**Construction Loan exercise**

Midsize Bank has a long-standing relationship with Joseph Moneymaker, who has had a successful career in the hotel and hospitality sectors. A newly formed entity, Newdeal LLC, in which Moneymaker is a substantial investor, is planning a multi-phase, mixed-use project. Moneymaker does not have significant experience with projects of this nature. Newdeal’s managing member is Samantha Highflyer, a real estate developer with extensive experience in multi-family residential and commercial projects. This is Highflyer’s first project in the region in which Bank operates. Moneymaker introduced Bank’s loan officer in charge of construction lending to Highflyer, and lawyers for Bank and for Newdeal are meeting to discuss terms of a proposed construction loan for the project. At Moneymaker’s request, in anticipation of that meeting, Bank provided to Newdeal the Bank’s standard form of construction loan agreement. That form of agreement, which has been provided to you, will be the basis for the discussion.

[Guest lender lawyer’s name (“Lend Lawyer”)], of Green Law, is the lead lawyer for Bank. Lend, who regularly represents Bank on construction financing matters, will have junior lawyers (several of you) at the meeting because those junior lawyers will be responsible to finalize the loan documents and to close the new loan on Bank’s behalf. [Guest borrower’s lawyer name (“Baro Attorney”)], of Purple Law, the lead lawyer for Newdeal, will also have junior lawyers (the rest of the class) at the meeting and will rely on those junior lawyers to wrap up the transaction for Newdeal. Lend and Baro know each other professionally, but they have not negotiated any previous deals with each other. Lend regularly represents Bank and is familiar with the Bank’s relationship with Moneymaker but does not know Highflyer. Baro’s relationship has been with Highflyer, and neither Baro nor Highflyer had any previous transactions with Bank.

Lend and Baro agreed in a preliminary telephone conference, after Baro took a quick pass through the proposed loan agreement form, that they would primarily focus on the six topics listed below during the upcoming meeting (although other matters might come up).

**Draw Procedures** (procedures that govern periodic advances of the loan proceeds).

**Retainage** (withholding of amounts that would otherwise be due to the contractor under the construction agreement).

**Liens** (referring to potential lien claims of the contractor, subcontractors, suppliers, etc.)

**Change Orders** (changes to the work under the construction contract).

**Default and cure rights** (applying if Newdeal defaults under the construction loan agreement).

**Assignments of Contract Rights** (including rights the Bank proposes to have relating to the construction contract and the architectural plans for the project).

[**Instructor note:** For this exercise, I prefer inviting local lawyers who regularly represent clients in construction lending transactions to work with the students and to use a sample loan agreement they provide. It is also feasible to select a sample loan agreement from a database available to the students. For purposes of running this exercise without guest lawyers to serve as senior partners, the instructor may provide guidance as needed to the students on each side of the exercise. While I generally use this exercise for a negotiation simulation, it can be the basis for a drafting exercise in which students revise provisions of the sample loan agreement to address likely concerns the borrower has with the sample agreement.]