

## MASTER LEASE REVIEW CHECKLIST

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| **MASTER LESSOR** | Must satisfy Guide requirements for Borrower structure. |
| **MASTER LESSEE** | Must satisfy Guide requirements for Borrower structure (provided that the property ownership requirements will be satisfied pursuant to Master Lessee’s interest in the Master Lease). |
| **[HISTORIC TAX CREDIT INVESTOR]** | (If applicable) |
| **LEASE DATE** |  |
| **REVIEW DATE** |  |

The subject matters discussed below in this Master Lease Review Checklist are not intended to be exhaustive. Lender and its counsel must review, negotiate, and approve the Master Lease in accordance with applicable Fannie Mae and other prudent underwriting standards, and explain below any significant risks and proposed mitigants to such risks. Lender is required to fully underwrite the Master Lease to confirm that the terms of the Master Lease, and the rights of the parties to the Master Lease, do not:

* conflict with the Loan Documents;
* impair Master Lessor’s or any guarantor’s ability to comply with the Loan Documents; or
* impair Lender’s exercise of remedies under the Loan Documents.

The requirements set forth in this Master Lease Checklist also apply to Sub-Master Leases. References to “Master Lessor” are intended to mean “Borrower” unless the context indicates otherwise.

The reviewer comments should reference the appropriate section numbers in the applicable Master Lease, Sub-Master Lease, sublease, operating lease, or other lease document, including any exhibits or amendments. This Master Lease Review Checklist must be delivered to Fannie Mae with the underwriting narrative, together with executed copies of all such lease documents. Any deviation from the requirements set forth herein must be approved by Fannie Mae.

**GENERAL MASTER LEASE REQUIREMENTS**

| **ITEM** | **SUBJECT MATTER** | **REQUIREMENTS** | **REVIEWER COMMENTS (REFERENCE APPLICABLE SECTION NUMBERS)** |
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|  | **Master Lessee Affiliation** | Describe the relationship between Master Lessee and Master Lessor, and any Sub-Master Lessee, Guarantor, Key Principal, operator, manager, or sublessee, identifying any that is an affiliate or that controls, is controlled by, or is under common control with Master Lessee. Provide organizational charts, as applicable. |  |
|  | **Mortgage Loan Authorized** | The Master Lease must contain an acknowledgement by Master Lessee that Master Lessor may enter into the Mortgage Loan, encumber the fee estate and the other Mortgaged Property as described in the Loan Documents, and assign its interest in the Master Lease Documents as described in the Loan Documents. |  |
|  | **No Abatement or Setoff; Rental Amount** | There is no free rent, rent abatement, or rent rebate under the Master Lease and no fees are owed by Master Lessor to Master Lessee.  The rent payments by Master Lessee under the Master Lease must cover all payment (including funding of escrows and reserves) and indemnification obligations of Master Lessor under the Loan Documents, as well as any late charges caused by Master Lessee’s late payments. Unless otherwise covered by an “overpayment” of rent, the Master Lease shall specify a default rate that is at least equal to that in the Loan Agreement. The Master Lease rent payments may be reduced to match a reduction in payment obligations under the Loan Documents.  The Master Lease must be a so-called triple-net, absolute net, or bondable lease with no right of abatement or set-off, notwithstanding any *force majeure* provision. |  |
|  | **Term of Master Lease; Extension/Renewal Options** | Identify the Master Lease commencement and expiration dates, as well as the terms of and requirements for exercising any extension or renewal options.  The Master Lease term may not expire prior to 90 days after the Maturity Date of the Mortgage Loan. The Master Lease must include appropriate Lender notices for extension/renewal terms. |  |
|  | **Indemnification** | Master Lessee must be responsible for indemnifying or reimbursing Master Lessor for its indemnification, reimbursement, and other similar obligations to Lender. Appropriate insurance shall be maintained by Master Lessee for such purposes. |  |
|  | **Representations; Warranties; Covenants** | Master Lessee must make appropriate corresponding representations, warranties, and covenants to support those made by Master Lessor in the Loan Agreement. |  |
|  | **Full Force and Effect** | The Master Lease must be in full force and effect, with all conditions precedent having been satisfied or waived in writing. |  |
|  | **Estoppel Certificates** | The Master Lease must require Master Lessee to furnish Master Lessor with estoppel certificates as described in the Loan Agreement. |  |
|  | **Compliance with Laws** | The Master Lease must require that Master Lessee and the Mortgaged Property comply with all applicable laws. |  |
|  | **Alterations** | Master Lessee must be prohibited from making alterations to the Mortgaged Property in violation of the Loan Documents. |  |
|  | **Entry; Inspection; Audit** | Master Lessor and its agents shall have the right to enter and inspect the Mortgaged Property, and to audit Master Lessee’s books and records upon the terms set forth in the Loan Agreement. |  |
|  | **Mortgaged Property Ownership, Condition, Maintenance and Repair** | Except as otherwise disclosed in the Loan Agreement and approved by Fannie Mae, all real and personal property required for the ownership, operation, and management of the Mortgaged Property must be (i) owned by Master Lessor, (ii) leased by Master Lessee pursuant to the Master Lease, (iii) included among the Mortgaged Property, and (iv) pledged to Lender as the first priority Lien holder.  The Mortgaged Property must be conveyed to Master Lessee in “as is, where is, with all faults” condition.  Repair and maintenance requirements in the Master Lease must satisfy the Loan Document requirements for repair and maintenance of the Mortgaged Property. If the Master Lease provides that Master Lessor is responsible for all repairs to and maintenance of the Mortgaged Property, Master Lessee must assume such responsibilities in writing.  Master Lessee must make corresponding representations, warranties, and covenants with respect to the condition and maintenance of the Mortgaged Property as Master Lessor is required to make to Lender in the Loan Documents. |  |
|  | **Use Restrictions; Transfer of Mortgaged Property** | The Master Lease must restrict use of the Mortgaged Property in the same manner as the Loan Agreement.  The Master Lease must prohibit Master Lessee from removing, selling, or transferring any part of the Mortgaged Property (including personal property) other than obsolete or worn out personalty that are contemporaneously replaced by unencumbered items of equal or better function and quality or as otherwise expressly permitted by the Loan Agreement. |  |
|  | **Property Management** | Master Lessee’s engagement of a property manager and the amendment and termination of any property management agreement must comply with the criteria set forth in the Loan Agreement. |  |
|  | **Assignability of Leases, Rents, Security Deposits** | All leases, rents, and security deposits from the Mortgaged Property must be assigned to Lender. |  |
|  | **Amendment/ Modification** | The Master Lease must provide that neither the Master Lease nor any other Master Lease Document (i.e., any supplemental agreements entered into in connection with the Master Lease) may be amended, modified, cancelled, surrendered, or terminated without the consent of Lender. |  |
|  | **Bankruptcy** | The Master Lease must provide that a Master Lessee bankruptcy shall be an automatic default under the Master Lease. |  |
|  | **Waiver of *de facto* Guarantor’s Rights** | Master Lessee must waive its rights to claim landlord/tenant or *de facto* guarantor protections. |  |
|  | **No Brokerage/ Commissions** | Master Lessee must warrant that no brokerage or commission is due. |  |
|  | **Non-Merger Clause; Acceptance of Surrender** | The Master Lease must contain a non-merger clause (i.e., a clause providing that the Master Lease shall not terminate because of the conveyance of Master Lessee's leasehold interest to Master Lessor, or the conveyance of Master Lessor's fee interest to Master Lessee). No surrender of the Master Lease shall become effective without Lender’s written consent. |  |
|  | **No Personal Liability** | None of Lender, Master Lessor, nor their respective affiliates, successors, or assigns, shall have personal liability under the Master Lease. |  |
|  | **Surrender** | Master Lessee must surrender the Mortgaged Property to Master Lessor upon the expiration/termination of the term in the condition required by the Loan Documents.  Upon request, Master Lessee must surrender the Mortgaged Property to Lender, its agent, or a receiver upon such party’s taking possession.  The Master Lease must include a holdover charge (and payment of associated costs and fees) appropriate for the jurisdiction. |  |
|  | **Termination by Master Lessee** | The Master Lease must provide that an Affiliated Master Lessee shall have no right to terminate the Master Lease.  The Master Lease may provide a non-Affiliated Master Lessee the right to terminate the Master Lease upon a default provided (a) Lender shall be entitled to the reasonable opportunity to cure Master Lessor’s default, and (b) if Lender cannot or does not cure such default, following a foreclosure under the Security Instrument (or a deed in lieu of foreclosure or any other comparable exercise of remedies), Lender or its successor or assignee shall have the right to enter into a replacement master lease with Master Lessee on terms equivalent to those contained in the Master Lease. Identify and evaluate any non-Affiliated Master Lessee termination right. |  |
|  | **Lender’s Termination Right; Foreclosure; Lender’s Liability** | The Master Lease must provide that upon an Event of Default under the Loan Documents, irrespective of the existence of a default under the Master Lease, Lender shall have the right to exercise all remedies set forth in the Loan Documents including:   * termination of the Master Lease and the other Master Lease Documents; * foreclosure (or exercise of similar rights) under the Security Instrument, subject to the Master Lease and the other Master Lease Documents; or * foreclosure (or exercise of similar rights) under the Security Instrument and termination of the Master Lease, any other Master Lease Documents, and any supplemental agreements entered into in connection with the Master Lease including Master Lessee’s agreements with third parties.   All of Master Lessee’s agreements with third parties must be terminable upon no more than 30 days notice and without penalty, irrespective of the existence of a default under the Master Lease.  Each of Lender and its successors and assigns must have its liability limited to (a) its interest in the Mortgaged Property, and (b) gross negligence, willful misconduct, or wrongful acts or omissions occurring during the time it holds record title to the Mortgaged Property. |  |
|  | **Subordination to Lender/Fannie Mae Mortgage** | The leasehold estate must be subject and subordinate to the Security Instrument and all liens created thereunder, either through express subordination language in the Master Lease or through a separate subordination agreement executed by Master Lessee.  If contained in the Master Lease, the subordination language must specify that Lender’s exercise of remedies under the Loan Documents shall not be affected or impaired by the terms of the Master Lease, or by whether a Master Lease default has occurred.  Additionally, Master Lessee’s and any Guarantor’s claims against Master Lessor shall be subordinated to Lender’s claims. All subordination agreements must be recorded in the land records unless the laws of the Mortgaged Property jurisdiction provide effectiveness otherwise. |  |
|  | **Title Policy** | An ALTA Loan Policy must be obtained that (a) insures that the Master Lease is subordinate to the Mortgage Loan, and (b) otherwise satisfies standard Fannie Mae title policy requirements as set forth in the Guide. |  |
|  | **Financial Reporting** | The Master Lease must require Master Lessee to deliver financial reports and reports regarding the Mortgaged Property to Master Lessor that comply with the requirements in the Loan Documents. |  |
|  | **Insurance and Escrows** | The insurance requirements in the Master Lease must satisfy the Loan Documents and Guide requirements for insurance. If the Master Lease provides that Master Lessor shall obtain and maintain property damage insurance for the improvements, or pay or maintain insurance escrows, Master Lessee must assume these responsibilities in writing and pay any related amounts as part of its rent payments. *Force majeure* shall not excuse Master Lessee’s compliance with the insurance requirements. |  |
|  | **Condemnation/ Casualty Payments; Restoration** | The Master Lease must require Master Lessee to transfer and assign to Master Lessor any rights, title, and interest in any condemnation award or insurance proceeds to which Master Lessee is entitled. The casualty and condemnation provisions of the Master Lease must satisfy the Loan Document requirements for how casualty and condemnation proceeds are administered. Master Lessee must not be entitled to make any claim for condemnation/casualty proceeds on account of its leasehold interest in the Mortgaged Property.  Restoration obligations, procedures, and schedules must meet the applicable requirements set forth in the Loan Documents. |  |
|  | **Total Loss or Condemnation** | The Master Lease may provide that, upon a total loss or condemnation of the Mortgaged Property, the Master Lease shall terminate upon payment in full of the Mortgage Loan, including any Prepayment Premium owing as a result of such event and any other amounts required under the Loan Documents.  In the event of a total loss due to casualty, the Master Lease may provide Master Lessee an option to purchase the Mortgaged Property, provided that exercise of the purchase option results in payment in full of the Mortgage Loan, including all prepayment premiums and any other amounts required under the Loan Documents.  In the event of a condemnation of the entire Mortgaged Property, the Master Lease may provide Master Lessor an option to require Master Lessee to purchase the Mortgaged Property, provided that exercise of the option results in payment in full of the Mortgage Loan, including all prepayment premiums and any other amounts required under the Loan Documents. |  |
|  | **Purchase Options** | The Master Lease Documents may not contain any option to purchase, right of first refusal to purchase, or right of first offer to purchase the Mortgaged Property or any portion thereof unless such option results in payment in full of the Mortgage Loan, including all prepayment premiums and any other amounts required under the Loan Documents. |  |
|  | **Assignability/Transfers** | The Master Lease must prohibit any assignment, sublease, or transfer of Master Lessee’s interest in the Master Lease, without the prior written consent of Master Lessor and Lender. If Master Lessor and Lender consent to such an assignment or transfer of the Master Lease, then Master Lessee must also assign or transfer its rights in all other Master Lease Documents and any supplemental agreements entered into in connection with the Master Lease.  Master Lessor may consent to a sublease of the Master Lease, provided that all of the obligations of Master Lessee under the Master Lease Documents are performed by the Sub-Master Lessee and all of the rights and interests of Master Lessee under such Sub-Master Lease (including the assignment of all leases and rents from the Mortgaged Property) are assigned to Master Lessor or to Lender.  However, in any case, Master Lessee must not be permitted to make or allow any Transfers prohibited by the Loan Agreement.  Any assignment or transfer of the Master Lease by Master Lessor must include an assignment or transfer of Master Lessor’s rights in all other Master Lease Documents and any supplemental agreements entered into in connection with the Master Lease.  The Master Lease must permit Lender (and its assignee or nominee) to transfer the lessor’s interest in the Master Lease without notice to or consent of Master Lessee following a foreclosure under the Security Instrument (or a deed in lieu of foreclosure or any other comparable exercise of remedies). |  |
|  | **Future Mortgages or Encumbrances** | The Master Lease must prohibit Master Lessee from mortgaging or encumbering its lessee interest in the Master Lease, its leasehold interest in the Mortgaged Property, or its fee or leasehold interest in any personalty that comprises the Mortgaged Property or is otherwise used for the operation or maintenance of the Mortgaged Property. |  |
|  | **No Liens** | Master Lessee must keep the Mortgaged Property free from Liens in accordance with the Loan Agreement. |  |
|  | **Recording** | Neither the Master Lease nor any memorandum thereof shall be recorded among the land records unless (a) required by law, (b) required to effectuate a permitted option, or (c) required to effectuate any collateral assignments in favor of Lender. If recorded, Master Lessee shall be required to deliver a termination in recordable format upon expiration or earlier termination of the Master Lease. |  |
|  | **Taxes** | If the Master Lease provides that taxes and assessments relating to all or any portion of the Mortgaged Property or the Master Lease, or any escrows therefor, shall be paid by Master Lessor, Master Lessee must assume such responsibilities in writing and pay such amounts as part of its rent payment. |  |
|  | **Tax Appeals/Contests** | Master Lessee must not engage in a tax appeal/contest without Master Lessor’s consent. Master Lessee must have no greater right to participate in or settle a tax appeal/contest than Master Lessor. |  |
|  | **Replacement/Repair Escrows** | The replacement/repair escrow requirements of the Master Lease must satisfy the Loan Document requirements for Replacement/ Repair Escrows. If the Master Lease provides that Master Lessor shall make replacement/repair escrow deposits, Master Lessee must assume such responsibilities in writing and pay any related amounts as part of its rent payment. |  |
|  | **Cure Periods** | There must not be a cure period for any Master Lessee obligation under the Master Lease for which there is not a corresponding cure period otherwise granted under the Loan Documents (e.g., there can be no cure period relating to rent payments or maintenance of insurance). Master Lessee cure periods in the Master Lease must run concurrently with any corresponding cure period in the Loan Agreement. |  |
|  | **Defaults; Remedies** | Summarize and evaluate each non-standard Master Lessor and Master Lessee event of default, associated cure right, and (for non-Affiliated Master Lessees) any resulting termination right.  Master Lessee must not take any act or suffer any omission that would cause a default under the Loan Documents.  All applicable remedies available to Lender under the Loan Documents must be available to Master Lessor under the Lease.  A non-Affiliated Master Lessee’s remedies must be limited to specific performance. In no event shall Master Lessee be entitled to special, consequential, or punitive damages. Master Lessor’s liability must be limited to its interest in the Mortgaged Property.  Master Lessor and Master Lessee must copy Lender on any notice of default delivered under the Master Lease or any other Master Lease Document. |  |
|  | **Limited Cross-Default** | A default under the Loan Documents must not be an automatic default under the Master Lease. However, a default under the Master Lease must be an automatic default under the Loan Documents. |  |
|  | **Remedies Cumulative; No Duty to Mitigate** | Master Lessor’s election of one remedy under the Master Lease must not impair the exercise of alternate or additional remedies or constitute a waiver thereof.  Master Lessor must have no duty to mitigate damages unless required by law. |  |
|  | **Master Lessor’s Cure Rights; Lender’s Performance** | Master Lessor must have the right to cure Master Lessee defaults under the Master Lease at Master Lessee’s expense. Master Lessee shall be obligated to accept Lender’s performance. |  |
|  | **Power of Attorney** | The Master Lease must include a power of attorney from Master Lessee to Master Lessor (which shall be expressly permitted to be assigned to Lender) to permit Master Lessor (and Lender on its behalf) to exercise the attorney in fact rights set forth in the Loan Documents. |  |
|  | **Governing Law** | The Master Lease must be governed by the laws of the Mortgaged Property jurisdiction. |  |
|  | **Successors and Assigns** | The Master Lease must be binding upon Master Lessor’s and Master Lessee’s respective permitted successors and assigns. |  |
|  | **Counterparts** | The Master Lease may be executed in counterparts. |  |
|  | **Integration; Severability** | The Master Lease must include integration and severability clauses. |  |
|  | **No Deemed Consent** | Master Lessor’s consent must never be deemed. |  |
|  | **Notices** | Notices under the Master Lease must be given in the same manner as set forth in the Loan Agreement. Master Lessor must be authorized to deliver any notice, request, report, or other communication received from Master Lessee to Lender. |  |
|  | **Disclosure of Information** | Master Lessor and Lender must be permitted to disclose all information received from Master Lessee concerning Master Lessee, the Master Lease Documents, or the Mortgaged Property. |  |
|  | **Time of the Essence** | The Master Lease must state that time is of the essence. |  |
|  | **Jury Trial Waiver; Consent to Jurisdiction; No Arbitration** | The Master Lease must contain a jury trial waiver and consent to jurisdiction in the State and Federal courts of the Mortgaged Property jurisdiction. The Master Lease must not contain an arbitration requirement. |  |

**ADDITIONAL REQUIREMENTS AND EXCEPTIONS FOR**

**SHARIA AND HISTORIC TAX CREDIT MASTER LEASE TRANSACTIONS**

| **ITEM** | **SUBJECT MATTER** | **REQUIREMENTS** | **REVIEWER COMMENTS (REFERENCE APPLICABLE SECTION NUMBERS)** |
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|  | **Master Lessor’s Put Option** | The Master Lease may provide Master Lessor an option to require Master Lessee to purchase the Mortgaged Property or the equity in Master Lessor (a “put option”) after a default by Master Lessee, a condemnation of the entire Mortgaged Property, or a termination of the Master Lease, provided that the exercise of the put option results in payment in full of the Mortgage Loan, including all prepayment premiums and any other amounts required under the Loan Documents. |  |
|  | **Master Lessee’s Call Option** | Identify and analyze any option given to Master Lessee to purchase the Mortgaged Property or the equity in Master Lessor (a “call option”). The exercise of a call option must result in payment in full of the Mortgage Loan, including all prepayment premiums and any other amounts required under the Loan Documents. |  |
|  | **Sharia Compliance; Diplomatic Immunity** | Master Lessee shall warrant that the Master Lease has been reviewed by the Sharia Supervisory Board of Master Lessee for compliance with the principles of Islamic Ijara contracts.  Master Lessee shall warrant that it is not eligible for diplomatic immunity (or that it has waived such immunity and provided an opinion of counsel on the enforceability of such waiver). |  |