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**To:** **CRE Outside Counsel**

**From:** **Jennifer Rentenbach, Assistant General Counsel**

**Date: October 24, 2017**

**Subject: Updates to CRE form Loan Agreements**

Please note that we are providing this memorandum to only one contact at each of our outside law firms.

Please circulate this memorandum to each of your firm’s attorneys who may work on matters for the SunTrust

Commercial Real Estate (“CRE”) line of business.

Attached are updated versions of the CRE form Loan Agreements, which are in process of being uploaded to our CRE Loan Documentation Website. These versions include the updates detailed below. In any deal where for any reason you are not using the most recent version of our form loan agreement, please make sure these updates, as applicable, are included in your documents along with any other subsequent form updates.

Updates:

1. **Flood Insurance Compliance for Construction Loans**

Effective November 1, 2017, for any construction loan where structures will be built in a Special Flood Hazard Area, SunTrust will require that flood insurance, sufficient to comply with the requirements of the National Flood Insurance Reform Act of 1994 and related legislation, is in place and effective **at the time of loan closing**. Previously, SunTrust had required evidence that sufficient flood insurance was in place prior to vertical construction, after the slab or foundation had been completed. This change in timing is a result of the difficulties inherent in effectively monitoring that required flood insurance has been obtained after loan closing but prior to commencement of vertical construction. For loans closing after November 1st, please delete item (p) in Section 3.3 (Conditions Precedent to All Advances) of our form Construction Loan Agreements, set forth below, as it suggests that delivery of compliant flood insurance can be delayed until commencement of vertical construction:

Section 3.3(p) – ***to be deleted***:

**Prior to the construction of any Improvements above the foundation on any portion of the Property located in an area designated by the Federal Emergency Management Agency as having special flood hazards, Lender shall have received evidence in form and substance acceptable to Lender that Borrower has obtained a policy of flood insurance in compliance with all applicable regulations of the Board of Governors of the Federal Reserve System.**

1. **Permanent Loan Provisions Added to Syndicated Term Loan Agreement Form**

Earlier this year CRE introduced a permanent loan program, providing 5, 7 and 10 year loan terms, at fixed or floating rates (with an interest rate swap required for floating rate loans), on stabilized properties. Our form Syndicated Term Loan Agreement has been updated to include provisions that may be applicable for these permanent loans (depending on specific deal terms), including:

1. Prepayment premium provisions for fixed rate loans, along with notations of floating rate specific provisions to delete for fixed rate loans
2. Provisions for holdbacks for TI, leasing commissions and capital expenditures
3. Reserve account provisions
4. Loan assumption provision[[1]](#footnote-1)

Change pages transmitted along with this memo identify these additional provisions. We will also be adding these provisions to our bilateral form Term Loan Agreement in the near term.

1. **Subsequent Appraisals**

In an abundance of caution, we have revised Section 5.13 (Appraisal) in our form Loan Agreements to remove the reference to “*Borrower shall assist Lender with obtaining a new or updated appraisal*”, to avoid any potential inference that the Borrower may play a role in the appraisal ordering process that could be said to contradict the independence requirements of FIRREA. The revised provision reads as follow:

**Section 5.13. Appraisal****. Lender may from time to time obtain a new or updated Appraisal prepared in accordance with its instructions from a third party appraiser satisfactory to it and engaged by it. Borrower shall only be obligated to reimburse to Lender the cost of such a new or updated Appraisal once in any twenty-four (24) month period, unless an Event of Default has occurred and is continuing, in which case Borrower shall reimburse to Lender the cost of any and all new and updated Appraisals obtained by Lender. Lender shall provide a copy of any new or updated Appraisal to Borrower only if Borrower covered the cost of such new or updated Appraisal.**

1. **Construction Close-Out Deliveries and Radon Testing**

We have modified Section 3.4 (Construction Close-Out Deliveries and Conditions Precedent to Final Advance) as set forth in the attached change pages in order to: (i) provide that construction close-out deliveries must be satisfied no later than 60 days following certificate of occupancy (avoiding any creative argument that if a final draw of loan proceeds isn’t taken by a borrower, these conditions never have to be satisfied); (ii) for projects with multiple buildings, provide that evidence of permanent casualty insurance and a radon testing report (where applicable) shall be satisfied on a per building basis (no later than 60 days following c/o for each building); and (iii) include a provision requiring radon testing, to be used for multifamily, day care and senior housing projects **IF** the SunTrust loan closer on a given deal advises that the SunTrust REVAL environmental team is requiring radon testing for a given project.

1. **Property Inspection Fee**

We have updated Section 5.9 (Visitation and Inspection) in our Term Loan Agreement forms to permit us to charge the borrower a property inspection fee, for one inspection per year, as indicated in yellow highlighting below. This is not a money-making concept; the intent is that if we choose to hire a local property inspection firm to perform an annual inspection of a project, we will pass along that cost. If need be in response to borrower comments, we can put a cap on the amount of the fee. Generally the current cost for this service we have been quoted is about $250 per inspection (although that fee could differ in different markets). Where needed, we suggest starting with a cap of “**not to exceed $500 per inspection**.” If really pushed on that amount, we could lower, but the cap should not in any event be less than $250. This inspection fee will not apply to construction loans.

**Section 5.9:  Visitation and Inspection.  Borrower will permit any representative of Lender to visit and inspect the Property, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as Lender may reasonably request after reasonable prior notice to Borrower; provided that if an Event of Default has occurred and is continuing, no prior notice shall be required.  Borrower shall pay Lender’s customary property inspection fee, for one property inspection performed by or for Lender per calendar year.**

1. **Federal Funds Rate Definition**

Consistent with the market, we have revised our Federal Funds Rate definition to delete the language stricken in red below:

“Federal Funds Rate” shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System ~~arranged by Federal funds brokers~~, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by Lender from three Federal funds brokers of recognized standing selected by Lender.

1. Syndication Provisions

We have also made a few updates to syndication provisions in our syndicated form loan agreements, as set forth in the attached change pages.

Please let me know if you have questions about these matters.  Thank you for your continued assistance and partnership.

1. Do not include this provision unless it has been negotiated as part of the business deal. [↑](#footnote-ref-1)