



GLOSSARY OF TERMS

The following Glossary of Terms is not intended to be legal definitions, but rather a lay expression or explanation of how the words are used in the field of Real Estate.

ABATEMENT: (1) A reduction or decrease. (2) The removal of a nuisance.

ABOVE BUILDING STANDARD: Materials or excess quantities not included in the work letter which are subject to negotiation between the landlord and tenant.

ABSOLUTE NET: Tenant is responsible for any and all expenses incurred regarding the property. If owner agrees to assume any costs whatsoever, it will not be classified as an "absolute net".

ABSORPTION, GROSS: The sum of all leased and sold buildings. At Allard Commercial Brokerage we exclude investment sales from this number because the building sold is not vacant.

ABSORPTION, NET: The change in occupied space. Can be positive or negative. At Allard Commercial Brokerage we calculate net absorption as the sum of the net change in previously occupied space plus the total of all lease and sale transactions completed during the period in new building shells, including build-to suits, planned buildings or buildings under construction. Different from the net change in available space, as net change does not include the aforementioned new building shells that are not available at the beginning of the period.

ABSTRACT OF JUDGMENT: Summary of a Court's order. When recorded it creates a general lien upon real and personal property of a judgment debtor in the county where recorded.

ABSTRACT OF TITLE: Summary or digest of documents affecting title to real estate. A condensed history disclosing items of public record (i.e., grants, conveyances, wills, records, judicial proceeding, liens, encumbrances, etc.). Does not guarantee or ensure validity of title; does not reveal encroachments or forgeries.

ABTRACTER: A person who, historically, searches recordings or registrations with the county recorder, county registrar, circuit court and other official sources to find anything affecting the title to real property and summarizes the information in the findings.

ABUTTING: Land that touches or borders the land of another.

ACCELERATION/ALIENATION CLAUSE: A provision within the loan documents reserving to the lender the right to declare the entire unpaid principal balance of the loan immediately due and payable if title to the property changes during the life of the loan. An acceleration clause does not require a lender to declare the loan due and payable, but merely gives him the right to make such a declaration. An acceleration clause, in effect, gives the existing lender the right to approve (or disapprove) any proposed purchaser who desires to assume the loan. In many cases an acceleration clause is also used to increase an existing interest rate to what may be market at the time title to the property changes. (Also known as Call Provision).

ACCEPTANCE: An unqualified agreement to the terms of an offer.

ACCESSION: The acquisition of title to additional land or to improvements as a result of annexing fixtures or as a result of natural causes such as alluvial deposits along the banks of streams by accretion.



ACCORD AND SATISFACTION: The settlement of an obligation. An accord is an agreement by a creditor to accept less than bargained for from a debtor. The creditor's acceptance of the accord constitutes satisfaction of the debt.

ACCOUNTING: The agent must be able to report the status of all funds received from, or on behalf of, the principal. Most state real estate license laws require a broker to give accurate copies of all documents to all parties affected by them and to keep copies on file for a specified period of time. Most license laws also require the broker to deposit immediately, or within 24 to 48 hours, all funds entrusted to the broker (such as earnest money deposits) in a special trust, or escrow, account. Commingling such monies with the broker's personal or general business funds is strictly illegal.

ACCRETION: A buildup of soil by natural causes on property bordering a river, lake or ocean. This soil becomes the property of the riparian or littoral owner and becomes subject to any existing mortgages.

ACCRUAL METHOD OF REPORTING INCOME: Income and expense is included and reported only in the year in which it is earned regardless of when payment is received or made.

ACCRUED: Accumulated over a period of time.

ACCRUED DEPRECIATION: Depreciation that has accumulated over a period of time. For appraisal purposes, the difference between the cost to reproduce the property (as of the appraisal date) and the property's current value as judged by its "competitive condition." In this context, accrued depreciation is often called diminished utility.

ACCRUED ITEMS OF EXPENSE: Incurred expenses that are not yet payable. In a closing statement accrued expenses of the seller are credited to the purchaser (taxes, wages, interest, etc.)

ACKNOWLEDGMENT: A declaration before a notary public or other officer by a party executing a legal document that the execution is his free and voluntary act and deed. Designed to prevent forged and fraudulently induced documents from taking effect.

ACQUISITION COST: The amount of money or other valuable consideration expended to obtain title to a property. Includes purchase cost, plus such items as appraisal fees, closing costs, finance charges, mortgage loan origination fees and title insurance. (See title)

ACRE: A measure of land equal to: 43,560 square feet; 4,840 square yards; 4,047 square meters; 160 square rods; or, 0.4047 hectares.

ACTION: A lawsuit brought to court.

ACTUAL AGE: The real age of a building.

ACTUAL DEPRECIATION: That depreciation occurring as a result of physical, functional or economic forces, causing loss in value to a building.

ACTUAL NOTICE: Knowledge gained based on an actual observance or direct knowledge, as opposed to Constructive Notice.



AD VALOREM TAX: A Latin term meaning “to value” or “in proportion to the value.” A tax varying with the value of the property.

ADDENDUM: Additional material attached to and made part of a document. If there is space insufficient to write all details of a transaction on the contract form, the parties will attach an addendum to the document which is incorporated into the contract by reference and is signed or initialed by all parties.

ADJUSTABLE RATE MORTGAGE (ARM): A loan which allows for the interest rate and terms to adjust periodically in relationship to a predetermined index based on the maintenance of a preestablished margin.

ADJUSTED COST BASIS: The value on the books of a taxpayer which is original cost plus capital improvements and assessments, less allowable depreciation, depletion allowances and uncompensated property losses.

ADMINISTRATOR/ADMINISTRATRIX: A person appointed by the court to handle the affairs of a deceased person when there is no one mentioned in a will to do so.

ADVERSE POSSESSION: The possession, by one person, of land belonging to another in a manner deemed adverse to the interest of the owner. In most states, by operation of law, title to the land becomes vested in such person after a fixed number of years if the owner fails to assert his or her rights.

AESTHETIC ZONING: Zoning for beauty. May regulate architectural styles, colors or signage.

AFFIDAVIT: A written statement of facts sworn to or affirmed before an authorized official (usually a notary public).

AFTER ACQUIRED TITLE: Title or interest acquired by the grantor after a property has been conveyed. Any benefits that come to a property after a sale must follow the sale and accrue to the new owner.

AGENCY: The relationship of trust in which one person (the agent) represents another (the principal) in dealing with third parties, as authorized by the principal.

AGENT: An agent is one who is authorized to represent another, called the principal, in dealing with third persons. Such representation is called agency. The agent, if within the scope of authority, may bind the principal by contract.

AGGREGATE FACING: A decorative finish on plywood, concrete or plaster.

AGREEMENT OF SALE: A written contract between buyer and seller in which they reach a meeting of the minds on the terms and conditions of the sale, but do not pass title. (See **CONDITIONAL SALES CONTRACT**)

AIR CONDITIONING ZONES: The identified portions of an area served by the HVAC system which have separate thermostatic and temperature controls.

AIR RIGHTS: The rights to the use of the space above the physical surface of the land. Governments and airport authorities often purchase air rights adjacent to an airport, called an



avigation easement, to provide glide patterns for air traffic. The air itself is not real property, but airspace is when described in three dimensions with reference to a specific parcel of land.

AIR HANDLER: A blower with a cooling or heating coil to move and condition air.

ALIENATE: To transfer the title to real property from one person to another.

ALIENATION CLAUSE: A special type of acceleration clause that demands payment of the entire loan balance upon sale or other transfer of the title. Such as: All Encompassing Deed of Trust; Armistead Deed of Trust; Hold Harmless Deed of Trust; or, Over-Riding Deed of Trust.

ALL-INCLUSIVE TRUST DEED: A purchase money deed of trust subordinate to, but still including, the original loan.

ALLUVIAL DEPOSIT: Sand or mud, carried by water and deposited on land.

ALLUVIUM: Soil that builds up as a result of accretion.

ALQUIST-PRIOLO SPECIAL STUDY ZONE: A California law requiring a real estate agent or owner to disclose to prospective buyers that a property is located within a special study zone (geological hazard zone). "Special study zones" cover an area 660 feet on each side of fault lines and are indicated on maps prepared by the California Department of Mines and Geology.

A.L.T.A.: American Land Title Association

A.L.T.A. TITLE POLICY: "American Land Title Association" (Formally called "American Title Association" – A.T.A.). A national trade association whose standard forms of title insurance policies are used by most of the title insurance companies throughout the country. ALTA has two kinds of policies: owner's and lender's. The owner's policy may be accompanied by an extended coverage policy and the lender's policy may be accompanied by a comprehensive policy. Expands risk from "standard coverage" policy to include: unrecorded physical easements, facts a physical survey would uncover, water and mineral rights, and rights of parties in possession.

AMENDMENT: A change to the existing content of a contract. Any time words or provisions are added to or deleted from the body of the contract, the contract has been amended.

AMERICANS WITH DISABILITIES ACT (ADA): Signed into law July 26, 1990 ("ADA"), a federal law which prohibits discrimination against individuals with disabilities. The ADA addresses discrimination in four general areas: 1. Employment (Title I); 2. Public services (Title II); 3. Public accommodations and commercial facilities (Title III); and, 4. Telecommunications (Title IV). The purpose of the ADA is to give individuals with disabilities civil rights protection against discrimination similar to those afforded to individuals on the basis of race, color, national origin, sex, and religion.

AMORTIZATION: (1) The gradual repayment of a loan, normally by equal periodic payments in which the interest is at a pre-determined rate and is charged only on the unpaid balance, so that at the end of the period there is a zero balance. Some loans are not fully amortized and require a balloon payment at the end of the term. (2) In accounting, the reduction of the amount of a debt or the value of an asset over a period of time.

AMORTIZATION OF TENANT IMPROVEMENTS: The return ("of" capital and "on" capital) to the landlord over the term of the lease for those tenant improvement costs to be paid by the tenant as



additional rent.

AMORTIZED LOAN: A loan that is completely paid off, interest and principal, by a series of regular payments that are equal or nearly equal.

AMPERAGE: A term indicating the amount or consumption of electrical current.

AMPERE: A measure of the quality of electricity carried by a wire. It is the rate of flow, or current.

ANALYSIS OF A PROPERTY: A collection of and summary of all the known factors pertaining to a particular parcel of property for the purpose of forming an opinion as to its fair market value and future benefits.

ANCHOR TENANT: The key tenant in a proposed commercial property. Since the quality of the tenant usually dictates the size of the mortgage that can be secured for development purposes, a large national firm is most desirable.

ANNEXATION: An addition to property by the act of attaching a smaller thing to the larger property. Usually attaching personal property to real property.

ANNUAL PERCENTAGE RATE (A.P.R.): A term used in the Truth in Lending Act. It represents the relationship of the total finance charge (interest, discount points, origination fees, loan broker commission) to the amount of the loan.

ANNUITY: A series of assured equal or nearly equal payments to be made over a period of time or it may be a lump sum payment to be made in the future. The installment payment due to the landlord under a lease is an Annuity. So are the installment payments due to a lender.

APPRAISAL: An estimate or opinion of the monetary value of a property, supported by factual information as of a certain date.

APPRAISAL REPORT: A written report stating an appraiser's estimate of a subject property's value.

APPRAISED VALUE: The valuation opinion of an appraiser, based upon an interpretation of facts and beliefs into an estimate of value, as of a stated date.

APPRECIATION: An increase in the worth or value of a property, due to economic causes.

APPROACHES TO VALUE: Employed by an appraiser to estimate the value of real estate: cost approach, income approach, and market data approach.

APPURTENANCE: A right or privilege that is a part of the ownership of property, such as a right of way to a highway across the land of another. Water rights are also an example.

ARCH RIB ROOF: A roof design resulting in arched or crescent shaped silhouette. Roof support is accomplished by a bow-string truss system, which is engineered to spread the roof load.

ARM'S LENGTH TRANSACTION: A transaction, such as a sale of property, in which all parties involved are acting in their own self-interest and are under no undue influence or pressure from the other parties.



"AS IS" CONDITION: Premises taken by buyer or tenant in condition as it exists. Intended to signify there are no guarantees whatsoever with respect to the condition of the property.

ASBESTOS/HAZARDOUS MATERIALS: Materials, which may exist in building structures, which may pose a detriment to tenant's occupancy.

ASSESSED VALUE: The value placed on land and buildings by a township or a county assessor for use in levying annual real estate taxes.

ASSESSMENT: A tax against real estate by a public authority to pay the cost of public improvements for the property such as sewers, streetlights, etc.

ASSESSMENT ROLL OR TAX ROLL: A list of all taxable property showing the assessed value of each parcel; establishes the tax base.

ASSIGN: To transfer over to another a claim, right, interest or title to property.

ASSIGNEE: The person to whom a claim, benefit or right in property is made.

ASSIGNMENT OF RENTS CLAUSE: A clause in a trust deed, which gives the beneficiary the right to collect rents of the secured property in the event of default.

ASSIGNMENT: The transfer in writing of an interest in a lease, mortgage, or other installment. The assignor, or lessee, transfers the entire remainder of the interest created by the lease, and the assignee becomes liable to the original lessor for rent. Assignor remains contractually liable for performance under the lease unless the lease or other agreement between the landlord and the assignor provides otherwise.

ASSIGNOR: The person transferring a claim, benefit or right in property to another.

ASSUMPTION OF MORTGAGE (or trust deed): Taking over the primary liability for payment of an existing mortgage of trust deed.

ATTORNEY-IN-FACT: A competent and disinterested person who is authorized by another person to act in his or her place in legal matters. The attorney-in-fact should be so authorized by way of a power of attorney.

AVOIDANCE OF TAXES: Legally acceptable procedure of planning transactions, using the various regulations and tax court rulings, to minimize the result taxes. See also "Evasion of Taxes."

AVULSION: The sudden washing or tearing away of land by the action of water, earthquake or volcanic action. Affects appraisals because value is based on type and size of improvements in proportion to each other and the land.

BALLOON PAYMENT: A lump sum payment which must be made at a specified point in the loan amortization schedule earlier than the loan would be due if all payments were equal in amount. For example, a 25 year amortization with a 20 year due date will involve a balloon payment of the remaining principal balance at the end of the 20th year.

BAND OF INVESTMENT: A method of developing an interest or capitalization rate by applying mortgage and equity rates of comparable properties.



BANK PARTITION: The type of space divider usually made of steel and glass and extending approximately 5 to 6 feet up from the floor, rather than to the ceiling.

BANKER'S RULE: A month consists of 30 days and a year 360 days, for proration and some other purposes.

BAR OR TRUSS SHAPE: A structural support made of various rolled steel pieces to create a loadbearing girder or joist.

BASE LEASE: A contract stating the minimum established requirements that are applicable to all tenants.

BASE LINE: A survey line running east and west, used as a reference when mapping land.

BASE YEAR: Usually the calendar year in which a tenant's lease begins; expenses in the base year are used as the basis from which to calculate increases (or escalation). The base year is also used by the Landlord to fix or identify the operating costs, which are included in a gross or full service lease.

BASIS: Property owner's "book value" for income tax purposes. Original cost plus capital improvements less depreciation.

BASIS, ALLOCATION OF: The cost or other basis of property consisting of land, improvements and personal property must be allocated to the separate units, usually in proportion to the MV of each (reasonable market value).

BASIS, ADJUSTED: Adjusted cost of an asset. An expression of value acceptable for tax purposes, upon acquisition by purchase, gift, bequest, exchange, termination of joint tenancy in common, and so forth. Original cost PLUS allowable additions including capital improvements, certain carrying costs and assessments MINUS allowed depreciation's and partial sales. Book value.

BASIS, NEW ADJUSTED: Owner's basis in property acquired in an exchange. See also "New Basis".

BASIS, OLD ADJUSTED: Owner's adjusted basis in property being disposed of.

BAY DEPTH (office): The distance from the office building window line to building corridors.

BAY DEPTH (industrial): The distance from the front of the building (or end of the office improvement) to the back of the building.

BEARING WALL: One that offers support to second floor or roof.

BENEFICIARY: Lender on the security of a note and deed of trust. The one who receives the income from the trustor.

BENEFICIARY STATEMENT: When an existing loan is to be paid or assumed by a buyer, the escrow agent will obtain a statement of the balance due on the loan so the buyer receives the proper amount of credit.



BEQUEST: A gift of personal property by will; see legacy.

BERM: Earth sloping from a building to ground level.

BIDS: A competitive system in which each bidder submits a sealed proposal to execute Construction work for a specified sum. The client and architect control the list of bidders (bid list).

BILATERAL RECIPROCAL CONTRACT: A contract in which each party promises to perform an act in exchange for the other party's promise to perform. The usual real estate contract is an example of a bilateral contract in which the buyer and seller exchange reciprocal promises respectively to buy and sell the property. If one party refuses to honor his or her promise and the other party is ready to perform, the nonperforming party is said to be in default.

BILL OF SALE: A written agreement by which one person sells, assigns or transfers to another his or her right to, or interest in, personal property. A bill of sale is sometimes used by a seller of real estate to evidence the transfer of personal property, such as when the owner of a store sells the building and includes the store equipment and trade fixtures.

BINDER: Sometimes called "preliminary certificate" or "commitment". (1) A preliminary report as to the condition of a title and a commitment to issue a title insurance policy in a certain manner when certain conditions are met. (2) A deposit in escrow of a small part of the purchase price of real estate as evidence of good faith and to bind an agreement to purchase.

BLANKET ENCUMBRANCE/TRUST DEED: A trust deed secured by several properties or a number of lots; often used to secure construction financing for proposed subdivisions or condominium development projects. The developer normally seeks to have a "partial release" clause inserted in the mortgage so that he or she can obtain a release from the blanket loan for each lot as it is sold, according to a specified release schedule.

BLANKET LOAN: A loan secured by several properties.

BLOCK REINFORCING: Wire reinforcement laid in mortar between courses (or layers) to reduce cracking.

BOARD OF UNDERWRITERS: An organization that fixes rates for fire insurance and other types of coverage. The organization also maintains a laboratory that tests safety factors of materials, substances, electrical equipment, machinery and other apparatus.

BOMA. STANDARD MEASUREMENT: A way to measure a space defined by the Building Owners and Managers Association (BOMA), a national organization of professionals in the office building industry. Landlords may choose their own method to measure space, normally by increasing the amount of common area added to the usable area.

BOND BEAM: A horizontal reinforced concrete or concrete masonry beam designed to support a wall and protect it from possible cracking.

BOOK DEPRECIATION: An accounting concept which refers to an allowance taken to provide for recovery of invested capital.

BOOK SALE: A sale of real property to the state, in name only, when a taxpayer is delinquent in paying property tax.



BOOK VALUE: Original acquisition cost of the asset, plus the cost of any subsequent additions to capital, less charges for depreciation on both.

BOOT: Money or other property that is not like-kind, which is given to make up any difference in value or equity between exchanged properties. Boot may be in the form of cash, notes, gems, the market value of an asset such as a mortgage, land contract, personal property, goodwill, a service or a patent offered in an exchange. The taxable gain in the like-kind exchange is recognized immediately to the extent of boot, whereas other gain from the exchange may be deferred until subsequent transfer.

BORROWED LIGHT: A partition, containing glass or plastic panels, between an interior dark space and a space illuminated by daylight or high-intensity artificial light.

BOX-ON-BOX: A low-roofed office space attached to factory portion of a building.

BRADLEY SINK: A round industrial lavatory capable of handling more than one person at a time by means of several soap dispensers and multiple water jets operated by a foot pedal.

BREACH OF CONTRACT: Violation of any of the terms or conditions of a contract without legal excuse; default; nonperformance. The non-breaching party can usually seek one of three alternative remedies upon a material breach of the contract: rescission of the contract, action for money damages, or an action for specific performance.

BREAKEVEN POINT: In income property, the figure at which rental income is equal to expenses and debt service.

BRICK COURSE: See Concrete Block.

BRIDGE LOAN: A short-term loan made to cover the period between the termination of one loan, such as an interim construction loan, and the beginning of another loan, such as a permanent takeout loan.

BROKER: One who acts as an intermediary on behalf of others for a fee or commission.

BROKERAGE: The bringing together of parties interested in making a real estate transaction. The business of a broker in acting as a third party agent to a transaction.

BROOM CLEAN: Premises delivered free of debris and floors swept clean.

BTU: British Thermal Unit. The quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

BUILDING CODE: A state, city or county ordinance, which sets forth minimum construction standards. These ordinances are enforced for the protection of public safety and health.

BUILDING CORE: The “guts” of an office building, which normally includes elevators, restrooms, smoke towers, fire stairs, mechanical shafts, janitorial closets, etc.

BUILDING MODULE: A unit of length and width by which the plan of a building can be standardized and which facilitates the design and layout of office space. The module places constraints on the size and shape of many of the elements of the physical systems. In contrast,



buildings of non-modular design present many problems for initial design and subsequent alterations.

BUILDING MODULE (office): Standard dimensions within leased areas dictated by spacing of window mullions or columns, i.e. a 5 foot module dictates offices in multiples of 5 feet dimensions.

BUILDING STANDARDS: The specific construction standards that have been established by the owner and architect to achieve a uniform element of design throughout the building and to establish a cost basis for fitting up charges and/or allowances. Such items may be changed only with the approval of the building owner or the managing representative. Examples of building standards would be a certain type of carpet, wall and window coverings.

BUILDING SANITARY SEWER OUTLET: An outlet generally built adjacent to the fresh air vent pipe near the building wall.

BULK SALES ACT: An act that requires the recording and publication of a sale that is not in the normal course of business; intended to give notice to the creditors of the seller so they can protect their interests.

BULK TRANSFER LAW: The law concerning transfer in bulk (not a sale in the ordinary course of the seller's business), it is intended to prevent commercial frauds such as a merchant selling stock, pocketing the proceeds and leaving creditors unpaid. Under state law a bulk sale must be reported by the seller to the state tax authorities, and the purchaser must withhold payment until the seller's tax clearance is received; otherwise the purchaser may become liable for any unpaid taxes that are a lien against the items sold.

BULLET LOAN: A loan that includes a call date earlier than its normal amortization period; also called a renegotiable rate loan or a rollover loan.

BUMPERS: Protective, replaceable timbers placed around loading docks to absorb the shock and prevent damage when trucks pull in to unload.

BUNDLE OF RIGHTS: The rights or interests that a person has in a thing; the exclusive right of a person to own, possess, use, enjoy and dispose of real or personal property.

BUS DUCT: A metal clad enclosure containing electrical wiring designed for random plug-in electrical drops to machinery at desired location.

BUSINESS OPPORTUNITY: Any type of business that is for lease or sale. The sale or lease of the business and goodwill of an existing business, enterprise or opportunity, including a sale of all or substantially all of the assets or stock of a corporation, or assets of partnership or sole proprietorship.

BUY-SELL AGREEMENT: An agreement between the long term lender, the interim lender, and the borrower regarding the method by which the interim lender will be paid off by the long term lender. Essential parts of a buy-sell arrangement are that the interim loan is documented on the long term lender's documents and when the loan is ready for long term funding, the long term lender purchases the loan by assignment of the loan documents securing the loan, with the purchase price being the balance of the loan.

CALENDAR YEAR: Starts on January 1 and continues through December 31 of the same year.



CAM: CAM (Common Area Maintenance) refers to any and all areas that are for the convenience of all tenants. The costs associated therewith may be paid by landlord by incorporation in the rent structure with a base year established and increases passed on to the tenants, or by a formula in which all costs including management thereof are directly passed on to the tenant.

CANCELLATION CLAUSE: A provision in a lease that confers upon one or both of the parties to lease the right to terminate the lease upon the occurrence of a condition or contingency set forth in the said clause.

CANTILEVER FRAMING: A structural steel design that is balanced to provide support by reducing steel weight or size.

CAP RATE: A term sometimes used when referring to capitalization rate.

CAPACITY OF PARTIES: The legal ability of people or organizations to enter into a valid contract. A person entering into a contract will have full, limited or no capacity to contract.

CAPITAL GAIN: The gain received on the sale of real or personal property, other than property sold as stock-in-trade.

CAPITAL IMPROVEMENTS: Any permanent improvement made to real estate for the purpose of increasing the useful life of the property or increasing the property's value.

CAPITALIZATION: The mathematical process of converting net income into an indication of value, commonly used in the income approach to value. The net income is divided by a capitalization rate of return to give the indicated value. ($\text{Income} \div \text{Rate} = \text{Value}$) Calculating the present worth of a property on the basis of its capacity to continue to produce an income stream.

CAPITALIZATION RATE: The "CAP Rate". The ratio of net income, before debt service, divided by the property value, expressed as a percentage. Similarly, it is the return from the property, expressed as a percentage, before taking into account any debt or cost of debt. (i.e., \$400,000 net income before debt divided by \$4,210,000 (property value) = 9.5% capitalization rate.)

CARE: The agent must exercise a reasonable degree of care while transacting the business entrusted to him or her by the principal. The principal expects the agent's skill and expertise in real estate matters to be superior to that of the average person. The most fundamental way in which the agent exercises care is to use that skill and knowledge in the principal's behalf. The agent should know all facts pertinent to the principal's affairs, such as the physical characteristics of the property being transferred and the type of financing being used.

CASH SPENDABLE (INCOME): Net cash spendable, or cash remaining, after all operating costs, including loan payments, capital costs and income taxes attributable to the particular investment, have been paid. Net operating income less loan payments less capital costs equals net spendable income.

CAVEAT EMPTOR: Latin term meaning, "Let the buyer beware". The buyer must examine his purchase and buy at his own risk.

CAVITY WALL CONSTRUCTION: A type of construction that provides air space between building facing and block to allow for insulation and prevent water penetration.



CC&Rs: Covenants, conditions and restrictions of record concerning a particular property. Includes items such as set backs, easements and property oriented restrictions, which are used to regulate building construction, density and use. Usually uncovered in investigation of public records (Title Report).

CENTER CORE BUILDING: A building in which the core is located midway between each side and center.

CERCLA (Comprehensive Environmental Response, Compensation and Liability Act): A federal law administered by the Environmental Protection Agency that establishes a process for identifying parties responsible for creating hazardous waste sites, forcing liable parties to cleanup toxic sites, bringing legal action against responsible parties and funding the abatement of toxic sites.

CERTIFICATE OF INSURANCE: A certificate issued by an insurance company or its agent. It verifies that a certain insurance policy is in effect for stated amounts and coverage and names those insured.

CERTIFICATE OF OCCUPANCY: A certificate issued by a governmental authority indicating that a building is ready and fit for occupancy and that there are no building code violations.

CERTIFICATE OF TITLE: A statement of opinion prepared by a title company or an attorney on the status of a title to a parcel of real property, based on an examination of specified public records. This certificate of title should not be confused with a title insurance policy. A certificate of title does not guarantee title, but certifies the condition of title as of the date the certificate is issued, on the basis of an examination of the public records maintained by the recorder of deeds, the county clerk, the county treasurer, the city clerk and collector and clerks of various courts of record. The certificate also may include records involving taxes, special assessments, ordinances, zoning and building codes. Note that a certificate of title does not offer protection against "off -the-record" matters such as undisclosed liens, rights of parties in possession and matters of survey and location. Nor does it protect against "hidden defects" in the records themselves, such as fraud, forgery, lack of competency or lack of delivery. A title insurance policy, not a certificate of title, protects against certain off-the-record and hidden defects risks.

CFM: Cubic feet per minute. Used in this context as a measurement of air volume.

CHAIN OF TITLE: The succession of conveyances from some accepted starting point, usually beginning with the original recorded source, whereby the present holder of real property derives the title.

CHANNELING: Cutting, chipping or routing a prescribed sectional area in a linear pattern of any surface, but usually in concrete or plaster.

CHATTEL MORTGAGE: A mortgage on personal property.

CHATTEL REAL: An item of personal property which is connected to real estate; for example, a lease.

CHILLER: Freon Compressor or steam absorption equipment that produces chilled water at 45 degrees.



CLAIM: An adverse right or interest asserted by one party against another or against an insurer or indemnifier. Claims may arise from unpaid debts or taxes, as well as from hidden title defects such as fraud, forgery, missing heirs, etc.

CLARIFIER: A system of underground tanks engineered to dissipate water, acids and other harmful agents prior to disposal into sewer or septic tank.

CLEAN ROOM: A room constructed to maintain a controlled atmosphere (humidity, temperature, dust, germ free, etc.) Class explanations follow:

CLASS 10: 10 particles of 1/2 micron or greater per cubic foot of air. Air flow of 90 feet per minute or more. Hepa filters.

CLASS 100: 100 particles of 1/2 micron or greater per cubic foot of air. Air flow of 90 +/- 20 feet per minute. Hepa filters.

CLASS 1,000: 1,000 particles of 1/2 micron or greater per cubic foot of air. 60-90 air changes per hour. Hepa filters.

CLASS 10,000: 10,000 particles of 1/2 micron or greater per cubic foot of air. 60-90 air changes per hour. Hepa filters.

CLASS 100,000: 100,000 particles of 1/2 micron or greater per cubic foot of air. 20-30 air changes per hour. 95% bag filters.

CLEAR HEIGHT: The height within a building from the floor to the lowest point of obstruction (i.e. under the fixed HVAC).

CLEAR SPAN: Area within building unobstructed by columns or posts.

CLEAR TITLE: Real property ownership free of liens, defects, encumbrances or claims.

CLIENT: The person who employs an agent to perform a service for a fee. In traditional real estate brokerage, the client was the seller, and the buyer was the prospect. In modern practice, more and more buyers are seeking representation as a client. Dual agency occurs when a broker represents both seller and buyer as clients.

CLOSE-OF-ESCROW/CLOSING: The consummation of a real estate purchase and sell transaction, when the seller delivers title to the buyer in exchange for payment by the buyer of the purchase price. Closing in some areas may not occur until the documents are recorded; however, under general rules of real estate law, transfer of title takes place upon delivery of the deed to the grantee.

CLOUD ON TITLE: An irregularity, possible claim or encumbrance that, if valid, would adversely affect or impair the title. Usually revealed by a title search and removed by either a quitclaim deed or suit to quiet title.

C.L.T.A. (California Land Title Association): A trade organization of the state's title companies.



C.L.T.A. POLICY: A standard coverage title insurance policy which protects real estate buyers in matters of record and specific risk.

CODE COMPLIANCE TRIGGER: Certain costs, structural changes or other defined events, which necessitate the compliance of a building to current codes.

CODE OF ETHICS: The high standards to which every Realtor pledges himself to observe. Referred to as the "Golden Rule". Ensures that the broker acts in the best interests of both his/her principal and any third parties.

CODE REQUIREMENTS: Building code requirements, which must be satisfied by either the tenant or the tenant occupancy. Included are seismic life safety, energy, hazardous/toxic materials and handicapped code requirements.

CODICIL: A change in a will before the maker's death; executed with the same formalities as a will, and normally does not revoke the entire will.

C.O.L.: Cost of Living refers to a percentage (%) increase to a rate such as a rental or sale price.

COLLATERAL: The lender as security, to insure the performance of the obligation, holds Property given in addition to the personal obligation of the borrower. The collateral for a real estate mortgage loan is the mortgaged property itself.

COLUMN: A vertical structural member that supports a roof or floor joists.

COMMERCIAL INVESTMENT REAL ESTATE INSTITUTE (CIREI): A professional organization of real estate practitioners specializing in commercial real estate; confers the designation CCIM (Certified Commercial Investment Member).

COMMERCIAL REAL ESTATE: A classification of real estate that includes income-producing property, such as office buildings, gasoline stations, restaurants, shopping centers, hotels, motel, parking lots, and stores.

COMMINGLING: The illegal act of mixing deposits or monies belonging to a client with one's personal money. By law brokers are required to maintain a separate trust or escrow account for other parties' funds held temporarily by the broker.

COMMISSION: Payment to a broker for services rendered, such as in the sale or purchase of real property; usually a percentage of the selling price or total rent for the transaction.

COMMISSION SPLIT: The previously agreed upon division of money between a broker and sales associate when the brokerage has been paid a commission from a sale made by the associate.

COMMITMENT FEE: A sum of money, generally 1% or 2% of the loan amount, retained by the lender for making the commitment--considered the same as a non-refundable standby fee.

COMMON AREAS: In an office building, common areas are those portions of the building used by all office tenants or which serve all office areas. Common areas include corridors, restrooms, janitorial closets, utility closets, telephone closets, public lobbies, etc.

COMMON AREA MAINTENANCE (CAM): CAM refers to any and all areas, which are for the



convenience of all tenants. The costs associated therewith may be paid by landlord by incorporation in the rent structure with a base year established and increases passed on to the tenants, or by a formula in which all costs including management thereof are directly passed on to the tenant.

COMMUNITY PROPERTY: Real and personal property earned or accumulated after marriage through the joint efforts of husband and wife while living together.

COMPACTION: Whenever extra soil is added to fill low areas or to raise the level of land. The added soil is often too loose and soft to sustain the weight of buildings. Therefore, it is necessary to compact the added soil so that it will carry the weight of structures without the danger of their cracking or shifting.

COMPACTOR: A rubbish disposal container and compressing unit that packs rubbish into a container, thus reducing volume to a 6:1 ratio.

COMPARTMENTALIZATION: A code requirement to divide large floor plates into smaller units to meet fire code requirements.

COMPENSATION: The source of compensation does not determine agency. An agent does not necessarily represent the person who pays his or her commission. In fact, agency can exist even if no fee is involved (called a gratuitous agency). Buyers and sellers can agree however they choose to compensate the broker, regardless of which is the agent's principal. For instance, a seller could agree to pay a commission to the buyer's agent. The written agency agreement should state how the agent is being compensated and explain all the alternatives available.

COMPS/COMPARABLES: An abbreviation for comparable properties, rentals, incomes, etc., used for comparative purposes in the appraisal process. Facilities of reasonably the same size and location, and with similar amenities.

COMPETITION: Those properties, which may be considered as alternative rental or leaseable facilities, although they may not be comparable.

COMPOUND INTEREST: Interest computed on the principal sum plus accrued interest. At the beginning of the new interest period, all interest is added to the principal, forming a new principal figure on which interest is then calculated. This process repeats itself each interest period; interest may be compounded daily, monthly, semiannually or annually.

COMPRESSOR: Equipment that compresses Freon after it has expanded and cooled the coil. It recycles the Freon.

CONCESSIONS: Those inducements offered by a landlord to a tenant to sign a lease. Concessions may be free rent, extra tenant improvement allowances, payment of moving costs and lease pick-ups. All lease concessions should be included on tenant estoppel certificates when a property with existing tenants is for sale, as the value of any current/future concessions should be deducted from the amount of future rent when computing the building's value as a leased investment.

CONCRETE BLOCK: A building block unit of concrete 8 inches high by 18 inches wide.

CONCRETE CURE AND SEAL: A coating applied to concrete after finishing to prevent evaporation of moisture within the slab, resulting in harder cured concrete.



CONCRETE FINISH: The process that includes floating, waiting for concrete to set and fine troweling to produce a hard, dense and wearable surface.

CONCRETE TILT-UP: Method of construction whereby concrete walls of a structure are poured in forms on surface of floor, allowed to set, then elevated to position by means of a crane.

CONDEMNATION: The judicial or administrative act of taking private property, through the exercise of the power of eminent domain, for public use, upon the payment of a fair compensation.

CONDENSING UNIT: Air-cooled outdoor air conditioning equipment that holds the compressor.

CONDITION OR CONDITIONS: A provision in a deed or a will. It guarantees that, upon the occurrence or nonoccurrence of a certain event, the title of the purchaser or devisee will be limited, enlarged or terminated. A condition in a deed is a restriction that is coupled with a reverter clause.

CONDITION PRECEDENT: A condition which requires something to occur before a transaction becomes absolute and enforceable; for example, a sale that is contingent on the buyer obtaining financing.

CONDITION SUBSEQUENT: A condition which, if it occurs at some point in the future, can cause a property to revert to the grantor; for example, a requirement in a grant deed that a buyer must never use the property for anything other than a private residence.

CONDITIONAL SALES CONTRACT: A contract for the sale of real or personal property in which possession is delivered to the buyer, title to remain vested in the seller until all the conditions of the contract have been fulfilled.

CONDITIONAL USE PERMIT (CUP): Written governmental permission allowing a use inconsistent with zoning but necessary for the common good, such as locating an emergency medical facility in a predominantly residential area.

CONDOMINIUM: An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with separate interest in space in a residential, industrial, or commercial building.

CONDUIT DROP: Fixed steep tubing that holds electrical wiring connected to equipment.

CONSIDERATION: Anything of value to induce another to enter into a contract; may be money, services or a promise.

CONSTRUCTION COST: Total expense, plus normal overhead and profit that must be paid for the job in question.

CONSTRUCTION COST ESTIMATE: A figure submitted in advance of construction, not binding unless submitted as a bid. It is used to help arrive at a decision concerning the feasibility of a proposed project.

CONSTRUCTION JOINT: The joint between adjacent concrete sections as each is poured.



CONSTRUCTIVE EVICTION: Actions (or lack of actions) by a landlord that so materially disturb or impair a tenant's enjoyment of the leased premises that the tenant is effectively forced to move out and terminate the lease without liability for any further rent.

CONSTRUCTIVE NOTICE: Notice given to the world by the recording of documents with a public official. All persons are charged with knowledge of such documents and their contents, whether or not they have actually examined them.

CONSUMER PRICE INDEX: Available from the Bureau of Labor Statistics. An index used as a basis for calculating rental increase adjustments. Several forms of the index are published.

CONTIGUOUS: Adjoining or touching upon, such as parcels of land next to each other.

CONTINGENCY: A provision in a contract that requires a certain act to be done or a certain event to occur before the contract becomes binding.

CONTRACT: A legally enforceable promise or set of promises that must be performed and for which, if a breach of the promise occurs, the law provides a remedy.

CONTRACT DOCUMENTS: In construction contracts, the documents consisting of the agreement and the conditions of the contract (general, supplementary and other conditions). They include the drawings, the specifications, all addenda issued prior to execution of the contract, and all modification thereto. A modification is (1) a written amendment to the contract signed by both parties; (2) a written interpretation issued by the architect in the form of a drawing or otherwise; (3) a change order; or (4) a written order issued by the architect for a minor change in the work.

CONTRACT OF SALE: A contract for the purchase and sale of real property in which the buyer agrees to purchase for a certain price and the seller agrees to convey title by way of a deed or an assignment of lease (for leasehold property). In addition to binding the parties to the purchase and sale of the property during the period of time required to close the transaction, the contract frequently serves as the initial directions to the closing agent or escrow company to process the mechanics of the transaction. In essence, the contract of sale is an executory contract to convey property, serving as the vehicle to get to the deed, which finally conveys title; it is the blueprint for the entire transaction. Some of the many names for this contract are sales contract, purchase agreement, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase and sale agreement.

CONTRACT PRICE: Term used in installment sales. (1) If property is clear, then contract price = selling price. (2) If property is encumbered and vendor's adjusted basis is greater than existing encumbrances, then contract price = owner's equity. (3) If property is encumbered and vendor's adjusted basis is less than existing encumbrances, then contract price = owner's equity plus excess of mortgage over basis.

CONTRACT RENT: The rent designated in a lease. The term describes the actual rent paid.

CONTRACTION JOINT: Generally a saw-cut or sheet-metal strip that separates a 1000 square foot section of floor to reduce cracking, for, as concrete hardens, it shrinks, creating stresses that the joint reduces.

CONTRACTOR: An individual and/or firm used in performing work on construction projects. There are different classes of contractors, which are normally listed under the heading of subcontractors. The function of the subcontractor is to perform a particular task only under the



direction and coordination of the general contractor, who takes on the responsibility of managing the project in accordance with the construction documents. The general contractor is normally selected through bidding procedures and is totally responsible for completion of the project in a skillful manner that is acceptable to both architect and owner. However, the general contractor may be pre-selected to handle all work within a particular project and could be contracted on a time-and-material basis, which may or may not have an upset maximum.

CONTRACTOR'S AFFIDAVIT: A written statement, made under oath before a notary public by a contractor, stating facts regarding the contract, subcontracts, material suppliers and labor and setting forth the amounts paid and unpaid and the balance of payments due.

CONTRACTUAL INTENT: Intention to be bound by an agreement, thus preventing jokes and jests from becoming valid contracts.

CONVECTION SYSTEM: A system in which heat is transferred through the circulatory motion of air that occurs when the temperature varies due to the difference in air density and the action of gravity. A hot-water heat or steam radiator is one such system.

CONVECTOR: A heating unit in which air, heated by contact with a heating device in a casing, circulates by convection. This term is often used by the layman, to identify what is really an induction unit, or system that it resembles. It is usually taken for granted that all systems are the same and thus, "convector" is often used as a generic term when identifying either system.

CONVENTIONAL MORTGAGE: A mortgage loan that made with real estate as security and not involving government participation in the form of insuring (FHA) or guaranteeing (VA) the loan. The mortgagee can be an institutional lender or a private party. The loan is conventional in the sense that it conforms to accepted standards and that the lender looks solely to the credit of the borrower and the security of the property to ensure payment of the debt. Conventional loans include those loans insured by private mortgage insurance companies and are frequently more flexible with respect to terms and interest rates, although they reflect a higher interest rate and larger down payment requirement due to the higher risk involved.

CONVERSION: The appropriation of property belonging to another.

CONVEYANCE: A document, such as a deed, used to transfer title to property from one person to another. The term is also used in describing the act of transferring.

COPING: Tile or concrete installed on top of a parapet rising above the roof line of a building to prevent water leakage.

CORD DROP: A rubber-covered electrical wire connected to equipment.

CORE: Core space includes the square footage used for public corridors, elevators, washrooms, stairwells, and electrical and janitorial closets.

CORE DRILLING: A method of drilling holes in floors and ceilings to allow telephone and electrical installations.

CORING: A mechanical system of removing a cylindrical section of concrete from the existing floor to gain access to the duct system.

CORNER LOT: A lot found at the intersection of two streets.



CORPORATION: A legal entity, created by law as a legal person having certain powers and duties of a natural person, together with the rights and/or liabilities, distinct and apart from those of the persons composing it. A Corporation, however, never dies and only ceases to exist when and if it is dissolved through the proper legal process.

COST: Represents expenses in money, labor, material or sacrifices in acquiring or producing something.

COST APPROACH: The process of estimating the value of a property by adding to the estimated land value the appraiser's estimate of the replacement cost of the building, less depreciation.

COST BASIS: An original price, plus acquisition expenses; used for income tax purposes.

COUNTEROFFER: A new offer made in response to an offer received. It has the effect of rejecting the original offer, which cannot be accepted thereafter unless revived by the offerer.

COVENANT: An agreement, written into deeds and other instruments, promising performance or nonperformance of certain acts or stipulating certain uses or non-uses of the property; usually found in such real estate documents as deeds, mortgages, leases and contracts for deed.

COVERAGE:

 Breakeven - The total carrying costs (annual expenses plus dept. service) as a percentage of gross income.

 Effective gross to carrying costs - This ratio shows how many times the annual carrying costs are covered by the annual effective gross income.

 Net operating income to debt service (Debt Coverage Ratio) - This ratio shows how many times the annual net income covers the annual debt service.

CPI: Available from the Bureau of Labor Statistics -- an index used as a basis for calculating rental increase adjustments. Several forms of the index are published.

CROSS-OVER FLOOR: A floor in which one bank of elevators connects to another bank of elevators, allowing tenants to have access to floors in other elevator banks without returning to the lobby of the building.

CT CABINET: The equipment at which a power company connects its meter; one square inch of copper buss will allow 1000 amperes.

CUBIC YARD: A block whose length, width and height are all 1 yard. 1 yard (3') x 1 yard (3') x 1 yard (3') = 1 cubic yard. (27 cubic feet)

CUBIC FOOT: A block whose length, width and height are all 12", an equivalent of 1728 cubic inches.

CURRENT RATIO: The result of dividing current assets by current liabilities (as shown in a company's financial statements). The answer should be in decimal form and shows how many times a company can meet current obligations (due within 30 days) with current assets. For example, if a company's current assets equal \$350,000 and its current liabilities are \$276,000 dividing 350 by 276 will provide a current ratio of 1.27, saying thereby that the company has the ability to cover its current obligations 1.27 times with its current assets.



CURTAIN WALL: A tinted or reflecting glass and aluminum frame wall.

DAMAGES: Money payment ordered by a court to be paid to one whose property rights or personal rights have been violated.

DAMPER: A valve or plate operated mechanically or manually to regulate airflow to or from any prescribed point.

D.B.A.: Abbreviation for "Doing Business As".

DEALER: A person who holds property primarily for sale to customers in the ordinary course of his trade or business.

DEBT SERVICE: The annual amount of interest and principal paid on a mortgage loan.

DECLARATION OF RESTRICTIONS: A statement of all the covenants, conditions and restrictions (CC&Rs) that affect a parcel of land. A subdivider may note the restrictions on the map or plan when recording the subdivision plat. If the restrictions are numerous, the subdivider may also prepare a separate document called a declaration, listing all the restrictions, and then record this declaration. (See CC&Rs)

DEDICATION: The voluntary transfer of land by its owner to the public for some public use which has been accepted for such use by authorized public officials on behalf of the public.

DEDUCTIONS: Itemized standard deductions and minimum standard deductions. The amount deducted from the gross income to arrive at the adjusted gross income.

DEED: A written instrument that, when executed and delivered, conveys title to or an interest in real estate.

DEED IN LIEU OF FORECLOSURE: Voluntarily signing over to a lender the property pledged as collateral on a defaulted loan. It is an alternative to a foreclosure action. Its main disadvantage to a lender is that the deed does not wipe out junior liens, as a foreclosure action would. (See Junior Lien)

DEED IN TRUST: An instrument that grants a trustee under a land trust full power to sell, mortgage and subdivide a parcel of real estate. The beneficiary controls the trustee's use of these powers under the provisions of the trust agreement.

DEED OF RECONVEYANCE: The transfer of legal title from the trustee to the trustor (borrower) after a trust deed debt has been paid.

DEED OF TRUST: Also known as a trust deed, an instrument used to create a mortgage lien; the trustor (borrower) conveys the title to a trustee who holds it for the benefit of the beneficiary (the lender).

DEED OF TRUST, ALL INCLUSIVE: A purchase money deed, which is subordinate to, but yet includes the encumbrance or encumbrances to which it is subordinated. Similar to a land contract except that title actually is passed, and may be guaranteed by title insurance. The seller remains as the trustor on the existing loan or loans.



DEED RESTRICTIONS: Clauses in a deed limiting the future uses of the property. Deed restrictions may take many forms. They may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or at all. Deed restrictions may impose a myriad of limitations and conditions.

DEFAULT: Failure to meet an obligation when due or to perform any provision of a lease, mortgage, or other agreement. The most common occurrence of default on the part of a buyer or lessee is nonpayment of money when due. A default is normally a breach of contract and the non-defaulting party may seek legal remedies to recover any loss.

DEFAULT JUDGEMENT: A court order resulting from the failure of a defendant to answer a complaint in a lawsuit.

DEFEASANCE CLAUSE: A clause used in leases and mortgages that cancels a specified right upon the occurrence of a certain condition, such as cancellation of a mortgage upon repayment of the mortgage loan.

DEFEASIBLE FEE ESTATE: An estate in which the holder has a fee simple title that may be divested upon the occurrence or nonoccurrence of a specified event. There are two categories of defeasible fee estates: fee simple on condition precedent (fee simple determinable) and fee simple on condition subsequent.

DEFECT OF RECORD: Any encumbrance on a title that is made a part of the public record. Recorded defects include judgments, deeds of trust, mortgages, other liens and easements.

DEFECTIVE TITLE: A blemish, imperfection or deficiency. A defective title is one that is irregular and faulty.

DEFERRED MAINTENANCE: Negligent or "put off" repair of property.

DEFERRED PAYMENT: A payment program under which the total balance of principal and an amount for finance charge is put off (deferred) until the future. This balance is paid by means of installments over a long period.

DEFICIENCY JUDGEMENT: A court order to pay the balance (deficiency) owed on a loan after the proceeds from sale of the security are not sufficient to pay off the loan.

DEFINITE AND CERTAIN: Precise acts to be performed are to be clearly stated.

DEMISED PREMISES: Premises, or parts of real estate, in which an interest or estate has been transferred temporarily, such as an interest in real property conveyed in a lease.

DEMISING CLAUSE: The clause in a lease whereby the landlord (lessor) leases and the tenant (lessee) takes the property. Demise is synonymous with "lease" or "let".

DEMISING WALLS: Those walls between one tenant's area and another as well as walls between tenant areas and public corridors.

DEMOGRAPHY: The statistical science dealing with the distribution, density, vital statistics, etc., of population.



DEMOLITION CLAUSE: A clause within a lease denoting the fact that if or when the ground lease has expired, the building will be demolished per such clause. Due to the demolition of the building, the lessor must notify the tenants within an established time of such condition.

DEPARTMENT OF REAL ESTATE (CALIFORNIA): The California agency that administers the Real Estate Law, including the licensing of real estate brokers and agents.

DEPOSIT: Money offered by a prospective buyer as an indication of good faith in entering into a contract to purchase; earnest money; security for the buyer's performance of a contract. If the buyer completes the purchase, the deposit money is applied toward the purchase price.

DEPOSIT RECEIPT: Also known as a sales contract; the primary document used to present an offer on real property.

DEPRECIABLE BASIS: In investment real estate, only structures can be depreciated. The depreciable basis is the original basis less the value of the land.

DEPRECIATION: Loss of value due to causes other than casualty. Depreciation usually includes (1) physical deterioration (ordinary wear and tear), (2) functional depreciation (see Obsolescence) and (3) economic obsolescence (see Economic Obsolescence). Curable when it can be remedied by repair or an addition to the property; incurable when there is no easy or economic remedy.

DEPRECIATION ALLOWABLE: The depreciation which is permissible by the Internal Revenue Service or other taxing authority or that amount which must be taken annually by the investor as an expense item and charged against the adjusted basis when determining capital gain.

DEPRECIATION, DECLINING BALANCE METHOD OF: Where the improvement portion of an investment basis is depreciated by a fixed percentage of the remaining balance each year over the useful life of the improvements, i.e., 150% of straight line for new. **FOR FIRST USERS ONLY.**

DEPRECIATION, STRAIGHT LINE METHOD OF: Where the improvement portion of the investment (less salvage value) is depreciated an equal amount each year over the useful life of the improvements.

DEPRESSED DOCK: See truck well.

DEREGULATION: A process where financial institutions that formerly had been restrained in their lending activities by the law are allowed to compete freely for profits in the marketplace.

DEVISE: A transfer of real property under a will. The donor is the devisor and the recipient is the devisee.

DIFFUSER: A device for reducing the velocity of airflow from a mechanical duct system supplying air. Its shape is usually circular or square and it is set in the ceiling at predetermined locations to diffuse air within that space.

DIRECT CHARGE OF OPERATING EXPENSES: On a NNN lease where the tenant does not pay costs directly.

DIRECT EXPANSION SYSTEM: Air conditioning in which cooling is achieved by the direct use of Freon in the cooling coil.



DIRECTIONAL GROWTH: The direction in which the development of city is growing.

DISCLAIMER: Statement on publication limiting liability - "information contained herein obtained from sources deemed reliable..." Statement denying legal responsibility - "there are no promises, representations, oral understandings or agreements except as contained herein..." Neither statement relieves the maker of any liabilities for fraudulent acts or misrepresentations.

DISCLOSURE: The agent has a duty to inform the principal of all relevant and material facts, that could affect a transaction, that the agent knows or should have known - "One or more of the principals of the Premises is a licensed California real estate broker acting as agent in this transaction..."

DISCONNECT SWITCH: The switch protecting a system from short-circuiting.

DISCOUNT: To sell a note for less than its face value. To receive the present value of a note, minus a deduction to cover interest.

DISCOUNTED CASH FLOW: Used in measuring the return from a real estate investment; the present value of a future income stream as determined by a given discount rate.

DISINTERMEDIATION: The process of individuals investing their funds directly instead of placing their savings with banks, savings and loan associations, and similar institutions for investment by such institutions. Occurs when proportionately higher yields are available on secure investments than can be obtained on savings deposits.

DIVISIBLE CONTRACT: A contract that consists of separate agreements which are not dependent on each other. The illegality of one part will not void the balance of the contract.

DOCK HIGH: Refers to design of building that provides loading through doors at truck level. Normal height would be between 42 and 52 inches. See also recessed dock, truck well.

DOCK LEVELER: A device, adjustable in height, which bridges space between truck floor and dock.

DOCK-HIGH BUILDING: A building in which the main floor is elevated to a height sufficient so that materials, equipment, products, etc., can be moved directly out loading doors onto trucks parked on the ground level outside the building (for a contrast, see Truck Well).

DOCTRINE OF CORRELATIVE USER: Owner may use only a reasonable amount of the total underground water supply for his or her beneficial use.

DOCUMENTARY TRANSFER TAX: A method of taxing real property transfers. Most California counties require that a tax be paid prior to recording the deed.

DOMINANT TENEMENT: The property that benefits from an easement.

DOOR FRAME: Made of either wood or hollow metal. A frame includes the following components: (a) head--the horizontal top portion of the door frame; (b) jamb--either the left or right vertical portion of the frame; (c) sill--the bottom of the door at floor level; (d) stop--continuous projection around frame to resist the door from traveling beyond a closing point; and (e) buck--the subframe of wood or pressed metal to which the door case is fixed.



DOORS: The most common types are solid core wood (S.C.), hollow core wood (H.C.) or hollow metal (H.M.). All of the doors can be furnished for paint finish; wood doors, when it is requested, may be furnished with any particular wood veneer available, at an additional cost. (One particular type of door, which may come up periodically on proposed construction jobs, is that of a class "B" door. This door of wood or metal, but usually metal, has a two-hour fire rating, and is primarily located at stairwells or other enclosures requiring fire protection for at least two hours.)

DRAFT CURTAIN: 26 gauge sheet metal strips, or drywall 5/8" both sides, attached to underside of roof, dividing areas within a building for purposes of containing and preventing heat, gas, smoke and flames from reaching other areas of building.

DRILL TRACK: A rail track serving industrial property. Individual industry tracks depart from it to serve plant sites.

DROPPED CEILING: A suspended ceiling attached to the underside of the floor above.

DUAL AGENCY DISCLOSED: Real estate licensing laws may permit dual agency only if both parties (i.e., buyer and seller or lessor and lessee) are informed and consent to the broker's representation of both parties in the same transaction. Although the possibility of conflict of interest still exists, disclosure is intended to minimize the risk for the broker by ensuring that both principals are aware of the effect of dual agency on their respective interests and that they may have to assume greater responsibility for protecting their interests than they would if they had independent representation. The broker must reconcile how, as agent, he or she will discharge the fiduciary duties on behalf of both principals, particularly providing loyalty and protecting confidential information.

DUAL AGENT: An agency relationship in which the agent acts concurrently for both principals in a real estate transaction.

DUCT: A pipe, tube, channel, or any other unit necessary for conveying gases, liquids or solid units from one point to another. The term is also applicable to under-floor duct systems for conveyance of telephone line and other electrical conductors.

DURESS: The use of force to get agreement in accepting a contract. A contract entered into under duress is voidable.

EARNEST MONEY: The cash deposit (including initial and additional deposits) paid by the prospective buyer of real property as evidence of good-faith intention to complete the transaction; called bargain money, caution money, hand money, or a binder in some states.

EASEMENT: A right to use the land of another for a specific purpose, such as a right-of-way or for utilities (see Incorporeal Interest). An easement appurtenant passes with the land when it is sold.

EASEMENT BY CONDEMNATION: An easement created by the government or government agency that has exercised its right under eminent domain.

EASEMENT BY ESTOPPEL: An easement created when a person's words or actions lead another to believe that an easement exists. If, in relying on those words or actions, the easement user acts to his or her detriment, they may not deny the existence of the easement.



EASEMENT BY NECESSITY: An easement allowed by law as necessary for the full enjoyment of a parcel of real estate; for example, a right of ingress and egress over a grantor's land.

EASEMENT BY PRESCRIPTION: An easement acquired by continuous, open and hostile use of property for the period of time prescribed by state law.

EASEMENT IN GROSS: An easement that is a personal right that is not transferable by its owner; it is not appurtenant to any one parcel; for example, public utilities.

ECONOMIC LIFE: The estimated period over which an improved property may be profitably utilized so that it will yield a return over and above the economic rent attributable to the land itself; the period during which an improvement has value in excess of its salvage value. In the case of an older structure or improvement, economic life refers to the remaining period during which the improvements to the real property (not land) are depreciated for tax purposes, and is normally shorter than their actual physical lives. See also "Useful Life."

ECONOMIC OBSOLESCENCE: Impairment of desirability or useful life or loss in the use and value of property arising from economic forces outside of the building or property, such as changes in optimum land use, legislative enactment's that restrict or impair property rights, and changes in supply-demand relationships.

ECONOMIC RENT: See "Market Rent".

ECONOMIZER CYCLE: The system of controls and ducts to use cooler outside air for costless cooling in mild weather.

EFFECTIVE AGE: The years or age shown by the condition and utility of a structure, rather than its actual or chronological age.

EFFECTIVE GROSS INCOME: Scheduled gross annual income plus any reasonably expectable miscellaneous income, less vacancy and rent collection losses.

EFFECTIVE RENT: Total rental dollars divided by the period of occupancy. This is expressed as a dollar per square foot per month figure, which the tenant pays, on an average over the term of the lease. This would be the average of specified rents in a stair-stepped lease as well as the average of a lease with a substantial free rent period.

EFFICIENCY: The percentage of rentable area which is usable area, i.e. a 90% efficient building offers 900 usable square feet for every 1000 rentable square feet. (Note: Efficiency and load factor are not the same.)

EGRESS: A way to exit from a property; the opposite of ingress.

ELECTRICAL:

Amperage: A term indicating the amount or consumption of electrical current.

Kilovolt-Ampere (K.V.A.): A unit of electro-motive forces equal to 1,000 volt amperes.

Three Phase Power: A three-wire electrical service used to power machinery.

Voltage: 110, 208, 240, 480 type service.

ELEVATOR BANKS: A series of elevators that serve only certain floors in a building. A major building may have as many as 3 or 4 elevator banks.



EMINENT DOMAIN: The right of a government or municipal quasi-public body to acquire private property for public use. It is acquired through a court action called condemnation, in which the court determines that the use is a public use and determines the price or compensation, which is generally fair market value, to be paid to the owner.

ENCROACHMENT: An unauthorized invasion or intrusion of an improvement or other real property onto another's property, thus reducing the size and value of the invaded property. Common examples of encroachment are the roof of a building that extends over the property line or the front of a building that extends over the building setback line or extends onto a neighbor's property.

ENCUMBER: To place a lien or charge on land.

ENCUMBRANCE: Any claim, lien, charge or liability attached to and binding on real property that may lessen its value or burden, obstruct or impair the use of a property but not necessarily prevent transfer of title; a right or interest in a property held by one who is not the legal owner of the property. There are two general classifications of encumbrances: those that affect the title, such as judgments, mortgages, mechanics' liens and other liens, which are charges on property used to secure a debt or obligation; and those that affect the physical condition of the property, such as restrictions, encroachments and easements.

ENDANGERED SPECIES ACT: Passed by the United States Congress in 1973, the Act was originally intended to protect endangered species on federal lands. Since passage, the Act has been used to prohibit development or other land use in habitats of protected species.

ENERGY CHARGE: The surcharge per kilowatt hour used to reimburse power companies for higher fuel costs.

ENFORCEABLE: A contract or agreement in which the party (parties) can be compelled to perform.

ENTITY RULE: Three entities can hold property: individuals, partnerships and corporations. In the case of a property exchange, the way an exchanger holds property going into an exchange is the way they must hold the property coming out of the exchange.

ENTREPRENEURIAL BUILDING: A building where the landlord is not a major tenant and which is built primarily for its investment return potential.

ENVIRONMENTAL IMPACT REPORT (EIR): A report required by the California Environmental Quality Act that projects the impact a project may have on the environment. The reports includes relevant data and an analysis of its effects on the environment.

ENVIRONMENTAL SITE ASSESSMENT: An independent investigation and assessment of a property, usually performed by an outside environmental engineering firm, to determine if any existing or potential environmental problems or hazards exist on a property which might affect the use or market value. Sometimes referred to as the due diligence audit.

EQUAL CREDIT OPPORTUNITY ACT (ECOA): A federal law passed in 1974 that requires lenders to assure that credit is available with fairness, impartiality and without discrimination on the basis of race, color, religion, national origin, sex or marital status, age, receipt of income from public assistance programs, and ensure good-faith exercise of any right under the Consumer



Credit Protection Act. Applies to real estate brokers if they routinely assist sellers/lessors in determining whether a proposed buyer/lessee is creditworthy.

EQUALIZATION: The raising or lowering of assessed values for tax purposes in a particular county or taxing district to make them equal to assessments in other counties or districts. Used to achieve uniformity in state wide tax assessments.

EQUITABLE LIEN: A lien arising out of common law. Contrast with a statutory lien, which is imposed on property by statute.

EQUITABLE REDEMPTION: A defaulted property owner recovers their property prior to its sale by curing the default.

EQUITABLE TITLE: The interest held by the trustor or vendee under a contract for deed or an installment contract; the equitable right to obtain absolute ownership to property when legal title is held in another's name.

EQUITY: The value of real estate over and above the liens against it. It is obtained by subtracting the total liens from the value.

EQUITY BUILD UP: The principal payment portion of the loan payments that go to decrease the loan balances, and increase the owner's equity in the property.

EQUITY OF REDEMPTION: Also known as the right of redemption; the right of a debtor, before a foreclosure sale, to reclaim property that had been given up due to mortgage default.

EQUITY RETURN (RETURN ON CASH): The percentage relationship between the sum of the cash spendable income and the equity build up to the owner's equity. Gross equity return figured with the cash spendable income before taxes. Net equity return - figured with the cash spendable income after taxes.

EROSION: The gradual wearing away of land by natural processes; i.e., currents, tides or winds.

ESCALATION CLAUSE: Provision in lease providing for automatic adjustment in rent, maintenance or taxes, in the future by formula or by prescribed amount.

ESCAPE CLAUSE: A contract provision relieving a party of liability for failure to perform, as where a stated contingency does not occur. Alternately, a clause in a proprietary lease of a tenant-stockholder that permits the tenant to surrender the stock and lease back to the cooperative association and thereby terminate continuing liability for payments due under the lease.

ESCHEAT: The reversion of property to the state or county, as provided by state law, in cases where a decedent dies intestate and there are no heirs capable of inheriting or when the property is abandoned. In some states, bank accounts that are unused for more than seven years will escheat to the government.

ESCROW: A transaction, usually a sale, wherein one person delivers evidence of title to a third person to be held by such third person until the happening of the performance of a prescribed condition, when the evidence of title is then delivered to the buyer.



ESCROW ACCOUNT: The trust account established by a broker under the provisions of the license law for the purpose of holding funds on behalf of the broker's principal or some other person until the consummation or termination of a transaction.

ESCROW HOLDER: A third party, usually a corporation, who acts as the stakes holder for a buyer and seller. Escrow holder acts as an agent for buyer and seller.

ESCROW INSTRUCTIONS: Written directions, signed by a buyer and seller, detailing the procedures necessary to close a transaction and directing the escrow agent how to proceed.

ESTATE: A legal interest in land; defines the nature, degree, extent and duration of a person's ownership in land.

ESTATE AT SUFFERANCE: A tenancy created when one is in wrongful possession of real estate even though the original possession may have been legal. Example: A tenant continuing to occupy the real estate after the lease term has expired.

ESTATE AT WILL: The tenancy may be ended by the unilateral decision of either party; no agreed upon termination date, however, and either party must give 30 days notice before ending the tenancy.

ESTATE FOR YEARS: A leasehold estate with a definite end date; must be renegotiated; commonly used for commercial leases.

ESTATE FROM PERIOD TO PERIOD: A leasehold estate that is automatically renewed for the same term; a conveyance for an indefinite period of time; does not need to be renegotiated upon each renewal; commonly a month to month rental.

ESTATE IN FEE: The most complete form of ownership of real property; a freehold estate that can be passed by descent or by will after the owner's death; also known as estate of inheritance or fee simple estate.

ESTATE IN LAND: The degree, quantity, nature and extent of interest a person has in real property.

ESTATE PLANNING: An investment program, which is geared to the establishment of an estate in accordance with the wishes of the investor, and takes into account his age, educational background, marital status, hopes, aims, ambitions, managerial ability, ability to stick to an organized plan of acquisition and management of investments.

ESTATE TAXES: Federal estate taxes and state inheritance taxes (as well as the debts of decedents) are general, statutory, involuntary liens that encumber a deceased person's real and personal property. These are normally paid or cleared in probate court proceedings.

ESTIMATED BUYER'S COSTS: An estimate of the buyer's total cash requirements to purchase real property. A realistic estimate of all costs and payments based on the buyer's offer.

ESTIMATED SELLER'S PROCEEDS: An estimate of the net amount an owner will receive from the sale of their property. An "Estimated Seller's Proceeds" form is filled out by the listing broker and calculates the proceeds based on the listing price and seller's costs.

ESTOPPEL CERTIFICATE: A certificate stating that the lease is unmodified and in full force and



effect, or in full force and effect as modified, and stating the modifications. The certificate will also state the amount of minimum monthly rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent. Before a landlord can obtain a loan secured by a deed of trust on the premises, or the building and other improvements in which the premises are located, or sell the premises, the building and other improvements, the lender or the purchaser might require the landlord to obtain from the tenant a written certificate, stating the present status of the lease. Landlords should insist on a clause like the one above in order to assure their ability to obtain such a certificate when necessary. These certificates are usually referred to as estoppel certificates or "offset statements".

ET AL: Any abbreviation for "et ali," meaning "and others." It may also mean "and other" in the singular.

ET UX: Term meaning "and wife."

ETHICS: A set of principles or values by which an individual guides his or her own behavior and judges that of others. The system of moral principles and rules that become standards for conduct.

EVASION OF TAXES: Willful attempt to evade or defeat taxes, a felony punishable by a fine of \$10,000, imprisonment for not more than five years, or both. See also "avoidance of taxes."

EVICTION: The legal process of removing a tenant from the premises for some breach of the lease. Alternately, the disturbance of a tenant's quiet enjoyment of any material part of a leased premises by an act of the landlord or by a claim of superior title by a third party.

EVIDENCE OF TITLE: Proof of ownership of a property. Commonly a certificate of title, an abstract of title with lawyer's opinion, title insurance or a Torrens registration certificate.

EXCEPTION: A provision in a title insurance binder or policy that excludes liability for a specific title defect or an outstanding lien or encumbrance.

EXCHANGE: A transaction in which all or part of the consideration for the purchase of real property is the transfer of property of "like kind" (i.e., real estate for real estate).

EXCLUDED CAPITAL GAIN: The part of the realized gain that is "excluded" from taxes.

EXCLUSIONS: Terms specifically excepted by IRS from being classed as gross income, such as: certain death benefits, gifts and inheritance, amounts received under accident and health plans, unemployment compensation, improvements by lessee on lessor's property, and certain dividends from qualifying corporations.

EXCLUSIVE AGENCY LISTING: A listing contract under which the owner appoints a real estate broker as the one exclusive agent for a designated period of time to sell or lease the property on the owner's stated terms, and under which the owner agrees to pay the broker a commission. However, the owner reserves the right to sell or lease without a commission to a prospect not introduced or claimed by the broker. (see Exclusive Right to Sell)

EXCLUSIVE RIGHT TO SELL OR LEASE LISTING: A listing contract in which the owner appoints a real estate broker as the exclusive agent for a designated term. The owner agrees to pay the broker a commission when the sale or lease is consummated, whether the buyer or tenant is procured by the owner, the broker, or anyone else.



EXCULPATORY CLAUSE: A clause included in loan documents specifically stating that the borrower and/or other parties will be excluded from personal liability for repayment of the real estate loan. Generally, an exculpatory clause provides that the lender will look only to the real estate for satisfaction of the debt.

EXECUTE: The act of making a document legally valid, such as formalizing a contract by signing, or acknowledging and delivering a deed. In some cases, execution of a document may refer solely to the act of signing; in other cases it may refer to complete performance of the document's terms.

EXECUTION: Completion of an act or process, such as an escrow.

EXECUTOR'S DEED: A legal deed to real property given by an executor of an estate.

EXECUTOR / EXECUTRIX: A person named in a will to handle the affairs of a deceased person. State probate laws generally refer to this person as a "personal representative of the decedent."

EXECUTORY CONTRACT: A contract in which obligation to perform exists on one or both sides of the contract.

EXEMPTIONS: Items which the IRS allows the taxpayer as exemptions from the taxable income, due to marital status, number of dependents, age or blindness. See also "Deduction and Exclusions."

EXPANSION JOINT: A flexible vertical joint that permits wall expansion and movement independent of the structural steel.

EXPEDIENTES: Land grants recorded by the Mexican government in California.

EXPENSE STOP: An identified dollar amount, either on a dollar per square foot per year basis or a pro rata share basis of total operation expense cost that the landlord is responsible to pay. Any increase over the stop will be allocated to the tenant.

EXPLORATORY COSTS: The cost figures collected on the basis of a discussion of possible needs and reviewed with an interested individual. (see Preliminary Estimates)

EXPRESS CONTRACT: The parties declare the terms and put their intentions in words, either oral or written. This includes express agency agreements.

EXTENDED COVERAGE POLICY: One that extends protection to owners over the general exceptions on the standard ALTA owner's policy. The general exceptions referred to are: (1) rights or claims of parties in possession not shown by the public records; (2) encroachments, overlapping boundary line disputes any matters which would be disclosed by an accurate survey of the property; (3) easements and claims of easement not shown by public records; (4) mechanics' liens not shown by the public records; (5) taxes or special assessments which are not shown as existing liens by the public records.

EXTENSION (LEASE): An agreement by which a lease is made effective for an additional period of years on specified terms.



EXTERIOR ROOF DRAINAGE: Roof drainage from the perimeter of a roof. Leaders on the exterior walls carry water to the pavement or storm system.

EXTERIOR-PAR INCANDESCENT BULB: Used in industrial lighting, the PAR (parabolic) incandescent has a 2,000-hour life and is the least expensive lamp, although it gives less footcandles than a HID (high intensity discharge) fixture, which has a 25,000-hour life. A quartz, the brightest and most concentrated lamp, can serve as a heater (it will even melt snow). Street type poles are not as effective as the more expensive, but decorative, architectural poles.

EXTERNAL DEPRECIATION: Reduction in a property's value caused by outside factors which are off the subject property, such as environmental, social or economic forces. If the loss in value is incurable and cannot be reversed by spending money on the property, it is known as external obsolescence.

F.A.R. (Floor Area Ratio): A formula which is the relationship between "the total amount of building built on a piece of land and the total amount of square feet of land". For example, if there are 200,000 sf of building constructed on 11.50 acres (11.50 acs x 43,560 sf per acre = 500,940 sf of land) the FAR would be: 200,000 sf of building divided by 500,940 sf of land for a ratio of .399 or .40 FAR.

FAIR MARKET VALUE (FMV): The broker's evaluation after the collection and interpretation of all available data, of how much the property should reasonably be expected to bring, when offered in the open market for a reasonable length of time.

FEE APPRAISER: A non-salaried appraiser who is paid a fee for the appraisal assignments he or she performs.

FEE SIMPLE ABSOLUTE: The maximum possible estate or right of ownership of real property, continuing forever.

FEE SIMPLE DEFEASIBLE: An estate in land in which the holder has a fee simple title subject to being divested upon the happening of a specified condition; also called a qualified fee or a defeasible fee. There are two categories of fee defeasible estates--fee simple determinable and fee simple subject to a condition subsequent. The term fee simple determinable implies that the duration of the estate can be determined from the deed itself. This is not true of a fee simple subject to a condition subsequent, in which case the estate's duration depends on the grantor's independent choice of whether to terminate the estate. (see Fee Simple Determinable, Fee Simple Subject to a Condition Subsequent)

FEE SIMPLE DETERMINABLE: A fee simple determinable is an estate in real property that exists "so long as," "while" or "during the period" that a certain prescribed use continues. Such use is described in the grant of conveyance. For example, a conveyance to the University of Knowitall "so long as" the real estate is used for educational purposes would give the university title provided the granted land is used as prescribed. If, at some future time, the university were to stop using the property for educational purposes, title would revert to the original grantor if living or to his or her heirs if the grantor is deceased. A fee simple determinable automatically ends when the purpose for which it has been prescribed terminates. Upon the grant of a fee simple determinable, there remains in the grantor a possibility of reverter.

FEE SIMPLE QUALIFIED: An estate in which the holder has a fee simple title, subject to return to the grantor if a specified condition occurs.



FEE SIMPLE SUBJECT TO A CONDITION SUBSEQUENT: A fee simple subject to a condition subsequent is an estate conveyed "provided that," "on the condition that" or "if" it is used for a specific purpose. If it is no longer used for that purpose, it reverts to the original grantor or his heirs. This type of estate is much the same as a fee determinable, except that in a fee determinable conveyance the words are of duration while a fee condition subsequent refers strictly to a specific condition. In addition, unlike a fee determinable, when fee condition subsequent property is no longer used for its prescribed purpose, the original grantor (or heirs) must physically retake possession of the property within a reasonable period of time after the breach (i.e., the grantor must exercise his or her right of reentry).

FEE SIMPLE TITLE: The maximum possible estate one can possess in real property. A fee simple estate is the least limited interest and the most complete and absolute ownership in land; it is of indefinite duration, freely transferable and inheritable. Fee simple title is sometimes referred to as "the fee."

FEEDER: Large-sized cables that distribute electricity within the building to the local panels.

FIDUCIARY: A relationship that implies a position of trust or confidence wherein one person is usually entrusted to hold or manage property or money for another. The term fiduciary describes the faithful relationship owed by an attorney to a client or by a broker (and salesperson) to a principal. The fiduciary owes complete allegiance to the client. Among the obligations that a fiduciary owes to his or her principal and the duties of loyalty, obedience and full disclosure; the duty to use skill, care and diligence; and the duty to account for all monies.

FILLED LAND: An area of a property where the grade has been raised by depositing dirt, gravel or rock. Under most circumstances a seller (broker) has a duty to disclose to a buyer the fact that a property is on filled land.

FINANCIAL INTERMEDIARY: An organization that obtains funds through deposits and then lends those funds to earn a return—such as savings banks, commercial banks, credit unions and mutual savings banks.

FINANCIAL MANAGEMENT RATE OF RETURN (FMRR): A multi-year analysis of rate of return. Used by investors in medium and large properties (occasionally on small properties). Multi-year cash flows and net sale proceeds are analyzed using discounted cash flow techniques to solve for the Financial Management Rate of Return (FMRR). FMRRs are the best rate of return indicator, because they require an analysis of the investor's entire holding period, not just a single year. The discounting process takes into consideration the time value of money and thereby produces a more realistic rate of return. (See IRR.)

FINANCIAL STATEMENT: A brief summary of a person's assets, liabilities and earnings records.

FINANCING STATEMENT: A written notice filed with the county recorder by a creditor who has extended credit for the purchase of personal property; establishes the creditor's interests in the personal property which is security for the debt.

FIN TUBE RADIATION SYSTEM: A heating convection system that transmits heat through a series of sheet-metal plates spaced at close intervals on a center pipe. The energy of heat transmission is usually provided by hot water or steam.

FIRE CORRIDORS: Special corridors with special partitioning designed to create escape routes in time of fire.



FIRE DEPARTMENT CONNECTION: Located at a sprinkler service for fire department pumper.

FIRE DOOR: An insulated door that closes automatically to prevent the spread of fire between areas. It has an Underwriter hourly rating.

FIRE PUMP: An electric or diesel engine driven pump to boost sprinkler pressure within a building.

FIRE RATED: Special building materials, such as partitioning and doors, which have greater fire resistance than normal building standard materials.

FIRE RATING: A rating of the length of time it takes a fire to penetrate a barrier, it designates the ability of a material to contain a fire in a carefully controlled test setting for a specified period of time. A material tested in a laboratory that adequately contains a fire for two hours and meets other requirements during the laboratory fire test is given a two-hour fire resistance rating. Fire-resistance ratings are based on full-scale tests under controlled conditions and are generally recognized by building code authorities and fire insurance rating bureaus. Requirements for fire-resistance ratings are usually set by local building code officials based on the expected occupancy of the building.

FIRE RATING BUREAU: An agency whose functions include maintaining a complete set of records with state insurance departments, covering not only ratings schedules, basis or key rates, and charges or credits applicable, but also rules and clauses affecting the rates and the grading of the value of public fire protection.

FIRE SPRINKLER SYSTEM: An automatic fire-protection system that provides a flow of pressurized water from overhead nozzles when the temperature exceeds a predetermined level. The nozzles are fitted with plugs that melt at relatively low temperatures. There are two types of sprinkler systems (ordinary hazard and calculated system): the dry system, where the water-supply pipes are filled with compressed air to hold the water behind the dry valve to prevent freezing; and the wet system, where the water supply pipes are filled with water up to the nozzles.

FIRE WALL: A wall constructed of fireproof material, which is installed to check the spread of fire into other areas of a building or adjacent properties for one, two or four hours (see FIRE RATING).

FIRE YARD: A side yard, which must be kept clear to facilitate the passage of fire equipment. It is required by certain building codes and its length is determined by building size.

FISCAL YEAR: Starts on July 1 and runs through June 30 of the following year; used for real property tax purposes.

FIXED OPERATING EXPENSE: Those recurring expenses that have to be paid regardless of whether the property is occupied, for example, real property taxes, hazard insurance and debt service. These expenses contrast with operating expenses necessary to maintain the production of income from the operation of a property.

FIXTURE: Personal property so attached to the land or improvements as to become part of the real property. The right of the tenant to remove fixtures may be given by stipulation in the lease or by separate written agreement between the parties.



FLAG LOT: Looks like a flag on a pole, which represents the access to the site; usually located to the rear of another lot fronting a main street.

FLASHING: An impervious material used in roof and wall construction as a barrier to water seepage.

FLAT LEASE: One in which the rental is a fixed sum paid periodically throughout the entire lease term.

FLOOD HAZARD AREAS: Locations specified on Federal Emergency Management Agency (FEMA) maps indicating areas that are subject to flooding. The seller's agent is required to inform potential buyers if the agent has knowledge that a property is located in such an area.

FLOOR DRAINS: Drains in floor for collection of water or waste. (May be connected to sanitary sewer or clarifier.)

FLOOR LOAN: A loan amount less than the total loan committed which is usually funded upon completion of the security for the loan. The difference between the floor and the total amount committed is normally funded if and when the occupancy level specified in either the loan application or the lender's written commitment is attained within the specified period after funding of the floor loan. The difference between the floor and the total amount committed is usually called a "gap" or a "holdback".

FLOOR PLATE: A broker's buzz word for rentable floor size and/or the floor design.

FLUORESCENT LIGHTING: A tubular electric lamp with a coating of fluorescent material on its surface and containing mercury vapor, whose bombardment by electron from the cathode provides ultraviolet light which then causes the material to emit visible light. There are several types: (1) Rapid Start bulb, a typical 4 foot 0 degree office bulb; (2) slimline, 8 foot 0 degree, the best combination of fluorescent installation as to cost and output; (3) Power Groove (VHO), giving the greatest fluorescent output, but superseded by mercury vapor; (4) industrial fixture, which includes a reflector to concentrate light downward; (5) pan or strip fixture, which is an inexpensive supermarket type without a reflector; and (6) upright slots, which provide a good quality fixture to direct some light to the ceiling, reducing the contrast and keeping the lamp cool and clean.

FOOTCANDLE: A measurement of light level. It is equivalent to the light intensity made by one candle at a distance of one foot.

FOOTCANDLES MAINTAINED: The level of light that will be maintained after the initial drop-off of footcandles following installation. Usually it will be after the first 100 hours of burning.

FOOTING: The concrete or brickwork base of a wall or column. It is wider than the structure and is designed to spread the weight of the structure over the ground. It is usually located below freezing level.

FOREBEARANCE: Refraining from action by a creditor against the debt owed by a borrower after the debt has become due. It is usually granted only when a borrower makes a satisfactory arrangement by which the arrears will be paid at a future date.

FORECLOSURE: A legal procedure whereby property used as security for a debt is sold to satisfy the debt in the event of default in payment of the mortgage note or default of other terms in the mortgage document. The foreclosure procedure brings the rights of all parties to a conclusion



and passes the title in the mortgage property to either the holder of the mortgage or a third party who may purchase the realty at the foreclosure sale, free of all encumbrances affecting the property subsequent to the mortgage. There are three general types of foreclosure proceedings: judicial foreclosure, nonjudicial foreclosure and strict foreclosure.

FOUNDATION WALL: The exterior wall support that rests below ground level.

FRAUD: Any form of deceit, trickery, breach of confidence or misrepresentation by which one party attempts to gain some unfair or dishonest advantage over another. Unlike negligence, fraud is a deceitful practice or material misstatement of a material fact, known to be false, and done with intent to deceive, or with reckless indifference as to its truth, and relied on by the injured party to his or her damage.

FRAUD, CONSTRUCTIVE: Breach of a legal or equitable duty that the law declares fraudulent because of its tendency to deceive others, despite no showing of dishonesty or intent to deceive. A broker may be charged with constructive fraud for failing to disclose a known material fact when the broker had a duty to speak—for example, if a listing broker failed to disclose a known major foundation problem not readily observable upon an ordinary inspection.

“FREE AND CLEAR”: “Free” means unencumbered by liens (money claims) and “clear” indicates there are no encumbrances or other clouds.

FREE RENT: Period of time in which the tenant occupies the premises under the lease but does not pay rent. Tenant may be required to pay operating expenses during this period.

FREEHOLD ESTATE: An estate in land in which ownership is for an indeterminate length of time, in contrast to a leasehold estate.

FRONT FOOTAGE: The measurement of a parcel of land by the number of feet of street or road frontage.

FULL SERVICE: Utilities, janitor, taxes, insurance and exterior maintenance, and base year taxes.

FULLY AMORTIZED NOTE: Fully amortized notes are paid in equal monthly installments, which include interest and amortization of principal, paid over a period of years. The interest is set at a predetermined rate and is charged only on the loan balance. As payments are made the amount allocated to interest decreases while the amount allocated to principal increases. At the end of the term the mortgage will be paid in full, including interest. No balloon payment is required.

FUNCTIONAL OBSOLESCENCE: A loss of value or marketability to an improvement to real estate arising from functional problems, often caused by age or poor design. (see Obsolescence).

GAP FINANCING: Financing to cover the holdback difference between the floor loan and the full loan amount.

GENERAL LIEN: A lien on all property, both real and personal, of a debtor.

GENERAL PLAN: Every city and county is required to develop a general plan of comprehensive zoning.



GIFT DEED: A deed in which the consideration is "love and affection," used to make a gift of property to a grantee, usually a close friend or relative. Because the deed is not supported by valuable consideration, the grantee may not be able to enforce against the grantor certain promises or agreements contained in the deed.

GIRDER: A horizontal main member that supports roof or floor joists.

GLUE LAMINATED BEAMS: Beams supporting roof structure constructed of layers of wood glued and pressed together (as opposed to steel beams).

GOOD CONSIDERATION: Gifts such as real property based solely on love and affection.

GOODWILL: An intangible, salable asset arising from the reputation of a business; the expectation of continued public patronage; includes other intangible assets like trade name and going concern value. When a business is sold, the sales price often reflects its goodwill value.

GRACE PERIOD: An agreed-upon time after the payment of a debt is past due, during which a party can perform without being considered in default.

GRADUATED LEASE: A lease that provides for specific increases or decreases in rent at definite times during the term of the lease.

GRADUATED PAYMENT ADJUSTABLE MORTGAGE (GPAM): A loan in which the monthly principal and interest payments graduate by a certain percentage each year for a specific number of years, then level off for the remaining term of the loan.

GRANT: To bestow or confer, with or without compensation, a gift such as land or money by one having control or authority over the gift.

GRANT DEED: A type of deed in which the grantor warrants that he or she has not previously conveyed the property being granted to another, that he or she has not encumbered the property except as noted in the deed, and that he or she will convey to the grantee any title to the property acquired later.

GRANTEE: The person who receives a conveyance of real property from a grantor. The grantee must be a person, either natural or otherwise (e.g. corporation, public agency, partnership, etc.) who (or that) exists at the time of the conveyance and is capable of taking title.

GRANTOR: The person transferring title to, or an interest in, real property. A grantor must be competent to convey title. A corporate grantor must have legal existence and be authorized to hold and convey title to real property. The grantor must be clearly identified in the deed.

GROSS EFFECTIVE EQUITY: Equity plus available cash. See also "Net Effective Equity."

GROSS INCOME: The scheduled income from the operation of the business or the management of the property, customarily stated on an annual basis.

GROSS LEASE: The antonym of net lease. One in which the owner pays taxes, insurance, maintenance, operating expenses, etc. The gross lease today is confined largely to older commercial buildings and multi-tenant buildings. Warning: One must read the lease document to insure which items are paid by the owner and if the increases are paid by the tenant after the base year.



GROSS OPERATING INCOME: The result when other income is added to rental income.

GROSS RECEIPTS: Gross amount of receipts. May or may not equal gross income. (In merchandising, gross receipts minus cost of good sold = gross income. In real estate brokerage, gross receipts = gross income. In service type business, gross receipts = gross income.)

GROSS RENT: Income (figured annually) received from rental units before any expenses are deducted.

GROSS RENTABLE: Rentable area of a single tenancy floor, whether above or below grade, shall be computed by measuring to the inside finish of permanent outer building walls, or from the glass line where at least 50% of the outer building wall is glass. Rentable area shall include all area within outside walls, less stairs, elevator shafts, flues, pipe shafts, vertical ducts, air-conditioning rooms, fan rooms, janitor closets, electrical closet - and such other rooms not actually available to the tenant for his furnishings and personnel - and their enclosing walls. Toilet rooms within and exclusively serving only that floor shall be included in rentable area.

GROSS RENT MULTIPLIER (GRM): The figure used as a multiplier of the gross monthly income of a property to produce an estimate of the property's value.

GROSS SCHEDULED INCOME: The maximum amount of rent if the property were 100 percent occupied.

GROUND LEASE: A lease of land alone, usually of long duration, to a tenant who covenants to erect or has erected a building on the premises. Also called a land lease, the ground lease is a means used to separate the ownership of the land from the ownership of the buildings and improvements constructed on the land. (See Subordinated Ground Lease).

GROUND RENT: Earnings or income from an investment attributable to the ground itself. Economic Rent.

GROUNDWATER: Water under the earth's surface, regardless of the geological structure in which the water is standing or flowing. It does not include water in underground streams that have identifiable banks and beds.

GUARANTEE OF TITLE: An assurance of clear title.

GYPSUM ROOF DECK: Concrete-like gypsum poured in sheetrock or fiberglass formboard, which is supported on structural tees that are supported on roof joists.

H COLUMN: A structural column with a wide flange shaped like an H.

HANDICAPPED REQUIREMENTS: Code required features designed to accommodate handicapped persons. Included are entry ramps, restroom fixtures, hardware, special doors, etc.

HANGOUT: The difference between the loan amortization period and a lease term, when the lease is for a shorter period than the loan term. If a 20-year lease is taken as security in a 25-year loan, a 5-year hangout exists.

HARD MONEY LOAN: A loan made in cash by a non-institutional lender.



HATCH: An opening in the floor or roof of a building.

HAZARDOUS WASTE: A subset of solid wastes that pose substantial or potential threats to public health or the environment and meet any of the following criteria: (i) specifically listed as a hazardous waste by EPA; (ii) exhibits one or more of the characteristics of hazardous waste (ignitability, corrosiveness, reactivity, and/or toxicity); or (iii) generated by the treatment of hazardous waste, or contained in a hazardous waste. These toxic waste materials jeopardize the value of real estate. (Examples: asbestos, underground storage tanks, urea-formaldehyde.)

HAZARDOUS WASTE DISCLOSURE: California Health and Safety Code (§25359.7(a)) requires owners of nonresidential properties to disclose to prospective buyers or lessees the existence of hazardous substances on or beneath a property. Both residential and nonresidential tenants are required to notify landlords if hazardous substances have been released on a property.

HIGH INTENSITY DISCHARGE LIGHTING (HID): The discharge of electricity between electrodes causes luminosity of the enclosed vapor or gas, thus producing light. There are several kinds: mercury vapor, which has the longest life; metal halide, the most often used today, and which gives more light output per watt; and sodium vapor. It is used in high ceiling applications.

HIGH HAZARD DESIGN: A system designed to reduce risks due to concentrated flammable occupancies.

HIGHEST AND BEST USE: That particular use of a property that will produce the greatest net income and thereby develop the highest value.

HOLD HARMLESS: A contract provision whereby one party agrees to indemnify and protect the other party from any injuries or lawsuits arising out of the particular transaction. Such clauses are usually found in leases in which the lessee agrees to "indemnify, defend and hold harmless" the lessor from claims and suits of third persons for damage resulting from the lessee's negligence on the leased premises.

HOLDBACK: Funds not released under a construction loan agreement due to a failure to satisfy some additional requirement (rental, finishing, fixturing, lease up to a required minimum, etc.).

HOLDER: The party to whom a promissory note is made payable.

HOLDER IN DUE COURSE: The holder of a negotiable instrument (check or note) purchased for value when the instrument appears complete and regular on its face; is taken before its due date and without notice of previous dishonor; and the holder has no notice of any defects in title of the transferor.

HOLDING OVER: The act of a tenant retaining possession of the premises after the expiration of the term of the lease. The landlord, by continuing to accept rent, agrees to the tenant's continued occupancy as defined by state law.

HOLDING AREA: A space or room usually in the freight docking area where deliveries to a tenant (or to the building management) may be held until delivered; sometimes also called a receiving area.

HOLOGRAPHIC WILL: Written in the maker's own handwriting, dated and signed by the maker, but not witnessed. Some states consider a holographic will to be valid even though it was not



witnessed, presumably on the theory that the handwriting can be analyzed to verify authenticity and demonstrate competency.

HUNG CEILING: One that is lightweight and suspended to reduce ceiling height and for decorative and acoustical purposes.

H.V.A.C.: Heating, ventilation and air conditioning.

HYDRAULIC DESIGN: A sprinkler system designed for new buildings with high stacking occupancy.

HYPOTHECATE: To pledge real or personal property as security for a loan or other obligation without surrendering possession of the property. The borrower retains the rights of control and possession, and the lender secures an underlying equitable right in the pledged property.

I BEAM: A structural shape with a narrow flange shaped like an I and used horizontally to support the roof deck or upper floor slab.

ILLUSORY CONTRACT: An apparent contract that is not a contract because the parties have not agreed to be bound.

IMPLIED CONTRACT: A contract under which the agreement of the parties is demonstrated by their acts and conduct rather than words.

IMPOUND ACCOUNT: A trust account established to set aside funds for future needs relating to a parcel of real property. Many mortgage lenders require an impound account to cover future payments for taxes, assessments, private mortgage insurance and insurance in order to protect their security from defaults and tax liens. Sometimes, part of the purchase price due the seller may be impounded or put aside by escrow to meet the postclosing expense of clearing title or repairing the structure.

IMPROVEMENTS ON LAND: Any structure, usually privately owned, such as buildings, fences, driveways, and retaining walls, erected to enhance the value of the property or so that a site can be used.

IMPROVEMENTS TO LAND: A publicly owned structure added to or benefiting land, such as curbs, sidewalks, streetlights and sewers.

INCANDESCENT LIGHTING: Light produced by heated wire (filament). It is inefficient and has a short, 1000-hour life.

INCOME APPROACH: The process of estimating the value of an income-producing property by capitalization of the annual net income expected to be produced by the property during its remaining useful life.

INCOME, ADJUSTED GROSS: Gross income minus deductions. For a wage earner, gross income and adjusted gross income are one and the same. A salesman may deduct all expenses attributable to earning his salary. A business may deduct all ordinary business expenses. His net business income is his adjusted gross income. An investor may deduct 50% of the excess of net long-term capital gains over net short-term capital losses to determine his adjusted gross income.



INCOME, GROSS: Ordinary income plus capital gains income. (In merchandising gross income = gross receipts minus cost of goods sold. In service type business, i.e., real estate brokerage, gross income = gross receipts.)

INCOME, GROSS EQUITY: Return on equity before taxes; or net operation income minus interest on loans; or net operating income minus loan payments plus principle payments; or gross spendable income plus principle payments. See also "Income, Net Equity".

INCOME, GROSS SCHEDULED: Projection of rental income the owner hopes to receive during the coming year.

INCOME, GROSS SPENDABLE: Net operating income minus total loan payments (P + I). See also "Income, Net Spendable."

INCOME, NET EQUITY: Cash spendable (after income taxes) plus equity build up.

INCOME, NET OPERATING: Gross scheduled income minus vacancy allowance; or audited gross income minus operating expenses, but before any loan payments.

INCOME, NET SPENDABLE: Net operating income minus loan payments (P + I) minus federal and state income taxes minus capital improvements. See also "Income, Gross Spendable."

INCOME, NET TAXABLE: Gross scheduled income minus vacancy allowance minus operating costs minus available depreciation minus interest on all loans.

INCOME PROPERTY: A property that has, as its primary purpose, the capacity to produce monetary income.

INCREASING AND DIMINISHING RETURNS: The addition of more improvements to land and structures increases value only to the asset's maximum value. Beyond that point, additional improvements no longer affect a property's value. As long as money spent on improvements produces an increase in income or value, the law of increasing returns applies. At the point where additional improvements do not increase income or value, the law of diminishing returns applies.

INDEMNIFY: To secure against hurt, loss or damage; to make compensation to for hurt, loss or damage.

INDEPENDENT CONTRACTOR: One who is retained to perform a certain act, but who is subject to the control and direction of another only as to the end result and not as to how he or she performs the act. The critical feature, and what distinguishes an independent contractor from an employee or agent, is the degree of control the employer has over such a person's activities. Because many licensing laws make brokers responsible for the activities of their salespeople, even if they are independent contractors, many brokers want to exercise a high degree of control over such activities; however, state licensing laws do not preclude the establishment of independent contractor status for tax purposes, provided the relationship is carefully structured to avoid possible classification of such a person as an employee.

INDICATED GAIN: The potential gain that would be recognized if the property were sold for cash.



INDUCTION SYSTEM: A mechanical system normally located on the periphery of a building at the base of the window walls. Forced air is thermostatically controlled to temper its flow by heating or cooling the interior air. This process is controlled by the current climatic conditions at the exterior and the demands of the spaces within the building (see Convection and Convectector).

INDUSTRIAL DISTRICT OR PARK: A controlled park-like development designed to accommodate specific types of industry. It provides public utilities, streets, railroad sidings, water, sewage facilities, etc.

INDUSTRIAL PROPERTY: A property primarily used for the production or manufacture of goods or products.

INFLATION: The gradual reduction of the purchasing power of the dollar, usually related directly to the increases in the money supply by the federal government.

INGRESS: A way to enter a property; access. As applied to an easement, "to go in."

INJUNCTION: A legal action whereby a court issues a writ that forbids a party defendant from doing some act or compels the defendant to perform an act.

INSTALLMENT CONTRACT: A financing device for the sale of real estate wherein the purchase price is paid in installments over an extended period of time by the purchaser who is in possession. Title is retained by the seller until the final payment. Also called a contract for deed or articles of agreement for warranty deed.

INSTALLMENT NOTE: A promissory note with payments of principal and interest made at designated intervals.

INSTALLMENT SALE: An income tax method of reporting gain received from the sale of real estate when the sales price is paid in installments, i.e., where at least one payment is to be received after the close of the taxable year in which the sale occurs. No down payment is required in an installment sale. If certain conditions are met the taxpayer can save on taxes by postponing the receipt of an installment and the reporting of such income to future years when his or her other income may be lower. Thus, a taxpayer can avoid paying the entire tax on the gain in the year of sale.

INSTITUTIONAL LENDER: A bank, insurance company, or savings and loan association that deals heavily in real estate loans.

INSTRUMENT: A written legal document.

INSULATION: Used to protect interiors from heat loss. There are two types: non-combustible fiberglass, Fesco, celoterm (perlite); combustible-celotex, wood fiber.

INTEREST: A charge made by a lender for the use of money.

INTEREST ONLY: A term loan calling for payments of interest only, not to include any amount for principal.

INTEREST PAYMENTS: The total interest payments during the year on all loans, either now against the property or being projected against it.



INTEREST RATES:

CREDIT RATE – An interest rate based solely upon the strength of a respected credit tenant on an executed long-term triple net lease and almost ignoring the value of the real estate involved in the deal. The credit rate is usually 1/8 – 3/8% below the real estate rate.

FACE RATE – The interest rate shown on the Promissory Note; the same as the gross interest rate.

GROSS INTEREST RATE – The interest rate paid by the borrower in a mortgage loan transaction; also called the face rate.

NET RATE – The net return on investment received by the lender in a mortgage loan transaction after payment of the servicing fee to the correspondent/servicing agent. The gross interest rate (face rate) less the servicing rate.

REAL ESTATE RATE – An interest rate reflecting the desirability and risk (to the lender) of the real estate to be taken as security in the loan transaction and not anticipating the execution of a long term credit lease for space within the property.

SERVICING RATE – A small participation, by the servicing agent, in the gross rate of interest charged by the lender, for the services provided by the servicing agent (see Loan Servicing). The servicing rate is usually a function of the dollars loaned in a particular transaction and rarely exceeds .25% (1/4 of 1%).

INTERIM FINANCING: A short-term loan usually made during the construction phase of a building project.

INTERIM OCCUPANCY AGREEMENT: An agreement allowing a buyer to take possession of a property as a tenant prior to close of escrow.

INTERIOR LOT: One that is surrounded by other lots, with a frontage on the street; the most common type lot, which may or may not be desirable depending on other factors.

INTERIOR ROOF DRAINAGE: Roof drainage from the interior portion of a roof. Interior or underground piping carries water to the pavement or storm system.

INTESTATE: The condition of a property owner who dies without leaving a valid will. Title to the property will pass to the decedent's heirs as provided in the state law of descent.

INTESTATE SUCCESSION: A succession of a property to the heirs when a person dies without a will.

INTRINSIC VALUE: An appraisal term referring to the value created by a person's personal preferences for a particular type of property.

INURE: 1. to come into use; take or have effect. 2. to become beneficial or advantageous.

INVOLUNTARY LIEN: A lien placed on property without the consent of the property owner.

IRR (Internal Rate of Return): A multi-year analysis of rate of return similar to Financial Management Rate of Return (FMRR). Used by investors in medium and large properties



(occasionally on small properties). Multi-year cash flows and net sale proceeds are analyzed using discounted cash flow techniques to solve for the IRR. IRRs and FMRRs are the best rate of return indicators, because they require an analysis of the investor's entire holding period, not just a single year. The discounting process takes into consideration the time value of money and thereby produces a more realistic rate of return. (See FMRR)

IRREVOCABLE: That which cannot be revoked or changed.

IRS TAX LIEN: A federal tax lien, or Internal Revenue Service (IRS) tax lien, results from a person's failure to pay any portion of federal taxes, such as income and withholding taxes. A federal tax lien is a general, statutory, involuntary lien on all real and personal property held by the delinquent taxpayer. Its priority, however, is based on the date of filing or recording; it does not supersede previously recorded liens.

JAMB: (See Door Frame).

JOINT NOTE: Note signed by two or more persons each having equal liability for payment.

JOINT AND SEVERAL LIABILITY: A situation when more than one party is liable for repayment of a debt or obligation. The parties may be sued either jointly or individually for the full amount of the note.

JOINT TENANTS: Two or more land owners who have been specifically named in one conveyance as joint tenants. Each joint tenant has an undivided interest in the land, and upon the death of a joint tenant, the surviving joint tenant or tenants receive the deceased tenant's interest by the right of survivorship, which is the important element of joint tenancy. Four "unities" are required to create a joint tenancy: (i) unity of possession - all joint tenants holding an undivided right to possession; (ii) unity of interest - all joint tenants holding equal ownership interests; (iii) unity of time - all joint tenants acquire their interests at the same time; and (iv) unity of title - all joint tenants acquire their interest by the same document. The four unities are present when the following requirements are met: (i) title is acquired by one deed; (ii) the deed is executed and delivered at one time; (iii) the deed conveys equal interests to all of the parties; and (iv) the parties hold undivided possession of the property as joint tenants. Because the unities must be satisfied, many states require the use of an intermediary when a sole owner wishes to create a joint tenancy between himself or herself and others. The owner conveys the property to a nominee, or straw man. Then the nominee conveys it back, naming all the parties as joint tenants in the deed. As a result, all the joint tenants acquire title at the same time by one deed.

JOINT VENTURE: The joining of two or more people to conduct a specific business enterprise. A joint venture is similar to a partnership in that it must be created by agreement between the parties to share in the losses and profits of the venture. It is unlike a partnership in that the venture is for one specific project only, rather than for a continuing business relationship.

JOIST: A horizontal floor or roof deck support.

JUDGMENT: The formal decision of a court on the respective rights and claims of the parties to an action or suit. A judgment that has been entered and recorded with the county recorder usually becomes a general lien on the property of the defendant.



JUDGMENT CLAUSE: A provision in notes, leases and contracts by which the debtor, lessee, etc., authorizes any attorney to go into court and confess judgment against him for a default in payment. Unenforceable in many states.

JUDGMENT DECREE: A decree specifying the award made by the court in a civil case.

JUDGMENT LIEN: A charge, or lien, upon the land of a debtor, arising when a money judgment is publicly recorded in the jurisdiction where the land is located, and giving the holder of the judgment a right to levy the property to satisfy the debt.

JUDICIAL FORECLOSURE: A method of foreclosing on real property by means of a court supervised sale. In a judicial foreclosure there is an appraisal, after which the court determines an upset price below which no bids to purchase will be accepted.

JUNCTION BOX: A rectangular metal or plastic box that provides a nexus (junction) for a building's electrical wiring system and protects the wiring from the elements.

JUNIOR LIEN OR MORTGAGE: An obligation, such as a second mortgage, that is subordinate in right or lien priority to an existing lien (senior loan) on the same real estate.

JUNIOR TRUST DEED: Any trust deed that is recorded after a first trust deed.

KEY LOT: So named because it resembles a key fitting into a lock; one that is surrounded by the backyards of other lots, therefore is the least desirable because of the lack of privacy.

KILOVOLT-AMPERE (K.V.A.): A unit of electro-motive force equal to 1,000 volt amperes.
KW, KVA, DEMAND: The maximum electric power required during any 15-minute period in a month.

LAND: The earth's surface, extending downward to the center of the earth and upward infinitely into space, including things permanently attached by nature, such as trees and water.

LAND CONTRACT: A contract for the purchase of real estate upon an installment basis. Upon payment of the last installment, the deed is delivered to the purchaser (see Installment Contract).

LANDLORD: The lessor or the owner of a leased premises. The landlord retains a reversionary interest in the property so that when the lease ends the property will revert to the landlord.

LAND PROJECTS: Subdivisions located in sparsely populated areas of California, made up of 50 parcels or more.

LAND TRUSTS: A few states permit the creation of land trusts, in which real estate is the only asset. As in all trusts, the title to the property is conveyed to a trustee, and the beneficial interest belongs to the beneficiary. In the case of land trusts, however, the beneficiary is usually also the trustor. While the beneficial interest is personal property, the beneficiary retains management and control of the real property and has the right of possession and the right to any income or proceeds from its sale. One of the distinguishing characteristics of a land trust is that the public records usually do not name the beneficiary. A land trust may be used for secrecy when assembling separate parcels. There are other benefits as well. A beneficial interest can be transferred by assignment, making the formalities of a deed unnecessary. The beneficial interest in property can be pledged as security for a loan without having a mortgage recorded. Because the beneficiary's interest is personal, it passes at the beneficiary's death under the laws of the



state in which the beneficiary lived. If the deceased owned property in several states, additional probate costs and inheritance taxes can be avoided.

LATENT DEFECT: A hidden structural defect that would not be discovered by ordinary inspection and that threatens the property's soundness or the safety of its inhabitants. Some states impose on sellers and licensees a duty to inspect for and disclose latent defects. Buyers have been able to either rescind the sales contract or receive damages when a seller fails to reveal known latent defects. The courts have also decided in favor of the buyer when the seller neglected to reveal violations of zoning or building codes.

LATERAL SUPPORT: The right to have land supported by the adjoining land or soil beneath.

LATITUDE: Distance on the earth's surface, measured northward or southward from the Equator and measured in degrees of the meridian.

LAW OF AGENCY: A fiduciary relationship is created under the law of agency when a property owner, as the principal, executes a listing agreement or management contract authorizing a licensed real estate broker to be his or her agent.

LAYOUT EFFICIENCY: Efficiency of the usable area to meet tenant's work flow requirements, office design personnel, etc. Efficiency of usable area is dictated by building shape, core location, floor size, leasing depth, corridors, etc.

LEASE: An agreement, written or unwritten, transferring the right to exclusive possession and use of real estate for a definite period of time. To create a valid lease, the lessor must retain a reversionary right; that is, the lessor (landlord) must grant the right of possession to the lessee (tenant) but retain the right to retake possession after the lease term has expired.

LEASE BUY-OUT: A cash inducement offered by a landlord to a tenant's previous landlord to cancel the remaining term of tenant's lease.

LEASEHOLD ESTATE: A tenant's right to occupy real estate during the term of a lease; a personal property interest.

LEASEHOLD IMPROVEMENTS: Items required by tenant, which are added to premises.

LEASE, INDUSTRIAL:

ABSOLUTE NET – Tenant is responsible for any and all expenses incurred regarding the property. If owner agrees to assume any costs whatsoever, it will not be classified as an "absolute net".

MODIFIED NET – Each and every expense must be identified as to where the responsibility for payment lies. Taxes are always paid for by the tenant; all other expenses may be negotiated.

NET, NET, NET – (often referred to as triple net): The tenant is obligated to pay the following expenses attributable to the leased property, including but not limited to: 1) Taxes, 2) Insurance, and 3) Maintenance.

GROSS LEASE – Lessor pays base taxes and insurance and maintains the roof, exterior walls and structural members. Lessee pays increase in costs of taxes and insurance over base year and assumes responsibility for all other expenses.



MULTI-TENANT – The term multi-tenant preceding any of the above definitions qualifies each in that provisions are incorporated in each lease which address the common area expenses (CAM) and the administrative procedure for controlling same.

LEASE OPTION: A lease under which the tenant has the right to purchase the property, either during the lease term or at its end.

LEASE PICK-UP: Landlord's commitment to pay the costs associated with assuming the financial obligation of paying a tenant's rent in premises to be vacated which are still under lease.

LEASE PURCHASE: The purchase of real property, the consummation of which is preceded by a lease, usually long-term. Typically done for tax or financing purposes.

LEASE RATE QUOTES: Usually stated in dollars per month (net or gross) or cents per square foot per month (net or gross) calculated on square footage of the building (exterior measurements).

LEGACY: A gift of personal property by will.

LEGAL DESCRIPTION: A proper and formal method of describing a parcel of real estate that is recognized by law.

LEGAL TITLE: Title that is complete and perfect regarding right of ownership; may be held by a trustee under a deed of trust.

LESSEE: The business entity to which property is rented or leased; also referred to as a tenant.

LESSOR: The business entity which rents or leases property to another; also referred to as a landlord.

LESS-THAN-FREEHOLD ESTATE: A leasehold estate, considered to exist for a definite period of time or successive periods of time until termination.

LETTER OF CREDIT: An instrument used for financial security instead of cash. Issued by a Financial institution.

LEVEL ROOF HEIGHT: Office, or room, and building roof at the same height.

LEVERAGE: Using someone else's money to purchase a property. Refers to the ability to use the investment as collateral for a loan.

LEVY: To assess, seize or collect. To levy a tax is to assess a property and set the rate of taxation. To levy and execution is to officially seize the property of a person in order to satisfy an obligation.

LICENSE: Permission given by the owner of property to enter the property for a particular purpose. A license is of temporary character, purely a personal right, and cannot be sold. It is usually revocable by the owner at any time.

LIEN: A charge or claim that one entity (lienor) has on the property of another (lienee) as a security for a debt or obligation.



LIFE ESTATE: Any estate in real or personal property that is limited in duration to the life of its owner or the life of some other designated person. Although classified as a freehold estate because it is a possessory estate of indefinite duration, a life estate is not an estate of inheritance.

LIFE SAFETY: Government regulations and building code requirements for building relative to seismic, fire, handicapped and existing requirements.

LIFE TENANT: A person in possession of a life estate.

LIFT TRUCK: Powered equipment that transports, lifts, and stacks pallets.

LIKE KIND: A term relating to the nature of a property rather than its quality or quantity. Only like kind properties qualify for a real estate exchange and the resulting tax benefit.

LIMITED LIABILITY COMPANY (LLC): LLCs are a relatively recent form of business organization. An LLC combines the most attractive features of limited partnerships and corporations. The members of an LLC enjoy the limited liability offered by a corporate form of ownership and the tax advantages of a partnership. In addition, the LLC offers flexible management structures without the complicated requirements of S corporations or the restrictions of limited partnerships.

LIMITED PARTNERSHIP: Consists of one or more general partners as well as limited partners. The business is administered by the general partners and funded, for the most part, by limited or silent partners. The limited partner's liability is limited to the amount invested and in some cases the profit he can make. A limited partner is generally not permitted to have a voice in the management.

LINEAR FOOT: A measurement meaning one foot or 12 inches in length as contrasted to a square foot or a cubic foot.

LINEHAUL CAR: A term indicating, for purposes of payment, a freight car that has been shipped over a certain railroad's tracks. For instance, if a full freight car goes from New York City to Cleveland over the tracks of two railroads, each would receive a linehaul payment for its shipment.

LINTEL: The part over a door or other opening that supports weight above.

LIQUIDATE: To convert property and/or other assets into money; to pay a debt in full.

LIQUIDATED DAMAGES: An amount predetermined by the parties to an agreement as the total amount of compensation an injured party should receive if the other party breaches a specified part of the contract.

LIQUEFACTION: A phenomenon during an earthquake whereby the ground/soil turns into a high unstable, jelly-like substance.

LIQUIDITY: The time it takes to convert an asset to cash as a reflection of its market value.

LIS PENDENS: A recorded legal document that gives constructive notice that an action affecting a particular piece of property has been filed in a state or federal court. *Lis pendens* is Latin for



“action pending” and is in the nature of a “quasi lien.” A person who subsequently acquires an interest in that property takes it subject to any judgment that may be entered; that is, a purchaser pending a lawsuit is bound by the result of the lawsuit.

LISTING AGREEMENT: A written employment agreement between a property owner (as principal) and a real estate broker (as agent) authorizing the broker to find a buyer or a tenant for certain real property, for which service the property owner agrees to pay the real estate broker a commission. Listing can take the form of open listings, exclusive agency listings, or exclusive right to sell or lease listings. The most common for is the exclusive right to sell or lease listing. (see Open Listing, Exclusive Agency and Exclusive Right to Sell or Lease).

LITTORAL: Land bordering a pond, lake, ocean or sea-as opposed to land bordering a stream or river (running water).

LITTORAL RIGHTS: The rights of a landowner whose land borders a pond, lake or ocean shoreline where the body of water is non-flowing. Littoral rights extend to the mean high water mark of ocean or tidal waters. (See riparian rights, water rights.)

LIVE LOAD: The variable weight per square foot to which a building is subject. It is a load that may be removed or replaced on a structure but which is not necessarily a dynamic load. It includes the impact effect, such as people walking on a surface.

LIVING TRUST: An arrangement in which a property owner (trustor) transfers assets to a trustee who assumes specified duties in managing the asset. After payment of operating expenses and trustee's fees, the income generated by the trust property is paid to or used for the benefit of the designated beneficiary.

LOAD FACTOR/COMMON AREA ALLOCATION (office): That percentage of the building, which is common area, allocated to the tenants to increase their usable area to rentable area. A load factor of 10% means that 900 usable square feet would be 990 rentable square feet.

LOADING DOCK: A platform or area where material, equipment, supplies, etc., are moved in or out of an industrial facility to trucks or rail cars.

LOADING DOCK GRADING: A pitched building slab at outside grade level with grade “dug out 48 inches” at loading area to accommodate truck platform at building slab height.

LOAN APPLICATION: A lender's initial source of information on a borrower/applicant and the collateral involved; stipulates the amount of money requested and repayment terms.

LOAN COMMITMENT: A written statement from the lender, in response to a formal executed loan application, agreeing to lend a specific sum of money for a specified purpose over a specific term at a specified rate of interest. To be valid, a real estate loan commitment must state: (1) amount, (2) term, (3) interest rate, (4) fees, if any, (5) conditions and requirements for funding, and (6) real property to be taken as security, and must be in writing.

LOAN CONSTANT: The percentage of the unpaid balance of a loan which is represented by the sum of the principle and interest payments for the following year which is needed to fully amortize the loan. For example, a six percent loan amortized over 25 years has a loan constant of 7.732 percent. Annual payments necessary to fully amortize a \$100,000 loan in 25 years would therefore be \$7,732 per year.



LOAN ORIGATION FEE: The processing of a mortgage application is known as loan origination. When a mortgage loan is originated, a loan origination fee, or transfer fee, is charged by most lenders to cover the expenses involved in generating the loan. These include the loan officer's salary, paperwork and the lender's other costs of doing business.

LOAN PACKAGE: A collection of papers and documents relative to a specific property on which a lender will base a decision to approve or decline a loan request. A typical loan package will generally include the following: (a) Letter of Transmittal, (b) Executed Loan Application, (c) Appraisal, (d) Financial Statements, (e) Credit Reports and/or Dun and Bradstreet Reports, (f) Photographs, (g) Plot Plan and Survey, (h) Cost Breakdown, (i) Complete Set of Plans and Specifications for proposed projects, (j) Other items which would assist a lender in making his/her decision.

LOAN POLICY: Also called "mortgagee policy". A title insurance policy insuring a mortgagee, or beneficiary under a deed of trust, against loss caused by invalidity or unenforceability of a lien, or loss of priority of the mortgage or deed of trust.

LOAN QUOTE: The best estimate of a lender, mortgage banker or mortgage broker of a loan which could be obtained on a specific property under the conditions stated by the person requesting the quote. A quote is normally issued before the property to be taken as security for the loan has been appraised, or the financial capacity of the proposed borrower analyzed, by the mortgage banker or lender and should be accepted in that light – as an estimate of the loan obtainable and not as a promise of that exact loan amount.

LOAN SERVICING: The procedure, by a servicing agent of processing all the details of loan administration, including, but not limited to: (1) Consolidation of all loan payments received for each lender into one or two large checks each month, (2) Providing each lender with an accurate accounting of the funds received for its account, (3) Posting of individual payments received to the records of each borrower, (4) Ensuring that taxes are paid on time and that proper insurance is kept in force on all properties hypothecated to lenders as security for their loans, (5) Inspections of properties, as required by lenders, (6) Disbursement of any repair funds (usually insurance proceeds) in the case of damage to properties securing lender's loans (i.e., fire, flood, earthquake damage, etc.)

LOAN-TO-VALUE RATIO: The relationship between the amount of the mortgage loan and the value of the real estate being pledged as collateral.

LOCAL PANEL: The switch panel controlling lighting in a section of a building.

LOCAL TRANSFORMER: The transformer in a 480- or 220-volt system that reduces voltage to 22 or 100, as applicable.

LOCKED IN LOAN: A loan that the borrower is forbidden by contractual agreement from paying off before a certain period of time has elapsed.

LONGITUDE: Distance measured east or west on the earth's surface, measured by the angle which the meridian through a place makes with some standard meridian, as that of Greenwich, Great Britain. Longitude may be measured in time (longitude in time) or in degrees (longitude in arc).

LOYALTY: The duty of loyalty requires the agent to place the principal's interests above those of all others, including the agent's own self-interest. The agent must be particularly sensitive to any



possible conflicts of interest. Confidentiality about the principal's personal affairs is a key element of loyalty.

MAIN DISTRIBUTION PANEL: The switching panel controlling feeder electric cables in a building.

MAIN LINE (MAIN TRACK): A primary main line track handles high-speed traffic and heavy tonnage; a secondary main line handles less traffic; a branch main line handles still less traffic. Main lines run through yards and between stations and are regulated by signals.

MAKER: The borrower who executes a promissory note and becomes primarily liable for payment to the lender.

MARGIN: In an adjustable-rate loan, the amount added to the index rate that represents the lender's cost of doing business (including costs, profits and risk of loss of the loan). Generally the margin stays constant during the life of the loan.

MARKET DATA APPROACH: The process of estimating the value of property through the examination and comparison of actual sales of comparable properties.

MARKET INDICATION OF VALUE: The market value estimate predicated upon prices paid in actual market transactions. A process of analysis and correlation of similar, recently sold properties. The reliability of this technique is dependent upon: (a) the degree of comparability of each property with the property under appraisal, (b) the time of sale, (c) the verification of the sale date, (d) the absence of unusual conditions affecting the sale, and (e) the terms of the sale.

MARKET RENT: The rental income that real estate can command in an open, competitive market at any given time, as contrasted with contract rent, or the income actually received under a lease agreement.

MARKET VALUE: The most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale, such conditions include the assumption that the buyer and seller acted prudently and knowledgeably and that the price is not affected by undue stimuli. As defined by the courts, "The highest price estimated in terms of money which a property will bring if exposed for sale in the open market, allowing a reasonable time for finding a purchaser who buys with knowledge of all the uses to which it can be adapted and for which it is capable of being used".

MARKETABLE TITLE: Good or clear saleable title reasonably free from risk of litigation over possible defects.

MASONRY: Any construction material involving bricks/blocks and mortar or related materials.

MASTER DEED: The principal conveyance document used by the owners of land on which condominiums are located.

MATERIAL FACT: Any fact that is relevant to a person making a decision. Agents must disclose all material facts to their clients. Agents must also disclose to buyers material facts about the condition of the property, such as known structural defects, building code violations and hidden dangerous conditions. Brokers are often placed in a no-win situation of trying to evaluate whether a certain fact is material enough that it needs to be disclosed to a prospective buyer. It is sometimes difficult to distinguish between "fact" and "opinion." Even though brokers act in good



faith, they may still be liable for failure to exercise reasonable care or competence in ascertaining and communicating pertinent facts that the broker knew or "should have known."

MEAN: The average of all items included within a group, calculated by dividing the sum of the individual items, or variates, by the number of variates.

MECHANIC'S LIEN: A statutory lien established by law on a specific property in favor of those who provide labor or material for the improvement of real estate.

MEDIAN: The middle figure in a set of numbers.

MEDIATION: A process by which a neutral third party works with the parties in a dispute to reach a satisfactory solution.

MENACE: Using threat of violence to get agreement in accepting a contract.

MENTOR PROGRAM: A training program in a real estate office wherein newly-hired agents assist successful, knowledgeable salespersons for a period of time.

MERGER: The joining of a lesser right with a greater right so that the lesser right is lost.

MERIDIAN: One of a set of imaginary lines running north and south and used by surveyors for reference in locating and describing land under the government survey method of property description.

METAL PAN: An architectural term for a preformed sheet metal unit, which is set in place to receive a plastic material (concrete, terrazzo, etc.). It is frequently used for ceiling or stair construction.

METAL ROOF DECK: Ribbed metal supported across roof joists and girders, onto which insulation and roofing material are laid.

METAL SIDING: A steel or aluminum pre-painted wall, ribbed for rigidity, insulated or un-insulated.

METES AND BOUNDS: A method of legally describing a parcel of land in which the dimensions of the property are measured by distance and direction from a well marked point.

MEZZANINE: An intermediate floor placed between the floor and ceiling of a single story. A mezzanine has a low ceiling height and covers only a small portion of the main floor area.

MEZZANINE STEEL: The heavier live load design for floor occupancy that results in a heavier steel design than that for a roof load.

MILLWORK: Finished carpentry work; wood processing done in the mill or factory, as distinguished from handwork on the job.

MISREPRESENTATION: A false, incorrect or misleading statement, account or explanation. Also concealment of a material fact. Made or omitted with the intention of inducing some action by another party.



MISTAKE: An error or misunderstanding. A contract is voidable if there is a mistake that is mutual, material, unintentional and free from negligence. Innocent mistakes seldom serve to void a contract. A party cannot claim "mistake" to get out of a contract on the basis that he or she did not read the contract he or she signed and was therefore mistaken as to its material terms; neither ignorance nor poor judgment is a mistake of fact. Nor can a party claim mistake in not knowing the legal consequences upon signing the contract (mistake of law). When there is an ambiguity known by one party who fails to explain the mistake to the innocent party, the innocent party's interpretation generally will prevail.

MITIGATION: To make less severe, as in the "mitigation" of environmental hazards.

MIXED-USE DEVELOPMENT (MUD): MUDs combine office space, stores, theaters and apartment units in a single community. MUDs usually contain and offer laundry facilities, restaurants, food stores, valet shops, beauty parlors, barbershops, swimming pools and other attractive and convenient features.

MODIFIED NET: Each and every expense must be identified as to where the responsibility for payment lies. Taxes are always paid for by the tenant; all other expenses may be negotiated.

MONTH-TO-MONTH TENANCY: A periodic tenancy under which the tenant rents for one month at a time. In the absence of a rental agreement (oral or written) a tenancy is generally considered to be month to month.

MONUMENT: A fixed natural or artificial object used to establish real estate boundaries in a metes and bounds land description.

MORATORIUM: 1. A temporary suspension of payments due under a financial obligation in order to help a distressed borrower recover from financial difficulties and avoid default and foreclosure. 2. A temporary suspension of issuing building permits.

MORTGAGE: A legal document used to secure the performance of an obligation. The term mortgage, which is derived from the French words *mort*, meaning "dead" and *gage*, meaning "pledge" is appropriate in that the pledge is extinguished only after the debt is paid. The purpose of the mortgage note is to create a personal liability for payment on the part of the mortgagor; the purpose of the mortgage is to create a lien on the mortgaged property as security for the debt.

MORTGAGE BANKER: A person, corporation or firm not otherwise in banking and finance that normally provides its own funds for mortgage financing as opposed to savings and loan associations or commercial banks that use other people's money; namely that of their depositors--to originate mortgage loans. Although some mortgage bankers do supply permanent long-term financing, the majority specialize in supplying short-term and interim financing, either through their own resources or by borrowing from commercial sources.

MORTGAGE BROKER: A person or firm that acts as an intermediary between borrower and lender; one who, for compensation or gain, negotiates, sells or arranges loans and sometimes continues to service the loans; also called a loan broker. Loans originated by the mortgage broker are closed in the lender's name and are usually serviced by the lender. This is in contrast to mortgage bankers, who not only close loans in their own names but continue to service them as well. Many mortgage brokers are also licensed as real estate brokers and provide these financing services as supplements to their realty services.

MORTGAGE LIEN: The lien or charge on real estate given to the mortgagee when the mortgagor



executes a mortgage to secure his note.

MORTGAGE LOAN CORRESPONDENT: A mortgage banker who originates and services loans for an investor, as an agent of the investor, according to terms specified in the Correspondent Contract between the investor and the mortgage banker.

MORTGAGE LOAN DISCLOSURE STATEMENT: A statement that informs the buyer of all charges and expenses related to a particular loan, disclosure of which is mandated by Article 7 of the Real Estate Law.

MORTGAGE TERM: The length of time (specified in the loan documents) in which the mortgage loan must be paid off.

MORTGAGEE: In a mortgage transaction, the party who receives and holds a mortgage as security for a debt. The lender.

MORTGAGEE PROTECTION CLAUSE: A clause often required (by institutional lenders) within major leases in large office, shopping center and industrial projects stating that the tenant agrees to give notice of a default in the lease terms by the lessor to the lender (mortgagee) and further agrees to give the lender a specified reasonable period of time in which to effect a cure of the lessor's default prior to the lessee taking any (legal) actions which might jeopardize the lender's position (such as unilateral cancellation of the lease). Since few leases contain this provision as they are drawn, the mortgagee protection clause normally must be added as an amendment to the original executed lease.

MORTGAGEE'S TITLE INSURANCE: An insurance policy protecting the lender for the amount of the loan in the event of a future title dispute.

MORTGAGOR: In a mortgage transaction, the buyer/borrower is the mortgagor. The mortgagor is required to sign a promissory note for the amount borrowed and to execute a mortgage to secure the debt. The mortgage note creates a personal liability for payment on the part of the mortgagor.

MOTIVATION: Reason why property owner wants to sell, exchange or lease his property.

MOVING ALLOWANCE: An offer by a landlord to pay all or part of tenant's moving costs.

MULTI-TENANT: The term multi-tenant preceding any of the above definitions qualifies each in that provisions are incorporated in each lease which address the common expenses and the administrative procedure for controlling same.

MUST-BUY BUYERS: Buyers looking for properties that meet specific needs.

MUST-SELL SELLERS: Highly motivated or desperate sellers.

MUTUAL CONSENT: Both parties approve or assent to the terms of a contract freely.

NAKED LEGAL TITLE: Bare title to the property lacking the rights and privileges commonly associated with ownership. A trustee in a deed of trust securing instrument may hold the title to a secured property, but only such title as is needed to carry out the terms of the lien document.



NEGATIVE AMORTIZATION: A financing arrangement in which the monthly payments are less than the true amortized amounts and the loan balance increases over the term of the loan rather than decreases. An interest shortage that is added to unpaid principal.

NEGATIVE DECLARATION: A declaration by a developer that a project will not have a negative impact on the environment.

NEGATIVE EASEMENT: An easement where the owner of a servient estate is prohibited from doing something on his or her estate that is otherwise lawful, because it will affect the dominant estate.

NEGLIGENCE: The failure to use ordinary or reasonable care under the circumstances.

NEGLIGENT MISREPRESENTATION: A negligent misrepresentation occurs when the broker should have known that a statement about a material fact was false. The fact that the broker may actually be ignorant about the issue is no excuse.

NEGOTIABLE INSTRUMENT: A promissory note or check that meets certain legal requirements allowing it to circulate freely in commerce.

NET EFFECTIVE EQUITY: Gross effective equity minus selling costs. Equity plus available cash minus selling costs.

NET INCOME: The difference between the effective gross income and the expenses, including taxes and insurance. Usually the terms are qualified as net income before debt service.

NET INCOME APPROACH: A method of pricing multiple unit rental properties where the desire to buy is driven by the property's ability to generate cash flow and profit. Most often used to price rental properties of two or more units.

NET LEASE: Often used to describe a lease whereby the tenant agrees to pay, in addition to the stated fixed rent, all or most of the expenses of ownership, such as real estate taxes, operating costs, insurance premiums and repairs (see Gross Lease). **WARNING** – Because of potential confusion among the different types of "Net" leases, this term should NOT be used. Always specifically state which costs are to be paid by the landlord and the tenant and read the specific lease document for clarification.

NET LOAN RELIEF: In an exchange loans received minus loans assumed. See also "Recognized Net Loan Relief".

NET OPERATING INCOME (NOI): The income projected for an income-producing property after deducting losses for vacancy, collection and operating expenses.

NET PROCEEDS: The cash received after paying all liens and expenses.

NET RENTABLE AREA:

NET RENTABLE AREA, OFFICE SPACE – The net rentable area of a multiple tenancy floor is the sum of all rentable areas on that floor. The rentable area of an office on a multiple tenancy floor is computed by measuring to the inside finish or permanent outer building walls, to the office side of corridors, and/or other permanent partitions, and to the center of partitions that separate the premises from adjoining rentable areas. No deductions are made for columns and projections necessary to the building. (Simple Version: "Gross



building square footage minus the elevator, core, flues, pipe shafts, vertical ducts, balconies and stairwells.”

FULL FLOOR RENTABLE AREA, OFFICE SPACE – The rentable area of a single tenancy floor is computed by measuring to the inside finish of permanent building walls. Rentable area of a single tenancy floor includes all areas within outside walls, less stairs, elevator shafts, flues, tacks, pipe shafts, and vertical ducts with their enclosing walls. Toilets, air conditioning rooms, fan rooms, janitors’ closets, and electrical closets within and exclusively servicing only that floor are included in rentable area. No deductions are made for columns and projections necessary to the building.

STORE AREAS – Measured from the building line in the case of street frontages, and from the inner surface of other outer building walls and from the inner surface of corridor and other permanent partitions from adjoining rentable areas. No deduction should be made for vestibules inside the building line or for columns or projection necessary to the building. No addition should be made for bay windows extending outside the building lines. If the rentable area is entirely inside the building line, measure from the inner surface of the building walls and from the inner surface of the corridor and other permanent partitions and to the center of partitions that separate the premises from adjoining rentable areas. No deduction should be made for columns, projections, or footing stones necessary to the building.

BASEMENT AREA – If the rentable area extends beyond the building line under the sidewalk, measure from the curtain wall or finished surface of the retaining wall and from the inner surface of corridor and other permanent partitions and to the center of partitions that separate the premises from adjoining rentable areas. If the rentable area is entirely inside the building line, measure from the inner surface of building walls and from the inner surface of corridor and other permanent partitions and to the center of partitions that separate the premises from adjoining rentable areas. No deduction should be made for columns, projections, or footing stones necessary to the building.

NET TO THE SELLER: Unless otherwise specified, this means only less real estate commission. Escrow fees, title insurance policy, etc. are assumed to be per county custom.

NET SPENDABLE: The cash remaining from the gross income after deducting operating expenses, principal and interest payment, and income taxes.

NET WORTH: In a financial statement, total assets less total liabilities = net worth (TA-TL = NW)

NEUTRAL DEPOSITORY: an escrow business conducted by someone who is a licensed escrow holder.

NEW BASIS: Basis of the new property in the hands of the new owner after acquisition of the property through purchase or exchange. Old basis plus loan assumed plus cash and/or boot paid plus recognized gain minus cash received minus boot received. See also “Basis, New Adjusted”.

NO-CHOICE RULE: If a real estate transaction qualifies as an exchange, it must be treated as such. An exchanger who qualified for the 1031 tax-deferred exchange has “no choice” - they can not recognize the gain or loss.

NO-LOSS RULE: If a real estate transaction qualifies as an exchange, “no loss” can be recognized.



NOMINAL INTEREST RATE: The stated interest rate in a note or contract, which may differ from the true or effective interest rate, especially if the lender discounts the loan and advances less than the full amount.

NON-CONFORMING USE: A use of property that is permitted to continue after a zoning ordinance prohibiting it has been established for the area.

NON-CUMULATIVE ZONING: Zoning that allows only the stated use and not more restrictive uses.

NON-DISTURBANCE AGREEMENT: An agreement between a tenant and a lender stating that, as long as the tenant is not in default under the terms of his lease, the lender will not disturb/interfere with the lease and the tenant's use of the leased premises, even if the borrower/lessor defaults in his repayment of the loan and the lender forecloses on the property. A Non-Disturbance Agreement is sometimes also called a "Right of Quiet Enjoyment" statement.

NON-INSTITUTIONAL BUILDING: (See Entrepreneurial Building) Note: IRS also includes cash asboot; however, exchanges keep cash separate from other boot in order to keep track of it.

NON-JUDICIAL FORECLOSURE: The process of selling real property under a power of sale in a mortgage or deed of trust that is in default. One disadvantage is that the lender cannot obtain a deficiency judgment. Also, some title insurance companies are reluctant to issue a policy unless a court has judicially foreclosed the mortgagor's interest.

NOTE: A document signed by the borrower of a loan and stating the loan amount, the interest rate, the time and method of repayment and the obligation to repay. The note serves as evidence of the debt. When secured by a mortgage, it is called a mortgage note, and the mortgagee is named as the payee. In a trust deed, the note is usually made payable to the bearer or holder. The note may also contain some of the same provisions as in the mortgage or trust deed document, such as prepayment or acceleration.

NOTICE: Information about or warning of something. Notice may be by personal observation or by written or oral message from another person.

NOTICE OF CESSATION: A notice that gives subcontractors thirty days and prime contractors sixty days to file liens from the date of cessation of work.

NOTICE OF COMPLETION: A document recorded to give constructive notice that a building job has been completed.

NOTICE OF DEFAULT: A notice to a defaulting party announcing that a default has occurred. The defaulting party is usually provided a grace period during which to cure the default. Notices of default are frequently provided for in contracts for deed and mortgages and are sometimes required by operation of law.

NOTICE OF NON-RESPONSIBILITY: A legal notice designed to relieve a property owner of responsibility for the cost of improvements ordered by another person (such as a tenant). The owner usually gives notice that he or she will not be responsible for the work done by posting notice in some conspicuous place on the property, and by recording a verified copy in the public records.



NOTICE OF TRUSTEE'S SALE: Notice given, and published, that a trustee's sale will be held to sell a property to satisfy a debt.

NOTICE TO PAY RENT OR QUIT: A 3-day notice required by law before a tenant, delinquent in rental payments, may be evicted by an unlawful detainer court action.

NOVATION: The substitution by agreement of a new obligation for an existing one or substituting new parties to an existing obligation.

NUISANCE: That which annoys and disturbs one in possession of his or her property, rendering its ordinary use physically uncomfortable.

NUNCUPATIVE WILL: An oral will declared by the testator in his or her final illness, made before witnesses and afterward reduced to writing.

OBEDIENCE: The fiduciary relationship obligates the agent to act in good faith at all times, obeying the principal's instructions in accordance with the contract. However, that obedience is not absolute. The agent may not obey instructions that are unlawful or unethical. Because illegal acts do not serve the principal's best interests, obeying such instructions violates the broker's duty of loyalty. On the other hand, an agent who exceeds the authority assigned in the contract will be liable for any losses that the principal suffers as a result.

OBSOLESCENCE: Lessening of value due to being out of date (obsolete) as a result of changes in design and use; an element of depreciation. Obsolescence may be functional or economic.

OCCUPANCY PERMIT: A permit issued by the appropriate local governing body to establish that the property is suitable for habitation by meeting certain safety and health standards.

OFFER: A promise made by one party requesting something in exchange for that promise. The offer is made with the intention that the offeror will be bound to the terms if the offer is accepted. The terms of the offer must be definite and specific and must be communicated to the offeree.

OFFER AND ACCEPTANCE: Two essential components of a valid contract; a "meeting of the minds."

OFFEREE: The party receiving an offer.

OFFEROR: The party making an offer.

OFFSET CORE: A building in which the core is located midway between each side and center.

OFF-SITE IMPROVEMENTS: Improvements, which add to the usefulness (utility) of the site but are not located directly on it. Examples: streets, curbs, drainage, sidewalks, lighting, etc.

OFF SET STATEMENT: Buyer's request for written verification (1) from tenant of terms and conditions of tenancy (amount of rent, terms of lease, if any, security deposit, if any, etc.) (2) from borrower and lender on condition of existing loan as to unpaid balance, interest, maturity date, etc.

OFF THE FLOOR TOILET: A modern toilet that allows easier floor cleaning and installation in renovations.



OLD BASIS: Adjusted cost basis of the property being exchanged. See also "Basis, Old Adjusted."

OPEN END MORTGAGE: One which provides for an increase in the unpaid balance in order to advance additional loan funds to the borrower up to a maximum dollar amount, the full loan being secured by the same original mortgage.

OPEN HOUSE: The common real estate practice of showing listed properties to the brokerage community during established hours.

OPEN LISTING: A listing given to any number of brokers who can work simultaneously to sell or lease the owner's property. The first broker to secure a buyer or tenant who is ready, willing and able to purchase or lease at the terms of the listing earns the commission. In the case of a sale, the seller is not obligated to notify any of the brokers that the property has been sold. Unlike an exclusive listing, an open listing need not contain a definite termination date. The listing terminates after a reasonable time, usually whatever is customary in the community. Either party can, in good faith, terminate the agency at will.

OPERATING COVENANT: An agreement between an owner/operator of specified realty improvements and a developer, lender or other interested party that the owner/operator will operate his business in a particular location for a specified period of time. Often an operating covenant will be structured in a manner such that the operator is required to operate as a specific company for a certain minimum period, followed by another minimum period in which the operator agrees to operate a similar business within the same premises but is not required to use the same name as in the initial time period. An example of an operating covenant can be seen in most regional shopping centers where the major tenants own their own pads and execute operating covenants, agreeing to operate for a certain minimum number of years, to enable the developer to gain the financing necessary to build the satellite stores, common areas and other realty improvements required for the successful operation of the shopping center.

OPERATING EXPENSES: Those recurring expenses that are essential to the continuous operation and maintenance of a property. Operating expenses are generally divided into the following categories: fixed expenses such as real property taxes and building insurance; variable costs such as utilities, payroll, administration and property management fees; and reserves for replacement. Included can also be amortization of capital improvements, which are necessary or required for the most efficient operation of the building or to meet certain code costs. Operating expenses do not include items such as mortgage payments, capital expenditures and depreciation.

OPINION OF TITLE: An opinion of the marketability of a title given by an attorney based on the abstract of title.

OPPORTUNITY COST: Earnings that may be available on alternative investments.

OPTION: A contractual agreement giving one party the privilege of demanding, within a specified time, the carrying out of a transaction upon stipulated terms. Examples: option to renew, to expand, to purchase or to cancel.

OPTION TERM: The stipulated time, in accordance with the option agreement, in which the optionee can exercise his rights under the agreement.

ORDINANCE: A statute enacted by the legislative department of a city government.



ORDINARY INCOME: Taxable income other than capital gains income, subject to the full graduated tax rates.

ORIGINAL BASIS: The sum of the purchase price of a property plus buying expenses on acquisition.

'OR MORE' CLAUSE: A clause in a promissory note that allows a borrower to pay it off early with no penalty.

OSTENSIBLE AGENCY: A form of implied agency relationship created by the actions of the parties involved rather than by written agreement or document.

OTHER INCOME: Refers to income other than rent, such as vending machines, storage or parking space income, etc.

OWNER OCCUPIED: A property where the owner physically occupies the property.

OWNER'S TITLE INSURANCE: An insurance policy protecting the buyer for the amount of the purchase price in the event of a future title dispute.

OWNERSHIP: The right to use, possess, enjoy, transfer and dispose of a thing to the exclusion of all others.

OWNERSHIP COST: The cost to the owner to own the building, service existing debt, or receive a return on his equity. Also included would be costs of capital improvements, repair and upkeep, which would not be considered standard operating costs.

PACKAGE AIR CONDITIONING UNIT: A complete heating/cooling or cooling only system factory assembled in one housing designed for rooftop installation. Cooling is electric; heating may be gas or electric. Most acceptable use of electric heating is a heat pump; electric resistance heat in any form seldom satisfies Title 24 requirements in the State of California.

PACKAGE LOAN: A loan on real property that can be secured by land, structure, fixtures and other personal property.

PAD TRANSFORMER SERVICE: Three separate "pot" transformers of large size, on the ground.

PALLET: A wooden, plastic or metal movable platform that supports goods while they are being transported by a lift truck.

PAR: The face value of a bond or security.

PARCEL: Any area of land contained with one description.

PAROLE EVIDENCE: Oral or written negotiations made prior to a dispute about an executed contract.

PAROLE EVIDENCE RULE: A rule of evidence providing that a written agreement is the final expression of the agreement of the parties, not to be modified by oral or written negotiations.



PARTIALLY AMORTIZED INSTALLMENT NOTE: A promissory note with a repayment schedule that is not sufficient to amortize the loan over its term.

PARTIAL RECONVEYANCE DEED: A deed used to reconvey a portion of land encumbered by a blanket mortgage or trust deed.

PARTIAL RELEASE CLAUSE: A clause in a mortgage or trust deed which provides for release of part of the property from the mortgage or trust deed upon part payment of all or part of the debt.

PARTIAL ZONING: Zoning that does not consider its effect on other areas.

PARTICIPATION LOAN: As a concession for making the loan on a commercial property the lender is given some portion of the ownership which allows him to participate in the profits.

PARTITION: Co-tenants who wish to terminate their co-ownership may file an action in court to partition the property. Partition is a legal way to dissolve the relationship when the parties do not voluntarily agree to its termination. If the court determines that the land cannot be divided physically into separate parcels without destroying its value, the court will order the real estate sold. The proceeds of the sale will then be divided among the co-owners according to their fractional interests.

PARTITIONING: The divisions between offices, separate office suites, tenant areas and corridors.

PARTNERSHIP: An association of two or more individuals who carry on a continuing business for profit as co-owners. Under the law a partnership is regarded as a group of individuals rather than as a single entity.

PARTY WALL: A wall that is located on or at a boundary line between two adjoining parcels of land and is used or is intended to be used by the owners of both properties.

PARTY WALL EASEMENT: A party wall can be an exterior wall of a building that straddles the boundary line between two lots, or it can be a commonly shared partition wall between two connected properties. Each lot owner owns the half of the wall on his or her lot, and each has an appurtenant easement in the other half of the wall. A written party wall agreement must be used to create the easement rights. Expenses to build and maintain the wall are usually shared. A party driveway shared by and partly on the land of adjoining owners must also be created by written agreement, specifying responsibility for expenses.

PASSIVE INCOME: Income generated when a person is not active in a business or occupation. Examples of situations where passive income is generated include limited partnerships, or rental income remaining after allowable deductions.

PASSIVE LOSSES: Losses left over when deductions for annual operating expenses, loan interest, and depreciation exceed annual rents. For tax purposes, passive losses can only be used to offset passive income.

PATENT DEED: A deed given by the government to a private individual as evidence of title transfer from the government to the private person.

PATENT DEFECT: A defect that is obvious from a reasonable inspection of a property.



PAYEE: The person to whom a debt instrument, such as a check or promissory note, is made payable.

PAYMENT CAP: The limit on the amount the monthly payment can be increased on an adjustable rate mortgage when the interest rate is adjusted.

PAYOR: The debtor on a promissory note or the party who makes payment to another.

PENSION FUNDS: Pension funds usually have large amounts of money available for investment. Because of the comparatively high yields and low risks offered by mortgages, pension funds have begun to participate actively in financing real estate projects. Most real estate activity for pension funds is handled through mortgage bankers and mortgage brokers.

PERCENTAGE LEASE: A lease, commonly used for commercial property, whose rental is based on the tenant's gross sales at the premises; it usually stipulates a base monthly rental plus a percentage of any gross sales above a certain amount.

PERMANENT LOAN CLOSING: The execution of final loan documents by the borrowers, followed by the distribution of loan proceeds to the interim lender, tax authorities, any lien holder, and the borrower upon approval by the lender and the title insurance company of all loan documents and the recording of the Deed of Trust and other recordable security documents in the office of the County Recorder of the county in which the property to be taken as security is located.

PERSONAL PROPERTY: Things that are tangible and movable; property that is not classified as real property, such as chattels. Title to personal property is transferred by way of a bill of sale, as contrasted with a deed for real property. Items of personal property frequently become the object of dispute between buyer and seller, most often due to whether an item is considered a fixture, or due to the seller's attempt to substitute a similar item. Some buyers insert a clause in their purchase contract to the effect that the buyer will get the fixtures "as currently installed and used in the premises." A tree is real property while rooted in the ground; once severed, it becomes personal property; when the resulting lumber is used to construct a building, it once again becomes a fixture or real property.

PHYSICAL DETERIORATION: A reduction in a property's value resulting from a decline in physical condition; can be caused by action of the elements or by ordinary wear and tear.

PHYSICAL INDICATION OF VALUE: A method in which a value estimate is derived by estimating the replacement cost of the improvements, deducting there from the estimated depreciation, then adding the value of the land. (Also called the Cost Approach).

PIGGYBACK LOANS: A loan divided into two parts with one lender taking a secondary security position.

PLANNING COMMISSION: A local government agency that plans proper physical growth of a community and recommends zoning ordinances and other laws for that purpose.

PLANS AND SPECIFICATIONS: The plans include all drawings pertaining to the property under consideration, such as building drawings, mechanical drawings, electrical drawings, etc. The specifications are written instructions to the builder containing all the information pertaining to the dimensions, materials, workmanship, style, fabrication, colors, and finishes which supplement the details appearing on the working drawing.



PLAT MAP: A map dividing a parcel of land into lots, as in subdivision. A plat book contains the plat maps for a given area.

PLEDGE: The depositing of personal property (i.e. stock bonds) by a debtor with a creditor as security for a debt.

PLOT PLAN: A plan showing the layout of the improvements on the site, including their location, dimensions, parking areas, landscaping, etc.

PLOTTAGE OR ASSEMBLAGE: Putting several smaller, less valuable parcels together under one ownership to increase value of total property.

POCKET TO POCKET LEASE: A lease transaction wherein both the lessor and lessee are usually the same person or company but operating through different entities, and wherein the lease payment exactly meets an obligation of the lessor. As an example, Investor A owns an industrial building and a manufacturing company, called Company B. Investor A leases his building to Company B for the tax benefits involved and sets the rent at the total of his expenses in operating the building (taxes, insurance, maintenance, replacement reserves, etc.). The term "pocket to pocket" is used to connote moving the rent payment from one pocket to another and is sometimes also known as a "lease of convenience".

POINT OF BEGINNING (POB): In a metes and bounds legal description, the starting point of the survey, situated in one corner of the parcel; all metes and bounds descriptions must follow the boundaries of the parcel back to the point of beginning.

POINTS: A point is one percent of the amount of the loan, paid to the lender at the time the loan is made, in order to obtain the loan.

POLICE POWER: The inherent right of the state to pass laws, within lawful limits, that promote the order, safety, health, morals and general welfare of its citizens. This right is the basis of zoning, the official map, and building codes.

PORTFOLIO LOAN: A loan originated and maintained by the lender and not sold in the secondary mortgage market.

POTENTIALLY RESPONSIBLE PARTY (PRP): Any individual or company that is potentially responsible for or has contributed to a spill or other contamination at a Superfund site. Whenever possible, the EPA requires PRPs to clean up sites they have contaminated. (See Superfund)

POWER OF ATTORNEY: A written, notarized and recordable instrument used to appoint an attorney in-fact, a person who may act as the agent on behalf of the writer to the extent indicated in the instrument.

POWER OF SALE: A clause in a trust deed or mortgage that gives the holder the right to sell the property in the event of default by the borrower. The proceeds from the sale are used to pay off the mortgage debt first and any surplus is paid to the mortgagor.

PRE-LEASE: Leasing of premises in a building under construction which is not yet ready for occupancy.



PRELIMINARY NOTICE: Notifies a customer that work to be completed is subject to the lien rights of the contractor. Preliminary notice must be given prior to recording of a mechanic's lien, and should be filed by a contractor at least 20 days prior to the start of work. If notice is given later, liens will cover only the work starting 20 days prior to filing.

PRELIMINARY TITLE REPORT: A title report that is made before a title insurance policy is issued or when escrow is opened. A preliminary report or policy of title insurance reports only on those documents having an effect on the title and should not be relied on as being an abstract. An abstract of title, on the other hand, reflects all instruments affecting title from the time of the original grant and also includes a memorandum of each instrument, and makes no attempt to determine which of the documents currently affects record title. The "preliminary" is not a binder or commitment that the title company will thereafter insure the title to the property, although this commitment may be obtained at an added cost.

PREPAID INTEREST: Where the down payment is partly or entirely accepted as prepayment of interest on the purchase money encumbrance. This is taken as a deductible expense by the buyer and ordinary income by the seller. IRS has disallowed prepaid interest of any significance.

PREPAID ITEMS: On a closing statement, items that have been paid in advance by the seller, such as insurance premiums and some real estate taxes, for which he or she must be reimbursed by the buyer.

PREPAYMENT CLAUSE: A clause in a trust deed that allows a lender to collect a certain percentage of a loan as a penalty for an early payoff.

PREPAYMENT PENALTY: The amount set by the creditor as a penalty to the debtor for paying off the debt before it matures; an early-withdrawal charge. The prepayment penalty is charged by the lender to recoup a portion of interest that the lender had planned to earn when the loan was made. It covers the lender for initial costs to set up the loan, to service it and to carry it in the early years of high risk. This punitive device also may represent the loss of income to the lender for the time the mortgage is paid off and the funds remain uncommitted. The reason most lenders are willing to allow prepayment after five years without penalty is that much of the total note's interest has been paid in by that time.

PREPAYMENT PRIVILEGE: A clause in a mortgage that gives the borrower the privilege of paying off part or all of the mortgage debt before it becomes due.

PRESCRIPTION: Acquiring a right in property, usually in the form of an intangible property right such as an easement or right-of-way, by means of adverse use of property that is continuous and uninterrupted for the prescriptive period established by state statute. Use of land is adverse when it is made under a claim or right. Therefore, there is no adverse use if the owner has granted permission, if the user has paid for the use or if the user has admitted that the owner has a superior right in the property. Prescription is often used interchangeably with the term adverse possession, which more strictly refers to the acquiring of title to lands. As in adverse possession, the essential elements are that the prescriptive right be adverse, under claim of right, continuous and uninterrupted, open, notorious and exclusive, with the knowledge and acquiescence of the servient owner, and continuing for the full prescriptive period. By "continuous" is meant that the property is used on a regular basis.

PRESENT WORTH: The discounted present day value of money to be collected in the future.

PRICE: What is paid for something.



PRIMA FACIE: Latin phrase; at first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

PRIMARY LENDERS: Originators of real estate loans, including commercial banks, savings and loan associations and mutual savings banks.

PRIMARY MORTGAGE MARKET: The mortgage market in which loans are originated and consisting of primary lenders.

PRIMARY AND SECONDARY RENTALS: A lease covenant under which a rental is divided into two categories. The primary rental is a fixed amount usually based upon a definite percentage of property value as established at the time of the execution of the lease agreement. The secondary rental, which would be prorated according to the space, which a tenant might occupy in a building, covers the expense of taxes, repairs and insurance, water, heat, etc. The secondary rental agreement achieves the same result as an escalator clause.

PRIME RATE: The minimum interest rate a commercial bank will charge to its largest clients. Prime rates are determined in part by the rate the bank pays for the money they lend to borrowers. Decisions of the Federal Reserve Bank (The Fed) to increase or decrease the supply of money can cause the prime rates banks charge to fluctuate.

PRIME TENANT: When on or more subleases have been made on a property, the original lessee is sometimes referred to as the prime tenant.

PRINCIPAL: Someone who directs or authorizes another to act in his or her place regarding relations with third persons; buyer or seller; the amount of money borrowed; the original amount borrowed.

PRINCIPAL MERIDIAN: The main imaginary line running north and south and crossing a base line at a definite point; used by surveyors for reference in locating and describing land under the rectangular (government) survey system of legal description.

PRINCIPLE PAYMENTS: The total principle payments during the year of all loans either now against the property or being projected against it.

PRIOR APPROPRIATION: A concept of water ownership in which the landowner's right to use available water is based on a government administered permit system.

PRIVATE GRANT: The granting of private property to other private persons.

PRIVATE OFFERING: An offering of sale to no more than 10 persons.

PRIVITY OF CONTRACT: The relationship between contracting parties (i.e., mortgagor to mortgagee or assignee to assignor).

PROBATE: A minimum four-month period during which the Superior Court has jurisdiction over the administration of the estate of a deceased person.

PROBATE SALE: A court-approved sale of the property of a deceased person.



PROCURING CAUSE: That effort which brings about the desired results. Also called predominant efficient cause or the contributing cause.

PROGRESSION: An appraisal principle that states that, between dissimilar properties, the value of the lesser-quality property is favorably affected by the presence of the better-quality property.

PROJECTED OPERATING EXPENSES INCREASE: A “Good Faith” estimate by the owner as to current operating expense increases over a base year, which are billed to the tenant as additional rent.

PROJECTION: An estimate of future performance and/or tax consequences resulting from either no charge of after a particular contemplated transaction.

PROMISSORY NOTE: An unconditional written contract containing a promise to pay a definite amount of money at a definite future time.

PROPERTY: The rights or interests which an owner has in something owned.

PROPERTY BRIEF: Produced by the listing agent, a property brief is simply a flier about the property pointing out attractive features. It usually contains a photograph and floor plan of the building.

PROPERTY MANAGEMENT: That aspect of the real estate industry devoted to marketing, leasing, managing and maintaining the property of others.

PROPERTY MANAGER: Someone who manages real estate for another person for compensation. Duties include collecting rents, maintaining the property and keeping up all accounting.

PRO RATA SHARE: The ratio between the tenant’s percent of occupancy of the rentable square footage of the building and the entire building’s rentable area.

PRORATION: The division and distribution of expenses and/or income between the buyer and seller of property as of the date of closing or settlement.

PROTECTIVE COVENANTS: (restrictive covenants) A contract to protect and preserve the character and integrity of the area covered by the covenant (use, size, kind, set-backs, architectural, etc.) Applied individually as sold or recorded and applied simultaneously to all property in a development.

P-TRAP: A drainage plumbing pipe in the approximate shape of a “p” laid on its face, providing a trap that prevents sewer gases from entering the habitable space.

PUBLIC DEDICATION: When private property is intended for public use, it may be acquired in this manner.

PUBLIC GRANT: The transfer of title by the government to a private individual.

PUFFING: Exaggerated or superlative comments or opinions not made as representations of fact, thus not grounds for misrepresentation. One test used is whether a reasonable person would have relied on the statement. Example: “This office has a terrific view,” would be considered



puffing; whereas, “this office has a terrific view of the lake” would be considered misrepresentation because the windows all face away from the lake.

PURCHASE MONEY: Deed of trust, mortgage of land contract given to the seller to secure payment of the balance of the purchase price or a deed of trust, mortgage, or land contract.

PURCHASE-MONEY MORTGAGE: A mortgage given as part of the buyer's consideration for the purchase of real property, and delivered at the same time that the real property is transferred as a simultaneous part of the transaction. It is commonly a mortgage taken back by a seller from a purchaser in lieu of purchase money. A purchase-money mortgage is usually used to fill a gap between the buyer's down payment and a new first mortgage or mortgage assumed, as when the buyer pays 10 percent in cash, gets an 80 percent first mortgage from a bank, and then the seller takes back a purchase-money second mortgage for the remaining 10 percent.

PURCHASE MONEY TRUST DEED: A trust deed which is given by the buyer (taken back by the seller) as part or all of the purchase price of a property.

PYRAMIDING: An investment program designed to increase the investor's equities at the fastest rate possible. Leverage, depreciation, appreciation, inflation, and income tax regulations are used to maximum advantage in the acquisition, holding, disposal of and/or exchange of investments for other investments. The process of acquiring properties by refinancing properties already owned and investing the loan proceeds in additional properties.

QUASI CONTRACT: A contract implied by law, as a matter of equity, when no actual contract exists.

QUIET ENJOYMENT: An implied warranty that the landlord will not interfere with the tenant's reasonable use and enjoyment of a leased property.

QUIET TITLE ACTION: A suit brought for the purpose of establishing clear title to real property or to remove a cloud on the title.

QUIT CLAIM DEED: A deed used to transfer any interest in real property which the grantor may have. It contains no warranties or obligations of any kind.

RAFTER: A roof structural support system using “2 by” wood components that are nailed together (as opposed to trusses that are connected using press-on metal plates).

RANGE: A land description used in the U.S. government survey system consisting of a strip of land located every six miles east and west of each principal meridian.

RATE: The percentage of interest charged on the principal.

RATE CAP: The limit on the amount the interest rate can be increased at each adjustment period in an adjustable rate loan. The cap may also set the maximum interest rate that can be charged during the life of the loan.

RATIFICATION: The approval of a previously authorized act, performed on behalf of a person, which makes the act valid and legally binding.

RATIFIED: Approved.



RATIOS: (Office)

Rentable Usable Ratio (R/U Ratio) = Rentable Area ÷ Usable Area

Rentable Area = Usable x R/U Ratio

Usable Area = Rentable Area ÷ R/U Ratio

READY, WILLING AND ABLE BUYER: A buyer who is prepared to buy property on the seller's terms and is ready to take positive steps to consummate the transaction.

REAL ESTATE: See REAL PROPERTY.

REAL ESTATE AGENT: Someone licensed by the Department of Real Estate, holding either a broker or salesperson license, who negotiates sales for other people.

REAL ESTATE BROKER: Someone holding a broker license and permitted by law to employ those holding a salesperson license, who may negotiate sales for other people.

REAL ESTATE COMMISSIONER: The Real Estate Commissioner is appointed by the governor and serves at the governor's discretion. The commissioner determines administrative policy and enforces that policy in the best interests of those dealing with real estate licensees. The person selected as commissioner must have been a practicing real estate broker in California for five years, or otherwise engaged in real estate activity for five of the past ten years.

REAL ESTATE INVESTMENT TRUST (REIT): A way investors with a small amount of capital can pool their resources to buy real estate. A method of pooling investment money using the trust form of ownership. In the 1960s Congress provided favored tax treatment for certain business trusts by exempting from corporate tax certain qualified REITs that invest at least 75 percent of their assets in real estate and that distribute 95 percent or more of their annual real estate ordinary income to their investors. As an alternative to the partnership or corporate methods of investing in real estate, the REIT offers some of the flow-through tax advantages of a partnership or syndication while retaining many of the attributes and advantages of a corporate operation.

REAL ESTATE LAW: The law that affects the licensing and conduct of real estate agents.

REAL ESTATE OWNED (REO): A term used by lenders to refer to properties acquired through foreclosure.

REALITY OF CONSENT: A contract that complies with all of the basic requirements may still be either void or voidable. This is because of the doctrine of reality of consent. A contract must be entered into as the free and voluntary act of each party. Each party must be able to make a prudent and knowledgeable decision without undue influence. A mistake, misrepresentation, fraud, undue influence or duress would deprive a person of that ability. If any of these circumstances is present, the contract is voidable by the injured party. If the other party were to sue for breach, the injured party could use lack of voluntary assent as a defense.

REALIZED GAIN (Indicated Gain): Fair market value minus adjusted cost basis of the property; potential.

REAL PROPERTY: The earth's surface, the air above and the ground below, as well as all appurtenances to the land including buildings, structures, fixtures, fences and improvements erected upon or affixed to the same, excluding growing crops.



REAL PROPERTY SECURITIES DEALER: A broker who sells an existing trust deed and guarantees a return on it.

REALTOR: A real estate broker holding active membership in a real estate board affiliated with the National Association of Real Estate Boards. An important element of this Association is the Realtor's Code of Ethics, which is used to ensure that the broker acts in the best interests of both his or her principal and any third parties.

REBATE LAW: Law that prohibits escrow and title insurance companies from giving rebates or favorable treatment as consideration for the referral of business.

RECAPTURE: The billing to tenants of their pro rata share of increased operating expenses after those expenses have been incurred and paid for by the landlord.

RECASTING: The process of rewriting existing loans, especially where there is a default. The term and interest rate may be adjusted to take pressure off the borrower.

RECEIVER: An independent party appointed by a court to impartially receive, preserve and manage property that is involved in litigation, pending final disposition of the matter before the court.

RECESSED DOCK OR WELL: A below grade truck dock recessed into a building.

RECIPROCAL EASEMENT AGREEMENT: An agreement among the owners (and in some cases major tenants) within a shopping center regarding reciprocal parking and use easements/rights to be enjoyed by owners, tenants, and customers/invitees of the center.

RECOGNIZED GAIN: That portion of the indicated gain which has been recognized by IRS as taxable in this particular transaction. The lesser of (1) indicated gain (2) total other properties received in the exchange.

RECOGNIZED NET LOAN RELIEF: In an exchange loan relieved minus loan assumed minus cash paid, or net loan relief minus cash paid.

RECONCILIATION: Sometimes called correlation, this is the adjustment process of weighing results of all three appraisal methods to arrive at a final estimate of the subject property's market value.

RECONVEYANCE DEED: Conveys title to property from a trustee back to the borrower (trustor) upon payment in full of the debt secured by the trust deed.

RECORDING: The noting in a public office of the details of a legal document – such as a deed, mortgage, contract for sale, option or assignment – affecting the title to real estate. When such an instrument is properly recorded, it is considered to be a matter of public record. Legally, that means that all subsequent purchasers are deemed to have constructive knowledge of that information.

RECOURSE: By signing a note "without recourse" an endorser signifies that while he is transferring his property in the instrument he does not assume the responsibility of an endorser.

RECTANGULAR SURVEY SYSTEM: Also referred to as government survey system, it provides for surveying and describing land by reference to principal meridians and base lines.



RECURRING COSTS: Expenses that the buyer can expect again, year after year, such as property taxes, fire insurance and interest.

RED FLAG: A visual sign or indication of a defect. Something that would warn a reasonably observant person of a potential problem requiring further investigation.

REDLINING: The use of a property's location to deny financing. The usual justification for redlining is that the lender wants to limit the risks in an area that is deteriorating. The lender discriminates against a whole class of risks rather than distinguishing among individual risks.

REFINANCE: To obtain a new loan to pay off an existing loan; to pay off one loan with the proceeds from another. Properties are frequently refinanced when interest rates drop and/or the property has appreciated in value. Sometimes, a buyer will purchase a property by way of a contract for deed with the expectation of either selling the property before the balance under the contract for deed becomes due or refinancing at better terms and interest rates than exist at the time the agreement of sale is entered into.

REFORMATION: An action by a court to revise a contract to read as it was intended by the parties to read rather than as stated.

REGRESSION: An appraisal principle that states that, between dissimilar properties, the value of the better-quality property is affected adversely by the presence of the lesser-quality property.

REINSTATE: To bring something back to its prior position, as in restoring a defaulted loan to current status.

REJECTION: Proposing any deviation from the terms of an offer constitutes a rejection of the original offer and becomes a new offer.

RELEASE CLAUSE: A statement contained within the loan documents allowing the borrower to obtain the release of either a specified parcel or a number of non-specified parcels within a specified area from the lender's lien upon payment of a certain sum of money at a certain time or upon the performance of some other act, as agreed upon by lender and borrower prior to execution of the loan documents. An example of the fashion in which a release clause works might be found in a situation wherein a developer controls a fifteen-acre parcel of land suitable for a shopping center but costs and other considerations prevent him from developing the entire 15 acre parcel at one time. Because he seeks the maximum dollars in his loan, the lender requires that a lien be placed over the entire 15 acres even though the first development phase covers only 10 acres. A release clause included within the loan documents would allow the borrower to obtain release of the remaining 5 acres from the lien of the lender who made the loan on the first phase of development upon either the payment of a certain sum to the lender (as principal reduction) or the execution of some other specified act by the borrower.

RELICTION: Occurs when land that has been covered by water is exposed by the permanent withdrawal of water.

REMAINDER ESTATE: A future interest in real estate created at the same time and by the same instrument as another estate, and limited to arise immediately upon the termination of the prior estate. For example, Hoe Phigg owns a property in fee simple and conveys the property "to Barry



Clink and, upon Clink's death, to Cora Quibb and her heirs." Cora Quibb has a remainder estate, which is vested because the estate automatically passes to Cora Quibb and her heirs upon the death of Barry Clink.

REMAINDER INTEREST: The remnant of an estate that has been conveyed to take effect and be enjoyed after the termination of a prior estate, such as when an owner conveys a life estate to one party and the remainder to another.

RENEWAL OPTION: A lease covenant giving the lessee the right to extend the lease for an additional period of years on specified terms.

RENT: A fixed, periodic payment made by a tenant of a property to the owner for possession and use, usually by prior agreement of the parties.

CONTRACT RENT – The rent designated in a lease. The term describes the actual rent paid.

ECONOMIC RENT – The reasonable rental expectancy if the property were available for lease; the rent being paid for comparable space.

PERCENTAGE RENT – A lease provision which usually states that a percentage of the tenant's gross sales will constitute a stipulated rental. A minimum rent is usually included although a straight percentage lease is occasionally encountered.

RENTABLE AREA: The rentable area includes the usable area plus a prorata portion of common areas on the entire office floor excluding vertical shafts, such as elevators, stairs, mechanical risers, etc. The rentable area of a building is fixed for the like of the building and is not affected by changes in corridor size or configuration.

RENTAL INCOME: The result when vacancies (uncollected rent) is subtracted from gross scheduled income.

RENTAL INCREASE/CPI: Changes in the base rent during the term of the lease. Not to be confused with operating expense, recapture increase or expense billings. Usually tied to the C.P.I. (Consumer Price Index).

RENTAL REQUIREMENT: A condition in the commitment letter which stipulates that a specific number of square feet or a specific number of units must be rented at a specified minimum rental rate if the entire loan amount is to be funded.

RENT UP: A requirement of a lender that a developer lease a stated amount of space in a building as a prerequisite to a permanent lender "taking out" the interim lender.

RENUNCIATION: An act or instance of relinquishing, abandoning, repudiating or sacrificing something, as a right, title, person, etc.

REPAIR or CORRECTIVE MAINTENANCE: Involves the actual repairs that keep the building's equipment, utility and amenities functioning. Repairing a boiler, leaky faucet, or air conditioning unit are acts of corrective maintenance.

REPLACEMENT COST: The cost of replacing improvements with modern materials and techniques.



REPRODUCTION COST: Cost of replacing the improvements on a property minus allowance for depreciation. Replacement cost.

REQUEST FOR NOTICE: A notice that is sent, upon request, to any parties interested in a trust deed, informing them of a default.

RESCISSION: Legal action taken to cancel, terminate or annul a contract either by mutual consent of the parties or by one party when the other party has breached a contract. Contracts may be rescinded due to mistake, fraud or misrepresentation.

RESERVE FUND: Monies a lender will often require a borrower to set aside as a cushion of capital for future payment of items such as taxes, insurance, furniture replacement and deferred maintenance. Sometimes a reserve fund is referred to as an impound account or customer's trust fund. Replacement reserves should be maintained especially when the owner is installing items having a short life expectancy - for example, appliances, furniture or carpeting in a furnished apartment.

RESIDENTIAL RENTAL PROPERTY: Property from which 80 percent or more of the gross rental income is from dwelling units.

RESTRICTIVE COVENANTS: A clause in a deed that limits the way the real estate ownership may be used.

RETAINING WALL: A wall built to hold back or support a bank of earth.

RETALIATORY EVICTION: An act whereby a landlord evicts a tenant in response to some complaint made by the tenant.

RETROACTIVE LIABILITY: A liability is not limited to the current owner of a property, but includes people who have previously owned the property.

RETURN ON INVESTMENT: The net annual income divided by the original cash investment equals a percentage return on investment.

REVERSE LEVERAGE: A situation wherein the cost of borrowed funds exceeds the return provided by the investment. It is illegal for a landlord to decrease services, increase rent or evict the tenant within 180 days of such a complaint.

REVERSION: The right of future possession and use by the grantor of a life estate.

REVERSIONARY RIGHT: The lessor (landlord) grants the right of possession to the lessee (tenant) but retains the right to retake possession after the lease's term has expired.

REVOCAION: An offeree may fail to accept an offer before it expires. The offeror may revoke the offer at any time before receiving the acceptance. This revocation must be communicated to the offeree by the offeror, either directly or through the parties' agents.

REVOKE: Recall and make void.

RIDER: An addition, amendment, or endorsement to a document.



RIGHT OF CORRELATIVE USER: The right of a land owner to the reasonable use of underground percolating water.

RIGHT OF FIRST REFUSAL: The right to the first opportunity to lease or purchase real property. For example, a tenant may have the right of first refusal if the building is going to be marketed for sale.

RIGHT OF PRIOR APPROPRIATION: A water rights concept in California (and other states) that the first user of riparian water obtains priority over subsequent users.

RIGHT OF SURVIVORSHIP: The distinctive characteristics of a joint tenancy (also tenancy by entirety) by which the surviving joint tenant(s) succeeds to all right, title and interest of the deceased joint tenant without the need for probate proceedings.

RIGHT-OF-WAY: An easement giving a person the right to pass over, construct a roadway over, or use as a pathway, the land of another without actually transferring ownership.

RIPARIAN RIGHTS: The rights of a landowner whose land is next to a natural watercourse to reasonable use of whatever water flows past the property provided such use does not injure other riparian owners. Riparian owners own to the middle of a non-navigable river bordering the property line and to the low water mark of a navigable watercourse or lake.

ROLLED ROOFING: An asphalt roofing material that is manufactured in rolls with granules on one side. Asphalt roofing is a relatively inexpensive and short-lived product.

ROLLOVER MORTGAGE: A loan that allows the rewriting of a new loan at the termination of a prior loan.

ROOF DECKING: The under support material for attaching shingles and other materials to the roof. Typically wood.

ROUTINE MAINTENANCE: Includes such day-to-day duties as cleaning common areas, performing minor carpentry and plumbing adjustments and providing regularly schedule upkeep of heating, air conditioning and landscaping.

SAFETY CLAUSE: A safety clause may be contained in a listing. It provides that a broker is still entitled to a commission for a set period of time after the listing has expired if the property is sold to a prospect of the broker introduced to the property during the period of the listing.

SALE-LEASEBACK: A real estate transaction wherein an investor acquires title by purchase and gives contract possession by leasehold to the grantor.

SALES COMPARISON APPROACH: The process of estimating the value of a property by examining and comparing actual sales of comparable properties.

SALES CONTRACT: A real estate sales contract contains the complete agreement between a buyer of a parcel of real estate and the seller. Depending on the area, this agreement may be known as an offer to purchase, a contract of purchase and sale, a purchase agreement, an earnest money agreement or a deposit receipt.

SALESPERSON: Any person who, for a compensation or valuable consideration, is employed either directly or indirectly by a licensed real estate broker to perform certain acts: to sell, offer to



sell, buy, offer to buy; negotiate the purchase, sale or exchange of real estate; lease, rent or offer to rent any real estate, or to negotiate leases thereof or improvements thereon.

SANDWICH LEASE: Intermediary instrument in three or more leases on the same property, i.e., A leases to B, B leases to C, C subleases to D; the agreement between B and C would be called a Sandwich Lease. The sandwich party of the lessee of one party and the lessor of another; thus, he or she is neither the fee owner nor the end user of the property.

SATISFACTION OF MORTGAGE: When all mortgage loan payments have been made and the Note has been paid in full, a satisfaction of mortgage (also known as a release of mortgage or mortgage discharge) returns to the mortgagor all interest in the real estate conveyed to the mortgagee by the original recorded mortgage document.

SECONDARY FINANCING: A loan taken out in addition to a first loan; usually obtained from an individual lender.

SECONDARY MORTGAGE MARKET: A market for the purchase and sale of existing mortgages, designed to provide greater liquidity for selling mortgages.

SECOND MORTGAGE: A mortgage that is junior or subordinate to a first mortgage; typically, an additional loan imposed on top of the first mortgage, taken out when the borrower needs more money. Because the risk involved to the lender is greater with the second mortgage, the lender's conditions are usually more stringent, the term is shorter and the interest rate is higher than for the first mortgage.

SECOND TRUST DEED: The evidence of a debt that is recorded after a first trust deed; or a junior trust deed.

SECRET PROFIT: Refers to a broker making an undisclosed profit at the seller's expense; for example, when the broker has an undisclosed relative buy the listed property and then resell it to a buyer whose earlier offer was never presented to the seller.

SECTION: An area of land, as used in the government survey method of land description; a land area of one square mile or 640 acres; 1/36 of township.

SECURITIZATION: The pooling of real estate mortgages and trust deeds to act as collateral for the sale of securities to public and private investors.

SECURITY: Evidence of obligations to pay money or of rights to participate in earnings and distribution of corporate, trust or other property. A security is usually found where an investor subjects his or her money to the risks of an enterprise over which he or she exercises no managerial control.

SECURITY AGREEMENT: The device commonly used to secure a loan on personal property.

SECURITY DEPOSIT: The sum of money, or equivalent, deposited by the lessee with the lessor or a trustee, as guarantee for performance under the lease terms.

SELLER CARRYBACK FINANCING: A sale of real property where the seller receives a portion of the sales price in the form of a promissory note secured by the real property purchased. An extension of credit by the seller.



SELLER'S AGENT: An agent who represents the seller of real property.

SELLER'S PERMIT: Allows a retailer to buy the product at wholesale prices without paying sales tax. The retailer must then collect the proper sales tax from customers and pay it to the State Board of Equalization.

SELLING COSTS: Brokers' commissions plus escrow charges.

SENIOR LOAN: A real estate loan in the first priority position.

SEPARATE PROPERTY: Property owned by husband or wife which is not community property. Property acquired by either prior to marriage. Property acquired by deed, will or gift. Personal injury damages or compensation. Earnings of wife and minor children while living separate from her husband.

SERVICING AGREEMENT: Signed documentation as to who will service the loan.

SERVIENT TENEMENT: The property that is burdened by an easement. If property A has a right-of way across property B, property B is the servient tenement. The servient owner may not use the property in such a way as to interfere with the reasonable use of the dominant owner.

SETBACK: The amount of space local zoning regulations require between a lot line and a building line.

SEVERALTY: Ownership of real property by one person or entity.

SEVERANCE: Changing an item of real estate to personal property by detaching it from the land. Example: cutting down a tree.

SHARED APPRECIATION MORTGAGE (SAM): A mortgage loan in which the lender, in exchange for a loan with a favorable interest rate, participates in the profits (if any) the borrower receives when the property is eventually sold.

SHARED TENANT SERVICES: Services provided by a building to allow tenants to share the costs and benefits of sophisticated telecommunications and other technical services.

SHERIFF'S DEED: A deed given to a buyer when property is sold through court action in order to satisfy a judgment for money or foreclosure of a mortgage.

SHINGLES: Roofing material characterized by short, rectangular sections, nailed to the roof decking in an overlapping pattern. Asphalt shingles are the most common type.

SHORT-FORM LEASE: When either of the parties wishes to record a lease agreement but does not want the rentals and covenants exposed to the public eye, a short-form document is sometimes used which recites the fact that a lease has been made between the parties concerning certain premises for a specified term. It would then stipulate somewhat as follows: "This lease has been made upon the rents, terms, covenants, and conditions contained in a certain collateral agreement or lease between the parties hereto and bearing even date herewith."

SIGNATORY: A signer, or one of the signers, of a document.



SIMPLE INTEREST: Interest computed on the principal balance only and not additionally on unpaid but previously earned interest.

SINGLE AGENCY: The practice of representing either the buyer or the seller but never both in the same transaction. The single-agency broker may be compensated indirectly through an authorized commission split or directly by the principal who employed the agent to represent him or her.

SINKING FUND: A fund aside from the income of property which, with accrued interest, will pay for the replacement of improvements.

SITE: The position, situation or location of a piece of land in a neighborhood.

SITUS: The personal preference of people for one area over another, not necessarily based on objective facts and knowledge.

SLAB: A flat piece of concrete, typically used as a walking surface, but may also serve as a load bearing device in concrete tilt-up construction.

SMART BUILDING: A building which has additional technical capabilities to provide enhanced building management and operating efficiency.

SMOKE VENTS: Vents in roof which open automatically to allow the escape of hot gases and smoke. Used in conjunction with Draft Curtains.

SOFT MONEY LOAN: A loan where credit not cash is extended. Usually by the seller carrying all or part of the financing.

SOLE PROPRIETORSHIP: A method of owning a business in which one person owns the entire business and reports all profits and losses directly on his or her personal income tax return, as contrasted with corporate, joint or partnership ownership. A sole or individual proprietorship is easy to organize and flexible to operate. It is frequently used in real estate brokerage. An individual proprietor may run a brokerage company if he or she has a valid broker's license. The proprietor may use his or her own name or a fictitious name previously registered as required by state law. There is a growing tendency for sole proprietors to incorporate and thus take advantage of certain tax and fringe benefits, such as those provided by pension and profit-sharing plans.

SOLID CORE DOOR: A door where the inner material (core) is made of solid wood. This type door is usually used for doors to the outside.

SPACE PLAN: A plan created by a space planner/interior architect showing locations of tenant improvements and the utilization of the space by the tenant.

SPECIAL AGENT: One authorized by a principal to perform a particular act or transaction, without contemplation of continuity of service as with a general agent. The real estate broker is ordinarily a special agent appointed by the seller to find a ready, willing and able buyer for a particular property. An attorney-in-fact under a limited power of attorney is a special agent.

SPECIAL ASSESSMENT: A tax or levy customarily imposed against only those specific parcels of real estate that will benefit from a proposed public improvement, as opposed to a general tax on the entire community. Because the improvement will enhance the value of the affected



buildings, only those affected owners must pay this special lien. Examples: Sidewalks, parks, recreational facilities, etc.

SPECIAL STUDIES ZONE: A specific area where an investigation is taking place regarding seismic or geologic considerations.

SPECIFIC LIEN: A lien affecting or attaching only to a certain, specific parcel of land or piece of property.

SPECIFIC PERFORMANCE: A doctrine of contract law by which a party is compelled by the court to perform his agreement.

SPENDABLE FROM INVESTMENT: Take home pay from investment. Net Spendable Income.

SPIN OFF EXCHANGE: In a spin-off, a corporation exchanges part of its assets to a new corporation in exchange for stock in the new corporation. This stock is immediately distributed to its shareholders who do not surrender any of their stock in the original corporation.

SPLASH BLOCK: A small, specially designed portable concrete pad. Oriented downhill, splash blocks direct water from rain gutters down drains or under outside hose faucets to flow away from the building.

SPLIT OFF EXCHANGE: Corporation transfers part of its assets to a new corporation in exchange for the stock of the new corporation. This stock is immediately distributed to the shareholders and they, in turn surrender part of their stock in the original corporation.

SPLIT UP EXCHANGE: Corporation is split into two or more corporations.

SPOT ZONING: Zoning of parcels not in conformance with the general zoning of an area.

SPRINKLERS: A fire suppression system designed into many buildings to avoid compartmentalization and to provide additional fire protection.

SQUARE FOOT METHOD: A method of estimating a building's construction, reproduction or replacement costs whereby the structure's square foot floor area is multiplied by an appropriate construction cost per square foot.

STAIR-STEPPED RENT: A rental rate which increases by fixed amount during the period of the lease term.

STANDARD COVERAGE TITLE INSURANCE POLICY: Insures risks against imperfect title (except matters disclosed from search of public records), lack of capacity of parties (forgers, minors, incompetents), lack of authority of parties and lack of delivery of instruments of title.

STANDBY FEE: A sum of money, generally 1% or 2% of the loan amount, which is held by the lender until all the conditions of its commitment letter have been satisfied and the loan is funded. The standby fee is usually returned concurrently with funding the loan. In some cases, a portion or all of the standby fee may be negotiated as a non-refundable standby fee and, in this case, would be retained by the lender as additional interest for making the loan.

STANDBY TAKEOUT COMMITMENT: An agreement by an interim lender to advance funds to take out a construction lender.



STATUTE OF FRAUDS: A state law which requires that certain contracts must be in writing and contain certain essential elements in order to be legally enforceable.

STATUTE OF LIMITATIONS: The law that specifies the time limits in which legal action must be instigated to be enforceable in court. The theory behind the statute of limitations is that there must be some end to the possibility of litigation. It is said that stale witnesses and stale records produce little trust and result in accidental justice, if any.

STATUTORY: Regarding laws created by the enactment of legislation as opposed to law created by court decisions.

STATUTORY LIEN: A lien imposed on property by statute--a tax lien, for example--in contrast to an equitable lien, which arises out of common law.

STATUTORY REDEMPTION: The right of a defaulted property owner to recover the property after its sale by paying the appropriate fees and charges.

STEERING: Illegal practice of only showing clients property in certain areas.

STEP-DOWN LEASE: A lease which provides for a certain rent for an initial period, followed by a decrease in rent over stated periods.

STEP-UP LEASE: A lease which provides for a certain rent for an initial period, followed by an increase in rent over stated periods.

STIGMATIZED PROPERTY: A property that has acquired an undesirable reputation due to an event that occurred on or near it, such as violent crime, gang related activity, illness or personal tragedy.

STOP DATE: Date on a term loan when the balloon payment is due.

STRAIGHT LINE METHOD: A method of depreciation, also called the age life method, that is computed by dividing the adjusted basis of a property by the number of years of estimated remaining useful life. The cost of the property is thus deducted in equal annual installments.

STRAIGHT NOTE: A promissory note evidencing a loan in which payments of interest only are made periodically during the term of the note, with the principal payment due in one lump sum upon maturity. It may also be a note with no payments on either principal or interest until the entire sum is due. A straight note is usually a non-amortized note made for a short term, such as three to five years, and is renewable at the end of the term.

STRICT FORECLOSURE: In a strict foreclosure procedure, after a delinquent borrower has been notified and the proper papers have been filed, the court designates a specific period during which the balance of the default must be paid in full. If the payment is not made, the borrower's equitable and statutory redemption rights are waived and the court awards full legal title to the lender. There is no deficiency judgment in strict foreclosure cases.

SUBAGENT: An agent of a person who is already acting as an agent for a principal. The original agent can delegate authority to a subagent where such delegation is either expressly authorized or customary in the trade.



SUBDIVIDED LANDS ACT: A state law protecting purchasers of property in new subdivisions from fraud, misrepresentation or deceit in the marketing of subdivided property; concerned with financial aspects of a development. A public report is required for subdivisions of five or more parcels.

SUBDIVIDER: One who buys undeveloped land, divides it into smaller, usable lots and sells the lots to potential users.

SUBDIVISION: Any land that is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units or interests. Subdivision refers to any land, whether contiguous or not, if two or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale.

SUBDIVISION MAP ACT: Outlines City and County rules for filing subdivision maps to create subdivisions; concerned with physical aspects of a development.

SUBJECT PROPERTY: A reference to the real property under discussion or under appraisal.

SUBJECT TO: Method of taking over a loan without taking on the responsibility of a deficiency judgment. The grantee takes title but is not responsible for mortgage beyond the value of his equity in the property.

SUBLESSOR – SUBLESSEE – SUBLEASE: Sometimes a tenant is permitted to lease all or part of its interest in the premises to a third party. The original lessee thereby becomes a sublessor. The new tenant is the sublessee. The new agreement between sublessor and sublessee is a sublease. The sublessor retains some reversionary interest. Leases normally contain a clause prohibiting subletting without prior consent of the lessor. The lessee (sublessor) remains directly liable to the lessor for the rent, which is usually paid by the sublessee to the lessee (sublessor) and from it to the lessor. The sublessee does not have a contractual obligation to pay rent to the original lessor.

SUBORDINATION: The act, by a party in the transaction, of taking an inferior position with respect to rights to obtain something of value in a transaction. For example, a lender who subordinates his position to that of a new lender will have rights to the property only after the new lender's debt is fully satisfied. As another example, a land owner who leases his land to a shopping center developer may be required by the first mortgage lender to subordinate his position to that of the first mortgage loan, so that the lender may take not only the improvements but the land upon which they rest in the event of default in the loan.

SUBORDINATION CLAUSE: Clause in mortgage or trust deed providing that it may be secondary to mortgage or trust deed to be recorded later. Also, it can exist in lease designating either lender or tenant as having rights secondary to the other in event of foreclosure of landlord's loan obligation.

SUBROGATION: The substitution of one party for another in a claim, lien or cause of action against others. Subrogation is used by title insurers to acquire from the injured party rights to sue in order to recover any claims they have paid. (Lessees frequently require fire insurance companies to waive subrogation against lessee.)

SUBSTANTIAL COMPLETION: The point in time in the construction of the premises when the landlord has done all the major construction and the premises are in such a condition that the tenant can use them for its intended purposes with only minor work left to be done to fulfill the



landlord's construction obligation. The phrase has no exact meaning and is a common source of disputes and therefore must be defined clearly in a lease.

SUCCESSION: The legal transfer of a person's interest in real and personal property under the laws of descent.

SUIT FOR SPECIFIC PERFORMANCE: If a seller breaches a real estate contract, the buyer may sue for specific performance. The buyer asks the court to force the seller to go through with the sale and convey the property as previously agreed. The buyer may choose to sue for damages, in which case the buyer asks that the seller pay for costs and hardships suffered as a result of the seller's breach.

SUIT TO QUIET TITLE: A court action intended to establish or settle the title to a particular property, especially when there is a cloud on the title.

SUMP: A reservoir that collects and holds water or some other liquid, which is subsequently disposed of using a pump.

SUPERFUND: Popular name of the hazardous waste cleanup fund established by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA). Superfund focuses on the cleanup of releases of hazardous substances on property. It creates significant legal exposure based on strict liability for owners, landlords and sometimes lenders.

SURETY: (1) A person who agrees to be responsible for a debt or obligation of another. (2) The pledge or agreement by which one undertakes responsibility for the debt or obligation of another.

SURETY BOND: An agreement by an insurance or bonding company to be responsible for certain possible defaults, debts or obligations contracted for by an insured party; in essence, a policy insuring one's personal and/or financial integrity. In the real estate business a surety bond is generally used to ensure that a particular project will be completed at a certain date or that a contract will be performed as stated.

SURRENDER: Giving up of leasehold rights by a tenant in exchange for a release from future obligations under a lease.

SURVEY: The process by which boundaries are measured and land areas are determined; the onsite measurement of lot lines, dimensions and position of a building on a lot, including the determination of any existing encroachments or easements.

SUSPEND: Temporarily make ineffective.

SWING LOAN: A short-term loan used to enable the purchaser of a new property to buy that property on the strength of the equity from the property the purchaser is now selling.

SYNDICATE: A combination of people or firms formed to accomplish a business venture of mutual interest by pooling resources. In a real estate investment syndicate the parties own and/or develop property, with the main profit generally arising from the sale of the property.

SYNDICATION: A descriptive term for a group of two or more people united for the purpose of making and operating an investment. A syndication may operate in the form of a REIT, corporation, general partnership, limited partnership or even as tenancy in common.



T.I.s: Tenant improvements.

T-INTERSECTION LOT: A lot that is fronted head-on by a street; noise and glare from headlights may be detractors from this type of lot.

TAKE OUT LOAN: A long-term permanent loan that replaces the interim construction loan. The interim lender normally requires a commitment by a permanent lender to agree to "take out" the interim lender in which the lender pays off the construction loan and leaves the developer with a permanent long-term loan when the building has been completed.

TAX BILL: A property owner's tax bill is computed by applying the tax rate to the assessed valuation of the property.

TAX CREDIT: An amount by which tax owed is reduced directly.

TAX DEED: An instrument, similar to a certificate of sale, given to a purchaser at a tax sale or auction.

TAX DEFERRED EXCHANGE (1031 EXCHANGE): Under Section 1031 of the Internal Revenue Code, some or all of the realized gain from the exchange of property may not need to be immediately recognized for tax purposes. Both properties in an exchange must be held for productive use in trade or business or for investment, and must be of a like-kind.

TAX LIABILITY FROM INVESTMENT: Total tax liability less the tax liability from ordinary income.

TAX LIABILITY FROM ORDINARY INCOME: Tax liability based on tax rate schedules as applied to gross income minus deductions and exemptions.

TAX LIEN: A charge against property, created by operation of law. Tax liens and assessments take priority over all other liens.

TAX RATE: The tax rate for each taxing body is computed separately. To arrive at a tax rate, the total monies needed for the coming fiscal year are divided by the total assessments of all real estate located within the taxing body's jurisdiction.

TAX SALE: A court-ordered sale of real property to raise money to cover delinquent taxes.

TAX STOP: A clause within a lease wherein the landlord's responsibility for taxes in any year is limited to either a specified sum or the amount of taxes paid in whatever year is specified as the base year. Any and all real estate taxes in excess of that base amount are the responsibility of the tenant.

TENANCY AT SUFFERANCE: A tenancy in which a person wrongfully holds or occupies a property after the expiration of a lease without the consent of the landlord. No notice of termination is required for the landlord to evict the tenant.

TENANCY AT WILL--MONTH-TO-MONTH TENANCY: Lease agreement cancelable by either party on short notice – usually 30, 60, or 90 days.

TENANCY FOR YEARS: A tenancy for a definite period of time. The tenant must vacate the property at the end of the lease unless an extension or new lease has been agreed upon.



TENANCY IN COMMON: Ownership by two or more persons who hold an undivided interest without right of survivorship.

TENANCY IN PARTNERSHIP: Ownership by two or more persons who unite their property in a lawful business venture.

TENANCY IN SEVERALTY: Ownership of a property by one person, rather than held jointly with others. Also called **SOLE TENANCY**.

TENANT: In general, one who exclusively holds or possesses property, such as a life tenant or a tenant for years; commonly used to refer to a lessee under a lease. A tenant's occupancy, although exclusive, is always subordinate to the rights of the owner. Tenant refers to an occupant, not necessarily a renter.

TENANT CONTRIBUTIONS: All costs which are the responsibility of the tenant(s) over and above the contract rent specified in the lease. Examples are: (a) common area maintenance, (b) snow removal, (c) excess over tax stop, (d) percentage rent above fixed minimum, (e) escalator provisions, (f) janitorial, (g) etc.

TENANT IMPROVEMENT ALLOWANCE: The estimated or prescribed dollar value of the tenant improvements being offered by the landlord. This is the landlord's contribution to the cost of construction and/or alteration necessary to prepare a space for tenant's occupancy. Such construction and/or alteration ranges from simply re-painting or re-carpeting to completely gutting the interior and redesigning the space by erecting new walls, partitions and electrical systems. The Tenant Improvement Allowance may be an established amount, or it may vary from one kind of transaction to another.

TENANTS IN COMMON: A form of concurrent ownership of property between two or more persons, in which each has an undivided interest in the whole property. This form is frequently found when the parties acquire title by descent or by will. Each co-tenant is entitled to the undivided possession of the property, according to his or her proportionate share and subject to the rights of possession of the other tenants. No cotenant can exclude another cotenant, or claim ownership of a specific portion of the property. Each cotenant holds an estate in land by separate and distinct titles, but with unity of possession. Their interests may be equal, as in joint tenancy, or unequal. Where the conveyance document does not specify the extent of interest of each cotenant, there is a rebuttable presumption that the shares are equal. Unlike a joint tenancy, there is no right of survivorship in a tenancy in common. Therefore when one of the cotenants dies, the interest passes to his or her heirs or beneficiaries and not to the surviving tenants in common. The property interest of a tenant in common is thus subject to probate. Also, unlike joint tenancy, dower rights may exist in property held in common.

TENDER: An offer by one of the parties to a contract to carry out his or her part of the contract.

TERM LOAN: A short-term loan requiring interest-only payments until maturity, at which time the entire principal is due and payable.

TESTAMENTARY TRUST: A trust established by a valid will.

TESTATOR: A person who has made a valid will. A woman is often referred to as a testatrix, although testator can be used for either gender.



THIRD PARTY: A person who may be affected by the terms of an agreement but who is not a party to the agreement.

THREE-DAY NOTICE: Notice to quit, quit or cure, or quit or pay rent. Three-day notice must be given before an unlawful detainer action. (See Unlawful Detainer Action)

THREE PHASE POWER: A three-wire electrical service used to power machinery.

TIGHT MONEY: An economic situation in which the supply of money is limited, and the demand for money is high, as evidenced by high interest rates.

TIME: Duration of loan.

TIME IS OF THE ESSENCE: A contract clause that emphasizes punctual performance as an essential requirement of the contract. Thus, if any party to the instrument does not perform within the specified time period (the drop-dead date), that party is in default, provided the non-defaulting party has made a valid tender of performance. If no tender is made, then the clause may be waived. The clause may also be waived by the subsequent acts of the parties such as accepting tardy payments or signing escrow instructions that allow for extensions of time in which to perform.

TIMELY MANNER: An act must be performed within certain time limits described in a contract.

TIMING: Refers to the length of time one must wait to receive cash flow from an investment.

TITLE: (1) A combination of all the elements that constitute the highest legal right to own, possess, use, control, enjoy and dispose of real estate or an inheritable right or interest therein. (2) The rights of ownership recognized and protected by the law.

TITLE COVENANTS: Covenants ordinarily inserted in conveyances and in transfers of title to real estate for the purpose of giving protection to the purchaser against possible insufficiency of the title received. A group of such covenants known as "common law covenants" includes: covenants against encumbrances; covenants for further assurance (in other words, to do whatever is necessary to rectify title deficiencies); covenants of good right and authority to convey; covenants of quiet enjoyment; covenants of seisin; covenants of warranty. (See Warranty or Covenant.)

TITLE DEFECT: (1) Any possible or patent claim or right outstanding in a chain of title that is adverse to the claim of ownership. (2) Any material irregularity in the execution or effect of an instrument in the chain of title.

TITLE INSURANCE POLICY: Standard Coverage Title Insurance Policy insures risks against imperfect title (except matters disclosed from search of public records), lack of capacity of parties (forgers, minors, incompetents), lack of authority of parties and lack of delivery of instruments of title. (See "Standard Coverage" Policy and "A.L.T.A." Policy).

TITLE PLANT: Also called "abstract plant" in some areas. A geographically filed assemblage of title information that helps in expediting title examinations, such as copies of previous attorneys' opinions, abstracts, tax searches and copies or take-offs of the public records.

TITLE SEARCH: The examination of public records relating to real estate to determine the current state of the ownership.



TON OF REFRIGERATION: Refrigerating effect equal to the melting of one ton of ice in 24 hours. One ton of cooling is equal to 12,000 btu/hr and roughly equal to 400 cfm.

TOPOGRAPHY: Nature of contours and elevation of the surface of land.

TORT: A negligent or intentional wrongful act arising from breach of duty created by law and not contract.

TOTAL RATE: Equity rate plus growth rate.

TOWNSHIP: A land description used in the U.S. government survey system consisting of a six-by-six mile area containing 36 sections, each one mile square and consists of 23,040 acres.

TRADE: Reciprocal transfer of property (single family residential).

TRADE ASSOCIATION: A voluntary nonprofit organization of independent and competing business units engaged in the same industry or trade, formed to help solve industry problems, promote progress and enhance service Trade Fixture.

TRADE FIXTURE: An article of personal property annexed or affixed to leased property by the tenant as a necessary part of business; may be removed by tenant as personal property upon termination of the lease, unless it is a replacement fixture. The tenant is responsible for any damages caused by their removal. If the tenant fails to remove trade fixtures within a reasonable time of lease expiration, the fixtures are considered abandoned and become the property of the landlord.

TRANSFER TAX: A state tax imposed on the transfer or conveyance of realty or any realty interest by means of deed, lease, sublease, assignment, contract for deed or similar instrument. One purpose of the tax is to acquire reliable data on the fair market value of the property to help establish more accurate real property tax assessments.

TRESPASS: Unlawful entry of or injury to the property of another.

TRI-PARTY AGREEMENT: An agreement by and between the interim lender, the long term lender and the borrower relating to the payoff of a short term loan by a long term lender. The agreement includes the following: 1. The long term lender agrees to pay off the interim lender's loan when certain conditions are satisfied. 2. The interim lender agrees that he will not accept repayment of the interim loan from any source other than the long term lender. 3. The borrower agrees to the agreement between the other two parties.

TRUCK WELL: A ramp and/or level area below ground level which creates loading at truck height. A pump is required to clear water from the well following rains.

TRUSS: A roof structural support system made up from "2 by" wood components that are attached using press-on metal plates (as opposed to rafters that are nailed together).

TRUST: An arrangement whereby legal title to property is transferred by the grantor (the trustor) to a person called a trustee, to be held and managed by that person for the benefit of another, called a beneficiary.

TRUST ACCOUNT: A special account where money is deposited by an agent for the account of a principal and is to be kept intact and not commingled.



TRUST DEED: Also called a deed of trust. A document where title to property is transferred to a third party trustee as security for a debt owed by the trustor (borrower) to the beneficiary (lender). A trust deed is similar to a mortgage--the main difference is that it involves three parties. When a borrower repays the note secured by a trust deed, the trustee must reconvey title back to the borrower by way of a deed of reconveyance.

TRUST DEED LIEN: A lien on the property of a trustor that secures a deed of trust loan. (See Lien)

TRUST FUNDS: Money or things of value received by the broker or the salesperson on behalf of his principal or any other person in the performance of any acts for which a real estate license is required and not belonging to the broker but being held for the benefit of others.

TRUST LEDGER: (1) A record of all trust funds received (cash, checks or other) whether placed in the broker's trust account, given to the seller, or placed in escrow; (2) A record of all monies paid out on behalf of an owner.

TRUSTEE: (1) One who holds property in trust for another as a fiduciary and is charged with the duty to protect, preserve and enhance the value and the highest and best use of the trust property. (2) One who holds property in trust for another to secure the performance of an obligation. In those states using trust deeds as security devices, the trustee holds bare legal title to the property pending the borrower/trustor paying off the underlying debt or promissory note. The trustee is usually a lending institution, trust company or title insurance company.

TRUSTEE'S DEED: A deed given to a buyer of real property at a trustee's sale, executed by a trustee conveying land held in a trust.

TRUSTEE'S SALE: The forced sale of real property, by a lender, to satisfy a debt.

TRUSTOR: The person who creates a trust and gives the instructions to the trustee. The borrower under a deed of trust.

TURN-KEY: Refers to industrial, commercial, office, etc. alike in that it refers to a space ready for occupancy.

UNCOLLECTED RENT: Uncollected rent or vacancy is subtracted from gross scheduled income. Uncollected rent is an estimate expressed as a percentage and then converted to dollars.

UNDER FLOOR DUCT SYSTEM: A system of ducts permanently located in floors to assist in the installation of telephone and electrical wiring.

UNDERWRITING: The process of analyzing the major risk factors, from a lender's standpoint, in making of a mortgage loan and the structuring of the requested loan, with the intent of best protecting the lender's interests while simultaneously hopefully achieving funding of the loan on terms as close as possible to those requested by the borrower.

UNDIVIDED INTEREST: The interest of co-owners in the entire property, which interest is indistinguishable.

UNDUE INFLUENCE: Taking unfair advantage of another person's distress or weakness of mind to induce him to enter into a contract. Undue influence usually requires a close or confidential



relationship like attorney-client or broker-seller. When a person has been unduly influenced to sign a contract, that person can void the contract.

UNENFORCEABLE CONTRACT: A contract that was valid when made, but cannot now be proved or will not be enforced by a court; not merely void or illegal, but unenforceable because it is not in writing, as may be required under the state statutes of frauds, or the statute of limitations has run.

UNILATERAL CONTRACT: A one-sided contract wherein one party makes a promise so as to induce a second party to do something. The second party is not legally bound to perform; however, even if the second party does not comply, the first party is obligated to keep the promise.

UNILATERAL RESCISSION: Legal action taken to repeal a contract by one party when the other party has breached a contract.

UNITY OF OWNERSHIP: The four unities that are traditionally needed to create a joint tenancy: unity of title, time, interest and possession.

UNLAWFUL DETAINER ACTION: Lawsuit to evict a tenant who unlawfully remains in possession of real property rightfully obtained.

UNREINFORCED MASONRY BUILDING: A building that does not meet current seismic code requirements.

UNSECURED: No specific property is available to satisfy a lien; a debt instrument backed only by the debtor's promise to pay.

USABLE AREA: A measure of the office space actually occupied by a tenant for its sole and exclusive use. The usable area on a single floor of a building may vary depending upon corridor configurations, whether the floor is a single tenant or multiple tenant occupancy, etc. Usable area on a floor can be converted to rentable area by the use of a conversion factor.

USURY: The act of charging a rate of interest in excess of that permitted by law.

USURY CEILING: The maximum legal rate of interest which may be charged for the use of money. This ceiling may vary depending on the type of loan and upon the borrowing entity (i.e., corporation vs. individual). (Certain loans may be exempt in some states, such as FHA-VA loans.) Each state has its own usury ceiling.

UTILITY VALUE: The value in use to an owner-user, which includes the value of amenities attaching to a property.

VACANCY & RENT LOSS: Vacancy refers to any type of rental property or unit thereof which is unrented. In the estimate of the gross income of the property, an allowance or discount for vacancy is usually made. Rent loss can result for a number of reasons, such as: (1) loss in rental income during periods of remodeling or rehabilitation of the project, (2) rent loss because of the tenant's inability to pay, (3) other such occurrences.

VALID CONTRACT: A contract that complies with all the essentials of a contract and is binding and enforceable on all parties to it.



VALUABLE CONSIDERATION: Each party to a contract must give up something to make the agreement binding.

VALUE: The worth of a thing in money or goods at a certain time.

VARIABLE AIR VOLUME BOX: A sheet metal box containing a modulating damper controlled by a wall thermostat designed for installation in a duct to vary air flow to a specific zone.

VARIABLE COSTS: Operating expenses that fluctuate with occupancy, such as utilities and maintenance costs.

VARIABLE LEASE: Allows for increases in the rental charges during the lease period. One of the more common is the graduated lease. A graduated lease provides for specified rent increases at set future dates. Another is the index lease, which allows rent to be increase or decreased periodically based on changes in the consumer price index or some other indicator.

VARIABLE RATE MORTGAGE (VRM): A mortgage where the interest rate varies according to an agreed-upon index, thus resulting in a change in the borrower's monthly payments.

VARIANCE: Permission obtained from governmental zoning authorities to build a structure or conduct a use that is expressly prohibited by the current zoning laws; an exception from the zoning laws. A variance gives some measure of elasticity to the zoning game.

VAV (Variable Air Volume Conditioning System): A central heating and cooling system capable of varying the amount of supply air to accommodate the needs of multiple zones through the use of thermostatically controlled dampers.

VENDEE: The buyer under a contract of sale (land contract).

VENDOR: The seller under a contract of sale (land contract).

VESTED: Owned by.

VOID: To have no force or effect. A nullity. Unenforceable.

VOID CONTRACT: A contract that has no legal force or effect because it does not meet the essential elements of a contract.

VOIDABLE: That which is capable of being made void, but is not void unless action is taken to make it so.

VOIDABLE CONTRACT: A contract that seems to be valid on the surface but may be rejected or disaffirmed by one or both of the parties.

VOLUNTARY CONVEYANCE: Voluntarily signing over to a lender the property pledged as collateral on a defaulted loan. (See Deed in Lieu of Foreclosure)

VOLUNTARY LIEN: A lien placed on property with the knowledge and consent of the property owner. (See Lien)

WAIVER: The intentional or voluntary relinquishment of a known right, essentially a unilateral act.



WAREHOUSING: The process of assembling into one package a number of mortgage loans, prior to selling them to an investor.

WARM SHELL: Although it varies by Owner, a warm shell generally includes the installation of restrooms, HVAC mounted, electrical to the building panel, stairwell and stairs, and elevator.

WARRANTY: In a broad sense, an agreement or undertaking by a seller to be responsible for present or future losses of the purchaser occasioned by deficiency or defect in the quality, condition or quantity of the thing sold. In a stricter sense, the provision or provisions in a deed, lease or other instrument conveying or transferring an estate or interest in real estate under which the seller becomes liable to the purchaser for defects in or encumbrances on the title. A warranty is different from a representation in that a representation is a statement made in the course of negotiations leading up to the sale, but not incorporated into the contract. A warranty, on the other hand, is a statement in the contract asserting the truth of certain things about the property. (See Title Covenants.)

WARRANTY DEED: A deed in which the grantor fully warrants good clear title to the premises; also called a general warranty deed. The usual covenants of title are covenant of seisin (possession), covenant of quiet enjoyment, covenant against encumbrances, covenant of warranty forever and covenant of further assurance. A warranty deed warrants the title, not the quality of construction of the real property. A warranty deed is used in most real estate deed transfers and offers the greatest protection of any deed.

WASTE: An improper use or an abuse of a property by a possessor who holds less than fee ownership, such as a tenant, mortgagor or vendee. Such waste ordinarily impairs the value of the land or the interest of the person holding the title or the reversionary rights.

WATER TABLE: The natural level at which water is located in a particular area, be it above or below the surface of the earth.

WILL: A written instrument whereby a person makes a disposition of his property to take effect after his death.

WINDOW MULLIONS: Those divisions on large windows which can accept tenant partitioning to create offices.

WITNESSED WILL: Will usually prepared by an attorney and signed by the maker and two witnesses.

WORKING CAPITAL: In a financial statement, the difference between CURRENT assets and CURRENT liabilities (CA – CL = working capital).

WORKING DRAWINGS: Drawings necessary to obtain a building permit and the construction of tenant improvements.

WORKLETTER: That part of the lease, usually attached to the back as an exhibit, which delineates all work that is to be done for the tenant by the landlord (sometimes called a construction rider).

WORKOUT: The various ways to offset a foreclosure. (See moratorium, waiver)

WRAPAROUND MORTGAGE: A method of financing in which the new mortgage is placed in a



secondary or subordinate position; the new mortgage includes both the unpaid principal balance of the first mortgage and whatever additional sums are advanced by the lender. Sometimes called an all-inclusive loan, an overriding loan or an overlapping loan. In essence, it is an additional mortgage in which another lender refinances a borrower by lending an amount over the existing first mortgage amount, without cashing out or disturbing the existence of the first mortgage. The entire loan combines two or more debts and is treated as a single obligation, and the wrap, or secondary, mortgagee pays the obligations of the first mortgage from the total payments received. While the wraparound lender makes the debt service payments on the first mortgage, the lender does not assume liability for this first lien. A default on the wraparound mortgage would usually result in a default on the underlying mortgage.

WRIT OF EXECUTION: A court order authorizing and directing an officer of the court to levy and sell property of the defendant to satisfy a judgment.

WRIT OF POSSESSION: A court order directing the sheriff to remove the tenant and his or her possessions within five days.

YIELD: The return on an investment or the amount of profit, stated as a percentage of the amount invested; the rate of return. In real estate, yield refers to the effective annual amount of income that is being accrued on an investment. The yield on income property is the ratio of the annual net income from the property to the cost or market value of the property. The yield, or profit, to a lender is the spread or differential between the cost of acquiring the funds lent and the interest rate charged.

ZERO COUPON BONDS: A single-payment bond that grows to its face value over a prescribed time period at a specific interest rate. All compound interest is tax-deferred until the bond is cashed.

ZONE: A portion of a building controlled by one thermostat. In air conditioning design, zones are created to maximize environmental comfort by grouping together area with similar conditions, i.e. all exterior offices with a western exposure would constitute a zone.

ZONING: The regulation of structures and uses of property within designated districts or zones. Zoning regulates and affects such things as use of the land, lot sizes, types of structure permitted, building heights, setbacks and density (the ratio of land area to improvement area).

ZONING ORDINANCE: An exercise of police power by a municipality to regulate and control the character and use of property.

ZONING VARIANCE: A zoning variance permits a change in the specifications required by the zoning ordinance.