



EXHIBIT 1 CARVEOUTS FROM “A TO “Z”

Bold-face indicates traditional carveouts that virtually always appear in loan documents, even in older transactions.

Regular type indicates standard carveouts that normally appear today.

Italics indicates cutting-edge new, unusual, or uncommon carveouts.

(1)	(2)	(3)	(4)
<u>Carveout Trigger or Obligation</u>	<u>Basis and Nature of Lender’s Loss</u>	<u>Appropriate Extent of Personal Liability</u>	<u>Alternative Protection Techniques That Could Substitute for the Carveout</u>
<i>Additional borrowings, even if unsecured</i>	Potential complexity in bankruptcy	All loan obligations	Borrowing restrictions in filed charter documents.
<i>Any act or omission that reduces value</i>	Erosion or destruction of collateral	Pay for loss suffered	Careful choice of borrower
Bankruptcy	Sudden erosion of collateral and extra costs	All loan obligations	Bankruptcy remote entities
Books and records after foreclosure	Sudden erosion of collateral, but limited total exposure	All loan obligations? Deficiency?	Extensive reporting before default
<i>Brokerage commissions (on loan)</i>	Unexpected risks to lender	Commission not paid	Pay at closing or don’t close
<i>Cash on hand at time of default</i>	Expected erosion of collateral	Amount of cash	Lockbox
<i>Closing costs, commitment fee</i>	Unintended additional investment by lender	Pay costs	Pay at closing or don’t close
<i>Closing certificates and affidavits</i>	Fraud	Indemnify for loss suffered	Due diligence
<i>Compliance with law</i>	Erosion of collateral; additional lender investment	Cost to cure	Due diligence; reserves
Construction obligations	Unexpected risks; loss of collateral	Cost to complete less loan funds remaining	Completion guaranty
Criminal acts	Fundamental alteration of risks	Pay for loss sustained? All loan obligations?	Careful choice of borrower
<i>Distributions in violation of loan documents</i>	Unclear, assuming true nonrecourse ¹	Restore amount distributed (but why?). Real test may be rent diversion	Lockbox, receiver
Enforcement costs	Gradual, but open-ended additional investment by lender	Pay all costs	Strong documents, quick courts
Enforcement, contest of (defenses, etc.)	Erosion of collateral, additional cash investment by lender (deterioration of collateral during battle)	All loan obligations	Quick courts

EXHIBIT 1 (cont.)

(1) Carveout Trigger or Obligation	(2) Basis and Nature of Lender's Loss	(3) Appropriate Extent of Personal Liability	(4) Alternative Protection Techniques That Could Substitute for the Carveout
Environmental	Sudden destruction of collateral, perhaps total	All loan obligations, all environmental losses. (Borrower would limit to clean-up costs)	Due diligence
<i>ERISA violations</i>	Problems, issues, uncertainty	All loan obligations	Due diligence
<i>Forfeiture via government seizure (drugs, RICO, etc.)</i>	Sudden loss of collateral, probably total	All loan obligations	Due diligence on borrower, background investigations
Fraud or misrepresentation	Sudden unexpected risk or loss of collateral	Indemnify for loss suffered?	Thorough due diligence
Ground lease default	Sudden destruction of collateral	All loan obligations	Leasehold mortgagee protections or lease and sublease
<i>Hedge purchase price</i>	Stress resulting from higher floating interest rates	Hedge purchase price, when purchased	Buy hedge at closing
<i>Indemnity, general</i>	Sudden alteration of risks	Indemnity for loss suffered	Enforce "additional insured" requirement; buy lender's insurance
Insurance premium nonpayment	Zero – as long as no fire occurs	Premiums not paid	Insist on notice of cancellation (ACORD 27); monitor renewals
<i>Interference with assignment of rents</i>	Erosion of collateral	All loan obligations? Lost rents?	Appoint receiver
<i>Invalidation of loan payments as, e.g., preference</i>	Unexpected exposure to lender	Amount of payment set aside	Conservative underwriting
Lease amendment, bad faith (rent reduction)	Sudden but permanent erosion of collateral	Personal liability for lost value of lease?	SNDA or tenant notices
<i>Leases, violation of guidelines</i>	Sudden but long-term erosion of collateral	Value lost because of bad lease	Recording laws?
<i>Leases, noncompliance with</i>	Erosion of collateral	Offsets and claims; value of lost lease	SNDA (some protection)
Letter of credit renewals	Sudden partial loss of collateral	Amount of L/C not renewed	Draw before expiry
<i>Liens, any prohibited</i>	Erosion of collateral; additional lender investment	Remove lien	Title claim if prior, foreclosure if not
Loss proceeds misapplication	Sudden destruction of collateral	Restore stolen proceeds	Enforce "loss payee" requirements
Mechanics' liens	Unexpected additional risk—indirect, particularly if liens are subordinate	Indemnity for lien	Careful compliance with favorable statutes, if any (e.g., N.Y. Lien law)
<i>Operating expenses nonpayment</i>	Gradual erosion of collateral	Expenses not paid (perhaps limit to rents diverted)	Lockbox, receiver
Partnership with lender, claim of	Unexpected risks, potential loss of collateral	All loan obligations	Careful closing and administration of loan
Personal property removal	Sudden erosion of collateral, but limited scope	Personal property taken	No loan value for personal property

EXHIBIT 1 (cont.)

(1)	(2)	(3)	(4)
<u>Carveout Trigger or Obligation</u>	<u>Basis and Nature of Lender's Loss</u>	<u>Appropriate Extent of Personal Liability</u>	<u>Alternative Protection Techniques That Could Substitute for the Carveout</u>
Preservation and maintenance of collateral, general	Destruction or erosion of collateral	Impairment of collateral	Aggressive monitoring, but cannot catch all problems
Rent misapplication (general or after notice of default)	Gradual erosion of collateral	Rents misapplied	Lockbox, receiver
Rent prepayment	Sudden erosion of collateral	Disgorge prepaid rent	SNDA or tenant notices
<i>Repairs, failure to make</i>	Erosion of collateral	Cost of repairs not made	Careful administration, frequent inspections
Security deposits diversion	Sudden erosion of collateral, but limited dollar exposure	Restore stolen deposits	Hold the security deposits
<i>Single purpose entity violations</i>	Greater risk of issues in bankruptcy	All loan obligations?	Regular monitoring of SPE compliance.
Taxes, nonpayment	Gradual erosion of collateral	Taxes not paid (limited to amount of rents?)	Escrows, reporting service, lockbox, receiver
<i>Tortious conduct, generally</i>	Unexpected risks; destruction or erosion of collateral	Damage suffered	Lender's separate insurance
Transfer or encumbrance	Sudden unexpected risks (a bad new borrower)	All loan obligations (overcompensation for incremental risk?)	Foreclosure (why is this not an adequate remedy?)
Transfer taxes on foreclosure (payment, cooperation)	Additional investment by lender	Taxes due	Escrow at closing or reduce loan-to-value
<i>Uninsurable loss</i>	Sudden destruction of collateral	Amount of casualty loss	(NOTE: This is a very unusual carveout.)
<i>Uninsured loss, but insurable</i>	Sudden destruction of collateral	Amount of casualty loss	Careful insurance administration; escrows; single-interest coverage
Waste	Sudden destruction or erosion of collateral	Pay costs to repair	Careful choice of borrower
Yield maintenance premium	Additional investment by lender, unexpected risk	Amount of premium	Lower loan-to-value

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