the foundation. According to the Ground Lease, the Town of Tolland is not responsible for damage and repairs to the foundation. The tenant's foundation has not been tested to indicate a crumbling

foundation. However, there is visible crumbling damage. It was suggested that tenants who apply for crumbling foundation remediation reimbursement from the State of Connecticut or other potential sources would benefit from guidance from the Town of Tolland regarding testing procedures, engaging contractors for repair/remediation and reimbursement applications. John Beck will seek advice from Attorney John Tunila as to how we will approach the Town of Tolland regarding this matter.

Assignment of Ground Lease - The Ropers of 57 Rolling Meadow Drive are divorcing and the wife will be getting the house in the settlement. John Beck has received the papers regarding the related mortgage refinance and an additional loan. A brief meeting may need to be called in the coming weeks in order to approve the assignment of the Ground Lease.

Approval of December 7, 2020 Meeting Minutes - A review of the 12-7-2020 minutes of the Tolland Non-Profit Housing Corporation was followed by a motion by Roland Cardin to approve the minutes as submitted. Edwin Lugo seconded the motion. The motion passed Unanimously.

Complaint Regarding use of ATV's and Dirt Bikes - Roland Cardin referred to the Complaint regarding signage—noting that the complainant had also mentioned concern about the use of ATV's (all- terrain vehicles) and dirt bikes on Rolling Meadow Drive. The Town of Tolland had informed the complainant to contact the police. John Beck will send an email to Cassandra Santoro (Town of Tolland) stating that the complaint is out of the jurisdiction of the Tolland Non-Profit Housing Corporation and that concerned residents should contact the police about the use of ATV's and dirt bikes on the road.

Adjournment - A motion to adjourn the meeting was made by Roland Cardin. Edwin Lugo seconded the motion. The motion passed unanimously and the meeting adjourned at 7:34 PM.

Submitted by:

Nancy Orris, Secretary

Tolland Non-Profit Housing Corporation