**[DRAFTING NOTE: REVIEW THE GROUND LEASE IN ACCORDANCE WITH THE GUIDE AND THIS CHECKLIST AND OBTAIN AN ESTOPPEL SUBSTANTIALLY IN THE FORM OF FORM 6495. AN ESTOPPEL CANNOT AMEND THE GROUND LEASE, SO IF GROUND LEASE MODIFICATIONS ARE NECESSARY FOR COMPLIANCE LENDER MUST (1) REQUIRE A LEASE AMENDMENT, (2) REQUIRE SUCH PROVISIONS BE INCLUDED IN THE JOINDER (ATTACHED TO FORM 6308) (IF GROUND LESSOR AND GROUND LESSEE (INCLUDING DIRECT OR INDIRECT OWNERS) ARE AFFILIATES), OR (3) REQUIRE SUCH PROVISIONS BE INCLUDED IN A GROUND LEASE RECOGNITION AND ATTORNMENT AGREEMENT (FORM 6426). THE CHECKLIST IS NOT A LOAN DOCUMENT AND SHOULD NOT BE ATTACHED TO THE DELIVERED LOAN DOCUMENTS.]**

**[DRAFTING NOTE: IF GROUND LESSOR AND GROUND LESSEE (INCLUDING DIRECT OR INDIRECT OWNERS) ARE AFFILIATES, GROUND LESSOR MUST JOIN INTO THE SECURITY INSTRUMENT AND THE SECURITY INSTRUMENT MUST BE A LIEN ON THE FEE AND THE LEASEHOLD ESTATES.]**

**GROUND LEASE REVIEW CHECKLIST**

|  |  |
| --- | --- |
| **LENDER** |  |
| **PROJECT NAME/LOCATION** |  |
| **LAW FIRM** |  |
| **LAW FIRM ATTORNEY CONTACT INFORMATION** |  |

|  |  |
| --- | --- |
| **GROUND LESSOR** |  |
| **GROUND LESSEE** |  |
| **LEASE DATE** |  |
| **REVIEW DATE** |  |
| **IF GROUND LESSOR AND GROUND LESSEE ARE AFFILIATED (INCLUDING ANY DIRECT OR INDIRECT OWNERS), DESCRIBE RELATIONSHIP** |  |

| **ITEM** | **SUBJECT MATTER** | **REQUIREMENTS** | **REVIEWER ANALYSIS (include Ground Lease sections as appropriate)** |
| --- | --- | --- | --- |
|  | **Recorded** | Ground Lease (or a memorandum of Ground Lease) must be recorded among the official land records of the applicable jurisdiction. |  |
|  | **Full Force and Effect** | The Ground Lease must be in full force and effect. |  |
|  | **Term of Lease** | The term of the Ground Lease must extend at least 30 years beyond the term of the Mortgage Loan. |  |
|  | **Non-Merger Clause** | The Ground Lease must contain a non-merger clause providing that the Ground Lessee’s leasehold estate shall not merge into the Ground Lessor’s fee estate, and the Ground Lease shall not terminate as to the Leasehold Mortgagee, because of conveyance of the Ground Lessee’s leasehold interest to the Ground Lessor or conveyance of the Ground Lessor’s interest to the Ground Lessee. |  |
|  | **Assignability** | The Ground Lease must provide that:   * both the Ground Lessee’s leasehold estate and the Ground Lessee’s option to extend or purchase the fee interest in the land (if any) are assignable or transferable without the consent of the Ground Lessor, or * if assignment or transfer is limited, the Ground Lease must permit assignment or transfer to the Leasehold Mortgagee and permit assignment or transfer by the Leasehold Mortgagee (after a foreclosure or any other exercise by Leasehold Mortgagee of rights and remedies, whether under the Mortgage Loan or under applicable law, as a result of which Leasehold Mortgagee or its designee or nominee becomes owner of the leasehold estate, or delivery of a deed or other conveyance of Ground Lessee’s interest in lieu of any of the foregoing) to a purchaser at a foreclosure sale or otherwise (other than the Leasehold Mortgagee) without the Ground Lessor’s consent. |  |
|  | **Leasehold Mortgage Authorized** | The Ground Lease must authorize a mortgage lien and Fannie Mae must qualify as a permitted or authorized mortgagee. Any conditions precedent that must be satisfied for Lender and Fannie Mae to benefit from lender protections under the Ground Lease must be satisfied. |  |
|  | **Notice and Cure** | The Ground Lease must provide for written notice of default from the Ground Lessor to the Leasehold Mortgagee and a reasonable time (in addition to the time given to the Ground Lessee) and opportunity for the Leasehold Mortgagee to cure any default under the Ground Lease; provided, however, that with respect to any default of Ground Lessee under the Ground Lease which cannot be remedied within such time frame, the Ground Lease shall provide Leasehold Mortgagee such additional time as reasonably necessary to cure such default if Leasehold Mortgagee commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion. With respect to any default that cannot be remedied without Leasehold Mortgagee obtaining possession, the Ground Lease must provide a sufficient period of time for the Leasehold Mortgagee to obtain possession before any applicable cure period commences, provided Leasehold Mortgagee cures any other defaults which reasonably can be cured without possession and provided that Leasehold Mortgagee commences to exercise any rights to obtain possession or to effect foreclosure, and diligently pursues the exercise of such rights thereafter. |  |
|  | **Inability to Cure Default; New Lease** | The Ground Lease must contain:   * + a provision that prohibits the Ground Lessor from terminating the Ground Lease based on defaults personal to Borrower (such as a voluntary bankruptcy filing) or based on defaults that Lender is not able to cure, or   + a provision that requires Ground Lessor to enter into a new Ground Lease with Lender on the same terms as the original Ground Lease if the Ground Lease is terminated for any reason or is rejected in bankruptcy. |  |
|  | **Condemnation/ Casualty Payments; Restoration after Destruction or Condemnation** | The Ground Lease must permit payment to the Leasehold Mortgagee of any casualty or condemnation award to which the Ground Lessee is entitled. This payment must not be less than the total award minus the value of the remainder interest in the land considered as unimproved. In the event of a partial taking, the Ground Lease must permit the Ground Lessee to rebuild and restore the improvements on the mortgaged premises unless the Leasehold Mortgagee consents to distribution of the proceeds. In that event, the proceeds must be applied first toward reduction of the Mortgage Loan. The Ground Lease shall not prohibit Lender from participating in adjustment of losses and settlement.  In the event of a casualty or condemnation, the Ground Lease must provide that it cannot be terminated and must further expressly provide (or not prohibit) that the insurance proceeds or condemnation award may be retained by the Ground Lessee and applied to the Mortgage Loan as repayment of the indebtedness or to restore the improvements; provided, however, that in the event of a full casualty or taking Ground Lessor may be entitled to the portion of any casualty proceeds or condemnation award which represents the unimproved value of the fee estate as the Ground Lessor’s interest. |  |
|  | **Foreclosure** | The Ground Lease must provide for the Leasehold Mortgagee’s right to foreclose without Ground Lessor consent and acquire the lease in its own name or in the name of an assignee or nominee upon foreclosure or any other exercise by Leasehold Mortgagee of rights and remedies (whether under the Mortgage Loan or under applicable law), as a result of which Leasehold Mortgagee (or its designee or nominee) or a third party purchaser becomes owner of the leasehold estate, or delivery of a deed or other conveyance of Ground Lessee’s interest in lieu of any of the foregoing. |  |
|  | **Rent Escalation** | If the Ground Lease contains an escalator clause, the amount of the rent increase must be ascertainable at origination (for example, the Ground Lease must not contain rent escalation provisions based on changes in the Consumer Price Index (CPI)) , and the increase in rent may not cause the amortizing Debt Service Coverage Ratio applicable to the Mortgage Loan to fall below the amortizing Debt Service Coverage Ratio used in the calculation of the loan amount. Rent must be comparable to market rent for properties similar to the mortgaged property in the applicable geographic area of the mortgaged property. |  |
|  | **Ground Lessee’s Options to Extend the Term of the Ground Lease and Options to Purchase the Fee Estate** | The Ground Lease must contain a provision that requires the Ground Lessor to give the Leasehold Mortgagee notice of the Ground Lessee’s failure to exercise (a) any options to renew or extend the term of the Ground Lease or (b) any options to purchase the fee estate (including any right of first refusal or right of first offer to purchase the fee estate) and provide the Leasehold Mortgagee with the right to exercise any such Ground Lease renewal, extension or purchase rights notwithstanding expiration of such rights following the Ground Lessee’s failure to do so (and, in the event any such purchase option is exercised, the Mortgage Loan will become a first lien on the fee estate). |  |
|  | **Personal Liability** | The Leasehold Mortgagee must not have personal liability under the lease until it has record title to the leasehold estate. If Leasehold Mortgagee obtains record title to the leasehold estate, such liability of the Leasehold Mortgagee and its assigns to the Ground Lessor must be limited to the value of their respective interests in the leasehold estate. |  |
|  | **Use Restrictions** | The Ground Lease must not contain any unreasonable restriction on the use of the real property and must permit the Ground Lessee to use the Property for multifamily housing and any other underwritten use. |  |
|  | **Subletting** | The Ground Lease must permit the Ground Lessee to sublet the premises to individual residents without unreasonable restrictions. The Ground Lease may not be a sublease. Structures where Leasehold Mortgagee’s interest will be secured by a sublease under a Ground Lease should be avoided unless there is an agreement from the Ground Lessor or an amendment to the Ground Lease to recognize the sublease as a direct lease between Ground Lessor and Borrower if the Ground Lease is terminated for any reason. |  |
|  | **Improvements** | The Ground Lease must provide that the Ground Lessee:   * owns the Improvements, and * has the right to alter, improve, and modify the Improvements without the Ground Lessor’s consent. |  |
|  | **Estoppel Certificate** | The Ground Lease must obligate the Ground Lessor to provide “estoppel” certificates when requested by a lender.  The Estoppel Certificate must be substantially in the form of Form 6495. |  |
|  | **No Cross-Default** | The Ground Lease may not contain a provision whereby a default under the Security Instrument is considered a default under the Ground Lease. |  |
|  | **Title Policy** | An ALTA Leasehold Loan Policy or an ALTA Loan Policy with a CLTA 107.5 endorsement must be obtained. The policy must: (a) insure the Ground Lessee’s interest and the Ground Lessee’s option (if any) to purchase the fee interest in the related land; (b) insure that the lease is not subordinate to any lien or encumbrance other than the Mortgage Loan, and (c) otherwise satisfy other Fannie Mae title policy requirements. |  |
|  | **Affiliated Parties** | If the Ground Lessor is an affiliate of the Ground Lessee, the Ground Lessor must join in the security instrument and the security instrument must constitute a lien on both the fee estate and the leasehold estate. |  |
|  | **Ground Lessor Right of First Offer or Right of First Refusal** | The Ground Lessor must not hold any option, right of first offer or right of first refusal to purchase the Mortgage Loan or the leasehold estate. |  |
|  | **Assignment of Rents** | The Ground Lease must not grant to Ground Lessor any assignment or security interests in the leases and rents from the Property. |  |
|  | **Subordination to Leasehold Mortgage** | * + Any existing mortgage on the fee estate of the Ground Lessor must be subordinate to the leasehold estate of the Ground Lessee under the Ground Lease; and   + The Ground Lease must prohibit the Ground Lessor from mortgaging the fee estate at a later date unless there is an express subordination of the Ground Lessor’s fee mortgage to the Ground Lessee’s interest under the Ground Lease. |  |
|  | **Subordination to Fee Estate** | The Ground Lease must not require Ground Lessee to subordinate its leasehold estate to a subsequent mortgage of the fee estate obtained by the Ground Lessor. |  |
|  | **Amendment/ Modification** | The Ground Lease must provide that it cannot be amended, modified, cancelled, or terminated without the prior written consent of the Leasehold Mortgagee. |  |
|  | **Surrender** | The Ground Lease must provide that either the Ground Lessor agrees not to accept a voluntary surrender or termination of the Ground Lease or the Ground Lessee is not permitted to voluntarily surrender or terminate the Ground Lease at any time when the leasehold estate is encumbered by the Mortgage Loan. |  |
|  | **Notice of Proceedings; Lender Right to Participate** | The Ground Lease must provide that, if Ground Lessor or Ground Lessee initiates any appraisal, arbitration, litigation or other dispute resolution proceeding affecting the Ground Lease, then Ground Lessor shall notify Lender of such proceedings, and Lender shall have the right to participate in such proceeding on Ground Lessee’s behalf, or exercise any or all of the Ground Lessee’s rights in such proceeding, in each case (at Lender’s option) to the exclusion of Ground Lessee. |  |
|  | **Other Terms** | The Ground Lease must not present any other unusual or noteworthy terms or rights that would be unacceptable to Lender, including lease escalations that could adversely affect the value of the Leasehold or any provisions that could adversely affect the marketability of and Lender’s ability to sell the property following a foreclosure event.  The Ground Lease must not require Ground Lessee to pay any non-standard fees or compensation to the Ground Lessor, which would not ordinarily be payable in a Ground Lease that is arms’ length and between third parties.  Neither Ground Lessee nor Ground Lessor was the previous owner of the entire property prior to the Ground Lease being executed (e.g. the sale of the land and execution of the Ground Lease was done to create a financially engineered ground lease capital structure). |  |