LesMark Capital, LLC

SELF-AMORTIZING BOND LOAN PROGRAM

Casualty and Condemnation Insurance

Structured properly, CTL loans provide that the credit tenant is responsible for all forms of insurance required under the lease and pursuant to traditional commercial mortgage real estate financing. This means that in a bondable or triple-net lease, there can be no interruption from the cash flow coming from the tenant. However, many leases provide that the tenant may terminate the lease or abate rent under certain circumstances. If the lease cannot be amended, casualty and condemnation insurance may be the best solution.

Condemnation Insurance

Within a triple-net lease there will be an explicit or implicit right for the tenant to terminate prior to the end of the initial term due to a partial or total condemnation of the premises as a result of a governmental entity exercising its right of eminent domain. In every case where eminent domain is exercised, the condemning authority must pay fair compensation to the owner of the property to offset the value of the property taken. However, the calculation of this amount is often subject to protracted legal maneuvers. From the perspective of a CTL lender, the uncertainty surrounding the timeliness and adequacy of payment from the condemning authority introduces excessive real estate risk into what is supposed to be a credit based transaction. Therefore, in order to mitigate lender's concerns, condemnation insurance is required.

The insurance policy is written for the entire term of the loan and is for the benefit of the lender only. Essentially it states that, should the lease on the mortgaged property be terminated by the tenant as a result of condemnation, the lender will be paid the entire unamortized balance of the loan within 15 days of a claim being submitted. In return, the insurer takes over the lender's position as first mortgagee and all rights of recovery associated with it. The lender is made whole without the time and expense of foreclosing or litigation over the condemnation award.

LesMark Capital will secure condemnation insurance at the request of the borrower through a national provider. The premium for the policy is paid up-front at loan closing and the policy is non-cancelable once the premium has been paid. Terms of up to 30 years are available. Pricing varies based on the condemnation wording in the lease and perceived ease with which the tenant may exercise the termination right, but typically run approximately 45 basis points of the loan amount.

Casualty Gap Insurance

Many triple-net leases include a tenant right to terminate in the event the building is substantially destroyed by fire or other perils. The extent of damage required to permit termination varies widely and has a dramatic effect on pricing of casualty gap insurance. For example, some leases will permit termination if damage occurs which cannot be repaired within an unreasonably short period of time, say 90 to 180 days. Other leases permit termination only if 50% of the building is destroyed, or only during the last three years of the lease. Regardless, the casualty gap insurance policy addresses tenant termination just like it does condemnation. If the tenant terminates, the policy pays the lender the unamortized balance of the loan and the insurer takes over the lender's first mortgage position.

Properties that would represent undesirable risks for traditional insurance carriers also are unattractive to lease termination insurers. Examples are high profile office buildings in perceived terrorist locations such as New York City and Washington, DC, sites in high frequency earthquake areas such as California, and coastal properties subject to hurricanes. These may not be completely uninsurable for lease termination, but the pricing may make the transaction uneconomic to complete.

LesMark Capital will secure casualty gap insurance at the request of the borrower through a national provider. The premium for the policy is paid up-front and the policy is non-cancelable once the premium has been paid. Terms of up to 30 years are available. Pricing typically runs approximately 75 to 100 basis points of the loan amount.