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SAN JUAN COUNTY WASHINGTON

SIA STEPHENS AUDITOR

JR

**MASTER LEASE**

Document Title: OPAL Community Land Trust Ground Lease

Grantor: OPAL (Of People and Land) Community Land Trust

Grantees: Leaseholders  
The Public

Tax Parcel Number(s): 18 Lots at Opal Commons: 271151001 - 271151018  
24 Lots at Bonnie Brae not yet assigned tax parcel numbers  
Current base lot: 271421005

Legal Description: Opal Commons: Portion of the SE / SW, S11, T37N, R2W  
Bonnie Brae: Portion of NE / NW, S14, T37N, R2W

Reference Auditor File Numbers:



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GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by and between OPAL Community Land Trust ("OPAL") as Lessor, and \_\_\_\_\_ ("Lessee") as Lessee.

RECITALS

- A. OPAL is organized exclusively for charitable purposes, including: the development and preservation of decent, affordable housing for low and moderate income people in the San Juan County area; the conservation of land and natural resources by fostering responsible, affordable long-term occupancy; the promotion of neighborhood stability and improvement of low-income communities in the San Juan County area; and the creation of home-ownership opportunities for low and moderate income people, who otherwise would be denied such opportunities because of limited financial resources.
- B. The goal of OPAL is to stimulate the creation 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.
- C. OPAL, in furtherance of these charitable purposes, has acquired fee title to the property described in Exhibit A and by reference included herein (the "Premises").
- D. Lessee shares the purposes and goals of OPAL and has agreed to enter into this Lease not only to obtain those certain benefits to which OPAL's prospective or current members are entitled hereunder, but also to further the charitable purposes of OPAL.
- E. OPAL and Lessee recognize the special nature of the terms and conditions of this Lease and each of the parties hereto, with the independent and informed advice of legal counsel, freely accepts said terms and conditions, including, without limitation, such terms and conditions as will enhance the marketability among low and moderate income people but also possibly affect the marketability or resale price of any residential structures or other improvements on the leased premises for other people.
- F. It is mutually understood and accepted by OPAL 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 low and moderate income people over an extended period of time and through a succession of owners;

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

**AGREEMENTS**

**ARTICLE I: LETTERS OF STIPULATION/ACKNOWLEDGMENT**

Attached hereto as Exhibit B and made a part of this Lease by reference are (i) Letter(s) of Stipulation of each prospective owner/resident of the Leased Land, and (ii) a Letter of Acknowledgment of legal counsel of each prospective owner/resident both of which set forth their review and understanding of this Lease (in particular, ARTICLE X hereof), the terms and conditions contained herein, and related documents for this transaction.

**ARTICLE II: DEMISE OF LEASED LAND**

2.1 **LEASED LAND:** OPAL, in consideration of the rents reserved and the terms, conditions, covenants and agreements herein, does hereby demise and lease unto Lessee, and Lessee does hereby take and hire from OPAL, that portion of the Premises (referred to in this Lease as the "Leased Land") described in Exhibit C attached hereto which is by reference included herein. OPAL has furnished to Lessee a copy of the most current, if any, title report previously obtained by OPAL for the Premises, and Lessee accepts title to the Leased Land in their "as is" condition as of the execution hereof.

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

**ARTICLE III: DURATION OF LEASE**

3.1 **TERM:** The term of this Lease shall be 99 years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and terminating on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless terminated sooner as provided herein.

3.2 **LESSEE'S OPTION TO EXTEND:** Lessee may extend the principal term of the Lease for one (1) additional period of 99 years, subject to all of the provisions of this Lease; provided that OPAL may make changes to the terms of the Lease for the renewal period prior to the commencement of such renewal period but only if such changes do not materially harm Lessee's rights hereunder. Lessee's right to exercise the option to extend is subject to the following conditions: this Lease shall be in effect at the time notice of exercise is given and on the last day of the term; and there shall not then be an Event of Default by Lessee (as defined in ARTICLE XII herein) under this Lease nor under any loan documents between Lessee and any Permitted Mortgagee (hereinafter



defined). In order to extend the term of this lease, Lessee shall give OPAL written notice, not more than 365 days nor less than 180 days before the last day of the current term, irrevocably exercising the option to extend. Each party shall then execute a memorandum, in mutually agreeable recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum or notice of lease.

**3.3 CHANGE OF LESSOR; LESSEE'S RIGHT TO PURCHASE:** In the event that ownership of or title to the Premises or some portion thereof on which the Leased Land is located is conveyed by OPAL to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected. However, in the event that OPAL desires to sell or convey the Premises to any person or entity other than to a non-profit corporation, charitable trust, governmental agency or other similar entity sharing the goals and objectives set forth in the recitals above (or as security for a mortgage loan), Lessee shall have a right of first refusal to purchase the Leased Land. This right shall be as specified in Exhibit D (FIRST REFUSAL) annexed hereto and incorporated herein. Any sale or transfer contrary to this Section shall be null and void.

#### ARTICLE IV: USE OF LEASED LAND AND IMPROVEMENTS

**4.0 OPAL'S RELATIONSHIP TO LESSEE:** OPAL has no desire or intention to interfere with the personal lives, associations, expressions, or actions of Lessee, subject only to the terms, covenants, conditions, provisions, restrictions, or reservations of this Lease, as well as the applicable OPAL Covenants, Conditions, and Restrictions ("CC&Rs").

**4.1 RESIDENTIAL AND COTTAGE INDUSTRY USE ONLY:** Lessee shall use, and shall cause all occupants thereof to use, the Leased Land and Improvements (as defined in Article 7.0) only for residential purposes, cottage industries and incidental activities permitted by applicable zoning law as indicated as of the date of this Lease as described in the attached Exhibit E (ZONING). In addition, transfers of Lessee's interest in the Leased Land shall be subject to the restrictions hereof, including ARTICLE X and XI. Lessee agrees and acknowledges that the foregoing limitations and all other conditions and restrictions contained herein, are essential to the fulfillment of the charitable purposes of OPAL and that the conditions and restrictions on the use of the Leased Land and Improvements are intended to run the full term of this Ground Lease.

**4.2 RESPONSIBLE FOR USE:** Lessee shall use the Leased Land and Improvements in a manner so as not to cause harm to others, nor shall Lessee create any nuisances, public or private, and Lessee shall dispose of any and all waste in a safe and sanitary way.

**4.3 RESPONSIBLE FOR OTHERS:** Lessee shall be responsible for the use of the Leased Land and Improvements by any residents thereof, families, their friends or

visitors, or anyone else using the Leased Land or Improvements with Lessee's consent, and shall make such users aware of the spirit, intent and appropriate terms of this Lease.

4.4 OCCUPANCY: Lessee shall occupy the Leased Land and Improvements for at least nine (9) months of each year of this Lease, unless otherwise agreed in advance by OPAL. Occupancy by children or other immediate family members or dependents of Lessee shall be deemed occupancy by Lessee.

4.5 INSPECTION: OPAL may inspect any portion of the Leased Land at any reasonable time and in any reasonable manner, upon at least twenty-four (24) hours oral notice to Lessee, except in the event of emergency when no notice shall be required.

4.6 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT: Lessee has the right to undisturbed, peaceful enjoyment of the Leased Land. However, Lessee recognizes that the Premises are near an airport and agrees that the use of that airport and the noise attendant thereto will not be deemed an interference with Lessee's undisturbed, peaceful enjoyment of the Leased Land or Improvements, and that under no circumstances will the use of the airport constitute a violation of this paragraph.

4.7 LESSEE'S OBLIGATION TO MAINTAIN LEASED LAND AND IMPROVEMENTS: OPAL has no desire or intention to interfere with the personal lives, associations, expressions, or actions of Lessee, subject to the terms, covenants, conditions, provisions, restrictions, or reservations of this Lease. Lessee agrees that Lessee shall maintain the Leased Land and 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 the Leased Land.

#### ARTICLE V: LAND LEASE FEE

5.1 LAND LEASE FEE: In consideration of the possession, continued use and occupancy of the Leased Land and Improvements, Lessee shall pay to OPAL a monthly Land Lease Fee (the "Land Lease Fee") equal to:

- (a) a Use Fee (hereinafter defined in paragraph 5.5) of Zero Dollars; plus
- (b) one-twelfth (1/12th) of the reserve/maintenance and administrative charges applicable to the Leased Land and Improvements as determined by OPAL in its sole discretion; plus
- (c) one-twelfth (1/12th) of (i) the annual real estate taxes and (ii) any other municipal charges (such as water and sewer charges) whatsoever applicable to the Leased Land or Improvements; plus

(d) special assessments or tax adjustments against the Land, Leased Land or Improvements prorated over the number of months for which said assessments or adjustments apply; plus

(e) one-twelfth (1/12th) of the insurance premiums for such insurance as OPAL may from time to time carry with respect to the Premises or Leased Land; plus

(f) all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees, incurred by OPAL in connection with any Permitted Mortgage.

5.2 **CALCULATION OF LAND LEASE FEE:** Promptly after the receipt by OPAL of any bills for the upcoming year for any items listed in 5.1 above, but in any event not later than December 15th of each year, OPAL shall give Lessee notice of the actual or estimated total amount of the Land Lease Fee for the then coming year. If a bill for the coming year for any item included in the Land Lease Fee is not available as of the time OPAL gives such notice, or if such item does not get billed out on an annual basis (such as maintenance charges), OPAL shall make a projected computation based upon the charge for such item for the immediately prior year, or, if there has been no such charge, on the basis of a reasonable good faith estimate for such charge for the coming year. After OPAL receives a bill, an adjustment shall be made in the Land Lease Fee to account for any discrepancies between estimated and actual charges or fees, and Lessee shall be notified thereof promptly after OPAL receives the applicable bill.

5.3 **PAYMENT OF LAND LEASE FEE:** Subject to the provisions of Section 6.2 below, the Land Lease Fee shall be payable at OPAL's principal address specified herein on the first day of each month of each year of the term hereof. In the event this Lease commences between any of the aforesaid payment dates, a pro-rata portion of the Land Lease Fee shall be paid for the balance of such month at the time of the execution hereof.

5.4 **REDUCTION, DELAY OR WAIVER OF LAND LEASE FEE:** OPAL in its sole discretion may reduce, delay or waive entirely the Land Lease Fee at any time and from time to time in consideration of the personal hardship or incapacity of Lessee or Lessee's general ability to pay. The intent of this section is to foster continued occupancy by the resident owners despite the occurrence of unforeseeable financial and personal hardship if reasonably possible.

5.5 **ADJUSTMENT OF USE FEE:** The Use Fee specified in Section 5.1 (a) above has been calculated to approximate the monthly fair rental value of the Leased Land, current as of the commencement of the lease term, as if the use were not restricted by certain of the provisions hereof with respect to transfers and use of the Improvements. Such Use Fee shall be applicable in calculating the Land Lease Fee at all times during the term of this Lease, as such Use Fee shall be adjusted as hereinafter provided. Notwithstanding the generality of the foregoing, during such portions of the term hereof

as Lessee shall be in compliance with the provisions of ARTICLE IV, ARTICLE X AND ARTICLE XI hereof, the Use Fee shall be abated to an amount not to exceed One Hundred Dollars (\$100) per month. In the Event of Default with respect to any of the provisions of ARTICLE IV, Sections 4.1 and 4.4, or ARTICLES X or XI, then upon OPAL's election exercised by notice to Lessee, the Use Fee shall increase to a fee equal to the monthly fair rental value of the Leased Land as if the use were not restricted by this lease, or such lesser amount as such notice shall specify. In the event that OPAL receives, at the time of signing this Lease, payment in full for the Leasehold Interest the Use Fee shall then be waived for the term of the Lease.

OPAL may also, in its sole discretion, recalculate the Use Fee every tenth (10th) year during the term hereof, in which event the amount shall be recalculated through such reasonable appraisal process as OPAL shall determine, and shall be determined as of such tenth or multiple thereof anniversary of the commencement of the lease term and be based upon the monthly fair rental value of the Leased Land as if the Use were not restricted. OPAL shall notify Lessee promptly upon such recalculation of the new Use Fee amount, and if Lessee shall not state objections to such recalculated amount and the basis for its objection and its proposed recalculated amount within thirty (30) days after receipt of such notice, the Use Fee shall then be as stated by OPAL in such notice. If Lessee shall so object to the recalculated Use Fee, and the parties are thereafter unable to agree upon a recalculated Use Fee within fifteen (15) days of OPAL's receipt of Lessee's objection, the dispute shall be resolved according to the arbitration process as set forth in ARTICLE XIII hereof, except that the arbitrators chosen by each party shall be ones with reasonably substantial experience in the valuation of real estate. Upon the final determination of the recalculated Land Use Fee in accordance with the terms of this section, OPAL shall maintain in its file a notarized certification of the amount of such recalculated Use Fee and the method of determination thereof.

#### ARTICLE VI: TAXES AND ASSESSMENTS

**6.1 PAYMENT OF LAND TAXES BY OPAL WITH LAND LEASE FEE PROCEEDS:** Provided that Lessee has paid the Land Lease Fee promptly and fully in accordance with the foregoing ARTICLE V, OPAL shall pay all taxes or assessments owed for its ownership of the Premises with the proceeds generated from the Land Lease Fee. OPAL shall keep that portion of the Land Lease Fee designated for taxes or assessments in a tax escrow account. Such tax escrow account may contain funds collected for such purpose from other lessees of OPAL. Lessee shall not be entitled to any interest on any monies deposited into the tax escrow account. OPAL may from time to time at its discretion change the number and/or location of said tax escrow account. OPAL and Lessee shall cooperate in securing any discount that may be available for early payment of taxes or assessments.

**6.2 LESSEE'S RESPONSIBILITY FOR TAXES AND ASSESSMENTS ON IMPROVEMENTS:** Notwithstanding the generality of Section 6.1 nor the provisions of Section 5.1 specifying the components of the Land Lease Fee, Lessee shall be responsible

for payment of all taxes and assessments, no matter how designated, that relate of to the Improvements on the Leased Land (any or all of the foregoing, "Taxes"). So long as Lessee shall not be in default hereunder, Lessee shall be permitted to pay directly to the taxing or assessing authority the portions of the Land Lease Fee described in Section 5(c) and (d) above relating to the Improvements on the Leased Land (but not the Land) in lieu of paying such portions of the Land Lease Fee to OPAL; but from and after notice of a default to Lessee so stating, OPAL may require that some or all of such payments be made to OPAL as part of the Land Lease Fee as specified in ARTICLE V. To the extent any Taxes are not accounted for in the Land Lease Fee, Lessee shall pay promptly when due such Taxes directly to the taxing or assessing authority. Lessee shall also pay directly, when due, all service bills, utility charges, or other governmental assessments charged against the Leased Land, unless otherwise directed by OPAL.

6.3 LESSEE'S RIGHT TO CONTEST: Lessee shall have the right to contest the amount or validity of any Taxes. OPAL shall, upon written request by Lessee, join in any such proceedings if Lessee shall reasonably determine that it shall be necessary or convenient for OPAL to so join in order for Lessee to prosecute such proceedings. All other costs and expenses of such proceedings shall be paid by Lessee. Notwithstanding the foregoing, Taxes or assessments against or including the Leased Land shall be contested only with the concurrence of OPAL in its sole discretion.

6.4 PAYMENTS IN EVENT OF DELINQUENCY: In the event that Lessee fails to pay Taxes or other charges specified in Section 6.2 above which are not otherwise part of the Land Lease Fee, OPAL may make such payments and increase Land Lease Fee payments in amounts such that the total sum collected will offset the cost of any delinquent and current Taxes or other charges.

6.5 PROOF OF COMPLIANCE: Promptly after the payment thereof, each party will furnish evidence satisfactory to the other documenting the payment of all taxes, assessments, and charges paid by such party as required or permitted by the provisions of this Ground Lease. A photocopy of a paid receipt for such charges showing payment prior to the due date shall be the usual method of furnishing such evidence.

## ARTICLE VII: IMPROVEMENTS

7.0 "IMPROVEMENTS" DEFINED: "Improvements" include all buildings, structures, additions, alterations, foundations, footings, driveways, roads, utilities, pavings, landscaping, fixtures, and permanently installed equipments in, upon, under or over the Leased Land, including but without limiting the generality of the foregoing, all furnaces, piping, wiring, connections, conduits, ducts, equipment, partitions, screens, windows, and doors, together with any and all repairs, renewals and replacements thereof or additions thereto or substitutes therefor.

"Improvements" does not include any Personal Property. "Personal Property" includes fences, outbuildings, yard ornaments, and permanently installed sports equipment,

including but without limiting the generality of the foregoing, picket or stake fences, sheds, fountains, flagpoles, picnic tables, swings, and basketball hoops, together with any and all repairs, renewals and replacements thereof or additions thereto or substitutes therefor.

**7.1 OWNERSHIP:** It is expressly understood and agreed that any and all Improvements and fixtures purchased by Lessee or constructed, placed, or maintained by Lessee upon any part of the Leased Land at any time during the term of this Ground Lease shall be and remain property of Lessee. Title to such Improvements and fixtures shall be and remain vested in Lessee. Lessee's exercise of the rights of ownership is subject and subordinate, however, to the provisions hereof, in particular Section 7.6 and ARTICLE XI below, regarding the disposition of Improvements by Lessee and OPAL's option to purchase the Improvements. In addition, Lessee shall not sever or move the Improvements from the Land, unless there is prior agreement from OPAL.

**7.2 PURCHASE OF IMPROVEMENTS BY LESSEE:** OPAL is simultaneously selling and conveying to Lessee the Improvements now located on the Leased Land and described in the DEED, the form of which is annexed hereto as Exhibit F (DEED).

**7.3 CONSTRUCTION AND ALTERATION:** No construction, addition, alteration, repair, renewal or replacement (collectively, "Construction") to the Improvements shall be undertaken without prior approval and written authorization from OPAL. 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 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 IV; (d) Lessee agrees that any Construction, addition, alteration, repair, renewal or replacement to the Improvements shall be consistent with OPAL's mission to provide affordable housing to the citizens of San Juan County, Washington.

**7.4 PROHIBITION OF LIENS:** No lien for services, labor or materials resulting from Lessee's Construction shall attach to OPAL's title to the Premises or to OPAL's interest in the Leased Land or to any other property owned by OPAL. Lessee shall not suffer or permit any vendor's, mechanic's laborer's, or materialman's statutory or similar lien to be filed against the Premises, the Leased Land, the Improvements, or any interest of OPAL or Lessee. If any such lien shall at any time be filed against the Leased Land, or any Improvements thereof, Lessee shall within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, as ordered by a court of competent jurisdiction or as otherwise permitted by law. 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 Land or Premises from such a lien. If Lessee shall fail to cause such lien to be discharged within the period aforesaid, or to contest the same, then, OPAL may

terminate the Lease and in addition to any other right or remedy of OPAL, OPAL may, but shall not be obligated to, discharge the same by paying the amount in question. Any amounts paid by OPAL hereunder in respect of such liens shall be deemed to be an additional Land Lease Fee payable by Lessee upon demand.

7.5 MAINTENANCE: Lessee shall, at Lessee's sole expense, maintain the Leased Land and all buildings and Improvements in accordance with the OPAL CC&Rs applicable to the Leased Land, 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 Land, Premises or Improvements. OPAL 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 Land or Improvements, and Lessee hereby assumes the full and sole responsibility for furnishing all services or facilities.

7.6 DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term hereof as such term may be extended or sooner terminated in accordance with this Lease, Lessee shall yield up and surrender the Improvements together with the Leased Land to OPAL. The title to the Improvements shall thereupon revert to OPAL.

#### ARTICLE VIII: FINANCING

8.1 PERMITTED MORTGAGE(S) ONLY: Lessee may mortgage, pledge, or encumber the Leased Land or any portion thereof or interest therein only pursuant to a Permitted Mortgage. OPAL specifically consents to such Permitted Mortgage. A "Permitted Mortgage" shall be a mortgage or deed of trust which:

(a) is a lien on all or any of the Improvements (the "Security");

(b) 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, bank (including savings and loan association), insurance company, or pension and/or profit-sharing fund or trust, the procedures of which are subject to direct governmental supervision, or (ii) a "community loan fund," or similar non-profit lender to housing projects for low and moderate income persons (as defined by reference to the membership criteria for the National Association of Community Development Loan Funds, a non-profit corporation currently affiliated with the Institute for Community Economics of Springfield, MA);

(c) shall provide, among other things, that in the event of a default in any of the mortgagor's obligations thereunder, the holder of the Permitted Mortgage shall notify OPAL of such fact and OPAL shall have the right, but not 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 Permitted Mortgage or to foreclose under the Permitted Mortgage on account of such default;

(d) shall provide, among other things, that if after such cure period the holder intends to accelerate the note secured by such Permitted Mortgage or initiate foreclosure proceedings under the Permitted Mortgage, all in accordance with the Section 8.1, the holder shall first notify OPAL of its intention to do so and OPAL 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 the Permitted Mortgage and to have the note evidencing the indebtedness endorsed to OPAL without recourse and the Permitted Mortgage assigned to OPAL; and

(e) shall provide that such holder will use reasonable efforts to sell the Security pursuant to any sale after or in lieu of foreclosure to a purchaser who is a Low or Moderate Income Resident, as defined in Article 10.2. It is not the intent of this paragraph to adversely affect the market value of the Security, but rather to assure the parties that the character of the Premises is maintained as low and moderate income housing.

**8.2 LESSOR'S CONSENT TO PERMITTED MORTGAGE:** Not less than thirty (30) days prior to the date on which Lessee shall request OPAL's consent to a mortgage to be effective, Lessee shall furnish to OPAL true and correct copies of each and every document and instrument to be executed in connection with the transaction represented by such mortgage. Notwithstanding anything to the contrary contained herein, OPAL shall not be required to consent to such mortgage unless:

(a) the mortgage so submitted shall be a Permitted Mortgage as defined by the provisions hereof;

(b) at the time of such submission and at the time proposed by Lessee for the execution of such documents, no default shall then be outstanding under the terms of the Lease;

(c) such Permitted Mortgage and related documentation shall contain no provisions other than provisions generally contained in mortgages used for similar transactions in the State of Washington by institutional mortgages;

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



(e) such Permitted Mortgage and related documentation shall contain provisions to the effect that the holder of the Permitted Mortgage (a "Permitted Mortgagee") shall not look to OPAL nor OPAL's interest in the Premises, but will look solely to Lessee, the leasehold estate created hereby, Improvements, or such other buildings and improvements which may from time to time exist on the Leased Land, for the payment of the debt secured thereby or any part thereof. It is the intention of the parties hereto that OPAL 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 on the Leased Land without any liability on the part of OPAL for any deficiency judgment;

(f) 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 by the holder of the Permitted Mortgage in accordance with the provisions of ARTICLE IX hereof;

(g) nothing contained in the Permitted Mortgage or such related documentation shall obligate OPAL to execute an assignment of the rent payable by Lessee to it under the term of this Ground Lease.

**8.3 RIGHTS OF PERMITTED MORTGAGEE:** A Permitted Mortgagee shall have the right, but not the obligation, without requirement of consent by OPAL to:

(a) cure any default under this Ground Lease, and to perform any obligation required hereunder, and any such cure or performance by a Permitted Mortgagee shall be effective as if the same had been undertaken and performed by Lessee; and

(b) after compliance with Article 8.1 to foreclose or otherwise acquire and convey, assign, transfer and exercise any right, remedy, or privilege granted to Lessee by this Ground 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

(c) rely upon and enforce any provisions of this Ground Lease to the extent that such provisions are for the benefit of a Permitted Mortgagee.

(d) the Permitted Mortgagee after acquiring the Leased Land may occupy the same or sublet or sell for cash or credit to an Eligible Transferee.

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. 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 actually takes possession of the Security or collects fees or rentals from Unit Owners; provided, however, that in the event the Permitted Mortgagee 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 hereunder.

In the event that title to the estates of both OPAL and Lessee shall be acquired at any time by the same person or persons, no merger of said estates shall occur without the prior written declarations of the person or persons owning both estates.

**8.4 APPROVAL OF AMENDMENTS:** Any amendments to this Ground Lease shall be subject to the written approval of Permitted Mortgagee, which shall not be unreasonably withheld or delayed.

**8.5 NEW LEASE TO PERMITTED MORTGAGEE:** If this Lease shall be terminated for any reason, or in the event of the rejection or disaffirmation of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, OPAL will enter into a new lease of the Leased Land with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee subject to OPAL's approval, which approval shall not be unreasonably withheld), not more than thirty (30) days after the request of the Permitted Mortgagee. Such lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmation, and upon all the terms and provisions contained in the Lease. However, the Permitted Mortgagee shall make a written request to OPAL for such new lease within sixty (60) days after the effective date of such termination, rejection or disaffirmation, as the case may be, and such written request shall be accompanied by a copy of such new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be Lessee thereunder, and the Permitted Mortgagee shall have cured all defaults under the Lease which can be cured by the payment of money. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Premises as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmation of the Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by OPAL, Lessee and the Permitted Mortgagee.

**8.6 NO TERMINATION DURING FORECLOSURE:** OPAL shall have no right to terminate this Ground Lease if the Permitted Mortgagee is commencing foreclosure in accordance with provisions hereof and is diligently pursuing the same.

**8.7 PROVISIONS SUBJECT TO FORECLOSURE:** In the event of a foreclosure by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions hereof, at the election of the Permitted Mortgagee the provisions of ARTICLE X, Sections 10.1 through 10.13 shall be deleted and thereupon shall be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

**8.8 SPECIAL PROVISIONS FOR U.S.D.A.-R.D. MORTGAGES OR DEEDS OF TRUST:** A mortgage or deed of trust which shall run in favor of United

States Department of Agriculture Rural Development ("U.S.D.A.-R.D.") shall be a Permitted Mortgage. Notwithstanding any of the above provisions to the contrary in the event that the Lessee obtains a Loan from the U.S.D.A.-R.D the following provisions shall apply.

(a) The Lessee's Leasehold interest shall not be subject to summary forfeiture or cancellation by OPAL;

(b) OPAL shall give U.S.D.A.-R.D at least 90 days written advance notice of its intention to cancel or terminate the Lease and provide U.S.D.A.-R.D with a right, within that period, to cure the default and preserve the Lease;

(c) The Lessee may transfer the leasehold, subject to the U.S.D.A.-R.D mortgage, to an eligible transferee (as that term is defined by U.S.D.A.-R.D);

(d) U.S.D.A.-R.D may foreclose its mortgage and sell without restrictions that would affect adversely the market value of the security;

(e) U.S.D.A.-R.D may bid at the foreclosure sale or accept the voluntary conveyance of the security in lieu of foreclosure;

(f) U.S.D.A.-R.D may occupy the property, sublet it, or sell it for cash or credit; and

(g) If the property is sold for credit, U.S.D.A.-R.D may take a mortgage with rights similar to those under the original mortgage.

Any provisions of this Lease in conflict with U.S.D.A.-R.D regulations shall be deemed stricken in regards to mortgages or deeds of trust held by the U.S.D.A.-R.D.

8.9 NOTICE: Whenever in this ARTICLE notice is to be given to Permitted Mortgagee, such notice shall be given in the manner set forth in ARTICLE XV, Section 15.2 hereof to the Permitted Mortgagee at the address given by the Permitted Mortgagee to OPAL by written notice to OPAL sent in the manner set forth in said Section 15.2 hereof.

#### ARTICLE IX: LIABILITY, INSURANCE, DAMAGE, EMINENT DOMAIN

9.1 LESSEE'S LIABILITY: From and after the date hereof, Lessee assumes sole responsibility and liability to any and all persons and authorities related to its possession, occupancy and use of Leased Land.

9.2 INDEMNIFICATION OF LESSOR: Lessee shall defend, indemnify and hold OPAL harmless against all liability and claims of liability for damage or injury to person or property from any cause on or about the Premises. Lessee waives all claims

against OPAL for damage or injury to Person or Property on or about the Leased Land arising, or asserted to have arisen, on or about the Leased Land from any cause whatsoever. Notwithstanding the foregoing two sentences, OPAL shall remain liable (and Lessee shall not indemnify and defend OPAL against nor waive such claims of liability) for damage or injury due to the grossly negligent or intentional acts or omissions of OPAL or OPAL's agents or employees. In the event U.S.D.A.-R.D or any government entity succeeds to the Lessee's estate by foreclosure, deed in lieu or otherwise, this section shall not apply to the U.S.D.A.-R.D or government entity.

9.3 PAYMENT BY LESSOR: In the event OPAL shall be required to pay any sum whatsoever which is Lessee's responsibility or liability, to the extent permitted by law, Lessee shall reimburse OPAL therefore and for reasonable expenses caused thereby.

9.4 INSURANCE:

(a) Insurance Coverage of Leased Land and Improvements: Lessee shall, at Lessee's sole expense, keep all Improvements continuously insured against loss or damage by fire and add the extended coverage for the full replacement value of such Improvements.

(b) Bodily Injury Liability Insurance: Lessee shall, at Lessee's sole expense, maintain continuously in effect bodily injury liability insurance covering the Leased Land and its Improvements in the amounts of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for injury to or death of any one person; and \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for injury to and death of any number of persons in one occurrence; and \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for property damage.

The dollar amount of each such coverage shall be adjusted at least every two (2) years from the date hereof or upon OPAL's demand given not more often than annually, upon 30 days notice to Lessee. This adjustment shall be equal to the percentage of change (positive or negative) over the period since the last adjustment in the Consumer Price Index for rural areas the size of Orcas Island. Such index is maintained by the Office of Prices and Living Conditions of the Bureau of Labor Statistics, of the U.S. Department of Labor.

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

(c) Lessee shall provide OPAL with copies of all policies and renewals thereof. All policies shall also contain endorsements providing that they shall not be canceled, reduced in amount or coverage or otherwise modified by the insurance carrier involved without not less than thirty (30) days' prior written notice being given to OPAL. OPAL

shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance.

(d) Since USDA is self-insured, the requirements of this Section 9.4 do not apply to USDA-RD.

**9.5 DAMAGE OR DESTRUCTION:** In the event of fire or other casualty to any Improvements, Lessee shall forthwith commence, and thereafter diligently and continuously prosecute to completion, at its sole cost and expense, the repair of such damage and the restoration of such Improvements to their condition immediately prior to such damage. All such repairs and restoration shall be completed as promptly as possible. Lessee shall also promptly take all steps necessary to assure that the Leased Land shall be and remain safe and the damaged Improvements not constitute a hazard or danger to persons or property from the time of the fire or other casualty.

In no event shall the Land Lease Fee be suspended or abated, unless OPAL, in its sole discretion, decides to do so in consideration of the personal hardship or incapacity of Lessee. The intent of this section is to foster perpetual occupancy by Low or Moderate Income Residents (as defined below) despite the occurrence of unforeseeable financial and personal hardship.

If not later than sixty (60) days after the occurrence of a fire or other casualty which causes substantial damage to the Improvements, Lessee, using reasonable judgment and in reliance upon professional estimates and advice determines that such full repair and/or restoration is either (a) physically impossible, or (b) provided that Lessee has fulfilled all of the hazard insurance requirements set forth in Section 9.4 hereof, the available insurance proceeds are not more than eighty percent (80%) of the cost of such repair and/or restoration, Lessee may terminate this Lease by written notice to OPAL given within such sixty (60) day time period. Such termination notice shall not, however, be effective until sixty (60) days after the date upon which it is received by OPAL, during which time OPAL shall have the opportunity to seek an adjustment from the insurer so as to increase the amount of available insurance proceeds, arrange for such repair and/or restoration at a cost sufficiently low so as to avoid condition (b) of the preceding sentence, or design a partial restoration of the Improvements which would be reasonably equivalent quality and floor area to not less than eighty percent (80%) of the Improvements as they existed immediately prior to such fire or other casualty; and in any of the foregoing cases, by written notice of such action to Lessee within such additional sixty (60) day period OPAL may render Lessee's termination notice null and void. If OPAL shall fail to so nullify the termination notice, then this Lease shall terminate at the expiration of such sixty (60) day period after OPAL's receipt of Lessee's termination notice, and any proceeds of insurance payable to Lessee on account of such fire or other casualty shall be paid as follows:

Such proceeds shall be first paid to the Permitted Mortgagee to the extent of its debt. The balance shall be allocated between Lessee and OPAL according to the same

proportion as that of the relative values of (i) the Improvements prior to such casualty, as encumbered by this Lease (including the limitation on sale price set forth in ARTICLE X hereof), to (ii) the total market value of all of the Leased Land, Improvements and other property located on the Premises (similarly so measured prior to such casualty), less the value of the Leased Land, Improvements and other property located on the Premises measured after such casualty as of the time of termination.

9.6 EMINENT DOMAIN AND PUBLIC DEDICATION: In the event of: (a) A taking of the entire Leased Land by reason of eminent domain or other action of public authority prior to the expiration of the term of this Lease, this Lease shall terminate as of the date Lessee is thereby required to give up possession of the Leased Land, and the entire amount of any award(s) paid shall be allocated as follows:

Said award(s) shall be first paid to the Permitted Mortgagee(s) to the extent of their indebtedness. The balance shall be allocated between Lessee and OPAL according to the same proportion as that of the relative values of (i) the Improvements prior to such casualty, as encumbered by this Lease (including the limitation on sale price set forth in ARTICLE X hereof), to (ii) the total market value of all of the Leased Land, Improvements and other property located on the Premises measured after such casualty as of the time of termination. Notwithstanding the generality of the foregoing, in any event Lessee shall not receive an amount in excess of the sale price of the Improvements permitted hereunder.

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

(i) If the Improvements may reasonably be restored to a residential use consistent with this Ground Lease, OPAL may in its discretion allocate some or all of the proceeds to enable Lessee to repair and restore that which may remain thereof.

(ii) Any remainder after the use of such proceeds as set forth in (i) above shall be paid over in accordance with an allocation made as provided above in part (a) of this Section.

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 Section 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 Premises, OPAL shall join in such proceedings or permit the same to be brought in its name. OPAL 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 OPAL shall incur any cost or expense in connection with such proceedings, OPAL shall be entitled to reimbursement for the reasonable amount thereof and same shall likewise constitute a first charge against any award.

**9.7 RELOCATION OF LESSEE:** In the event of a termination of this Lease by reason of damage, casualty or taking, OPAL may, but shall not be obligated to, grant Lessee a leasehold interest in another tract within the Premises, if such other tract is available and Lessee agrees to contribute any proceeds or award received by Lessee to purchase or develop such other property and enter a Lease substantially similar to this one. In no event shall OPAL be required to terminate the tenancy of any other lessee or withhold any property from development or rental so as accommodate Lessee, and OPAL's failure to supply similar leasehold or any portion of the Premises whatsoever shall not give rise to any cause of action by Lessee against OPAL for damages, specific performance or other remedy.

#### **ARTICLE X: TRANSFER, SALE OR DISPOSITION OF IMPROVEMENTS**

**10.1 INTENT AND EFFECT:** 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 purpose and goals of OPAL and Lessee set forth herein to create and preserve access to land, decent and affordable housing and home ownership opportunities for low and moderate-income 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 any Improvements on the Leased Land by making them affordable to low and moderate-income families who, absent such provisions, would be unable to afford them.

**10.2 TRANSFERS TO LOW OR MODERATE INCOME RESIDENTS:** Lessee may sell, transfer, or otherwise dispose of its interest in the Leased Land or the Improvements directly to any Eligible Transferee (hereinafter defined). Any purported sale, transfer or other disposition to any other person or entity 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 the terms hereof, shall be null and void. An Eligible Transferee shall be a low or moderate income resident as hereinafter defined.

Low Income Residents shall mean a person or group of persons whose combined income does not exceed fifty percent (50%), and Moderate Income Residents shall mean a person or group of persons whose combined income does not exceed eighty percent (80%), of the median income for the San Juan County Standard Metropolitan Statistical Area ("SMSA") for such number of persons, as determined from time to time by the Department of Housing and Urban Development (HUD) or any successor thereto, or such lesser percentages of median income as required for eligibility from time to time for the so-called Section 8 rental subsidy program administered by HUD.

**10.3 EFFECT OF TRANSFER ON LESSEE'S INTEREST IN GROUND LEASE:** Any transfer, sale, or other disposition of Lessee's interest in the Leased Land or Improvements shall terminate Lessee's interest in this Lease, subject to Paragraph 10.3

regarding transfer to Lessee's heirs, and Article XI regarding assignment and sublease of Lessee's interests.

**10.4 TRANSFER TO LESSEE'S HEIRS:** Upon receipt of notice given within ninety (90) days of the death of a Lessee (or the last surviving co-owner of the Improvements) OPAL shall consent to a transfer of the Improvements and an assumption of this Lease to and by the heirs, successors and assigns if they otherwise meet the qualifications of paragraph 10.2.

If any such heir, successor or assign is unable to meet the qualifications set forth in paragraph 10.2, then such person shall not be entitled to possession of the Leased Land must transfer the Leased Land in accordance with the provisions of paragraph 10.2.

**10.5 NOTICE TO LESSOR:** Except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure, in each event that Lessee contemplates an assignment of its interest herein or a sale, transfer or disposition of the Improvements to a third party, then not less than sixty (60) days prior to the contemplated closing thereof, Lessee shall give OPAL notice thereof substantially in the form of Exhibit G PROSPECTIVE PURCHASER annexed hereto and incorporated herein by reference. Such notice shall include the following or comparable items: (1) the tax return of the assignee or buyer for the immediately preceding year; (2) a current verification of assignee's or buyer's employment; (3) the pay stubs of the assignee or buyer for the three months immediately preceding the month in which notice is given to OPAL; (4) a statement of the terms of sale; and (5) a Letter of Stipulation from such assignee or buyer and a Letter of Acknowledgment in form and substantially similar to that of Exhibit B hereto.

No assignment, sale, transfer or other disposition shall be effective unless and until (a) such notice and accompanying documentation are received by OPAL as aforesaid, and (b) (i) OPAL confirms in writing within forty-five (45) days of receipt that such assignee or buyer is a Low or Moderate Income Resident and that the terms of sale are permitted under this Lease, or (ii) OPAL fails to respond in writing within forty-five (45) days of its receipt of such notice, in which case such failure on the part of OPAL shall be deemed to constitute confirmation of such status.

If Lessee has no specific person intended or committed to purchase the improvements, then Lessee shall give OPAL notice that such will be offered for sale substantially in the form of Exhibit H NOTICE OF INTENT TO SELL annexed hereto and incorporated herein by reference. Notice shall contain a detailed listing of the terms and conditions of such intended sale. Within sixty (60) days of OPAL's receipt of notice, OPAL shall either:

(a) exercise its option to purchase on the terms and within the time period set forth in Section 10.6 and 10.7 below; or



(b) locate an interested buyer and obtain from such buyer a binding commitment to purchase from Lessee; or

(c) notify Lessee that Lessee is free to transfer the Improvements in the open market (i) to any Eligible Transferee, (ii) at not more than the then applicable Purchase Price (as defined in Section 10.8 below).

**10.6 LESSOR'S OPTION TO PURCHASE:** Upon receipt of the Notice of Intent to Sell given in accordance with Section 10.4 above, OPAL shall have the option to purchase said Improvements at the Purchase Price as determined in accordance with the terms of Section 10.8. Such price is designed to ensure the affordability to succeeding Low and Moderate Income Resident families while taking fair account of the investment of labor and capital by Lessee.

**10.7 PERIOD FOR EXERCISE:** If OPAL shall elect to exercise the purchase option set forth in Section 10.6, OPAL shall: (i) notify Lessee of its election to purchase within ninety (90) days of the receipt of the Notice of Intent to Sell, which notice of election shall include OPAL's determination of the Purchase Price; and (ii) exercise the foregoing option to purchase within one hundred and twenty (120) days of OPAL's receipt of the Notice of Intent to Sell, or its option will expire.

**10.8 PURCHASE PRICE:** The Purchase Price shall be the lesser of (a) the Index Option Price as determined according to the formula set out in Exhibit H, or (b) the market value of the Improvements as determined according to Sections 10.9 and 10.10 below.

#### 10.9 VALUATION

(a) **ORIGINAL VALUE:** OPAL and Lessee hereby agree that the fair market value of the Improvements existing on the Leased Land as of the commencement of the term of this Ground Lease is \$ \_\_\_\_\_ (the "Original Value").

(b) **DETERMINATION OF ADDED VALUE:** Added Value shall be consistent with Paragraph 7.3 of this Lease. Promptly upon completion of any Construction, OPAL shall determine the Added Value, if any, attributable to the Construction, in accordance with this Section and Section 10.9(c) below. Added Value shall be the lesser of:

(i) Original Value Per Square Foot, multiplied by the Square Footage added by the Construction; or

(ii) the actual verified cost of the Construction resulting in the added Square Footage, as documented in accordance with Section 10.9(d) below.

(c) **CALCULATION OF OTHER ADDED VALUE:** OPAL, in its sole discretion, may determine the Added Value, if any, of Construction which does not increase the Square Footage of the Improvements.

(d) **CONSTRUCTION COST DOCUMENTATION:** In order to account for the value of Lessee's equity in the Improvements, Lessee shall document the actual cost of any Construction as defined in Article 7.3 of this Lease. Lessee shall document the actual cost of any Construction by means of detailed records, including but not limited to receipts and invoices for materials and labor, receipts for barter goods and services, or by other documentation reasonably acceptable to OPAL. If Lessee contributes some or all of the labor for Construction, Lessee shall document in writing the number of hours spent on each of the major phases of the Construction, and Lessee's valuation of Lessee's labor.

OPAL may perform a site visit to verify the quality and state of completion of Construction. OPAL reserves the right to use an independent appraisal of Construction where costs are much in excess of the trade standards for similar Construction in the local area.

**10.10 APPRAISALS:** Within a reasonable time after receiving either Lessee's Notice of Intent to Sell or Lessee's Prospective Purchaser Notice in accordance with Section 10.5, OPAL shall submit to Lessee, at OPAL's expense, an appraisal ("the Appraisal") of the Improvements. Upon receipt of the Appraisal, Lessee shall either (a) accept the Appraisal as accurately representing the market value of the Improvements for purposes of calculating the Index Option Price, or (b) if Lessee believes the market value of the Improvements is greater than the amount stated in the Appraisal, Lessee shall commission a second appraisal by a licensed appraiser, at Lessee's sole expense, and submit a copy of this second appraiser's report to OPAL within a reasonable time of receiving the Appraisal. If Lessee commissions a second appraisal, the amount to be used in determining the market value of the Improvements shall be the average of the two appraised values reported by the appraisers.

If Lessee contemplates selling the Improvements to an Eligible Transferee as defined in Paragraph 10.2 above, the Eligible Transferee shall be solely responsible for the expense of any appraisal required by U.S.D.A.-R.D or any other Permitted Mortgagee as defined in Article VIII above.

**10.11 LESSEE'S FAILURE TO SELL:** In the event OPAL does not exercise its option to purchase as set forth above, and Lessee continues to hold the Improvements for sale but is unable to locate an Eligible Transferee and execute a binding purchase and sale agreement within one hundred eighty (180) days of the giving of the Intent to Sell Notice, such shall be deemed an event of default and the lease shall be terminated pursuant to Article XII.

**10.11 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION:** If the provisions of Lessor's Option to Purchase as set forth in Section 10.6, for any reason, become

unenforceable, OPAL 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 as specified in Exhibit D FIRST REFUSAL annexed hereto and incorporated herein. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

10.13 SATISFACTION OF U.S.D.A.-R.D OBLIGATIONS: Since OPAL is not an Eligible Transferee under U.S.D.A.-R.D regulations, in the event that OPAL elects to exercise its option under this article on any Leased Land or Improvements that are subject to a U.S.D.A.-R.D security interest, OPAL must first satisfy the obligation to the U.S.D.A.-R.D.

#### ARTICLE XI: ASSIGNMENT AND SUBLEASE

11.1 NO ASSIGNMENT OR SUBLEASE WITHOUT OPAL'S PRIOR WRITTEN CONSENT: Except as otherwise provided in ARTICLE VIII regarding the Permitted Mortgages and ARTICLE X, regarding transfers, Lessee shall not assign, sublease, sell or otherwise convey any of Lessee's rights under this Lease without prior written consent of OPAL. Lessee agrees that OPAL shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth herein. If OPAL consents, any assignment or subleases shall be subject to the following conditions:

- (a) any such assignment or sublease shall be subject to all of the terms and provisions of this Lease;
- (b) in the case of a sublease, the rental or occupancy fee Lessee charges the sublessee shall not be more than the Land Lease fee that OPAL charges the Lessee, and
- (c) in the case of an assignment, the total consideration for such assignment and the related sale or transfer of the Improvements shall not exceed the Purchase Option Price as calculated in accordance with ARTICLE X hereof;
- (d) OPAL's consent to one assignment or sublease shall not constitute consent to any other assignment or sublease.

11.2 LESSEE'S RIGHTS AND OBLIGATIONS UNDER THE LEASE: Lessee agrees that the assignment or sublease of Lessee's rights under this Lease shall not terminate any of Lessee's obligations under this Lease. Lessee agrees that an assignment of Lessee's interest under this Lease shall forever terminate all of Lessee's rights under this Lease.

11.3 NOTICE OF ASSIGNMENT OF INTEREST: If and when OPAL consents to assignment or sublease of Lessee's interest in this Lease under this Article,

Lessee and OPAL shall sign and have notarized and Lessee shall cause the Assignee or Sublessee to sign and have notarized a Notice of Assignment of Interest ("Notice") executed substantially in the form of Exhibit K attached hereto and incorporated herein by reference. OPAL shall record the Notice with the County Assessor's Office.

ARTICLE XII: DEFAULT

12.1 EVENTS OF DEFAULT: It shall be an Event of Default if:

(a) Lessee shall fail to pay the Land Lease Fee or other charges for which provision is made herein within thirty (30) days after OPAL has sent to Lessee notice of such default and such default is not cured by any Permitted Mortgagee within ninety (90) days after a subsequent notice from OPAL to such Permitted Mortgagee of Lessee's failure to cure such default within the initial thirty (30) day grace period. However, if Lessee shall make a good faith partial payment of at least two-thirds (2/3) of the Land Lease Fee during such initial thirty (30) day grace period, then such period shall be extended one additional thirty (30) day period; or

(b) Lessee shall fail to perform or observe any other material term or condition of this Lease, and such failure is not cured by Lessee or a Permitted Mortgagee within sixty (60) days after notice thereof from OPAL to Lessee and such Permitted Mortgagee. However, in the case where Lessee or a Permitted Mortgagee has commenced to cure such default within such sixty (60) day period and is continuing such cure with all reasonable 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 reasonable under the circumstances (up to an additional 60 days); or

(c) if the estate hereby created shall be taken on execution or by other process of law, or if any assignment shall be made of the property of Lessee for the benefit of creditors, or if a receiver, guardian, conservator, or other similar office shall be appointed to take charge of all or any substantial part of Lessee's property by a court of competent jurisdiction

In any of said cases OPAL may, immediately or at any time thereafter, terminate this Lease and initiate summary proceedings against Lessee.

If OPAL shall elect to terminate the Lease pursuant to any provision thereof, then the Permitted Mortgagee shall have the right (subject to OPAL's rights under ARTICLE VIII above) to postpone and extend the specified date for the termination of the Lease for a period of time sufficient to enable the Permitted Mortgagee or its designee to acquire Lessee's interest in the Lease by foreclosure of its mortgage or otherwise.

OPAL shall keep up-to-date record of suitable applicants who desire to take over a Lease in the case of default by any existing Lessee. In such a case, OPAL would submit

names of parties interested in and capable of assuming both Land Lease and Permitted Mortgage.

**ARTICLE XIII: ARBITRATION**

13.1 **ARBITRATION PROCESS:** Should any grievance or dispute other than the events of default in Article XII arise between OPAL and Lessee concerning the terms of this Lease which cannot be resolved by normal interaction, the following arbitration procedure shall be used:

OPAL or Lessee shall notify the other by written notice of its selection of a disinterested arbitrator. Within fifteen (15) days of receipt of this 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. If the other party fails to timely name an arbitrator in response to the receiving of the written notice from this initiator, the arbitrator selected by the initiator shall be the sole arbitrator.

The arbitrator or arbitrators shall hold a hearing within thirty (30) days after the initial written notice by the initiator of the arbitration process. At the hearing OPAL and Lessee shall have an opportunity to present evidence and question witnesses in the presence of each other.

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 OPAL and Lessee of its findings and decisions, including a personal statement by each arbitrator of his/her decision and the accordence with the substantive law of the jurisdiction and what is just and equitable under the circumstances. The decisions and awards of the majority of the arbitration panel shall be binding and final between OPAL and Lessee.

This arbitration provision shall not apply to or be binding on the U.S.D.A.-R.D.

**ARTICLE XIV: USES IN ACCORDANCE WITH OPAL COVENANTS,  
CONDITIONS AND RESTRICTIONS**

14.1 **IN GENERAL:** All uses of the Leased Land and Improvements shall be in accordance with the OPAL Covenants, Conditions and Restrictions ("CC&Rs") applicable to the Leased Land. By entering into this Lease, Lessee agrees to join and participate in OPAL and to be bound by the OPAL CC&Rs applicable to the Leased Land. Lessee understands that substantial or repeated violations of the OPAL CC&Rs applicable to the Leased Land may be considered an event of default of the Ground Lease between Lessee and OPAL.

14.2 **ADOPTION OF RULES, TERMS AND CONDITIONS:** At least thirty (30) days written notice must be provided to all leaseholders before any vote by

leaseholders on any changes, additions, deletions or amendments to the rules, terms and conditions of the OPAL CC&Rs applicable to the Leased Land. Rules, terms and conditions of the OPAL CC&Rs applicable to the Leased Land may be adopted by a three-fourths (3/4) majority vote of the members of OPAL. Ample opportunity must be provided for members of OPAL and other affected parties to be heard prior to the taking of any vote on any rule, term or condition of the OPAL CC&Rs applicable to the Leased Land. Ample opportunity to be heard requires that at least one public meeting be held by OPAL members at a meaningful time in a meaningful manner.

14.3 APPROVAL BY OPAL: Any rule, term or condition adopted by OPAL members shall be approved by a simple majority of the Board of Directors of OPAL before it may become effective. Lessee understands that ample notice and opportunity to be heard before the Board of Directors of OPAL shall be provided before any vote by the Board of Directors of OPAL on any rule, term or condition adopted by OPAL members.

14.4 CONDITIONS FOR DEFAULT: Lessee understands that any finding by OPAL members that he or she has violated a rule, term or condition of the OPAL CC&Rs applicable to the Leased Land may be appealed for review to the Board of Directors of OPAL. The Board of Directors of OPAL shall, after providing ample notice and opportunity to be heard by all affected parties, affirm, reverse or remand the finding of OPAL members. If the Board affirms the finding of the members, Lessee and OPAL shall retain and may utilize their rights regarding an event of default as set forth in ARTICLE XII of this Lease.

#### ARTICLE XV: GENERAL PROVISIONS

15.1 LESSEE'S MEMBERSHIP IN OPAL: Lessee under this Lease automatically shall be entitled to membership in OPAL.

15.2 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person, or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to OPAL:

OPAL CLT  
PO Box 1133  
Eastsound, WA 98245

With copy to:

Lori Salzarulo  
Affordable Housing Development Clinic  
4045 Brooklyn Ave. NE, JA-16  
701 Fifth Avenue  
Seattle, WA 98105

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.

15.3 MEMORANDUM OF LEASE TERMINATION: Upon termination of Lessee's Interest in this Lease under any Article or paragraph, including but not limited to paragraphs 7.4, 9.5, 9.6, 10.3, 10.11, and 12.1(d), Lessee or its heir and OPAL shall sign and have notarized a Memorandum of Lease Termination ("Memorandum"). The Memorandum shall be executed substantially in the form of Exhibit J annexed hereto and incorporated herein by reference. OPAL shall file the executed Memorandum with the San Juan County Assessor's Office.

15.4 NO BROKERAGE: Lessee warrants and represents that it has not dealt with any broker other than \_\_\_\_\_ in connection with the consummation of this Lease, and in the event any claim is made against Lessee relative to dealing with brokers other than \_\_\_\_\_, Lessee shall defend the claim against OPAL with counsel of OPAL's selection and save harmless and indemnify OPAL on account of loss, cost or damage which may arise by reason of any such action.

15.5 SEVERABILITY: If any clause, Article, Section, 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 Section, 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.

15.6 DURATION: It is the intention of the parties that their respective options to purchase and all other rights and options hereunder shall continue in full force and effect for the duration of the term of this lease and any renewal thereof, and such options and other rights shall be considered to be coupled with an interest. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration

thereof, the time period for the exercise of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of the children living as of the date hereof of any of directors or employees of OPAL CLT.

**15.7 WAIVER:** The waiver by OPAL of, or the failure of OPAL 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 or subsequent breach of same, or of any other term, covenant, condition, provision, restriction, or reservation herein contained. OPAL may grant waivers in the terms of this Lease, but such must be in writing and signed by OPAL before being effective.

The subsequent acceptance of Land Lease Fee Payments hereunder by OPAL 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 pay the particular fee so accepted, regardless of OPAL's knowledge of such preceding breach at the time of acceptance of such payment.

**15.8 LESSOR'S RIGHT TO PROSECUTE OR DEFEND:** OPAL shall have the right, but shall be under no duty or obligation, to prosecute or defend, in its own or Lessee's name, any actions or proceedings appropriate or necessary to the protection of its title to, and Lessee's perpetual occupancy, use, and possession of or interest in the Leased Land. Whenever requested by OPAL, Lessee shall give OPAL all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding.

**15.9 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.

**15.10 CAPTIONS AND TABLE OF CONTENTS:** The captions and table of contents 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.

**15.11 PARTIES BOUND:** This Lease sets forth the entire agreement between the parties hereto with respect to the leasing of the Leased Land and Improvements; it is binding upon and inures to the benefit of the parties hereto and, in accordance with the provisions hereof, their respective successors in interest. This Lease may be altered or amended only by written notice executed by the parties hereto or their legal representatives or, in accordance with the provisions hereof, their successors in interest.

**15.12 GOVERNING LAW:** This Lease shall be interpreted in accordance with and governed by the laws of The State of Washington.



15.13 RECORDING: The parties agree, as an alternative to recordation of this Lease, to record a master copy of this Lease and execute a Memorandum of Lease in form recordable and reasonably satisfactory to OPAL's attorneys.

LESSOR:

LESSEE:

OPAL COMMUNITY LAND TRUST

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of OPAL COMMUNITY LAND TRUST; the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(print name)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(print name)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**

**THE PREMISES**

**EXHIBIT B**

- (i) Letter of Stipulation
- (ii) Letter of Acknowledgment of Legal Counsel

**EXHIBIT C**

**LEASED LAND**

**EXHIBIT D**

**FIRST REFUSAL**

Whenever any party under the Ground Lease shall have a right of first refusal as to certain property, the following procedures apply. If the owner of the property offering it for sale or lease ("Offering Party") shall within the term of the Ground Lease receive a bona fide third party offer to purchase or lease the property which such Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") shall have the following rights:

(a) Offering Party shall give written notice (the "Notice") of such offer to Holder setting forth (i) the name and address of the prospective purchaser thereof, (ii) the purchase price offered by the prospective purchaser and (iii) all other terms and conditions of the sale. Holder shall have a period of ninety (90) days after the receipt of the Notice containing the offer (the "Election Period") within which to elect to purchase the property on the same terms and conditions, including the purchase price set forth in the Notice. Such election shall be made by a written notice given to the Offering Party within the Election Period.

(b) If Holder makes the election to purchase the property, such purchase shall be made within ninety (90) days after such election shall have been made by Holder (or if the Notice shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice, including payment of the purchase price provided therein.

(c) Should Holder fail to make any election 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 (1) year period, the Offering Party's right so to sell shall end, and all of the foregoing provisions of this section shall be applied again to any future offer, all as aforesaid. If a sale is consummated within such one (1) year period, the purchaser shall purchase subject to a renewed right of first refusal in said property.

**EXHIBIT E**

**ZONING**

**EXHIBIT F**

**DEED**



**EXHIBIT G**

**PROSPECTIVE PURCHASER NOTICE**

**EXHIBIT H**

**NOTICE OF INTENT TO SELL**

**EXHIBIT I**

**INDEX OPTION PRICE**

**EXHIBIT J**

**MEMORANDUM OF LEASE TERMINATION**

This Memorandum of Lease Termination ("Memorandum") is signed by and between Opal Community Land Trust ("Lessor") and \_\_\_\_\_ and \_\_\_\_\_ ("Lessees") on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

1. Any and all interest of Lessees in that certain ground lease ("Lease") executed by and between Lessees and Lessor on or about \_\_\_\_\_ (a true and accurate copy of which is attached to this Memorandum as Appendix A) has been cancelled, extinguished, and terminated in accord with the Lease terms.
2. Lessees and Lessor have been released from any and all future obligations imposed on either of them by the Lease. Lessees and Lessor may still be liable for any obligations outstanding prior to termination of the Lease.
3. This Memorandum shall be effective as of \_\_\_\_\_.

\_\_\_\_\_, 19\_\_\_\_.  
Lessee Date

\_\_\_\_\_, 19\_\_\_\_.  
Lessee Date

OPAL COMMUNITY LAND TRUST,  
a nonprofit corporation

BY

\_\_\_\_\_, 19\_\_\_\_.  
Opal Community Land Trust Date

Lessee's Notary Acknowledgement

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF SAN JUAN )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(print name)  
Notary Public in and for the State of  
Washington  
My Appointment Expires \_\_\_\_\_

Lessee's Notary Acknowledgement

STATE OF WASHINGTON )  
 )  
 ) ss.  
COUNTY OF SAN JUAN )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(print name)  
Notary Public in and for the State of  
Washington  
My Appointment Expires \_\_\_\_\_



**EXHIBIT K**

**NOTICE OF ASSIGNMENT OF INTEREST**

This Notice of Assignment of Interest ("Notice") is signed by and between Opal Community Land Trust ("Lessor") and \_\_\_\_\_ and \_\_\_\_\_ ("Lessees") and \_\_\_\_\_ and \_\_\_\_\_  "Assignees" OR  "Sublessees" (mark the appropriate box) on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

1. Lessees, Lessor, and  Assignees or  Sublessees acknowledge that they remain liable for any and all obligations imposed on them by the Lease (a true and accurate copy of which is attached to this Notice as Appendix A). Lessees acknowledge that their rights under the Lease have been terminated permanently (in the event of assignment) or for the duration of the sublease (in the event of sublease).

2. This Notice shall be effective as of \_\_\_\_\_.

\_\_\_\_\_, 19\_\_  
Lessee Date

\_\_\_\_\_, 19\_\_  
Lessee Date

\_\_\_\_\_, 19\_\_  
Assignee or Sublessee Date

OPAL COMMUNITY LAND TRUST,  
a nonprofit corporation

BY

\_\_\_\_\_, 19\_\_  
Opal Community Land Trust Date





