

# Plain Language Summary of Diamond State CLT Ground Lease (version 2)

*THIS GROUND LEASE SUMMARY DOES NOT SERVE AND IS NOT INTENDED TO SERVE AS A REPLACEMENT FOR THE ACTUAL DSCLT GROUND LEASE. WE ADVISE YOU TO REVIEW THE ENTIRE GROUND LEASE WITH YOUR ATTORNEY.*

## **WHAT IS A GROUND LEASE?**

The Ground Lease is a legally binding agreement that gives you the right to use the land. It describes in full what your rights and responsibilities are and what restrictions you accept in exchange for those rights. As a legal document, it tries to cover all possible events, no matter how unlikely, and is written in “legalese.” The Lease tries to balance your interests as a homeowner with the DSCLT’s interests.

## **WHAT IS THIS “PLAIN LANGUAGE SUMMARY”?**

This summary is meant to help you, as a potential homebuyer with the DSCLT, to understand the rights, responsibilities, and restrictions you will agree to when you sign the actual Ground Lease. This summary is *not* the lease and addresses only the most important elements of the lease. We hope that it explains the lease provisions in a clearer way than the legal language of the Ground Lease itself. You will get a copy of your lease for you to read and review before you sign it. If you’d like a copy now, please ask for one. (**NOTE:** The DSCLT requires that you consult with an attorney *before* signing the actual lease. This is for your protection, so that you fully understand the unique features of DSCLT homeownership before you buy your home.)

Each of the **bold** headings below is an ARTICLE or SUB-ARTICLE of the lease. The text under the heading is a plain language explanation of what that ARTICLE says.

## **RECITALS**

The Recitals state the goals and purposes of the lease. By signing, you and the Diamond State Community Land Trust (DSCLT) agree to these goals and purposes. The primary goal of the lease is to provide you with an opportunity for homeownership and to preserve the availability and affordability of this opportunity for other households of modest means in the future.

### **ARTICLE 1. Letters of Agreement and Attorney's Letter of Acknowledgment.**

You will sign a Letter of Agreement which says that you understand the lease agreement. When you consult with an attorney (as required by DSCLT) to further your understanding of the lease, your attorney will sign a Letter of Acknowledgment stating that he or she has reviewed the lease and related documents with you. These letters are meant to encourage you to fully understand the lease. They also protect DSCLT from future disputes.

### **ARTICLE 2. Leasing of Rights to the Land**

This says that the Diamond State CLT leases you the land to use. DSCLT keeps the rights to any minerals in the land. You are protected because you have to agree before the DSCLT can do anything with the mineral rights that would disrupt your use of the land.

### **ARTICLE 3. Duration of Lease.**

#### ***3.1 Principal Term and 3.2 Homeowner's Option to Extend***

The lease is for ninety-nine years, starting on the day you sign the lease. In the last year of the lease, you (if you happened to live so long) or your heirs have the option to add another 99 years to the lease. The lease is this long because the DSCLT wants you and your family to stay in your home as long as you want, just as if you owned the land.

#### ***3.3 Change of Lessor; Homeowner's Right to Purchase.***

If someone, or some organization, besides the DSCLT becomes owner of the land, you are protected in two ways. The new owner is bound by the terms of the lease and can't change them without your agreement. If the DSCLT decides to sell to a new landowner who doesn't share the goal of permanently affordable housing, you will have the right to buy the land at the price the new owner would have paid. This price may be less than or equal to the full market value of the land.

### **ARTICLE 4. Use of Leased Premises.**

#### ***4.1 Residential Use Only***

You may only use the land for residential purposes as permitted by current building and land use laws. For example, a home office is allowed by most

zoning, but keeping livestock isn't. If you give the lease to someone else (covered in ARTICLE 10 and ARTICLE 11), they will also be bound by these same restrictions.

#### ***4.2 Responsible Use and Compliance with Law.***

You must use the land without creating public or private nuisances, you will dispose of waste safely, and you will maintain the land and your home in good, safe, and habitable condition. You must make sure, in addition, that you do nothing to jeopardize the chances that the land and any buildings located upon it can be covered by insurance. (You are required to carry adequate hazard and liability insurance under ARTICLE 9.4).

#### ***4.3 Responsible for Others.***

You will be responsible for anybody who uses the land, including your family, friends, and visitors.

#### ***4.4 Occupancy.***

You or your family must live in your home 12 months a year. This is meant to make sure the home is your primary residence. It also keeps people from renting out their homes. Of course, you might want to go on vacations, leave your home to care for a sick relative, or leave your home for medical or educational reasons. If you need to be away for any of these reasons, you may do so without notifying DSCLT, as long as you are not absent for longer than three weeks and as long as you are not subletting your home while you are away. If you ARE going to be absent from your home for longer than three weeks, you must notify DSCLT of your absence.

#### ***4.5 Subleasing***

If you need to sublet your home for any length of time, you will need to get the DSCLT's written approval to do so.

#### ***4.6 Inspection.***

The DSCLT has the right to inspect the land and the outside of your home. Except in an emergency, the DSCLT must let you know at least 48 hours in advance before it sets foot on the land that you are leasing from the DSCLT. The DSCLT has the right to inspect the interior of your home, but only in the following two circumstances: 1) issuing approval for major improvements; and 2) deciding whether to exercise the CLT's right to purchase your home once you have decided to sell it. DSCLT must let you know 72 hours in advance. No more than 2 times per year.

#### ***4.7 Homeowner's Right to Peaceful Enjoyment***

You have the right to undisturbed use of the land. The DSCLT doesn't care about – and won't interfere with – your beliefs, visitors, or personal life, unless they violate the lease.

**ARTICLE 5. Ground Lease Fee.*****5.1 Ground Lease Fee.***

You will pay a monthly Fee to the DSCLT for use of the land underlying your home. The amount of this Lease Fee is initially set at \$40 per month.

***5.2 Payment of Ground Lease Fee.***

You will pay the Lease Fee monthly, either to the DSCLT or to the private lender who holds your mortgage. If Lease Fees are owed to DSCLT when you resell your home, they will be taken out of the equity you would otherwise have earned on the sale.

***5.3 Calculation of Ground Lease Fee***

The DSCLT has calculated the “fair rental value” of the land underlying your home, but has set your Lease Fee at a lower amount in order to make it more affordable for you.

***5.4 Reduction, Delay or Waiver of Ground Lease Fee***

If you have financial difficulties, the DSCLT may waive or reduce the Lease Fee – but DSCLT doesn’t have to do so.

***5.5 Adjustment of Ground Lease Fee..***

DSCLT may increase the Lease Fee in order to keep it “reasonably current,” but may only do so every fifth year during the term of the lease. Such increases will be indexed to changes in the Consumer Price Index for Urban Wage Earners.

You have the right to protest any increase. If you and the DSCLT can’t agree on the increase, you can have it decided by arbitration.

***5.6 Adjustment of Ground Lease Fee (loss of resale restrictions)***

If the resale and subletting restrictions on your home are ever removed (for example, if a bank ended up owning your home after foreclosure), the DSCLT can raise the Lease Fee to fair market value. This ensures that the DSCLT can recover its investment if the home someday loses its affordability.

***5.7 Late Payment of Ground Lease Fees***

If the ground lease fee is paid late – DSCLT may charge late fee of 5%. If paid within 30 days of due date will be waived.

***5.8 Unpaid Ground Lease Fees***

If Lease Fees are owed to DSCLT when you resell your home, they will be taken out of the equity you would otherwise have earned on the sale.

**ARTICLE 6. Taxes and Assessments.*****6.1 Taxes and Assessments.***

You must pay the property taxes on both your home and the underlying land. (Often, these tax payments will be included in your monthly mortgage payment.)

If the government assesses the land for service improvements, like utility lines or new roads, you’ll be responsible for paying them.

**6.2 Taxes on Leased Premises.**

If the DSCLT is sent the bill for taxes on the land, this bill will be passed along to you for payment.

**6.3 Homeowners's Right to Contest.**

If you want to appeal the tax assessment on your home, you may do so. You may also ask the DSCLT to join your appeal, as long as you are willing to pay all costs.

**6.4 Payments In Event of Delinquency**

If you don't pay your property taxes, the DSCLT can increase your Lease Fee and use the extra to pay these taxes for you. This is to make sure that your home won't be taken for unpaid taxes and lost to the DSCLT's affordable housing program.

**6.5 Proof of Compliance.**

You or another party (mortgage servicer) must provide proof that portion of all taxes and assessments are paid.

**ARTICLE 7. The Home (Improvements)****7.1 Ownership.**

You own all of the buildings, structures, fixtures (such as utility connections), and other improvements (such as landscaping) on the land. If you later add any of these things, they belong to you as well. Although you own the improvements, the lease controls your use and sale of them. None of these improvements may be removed from the land.

**7.2 Purchase of Improvements by Lessee.**

You are buying the improvements at the same time that you sign this lease.

**7.3 Construction and Alteration.**

After buying the improvements and signing the lease, you are allowed to change your improvements or to build new ones, as long as the proposed work meets five conditions.

1. You must pay all costs of the work. (If you have the skills, you can do the work yourself.)
2. The work must be done in a "workerlike manner" and must comply with all applicable laws, ordinances, and regulations.
3. The work must be for a use that is permitted by the lease.
4. You can't increase the size or height of the building or add any new buildings or make any major improvements (requiring a building permit or certificate of occupancy, if appropriate), without the prior written consent of the DSCLT. You must also give the DSCLT a copy of any plans for such major work before beginning it.

5. You must give the DSCLT a written request for all changes requiring a building permit for any work on your home before beginning it.

#### ***7.4 Prohibition of Liens.***

No liens resulting from your improvements may be put on the land. If someone puts a lien on your home (or on the land) because of your actions, you must pay it off within 60 days. If you don't, the DSCLT can pay it off and add the cost of paying off the lien to your Lease Fee.

#### ***7.5 Maintenance and Services.***

You are completely responsible for all maintenance of the land and improvements. You must keep both in good condition. DSCLT is not required to make repairs or to provide such services as electricity, water, heat, air conditioning, or snow removal.

#### ***7.6 Disposition of Improvements Upon Expiration of Lease Term.***

When the lease ends, or is terminated early, you must turn over the improvements to the DSCLT. If the lease is ending, the DSCLT must pay you for these improvements at a price set by the resale formula in ARTICLE 10.

### **ARTICLE 8. Financing.**

#### ***8.1 Permitted Mortgage.***

A mortgage on your home must meet certain conditions. These conditions are designed to protect your interests and the interests of the DSCLT. The mortgage must be from an "institutional lender," which means a standard mortgage lender. The loan must be a first mortgage with standard terms. The lender must agree to notify the DSCLT if you default on your mortgage and must permit the DSCLT to cure your default for you. It must give the DSCLT the right to buy the mortgage if the lender is going to foreclose. The lender must also agree to try to sell the home to another income-qualified buyer if the lender takes title to the home. The mortgage cannot make the DSCLT responsible for repaying the loan or any of its costs. If the mortgage meets all of these necessary conditions, then the DSCLT must allow you to mortgage your home.

#### ***8.2 DSCLT Permits Original Mortgage.***

By signing this lease, DSCLT gives permission of a deed of trustor mortgage also signed on the same day for purposes of buying the home.

#### ***8.3 Refinancing***

If after the purchase of your home you seek to refinance your mortgage you must inform DSCLT in writing and obtain permission for the refinance. DSCLT will not allow a mortgage if the total amount owed by you on the house will be greater than 100% of the purchase option price at the time of the request.

#### ***8.4 Approval of Permitted Mortgage***

DSCLT is required to permit any mortgage that conforms to Permitted Mortgage Exhibit Part C - total debt cannot exceed 100% of purchase option price

#### ***8.5 Home Equity Loan, Home Equity Line of Credit, Reverse Mortgage or Other Equity Loans***

Requests for equity loans must be in writing to DSCLT – debt cannot exceed 80% of purchase option price. If the mortgage plus the equity loan will bring the total owed in excess of 80% of the purchase option price, DSCLT will deny the request for the loan.

#### ***8.6 Mortgagee Permitted Mortgage Obligation***

Exhibit: Permitted mortgage, part A, Obligations, lists the obligations of the mortgage. Obligations include among others, a cure period for DSCLT if homeowner defaults and provisions to give notice to DSCLT and homeowner.

#### ***8.7 Mortgagee Permitted Mortgage Rights***

Exhibit: Permitted mortgage, part B, Rights, lists the rights of the permitted mortgage. Rights include mortgagee's permission to cure default by homeowner, no requirement to assume personal liability and notice by DSCLT in the event of default or other action which affects the mortgagee's interest.

#### ***8.8 Homeowners's Right to Proceeds in Excess of Purchase Option Price in the Event of Foreclosure.***

ARTICLE 10, explained below, says that you cannot receive more from the sale of your home than the "Purchase Option Price." Article 8.5 says that this will also be true if a lender takes title to your home.

### **ARTICLE 9. Liability, Insurance, Damage and Destruction, Eminent Domain.**

#### ***9.1-3 Lessee's Liability.***

You, not the DSCLT, are liable for whatever happens on the land. You agree to defend the DSCLT if someone tries to claim it is liable for something that happened on the land, and to repay the DSCLT if it has to pay anything that you are liable for. The DSCLT, on the other hand, remains liable for its own negligence.

#### ***9.4 Insurance.***

You are required to have and keep adequate hazard and liability insurance. The insurance must name the DSCLT as an insured and the DSCLT must be notified if your insurance is going to be cancelled. The DSCLT can ask you for proof of insurance. These provisions ensure that both your and the DSCLT's investments are protected.

#### ***9.5 Damage or Destruction.***

If your home is damaged or destroyed, you must rebuild with the insurance proceeds, unless it would be impossible or unless the insurance wouldn't cover

the expense. While this limits what you could do, it keeps an affordable home available for future home buyers. If the insurance won't cover the cost of rebuilding and the DSCLT can't get a bigger insurance payment, you can terminate the lease.

#### ***9.6 Eminent Domain and Public Dedication.***

If the government takes enough of the land so that it can't be used for your home, the lease will terminate. The awarded money will be paid out in the same order as above. If you or the DSCLT fights the government, the other agrees to cooperate with the effort.

#### ***9.7 Reassessment of Rental Value.***

If the government takes part of the land, but not enough to force you to leave your home, DSCLT will reduce your Lease Fee.

#### ***9.8 Relocation of Lessee.***

If your home is destroyed or the land is taken by the government, the DSCLT will try to lease you another piece of land.

### **ARTICLE 10. Transfer, Sale or Disposition of Improvements.**

#### ***10.1 Intent.***

You repeat your understanding that the lease in general and ARTICLE 10 in particular impose resale restrictions that are designed to keep your home affordable.

#### ***10.2 Transfers to Income-Qualified Persons.***

You may only sell or transfer your home to an Income-Qualified Person (the percentage of median income as defined in ground lease; except in the case of heirs that are named in Article 10.3. Any other sale or transfer, except to a lender in foreclosure, is null and void. This is what keeps the home affordable for future buyers.

#### ***10.3 Transfer To Homeowner's Heirs.***

You may leave your home to three categories of people, even if they aren't Income Qualified. They are: your spouse, your children, or a member of your household who has lived in the home for at least one year before she received the home. This provides housing security to your family. Any other person must be Income Qualified. So, if you leave or give your home to someone who isn't Income Qualified and doesn't meet one of the three exceptions, she would have to sell the home.

#### ***10.4 Homeowners's Notice of Intent to Sell.***

When you want to sell your home, you must notify the DSCLT in writing.

**10.5 Appraisal.**

After telling the DSCLT that you want to sell your home, an appraisal of the market value of your home and the land is needed to calculate the formula price. The cost of the appraisal will be paid by DSCLT.

**10.6 Lessor's Purchase Option.**

Starting on the date when you tell DSCLT that you want to sell your home, DSCLT will have 90 days to sign a Purchase and Sale Agreement with you to buy your home at the Purchase Option Price. (The DSCLT can also designate an Income Qualified Buyer to buy it.)

**10.7 If Purchase Option Expires.**

If DSCLT does not buy your home within 90 days, then you may sell your home yourself to any Income-Qualified Person, but not for more than the Purchase Option Price. If after six months you have been unable to sell your home to an Income Qualified Person, you may sell it to anyone, regardless of their income, but you must still sell the home for no more than the Purchase Option Price.

**10.8 Lessor's Power of Attorney to Conduct Sale.**

If DSCLT does not buy your home and you have been unable to sell your home for a year and you have moved out of your home, then DSCLT may seek a buyer and negotiate a sale at a reasonable price. This is meant to prevent the home from being vacant and un-maintained for a long period of time.

**10.9 Purchase Option Price.**

If the appraised market value of your home (and other improvements) is less than the formula price, the price at which your home must be sold (the Purchase Option Price) will be the appraised market value. If the formula price is less than the appraised market price of your home, then your home must be sold for the formula price.

**10.10 Calculation of the Formula Price.**

The resale price of your home is calculated using a formula that takes into consideration the total cost of the home; the purchase price you paid; the increase in your home's appraised market value; and the length of time you have owned your home.

The first step is dividing the purchase price you paid for your home by the appraised market value of your home and the land at the time you purchased your home (Step 1). This gives you the percentage of the total value of the package of the home and land owned by you, the homeowner.

When you decide to sell your home, another appraisal of the home and land will be done. The initial appraised value is subtracted from the current appraised value to calculate the market value appreciation of your home and the land (Step 2)

Your share of the market value appreciation is determined by multiplying the market value appreciation by the price-to-value ratio (Step 3) and then multiplying the product by the Shared Appreciation Factor that corresponds to the length of time you've owned your home (Step 4)

<b>EXAMPLE</b>	
<b>STEP 1</b>	
\$100,000	Initial Purchase Price
/ \$150,000	Initial Appraised Value of Home & Land
66%	Homeowner's Portion of Total Value
<b>STEP 2</b>	
\$200,000	Current Appraised Value of Home & Land
- \$150,000	Initial Appraised Value of Home & Land
\$50,000	Appreciation
<b>STEP 3</b>	
\$50,000	Appreciation
x 66%	Portion of Total Value Owned by Homeowner
\$33,000	Increase in Value Attributed to Portion Owned by Homeowner
<b>STEP 4</b>	
\$33,000	Increase in Value Attributed to Portion Owned by Homeowner
x 35%	<b>Shared Appreciation Factor</b>
\$11,550	Homeowner's Share of Appreciation
<b>STEP 5</b>	
\$100,000	Initial Purchase Price
+ \$11,550	Homeowner's Share of Appreciation
<b>\$111,550</b>	<b>Resale Price to Next Homeowner</b>

The formula price is then calculated by adding your share of the appreciation to the purchase price you paid for the home (Step 5).

Years of Ownership of Home	Shared Appreciation Factor
0-5 Years	25%
6-10 Years	35%
11-15 Years	45%
16 or more years	55%

**10.11 Qualified Purchaser's Choice of New Lease of Assignment of Existing Lease.**

Whoever buys your home shall be issued a new 99 years term lease

**10.12 Transfer Fee**

DSCLT may add a transfer fee to the Purchase Option Price to be paid by the purchaser for transaction responsibilities. No more than 6% of purchase option price

**10.13 Homeowner Repairs at Transfer**

Maintenance of your home is the homeowner's responsibility as noted in Section 4.2 and 7.5. Buyer's will contract for certified home inspection and homeowner will be responsible for repairing specific reported defects/conditions. With written permission these homeowner costs can be paid from homeowner's proceeds of sale.

## **ARTICLE 11. Default.**

### ***11.1 Default by Homeowner.***

You default on the lease agreement if you break any of its provisions. If the DSCLT notifies you that you're in default because you haven't paid the Lease Fee (or other monetary charges you owe to the DSCLT), or other fees determined by the lease, you have 60 days after notice to correct.

### ***11.2 Default by Lessee Resulting from Judicial Process.***

If you are bankrupt or insolvent and are forced by a judicial process to give your home to your creditors, the DSCLT can terminate the lease. DSCLT can also terminate the lease if an assignment of your interest is appointed by the courts to a trustee or other officer of the court.

### ***11.3 Termination.***

If you fail to fix a monetary or non-monetary default, the DSCLT can terminate the lease and evict you from the land.

### ***11.4 Default by Lessor.***

If the DSCLT is in default, you must notify DSCLT in writing and give it 60 days to fix the problem.

## **ARTICLE 12. Mediation and Arbitration.**

### ***12.1 Arbitration Process.***

If you and DSCLT can't resolve a dispute on your own, you will use an arbitration or mediation procedure. Each of you will pick an arbitrator. The two arbitrators will pick a third. The three will hear both sides of the issue and make a decision. You and DSCLT both agree to accept their decision as a final solution to the problem.

### ***12.2 Cost Mediation/Arbitration***

Unless decided otherwise by the arbitration panel, the cost of this arbitration process will be split equally between you and the DSCLT.

## **ARTICLE 13. General Provisions.**

### ***13.1 Homeowners's Membership in the DSCLT.***

You are automatically a voting member of the Diamond State CLT, once you sign the lease. This gives you some say in what happens to the nonprofit corporation that owns the land under your home.

**13.2 Notices.**

Whenever the lease requires that you notify DSCLT of something (such as your decision to sell your home), or that DSCLT notify you of something, that notice must be in writing and either delivered in person or mailed, by certified or registered mail, return receipt requested. If it is a notice from you, the lessee, to DSCLT, a copy must also be sent to DSCLT's attorney, name and address specified in the ground lease.

**13.3 No Brokerage**

This certifies that you and DSCLT have not used any real estate broker or agent other than the one listed in the lease in connection with the purchase of your home and signing of the lease.

**13.4 Severability**

If any one part of the lease becomes unenforceable or invalid, that material will be removed from the lease and it will not affect the validity of any other part of the lease. Also, it cannot be used in any legal cause of action between you and DSCLT. All rights of both parties are intended to remain valid throughout the entire duration of this lease. Delaware Law requires an interest held in trust to vest within 110 years.

**13.5 Right of First Refusal in Lieu of Option**

If the law changes and the DSCLT's option to repurchase your home at the Purchase Option Price is no longer enforceable, DSCLT will still have the first right repurchase your home by matching the price that is offered by any legitimate buyer.

**13.6 Waiver.**

DSCLT can waive requirements of the lease, but any waiver must be in writing and must be signed by an authorized representative of the DSCLT.

**13.7 Lessor's Right to Prosecute or Defend.**

DSCLT can, but is not obliged to, prosecute or defend in its name or in your name, any legal actions or proceedings appropriate to protecting the DSCLT's title to, and your interest in, the land.

**13.8 Construction.**

Wherever a pronoun is used in the lease, it is meant to represent either the singular or plural, masculine or feminine, as the case shall demand.

**13.9 Captions and Table of Contents.**

The table of contents and captions in the lease are for convenience only and are not a part of the lease.

**13.10 Parties Bound.**

The Ground Lease is the only agreement about leasing the land and can be changed only through a written agreement signed by you and by the DSCLT.

**13.11 Governing Law**

The lease is subject to the laws of Delaware.

**13.12 Recording**

A shorter version of this lease will be recorded with the County Recorder of Deeds.

**SIGNATURES**

You and a representative of DSCLT will sign the lease to make it official. A notary will notarize the signatures.

**EXHIBITS**

The Exhibits are documents attached to the lease. When attached to the lease, they become part of the lease. Some of them you will sign, others you won't. One of them is a letter from you stating, or stipulating, that you understand the rights, responsibilities, and restrictions defined in the lease agreement (Letter of Stipulation). Another describes the land you are leasing. Another describes any restrictions on your use of land that aren't written in