

Wednesday, May 18  
9:30 – 11 a.m.  
Studio 1

**The Dynamics of Commercial Loan Closings – From Internal and External Counsels’ Perspectives**

*Co-Sponsored by the Banking Law Section*

Moderator/Speaker:

Peter R. Herman, Esq.

*Wilentz Goldman & Spitzer, PA, Woodbridge*

Speakers:

Susan Aufiero-Peters, Esq.

Senior Vice President, General Counsel & Corporate Secretary

*Northfield Bank*

Scott T. McCleary, Esq.

*Meyner & Landis, LLP, Newark*

Christopher P. Warren, Senior Vice President

Team Leader – Commercial Banking

*Investors Bank*



## THE DYNAMICS OF COMMERCIAL LOAN CLOSINGS

Susan Aufiero-Peters, Esq.  
In-House Counsel Viewpoints  
Spring, 2022

### 1. Pre-Closing Documents and Mechanics

- 1.1. Term Sheet
- 1.2. Loan / Credit Approval
- 1.3. Commitment Letter
- 1.4. Closing instructions to you to act as attorney for Lender
- 1.5. Relationship managers and closing team
- 1.6. Pricing your deal incl. post-closing matters
- 1.7. Form loan documents, incl. checklist and any portal
- 1.8. Searches

### 2. Closing Documents

- 2.1. Basic objectives of primary credit document– See Annex
- 2.2. Drafting Notes
- 2.3. Loan Agreement; Loan and Security Agreement
- 2.4. Exhibits and Schedules to Loan Agreement; Loan and Security Agreement
- 2.5. Note(s) properly executed and, for NY, corresponding Allonges
- 2.6. Mortgage(s) properly executed and notarized and, for NY, corresponding Assignments of Mortgage, all of which is/are to be recorded with the appropriate county clerk/register
- 2.7. For NY, Mortgage(s) Consolidation, Extension and Modification Agreement properly executed and notarized, which is to be recorded with the appropriate county clerk/register

## THE DYNAMICS OF COMMERCIAL LOAN CLOSINGS

Susan Aufiero-Peters, Esq.  
In-House Counsel Viewpoints  
Spring, 2022

- 2.8. Construction Loan Agreement properly executed and notarized, which is to be recorded with the appropriate county clerk/register
- 2.9. Assignment of Leases and Rents signed properly executed and notarized, which is to be recorded with the appropriate county clerk/register
- 2.10. Fixture UCCs, filed locally
- 2.11. General Security Agreement; UCCs
- 2.12. Title Report – Marked up copy or proforma policy with necessary endorsements
- 2.13. State and Local Registrations (e.g. NJ DCA Green Card)
- 2.14. Personal and Corporate Guarantee(s)
- 2.15. Carveout Guaranties/Indemnity Agreements
- 2.16. Environmental Indemnity
- 2.17. Insurance Binder/Policy naming [Lender] as an additional insured where appropriate
- 2.18. Property and Liability Insurance; Flood Insurance; Construction Loans require “Builders Risk” Insurance
- 2.19. Errors & Omissions Form
- 2.20. Subordination Non-Disturbance Agreements; Landlord Waivers
- 2.21. Tenant’s Estoppel Certificate
- 2.22. Two forms of proof of identification for all borrowers, mortgagors/grantors and guarantors – Valid Driver’s License or Passport preferred
- 2.23. W9 – one for each borrower, mortgagor/grantor and/or guarantor
- 2.24. Incumbency Certificates with Resolutions and Good Standings/Foreign Qualifications
- 2.25. Borrower Counsel Opinion Letter

## THE DYNAMICS OF COMMERCIAL LOAN CLOSINGS

Susan Aufiero-Peters, Esq.  
In-House Counsel Viewpoints  
Spring, 2022

- 2.26. Other Closing Documents as follows: e.g. Payoff Letters, Purchase Documents, Zoning Documents
  - 2.27. Closing certificates and affidavits
  - 2.28. Loan Closing Statement and proof of funding
  - 2.29. Lender Counsel Legal Bill Summary
  - 2.30. Escrow / Post-Closing Agreements
3. Closing and Post-Closing Documents and Mechanics:
- 3.1. Each obligor'(s) full legal name(s) must be used consistently throughout all documents.**
  - 3.2. Any judgment or other lien except for permitted liens (if any) against any mortgagor/grantor and any violation of record must be satisfied at or by the closing.**
  - 3.3. Lender Counsel Comfort Letters / Counsel Memo
  - 3.4. "Mortgagee clause" on all legal documents and insurance policies
  - 3.5. Survey – original surveys must be certified to "[Lender], its successors and/or assigns as their interests may appear" and to the applicable title company; Survey Affidavit of No Change
  - 3.6. Title insurance policy requirements including full legal description for each parcel
  - 3.7. Certificate of Occupancy (CO); In the event the municipality does not require a CO, a letter so stating from the municipality is required
  - 3.8. Tax and Insurance Escrows
  - 3.9. Terms of the transaction change at or immediately prior to closing?
  - 3.10. Funding from your attorney trust account and/or 3<sup>rd</sup> party

## THE DYNAMICS OF COMMERCIAL LOAN CLOSINGS

Susan Aufiero-Peters, Esq.  
In-House Counsel Viewpoints  
Spring, 2022

- 3.11. Original Collateral
- 3.12. Final set of documents
- 3.13. Return of recorded documents
- 4. Other Bank products
  - 4.1. Deposit Accounts
  - 4.2. Letters of Credit
  - 4.3. Derivatives/Interest rate swaps
- 5. Subsequent Events Affecting a Loan
  - 5.1. Change in Borrower's name
  - 5.2. Change of location of Borrower or collateral
  - 5.3. Change of ownership of collateral
  - 5.4. Modifications of loan transactions
  - 5.5. Mergers, changes in entity form
- 6. Bank Representation
  - 6.1. Accounts and referrals
  - 6.2. Conflict Waivers
  - 6.3. Workouts and restructurings
  - 6.4. Vendor Management

# THE DYNAMICS OF COMMERCIAL LOAN CLOSINGS

## Annex

### Basic Objectives of Primary Credit Document

1. Define the financial terms of the credit extension (i.e., type of credit extension, amount, maturities, repayments, fees, interest rates)
2. Set forth the conditions precedent for the extension of credit
  - a. conditions to initial credit extension
  - b. conditions to subsequent credit extensions
3. Set forth the credit structure for the credit extension
  - a. identity of borrower
  - b. identity of guarantor
  - c. security
  - d. other credit support
4. Define the condition of the credit structure - representations and warranties
5. Limit the changes that can be made to, or occur with respect to, the credit structure - covenants
  - a. affirmative
  - b. negative
  - c. financial
6. Define the circumstance in which the obligation to extend credit can be terminated and/or the maturity of outstanding credit extensions can be accelerated - events of default
7. General provisions
  - a. Modifications and waivers
  - b. Lender rights, borrower consents
  - c. Boilerplate/miscellaneous provisions



## **The Dynamics of Commercial Loan Closings— Borrower's Counsel's Perspective**

### **I. Term Sheet or Commitment Letter**

1. What it is?
2. Why Borrower's Counsel Needs to be Involved
3. Timing is Everything
4. Appraisal, Environmental Report, Property Condition Report

### **II. The Bank's Checklist as Roadmap to Closing**

1. Title Company/Title Binder/Survey/Endorsements
2. Required Searches
3. Again, Timing is Everything
4. Online Shared Folders

### **III. Borrower's Counsel Opinion Letters**

1. Preliminary- Purpose, Ethical Issues
2. Can You Give the Opinion?
3. Due Diligence- Organizational Charts, Organizational Documents and Searches
4. The Form

### **IV. Leases**

1. Certified Rent Roll- Base Rent/Additional Rent/Security Deposits
2. Estoppel Certificates
3. Subordination, Non-Disturbance and Attornment Agreements (SNDAs)

### **V. Bulk Sales Act**

1. Mechanics
2. Know Your Seller

### **VI. The Loan Documents**

1. Positive and Negative Covenants
2. Events of Default- Cross-Defaults, Grace & Cure Periods, Debt Service Coverage Ratios, Material  
Adverse Change, Judgments, Death
3. Carve-Out/Bad-Boy Guarantees
5. Prepayment Penalties
6. Notarization



## **NEGOTIATING CREDIT DOCUMENTATION FROM BORROWER'S AND LENDER'S PROSPECTIVE**

### **I. INTRODUCTION**

A. When negotiating credit documentation between a Lender and a Borrower it is important to strike a balance between permitting the Borrower to continue conducting its business, as understood, and approved from a credit perspective, by the Lender and ensuring that the transaction as documented such as to protect the Lender's interests.

B. Factors considered in striking this balance:

- i. Financial statements and other information provided to Lender in seeking approval;
- ii. The terms of the final credit approval and conditions thereof; and
- iii. Documenting the credit facility such that (i) the Lender's and Borrower's expectations with respect to the operation and performance of the Borrower's business is memorialized, (ii) any security interest required by the Lender is properly granted and perfected, and (iii) adequate remedies in favor of the Lender are provided.

### **II. GENERAL TERMS OF CREDIT FACILITIES:**

A. This section of the Credit Documents describes the specifics of the credit facilities being offered by the Lender. Usually in Notes or the Credit Agreement.

B. It is important from the Lender's perspective that the terms reflect the credit facilities as approved by the Lender and from the Borrower's perspective that the terms reflect the Borrower's anticipated credit needs.

C. Terms may include:

- i. Type of facility;
- ii. Amount of facility;
- iii. Rate of interest/fees payable;
- iv. Terms of repayment/prepayment;
- v. Terms of borrowing/availability.

D. Generally, the language contained in the Credit Documents, other than specifics of your particular deal (such as the exact rate of interest), is standard, and therefore, is not subject to change.

E. For example, the Lender is very unlikely to change its definition of “Prime Rate” or “SOFR.”

### **III. COLLATERAL**

A. Assuming the subject credit facilities are to be collateralized, the form of security documentation can vary greatly depending on the type of collateral. For example, real property is secured by a mortgage and personal property is secured by a security agreement.

B. Due Diligence – an important aspect of any transaction to insure the Lender that it is obtaining the mortgage/security/pledge bargained for, or in the alternative, if the deal is unsecured the Borrower is free and clear of all liens.

C. Due Diligence may include:

- i. Searches – UCC, state and federal tax liens, judgments;
- ii. Title Insurance –
- iii. Opinion – authorization, execution, delivery, enforceability.

D. Borrower sometimes resist providing requested due diligence because of timing/cost. Generally, the Lender is going to require in order to make sure that status of the Borrower and the collateral being provided is as was approved by Lender.

### **IV. REPRESENTATIONS AND WARRANTIES:**

A. The purpose of obtaining representations and warranties in the Credit Documents is to get an accurate depiction of the Borrower and other Obligors (e.g., Co-Borrowers and Guarantors) at the time of closing. This depiction should be consistent with the Lender’s understanding of its Borrower and other Obligors at the time of the Lender’s approval.

B. The types of representations typically found in the Credit Documents are (i) legal existence and power to enter into the transaction, (ii) good standing, (iii) financial condition, (iv) status of judgments, other liens and prior of security interests/mortgages granted in favor of Lender, and (v) no violations of laws, licenses or permits.

C. Since an attorney representing the Borrower and other Obligors will often not have direct knowledge as to whether factually the representations and warranties being requested are accurate, Borrower’s counsel should instruct his client to review each representation and warranty carefully.

D. It is important to the Borrower that it carefully review the representations to assure their accuracy. The failure to do so could result in an Event of Default on the part of the Borrower. On the other hand, the Lender wants its Borrower to fully disclose all issues affecting the accuracy of the representations and warranties, particularly if it would impact on whether the Lender would close the transaction. It is important that the Lender trust the accuracy of all representations and

information being provided by its Borrower during the entire course of their relationship, starting with those provided at or prior to closing.

## V. AFFIRMATIVE COVENANTS

Covenants are generally broken down into affirmative and negative covenants. Affirmative covenants are those where the Borrower and other Obligors agree to perform certain acts (e.g. to comply with applicable laws) and negative covenants are those where the Borrower and other Obligors agree to refrain from certain acts (e.g., not to create a lien on its assets).

Some standard affirmative covenants included in the Credit Documents are (i) preservation of legal existence; (ii) compliance with laws, (iii) payment of taxes, (iv) maintenance of property, (v) maintenance of insurance, (vi) notice of financial information and other reporting requirements, (vii) examinations and inspections, and (viii) use of loan proceeds.

A. Most affirmative covenants are not heavily negotiated for the reason that most well run companies are likely in compliance with the standard covenants set forth in the Credit Documents in the ordinary course of their business.

B. For instance, most companies would pay their taxes, generally comply with laws and maintain their properties regardless of whether they had entered into the Credit Documents. If they did not, they jeopardize going out of business.

C. There are, however, some exceptions to the foregoing:

- i. Sometimes the concept of “materiality” is negotiated into the documentation.
- ii. An example of “materiality” is an event or condition which could have a material adverse effect on (a) the business prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Borrower and other Obligors, (b) the collateral, (c) the Borrower’s and the other Obligors’ ability to perform their respective obligations under the loan documents, or (d) the validity, enforceability or availability of rights and remedies of the Lender hereunder or any other loan documents, in each case as determined by the Lender.
- iii. Covenants regarding maintenance of insurance needs to be reviewed carefully by Borrower.
- iv. Often as part of the negotiations with respect to the insurance provisions, a discussion arises with respect to the Borrower’s ability to utilize casualty insurance to replace the property damaged or destroyed.
- v. Attention should also be paid with respect to the financial statements and other reporting requirements of the Lender.

## VI. NEGATIVE COVENANTS

A. As indicated earlier covenants generally fall into two categories, affirmative covenants and negative covenants.

B. Generally, the negative covenants is the area of most concern to both the Borrower and the Lender. The Borrower wants to make sure that it is able to continue to operate as it has in the past and the Lender does not want to impede the Borrower from continuing to operate its business as the Lender understands it and has considered as part of its credit approval.

C. Some negative covenants generally found as part of the credit agreement are:

- i. limitation on indebtedness;
- ii. limitations on the sale and disposition of assets;
- iii. restrictions on the acquisition of assets;
- iv. restrictions on mergers, consolidation and other restructures;
- v. restrictions on investments and formation of subsidiaries and affiliates;
- vi. restrictions on changes of ownership;
- vii. restrictions on loan and advances to other persons or entities;
- viii. limitations on liens; and
- ix. restrictions on dividends and distributions.

D. Limitation Debt

- i. This covenant generally prohibits Borrowers from incurring additional debt, other than debt to the Lender.
- ii. The kind of relief a Borrower needs with respect to this covenant often depends upon how the customer has historically financed their business needs in past and what their expectation is for the future.
- iii. Therefore, the concept of “permitted indebtedness” is often introduced to the documentation.
- iv. Often the components of permitted indebtedness will include (1) additional indebtedness from the Lender, (2) trade payable of the Borrower in the ordinary course of business, (3) existing indebtedness of which the Lender is aware of the time of closing, and (4) purchase money financing.
- v. Clearly, additional indebtedness from the Lender is not a problem. Depending upon the Borrower’s future needs and the Lender’s capability to

satisfy those needs may dictate whether this is the only form of permitted indebtedness required.

- vi. Most businesses produce trade payables in the ordinary course of business, such that this type of concept is generally not an issue.
- vii. Lenders should not be surprised by existing debt. Existing debt should have been disclosed to the Lender in the financial statements that were delivered to the Lender in connection with the Borrower's request for the credit facilities in question.
- viii. Purchase money financing is debt incurred by Borrower for the specific purpose of financing the acquisition of goods. Generally Lender will permit some purchase money financing with respect to equipment within certain dollar limitations.

E. Limitation on the sale and disposition of assets.

- i. Lenders see the need to restrict a Borrower's ability to sale or dispose of its assets as important for those reasons. First, those assets are seen as necessary for the Borrower to operate and continue with its business. Second, if a Lender has a security interest in the Borrower's property, the sale of such property diminishes the value of the Lender's such security interest.
- ii. Notwithstanding the foregoing, two exceptions to the sale and disposition of assets is often agreeable to the Lender.
- iii. If the Borrower is in the business of selling goods, clearly the sale of goods in the course of its business would be acceptable.
- iv. If the Borrower has significant amount of equipment which tends to become obsolete, it would not be unusual for a Borrower to periodically sell same and replace with new equipment.

F. Acquisition of Assets, Mergers, Consolidation and Restructuring.

- i. Lender want to place restrictions on the Borrowers' ability to acquire another business, to undergo mergers or consolidations with other companies and to otherwise restructure its legal existence.
- ii. The Lender has a deep concern with respect to such limitations because without such restrictions the essence of the Borrower, for which the Lender has received credit approval, could fundamentally change.
- iii. Sometimes Borrower looks for relief from this covenant because they might want to acquire a business or undergo some type of merger, consolidation or restructure.

- iv. The difficulty is that the foregoing events can take many different forms and each will have their own characteristics. For that reason it is difficult to craft an exception that will give the Borrower the flexibility it wants without the Lender feeling materially compromised. Even if the Lender attempts to provide some type of exception, the Lender generally requires that it give some kind of consent before permitting.
- v. On the other hand, if a Borrower has a specific acquisition, merger, consolidation or reorganization in mind, and enough detail with respect to same is available, a specific exception may be provided at closing.

G. Restriction on Investments, Subsidiaries and Affiliates.

- i. Generally, Lenders look at their Borrowers from a credit perspective from two angles, i.e., from an income statement or revenue/expense perspective and from a balance sheet or asset/liability perspective.
- ii. designed to maintain a healthy balance sheet.
- iii. Restriction on investments, subsidiaries and affiliates is consistent with this goal.
- iv. By limiting the Borrower to less risky investments or restricting the Borrower from forming subsidiaries or affiliates, the Lender is able to maintain the financial integrity of the Borrower.

H. Change of Ownership.

- i. If the Borrower is a publicly traded company, this restriction would generally come out.
- ii. On the other hand, if the Borrower is a closely held company some sort of change of control provision is generally required.
- iii. From the Lenders perspective, the success of the Borrower often rests in certain “key” persons continuing to control the Borrower.
- iv. Generally, a Lender desires that these “key” persons own and/or have the right to vote at least 51% of all ownership interests entitled to vote.

I. Loans and Advances.

- i. Loans and advances made by the Borrower to the other persons are often prohibited or restricted under the Credit Documents.
- ii. The Lenders are concerned with these outflows of cash because it leaves less money available to the Borrower to service its debt and to operate its business.

- iii. There are exceptions that Borrower may request of Lender which may be acceptable.
- iv. These exceptions may include (i) limited loans or advances to employees or owners of the Borrower, (ii) loans or advances to other borrowers or guarantors of the credit facility, and (iii) credit extended by the Borrower to its customers in the ordinary course of business.

J. Limitations on Lien.

- i. If a Lender is granted a lien on all assets of the Borrower, same is generally a first, and only, priority lien.
- ii. Lenders like to be the only secured party with respect to the collateral, even if other secured parties are junior in priority.
- iii. Notwithstanding the foregoing, the concept of certain permitted liens is often negotiated in the documentation.
- iv. Some of these permitted liens typically include:
  - (1) Liens of warehousemen, mechanics, materialmen, workers, repairmen, fillers, packagers, processors, common carriers, landlords and other similar liens arising by operation of law or otherwise, not waived in connection herewith, for amounts that are not yet due and payable or which are being diligently contested in good faith by the Borrower by appropriate proceedings, provided that in any such case an adequate reserve is being maintained by the Borrower for the payment of same in accordance with GAAP and it does not prevent the Lender's lien under the loan documents to remain a first priority lien.
  - (2) Liens for taxes, assessments or other governmental charges not yet due and payable or which are being diligently contested in good faith by the Borrower by appropriate proceedings, provided that in any such case an adequate reserve is being maintained by the Borrower for the payment of same in accordance with GAAP.
  - (3) Deposits or pledges to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance;
  - (4) Deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, regulatory or statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business with the Borrower.

- (5) Liens placed on equipment financed with “purchase money financing” to the extent permitted under the Credit Documents, provided that such liens shall not encumber any other property of the Borrower.
  - v. With respect to permitted purchase money financing noted earlier, usually there is a dollar limitation as to the amount permitted. It should be noted that purchase money financing will take priority over the Lender’s lien with respect to the specific equipment financed.
- K. Restriction on Dividends and Distributions.
- i. As is the case with loans and advances, dividends and distributions are cash outlays which would otherwise be available to pay debt service and operating expenses of the Borrower. For this reason, the Lender has a legitimate concern in restrictions or limiting dividends and distributions.
  - ii. Typically, if your Borrower is a limited liability company or an S corporation, Lenders will permit, so long as no default exists at the time or would result therefrom, dividends and/or distributions to the extent necessary for the owners to pay their tax liability associated with such ownership interests in the Borrower.
  - iii. Sometimes the Lender will craft certain financial covenants which take into account dividends and distributions. If this is the case, the Lender may permit dividends and distributions, so long as no default shall exist at the time and so long as the Borrower remains in compliance with such financial covenant after such dividends and distributions.

## VII. FINANCIAL COVENANTS

A. Financial covenants can take the form of affirmative covenants or negative covenants. In either case, careful attention needs to be paid by both the Lender and the Borrower. These covenants are generated as a result of (i) the Borrower providing its financial statements and other information to the Lender as part of the credit facility approval process, and (ii) the Lender reviewing same and crafting the financial covenant to measure the performance of the Borrower compared to those financial statements and other information.

B. It is important from the Lender’s perspective that the financial covenants accurately reflect the Lender’s expectations and from the Borrower’s perspective that they reflect the Borrower’s anticipated performance.

C. The crafting of the financial covenants generally will require significant input from the business people in the transaction, namely the chief financial officer or chief operating officer of the Borrower and the credit officers of the Lender.

D. also the manner and method by which the financial covenants are to be calculated, such as how is “Debt Service Coverage Ratio” defined or determined.

## VIII. EVENTS OF DEFAULT

A. Events of Default are those provisions set forth in the Credit Documents which give the Lender the ability to accelerate the credit facilities and/or exercise the various remedies provided for the credit documentation.

B. Events of Default generally in the Credit Documents includes, among others, (i) failure to make payment, (ii) breach of covenants set forth in the Credit Documents, (iii) misrepresentation of representation and warranties, (iv) bankruptcy and/or insolvency, (v) cross-default to other credit facilities with the Lender or other lenders, (vi) judgments, and (vii) material adverse change.

C. Failure to Make Payment.

- i. Borrowers often request a grace period with respect thereto.
- ii. If the Borrower is to make payment by automatic debit, the Lender is unlikely to grant since sufficient money should be on account.

D. Breach of Covenants.

- i. Borrower will also often request grace or cure periods here.
- ii. Lender may grant some kind of relief here to the extent that the breach is curable and by waiting the Lender does not unduly compromise its position with respect to the Borrower or its remedies.
- iii. Lenders will not generally provide such relief with respect to negative covenants or financial covenants.

E. Bankruptcy and/or Insolvency.

- i. Generally some type of grace or cure period is provided with respect to involuntary proceedings.
- ii. However, if the Borrower itself commences such proceeding to take advantage of the protections afforded by these laws, the Lender will not agree to any such grace or cure period.

F. Judgments.

- i. Generally, the Lender will provide the Borrower with some type of cure period in which to have the judgment discharged or stayed pending an appeal.
- ii. Furthermore, often the Lender will agree to some aggregate and individual dollar threshold prior to a judgment becoming an Event of Default. The

amount of this is generally set at a level below which the Lender feels the Borrower would not be materially impacted.

G. Cross Defaults.

- i. Usually a dollar threshold with respect to a cross default is requested by the Borrower.
- ii. With respect to other debt owed by the Borrower to the Lender, generally no such dollar threshold is granted.
- iii. With respect to debt owed to other lenders, a threshold that is not indicative of a material problem might be provided. The amount of the threshold would generally be size based upon a similar analysis as under judgments

H. Material Adverse Change.

- i. This provision often makes Borrowers nervous.
- ii. Lenders rarely remove this provision.
- iii. However, Borrowers should take some comfort from the fact that this provision is seldomly used by the Lender, particularly if there are financial covenants set forth in the Credit Documents.

## **IX. REMEDIES**

A. These provisions are rarely negotiated.

B. Time and energy has been spent drafting the other provisions of the Credit Documents. If after all that an Event of Default occurs, the Lender must be in the position, to the extent permitted by applicable law, to exercise all rights and remedies available to it.

## **X. CONCLUSION**

It is of mutual beneficial interests of the Lender and the Borrower that each understands the others' position. Once this occurs, the parties can focus on seeing that the transaction is memorialized taking into account (i) the Borrower's anticipated performance and operation of business, as presented by the Borrower to the Lender during credit approval, and (ii) the credit facility being extended to the Borrower, as approved by the Lender, including the provision of any collateral with respect thereto.

Susan Aufiero-Peters, Esq. is the Senior Vice President, General Counsel and Corporate Secretary of Northfield Bank. She was most recently Assistant General Counsel for Investors Bank and has also held an Associate General Counsel position with Sterling National Bank and a Senior Corporate Associate position with Proskauer LLP. With over 20 years of experience, Susan has a proven track record in the areas of commercial and credit transactions, governance, regulatory and compliance matters, and outside counsel and litigation management.

Susan has provided representation for lenders and borrowers in secured and unsecured financings, at the senior, junior and mezzanine level. Her representation experience also includes distressed debt trading, intercreditor matters, and workouts and restructurings.

Susan is a member of the New York and New Jersey Bars and has a Bachelor of Arts Degree from Drew University and a Juris Doctor from the Seton Hall School of Law. She is a member of the Financial Women's Association and the Association of Commercial Finance Attorneys, as well as multiple banking and bar associations.

Susan has co-authored or assisted with articles concerning lending, restructuring and recovery. She has served as a mentor at the high school, college and law school levels, and is involved in community activities.



MEYNER AND LANDIS LLP  
COUNSELLORS AT LAW

### **Scott T. McCleary**

Scott McCleary is a principal of Meyner and Landis LLP and has been practicing law since 1987. Scott has in-depth experience providing transactional and litigation services to large corporations and financial institutions, closely held businesses, entrepreneurs and other business owners.

Scott provides counsel with respect to most types of commercial transactions, including commercial loan and workout agreements, real estate purchase and development agreements, asset sale agreements, commercial leases, construction agreements, stock purchase agreements, shareholder and operating agreements, and other agreements relating to for-profit and non-profit corporate governance. Scott also has 35 years of trial experience, including jury trials, litigating matters involving commercial transactions.

Scott is a member of the New Jersey Bar, has a Bachelor of Arts degree from Bloomsburg University and a Juris Doctor from the University of Bridgeport School of Law (now Quinnipiac School of Law).



## **Peter R. Herman, Esq.**

Peter R. Herman is a shareholder at Wilentz, Goldman & Spitzer, P.A. and co-chair of the firm's Banking & Financial Services group and the Bankruptcy and Creditors' Rights group. For over 30 years, he has represented both lending institutions and business entities in a broad range of commercial finance transactions, including those related to secured and unsecured lending, asset-based lending, letters of credit, tax-exempt financing, syndicated and club deals, mezzanine financing, participations, construction financing, merger and acquisition financing, sponsor deals, and loan workout restructuring. Mr. Herman's banking and corporate law practice also includes representing companies in the real estate, healthcare, manufacturing, and service industries with regard to both national and international transactions.

Mr. Herman is a Member of the New York and New Jersey Bars and has a Bachelor of Arts Degree in Economics from St. Joseph's University and a Juris Degree from Fordham University School of Law.

He is also a Member of New Jersey state Bar Association, Banking Law Section, Board of Directors and Risk Management Association, Northern New Jersey Chapter, President.

Since 2020, Mr. Herman has been ranked by *Chambers USA* with a distinguished Band 1 ranking. Since 2003, he has been consistently selected for inclusion in the *Best Lawyers in America* list for Banking and Finance Law and Financial Services Regulation Law, including as "Lawyer of the Year" in 2020 for Banking and Finance Law.

## **Christopher P. Warren**

Mr Warren is the Team Leader for Investors Bank, a division of Citizens Bank. He leads a commercial banking group in southern and central New Jersey.

He started his career in banking at the Philadelphia National Bank / CoreStates as part of the Bank's commercial credit training program. During his tenure at CoreStates, Mr. Warren was Managing Director of the Bank's merchant banking subsidiary in Sydney, Australia.

Before joining Investors Bank in January of 2019, Mr Warren was the Market President for BB&T in the Camden and Burlington county market. Prior to BB&T, Mr. Warren was a Senior Vice President and the Business Banking Area Manager at Citibank with responsibility for the Company's market in southeastern Pennsylvania and New Jersey.

During Mr Warren's career he has had extensive experience delivering a myriad of banking services to closely held businesses, professional firms and not-for-profit organizations. He has led teams of experienced relationship managers with a focus on growth, revenue generation, and market share development by building an extensive network of customer relationships. He is also personally responsible for new client acquisition, credit quality and compliance.

Mr. Warren has had a long history of service to his community. He has served with distinction as a board member of the following organizations:

- Trustee, Boys & Girls Club of Camden County;
- Trustee, The Virtua Foundation;
- Trustee, Oaks Integrated Care;
- Member, Finance & Investment Committee, Virtua Health System.
- Board Member, South Jersey Bankers Association.
- Advisory Board member, Jewish Family and Children Services.

Mr Warren has a 30+ year investment in the Southern New Jersey business community, evidenced in part by the following recognitions:

- 2021: SJ Biz Power 50. Annual list of South Jersey's most influential leaders
- 2020: SJ Biz Power 50. Annual list of South Jersey's most influential leaders
- 2019: SJ Biz Power 50. Annual list of South Jersey's most influential leaders
- 2019 Boys & Girls Club's Citizen of the Year
- 2018: SJ Biz Power 50. Annual list of South Jersey's most influential leaders.
- 2016: Smart CEO Magazine. Center of Influence Finalist.
- 2005: Chamber of Commerce of Southern NJ. Volunteer of the Year at the Chamber's 11th Annual Pinnacle Awards Dinner.

Warren graduated from Ursinus College with a bachelor's degree in economics, has a married adult daughter and has lived in Moorestown, NJ with his wife Elizabeth for close to thirty years.