M&T BANK

OUTSIDE COUNSEL MANUAL

FOR

COMMERCIAL LENDING TRANSACTIONS

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SECTION 1
1.0 Introduction

1.01 General Overview of Manual

This Manual has been prepared by the Legal Department of M&T Bank for all attorneys serving as outside legal counsel to M&T Bank (a/k/a Manufacturers and Traders Trust Company) and/or any of its commercial lending affiliates and subsidiaries (collectively, “M&T”) in connection with any commercial lending transaction. The primary purpose of this Manual is to serve as a reference guide for outside counsel in documenting commercial lending transactions for M&T by providing organizational information, an overview of general policies and guidelines, as well as basic contact information for M&T personnel. Our goal is to help facilitate high-quality and cost-effective legal services, while ensuring that all commercial lending transactions handled by outside counsel are properly documented.

That said, this Manual is certainly NOT, nor is it intended to be, an instruction manual on “How to Close a Loan”, nor should outside counsel expect that it will answer every question or address every legal issue and/or situation that might arise in documenting a commercial lending transaction. M&T will expect and rely on the expertise and professional judgment of its outside counsel to (a) identify and advise M&T on any issues or risks that might arise during the course of a transaction, so as to enable M&T loan officers to make well-informed business decisions, and (b) document the transaction and be present at the closing (or at least readily available to assist the loan officer at the closing), so as to appropriately protect the interests of M&T.

Please note that discussions of legal requirements in this Manual reflect an understanding of general principles of U.S. and state-specific laws as of the revision date. It remains the obligation of any attorney closing a commercial loan for M&T to provide competent legal advice and draft documents in accordance with current laws of the jurisdiction where the transaction is taking place. In particular, while there are some references in this manual to legal requirements in Canada, we strongly encourage any attorney working on a transaction in Canada, or involving a Canadian entity, to contact and work with Canadian legal counsel on the M&T Approved Outside Counsel List (see below) in order to better understand the nuances of Canadian law applicable to the transaction.

IN GENERAL, M&T WILL ASSUME THAT ANY COMMERCIAL LENDING TRANSACTION REFERRED TO OUTSIDE COUNSEL WILL BE HANDLED BY SUCH COUNSEL IN FULL COMPLIANCE WITH APPLICABLE LAW AND THE POLICIES AND GUIDELINES PROVIDED IN THIS MANUAL. In the event a matter arises which outside counsel believes requires action that deviates from that which is contemplated by this Manual, outside counsel should contact a Commercial Lending Attorney in the Legal Department at M&T. (See Section 7.0 of this Manual for contact information.) Otherwise, failure to abide by the requirements in this Manual may subject an attorney (and/or a law firm) to, among other things, disqualification and removal from M&T’s Approved Outside Counsel List.

* Please note that this manual does not cover certain specialized lending topics such as commercial equipment lease financing, renewable energy financing, aircraft and railcar lease or loan financing, tax exempt/municipal lease financing, franchise lending or leveraged leasing. The Bank’s closing requirements and document templates for these specialized lending areas may be provided upon request. If you have questions, or are working on documenting any of the above-referenced specialty lending topics, please contact Evis Daum.
1.02 Approved Outside Counsel

This Manual is provided to a primary contact at each law firm at the time such law firm is added to the M&T Approved Outside Counsel List for commercial lending transactions (“Approved List”). This Manual is also posted on the M&T Outside Counsel E-Forms Website, and will be updated from time to time on that Website. Each approved law firm must sign a license agreement and pay an annual licensing fee to gain access to the Website, which also includes a listing of, and electronic links to, all of M&T’s standard commercial lending forms. (See Section 2.04 of this Manual for further discussion of M&T’s standard forms.) Access to the Website is a prerequisite to inclusion on the Approved List.

The decision to add a law firm to the Approved List, as well as a law firm’s (or individual attorney’s) ongoing status on the Approved List, is at all times subject to review by the M&T Legal Department. A law firm or individual attorney may be removed from the Approved List at any time, at the discretion of the M&T Legal Department, without notice.

The mere fact that a law firm is listed on the Approved List (and has paid its annual licensing fee) does not necessarily entitle the law firm to any legal work from M&T. With respect to commercial lending transactions, M&T loan officers are generally free to select from the Approved List whatever outside counsel they desire, subject to any regional policies that might influence that selection.

1.03 Legal Fees for Commercial Lending Transactions

1.03.01 Expectation of “Borrower-to-Pay”

It is M&T’s expectation, generally speaking, that all commercial lending transactions are “borrower-to-pay” transactions, meaning that the legal fees and expenses of M&T’s outside counsel will be paid for by the borrower. Notwithstanding that fact, it is M&T’s expectation that outside counsel will work efficiently and cost-effectively, without in any way sacrificing the quality and completeness of their work, to minimize closing costs for M&T’s customers.

1.03.02 “M&T-to-Pay” Procedures; Electronic Billing Using “TyMetrix”

Please note that when outside counsel is retained by M&T in connection with any matter (whether a commercial lending transaction or otherwise) for which M&T expects to pay any portion of the legal bill (i.e., an “M&T-to-pay” matter), M&T policy requires that the referral of such work to that outside counsel must first be approved by the M&T Legal Department. Please be advised that M&T expects, and will generally require, volume discounts and/or flat fee arrangements, as appropriate, on such "M&T-to-pay" matters, in accordance with then-current M&T policy.

For all M&T-to-pay matters, M&T uses an electronic billing and matter-management system called CT TyMetrix 360 (“TyMetrix”). It is M&T’s policy that ALL vendor invoices, including law firm invoices, to be paid by M&T’s Accounts Payable department (regardless of whether M&T will later be reimbursed for the legal fee/expense by an M&T customer) MUST be submitted electronically through TyMetrix. M&T’s Legal Department has created a separate manual dealing with “M&T-to-pay” matters generally, and the TyMetrix requirements specifically. For a copy of that manual, and for any other TyMetrix system questions, please contact the TyMetrix Paralegal (see Section 7.0 of this Manual for contact information).
1.03.03  Presentation of Final Legal Bills

In commercial lending transactions, it is customary that M&T’s outside counsel fees and expenses will be paid at closing by the borrower. Accordingly, M&T expects that its outside counsel’s final legal bill will be prepared and presented to the borrower at or prior to the closing. It is a violation of M&T policy for M&T to “front” payment of any legal bill that is to be paid by the borrower. The legal bill must include the following: (a) all fees and expenses incurred leading up to the closing, and (ii) a reasonable estimate of any fees and expenses to be incurred at the closing and for any post-closing work to be performed by the outside counsel. Unless otherwise agreed to in advance by the M&T loan officer, M&T will NOT, absent exceptional circumstances, present its customer with a post-closing legal bill for fees that outside counsel should have foreseen and included an estimate for in a legal bill presented at closing, nor will M&T assume responsibility for paying such a legal bill.

M&T requests that outside counsel maintain a record of all amounts paid to them by M&T and its customers (in connection with M&T loans). The M&T Legal Department may request a copy of such records from time to time.

1.03.04  Fee Quotes

M&T encourages, where appropriate, the establishment of a fixed fee (outside counsel sets the dollar amount of a bill up front) or fee cap (outside counsel bills at an appropriate hourly rate, but the amount of the final bill will not exceed a pre-set dollar amount) both for “borrower-to-pay” and “M&T-to-pay” legal work. In calculating such a fixed fee or fee cap, outside counsel should assume the loan structure would be substantially the same as set forth in the credit approval/term sheet/commitment letter and would not require more than two drafts plus an execution version of each of the loan documents. If, however, the transaction changes significantly (e.g., new structure, additional collateral, etc.) or there is unexpectedly extensive negotiation of the loan documents, outside counsel would be entitled to adjust the fixed fee or fee cap accordingly.

1.04  Attorney Conflicts of Interest

M&T expects its outside counsel to maintain the highest standards of professional and ethical conduct in all of its dealings with and on behalf of M&T. To that end, M&T expects outside counsel to identify any potential or actual conflicts of interest that might trigger ethical obligations for the outside counsel, foreseeable lead the outside counsel to act in an adversarial manner toward M&T, or impair the outside counsel’s ability to represent M&T in any matter. With respect to commercial lending transactions, all potential or actual conflicts must be promptly disclosed to the M&T loan officer and to a Commercial Lending Attorney in the M&T Legal Department. (See Section 7.0 of this Manual for contact information.)

In any commercial lending transaction for which the M&T credit approval requires attorney representation on behalf of M&T, such attorney and law firm must be SEPARATE, DISTINCT AND UNAFFILIATED with any attorney and law firm representing the borrower, title insurance company or any other party to such transaction.

M&T is understanding and generally accommodating to outside counsel on its Approved List who request a conflict waiver in connection with their proposed representation of a borrower in a transaction.
where M&T is the lending entity, provided that (i) M&T will have separate, distinct and unaffiliated outside legal counsel for the transaction, (ii) the outside counsel requesting the waiver has not previously represented M&T in any matter involving that particular borrower (or an affiliate of that borrower), and (iii) the outside counsel requesting the waiver agrees that it will not, absent written consent by M&T, represent such borrower in any subsequent dispute, litigation, claim or proceeding against M&T, or any workout, bankruptcy or other reorganization proceeding wherein M&T is a creditor. M&T generally prefers to issue its own standard form of conflict waiver letter, including a blanket waiver form when appropriate, that we will provide upon request and approval. Only a Deputy General Counsel from the M&T Legal Department is authorized to issue or otherwise approve a conflict waiver on behalf of M&T.
2.0 Loan Closing Process

2.01 Credit Approval

The M&T loan officer should provide outside counsel with the M&T credit approval form and other relevant documentation (commitment letter, term sheet, etc.), if any, that sets forth the basic terms of the transaction. It is outside counsel’s responsibility to close the transaction in accordance with the credit approval form\(^1\), recognizing that the credit approval form may NOT (and in most cases, will NOT) dictate the documentation needed to satisfy the credit approval terms and ensure a properly documented transaction. Again, M&T will rely on the expertise and professional judgment of its outside counsel to ensure the transaction is documented appropriately.

M&T treats the credit approval and all other internal credit documents as confidential information. Outside counsel must not disclose the credit approval form or its contents, or that of any other internal credit documents, to a borrower or any other parties. It is M&T’s expectation that all outside counsel will properly secure all confidential information it gathers pertaining to M&T, its customers and any third parties, and maintain appropriate data security measures to prevent any unauthorized access to such information.

Please be aware that, under M&T policy, a credit approval may expire after a certain period of time. Unless otherwise indicated on its face (e.g., a 90-day expiration for certain Business Banking credit approvals), a credit approval will expire 6 months after it is issued, requiring either a reaffirmation or a new credit approval. While it is primarily the responsibility of the M&T loan officer to monitor this, outside counsel should be aware of it as well.

2.02 Determining the Appropriate Lending Entity

2.02.01 M&T Bank/Manufacturers and Traders Trust Company

“M&T Bank” and “Manufacturers and Traders Trust Company” are alternative names for the same entity, which shall be referred to throughout this Manual as the Bank. The Bank is a New York state-chartered banking corporation. Both names are referenced in the Bank’s charter, and both are considered official names and may be used interchangeably, though the Bank’s standard commercial loan forms reference only “M&T Bank”. The Bank currently operates full-service branches in New York, New Jersey, Connecticut, Pennsylvania, Maryland, District of Columbia, Virginia, West Virginia, Delaware and Florida, along with limited service commercial branches only in Massachusetts, representative offices (for commercial loan production) in Washington, Utah and Colorado, and a limited purpose commercial branch in Ontario, Canada (collectively, the “M&T Commercial Footprint”). Please note that the commercial branch in Canada is registered exclusively under the name “M&T Bank”.

Except as otherwise provided below, the Bank will be the lending entity for ALL commercial lending transactions in any state/commonwealth/district/jurisdiction where the Bank maintains a branch. (Please note, in particular, that “M&T Bank Corporation” is the parent holding company of the

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\(^1\) In the event of an inconsistency between the credit approval form and a term sheet or commitment letter that may have been prepared by the loan officer, the credit approval form controls. If the term sheet or commitment letter has already been issued to the borrower and cannot be revised, the loan officer may need to obtain a revised credit approval to match the terms of the term sheet or commitment letter.
Bank and its various affiliates. Generally speaking, M&T Bank Corporation should never be named as the lending entity in any transaction.)

2.02.02 M&T Real Estate Trust (Applicable Only in New York and Oregon)

“M&T Real Estate Trust” (referred to herein as “MRE Trust”), an indirect non-bank subsidiary of the Bank, is a Maryland “real estate investment trust” (and the successor entity in a 2003 merger with M&T Real Estate, Inc., a New York corporation). MRE Trust is a qualified REIT under the federal tax code, and as such is permitted to hold in its portfolio of assets only certain commercial loans that are “fully” (i.e., at least dollar-for-dollar) secured by real estate collateral, meaning that the value of the real estate collateral must be at least equal to the amount of the loan.

Loans have historically ended up on the books of MRE Trust in one of three ways:

- **Loan Originations in New York and Oregon** - Loans closed in New York and Oregon that met the above-stated qualifications (i.e., “fully” secured by real estate) were generally funded by and documented in the name of “M&T Real Estate Trust”.

- **Loans Originated by the Bank and Participated to MRE Trust** - On a case-by-case basis, loans originated in the name of the Bank (in any state where the Bank maintains a branch) have been and may still be participated to MRE Trust, such that the economic interest in the loan is transferred to MRE Trust, while legal title to the loan remains in the name of the Bank. This is done post-closing pursuant to a master participation agreement, and is handled internally by Bank personnel. **Outside counsel need only be aware of this, but need not (and should not) document the participation. Any future modifications to such a loan should be documented in the name of the Bank.**

- **Loans Assigned to MRE Trust (or its predecessor, M&T Real Estate, Inc.)** - In rare instances, a Bank loan may have been assigned outright by the Bank to MRE Trust, such that both legal title and full economic interest are now held by MRE Trust. Now that participations are the preferred practice, the need for assignments between the Bank and MRE Trust are rare. **Again, generally speaking, outside counsel need not take any action to assign or participate any loans, unless such action is specifically requested after consultation with a Commercial Lending Attorney in the M&T Legal Department.**

Following a policy change in mid-2005, however, MRE Trust is no longer a preferred originator of loans in New York. **Consistent with the policy statement in Section 2.02.01, all new commercial loans in New York are to be documented in the name of the Bank, except as follows:** Since the existing portfolio of loans documented in the name of MRE Trust will remain in the name of MRE Trust, all future modifications and extensions of such loans may be documented in the name of MRE Trust. In addition, where MRE Trust holds an existing mortgage lien, it is permissible to document any junior mortgage loans or related real estate loans to the same borrower in the name of MRE Trust. MRE Trust forms are available upon request from a Commercial Lending Attorney in the M&T Legal Department. (Alternatively, when appropriate and when the opportunity presents itself, the MRE Trust loans may be assigned over to M&T Bank to facilitate consolidations with current or future M&T Bank loans.)

MRE Trust remains as the sole originator of loans in Oregon. These are the only exceptions to the general rule that all new commercial loans are to be documented in the name of the Bank.

Most M&T loan officers are “officers” only of the Bank, not MRE Trust. An M&T loan officer can obtain a current listing of the officers of MRE Trust by contacting the M&T Corporate Secretary’s Office.
In order to facilitate the execution of documents on behalf of MRE Trust in day-to-day transactional matters, MRE Trust has executed a Power of Attorney naming the Bank as its “attorney in fact”. As such, officers of the Bank can execute documents on behalf of MRE Trust as follows:

M&T REAL ESTATE TRUST

By: Manufacturers and Traders Trust Company,
   its Attorney-in-Fact

By: __________________________ [signature of Bank officer]
Name: __________________________ [type name]
Title: __________________________ [Bank officer’s title]

In New York (and other states, if applicable), when recording any documents signed by the Bank as attorney in fact for MRE Trust (e.g., mortgage discharges or assignments), it may be necessary to present for recording an original (or certified copy) of the Power of Attorney naming the Bank as attorney in fact for MRE Trust. To obtain a copy of the Power of Attorney, contact the M&T Commercial Lending Paralegal (see Section 7.0 of this Manual for contact information).

2.02.03 Further Restrictions on Loans Eligible for MRE Trust

Notwithstanding the basic REIT asset qualifications noted in Section 2.02.02 above, any of the following types of loans, even to the extent “fully” secured by real estate and otherwise permitted under M&T policy, must NOT be documented and closed in the name of MRE Trust under any circumstances:

2.02.03.01 Small Business Administration (SBA) Loans

All commercial loans guarantied by the Small Business Administration must be documented and closed in the name of the Bank, rather than MRE Trust. (See Section 3.09 of this Manual for further information on closing SBA loans).

2.02.03.02 Tax Exempt Bonds, Mortgages and Loans to Volunteer Fire Halls

Any credit which involves a tax-exempt bond or mortgage (e.g., certain loans to volunteer fire halls) must be documented and closed in the name of the Bank, rather than MRE Trust, unless prior approval has been given by the M&T tax and legal department to use the name of a specially designated M&T subsidiary, namely 233 Genesee Street Corporation or Premier National Investment Company, Inc. Please refer to Section 2.02.05 below for a more specific description of these two entities.

2.02.03.03 Certain State-Sponsored Loan Programs

All loans made pursuant to the “Linked Deposit Program” sponsored by the New York State Department of Economic Development must be documented and closed in the name of the Bank, rather than MRE Trust. The Bank has created specific Rider forms to be used in connection with this program. (Please note that loans made pursuant to the “Energy Smart Program” sponsored by the New York State Energy Research and Development Authority may be documented and closed either in the name of the Bank or MRE Trust, as appropriate based on the terms of the loan.)
2.02.03.04 Loans Accompanied By an Interest Rate Swap

Whenever an interest rate swap agreement is (or is expected to be) entered into in connection with a loan, that loan should be documented and closed in the name of the Bank, rather than MRE Trust.

2.02.04 Lending Outside the “M&T Footprint

Generally speaking, the “M&T Footprint” refers collectively to those states/jurisdictions where M&T Bank maintains a full-service or commercial branch presence (see Section 2.02.01 for a listing of those states). As noted above, M&T Bank is the preferred lending entity for all commercial loans within the M&T Footprint. The one exception is in Oregon, where MRE Trust remains our designated lending entity.

It is important to remember that some states have laws that restrict the ability of out-of-state entities (particularly banks) to transact business (with varying definitions as to what constitutes “transacting business”) in a state without proper authority. Under no circumstances should outside counsel seek to register any M&T entity in any jurisdiction, or contact any regulatory or other government agency in any jurisdiction on M&T’s behalf, without the prior approval of an attorney in the M&T Legal Department.

When dealing with a lending prospect located in a state outside the M&T Footprint, M&T loan officers and outside counsel must adhere to the following general guidelines, absent guidance to the contrary from an attorney licensed to practice in such state:

- All credit decisions and loan closings must take place in a state within the M&T Footprint.

- All reasonable efforts should be made to limit the “contacts”* lenders have with a state outside the M&T Footprint.

  * In this context, “contacts” can mean any activity whatsoever. Generally speaking, the most problematic contacts tend to involve physical/tangible presence in a state (e.g., regular travel to and within such state in the ordinary course of business; advertising or otherwise actively soliciting business in such state; any other activity that would support the inference that M&T is transacting business in such state). Less problematic, generally speaking, are interstate communications (e.g., by mail, email, telephone or fax), the exchange of documents or information by mail, and perhaps even selected, limited-purpose visitations to a customer’s out-of-Footprint facility for a financial audit or collateral review purposes, etc.).

- Loan documents (with the exception of real estate collateral documents) should provide for choice of law and venue in a state within the M&T Footprint (i.e., the state in which the closing occurs).

- Whenever perfecting a security interest in collateral (e.g., recording a mortgage or filing financing statements) in a state outside the M&T Footprint, retain local counsel in that state for the purposes of having them advise as to the state law implications, if any, of an out-of-state bank (or, in the case of MRE Trust, a Maryland “real estate investment trust”) perfecting, holding and/or enforcing such a security interest in such state. (Please note: independent of these “conducting business” issues, local counsel should always be involved in any such loan transaction anyway, for the purpose of ensuring the use of appropriate documents and proper perfection of any liens in a state outside the M&T Footprint.)
• Any solicitation or opening of commercial deposit accounts and related cash management products must be handled through a Bank branch within the M&T Footprint.

2.02.05 Other M&T Bank Corporation Lending Subsidiaries

The following entities are affiliates or subsidiaries of the Bank that engage in commercial lending activities. This is for informational purposes only, as outside counsel, generally speaking and absent specific instructions to the contrary, should NOT document any commercial credit transactions in the name of any of these entities.

• M&T Realty Capital Corporation (a direct non-bank subsidiary of the Bank) is a Maryland corporation currently authorized to operate in various states as an originator and servicer of commercial loans secured by multi-family housing projects under the Fannie Mae DUS program.

• Wilmington Trust, National Association (formerly known as M&T Bank, N.A.; an affiliate of the Bank and a direct subsidiary of M&T Bank Corporation) is a separate, nationally chartered bank that currently engages primarily in commercial credit card business.

• Premier National Investment Company, Inc., a subsidiary of the Bank, is a Nevada corporation used primarily to buy and sell securities in the name of the Bank, as well as for select municipal tax exempt bonds/equipment lease financing.

• 233 Genesee Street Corporation, a subsidiary of the Bank, is a New York Article 9A company formed to manage primarily investment securities, but is also used for select municipal tax exempt bonds/equipment lease financing.

2.03 Loan Servicing

The servicing of all M&T loans (other than loans originating out of the New York City Commercial Real Estate Division) is handled by Commercial Lending Services, based in Buffalo. The New York City Commercial Real Estate Division has a separate servicing department located in New York City. See Section 7.0 of this Manual for contact information.

2.04 Loan Documents

Outside counsel is ultimately responsible for preparing all necessary documents and ensuring that all appropriate procedures have been followed to properly document the transaction and protect the interests of M&T.

2.04.01 Standard Form Documents – M&T “E-Forms”

M&T requires that, to the extent possible, outside counsel use M&T’s standard form loan documents rather than outside counsel’s own version of such documents.
That said, it is understood and expected that outside counsel will from time to time have to (a) customize M&T’s standard form documents to fit the parameters of a particular transaction, (b) supplement the M&T standard form documents with other documents that may be necessary to protect M&T’s interests in a particular transaction, and/or (c) use non-standard forms in place of the M&T standard forms, as necessary, where the parameters of the transaction may not be compatible with the M&T standard forms, or as otherwise dictated by the particular circumstances of the transaction. If deviations from the standard promissory note forms are necessary, a draft of the customized note should be previewed with the Commercial Lending Services area prior to loan closing, so that any processing and/or servicing issues can be addressed.

M&T provides an Internet-based service called “E-Forms” to provide outside counsel with M&T’s standard commercial lending forms in electronic format. Approved outside counsel must sign a license agreement and pay an annual licensing fee to gain access to the M&T Outside Counsel E-Forms Website, which will allow outside counsel to view, download and print, in Microsoft Word format, state-specific M&T Bank forms appropriate for most commercial lending transactions documented within the M&T Footprint. (Please note the following: MRE Trust forms are no longer posted on the E-Forms Website, but are available upon request from the Commercial Lending Attorneys in the Legal Department. M&T does not maintain a full set of forms for District of Columbia (DC), opting instead to use Maryland or Virginia forms for use in DC, supplemented by DC-specific real estate collateral forms. M&T maintains a base set of forms for general use in all provinces of Canada, other than Quebec.) E-Forms is the exclusive source and method for outside counsel to obtain the current version of M&T’s standard commercial lending forms.

Floor plan-specific commercial loan forms are now included in the E-Forms Website. Please note that the documents numbered AFP-01 to AFP-06 are floor plan specific and must be used for all floor plan borrowers, regardless of the borrower’s state of incorporation. These documents are governed by New York law and are not state specific. However, except for the documents referenced above, the attorney closing a floor plan loan may use any other standard documents from the E-Forms Website (such as collateral documents, organizational documents, guarantees and other documents).

There is a link on the Website to a state-specific forms index, which in turn has links to the actual state-specific E-Forms for that state. Documents in the index are categorized by document type. All E-Forms listed on the Website will include a revision date. Specific forms may be updated from time to time by the M&T Legal Department without specific notice to outside counsel. As such, it is outside counsel’s responsibility to check the Website revision date for any forms they plan to use to document a transaction, so as to make sure that they are using the most up-to-date forms.

M&T maintains E-Forms only for select states/jurisdictions (including Canada) where the Bank maintains a commercial branch or, in some instances, a loan production office. Any loan made to an entity based in a state/jurisdiction where the Bank does not maintain a branch (a "non-M&T state") should, absent legal advice to the contrary from an attorney licensed to practice in such non-M&T state, still be documented and closed in a state/jurisdiction where the Bank has a branch, using M&T’s standard forms for that state/jurisdiction. If real estate in a non-M&T state is to be taken as collateral, local counsel in that state should be retained to (i) ensure the use of an appropriate form of mortgage/deed of trust and any other document to be recorded in the real estate records in that state, and (ii) consult with as to any enforceability concerns or tax consequences arising from the fact that M&T may not be authorized, registered or otherwise qualified to do business in that state. See Section 2.02.04 for further information on loans to borrowers located outside the “M&T Footprint”.

Outside counsel are encouraged to use M&T’s E-Forms for a particular state/jurisdiction only under the guidance of an attorney licensed to practice in that particular state. Please contact a Commercial Lending Attorney in the M&T Legal Department with respect to any perceived deficiencies in any of
M&T’s standard form documents, and with any suggestions for improving or adding to the list of M&T’s standard form documents.

2.04.02 Standard Promissory Notes & Riders - Generally

To ensure compatibility between loan documents and loan systems, it is of greatest importance that outside counsel use M&T’s standard form promissory note forms whenever possible. These promissory note forms have been drafted with loan system restrictions in mind. Using the standard note forms, without modification, is the best way to avoid loan processing or servicing issues and other complications.

M&T is now booking all commercial loans (with the exception of some specific Business Banking products) on its enhanced AFS loan system, and has discontinued the use of its DLS (DataLink) loan system. In conjunction with this loan system upgrade, we have made significant changes to our standard set of promissory notes, particularly those used to document real estate secured loans that would, formerly, have been booked on the DLS system, but which are now to be booked on the AFS system. Please take note that the former set of DLS “Mortgage Notes” have been eliminated from the E-Forms Website and should no longer be used.

M&T’s current set of promissory note forms include the following, all of which (including state-specific versions of each form listed) have been added to M&T’s E-Forms Website:

2.04.02.01 Term Notes (Including Construction Loan Notes)

“Actual-Balance” Promissory Notes are the standard product set for all M&T term loans. “Actual-Balance” describes the interest accrual method and this is the PREFERRED method for all M&T loans. (Please also note that the ability to use the new CLB-102 with CLB-211 renders the “old” LIBOR Term Note (CLB-172) obsolete. As such, CLB-172 has been removed from the E-Forms Website.)

“Actual-Balance” Promissory Notes & Riders:

<table>
<thead>
<tr>
<th>Promissory Note Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLB-102 - Term Note</td>
<td>To be used for all single-advance term loans (both commercial real estate secured and non-real estate secured)</td>
</tr>
<tr>
<td>CLB-168 – Multiple Disbursement Term Note</td>
<td>To be used for multiple-advance, non-revolving, non-construction term loans</td>
</tr>
<tr>
<td>CLB-210 – Construction-To-Permanent Note</td>
<td>To be used for all multiple-advance, non-revolving, construction/acquisition-to-permanent loans.</td>
</tr>
<tr>
<td>CLB-211 – Construction Loan Note</td>
<td>To be used for all multiple-advance, non-revolving, construction or acquisition loans that do not include a permanent loan period.</td>
</tr>
<tr>
<td>CLB-212 – LIBOR Rate Rider (Actual Balance)</td>
<td>To be used with CLB-102, CLB-168, CLB-210 and CLB-211, as needed.</td>
</tr>
</tbody>
</table>
NOTICE to New York and Pennsylvania Outside Counsel: An alternative set of limited-use* promissory notes and riders (“Scheduled Balance” Promissory Notes & Riders) has been added to the E-Forms index for NY and PA only, as follows:

<table>
<thead>
<tr>
<th>Promissory Note Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLB-222 - Term Note (Scheduled Balance Mortgage Note)</td>
<td>For limited use* only on specific commercial real estate secured single-advance term loans.</td>
</tr>
<tr>
<td>CLB-223 - Construction-To-Permanent Note (Scheduled Balance Mortgage Note)</td>
<td>For limited use* only on specific construction/acquisition-to-permanent loans.</td>
</tr>
<tr>
<td>CLB-224 - LIBOR Rate Rider (Scheduled Balance)</td>
<td>This is the “Scheduled Balance” version of CLB-211; to be used only with either CLB-222 or CLB-223.</td>
</tr>
</tbody>
</table>

*PLEASE NOTE: These “Scheduled Balance” forms should ONLY be used when the M&T credit approval specifically provides for a “scheduled balance” real estate secured loan. In all other circumstances, the “Actual Balance” promissory notes and riders should be used.

NOTICE regarding land acquisition loans: In New York, whenever M&T is funding both the purchase of land and the construction of an improvement, the land acquisition loan and the building construction loan should be separately documented. Accordingly, the land acquisition loan would have its own mortgage and note, and the building loan would have its own mortgage, note and building loan agreement. The land acquisition mortgage should be recorded in first position. The reason for the separate documentation is that a single mortgage to secure both the land acquisition and the building construction loan would allow a mechanic lienor, under NY Lien Law 22, to gain priority over both the mortgage lien for the land acquisition loan and the building construction loan. However, if M&T files a separate land acquisition mortgage (in first position) and building construction mortgage (in second position), any successful mechanic lien would only prime the building construction mortgage and would not have priority over the land acquisition mortgage. (See Atlantic Bank of New York v. Forrest House Holding Company, 651 N.Y.S. 2d. 607 (App. Div. 2nd 1996).) To the extent the law in other states creates similar issues, a similar structure should be used.

2.04.02.02 Demand Notes (Including Revolving Lines of Credit and Floor Plan Loans)

The following promissory note forms may be found on the E-Forms website:

<table>
<thead>
<tr>
<th>Promissory Note Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLB-103 – Demand Note</td>
<td>For fully-funded, non-LIBOR-based loans (not lines of credit) payable on demand</td>
</tr>
<tr>
<td>CLB-182 – LIBOR Demand Note</td>
<td>For fully-funded, LIBOR-based loans (not lines of credit) payable on demand</td>
</tr>
<tr>
<td>CLB-121 – Revolving Line Note</td>
<td>For non-LIBOR-based, revolving lines of credit (discretionary advances, payable on demand)</td>
</tr>
<tr>
<td>CLB-202 – Daily Adjusting LIBOR Revolving Line of Credit</td>
<td>For revolving lines of credit priced at a LIBOR-based rate adjusting DAILY</td>
</tr>
<tr>
<td>CLB-205 – Monthly Adjusting LIBOR Revolving Line of Credit</td>
<td>For revolving lines of credit priced at a LIBOR-based rate adjusting MONTHLY</td>
</tr>
<tr>
<td>CLB-171 – “Standard” LIBOR Grid Note (LIBOR Only)</td>
<td>For revolving lines of credit where the borrower selects a LIBOR-based rate for each advance (includes daily adjusting LIBOR as an option); each advance is priced, booked and invoiced as a separate loan obligation</td>
</tr>
<tr>
<td>CLB-171A – “Standard” LIBOR Grid Note (LIBOR &amp; Prime)</td>
<td>For revolving lines of credit where the borrower selects a LIBOR-based rate for each advance (includes Prime-based rate as an option); each advance is priced, booked and invoiced as a separate loan obligation</td>
</tr>
</tbody>
</table>
### Loan Closing Process

#### AFP-02 - Daily Adjusting LIBOR Demand Note
Floor plan only: To be used for loans priced at a LIBOR based rate adjusting daily.

#### AFP-03 – Monthly Adjusting LIBOR Demand Note
Floor plan only: To be used for loans priced at a LIBOR based rate adjusting monthly.

#### AFP-04 – Prime Rate Demand Note
Floor plan only: To be used for loans priced at a Prime based rate.

#### AFP-05 – LIBOR Rate Rider
Floor plan only: To be used with AFP-02 and AFP-03.

#### AFP-06 – Prime Rate Rider (Actual Balance)
Floor plan only: To be used with AFP-04.

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**PLEASE NOTE:** M&T’s standard line of credit products provide for discretionary advances and payment on demand. To the extent that M&T may approve a “committed” line of credit and/or a line of credit with a maturity date, the above forms will have to be revised to incorporate the appropriate terms.

There are several other promissory note forms on each state-specific index on the E-Forms Website, including specific forms designed for use in documenting loans under specific SBA loan programs. Please see section 3.09 for more details on selecting forms for documenting loans guarantied by the SBA.

#### 2.04.03 “Interim Interest”

The “Term Note (Actual Balance)” (CLB-102) (along with the “Scheduled Balance” version of that same note (CLB-222), available in NY and PA only) provide for the collection at closing of interest that will accrue from the day of the closing until the next succeeding “Payment Due Date”, as defined in the Term Note and selected for the loan by the borrower. This is to prevent a long delay between the closing date and the first payment made by the borrower in the circumstance where the closing date is early in the month (e.g., the 1st of the month) and the borrower selects a payment date (i.e., “Payment Due Date) that is later in the month (e.g., the 20th of each month). Please note that if the closing takes place on the 5th of the month and the borrower selects the 5th of the month as the Payment Due Date, no interim interest would be due at closing.

#### 2.04.04 Other Standard Forms

The E-Forms Website includes, in addition to promissory note forms, various forms of loan agreements, collateral documents and other form documents that outside counsel should find useful in documenting commercial loan transactions for M&T. If there is a particular type of document that outside counsel deems necessary for a transaction that is not included on the Website, outside counsel is encouraged to use its own form to supplement the closing documents. Outside counsel is likewise encouraged to contact a Commercial Lending Attorney in the M&T Legal Department if they discover any flaws in the M&T standard forms, or if there is a particular type of document that they recommend adding to the list of M&T’s standard forms.

#### 2.04.05 Modifications to Standard Forms

Obviously, it is M&T’s preference to document loan transactions using its standard form documents (supplemented as appropriate), without any modification. If, however, it becomes necessary to negotiate and consider proposed modifications to the M&T standard forms, it is the role and responsibility of outside counsel to explain to the M&T loan officer the legal implications and business risk associated with making any proposed modification, so as to enable the loan officer to make an informed business decision on whether to allow the modification and accept the risk. It is the loan officer’s responsibility to know whether and to what extent he or she has the decision-making authority on a particular issue, or
whether he or she needs to seek further approval or modify the credit approval form for the transaction. Outside counsel is encouraged to alert the loan officer if a particular concession will result in failing to satisfy any requirement stated in the credit approval form.

With regard to any proposed modifications to provisions in loan documents that are more “legal” in nature, it is expected that the M&T loan officer may look to outside counsel to play a more active role in determining whether the proposed modification is acceptable. With regard to any proposed modifications to provisions in loan documents (particularly, promissory notes) that are more “operational” or that may impact the loan systems, the loan officer should refer the question to the Commercial Lending Services area. In all situations, outside counsel is encouraged to exercise appropriate judgment in advising the loan officer, and may refer to the following general guidelines:

- Jurisdiction/Choice of Law provisions: No changes without consulting a Commercial Lending Attorney in the M&T Legal Department.
- Venue provisions: Any further limitations are only acceptable if limited to a geographic area where the Bank maintains a branch, such that the borrower would not be perceived as having a “home field advantage” over M&T.
- Notice provisions, particularly additional notice requirements: Avoid agreeing to any unusual burdens that could impair M&T’s ability to act expeditiously to enforce its rights.
- Interest calculation provisions, repayment provisions, application of payments, late charges, default rates, and other proposed changes that could impact the loan system on which the loan is booked and processed - Any revisions should be previewed by the Commercial Lending Services area to ensure compatibility with the loan systems.

2.04.06 M&T Bank “Cost of Funds” Definition

Unless otherwise specified, any fixed interest rate quote should use the Bank’s cost of funds definition, plus the applicable margin. The approved definition for the Bank’s cost of funds is the following:

“Cost of Funds” shall mean the sum of the yield on United States Treasury Obligations adjusted to a constant maturity of ____ (____) years in effect two (2) New York Business Days prior to [define/insert the effective date], as published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (519), or by such other quoting service, index or commonly available source utilized by the Bank, plus the “ask” side of the ____ (____) year LIBOR swap spread in effect two (2) New York Business Days prior to [define/insert the effective date], as quoted by Bloomberg, L.P. or such other quoting service, index or commonly available service utilized by the Bank.

The blanks should be completed with the number that matches (or, as rounded, most closely approximates) the time period the fixed rate will be in effect. For the “effective date”, insert or define the date that the fixed rate will become effective. For example, for a new loan, use “closing date” in the term sheet. In other contexts, one might use “Amortization Commencement Date” or otherwise, appropriate. This cost of funds language should be used in proposal letters, commitment letter and loan documents where the circumstances require. It is already included in our promissory note forms that contemplate a change to a fixed interest rate that is determined during the term of the loan.
2.05  Closing Process

2.05.01  Attorney Presence at Loan Closing

It is generally required that the attorney selected to represent M&T in the loan transaction be present at the loan closing. If the attorney is not present at the loan closing, he or she must be readily available by phone to advise the loan officer on any loan closing issues that arise.

2.05.02  Loan Funding

Commercial loans may be funded in any one of a number of ways, including (without limitation) those listed below. Depending on the funding method, there may be additional M&T policy considerations and/or legal issues to consider.

2.05.02.01  Wire Transfers and Funds Transfer Agreements (FTA’s)

M&T has adopted an updated Corporate Wire Policy which requires that a Funds Transfer Agreement (“FTA”) be signed for all service assisted wires. Each M&T business unit has adopted an FTA to meet its specific customer needs and to provide the Bank with UCC-4A protection in the event a customer incurs a loss due to a fraudulent wire. In the commercial credit context, when funding a loan or lease via wire transfer, it is the M&T loan officer’s responsibility to have the FTA signed by the borrower, or confirm that an appropriate FTA is already on file for the borrower, at or prior to closing. Outside counsel should assist in this effort by including a reference to “FTA Completed” on your standard loan closing checklist, with the task assigned to the M&T loan officer. Outside counsel are not responsible for ensuring that the FTA is completed properly and signed, but the checklist item will provide a reminder to the loan officer to confirm that this task has been completed prior to any disbursement of loan proceeds by wire.

2.05.02.02 Funding in Escrow

To the extent loans are funded in escrow via a title insurance company or law firm account, M&T requires that an appropriate escrow agreement be executed between M&T and the escrow agent.

2.06  Closing Memorandum

M&T requires that outside counsel keep a list of the following, all of which should be included in a “closing memo” that accompanies the loan document package submitted to M&T following the closing of the transaction:

- any material modifications to M&T’s standard forms (e.g., a guaranty was revised to be note-specific);
- any material concessions made by the loan officer at closing (e.g., loan officer waived the survey requirement);
- any omissions from the loan document package that will be submitted post-closing (e.g., final title insurance policy and documents to be recorded to follow);
- the names and addresses of all parties present or represented at the closing (including attorneys and law firm names);
• any other issues or items that the outside counsel deems relevant.

The “closing memo” need be nothing more than “bullet-points” incorporated into a cover letter submitted along with the loan document package. If there is nothing to report in the closing memo, the closing memo should state: “Nothing to report.” The closing memo will assist our collateral review area and should minimize unnecessary collateral exception reports. It will also assist future reviewers of the loan file to identify all material modifications to the loan documents without having to read through each document.

2.07 Closing Sets

2.07.01 General Rules

Outside counsel must submit a closing set of original loan documents to the appropriate collateral review area as soon as possible following the closing and in any event no later than fifteen (15) business days from closing. All relevant documents should be included in the closing set prepared by outside counsel for the appropriate collateral review area, as noted below.

A closing set of original documents should be organized into three sections: (i) Cover Letter / Closing Memorandum; (ii) Document Index; and (iii) all Closing Documents. Closing sets should be clipped or rubber-banded.

See Section 2.09 of this Manual for a sample Closing Memorandum and Document Index. Closing Documents should be arranged in the order set forth in the Document Index and separated by correspondingly numbered tabs. Closing Documents to be provided post-closing should also appear in the Document Index and have a tabbed location for easy insertion when provided. At that tab, a sheet of paper should be inserted with the notation “To Be Delivered Post-Closing”. If a document is being delivered under separate cover or if the loan officer has already received the document, a sheet of paper with the notation “Delivered Under Separate Cover” or “Delivered Under Separate Cover By Loan Officer” (as the case may be) should be inserted at the appropriate tab.

Copies of all UCC financing statements (“UCCs”) sent for recording should be included in the Closing Set. The Document Index should indicate the location of all places where the UCCs are being filed. Because the recording information stamped on original UCC filing receipts is often difficult to read, outside counsel should clearly indicate the date and location of filing for each such UCC filing receipt prior to forwarding the receipts to M&T.

Duplicate originals of the unrecorded mortgage and other documents sent for recording (each clearly marked as a “duplicate original”) should be included in the Closing Set. These duplicate originals serve as back-up in the event the other original document is misplaced during the recording process. The Document Index must set forth the location of all places where such documents are being recorded. It is M&T’s expectation that outside closing counsel will ALWAYS handle the recording of any documents that require recordation (e.g., mortgages, deeds of trust, UCC financing statements, etc.). While Section Outside Counsel Manual contemplates that duplicate originals of any to be recorded documents should be included in the Closing Set, it is important that outside counsel understand that (i) outside counsel is responsible for handling the recording of all such documents, (ii) outside counsel should affirmatively indicate in the Closing Memo or Closing Set that original documents have been sent to the appropriate recording office(s), and (iii) any duplicate originals of such documents should be clearly marked to
indicate that they are duplicates. This will help avoid any confusion as to whether the documents have in fact been properly submitted for recording.

All Closing Sets and any post-closing items should be sent to the following address:

M&T Bank
Records Management
499 Mitchell Street
Millsboro, DE 19966

All original loan documents must be sent directly to M&T’s Records Department at the above address. Under no circumstances should any original loan documents be sent to the M&T loan officer.

Completed Closing Sets should be delivered to M&T’s Records Department within fifteen (15) business days of the closing of the loan. Recorded documents and final title policies must be sent to the above address as soon as they are received and have been appropriately reviewed by outside counsel.

It is ultimately the loan officer’s responsibility to ensure that the closing documents are delivered promptly. Therefore, outside counsel should notify the loan officer when the Closing Set and any post-closing documents have been submitted by copying the loan officer on the cover letter that accompanies the Closing Set or post-closing document. Upon request of a loan officer, a duplicate copy of the Closing Set may be provided to the loan officer as well.

Due to the inherent credit and regulatory risks associated with not receiving Closing Sets in a timely manner, this issue is getting heightened attention. Both the Collateral and Legal Departments will continue to monitor this closely, and will take action to remove law firms from our approved counsel list if there is a pattern of delinquency in delivering Closing Sets.

2.07.02 Electronic Copies for Participations Bought

When M&T purchases a participation in a large commercial loan originated by another lender, it is customary for the lead bank to provide executed copies of the closing documents on a computer disc or via a “closing website”. This is the only exception to the original document requirement for Closing Sets.

2.08 Post-Closing Matters

As noted above (see Section 1.03.03), any costs or expenses for handling post-closing matters must be anticipated, estimated and included in the outside counsel’s legal bill presented at closing.

M&T’s collateral review area will review of the Closing Set and any other documentation relevant to the transaction. To the extent any deficiencies are discovered, M&T expects that outside counsel will be responsive and assist to whatever extent necessary to remedy the deficiency. If the deficiency is in any way due to the negligence or oversight of M&T’s outside counsel, it is M&T’s expectation that the cost of remedying such deficiency will be borne by outside counsel.
### 2.09 Samples

#### 2.09.01 Sample Closing Memorandum

**CLOSING MEMORANDUM**

**Borrower:** XYZ Company, Inc.  
**Lender:** M&T Bank  
**Loan Officer / Location:** John Doe / Buffalo, New York  
**Loan:** $1,500,000 Mortgage Loan  
**Closing Date:** March 21, 2000

---

**Parties Present at Closing:**

<table>
<thead>
<tr>
<th>John Doe</th>
<th>Jane Doe, Esq.</th>
</tr>
</thead>
<tbody>
<tr>
<td>M/&amp;T Bank</td>
<td>Doe &amp; Doe</td>
</tr>
<tr>
<td>One M&amp;T Plaza</td>
<td>56 Delaware Avenue</td>
</tr>
<tr>
<td>Buffalo, New York 14240</td>
<td>Buffalo, New York</td>
</tr>
<tr>
<td>John Smith, President</td>
<td>Telephone No. (716) 885-0000</td>
</tr>
<tr>
<td>XYZ Company, Inc.</td>
<td>(Counsel to M&amp;T)</td>
</tr>
<tr>
<td>35 Oxford Street</td>
<td></td>
</tr>
<tr>
<td>Buffalo, New York</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Robert Jones, Esq.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>G, H &amp; I</td>
<td></td>
</tr>
<tr>
<td>92 Main Street</td>
<td></td>
</tr>
<tr>
<td>Amherst, New York</td>
<td></td>
</tr>
<tr>
<td>Telephone No. (716) 881-0000</td>
<td>(Counsel to XYZ Company, Inc.)</td>
</tr>
</tbody>
</table>

---

**Post Closing Matters:**

<table>
<thead>
<tr>
<th>Post Closing Document</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Final Title Policy</td>
<td>When Received</td>
</tr>
<tr>
<td>2. File Stamped UCC-1</td>
<td>When Received from NYS Secretary of State</td>
</tr>
<tr>
<td>3. Recorded Mortgage</td>
<td>When Received from Erie County Clerk</td>
</tr>
<tr>
<td>4. Recorded Assignment of Rents</td>
<td>When Received from Erie County Clerk</td>
</tr>
</tbody>
</table>

**Material Document Modifications:**

1. **Mortgage** - Modified the “deemed transfer” provision upon change of ownership to reduce the percentage threshold from 10% to 5%.

2. **Guaranty** - Guaranty no longer unlimited. Is now limited only to mortgage note.

3. **Subordination Agreement** - Not received. Waived by bank officer (John Doe).
2.09.02 Sample Document Index

Note: Obviously, not all transactions will necessitate the use of all of the documents listed below.

DOCUMENT INDEX
FOR
$ __________________ LOAN
CLOSING DATE: ____________________, 20____

Borrower = ____________________________
Guarantor = ____________________________
Property = ______________________________
Lender = M&T Bank

A. Loan Documents
- Promissory Note
- Bond

B. Real Estate Documents
- Mortgage
- UCC-1 Financing Statements
- Building Loan Agreement
- Notice of Lending & Lien Law Affidavit (New York)
- Assignment of Mortgage
- Subordination Agreement
- Consolidation, Modification & Extension Agreement (Spreader Agreement)
- Survey
- Mortgagee Title Insurance Policy
- Flood Zone Certificate
- Appraisal
- Phase I Environmental Report
- Environmental Authorization, Waiver & Indemnification Agreement
- Environmental Compliance and Indemnification Agreement

C. Collateral Documents
- Security Agreement
- UCC-1 Financing Statements
- Pledge and Assignment of Deposit Account
- Control Agreement for Deposit Account (non-M&T account only)
- Pledge of Securities
- Control Agreement for Investment Property
- Collateral Assignment of Lease & Rents
- Collateral Assignment of Life Insurance Policy

D. Guaranties
- Guaranty of John Smith
- Guaranty of IOU Inc.
E. **Organizational Documents**
- Company Certificate(s) (Borrower and Guarantors)
  a. Public Organic Record, as required by the UCC
  b. Articles of Incorporation / Partnership Agreement / Operating Agreement / etc.
  c. Bylaws
  d. Borrowing Resolution
  e. Good Standing Certificate
  f. Franchise Tax Report

F. **Other Documents**
- BSA/AML Compliance (verify completion by M&T loan officer)
- Evidence of Commercial Property Insurance (ACORD 28) w/ Mortgagee/Lender’s Loss Payee
  Endorsement and Mandatory Notice of Cancellation
- Evidence of Liability Insurance (ACORD 25)
- Evidence of Flood Insurance
- TIN Certification
- Tax Affidavits
- Counsel Opinion(s) (Borrower & Guarantors)
- Disbursement Authorization [including completed Funds Transfer Agreement, if applicable, and if one is not already on file for this customer. Confirm with M&T loan officer]
- Original Assigned Note
- Original Assigned Legal Documents
- Leases
- Memorandum of Lease
- Building Permit
- Certificate of Occupancy (Zoning Compliance)
- Tenant Estoppel Certificate
- Subordination, Non-Disturbance & Attornment Agreement
3.0 General Policies and Guidelines

This section of the Manual provides a brief overview of various M&T policies and procedures relevant to commercial lending transactions. Again, please note that discussions of legal requirements in this manual reflect an understanding of general principles of U.S. and state-specific laws as of the revision date. It remains the obligation of any attorney closing a commercial loan for M&T to provide competent legal advice and draft documents in accordance with current laws of the jurisdiction where the transaction is taking place. In particular, while there are some references in this manual to legal requirements in Canada, we strongly encourage any attorney working on a transaction in Canada, or involving a Canadian entity, to contact and work with Canadian counsel on the M&T Approved List in order to better understand the nuances of Canadian law applicable to the transaction.

3.01 Due Diligence

Although an appropriate due diligence review of the identity and status of borrowers and guarantors has always been a critical component of the loan closing process at M&T, both for credit enforceability reasons and in accordance with regulatory “safety and soundness” principles, the emergence of the Bank Secrecy Act, the USA PATRIOT Act and other anti-money laundering legislation (collectively, “BSA/AML Legislation”) has imposed additional due diligence obligations on all financial institutions to assist the federal government in the detection and prevention of money-laundering activities.

3.01.01 Standard Credit/Enforceability Due Diligence

It remains a primary role of M&T’s outside counsel to handle the standard credit and enforceability due diligence associated with the closing and funding of a commercial loan. With respect to borrower/guarantor entities, M&T expects that the due diligence review will include, for example and without limitation, a review of organizational documents (e.g., articles of registration/organization/incorporation that constitute the Public Organic Record (as defined in UCC Article 9), bylaws, operating agreements, good standing certificates, franchise tax reports, lien searches, etc.), and that such documents will be included in the Closing Set. This level of due diligence should further cover, without limitation, verification of the borrower’s/guarantor’s legal name and location/state of registration (in accordance with all applicable UCC Article 9 requirements), verification that the borrower/guarantor is duly organized and has appointed authorized officers with the requisite authority to execute the loan documents, and the review of certificates or other evidence demonstrating that there has not been a material adverse change in the borrower’s/guarantor’s legal status since the time the commitment letter was issued.

For all U.S. borrowers, M&T continues to require a completed IRS W-9 form, indicating the Tax Identification Number (or Social Security Number) of each borrower. For foreign borrowers, M&T requires the collection of a completed W-8 form. These forms are required from participant lending entities as well (see Foreign Account Tax Compliance Act (“FATCA”). The appropriate W-9 and W-8 forms are available at www.irs.gov. For individual borrowers, a review of the individual’s driver’s license is required for, among other things, UCC lien search and filing purposes. Please be aware that some states may restrict/prohibit the making, taking and/or retention of photocopies of government-issued identification cards (e.g., driver’s licenses). In such instances, visual inspection by the M&T loan officer (or M&T’s outside counsel), along with a memo-to-the-file shall suffice for verification purposes.
Please note that failure to adhere to the minimum standards of due diligence in this area can expose M&T to significant credit risk, as well as regulatory risk, and will result in the issuance of documentation exception reports and/or the removal of outside counsel from the M&T Approved List of law firms.

3.01.02 BSA/AML Compliance

Ensuring enterprise-wide compliance with all regulatory rules and guidance stemming from the BSA/AML Legislation is a top priority at M&T. In accordance with applicable law, each business area of M&T has established and implemented a Customer Identification Program (CIP), outlining “know your customer” due diligence procedures for obtaining and verifying customer identification information with the opening of any customer account. These CIP procedures have recently been enhanced to include procedures for risk-ranking customers and bank products and services, and applying standard customer due diligence and/or enhanced due diligence depending on the nature of the customer and/or the account. Under no circumstances should the level of due diligence fall below the standard set forth in the applicable CIP.

It is important for M&T’s outside counsel to understand that M&T loan officers are primarily responsible for ensuring compliance with all aspects of the CIP, and BSA/AML Legislation generally. This is primarily because most or all of the due diligence necessary to comply needs to occur prior to loan approval, which is typically prior to outside counsel involvement in a commercial loan transaction. Outside counsel should still be prepared to assist M&T loan officers with particular questions related to customer identification and verification using documentary evidence or otherwise, and confirm that the M&T loan officer has completed the required BSA/AML due diligence prior to closing. **We ask for our loan closing counsel to consistently add a line item to your standard loan closing checklist that references “BSA/AML Compliance” as a task to be completed by the M&T loan officer, and if feasible, to set a specific target date for completion of those requirements that is well in advance of any scheduled closing date.**

Also, please note that outside closing counsel may be able to obtain the borrower’s organizational documents and other documents needed to complete the loan transaction from the loan officer, rather than asking the borrower for them a second time.

For loan transactions in Canada, M&T has adopted a separate anti-money laundering and anti-terrorist financing program that is designed to comply with Canadian law. Please consult with approved outside legal counsel in Canada about applicable law and regulations in this area, and remind the M&T loan officer to consult with M&T’s Compliance Department and the Principal Officer and/or Chief Anti-Money Laundering Officer of M&T’s Canada Branch.

3.02 Security Agreements

M&T’s standard form documents include several types of security agreements. In general, outside counsel should use the standard form most appropriate for the desired collateral, as follows:

<table>
<thead>
<tr>
<th>Collateral</th>
<th>Form Name</th>
<th>Form Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Assets</td>
<td>General Security Agreement</td>
<td>CLB-107</td>
</tr>
<tr>
<td>Select Assets</td>
<td>Specific Security Agreement</td>
<td>CLB-108</td>
</tr>
<tr>
<td>Investment Property Only</td>
<td>Pledge of Securities</td>
<td>CLB-149</td>
</tr>
<tr>
<td>Deposit Accounts Only</td>
<td>Pledge and Assignment of Deposit Accounts</td>
<td>CLB-072</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>Continuing and Collateral Assignment of Life Insurance Policy</td>
<td>CLB-045</td>
</tr>
</tbody>
</table>
M&T’s E-Forms also include a form of Hypothecation Agreement (CLB-181), which can be used in conjunction with a security agreement, as needed, to document third party collateral pledges where the third party is not a co-borrower or guarantor.

### 3.03 UCC Matters

#### 3.03.01 Generally

Outside counsel are expected to know and adhere to the requirements of Article 9 of the Uniform Commercial Code (UCC), as adopted in each state, and as may be amended from time to time, so as to ensure that M&T obtains and maintains a valid and properly perfected (with appropriate priority) security interest in the desired personal property collateral. Similarly, Canadian counsel is expected to know and properly apply the requirements of the Personal Property Security Act and related laws in Canada.

Most (if not all) states now require the use of National UCC Financing Statement Forms (e.g., UCC-1 and UCC-3 Forms, with appropriate Addendums). These forms are not provided by M&T, but outside counsel are expected to obtain and use them as needed.

#### 3.03.02 Collateral Descriptions

For “blanket” security interests covering all assets of the debtor, Article 9 of the UCC allows for the use of an abbreviated collateral description (e.g., “All Assets of the Debtor, wherever located, whether now owned or hereafter acquired.”) on UCC-1 financing statements. It is still permissible (and perhaps preferable in certain circumstances) to include specific references to general collateral categories, as well as to describe certain types of collateral with even greater specificity when appropriate. Please see the following examples:

- A non-abbreviated reference to a “blanket” security interest in all personal property assets of a debtor would read as follows:

  All assets of the Debtor, including, without limitation, all of the Debtor’s Equipment (including, but not limited to, machinery, vehicles and furniture), Fixtures, Inventory, Accounts, Investment Property, Chattel Paper, Instruments, Documents and General Intangibles, wherever located, whether now owned or hereafter acquired or arising.

- To perfect a security interest in a debtor’s rights under a particular contract:

  All rights of the debtor under a certain [identify name, date of, and parties to contract], as the same may be amended from time to time.

Other general rules/recommendations to follow with respect to collateral descriptions are as follows:

- Whenever taking a security interest in **Accounts**, include a reference to **General Intangibles** (to cover any assets that may overlap the two categories) and **Chattel Paper** (to cover payment rights that may include a security interest).
Whenever taking a security interest in **Equipment**, include a reference to **General Intangibles** (to cover any license or proprietary process needed to operate the Equipment) and **Fixtures** (to cover any asset that could become or be viewed as a Fixture).

Generally speaking, except as may be otherwise required by applicable state law, M&T is comfortable relying on its **Mortgage (or Deed of Trust)** as a financing statement covering **Fixtures**, in accordance with UCC Section 9-502(c), such that there is no need to record a separate financing statement covering **Fixtures** in the real estate records.

Notwithstanding that a properly recorded **Mortgage (Deed of Trust)** covering real estate will also serve as a financing statement covering **Fixtures**, consideration should still be given to filing an appropriate financing statement to cover **Equipment** (to cover items that may not technically be Fixtures), as well as **Accounts** and **General Intangibles** (to cover all rents and other rights to payments arising from the operation of the premises, a description of which should be attached thereto as an addendum).

Although Article 9 of the UCC permits perfection of a security interest in **Investment Property** by means of a financing statement, M&T requires perfection by possession or “control” (as contemplated in Article 8 of the UCC). See Section 3.04 for further discussion of M&T policy with respect to taking a security interest in Investment Property.

As with all other rules/recommendations contained in this Manual, M&T defers to the professional judgment of its outside counsel in applying such rules/recommendations to the facts of a particular transaction.

### 3.03.03 Secured Party Information

Outside counsel must ensure that the appropriate lending entity is identified as the Secured Party on each financing statement. See Section 2.02 of this Manual for the names and a discussion of the relevant M&T lending entities. Please note, however, that M&T expects that all UCC filing receipts will be returned directly to and reviewed by outside counsel prior to being sent to the collateral department at M&T.

### 3.04 Investment Property Collateral

This Section discusses in greater detail the Bank’s procedures for taking a security interest in **Investment Property** (shares of stock, mutual funds, securities accounts, etc.) in the United States. The practice in Canada is different, and requires the involvement of Canadian counsel.

### 3.04.01 Documentation

The M&T Pledge of Securities form (CLB-149) grants M&T a security interest in designated Investment Property, and must ALWAYS be used when M&T’s collateral includes Investment Property, regardless of whether the securities are certificated or uncertificated, and regardless of whether the securities are held by the pledgor, the issuer, or in a securities account with a “securities intermediary” (as defined in Article 8 of the UCC). The need for additional documentation depends on the particular circumstances, as described below.

3.04.02  Certificated Securities

To the extent the Investment Property includes certificated securities, M&T requires that it take physical possession of the original stock certificates, along with appropriate stock power forms, which are to be undated and endorsed “in blank” by the pledgor of the securities. To facilitate compliance with Securities and Exchange Commission regulations, M&T expects that its outside counsel will be responsible for (i) verifying that any stock certificates to be pledged have not been listed with the Securities Information Center as having been lost or stolen, and (ii) ensuring that the execution of each stock power form is either (a) witnessed by a M&T employee who is authorized and qualified to guaranty signatures under the Stock Transfer Agents STAMP Program, or (b) guarantied with a medallion signature guaranty by a third party member of the Stock Transfer Agents STAMP Program. Outside counsel should send the original stock certificates directly to the M&T Closing & Collateral Department, by hand delivery, registered mail or overnight delivery (with an insured carrier) at the address listed in Section 2.06 of this Manual. To minimize any risk of loss, outside counsel should not send the original stock certificates and stock power forms together, but rather send the stock power forms under separate cover to the same address.

3.04.03  Uncertificated Securities

To the extent the Investment Property includes uncertificated securities that are not held in an investment account (e.g., shares of a mutual fund issued directly by the fund and not held in an account with a securities intermediary), M&T requires that either (i) the shares be certificated by the issuer, in which case the provisions of Section 3.04.02 of this Manual become applicable, or (ii) the issuer (along with the pledgor) execute an appropriate “control agreement”, as described in Section 3.04.04 below.

To the extent the Investment Property includes uncertificated securities that are credited to an investment account established by a pledgor with an issuer, broker or other securities intermediary, M&T must obtain an appropriate “control agreement”, as described in Section 3.04.04 below.

3.04.04  Control Agreements

M&T’s E-Forms include a standard form Control Agreement (For Investment Property) (CLB-152), along with a Trading Rider (CLB-152A, which is used only in conjunction with the M&T form of Control Agreement when M&T specifically agrees to permit the pledgor to continue trading assets within the pledged account).

The Control Agreement grants M&T “control” over (and thereby perfects M&T’s security interest in) designated Investment Property. The M&T form of Control Agreement (or an acceptable substitute) MUST be obtained in all instances where M&T does NOT take possession of the Investment Property being pledged (e.g., where the Investment Property is held in an account with a securities intermediary). The Control Agreement must be signed by the securities intermediary and any other party (e.g., broker, investment manager, etc.) that may otherwise have the ability to direct the disposition of assets in the account.

It has become increasingly common for securities intermediaries to refuse to sign the M&T form of Control Agreement and instead require the use of their own form. In such instances, M&T is generally willing to consider the use of the securities intermediary’s form in place of the M&T standard form, provided that the securities intermediary’s form is acceptable and/or that the securities intermediary is willing to modify its form to accommodate reasonable requests from M&T. In our experience, nearly ALL non-standard forms will require some revision in order to make them acceptable. It is the responsibility of outside counsel to review and negotiate the terms of any non-
standard control agreement form to ensure that it complies with the requirements of Articles 8 and 9 of the UCC, and that it adequately protects M&T’s interests in the collateral. To that end, the following concepts MUST be included (or deleted, as indicated):

- the agreement must be signed by ALL appropriate parties, namely the securities intermediary that has custody of the assets, as well as the broker (if different) and any other party (e.g., an investment manager) that will have the ability to access or direct trading activity in the account.
- statutorily mandated “control” provision (see Article 8 of the UCC)
- representation by the securities intermediary that it has no knowledge of and will not allow any competing interests (e.g., other control agreements) with respect to the pledged collateral
- subordination of any broker rights and/or liens, except for customary account maintenance fees
- clear procedures by which M&T can take exclusive control and/or possession of the collateral
- M&T to receive monthly statements (to be sent to the loan officer) and prior notice (at least 30 days) of any termination (to be sent to the M&T Closing & Collateral Department – see Section 7.0 for the appropriate address)
- general provisions limiting the securities intermediary’s liability for failure to abide by the terms of the control agreement or otherwise requiring M&T to indemnify or hold the securities intermediary harmless MUST BE DELETED, the sole exception being that M&T will agree to indemnify and hold the securities intermediary harmless at the direction of M&T and/or in strict compliance with the terms of the control agreement”.

3.04.04.01  Master Control Agreements

Please be aware that M&T Bank has entered into a “master” control agreement with each of the following affiliate entities:
- M&T Securities, Inc. (along with Pershing LLC, as custodian)
- Wilmington Trust Company
- Wilmington Trust, N.A.

These master control agreements cover any and all investment accounts maintained with such entity that are pledged as collateral for an M&T Bank loan. As such, there is no need for an account-specific control agreement to be executed at closing. Arrangements are made internally at M&T to ensure that the securities intermediary puts an appropriate “hold” on the investment account to protect the lien of M&T Bank.

3.04.05  UCC Financing Statements

Notwithstanding that perfection by “control” is by itself the required method of perfection, UCC-1 financing statements may also be filed as a “belt and suspenders” method of perfection, as deemed necessary or appropriate in a particular transaction. The preferred collateral description for these financing statements is set forth below:
SCHEDULE A

All of Debtor’s right, title and interest in the following Investment Property credited to or issued by the below-referenced institution in or under the following Securities Account(s) No.(s) or otherwise identified as follows:

Securities Intermediary or Issuer:

This description of the above Investment Property includes, without limitation, (i) any replacement or substitute securities or other account(s) in connection therewith (whether or not any number identifying any account identified above is subsequently changed), (ii) any and all Financial Assets in any account identified above, whether now owned or hereafter acquired or credited thereto, (iii) any and all substitutions or replacements of any of the Investment Property otherwise identified above (whether or not any number identifying such Investment Property is subsequently changed), and (iv) all interest and dividends in connection with any of the above, whether now or hereafter earned thereon and all Proceeds of any of the above.

3.04.06 Regulation U

Federal Reserve Board Regulation U imposes limitations on the amount of any “purpose credit” (as defined in Regulation U) that is to be secured directly or indirectly by “margin stock” (as defined in Regulation U). The general rule is that the portion of any purpose credit that is to be secured by margin stock may not exceed 50% of the current market value of such margin stock. Outside counsel is responsible for ensuring that M&T complies with all requirements of Regulation U, including, without limitation, obtaining from the borrower a properly completed Federal Reserve Form U-1, as appropriate. (Regulation U is not applicable for loan transactions in Canada.)

3.05 Non-Article 9 Collateral

Outside counsel is expected to meet the necessary requirements and follow the necessary procedures for obtaining and perfecting security interests and/or liens upon any personal property not covered by Article 9 of the UCC (e.g., motor vehicles, floor plan aircraft, floor plan boats/vessels, life insurance policies, etc.).

M&T’s E-Forms include a Continuing Collateral Assignment of Life Insurance Policy (CLB-045). Use of a non-standard form in lieu of the CLB-045 is permissible, provided that outside counsel has reviewed the non-standard form and it provides to M&T substantially the same rights as does the CLB-045. Duplicate original copies of the Assignment, duly acknowledged by the insurer, should be retained by M&T so as to allow M&T to present the insurer with an original copy at such time as enforcement is deemed necessary. In addition, every effort should be made to obtain the original life insurance policy, particularly if it is a whole life policy with a cash surrender value component. The insurer must have an A.M. Best & Company rating of B or better.
3.06  Hazard and Liability Insurance

3.06.01  Form of Hazard and Liability Insurance

For all M&T transactions, the borrower (and/or any other pledgor of collateral) must provide proof of hazard and liability insurance coverage in amounts deemed sufficient by M&T for the transaction in accordance with M&T Credit Policy.

Proof of hazard insurance may be satisfied by obtaining documentary evidence that insurance has been issued, is in force, and that all appropriate rights and privileges under the policy have been properly extended and conveyed to M&T. Such documentation may take any of the following forms: (a) a copy of the insurance policy, (b) a copy of an appropriate insurance binder, or (c) an appropriate certificate, provided that such documentation includes the required content, as described in detail below.

3.06.02  Content of Proof of Hazard and Liability Insurance

In order to be acceptable to M&T, the evidentiary document must be an original that is signed by an authorized representative of the insurance company and must contain the following:

- proper reference to the appropriate M&T lending entity (M&T Bank or M&T Real Estate Trust, as applicable), along with a reference to its “successors and assigns”
- correct legal name of the insured
- accurate property address(es)
- the effective date and expiration date of the policy
- a representation that the insurer will provide M&T with notice as to any changes to the policy, as well as 30 days’ prior notice of cancellation
- the notice address for M&T Bank should be P.O. Box 1358, Buffalo, NY 14240-1358
- appropriate statement of M&T’s lien position
- an appropriate endorsement naming the appropriate M&T lending entity as a lender’s loss payee (if there is non-real estate collateral), mortgagee (if there is real estate collateral) and as additional insured for liability coverage (Please note that merely listing M&T as an additional interest, certificate holder or loss payee does not offer M&T the desired protection.)

It is the M&T loan officer’s responsibility to determine the required amount of the insurance coverage. Outside Counsel should make sure that the insurance company has the minimum insurance rating (i.e., B or better by A.M. Best & Company). As a general rule, the cumulative value of the insurance should cover the outstanding debt or value of the collateral covered by the insurance. Outside counsel should strive to obtain the appropriate evidence of insurance in advance of the closing so as to give the insured sufficient time to fix any deficiencies in the evidence of insurance before the closing.

To assist the insured’s insurance agent in issuing the appropriate insurance documents, M&T has developed a form letter for the insured to forward to its insurance agent, which outlines M&T’s insurance requirements (see CLB-157/157A). These forms are available on M&T’s E-Forms Website.
3.07 Landlord Waivers

Whenever personal property pledged by a borrower to M&T as collateral is located on real estate owned by a third party, M&T strongly recommends having the owner of the real estate execute and deliver an acceptable Landlord Waiver. In Pennsylvania, West Virginia and Delaware, obtaining a Landlord Waiver is REQUIRED, due to particular laws of those states that are unfavorable to secured creditors. M&T has a standard form Landlord Waiver (CLB-117) that should be used whenever possible.

3.08 Counsel Opinions

Unless the M&T loan officer indicates otherwise, or a particular state’s law prohibits it or renders it meaningless, outside counsel should obtain an appropriate opinion from the borrower’s (and/or guarantor’s) counsel in the following situations: (i) if the amount of the loan is equal to or greater than $1,000,000 or (ii) if there are events or circumstances concerning the credit whereby outside counsel, after consultation with the M&T loan officer, deems it prudent to have borrower’s (and/or guarantor’s) counsel opine on some aspect of the borrower/guarantor, the loan documents or the overall transaction (e.g., if the borrower/guarantor is a trust).

3.09 Small Business Administration (SBA) Loans

3.09.01 Overview

M&T has been designated by the SBA as a member of the Preferred Lender Program (PLP), and as such, is an active participant in a variety of SBA Loan Programs, including the Section 7(a) Loan Guaranty Program, the SBA Express Loan Program and the Certified Development Company (504) Program, among others. As a PLP lender, the M&T is under close scrutiny from the SBA to ensure that all required procedures are being followed by the M&T and its outside counsel. M&T will hold its outside counsel to the same heightened standard. It is critically important that M&T outside counsel do not undertake to close SBA loans if they do not have the experience and expertise to do so. Outside Counsel closing any SBA loan must be familiar with these loan programs and the various Standard Operating Procedures (SOPs) promulgated by the SBA for each program, including, without limitation, the following:

- SOP 50-10 – Lender and Development Company Loans
- SOP 50-50 – Servicing
- SOP 50-51 – Liquidation
- SOP 70-50 – Legal Responsibility

For more detailed information on the loan programs and relevant SOPs, please refer to the SBA’s website at www.SBA.gov. (Please note that SBA loans are not available in Canada.)

If you have SBA loan documentation questions for a particular loan transaction, please contact Katherine Daley, M&T’s internal SBA Lending Manager at (716) 842-5402 or kdaley@mtb.com.
3.09.02 Selecting Appropriate M&T Lending Entity

As noted in Section 2.02.03.01 above, any loan to be guaranteed by the SBA under the SBA’s Section 7(a) Loan Guaranty Program (or any related program) must be documented and closed in the name of the Bank only (i.e., not MRE Trust or any other affiliate of the Bank). MRE Trust is permitted to be a lending entity in connection with Certified Development Company (504) Program loans, subject of course to M&T’s general preference to originate all loans in the name of the Bank (see Section 2.02.01).

3.09.03 SBA Form Documents

The SBA has its own form documents (see the SBA website at www.SBA.gov/library/) that it requires to be executed in connection with certain SBA loans. In certain other circumstances, the SBA permits the lender to utilize its own standard forms to document the loan, provided that the terms comply with the various SBA requirements under the applicable SOPs and the SBA Authorization for the particular loan. It is the responsibility of M&T’s outside closing counsel to determine whether to what extent SBA forms or M&T forms may be used for a particular transaction. For instances where an M&T promissory note form may be used, M&T provides two (2) promissory note forms via the E-Forms Website, as follows:

<table>
<thead>
<tr>
<th>Promissory Note Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLB-178A-SBA Business Access Line of Credit Note (SBA Express Program)</td>
<td>SBA Express Program version of M&amp;T’s standard BALOC for demand/discretionary, working capital lines of credit; not for use on any 7(a) lines of credit</td>
</tr>
<tr>
<td>CLB-198-SBATerm Note (SBA Programs: Express and 7(a) Small Loans)</td>
<td>For term loans under either the SBA Express or SBA 7(a) Small Loan programs ($350,000.00 or less)</td>
</tr>
</tbody>
</table>

Even when the SBA requires the use of its own promissory note form, the SBA does not have forms to cover all aspects of a commercial lending transaction. For example, there is no SBA form of security agreement or pledge of deposit account. Therefore, outside counsel may need to use some standard M&T forms to supplement the SBA forms in order to appropriately document the loan transaction. However, an SBA form should not be duplicated with an M&T form (e.g., a guarantor should not sign both an SBA form guaranty and an M&T form guaranty), unless there is also a non-SBA-sponsored loan outstanding or being made by the M&T. In that case, it is both an SBA and M&T requirement that separate and distinct loan documents be executed for each loan.

3.09.04 SBA Loan Authorization

Outside counsel should take special care to make sure that all requirements of the SBA Loan Authorization are satisfied. For example, in a section of the SBA Authorization entitled “Other Provisions”, the SBA often requires that the borrower provide evidence of a “capital injection” (satisfied by having the borrower certify that the capital contribution was made and attaching copies of canceled checks) or certain “certifications” (satisfied by having borrower sign separate, stand-alone certifications). The M&T E-forms Website includes a selection of “SBA Supplemental Documents”, which have been created by M&T to facilitate compliance with the typical SBA Authorization requirements. Failure to satisfy all requirements in the SBA Authorization may result in the SBA refusing to honor its guaranty of the M&T loan. For collateral review purposes, a copy of the SBA Authorization marked to refer to the closing document that meets each requirement, by section and page, should accompany the Closing Set.
3.09.05 Electronic Remittance of SBA Fees

Under the Debt Collection Improvement Act, all payments to the federal government (with the exception of Internal Revenue Service tax payments) must be made electronically. As such, M&T must remit SBA guaranty fees electronically from the Commercial Lending Services area. THE SBA WILL NOT ACCEPT PAPER CHECKS. As such, the borrower must reimburse M&T at closing with an M&T official check (or a certified check or money order) made payable to “M&T Bank”. Please write “SBA Fee” in the lower left hand corner of the check and deliver it to the M&T loan officer.

3.10 Personal Use/Accommodation Loans

Outside counsel must always be alert to the possibility that a particular loan transaction may involve a loan to an individual borrower for “personal, family or household use”, thereby triggering the applicability of various consumer lending laws. In such instances, M&T expects that outside counsel will, at a minimum, be able to identify such transactions and either (a) handle the transaction in full compliance with the applicable federal and state consumer lending laws, or (b) alert the M&T loan officer to the issues and the need to find an appropriate attorney who is experienced in handling consumer loans to assist with the closing of the transaction. Among the consumer lending laws that tend to be implicated in such transactions are the following:

- Regulation Z (Truth in Lending Act)
- Regulation C (Home Mortgage Disclosure Act)
- RESPA (Real Estate Settlement Procedures Act)

If outside counsel undertakes to represent M&T in connection with such a transaction, it is outside counsel’s responsibility to ensure that M&T complies with all relevant laws.

3.11 Participations Sold Requirements

For all loan participation agreements executed where M&T is selling a participation interest, the following criteria must be met to qualify for “sale” accounting:

1. The portions sold and retained must represent a proportionate (pro-rata) ownership interest in the entire loan (e.g. 11% of the total loan sold, 89% of the total loan retained). Subsequent portions sold and retained must also meet this requirement.

2. After the transfer date, cash payments received from the borrower must be divided among all participants, including M&T, based upon their proportionate share of ownership. There can be no subordination or other payment priority on the part of M&T. (Compensation for being the loan servicer is excluded from this requirement.)

3. The rights of all participants, including M&T, should be equal, on a pro-rata basis, in all circumstances. No participant’s interest (including payment priority) should be subordinated to another participant. There should be no recourse to M&T other than the standard representations and warranties and ongoing servicing obligations.

4. No one participant, including M&T, should have the right to pledge or exchange the entire loan. The purchaser should have the right to pledge or exchange the portion of the loan purchased. If
M&T’s consent is required for the purchaser to pledge or exchange the portion of the loan purchased, the participation agreement must explicitly state that M&T’s consent shall not be unreasonably withheld.

5. M&T’s creditors should have no access/recourse to the participations sold, even in the event of bankruptcy or receivership.

6. M&T should not maintain effective control over the portion of the loan sold:
   a. M&T should not be entitled nor obligated to repurchase the portion of the loan participated out before maturity.
   b. M&T should not have the ability to cause the purchaser to return the portion of the loan that has been sold.
   c. The purchaser should not have the ability to require M&T to repurchase the sold portion of the loan.

Prior to structuring a participation agreement that does NOT comply or places a condition upon any of the above criteria, consultation with M&T’s Accounting Policy Department is required, as it could impact the accounting for the transaction as a sale of a portion of the loan and thereby impact the profitability of the transaction.

### 3.12 Tax-Exempt Loans

M&T will rely on the expertise of outside counsel to ensure that any tax exempt loan is documented properly and that all appropriate certifications and opinions are obtained to validate the tax exempt qualifications of the borrower and the particular loan as a tax-exempt obligation and/or Bank Qualified bond, as applicable, including, but not limited to, ensuring that the appropriate TEFRA hearing has been conducted and that a Form 8038 has been filed with the Internal Revenue Service. **Outside counsel should not close a tax exempt loan unless they have the expertise necessary to do so.**

- A provision should be added to the promissory note (or a rider thereto) that contemplates a conversion to a taxable interest rate effective as of the date of any determination that the interest earned by M&T on such loan is not exempt from inclusion in the gross income of M&T under applicable tax law.

- For all loans where a “yield maintenance” prepayment premium provision is to be applicable, M&T’s standard yield maintenance provision must be modified to account for the tax-exempt nature of the deal, to ensure that, for purposes of the calculation, we are comparing a tax-exempt fixed rate with a tax-exempt market rate. Without an appropriate modification, the standard “yield maintenance” provision does not properly compensate the Bank when a customer prepays a tax-exempt fixed rate loan. The only necessary revision to the standard provision is highlighted in **bold italics** below:

  **“Prepayment Premium.”** If the interest rate in effect at the time of any prepayment is a fixed percentage rate (whether in effect since the date of this Note or any subsequent date in connection with an interest rate adjustment), as consideration of the privilege of making such prepayment, Borrower shall pay to M&T Bank (“Bank”) a premium equal to the greater of (a) one percent (1%) of the amount prepaid, or (b) the present value of the difference between (i) the amount of interest that would have accrued on the prepaid principal from the date of prepayment through the earlier of the Maturity Date or the date of the next scheduled interest rate adjustment, if any (“Measurement Period”) at the fixed interest rate in effect on the date of prepayment...
and (ii) the amount of interest that would have accrued on the prepaid principal during the Measurement Period at the Current Market Rate. “Current Market Rate” shall mean the most recent yield on United States Treasury Obligations adjusted to a constant maturity having a term most nearly corresponding to the Measurement Period, in effect two (2) business days prior to the date of prepayment, as published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (519), or by such other quoting service, index or commonly available source utilized by the Bank for such purposes, 

adjusted to a tax-exempt rate by multiplying by a factor of ____%. The present value calculation used herein shall use the Current Market Rate as the discount rate and shall be calculated as if each installment of principal had been made as scheduled pursuant to the terms of this Note.”

The percentage factor to be inserted in the blank should be the same percentage factor used to determine the tax-exempt rate for the loan. (For example, if the loan is priced at 69% of 5 year Cost of Funds+375 bps, then “69%” should be used as the tax-exempt adjustment factor in the yield maintenance prepayment provision.)
SECTION 4
4.0  Real Estate Collateral Policies

This section of the Manual provides a brief overview of M&T policies pertaining to various real estate collateral issues that commonly arise in connection with commercial lending transactions.

4.01  Environmental Matters

4.01.01  Documentation Requirements

Commitment letters must provide that closings are contingent upon a satisfactory environmental assessment of the property by M&T, and that the borrower is responsible for all costs associated with such assessment, regardless of the outcome of the assessment and whether the loan closing occurs.

The Environmental Authorization, Waiver and Indemnification Agreement (CM-013) **SHOULD** be obtained **PRIOR** to the commencement of any environmental review of the real estate. This Agreement authorizes the environmental audit and indemnifies M&T and its agents in connection therewith.

The Environmental Compliance and Indemnification Agreement (CLB-158) **MUST** be obtained at closing, and **MUST** be signed by the mortgagor, the borrower (if different from the mortgagor) and each guarantor. This Agreement requires the mortgagor, borrower and guarantors to (i) warrant that the property is free of environmental problems, (ii) covenant that it will remain so, and (iii) indemnify and hold M&T harmless from any environmental liability.

Please note that the CM-013 is **not** a substitute for the CLB-158. Similarly, it is, generally speaking, **NOT** acceptable to rely on the abbreviated environmental provisions in the standard M&T mortgage/deed of trust forms in place of the CLB-158 form.

4.01.02  Environmental Policy

M&T’s policy with respect to environmental audits of real estate to be taken as collateral is outlined in detail in M&T's Credit Policy Manual. M&T loan officers are responsible for ensuring compliance with Credit Policy. All questions regarding M&T’s policy should be referred to the Environmental Risk Officer in the M&T Credit Administration Department.

4.01.03  Form of Environmental Assessments and Reports.

It is the M&T loan officer’s responsibility to review the environmental audit report and determine whether it meets applicable internal policy requirements. Questions in this regard should be referred to the M&T Environmental Risk Officer. Unless requested to do otherwise by the loan officer, outside counsel should review the report only to make sure that it has been issued for the benefit of the appropriate M&T lending entity, or if the report was commissioned by the borrower, that there is a reliance letter from the issuer of the report providing that the appropriate M&T lending entity can rely on the report. The M&T loan officer should provide a copy of the environmental report (and reliance letter, if applicable) to outside counsel to include in the closing set of loan documents.
4.02 Flood Insurance

The Flood Disaster Protection Act of 1973, as amended by the 1994 National Flood Insurance Reform Act, created the National Flood Insurance Program (NFIP), which among other things, requires that M&T, when taking improved (or to be improved) real estate as collateral, determine if the subject real estate is located in a “Special Flood Hazard Area” (SFHA), as indicated on an official Flood Hazard Boundary Map issued by the Federal Emergency Management Agency (FEMA). If any improvement (or part of an improvement) on the property is or will be located within a flood zone according to the FHBM Map, M&T MUST require the borrower to purchase flood insurance in an amount at least equal to the outstanding principal amount of the loan, or the maximum coverage amount available under the NFIP, if less.

The above requirement is applicable for all new loans, as well as for loan increases, renewals, supplemental mortgages, modifications and extensions.

For EVERY loan transaction where M&T is taking real estate as collateral, there MUST be evidence in the INITIAL closing set (delivered within 15 business days of closing) of our compliance with the NFIP. For real estate that is not in a flood zone, this means including a copy of the Standard Flood Hazard Determination (SFHD) in the closing set. When the real estate collateral is in a flood zone, full compliance with NFIP requirements is expected. M&T must have evidence of sufficient flood insurance coverage for all appropriate structures and personal property contents, AND SUCH COVERAGE MUST BE EFFECTIVE AS OF THE DATE OF CLOSING.

M&T has contracted with an outside vendor to participate in a Flood Hazard Certification Program, pursuant to which the vendor does the research, determines if the real estate is located in a flood zone, and provides life of loan service. It is the M&T loan officer’s responsibility to provide a copy of the Standard Flood Hazard Determination (SFHD) to outside counsel for inclusion in the Closing Set of loan documents. If outside counsel is asked to order the SFHD, please note that M&T’s designated vendor should still be used, and the fee charged to the borrower should be no greater than the cost to M&T ($12.00, as of July, 2012).

If the SFHD indicates that an improvement on the real estate is located in a SFHA, please note the following:

- A “Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance” MUST be provided to and executed by all borrowers at least 10 days prior to the loan closing date (or if the period between commitment and closing is less than 10 days, not later than the date of the M&T loan commitment). The Notice is generated internally (with the assistance of the vendor) and the loan officer is responsible for ensuring that the Notice is sent to the required parties. However, it remains the outside counsel’s responsibility to ensure that the Notice, signed by all required parties, is obtained at closing and included in the Closing Set.

- Prior to closing, outside counsel must obtain from the borrower for inclusion in the Closing Set one of the following: (i) a copy of the completed Flood Insurance Application Form and evidence of paid premium; (ii) a copy of the Flood Insurance Policy Declarations Page; or (iii) a copy of a Certification of Proof of Purchase of Flood Insurance (a FEMA form).

Failure to include all necessary documentation in the closing set creates regulatory risk for M&T. Our Closing & Collateral area will monitor this closely and report any violations to the Legal Department. Due to the increased scrutiny that federal and state regulatory agencies are giving to NFIP compliance, any violation
of M&T’s policy in this area may lead to removal of the responsible law firm from our approved outside counsel list.

If any improved real estate is located in a SFHA, flood insurance is MANDATORY. M&T has no discretion to waive the requirement. If a borrower wishes to challenge the flood zone determination, they are free to do so on their own behalf. M&T will accept only an official Letter of Map Amendment or Letter of Map Revision issued by FEMA as evidence that the improved real estate in question is actually not in a flood zone.

It is outside counsel’s responsibility to assist the M&T loan officer in determining the appropriate amount of the flood insurance coverage, taking into consideration the facts of the particular loan. For example, if M&T is taking a second mortgage, the amount of the flood insurance should be sufficient to cover the first and second lien position up to the value of the property. Notwithstanding the coverage limits under the NFIP, M&T is free to require the borrower to obtain additional coverage through a private insurer. There are also situations where flood insurance is not statutorily required (e.g., where there is no real estate collateral, but only personal property collateral located on real property in a flood zone), where the M&T loan officer should consider requiring the borrower to purchase flood insurance. All costs incurred by M&T with respect to flood insurance are to be paid by the borrower at closing, and should therefore be included on any settlement statement prepared by outside counsel.

4.03 High-Volatility Commercial Real Estate (HVCRE) Regulations

Federal regulatory agencies imposed new risk-based capital reserve requirements effective January 1, 2015, that, among other things, require banks to hold additional capital in connection with certain commercial real estate acquisition, development and/or construction loans. Any loan that is deemed to be a “high-volatility commercial real estate exposure” (“HVCRE”, as defined in the regulation) triggers the additional capital requirements. The details of this definition and the regulation may be found at: http://www.gpo.gov/fdsys/pkg/FR-2013-10-11/pdf/2013-21653.pdf (see, in particular, pp. 62089-62090 and 62165).

Please note that not all acquisition, development and construction loans are considered HVCRE. There are some broad categories of commercial real estate secured loans that would not qualify as HVCRE, or that are otherwise exempt from the regulatory requirements, including, most notably, any loan that is in a permanent financing phase, loans to businesses and farms that have annual gross revenue of $1 million or less, etc. Please consult the regulation for additional details on this.

In an effort to minimize the impact of this new regulation on its capital reserve levels, M&T will generally require the following provision (the “Required Provision”) to be added to term sheets, proposal letters, commitment letters and loan documents for any credit facility that may potentially qualify as an HVCRE:

“To ensure that any credit facility referenced herein will not be classified as a “high-volatility commercial real estate exposure” (“HVCRE”) under applicable federal banking regulations relating to the adoption of Basel III regulatory capital rules, as may be amended from time to time (“Basel III Regulations”), Borrower understands and agrees that:

i. Prior to the funding of any advance or draw under such credit facility, Borrower shall be required to have contributed cash equity to the subject project (“Project”) equal to 15% of the subject real estate’s prospective value at the completion of any contemplated acquisition, development and/or construction, as determined by an “as completed”
appraisal deemed acceptable in form and substance to the Bank, which appraisal shall be received and reviewed by the Bank prior to closing;

ii. Borrower shall be required to contribute sufficient cash equity in a manner compliant with the applicable Basel III Regulations and acceptable to the Bank in its sole discretion, and such cash equity (along with all capital internally generated by the Project) shall not be withdrawn (except to the extent used to fund permissible Project development expenses, in accordance with Basel III Regulations) until such time as the credit facility is converted to permanent financing or repaid in full, or the subject real estate is sold; and

iii. Borrower shall further satisfy any other requirements necessary to facilitate the credit facility not being classified as a HVCRE per Basel III Regulations.

Notwithstanding any provision to the contrary set forth herein or in any document evidencing the credit facility, the Bank shall not be obligated to advance any funds that could cause the credit facility to be classified as a HVCRE, as shall be determined by the Bank in its sole discretion.”

It will be the responsibility of our outside closing attorney to (i) inquire and discuss with the M&T loan officer as to the applicability of these provisions to the particular credit facility, and (ii) ensure that the above provisions are incorporated into the appropriate documentation, as applicable to the particular credit transaction.

The Required Provision has been incorporated into the applicable M&T standard promissory notes available on the M&T E-Forms Website. These will include only those promissory notes that are designed to be utilized for the type of loan (acquisition, development, construction, etc.) that is likely to qualify as HVCRE, namely the Construction Loan Note (CLB-211), the Construction-To-Permanent Loan Note (CLB-210), and the Term Note (CLB-102), along with the “scheduled balance” versions of these forms, as applicable. To the extent that a non-standard promissory note is utilized for any potential HVCRE loan, we will expect that our outside closing attorney will incorporate the Required Provision into the applicable documents.

4.04 Title Insurance

4.04.01 When Required

M&T requires title insurance (a mortgagee/lender policy) in connection with ALL commercial loans where real estate is taken as collateral, except for non-purchase money loans where the collateral value of the real estate (i.e., the lesser of the face amount of the recorded mortgage or the amount of the loan) is (a) $500,000 or less with respect to commercial real estate, or (b) $1 million or less with respect to residential real estate.

4.04.02 Title Insurance Companies

M&T’s Credit Administration Department now maintains a list of approved title insurance companies for commercial transactions, which is available to loan officers on an internal “Loan Controls” web page. Any request for an exception to Credit Policy or to accept a title insurance policy from a company that does not appear on the approved list should be directed by the loan officer to M&T’s Credit Administration Department.
4.04.03 Acceptable Minimum Dollar Coverage

The amount of title insurance coverage must at least equal the original principal amount of the mortgage/deed of trust.

4.04.04 Form of Title Insurance

M&T requires an American Land Title Association (ALTA) standard policy. Any other type of policy is not acceptable without the prior approval of a Commercial Lending Attorney in the Office of the General Counsel. The policy must be certified to the appropriate M&T lending entity, as applicable.

4.04.05 Endorsements

Custom and practice in the various states where M&T operates may dictate that certain title insurance policy endorsements should be obtained, depending on the particular circumstances of the transaction. M&T expects that outside counsel will advise the M&T loan officer as to which endorsements are available, such that an informed business decision can be made as to which endorsements are appropriate for a particular transaction.

4.04.06 Final Review of Policy

M&T expects that the final title insurance policy, when issued, will be reviewed by outside counsel prior to being forwarded to the appropriate M&T collateral department to assure that all of the negotiated changes to the title commitment have been included. It is outside counsel’s responsibility to make the necessary arrangements to ensure that this occurs.

4.05 Surveys

M&T considers real estate surveys, when reviewed by an experienced real estate attorney, to be very valuable as a means of (i) verifying the accuracy of the legal description of the real estate, (ii) discovering any material encumbrances or other problems with the real estate that could impact its collateral value to M&T. The threshold for when surveys are required is set by Credit Policy, and may be adjusted from time to time. It is the responsibility of the loan officer to be aware of the thresholds set by Credit Policy.

4.05.01 Age of Survey

M&T will generally accept surveys which are not more than five (5) years old as long as (i) the owner of the property executes an affidavit of no change, (ii) the current owner was also the owner of the property at the time the survey was performed, (iii) the surveyor that performed the survey is acceptable to M&T, and (iv) the survey has been certified to the appropriate M&T lending entity. Existing surveys that do not meet the above criteria will need to be updated by an acceptable surveyor.

4.05.02 Form of Survey

M&T has not adopted a strict survey standard since survey standards vary by geographic region, but absent other factors, M&T strongly prefers a survey meeting current American Land Title Association (ALTA) standards. Each survey, therefore, must comply with the minimum standards and form
employed by surveyors currently practicing in the same locality where the subject real estate is located. It is outside counsel’s responsibility to ensure that a survey delivered to M&T conforms to the appropriate local survey standards.

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### 4.06 Tax Reporting Service

All commercial loans secured by real estate must be registered with a tax reporting service selected by M&T. This is handled internally by M&T. That service will periodically check the status of the payment of real estate taxes with regard to the subject real estate and obtain tax bills on all escrow accounts. No extra documentation is required, but the cost of this service is to be paid by the borrower at closing, and should be included on any settlement statement prepared by outside counsel. Outside counsel should request this information from the loan officer.

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### 4.07 Subordination, Nondisturbance and Attornment Agreements

The determination of whether a subordination, nondisturbance and attornment agreement (“SNDA Agreement”) is required from tenants should be made on a loan-by-loan basis. Generally, an SNDA Agreement should be obtained if the loan amount is greater than $2.5 million or if the presence of the tenant is particularly critical to the value of the real estate. Outside counsel should discuss with the loan officer the local practice with respect to SNDA Agreements and the benefits and burdens if an SNDA Agreement is required.

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### 4.08 Review of Leases, Certified Rent Rolls, Tenant Estoppel Certificates etc.

The determination as to whether outside counsel should review leases, obtain a certified rent roll and tenant estoppel certificates shall be made by the M&T loan officer, in consultation with outside counsel, on a loan-by-loan basis. As with SNDA Agreements, outside counsel should discuss with the loan officer the benefits and burdens in connection with each such undertaking. Generally, it is recommended that such additional due diligence be done with the assistance of outside counsel as needed.

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### 4.09 Certificates of Occupancy, Permits and Zoning

To ensure that any improvements on the real estate are in compliance with applicable building laws and regulations (e.g., Americans with Disabilities Act (ADA)), outside counsel should discuss with the M&T loan officer the following:

- Whether to require the borrower to provide a copy of the permanent certificate or certificates of occupancy or completion, as may have been amended or issued from time to time, covering any improvement located upon the real estate, which were required to have been issued by the appropriate governmental authority for such improvement; or a letter from an appropriate governmental authority stating that at the time of construction certificates of occupancy were not required for such improvements, and, if necessary, suitable evidence of the date of construction of such improvements.
• If a current certificate of occupancy cannot be obtained, one of the following should be received: (i) written confirmation from the applicable zoning commission or other appropriate governmental authority stating that the improvements on the real estate do not violate any land use and zoning ordinances, regulations or restrictions applicable to such property; (ii) an opinion from borrower’s counsel to the same effect; or (iii) an appropriate zoning endorsement on the title insurance policy.

• A copy of all material licenses, permits (including building permits) and authorizations (other than certificates of occupancy or completion, all applications, plans and filings necessary for the issuance of any such certificate and all licenses, permits and authorizations that were no longer required once any such certificate was issued) that were necessary for the construction of each improvement located upon the real estate or that are necessary for the current operation of such improvement, and, if appropriate, a copy of all applications (including plans) that were necessary for the issuance of any certificate of occupancy or completion with respect to any improvement, but only to the extent now or hereafter in the borrower’s possession.

4.10 Miscellaneous

4.10.01 UCC Financing Statements

Generally speaking, M&T is comfortable relying on its Mortgage (or Deed of Trust) as a financing statement covering Fixtures, in accordance with UCC Section 9-502(c), such that there is no need to record a separate financing statement covering Fixtures in the real estate records. Notwithstanding that a properly recorded mortgage/deed of trust covering real estate will also serve as a financing statement covering Fixtures, consideration should still be given to filing an appropriate financing statement to cover Equipment (to cover items that may not technically be Fixtures), as well as Accounts and General Intangibles (to cover all rents and other rights to payments arising from the operation of the premises, a description of which should be attached thereto as an addendum).

4.10.02 State-Specific Issues

Commercial real estate lending practices differ from state to state. M&T expects and relies on its outside counsel to be well versed in all the nuances of state and local law with respect to real estate secured loans, so as to ensure that M&T enjoys all benefits that the law allows.

For instance, in New York State, it is imperative in the construction loan context that a lender records a “Notice of Lending” so as to protect itself from intervening liens that might otherwise arise pursuant to the New York Lien Law.

4.10.03 Assignments of Leases and Rents

All M&T commercial real estate loans (i.e., loans where the primary collateral is commercial real estate) should include a collateral assignment of all current and future leases and rents related to or derived from the use the real estate. To that end, each of M&T’s standard Mortgage and Deed of Trust forms incorporate a lease and rent assignment provision. In addition, M&T has a “stand alone” Assignment of Leases and Rents form. Generally speaking, it is not necessary to obtain and record a “stand alone” Assignment of Leases and Rents if:
(i) a mortgage/deed of trust incorporating an appropriate assignment of leases and rents provision is to be recorded; and
(ii) the real estate is owner-occupied.

Please use the above policy as a guideline. Our desire here is to, when appropriate, eliminate unnecessary documentation and recording costs, and increase our collateral management efficiency. Ultimately, however, our primary concern is still to ensure collateral protection for our loans. As such, we defer to the judgment of our closing attorney to determine what documentation is necessary and appropriate for each loan transaction.
5.0  Loan Modifications

5.01 Generally

M&T prefers that all modifications to existing M&T loans be documented using M&T standard forms (particularly notes and primary collateral documents). As such, an “amended and restated note” (rather than an allonge or amendment agreement) is preferred whenever possible (even when the existing note is already on an M&T standard form). That said, in some mid-term modification transactions, there may be circumstances where it is more efficient and equally effective to use an amendment agreement to amend the existing note (together with the mortgage/deed of trust, etc., as needed). An example of a particular circumstance where this might be true is when the existing note is not an M&T standard form and/or was heavily negotiated, and is therefore not easily replaceable with an M&T standard form. However, if an amendment agreement is to be used, outside counsel must be particularly attentive to the constraints of the M&T loan system. Any such amendment agreement should be previewed by the Commercial Lending Services area. (See Section 7.0 of this Manual for contact information.)

5.02 Real Estate Secured Loans

Modifications to real estate secured loans should be handled by outside counsel in accordance with this Manual and in the same manner that a new loan origination is handled. At a minimum, a review of the existing loan documents is essential to ensure that the proposed loan modification does not create any disconnects with the existing promissory note and/or collateral documents.

5.03 Participated/Syndicated Loans

With respect to loans that are closed in the name of the Bank and participated to MRE Trust (see Section 2.02.02 of this Manual for further discussion of participations), any modification to such loans should be documented in the name of the Bank, not MRE Trust. Only under circumstances where there has been an outright assignment of the loan by the Bank to MRE Trust should a subsequent modification be documented in the name of MRE Trust.

On any large participated or syndicated credit facilities where M&T is the lead/agent bank, M&T’s Debt Capital Markets group should be consulted to ensure that all necessary documentation requirements are included.

5.04 Assignment of Loans to M&T

When taking an assignment of another lender’s loan, the original of the assigned documents (e.g., the original mortgage/deed of trust, security agreement, UCC-1 financing statement receipts, UCC-3 assignments, etc.) must be obtained and the original promissory note endorsed to the appropriate lending entity (Bank or MRE Trust, as appropriate).

M&T generally prefers to replace the prior lender forms with M&T standard forms documents, whenever possible, by preparing (and recording as appropriate) an amended and restated note, a mortgage modification agreement, etc., pursuant to which the text of standard form M&T documents will replace the text of the prior lender’s forms. If the nature of the transaction and/or borrower opposition does not
allow this, the loan officer may choose to forgo such modifications and retain the assigned documents “as is”, provided that outside counsel has reviewed such documents and determines that they are acceptable and include the customary rights and remedies that a commercial lender would expect to have in its loan documents.

### 5.05 Assignment of Loans by M&T

Any assignments of loans by M&T should be “as is” and “without recourse”. The cost of documenting any assignments must be paid for by the borrower. Outside counsel should work with the M&T loan officer to obtain the original loan file from M&T’s Closing & Collateral Department. Please see Section 7.0 of this Manual for the contact information for the Collateral Manager.

### 5.06 Loans Acquired by Merger/Acquisition

Outside counsel should be aware that existing mortgage/deed of trust documents may not show M&T as the mortgagee/secured party if M&T is merely the successor in interest (by merger or otherwise) to the original mortgagee/secured party. When preparing documentation for a modification agreement or assignment, outside counsel may need to reference the succession of interests therein. The following is a basic guide referencing recent and other relevant mergers/acquisitions:

“M&T Bank . . .

. . . as successor by merger to [Hudson City Savings Bank], as successor in interest to [insert ultimate predecessor to [Hudson City Savings Bank], if applicable]”

. . . as successor in interest to Wilmington Trust [Company][FSB], as successor in interest to [insert ultimate predecessor to Wilmington Trust [Company][FSB], if applicable]”

. . . as successor in interest to the Federal Deposit Insurance Corporation, as Receiver for K Bank, as successor in interest to [insert ultimate predecessor to K Bank, if applicable]”

. . . as successor in interest to Provident Bank of Maryland, as successor in interest to [insert ultimate predecessor to Provident Bank of Maryland, if applicable]”

. . . as successor in interest to the Federal Deposit Insurance Corporation, as Receiver for Bradford Bank, as successor in interest to [insert ultimate predecessor to Bradford Bank, if applicable]”

. . . as successor in interest to First Horizon Bank as successor in interest to [insert ultimate predecessor to First Horizon Bank, if applicable]”

. . . as successor by merger to Partners Trust Bank, as successor in interest to [insert ultimate predecessor to Partners Trust Bank, if applicable]”

. . . as successor by merger to Allfirst Bank, as successor in interest to [insert ultimate predecessor to Allfirst Bank, if applicable]”

. . . as successor by merger to Premier National Bank, as successor in interest to [insert ultimate predecessor to Premier National Bank, if applicable]”

. . . as successor by merger to Keystone Financial Bank, N.A., as successor in interest to [insert ultimate predecessor to Keystone Financial Bank, N.A., if applicable]”
. . . as successor by merger to **First National Bank of Rochester**, as successor in interest to [insert ultimate predecessor to First National Bank of Rochester, if applicable]”

. . . as successor by merger to **OnBank & Trust Co.**, as successor in interest to [insert ultimate predecessor to OnBank & Trust Co., if applicable]”

. . . as successor by merger to **Franklin First Savings Bank**, as successor in interest to [insert ultimate predecessor to Franklin First Savings Bank, if applicable]”

. . . as successor by merger to **East New York Savings Bank**, as successor in interest to [insert ultimate predecessor to East New York Savings Bank, if applicable]”
6.0 Letters of Credit

Letters of Credit are issued only in the name of “Manufacturers and Traders Trust Company”, and only by the Bank’s International Trade Finance (“Trade Finance”) department in Baltimore, MD.

6.01 Letter of Credit Forms

The Bank has a standard form of continuing agreement governing letters of credit (distinct from the actual letter of credit itself) entitled “Letter of Credit Agreement”, which every customer must sign before a letter of credit may be issued on the customer’s behalf. Additionally, a separate application is required for each letter of credit, whether standby, direct pay or commercial. Trade Finance maintains its own set of form documents to be used in issuing a letter of credit for the account of a customer (“applicant”). These standard forms may be obtained by contacting Trade Finance directly. (See Section 7.0 of this Manual for contact information.) Any changes to the standard forms are strongly discouraged. Trade Finance must pre-approve any changes to its standard forms before any such forms are sent to the applicant for execution. M&T’s Legal Department must also review and approve any proposed changes to the Letter of Credit Agreement. A current secretary’s certificate in the form provided by Trade Finance must be on file for each applicant and, if applicable, any co-applicant that may join in the Letter of Credit Agreement.

6.02 Letter of Credit Text

Trade Finance drafts the text of the letter of credit in most cases, based on information provided by the applicant. If outside counsel expects to draft and negotiate a complex letter of credit, Trade Finance should be informed well in advance of issuance that a letter of credit is required and being developed, and kept abreast of the context of the transaction. Variation from standard forms is discouraged. However, if customization is required, outside counsel should use one of Trade Finance’s shelf documents as the skeleton for the proposed text and should consult with Trade Finance concerning all review and payment deadlines and other operational details. Trade Finance must approve the text before it is reviewed with other parties.

If customization is necessary, it is essential to keep the text as clear as possible with straightforward terms and conditions which are easily understood. The parties to the letter of credit are referred to as the Applicant, the Beneficiary and the Bank. Do not use the terms “you”, “we”, “us”, or other terms which can easily be reversed or cause other ambiguity. All drawing conditions must be expressed in terms which can be evidenced by a document. Non-documentary conditions will have no legal effect and must be avoided. Draws presented under a letter of credit are examined by trained operational employees, not lawyers, to determine whether the draw presented facially complies with the terms of the letter of credit. So draw conditions must be documentary only and not overly complicated.

The Bank prefers that all standby letters of credit and direct pay letters of credit (bond transaction credit enhancement) that it issues incorporate and be governed by International Standby Practices (ISP98). Commercial (import/export) letters of credit should incorporate by reference the Uniform Customs and Practices for Documentary Credits, 2007 Revision, International Chamber of Commerce.
Publication #600 (UCP600). New York or Maryland law should govern to the extent not inconsistent with ISP98 or UCP600, as applicable.

Letters of credit are issued and managed exclusively by the Trade Finance staff in Baltimore, and cannot be signed, approved or maintained by officers of other areas of the Bank.

### 6.03 Collateral for Letters of Credit

If a line of credit to be extended to the applicant for issuance of letters of credit is to be secured, for instance, by a general security interest in all of the applicant’s personalty, the Bank’s security interest in the collateral must attach and be perfected in the same transaction in which the letter of credit reimbursement agreement is executed. If the applicant’s reimbursement obligation is to be secured only for a particular letter of credit, then the security agreement should be executed, and any needed Uniform Commercial Code filings made, at the time of, or prior to, issuance of the letter of credit.

### 6.04 Letters of Credit as Collateral Securing Obligations Owed to Bank

If a customer offers to provide as collateral a letter of credit issued by another bank for the benefit of the Bank or an affiliate, Trade Finance must approve the issuer and the form of the proposed letter of credit.

Trade Finance has prepared preferred forms of letters of credit to secure lines of credit and term loans owed to the Bank. To facilitate negotiations, outside counsel should obtain the preferred form from Trade Finance, make any adjustments in duration and amount or drawing or reinstatement conditions needed to protect the Bank in the event of insolvency of the applicant, review the revisions with Trade Finance, and forward the draft to the proposed applicant and issuer. To avoid rejection and funding delays, any further revisions should again be reviewed with Trade Finance prior to actual issuance of the letter of credit by a third party issuing bank.

### 6.05 Letters of Credit in Bond Transactions

The Bank issues letters of credit for bond transactions in two forms: (i) standby letters of credit, under which the beneficiary may draw only if the borrower defaults in payment; and (ii) direct pay letters of credit, under which the trustee for the bondholders will draw on the letter of credit on a regular basis as the means of funding all payments in respect of the bonds.

Trade Finance has developed standard forms for letters of credit to be issued in connection with bond transactions. Direct pay letters of credit in particular are labor-intensive and expensive for Trade Finance to administer. From the earliest stage in the transaction, outside counsel is requested to work closely with Trade Finance (and the Bank’s Letter of Credit Attorney, if needed) in representing the Bank in connection with such letters of credit, and to create as few exceptions as possible in Trade Finance’s forms and procedures.

If an internal legal opinion is required from the Bank, the proposed form thereof should be reviewed with the Bank’s Letter of Credit Attorney well in advance of closing.
SECTION 7
7.0 M&T Contact Information

Legal Department

- Commercial Lending Attorneys:
  
<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Fax</th>
<th>E-mail</th>
</tr>
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<tbody>
<tr>
<td>Donald J. Held, Esq. (Buffalo)</td>
<td>(716) 842-5955</td>
<td>(716) 842-5376</td>
<td><a href="mailto:dheld@mtb.com">dheld@mtb.com</a></td>
</tr>
<tr>
<td>Eileen M. Lunga, Esq. (Baltimore)</td>
<td>(410) 244-3851</td>
<td>(410) 244-3817</td>
<td><a href="mailto:elunga@mtb.com">elunga@mtb.com</a></td>
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- Floor Plan Attorney:
  
  Evis Daum, Esq. (Washington, D.C.)  
<table>
<thead>
<tr>
<th>Telephone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>(716) 842-4608</td>
<td>(716)842-5376</td>
<td><a href="mailto:edaum@mtb.com">edaum@mtb.com</a></td>
</tr>
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</table>
  or (202) 661-7290

- International Trade Finance / Letter of Credit Attorney:
  
  Mark W. Warren, Esq. (Buffalo)  
<table>
<thead>
<tr>
<th>Telephone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>(716) 842-5667</td>
<td>(716) 842-5376</td>
<td><a href="mailto:mwarren@mtb.com">mwarren@mtb.com</a></td>
</tr>
</tbody>
</table>

- Commercial Lending Paralegal: (vacant)

- Commercial Lending Administrative Assistants:
  
<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>Heidi Miller (Buffalo)</td>
<td>(716) 842-5266</td>
<td></td>
<td><a href="mailto:hmiller@mtb.com">hmiller@mtb.com</a></td>
</tr>
<tr>
<td>Deborah Kromm (Baltimore)</td>
<td>(410) 244-3816</td>
<td></td>
<td><a href="mailto:dkromm@mtb.com">dkromm@mtb.com</a></td>
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- TyMetrix Paralegal:
  
  Anthony Kulys (Buffalo)  
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<tr>
<th>Telephone</th>
<th>Fax</th>
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<tbody>
<tr>
<td>(716) 842-5542</td>
<td>(716) 842-5376</td>
<td><a href="mailto:akulys@mtb.com">akulys@mtb.com</a></td>
</tr>
</tbody>
</table>

- Address (Main Office): One M&T Plaza, 12th Floor, Buffalo, NY 14203
  (Baltimore Office): 25 S. Charles Street, 22nd Floor, Baltimore, MD 21201

Closing & Collateral Department

- Closing Mgr:
  
  Mark Crisafulli (Buffalo)  
<table>
<thead>
<tr>
<th>Telephone</th>
<th>Fax</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>(716) 848-3616</td>
<td>(716) 848-3454</td>
<td><a href="mailto:mcrisafulli@mtb.com">mcrisafulli@mtb.com</a></td>
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- Pre-Closing:
  
  Maryanna Warfield (Baltimore)  
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<th>Telephone</th>
<th>Fax</th>
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<tbody>
<tr>
<td>(410) 512-4745</td>
<td>(410) 412-4750</td>
<td><a href="mailto:mwarfield@mtb.com">mwarfield@mtb.com</a></td>
</tr>
</tbody>
</table>
  Cheri Ehrle (Buffalo)  
<table>
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<tr>
<th>Telephone</th>
<th>Fax</th>
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<tbody>
<tr>
<td>(716) 848-3429</td>
<td>(716) 848-3454</td>
<td><a href="mailto:cehrle@mtb.com">cehrle@mtb.com</a></td>
</tr>
</tbody>
</table>

- Post-Closing:
  
  Theresa Starks (Buffalo)  
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<tr>
<th>Telephone</th>
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<tbody>
<tr>
<td>(716) 848-3432</td>
<td>(716) 848-3454</td>
<td><a href="mailto:tstarks@mtb.com">tstarks@mtb.com</a></td>
</tr>
</tbody>
</table>
• Collateral Mgr:

Denise Hoffman-Day (Buffalo)  
(716) 848-3460  
(716) 848-3144  
dhoffman@mtb.com

• Releases:

Margarita Hartman (Buffalo)  
(716) 848-7278  
(716) 848-3144  
mdhartman@mtb.com

• Address: One Fountain Plaza, 4th Floor, Buffalo, NY 14203

**Commercial Lending Services Department**

• Manager:

Jeb Rivait (Buffalo)  
(716) 848-3778  
(716) 848-3860  
jrivait@mtb.com

Carlo Telemaque (NYC)  
(212) 350-2569  
(212) 350-2592  
ttelemaque@mtb.com

**International Trade Finance Department (Letters of Credit)**

• Manager:

Thomas Douglas (Baltimore)  
(410) 244-4904  
(410) 244-3986  
tdouglas@mtb.com

• Address: Montgomery Park, 1800 Washington Blvd., 8th Floor, Baltimore, MD 21230