SNDA

TRUIST INSTRUCTIONS TO DRAFTER/CLOSER

AND NEGOTIATION POINTS

1. Without approval of credit and/or internal legal as applicable, do not:

* Sign an SNDA that will cause Lender/Successor Landlord to be liable for base building construction
* Agree to give Tenant notice of loan defaults and an extended cure following notice. If this provision is approved to be given (should be rare), it must clarify that Lender’s exercise of remedies is not affected by extended cure period and provide appropriate ticklers in the loan file to ensure compliance.
* Sign an SNDA that does not limit lender/successor landlord liability to interest in the lease, unless the underlying lease clearly contains such limitation as to a successor landlord.
* Sign an SNDA that will cause the Lender/successor landlord to be responsible for unquantifiable/uncapped liabilities of prior landlord/borrower.
* Sign an SNDA that will cause Lender/successor landlord to be responsible to pay Tenant for amounts due from prior landlord/borrower rather than treat those amounts as an offset against rent.
* Sign an SNDA that will cause lease terms to govern over loan terms as between Lender and Tenant for insurance proceeds even if Landlord/borrower is in default, or that will cause Successor Landlord to be liable to reconstruct after casualty/condemnation to the extent insurance proceeds are not available therefor.

2. Section 4.1 Claims Against Former Landlord (Offset Rights):

If Tenant objects, consider adding at the end of the first sentence: “, other than Offset Rights expressly provided in Section \_\_\_\_ of the Lease” IF YOU HAVE REVIEWED AND FOUND SUCH OFFSETS ACCEPTABLE.

3. Section 4.5 Modification; Amendment; or Waiver (amendments of Lease):

If Tenant objects, consider inserting “material” before each of “modification or amendment” and “waiver”, and adding the following sentence: “For purposes hereof, a “material” amendment, modification or waiver means one that terminates the Lease or effects a voluntary surrender by Tenant; reduces the rent, term, or size of Tenant’s Premises; reduces or transfers to Landlord costs or expenses previously paid by Tenant; adds options on the part of the Tenant to expand Tenant’s Premises or to purchase Landlord’s Premises; or otherwise materially increases Landlord’s obligations or decreases Tenant’s obligations under the Lease.”

Also consider adding the following language at the end of this Section: “, to the extent such consent is required under the Security Instrument or other Loan Documents”.

4. Section 4.7 Construction-Related Obligations:

Consider deleting this provision if in the case of a construction loan, (i) the Construction-Related Obligations relate solely to tenant improvements or preparation of space for tenant improvements (as opposed to building the base building), (ii) the cost of the Construction-Related Obligations is included in the loan budget, and (iii) a completion guaranty is provided that covers tenant improvements.

If this provision is included, and Tenant objects, consider adding the following sentence: “If Former Landlord has failed to perform Landlord’s Construction-Related Obligation(s) with respect to Tenant’s initial occupancy of Tenant’s Premises and Successor Landlord does not agree in writing within thirty (30) days after Tenant’s demand after the date of attornment to complete such Construction-Related Obligation(s) within a reasonable period, then Tenant, as its sole remedy, shall have the right to elect either to terminate the Lease by written notice to Successor Landlord, or to complete and pay for such Construction-Related Obligations and offset all reasonable costs thereby incurred (the “Construction Cost”) against any rent thereafter payable, until Tenant shall have so recovered the entire Construction Cost.” ***However*, if the Construction-Related Obligations are to complete the base building, Tenant should have only a termination right and not an offset right.**

5. Section 5 Exculpation of Successor Landlord: Delete this provision if Tenant objects but only if a satisfactory exculpation provision is included in the Lease.

6. Section 6 Lender’s Right to Cure: If Tenant objects, consider reducing “thirty (30)” days in both places in Sections 6.2 and 6.3 to “fifteen (15)” days, and adding at the end of Section 6.3: “; provided, however, (i) the Extended Cure Period shall not exceed \_\_\_\_\_\_\_\_\_ (\_\_) days [confer with local counsel to complete], and (ii) Mortgagor shall not be entitled to the Extended Cure Period unless it takes action to commence cure or the exercise of remedies within the initial fifteen (15) day cure period referred to in Section 6.2”.

7. Section 7 Confirmation of Facts: Delete and replace with “*intentionally omitted*” if the lease is a new lease or if borrower has delivered a separate current estoppel.