

## GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into this 13<sup>th</sup> day of August, 2007, by and between the MACLT TROY GARDENS RESIDENTIAL PARCEL, LLC ("MACLT"), as Lessor, and FRIENDS OF TROY GARDENS, INC. ("FTG"), as Lessee.

### ARTICLE 1: TRANSFER OF LEASED LAND

**1.1 LAND.** MACLT, in consideration of the rents received and the terms, conditions, covenants and agreements contained in this Lease, leases to FTG, and FTG takes and hires from MACLT, the property described in **Exhibit A**.

### ARTICLE II: DURATION OF LEASE

**2.1 PRINCIPAL TERM.** The term of this Lease shall be five (5) years, commencing on August 13, 2007, and terminating on August 12, 2012, unless terminated sooner or extended in accordance with the provisions of this Lease.

**2.2 CHANGE OF LESSOR.** In the event that ownership of, or title to, Troy Gardens is conveyed or transferred, voluntarily or involuntarily, by MACLT to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected.

### ARTICLE III: RESTRICTIONS GOVERNING USE OF LAND

**3.1 PERMITTED USE.** FTG shall use, and shall cause all sub-lessees or other occupants of the Leased Premises to use, Troy Gardens and any Improvements on Troy Gardens only in conformance with the following documents (attached herein) governing use ("**Governing Documents**"):

- a. Map of Leased Premises (**Exhibit A**)
- b. 2006 PUD Zoning Text, Letter of Intent, and Site Plan (**Exhibit 1**);
- c. Conservation Easement held by Urban Open Space Foundation (**Exhibit 2**);
- d. Memorandum of Agreement for Purchase of Services (funding agreement with the City of Madison that enabled MACLT to purchase the land) (**Exhibit 3**);
- e. Dane County Ground Lease (for DNR funding agreement secured by a ground lease between MACLT and Dane County) (**Exhibit 4**);
- f. Declaration of Restrictions (relating to the remediated areas over the old railroad tracks) (**Exhibit 5**).
- g. American Transmission Corporation Utility Easement (**Exhibit 6**).

**3.2 FTG RIGHTS TO CONSTRUCT IMPROVEMENTS.** FTG has the right to install, (and the responsibility to maintain following installation), the Improvements specified in Section 5.2 and Section 6.1.c (and these only), subject to review prior to installation by MACLT (and the holder of the Conservation Easement) for compliance with the Governing Documents.

**3.3 TRANSFERABILITY.** FTG shall incorporate the terms of this Lease in any legal instrument by which FTG transfers any part of its interest in Troy Gardens, whether such transfer is the voluntary act of FTG or occurs by operation of law, and the terms of this lease shall be binding upon and inure to the benefit of any such successor or assignee.

**ARTICLE IV: LESSEE'S OBLIGATIONS.**

**4.1 COMPLIANCE WITH RESTRICTIONS GOVERNING USE.** FTG shall develop and manage the Leased Premises in full compliance with all Governing Documents referenced in Section 3.1.

**4.2 LESSEE RESPONSIBLE FOR USE BY OTHERS.** FTG shall be responsible for use of any portion of Troy Gardens and any Improvements thereon by any sub-lessee or other organization or person using that portion of Troy Gardens or said Improvements with FTG's knowledge or consent, and shall make them aware of the spirit, intent and appropriate terms of this Lease.

**4.3 LESSEE'S MANAGEMENT RESPONSIBILITIES.** FTG shall be responsible for the following management activities, to be performed to the standard of Best Management Practices:

- a. Management of the community gardens;
- b. Maintenance of the in-ground water irrigation system serving community gardens and farm.
- c. Consistent maintenance to all fencing, pathways, and mowed areas.
- d. Keeping the site free from trash.
- e. Management of composting and cleared plant materials.
- f. Management of community farm.
- g. Supervision of use of the community gardens' parking lot, subject to Section 7(3)(b).
- h. Management of prairie and other natural areas.
- i. Installation of raised-bed community gardens no later than December 31, 2008 in the area labeled "Accessible Gardens" in Exhibit A.

**4.4 PROPERTY TAXES AND SPECIAL ASSESSMENTS.** FTG shall be responsible for any and all property taxes related to the Leased Premises in addition to any and all special assessments levied against the Leased Premises by any municipal or

political subdivision of the City of Madison for the construction of sidewalks, curbs, gutters, or other public improvements on the Leased Premises.

**4.5 UTILITY FEES.** FTG shall be responsible for paying any utility fees assessed to Troy Gardens, including but not limited to storm water utility charges, water and electrical bills.

**4.6 CONDITION OF TROY GARDENS; COMPLIANCE WITH LAW.** FTG shall use the Leased Premises and Improvements in a manner so as not to cause actual harm to others or create any nuisances, public or private, and shall dispose of any and all waste in a safe and sanitary manner. FTG shall maintain the leased premises and Improvements in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over matters concerning the condition of the Leased Premises and the Improvements.

## **ARTICLE V: LESSEE'S RIGHTS**

**5.1 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT.** FTG has the right to peaceful enjoyment of Troy Gardens, subject to the terms, covenants, conditions, provisions, restrictions or reservations of this Lease. For purposes of this paragraph, "peaceful enjoyment" shall not include reasonable interference associated with the development of Housing Units and other structures on the neighboring housing site also owned by MACLT.

**5.2 LESSEE'S RIGHT TO USE TROY GARDENS.** FTG has the right to use Troy Gardens and to place or construct the following specified (and these only) buildings, structures, and fixtures ("**Improvements**") on the Leased Premises, subject to the terms, covenants, conditions, provisions, restrictions, and reservations set forth in the Governing Documents and this Lease.

- a. fencing,
- b. moveable structures,
- c. hoop houses,
- d. playground equipment,
- e. greenhouse,
- f. irrigation/water lines,
- g. bins for leaf mulch/compost/weeds,
- h. signage.

## ARTICLE VI: LESSOR'S OBLIGATIONS.

### **6.1 CONSTRUCTION OF IMPROVEMENTS AT FTG REQUEST.**

MACLT hereby agrees to project manage the construction of one (1) farm building in one of the two locations specified in Exhibit A, subject to the following conditions:

- a. FTG has secured the necessary funding to cover both the construction costs as well as a reasonable management fee for the project.
- b. MACLT has received reasonable notice of the project, no later than September 30<sup>th</sup> of the year prior to the planned construction of the farm building, so as to fit the project within MACLT's annual organizational work plan.
- c. In the event that the conditions described in Section 6.1.a and Section 6.1.b are satisfied and MACLT declines to project manage the construction of the farm building, FTG will have the right to construct said farm building, subject to meeting the requirements described in Section 3.1, Section 3.2 and Section 4.6.

### **6.2 ACCESSIBILITY.**

The MACLT will include, as part of its medium-to-long-term work plan, the installation of a wheelchair accessible trail system on the leased premises at Troy Gardens. MACLT will assume primary fundraising responsibility for this project. The goal is to create a wheelchair accessible pathway system which meets the following objectives:

- a. Connects the gardens parking lot to:
  - i. Raised-bed gardens,
  - ii. the greenhouse (if located adjacent to the parking lot), and
  - iii. north across the old railroad tracks between the farm and prairie intersecting with the sidewalk system of the Central WI Center.
- b. Connects the pedestrian pathways on the housing site to the wheelchair accessible path system in the leased premises.

## ARTICLE VII: LESSOR'S RIGHTS

### **7.1 INSPECTION.**

MACLT may inspect any part of Troy Gardens at any reasonable time and in any reasonable manner to ensure compliance with the terms of this Lease.

### **7.2 MACLT RIGHTS TO CONSTRUCT IMPROVEMENTS.**

MACLT retains the right to install (and the responsibility to maintain following installation), the following specified Improvements on the leased premises, subject to review prior to installation by the holder of the Conservation Easement for compliance with the Governing Documents.

- a. wheelchair accessible trail system,
- b. farm buildings in the locations identified in Exhibit A.

### **7.3 OTHER RIGHTS RETAINED BY MACLT.**

MACLT specifically retains the following additional rights as to the leased premises.

- a. Each homeowner household at Troy Gardens Homes shall have the option to garden on one (1) plot at Troy Community Gardens, provided such homeowner complies with FTG's rules and procedures.
- b. In the event that MACLT moves its offices to the housing site at Troy Gardens, MACLT will have the right to reassign parking spaces in the community gardens parking lot (see Exhibit A) for use by MACLT staff and visitors.

## **ARTICLE VIII: GENERAL PROVISIONS**

### **8.1 LEASE FEE.**

a. In consideration of MACLT's agreement to FTG's possession, continued use and occupancy of Troy Gardens, FTG shall pay to MACLT a monthly lease fee in an amount of one dollar (\$1.00) per month (the "**Lease Fee**").

### **8.2 INSURANCE.**

a. Casualty Insurance. FTG shall, at FTG's sole expense, keep all Improvements continuously insured against loss or damage by fire and the extended coverage hazards for the full replacement value of such Improvements or such lesser amount which shall be sufficient to avoid co-insurance of the Improvements.

b. Liability Insurance. FTG shall, at FTG's sole expense, maintain continuously in effect liability insurance covering the Improvements and the Leased Premises and its appurtenances in the amounts of not less than One Million Dollars (\$1,000,000.00), for injury to or death of any one person; and One Million Dollars (\$1,000,000.00) for injury to or death of any number of persons in one occurrence; and One Million Dollars (\$1,000,000.00) for property damage. The dollar amount of each such coverage shall be adjusted upon MACLT's demand, given not more often than biennially, upon 30 days notice to FTG. This adjustment shall not exceed the percentage of increase (if any) over the period since the last adjustment in the Consumer Price Index. Such insurance shall specifically insure FTG against all liability assumed under this Lease, as well as all liability imposed by law, and shall also insure MACLT as an additional insured so as to create the same liability on the part of the insurer as though separate policies had been written for MACLT and FTG.

c. Certificates of Insurance. FTG shall provide MACLT with a certificate of insurance each calendar year for all policies and policy renewals.

**8.3 NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by certified or registered mail to the address set forth below, or such other address designated by like written notice:

To MACLT:

Madison Area CLT Corporation  
305 South Paterson Street  
Madison, WI 53703

To FTG:

Friends of Troy Gardens  
3601 Memorial Drive  
Room 171, Building 14  
Madison, WI 53704

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

**8.4 AMENDMENT.** This Lease may be amended, by mutual consent of the Parties, only by a written instrument, provided that any such amendment shall not diminish the Restrictions set forth in Article III or interfere with the Parties' fulfillment of their respective charitable purposes. FTG and MACLT agree to come together in good faith, and further commit to act in a timely manner, to amend this Lease when necessary to ensure the continued success of FTG's stewardship of Troy Gardens and the fulfillment by FTG and MACLT of their charitable purposes.

**8.5 DISPUTES.** MACLT and FTG recognize the unique and long-term relationship established for and between the Parties by this Lease, the Parties' charitable purposes, and the Conservation Easement governing Troy Gardens and the Housing Area. The Parties further recognize the need to maintain a mutually respectful, communicative, and collaborative relationship to best fulfill the Parties' responsibilities to the Parties' organizational members, Madison's Northside community, the general public, and the land that is Troy Gardens and the Housing Area. To that end, the Parties agree to work diligently and in good faith to resolve disputes amicably and without litigation, and, if necessary, to pursue a mediated resolution.

Should any grievance or dispute arise between MACLT and FTG concerning the terms of this Lease which cannot be resolved by normal interaction, MACLT and FTG shall submit the grievance or dispute to an agreed-upon third party for resolution. If MACLT and FTG cannot agree upon such a third party within ten (10) days after either of them submits the name of a proposed arbitrator to the other, the following procedure shall be used:

MACLT or FTG 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, disinterested arbitrator to constitute an arbitration panel.

If the other party fails to timely name an arbitrator in response to the receipt of the written notice from the initiator, the arbitrator selected by the initiator shall be the sole arbitrator.

The arbitration panel shall hold a hearing within thirty (30) days after the initial written notice by the initiator of the arbitration process. At the hearing MACLT and FTG 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 MACLT and FTG of its findings and decisions, including a personal statement by each arbitrator of his/her decision and the reason for it. The arbitration panel shall decide the dispute or claim in accordance with the substantive law of the jurisdiction and what is just and equitable under the circumstances. The decisions and awards of a majority of the arbitration panel shall be binding and final between MACLT and FTG.

All costs and expenses of the arbitration, including the arbitrator's fees, shall be borne equally by the Parties, unless at least two members of an arbitration panel find that either party has delayed, impaired, or attempted to deceive the panel for the purpose of harassing the other party to the arbitration, in which event the panel may direct either party to pay the costs of the arbitration assessable to the other party. Each party shall be responsible for its own attorney's fees.

**8.6 ASSIGNMENT.** FTG shall not assign or transfer this lease agreement, or any interest in this Lease, or enter into any sublease of any part of the leased premises, without the prior, express, and written consent of MACLT, which shall not be unreasonably withheld. MACLT's consent to an assignment or sublease shall not be deemed to be a consent to any subsequent assignment of sublease. Any assignment or sublease without MACLT's consent shall be void and shall, at the option of MACLT, terminate this lease agreement.

**8.7 DAMAGE OR DESTRUCTION.** In the event of fire or other casualty to any Improvement(s) required by the PUD Development Plan or any other Governing Document, FTG shall forthwith commence, and thereafter diligently and continuously prosecute to completion, the repair of any such Improvement(s), and all insurance proceeds shall be applied first to the repair of such damage and the restoration of such Improvement(s) to their condition immediately prior to such damage and the balance shall be allocated according to this Section 8.7. All such repairs and restoration shall be completed as promptly as possible. FTG shall also promptly take all steps necessary to assure that Troy Gardens shall be and remain safe and the damaged Improvement(s) do not constitute a hazard or danger to persons or property from the time of the fire or other casualty.

**8.9 INDEMNIFICATION OF LESSOR.** FTG shall defend, indemnify and hold MACLT harmless against all liability and claims of liability for damage or injury to person or property from any cause on or about the Leased Premises. FTG waives all claims against MACLT for damage or injury to persons or property on or about the Leased Premises arising, or asserted to have arisen, on or about the Leased Premises from any cause whatsoever. Notwithstanding the foregoing two sentences, MACLT shall remain liable (and FTG shall not indemnify and defend MACLT against nor waive such claims of liability) for damage or injury due to the grossly negligent or intentional acts or omissions of MACLT or its agents or employees.

**8.10 DEFAULT.** In the Event of Default, MACLT may, in its sole discretion, terminate this Lease and initiate summary proceedings against FTG. If permitted by such proceedings, MACLT, without demand or notice, may enter upon the Leased Premises or any part thereof in the name of the whole and repossess the same, and expel FTG and those claiming through or under FTG and remove its or their effects without being guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant. If this Lease is terminated by MACLT or if MACLT re-enters the Leased Premises pursuant to an Event of Default, FTG agrees to pay and be liable for any unpaid Lease Fee, damages which may be due or sustained prior to or in connection with such termination or re-entry, and all reasonable costs, fees and expenses, including, without limitation, reasonable attorney's fees, incurred by MACLT in pursuit of its remedies under this Lease.

It shall be an Event of Default if:

a. FTG shall fail to perform or observe any other material term or condition in this Lease, and such failure is not cured by FTG within sixty (60) days after notice thereof (according to the requirements of Section 8.3) from MACLT to FTG; or

b. FTG shall be dissolved or cease to be recognized as a charitable organization or judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of FTG for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of FTG's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of FTG under any provisions of the Bankruptcy Act now or hereafter enacted, or if FTG shall file a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts and FTG fails to vacate or stay any of the foregoing within sixty (60) days after MACLT has sent to FTG notice of such default; provided, however, that the foregoing shall not operate or permit MACLT to terminate the Lease so long as all monetary payments required to be paid by FTG continue to be paid in accordance with the terms of the Lease.



**8.11 LESSOR'S DEFAULT.** MACLT shall in no event be in default in the performance of any of its obligations under this Lease unless and until MACLT shall have failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by FTG to MACLT properly specifying wherein MACLT has failed to perform any such obligation. If MACLT is in default pursuant to this paragraph, FTG shall have the right to terminate this Lease or seek specific performance or other equitable remedies.

**8.12 SEVERABILITY AND DURATION.** If any Article, Section, paragraph, subparagraph or clause 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 Article, Section, paragraph, subparagraph or clause, 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. The intention of the parties is that their respective rights under this Lease shall continue in full force and effect for the duration of the term of this Lease and any renewal thereof, and such rights shall be considered to be coupled with an interest.

**8.13 WAIVER.** MACLT's failure to exercise any remedy available to it, or its failure to take action with respect to, any breach of any term, covenant, condition, provision, restriction, or reservation contained in this Lease, shall not be deemed to be a waiver of such term, covenant, condition, provision, restriction, or reservation or subsequent breach of the same, or of any other term, covenant, condition, provisions, restriction, or reservation herein contained. MACLT may grant waivers in the terms of this Lease, but any such waiver must be in writing and signed by MACLT before being effective.

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

**8.15 EXHIBITS.** The exhibits attached to this Lease are, by their reference, incorporated in and made a part of this Lease.

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

**8.17 RECORDING.** The parties may, as an alternative to recording this Lease, execute a Notice of Lease or Short Form Lease in form recordable and complying

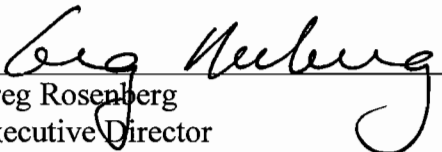
with applicable law and reasonably satisfactory to the Parties' attorneys. Any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

Either party may, upon notice to the other, execute and record any subsequent notice as may be required by the provisions of Chapter 706, Wisconsin Statutes (2001-2002) or similar statutes.

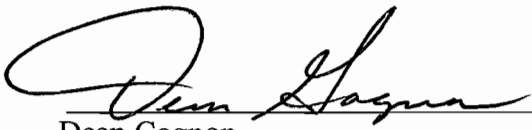
**8.18 FORCE MAJEURE.** FTG shall not be in default where performance is delayed or prevented by acts of God, war, civil commotion, strikes, labor disputes, or the like.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

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

  
\_\_\_\_\_  
Greg Rosenberg  
Executive Director  
Madison Area CLT Corporation

**FRIENDS OF TROY GARDENS**

  
\_\_\_\_\_  
Dean Gagnon  
Co-Chair  
Friends of Troy Gardens Board of Directors