

# **A SUMMARY OF THE GROUND LEASE USED BY THE ADIRONDACK COMMUNITY HOUSING TRUST**

*This summary is intended to provide a general guide to the contents of the ACHT ground lease for people who own homes on land leased from ACHT or people considering buying such homes. When you need to know the exact contents of a particular section in full detail you should read that section in the ground lease itself.*

## **Definitions of basic terms used in this summary**

You: The homeowner who is leasing the land and is identified in the lease as the *Homeowner*.

ACHT: The Adirondack Community Housing Trust, which is leasing the land to you.

Premises: The parcel of land that is leased to you by ACHT.

Improvements: The house and any other structures that you own on the Premises.

## **Introductory “Whereas Statements”**

These statements lay out a framework for the details of the agreement contained in the ground lease. They make it clear that in some ways this is not a conventional real estate transaction. ACHT’s purpose is to make homeownership affordable for low and moderate income families. The terms of the ground lease are designed to accomplish this purpose, and you understand and accept this purpose.

## **Article I: Letters of Stipulation and Acknowledgement**

The “letter of stipulation” is a letter, signed by you, summarizing the more important parts of the lease agreement and stating that you understand these and other parts of the lease. The “letter of acknowledgement” is signed by your attorney. It states that the attorney has gone over the lease with you and advised you on its meaning. Both letters are attached to the lease as evidence that you are entering into the lease agreement with an understanding of what you are agreeing to.

## **Article II: Demise of Leased Premises**

2.1: ACHT is turning the Premises over to you on the terms laid out in the lease, and you are accepting it “as is” at the time you sign the lease.

2.2: ACHT does *not* turn over to you the right to dig up and remove from the Premises any minerals that may be found on or in the land (including such materials as sand and gravel). ACHT still owns all such materials but does not have the right to remove them from the Premises if it would interfere with your right to live on and use the Premises.

## **Article III: Duration of Lease**

3.1: The lease – and all the rights and responsibilities that it gives you – will be in effect for 99 years unless you sell your home and give up or transfer the lease or unless the lease is “terminated” because you have failed to comply with the terms of the lease and failed to correct the problem when notified of it by ACHT.

3.2: Before the lease expires, you (or your heirs) will have a right to renew it for another 99 years on the same basic terms. The section then lays out the process to be followed in renewing the lease.

3.3: This section makes it clear that, if ACHT ever sells the land, the new land owner must honor the lease and cannot terminate it as long as you are complying with its terms. It also says that if ACHT ever agrees to sell the land to anyone other than a nonprofit or government agency, you will have a right to buy it yourself for the price that the potential buyer had agreed on.

#### **Article IV: Use of Leased Premises**

This article describes certain restrictions and requirements regarding your use of the Premises.

4.1: You can use the Premises only for residential purposes and related purposes permitted on residential property by local zoning. **[modify as necessary]**

4.2: You are responsible for abiding by all laws and government regulations in your use and maintenance of the Premises.

4.3: You are responsible for seeing that everyone who is present on the Premises with your permission complies with the terms of the lease.

4.4: You, or someone in your immediate family, must live in the home for at least 9 months of each year.

4.5: ACHT has certain limited rights to inspect the Leased Premises, but not the inside of your home.

4.6: You have a right to enjoy your home without any unnecessary disturbance from ACHT, and ACHT has no intention of disturbing you.

#### **Article 5: Ground Lease Fee**

5.1: The ground lease fee that you pay for the use of the land is to be \$25 per month.

5.2 - 5.5: These sections deal with the way the fee is to be paid and the ways the amount of the fee may be changed under different circumstances.

#### **Article 6: Taxes and Assessments**

You are responsible for paying all taxes and special assessments on both the Improvements that you own and the land that you are leasing. If any part of what is owed is billed to ACHT, ACHT will pass that bill on to you. If you fail to pay, ACHT can pay the amount due, and you will then be required to reimburse ACHT for this amount.

#### **Article 7: Improvements**

7.1 and 7.2: You own the house and other “Improvements” on the Premises – including both what you are buying when you sign the lease and what you may add afterward.

7.3: Any new improvements or changes to existing improvements must be paid for by you, and must comply with any building codes, zoning laws or other legal requirements. New improvements and any major changes to existing improvements must be approved by ACHT before work is started.

7.4: You are responsible for preventing or, if necessary, removing any liens that might be filed against the property by someone you owe money to, including, hospitals, trades

people, etc. – but *not* including a mortgage lender if the mortgage has been approved by ACHT.

7.5: You – not ACHT – are responsible for maintaining the Premises and Improvements and must pay for all utilities and other services that you use.

7.6: When the lease finally expires or is terminated for any reason, ownership of the improvements goes back to ACHT, but ACHT must then pay you the amount you would have been allowed to sell them for (the Purchase Option Price as described in Article 10).

### **Article 8: Financing**

8.1: You have the right to mortgage the Improvements and your leasehold interest in the land provided ACHT approves the mortgage and the terms of all related agreements. ACHT *must* give its approval for a mortgage if the terms comply with the requirements for a “Standard Permitted Mortgage” as laid out in the Exhibit PERMITTED MORTGAGES.

8.2: The holder of a permitted mortgage (the Permitted Mortgagee) has certain rights, which are laid out in Exhibit PERMITTED MORTGAGES.

8.3: If a permitted mortgage is foreclosed, or if you turn over your deed to the Permitted Mortgagee in order to avoid foreclosure, the resale restrictions contained in Article 10 can be removed from the lease to help the Mortgagee recover what is owed.

8.4: If there is a foreclosure and the home is eventually sold for more than what is owed to the Mortgagee, then some of this excess amount may be paid to you, but not any amount above and beyond what would be due to you under the terms of the resale provisions in Article 10.

8.5: Any amendments to this lease that you and ACHT agree upon must also be approved by any Permitted Mortgagee.

### **Article 9: Liability, Insurance, Damage and Destruction, Eminent Domain**

9.1 through 9.3: You have full responsibility for the Premises. If anything happens on the Premises for which someone can be held liable (for instance, if someone is injured), then the liability is yours, not ACHT’s. If ACHT is forced to pay for something that you are responsible for, then you are required to reimburse ACHT.

9.4: You are required to insure your house and other Improvements against fire and other hazards. This insurance policy must cover the full replacement cost of the Improvements. You are also required to purchase liability insurance covering the Premises and the Improvements. (Note: both kinds of insurance may be included in a single “homeowners policy.”) The liability insurance must provide coverage as follows.

- For injury or death of one person: \$\_\_\_\_\_
- For injury or death of any number of persons: \$\_\_\_\_\_
- For property damage: \$\_\_\_\_\_

These amounts may be adjusted from year to year based on changes in the cost of living.

9.5: If your Improvements are damaged by fire or some other cause, you are required to repair the damage (using insurance money) and do whatever is necessary to make the Premises safe for people and property. However, if it is physically impossible to repair the damage or if the insurance money will cover less than 80% of the cost of full repair, you have a right to give up your lease after giving notice to ACHT – unless, within 45

days of when you give notice, ACHT is able to get the insurer to cover at least 80% of the cost of repair.

9.6: This section deals with the unlikely possibility that a government agency takes some or all of the Premises, through its right of “*eminent domain*,” for some public use (for instance, highway construction). Three possible situations are addressed.

- The entire Premises is taken, or enough of it is taken so that your home is destroyed or damaged beyond repair.
- Some part of the Premises is taken but it doesn’t affect your use of the Premises.
- Part of the Premises is taken and there is damage that does affect your use of the Premises but this damage can be repaired.

For the details of each of these situations go to Section 9.6 of the full lease.

### **Article 10: Transfer, Sale, or Disposition of Improvements**

10.1: This section emphasizes the basic understanding that the requirements stated in this article are intended to keep the home affordable for others with incomes similar to yours.

10.2: You can sell the Improvements only to ACHT or to an “*income-qualified person*,” which means a person or household with an income less than \_\_\_% of the median household income for your county. ACHT can tell you what this dollar amount is in a given year. (Note: the percentage may vary from one ACHT home to another.)

10.3: You can leave your home to any heir or heirs you choose. Any heir who inherits the home and who is either your spouse or domestic partner or your child, or who is an income-qualified person, will have a right to take over the lease and occupy the home. Anyone else who inherits the home will have to sell it through the process described in this article.

10.4: If you decide to sell your home, you must notify ACHT in writing. If you want to recommend a potential buyer, you should name that buyer in the notice.

10.5: In order to determine the price you can receive for your home, an appraisal must be requested (within 10 days of when you give notice of your intent to sell) from a licensed appraiser that you and ACHT agree on. You will be responsible for paying for the appraisal. The appraiser will be told to determine the unrestricted market value of both the land and Improvements *as if there were no ground lease* affecting that value.

10.6: When the appraisal has been completed ACHT will have a right (“*option*”) to buy the home for the Purchase Option Price, calculated in the way described below. If ACHT decides to use its option and buy the home, it must notify you of this intent within 45 days of its receipt of the appraisal. After notifying you, ACHT can assign its option to an income qualified person. The purchase must be completed (by ACHT or the person it assigns the option to) within 60 days of when it notified you it intended to use the option.

10.7: If ACHT does not notify you within the 45-day period or complete the sale within the 60-day period, then you can sell the Improvements and assign the lease to any income-qualified person for a price that is no higher than the Purchase Option Price. If you have tried to sell the home for 6 months and it has still not sold, then you will be permitted to sell it to *any* buyer, regardless of their income, for not more than the Purchase Option Price.

10.8: If the home has been on the market for a full year and you have still not contracted to sell it, ACHT will have a right to step in and find a buyer and sell the home for you, and will turn over the money received to you, minus any costs of selling it.

10.9: The Purchase Option Price will be equal to the *lesser of* the appraised value of your “Ownership Interest” (explained below) or the Formula Price (explained in section 10.10).

Your Ownership Interest is based on the percentage of the original appraised value that you paid for (with both your down payment and your mortgage loan). The worksheet contained in section 10.10 of the full lease shows you how to calculate your Ownership Interest.

10.10: The Formula Price is the sum of the following amounts:

- your original purchase price,
- plus any Capital Improvement Credit (explained in section 10.11),
- plus 25% of any increase in the appraised value of your Ownership Interest between the time you bought the home and the time you are selling it.

(See the worksheet in Section 10.10 of the full lease.)

10.11: A Capital Improvement Credit can be added to the Formula Price to account for the value of major improvements you make to your home if you follow the procedure described in this section and ACHT approves such a credit. See section 10.11 of the full lease for the details of the procedure.

10.12: If ACHT does not use its purchase option and you sell the Improvements directly to another person, this section gives ACHT a right to charge the buyer a “transfer fee” on top of the price you receive. This fee will cover ACHT’s costs in overseeing the transfer of the lease to the buyer.

10.13: If you do sell your home, the new owner can choose between accepting an assignment of the old lease (with however much time remains in its 99-year term) or receiving a new lease from ACHT with a full 99-year term.

### **Article 11: Assignment and Sublease**

You can sublease your home or assign your lease to another person only if ACHT gives permission in writing. Because ACHT doesn’t want to promote absentee ownership, it will allow an owner to sublease only for a limited time, if at all, and it will limit the rent you can charge to the amount needed to cover your costs. The person you sublease to will be responsible for complying with all of the terms of the lease.

The only time you can assign the lease permanently to another person is when you are selling the Improvements to that person. In that case, the price you receive for the Improvements and the lease will be limited as described in Article 10.)

### **Article 12: Default**

A “default” is a failure to comply with the terms of the lease. A default is formally declared to be an “event of default” only if you have been notified of the failure and you have not corrected it within the time allowed.

12.1: It is an event of default if you fail to pay the ground lease fee, or other charges required by the lease, within 30 days of receiving a notice of failure to pay from ACHT.

However, if you pay at least 2/3 of the amount due within 30 days, you will be given another 30 days to pay the rest.

*12.2:* It is an event of default if you fail to correct “non-monetary” violations of the lease within 60 days of receiving notice of the violations. However, if you have begun to correct the violation during that 60-day period and are making a good-faith effort to complete the process but cannot complete it in 60-days, then the period will be extended enough to allow completion.

*12.3:* It is also an event of default if your rights to the Leased Premises are taken away by bankruptcy or other “judicial process.”

*12.4:* An event of default by you gives ACHT a right to terminate the lease and evict you from the Premises. Upon termination, ACHT will take ownership of the Improvements, but must pay you the Purchase Option Price minus expenses.

*12.5:* A failure by ACHT to do what the terms of the lease obligate it to do will result in an event of default if the failure is not corrected within 60 days of receiving notice from you, or within “such additional time as is reasonably required” to correct the default.

### **Article 13: Arbitration**

If you and ACHT disagree about what is required by the terms of the lease, and if you cannot work out the disagreement between yourselves, then an arbitration procedure will be used. You and ACHT will each appoint an arbitrator and these two arbitrators will agree on a third arbitrator. The three arbitrators will hold a hearing at which you and ACHT will have an opportunity to present evidence and question witnesses. The arbitrators will then decide the dispute in accordance with the law, and their decision will be final. (See article 13 of the full lease for the details of the procedure.)

### **Article 14: General Provisions**

This article contains a series of technical provisions that establish or clarify certain legal points.