

# TIPS FOR NEGOTIATING THE LOAN APPLICATION (WITH FORMS)



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Loan applications are an important, but sometimes overlooked, component of the mortgage financing process. A properly drafted loan application, among other things:

- Identifies the correct borrower and guarantor (if any) and describes the proposed loan structure and the information that the lender will use to underwrite and approve the loan;
- Contains any transaction-specific provisions required by the lender and the borrower;
- Lists the lender's due diligence and closing requirements and contains a timetable for the borrower satisfying those requirements;
- Describes the fees and expenses that are payable by the borrower in connection with the proposed loan;
- Establishes the conditions under which either the borrower or the lender may terminate the loan application process, as well as the respective rights and obligations of the parties in the event of a termination; and
- Provides the basis for the lender to prepare the commitment letter and the loan documents (assuming the loan is approved).

By identifying and incorporating important deal terms into the loan application, the borrower and

its counsel can avoid costly misunderstandings with the lender and can also expedite the due diligence, loan commitment, and closing processes.

The borrower's counsel should: (i) discuss with the client the client's business objectives and desired timing for closing the loan before commencing the review and negotiation of the loan application; and (ii) establish a timeline with the client for finalizing the loan application. Circumstances (for example, an opportunity to take advantage of declining interest rates) or the borrower's own business objectives (e.g., the borrower's immediate need for capital) may cause the borrower to emphasize speed in completing and submitting the loan application over undertaking extensive negotiations.

It may be useful for the borrower's counsel to request and briefly review certain key provisions in the lender's standard loan document forms (e.g., default provisions, transfer provisions, and casualty and condemnation provisions) for purposes of determining whether the borrower should negotiate modifications to those provisions in the loan application. Both the borrower and its counsel should expect that the loan application will form the basis for the lender's loan commitment, and that the borrower may not have the opportunity at the loan commitment stage to modify the deal described in the loan application.

## **LOAN PARTIES AND BASIC LOAN STRUCTURE**

To really understand the loan application process, and to succeed in incorporating the major deal terms into the loan application, you must become familiar with the parties and the most fundamental aspects of the loan.

### **Borrower and guarantor**

The loan application must correctly identify the borrower and any guarantor of the loan. If the borrower is a to-be-formed entity, then the loan application should clearly state that fact, as well as identify the relationship of the borrower to the person or entity executing the loan application on the borrower's behalf.

### **Collateral for the loan**

The loan application must identify the correct property and/or other security (including any applicable outparcels) that will constitute the collateral for the loan. This may seem like a somewhat innocuous task, but the failure to accurately identify the collateral in the loan application can cause problems for the borrower and the lender:

- In multi-property portfolio loans;
- When the client owns several different properties that have similar names; or
- If the loan collateral consists of only a portion of a multi-phase property.

If the lender must perform new due diligence and loan underwriting work on the new (correct) collateral, then that task will adversely impact the borrower's loan closing timetable. The loan application should state whether the loan will be cross-collateralized and/or cross-defaulted with any other loan.

### **Loan amount and loan term**

The loan application should list the loan amount and the loan term requested by the borrower. If the lender did not perform any loan underwriting or other due diligence before completion of the loan application, then the lender will reserve the ability

in the loan application to adjust the loan amount based on the results of the lender's loan underwriting. The borrower should have the right to terminate the loan application (and receive a refund of all or a negotiated portion of any loan application fees) in the event that for any reason the lender is unable to make a loan to the borrower in an amount and for a loan term the same as those set forth in the loan application submitted to the lender.

The loan application should list the maximum loan-to-value (LTV) and minimum debt service coverage (DSC) ratios that the lender will use in determining the loan amount. The borrower can apply these ratios to the borrower's internal valuation of the property in order to make a preliminary assessment regarding whether the borrower-determined value of the collateral will be sufficient to support the requested loan amount. The internal financial information used by the borrower in determining the LTV and DSC ratios may differ from the information used by the lender to make those determinations, so the loan application also should include at least a brief description of the lender's underwriting methodology. Information as to the lender's underwriting procedures will provide the borrower with a basis for:

- Confirming the accuracy of the lender's loan collateral valuation; and
- Verifying that the lender has correctly applied the lender's own underwriting standards in determining the loan amount.

The description of the loan term in the loan application should include any rights that the borrower may have to extend the loan term, as well as all conditions precedent to the borrower's exercise of those extension rights.

### **Selection of interest rate(s) and method(s) of calculating interest**

If the loan application does not state the actual loan interest rate, then the document must state whether the loan will be a fixed-rate loan, a floating rate loan

or some combination thereof, as well as the lender's methodology for:

- Establishing the interest rate; and
- Calculating the interest amount.

For example, lenders often use the yield on a specified U.S. Treasury security plus some basis point spread to determine fixed-rate loan pricing, while a lender may base floating rate loan pricing on the lender's "prime" rate plus a basis point spread or the 30, 60, or 90 day London Interbank Offering Rate (LIBOR) plus a basis point spread. The lender typically will use one of the following three methods to actually calculate the interest amount:

- A year consisting of 360 days and each month in that year consisting of the actual number of days in that month (the "Actual/360" method);
- A year consisting of 365 (or 366) days and each month in that year consisting of the actual number of days in that month (the "Actual/365" method); or
- A year consisting of 360 days and each month in that year consisting of 30 days (the "30/360" method).

If the loan will be a fixed-rate loan, then the loan application should provide the borrower with the right to lock the interest rate before closing, including:

- The procedures that the borrower must follow in order to lock the interest rate;
- Any timetable for interest rate lock; and
- Any payments that must be made to the lender in order to permit the borrower to lock the interest rate.

Some lenders will permit a borrower to lock the interest rate well in advance of the closing date in exchange for the borrower making a "rate lock deposit" to the lender equal to a negotiated percentage of the loan amount. This early rate lock right can allow the borrower to take advantage of borrower-favorable shifts in interest rates. The rate

lock deposit will be returned by the lender to the borrower if the loan closes in accordance with the terms of the loan commitment; however, the lender customarily has the right to keep all or a portion of the rate lock deposit (as compensation to the lender) in the event that the borrower fails to close the loan transaction. The parties sometimes can negotiate the form of payment of the rate lock deposit (e.g., cash, letter, or credit or guaranty) as part of the loan application process.

When the interest rate will change from a fixed-rate to a floating rate (or vice versa) during the loan term, then the loan application should describe the timing and process for converting the interest rate.

### **Prepayment restrictions or provisions**

The loan application should set forth any rights of the borrower to prepay all or a portion of the loan, as well as any prohibitions on loan prepayment. When loan prepayment is permitted, the loan application should describe the applicable prepayment formula (e.g., yield maintenance, prepayment fee/premium, or defeasance).

## **IMPORTANT TRANSACTION-SPECIFIC PROVISIONS**

Whenever possible, the borrower and its counsel should include some or all of the following types of loan document provisions in the loan application.

### **Recourse liability**

The loan application should include the actual limitation on liability provisions that the lender will use in the loan documents. Counsel for the borrower should review and, if necessary, negotiate these provisions as part of the loan application process. In particular, the borrower's counsel should identify for his client those types of loan document defaults, if any, which could result in full personal liability for the borrower and/or any guarantor under the loan documents.

Any special provisions relating to any guarantor of all or a portion of the loan (for example, limits on

guarantor liability or special guaranty release provisions) also should be set forth in the loan application.

### **Collateral substitutions and releases**

If the borrower will have the right during the loan term to substitute collateral for the initial loan collateral and/or obtain a release of all or a portion of the loan collateral, then the loan application should contain an overview of the loan document provisions relating to collateral substitutions and releases.

### **Insurance requirements**

The borrower should have the lender include as part of the loan application a list of the lender's insurance requirements. (See Appendix 1 at the end of this article for a sample provision.)

### **Transfer provisions**

If the borrower is a joint venture, an affiliate of a real estate investment trust (REIT), an entity that is undertaking a tenant-in common (TIC) transaction, or any other entity that may require some flexibility in connection with possible future transfers of ownership interests in the borrower or the property that is the loan collateral, then the loan application must describe the necessary permitted transfers. The transfer provisions may need to be broad enough to allow for a change in control of the borrower entity when holders of ownership interests in the borrower have the right to buy out the controlling ownership interest holders.

### **Defaults and cure periods**

Many loan applications address borrower defaults in very general terms; for example, the application may contain a statement that "borrower defaults will be as described in the loan documents governing the transaction." Unless the loan application contains specific notice and cure periods for borrower defaults, or the borrower is particularly sensitive to default cure periods, the borrower's counsel should consider deferring negotiating default and related cure period provisions until the actual negotiation of the loan documents.

### **Casualty and condemnation provisions**

The borrower's counsel may have an opportunity to negotiate as part of the loan application process the conditions under which casualty and condemnation proceeds will be made available to the borrower for use in restoring the collateral property. If the loan application form does not address these issues, then this may be another topic that the borrower can defer until the actual negotiations of the loan documents.

### **Other deal-specific requirements**

The loan application should contain any other deal-specific provisions that the lender will need to incorporate into its loan underwriting and approval processes and/or the actual loan documents. Deal-specific requirements that should be set forth in both the loan application and the loan documents include:

- Any DSC or LTV tests that will be applicable to the loan collateral following the loan closing;
- Any post-closing requirements or restrictions relating to future leasing activity at the property;
- Any prohibitions on or permitted secondary financing; and
- Any repair or replacement reserve, real estate tax, and insurance escrow or other escrow requirements.

Examples of requirements that, while important for loan application purposes, will not be included in the loan documents include:

- The lender's agreement to use loan documents from a prior loan as the template documents for the contemplated loan;
- The lender's agreement to use specific legal counsel for the transaction;
- Any pre-closing property-related requirements (e.g., minimum occupancy levels); and
- The borrower's request that the lender waive certain lender closing requirements (e.g., the lender agreeing to accept certificates evidencing

insurance coverage rather than actual insurance policies).

## LENDER'S DUE DILIGENCE AND CLOSING REQUIREMENTS

The loan application should list all of the due diligence items and other submissions and requirements that must be satisfied by the borrower as a condition to the lender evaluating the loan application, completing the lender's due diligence, issuing the loan commitment, and closing the loan.

### Borrower formation requirements

Depending on the lender and the type of loan, the lender may specify in the loan application that the:

- Borrower must own only the loan collateral and cannot own any other assets;
- Borrower have a certain organizational structure (e.g., a Delaware limited liability company that has one or more independent members for bankruptcy-remoteness purposes); and
- Borrower's organizational documents contain a number of special purpose entity (SPE) provisions that are intended to keep the assets of the borrower from being consolidated with the assets of the borrower's parent in the event of the bankruptcy of the parent.

Borrower's counsel must incorporate the lender's requirements into the borrower's organizational documents, either at the time of entity formation or by amendment to existing organizational documents.

### Underwriting deliveries

Appendix 2 to this article contains a sample list of the types of documents that the lender may require from the borrower in connection with the lender's loan underwriting process. In addition to the items listed in Appendix 2, the loan application delivery list should include copies of the organizational documents of the borrower (to the extent existing at the time of the loan application) and of any guarantor of the loan.

## Title and survey requirements

The lender should include its title insurance and survey requirements in the loan application. Title insurance requirements may include:

- A list of title insurance companies that are acceptable to the lender;
- Identifying the form of mortgagee title insurance policy (e.g., a 2006 ALTA policy) that the lender must receive at closing;
- A description of any endorsements to the title insurance policy required by the lender; and
- If applicable, the lender's title reinsurance guidelines.

Most lenders require a current ALTA/NSPS (i.e., American Land Title Association/American College on Surveying and Mapping) survey of the property. Lenders also will specify what additional matters (the so-called Table A items) must be depicted on the survey. The lender must include its survey guidelines and any required form of survey certification as exhibits to the loan application (See Appendix 3 to this article for examples of lender survey guidelines and a survey certification).

### Legal opinions and other closing deliveries

The loan application should contain a description of the legal opinions and any special requirements or deliveries that must be satisfied or provided by the borrower (or the borrower's counsel) as a condition to loan closing. Borrower and guarantor formation, due authorization and loan document enforceability opinions from the borrower's counsel (or local counsel, if necessary) are customary loan closing requirements. Lenders also may require a non-consolidation opinion letter under certain circumstances (for example, large loans and/or CMBS loans). The borrower's counsel may have to provide a tax opinion in a bond financing or a low-income housing tax credit (LIHTC) transaction. Some loan applications even attach a suggested form of borrower's counsel opinion letter as an exhibit.

If the loan collateral consists of office or other commercial property, then the borrower may be required to provide tenant estoppel letters and/or subordination, non-disturbance and attornment agreements (SNDA) from certain tenants as a condition to loan closing. In negotiating these requirements with the lender, the borrower's counsel should consider:

- Attaching the forms of estoppel letter and SNDA as exhibits to the loan application; and
- Having the lender agree in the loan application that the lender will accept in satisfaction of any loan closing requirements the forms of estoppel letter and SNDA, if any, that the tenants are required to deliver under the terms of the relevant leases.

If the borrower wants the ability to provide landlord estoppel letters to replace estoppel letters furnished by tenants that are not acceptable to the lender, then the borrower should negotiate those conditions as part of the loan application process.

Some lenders, particularly insurance companies, require their borrowers to execute and deliver at loan closing certifications and representations relating to ERISA matters. Because of the highly technical nature of the ERISA laws and the severity of the consequences for both the lender and the borrower if the borrower violates an ERISA certification or breaches a representation, the parties must review and include in the loan application any required ERISA certifications and representations that the borrower must execute at loan closing.

## FEES AND EXPENSES

The loan application should list:

- All fees and reimbursements payable by the borrower to the lender and third parties engaged by or on the lender's behalf;
- The method the lender uses to calculate all fees, if applicable;
- The timing of the borrower's payment of those fees and reimbursements; and

- The circumstances under which all or a portion of any fees may be waived or refunded to the borrower.

Fees may include a loan application fee, a due diligence review fee, a loan commitment fee, an early rate lock fee, legal fees (if the lender has agreed to cap legal fees or to pay a fixed legal fee, then the application should contain the capped or fixed fee amount), and an interest rate standby fee (sometimes also referred to as a forward commitment fee or a good faith deposit). The loan application also should identify all fees that will be payable by the borrower in connection with any permitted collateral substitutions or releases, any transfers of the collateral, or any transfers of interests in the borrower.

## TERMINATION OF LOAN APPLICATION

The lender will want the right to terminate the loan application upon the occurrence of any of the following events (each referred to in this article as a "termination event"):

- The borrower's failure to satisfy any of the conditions set forth in the loan application (this would also include inaccurate due diligence information from the borrower);
- The borrower, any guarantor, or any key tenant becoming insolvent or filing bankruptcy, or a material adverse change in the financial condition of any of those parties or the loan collateral;
- Material damage to or destruction of the loan collateral;
- A material default by a key tenant under its lease; or
- Any event that would constitute an event of default by the borrower or any guarantor under the loan documents (the default to be determined as if such documents were in effect before closing).

The borrower's counsel should attempt to negotiate borrower cure periods in connection with all termination events. The loan application must describe what the borrower's financial obligations will be to the lender following the occurrence of a

termination event. Preferably, the borrower would, at most, forfeit any loan application fee paid to the lender and also be responsible for payment of the lender's third-party transactions costs (for example, reasonable attorneys' fees and costs and the actual costs of third party reports) as liquidated damages. If the borrower locks the interest rate and paid an early rate lock fee before a termination event, then the lender also may want to retain the early rate lock fee as compensation for any loss incurred by the lender in locking the interest rate before closing. The loan application should provide that all fees not retained by the lender following a termination event in accordance with the terms of the loan application will be promptly returned to the borrower following a termination event.

If the lender should elect for any reason (other than the occurrence of a termination event) not to make the loan, then, at a minimum, the loan application should specify that the lender will promptly return to the borrower all amounts previously paid by the borrower to the lender in connection with the loan application process.

## SOME OTHER USEFUL LOAN APPLICATION PROVISIONS

The borrower's counsel may want to include several other useful provisions in the loan application, such as representations and indemnities from both the borrower and the lender identifying:

- Any third-party loan brokers that are to be paid in connection with the loan;
- The party that is responsible for making those payments; and
- A timeline for the lender's expected review of the due diligence materials, loan committee consideration and approval of the loan, issuance of a binding loan commitment letter, and preferred and outside closing date also might be helpful in keeping the parties focused on accomplishing the tasks necessary to close the loan.

## CONCLUSION

A comprehensive, well-drafted and negotiated loan application will greatly simplify the lender's due diligence, underwriting, loan commitment, and loan documentation processes. Ideally, the loan commitment letter can be relatively short and can attach the executed loan application as an exhibit and incorporate that document into the commitment letter by reference. ♣

## APPENDIX 1

### SAMPLE LENDER INSURANCE REQUIREMENTS

All coverages (including, without limitation, coverage for acts of terrorism), forms, amounts, issuers, deductibles, and exclusions are subject to Lender's approval. As evidence of insurance, Lender will accept insurance policies and may accept certificates evidencing such insurance policies; however Lender will not accept certificates that do not confer rights on Lender as certificate holder that are satisfactory to Lender, in its sole discretion. Additionally, in the event Lender accepts an insurance binder as evidence of insurance, an insurance policy or certificate satisfactory to Lender must be submitted to Lender at least ten (10) days before the expiration date of the binder. Lender's insurance requirements are summarized below.

Insurance must be provided on all insurable perils. (All Risk or Special Form with Replacement Cost endorsement and agreed amount endorsement waiving all co-insurance provisions).

Lender must be included as a named Mortgagee and Loss Payee on all Property policies and a named Additional Insured on all Liability policies regardless of the terms or requirements of the Loan.

Insurance must be provided by an AM Best "Excellent" rated company with a financial size X and for areas with the potential for catastrophic loss (e.g., earthquake, flood) an "A" rated company with a financial size of X.

Cut-through endorsements are not allowed.

**Property Program:** (limits/sublimits for each type of coverage must be indicated as part of evidence of insurance provided).

**All Risk:** Full Replacement Cost

**All Risk Deductible:** \$\_\_\_\_\_

**Loss of Rents/Business Income:** \_\_\_\_ Months

**Extended Period of Indemnity (EPI):** 12 months

**Boiler & Machinery:** Full Replacement Cost

**Ordinance and Law:** Full Replacement Cost plus increase cost of construction to conform to current codes

**Windstorm:** Full Replacement Cost plus loss of rents and EPI as above and subject to deductibles as approved by Lender

**Terrorism:** Full Replacement Cost

**Earthquake:** Required for UBC Zones 3 and 4 in an amount otherwise approved by Lender plus loss of rents and EPI

**Flood:** Required except for Flood Zones B, C or X; Replacement Cost or FEMA max

**Environmental:** Subject to Environmental Site Assessment

**Liability Program:** ("occurrence" form with combined single limits as set forth below):

**General Liability:** \$\_\_\_\_\_ total coverage

**Auto Liability:** \$\_\_\_\_\_ owned/hired/non-owned

**Workers Compensation:** Statutory

**Employer's Liability:** \$\_\_\_\_\_ per accident/per disease/per employee and per disease

## APPENDIX 2

### SAMPLE LENDER UNDERWRITING DELIVERIES

Quote from insurance broker on new premium and copies of complete insurance policies and certificates of insurance

1. Certified property operating statements for past \_\_\_ years and year to date 20\_\_
2. 20\_\_ operating budget
3. Copies of all major service contracts (landscaping, trash, pool, laundry, elevator, etc.)
4. Most recent year tax bills
5. Copy of one bill from each utility provider for the property
6. Current payroll schedule and benefits
7. Copy of current management agreement
8. Current sources and uses of funds
9. Reciprocal easement agreement, if applicable
10. Projected capital improvements for next 12 months
11. Existing title report
12. Existing survey
13. Certificates of occupancy
14. Current termite report
15. Current rent roll for the property
16. Lease form (if residential property) or copies of all leases (if office or commercial property)
17. Copy of any operations and maintenance (O&M) plan
18. Copies of all existing environmental, engineering, architect, and other property reports
19. Organizational structure charts for the borrower and any guarantor
20. Evidence that the property complies with all zoning, building, environmental, and land use laws
21. Zoning reports
22. Building code violation searches

## APPENDIX 3

### SAMPLE LENDER SURVEY GUIDELINES AND FORM OF CERTIFICATION

Improvements are to be constructed within the title lines of the Property and appurtenant easements as established by a survey that shall be furnished with plats of survey of the Property and appurtenant easements in triplicate, prepared for and certified to Lender and the title company issuing the title insurance by a registered land surveyor approved by Lender.

1. The survey shall be made by a surveyor who is duly licensed and registered in the state where the Property is located.
2. The survey should bear the surveyor's stamp, seal, and registration number.
3. The survey shall be made at least in accordance with the minimum detail requirements for ALTA/NSPS Land Title Surveys and shall contain a legal description.
4. The survey should note the date of the survey and the date(s) of any revisions to such survey and shall not be dated any later than sixty (60) days before closing.
5. The survey should indicate the location of the property relative to magnetic north.
6. The survey shall correctly show:
  - a. The boundaries of the property and evidence of the location of all corners thereof by an indication of physical evidence found in the field or markers placed by the surveyor at locations where such physical evidence is absent, showing also all conflicts and discrepancies between such boundary lines and the legal description of record;
  - b. The location of all buildings, structures, billboards, signs, and other improvements situated on the property;
  - c. The dimensions of each building (including both measured building height and number of stories) located on the property (or a typical detail of each building type), and both the exterior footprint square footage of each building on the property and the number of square feet of gross floor area contained within each building on the property;
  - d. Encroachments, conflicts, or protrusions onto adjoining premises, streets, or alleys by any of such buildings, structures, or other improvements (including a clear indication of the extent of any such encroachments, conflicts, or protrusions);
  - e. Encroachments, conflicts, or protrusions onto the property by buildings, structures, or other improvements situated on adjoining premises (including a clear indication of the extent of any such encroachments, conflicts or protrusions);
  - f. If improved property, the location of parking areas (including the location of each striped parking space, and the location of each parking space reserved for handicapped persons, marked as such), and a notation of the total number of parking spaces, striped as such, on the property, including the number of parking spaces reserved for handicapped persons and marked as such;
  - g. The location of all means of access from the property to a public right-of-way on land (such as curb cuts and driveways), together with the distance from the nearest public intersection to the beginning point of the property surveyed, and the location of all means of access to and from waters adjoining the property (such as boat slips, launches, piers, and docks);

- h. If readily apparent, approximate location and arrangement of underground utilities and underground structures, based upon visible evidence such as manholes, storm drains, and similar physical evidence, and upon information obtained from the Borrower or independent sources (i.e., utility companies, utility location services, municipalities and the like) when necessary;
- i. If the real estate constitutes an assemblage or subdivision, interior lines and lot numbers and facts sufficient to insure contiguity, and a certification that there are no gaps or gores within the property;
- j. The location of telephone or electric power poles, wires, or lines and guy wire anchors;
- k. All easements or rights-of-way abutting the property (including the width of such easements or rights-of-way) shown by courses and distances (with notations indicating whether each such easement or right-of-way is dedicated or private), and the names and width of rights-of-way;
- l. The location and recording data for all easements and rights-of-way located on or affecting the property (including the width of such easements or rights-of-way), and the location and source of all building setback lines, buffer zones, etc., located on the property (and if of record, each must be identified by reference to the applicable recording information), and reference shall be made on the face of the survey to the title commitment provided to the surveyor (including name of title insurance company, commitment number, and effective date) with a listing of all recorded exception documents referenced therein and a notation whether each such item is plotted on the survey, cannot be plotted, or does not affect the property surveyed, as appropriate;
- m. The location of creeks, streams, rivers, lakes, ponds (retention or otherwise), or other waterways that cross or form a boundary line of the property, including the location of high and low water marks established by the U.S. Army Corps of Engineers, where applicable;
- n. Joint driveways, access means, shared facilities, and party walls, if any;
- o. The location of access roads or streets, sidewalks, curbs, driveways, fences, railroad tracks, and railroad rights-of-way;
- p. The location of cemeteries or family burial sites, if any;
- q. An acreage calculation to the nearest 1/1,000th of an acre and, if requested by Lender, a calculation of the number of square feet contained within the boundaries of the property;
- r. A Point of Beginning to form the basis for, or as used in, the legal description of record of the property;
- s. Notations of the names of adjoining owners whenever possible;
- t. The political subdivision, county, state, and such other notations as will accurately locate the property surveyed;
- u. A scale of measurement;
- v. A legend to explain any symbols or abbreviations appearing on the survey;
- w. A certification that the real estate as described on the plat does not constitute an illegal subdivision of land under applicable county or city ordinances;
- x. A certification as to the current zoning of the property;
- y. A certification as to whether or not the real estate lies within a flood hazard area. If the real estate lies within a flood hazard area, the certification should reflect the flood zone classification and give a map reference; and
- z. Any wetlands area(s), if known.

7. A certification on the face of the survey to the proposed owner, the title insurance company, and [the lender] in the following form:

I hereby certify to \_\_\_\_\_ [Name of Lender], \_\_\_\_\_ [Name of Borrower], and \_\_\_\_\_ [Name of Title Insurance Co.] that this is a true and correct survey of \_\_\_\_\_ [land lot, etc. and street address] and shows the true and correct location of the buildings and improvements situated on such land and all easements, rights-of-way, setback lines, and similar restrictions of record affecting the property surveyed. The buildings and improvements do not overhang or encroach upon any easement or rights-of-way of others, and there are no encroachments either way across the property lines. The property surveyed contains \_\_\_\_\_ acres [to the nearest 1/1,000th of an acre] and \_\_\_\_\_ parking spaces (including \_\_\_\_\_ handicapped spaces), and is not located within a flood plain area.

I hereby certify that this survey is made at least in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," jointly established and adopted by ALTA and NSPS. Pursuant to the Accuracy Standards adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of \_\_\_\_\_, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

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