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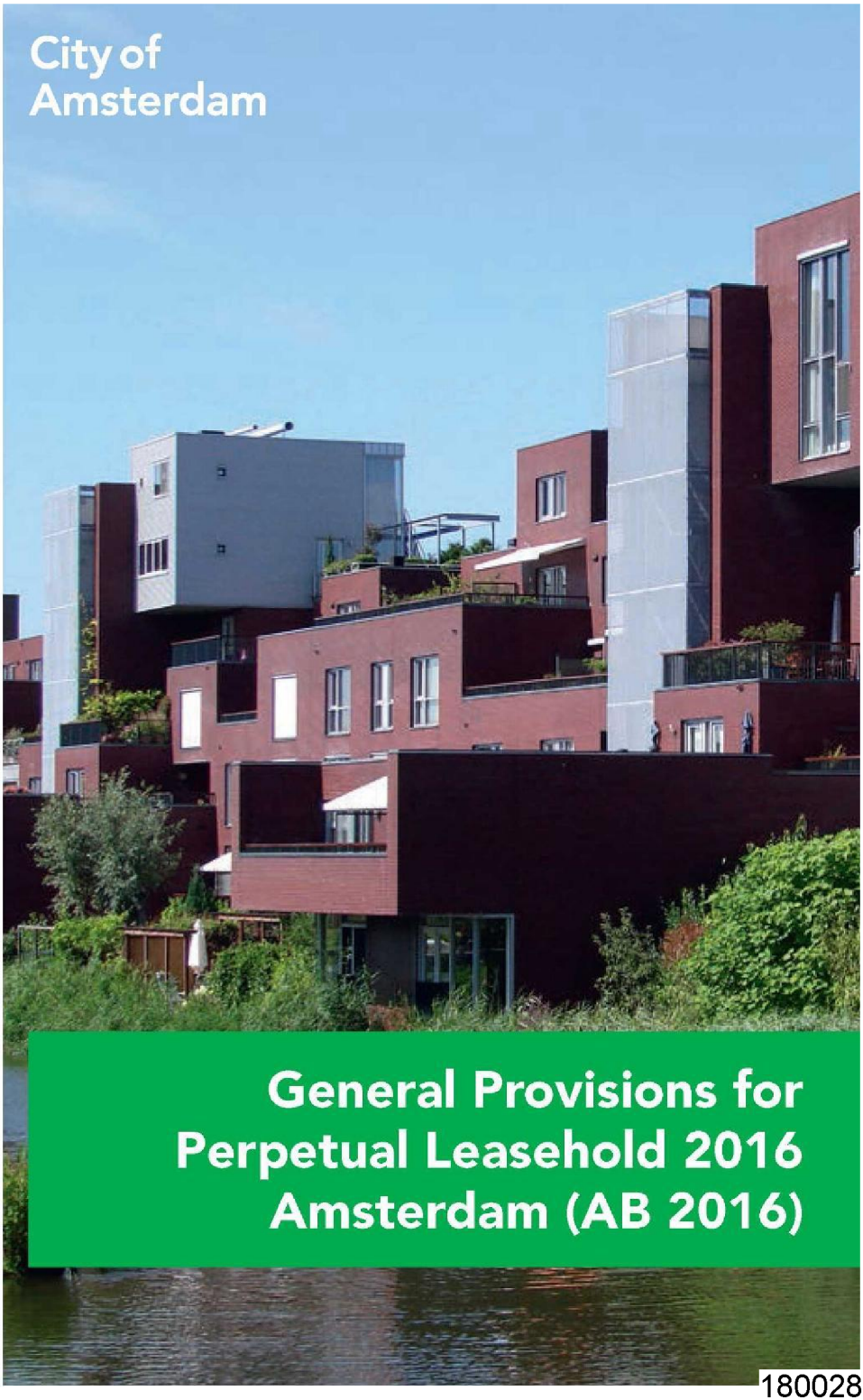
City of Amsterdam



General Provisions for Perpetual Leasehold 2016 Amsterdam (AB 2016)

180028

Preface

These are the General Conditions for Perpetual Leasehold 2016 Amsterdam (hereafter AB 2016). A milestone in Amsterdam's leasehold history, these are the first general provisions that apply to perpetual lease. After issuing land in a continuous ground lease system for more than 100 years, the AB 2016 now allows land to also be issued in perpetual lease.

The new leasehold system is more transparent and provides more certainty. Every 50 years the leasehold land value usually rises considerably, resulting in unexpected increases to the leasehold costs. Not every leaseholder anticipates this. This will not occur in the new system. For Amsterdam residents who fall under the perpetual lease system this means that the ground rent will be set one more time, with no further revisions … ever. The guarantee of a perpetual leasehold is laid down in these general conditions, which describe the rights and obligations of the leaseholder but also of the City of Amsterdam under the new system.

Eric van der Burg
Councillor Land Management

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1.

Erfpacht in Amsterdam

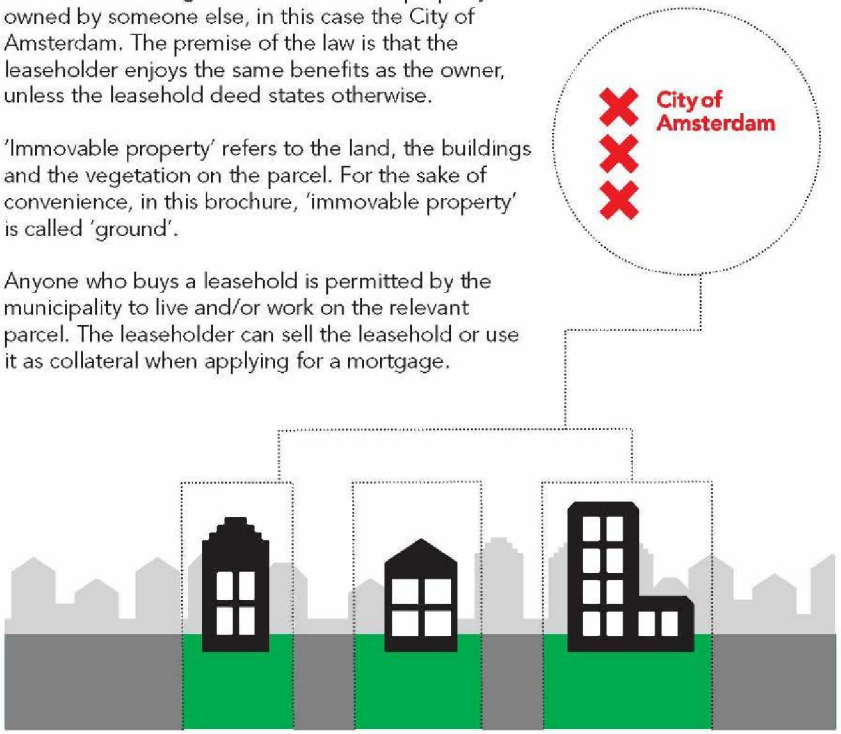
1896

The Amsterdam leasehold system was introduced in 1896.

Leasehold is the right to use immovable property owned by someone else, in this case the City of Amsterdam. The premise of the law is that the leaseholder enjoys the same benefits as the owner, unless the leasehold deed states otherwise.

'Immovable property' refers to the land, the buildings and the vegetation on the parcel. For the sake of convenience, in this brochure, 'immovable property' is called 'ground'.

Anyone who buys a leasehold is permitted by the municipality to live and/or work on the relevant parcel. The leaseholder can sell the leasehold or use it as collateral when applying for a mortgage.



80%

The City of Amsterdam owns 80% of the ground in Amsterdam. Most of it is leased.



Leasehold

110.000



There are about 110,000 leaseholders.

Leaseholders pay an annual fee for the use of the ground. That fee is called the ground rent. It can be paid as a lump sum (buyout).



As a leaseholder you buy (in the legal sense) a leasehold, not a home or commercial premises.



260.000

There are about 260,000 leasehold contracts.



A leaseholder can have multiple contracts and one contract can apply to several buildings

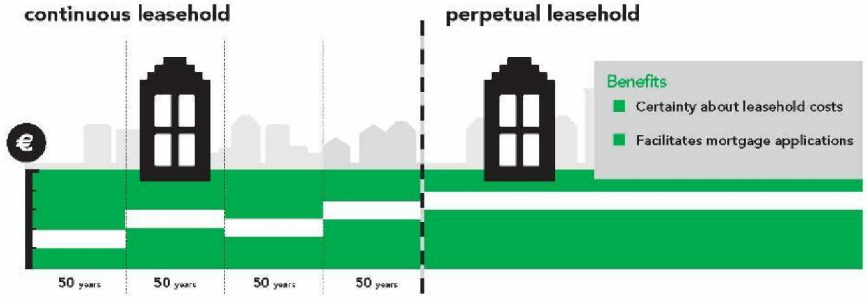
2.

What is perpetual leasehold?

In perpetual leasehold the ground rent that leaseholders have to pay for the use of the ground is calculated only once. The ground rent is never revised after this, unless the leaseholder wants to change something in his or her leasehold.

At present, most leaseholders in Amsterdam have a continuous leasehold. With a continuous leasehold, the City of Amsterdam can unilaterally impose new terms and conditions for each period (50 or 75 years). Furthermore, at the beginning of each period the ground rent is recalculated based on the leasehold land value at the time. If the value of the ground has increased, usually the ground rent does too. The amount of the new ground rent can only be calculated a few years before a new time period begins. Because this creates uncertainty for leaseholders and mortgage lenders, the City of Amsterdam has introduced a perpetual leasehold system.

With perpetual leasehold the amount of the ground rent is calculated only once; thereafter, the ground rent is still indexed annually (based on inflation). Nothing else will ever be altered in the ground rent or in the other agreements, unless the leaseholder wants to make a change (e.g., a change of use). This provides the leaseholder and the City of Amsterdam with clarity and certainty. In addition, mortgage lenders can be assured of the value of the leasehold when considering it as collateral for a loan.



Ground rent calculated by period

Ground rent is set once and for all time, unless the leaseholder wants to make a change.

Differences between the continuous and the perpetual leasehold systems

Continuous leasehold	Perpetual leasehold
■ The ground rent is adjusted every 50 years (in addition to indexing, and in the event of a change).	■ The ground rent will never change (it will only be adjusted for inflation and in the event of a change).
■ The City of Amsterdam issues the latest regulations (general provisions) every 50 years	■ The City of Amsterdam will never unilaterally amend the general conditions after a contract has been concluded.
■ The buyout is for 50 years, followed by another 50-year period, etc. In the event of a change an additional lump sum may be requested.	■ A lump sum buyout is for perpetuity. Only in the event of a change can an additional lump sum be requested.
■ Uncertainty about leasehold costs every 50 years.	■ Certainty about leasehold costs.
■ Mortgage negotiations during the last 10 years of the time period are complicated by the uncertainty relating to leasehold costs.	■ Facilitates mortgage negotiations because banks also have more certainty.
■ Payment options AB 2000: the ground rent is adjusted according to annual inflation –1% adjusted ground rent, a 10 or 25 year fixed ground rent or a lump sum buyout.	■ Payment AB 2016: an annual inflation-adjusted ground rent or lump sum buyout (buying out the ground rent is mandatory for newly issued ground intended for commercial use).

3.

What does the AB 2016 stipulate?

With perpetual ground lease, if the use remains unchanged the leaseholder will have certainty about the leasehold costs. This is regulated by the AB 2016. The agreements set out herein apply to leaseholders of leasehold rights to which these general conditions have been declared applicable. The City of Amsterdam cannot unilaterally amend these agreements. The agreements can only be altered with the consent of both parties.

Among others, the AB 2016 states:

- that perpetual ground lease applies to the leasehold,
- what a leasehold deed should stipulate,
- how the ground rent is determined and the payment options,
- how the municipality deals with changes requested by the leaseholder in the future (for example, changes to the use or a splitting up of the leasehold),
- situations when a leasehold can be terminated,
- the consequences if a leaseholder does not pay (on time).

Release of land in perpetual leasehold (Article 1)

The City of Amsterdam releases ground in perpetual lease to which it applies the general conditions, in this case the AB 2016. In addition, the City will make agreements with the leaseholder about more specific arrangements for each release of land. Among others, the special conditions include the purpose.

General conditions and special provisions

General conditions are the general agreements relating to the rights and obligations that apply when concluding a long-term lease. General conditions apply to all leasehold rights. Special provisions apply to a specific situation involving one leasehold. For example, the general conditions state that a leaseholder cannot change the purpose that is specified in the leasehold deed without the municipality's permission. The special provisions state the purpose of a specific leasehold (for example, an owner-occupied home).

Contents of the leasehold deed (Article 3)

A public notary registers the lease in a leasehold deed. This notarial deed is then submitted to the Land Registry, which formally ratifies the leasehold. The leasehold deed contains the amount of the ground rent and any special conditions relating to the leasehold, including the purpose, the permitted use, and the maximum allowable floor area. A soil study (baseline) is included with the deed. With this study the municipality determines which substances are in the soil. During the term of the leasehold the baseline is a reference when applying Articles 14 and 15 of the AB 2016.

Paying ground rent (Article 7, 8 and 27)

The leaseholder pays ground rent from the date the leasehold takes effect. This is a fee for the use of the land. In perpetual leasehold, the amount of the ground rent is calculated only once. If the use remains unchanged, the provisions and the ground rent remain unchanged, apart from the annual adjustment for inflation. The ground rent can only be recalculated if the leaseholder wants to make a change to the leasehold.

The AB 2016 offers two payment options:

- An annual ground rent that is annually adjusted for inflation.
- A lump sum which buys out the ground rent for perpetuity.

Amount of the ground rent

The municipality calculates the amount of the ground rent by multiplying the current leasehold land value by the current ground rent percentage.



Leasehold ground value

This is the value of the ground as stated in the leasehold deed. The value of the building (known as building rights) is not included in the leasehold land value. How the leasehold land value is calculated is detailed in the land price policy.

The ground rent percentage

The municipality periodically sets the ground rent percentage and announces it in the land price policy, in principle once annually. The current ground rent percentage can be found at: **www.amsterdam.nl/erfpacht**.

Ground rent indexing

Each year the municipality adjusts the ground rent in line with inflation. If there is deflation the ground rent stays the same. Article 7 of the AB 2016 describes exactly how the ground rent is annually adjusted for inflation.

Land price policy

The land price policy includes the calculation used to determine the leasehold land value, the current prices of land per square metre and the ground rent which is based thereon. The City of Amsterdam defines this policy each year in the so-called Land prices memorandum. This is published at: **www.amsterdam.nl**.

Lump sum amount

With the AB 2016 it is possible to buy out the ground rent for perpetuity. Details can be found in Article 8. A buyout of the ground rent is mandatory for a number of commercial purposes. For the purposes to which this applies please consult the City of Amsterdam's land price policy. The land price policy also includes an explanation of how the lump sum is calculated.

Changes to the leasehold (Article 4, 5, 9, 10, 11, 12 and 20)

Changes can be made to the leasehold, as well as to some obligations, deadlines and restrictions. To do this, the City of Amsterdam's permission or exemption is required. It can attach conditions, such as a ground rent increase, to such changes. The following are some examples where permission or exemption is required:

- Change of purpose
- Expansion of the garden, the home or business premises
- Division of the leasehold right into apartment rights

For more examples of cases where permission or exemption are required, see Articles 4, 5, 9, 10, 11 and 12.

Ground rent increases in the event of a change

The City of Amsterdam can attach special conditions when granting a waiver or permission. These conditions include a revision of the ground rent. How the municipality calculates the ground rent is detailed in Article 20 of the AB 2016. The ground rent is not reduced if a change in the use leads to a reduction in the value of the ground. An exception is if a particular municipal interest benefits from the change.

No ground rent increase due to expanding the floor area in homes

The ground rent does not increase if a the floor area of a home is increased. The provisions relating to this are described in Article 10, paragraph 5.

Only the City of Amsterdam can terminate the leasehold (Articles 22, 23, 24, 25 and 26)

The leaseholder cannot terminate the leasehold. This differs from the general conditions for the continuous lease system, which permits leaseholders to end the leasehold at the end of a time period if the City imposes new conditions. This option does not exist with perpetual ground lease because we will no longer be working with time periods.

The City of Amsterdam can terminate the leasehold in these extreme cases:

- The ground rent is not paid for two years (non-payment).
- The leaseholder seriously fails in fulfilling his or her obligations.
- There are reasons of general interest. This is comparable to the ability to expropriate in the public interest. In such cases, the municipality provides compensation.

Obligations to consent (Article 13)

The municipality must be able to lay cables, pipes and sewers, and install other public facilities on the leaseholder's parcel.

Fine (Article 18)

The general conditions also stipulate situations that can result in the imposition of a fine, for example, if the ground rent is not paid on time. The municipality then asks for a so-called default interest. The municipality can also impose a fine if the commitments that are agreed to are not met.

General matters (Article 27 to 37)

The AB 2016 also contain some final conditions that regulate more general issues. For example, the final conditions stipulate that there are individual commitments if a leasehold is allocated to more than one person. By 'individual commitments' we mean that each individual is fully liable for the fulfilment of the obligations.

General matters that are regulated in the final conditions:

- If there are multiple leaseholders, the identity of the contact person must be known.
- The leaseholder's address should always be known.
- If a time limit ends on a Saturday, Sunday or a public holiday, then the deadline is postponed to the next workday.

4.

General Conditions for Perpetual Ground Lease (Leasehold) in Amsterdam 2016

This document is a translation of the original Dutch. While every effort has been made to ensure that the translation is accurate and is a true copy of the original text, no rights can be derived from this English translation. In the event of any discrepancy or conflict between the translated version and the original Dutch version, the latter shall prevail.

These General Conditions were adopted by the Municipal Council of the Municipality of Amsterdam in its resolution dated 22 June 2016, number 187/664, are recorded in a notarial deed and were registered along with that deed in the public registers in Amsterdam on 11 July 2016 in Volume 68635, number 79.

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I GENERAL

Article 1 - Leasehold (ground lease) in Amsterdam

The municipality of Amsterdam releases parcels for perpetual ground lease. When doing so, the municipality observes these Ge¬ne¬ral Conditions and declares them to be applicable. In addition to or in derogation from these General Conditions, the municipality will agree on special conditions for each release with the leaseholder (ground lessee). These concern, among other things, the purpose and permitted use of the parcel

Article 2 - Definitions

1 The following terms have the following meanings in these General Conditions:

a. **lump sum:**
a one-time amount to be paid in lieu of all future ground rent payments that are not due yet;

b. **General conditions:**
the General Conditions for perpetual ground lease (leasehold) 2016 Amsterdam;

c. **Article:**
an article of the General Conditions;

d. **special conditions:**
the provisions that apply in addition to, alongside or in derogation from the General Conditions as mentioned in the leasehold deed;

e. **ground rent:**
the amount that is due to the municipality by the leaseholder, whether or not periodically, as compensation for the leasehold right;

f. **ground rent percentage:**
the percentage used to calculate the ground rent. This percentage shall be periodically established and announced by the municipality;

g. **leasehold deed:**
the notarial deed in which the rights and obligations associated with the leasehold right are set out. The term 'notarial deed' includes:
- the deed of establishment ('akte van vestiging') in which the leasehold right is created;
- all subsequent notarial deeds in which the rights and obligations associated with the leasehold right are amended, including the conversion deed in which the General Conditions are declared applicable to an existing leasehold right;

h. **leasehold land value:**
the value of the parcel determined on the basis of the purpose included in the leasehold deed, the permitted use and the maximum permitted floor area of the parcel on which the ground rent calculation is based. This does not cover the value of any buildings situated on the parcel

i. **leasehold right:**
the leasehold right in rem *('zakelijk recht van erfpacht')* as set out in the leasehold deed (as well as any undivided share therein);

j. **immovable property:**
the land with any buildings situated or to be built in/on that land, or the apartment right;

k. **public registers:**
the public registers in which the Dutch Land Registry and Public Registers Office *('Dienst voor het kadaster en de openbare registers') ('Land Register')* records rights in rem, amongst other matters;

l. **buildings:**
development/construction, works and trees, plants and shrubs;

m. **parcel:**
the immovable property in respect of which a leasehold is or will be granted;

n. **release of leasehold rent:**
the first time that a parcel is released in leasehold;

o. **floor area:**
the floor area of the building(s), calculated in accordance with standard sheet NEN 2580. For residences this shall be expressed as the usable area (UA) and for other purposes as gross floor area (GFA).

II RELEASE

Article 3 - Release of leasehold land

1 **Establishing the leasehold right**

The release of a parcel in perpetual leasehold shall take place by means of a deed of establishment. The deed shall be executed by a civil law notary established within the municipality of Amsterdam. The municipality shall choose the notary after consultations with the leaseholder.

2 **Contents of the deed of establishment**

The deed of establishment shall in any event contain the following:

a. the area of the parcel, the Land Register designation and, to the extent known, the local designation;
b. a reference to the General Conditions;
c. the special conditions that apply to the leasehold right, including:
   - the acceptance of the parcel;
   - the purpose, permitted use and maximum permitted floor area;
   - the date on which, or the period within which, the building(s) must be completed;
   - the authority of the municipality to effect eviction within the meaning of article 31 by virtue of the first authenticated copy ('grosse') of the deed of establishment;
d. the financial conditions, including:
   - the amount of the ground rent,
   - the associated ground rent percentage and
   - the leasehold land value;
e. the effective date of the lease;
f. the dates on which the ground rent must have been paid;
g. the choice of domicile at the office of a notary who is established within the municipality of Amsterdam, if the leaseholder has no actual or elected domicile in the Netherlands;
h. the lump sum, if the ground rent is bought off in accordance with article 8.

3 **Soil investigation report to be attached to the deed of establishment**

A soil investigation report will be attached to the deed of establishment, which will at least meet the requirements of a baseline investigation according to standard sheet NEN 5740. The investigation shall provide insight into the environmental soil conditions of the parcel on the date:

a. the leasehold right is established, or
b. of the economic acquisition of the leasehold right; this shall apply if the leaseholder has started to use the parcel before the establishment of the leasehold right.

During the lease period this soil investigation will serve as a starting point for the application of article 14 and article 15.

4 **Obligation to deliver**

Unless stated otherwise in the written offer preceding the release of leasehold land and/or in the special conditions, the municipality shall be obliged to:

a. deliver a leasehold right to the leaseholder that:
   - is unconditional and cannot be restricted, dissolved or nullified in any way;
   - is not encumbered with attachments, mortgages or registrations thereof, with the exception of any limited rights stated in the special conditions;
   - is free from rent, lease or any other right of use;
   - is not subject to other special liabilities and limitations which hinder or restrict the agreed development/construction, the subsequent design and the start of use of the parcel;
b. to ensure that the actual site to which the leasehold right applies:
   - is suitable for the agreed purpose and use from an environmental hygiene point of view. That is to say that the parcel is sufficiently free from substances which, according to generally accepted views at the time of delivery, and taking into account the intended purpose, would pose a serious risk to public health or the environment;
   - has been adequately drained;
   - has been raised, should that be necessary.

Article 4 - Development/construction, design and start of use of the parcel

1 Subject to the terms and conditions and within the time-limits stated in the leasehold deed, the leaseholder shall be required to do the following:

a. build on the parcel in accordance with the building plan approved by the municipality;
b. appropriately lay out and maintain the part of the parcel which has not been built on in accordance with the purpose and the permitted use as specified in the leasehold deed;
c. start using the parcel; this use must be in conformity with its purpose and permitted use as specified in the leasehold deed;
d. appropriately separate the parcel from the public road and/or the adjacent parcels and to keep it thus separated.

2 Upon a request in writing from the leaseholder, the municipality may exempt the leaseholder from one or more of the obligations specified in paragraph 1 under a to c. Any exemptions shall be subject to the provisions of article 2.

Article 5 - Transfer before leaseholder has started to use the parcel

1 The leaseholder shall not be allowed to transfer his leasehold right in whole or in part or to assign it before he has fulfilled the obligations specified in article 4 paragraph 1. Nor shall the leaseholder be allowed to establish a limited right that allows third parties to obtain the use of the parcel.

2 Upon a request in writing from the leaseholder, the municipality may grant the leaseholder permission for one or more of the acts mentioned in paragraph 1. Such permission shall be subject to the provisions of article 20.

Article 6 - Charges and taxes

All charges and taxes in relation to the parcel shall be at the expense of the leaseholder from the date the deed of establishment was executed. If the leaseholder has started to use the parcel before the deed of establishment was executed, these charges and taxes shall be at the expense of the leaseholder from the date the leaseholder started to use the parcel.

III FINANCIAL

Article 7 - Ground rent

1 The ground rent shall be due from the date the leasehold right takes effect. Payment of the ground rent shall be subject to the provisions of article 28.

2 The ground rent for the release of perpetual leasehold shall be determined by the leasehold land value calculated at the time of release, to be multiplied by the ground rent percentage.

3 After the ground rent has been calculated, the level of the ground rent can be adjusted as a result of changes in the leasehold right as meant in article 20.

4 Each year the ground rent shall be adjusted to the rate of inflation. The rate of inflation shall be established using the Consumer Price Index (CPI) with regard to the category 'All households'. This index reflects the price changes of the package of goods and services purchased by all households in the Netherlands on average. The municipality shall calculate the indexed ground rent by multiplying the applicable ground rent with an adjustment factor.

$$\text{Adjustment factor} = \frac{\text{CPI of June last year}}{\text{CPI of June of year before last year}}$$

In this formula the following terms are defined as stated below:

CPI of June last year : the consumer price index for the month of June of the first year before indexing

CPI of June of year before last year : the consumer price index for the month of June of the second year before indexing

5 If the calculations stated in the previous paragraph result in a lower ground rent (deflation), the ground rent shall not be adjusted. The leaseholder shall continue to pay the ground rent at the existing level.

6 The municipality shall establish and publicly announce the adjustment factor each year. This adjustment factor shall, in principle, apply to one calendar year.

7 In establishing the adjustment factor, the municipality shall use consumer price indices. Statistics Netherlands (the Dutch Statistical Agency) or, in its absence, another independent institute announces the consumer price indices.

8 If either of the consumer price indices or both indices is/are not published or not published in time, the municipality shall calculate the adjustment factor in a way that corresponds with the calculation method described in this article as much as possible.

9 The municipality shall notify the leaseholder of the adjusted ground rent as soon as possible. Late notification shall not relieve the leaseholder from his obligation to make additional payments.

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Article 8 - Payment of lump sum to buy off the ground rent

1 The municipality may agree with the leaseholder that the leaseholder can pay all the ground rent that has not become due yet for the perpetual leasehold by paying a lump sum.

2 The municipality shall set the lump sum at such a level as it may deem necessary to compensate the municipality for the fact that it will no longer receive the ground rent that has not become due yet.

3 The municipality shall calculate the lump sum using a generally published instruction.

4 The lump sum paid by the leaseholder shall be recorded in a notarial deed. This deed shall in any event contain the following:
   a. the area of the parcel, the Land Register designation and, to the extent known, the local designation;
   b. the amount of the ground rent;
   c. the amount of the lump sum;
   d. the discharge granted by the municipality to the leaseholder for the payment of the lump sum.

IV ADMINISTRATION

Article 9 - Use according to purpose

1 The leaseholder shall be required to use the parcel according to its purpose and permitted use as specified in the leasehold deed.

2 At any rate the following shall be prohibited for the leaseholder:
   a. to make no or hardly any use of all or part of the parcel for more than one year;
   b. to carry out or fail to carry out any activities on or work to the parcel or to run any business which would endanger, damage, hinder or harm public health and/or the environment.

3 If the leaseholder acts in breach of paragraph 1 and/or paragraph 2, the municipality shall have the authority to require the leaseholder:
   a. to immediately cease the activity which constitutes the breach, and
   b. to redress or repair the damage that was caused.

4 The leaseholder shall be liable for any and all damage that directly or indirectly ensues from any act or omission on the part of the leaseholder in contravention of paragraph 1 and/or paragraph 2.

5 Upon written request from the leaseholder, the municipality may exempt the leaseholder from one or more of the obligations and prohibitions set out in paragraph 1 and paragraph 2. Any exemptions shall be subject to the provisions of article 20.

Article 10 - Maintaining the buildings

1 The leaseholder shall be required to maintain the parcel and the buildings in such a state that they are fit for their purpose and permitted use as specified in the leasehold deed.

2 The leaseholder shall not be allowed to demolish all or part of the buildings or to change the floor area of the buildings.

3 The leaseholder shall be required to rebuild all or part of the buildings, if they have been damaged or destroyed, irrespective of the cause.

4 Upon written request from the leaseholder, the municipality may exempt the leaseholder from one or more of the obligations and prohibitions set out in paragraph 1 to paragraph 3. Any exemptions shall be subject to the provisions of article 20.

5 The exemption referred to in paragraph 4 for an enlargement of the floor area stated in the leasehold deed will, in principle, be granted if:
   a. the leasehold right is designated in the leasehold deed as exclusively intended for 'living', and
   b. the leaseholder is also resident, and
   c. the residence has been occupied for at least four years, and

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d. the number of residences does not change.

The ground rent shall not be revised with this exemption.

Article 11 - Dividing and combining the leasehold right

1 The leaseholder shall not be authorised to do the following with regard to the leasehold right:
   a. to divide the leasehold right into leasehold rights;
   b. to divide the leasehold right into apartment rights;
   c. to combine the leasehold right with another leasehold right;
   d. to create membership rights of associations or cooperatives, or
   e. to grant participation or membership rights or holdings.

   The above provisions of this paragraph shall also apply to the rights related to the (virtually) exclusive use of all or part of the land and/or the buildings which, as the layout shows, is/are designed to be used as a separate unit/as separate units.

2 Upon a written request from the leaseholder, the municipality may grant the leaseholder permission for one or more of the acts mentioned in paragraph 1. Such permission shall be subject to the provisions of article 20..

3 If the municipality grants permission for division as referred to in paragraph 1, the municipality shall also establish the division of the ground rent according to a generally published instruction.

4 If the leasehold right has been divided into apartment rights, the association of apartment owners shall be jointly and severally liable for the ground rent due by one or more apartment owners.

5 The contents of this article shall also apply to apartment owners *mutatis mutandis*.

Article 12 - Sublease

1 The leaseholder shall not be allowed to create a sublease ('ondererfpacht') in respect of all or part of the property to which the leasehold applies either.

2 Upon written request from the leaseholder, the municipality may grant the leaseholder permission for the act mentioned in paragraph 1. Such permission shall be subject to the provisions of article 20.

Article 13 - Obligations to tolerate certain structures and facilities

1 The leaseholder shall be required to tolerate and permit the following on, in, to and above the parcel:
   a. the presence of structures and facilities for public and/or communication purposes, such as public lighting, sewers and pipes/networks for the transport of gas, water, heat/cold, electricity, telephony, cable television, data and suchlike;
   b. the installation, maintenance and renovation of these facilities if so ordered by the municipality.

   This concerns structures and facilities that have been or will be installed by the municipality, on behalf of the municipality or by third parties designated by it.

2 Damage which is the immediate consequence of the performance of the work as referred to in the previous paragraph shall be repaired or a compensation shall be paid to the leaseholder, after having consulted the leaseholder. This shall also apply to damage caused by the presence of structures and facilities installed after the release of the parcel. Repairs shall be carried out by the municipality or by a third party at the instructions of the municipality. The costs of these repairs shall be borne by the municipality or this third party. If the municipality and the leaseholder cannot agree on the nature and the amount of the compensation, it shall be established by experts.

Article 14 - Risk in the case of deteriorated immovable property

If the immovable property has deteriorated, this shall be at the risk of the leaseholder if this was caused after the effective date of the lease by either:
   a. soil pollution, or
   b. another factor

that cannot be attributed to the municipality.

Article 15 - Liability and support in legal proceedings

1 After the effective date of the lease the leaseholder shall be liable for the damage suffered by third parties that is the result of or is directly related to:
   a. soil pollution, or
   b. another factor.

   This shall only apply if the soil pollution or other cause is at the risk of the leaseholder. In this respect it is irrelevant whether the leaseholder or the municipality is held liable.

2 If the leaseholder is liable by virtue of paragraph 1 and legal action is brought against the municipality, the leaseholder shall be required to enter the proceedings so as to defend the interests of the municipality.

Article 16 - Transfer of leasehold right

If the leasehold right is transferred or assigned, the leaseholder shall be required to include the following in the notarial deed:
   a. all the information stated in article 3, paragraph 2, under a to h;
   b. any changes recorded in the leasehold deed(s) after the creation of the leasehold right, and
   c. any obligations of the leaseholder as referred to in article 32.

Article 17 - Failure on the part of the leaseholder to fulfil his obligations

1 If the leaseholder does not fulfil his obligations, or fails to do so in time or properly, the municipality can use its powers set out in the General Conditions or the special conditions. If necessary, the municipality can use these powers simultaneously or consecutively. The municipality shall retain the powers that it has by virtue of the law, notwithstanding the provisions in the General Conditions or special conditions.

2 Insofar as the leaseholder is not in default by operation of law, the municipality shall give the leaseholder written notice of default, before it proceeds to use any of its powers provided in the law, the General Conditions or the special conditions. In that notice of default the municipality shall allow the leaseholder a time-limit within which he can still fulfil his obligations.

3 With a view to enforcing the provisions of the leasehold deed, the municipality shall have the right to enter the parcel (with equipment) at all times and to inspect it both internally and externally, while keeping the disruption of business operations to a minimum. The municipality shall inform the leaseholder of its intention to carry out an inspection, offering the leaseholder the opportunity for consultation.

4 If the leaseholder does not fulfil his obligation of payment, the costs of recovery shall be borne by the leaseholder.

Article 18 - Fine

1 The municipality may impose a fine on the leaseholder if the leaseholder does not fulfil any of his obligations arising from the General Conditions or special conditions, or if he fails to do so in time or properly. The fine shall not exceed ten times the amount of the ground rent applicable at that time. The leaseholder must pay the fine within one month after it has been imposed.

2 In addition to the fine as referred to in paragraph 1, the municipality can impose a fine for each day or part of a day that the leaseholder persists in his failure to fulfil his obligations, or to do so in time or properly. This daily fine shall not exceed three percent (3%) of the ground rent.

3 If the ground rent has been bought off in perpetuity, the fine shall be determined as if a periodic ground rent applied.

4 The municipality may waive or refund the payment of all or part of a fine, if it thinks that that is justified.

5 The costs of collecting the fine shall be borne by the leaseholder.

Article 19 - Remedial work by the municipality

1 If the leaseholder fails to fulfil any obligation arising from the General Conditions or the special conditions, or fails to do so in time or properly, the municipality can arrange for this obligation to be fulfilled at the expense of the leaseholder. The General Conditions explicitly authorise the municipality to do so. The municipality is also authorised to undo anything the leaseholder has done in breach of any of his obligations, at the expense of the leaseholder.

2 The municipality shall notify the leaseholder in writing of its intention to use the authority as referred to in paragraph 1, allowing the leaseholder a time-limit within which he can still fulfil his obligations. With this notice, the municipality shall enclose a specification of the likely amount of the expenses associated with the work concerned.

3 The municipality shall not proceed to carry out the remedial work as referred to in paragraph 1, if the leaseholder has asked a court of law to give judgment on the application of this article. In that case the municipality shall suspend the performance of the remedial work until the court of law has given judgment in the proceedings.

4 The leaseholder shall be required to pay the costs associated with the remedial work upon first demand from the municipality. The municipality shall include a specification of the costs with this demand notice.

5 If the leaseholder disagrees with the level of the costs as specified by the municipality, he shall inform the municipality accordingly in writing within two months from the receipt of the aforementioned notice. If no agreement can be reached about the level of this amount, experts shall calculate the amount.

V MODIFICATION OF THE LEASEHOLD

Article 20 - Conditions for granting exemption or permission

1 a. The leaseholder shall require the prior written exemption or permission from the municipality to derogate from the obligations, prohibitions and time-limits stated in the following articles:
- article 4 - development/construction, design and start of use of the parcel;
- article 5 - transfer before leaseholder has started to use the parcel;
- article 9 - use according to purpose;
- article 10 - maintaining the buildings;
- article 11 - dividing and combining the leasehold right, and
- article 12 - sublease.

b. The municipality may impose conditions and/or a time-limit with regard to the grant of this exemption or permission. Such conditions may include an adjustment of the ground rent as referred to in this article.

2 The municipality shall only grant the requested exemption or permission if:
a. granting it is compatible with the public law provisions applicable at that time and is not contrary to any municipal interest, and
b. full agreement has been reached with the leaseholder about the conditions attached to the exemption or permission. This agreement must be reflected in an unconditional acceptance in writing of a municipal offer to grant the requested exemption or permission.

3 The municipality may revise the ground rent, or the paid lump sum if the ground rent has been bought off in perpetuity, if the value of the leasehold changes as a consequence of the change for which the leaseholder is requesting exemption or permission under these General Conditions.

4 If the derogation from the obligations, prohibitions and time-limits as referred to in paragraph 1 relates to:
a. a request for exemption or permission regarding a modification of the buildings, purpose or use or regarding a division within the meaning of article 11, the adjusted ground rent shall be calculated by applying the formula:
$A + (B - C) \times D$, where:
A stands for the ground rent that applies at the time of revision. If this ground rent has been bought off in perpetuity, it will be assumed for factor A that the ground rent has not been bought off;
B stands for the leasehold land value that applies at the time of revision for the requested, amended leasehold;
C stands for the leasehold land value that applies at the time of revision for the existing leasehold;
D stands for the ground rent percentage that applies at the time of revision;

b. a request for exemption or permission other than as meant under paragraph 4a, the new ground rent will be calculated with the formula:
$X \times Y$, where:
X stands for the leasehold land value that applies at the time of revision for the permitted development/construction, purpose and use;
Y stands for the ground rent percentage that applies at the time of revision.

5 If the calculation set out in the previous paragraph results in a lower ground rent, the ground rent shall not be adjusted. The leaseholder shall continue to pay the ground rent that is due at that time, unless the municipality takes the view that the municipal interests require otherwise.

6 The revised ground rent shall be due from the date on which:
a. the modification of the development/construction, the purpose and/or the use is started, or
b. use can be made of the granted exemption or permission

Article 21 - Performance of an agreement for a modification of the leasehold right

1 The municipality may include a section about integrity in the agreement that it enters into with the leaseholder prior to a modification of the leasehold right. This section will, among other things, provide that the municipality has the authority to suspend, wholly or partially dissolve or terminate the agreement to modify the leasehold right. The full or partial dissolution or termination of the agreement for a modification of the leasehold right shall be possible only until the modification of the leasehold right in accordance with paragraphs 2 and 3 of this article.

2 Any modification of the leasehold right as referred to in article 20 paragraph 1 under a shall be recorded in a notarial deed. The deed shall be executed by a notary established within the municipality of Amsterdam.

3 The notarial deed referred to in paragraph 2 shall in any event state:
a. the area of the parcel, the Land Register designation and, to the extent known, the local designation;
b. any increase in ground rent, if any, and in the additional lump sum if the increase in the ground rent has been/is bought off in perpetuity;
c. any increase in the leasehold land value;
d. the ground rent after adjustment;

e. the effective date of the modification of the leasehold right;

f. the purpose and permitted use;
g. the maximum permitted development/construction.

VI TERMINATION

Article 22 - No termination by the leaseholder

The leaseholder shall not be allowed to terminate the leasehold.

Article 23 - Termination because of a shortcoming on the part of the leaseholder and/or non-payment of the ground rent

1 The municipality may terminate the leasehold if the leaseholder:
   a. seriously fails to fulfil any obligation arising from the General Conditions and/or the special conditions and has been given the opportunity to fulfil those obligations, or
   b. has defaulted in his payments of the ground rent for two years running.

2 Termination shall take place by giving notice of termination of the leasehold right, after the municipality has made a decision to that effect. In this case the municipality shall also have the right to claim compensation from the leaseholder for all the costs, (any) fines, interest and damage.

3 The municipality shall inform the leaseholder and those named in the public registers as having limited rights or having levied an attachment in respect of the leasehold in writing of its intention to terminate the leasehold. In this notice the municipality shall state its reasons for termination. The municipality shall also publicly announce its intention to terminate the leasehold.

4 The municipality shall not take the decision to terminate the leasehold until at least two months have expired since the notification in writing as referred to in paragraph 3.

5 The municipality shall subsequently give notice of termination by means of a process-server's writ, observing a notice period of at least six months. After the writ has been served on the leaseholder, the notice of termination shall be served within eight days on those named in the public registers as having limited rights or having levied an attachment in respect of the leasehold. The municipality shall arrange for the notice of termination to be recorded in the public registers.

6 The decision by the municipality to terminate the leasehold and to give the leaseholder notice of termination shall not have legal effects if:
   a. the cause of the termination is removed before the date on which the leasehold will end, and
   b. the municipality has received compensation for all the costs, fines, interest and damage mentioned under paragraph 2 before the above-mentioned date.

7 If the parcel has not been vacated on the date on which the leasehold ends, the municipality can start eviction without any further notice of default, with due observance of the rights of use legally obtained by third parties and any lien the leaseholder may have.

Article 24 - Effects of termination due to a shortcoming on the part of the leaseholder and/or non-payment of the ground rent

1 If the leasehold ends in the manner provided for in article 23, the leaseholder can only claim compensation for the value of the leasehold from the municipality on the basis of the provisions of this article.

2 As from the date on which the leasehold ended in the manner provided for in article 23, the municipality shall be entitled to receive all proceeds from and to make use of the parcel. Also, all ordinary and extraordinary costs shall be borne by the municipality as from that date onwards. These costs shall include the taxes and levies related to the parcel, among other items.

3 Unless otherwise agreed with the leaseholder and mortgage holder(s), the municipality shall be required to sell a leasehold right to be established on the parcel concerned within six months after the date on which the leasehold right ended. The sale shall take place in public, in the presence of a qualified notary and on the conditions for auction which are customary at that time. The sale can also be a private sale in accordance with Section 268 of Book 3 of the Dutch Civil Code, if this was agreed with the leaseholder and the mortgage holder(s).

4 The leasehold right shall be established under the General Conditions, specific conditions and the ground rent that applied for the terminated leasehold. If the ground rent for the terminated leasehold was bought off, the ground rent of the leasehold to be newly created shall be deemed to have been bought off. The rights of use legally obtained by third parties shall be respected. Any construction/buildings realised in breach of the General Conditions and the special conditions and/or changed purpose and use shall be undone, turned back or stopped and shall be excluded from the value compensation on the basis of this article.

5 If no offer is made at the public sale, experts shall establish the compensation. Payment shall take place in accordance with paragraph 6 and paragraph 7 and with due observance of paragraph 8.

6 The municipality shall pay the proceeds of the sale or the amount as established by experts – should paragraph 5 be applicable – to the leaseholder after the deduction of:
   a. all that the leaseholder still owes the municipality with regard to the leasehold by virtue of the General Conditions and the special conditions,
   b. the costs incurred by the municipality in demanding compliance with the obligations/settlement of the required payments by the leaseholder,
   c. the costs incurred by the municipality in undoing anything created in breach of the General Conditions and special conditions, and
   d. the costs that are for the account of the municipality with regard to the sale.

7 If the ground lease is encumbered with a mortgage at the time of termination, the municipality shall be authorised to pay the mortgage holder(s) the proceeds of the sale minus:
   a. all that the leaseholder still owes the municipality with regard to the leasehold by virtue of the General Conditions and the special conditions, and
   b. the costs that are for the account of the municipality as stated in paragraph 6.

   The amount to be established by the municipality on this basis shall not exceed the amount that the mortgage holder(s) would receive, if the sales price had been divided in the event of a compulsory sale of the leasehold.

8 As long as the parcel has not been made freely available to the municipality, with the exception of rights of use legally obtained by third parties and any lien the leaseholder may have, the municipality shall be authorised to suspend the payment of the compensation.

9 If third parties have legally obtained rights of use, the leaseholder shall ensure that any guarantees and/or security (including interest) provided or deposited on the basis of these rights of use will be immediately made available to the municipality.

10 As long as the parcel has not been placed at the municipality's disposal after the termination of the leasehold, all the provisions of article 15 shall remain in full force.

Article 25 - Termination of the leasehold in the public interest

1 The municipality may terminate the leasehold in the public interest.

2 Termination shall take place by giving notice of termination of the leasehold after the municipal council has made a decision to that effect.

3 The municipal executive shall submit a proposal to terminate the leasehold to the municipal council, in which they explain the reasons justifying the termination in the public interest. The municipal executive shall give the leaseholder and those named in the public registers as having limited rights or having levied an attachment in respect of the leasehold written notice of the proposal to terminate the leasehold. The municipal executive shall also publicly announce its intention to terminate the leasehold.

4 The municipal council shall not make a decision to terminate the leasehold until at least six months have expired following the date of the written notice as referred to in paragraph 3. The leaseholder, those named in the public registers as having limited rights or having levied an attachment in respect of the leasehold as well as interested third parties may lodge objections to the proposal with the municipal executive during this period.
   The municipal council shall make a decision within one year following the date of the proposal from the municipal executive to terminate the leasehold.

5 The municipality shall give notice of termination by means of a process-server's writ, while observing a notice period of at least one year. After the writ has been served on the leaseholder, the notice of termination must be served on those named in the public registers as having limited rights or having levied an attachment in respect of the leasehold within eight days. The municipality will arrange for the notice of termination to be recorded in the public registers.

6 If the parcel has not been vacated on the date on which the leasehold ends, the municipality can start eviction without any further notice of default, with due observance of the rights of use legally obtained by third parties and any lien the leaseholder may have.

Article 26 - Effects of the termination in the public interest

1 If the leasehold is terminated in the manner referred to in article 25, compensation will be paid in accordance with the Dutch Compulsory Purchases Act ('Onteigeningswet'). If the ground rent of the terminated leasehold was bought off, this will be set off in the amount of the compensation.

2 As from the date on which the leasehold ended as referred to in article 25, the municipality shall be entitled to all proceeds from and to the use of the parcel. Also, all ordinary and extraordinary costs shall be borne by the municipality from that time onwards. These costs shall also include the taxes and levies related to the parcel.

3 No compensation will be paid to the leaseholder for:
   a. the value of anything created in breach of the General Conditions and special conditions;
   b. the damage sustained by the leaseholder as a result of the termination of an activity carried out in breach of the General Conditions and special conditions.

4 Based on the principles referred to in paragraph 1 and paragraph 3, the municipality shall make an offer in writing to the leaseholder. If the leaseholder does not agree with the compensation offered by the municipality, he will inform the municipality of this in writing within two months. The municipality and the leaseholder shall then enter into consultations. If they cannot reach an agreement about the level of compensation, this will be established by experts.

5 The municipality will pay compensation to the leaseholder after deduction of all that the leaseholder still owes the municipality with regard to the leasehold by virtue of the General Conditions and the special conditions.

6 If the ground lease is encumbered with a mortgage at the time of termination, the municipality shall be authorised, in derogation from paragraph 5, to pay the mortgage holder(s) the compensation to the leaseholder minus all that the leaseholder still owes the municipality with regard to the leasehold.
The amount to be established by the municipality on this basis shall not exceed the amount that the mortgage holder(s) would receive, if the sales price had been divided in the event of a compulsory sale of the leasehold.

7 As long as the parcel has not been made freely available to the municipality, with the exception of rights of use legally obtained by third parties and any lien the leaseholder may have, the municipality shall be authorised to suspend the payment of the compensation.

8 If third parties have legally obtained rights of use, the leaseholder shall ensure that any guarantees and/or security (including interest) provided or deposited on the basis of these rights of use will be immediately made available to the municipality.

9 As long as the parcel has not been placed at the municipality's disposal after the termination of the leasehold, all the provisions of article 15 shall remain in full force.

VII FINAL PROVISIONS

Article 27 - Payments

1 All payments by the leaseholder shall be made as instructed by the municipality.

2 If the municipality has made a payment that is for the account of the leaseholder pursuant to the General Conditions or the special conditions, the leaseholder must compensate the municipality for this.

3 Reducing or offsetting payments to be made by the leaseholder shall only be allowed if they involve claims against the municipality that are directly related to the leasehold right.

4 If the leaseholder does not pay or does not pay on time, he shall owe an interest charge for late payment as from the due date. This interest charge shall be calculated as follows:
   a. in the case of natural persons not acting within the scope of their profession or a business run by them: in accordance with Section 119 of Book 6 of the Dutch Civil Code;
   b. in the case of legal persons and natural persons acting within the scope of their profession or a business run by them: in accordance with Section 119a of Book 6 of the Dutch Civil Code.

   At the end of each year the amount on which the interest charge is calculated shall be increased by the interest charge for late payment that is due in respect of the past year (compound interest).

5 Irrespective of the description given to the payment by the leaseholder, the municipality shall apply each payment of his debts in the following order:
   a. to fine(s) owed in accordance with article 18;
   b. to interest charges owed in accordance with paragraph 4 of this article;
   c. to debts other than the ones mentioned under a and b above and under d below that the leaseholder has as a result of the leasehold;
   d. to the ground rent or the lump sum.

Article 28 - Experts

1 Where these conditions refer to experts, they refer to a number of three experts.

2 If the municipality or the leaseholder intends to submit:
   a. the compensation referred to in article 13,
   b. the level of the amount referred to in article 19, or
   c. the amount of the compensation referred to in article 26,

   to experts, it/he will notify the other party accordingly in writing. If it is the municipality that has this intention, the leaseholder shall be given the opportunity to choose, during a period of six weeks after the written communication as referred to in this paragraph, to have that compensation, level or amount determined by a competent court. If the leaseholder fails to use this opportunity during this period, he agrees to having it determined by experts.

3 If the leasehold right ends in the manner referred to in article 23 and if no offer is made in the case of a public sale as referred to in article 24, the experts shall determine the compensation in accordance with article 24. Payment shall be made in accordance with paragraph 6 and paragraph 7 and with due observance of paragraph 8 of article 24. Paragraph 1, paragraph 4 and paragraph 6 to paragraph 8 shall apply to this determination of the compensation.

4 The party that wishes to submit the determination of the compensation, level or amount in question to experts must request the court in Amsterdam to appoint the three experts as soon as possible.

5 The experts shall give both parties the opportunity to be heard. Parties shall also be given the opportunity to be heard about the draft advice. If so desired, they can be represented by an attorney.

6 The experts shall subsequently formulate their advice with due regard for the General Conditions and special conditions that apply to the leasehold.

7 The experts shall inform the parties in writing of their advice, providing their reasons, within six months after they have been appointed. The advice of the experts shall be binding.

8 a. The municipality and the leaseholder shall each pay half of the costs of the experts' advice.
   b. Notwithstanding paragraph 8a, the municipality shall pay the full costs of the experts, if the leasehold is terminated for reasons of public interest.
   c. Notwithstanding paragraph 8a, the leaseholder shall pay the full costs of the experts, if the leasehold is terminated because of a shortcoming on the part of the leaseholder and/or non-payment of the ground rent.

Article 29 - Joint and several liability

1 If the leasehold is in the name of two or more persons, they shall be jointly and severally liable for the performance of the obligations ensuing from the leasehold deed and the General Conditions. With regard to the ground rent, this joint and several liability shall not apply if the leasehold has been divided into apartment rights. The ground rent will then also be divided according to this division.

2 The obligations for the leaseholder ensuing from the leasehold shall always be indivisible with regard to the municipality.

3 After the transfer of the leasehold the successor and his legal predecessor shall both be liable for any unpaid ground rent that is due in respect of the previous five years. This shall also apply if a part of the leasehold, a share in the leasehold or a share in a part of the leasehold transfers to another person.

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Article 30 - Representation

1 If the leasehold is in the name of two or more persons, they shall appoint one of them as their representative. This representative shall be mentioned in the deed of establishment. Legal successors will record the representative in a statement. This statement shall be drawn up in accordance with the form attached to these conditions as an enclosure.

2 If the representative changes, the municipality shall be immediately informed of this in writing.

3 The municipality may legally address all notifications, demands and notices of termination in respect of the leasehold to the representative who last made himself known to the municipality as the representative concerned. The municipality can also make all claims with regard to the leasehold against the representative.

Article 31 - Vacation / eviction

The leaseholder shall have vacated the parcel and the buildings on the day the leasehold ends. If he has failed to do so, the municipality shall be authorized to start eviction on the basis of the first authenticated copy of the deed of establishment.

Article 32 - Effect vis-à-vis third parties, qualitative obligations and perpetual clause

1 It is the parties' explicit aim that their rights and obligations pursuant to the General Conditions and the special conditions shall have effect vis-à-vis third parties. The provisions in paragraph 2 and paragraph 3 of this article were drawn up to reinforce this effect vis-à-vis third parties.

2 All the obligations of a party mentioned in the agreed conditions to tolerate or refrain from doing something that do not have effect in rem (vis-à-vis third parties) are established as qualitative obligations ('kwalitatieve verplichtingen'), meaning that these obligations will transfer to the successive leaseholders. They shall also apply to those who have obtained a right of use from the right holder.

3 Obligations of the leaseholder that do not have effect in rem by virtue of the agreed conditions and for which no qualitative obligations as referred to in paragraph 2 of this article were established either shall be imposed by the leaseholder for the benefit of the municipality by means of a perpetual clause ('kettingbeding'); the leaseholder shall ensure that such obligations are accepted by his legal successor or the person with a limited right. The leaseholder shall apply this perpetual clause in the event of:

a. a transfer of the leasehold or a part thereof, or
b. encumbrance of the leasehold or a part thereof with a limited right of enjoyment.

Article 33 - Communications

Unless explicitly agreed otherwise, all communications, notifications, requests and approvals related to the leasehold shall be made in writing. All claims shall also be made in writing.

Article 34 - Choice of domicile

1 The leaseholder or the representative as referred to in article 30 shall ensure that his address is known to the municipality.

2 If the leaseholder or the representative as referred to in article 30 has no actual or elected domicile in the Netherlands, he shall elect domicile at the office of a notary established within the municipality of Amsterdam.

3 The leaseholder or the representative as referred to in article 31 shall inform the municipality in writing of his choice of domicile or any change therein.

4 The municipality may legally address all notifications, demands and notices of termination in respect of the leasehold to the place of residence last provided to it.

Article 35 - Costs relating to notarial deed

If the contents of the General Conditions or special conditions require that a notarial deed should be drawn up, the municipality shall decide whether and to what extent the associated costs shall be paid by the municipality. These costs concern the notary's fees and the cost of registering the deed in the public registers. The taxes and other charges that are due shall be for the account of the leaseholder.

Article 36 - General Extension of Time Limits Act

The Dutch General Extension of Time Limits Act *('Algemene Termijnenwet')* shall apply to any periods or time-limits mentioned in the General Conditions.

Article 37 - Official title

The General Conditions can be quoted as:
General Conditions for Perpetual Ground Lease (Leasehold) in Amsterdam 2016
('Algemene Bepalingen voor Eeuwigdurende erfpacht 2016 Amsterdam').

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City of Amsterdam

Enclosure: Representative Appointment Form[1]

Theundersigned .....
notary in ....., hereby declares

that the leasehold locally known as:
address .....
postal code and town .....,

recorded in the land register of:
the municipality of: ....., section: ....., no.: .....

was transferred to:
names .....
address .....
postal code and town .....,

by deed entered in the public registers in section: ....., no.: .....

Representative/correspondence/billing address
name .....
address .....
postal code and town .....
bank account number .....

Place: .....
Date: .....

Signature ..... stamp:

[1] Pertains to article 30 of the General Conditions for perpetual ground lease 2016 Amsterdam.

5.

More information

See **www.amsterdam.nl/erfpacht**

Send an email to (10)(2e) @amsterdam.nl

Call 14020 (City of Amsterdam 5-digit phone number)

Postal address
Grond en Ontwikkeling
Erfpacht en Uitgifte
Postbox 1104
1000 BC Amsterdam

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