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# Acquisition of Real Estate – Comprehensive Due Diligence Checklist



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**The acquisition of real estate involves a myriad of issues which should be addressed by the purchaser and its counsel. The following outline is created to serve as a due diligence checklist for such acquisition. The checklist is not intended to, and cannot, include state and local regulations or practices, but rather is an attempt to raise the practitioner's level of consciousness on issues of general application. The reader should investigate state and local requirements as well.**



I. GENERAL INFORMATION

- A. Determine address and location of the property; obtain any applicable tax identification numbers, subdivision parcel numbers and other governmental designations of the property.
- B. Identify record owner of the property and period of ownership. Obtain information on Seller's domicile or company or company directors – Citizen of? Obtain Seller's I.D. number or Company registration number.
- C. Determine past record owners of the property for at least 60 years (obtain name and period of ownership for each).
- D. Identify present tenants and subtenants of the property.
- E. Determine past tenants and subtenants of the property (obtain name and period of tenancy for each).
- F. Identify all present uses of the property.
- G. Obtain description of the property, as follows:
  - 1. Size of the property (acres or square meters).
  - 2. Number of buildings at the property.
  - 3. For each building provide:
    - a. number of stories and square meter per story
    - b. kind of construction (e.g., brick, wood, steel, etc.)
    - c. age
    - d. current use and prior uses (indicate time period for each prior use)
  - 4. For any previous building on the property obtain:
    - a. date demolished
    - b. uses (indicate time period for each use)
  - 5. Determine and describe any structures currently on the property other than buildings (such as water towers, above ground tanks, cellular phone towers, high tension wire towers, etc.).
  - 6. Determine and describe any structures other than buildings previously on the property (include relevant time periods).
- H. Identify (if any) person responsible for environmental matters at the property.



II. TITLE AND SURVEY

- A. Obtain from seller and evaluate copies of all title insurance policies, title insurance reports, attorneys' title certifications; if available from Seller all documents and/or title exceptions referred to therein.
- B. Obtain from seller copy of deed by which seller acquired its interest in the property, if in fee simple, or deed or assignment by which seller acquired leasehold interest, if subject to ground lease. Obtain from seller other documents relating to its acquisition of the property – acquisition agreements, settlement sheets, due diligence items.
- C. Order new title search and obtain title insurance commitment insuring purchaser (including appropriate affirmative coverage endorsements). Obtain from title agent copies of all documents and exceptions described in title insurance commitment. Order judgment searches and lien sheets. Evaluate condition of title, all title exceptions, and reports of all such searches, and determine if any lis pendens exist. Consider whether to competitively bid title insurance where premiums and fees not covered by state filings. Consider need for reinsurance and direct access agreements for the benefit of purchaser. Determine what title policy endorsements are available, and at what cost.
- D. Obtain from seller copies of all existing surveys and plats, surveyor's reports and surveyor's certifications.
- E. Order new surveys or updates of existing surveys for the property, as appropriate; among other things, current boundaries, all existing and proposed improvements, all parking spaces, all present and proposed utility lines and systems, and all easements, rights-of-way, restrictions, encroachments, setback lines, and other title exceptions. Surveys should be accompanied by certifications as to survey matters in a form acceptable to purchaser. Evaluate surveys and all conditions shown on surveys. Have surveyor prepare a metes and bounds description of the property.
- F. Obtain estoppel certificate from the ground lessor, if applicable, confirming terms of ground lease and non-existence of defaults or specifying defaults. Determine if Ground Lessor consent is required. Obtain such consent if required. Consider need to amend ground lease, and if necessary, amend ground lease to purchaser's satisfaction at or prior to settlement. Consider need to obtain non-disturbance protection from any fee mortgagee.
- G. Confirm direct access, for purposes of vehicular and pedestrian ingress and egress, of the property to a public street or roadway. If no direct access, evaluate alternatives, including availability of easements.
- H. Obtain from seller evidence of compliance of the property with all applicable private restrictions and covenants (recorded and unrecorded), and procure any required approvals prior to settlement.
- I. Confirm at or prior to settlement that all mortgages, deeds of trust and other liens encumbering the property (other than those mortgages and/or deeds of trust, if any, to be assumed at settlement by purchaser or as to which title will be taken subject to) have been satisfied and released of record or arrangements for releases have been made.



### III. REAL PROPERTY TAXES AND OTHER GOVERNMENTAL IMPOSITIONS

- A. Obtain from seller and evaluate:
  - 1. Copies of current bills showing all real property taxes, agricultural taxes, other ordinary and special assessments, water and sewer charges and other impositions.
  - 2. Copies of all current notices of real property tax assessments and assessments as to any special or other impositions.
  - 3. Copies of any notices or letters advising of pending reassessments or forthcoming special assessments.
  - 4. Copies of any pleadings, filings, notices and/or other correspondence pertaining to challenges, appeals or other proceedings concerning real property tax matters, special assessments and other governmental impositions.
  - 5. Copies of any agreements with governmental or taxing authorities concerning the deferral or reduction of real property taxes or other impositions, or payments in lieu of taxes.
  - 6. Information concerning any special taxing districts in which the property is located.
- B. Conduct independent investigation to confirm all applicable governmental impositions for real property taxes, special assessments, water, sewer, and other charges, and to determine likelihood of any pending or future reassessments or special assessments. Consider feasibility of entering into tax incentive agreements (such as payments in lieu of taxes) with local governments. Determine whether the property is subject to agricultural assessment.
- C. Investigate whether any statutory abatement of taxes affects the property.

### IV. ZONING, SUBDIVISION AND LAND USE MATTERS

- A. Obtain from seller and evaluate:
  - 1. Evidence of current zoning and land use classifications and compliance of the property with respect to zoning, subdivision and land use laws and regulations;
  - 2. Copies of all applicable subdivision approvals, special exceptions, variances, and other governmental legislative and administrative actions concerning zoning, land use and subdivision matters;
  - 3. Copies of all violation notices, notices of pending rezoning or land use reclassifications, and all pleadings or filings pertaining to zoning, subdivision or land use actions or proceedings;
  - 4. Copies of any opinions of counsel as to zoning, subdivision or land use matters in the possession of seller;



5. Copies of any agreements, orders or decrees concerning impact fees, linkage fees, exactions, adequate public facilities charges or similar fees or charges;
  6. Copies of any agreements relating to growth management or adequate public facilities laws or regulations; and
  7. Copies of any agreements or proposed deeds with respect to any contemplated dedication or proffers to any governmental agency or private body of any portions of any of the properties;
- B. Conduct independent investigation to determine compliance of the property with applicable zoning, subdivision and land use laws and regulations.
1. Review all applicable laws, rules, regulations, agreements, orders and approvals.
  2. Consider need for opinions of counsel.
  3. Consider need for title insurance zoning endorsements.
  4. Obtain comfort as to absence of pending zoning or land use reclassifications and any other legislative or administrative actions which might adversely affect the property, its zoning, subdivision or land use status, or purchaser's contemplated uses.
  5. Confirm with surveyor compliance of the property with respect to any applicable setback requirements.
  6. Consider applicability of any state or local adequate public facilities, smart growth, or other growth management legislation, moratoria, and impact fees, linkage charges or exactions, whether currently enacted or contemplated, particularly as to any contemplated construction on or improvement of the property.
  7. Determine any contemplated dedication or proffers of any portions of the property to any governmental agency or private body.
- C. Consider meeting with local community or citizens groups and local zoning officials to explain the conveyance of the property from seller to purchaser and any particular plans that purchaser may have after conveyance, such as expansion or new construction.
- V. STRUCTURAL SUFFICIENCY AND CONSTRUCTION
- A. Obtain from seller copies of as-built plans and specifications for the property.
  - B. Obtain copies of all warranties still in effect; determine assignability.
  - C. Obtain and evaluate a comprehensive study of the physical condition of the property, prepared by an engineer or consultant selected by purchaser. Procure from seller copies of any such studies previously obtained by seller. Consider need for any repairs or replacements, as revealed by such studies, and reach agreement with seller as to allocation of costs thereof.
  - D. Obtain from seller copies of any building code violation notices or other violation notices pertaining to the property. If any such violations exist, reach



agreement with seller as to responsibility for amelioration prior to settlement and as to payment of costs of amelioration.

- E. If there is any present or contemplated construction or improvement of the property, obtain from seller:
  - 1. copies of plans and specifications;
  - 2. copies of all construction contracts, major subcontracts, and architectural services agreements;
  - 3. copies of approvals from all required governmental agencies and private entities (e.g., building permits, environmental approvals, approvals of ground lessors);
  - 4. copies of any payment and performance bonds;
  - 5. copies of construction budget and project cost breakdowns; and
  - 6. copies of engineering feasibility studies, soil tests, and borings.
  - 7. Determine whether purchaser should require that construction be completed prior to settlement, and if not, identify the conditions pertaining to uncompleted construction to be met as of settlement.
- F. Obtain from seller copies of pleadings, settlement agreements and relevant correspondence pertaining to any pending or threatened litigation relating to ongoing or completed construction at the property.
- G. Confirm at or immediately prior to settlement that no mechanics' liens or materialmen's liens have been filed with respect to the property. Obtain from seller at or before settlement all affidavits, indemnities, and waivers of liens of contractors in this regard that purchaser or title insurer shall require.
- H. Conduct independent investigation to determine whether any existing building code violations or other violations exist with respect to the property. Resolve with seller responsibility for making of all ameliorations prior to settlement and for the payment for all costs of amelioration.
- I. If property is residential property, investigate presence of lead paint; determine cost of removal.
- J. Consider conducting a termite inspection (may be required by lender for residential property); consider conducting a radon inspection.
- K. Determine whether smoke detector, sprinkler or similar ordinances are applicable to the property.

## VI. TENANTS AND SUBTENANTS

- A. Obtain complete copies of all leases, including all amendments, addenda, exhibits, side agreements, lease abstracts, etc. Inquire as to credit worthiness of each tenant.
- B. Obtain copies of all lease commission agreements.



- C. Obtain copies of the most up-to-date rent roll including the following by tenant:
  - 1. Tenant name and suite number;
  - 2. Square footage (both rentable and usable);
  - 3. Lease commencement date;
  - 4. Lease expiration date;
  - 5. Listing of options;
  - 6. Annual and monthly base rent including steps;
  - 7. Responsibility for taxes, insurance, operating expense stops, base year information;
  - 8. Security deposits;
  - 9. Rent concessions;
  - 10. Rights of first offer or refusal;
  - 11. Expansion options;
  - 12. Cancellation clauses;
  - 13. Any other preferential clauses or restrictions (e.g., signage, exclusive, etc.);
  - 14. Responsibility for maintenance, repairs, casualty losses;
  - 15. Obligations of parties to make improvements permitted use.
- D. Obtain copies of all real estate tax bills, reassessments and correspondence for the preceding five years.
- E. Obtain copies of all personal property tax bills and correspondence for the preceding five years.
- F. Obtain copies of all utility bills for current and prior two years, and relevant correspondence (e.g. utility energy savings programs). Obtain a list of the location and purpose of each meter.
- G. Obtain detailed map of property, including at least the following:
  - 1. Site plan;
  - 2. Floor-by-floor space plan locating each tenant and vacant space;
  - 3. Individual space plans identifying constructed improvements;
  - 4. As-built plans.
- H. Obtain copies of tenant escalation (real estate taxes, and insurance) billing worksheets that show the calculations including base year information, stops, etc.



- I. Obtain copies of all service contracts including a brief description of its purpose and current amount being paid.
- J. Obtain itemized list of operating expenses for the prior five years.
- K. Obtain year-to-date financial statements including the current year's operating and capital budgets.
- L. Obtain year-end financial statements and audit reports for the prior two years.
- M. Obtain current schedule of any tenant improvement work not started.
- N. Obtain current on-going construction contracts.
- O. Obtain copies of notices regarding violation of ordinances.
- P. Obtain description and cost of major additions, deletions and renovations completed or anticipated.
- Q. Obtain any required compliance survey, engineering reports and environmental reports, if available.
- R. Obtain copies of latest building inspection reports and certificates of occupancy for the building shell and for each tenant space.
- S. Obtain any information relating to the soil condition in respect to the property.
- T. Obtain copies of park covenants and approvals for the building if located in an office or industrial park.
- U. Obtain from each tenant and subtenant an estoppel certificate:
  - 1. Confirming lease or sublease and important details of the tenancy; and
  - 2. Confirming non-existence of defaults or specifying defaults; and
  - 3. Confirming the non-existence of any bankruptcy or similar proceedings by or against the tenant.
- V. Determine whether there are any statutory rights of first refusal in favor of any tenants.

VII. UTILITIES

- A. Obtain from seller and evaluate evidence of sources and availability of all required utilities (e.g., electricity, gas, water, sewer, steam, telephone).
- B. Obtain from seller and evaluate copies of any applicable governmental or private agreements concerning availability of, or hook-up to, required utilities.
- C. Conduct independent investigation to confirm availability and sufficiency of all required utilities.



## VIII. INSURANCE

- A. Obtain evidence from seller that the property is adequately covered by insurance satisfactory to purchaser. Seek increases in coverages if inadequate.
- B. Obtain evidence that purchaser has been added as an additional insured during the contract period, to the extent of its interests, with respect to each policy of insurance maintained by seller for the property.
- C. Determine whether the property is located in an area designated as having special flood risks and, if so designated, obtain available flood insurance.
- D. Obtain from seller reports as to any existing or threatened litigation concerning insurance claims with respect to the property, together with copies of all pleadings, settlement agreements and other relevant documentation.
- E. Obtain comfort at settlement that the property has not suffered a casualty loss prior to settlement which has not been properly and fully repaired at seller's expense. If repairs are incomplete, confirm arrangements for completion of work, at seller's expense (or alternatively, at purchaser's expense with a sufficient credit at settlement).
- F. Obtain insurance coverage at or prior to settlement protecting purchaser with respect to:
  - 1. fire and other casualties and hazards on the buildings, improvements and contents;
  - 2. flood insurance (if applicable);
  - 3. public liability insurance;
  - 4. plate glass insurance (if desired);
  - 5. business interruption insurance (if desired);
  - 6. rent insurance (if desired); and
  - 7. any other insurance desired by purchaser.
- G. Evaluate applicable deductibles and self-insurance.

## IX. FINANCING TO BE ASSUMED BY PURCHASER (IF ANY).

- A. Obtain copies of all notes, mortgages, deeds of trust, security agreements and other loan documents with respect to any existing financing to be assumed (including taking title subject to existing financing) by purchaser as part of acquisition.
- B. Review and evaluate all such loan and mortgage documentation to determine:
  - 1. feasibility of assumption by purchaser; (e.g., due on sale or encumbrance) and consent by mortgagee;
  - 2. conditions pertaining to assumption by purchaser;
  - 3. any applicable fees or penalties; and



- 4. any modifications desired by purchaser as a condition of assumption.
  - C. Obtain estoppel certificate from each such mortgagee or lender:
    - 1. confirming important details of each such financing;
    - 2. confirming outstanding principal balance; and
    - 3. confirming non-existence of defaults or specifying defaults.
  - D. Obtain any required modifications in anticipation of settlement.
- X. CONDEMNATION
- A. Obtain from seller and evaluate copies of any notices or correspondence regarding pending or threatened condemnation of the property.
  - B. Conduct independent investigation to determine whether any condemnations are pending or threatened with respect to the property. If any such actions are pending or imminent, consider effect on transaction.
- XI. APPRAISALS
- A. Obtain from seller copies of all existing appraisals for the property. If desired or necessary, obtain and evaluate new appraisals for the property satisfactory in form to purchaser and any lender.
- XII. PERMITS AND LICENSES
- A. Obtain from seller copies of all permits, licenses and governmental approvals (other than environmental permits) maintained by seller in connection with its operation of the property.
  - B. Conduct independent investigation to determine nature of all permits, licenses and approvals required in connection with the contemplated operation of the property by purchaser.
  - C. Consider feasibility of transfer and/or assignment of any existing permits, licenses and approvals from seller to purchaser. Obtain new permits, licenses, no violation letters and approvals as required.
- XIII. PROPERTY AGREEMENTS
- A. Obtain from seller copies of all agreements pertaining to seller's use or operation of the property, including management agreements, contracts providing for removal of snow and ice and/or refuse, agreements pertaining to the maintenance of the property, contracts relating to the maintenance and/or replacement of systems serving the property, and public works agreements and any unrecorded agreements with any governmental agency.
  - B. Determine feasibility of assigning any contracts described in the preceding subparagraph from seller to purchaser at settlement, if so desired by purchaser. Consider rights of termination and any applicable fees or charges for termination.



- C. Obtain comfort that purchaser will, at settlement or within a reasonable time thereafter, be able to enter into all property agreements deemed by seller to be necessary in connection with its use and/or operation of the property.
- D. Evaluate feasibility of assignment at settlement by seller to purchaser of any warranties with respect to the roof and equipment at the property.
- E. Obtain from seller copies of all listing agreements for rentals at the property; determine whether commissions will be due from purchaser in the event of renewal of any lease.

XIV. COMPLIANCE INVESTIGATION

- A. Conduct an audit of the property's systems technology to determine whether the technology is able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing).

XV. PERSONAL PROPERTY

- A. Obtain from seller a listing of any personal property utilized by seller in connection with its operation of the property which will be conveyed to purchaser.
- B. Obtain from seller copies of all bills of sale and other documentation pursuant to which title to any personal property to be conveyed to purchaser became vested in seller.
- C. At or prior to settlement obtain from seller evidence that title to any such personal property will be assigned to purchaser at settlement free and clear of all liens and security interests.

XVI. HISTORIC PROPERTY DESIGNATIONS

- A. Obtain from seller copies of all orders, decrees, special legislative enactments or agreements enacted by or made with or by any federal, state or local government or agency concerning the designation of the property as historic, as a landmark, or as being subject to any similar classification.
- B. Conduct independent investigation to determine whether any of the properties have been designated, or are likely in the future to be designated, as historic properties, as landmarks, or as being subject to any similar classification. Consider the impact of such designations or potential designations upon the value of the property being acquired and any contemplated plans for construction or improvements of those properties.

XVII. ADJUSTMENTS

- A. Consider the financial adjustments which will have to be made at settlement in connection with acquisition of the property, including without limitation, adjustments as to real property taxes and other governmental impositions, utility charges and service contracts.



- B. Consider the cost of any taxes and other charges payable in connection with the conveyance of the property, and the recordation of the deed or other documents at settlement.

XVIII. ENVIRONMENTAL MATTERS – OBTAIN WITH RESPECT TO THE PROPERTY INFORMATION AND DOCUMENTS, AND CONDUCT AN INDEPENDENT INVESTIGATION, TO ADDRESS ISSUES SPECIFIED BELOW

A. Physical Condition of Property

1. Underground Storage Tanks

- a. Any currently existing aboveground or underground storage tanks, or tanks previously located at the property, providing the following for each:
  - (i) size
  - (ii) construction;
  - (iii) age (or age at removal or closure);
  - (iv) current and past uses, including the time period for each use;
  - (v) if no longer in use, determine abandonment/closure/removal procedure
  - (vi) compliance with applicable registration and tank maintenance, testing and safety requirements.

2. Determine and describe any lakes, lagoons, impoundments, pits, septic tanks, trenches, dry wells, catch basins, ditches, trenches, or other open conduits that are or have been on the property, providing for each:

- a. size;
- b. nature of material contained in or conveyed;
- c. liners and detection systems; and
- d. description of any dams, dikes or embankments.

3. Determine and describe any pipelines now or previously on the property, including size and materials transported, when constructed, and type.

4. Determine and describe any locations on the property where any materials, wastes, or substances have been released or disposed of, providing for each:

- a. size;
- b. when disposal or release occurred;
- c. nature of material waste or substance; and



- d. nature of disposal or release.
  - e. any remedial action that took place
  - 5. Determine any unusual land or soil coloration or other unusual conditions at the property and obtain an explanation.
  - 6. Determine any stressed or unusual vegetation or physical irregularities that might indicate unusual subsurface conditions or disposal of wastes, and obtain an explanation.
  - 7. Determine any areas on the property which would be or have been designated under federal, state or local regulations as wetlands, flood plains, coastal areas, habitat for endangered species or historical/archeological sites (location, size, type).
- B. Ongoing Operations at Property
- 1. Determine and describe any hazardous materials and/or hazardous waste management facilities at the property, including treatment, storage, disposal and recycling facilities.
  - 2. Determine and describe any pollution control, treatment or pre-treatment equipment or operations (e.g., wastewater treatment or air pollution control equipment) now or previously used at the property, including for each the purpose, flow or throughput rate, size, type, and age.
  - 3. Determine the type, quantity and storage of fuels used at the property.
    - a. Heating
    - b. Vehicle
    - c. Other
  - 4. Determine any chemicals, compounds, or substances used in or stored at the property (name, hazard class, and volume per month).
  - 5. Solid Wastes
    - a. Determine and describe all wastes generated or handled at the property, the quantities of each, and how they were handled, stored, and disposed. For hazardous wastes, determine waste codes and obtain any available analyses and reports.
    - b. Determine the wastes which are generated by air emission control systems at the property and the manner in which they are handled.
  - 6. Wastewater Issues
    - a. Determine the total annual process wastewater discharge and the place of discharge.
    - b. Determine the total non-contact cooling water discharge and the place of discharge.



- c. Determine the total sanitary wastewater discharge and the place of discharge.
  - d. Determine the total surface runoff water discharge, the place of discharge, and any treatment thereof.
  - e. Determine wastewater constituents which are monitored and the results of any monitoring.
  - f. Evaluate potential restrictions on wastewater discharges due to POTW capacity and/or water quality.
7. Air Issues
- a. Determine whether any stationary sources of air pollutants discharge from the property.
  - b. Determine whether there is any equipment or process for which an air permit has been issued.
  - c. Evaluate whether the facility is located in an attainment or non-attainment area with respect to National Ambient Air Quality Standards, and whether potential facility expansions or modifications could be effected.
- C. Indoor and Miscellaneous Environmental Issues
1. Asbestos
- a. If asbestos has ever been located on any part of the property, determine, if applicable, the removal process, the disposal process and whether federal and local regulations were followed, and obtain any available documentation.
  - b. Determine the presence of any asbestos or asbestos containing materials at the property, and any on-going asbestos maintenance, abatement, and/or operations plan in effect.
  - c. Evaluate compliance with state/governmental requirements concerning Asbestos, including requirements concerning record-keeping, warning signs, and training.
2. PCB's
- a. Determine any equipment containing PCBs on the property and any PCB spills or leaks.
  - b. Determine PCB inspection, labeling and storage or management procedures, and provide documentation.
3. Radon
- a. Determine whether the property or any facility on the property has been tested for radon. If so, obtain results of the tests and reports as to any remediation system.
  - b. Determine radon levels typically found in the vicinity of the property.



- c. If necessary, evaluate potential remedial action.
  - 4. Lead
    - a. Determine whether any water piping on the property contains lead (including lead-containing solder).
    - b. Obtain any test results for drinking water.
    - c. Determine whether paint on buildings, structures or equipment at the property contains lead.
    - d. Determine any locations where paint on a structure, building or equipment is peeling.
  - 5. Chlorofluorocarbons
    - a. Determine the usage of chlorofluorocarbons at the property, including with respect to all systems serving buildings on the property. Consider impact of cost of replacement with systems which do not use chlorofluorocarbons.
  - 6. Drinking Water
    - a. Determine quality of drinking water and compliance with state and local laws
- D. Adjacent Properties.
  - 1. Determine adjacent land usage (developed, commercial, industrial, residential) at the property.
  - 2. Determine names of current adjacent landowners and the location of their properties, and to the degree possible, their financial viability.
  - 3. Determine previous uses of adjacent land.
  - 4. Determine and describe any waste disposal sites, landfills, pits, ponds or lagoons located within one-quarter mile of the property.
  - 5. Determine any state sites located within one mile of the property which are listed in a hazardous or any similar list.
  - 6. Determine whether any government agencies have required remediation or testing with respect to any location within one mile of the property.
  - 7. Determine whether runoff from adjacent sites flows onto the property or into surface water or storm drainage systems that serve the property.
  - 8. Determine area-wide groundwater flow conditions and direction.
- E. Documentation to be Reviewed to Provide Information Concerning Subject Matters Set Forth Above
  - 1. From the Property Owner:



- a. regulatory notices and current and past permits, permit applications and regulatory agency files and correspondence.
- b. documents concerning past or present enforcement actions against the property resulting from non-compliance with environmental laws.
- c. responses to audit inquiry letters pertaining to the property.
- d. warning signs posted at the property, and information as to when they were first posted.
- e. warnings placed on any products produced at the property, and when the warning was first provided.
- f. material safety data sheets for materials produced or used at the property.
- g. reports or surveys with respect to any spill or other environmentally related incident.
- h. spill-control plans which have been developed and implemented with respect to the property.
- i. emergency response plans
- j. maps and aerial photographs of the property (may need to be obtained from third-parties or government agencies)
- k. notices from environmental groups, specifically including those prerequisite to filing of citizen suits to enforce federal, state, or other environmental laws and regulations.
- l. spill reports and notifications, administrative complaints, compliance orders, injunctions, or other proceedings including compensatory and punitive assessments, fines, or penalties pursuant to any federal, state or other environmental statute or regulation.
- m. environmental policies and procedures
- n. waste manifests
- o. discharge monitoring reports and other reports for any pollution discharge
- p. environmental litigation files and administrative response files.
- q. any previous Phase I or Phase II studies, or other environmental studies of the subject property, and if possible, adjacent properties.
- r. groundwater and soil sampling and testing results.
- s. environmental compliance audits performed internally or by outside personnel with respect to the operations of seller or previous owners or tenants at the property.



- t. flood plain maps and available wetlands delineation maps (may need to get from third-parties)
- u. for sellers that are public companies, any notification to the relevant stock exchange regarding material effects resulting from compliance with federal and state laws or regulations or pending or contemplated administrative or judicial proceedings arising under federal, state or local laws.
- v. Financial documents relating to adjacent owners (will likely need to be obtained from third-parties)



**EXHIBIT A**

**LENDER'S TITLE INSURANCE REQUIREMENTS CHECKLIST**

PROPERTY: CITY: [City]  
STATE: [State]  
ADDRESS: [Property Address]  
COUNTY: [County]  
PROPERTY NAME: [Common name of Property]  
TITLE COMPANY: \_\_\_\_\_ Title Insurance Company  
TITLE COMMITMENT NO.: \_\_\_\_\_

BORROWER: [Name of Borrowing Entity]

LENDER: \_\_\_\_\_

- \_\_\_ 1. Title Insurance Company Requirements:
  - \_\_\_ a. The maximum single risk (i.e., the amount insured under any one policy) by a title insurer may not exceed 25% of that insurer's surplus and statutory reserves.
  - \_\_\_ b. The Policy must be written by an insurer authorized to do business in the jurisdiction in which the Mortgaged Property is located.
- \_\_\_ 2. Loan Policy Forms.
- \_\_\_ 3. Insurance Amount. The amount insured must equal at least the original principal amount of the Loan.
- \_\_\_ 4. Named Insured. The named insured under the Policy must be substantially the same as the following: " \_\_\_\_\_, and its successors and assigns."
- \_\_\_ 5. Creditors' Rights. Any "creditors' rights" exception or other exclusion from coverage for voidable transactions under bankruptcy, fraudulent conveyance or other debtor protection laws or equitable principles must be removed by either an endorsement or a written waiver.
- \_\_\_ 6. Arbitration. In the event that the form Policy which is utilized includes a compulsory arbitration provision, the insurer must agree that such compulsory arbitration provisions do not apply to any claims by or on behalf of the insured.
- \_\_\_ 7. Date of Policy. The effective date of the Policy must be as of the date and time of the Closing, but, if a gap closing (i.e., a funding of the loan prior to the recording of the Mortgage) shall be authorized by \_\_\_\_\_ and the Mortgage (or Deed of Trust – either of which are hereinafter referred to as a "Mortgage") shall not be recorded until after the Closing, upon the recording of the Mortgage the Policy shall be redated as of the date of the recording of the Mortgage.
- \_\_\_ 8. Legal Description. The legal description of the Mortgaged Property contained in the Policy must conform to (i) the legal description shown on the survey of the Mortgaged Property, and (ii) the legal description contained in the Mortgage. In any event, the Policy must be endorsed to provide that the insured legal description is the same as that shown on the survey.



- 9. Easements. Each Policy shall insure, as separate parcels: (a) all appurtenant easements and other estates benefiting the Mortgaged Property, and (b) all other rights, title and interests of the borrower in real property under reciprocal easement agreements, access agreements, operating agreements and agreements containing covenants, conditions and restrictions relating to the Mortgaged Property.
  
- 10. Tax, Judgment and Lien Searches. Tax, judgment and lien searches must be made no earlier than 30 days before the closing of the loan against the borrower and the indemnitors (identified as such in the Loan Commitment) in (i) the county where the Mortgaged Property is located, (ii) the governmental office (or other appropriate office) of the state where the Mortgaged Property is located, (iii) the county where any such party has its principal place of business or, if an individual, its residence, (iv) the governmental office (or other appropriate office) of the state where any such party has its principal place of business or, if an individual, its residence, and (v) if not already covered, the governmental office (or other appropriate office) of the states of formation of each of the foregoing entities.
  
- 11. Exception to Coverage. With respect to the exceptions, the following applies:
  - a. Based upon representations made by the title insurer, each Policy shall afford the broadest coverage available in the state in which the Mortgaged Property is located. In addition, each Policy shall state that the Mortgage is a valid first lien on the Mortgaged Property.
  
  - b. With respect to the "standard" exception (such as for parties in possession or other matters not shown on public records), such exceptions must be deleted.
  
  - c. With respect to the "standard" exception regarding tenants in possession under residential leases, such exception should also be deleted. In the alternative, the exception should read as follows: "Rights or claims of parties in possession under residential leases or occupants of apartment units, as tenants only."
  
  - d. The "standard" survey exception to the Policy must be deleted. Instead, a survey reading reflecting the current survey should be incorporated.
  
  - e. Any exception for taxes, assessments or other lienable items must expressly insure that such taxes, assessments or other items are not yet due and payable.
  
  - f. Any lien, encumbrance, covenant, condition, restriction or easement and other matters of record must be listed in the Policy and may remain if such exception would be acceptable to mortgage lending institutions generally or is covered by affirmative insurance generally acceptable to mortgage lending institutions. The Policy must affirmatively insure that the improvements do not encroach upon the listed easements or insure against all loss or damage due to such encroachment.



- g. The Policy may not contain any exception for any filed or unfiled mechanics' or materialmen's liens.
- h. In the event that a comprehensive endorsement has been issued and any Schedule B exceptions continue to be excluded from the coverage provided through that endorsement, then a determination must be made whether such exceptions would be acceptable to \_\_\_\_\_.
- i. If Schedule B indicates the presence of any easements that are not located on the survey, the Policy must provide affirmative insurance against any loss resulting from the exercise by the holder of such easement of its right to use or maintain the easement.
- 12. Endorsements. With respect to endorsements, the following applies (unless by law such endorsements are not available in a particular jurisdiction):
  - a. Each Policy must include an acceptable environmental protection lien endorsement on the appropriate governmental form (if any).
  - b. Each Policy must contain an endorsement which provides that the insured legal description is the same as shown on the survey.
  - c. Each Policy must contain a comprehensive endorsement if a lien, encumbrance, condition, restriction or easement is listed in Schedule B to the title insurance policy.
  - d. The following endorsements shall be included in each Policy (unless inapplicable given the circumstances of the transaction):
    - access
    - zoning
    - assignment of loan documents
    - contiguity
    - single tax lot
    - doing business
    - due execution
    - mortgage tax
    - usury
    - address
    - assignment of leases and rents
    - assessments
    - mineral rights
    - reverter
    - subdivision
    - leasehold
    - tie-in
    - first loss
    - last dollar
- 13. Other Coverages. Each Policy shall insure the following by endorsement or affirmative insurance:
  - a. that no conditions, covenants or restrictions of record affecting the Mortgaged Property:



- (i) have been violated,
- (ii) create lien rights which prime the insured mortgage,
- (iii) contain a right of reverter or forfeiture, a right of reentry or power of termination, or
- (iv) if violated in the future would result in the lien created by the insured mortgage, or title to the Mortgaged Property being lost, forfeited or subordinated; and
- b. that except for temporary interference resulting solely from maintenance, repair, replacement or alteration of lines, facilities or equipment located in easements and rights of way taken as certain exceptions to each Policy, such exceptions do not and shall not prevent the use and operation of the Mortgaged Property or the improvements as used and operated on the effective date of the Policy.
- 14. Informational Matters. The Policy must include, as an informational note, the following:
  - a. The recorded plat number together with recording information; and
  - b. The property parcel number or the tax identification number, as applicable.
- 15. Financing Statements. Any financing statements filed or recorded showing the Lender as secured party must be shown as an informational note only. Such financing statements (and any assignments thereof) may not be listed as exceptions on Schedule B.
- 16. Delivery of Copies. All copies of all easements, encumbrances or other restrictions shown as exceptions on the Policy must be delivered.



## EXHIBIT B

### TO THE SURVEYOR

Please prepare three (3) original copies, signed and sealed by you, of a survey of the real property that is the subject of this transaction or financing meeting the specifications set forth herein. In connection with the preparation of the survey, you will be furnished with a recent title insurance commitment with respect to the real property and copies of all of the easements, rights-of-way and other title exceptions noted therein. The survey should be accompanied by three (3) copies of a consolidated perimeter metes and bounds description and, if required by the owner or the purchaser of the real property, the lender or the title insurer, three (3) copies of a surveyor's report in a specified form. The survey shall indicate the following:

1. The scale of the survey.
2. The North direction indicated by an arrow.
3. The beginning point definitively located in the dimensions of the Property.
4. The courses and distances (including radii and chords of all curved lines and their tangent points located by coordinates) of the entire perimeter. No distance shall be marked "more or less" except those that begin, terminate or bind on water or marshland, and in that event the limits of "more or less" must be set forth in feet.
5. The location and grades of all improvements on, as well as the physical characteristics of, the Property, such as walls, fences, streets, parking lots, buildings, driveways, visible utility installations to point of connection with any public system, cemeteries, streams and other water bodies, and all monuments and markers.
6. The meridian line drawn through one of the corners of the perimeter of the Property and another line drawn at right angles to said meridian through the same point. The meridian so drawn shall be either a true meridian or the magnetic meridian as of the date of the survey and so marked on the survey. All the courses and distances and coordinates shown on the survey shall be calculated from the said meridian and right angle line.
7. The width of any streets, alleys, curbs and pavements that abut or traverse the Property. The names of and distances to the nearest intersecting streets must be shown. The names of all dedicated public streets and alleys that abut or traverse the Property.
8. The total acreage of the Property in acres and in square feet.
9. Interior lines and facts sufficient to enable the title insurance company to insure contiguity if the Property comprises several parcels. All gaps, strips or gores must be shown with dimensions.
10. The location of any and all recorded easements or rights-of-way that are capable of being located (such as utility easements, set-backs, support easements, party walls, easements and rights-of-way required by the municipal, county or state authorities, etc.) with each recording references shown on the survey. If any such easements or rights-of-way cannot be located, please so state on the survey, making reference to the applicable recording references. If any such easements or rights-



of-way do not apply to the Property, please so state on the survey, making reference to the applicable recording references.

11. The location of any required set-back lines (whether by governmental requirement or recorded agreement) and the measured distance from the nearest edge of any building to the property line or public street.
12. The location of any tax lot lines or subdivision lot lines that (a) traverse the Property, or (b) include more land than the Property.
13. The zoning, use and density classification of the Property and the location of any lines that divide the Property into different classifications. The plat should designate the front yard lot line of the Property, as determined pursuant to applicable zoning regulations.
14. The location of the mean high and low water marks, or the mean height above sea level.

**EXHIBIT C**

[TO BE PLACED DIRECTLY ONTO SURVEY]

CERTIFICATION OF SURVEYOR

I, \_\_\_\_\_, hereby certify to [INSERT NAME OF BORROWER], [INSERT NAME OF LENDER], [INSERT NAME OF TITLE INSURANCE COMPANY], and to all other parties interested in title to the property that is the subject of this survey (the "Property") that:

- (a) The survey prepared by me entitled "[INSERT TITLE OF SURVEY]" was actually made upon the ground and that it and the information, courses and distances shown thereon are correct;
- (b) The title lines and lines of actual possession are the same;
- (c) The size, location and type of buildings and improvements are as shown and all are within the boundary lines of the Property;
- (d) There are no uses, encroachments or easements either way across property lines affecting the Property appearing from a careful inspection of the same;
- (e) The Property consists of one or more complete lots of land complying with all applicable subdivision laws, rules and regulations;
- (f) The zoning of the Property is proper for the buildings and improvements existing thereon, and there are no violations of zoning ordinances, restrictions or other rules and regulations with respect to the location of said buildings and improvements;
- (g) All water, sewer, gas, electric and telephone lines and mains and all utility easements on the Property are located as shown on the survey;
- (h) All utility services required for the operation of the Property either enter the Property through adjoining public streets or the survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land;
- (i) The survey shows the location and direction of all storm drain systems for the collection and disposal of all roof and surface drainage, and any discharge into streams, rivers and other conveyance systems;
- (j) I have reviewed Interim Title Insurance Commitment No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ issued by [INSERT NAME OF TITLE INSURANCE COMPANY], through its agent, [INSERT NAME OF TITLE INSURANCE AGENT], and have shown on the survey all of the exceptions contained in Schedule B of that commitment or, if any of such exceptions cannot be located, the same are indicated in the Notes appearing on this Survey;



[Manual signature of registered surveyor]\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Please affix seal and note license number of registered surveyor.

Disclaimer

The above notes have been compiled to assist you; however, actions taken as a result of this document are at the discretion of the reader and not Pytheas Limited.