



GROUND LEASES REVISITED

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Almost 15 years ago, I wrote a book on ground leases. Now it is out of print, but I get a stream of requests for electronic copies. So I've decided it's time to rethink and update the book – a total reworking, not just a second edition. I'll publish it myself, without a third-party publisher. For about a year, I've been working on it with help from an editor on my staff.

My book will expand to two volumes. The first will consist mostly of an encyclopedia of ground leases, an alphabetical series of discussions of issues, possibilities and problems that arise in these transactions.

The second volume will offer a template ground lease in two pieces: a "Base Case" followed by optional provisions that I call "Bells & Whistles." Volume 2 will also include a dozen other template documents for these transactions, each also a Base Case followed by Bells & Whistles.

The reworked book will not shock the reader with dramatic new developments. Ground leases have not changed that much. My knowledge and experience have changed a lot, though, from over a decade more of closing more ground lease deals, consulting on ground leases, living with (and sometimes cleaning up) other people's ground leases, writing articles on many ground lease issues, acting as an expert witness and fielding questions from all over the United States.

Here are a few important points I'll make:

- **Rent Resets.** Ground tenants have suf-

fered from recent rent resets calculated as 6 percent or 7 percent times land value. That formula can kill tenants in a commercial real estate market based on sub-5 percent capitalization rates. Landlords and tenants have explored other approaches to protecting the landlord from inflation, while protecting the tenant from untenable rent escalations. My encyclopedia will discuss rent resets extensively. My template ground lease will offer sample language for a range of possibilities.

- **Financeability.** Lease negotiators sometimes don't pay enough attention to financeability of the landlord's position (not just the tenant's). So my book also discusses what a landlord needs to make a lease fully financeable, with sample language.
- **First Rights.** I've written and spoken a lot on rights of first offer and first refusal, which sometimes appear in ground leases. I think they create more trouble than they are worth. For my book, I have consolidated, reorganized and expanded my previous publications in this area. I've also developed new sample language that tries to solve problems without creating new ones.
- **Damage and Condemnation.** If a ground leased building burns down or is condemned, what happens to the resulting pot of money? Careless or thoughtless answers to that question can produce a windfall or a forfeiture for landlord or tenant. So those answers are crucial in any ground lease, both generally and to assure financeability. Overall, the document should do its best to put each

party in a position as close as possible to its position as if no fire or condemnation had occurred. That sounds simple and fair, but it gets complicated fast.

- **Bankruptcy Headaches.** Every decade or two, the bankruptcy courts throw a firebomb into the world of ground leases. My book will discuss the infamous Qualitechs case, where a bankrupt landlord sold a property free of a long-term ground lease; and some decisions suggesting that if a tenant rejects a ground lease, that might not constitute a "termination" sufficient to entitle the leasehold mortgagee to a replacement ground lease. My template ground lease includes new language to respond to new bankruptcy problems.
- **Priorities.** Landlord, tenant and their lenders all have claims to the same real property. There is a right way to prioritize those claims. The ground lease should be prior to fee mortgages. Each mortgage should attach only to the borrower's interest, fee or leasehold. It's actually not very difficult. My detailed discussion and sample language try to keep it that way.

My new ground lease book should appear, both on paper and electronically, in 2019 or 2020. Until then, I'm happy to share parts of my manuscript, including template documents, with anyone who promises to review carefully whatever I send them, and submit comments in a reasonable time. If that sounds tempting, or if you would just like to know when the book will become available, please send email to office@joshuastein.com.