

# LESMARK

LesMark Capital, LLC

## SELF-AMORTIZING BOND LOAN PROGRAM

### Guidelines for Acceptable CTL Variances

**Transactions that exhibit the following variations from the definition of Bond Lease or Credit Lease Based CTL contained above will nevertheless be eligible for Schedule D treatment in accordance with Securities Valuation Office (SVO) guidelines and the definition if the following standards are met:**

1. Transactions where lease payment is insufficient to cover required debt service. The shortfall would be covered fully by credit enhancement, cash escrow or excess rent set asides.
2. Transactions with balloon payments in excess of 5% for Credit Lease Based CTLs if lease payments or credit enhancement fund the balloon. The SVO will assess the extent to which the payment stream, whether provided by the lease or credit enhancement, covers the balloon payment.
3. Transactions where loan term exceeds lease by more than 6 months. The lessee is obligated either to renew the lease, purchase the property or terminate the lease and pay an amount equal to the outstanding debt. If the lease is renewed by the tenant, the renewal term would have to be for the balance of the loan term. If the tenant purchased the property, the sale and settlement of the landlord's loan obligation must occur no later than the date prior to which lease payments would cease and there must be a simultaneous payment to the lender.
4. Transactions that have been purchased by the reporting insurance company from another institution via an assignment. If Bond Lease or Credit Lease criteria are met, the fact that the transaction was acquired through an assignment does not jeopardize CTL treatment.
5. Transactions in which the tenant occupies less than 100% of the premises. The reporting insurance company shall identify the credit tenant and the credit tenant's lease payments shall be sufficient to cover the necessary escrow, common area maintenance and other relevant costs.
6. Transactions where the user of the property is not affiliated with credit tenant or guarantor. If (i) the credit tenant or a guarantor is liable for and agrees to make the required lease payments and (ii) despite lack of affiliation between the parties, there is a substantial community of interests between the parties, for example the relationship that might exist between an auto manufacturer and an auto supplier.
7. Transactions where the tenant may terminate the lease despite the fact that the amount due under the lease is greater than 5% of the original loan amount. The tenant shall not terminate the lease without first paying off the loan or extending the term of the lease to a term sufficient to amortize the remaining balance of debt.

8. Transactions in which landlord has obligations other than those specified in the definition for Credit Lease Based CTLs. The SVO shall have sole discretion to determine whether the level of risk associated with the retained landlord obligation is consistent with the mitigant used. The SVO anticipates that the reporting insurance company will provide a structure that protects the cash flow. Devices like cash escrow or excess rent set asides may be appropriate mitigants.
9. Transactions in which landlord retains obligations but where the lease requires the tenant to continue to make payments regardless of landlord's breach of these obligations, with tenant's only remedy to pursue legal remedies for damages against the landlord. These transactions would be treated as Credit Lease Based CTLs, irrespective of the fact that the stated variation may be the only difference between the submitted transaction and a Bond Lease Based CTL.
10. Transactions that permit lease termination for casualty to all or substantially all of the property prior to the final three years of the lease term. The reporting insurance company must demonstrate that insurance by a third party acceptable to the SVO is in place and fully covers principal and interest in the event of lease termination. A key consideration in this variation is that it be clear that the insurance company lender would always "walk away whole."
11. Transactions that permit the lease to be canceled if the property is not restored within a specified time period after a casualty. The transaction shall incorporate a mechanism to assure that the casualty could be repaired within the term of the insurance policy then in force and the mortgagee would have to permit application of insurance proceeds to pay off the debt.
12. Transactions in which the tenant has a right to abate rent during a casualty, condemnation, repair or restoration event. The reporting insurance company shall provide (i) evidence of rent insurance of a duration of at least 1 year from a company rated the equivalent of an NAIC 1 and (ii) evidence that the tenant is obligated to resume paying rent after the end of the insurance policy payments, regardless of the status of the casualty, condemnation, repair or restoration event.
13. Transactions that provides a right to terminate the lease and substitute property on substantial casualty or condemnation. The tenant shall substitute equivalent leased property.
14. Transactions where the casualty insurer is not rated by the NAIC if there is a rating from A.M. Best Company. The NAIC does not independently rate insurance company claims paying ability. The SVO converts the ratings of NRSROs. NRSRO ratings are the only credit opinions entitled to a presumption of conversion to an equivalent NAIC Designation. A.M. Best is not an NRSRO. In situations where an NRSRO does not track the claims paying ability of an insurance company, the SVO would take guidance from an A.M. Best rating, although the SVO would not feel compelled to agree with the A.M. Best rating. The SVO has developed an internal conversion chart, which is advisory as the analyst may wish to consider additional criteria.
15. Transactions where tenant has a right to condemnation award for value of leasehold estate or tenant improvements. If the tenant has a leasehold interest in the premises because it has advanced funds for improvement, CTL eligibility is not affected because the agreement would permit the tenant to receive proceeds of the condemnation award, provided the tenant continues to be obligated to make the payments called for under the lease and those payments are sufficient to pay the loan in full, or the loan is repaid.

16. Transactions with unsatisfactory Phase I or II report. Section 4(a)(i)(E)(2) of this Part is intended to provide the industry with a device through which it can communicate environmental issues to the SVO. Generally, the SVO anticipates that all CTL transactions will have a Phase I report. If the Phase I report sets forth an unfavorable matter, a Phase II report shall provide more detailed study of the issue. If the reporting insurance company wants to pursue the transaction it may present the Phase II and other material information to the SVO, detailing the manner in which it would mitigate the risk. The SVO would then determine whether the proposed solutions serve as an adequate mitigant for the risk.
17. Transactions with a stale environmental audit. These transactions may be permitted if the tenant has been in the property since the date of the initial audit, the initial audit is available and acceptable to the SVO and the tenant's use of property is not environmentally sensitive. The documents shall include reliance on a strong net lease paragraph to establish that all environmental obligations are tenant obligations and not landlord obligations.
18. Transactions with appraisals submitting only one appraisal method. A transaction may be submitted with an appraisal that lacks all three valuation methods (cost, comparative and income approaches) if the appraisal is in accordance with MAI standards and makes clear that the other two methods were not applicable and this is stated in the MAI opinion.
19. Transactions with second mortgages. Rent must exceed aggregate debt service on all debt up to required Credit Lease Based coverage standards and the second mortgagee could not put lender into default.
20. Transactions where the lender is the second mortgagee. Rent must exceed aggregate debt service on all debt up to required Credit Lease Based coverage standards and the lender shall have a right to cure first mortgage defaults.
21. Transactions with minor lease representations, warranties or covenants. Staff shall have sole discretion to assess the nature of the landlord obligation and the extent to which the mitigant is appropriate. However, these transactions may be permitted if the tenant is estopped from asserting these lessor obligations to abate or cease payment of rent, or if there is credit enhancement or other collateral available to protect against tenant non-payment.
22. Use of collateral trustee and issuance of trust certificates. The use of a collateral trustee, or trust certificates, has no impact on eligibility for CTL treatment. Staff will, of course, review appropriate documentation associated with arrangement.
23. Transactions involving a "Dark Store." The SVO will raise no objection to CTL eligibility for a transaction in which the original lessee "darkens" the leased premises if the lessee remains unconditionally liable for the performance of all lessee obligations.