BORROWING CHECKLIST

In most commercial real estate transactions, a mortgage lender will be providing financing. The following is a list of issues which a borrower should consider when approaching the mortgage lender, whether a third party lender or the provider of vendor take back financing. In the context of a purchase, the purchaser should consider the requirements of its lender and anticipate these concerns, as applicable, in the offer to purchase. The following list is not intended to be exhaustive, and any transaction may give rise to additional issues or concerns and, of course, the emphasis on those issues and concerns will vary depending on the circumstances:

Basic Terms:

- Who is the borrower? Is there a nominee title holder on title and a different beneficial owner? Will there be more than one borrower, and if so is liability to be joint and several or several and proportionate?
- Is recourse limited to the interest of the borrower in the property or will the borrower be liable for a shortfall on realization?
- Is the loan due on sale or change of control or is it assumable, either by a related entity or on sale of the property to an unrelated party, and on what terms?
- What property is being mortgaged? Will additional property be added, and if so, will the loan amount be increased?
- Will security in addition to a mortgage be required, such as an assignment of rents, specific assignments of leases or significant contracts, a general security agreement etc.? What are the lender's requirements in respect of estoppel certificates and lease subordinations and attornment agreements?
- What is the interest rate? Does it vary during different phases of the development? Is there a participation feature? What fees are payable in addition to interest and when? Consider commitment fees and mandatory fees during the term of the loan. Also consider the cost of the lender's advisors and consultants, which will invariably be borne by the borrower and obtain fee estimates.
- Will there be guarantees? If so, are they limited recourse or subject to a cap? If there is more than one guarantee, are the guarantees several or joint and several? Are they in proportion to the interests of co-owners? Is collateral security required from the guarantors?
- Is the mortgage a first or subordinate charge on the property? If subordinated, can the borrower refinance prior loans? If a first ranking mortgage, can the borrower obtain priority

agreements from existing lenders for the first mortgage as well as any refinancing of the first mortgage? Consider if there will be caps on senior debt or limitations on the security which can be granted to permitted senior or subordinated lenders. Will multiple lenders require stand-still agreements or notice of default?

- Is the loan prepayable? On what terms? Must the loan be paid down if parts of the property are sold (consider subdivided or strata lots) and at what rate and what discharge fees apply? Does the borrower have the right to obtain partial discharges?

- What are the consequences of default – is acceleration of repayment immediate or is there an opportunity to cure?

- What conditions of funding must be met beyond the due diligence items mentioned below? Preleasing or presales? Rezoning or issuance of development or building permits? How is satisfaction of these conditions going to be proved? Take out financing availability?

- Is ongoing fulfillment of financial covenants required, such as minimum rental or leasing levels?

- What degree of control will the lender require, in particular, in relation to approvals of new leases, amendments or terminations of leases, forms of leases, forms of purchase agreements, sale prices, deposits on purchase price etc.?

- Will the property be developed? Obtain lender's agreement to postpone to or agree to municipal agreements, covenants, rights of way, dedications etc.

Due Diligence and Disclosure:

The lender will require a broad range of information relating to the property and the borrower which the borrower should be prepared to obtain or provide. If the financing is occurring in the context of a purchase, the borrower should be prepared to authorize the release of all of its own due diligence. The lender is likely to require:

- Details on the purchase price for the property and or appraisals.

- Historical financial statements on the property and on the borrower.

- Financial statements in respect of the borrower and guarantors and pro forma statements in respect of revenues and costs associated with the property and budget in respect of development and construction costs.

- Surveys showing the improvements and plans and drawings of improvements.

- Copies of key agreements, such as, as applicable, purchase agreements, leases, agreements to lease, property management agreements, construction and architects agreements, performance and labour and materials payment bonds, insurance policies and the like. Consider what consents may be required to permit the assignment of these agreements to the lender and what estoppel certificates as to the status of such agreements as may be obtainable.

- Review of leases and tenant files in respect of issues such as tenant creditworthiness, rental rates, termination and renewal rights, exclusive use covenants, inclusiveness of tenant recovery clauses etc.
- Attornment agreements from tenants, who are likely to require non-disturbance agreements.
- Insurance – consider scope required by lender: all risk/extended risk; earthquake; loss of rental income etc. and whether in the case of leased property, the costs of such insurance can be passed on to the tenants. Details of the claims history for the property.
- Building condition – engineers/contractors' reports on physical condition of building, foundations, roof, HVAC and other equipment, parking lot etc. The lender may require a reliance letter from the consultant if it accepts an existing report.
- Environmental condition – are Phase 1 or Phase 2 audits available or required? The lender may require reliance letters if it accepts existing reports or audits. Has the property been remediated and are there certificates of compliance in place, either final or conditional?
- Zoning, building standard, fire safety, health, elevating devices, boiler and pressure vessels, electrical and gas safety – standard inquiries depending on the property.
- Review of registered agreements, covenants, easements and rights of way.

Other Issues:

- Has the lender committed to fund or just issued a non-binding term sheet?
- Is a "commitment" subject to conditions which are in the discretion of the lender or are all conditions quantifiable and within the control of the borrower or reasonable in the circumstances?
- Timing? When can funds be made available?
- Can the amount available for funding be reduced for any reason?
- Does the borrower care if the loan is assigned or syndicated?
- Is the borrower prohibited from subordinate borrowing?
- Change of control restrictions?
- What encumbrances are permitted now and in the future?
- Is CMHC insurance required? How long will CMHC approval take and what are the fees?