



# **GUIDE TO THE GROUND LEASE**

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*PF*

# PLEASE READ BACK COVER BEFORE USING THIS GUIDE

## **WHAT IS THE GROUND LEASE ?**

The ground lease describes you as the Homeowner and Amherst Community Land Trust (ACLT) as the owner of the land. It is a legal agreement between you and ACLT that describes the responsibilities and rights you and ACLT each have in relation to the home and the land. Before buying the home, you need to review the ground lease with your attorney.

## **WHO ELSE IS INVOLVED?**

In addition to you, the Homeowner, and ACLT, other parties have interests and rights that are described in the ground lease. Both the Massachusetts Department of Housing and Community Development and the Town of Amherst hold certain rights of enforcement, to protect the long-term affordability of the home because Community Preservation Act funding provided the subsidy used to make the Home affordable.

# **WHAT IS IN THE GROUND LEASE ?**

The ground lease is a long document with a number of separate sections that all together make up the legal agreement. These include:

## **1 Table of Contents**

(Page 1 of the ground lease)

## **2 Seven “recitals,”** (statements) that

explain ACLT’s purpose in making these homes available, and make it clear that you are not making a typical home purchase.

(Page 2 of the ground lease)

## **3 Definitions** of words that have a specific meaning in the ground lease and are important to understand.

(Pages 2-3 of the ground lease)

## **4 Thirteen “articles,”** or sections, each describing a different aspect of the lease agreement.

(Pages 3-20 of the ground lease)

## **5 Signature page** (Page 20 of GL)

## **6 Seven “exhibits,”** or attachments that are included at the end of the document, after the signatures, but are referenced in the main part of the ground lease and treated as part of the entire agreement.

(Pages 22 to end)

# THE GROUND LEASE

## SECTION BY SECTION

### **Recitals (A through G)**

*GL pg 2*

This section of the ground lease explains that the ACLT is a charitable organization working to make housing permanently affordable for low- and moderate-income people by holding land in a community trust. It explains that the special rules and restrictions related to owning this home are established to serve these purposes.

SPECIAL NOTE: *Recital D states that the home and the leased land are subject to (restricted by) an agreement between ACLT, the Commonwealth of Massachusetts, the Town of Amherst, and you, the Homeowner, making the ground lease an affordable housing restriction under Massachusetts law. Among other things, this gives the Town and State certain enforcement powers related to the property.*

### **Definitions**

*GL pgs 2-3*

The following terms are defined in this section:

Leased Land

Home

Base Price

Purchase Option

Purchase Option Price

Lease Fee

Permitted Mortgage

Event of Default

## **ARTICLE 1:**

*GL pg 3*

### **Homeowner's Letter of Agreement and Attorney's Letter of Acknowledgment**

This article describes two letters that are attached to the lease as **Exhibit A** to show that you understand what you are agreeing to.

- The "*Letter of Acknowledgement*", signed by your attorney, says that the attorney has gone through the lease with you and explained its meaning.
- The "*Letter of Agreement*", signed by you, says you understand and accept the requirements of the ground lease.

## **ARTICLE 2:**

*GL pg 3*

### **Leasing of Rights to the Land**

Section 2.1 states that ACLT is leasing the land (described in **Exhibit B**) to you, and that you agree to accept it "as is" at the time you sign the lease.

Section 2.2 says that you need written permission from ACLT before cutting any trees on the land.

Section 2.3 makes clear that ACLT does not give you the right to remove any minerals or other resources that may be found underground.

## **ARTICLE 3:**

*GL pg 4*

### **Term of Lease, Change of Land Owner**

Section 3.1 sets the term of the lease (the period you have to use the land) as 99 years.

Section 3.2 gives you the right (which you can pass to an income-qualified heir) to renew the ground lease for another 99 years.

Section 3.3 says that if ACLT decides to sell the land to anyone except a nonprofit or a government agency, you would have a priority if you wanted to purchase it. This right is described in **Exhibit E**.

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

*GL pgs  
4-6*

This article describes how you may use the land:

- You agree to use the property only for legally allowed residential and related purposes, in a way that will not harm or disturb others, and to maintain the home in good condition.
- The home must be your principal residence and you must live there at least 10 months each year, unless ACLT grants an exception.
- You cannot sublease without written permission from ACLT. Occupancy longer than 3 months by anyone other than your immediate family is considered a sublease.
- ACLT may inspect your leased land, but not the inside your home (except when you plan to sell).
- You have a right to enjoy your home without any unnecessary disturbance

## **ARTICLE 5: Lease Fee**

*GL pgs 6-7*

This article says that you will pay ACLT a monthly lease fee of \$50. The fee is due on first day of each month. ACLT may increase the fee, but no more often than once every five years. The article also describes how lease fee rules can change and what happens if you don't pay the fees.

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

This article states that you, the Homeowner, are responsible for paying all taxes and assessments on the home you own and on the leased land. It describes both your and ACLT's rights and responsibilities related to taxes.

*GL pgs 7-8*

## **ARTICLE 7: The Home**

*GL pgs 8-9*

Sections 7.1 and 7.2 explain that:

- You purchase the home when you sign the ground lease. Ownership of the home includes all structures on the leased land. Your deed of ownership is **Exhibit C** of the ground lease.
- Your ownership rights have certain limits such as restrictions on sale of the home and prohibition on removing the home from the land.

Section 7.3 allows you to make changes to the home, but changes to its size, shape or location or any new structures, must first be approved by ACLT. You must pay all construction costs and comply with building codes, zoning and other laws.

Section 7.3 also requires you to pay all construction costs for work done on the home, and to comply with building codes, zoning and other laws.

Section 7.4 requires, if someone you owe money to files a lien against your home, that you resolve the problem so the lien is removed within 60 days. If you can't, you must notify ACLT.

Section 7.5 says you are responsible for paying for utilities, maintenance, and all home repairs.

Section 7.6 states that when the lease expires or is terminated for any reason, ACLT will take ownership of the home and must pay you (or your mortgage holder) the "Purchase Option Price" described in **Article 10**).

## **ARTICLE 8: Financing**      *GL pgs 9-11*

This article explains your right to borrow money to buy the home, including what mortgages are permitted and rules about refinancing. Permission from ACLT is required before you can mortgage the home, but ACLT is required to permit a "Standard Permitted Mortgage" as described in **Exhibit D**.

Article 8 also explains lenders' rights and what happens if a bank forecloses on you (if you cannot repay the money you borrowed to buy the house.)

**Exhibits D and F** provide more details about the relationship between you, your lender, and ACLT. These are complex rules so you should review them carefully, inform ACLT before borrowing against the home, and tell potential lenders about the lease.



## **ARTICLE 9:**

*GL pgs 11-13*

### **Liability, Insurance, Damage and Destruction, Eminent Domain**

Sections 9.1-9.3 say that, as Homeowner and lessee, you take full responsibility if anything happens on the property for which someone can be held liable (for instance, if someone is injured on the property). If ACLT has to pay costs that are your responsibility, then you must reimburse ACLT.

Section 9.4 requires you to insure your home against loss for its full replacement value and to maintain liability insurance for yourself and ACLT.

Section 9.5 describes your responsibilities if the home has fire or is damaged in other ways.

Sections 9.6-9.8 describe what would happen in the unlikely event that a government agency takes some or all of the property for some public use (e.g., highway construction) or if the lease is ended due to irreparable damage to the home.

## **ARTICLE 10:**

*GL pgs 13-17*

### **Transfer of the Home**

*NOTE: Exhibit F also has rules about sale or transfer of the home including restrictions not found in Article 10, so both must be read carefully.*

Section 10.1 emphasizes that these rules and price limits related to sale of the home are to keep it affordable for buyers with incomes similar to yours.

Section 10.2 says you can only transfer or sell the home to ACLT or to an income-qualified person.

Section 10.3 says that if you die, the home can be transferred to your heir(s) but under **Exhibit F** only a surviving spouse or an income-qualified heir may keep and live in the home. Any other heir must sell the house as described in the following sections.

Section 10.4 requires you to notify ACLT and the Town of Amherst in writing if you want to sell your home. You may recommend a buyer if you wish.

Sections 10.5 gives ACLT an option to buy the home when you say you want to sell.

Section 10.6 gives you the right, with certain limits, to find a buyer if ACLT doesn't buy the home.

Section 10.7 gives ACLT the right to sell your home for you if you no longer live there and have tried to sell for over a year without finding a buyer..

Sections 10.8-10.10 define the maximum price that you can sell the home for (the "**Purchase Option Price**") and explain how it is calculated. This price is based on the original cost of the home to you adjusted for inflation.

*NOTE: The purchase option price is the maximum allowed price. There is no guarantee that you will actually get that amount when you choose to sell.*

Sections 10.11 and 10.12 require the buyer to sign a new ground lease with ACLT, and allow ACLT to charge the buyer a transfer fee to cover costs.

Section 10.13 states that you, as Homeowner, must pay for any repairs needed when the home is sold.

## **ARTICLE 11: Default** *GL pgs 17-18*

Sections 11.1-11.4 explain that if you don't make required payments, or follow other lease rules, or are declared bankrupt or insolvent, and if you don't resolve the situation, ACLT may terminate the lease and purchase the home.

Section 11.5 explains what is considered a default (failure to meet its obligations) by ACLT.

## **ARTICLE 12:** *GL pg 18* **Mediation and Arbitration**

Article 12 says that you and ACLT may, if you both agree, use any process of mediation or arbitration to resolve any dispute. If you do so, you and ACLT will share the costs evenly.

## *GL pgs 18-* **ARTICLE 13: General Provisions** *20*

Section 13.1 makes you a voting member of the Amherst Community Land Trust (ACLT). Members elect the board of directors, and must approve any changes to the resale formula for ACLT homes, changes to the ACLT bylaws, and any sales of land. Currently members meet four times each year.

Section 13.2 states how you and ACLT need to communicate, and provides contact information.

Sections 13.3-13.13 contain various provisions that establish or clarify certain points about the ground lease and your relationship with ACLT, including:

- Even if ACLT fails to enforce a particular rule or requirement, that does not mean that ACLT has lost the right to enforce it in the future.
- ACLT has the right to take legal action to protect not only its own rights to the land, but also your interest in the leased land.
- The lease can only be changed if both you and ACLT, through its legal representative, sign a written agreement making those changes.

## **EXHIBITS**

*The following exhibits are attached to and treated as part of the ground lease.*

**Exhibit A:** Two letters signed by you and by your attorney saying the attorney has reviewed the ground lease with you and that you understand and accept its terms, including:

- You understand and support the goal to keep the home affordable from one owner to the next
- You know you can only sell the home to ACLT or to another income-qualified person and that the lease limits the price you can sell it for.
- You understand that the home is for you and your family to live in, and that if you move out permanently you must sell it.

**Exhibit B:** A description of the land you are leasing from ACLT, including a map of the property.

**Exhibit C:** The legal deed of ownership that shows you own the home.

**Exhibit D:** A 4-page document with three sections adding to the terms of **Article 8 (Financing)**:

- Obligations of a permitted mortgage holder
- Rights of a permitted mortgage holder
- Standard terms for a permitted mortgage.

**Exhibit E:** A description of “rights of first refusal” that you and ACLT each have in different situations that could arise, but are unlikely:

- If ACLT plans to sell the leased land, you may have first right to buy as stated in **Section 3.3**.
- If ACLT’s purchase option is disallowed, then ACLT may use this right to purchase your home if you decide to sell, as stated in **Section 13.5**.

**Exhibit F:** An added 10-page agreement signed by you and ACLT that strengthens the affordability protections and gives the Town of Amherst (called the “Municipality”) some rights to enforce the resale restrictions on the home. It provides more information about your rights and responsibilities as Homeowner related to selling the home and communicating with ACLT and the Municipality.

**Exhibit G:** The appraisal showing the home’s value at the time of your purchase, which is used to calculate the **Purchase Option Price** when you sell.

# KEY THINGS TO REMEMBER ABOUT YOUR HOME AND GROUND LEASE

## 1. Living in the home

- As Homeowner, you and your family have the right to live in and enjoy your home. You have sole use of the home and leased land and a right to privacy.
- You are expected to live in the home. You may not rent it, or continue to own it, if you move out. You may have guests, but no one except your family may stay in the home for more than three months without ACLT permission.

## 2. Caring for the property

- As Homeowner, you are responsible for repairs, yard maintenance, waste disposal and keeping the home and leased land in good condition.
- You are responsible for whatever happens in the home or on the leased land.

## 3. Making changes

- You may decorate your home, plant gardens, and make other changes and improvements.
- Major changes, such as putting an addition on the home or putting a permanent structure in the yard require permission from ACLT.

## **4. Mortgaging your home**

- The mortgage you are using to buy your home has been approved by ACLT.
- Any refinancing, or new mortgage, or borrowing against your home requires ACLT approval. You should always inform potential lenders about the ground lease.

## **5. Costs of ownership**

- In addition to mortgage payments and home repairs, you must pay a monthly lease fee and property taxes, and keep the property insured.

## **6. Selling your home**

- You can only sell your home to ACLT or an income-eligible buyer and the ground lease sets the maximum price you can receive.
- When you wish to sell your home, you must notify ACLT and the Town of Amherst in writing. ACLT will work with you to find a qualified buyer.

## **7. Membership in ACLT**

- As Homeowner, you are an ACLT member with the right to vote on policies and board members, or to seek election as an ACLT officer.
- ACLT can help you find assistance when dealing with contractors, or lenders, or issues related to your home, including zoning, permits, or taxes.
- If you have questions about your rights in relationship with ACLT and the ground lease, you should get independent legal advice.

## **DISCLAIMER**

**READING THIS GUIDE IS NOT A SUBSTITUTE FOR READING THE GROUND LEASE.**

This guide to the ground lease is provided by Amherst Community Land Trust (ACLT) to assist Homeowners, and others working with them, to gain an overview of the ground lease and to more easily find relevant information within it. The information in this guide is general in nature and by intention does not include many of the very important details found in the ground lease. Additionally, this guide was prepared by volunteers and may contain errors and omissions.

**HOMEOWNERS SHOULD READ THE ENTIRE GROUND LEASE AND REVIEW IT WITH AN ATTORNEY TO BE SURE THAT THEY UNDERSTAND ALL THE TERMS OF LEASE AND ALL THEIR RIGHTS AND RESPONSIBILITIES.**

