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Preliminary Due Diligence Checklist Development Loans

This Cambyses Management Associates ***Preliminary Due Diligence Checklist*** outlines the general requirements for a loan submission package for a real estate development loan. ***Preliminary Due Diligence Checklists*** for other transactions (including SBA credit line applications) are available on our website or by request.

Each ***Checklist*** includes only the information necessary to initiate discussions with a lender or funding source and reach preliminary consensus on rates and terms (i.e. to get a lending commitment from the lender). The lender or their underwriter may require additional documentation during the underwriting period or at closing. We have anticipated the most obvious of these, but many requirements are specific to the project, your financial situation, or the funding source.

Almost all lenders request (insist) that you fill-out and execute a loan application of their own design (in addition to the documentation noted in our checklist). Those applications, with the exception of their applications for SBA funding, are idiosyncratic to the lender. They often seem designed to frustrate your effort to provide accurate descriptions and information (e.g. a box that requests "legal description of the property," but allows you to enter only twenty-four characters). Cambyses recommends that you index/tab the entire document package and reference the documents in the package on the application form (e.g. "See Attachment Six," instead of trying to fit the legal description in that tiny box).

Cambyses suggests that you include a prose-narrative summary that explains the need for the loan, the use of the proceeds, and the salient points of each of the documents included in the loan package.

We *strongly recommend against* "cold submissions" (dropping a loan package on the loan officer's desk without benefit of introduction or interaction) and "broadcast submissions" (sending the same loan package to a dozen lenders in the hope someone will give it their attention). Make an appointment, sit with the loan officer, let them see your enthusiasm for the project.

Loan Due Diligence Checklists for common loan transactions are available on our website or by request.

General requirements for a development loan submission package

Project information:

- Project description—legal description of site, survey, photographs of site, renderings of building and any parking facilities, outbuildings, etc., development strategy, and timing
- Site and circulation plan, identification of any easements, availability of utilities, description of adjacent land uses, soil tests
- Plans for building improvements with detailed list of amenities
- Identification of architect, general contractor, principal subcontractors with supporting financial data and past performance of parties.
- Copies of agreements executed among parties.
- Description of construction and development procedures.

Preliminary Due Diligence Checklist - Development Loans

Market and financial data

- Full set of financial statements and income tax returns on the borrower and on any other principal project sponsor(s), similar or related development experience, list of previous project lenders;
- Full set of financial statements and income tax returns on all entities in which the borrower has an interest of 20% or more;
- Borrower's vitae or resume and/or narrative biography. Vitae or resume and/or narrative biography for any other principal project sponsor(s);
- Pro forma operating statement. Detail on proposed leasing terms to tenant, including base rent, escalations, expense stops, renewal options, common area expense allocation, overage (retail leases), finish-out allowances, other commitments;
- Detailed cost breakdowns, including:
 - Any land acquisition costs
 - Any necessary land development costs
 - Any required demolition costs
- Direct or hard costs with breakdowns for excavation, grading, foundation, masonry, steel work, drywall or plastering, HVAC, plumbing, electrical, elevator, and other mechanical items, any special finish-out or fixtures
- Indirect or soft costs, including architects, engineering fees, legal fees, property taxes, interest-construction period, development fees, insurance and bonding fees, estimated contingency reserve, anticipated permanent loan requirements
- Any executed lease agreements, commitments, or letters of intent from tenants detailing all terms of leases
- Market study and appraisal, including all comparables and detached schedule of rents charged by competitors
- Loan request, terms, anticipated interest rate, amortization period, anticipated participation options
- Equity to be provided by developer and/or other sponsors (cash and/or land); anticipated financing of draws/repayment

Government and regulatory information

- Statement as to zoning status
- Ad valorem taxes, method of payment, reappraisal date(s)
- Copies of all necessary permits, evidence of approved zoning variances, etc.

Legal documentation

- Legal entity applying for loan (evidence of incorporation, partnership agreement, etc.)
- Statement of land cost or contract evidencing purchase
- Detail regarding deed restrictions
- Subordination agreements
- Force majeure provisions (events beyond the control of the developer, i.e., "Acts of God or Nature")

Preliminary Due Diligence Checklist - Development Loans

Additional information needed for interim loan package

- A copy of the permanent or standby commitment from the permanent lender. Details on the amount, rate, term, fees, options relative to prepayment, calls, and participation. Details on contingencies that the developer must meet before the commitment is binding
- *Detailed* architectural plans and specifications
- *Detailed* cost breakdown
- All data relative to requirements listed in Part A above *updated* as appropriate. Assuming that (1) upon review of all relevant materials in A and B, the interim lender makes a commitment and (2) the developer goes forward the project, the next step will be close the interim loan

Interim lender closing requirements

- Project information: *final* drawings, costs and estimates, site plan, etc.
- Market and financial information: statement that no adverse change in borrower's financial position has occurred since application date
- Government and regulatory information: all necessary permits, notification of any approved zoning variances, etc.
- Legal documentation
 - Documentation indicating that the permanent lender has reviewed and approved all information in Part A and all updates in Part B
 - All documentation relative to contracts for general contractors, architects, planners, and subcontractors
 - Evidence of bonding
 - Conditional assignment of all contracts to interim lender
 - Agreements of all contractors to perform for interim lender
 - Verification of property tax insurance contracts, etc.
 - Inventory of all personal property that will serve as security for the interim loan
 - Any executed leases and approvals by permanent lender
 - Copies of ground leases and verification of current payment status by the lessor/owner
 - Evidence of assignment of all leases, rents, and other income in the event of default *and* guarantee of loan payments by the borrower (as a personal liability).

After review of these items, the interim lender will provide a loan commitment detailing the terms of the loan, including: the amount, rate, term, fees, prepayments and call options, and any other participations.

The permanent lender may require additional agreements with the interim lender, including a buy-sell agreement or triparty agreement.

Permanent lender closing requirements (Required if the developer completes construction and satisfies all contingencies, including lease-up requirements, contained in the permanent loan commitment before expiration date of the permanent commitment)

Market and financial data

- Statement of no material changes in financial status of borrower; or
- Certified list of tenants, executed leases, and estoppel certificates indicating verification of rents currently being collected, any amounts owed, and any dispute relative to payments on finish-out costs agreements with the developer

Preliminary Due Diligence Checklist - Development Loans

Project information

- Final appraisal of project value
- Final survey of building on site

Government and regulatory information

- Updates on currency of property tax
- Certificates of occupancy issued by building inspector(s)
- Other permit requirements (fire, safety, health, etc.)

For ALL Lenders - Borrower's Information

- Legal Name and DBA
- Street address, including zone or zip code, for primary location
- Telephone number and name of primary contact
- Fax number for primary contact
- E-mail s of primary contact
- Primary Borrower's vitae or resume and/or narrative biography
- **All** other project participant(s) vitae or resumes and/or narrative biography. Include
 - All persons or entities who will own 20% or more of the interests in the project
 - Primary operating personnel or contractors, and
 - guarantors

Legal documentation

- Delivery of the construction loan mortgage (if assigned to the permanent lender)
- Architect's certificate of completion with detailed survey and final plans, etc.
- Endorsements of all casualty and hazard insurance policies indicating permanent lender as new loss-payer
- Updated title insurance policy
- Updated verification on status of ground rents (if relevant)
- Exculpation agreement, relieving the borrower of personal liability (if applicable)
- Lien releases from general subcontractors and verification of any payments outstanding with proposed disposition

Lender Application and Agreements

- Borrower's prose narrative
- Lender Application
- SBA Supplementary Application (if applicable)
- Waiver and release to perform credit check and title search

Steven Roy Management Agreements

- Non-disclosure agreement
- Commission/Fee agreement and payment schedule
- Waiver and release to perform credit check and title search