

### Ground Lease Review Checklist

This Chapter offers a minimal checklist (in menu format) for review of a ground lease just for “financeability” issues. The list offered here is deceptively simple, and should not be used in a vacuum, *i.e.*, without understanding the issues this book covers. This list is somewhat shorter than typical.

### MEMORANDUM

#### VIA EMAIL

**To:** \_\_\_\_\_

**From:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**File no:** \_\_\_\_\_

**Copies to:** \_\_\_\_\_

**Subject:** Ground Lease — Assessment of “Financeability”

The following table compares the ground lease for the \_\_\_\_\_ site against industry standard expectations for “financeable” ground leases. For any deficiency we have noted, we have included comments on its importance, alternatives, marketplace expectations, and possible reactions of “the next lender.” For purposes of this memo, we reviewed only the ground lease dated \_\_\_\_\_ and the following amendments: \_\_\_\_\_.

#### **MORTGAGEE LEASE ALTERNATIVES**

#### **WANTS PROVIDES SOLUTIONS, OTHER COMMENTS**

No use restrictions.

Totally free assignability.

Total freedom to sublease.

Landlord must nondisturb reasonable subtenants.

Defined (favorable) claim to condemnation proceeds.

Use of casualty proceeds to restore (or repay loan).

Fee mortgages must be subordinate to lease.

Express right to grant leasehold mortgages without landlord consent.

Amendments, waivers, etc., not effective without lender consent.

Simultaneous copies of all notices.

Cure period: 30 days for monetary; 90 days plus due diligence for nonmonetary. If lender forecloses, need not cure incurable default.

New lease if this one terminates for any reason.

Right to exercise options and similar valuable rights.

Right to control any tenant decisions in landlord bankruptcy.

Notice of arbitration and other proceedings; right to participate.

If fee and leasehold are commonly held, they do not merge.

Total exculpation of tenant.

Treatment of multiple leasehold mortgagees.

Landlord must deliver estoppel certificates.

Landlord will amend lease if a future mortgagee asks.

Mortgagee may act through an assignee, nominee, servicer.

In addition to the alternatives and other solutions for possible problems suggested above, a lender might rely on the following measures:

- Personal guaranties on preservation of lease and other lease-related matters.
- Broad estoppel certificate from landlord (effectively a lease amendment) to try to solve some problems.