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EXECUTIVE SUMMARY:
THE COMMUNITY LAND TRUST REPORT

On May 26, 2005, the City Council directed the City Manager *to prepare a report researching the various forms of land trusts for affordable housing currently in operation in the United States and evaluating the feasibility of the trusts under Texas law and the financial policies of the City of Austin* (Resolution No. 20050526-021). This report is based on information developed as a result of a Technical Assistance contract between the City of Austin, the United States Department of Housing and Urban Development (HUD), and the Institute for Community Economics, Inc. (Springfield, Massachusetts). The contract was approved by HUD at no cost to the City of Austin last fall, and the Institute for Community Economics, Inc. selected Burlington Associates in Community Development, LLC, to provide technical assistance to explore the option of a community land trust model for Austin, Texas.

The Austin Community Development Corporation initiated the request for the Technical Assistance contract and formed The CLT Steering Committee to review issues related to organizational governance, community involvement, and business planning. This report includes the recommendations approved by the CLT Steering Committee and City staff's assessment of these recommendations in the context of lessons learned from other Community Land Trusts provided as part of the Technical Assistance contract.

This report details the following:

1. Detailed description of the Community Land Trust, its benefits and disadvantages, and its various forms across the country;
2. Feasibility of the Community Land Trust under Texas Law; and
3. Analysis of the financial policies of the City of Austin as relates to the Community Land Trust.

A Community Land Trust (CLT) functions to preserve public investment and to recycle and protect affordability. The CLT is an entity, typically a non-profit organization, that acquires and retains ownership of the real property and, in effect, sells the improvements via a 99-year ground lease to a homeowner, another non-profit, a cooperative housing corporation, or for-profit entity. This arrangement between the owner and the CLT protects housing affordability in perpetuity by ensuring that the housing is made affordable to low- to moderate-income persons upon the sale of a single-family, multi-family, and/or commercial property. The resale price restrictions contained in the ground lease stipulate

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the resale price formula that provides for a fair return (not a “market” return) on the homeowner’s investment. For purposes of this report, the CLT focus will be on residential housing models.

In summary, the Community Land Trust model is feasible under Texas Law. In addition, the analysis of the City of Austin’s Financial Policies indicates that the Community Land Trust model presents minimal investment risk and provides an opportunity to preserve public investment in affordable housing in perpetuity. The detailed description of the Community Land Trust, its benefits and disadvantages, and its various forms across the county suggest ten factors required to create a successful Community Land Trust in Austin:

1. Ability to unite the private sector, the public sector, and the low-income community to attract both public and private investment;
2. Financial resources to own land debt-free;
3. Guaranteed operational funding for the initial three year start-up period;
4. Focus on educating potential homeowners, lenders, and the community;
5. Strong commitment to and partnership with neighborhood-based non-profits and community housing development organizations (CHDOs) to produce permanent, affordable housing opportunities;
6. Ability to be nimble and flexible in order to negotiate land acquisition in the private market;
7. Ability to produce units over the initial three-year start-up period, in order to become self-sufficient;
8. Ability to provide a fair return on the CLT homeowner’s investment, in order to provide incentives to participate in the program;
9. Ability to adopt a comprehensive property tax strategy to reduce the tax burden and prevent market rate appreciation that would occur if the land and improvements were owned in fee simple; and
10. Ability to offer housing of competitive quality and location that is more affordable than what is available in the private market.

The Community Land Trust Model provides an opportunity for the City of Austin to preserve its investment in housing by developing permanently affordable homeownership opportunities for low-income households. The Community Land Trust structure allows the public investment in affordable housing to be recycled. By design, the CLT is committed to preserving the affordability of housing and other structures – one owner after another, one generation after another, in perpetuity.

I. THE COMMUNITY LAND TRUST OPTION

A Community Land Trust (CLT) functions to preserve public investment and to recycle and protect affordability. The CLT is an entity, typically a non-profit organization, that acquires and retains ownership of the real property and, in effect, sells the improvements via a 99-year ground lease to a homeowner, another non-profit, a cooperative housing corporation, or for-profit entity. This arrangement between the owner and the CLT protects housing affordability in perpetuity by ensuring that the housing is made affordable to low- to moderate-income persons upon the sale of a single-family, multi-family, and/or commercial property. For purposes of this report, the CLT focus will be on residential housing models.

A. PROTECTING PUBLIC INVESTMENT: "RECAPTURE" VS. "RESALE"

1. Recapture of Public Investment. In the past, the City of Austin has applied the policy of "recapture." This policy holds that the public investment is "recaptured," or collected, upon sale of the property receiving the public investment. Subsidy recapture provisions require the homeowner, when the home is sold, to repay particular subsidies that have reduced the cost of buying the home.¹ The City of Austin (City) treats this subsidy as a deferred loan, payable when the home is resold, refinanced, or is no longer the primary residence of the homeowner. The City reinvests this recaptured money back into affordable housing. Once sold, however, the property no longer requires a low-moderate income household to purchase the property, and the sales price is not required to be affordable.

The City of Austin adopted a subsidy recapture policy because it discourages homeowners from "flipping," or quickly reselling, their homes. In addition, subsidy recapture provisions are easily explained and justified, and do not raise serious questions of legal enforceability.²

Historically, this subsidy recapture policy served the City of Austin well because vacant land was inexpensive and available, and the public investment could then be re-invested in producing affordable housing. Given the increased costs and limited land availability, this policy no longer satisfies the needs of the City in creating and maintaining affordable housing opportunities. The Community Land Trust Legal Manual, produced by the Institute for Community Economics explains:

[S]ubsidy recapture alone will not move a community toward a long-term resolution of its housing problems, particularly in appreciating real estate markets. The fact that subsidies are recaptured does not prevent subsidized homes from returning to the unrestricted market, with prices that may be greater than what is affordable for lower-income households. In communities where real estate prices are appreciating faster than the incomes of local residents, the recaptured subsidy will seldom be sufficient to reduce the cost of another home of similar type to a level affordable for another lower-income household. Over time, even if subsidy-recapture provisions have not expired, the buying power of the pool of recaptured subsidies becomes less and less and the number of homes that can be subsidized becomes fewer and fewer, unless the purchasing power of this subsidy pool is repeatedly renewed through further public investment. Programs relying solely on subsidy recapture, in the end, preserve neither the affordability of assisted housing, nor the subsidy put in to make the housing affordable. Both are lost.³

2. Resale Price Restriction Policy. An alternative to the subsidy recapture policy is resale price restriction. Resale price restrictions go an important step beyond subsidy recapture in an effort to keep the subsidized home affordable for subsequent lower-income purchasers.⁴ Resale restrictions do not require the repayment of subsidies; instead, they preserve the value of subsidies – as well as the value of community efforts that increase real estate values – by fixing the subsidy in the home so that the subsidy is passed on to subsequent owners.⁵ “Resale” policy requires that when a property is sold, the subsequent buyers must be low to moderate income; and the property must be sold at a price that is affordable to the new buyer while providing a fair return, not a market return, to the seller.

Resale price restrictions are implemented by three basic methods. First, the nonprofit or public agency retains a pre-emptive right, or right of first refusal, to either purchase the home or find another income-eligible buyer to purchase the home. The effectiveness of a preemptive right depends on the continued ability of the nonprofit or public agency to exercise this right. Second, short-term resale price restrictions, generally lasting from 5 – 20 years, are imposed by a deed restriction or restrictive covenant running with the land. While short-term restrictions are more effective than subsidy recapture provision, they do not preserve long-term housing affordability or allow the amount of public investment to be recycled. The third method is by perpetual resale price restrictions.

Perpetual resale price restrictions can be implemented in two primary ways: 1). Restrictive Covenants that run in perpetuity,⁶ or 2). The Community Land Trust Model that utilizes a 99-year, renewable ground lease.

Resale restrictions are typically defined in restrictive covenants, deed restrictions, or ground leases and define the resale requirements. For example, the resale restrictions require that the property be sold to households at or below 80% of median family income and that the property be sold at a price that is affordable to the subsequent buyer. The resale restriction also stipulates that the property is sold to a subsequent buyer at a price that provides a fair return to the seller. The resale price formula is provided in the resale restrictions.

The CLT Model provides distinct and important advantages over a restrictive covenant in securing and maintaining perpetual affordability. The CLT typically charges a ground lease fee for the use of the land, so the CLT entity is actively engaged, on a monthly basis, with its homeowners. The CLT model also provides the cornerstone for homebuyer education and homebuyer support, including foreclosure prevention. Further, in Texas, title companies “enforce” restrictive covenants, and this often proves to be an unreliable monitor for preservation of affordability:

[D]eed restrictions are sometimes described as “self-enforcing” – the idea being that, although the party that established the limitations in the first place will not necessarily be aware that the property is to be sold, a title search conducted on behalf of the prospective purchaser would reveal the nature of the deed restrictions, and the prospective buyer would be likely to refuse to buy on terms that violated the restrictions. However, a less than completely diligent title search may *not* reveal the restrictions. It may also happen that a strongly motivated buyer, noting that no third party is present to enforce the restrictions, and knowing that the enforceability of the restrictions will eventually lapse, will decide to accept the limited risk involved in ignoring the restriction.⁷

Utilizing the structure of separation of land and improvements, the CLT is automatically part of any resale transaction, and thus, the CLT is positioned to enforce the income-eligibility restrictions and resale price contained in the ground lease.

A comparison of the market value appreciation from a resale versus recapture perspective is illustrative of why a resale policy should be adopted. (*Attachment "1"* provides a comparison of the costs of "recapture" as compared to "resale" theory.)

The CLT structure is based on a resale theory. While the CLT retains ownership of the land, ownership of the improvements is conveyed via a warranty deed, and the use of the land is conveyed via a 99-year ground lease. (See *Attachment "2"* that illustrates the ownership interests and relationships.) The CLT retains an option to repurchase any residential or commercial structures located on its land should their owners choose to sell. The resale price is set by a formula contained in the ground lease that is designed to give present low-income homeowners a fair return on their investment, while also giving future homebuyers access to affordable housing. The Community Land Trust structure allows the public investment in affordable housing to be recycled. By design, the CLT is committed to preserving the affordability of housing and other structures – one owner after another, one generation after another, in perpetuity.

B. CHARACTERISTICS OF THE TRADITIONAL COMMUNITY LAND TRUST

The CLT has the following characteristics⁸:

- 1. Dual Ownership.** The CLT acquires multiple parcels of land within the geographic service region of the CLT. The CLT retains ownership of the land in perpetuity. Existing improvements (homes), or housing that is subsequently constructed, are then sold to individual owners, cooperative housing corporations, non-profit developers of rental housing, or other types of entities.

- 2. Leased Land.** The CLT intent is to retain ownership of the land forever, and it provides use of its land by the owners of the improvements located on its property. The real property is conveyed to individual homeowners (or rental housing owners) through long-term, 99-year ground leases. This two-party contract between the CLT and owner protects the lessee's interests in security, privacy, legacy and equity, and the contract enforces the CLT's interests in preserving the appropriate use, structural integrity, and continuing affordability of any buildings located on the CLT land.

- 3. Perpetual Affordability.** The CLT retains an option to repurchase the housing unit(s) located on its land should the owner/lessee choose to sell. The resale price is set by a formula contained in the ground lease that is designed to give present low-income homeowners a fair return on their investment, while also providing future homeowners access to affordable housing.

4. Perpetual Responsibility. The CLT, as owner of the land underlying the housing unit(s) and as owner of an option to repurchase the housing unit(s), has a continuing interest in what happens to the buildings and to those who occupy them. Should the property owners allow their buildings to become a hazard, the ground lease gives the CLT the right to step in and mandate repairs. Should these property owners default on their mortgages or fail to pay their property taxes, the ground lease gives the CLT the right to step in and cure the default by paying the past due taxes or mortgage payments, forestalling foreclosure.

5. Community Control. The CLT is typically a community-based organization, drawing members from its own leaseholders and from residents of its community.

6. Balanced Governance. The board of directors of the CLT model is traditionally composed of three parts, each with an equal number of seats. The traditional CLT board model consists of the following representation: 1). One-third leaseholder representation; 2). One-third community representation; 3). One-third public officials, local funders, nonprofit housing providers or social services and other individuals representing public interest. Control of the board is balanced to ensure that all interests are heard and none predominate.

7. Expansionist Acquisition. CLTs are committed to active an acquisition and development program aimed at expanding their land holdings and increasing the supply of affordable housing under their stewardship. Most CLTs develop their own projects. Other CLTs work with non-profits, governmental partners, or private developers to construct or rehabilitate housing on CLT property, focusing their efforts on assembling parcels of land and preserving affordability.

8. Flexible Development. The CLT is a community development tool that accommodates a variety of land uses and a diversity of building tenures and types. CLTs around the country construct, acquire, rehabilitate, and resell housing of many kinds, *e.g.*, single-family homes, duplexes, condominiums, cooperatives, single-room occupancies (SROs), apartment buildings, and mobile home parks.

C. BENEFITS OF A COMMUNITY LAND TRUST

The CLT model has six primary benefits⁹ to the community it serves:

1. Stewardship: Preserving Scarce Resources;
2. Mobility: Enhancing the Housing Continuum;
3. Security: Backstopping Low-Income Households;

4. Stability: Supporting Development without Displacement;
5. Flexibility: Adapting to Sites, Funds, & Constituencies; and
6. Frugality: Shifting Administrative Burdens and Cost.

1. Stewardship: Preserving Scarce Resources

As a “steward” of the land, the CLT is able to preserve and recycle public subsidies. Through the 99-year ground lease, the CLT preserves affordability for future homeowners. The initial investment in affordable housing units is recycled by the resale restriction contained in 99-year the ground lease. For example, if public funding is used to purchase the land, the public investment in affordable housing is dedicated to creating affordable housing opportunities for future CLT leaseholders/owners. In addition, the value of S.M.A.R.T. Housing™ incentives and fee waivers is preserved for affordable units that are part of a CLT.

2. Mobility: Enhancing the Housing Continuum

The CLT model provides an additional rung on the housing continuum ladder for low-income households interested in homeownership opportunities, presenting another option to low-income people seeking to improve the type and tenure of their housing. The CLT model allows low-income households to step-up to “fee-simple” homeownership by providing an “assisted homeownership” option.

3. Security: Additional Support for Low-Income Homeowners

The CLT model supports homeowners after they purchase a home by intervening to cure defaults on property taxes and mortgages. In this mode of support, the CLT is able to mitigate foreclosure. The CLT Ground Lease, coupled with separate addenda and riders, contains provisions that allow the CLT to step-in and forestall the foreclosure process to cure defaults.

4. Stability: Supporting Development without Displacement

The CLT can direct investments in neighborhoods undergoing revitalization efforts with a minimum negative impact. Public funding invested in a CLT benefits low-income households in rapidly appreciating neighborhoods by providing long-term resident renters and homeowners an opportunity to secure affordable homeownership in housing that is code compliant and poses no risk to health and safety. For example, long-term homeowners of a neighborhood may own and occupy housing that is dilapidated. The CLT can function as a component of a housing rehabilitation strategy that would provide decent housing to long-term neighborhood residents.

5. Flexibility: Adapting to Sites, Funds, & Constituencies

The CLT abandons a one-size-fits all approach to community development and allows for mixed-use land development and a mix of types of housing in scattered-site projects. For example, the CLT model can accommodate affordable homeownership, rental, and commercial opportunities.

Most importantly, the CLT is not confined to serve only neighborhoods that are currently undergoing revitalization or neighborhoods that are considered “blighted.” Rather, the CLT model presents a unique opportunity to provide affordable housing “West of I-35,” in neighborhoods that do not traditionally present affordable housing opportunities for low income households. For example, city surplus land located in West Austin that is rendered unaffordable due to the land value and resulting taxes can be made affordable to low-income households by the CLT model. With land values for single-family, residential lots frequently valued at \$100,000 or more, removing the value of the land (or reducing the value of the land according to its ground lease value) would allow a low-income household to afford housing in West Austin.

6. Frugality: Shifting Administrative Burdens and Cost

The City of Austin is able to delegate responsibility for monitoring publicly-funded projects, using the CLT model. Over time and with an increasing volume of affordable housing units, the CLT can become financially independent. The CLT generates income from two primary sources: 1). The ground lease fee paid by the lessee; and 2). The potential income generated when a CLT home is resold. The amount of the ground lease fee should contemplate the administrative and operating costs of the CLT. The potential income generated when a CLT home is resold can be the result of a mark-up in sales price when the CLT purchases the home from a departing homeowner/lessee, or the income can result from a fee charged by the CLT for assigning its right to purchase when the home is resold directly to another homeowner/lessee.

Using the CLT Model, the City of Austin could delegate the responsibility for enforcing publicly-mandated controls, such as enforcing resale restrictions and enforcing “evictions” when homeowners/lessees fail to comply with the ground lease requirements. As a separate, non-profit entity, the CLT would be responsible for handling issues related to lessee communications and lessee relations including the process of foreclosure/eviction in the event of default under the mortgage or provisions in the ground lease. While the City of Austin protects its public investment, it does not necessarily have to be the entity responsible for enforcing the restrictions that insure the public investment.

D. DISADVANTAGES OF A COMMUNITY LAND TRUST

The CLT model has several disadvantages that are detailed below.

1. **Cultural Perception:** Most notably, the CLT model has not been tested in Texas: Austin would be the first municipality in Texas to adopt a community land trust. The market demand for a CLT home in Austin, or in Texas, is

uncharted territory. Cultural values could render a CLT home “undesirable” because the homeowner does not own the land. The CLT Model often suffers from a negative perception as a land ownership regime.

2. **Limitation on Wealth Creation:** A corollary to the first disadvantage is the limit on equity participation and wealth creation. In deciding whether or not to support the CLT model, the City of Austin must determine whether the public goal is: 1). To create permanent affordable housing opportunities; *or* 2). To perpetuate a system where a few low-income households can benefit from market appreciation of their homes in order to build and create wealth. (The CLT Model does provide a fair return on the homebuyer’s equity investment; however, the homebuyer’s participation in the full market rate appreciation of the home is limited.)
3. **Perceived “Competition” with Non-Profit Housing Providers:** A CLT will change the manner in which non-profit housing providers participate in publicly funded housing activities, and, as such, the CLT competes with the scarce public resources that are available to other non-profit housing providers. For example, AHFC provides forgivable loans to Habitat for Humanity to purchase land to develop homeownership opportunities for households at or below 50% MFI. AHFC also provides deferred payment, homebuyer assistance loans to homebuyers who purchase CHDO-developed housing. If a CLT is adopted, AHFC must re-evaluate these types of loan products to non-profit housing developers, because the assumption is that the CLT offers a model for permanent affordable housing development.
4. **Market Competition:** Several volume builders, such as CENTEX and KB Homes offer housing that is priced affordably for low- to moderate-income home buyers. It is important to understand the impact of market-rate, unrestricted homes: These homes may be affordable to the initial homebuyer, but these homes will not be guaranteed affordable to the next homebuyer. A CLT is successful by offering a competitive product in a competitive, desirable location for a price that is more affordable than similar market-rate products, and the CLT model guarantees affordability for the next homeowner. Austin can provide such opportunities, especially in emerging communities like the Robert Mueller Municipal Airport (RMMA) Redevelopment Project.
5. **CLT Model to Avoid Property Taxes:** The concern of higher-income neighborhoods forming nonprofit CLTs to avail themselves of property tax exemptions provided to a CLT is unfounded. Property tax exemption for nonprofits requires that the housing serve low-income households. Further, public funding for a CLT must be conditioned on serving low-income households.

E. VARIOUS FORMS OF COMMUNITY LAND TRUSTS FOR AFFORDABLE HOUSING IN THE UNITED STATES

There are a variety of forms of Community Land Trusts operating in the United States:¹⁰

1. **Grassroots Sponsorship**: Characterized by the grassroots activism of housing advocates, neighborhood residents, faith-based organizations, and/or community organizations. This was the basis of early CLT efforts.
2. **Employer Sponsorship**: Driven by employers who traditionally have employed low to moderate income employees in areas with high-priced housing. These employers have an interest in providing affordable housing to their employees.
3. **Government Sponsorship**: Gathers initial support from municipal governments and has traditionally relied upon local nonprofits to implement and provide leadership for the CLT. However, a government sponsored CLT may present unique benefits for the City of Austin.
4. **Nonprofit Sponsorship**: Emanates from an existing non-profit organization. Four different forms of non-profit sponsorship exist:
 - a. Conversion of an existing non-profit to transform itself into a "classic" CLT;
 - b. Spin-off of an existing non-profit, as the CLT becomes more autonomous and self-sufficient;
 - c. Affiliate of an existing non-profit, where the existing non-profit retains control over the governance of the CLT; or
 - d. Program of an existing non-profit, where the CLT does not exist as a separate corporation governed by its own board.

Appendix "A" describes various examples, advantages, and disadvantages of the three most popular CLT forms currently in operation in the United States: 1). Employer Sponsorship, 2). Government Sponsorship, and 3). Nonprofit Sponsorship.

F. TRADITIONAL CLT CORPORATE STRUCTURE & GOVERNANCE OPTIONS

There are two primary issues concerning the corporate structure of a CLT: 1). Whether or not the CLT entity is governed by the “classic” CLT tripartite board; and 2). Whether or not the CLT entity is a membership organization.

1. Tripartite Governance¹¹

The board of directors of the “classic” CLT is composed of three parts, each containing an equal number of seats. One third of the board represents the interests of people who lease land from the CLT (“leaseholder representatives”). One third represents the interest of residents from the surrounding “community” who do not lease land from the CLT (“general representatives”). One third is made up of public officials, local funders, nonprofit housing or social service providers, and other individuals presumed to speak for the public interest (“public representatives”). Control of the CLT’s board is diffused and balanced to ensure that all interests are heard but that no interest is predominant.

Although every CLT board has a diversity and balance of interests, the exact make-up and mix can vary widely from one CLT to another. For example, every CLT has public representatives, but some CLTs fill these seats exclusively with representatives of state or local government, while others include representatives of local churches, foundations, banks, social service agencies, tenant’s rights organizations, or community development corporations with this “public” category. Many start-up CLTs, moreover, have interim boards that may be composed (and appointed) quite differently than the broadly representative, membership-elected, tripartite board that will ultimately govern the CLT.

2. Membership¹²

The “classic” CLT structure allows anyone who resides within the CLT’s geographic boundary or who resides on CLT land to become a voting member of the CLT organization. In the “classic” CLT structure, the members elect two-thirds of the CLT Board. Most CLTs in the country are open-membership organizations. The distinction of membership organizations is that the membership comes together annually to elect the board of directors, in accordance with the bylaws. In this manner, the community is truly vested in the CLT – setting policies and directions and selecting the governing board to carry out these priorities. The benefit of this community “buy-in” is a broad base of support (political and financial) to support the CLT. Building a membership base involves significant effort. Another benefit of membership is the potential revenue created by membership dues. While “free” membership is generally a benefit of being a leaseholder, the broader community members pay annual membership dues.

By comparison, a “self-sustaining” board of directors fills vacant board seats by a vote of the existing, seated board. Recently, a number of CLTs have attempted to achieve community “buy-in” through means other than a membership

organization. “The jury, frankly, is still out on how these non-member organizations will fare over the long run.”¹³

G. CLT PROPERTY TAX ISSUES & OPTIONS

The affordability of CLT housing is directly impacted by the property taxes that the CLT leaseholders must pay. **Traditionally, CLT leaseholders have paid all the property taxes on real property and improvements, regardless of the fact that the CLT holds title to the land.** Since the typical CLT ground lease has a 99-year lease term, the underlying rationale is that the CLT leaseholder has exclusive use of the property for this extended period. Any tax bills received by the CLT are passed along to the lessees for payment.

A. CLT Property Tax Issues.

Since the leaseholder is responsible for payment of the property taxes, if the CLT property is taxed at its full market value, the CLT home becomes unaffordable over time, regardless of the long-term restrictions on sales price. The following are key questions for the local property tax assessor:¹⁴

1. What is the value of the land that is owned by the CLT when it is entered on the tax rolls? Considering that this land is encumbered with a 99-year lease, this land will generate only modest fees for the owner during the term of the lease, and this land will be immediately leased again to another low-income household whenever it reverts to the CLT.
2. What is the value of the housing/improvements located on the CLT land when entered on the tax rolls? Considering that these structures are encumbered with a perpetual restriction on the equity the owners may earn when the structures are resold, the value of the improvements are restricted.
3. How are these values adjusted over time, i.e., what is the rate of increase in the assessed value – considering that the land is never resold and the buildings are resold at a formula-driven price that is almost sure to be far below the market value?

See *Appendix “B”* describing the myriad of ways that CLTs have dealt with the property tax issue.

B. CLT Property Tax Options in Austin, Texas.

Because the tax burden can render housing unaffordable, the CLT model creates an opportunity to lessen the tax burden and increase affordability to target lower income households. There are two areas where property tax is integral in

creating affordability: 1). tax on the value of the land, and 2). tax on the value of the improvements.

The impact of property taxation is different in Austin than in other areas that have created CLTs. Most CLTs in the United States require the homeowner to pay all of the taxes, while some CLTs have absorbed the tax for the value of the land. Also, the overwhelming majority of states that have created CLTs impose an income tax on their residents; therefore, the property tax burden has not been as great.¹⁵ Because Texas does not have a personal state income tax, the property tax burden is substantial. The CLT Model presents a unique opportunity to bifurcate the property taxes, in order to decrease the tax burden to provide affordability for the homeowner.

1. Options for Property Taxation on the CLT Land Value.

If the CLT entity is responsible for paying taxes on the land, the amount of taxes due must be accounted for in the operating budget of the CLT entity. If the homeowner is responsible for paying taxes on the land, the amount of taxes due must be included in the monthly housing payment of the homeowner (PITI). Outlined below are three options for property taxation on the CLT land value and an example of the property tax due on a lot valued at \$40,000 is included for comparison.

a. AHFC Owns the Land.

Austin Housing Finance Corporation (AHFC) is accorded full property tax exemption under Texas Law.¹⁶ If AHFC served as landowner to the CLT, the value of the land would remain 100% tax exempt. If the CLT entity is a separate non-profit corporation, the AHFC could enter into an agreement with the CLT to manage the property. For example, there are no taxes due on a \$40,000 lot, if AHFC retains ownership with a full tax exemption.

b. Non-Profit Organization Owns the Land.

Effective January 1, 2004, the law for property tax exemption for affordable housing owned by non-profit organizations changed significantly. The new law allows a fifty-percent (50%) ad valorem tax exemption on the appraised value of the property, if certain eligibility requirements are satisfied.¹⁷ (Prior to this date, the "CHDO Exemption" allowed 100% property tax exemption for non-profit housing developers that were certified as CHDOs. All properties exempt as of December 31, 2003, are grandfathered under the new tax code.)

The new law requires that both the non-profit organization and the property meet certain eligibility requirements. The ownership requirements stipulate that the property must be owned by a "qualified entity." One of the critical requirements is that the "qualified entity" was exempt from federal income

taxation under IRC Section 501(c)(3) for the past three years. As such, a new CLT non-profit organization **could not** qualify for the 50% tax exemption. In addition, because the new tax law does not address the bifurcated ownership of land and improvements, it is unclear how the 50% exemption would be applied to the CLT Model.

Presumably, the land owned by the CLT entity would be considered “rental property,” because the CLT leases this land to low-income households. The 50% exemption for rental housing is available to qualified entities whose households meet the income qualifications for rental housing. Assuming that a non-profit entity qualifies as an eligible entity, and the property meets the requirements, the tax due to the CLT entity, for land valued at \$40,000, is approximately \$550. However, if the land is considered rental property, the value of the property would be based on an income-model appraisal. See discussion below on Income Method Appraisal.

c. CLT under the Homestead Preservation Act (HB 525).

The Homestead Preservation Act (“Act”) applies only to land trusts that operate within the boundaries of the district. (See *Appendix “C”* detailing the requirements of the Homestead Preservation Act.) The Act contains two provisions related to property tax exemption for community land trusts within the district:

1. The Act allows for the trust's real property to be exempt (except for school taxes), if the trust is created pursuant to the Act; and
2. The Act allows for the exemption of municipal and county taxation, if approved by the governing bodies, of the real property of any land trust operating under other law.

Assuming exemption of all taxes, other than school district taxes, the property tax due on land valued at \$40,000, is approximately \$676.

d. Income Method of Appraisal.

Another option for establishing the appraised value of the land is to adopt the income method of appraisal, considering the “rent restrictions” and the same capitalization rate used for other properties with similar rent restrictions. Arguably, the land owned by the CLT is rental property and generates rental income resulting from the ground lease between the CLT and the homeowner. The land would need to have a restrictive covenant establishing the limitations of the ground lease fee, *i.e.*, “rent restrictions.” Because the ground lease fee is a nominal amount, *e.g.*, \$50 per month, the annual rental income from a CLT lot would be \$600. Property taxes due would be based on the rental income – not the value of the land.

2. Options for Property Taxation on the CLT Improvement Value.

The CLT homeowner should be responsible for paying the property taxes on the improvements that he/she owns. Property taxes are an integral part of the responsibility of homeownership. However, the method of valuation of the improvements and the adjustment to the value over time must contemplate the value of the improvements (without the land) and the resale price restrictions.

a. Improvements Taxed at Market Value - Market Rate Adjustment.

Improvements can be taxed at the market value, established by the initial sales price of the home, *i.e.*, improvements only. In theory, improvements should depreciate over time, unless renovation occurs (increase in square footage, etc). However, improvements may increase based on the tax appraiser's assessment.

b. Improvements Taxed at Market Value - Resale Restricted Adjustment.

Improvements can be taxed at the market value, established by the initial sales price, and any adjustment in value is based on the resale restrictions, *i.e.*, the adjusted value over time should not be greater than the restricted resale price.

H. CLT GROUND LEASE

The ground lease is critical to the success of the CLT. The CLT ground lease serves two primary functions: 1). It is the legal document, executed at closing, that conveys an exclusive possessory interest to the leased land and the improvements located thereon; and 2). It is the document that defines the relationship between the CLT and the Lessee – particularly defining restrictions on the lessee's use, occupancy, and resale of the property over the term of the lease.

Formulating a ground lease forces a CLT to carefully consider exactly what it is trying to accomplish (*e.g.*, provide long-term affordability, mitigate resident displacement, promote equity development, encourage mixed-income neighborhoods, provide workforce housing, etc. Five guiding principals, or competing interests, exist to help frame the goals of the CLT that are embodied in the ground lease:

1. Individual Rights vs. Community Interests
2. Fair Market Return to Owner vs. Preservation of Future Affordability
3. Promote Upward Mobility vs. Encourage Neighborhood Stability
4. Hands-On vs. Hands-Off Management
5. Detailed, Thorough Ground Lease vs. Ease of Understanding

Appendix "D" provides an outline of typical provisions found in a CLT ground lease. In addition, it outlines several resale methodologies often used in a CLT ground lease.

I. CLT PROJECT DEVELOPMENT

CLTs have produced affordable units by a number of different development models. The range of models is diverse and is based on the particular needs of the community. *Appendix "E"* describes various CLT Development Models that include the following:

1. CLT-Initiated Development;
2. Buyer-Initiated Development;
3. Owner-Initiated Transactions (for rehabilitation of homes);
4. Developer-Initiated Projects;
5. Partnership Projects;
6. Municipally-Initiated Projects; and
7. PHA-Divested Property.

J. CLT FUNDING

1. CLT PROJECT FUNDING

Project development funding required by a Community Land Trust does not differ in size or kind from that required by any other nonprofit developer of affordable housing. Funds are needed to pay for:

1. Land acquisition;
2. Pre-development feasibility;
3. Site preparation;
4. Infrastructure development;
5. Construction of residential structures;
6. Rehabilitation of residential structures;
7. Downpayment assistance for first-time; and
8. Permanent financing for first-time homebuyers or various nonprofit (or for-profit) buyers of residential structures located on leased land.

Project funding has come from a host of sources, public and private. The most important aspect of CLT project funding is that the land is owned debt-free by the CLT. *Appendix "F"* sets forth the various funding issues and funding sources associated with CLT projects.

2. CLT OPERATIONAL FUNDING

The operational funding needs of a CLT include the following:

1. Rent, utilities, office expenses;
2. Salaries, benefits, payroll expenses;
3. Marketing materials and expenses;
4. Homebuyer education materials, training resources;
5. Legal expenses;
6. Accounting and bookkeeping expenses; and
7. Training and professional development expenses.

On occasion, a CLT is able to share staff and office resources with municipal or other non-profit organizations. Because a CLT has a revenue stream from ground lease fees and sales transaction fees when a CLT home is resold, the CLT is able to become self-sufficient over time. However, an initial commitment for start-up costs is critical to the success of a CLT. For more information, see *Appendix "G"* outlining the various issues and sources of operational funding.

II. FEASIBILITY OF THE CLT UNDER TEXAS LAW

Three primary legal issues exist for determining the feasibility of community land trusts under Texas law:

1. Ability under Texas law to grant separate ownership of land and improvements;
2. Ability under Texas law to execute and record separate deeds for land and improvements (i.e., to ensure that ownership of the improvements will be regarded as *real* property as opposed to *personal* property); and
- 3). Ability to issue two separate tax identification numbers – one for land and another for improvements.

An analysis of these issues indicates that the Community Land Trust model is feasible under Texas law. In addition, the recent legislation passed by the 79th Texas Legislature included the Homestead Preservation Act (“Act”). See *Appendix “C”* for the applicability of land trusts under this Act.

1. Separate Ownership

The community land trust model presumes a leasehold interest in the underlying real estate and a fee interest in the improvements. Improvements and land are separate estates or interests under Texas property law, and Texas recognizes the separate ownership of the improvements located on leased land.¹⁸ Texas law allows for separate ownership of the improvements located on leased land.¹⁹

2. Separate Deeds to Convey Realty (Land and Improvements)

In Texas, separate deeds can be used to convey both land and improvements. Whether or not the character of the improvements is considered a fixture that is considered as a permanent part of the land, or is considered personalty, is determined by the agreement of the parties.²⁰ Therefore, the improvements can be deeded separate from the improvements and can be considered realty, as opposed to personal property.

3. Separate Taxes

“Land and improvements are separate entities of real property under the tax code, subject to independent taxation.”²¹ “If owned by different persons, improvements and land are to be listed separately on a taxing authority's tax

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rolls, in the names of the respective owners, except when otherwise provided by the property tax code."²²

The Travis County Central Appraisal District (TCAD) currently is able to issue two separate reference identification numbers for land and improvements. To distinguish ownership of improvements only, TCAD denotes "IMP ONLY" in the legal description of the property. TCAD is also able to bill the leaseholder/homeowner for the taxes due on the improvements and to bill the CLT separately for the taxes due on improvements.

III. FINANCIAL POLICIES OF THE CITY OF AUSTIN

1. Financial Policies of City of Austin – Citywide Financial Policies

Adoption of a Community Land Trust model would not conflict with the Financial Policies of the City of Austin contained in the Supporting Documents to the 2004-2005 Budget. Specifically, an investment in land acquisition (property) for a CLT is in conformance with the four of the City's investment policy's primary objectives: 1). Preservation of capital and protection of principal; 2). Security of City funds and investments; and 3) Diversification of investments to avoid unreasonable or avoidable risks; and 4) Maximization of return on the portfolio.²³

Using City funds to invest in land to be used by a CLT is a permanent investment in affordable housing with minimal risk. The investment in land continues to appreciate and the benefits of this appreciation are allocated to preserving affordable housing stock in perpetuity. The investment risk is minimal and relates to issues of default by the lessee/homeowner and potential foreclosure on the leasehold mortgage.

The CLT ground lease documents include foreclosure prevention controls. Examples of foreclosure prevention include the two basic functions: 1). the monthly collection of ground rents (to maintain regular contact and "monitor" financial status of lessees); and 2). the right for the CLT to step in, in the event of default, and forestall the march towards foreclosure for 120 days (while assuring that monthly payments continue to be made to the bank), so that the CLT has time to work with the borrower to remedy the default.

Data from the Institute for Community Economics CLT survey conducted in 2001 indicated that, of the 2431 home sales represented, a total of 35 (1.4%) were reported to have experienced a default situation. Of those, twenty-two (22) defaults were cured. Thirteen (13), or 0.5%, went to foreclosure or deed in lieu of foreclosure. However, of these foreclosures or taking of the deed in lieu, only one (0.04%) resulted in loss of resale restrictions. For the remaining 12 that went to foreclosure, the CLT was able to arrange for a new buyer whose new mortgage was sufficient to cover the balance of the outstanding loan and the mortgagee's costs of foreclosure, before the mortgagee took the property to a sheriff's sale on the courthouse steps. Therefore, the data indicates that the risk is minimal.

In addition, use of federal grant funding is compatible with CLT acquisition and development, as well as the potential ability to use federal funds for operating costs of the CLT. This conforms with the City of Austin Financial Policy that "[a]ll

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grants and other federal and state funds shall be managed to comply with the laws, regulations, and guidance of the grantor.”²⁴

Further, if a CLT is adopted by the City of Austin, public investment will be required to demonstrate “adequate financial controls” as contained in “the City’s standard contract terms so as to provide assurance of minimum risk and access to review compliance.”²⁵ The City is subject to potential risks, if the City retains ownership of CLT property. However, AHFC, as a separate, public nonprofit corporation, can provide insulation from potential claims against the City, if AHFC retains ownership of the land. Further, AHFC can insure against potential risks and liabilities associated with ownership of CLT property.

If a CLT is adopted by the City of Austin, any revenue generated from the ground lease fee emanating from property dedicated to the land trust and owned by the City of Austin (or AHFC) would not be included in the City’s annual budget because these would be “funds controlled by another legal entity [*i.e.*, the community land trust].”²⁶ An example of this fund type includes the Housing Assistance Fund. Any revenue generated by the community land trust, resulting from ground lease fees of land owned by the City of Austin (or AHFC) must “have a stated purpose and will be assigned to a responsible department that will ensure that accounts in the fund are used in accordance with the fund’s stated purpose.”²⁷

2. Financial Policies of City of Austin – General Obligation Debt Financial Policies

Because general obligation bonds could potentially be used to fund land acquisition and infrastructure development for CLT properties for the public purpose of providing affordable housing for low and moderate income families,²⁸ the General Obligation Debt Financial Policies contained in the City of Austin’s Financial Policies may be also be applicable.²⁹

3. Financial Policies of City of Austin – Property Tax Revenue

Property tax revenue may be impacted by the operation of a CLT.³⁰ See discussion above on property tax issues and options.

IV. CONCLUSION

The detailed description of the Community Land Trust, its benefits and disadvantages, and its various forms across the county suggest ten factors required to create a successful Community Land Trust in Austin:

11. Ability to unite the private sector, the public sector, and the low-income community to attract both public and private investment;
12. Financial resources to own land debt-free;
13. Guaranteed operational funding for the initial three year start-up period;
14. Focus on educating potential homeowners, lenders, and the community;
15. Strong commitment to and partnership with neighborhood-based non-profits and community housing development organizations (CHDOs) to produce permanent, affordable housing opportunities;
16. Ability to be nimble and flexible in order to negotiate land acquisition in the private market;
17. Ability to produce units over the initial three-year start-up period, in order to become self-sufficient;
18. Ability to provide a fair return on the CLT homeowner's investment, in order to provide incentives to participate in the program;
19. Ability to adopt a comprehensive property tax strategy to reduce the tax burden and prevent market rate appreciation that would occur if the land and improvements were owned in fee simple; and
20. Ability to offer housing of competitive quality and location that is more affordable than what is available in the private market.

The Community Land Trust Model provides an opportunity for the City of Austin to preserve its investment in housing by developing permanently affordable homeownership opportunities for low-income households. The Community Land Trust structure allows the public investment in affordable housing to be recycled. By design, the CLT is committed to preserving the affordability of housing and other structures – one owner after another, one generation after another, in perpetuity.

APPENDIX "A"
Examples, Advantages, and Disadvantages
of the Most Popular CLT Forms
in the United States

This section will describe examples, advantages, disadvantages, and the applicability to the City of Austin of the three most popular CLT forms currently in operation in the United States: 1). Employer Sponsorship, 2). Government Sponsorship, and 3). Nonprofit Sponsorship.

1. EMPLOYER SPONSORSHIP

The most notable example of an employer-sponsored CLT is *First Homes* in Rochester, Minnesota. The area's rapidly appreciating housing market, created in part by the Mayo Clinic's expansion, created a housing affordability crisis for the hospital's lower-wage employees. Recognizing the problem, the Mayo Clinic, Rochester's largest employer, pledged \$7 million to the Rochester Area Community Foundation and encouraged other private employers and community interests to provide matching funds. The collaboration raised approximately \$13 million to subsidize the acquisition and construction of hundreds of reasonably-priced "starter homes." Attracted by the idea that their contribution could have a lasting impact if their subsidies were "recycled," the Mayo Clinic insisted that the majority of their funding be devoted to a CLT in order to lock-in affordability by perpetual control of the resale price. The Rochester Area Community Foundation, the Mayo Clinic, various community and business leaders, and local government worked together to establish a regional CLT, *First Homes*.

a. Advantages of Employer Sponsorship

- **Early Capacity & Credibility:** Employer-sponsored housing provides a start-up CLT organization with valuable resources and instant credibility, enabling the CLT to build its own capacity and its first project(s) within a relatively short amount of time.
- **Starter Homes for Working Families:** The association of a CLT with a major employer helps attract a "built-in" client base for the CLT.
- **Leveraging:** Private donations provided by an employer can be used to leverage additional public and private funding to create additional CLT housing opportunities.

b. Disadvantages of Employer Sponsorship

- **Cautious Democracy; Lingering Control:** While most employers who donate to a CLT prefer an arms-length arrangement, to avoid the

perception of sponsoring a “company town,” many employers are unwilling to relinquish total control.

- **Targeting Higher Income Households:** Employer-assisted housing tends to serve households at higher income levels and avoids serving households at lower incomes.
- **Business Model of Affordable Housing:** Private employers familiar with the for-profit business section may have difficulty in understanding the non-profit, business realm in which the CLT operates.

2. GOVERNMENT SPONSORSHIP

In recent years, municipal governments have expressed support for the CLT model. However, most municipalities have garnered the initiative and leadership of non-profit organizations and community housing advocates to create and operate their respective CLT(s).³¹ Further, there are a number of implications of a “public” community land trust:

If a public agency acts as the land trust, it is subject to public laws regarding acquisition of property, it assumes the uncomfortable dual roles of landlord as well as tax collector, and it is exposed to the liability of land ownership. For all of these reasons, land trust tend to be nonprofit entities.³²

In Chicago, the city’s Department of Housing (DOH) is organizing a city-wide, city-sponsored CLT.³³ This CLT will be structured as a separately incorporated nonprofit organization with a “classic” CLT tripartite board structure; however, the Mayor’s office will appoint the entire board. The CLT will be the landowner and lessor, funded and staffed by the DOH. The Chicago CLT is anticipating producing at least 100 units per year. This city-wide, city-sponsored CLT has determined to allow neighborhood-based CLTs, but the “smaller” CLTs will be required to use standardized lease terms and resale formulas in order to access DOH financing to produce affordable, CLT homes.

a. Advantages of Government Sponsorship:

- **Financial Commitments:** A commitment of and “favored” access to public funding accompanies government sponsorship. Both federal and local public fund dollars assist the start-up CLT to establish its operations, acquire land, and develop homes. Dedicated public funding commitments allow for sustained operations of the CLT.

- **Staff Support**: Where the city government has played an important role in starting a CLT, municipal staff often serve as *de facto* staff for the new CLT, thus speeding the process of developing the organization and the organization's first projects.
- **Regulatory Perks**: Government sponsorship allows the CLT to be participant and beneficiary of municipal ordinances like density bonuses or any number of other measures that encourage affordable unit production from developers.
- **Organizational Niche**: Because a municipal sponsor is providing support or the majority of the city's nonprofit housing organizations, it is not going to create a CLT that competes and conflicts with this existing network. The new CLT will be assigned a niche that complements the efforts of other components of a city's affordable housing infrastructure, programs, and plans.

b. Disadvantages of Government Sponsorship

- **Excludes potential for private fundraising efforts**. If a government entity sponsors the CLT, the ability to raise private funds is diminished. Instinctively, if the government is sponsoring the initiative, then private donors believe that public funding is the cornerstone. In addition, the ability of a government sponsored entity to engage in private fundraising activities is limited.
- **If the "city" says it's good, it must be "bad."** Endorsement by an agency of municipal government is going to make the CLT instantly unpopular among everyone with a suspicion of government in general, everyone with a grievance against the sponsoring agency in particular, and everyone with an inability to distinguish between CLT housing and public housing. Especially in neighborhoods with a legacy of urban renewal or municipal neglect, government sponsorship of a CLT may lead a twice-burned population to focus less on what the model gives (e.g., homeownership for low-income families) than on what the model takes away (e.g., equity limitation).
- **Partisan Bias**: A CLT that is started with the sponsorship of one administration can fall out of favor when another administration comes into office.
- **Top-Down Development**: Municipal officials may be too far removed from the realities of residential neighborhoods to know how best to tailor the

projects and programs of the new CLT to fit the needs and priorities of local communities.

- **Bureaucracy and Nimbleness**: A municipal government that provides the infrastructure for the CLT may not possess the nimbleness required for operations.

3. NONPROFIT SPONSORSHIP

CLTs are being initiated with increasing frequency by pre-existing non-profit organizations, especially in places with highly developed networks of community development corporations. Traditionally, nonprofit sponsorship of CLTs has taken four different forms:

1. **Conversion**. *The Sawmill Community Land Trust* in Albuquerque, New Mexico is a prime example of a community-based housing developer that was restructured as a CLT by amending its bylaws. Of note, The Sawmill CLT is also a designated Community Housing Development Organization (CHDO) and is eligible to receive CHDO HOME Investment Partnership funding.
2. **Spin-Off**. In some cases, a single nonprofit housing developer has incorporated and staffed a separate Community Land Trust, which becomes more and more autonomous over time. The CLT gradually builds its own constituency and its own capacity, until it can eventually stand on its own (although, the CLT may continue to purchase development services from its sponsor). *The Clackamas County Community Land Trust*, located just south of Portland, Oregon, was created in this way by the region's most successful nonprofit developer of tax credit rental housing, Northwest Housing Alternatives. In Cleveland, Ohio, the *Cuyahoga Community Land Trust* was established as an independent corporation by Ohio City New West, a nonprofit CDC engages in residential and commercial development. In Youngstown, Ohio, *CHOICE* (Community Housing Options Involving Cooperative Efforts) was created through the efforts of Common Wealth, a nonprofit technical assistance organization. Another spin-off scenario has occurred in Rochester, New York, where an unincorporated coalition of nonprofit organizations, churches, and neighborhood associations, the Northeast Block Club Alliance, has taken the initiative in sponsoring the *North East Neighborhood Community Land Corporation*, a CLT that will acquire and lease land in support of a variety of projects and organizations.
3. **Affiliate**: In some cases, a CLT has been established as a separate corporation by a nonprofit sponsor that retains continuing control over the

CLT's governance. For example, *Dudley Neighbors Inc.*, in Boston, Massachusetts, is a CLT created by the Dudley Street Neighborhood Initiative (DSNI) to be the steward of lands acquired as a result of DSNI's comprehensive program of community organizing, community planning, and community development. DSNI appoints a majority of the seats on the CLT's board of directors.

4. **Program**: In some cases, a successful developer of nonprofit rental housing, wishing to diversify its activities and portfolio by adding a homeownership component, has grafted selected elements of the CLT model onto its operations. The CLT does not exist as a separate corporation with its own board of directors, but as an internal program of a sponsoring nonprofit that may lack both a membership and the tripartite governance of the "classic" CLT. *Thistle Community Housing* in Boulder, Colorado, the *Neighborhood Economic Development Corporation* in Eugene, Oregon, and the *North Missoula CDC* in Missoula, Montana are examples of nonprofit housing developers that have made CLT-style ground leasing a permanent part of their programs. Similarly, in Levenworth, Washington, a CLT homeownership program known as SHARE has been integrated into the other activities of a church-sponsored nonprofit social services organization, *Upper Valley M.E.N.D.*

a. **Advantages of Nonprofit Sponsorship**

- **Capacity**. A CLT created under the wing of an existing nonprofit corporation has staff for both organizational development and housing development from the very start.
- **Productivity**. The new CLT may not have to wait very long to launch its first project. If the nonprofit sponsor is already an accomplished developer, the nonprofit's expertise can be used in developing and marketing new units for the CLT.
- **Credibility**. The CLT can "borrow" whatever credibility and bankability the nonprofit sponsor may have in soliciting funding and financing from public agencies and private lenders.
- **Compatibility**. A CLT that is sponsored by a nonprofit that may have been around for many years – A CLT that may even be housed within that nonprofit – is likely to threaten whatever network of nonprofit housing development organizations that already exists.
- **Diversification & Renewal**. Sponsorship of a CLT, regardless of whether it is retained permanently in-house or eventually spun-off as a separate

corporation – can strengthen an existing nonprofit by diversifying its portfolio, its constituency, and its funding base. A CLT initiative can introduce new energy and excitement into an older nonprofit in need of renewal.

b. Disadvantages of Nonprofit Sponsorship

- Political Baggage. Whatever mistakes the nonprofit sponsor has made in the past, whatever baggage it carries in the present, and whatever operational weaknesses may haunt its future will burden any product of the nonprofit’s labors – including the effort to establish a new CLT.
- Accountability to Leaseholders. Allowing the occupants of housing developed by a nonprofit to serve on the nonprofit’s board of directors is a concept that is not only foreign to the experience of many CDCs but one that is strongly resisted. While proponents of the “classic” CLT see leaseholder representation as essential to the stability, responsiveness, and effectiveness of a CLT, organizations that have never included tenants or homeowners on their boards may see only a headache they would prefer to avoid.
- Accountability to Community. Similarly, many CDCs have community representatives on their boards, but have never cultivated the kind of open, engaged membership that is contemplated by the CLT; nor have they allowed that membership to elect a majority of the nonprofit’s board of directors. Opening up a self-perpetuating board to more involvement and control by the community can be a daunting task.
- Divided Loyalties. Most nonprofit sponsors of a CLT continue to develop non-CLT housing to operate and support non-CLT programs. At best, this can dilute the amount of attention and resources that the nonprofit can devote to CLT development. At worst, this can result in direct competition between types and tenures of housing being made available through the CLT – i.e., limited-equity, owner-occupied units on leased land.
- Lingering Control. It is hard for a parent to let go. Nonprofit sponsors, even those with the intention of someday allowing their fledgling CLT to fly away, tend to relinquish control slowly and reluctantly. This can leave the CLT in limbo, neither fully integrated into the structure, staffing and funding of its sponsor nor independent enough to attract funding, constituents, and staff of its own.

APPENDIX "B"

CLT PROPERTY TAX EXAMPLES

States, and jurisdictions within the states, have varied greatly on how to deal with the problem of property taxes and affordability. Following are examples of the myriad of responses of different CLTs to the property tax issue.³⁴

- ***The Madison Area Community Land Trust*** (Madison, WI) pays local property taxes on the market value of the land. The houses are entered on the tax roll at the value for which they were originally sold to the homeowner by the ***MACLT***. They are then put on a lower curve, when it comes to calculating their increased value over time. In Madison, the local assessor does an analysis of sales in the neighborhood and then does an overall assessment for that district. Under an interim agreement with ***MACLT***, the assessor will increase property taxes at a rate that is two-thirds of the increase for all other homes in that district.

- In New Hampshire, the policy is that leaseholders pay taxes on the market value of their houses and the underlying land. (***CATCH*** of Concord, NH and ***Cheshire Housing Trust*** in Keene, NH).

- In Albuquerque, the city assessor has concluded that the land held by the ***Sawmill Community Land Trust*** has no value at all. The buildings upon that land will be put on the tax rolls at the price paid by individual homeowners when buying a unit from the ***SCLT***. Property values for ***SCLT*** homes, for purposes of local taxation, will increase at the same rate as the values of market-rate homes.

- In Oregon, the property taxes paid by CLT leaseholders of the ***Portland Community Land Trust***, the ***Clackamas County Community Land Trust***, and every other CLT in the state are no different than the property taxes paid by the owners of market-rate residential property. Because state law has placed limits on residential property taxes for everyone, however, the CLT's homeowners have not been disadvantaged. Land is generally assessed at 75% of the price that was paid by the CLT in purchasing it. Housing is assessed at 75% of the price that the homebuyer/leaseholder paid in purchasing it. Increases in assessed value, by state law, cannot rise by more than 3% per year.

- In Vermont, state law requires the assessment ratio of appraised value to assessed value to be 1:00, but local assessors are also required to take into consideration any covenants restricting the resale value (or the income stream) of residential property. The law does not specify, however, what constitutes a “consideration” – *i.e.*, how much the assessed value should be lowered. This has resulted in every town coming up with its own idiosyncratic formula for assessing the value of CLT land and buildings. The city assessor for Burlington, Vermont, for example, independently decided that the assessed value for the land and buildings in the ***Burlington Community Land Trust’s*** portfolio should be assessed at 95% of their market value. The Burlington formula did not result from a cost allocation process, but was an arbitrary determination by the assessor.

- On Orcas Island (Washington), the local assessor acknowledged the presence of a 99-year lease on land owned by the ***OPAL Community Land Trust*** by deciding that the encumbered value of ***OPAL’s*** land was 40% lower than their market value. The assessed value of the buildings located upon its land is based upon the actual selling price of the CLT’s homes, a price that is restricted by the resale formula embedded in the ground lease.

APPENDIX "C"
COMMUNITY LAND TRUSTS UNDER H.B. 525

The Homestead Preservation Act, relating to the creation of homestead preservation districts, reinvestment zones, and other programs to increase home ownership and provide affordable housing, contains provisions for a Homestead Land Trust within a designated district.³⁵ The basic requirements of the Homestead Land Trust are the following:

1. By ordinance, the governing body of a municipality may create or designate one or more homestead land trusts;³⁶
2. The trust must be certified as an exempt organization under Section 501(c)(3), Internal Revenue Code of 1986;³⁷
3. The governing body of a municipality appoints the directors of the trust;³⁸
4. The trust retains title to land it acquires and leases housing units located on the land or sells housing units located on the land under long-term ground leases;³⁹
5. The trust must sell or lease all housing units to families at or below 70% of area median family income, adjusted for family size. At least 40 percent of the housing must be sold or leased to families at or below 50% of area median family income. At least 10 percent of the housing units must be sold or leased to families at or below 30 % of area median family income;⁴⁰
6. A governmental entity may transfer land to a trust without competitive bidding; and a taxing unit may forgive outstanding taxes and fees on property transferred under this section or otherwise allowed by law;⁴¹
7. A trust's real property is exempt from property taxation by this state or a political subdivision of this state, other than a school district; and subject to approval by the governing body of the municipality or county, as appropriate, in which the district is located, the real property of any land trust operating in the district under other law is exempt from property taxation by the municipality or county if the land trust is exempt from federal income taxation under Section 101(a), Internal Revenue Code of 1986, by being certified as an exempt organizations under Section 501(c)(3), Internal Revenue Code of 1986;⁴² and
8. The Homestead Preservation Act does not preclude the creation of a land trust by a nonprofit organization, including a community housing development organization, under other statutory or common law or the operation of that land trust inside or outside the district.⁴³

APPENDIX "D"
**CLT GROUND LEASE PROVISIONS &
RESALE FORMULAS**

A. KEY GROUND LEASE PROVISIONS

The CLT Ground Lease has a number of key provisions⁴⁴:

1. Letter of Acknowledgment: Buyer's Representation.

A Letter of Acknowledgment is signed by the Buyer the his/her attorney and states that the attorney reviewed the ground lease and other pertinent documents with the Buyer and that the Buyer understands the restrictions inherent in the CLT ground lease. It is a protection for the homebuyer and documents that the transaction was a mutual agreement, understood by all parties. Given the unique nature, atypical and complex nature of buying and selling a CLT home, most CLTs want to be sure that Lessees understand the transaction and are entering into the CLT arrangement willingly and fully informed. As such, CLTs require Lessees to meet, prior to closing, with an attorney who thoroughly explains the ground lease and other documents being signed at closing.

In some states, the Buyer and Seller are required to be represented at the closing by an attorney. Texas does not require such representation; however, it is imperative that the prospective Lessee/Homebuyer understand the CLT transaction in order to prevent a claim by the lessee/homebuyer, or his/her heirs, claiming that the resale, or other restrictions, are invalid. Having an attorney's letter adds another layer of assurance that the buyer understands requirements of buying, owning, and selling a CLT home. However, it costs money to have an attorney review the ground lease and other documents with a prospective Lessee. Most CLTs have solicited pro bono assistance, or reduced-costs attorneys, from the legal community to assist with explaining the technical legal ramifications of the CLT transaction and to execute the Letter of Acknowledgment.

2. Occupancy

CLTs that create single-family owner-occupied units are interested in preventing absentee ownership. In order to do this, CLTs require homeowners to live in their homes as a primary residence, for a certain number of months during each calendar year. The Model Ground Lease promulgated by the Institute for Community Economics requires Lessees to live in their homes a minimum of eight (8) months of every calendar year.⁴⁵

3. Responsible Use and Compliance with Law.

The typical ground lease, at a minimum, requires Lessees to be in full compliance with existing laws, regulations, and ordinances. The ground lease generally requires that the Lessee not cause harm to others, to dispose of waste safely, and to maintain the Improvements on the Leased Premises. If a Lessee does not comply, the CLT can force a remedy and/or declare default on the ground lease.

4. Inspection of CLT Home

CLTs care about the condition of CLT homes because they, eventually, will be resold to another income eligible buyer. Consequently, CLTs have the right, with adequate notice, to inspect the leased premises. However, the CLT entity has to balance considerations concerning their inspection practices: 1). What are the administrative consideration?; 2). How engaged (intrusive) should the CLT be in the activities of the Lessee? Most CLTs retain the right to inspect the leased premises only (i.e., the "land"), and do not grant themselves the right to inspect the homes.

5. Ground Lease Fee & Adjustment

The ground lease assumes that a monthly ground lease fee will be paid by all Lessees. It does so by acknowledging that there is a "fair rental value" to the land being leased from the CLT. However, recognizing the affordability goals of the CLT, and the affordability needs of the Lessee, this "fair rental value" is reduced to the *actual* ground lease fee to be paid by the Lessee. In addition to charging a "fair" value for the use of the leased premises (i.e., land), the ground lease fee provides a means for the CLT to maintain regular contact with the Lessee. The ground lease fee acts as a "canary in a coalmine" – if a Lessee is not able to make minimum ground lease payments, then chances are the Lessee has fallen behind on other housing payments as well. In addition, the ground lease fee assists the CLT in covering some of its administrative costs. Of course, the value of the monthly ground lease charged to the Lessee must be factored into his/her monthly housing costs, and it thus reduces the amount of mortgage financing for which the Lessee can qualify.

The typical CLT ground lease provides for adjustment to the "fair rental value." In the event that, for whatever reasons, the ground lease restrictions are suspended or held invalid, the CLT would have the right to charge a higher ground lease. In addition, the ground lease provides for adjustments to the ground lease fee at established intervals during the lease term to adjust for market concerns. Often lenders are concerned that the CLT will raise the value of the ground lease payment too soon. To address this concern, CLTs "cap" the amount that the CLT can adjust the ground lease.

For example, the CLT can limit the increase to the corresponding change in Median Family Income (MFI) or in Consumer Price Index (CPI) during the specified interval.

6. Construction & Alterations

While the improvements (the house and other structures on the land) are owned by the Lessee/Homeowner, the CLT has a fundamental interest in preserving the quality of the permanently affordable homes located on its land and protecting the future residents of the property from shoddy work. For this reason, at a minimum, the CLT wants the ability to review and approve all post-purchase improvements made to CLT homes, before these improvements are made.

The typical CLT ground lease states that any post-purchase construction on the Leased Premises requiring issuance of a building permit, including addition of a new building, expansion of an existing building or alteration of existing Improvements is subject to the following conditions: 1). All costs shall be paid by the Lessee; 2). All construction must comply with applicable laws, codes, and regulations; 3). Lessee shall furnish to CLT copies of all plans and building permits prior to the start of construction; and 4). Construction cannot begin without the prior written permission of the CLT. Some CLTs add language that the CLT will not “unreasonably withhold” approval for post-purchase capital improvements.

The CLT has an interest in ensuring that Improvements remain livable, marketable, and affordable. Thus, most CLTs reserve the right to approve (or not approve) construction or alteration. Depending on the goals of the CLT (encouraging long-time residence vs. encouraging movement into market-rate homes), the CLT may either desire capital improvements or may discourage such improvements. Another factor is the treatment of capital improvements in the resale formula. If the resale formula (directly or indirectly) recognizes the added or diminished value of such construction or alterations, the CLT entity must be cognizant of the potential ramifications on resale. Restraints on capital improvements allow the CLT to limit the market appreciation (resale costs) of a CLT home to help keep the home affordable for future buyers. These restraints also permit the CLT to determine “allowable” alterations. These restraints must be balanced with the ability of the Lessee to exercise his/her personal preferences with respect to his/her home.

7. Transfer to Income Qualified Persons

The CLT ground lease stipulates that Lessees may transfer their ownership interests (ownership of Improvements and ground lease interest) only to an “income qualified” person. This requirements assures long-term affordability

targeted to the desired MFI level, e.g., 80% or below MFI; 65% or below MFI.

8. Transfer to Lessee's Heirs

The typical CLT Ground Lease gives the homeowner the right to pass his/her home to "designated heirs" (who do not need to be income-qualified) at the time of death. This "legacy" right promotes family security and the feeling and benefit of homeownership. Many CLTs have added or removed categories of people. Some CLTs extend the right to pass the home to heirs *before* death, in the event of retirement, confinement to a nursing home, etc. The wider the right to of the Lessee to transfer to his/her heirs, the less control the CLT has over who has access to the affordable home.

9. Purchase Option Price (Resale Formula)

The ground lease stipulates that the seller will receive the lesser of appraised value or the Formula Price. This stipulation is important because, if the market takes a downturn, the appraised value may be less than the Formula Price. ("Appraised Value" is determined by an independent, certified market appraisal.) Each CLT decides the appropriate Resale Formula for its community, under the guiding principal of attempting to provide a fair return to the seller while assuring an affordable purchase price to the new, income-qualified buyer.

10. Assignment & Sublease

CLTs that provide owner-occupied, for-sale homes are concerned about preventing absentee owners. As such, CLTs typically prohibit Lessee/homeowners from subletting their homes.

The CLT ground lease specifically prohibits transfer of Lessee's rights under the terms of the lease. Specifically, the lease: 1). Prohibits Lessee's from subletting their home without the CLT's prior written approval – and permission will only be granted in special situations (e.g., Lessee's military deployment); 2). Requires that if Lessee is allowed to sublet (under special conditions) this sublease is subject to all the terms of the lease; and 3). States that the amount of rent charged to the sublessee cannot be more than the amount of the ground lease fee plus a monthly rent amount that is approved by the CLT. Any transfer that is not specifically permitted by the lease is an event of default that can lead to termination. One option some CLTs have considered and allowed are housemate/roommate rentals without CLT permission.

11. Foreclosure Prevention

The agreement between the Mortgagee (lender), the Community Land Trust (lessor), and the Homeowner (lessee or mortgagor) stipulates the

requirements allowing the CLT to step-in and cure defaults under the mortgage loan (such as nonpayment of taxes or mortgage payment). Fannie Mae has also approved the “Fannie Mae Uniform Community Land Trust Ground Lease Rider” that modifies the CLT ground lease to allow Fannie Mae to accept mortgages on the resulting leasehold interest. This includes Fannie Mae’s notification to the CLT (lessor) in the event of default and the remedies accorded to the CLT to cure the default. It should also be noted that FHA has specific requirements for ground lease regulations and resale requirements.⁴⁶ For example, if the leaseholder defaults in his mortgage, the mortgagee (lender) must notify the owner of the real property (lessor) and provide a right to cure the default within 120 days. If after the 120 days, the mortgagee (lender) accelerates note secured by the mortgage, then the owner of the real property (lessor) has the right, but not the obligation, to pay off the mortgage indebtedness within 30 days.

B. TYPES OF RESALE FORMULAS

Overview of Resale Formulas. “A CLT resale formula establishes an upper limit on the price for which a CLT home may be resold – whether it is sold back to the CLT or sold directly to another household.”⁴⁷ It is important to note that the resale formula always stipulates that the resale price will be the *lesser* of the market value or the resale formula, in order to protect a resale formula price being set above prevailing market values. Two primary goals of the CLT resale formula are the following: 1). To ensure fair and affordable access to homeownership for subsequent low-income homebuyers, by maintaining the affordability of the CLT home over time; and 2). To provide the present homeowner with a fair return on her investment when she resells her CLT home.⁴⁸ The following are secondary goals that must be considered in deciding on a resale formula:⁴⁹

- ***Encouragement of long-term occupancy, avoidance for quick resale.*** CLTs have a basic interest in promoting stable neighborhoods and in providing long-term security for residents of these neighborhoods. They do not intend to provide homeownership opportunities as a way for owners to turn a quick profit and make a fast exit.
- ***Promotion of homeowner mobility.*** When CLT homeowners wish to sell their homes – perhaps to take advantage of employment opportunities in another community – they have an interest in selling for a price high enough to allow them to purchase a home in their new community. Some people argue that, if a CLT is to provide permanent benefits for lower income people in an

increasingly mobile society, it should allow resale prices high enough to allow continued homeownership for those who move away. Others see this goal as inconsistent with the CLT's concern with long-term occupancy and neighborhood stability, or may see it as impractical in light of the primary goal of preserving the affordability of CLT homes.

- ***Incentives for sound maintenance.*** CLTs do not want their resale formulas to pose economic disincentives to sound maintenance. A formula that fails to reward an owner's investment in such maintenance – or fails to penalize poor maintenance – can result in the deterioration of homes and the erosion of their future usefulness for the community.
- ***Incentives for useful improvements.*** In some situations, CLTs have reason to encourage owners to make useful improvements in their homes, and perhaps make other improvements on the leased land. Rural CLTs may want to encourage ecologically appropriate improvement of the land itself. Many CLTs want to encourage weatherization and other energy-saving improvements of existing homes. Some may want to encourage the expansion of smaller homes to accommodate larger families. In some urban situations, however, a CLT may decide that small residential lots are already used to the optimum and may not want to encourage substantial additions to existing homes. (A few CLTs have chosen not to reward – or even permit – improvements because they want homeowners to move out of their “starter homes” when their fortunes increase, making room for the next low-income first-time homebuyer.)
- ***Ease of comprehension by those affected.*** In an effort to allocate equity with perfect fairness, a CLT can develop a formula so complicated that it will be incomprehensible to potential or actual CLT homeowners – and perhaps to everyone except its creators. At some point it must be recognized that a formula that allocates value less precisely to its source but that is readily comprehensible may be preferable to one that is more intricately precise but less comprehensible.
- ***Ease of administration.*** Formulas that require extensive recordkeeping and/or frequent, detailed assessments of the value of the improvements may be very fair in theory, but they may also be beyond the capacity of a CLT with limited staff to administer, accurately and consistently, for many homes over many years.

Ease of monitoring, recordkeeping, and documentation are important concerns.

- ***Lack of intrusiveness; sense of ownership.*** It is important that owners of resale-restricted homes feel that they are “real” owners, with the same sense of privacy and control over their homes that conventional owners have. A formula that requires frequent inspections and the prior approval of repairs and improvements can undermine this sense of ownership.
- ***Avoidance of disputes.*** All resale formulas involve a tension between the interests of the homeowner and the interests of the CLT and community. Disputes can easily arise from this tension, but occasions for dispute can be minimized to the extent that the formula does not require subjective, debatable judgments by the CLT personnel in order to determine the resale price.

The above goals must be evaluated in light of the conflicting social goals, economic interests, and practical concerns.⁵⁰

The primary issue in designing a resale formula concerns the way in which the resale price will be adjusted upward or downward from the purchase price:

As far as possible, these adjustments should reflect the owner’s contribution to changes in the home’s values. They must also reflect the need for limiting possible increases in the resale price to what future homebuyers of modest means will be able to afford.⁵¹

Formulas. There are four basic types of resale formulas:

1. **Appraisal-Based Formulas** which adjust the resale price by allocating to the owner a specified percentage of market appreciation as measured by appraisals at the time of purchase and the time of resale;
2. **Itemized Formulas** which adjust the resale price by adding or subtracting specific factors that increase or decrease the value of the home;
3. **Indexed Formulas** which adjust the resale price in proportion to changes in an index such as median income for the area; and
4. **Mortgage-Based Formulas** which adjust the resale price based on the amount of mortgage financing a purchaser of a given income level will be able to afford at the then-current interest rate.

1. Appraisal-Based Formulas

The majority of CLTs across the United States use an appraisal-based formula:

Appraisal-based formulas adjust the resale price by adding a certain percentage of any increase in market value of the improvements, as measured by market appraisals at the time of purchase and the time of resale. Rather than itemizing factors that can cause increases or decreases in value, these formulas let the market measure changes in value. Any increase in value is then shared between the CLT and the homeowner. The percentage of appreciated value allocated to the homeowner (or “appreciation sharing percentage”) is stipulated in the formula. An appreciation sharing percentage of 25% for the homeowner is common, although some CLTs allocate a higher percentage, some allocate a lower percentage, and some . . . allow the percentage to vary with the length of tenure [of the homeowner].

It should be emphasized that, for the purpose of determining how much appreciation has occurred, these formulas establish the base value at the time of purchase. In some cases the purchase price may equal the appraised value, but often the price is substantially below the home’s appraised market value.

These formulas are usually applied not to the combined value of land and buildings but to the value of buildings (and other improvements) alone. In theory, it is the value of the land that is affected by social and economic factors that make the location more or less desirable in the marketplace, while the value of buildings is affected by physical depreciation and by maintenance and improvements. In practice, however, it may be difficult to get appraisals that completely isolate the value of the buildings from the value of the land.⁵²

The advantages of appraisal-based formulas are that they are fairly easy to administer, easy to explain, and less likely to cause misunderstandings or disputes. The disadvantages are that they do not distinguish between the value added by the owner and the value produced by social and economic factors. Other disadvantages of appraisal-based formulas in a rapidly appreciating

real estate market include: 1). Resale prices may rise beyond the affordability level if the homeowner's "appreciation sharing percentage" is too high and if appraisals of the value of the home are influenced by the market value of the underlying land; 2). Homeowners with a small downpayment invested may take advantage and "leverage" a substantial share of appreciation resulting in a quick resale.⁵³ Also, appraisal-based formulas do not isolate the portion of apparent appreciation that results from monetary inflation, and if the real estate market is appreciating only at the rate of inflation, a long-term owner who receives only a portion of this apparent appreciation will receive less value than she has invested.⁵⁴

2. Itemized Formulas

Itemized formulas adjust the resale price by adding or subtracting specific factors that affect a home's value and/or the value of the owner's investment in the home.⁵⁵ The following factors may be included as components of the itemized formula: 1). Value of improvements; 2). Maintenance, repairs, and depreciation; 3). Penalties for unusual damage; and 4). Inflation adjustments. The primary advantage of itemized formulas is "that they allow a relatively precise – and therefore fair – allocation of 'earned equity' to the owner."⁵⁶ Further, the resale price under the itemized formula is protected from fluctuations in the housing market. The primary disadvantage is that they are complicated to administer and difficult to implement. The CLT plays an active, on-going role in monitoring the improvements (and the homeowner).

3. Indexed Formulas

An index formula adjusts "the resale price (above or below) the purchase price by applying a single factor drawn from an index such as area median income (AMI) as calculated and adjusted for household size."⁵⁷ For example, if the purchase price of a CLT home is \$80,000, and during the period of ownership (time until resale) the AMI increases 25%, the home may be resold for 25% more than the purchase price and still be presumed to be affordable. The primary advantage of index formulas is that they provide a relatively simple and conventional computation for presumed affordability. The basic disadvantages are the following: 1). Value produced by the owner and value produced by other factors is not distinguished; and 2). The index may allow resale prices to rise beyond the level of affordability for many lower income households.⁵⁸ These formulas are not common among CLTs.

4. Mortgage-Based Formulas

"Mortgage-based formulas adjust the resale price based on the amount of mortgage financing a purchaser of a given income level will be able to afford at the then-current interest rate."⁵⁹ Unlike the three types of formulas discussed

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above, these formulas do not establish the resale price with reference either to what the owner has invested in the home or to how much the market value of the home may have changed.⁶⁰ They focus on the concern with affordability to the exclusion of the concern with giving the seller a fair return.⁶¹

The CLT must specify the following factors to define the mortgage-based formula:⁶²

1. Income level as a percentage of AMI adjusted for household size for which affordable monthly payments are to be calculated;
2. Components of the monthly housing cost (e.g., principal, interest, taxes, insurance and ground lease fee);
3. Percentage of gross income that will constitute an “affordable” allocation for monthly housing costs (e.g., 30%);
4. Percentage of the resale price to be covered by mortgage financing (usually at least 95%);
5. Type of mortgage (e.g., 30-year fixed rate); and
6. The index or benchmark used to determine the exact “current interest rate” for the type of mortgage specified.

The basic advantage of the mortgaged-based formula is that affordability is guaranteed for the next purchaser at the specified income level. The primary, and important, disadvantage is that the formula does not take into account what is fair to the seller.

APPENDIX "F"

CLT PROJECT FUNDING ISSUES & SOURCES

A. PROJECT FUNDING ISSUES FOR START-UP (AND EXISTING) CLTS

1. Grants for Land Acquisition

The CLT model works best when land is owned debt-free by the CLT, allowing the CLT to remove the entire cost of the underlying land from the selling price of housing and other improvements. Many municipalities make two common mistakes in investing in CLTs:

1). Rather than granting their funds for upfront acquisition of a permanent asset (i.e., the land), they insist on making temporary loans; and 2). Rather than directing their funds to a single grantee (i.e., the CLT), they loan their funds to dozens of individual homeowners. Neither of these approaches takes full advantage of the CLT model.

2. Grants for Project Development

Quite often, the subsidy required to achieve the desired level of affordability in a housing project (with or without a CLT) will be greater than the cost of the underlying land. If very low-income people are going to be served, therefore, where construction costs are very high, a CLT – like every other for-profit developer – is going to require grants that are sizeable enough not only to remove the costs of the land but to subsidize a portion of the building's cost as well. As obvious as this may seem, it is not uncommon for a public funder to assume that buying the land for a CLT will eliminate the need for additional subsidies to develop the housing.

3. Loans for Improvements on Leased Land

In all cities and states where CLTs have been successful, local financial institutions have been willing to write mortgages for resale-restricted homes on leased land – sometimes with the backing of FHA or Fannie Mae, and sometimes without such backing. In several cities, CLTs have persuaded local lenders to pre-qualify low-income homebuyers for mortgages on CLT homes, enabling would-be homebuyers to participate in the CLT's "Buyer-Initiated" Program. Establishing these relationships with local financial institutions takes education, care, and time.

B. SOURCES OF CLT PROJECT FUNDING

Potential sources of CLT project funding are described below:

1. CDBG & HOME

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Any federal funds that are offered to a nonprofit 501(c)(3) corporations for the construction of affordable housing or the redevelopment of low-income neighborhoods can be used – and have been used by CLTs. The two federal programs from which CLTs have received the greatest project support over the past decade have been the Community Development Block Grant Program (CDBG) and the HOME Investment Partnership Program (HOME).

It is worth noting that most CLTs have been designated as “Community Housing Development Organizations” (CHDOs) by their Participating Jurisdictions. In 1992, Congress amended the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773) to allow even start-up CLTs to qualify for CHDO status. Unlike other nonprofit housing developers seeking CHDO designation, a CLT can be awarded CHDO status without having a “demonstrated capacity for carrying out HOME activities” and without a “history of serving the local community within which the HOME-assisted housing is to be located.” A CPD circular, published soon after the 1992 amendments, notified HUD’s field offices of this special CHDO exemption for CLTs and the eligibility of CLTs to receive HOME CHDO set-aside funding for both their projects and their operations.

2. Federal Tax Credits

Although most CLTs concentrate on homeownership, a few also develop and manage rental housing. These CLTs have made extensive use of federal Low Income Housing Tax Credits and Historic Preservation Tax Credits to bring substantial equity into their affordable housing projects. (Since land is not included in the basis for the calculation of tax credits, the typical CLT tax credit deal involves the CLT’s ownership of the underlying land, with ownership of the building(s) by a limited partner.

3. Other HUD-Sponsored Production Programs

CLTs have developed housing and community facilities on leased land using several other HUD-funded programs, including: Urban Development Action Grant paybacks, HoPWA, Section 108, Enterprise Community SSBG, and Shelter Plus Care.

4. Municipal Real Estate (Surplus Property)

Public support for a CLT project has sometimes come to a CLT not only in the form of money but in the form of real estate. In several cities, “surplus” lands and buildings owned by the municipal government have been conveyed to a CLT at no cost – or at a below-market price – for the development of affordable housing.

5. Municipally Mandated “Donations” by Private Developers – Land & Housing

In several cities, including Chapel Hill, North Carolina and Burlington, Vermont, CLTs have received municipally-engineered “donations” of land and housing from private developers. They have done so either in exchange for concessions, approvals, or density bonuses granted by city government or in compliance with a municipal ordinance like inclusionary zoning or housing replacement. In some cases, the CLT has paid nothing for the land. In other cases, the CLT has paid significantly below the property's market value.

6. Municipally Mandated “Donations” by Private Developers – “Fee in Lieu Of”

Another option for CLT project funding to for private developers to contribute a “fee in lieu of” providing land or housing for the CLT.

7. Housing Trust Funds

At both the state and municipal level, housing trust funds have provided considerable support for projects developed on CLT land. The ability of the CLT to retain and recycle public subsidies and to perpetuate the affordability of any housing created through such subsidies have made CLTs, in several cities and states, preferred recipients of project funds distributed through Housing Trust Funds.

8. General Fund – Capital Improvement Project (CIP)

General Fund (CIP) funding could be used to purchase land and provide infrastructure development for CLT Project.

9. Tax Increment Financing

Tax Increment Financing for housing on leased land will be a significant part of project funding for at least three CLT projects: *First Homes* (Rochester, MN); the *Bahama Conch Community Land Trust* (Key West, FL); and the *Portland Community Land Trust* (Portland, OR).

10. Municipal General Obligation Bonds

To date, there is no CLT in the United States that has used a general obligation to fund CLT land acquisition or projects. However, the use of a general obligation bond issue is compatible with the CLT's need for land acquisition. Using bond funding to purchase land for a CLT allows the investment of public dollars to be preserved in perpetuity and permanently dedicated to the use of affordable housing.⁶³

11. Federal Home Loan Bank

FHLB's Affordable Housing Program has been a rich source of funding and financing for a number of projects developed by CLTs around the country. The CLT's ability to bring homeownership within the reach of lower-income households, combined with the enforceability of the CLT's long-term protection

of affordability, has enabled CLTs to score well in regional competitions for FHLB awards.

12. Private Financial Institutions

Throughout the United States, private lenders are financing residential and commercial projects on land that is leased from a CLT and writing mortgages for resale-restricted homes that are located on leased land. While some of these mortgages are held in portfolio, the expanding use of a model CLT ground lease prepared by the Institute for Community Economics and standardized riders approved by FHA and Fannie Mae have opened the secondary market to CLT mortgages. CLTs in several communities have also received REO properties from local lenders, either at a below-market price or as an outright donation. Other CLTs have had the benefit of special funds for affordable housing set aside by local, regional, or national banks under negotiated CRA agreements.

13. State Housing Finance Organizations

Permanent financing for CLT homes has been made available, in a growing number of states, through programs underwritten by State Housing Finance Agencies. SHFA financing for CLT-housing has been forthcoming, for example, in Colorado, Massachusetts, Minnesota, New Hampshire, North Carolina, Wisconsin, Wyoming, and Vermont.

14. ICE's (Institute for Community Economics) Revolving Loan Fund⁶⁴

Since its creation in 1979, ICE's Revolving Loan Fund (RLF) has loaned more than \$41 million, representing more than 425 loans to community organizations in 30 states and facilitating the development of more than 4,000 housing units.

ICE's principal lending goes to community land trusts, limited equity cooperatives, and community-based nonprofit organizations creating housing that is permanently affordable to people with lower incomes. Funds from the RLF are commonly used to finance land acquisition and the acquisition, construction and rehabilitation of housing.

14. Pension Funds

To date, there is only one pension fund that has invested in affordable housing through a CLT. The Burlington Employee Retirement System (BERS), the pension fund for municipal employees of Burlington, Vermont, has made several investments in projects developed by the ***Burlington Community Land Trust***.

15. Private Foundations

The CLT movement has benefited from several program-related investments provided to the Institute for Community Economics by national foundations and from a handful of operating grants provided to individual CLTs. Grants for land acquisition or project development have tended to come from foundations with

more local or regional focus. The largest to date has come from the Rochester Area Foundation in Rochester, MN, which is using a \$7 million gift from the Mayo Clinic and \$6 million from other donors to acquire land and to build affordable housing through its First Homes initiative. Most of the units being produced through this initiative will be developed through a regional community land trust.

16. Private Land Donations

Other CLTs have benefited from the donation – or bargain sale – of real estate owned by private individuals, religious orders, and private corporations.

17. CLT Development Fees

Although no CLT in the country has been able to fund most of its next project with the proceeds from its last project, there are a few CLTs that have regularly (or occasionally) put significant equity into new housing being developed on leased land, where the source of that equity was development fees earned by the CLT on earlier projects. The CLTs that have been the most successful in deriving part of their project funding from development have been the *Holyoke Community Land Trust* (Holyoke, MA) and the *Burlington Community Land Trust* (Burlington, VT).

18. Lease Fees

To date, there is only one CLT that has derived significant project funding through its own lease fees, but this one case provides an example that CLTs in more prosperous communities may be able to follow. In a manner analogous to the transformation of mortgage cash flows into mortgage-backed securities, the *Jackson Hole Community Land Trust* (Jackson, WY) was able to securitize its guaranteed stream of ground lease fees, raising significant equity from private investors for use in its future projects. CLTs that serve a poorer clientele and work in lower-income communities must charge lower lease fees than those charged by the Jackson Hole CLT, making the securitization of this income stream unprofitable and unlikely. Most CLTs rely on lease fees, moreover, for a portion of their operating support. Nevertheless, any CLT that is able to fund operations from other sources and is able to charge lease fees of \$50 - \$100 per month, without unduly undermining the affordability of the housing located thereon, may be able to accomplish securitization of their lease fees.

C. FINANCING OF CLT MORTGAGES FOR LEASEHOLDERS

There are two important components of financing mortgages for lessees: 1). Lender education concerning the CLT structure; and 2). Participation of the “secondary market” by Fannie Mae and FHA.

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Timely lender education is a critical to the CLT function. The CLT concept is often unfamiliar to home mortgage lenders. The typical CLT mortgage loan is secured by a mortgage on the leasehold interest and the improvements owned by the ground lessee. The underlying land owned by the CLT is **not** part of the security interest of the lessee's mortgage. As the Community Land Trust Legal Manual notes, "This type of mortgage (sometimes called a "leasehold mortgage") raises a special set of concerns for the lender and for the CLT, as well as the lessee." (p. 10-1). Lender concerns include the following:

1. Ground Lease is valid and enforceable under state law requirements;
2. Ground Lease term is longer than the term of the loan so that the loan can be fully amortized before there is an issue of lease renewal;
3. Ground Lease provides for advance notice to the Lender and opportunity for Lender to cure, in case of Lessee default; and
4. Ground Lease does not contain restrictions that, in the event of foreclosure, would prevent the home from being sold for a price high enough for the Lender to recover its investment.

A growing number of sources currently provide the necessary long-term financing for CLT homeownership:

Banks are increasingly willing to make such loans. In addition, some CLTs have arranged financing for their lessees through bank-capitalized loan pools or bank consortia established specifically to provide home mortgages for low- and moderate income people. Often an important motive for these private financial institutions – whether making these loans individually or joining with others to establish special programs – is their concern with meeting their obligations under the federal Community Reinvestment Act (CRA), which holds federally regulated banks responsible for meeting the credit needs of the communities in which they do business, including low-income neighborhoods. CLTs preparing to approach these lenders should be familiar with CRA provisions and the ways that community groups have used these provisions to initiate productive negotiations with banks in their communities.⁶⁵

In the past, private lenders held a limited number of CLT mortgages in their portfolios; however CLT programs are now gaining greater access to the secondary market.⁶⁶ Fannie Mae, Federal Housing Administration (FHA) mortgage insurance, and the Rural Housing Services 502 Program can be used

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with CLT lessee-mortgages. Fannie Mae offers a Community Land Trust special mortgage: a lender originates a first leasehold mortgage loan using one of Fannie Mae's Community Lending mortgages, and Fannie Mae purchases the leasehold mortgage from an approved lender.⁶⁷

APPENDIX "G"

CLT OPERATIONAL FUNDING ISSUES & SOURCES

A. CLT OPERATIONAL FUNDING ISSUES

1. Provoking Competition

In cities with few public funds and many nonprofit housing providers, any request for operating support for a new Community Land Trust is likely to be met with skepticism by existing nonprofit housing and community development organizations.

2. Eschewing Development

Some CLTs, in order to avoid competition with existing nonprofit housing developers for scarce resources, have made the reasonable decision not to do the development themselves. They contract, instead, with nonprofit partners for these services. But in averting conflict, they also surrender any claim to development fees – money that CLTs around the country have relied upon to sustain their operations. Eschewing development, a CLT must find other sources of operating support, including fees collected for counseling homebuyers, marketing units, and managing resales.

3. The CLT as "Something New"

Start-up CLTs are often the beneficiaries of many foundations and private donors to fund "something new" -- a "cure all" for the housing crisis. A CLT often takes time to build and requires patience in building its self-sustainability.

4. Funding for a Three-Year Start-Up

Experience has shown that it takes about three years for a new CLT to establish itself solidly within the community. The most successful start-ups, in recent years, have been those with at least three years of operational funding firmly in hand before they are launched – or, alternatively, at least three-years of staffing and support from a nonprofit sponsor.

5. Staffing Adequate to the Task

The need for operational funding is a function of the level of staffing a CLT finds necessary to carry out the roles it has chosen and the goals it has set. Some CLTs manage quite well with a staff of three. Other CLTs need a staff of a dozen (or more) to carry out all of the projects and programs that it has underway. The primary issue for a new (or old) CLT, therefore, when it comes to operational funding, is deciding how much staff and what kind of staff will be needed to do an effective and efficient job of doing the CLT's work.

B. SOURCES OF OPERATIONAL FUNDING

FINAL DRAFT

Described below are the major sources of operating support that CLTs are currently using, based on a national survey of CLTs conducted by the Institute for Community Economics.

1. CDBG & HOME

Both CDBG and HOME have provided considerable operating support for many Community Land Trusts. A few CLTs are receiving a combined total of approximately \$175,000 per year in capacity funding from these two programs. This is the high-end for CLTs around the country. The average is closer to \$50,000 per year in core operating support for CDBG and HOME.

2. Private Institutions

At the high end, a few CLTs are obtaining \$100,000 - \$300,000 in annual operating funds from businesses, banks, foundations, churches, and/or United Way. The average for CLTs around the country from private institutions is approximately \$50,000 annually.

3. Individual Donors

Some CLTs have made fundraising from individuals a major part of their political strategy for building membership and removing "NIMBY" opposition to their projects, as well as a major part of their financial strategy for sustaining their operations. At the high-end, CLTs in places like Orcas Island, WA, Gloucester, MA, Jackson Hole, WY, and Burlington, VT are raising \$60,000 per year from individual donors. The average CLT raises a little over \$10,000 annually in operating support from individual donors.

4. Grassroots Fundraising

Operating income derived from memberships, special events, and other grassroots fundraising provides significant operating funds for only a few CLTs, which raise \$10,000 - \$20,000 per year from this source. Most CLTs, especially those operating in low-income neighborhoods, raise much less.

5. Development Fees, Rental Income, & Lease Fees

Some CLTs receive almost all of their annual operating support from these three sources of income (development fees, rental income, and lease fees). Most CLTs receive nearly half of their operating income from these sources. At the high-end, a few CLTs receive \$150,000 - \$250,000 a year in development fees, net management fees for buildings located on CLT land, and lease fees for the use of the CLT's lands. The average amount received by most CLTs is closer to \$60,000 per year.

OTHER FUND SOURCES FOR THE CITY OF AUSTIN

General Fund & Capital Improvement Project (CIP).

General Fund (CIP) dollars could be used to support the initial three-year operational, start-up costs of the CLT entity.

END NOTES

- ¹ *Community Land Trust Legal Manual: A Handbook for Community Land Trusts and Their Attorneys*, (Institute for Community Economics: Springfield 2002), p. 2-2.
- ² *Ibid.*
- ³ *Ibid.*
- ⁴ *Ibid.*
- ⁵ *Ibid.*, p. 2-3.
- ⁶ Restrictive Covenants that run in perpetuity are legal and enforceable under Texas law. *See Moore v. Smith*, 443 S.W.2d 552, 556 (Tex. 1969) (Holding that restrictions that limit the use of property to residential purposes permanently or indefinitely are not void or unenforceable per se).
- ⁷ *Ibid.*, p. 205.
- ⁸ *Community Land Trusts, Issue Brief #5* (Institute for Community Economics).
- ⁹ *Why Create (or Support) a CLT?* (Institute for Community Economics & Burlington Associates in Community Development, LLC, 2003).
- ¹⁰ *See John Emmeus Davis, Options and Issues in Creating a Community Land Trust.* (Springfield: Institute for Community Economics, 2001).
- ¹¹ *The Diverse World of Community Land Trusts* (Institute for Community Economics/Burlington Associates, 2001), p. 3.
- ¹² *See Memorandum from Michael Brown of Burlington Associates in Community Development, LLC to Austin Community Land Trust Steering Committee, Organizational Development Decisions* (February 27, 2005) (on file with author).
- ¹³ *Ibid.*
- ¹⁴ *See Property Taxes* (Institute for Community Economics/Burlington Associates in Community Development, 2002).
- ¹⁵ Florida's property tax burden is similar to Texas, as Florida does not impose a personal state income tax. Sarasota, Florida is in the initial stages of a CLT planning initiative; however, Sarasota has not yet addressed the property tax issue.
- ¹⁶ *See Texas Local Government Code Sec. 394.905; Texas Property Tax Code Sec. 11.11, 11.42(b), 11.43(a).*
- ¹⁷ *See Texas Tax Code Sec. 11.182, as amended.*
- ¹⁸ *Travis Cent. Appraisal Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 837 (Tex. App.- Austin 2004, no pet.) citing *Wright v. Macdonnell*, 88 Tex. 140, 30 S.W. 907, 909 (1895); *Holly v. Craig*, 334 S.W.2d 586, 587 (Tex.Civ.App.-Fort Worth 1960, no writ). *See Tex. Tax Code Ann. § 25.04* (West 2001).
- ¹⁹ *Wright v. MacDonnell*, 88 Tex. 140, 30 S.W. 907, 909 (1895); *Holly v. Craig*, 334 S.W.2d 586, 587 (Tex.Civ.App.--Fort Worth, 1960, no writ).
- ²⁰ *See Lindsley v. Lewis*, 125 Tex. 630, 84 S.W.2d 994, 995-96 (1935); *Travis Cent. Appraisal Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 839 (Tex.App.-Austin, 2004, no pet.).
- ²¹ *Harris County Appraisal Dist. v. Reynolds/Texas, J.V.*, 884 S.W.2d 526, 528 (Tex.App.-El Paso 1994, no writ); *see Tex. Tax Code Ann. § 1.04; El Paso Cent. Appraisal Dist. v. Montrose Partners*, 754 S.W.2d 797, 798 (Tex.App.--El Paso 1988, writ denied); *Cameron County Appraisal Rev. Bd. v. Creditbanc Sav. Ass'n.*, 763 S.W.2d 577, 579 (Tex.App.--Corpus Christi 1988, writ denied).
- ²² *Travis Cent. Appraisal Dist. v. Signature Flight Support Corp.*, 140 S.W.3d 833, 837 (Tex.App.-Austin, 2004, no pet.). *See Tex. Tax Code Ann. § 25.04; Harris County Appraisal Dist. v. Reynolds/Texas, J.V.*, 884 S.W.2d 526, 528 (Tex.App.-El Paso 1994, no writ).
- ²³ *See Financial Policies of the City of Austin – Citywide Financial Policies #8* contained in the 2004-2005 City of Austin Budget.
- ²⁴ *See Financial Policies of the City of Austin -- Citywide Financial Policies #9* contained in the 2004-2005 City of Austin Budget.
- ²⁵ *See Financial Policies of the City of Austin -- Citywide Financial Policies #11* contained in the 2004-2005 City of Austin Budget.
- ²⁶ *See Financial Policies of the City of Austin -- Citywide Financial Policies #19* contained in the 2004-2005 City of Austin Budget.
- ²⁷ *Ibid.*
- ²⁸ *See Tex. Att'y Gen. No. JM-805* (1987) (A home rule city's issuance of general obligation bonds to finance affordable housing for low and moderate income families does not per se violate the public purpose requirements of article VIII, section 3, and article III, section 52, of the Texas Constitution.)
- ²⁹ *See Financial Policies of the City of Austin – General Obligation Debt Financial Policies* contained in the 2004-2005 City of Austin Budget.
- ³⁰ *See Financial Policies of the City of Austin – General Fund Financial Policies #10 and #12* contained in the 2004-2005 City of Austin Budget.

³¹ See *Options & Issues in Creating a Community Land Trust* (p. 9) identifying the following examples of CLTs with government sponsorship: **The Burlington Community Land Trust** (Burlington, Vermont), **The Time of Jubilee Land Trust** (Syracuse, New York), **Washtenaw Community Land Trust** (Ann Arbor, Michigan), **Community Land Trust in Orange County** (Chapel Hill, Carrboro, and Hillsborough, North Carolina), **Portland Community Land Trust** (Portland, Oregon), **Cannon River Community Land Trust** (Northfield, Minnesota), and **State College Community Land Trust** (State College, Pennsylvania).

³² *Homeownership Options Under the HOME Program: A Model for Publicly Held Properties and Land Trust* (U.S. Dept. of Housing and Urban Development: 1999), p. 43.

³³ *Ibid.* Phone interview with City of Chicago, Department of Housing Special Finance, Marti Wiles on May 6, 2005.

³⁴ See *Property Taxes* (Institute for Community Economics/Burlington Associates in Community Development, 2002).

³⁵ See Local Government Code Chapter 373A, as amended.

³⁶ See Sec. 373A.101.

³⁷ See Sec. 373A.102.

³⁸ See Sec. 373A.104.

³⁹ See Sec. 373A.105.

⁴⁰ See Sec. 373.106.

⁴¹ See Sec. 373.107.

⁴² See Sec. 373A.108.

⁴³ See Sec. 373A.109.

⁴⁴ See Memorandum *Austin Ground Lease Decision* from Michael Brown of Burlington Associations in Community Development to the CLT Steering Committee (3/9/05).

⁴⁵ See *Community Land Trust Legal Manual: A Handbook for Community Land Trusts and Their Attorneys*, (Institute for Community Economics: Springfield 2002). Chapter 12, “The CLT Ground Lease.”

⁴⁶ See HUD Handbook 4150.1 REV-1, pp. 6-24 to 6-25. See 24CFR Section 203.41 interpreted in Mortgagee Letter 94-2.

⁴⁷ *Community Land Trust Legal Manual*, p. 8-1.

⁴⁸ *Ibid.*, p. 8-3.

⁴⁹ *Ibid.*, p. 8-3 – 8-4.

⁵⁰ *Ibid.*, p. 8-5.

⁵¹ *Ibid.*, p. 8-7.

⁵² *Community Land Trust Legal Manual*, p. 8-12 – 8-13.

⁵³ *Ibid.*, p. 8-15.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 8-7.

⁵⁶ *Ibid.*, p. 8-11.

⁵⁷ *Ibid.*, p. 8-18.

⁵⁸ *Ibid.*, p. 8-20.

⁵⁹ *Ibid.*, p. 8-20.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*, p. 8-21.

⁶³ See Tex. Att’y Gen. No. JM-805 (1987).

⁶⁴ See <http://www.iceclt.org/loanfund/index.html>.

⁶⁵ *Community Land Trust Legal Manual*, p. 10-1.

⁶⁶ *Ibid.*, p. 10-2.

⁶⁷ See http://www.efanniema.com/hcd/single_family/mortgage_products/low_downpayment.html.

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Attachment "1"

CLT Model (Resale) v. Conventional Mortgage Subsidy (Recapture)

Initial and Long-Term Affordability	CLT Model	Mortgage Subsidy	Notes
Acquisition/Development Cost			
Land	\$40,000	\$40,000	
Improvements	\$80,000	\$80,000	
Total Development Costs	\$120,000	\$120,000	Assumption: Appraised value = development cost
Subsidy Provided			
Subsidized Land Costs	\$40,000	\$0	Land cost is permanently removed from CLT transaction
Gap Financing Loan (Mortgage Subsidy)	\$0	\$40,000	Cost of soft second loan
SALE PRICE TO QUALIFIED HOMEBUYER (BUYER #1)			
	\$80,000	\$120,000	
Market Value in 10 Years			
Value of Improvements Only	\$151,864		Assumption: 6% increase in land & improvement value Appraised Value after 10 years = improvements only
Value of Land and Improvements		\$214,902	Appraised Value after 10 years = land and improvements
Increase in Property Value (Appreciation)			
	\$71,864	\$94,902	
Percentage of Appreciation Allowed BUYER #1 ("fair return")			
	25%	100%	Every CLT develops its own resale formula. As an example, a "fair return" of 25% of the house's appreciation is provided to the CLT homeowner.
Amount of Appreciation Taken by BUYER #1	\$17,966	\$94,902	
Amount of Subsidy Payback	\$0	\$40,000	
BUYER #1 Share of Increased Value			
	\$17,966	\$54,902	
SALE PRICE TO BUYER #2			
	\$97,966	\$214,902	CLT sells to Buyer #2 for the original sales price plus the appreciation taken by Buyer #1. The CLT does not include the cost of land in the sales price.

COMMUNITY LAND TRUST MODEL

