

LEASEHOLD OR GROUND LEASE REVIEW

A leasehold or ground lease is typically a long-term lease (customarily run from 50 to 99 years or longer) of unimproved land or previously developed land where a Tenant/ Lessee, for a fixed amount, leases the land from the Landlord/ Lessor. The Lessee owns the improvements (e.g. the home on the land) during the ground lease term and pays the property expenses, while the Lessor continues own interest in the land where the real property is situated.

The following is a general overview of the typical and key considerations that should be reviewed in determining whether to approve or accept the ground lease:

1. Leasehold or Ground Lease Agreement:
 - a. Must reference either the subject property either (i) by legal description (matches prelim); or (ii) full address (matches prelim);
 - b. The Agreement must be **recorded** in where the property is located
 - c. Must have all pages and all pages must be legible
 - d. Specify the parties to the Agreement and is fully executed
2. Obtain sublease agreement(s), if any, and follow the same requirements as above
3. Length:
 - a. Lease term have at least **35 years remaining** (30 (our loan term) + 5 years)
 - b. If not, the leasehold agreement must allow for the term to be renewed or extended for additional term extending it to cover 35 years
4. Rent and Frequency:
 - a. Agreement must state the rent for the lease; **and**
 - b. Frequently of when and how the rent or dues must be paid (*i.e.* monthly, semi-annually, annually, etc.)
 - c. If the Lessor has an ability to purchase the ground lease, state how and for how much
5. Other Fees or Costs:
 - a. Review for other fees (e.g. service, maintenance costs, subordination); **and**
 - b. Frequency and/or duration of such fees
 - c. Review for transfer tax, if any;

6. Other conditions or restrictions:

- a. Review for other requirements (*e.g.* Leaseholder needs to provide written approval of lender, etcetera)
- b. Review for sublet or assignment requirements
- c. Permitted uses due to zoning laws or specialty leases (*e.g.* water or mineral rights, etcetera)
- d. What happens in the event the Lessor defaults on the payments, terms, or conditions and whether and how Lessor may cure such default (*i.e.* does lender have ability to impound for the fees).

If parties are using a Memorandum of Ground Lease, it must minimally contain the following material, non-economic terms, such as:

1. The names of the parties
2. The property subject to the ground lease
3. The term of the ground lease
4. A description of any lease extension options
5. A description of any options to purchase the Lessor's or the ground Lessee's interests
6. A description of any mortgages encumbering the ground Lessee's leasehold interest
7. Acknowledgements of specific leasehold lender rights