LATHAM & WATKINS LLP

The BOOK *of* JARGON®

Real Estate & REITs

A glossary of acronyms, slang, and terminology

First Edition

The Book of Jargon® – Real Estate & REITs is one in a series of practice area-specific glossaries published by Latham & Watkins. The definitions provide an introduction to each term and may raise complex legal issues on which specific legal advice is required. The terms are also subject to change as applicable laws and customary practice evolve. As a general matter, this glossary was drafted from a US practice perspective. The information contained herein is not legal advice and should not be construed as such.

10% Asset Test: one of the several Asset Tests that a REIT must satisfy at the close of each quarter of the Taxable Year to qualify as a REIT. Under this test, the REIT may not hold securities having more than 10% of the total voting power or the total value of the outstanding securities of any one Issuer (other than securities of a TRS, a qualified REIT subsidiary (QRS), and, in some cases, partnerships as well as securities that qualify for the 75% Asset Test).

100-Shareholder Requirement: one of two ownership tests that a REIT must satisfy to qualify as a REIT. Under this test, the REIT must have at least 100 shareholders during at least 335 days of a 12-month Taxable Year (or a proportionately smaller number of days for a shorter year). This requirement is not applicable in the first REIT Taxable Year.

15% Personal Property Test: a test used to determine if Rent attributable to personal Property qualifies as Rents From Real Property for purposes of the Income Tests. Under the 15% Personal Property Test, Rent attributable to personal Property leased in connection with a Lease of real Property qualifies as Rents From Real Property if the Rent attributable to personal Property for the Taxable Year does not exceed 15% of the total Rent for the Taxable Year attributable to both the real and personal Property leased in connection with such Lease. For this purpose, the Rent attributable to personal Property is generally determined by reference to the relative Fair Market Values of the personal property and all of the leased Property (including the personal Property). A similar test applies for purposes of determining whether personal Property leased in connection with real Property or an obligation secured by a Mortgage on both real Property and personal Property qualifies as a Real Estate Asset for purposes of the 75% Asset Test, and whether Interest income from an obligation secured by a Mortgage on both real Property and personal Property qualifies as Qualifying Income under the 75% Income Test.

25% Asset Test: one of several Asset Tests that a REIT must satisfy at the close of each quarter of the Taxable Year to qualify as a REIT. Under the 25% Asset Test (i) securities may not represent more than 25% of the value of the REIT's total assets (other than securities that qualify for the 75% Asset Test), and (ii) Nonqualified Publicly Offered REIT Debt Instruments may not represent more than 25% of the value of the REIT's total assets. See also TRS Asset Test.

3(c)(1) Exception to ICA: a section of the Investment Company Act that provides an exemption from registration as an investment company for Issuers that are (i) beneficially owned by not more than 100 investors (excluding knowledgeable employees), and (ii) not making a public offering of their securities.

3(c)(5)(C) Exception to ICA: a section of the Investment Company Act that provides an exemption from registration as an investment company for certain real estate funds if the funds are sufficiently focused on qualifying real estate transactions (e.g., acquiring Mortgages and other Liens on interests in real estate).

3(c)(7) Exception to ICA: a section of the Investment Company Act that provides an exemption from registration as an investment company for Issuers that (i) only qualified purchasers and/or knowledgeable employees own, and (ii) are not making a public offering of their securities.

3-05s: Financial Statements required by Rule 3-05 of Regulation S-X, which requires that Financial Statements of certain "significant" acquired businesses be included in registration statements filed with the SEC.

3-14s: Financial Statements required by Rule 3-14 of Regulation S-X, which requires that Financial Statements of certain "significant" acquired real estate operations be included in registration statements filed with the SEC.

363 Sale: named after a section of the Bankruptcy Code, an auction-like procedure for a bankrupt entity to sell assets, subject to the judge's approval. Often there is a stalking horse bidder that has already arranged to purchase the assets. If the stalking horse bidder is outbid (which does happen), the stalking horse bidder gets a breakup fee for its trouble.

4% Excise Tax: an excise tax that a REIT is required to pay for each calendar year to the extent it fails to distribute during such year at least the sum of (i) 85% of its Ordinary Income for such year, (ii) 95% of its Capital Gain net income for such year, and (iii) any undistributed taxable income from prior periods.

409A: the Internal Revenue Code section that provides guidance on the tax treatment of Equity-based instruments granted as compensation. Running afoul of Section 409A can result in punitive taxes on compensation that a Sponsor, principal, or employee receives.

5% Asset Test: one of the several Asset Tests that a REIT must satisfy at the close of each quarter of the Taxable Year to qualify as a REIT. Under this test, not more than 5% of the value of the REIT's total assets may be represented by securities of any one Issuer (other than securities of a TRS, a qualified REIT subsidiary (QRS), and, in some cases, partnerships as well as securities that qualify for the 75% Asset Test).

5/50 Test (Closely Held Test): one of two ownership tests that a REIT must satisfy to qualify as a REIT. Under this test, five or fewer "individuals" cannot actually own or Beneficially Own more than 50% in value of the REIT's outstanding stock at any time during the last half of the Taxable Year. For purposes of the 5/50 Test, an "individual" includes a supplemental unemployment compensation benefit plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally excludes a qualified pension plan or profit sharing trust. This test is not applicable in the first REIT Taxable Year. See also Ownership Limit.

75% Asset Test: the primary requirement of the Asset Test that a REIT must satisfy at the close of each quarter of the Taxable Year to qualify as a REIT. Under the 75% Asset Test (i) at least 75% of the REIT's total assets consist of real estate, cash and cash items (including certain receivables), and government securities. See also TRS Asset Test.

75% Income Test: one of two gross Income Tests that a REIT must satisfy for the Taxable Year to qualify as a REIT. Under this test, at least 75% of the REIT's gross income (excluding gross income from Prohibited Transactions, certain hedging transactions, and certain foreign currency gains) must be derived from investments relating to real Property or Mortgages on real Property, including Rents From Real Property, dividends from other REITs, and, in certain circumstances, Interest on Obligations adequately secured by Mortgages on real Property, or certain types of temporary investments.

90% Distribution Test: a distribution test that a REIT must satisfy for the Taxable Year to qualify as a REIT. Under the 90% Distribution Test, the REIT's Dividends Paid Deduction (computed without regard to Capital Gain Dividends) for the Taxable Year must equal or exceed the sum of (i) 90% of the REIT's taxable income (computed without regard to the Dividends Paid Deduction and by excluding any Net Capital Gain), plus (ii) 90% of the REIT's after-tax net income from Foreclosure Property, minus (iii) the excess of the sum of certain items of non-cash income over 5% of the REIT's taxable income (computed without regard to the Dividends Paid Deduction and by excluding any Net Capital Gain).

95% Income Test: one of two gross Income Tests that a REIT must satisfy for the Taxable Year to qualify as a REIT. Under the 95% Income Test, at least 95% of the REIT's gross income (excluding gross income from Prohibited Transactions, certain hedging transactions, and certain foreign currency gains) must be derived from the real Property investments described in the definition of 75% Income Test or dividends, Interest, and gain from the sale or disposition of stock or securities.

Abandonment: the voluntary relinquishment of all right, title, claim, and Possession, without the intention of reclaiming it. If there is some action — for example, an express statement (inaction is not sufficient) — that makes clear the owner no longer wants to own the Property, the Property becomes free and open to anyone who comes along to claim it.

Abatement: usually encountered in a Lease context, with respect to Rent. A Rent Abatement involves the removal or reduction of the tenant's Rent obligation as a Lease concession at the outset of the Term of the Lease or to make up for some interruption of or interference with the tenant's ability to use its Premises during the Term of the Lease.

Absolute Assignment: the Transfer of all benefits, liabilities, or rights by one party to another that leaves the assignor with no interest in the assigned right. Often used as Collateral in Mortgage loans for lenders in case the Borrower Defaults.

Abstract: a document showing the Encumbrances and Liens associated with a certain Property. The Abstract includes the names of all the Property owners and documents that affect the Property, such as Mortgages, Deeds, Covenants, restrictions, Property taxes, and the like.

Accelerated Cost Recovery System (ACRS): an accelerated system of Depreciation introduced for US federal income tax purposes in 1981. ACRS is based on IRS predetermined recovery periods set forth in the Internal Revenue Code rather than the useful life standard.

Accelerated Depreciation: any one of several methods by which a company may depreciate an asset in a manner that results in a greater amount of Depreciation being taken during the earlier years of an asset's life. The two most popular methods of Accelerated Depreciation for financial reporting purposes are the declining balance method and the sum-of-the-years digits method. The two currently allowable Accelerated Depreciation methods for US federal income tax purposes are ACRS and MACRS.

Acceleration: the end of the line under a Loan Agreement or Credit Agreement. The definitions of Default and Event of Default describe how we get there. Following an Event of Default, the lender (or the agent for the lenders) has the right to "accelerate" the due date of the debt; in other words, the lender has the right to declare its loans immediately due and payable. Bankruptcy and insolvency Events of Default automatically lead to Acceleration without any required notice or further action on the part of the lender (or agent). Also the premise of the Fast and Furious movie franchise.

Access/Accessibility: the ease with which a tenant or other user can enter a Property. Accessibility may also refer to design features that facilitate the ease with which disabled people can enter and maneuver in the building.

Accounts Receivable: the money that customers (individuals or entities) owe to another entity in exchange for goods or services (including, without limitation, charges for the use or occupancy of any guest, conference, or banquet rooms or other facilities; any restaurant, bar, or banquet services; or any other goods or services that have been delivered or used but not yet paid for). In the hotel industry, these typically include the City Ledger and the Guest Ledger.

Accretion (Alluvion): applies to both land and investment value. In relation to land, the increase in land by the washing up of seas or rivers to deposit sand and soil and form firm ground. In relation to investment, the accumulation of value until Maturity with respect to Bonds sold at a discount to face value that mature at Par.

Acquisition Fee: any and all fees, charges, and Commissions paid in connection with the purchase of real or personal Property. Examples include Commission paid to real estate brokers, Closing Costs, initiation or bank fees, and other Commissions or Closing Costs. Acquisition Fees may be paid directly by the purchaser or may be borrowed as part of a loan or Mortgage financing the acquisition.

Acquisition Loan: a loan attained for a specific purpose. Typically used to acquire a real Property asset.

Additional Insured (Additional Named Insured): lenders worry that a plaintiff may sue them if their Borrower harms the plaintiff, because the banks have deep pockets. Consequently, lenders instruct the Borrower to add the lenders, or at least the Collateral agent and administrative agent, on the Borrower's liability policies as Additional Insureds. The Additional Insureds have the right to be defended by the insurer, and to have any valid and covered claims paid, up to the policy limit. Lender coverage is effected through an Endorsement issued by the Insurance Broker, who makes sure the insurer's records show all the Additional Insureds. The cost is nominal.

Additional Rent: the amount of money to be paid by the tenant to the landlord in accordance with the Lease provisions in addition to the Base Rent. These costs can include the tenant's proportional share of HVAC charges, Common Area Maintenance fees, utilities, insurance, and janitorial services.

Adjusted Capital Account Deficit: with respect to any Partner or Member, the deficit balance, if any, in such Partner's or Member's Capital Account as of the end of the relevant Fiscal Year, after crediting any amounts that such Partner or Member is obligated to restore or is deemed to be obligated to restore pursuant to certain tax laws and debiting the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). Generally, for a Partner or Member without general liability or debt Guaranty Obligations, the deficit balance that would remain in a Partner's or Member's Capital Account after certain mandatory income and gain allocations is the Adjusted Capital Account Deficit.

Adjusted Funds From Operations (AFFO): a financial Performance Test used in the analysis of REITs, generally equal to Funds From Operations with adjustments made for recurring Capital Expenditures adjustment to GAAP straight-lining of Rent, leasing costs, and other material factors.

Adjusted Gross Income (AGI): for US federal income tax purposes, defined in Internal Revenue Code Section 62 as gross income reduced by certain specifically listed expenses.

Administrative Agent Fee (Agency Fee): the annual fee paid to the administrative agent for administering a credit facility.

Adverse Possession: a method of acquiring legal title to real Property by actual, open and notorious, hostile (without permission), and continuous Possession of the real Property, to the exclusion of its true owner, for a period of time set by state statute.

Affidavit of Title: a document signed by the seller to verify that the Property to be sold is owned by the seller and is free from potential legal issues. For example, a seller may sign an Affidavit of Title guaranteeing that there are no Liens against the Property and no unrecorded Easements, and that the Property is not being sold to another party.

Affiliate: defined slightly differently in different types of agreements, but generally refers to a corporation, partnership, or other person controlling, controlled by, or under common control with another entity. The official securities law definition is found in SEC Rule 144.

Affirmative Covenant: requires a Borrower or seller "to affirmatively do something." These are contractual provisions in a Credit Agreement or sale contract that itemize certain actions the Borrower or seller must take to be in compliance with the applicable document. Think of these as the "thou shalt" Covenants. Affirmative Covenants are usually more Boilerplate in nature, covering such actions as a promise by the Borrower to pay Interest and fees, maintain insurance, pay taxes, provide quarterly operating reports, and so forth and a seller to continue to operate its Property in the ordinary course of business between signing and Closing. In contrast, see Negative Covenant.

Affirmative Easement: the right to use another's Property for a particular purpose. For example, if a path from A's Property crosses over a portion of B's Property, A has an Affirmative Easement from B.

After Acquired Property: the personal or real Property of a Borrower/debtor that is acquired after a security instrument (Security Agreement, Mortgage, Deed of Trust, etc.) has been entered into by such party. Pursuant to §9-204 of the UCC, if so provided in a Security Agreement, the Lien of a Security Agreement generally extends to the debtor's after-acquired personal Property. A similar provision in a real Property security instrument may be valid with respect to the mortgagee/Beneficiary, but the instrument, if recorded prior to the time the Mortgagor/Grantor acquires record title to the after-acquired real Property, may not provide constructive notice to third parties as the security instrument will be outside of the Chain of Title because the instrument does not fully reflect all of the real Property encumbered thereby. Typically, the secured real Property lender will record a modification or spreader with respect to the original Mortgage subjecting the after-acquired real Property to the Lien of the Mortgage and solving any Chain of Title issues. As a note, if the debtor/Mortgagor/Grantor becomes a debtor in Bankruptcy, Property acquired after commencement of the Bankruptcy action generally will not be subject to the Lien of a prior security instrument.

Aged Receivables: the detail of how long Accounts Receivable owed to the business have been outstanding and unpaid. Such amounts are typically described as: current (less than 30 days), more than 30 days, more than 60 days, and more than 90 days.

Agreed Value: the stipulated value of a company-owned asset that has been agreed upon by the owners of the company or otherwise determined by a Designated Individual in accordance with a prescribed process. Agreed Value is usually intended to represent the asset's then-current Fair Market Value.

Air Rights: the legal right to develop the space above a piece of Property, building, or other structure. Air Rights can be transferred separately from the building Lot, so they have significant value for vertical development in urban areas such as New York City.

Alienation: the act of transferring Property or title to Property to another person.

All or Substantially All: no one knows the exact meaning of this phrase. It is used in various Covenants and other contractual provisions, but the precise meaning is the subject of much debate (and litigation). It does not necessarily mean what it sounds like in layman's terms but is generally interpreted to mean the sale of nearly all of a company.

Allocated Loan Amount: in a Mortgage loan transaction secured by more than one Real Estate Asset, the portion of the Principal amount of the loan allocated to each asset, often based on the relative Appraised Value of each asset. This Allocated Loan Amount can be used to determine the Release Price for each asset (i.e., the price the Borrower pays to obtain the release of the asset from the Lien of the Mortgage), materiality thresholds for each asset (e.g., a casualty causing damage in excess of X% of the Allocated Loan Amount of the asset), and the Cap on the amount secured by such asset if it is in a Mortgage recording tax state (e.g., "the greater of 125% of the Allocated Loan Amount and the Appraised Value of the Property").

Allonge: an Endorsement to a Note, on a piece of paper separate from the Note, used to Transfer ownership of the Note from the then-current holder to the designated successor. Under the laws of some states, an Allonge must be "permanently affixed" to the Note to be effective.

American Land Title Association (ALTA): a national trade association of the title industry that produces survey standards, forms of title insurance policies and Endorsements, and other real estate guidelines that have become industry standard. Typically used as an adjective and almost never spelled out, as in ALTA survey.

ALTA Statement: an affidavit containing representations regarding the status of the Property title and signed by both the buyer and the seller in order to obtain the buyer's title insurance policy. The document meets standards specified by the ALTA and is typically reviewed and signed by both parties at the Closing.

Alteration: a change or modification made to real Property, whether decorative (such as painting interior walls or changing carpeting) or more substantial (such as the rearranging of the interior layout of one's Premises, or the demolition or expansion of existing structures and Improvements, or the addition of new structures and Improvements). Sometimes a necessary improvement to new clothing.

Amendment: an agreement entered into between parties that changes the Terms of a prior agreement entered into between the same parties (or their predecessors in interest), whether by adding new provisions, deleting existing provisions, or modifying or supplementing existing provisions.

American Institute of Architects (AIA): a professional organization for licensed architects in the US.

Americans With Disabilities Act (ADA): a US federal act that prohibits discrimination of disabled persons in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. For example, use of a properties facility must be ADA-compliant.

Amortization: the required periodic repayment in installments of portions of a loan prior to its final Maturity. In accounting speak, Amortization is the same concept as Depreciation, except that intangible assets are Amortized and tangible assets are Depreciated.

Amortization Schedule: the schedule of regularly timed repayments of Principal prior to the Maturity of a loan. The Amortization Schedule is usually set forth in the Loan Agreement or Credit Agreement.

Anchor: the leading tenant in a shopping center whose name recognition often attracts other Tenants to the center.

Annual Budget: Approved: the Capital Budget and Operating Budget for a Property, prepared by the Property owner, showing the amounts required to operate and maintain the Property for a 12-month period (usually a calendar year, but sometimes the owner's Fiscal Year), in a format either prescribed or approved by the Property owner's lender, submitted by the Property owner to the lender on an annual basis. An "approved" Annual Budget is an Annual Budget that the lender has the right, under the loan documents, to approve and has, in fact, approved.

Annualized Net Effective Rent: a metric used by REITs to measure leasing economics. Annualized Net Effective Rent is typically calculated by straight-lining contractual Rents to Amortize Free Rent periods and Abatements, without regard for tenant Improvements and Leasing Commissions. Annualized Net Effective Rent differs from annualized cash Rent, which does not straight-line to amortize Free Rent periods and Abatements and which does account for tenant Improvements and Leasing Commissions.

Anti-Deficiency Statute: a state statute that prohibits lenders from suing Borrowers for deficiencies (the difference between the amount owed on a Mortgage and the price realized at a Foreclosure sale) with respect to Mortgages secured by a Borrower's primary residence.

Anti-Dilution: a provision intended to protect existing investors in the occasional event the company issues Equity at a lower Valuation than in previous offerings. Such a provision typically allows existing investors the first right to purchase a pro rata share of the new offering in order to prevent the investor's ownership interest in the company from being reduced by the new offering.

Applicable Margin: the additional percentage added to a particular Interest Rate index to determine the Interest Rate payable on Variable / Floating Rate debt. Generally, the Loan Agreement or Credit Agreement will set the Interest Rate at either the Base Rate plus a specified percentage, or LIBOR plus a specified percentage. The specified percentage is usually referred to as the Applicable Margin.

Appraisal: a determination of the value of a real Property asset performed, ideally, by a disinterested professional, usually in the context of the sale or financing of the asset. The scope of and methodology applied in performing an Appraisal may be prescribed by US federal or state statutes and regulations (such as the Financial Institutions Reform, Recovery, and Enforcement Act, or FIRREA), by professional standards (such as the Uniform Standards of Professional Appraisal Practice, or USPAP), and/or by the person requiring the Appraisal. Often the requester will also require that the appraiser performing the Appraisal be a member of the Appraisal Institute; the appraiser should also be certified or licensed by the state where the real Property is located.

Appraisal Institute (AI): an organization that promotes professional practice and ethics in the real estate field through industry standards, services, and education.

Appraised Valuation (Valuation): the value of an asset determined at a particular point in time that is typically performed by a professional appraiser.

Appreciation: an increase in value relative to purchase price.

Appurtenance: a right, privilege, or Property that is considered part of the principal Property and is conveyed with it for purposes such as passage of title, conveyance, or inheritance. An example is Easements that Run With the Land.

Arbitration (Alternative Dispute Resolution): a means of dispute resolution often perceived as less cumbersome and more expeditious than litigation. The rules of evidence are considerably more lax; there is no risk of a "wild jury verdict" (as there is no jury per se, though the Arbitrators are sort of professional jurors), and since the process is private, the parties do not have to wait on the public court system.

Arbitrator: a person chosen to conduct an Arbitration pursuant to a prescribed set of rules for the purpose of resolving a dispute between two or more parties.

Article 8 Opt-In: the election of the holder(s) of the interests in a partnership or limited liability company to have those interests be a security governed by Article 8 of the UCC. The election is achieved by including an express statement in the partnership agreement or LLC operating agreement that the Partnership Interests or Membership Interests are a security governed by Article 8. A lender secured by the pledge of the Equity in a partnership or LLC will often insist on an Article 8 Opt-In because of the advantages of holding a security (rather than a general intangible) as security; the lender also will usually insist that such interests be certificated.

Article 9: the law that governs the validity and Perfection of Security Interests in most personal Property. This is the article of the UCC that governs secured transactions of all types. In California, Article 9 is called "Division 9" — they just have to be special.

Articles Supplementary: a necessary Filing when a Maryland corporation classifies any new class or series of unissued capital stock (e.g., when it creates and issues a new series of Preferred Stock). An Articles Supplementary updates (and becomes part of) the corporation's Charter and is similar to a Certificate of Designation for a Delaware corporation.

Asbestos Containing Materials (ACM): pursuant to EPA regulations, any material containing over 1% asbestos.

As-Extracted Collateral: a type of personal Property defined in Article 9. As-Extracted Collateral consists of (i) oil, gas, or minerals that are subject to a Security Interest before they have been extracted, or (ii) accounts from the sale of oil, gas, or minerals that the debtor has an interest in before their extraction. For troubled credits, may also include teeth.

As-Is (Where-Is): a description of how a Property is being conveyed, which is in its actual, current state, warts and all, with all faults, with no Warranties or guaranties of any type (implied or otherwise), and no obligation of the seller or landlord to remedy any flaw. The buyer or tenant must take the Property, if at all, in its existing condition, without modification.

Assessed Value: the value a government agency assigns to a particular Property or asset for purposes of levying a particular tax, such as real Property tax.

Assessment: the actual Valuation assigned to a Property to determine tax payments. This value is calculated by tax assessors and may represent full cash value or a percentage of the actual cash value, depending on the Assessment practices followed in the particular jurisdiction.

Asset Allocation: an investment strategy that seeks to balance risk and reward by adjusting the percentage of various Asset Classes in a Portfolio according to risk tolerance, goals, and investment time frame.

Asset Class: a category of Real Estate Assets that a REIT may own, such as residential housing, commercial office space, or industrial site properties. Many REITs focus on one particular Asset Class.

Asset Test/Taxable REIT Subsidiary (TRS) Asset Test: a set of compliance requirements that a REIT must satisfy at the end of each quarter of the Taxable Year to qualify as a REIT. See also 10% Asset Test, 25% Asset Test, and 75% Asset Test.

Assignment of Contracts: a Collateral loan document pursuant to which a loan party (the Borrower or one of its Guarantors) assigns the contracts to which it is a party to the lender as Collateral for a loan. The contracts will typically be the agreements that relate to or bind the Mortgaged Property that is Collateral for the loan.

Assignment of Rents and Leases: a Collateral loan document pursuant to which a loan party (the Borrower or one of its Guarantors) assigns the Leases encumbering real Property owned by the loan party and the Rents and proceeds derived from such real Property to the lender as Collateral for a loan. Generally, the real Property will also have been mortgaged for the benefit of the lender.

Association: a corporate entity a developer forms under state statute for the purpose of marketing, managing, and selling homes, apartments, or Lots in a residential subdivision or Condominium development. The developer Transfers ownership of the Association to the home or condo owners after selling a predetermined number of units or Lots. Types of Associations include a Condo Association and Homeowner Association (HOA).

Assumable Loan (Assumable Mortgage): a Mortgage loan that the original Borrower may (though usually subject to conditions and/or an Assumption fee) Transfer to another party in conjunction with the sale of the Mortgaged Property. Most commercial Mortgage loans are not assumable.

Assumption: a decision by a debtor in a Bankruptcy action to remain obligated to perform under an Executory Contract or Lease and to receive the benefits under such Executory Contract or Lease. The Assumption must be of the entire agreement and not of merely select portions.

At the Market Program (ATM Program): an Equity offering sold into an existing market over a period of time at various prices. ATM Programs can reduce costs associated with offerings, such as road show expenses and agent Commissions. Because they allow an Issuer to adjust the size and timing of the individual issuances, ATM Programs generally do not decrease stock price to the same degree a traditional offering would.

Attornment: the express or implied consent to a Transfer of a right, such as when a tenant agrees to remain a tenant of the Property under a new landlord after the Transfer of Property ownership.

Audit: an examination of a company's Financial Statements and/or accounting procedures in order to evaluate their accuracy, validity, or appropriateness. In addition, an Audit is an examination of a tax return by the IRS or other tax authority in order to determine whether the taxpayer has paid the correct amount of tax or otherwise complied with applicable tax laws.

Audit Committee: a committee that a company or its Board of Directors forms that is responsible for the oversight of the company's financial reporting and disclosure.

Automatic Stay: a rule under Bankruptcy law stating that once a Bankruptcy case has commenced, creditors and other parties generally are not permitted to collect on claims against the debtor or otherwise obtain or exercise Control or Possession over Property of the debtor's Bankruptcy estate outside of the Bankruptcy proceedings. Creditors may seek relief from the Automatic Stay by Filing a motion with the Bankruptcy court. There are a number of exceptions to the Automatic Stay, such as governmental entities exercising their police power and the termination or Liquidation of certain financial contracts.

Average Daily Rate (ADR): a statistical measure that is often used in the lodging industry. ADR represents the average rental income per rented room in a given time period. It is calculated by dividing total room revenue by the number of rooms sold.

Avulsion: a change in the border between properties due to a sudden change in the natural course of a stream or river, when the border between properties is defined by the channel of a waterway.

Award: the decision to give a judgment of money to a party with respect to a lawsuit, Arbitration, or administrative claim. In the context of a Condemnation, the Award is the amount paid to a Property owner for the taking of the subject Property.

B Piece: in CMBS deals, the most subordinate bond classes or tranches, usually the B-rated and BB/Ba-rated bond classes along with the unrated class. Can be a subordinate piece of a Mortgage Note known as the "B Note."

Backup Contract: a contract signed by both the seller and potential buyer that formalizes the Backup Offer. If the primary contract falls through, the Backup Offer becomes the primary offer and both parties are obligated by the Backup Contract to proceed with the deal.

Backup Offer: any offer submitted after the seller accepts and signs a different purchase offer (the primary contract).

Balloon: the principal payment due on a loan (other than a fully Amortizing loan) on the Maturity date.

Bankruptcy: a US federal court process under the Bankruptcy Code whereby a company restructures its debt under the auspices of the Bankruptcy court. There are advantages (such as the ability to Cramdown a plan on dissenting creditors) and disadvantages (such as high costs and public disclosure requirements) to restructuring debts in Bankruptcy, as opposed to out of court.

Bankruptcy Code: Title 11 of the United States Code, the law governing Bankruptcy in the US.

Base Building: the part of a multi-tenant building that directly serves and affects all tenants. The Base Building normally includes the building's primary structure, the roof and façade, public Access areas, fire Egress (lobbies, corridors, elevators, and public stairs), and primary mechanical and supply systems (electricity, heating and air conditioning, phone, water supply, drainage, gas, etc.) up to the point of contact with tenant Premises.

Base Building Systems: the primary mechanical and supply systems of a building (electricity, HVAC, plumbing, gas, fire safety, etc.).

Base Management Fee (Special Management Fee): the basic fee paid to hotel managers. The fee is usually set as a percentage of total revenues or a minimum monthly amount, whichever is greater.

Base Rate: a Floating Rate of Interest that varies daily, usually equal to the higher of (i) the Prime Rate and (ii) the Federal Funds effective rate plus 0.5%. Lending rates are set at a Margin over the Base Rate, depending on the risk involved. See Applicable Margin and LIBOR.

Base Rent: the minimum, fixed Rent due under the Terms of a Lease, which often increases over the Term of the Lease.

Base Year: the actual taxes and Operating Expenses for a specified Base Year, most often the year in which a Lease commences.

Basis Points (BPS): 1/100th of a percentage point (e.g., 50 Basis Points equals 0.50%). BPS is generally pronounced "bips."

Basket: an exception contained in a Negative Covenant (usually expressed as a dollar amount). For example, a Negative Covenant may be "borrower shall not issue additional debt," while a Basket would be "except for unsecured debt in an amount not to exceed US$10 million."

Beneficial Ownership: in the context of REIT, the Beneficial Ownership of stock under the rules of Section 544 of the Internal Revenue Code, as modified by Section 856(h)(1)(B) of the Internal Revenue Code. Generally, these rules provide for attribution of stock ownership among certain family members and to holders of options to acquire stock, and certain upward attribution of ownership of stock held by partnerships, corporations, trusts, or estates to their owners or beneficiaries.

Beneficiary: a person who is entitled to enforce a promise or obligation made for that person's benefit. For example, the Beneficiary under a Letter of Credit is the person who is entitled to Draw on the Letter of Credit; and the Beneficiary under a Guaranty is the person who is entitled to make a claim under the Guaranty. A Deed of Trust is made by a Grantor or trustor, who owns real Property, to a trustee for the benefit of the Beneficiary, who gets to direct the trustee with respect to the Property and the exercise of remedies in the event of a Default on the secured Obligations.

Bid Rigging: when contractors engaging in Competitive Bidding for a project manipulate the bids or bid process so as to ensure which bid will be accepted, effectively increasing prices. Bid Rigging is a violation of US antitrust law.

Bifurcation of Lease: a landlord may divide a Lease as a matter of law to evict a certain tenant while allowing other tenants' Lease and occupancy rights to remain intact.

Big Box: a retail store that occupies a large square or rectangular building and sells a variety of products at high volume.

Bill of Sale: a document signed by both parties evidencing the Transfer of title to personal (not real) Property from the seller to the buyer. The Bill of Sale contains essential terms such as the purchase price, names and addresses of both parties, and a description of the Property.

Blanket Easement: an Easement that is not confined to a limited area of a Property but covers the entire Property for the use contemplated by the Easement.

Blanket Lien: a Lien that covers over everything. A Blanket Lien gives a creditor the right to seize, in the event of nonpayment, nearly all types of assets and Collateral owned by a debtor in order to satisfy the debt at issue.

Blanket Mortgage: a Mortgage that covers multiple properties as security for a debt or other obligation.

Blind Pool REIT: a REIT that does not own any properties or identify what specific properties will be acquired when raising capital from investors. After funds have been raised, the manager(s) of the Blind Pool REIT determines what properties the REIT will acquire.

Blocker Entity: typically a C Corporation or other entity taxable as a corporation for US federal income tax purposes that is used by a fund in structuring certain investments to achieve certain tax treatment or results. Blocker Entities are frequently utilized to: (i) avoid the incurrence of UBTI by certain tax-exempt investors, (ii) protect the tax-exempt status of certain tax-exempt investors, (iii) avoid the incurrence of Effectively Connected Income (or other, similar tax consequences) by certain non-US investors, and/or (iv) assist certain non-US investors that, but for their investment in the fund, may not be obligated to file a US tax return or otherwise be subject to taxation in the US.

Blue Sky Laws: US state laws that regulate (i) the offer and sale of securities within each state, (ii) the registration and reporting requirements for broker-dealers doing business in each state, and (iii) investment advisers seeking to offer investment advisory services in each state.

Board of Directors: the governing body of a company that is elected or appointed by the owners of the company and which is responsible for the overall management of the company.

Boilerplate: the parts of a contract, usually found near the end, that vary little among contracts of the same type.

Bona Fide Purchaser (BFP): an innocent party that has purchased Property for a stated value, unaware of any fact that would cast doubt on the seller's right to make the sale.

Bondable Lease: a Lease in which the lessee pays all the expenses, including Mortgage Interest and Amortization, carries all of the real estate risks (including casualty and Condemnation), never has the right to terminate the Lease before its expiration date, and never has the right to abate Rent, leaving the lessor with a steady Rent amount free of all claims, just like a bond. See also Hell or High Water Lease.

Bonds: a Surety Bond guarantees a contractor's payment and performance, deposited by the contractor for a deal with a Guaranty Construction job, to assure the owner that the contractor will complete the job.

Bonds: Completion: a Surety Bond that a given project will be completed, even if the project runs out of money or into other issues with completion.

Bonds: Payment: a Deposit or guarantee that the successful bidder of a Construction Contract gives to assure that upon completion of the contract, all amounts the successful bidder owes will be paid.

Bonds: Performance: a Surety Bond issued by one party to safeguard against a failure of the other party to meet their contract Obligations.

Bonds: Surety: a transaction between three parties, in which the "surety" promises to pay the "obligee" if the Principal or obligor fails to fulfill the Terms of the contract. The transaction ensures that the obligee does not suffer losses from a Principal's failure.

Book Value: the value at which Property is carried on the Balance Sheet of a company. The Book Value usually consists of the Property's historical cost adjusted for Depreciation.

Bookings: reservations for guest, conference, and banquet rooms or other facilities at a hotel.

Books and Records: typically a reference to all documents, records, and books of the account pertaining to an entity's business affairs, including the entity's organizational certificates and documents, ownership lists, Financial Statements, minutes of meetings and proceedings, and written records of other actions taken by or on behalf of the entity.

Borrower: a company that borrows under a Loan Agreement or Credit Agreement.

Brand Name: the name associated with a hotel or lodging system of hotels.

Brand Standards: the procedures, policies, instructions, standards, requirements, specifications, and programs required by the owner of a Brand Name with respect to the (i) marketing, operation, management, provision of various services, and maintenance of properties to be operated under or identified with the Brand Name, and (ii) physical appearance and components of properties to be operated under or identified with a Brand Name.

Brand Trademarks: the trademarks, service marks, trade dress, trade names, corporate names, logos and slogans (and all translations, adaptations, derivations, and combinations of the foregoing), and Internet domain names associated with a Brand Name.

Branded Residential: a usually upscale residential Condominium product associated with a Brand Name hotel, where the Condominium owners are offered the opportunity to receive a litany of luxury hotel services.

Breakage Costs: the losses, costs, and expenses incurred by a lender as a result of a Borrower's (i) failure to borrow, convert or continue a LIBOR loan after giving notice requesting the same, (ii) failure to make a prepayment of LIBOR loans after giving notice thereof, or (iii) Prepayment of LIBOR loans on a day that is not the last day of the applicable interest period (i.e., the costs of "breaking" a LIBOR loan).

Breakpoint: in Leases with Percentage Rent, the threshold dollar amount of annual Gross Revenues over which Percentage Rent is to be paid. The Breakpoint can be a dollar figure negotiated between the landlord and tenant, or it can be a "natural Breakpoint," which is derived by dividing the minimum or Base Rent payable under the Lease by the Percentage Rent rate. For example, if the minimum or Base Rent were US$20,000 per month, and the Percentage Rent rate were 6%, the natural Breakpoint would be US$333,333.33 (US$20,000 / 0.06).

Bridge Loan: a short-term loan that is used to finance a transaction (typically an acquisition) temporarily and cover costs until more permanent financing is arranged.

Bring Down Certificate: a document certifying that the Representations and Warranties set out in an agreement (often the Purchase Agreement or Loan Agreement) are true and correct. At Closing, Bring Down Certificates are often exchanged.

Bucket: when Indemnification is provided for, Bucket generally refers to a specified minimum dollar amount one party's losses must exceed before the other party has an obligation to pay damages to the first party for the losses. See also Basket.

Budget: Annual: the projected expenditures and income of a 12-month period.

Budget: Capital: the budget utilized by a lender, purchaser, or owner to track projected expenditures for Capital Improvements necessary at a Property.

Budget: Construction: the projected cost of the Construction phase of a project.

Budget: Operating: the projected expenditures and income for necessary day-to-day activities.

Budget: Proposed: a budget for costs and expenses of Construction of a project proposed by the owner/developer, often subject to the Construction lender's approval.

Buffer: in Zoning, the portion of a lot that is not covered by buildings, pavement, parking, Access, and service areas. Established as landscaped open space for the purposes of screening and separating properties. Typically consists of trees, shrubs, and other natural vegetation.

Builder's Risk Insurance: an insurance policy that covers perils that can occur during the Construction phase of a project.

Building Code: a set of regulations and standards promulgated by local government relating to the structural safety of buildings, and containing legal requirements for the Construction and maintenance of the same.

Building Systems: typically the core systems of a building, including the plumbing, electrical systems, and HVAC systems.

Build-Out: approximately where and how much space will be available for a potential development.

Build-to-Suit: an agreement whereby the owner of real estate agrees to construct and fund the Construction of a building or Premises to meet the specific requirements of a tenant. In exchange, the tenant agrees to Rent the building or Premises from the owner on mutually agreed Terms.

Bulk-Sales Affidavit: when real estate is transferred for income purposes and is not considered to be in the ordinary course of the seller's business, the seller must complete an affidavit detailing its secured and unsecured creditors. This affidavit is designed to protect the purchaser and is governed by the bulk sale laws of each jurisdiction. The sale of a single- or two-family home by an individual, trust, or estate is exempt.

Bureau of Indian Affairs (BIA): the US federal government agency, within the Department of the Interior, responsible for the administration and management of American Indian reservations.

Buy-Sell: a provision whereby the owners of a company agree upon the manner in which one or more owners may purchase the interests of another owner of the company. These provisions are typically used when a dispute arises between the owners that cannot be resolved or when an owner is in Default of its Obligations under the governing document of the company.

C Corporation: an entity taxable as a corporation under Subchapter C of the Internal Revenue Code. Income of a C Corporation is generally subject to two levels of tax: first at the corporate level, and again at the shareholder level when the income is distributed.

Cage Cash: cash held on the Premises (usually in a safe or vault). The gaming reserve requirements determine the minimum amount of cash held.

California Association of Realtors (CAR): an organization that promotes professional practice and ethics in the real estate field through industry standards, services, and education.

California Land Title Association (CLTA): a nonprofit corporation representing title companies in California. CLTA develops title forms, monitors and summarizes relevant legislation, and promotes professionalism within the title industry.

Call Right: a feature of some bonds that allows their Issuer to redeem (or "call") them before they mature and must be repaid.

Cap (Ceiling): a maximum dollar limitation on claims or reimbursement Obligations. Often used for Indemnification claims or a party's obligation to reimburse legal fees or Closing Costs.

Capital Account: an account maintained for each Partner or Member of an entity treated as a partnership for US federal income tax purposes. A Partner's or Member's Capital Account generally equals the sum of such person's Capital Contributions and allocable share of income and gain, minus such person's Distributions received and allocable share of deductions and losses.

Capital Appreciation: an increase in the market value of an asset relative to its purchase price. Capital Appreciation and Yield together comprise the total return on an investment in a particular asset.

Capital Call: action taken by a fund to exercise its right to receive from investors all or part of their Capital Commitment.

Capital Contribution: an owner's contribution of capital, in the form of money or Property, to a company.

Capital Expenditure (Capex): a business expenditure that is Capitalized to the Balance Sheet under the rules of GAAP, and then Amortized or Depreciated as an Income Statement expense over a period of more than one year rather than being immediately "expensed" to the Income Statement in full in the current period. A Capital Expenditure is distinguished from a current expense because it has a long-term impact that will benefit the business in future years as well as the current year. Buying vegetables for dinner is probably a current expense. Buying a vegetable farm is probably a Capital Expenditure. See also Capitalize.

Capital Gain / Capital Loss: gain or loss realized on the sale or other disposition of a capital asset. Generally, Capital Gain and Capital Loss are calculated by taking the sale price less asset basis and transaction costs.

Capital Gain Dividend: a dividend, or portion thereof, that is designated by the REIT in a written notice mailed to its shareholders as a "capital gain dividend" and is paid out of the REIT's Net Capital Gain for the Taxable Year. A Capital Gain Dividend is taxable to REIT shareholders as Long-Term Capital Gain.

Capital Improvements (Capital Repairs): forms of Capital Expenditures, which are costs typically incurred to add value to a fixed asset. A key factor to determining whether an Improvement or repair constitutes a Capital expense is whether the cost can be fully deducted for accounting and tax purposes in the year in which the cost was incurred; costs that must be Capitalized or Amortized over more than one year are considered Capital expenses.

Capital Lease: a Lease that meets at least one of four criteria outlined in paragraph seven of FASB No. 13 and, therefore, must be treated essentially as a loan for book accounting purposes. The criteria are: (i) title passes automatically to the lessee at the end of the Lease Term, (ii) Lease contains a bargain Purchase Option, (iii) Lease Term is greater than 75% of estimated useful life of the leased asset, and (iv) present value of Lease payments is greater than 90% of the leased asset's Fair Market Value. The lessee treats a Capital Lease as both the borrowing of funds and the acquisition of an asset to be Depreciated; the Lease is recorded on the lessee's Balance Sheet as an asset and a corresponding liability (Lease payable). Periodic lessee expenses consist of Interest on the debt and Depreciation of the asset.

Capital Structure: the overall structure of a company's debt and Equity. For example, a company's Capital Structure could include Senior Mortgage debt, Preferred Equity, and common Equity investments.

Capitalization Rate (Cap Rate): the ratio between the Net Operating Income produced by an asset and its capital or current market value.

Capitalize: in accounting terminology, a cost a company recognizes as a long-term investment rather than immediately recognizing it as an expense. The company then Amortizes or Depreciates the expense over time on its Income Statement, until eventually all of the expense is recognized. Spreading the expense over time like this increases earnings in the short term, because the entire cost is not deducted in the first period. Also used in the context of loans that accrue Interest in whole or in part (rather than being paid on a current basis), where Capitalize refers to adding any accrued and unpaid Interest to the Principal amount of the Notes on any Interest Payment Date in lieu of paying that Interest in cash.

Carried Interest: the percentage of a fund's or other company's investment profit that is paid, directly or indirectly, to the fund manager, General Partner, or a particular Member of a company, which is in excess of such party's ownership percentage in the entity. This is effectively the performance fee for receiving such payment.

Carryforward: an income tax deduction or credit (typically used when referring to a net operating loss) that cannot be taken entirely in a given period but may be taken in a later period.

Carveout: an exception to a Covenant or other Term of a Loan Agreement or Credit Agreement. Also, an exception to the nonrecourse character of a real Property secured loan.

Cash Available for Distribution (CAD): a REIT's cash available to be distributed as dividends, generally calculated by subtracting recurring Capital Expenditures from FFO.

Cash Equivalent: highly rated, short-term, liquid investments that are readily convertible to cash and have short maturities.

Cash Flow: the volume of revenues and expenses flowing in or out of an entity. Cash Flow is sometimes used synonymously with Liquidity or Current Income.

Cash Flow Participation: the right to share in the Cash Flow generated by an income producing Property in excess of Property expenses and, often, a certain return to the Equity investors. Often a source of additional return to a lender, beyond Interest and fees.

Cash Management Account: an account set up under a Cash Management Agreement or the cash management provisions of a Loan Agreement into which all Cash Flow from a Mortgaged Property are to be deposited. Usually an account set up in the name of the lender or under the exclusive control of the lender.

Cash Management Agreement: an agreement between a Mortgage Borrower and its lender that prescribes how the lender is to collect and disburse all Cash Flow from the Mortgaged Property.

Cash on Cash: a measure of an investment's rate of return based on cash invested, excluding Leverage. A Cash on Cash return is generally equal to the annual income generated by the investment divided by the amount of cash invested.

Cash Out Financing: a loan that allows the Property owner to liquidate some or all of its Equity in the Property, usually due to the Appreciation of the Property since its acquisition by the owner.

Cash Sweep: taking all Excess Cash Flow and applying it to the Mandatory Prepayment of debt. Cash Sweeps usually apply when something bad has happened or is projected to happen, so as to reduce the lenders' exposure as quickly as possible. Sometimes Cash Sweeps happen by design, if a loan is intended to be relatively short-term or highly Amortizing (such as a liquidating trust structure). See also Cash Trap.

Cash Trap: when times are bad, but perhaps not bad enough to call for a Cash Sweep, lenders may use a Cash Trap. Excess Cash Flow is held in an account while the parties wait and see whether things improve. Typically, the lender then applies this money through a Waterfall to pay debt service and other real Property expenses, and then any remaining funds will sit in the Cash Trap until release upon the Borrower meeting certain tests.

Casualty Insurance: a general category of insurance providing coverage against accidents, Property damage, or other liabilities. Casualty Insurance differs from Property Insurance in that Property Insurance insures damage to the physical Property itself, while Casualty Insurance covers the business.

Cause (Cause Event): the commission of a specified act or the occurrence of a particular event that gives one party the right to exercise certain rights or remedies against another party under a contractual agreement.

Caveat Emptor: the Latin equivalent of "buyer beware." Although US state and federal law has modified this common law doctrine, Caveat Emptor cautions purchasers to proceed at their own risk and holds them responsible for determining Good Title.

Centralized Marketing Program: the marketing, sales, and reservation services that a hotel manager or franchise company typically provide to owners of the hotels within the manager's or franchise company's system.

Centralized Services: the services, programs, and benefits that a hotel manager or franchise company typically provide to owners of the hotels within the manager's or franchise company's system (such as a Loyalty Program).

Certificate of Good Standing: ordered in connection with a Closing to make sure that the company and its subsidiaries are good corporate citizens. Certificate of Good Standing is a document issued in the US by the Secretary of State of the relevant jurisdiction certifying that an entity is in good standing (i.e., all fees, taxes, and penalties owed to the state have been paid, annual reports have been filed, no articles of Dissolution have been filed, etc.). A Bring Down Certificate of good standing is a short-form Certificate of Good Standing that is obtained more quickly and generally ordered for delivery on the morning of the Closing to make sure nothing has happened since the date of the long-form Certificate of Good Standing.

Certificate of Insurance (COI): a document issued by an insurance company certifying to a Property owner and often to its lender and its landlord, if applicable, that insurance coverage exists and outlining the basic provisions thereof. Also known as Evidence of Insurance.

Certificate of Occupancy (CO or CofO): a document verifying that the building complies with applicable Code and Zoning restrictions, issued by the local building or Zoning authority.

Chain of Title: the historical sequence of owners of a Property, beginning with the original owner and ending with the current owner. This list tracks Transfers of title to a Property.

Change Order: an agreement during Construction between a project owner and contractor that the contractor do something different than was originally contemplated by the Construction Contract. The contractor typically initiates the Change Order process when a circumstance or Assumption has changed, and the owner agreed to take the risk surrounding that change. For instance, a contractor might agree to guarantee completion by March 15, provided there are no more than five days of inclement weather preventing crews from working. Once the inclement weather days exceed five, the contractor will seek a day-for-day extension of the guaranteed completion date through the Change Order process.

Charge Off (Write Down): a write-off of debt by a lender.

Charter: a name for the fundamental document prescribed under US state corporate laws to create a valid corporation that qualifies for limited liability and all other state-conferred aspects of incorporation. Generally called the articles of incorporation (in Maryland, California, and other states) or the certificate of incorporation (Delaware).

Chattel: an item of personal Property that is movable (as distinguished from real Property).

Chattel Mortgage: a Mortgage on goods purchased, whereby the seller Transfers title to the buyer but retains a Lien securing the unpaid balance due to the seller, which is paid in future installments. Security Agreements, which Article 9 of the UCC governs, have generally replaced Chattel Mortgages.

Churn Rate: used by REITs to refer to the rate at which Leases are not renewed or are terminated during a certain period. Churn Rates are often calculated by comparing the annualized Rent of expired/terminated Leases during a certain period to the total Portfolio's annualized Rent at the beginning of such period.

City Ledger: Accounts Receivable attributable to non-registered guests, guests that are no longer at the hotel or event, or meeting room usage. Credit card receivables typically make up the largest portion of the City Ledger.

Claims Made Policy: an insurance policy in which coverage is triggered by the date the insured first became aware of the possibility of a claim and notified the insurer of such possibility. Typically, the policy period for a Claims Made Policy will extend to a stated retroactive date years before the policy was purchased, and the policy will provide coverage for claims made during the Term of the policy stemming from actions or events that occur sometime between that retroactive date and the date the claim is made. Compare with Occurrence Policy.

Class of Building: office space classifications representing a subjective quality rating that is used to differentiate between buildings and indicate the competitive ability of each building to attract similar types of tenants. Class A office buildings compete for premier office users, Class B office buildings compete for users willing to pay average Rent, and Class C office buildings are aimed at tenants who pay below-average Rent for the area. Trophy properties are usually one-of-a-kind landmark buildings such as Rockefeller Center in New York. The Building Owners and Managers Association (BOMA) is in charge of overseeing classification standards.

Class of Stock (Class of Interest): a type of stock or interest in a company that issues more than one type of stock or interest. Each type of classified stock or interest has distinct rights attached to it. Two common classified stocks are Preferred Stock, which carries the right to guaranteed dividends, and common stock, which carries the right to vote and collect common dividends.

Clawback: the obligation to return a fund Distribution previously received from the fund. This can refer to the obligation of a fund manager or General Partner to return excess Carried Interest Distributions, which can occur when markets or investment outcomes are strong in the early years of the life of a fund and weak in later years. Clawback can also refer to the obligation of fund investors to return Distributions previously received if the fund requires those amounts to meet its expenses or liabilities. Commonly referred to as a Limited Partner giveback.

Clean Title: a title that is free from Liens and all doubt regarding ownership of the Property, such that a reasonable buyer would accept that title to the Property. Clean Title is legally valid or effective. Also known as Clear Title, Defensible Title, Good Title, Indefeasible Title, Insurance Title, and Marketable Title.

Clogging the Equity of Redemption: the right of a Mortgagor to redeem its Property once the debt secured by a Mortgage is paid off or otherwise Discharged, and to hold and enjoy the Property as such Mortgagor was entitled to hold and enjoy it before the Mortgage. Contractual impediments that interfere with the Mortgagor's ability to satisfy its Obligations and reclaim its Property are referred to as clogs and are void.

Closing (Purchase and Sale): the consummation of a sale transaction between a purchaser and seller of real Property. At the Closing, all agreements between the parties are finalized, executed and delivered. Consideration is exchanged and title to the Property is conveyed.

Closing Checklist: a document that lists every last piece of paper that needs to be executed and/or delivered as a Closing Condition before the Closing of any transaction (loan, acquisition, etc.). A junior attorney's best friend and worst nightmare.

Closing Condition: a type of Conditions Precedent, namely those applicable at the time of Closing of a transaction.

Closing Costs: miscellaneous fees that both buyer and seller or lender and Borrower incur during the course of a transaction. These costs are often paid at Closing, when the contract or loan documents are executed and the sale or loan is consummated. Examples of Closing Costs include fees from the involved attorneys, surveyors, and appraisers, as well as title insurance premiums and other diligence providers.

Closing Date: the date on which the Closing occurs.

Closing Documents: documents signed during the final step in the execution of a transaction. These documents usually include the Deed, loan documents, title affidavits, and multiple disclosures.

Closing Instruction: written instructions pursuant to which an attorney or Escrow agent assembles the documents signed by the parties, then holds them in Escrow as part of a deal Closing process. Once these instructions have been followed, the Escrow is released and the documents become effective.

Closing Memo: a memorandum prepared prior to the Closing and agreed by the parties to the transaction, which sets forth the order in which the transaction steps occur and the amounts and wire instructions for the payments to be made at the Closing.

Closing Statement: a document that discloses all the Sources and Uses of funds and proceeds from the transaction, including all fees, costs, credits, and expenses.

Club Deal: a smaller loan pre-marketed to a group of relationship banks — the arranger is a first among equals, and each lender gets a full (or almost full) cut of the fees.

Code: a reference to a set of rules or official statutes such as the Internal Revenue Code or Bankruptcy Code.

Coinsurance: title insurance coverage provided by two or more title companies whereby each company is responsible for its allocated portion of risk and shares in its portion of the title insurance premium and the insured has direct access to each insurer in the event of a claim. Common practice is for one company to issue the policy and for the other company(ies) to review the lead insurer's policy and issue a Coinsurance Endorsement (also known as a "Me Too" Endorsement) to the lead insurer's title policy.

Co-Lender Agreement (Syndication Agreement): an agreement among lenders setting out the relative rights and Obligations of the various lenders making the loan to the Borrower, including Priority of payment, allocation of losses, and Priority of interest in the Collateral, if any, supporting the loan, the rights to service and administer the loan, and the exercise remedies following the occurrence of an Event of Default. The agreement will also address the rights of each lender to sell off its loan exposure after a transaction has closed.

Collar: a form of Hedge that limits the upside and protects the downside on the particular item being Hedged. For instance, an Interest Rate Collar on a Floating Rate Loan would establish an upper and lower limit on the Floating Rate.

Collateral: the assets of a Borrower and any Guarantors or other Grantors or Pledgors that secure the Borrower's (and sometimes Guarantors') Obligations under the applicable loan or credit documents in a Secured Financing.

Collection Account: an account created for an income-producing Property into which all revenues of the Property are deposited. The account will either be in the name of the lender or agent for the lenders or be expressly held for the benefit of the lender or agent, as secured party, and the Borrower will grant the Lender or agent a Security Interest in the Collection Account.

Comfort Letter: a letter from an Issuer's auditors addressed to the underwriters (in public offerings) or the initial purchasers (in 144A offerings) that provides "comfort" that the numbers included in the prospectus (in public offerings) or in the Private Placement memorandum (in 144A offerings) are accurate. The prescribed form a Comfort Letter should take is spelled out in SAS 72. The underwriters or initial purchasers (and sometimes the Board of Directors) seek such a letter in order to help establish a Due Diligence defense. The Comfort Letter allows the underwriters or initial purchasers to demonstrate reliance on experts for the Audited financials and an element of a "reasonable investigation" for the Unaudited Financials and other Unaudited Financial information. The Comfort Letter is delivered at pricing. It is the natural enemy of both accounting firms and junior- and mid-level law firm associates.

Commencement Date: the date on which actions pertaining to a contract begin. Although a Lease is dated when negotiated and signed, the Commencement Date may be a later date upon which the Terms of the Lease are implemented.

Commercial Mortgage-Backed Security (CMBS): a security backed by the Cash Flow produced by commercial or residential Mortgage loans. The creation of these securities occurs through a Securitization process whereby the applicable Mortgages are sold into a Securitization trust and the securities are issued by the trust thereafter.

Commission: a fee paid to a real estate broker in exchange for services rendered in connection with the sale, Lease, or exchange of Property. The payment is negotiated independently between the parties on a case-by-case basis and may be a percentage of the transaction value.

Commitment (Capital): in a loan context, a lender's obligation to fund a loan, up to the maximum amount specified, to a Borrower provided that the terms and conditions of the Loan Commitment are satisfied. In a joint venture context, the obligation of a joint venture Member to fund Capital Contributions to the venture, in or up to the maximum amount specified, provided that the terms and conditions for such Capital Contribution are satisfied.

Commitment Fee: a fee paid to the arranger of a loan for the Commitment provided in the Commitment Letter. The term also refers to a fee that is paid on the undrawn portion of a committed Revolver as compensation to the Revolver lenders for keeping money available for borrowing.

Commitment Letter: a letter by which financial institutions commit to provide loans. The Commitment Letter consists of the actual text of the letter, along with annexes and exhibits that lay out the Terms of the facilities and the Conditions Precedent to funding.

Commitment (Title Insurance): a document that informs the buyer or lender of the state of title of a Property as of the date of the Commitment. It includes three schedules: an informational page showing the party in which title to the Property vests and the Legal Description of the Property (often labeled Schedule A); the requirements page setting forth what the title insurance company needs to insure the buyer's title to the Property or the lender's Mortgage of the Property (often labeled Schedule B-I); and the exceptions page describing Liens, Easements, real estate taxes, and other matters affecting title to the Property (often labeled Schedule B-II).

Common Area: the area of Property available for shared use by all owners or tenants, often found in the lobbies of office buildings and in the clubhouses or similar amenities of apartments, gated communities, and Condominiums.

Common Area Maintenance (CAM): the fees paid by tenants that cover a pro rata share of the upkeep of specific Common Areas and amenities such as parking lots, trash removal, and street cleaning. CAM is highly negotiated in retail Leases. Landlords seek a broad definition to cover their costs of ownership and operation of the Common Areas, whereas tenants seek to narrow the definition to cover operation and maintenance costs of such areas only.

Community Reinvestment Act (CRA): an act passed by the US Congress in 1977 to encourage Depository institutions such as local banks and thrifts to help meet the credit needs of surrounding communities (particularly low- and moderate-income neighborhoods) by measuring each such institution's record in fulfilling its community obligations and then using that measurement in connection with future regulatory approvals needed by the applicable institution.

Comp: data used to calculate how much a Property is worth by comparing various aspects from recently sold properties in the same geographic neighborhood, such as physical characteristics, financing conditions, and conditions of sale. Also known as Comparables. Market conditions and locational comparability are also important factors.

Compact: the negotiated agreement between an American Indian tribe and a state government that resolves questions of overlapping jurisdictional responsibilities.

Competitive Bidding: bids from competing organizations that are openly invited, in order to stimulate competition and receive the lowest price for a given contract.

Competitive Set: a group of hotels mutually selected by the owner of a hotel and its manager to serve as a reference benchmark for the hotel's performance. A good description of a pair of first-year law students.

Completion Guaranty: Guaranty provided by a credit-worthy entity or person (e.g., the Sponsor of the project) guaranteeing completion of the project and payment of any overages incurred in connection therewith.

Comprehensive Environmental Response Compensation and Liability Act (CERCLA): a US federal law, passed in 1980 and commonly known as Superfund, that imposes strict liability (i.e., liability that does not depend on fault) for cleaning up environmentally contaminated land.

Computer Assisted Drawing (CAD): the use of a computer to aid in the formation or Alteration of a building design. Like making computer animated cartoons, but for buildings.

Concept Drawings: the initial illustration of a design for a Construction project, without the specific engineering logistics.

Condemnation: when a taxpayer owns Property or real estate in a place that has been designated for public use or Construction. Public authorities exercise Condemnation through the power of eminent domain.

Conditional Sale: a sale whereby the buyer takes Possession of the Property but the seller retains a right of repossession until payment of the full purchase price or satisfaction of one or more stipulated conditions. Once the conditions are satisfied, the contract becomes binding.

Conditional Use Permit: a Property owner's permit that allows the owner to use the Property in accordance with current Zoning regulations, according to the conditions required by the Zoning authority.

Conditions Precedent: things that must happen, including delivery of documents, Representations and Warranties being true, and sufficient funds being on-hand to close a transaction or be entitled to Draw under a Revolver loan facility or Construction Loan facility. The accent is on the second syllable: “prə-see-dent.”

Condo Hotel (Condotel) Block: a project that is used as both a Condominium and a hotel. Typically, individual guest rooms are sold as Condominium units to third-party owners who are then given the right to offer such units to be rented out as part of the hotel’s guest room inventory. When a unit owner occupies the unit, the owner is typically given the right to receive all of the hotel’s ancillary services. The right to submit the unit back into the hotel’s inventory is what primarily differentiates a Condo Hotel from a Branded Residential project.

Condominium: an individually owned housing unit that is part of a larger complex.

Condominium Conversion: the conversion of rental units to a Condominium regime.

Conduit Loan: a loan originated with the intent of selling the loan into a pool (such as a REMIC) that will become the security for a mortgage-backed security.

Confirmation Order: an order entered by the Bankruptcy court to evidence its approval and confirmation of a Plan of Reorganization.

Connected Load: the total electric load of a system when all of the equipment connected to that system is energized.

Consent Dividend: a REIT and its shareholders may, under certain circumstances, agree to treat an amount as deemed paid as a dividend on common stock for purposes of the Dividends Paid Deduction. The amount of a Consent Dividend is treated as distributed in cash by the REIT to the shareholder on the last day of the REIT’s Taxable Year and as contributed to the REIT’s capital by the shareholder on such day.

Consideration: something of value given in exchange for something else. Consideration is often bargained for and induces each party to enter into a contract, and is what distinguishes a contractual obligation from a gift. Money is a common form of Consideration, but other things of value, such as a promise to pay or a piece of Property, are also acceptable.

Construction: when a Property owner constructs a building or space for a specific tenant, with the tenant typically controlling the design and specifications.

Construction Contract: an agreement to build, construct, or repair a building or structure.

Construction Document (CD): a plan, drawing, or specification for a Construction project.

Construction Drawings: documents prepared by an architect that show a graphic representation of the building or project as planned.

Construction Loan: a type of loan, the proceeds of which are used primarily for Construction Improvements on real Property, which is typically advanced in parts as work progresses and is used to pay the General Contractor, Subcontractors, and material suppliers, as well as the Soft Costs of Construction. This type of loan is typically made with the expectation that a permanent loan will be used to refinance it upon completion of construction, or the loan is structured to be convertible into a permanent loan at such time.

Construction Manager: the person responsible for oversight of a project's construction and coordination from start to finish.

Construction: Build-Design: when a single entity handles both the design and Construction of a specific project.

Construction: Fast Track: when some portions of a project begin Construction before the entire design is finished.

Construction: Take-Out Buyer: the purchaser of a new Construction project upon completion of Construction. The proceeds of such sale are applied to pay off the Construction financing, and any excess is retained by the initial developer as Profit.

Constructive Eviction: when a landlord does not ask the tenant to leave but instead does something or fails to do something that they have a legal duty to provide, rendering the Property uninhabitable. Tenants who can show that the landlord's actions caused the uninhabitable condition and that the tenant vacated the Premises in a reasonable time may terminate the Lease and seek damages.

Constructive Ownership: the ownership of REIT stock under the rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code. The Constructive Ownership rules also apply when determining whether a REIT actually or constructively owns an interest in a tenant. Generally, these rules provide for Constructive Ownership of stock among certain family members and to holders of options to acquire stock, and certain upward and downward attribution of ownership of stock between partnerships, corporations, trusts or estates and their owners, subsidiaries, or beneficiaries.

Consumer Price Index (CPI): a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. Indexes are available for the US and various geographic areas. Average price data for select utility, automotive fuel, and food items are also available. In real estate, the CPI is often used in the determination of annual Rent increases, either to define the amount of the Rent increase each year or to provide a cap or Floor for such increases.

Contiguous: pieces of Property that are adjoined or adjacent to one another and share a common boundary.

Contingency: extra money in a Construction budget which at the time of Closing is not earmarked for any particular use but may be used for unexpected costs going forward. Contingency might be anywhere between 5% and 15%. Developers do not want Contingency to be too high, since it consists of debt (expensive and rare) and Equity (even more expensive and rare).

Contingent Obligation: an obligation that may, but is not certain to, materialize depending on what circumstances arise.

Contingent Rent: the Rent, or portion of the Rent, under a Lease that is not fixed or determinable at the inception of the Lease, but varies as a result of changes or events occurring after the inception of the Lease. Contingent Rent encompasses things like Common Area Maintenance costs, Property taxes payable by the tenant and Percentage Rent and Rent escalations based on an Index rather than a fixed percentage escalation.

Contraction Right: a Lease provision allowing the tenant to return a portion of the Demised Premises to the landlord if desired. A Contraction Right may also include the ability for the tenant to terminate the Lease early in its entirety.

Control: in a contractual context, a range of definitions, factoring in shareholdings, management roles, shareholder agreements, directorships, and the degree to which others have any of these things. Also a means of achieving Perfection Under Article 9 for certain types of Collateral. For certain Collateral, such as Deposit accounts, Control is the only method of Perfection. For other Collateral, such as securities accounts, certificated Securities, and uncertificated Securities, Perfection can be achieved by Filing a Financing Statement, although Perfection by Control has higher Priority in instances where Perfection can be achieved both ways.

Controlling Holder: in the context of a co-lender or Participation agreement, the holder of a portion of the debt that has the right to direct and consent to how the lenders will act in certain situations (e.g., in exercise of remedies). The Controlling Holder can lose its control if an Appraisal event occurs and it is determined that such holder is "out of the money" to such a point as to make their position valueless (and therefore their position as a controlling party inappropriate).

Cooling Off Period: a period of time after the purchase during which the buyer has the right to terminate the contract for a small penalty fee. At the end of the Cooling Off Period, the contract is legally binding. Under the US Federal Trade Commission's Cooling-Off Rule, real estate transactions are exempt and, therefore, contracts are binding once exchanged.

Cooperating Broker: a broker who assists another broker, often by locating the buyer for the Property. The brokers usually split the Commission.

Cost of Capital: the combined cost of debt and cost of Equity used to determine required return on capital necessary to make a project worthwhile.

Cost Overruns: the amount spent in excess of budgeted costs to complete the Construction or Alteration of a project.

Cost Recovery: the recoupment or deduction for financial accounting or tax purposes of the cost of a capital asset over time through Depreciation, Amortization, or depletion.

Cost-Plus Contract: an agreement by which the contractor is paid for all costs, plus a Profit.

Co-Tenants: persons who hold Property jointly or in common with each other.

Counterparty: the "other guy," or the other party that participates in a contractual transaction. For example, buyer and seller or lender and Borrower.

Course of Dealing: a clearly recognizable pattern of previous conduct between the parties to a transaction. The Course of Dealing is admissible evidence to interpret ambiguities in contracts and is examined by a court in determining the intent of the parties when they entered into a contract. The presumption is that the parties entered into the contract in accordance with the manner in which business was transacted prior to the signing of the contract. The Course of Dealing cannot be used to alter or contradict the contract's express provisions. The Course of Dealing is intended to safeguard the expectations of the parties and improve the certainty of their transactions, based upon their prior dealings with each other.

Covenant: legalese for an agreement to do something (Affirmative Covenants such as give notice to a seller/lender of a material event), to not do something (Negative Covenants such as not encumbering one's Property), or to maintain something (maintenance Covenants such as maintaining a Debt Service Coverage Ratio of a specified amount).

Covenant of Quiet Enjoyment: a promise that the tenant or Grantee will be able to use and enjoy real Property without disturbance. This Covenant includes the right to exclude others from the Property, to peace and quiet, to clean Premises, and to basic services.

Covenants, Conditions and Restrictions (CC&R): limitations and rules placed on a group of homes or condos by a developer or Association; for example, restrictions on the color a home can be painted.

Cramdown: the confirmation of a Chapter 11 Plan of Reorganization over the rejection of one or more classes of impaired creditors, provided that the Plan of Reorganization satisfies the basic requirements set forth in Bankruptcy Code Section 1129(b). The confirmed Plan of Reorganization will bind all creditors and Equity security holders, even those who vote against it.

Credit Agreement (Loan Agreement): a legal document in which one or more lenders agrees to lend money to a Borrower. The Credit Agreement not only sets forth the mechanics for the making of loans, but also contains Representations and Warranties of the loan parties, Affirmative Covenants, Financial Covenants, Negative Covenants, the remedies of the lenders after the occurrence of an Event of Default and expense reimbursement, as well as indemnity and other Boilerplate provisions.

Credit Bid: a bid by a secured creditor in a Foreclosure or Bankruptcy sale whereby the secured creditor bids up to the amount of the outstanding balance of its loan (in a Foreclosure context) or offsets the allowed amount of its secured claim against the price at which it would purchase the assets (in a Bankruptcy context).

Credit Enhancement: improving the credit quality of a company by employing resources, financial instruments, or the credit of another entity to support such credit quality. Common methods of Credit Enhancement include guarantees, Letters of Credit, Surety Bonds, Reserve Accounts, and cash Collateral accounts.

Credit Rating: designations used by Rating Agencies to give relative indications of credit quality.

Credit Tenant Lease: a single-tenant, Triple Net Lease, on a mid- to long-term basis, to an Investment Grade tenant. A landlord with such a Lease may be able to arrange more favorable financing Terms from lenders who will lend against the rental stream from such Lease, underwriting the loan based on the credit of the tenant rather than using Mortgage loan underwriting standards in evaluating the value of the Property and credit of the landlord.

Creditor's Rights: an area of law dealing with the collection of debts and judgments owed by a party (the debtor) to another party (the creditor).

Cross-Collateralized: an asset that serves as Collateral for more than one loan. If the debtor is unable to make timely either loan's schedule payments, the affected lender(s) can eventually force the Liquidation of the asset and use the proceeds for repayment.

Cross Default: a loan provision under which Default on one debt obligation triggers Default on another debt obligation.

Curb Appeal: the general attractiveness of a house or other type of Property from the exterior. Curb Appeal plays a significant role in Property Valuations, as it indicates the initial appeal of a Property to prospective buyers. Examples of factors that play a role in Curb Appeal are: landscaping, exterior decorations, state of repair, and paint. Also a popular show on HGTV.

Cure: to fix or make right. Bringing into compliance with a Covenant or otherwise eliminate a Default.

Cure Period (Grace Period): the period provided in a Loan Agreement, Credit Agreement, or other loan document for a Borrower or other loan party to Cure a Default so it does not ripen into an Event of Default.

CUSIP Number: a figure consisting of a combination of nine characters, both letters and numbers, that uniquely identifies a financial security. The CUSIP system is overseen by the Committee on Uniform Securities Identification Procedures.

Custodian: a financial institution that has the legal responsibility for a customer's documents, Notes, and/or securities.

Customary Services: for purposes of the Income Tests, Rents From Real Property include charges for services customarily furnished or rendered in connection with the rental of real Property, whether or not those charges are separately stated. Basic Customary Services provided to tenants in connection with the occupancy of space in general (e.g., light, heat, other utilities, and Common Area Maintenance) may be provided by the REIT directly or by any other person. Other Customary Services provided at properties of a similar class in the same geographic market in which the Property is located generally must be provided through an Independent Contractor from whom the REIT derives no income or a TRS.

Damages: monetary compensation that is awarded by a court in a civil action to a party that has been injured through the wrongful conduct of another party, intended to be remedial in nature, i.e., to restore the injured party to the position the party was in prior to the harm.

Exemplary/punitive Damages may be awarded to a plaintiff in addition to compensatory Damages when a defendant's conduct is particularly willful, wanton, malicious, vindictive, or oppressive. The intent of exemplary/punitive Damages is to punish the wrongdoer and to act as a deterrent to others who might engage in similar conduct.

Consequential Damages or losses arise not from the immediate act of the party, but as a consequence of such act. Consequential Damages can be direct or indirect.

Datedown Endorsement: an Endorsement to a title insurance policy that brings the date of the policy forward to the date of the Endorsement. This Endorsement describes any Encumbrances or other matters affecting title to the Property that have been recorded against the Property since the date of the initial title policy, and ensures that there are no additional Encumbrances since the date of the initial title policy that take Priority over one's Mortgage or Deed of Trust. This Endorsement is customarily obtained in connection with a loan modification transaction.

Dealer Property: Property held as inventory or primarily for sale to customers in the ordinary course of business. Whether a Property is Dealer Property is determined based on the facts and circumstances, taking into account factors such as the number, frequency, and continuity of sales, the nature and extent of promotional selling activities, the length of the holding period, and the purposes for which the Property was acquired, held, and disposed of. See also Prohibited Transaction.

Debt Maintenance: Partners in a partnership (such as an Operating Partnership) are allocated a share of the partnership's debt. If a Partner's share of partnership debt is reduced, or if a Partner contributes to a partnership Property subject to liabilities, and its share of such liabilities after the contribution is reduced, such reductions are treated as a Distribution of cash by the partnership to the contributor. Such Distributions will result in the recognition of gain to the extent that they exceed the Partner's tax basis in the Partnership Interest or trigger a Disguised Sale. The contributor of Property to a partnership may therefore want to ensure that it will be allocated sufficient partnership debt to prevent recognition of gain. A Tax Protection Agreement will frequently provide for restrictions on the partnership's ability to repay or refinance the debt to which the contributor's properties are subject. It may also provide the contributor with the right to guarantee a specified amount of the partnership's debt for a specified time period (e.g., the same period as that chosen for Sale Protection), which is intended to cause such debt to be allocated to the contributor for purposes of the above rules. The partnership may be required to indemnify the contributor in the event the contributor recognizes income as a result of the partnership's breach of these obligations.

Debt Service Coverage Ratio: the ratio of debt service to Net Operating Income, i.e., the amount of cash available to pay Principal and Interest on the loan. Often an ongoing Financial Covenant or cash trap trigger in a Loan Agreement.

Debt Service Reserve (DSR): cash Collateral held by lenders or the agent to pay debt service in case there is a hiccup in revenue.

Debt Stack (Capital Stack): the entirety of capital necessary for the completion or funding of a project. Such capital may include Equity, Preferred Equity, mezzanine debt, and Mortgage debt. The debt with the highest level of risk is at the top of the so-called "capital stack" and has the highest level of return. Typically, the stack is arranged as follows: (i) Sponsor Equity, (ii) Preferred Equity, (iii) mezzanine debt, and (iv) Mortgage debt.

Debt to Equity Ratio: a financial leverage ratio calculated by dividing a company's total liabilities by its owners' Equity. The ratio indicates what proportion of Equity and debt the company is using to finance the assets of a company. A high Debt to Equity Ratio generally means that a company has been aggressive in financing its growth with debt.

Debtor in Possession: a debtor that has remained in Possession of its Bankruptcy estate (as opposed to having, for instance, a Chapter 11 trustee appointed to run the Bankruptcy estate). In Chapter 11, a Debtor in Possession has most, if not all, of the powers that a trustee of the debtor's estate would have if the trustee were in Possession of the estate.

Debtor in Possession Financing (DIP Financing): financing arranged for a company for the period during which it is in the Chapter 11 reorganization process. Notably, claims for Principal, Interest, and fees under a DIP Financing typically take Priority over all existing debt, even pre-Bankruptcy secured debt. As long as certain conditions are met, the Bankruptcy Code allows Liens securing the DIP Financing to “prime” Liens securing the pre-Bankruptcy Filing debt, in order to encourage lenders to lend money to companies in Bankruptcy.

Deed: a legal document containing a bargain or contract used to Transfer ownership of real Property which describes the real Property and is signed by the transferor. Some Deeds include Warranties.

Deed in Lieu of Foreclosure: an agreement by an owner of a Property subject to a defaulted loan to “hand the keys” to the lender instead of making the lender go through the hassle of Foreclosure. This is a fairly common approach in downside cases, indicating that not all Acceleration scenarios are contentious between Borrower and lenders. Sometimes the owner is given a nominal payment to cough up the Deed in Lieu of Foreclosure, perhaps payment of its legal fees. Also known as Deed in Lieu or Assignment in Lieu.

Deed: General Warranty: a type of Deed containing both present and future Covenants whereby the seller makes several guarantees, including that seller owns the Property in question and has a right to sell it, and that the real Property is free from any Liens or Encumbrances. The General Warranty extends back to the origin of the real Property, not just the period of ownership of the seller.

Default: Loan Agreements and Credit Agreements generally have three stages of trouble: the Default, the Event of Default, and Acceleration. At stage one, the Default, the Borrower has violated some provision of the loan documents. Left uncured for a specified period of time, together (in some cases) with notice from a disgruntled lender or agent, a Default will ripen into an Event of Default, which will entitle the lender or agent to exercise remedies. Also known as the beginning of trouble.

Default Interest/Rate: the extra Interest accruing on amounts under a Loan Agreement or Credit Agreement following an Event of Default. Often Default Interest accrues on all outstanding amounts at the regularly applicable Rate plus 200–500 Basis Points, but sometimes it only accrues on overdue amounts.

Defeasance: a provision that voids a bond or loan when the Borrower purchases and pledges as collateral to the secured party cash or bonds sufficient enough to service the Borrower’s debt. Usually encountered in a CMBS context, Defeasance of a Securitized commercial Mortgage is a process in commercial real estate finance by which a Borrower substitutes other income-producing collateral for the Property subject to the Securitized Mortgage to facilitate the removal of such Mortgage on the Property without paying-off the existing Note. Generally, a Basket of

US Treasury Obligations is the only collateral acceptable for this type of substitution. See also Defeasance Collateral.

Defeasance Collateral: substitute Collateral comprised of government securities within the meaning of the Investment Company Act that can be used to replace real Property Collateral securing a Mortgage loan without jeopardizing the loan's status as a qualified Mortgage under the tax rules governing REMICs. Typically, these are US Treasury Obligations. The Portfolio of securities used to Defease the real Property Collateral needs to be structured to match the debt service schedule of the loan through the loan's Maturity date.

Deferred Maintenance: normal upkeep activities that have been postponed and often result in asset deterioration. In loan transactions, the Borrower is sometimes required to Escrow a portion of the proceeds of the loan in a Deferred Maintenance reserve fund to cover costs for such upkeep activities.

Deficiency: the difference between how much a secured party is owed and how much it realizes upon disposing of its Collateral in Foreclosure.

Deficiency Dividend: a dividend paid by a REIT in a later Taxable Year that the REIT may include in its Dividends Paid Deduction in an earlier Taxable Year following a determination (such as a final court decision, a Closing agreement, an agreement between the IRS and the REIT, or a statement filed by the REIT) that results in an increase in the REIT's taxable income or a decrease in the REIT's Dividends Paid Deduction for such earlier year. Deficiency Dividends may be taken into account both in determining whether a REIT has satisfied the 90% Distribution Test and in computing the REIT's tax on undistributed income for the applicable Taxable Year, and may be used to prevent an inadvertent failure to satisfy the 90% Distribution Test. However, a Deficiency Dividend may not be used to prevent a 4% Excise Tax.

Deficiency Judgment: a judgment following a Judicial Foreclosure for the unpaid balance of the Mortgage debt, when the proceeds of the Foreclosure sale of the Mortgaged Property are insufficient to satisfy the outstanding Mortgage debt.

Delay Damages: the actual costs incurred as a result of Construction that has been discontinued for a period of time longer than the time frame anticipated on the date the contract was signed. If the delay is excusable, then the company may receive an extension of time to complete the Construction. Also, not all delays are compensable.

Demand Load: the total electric power that a facility requires to supply its continuous and non-continuous operations. Knowledge of the

Demand Load is important prior to certain types of Construction in order to ensure that the new structure or addition will be supported by enough power.

Demising Wall: a boundary, also known as a partition or party wall, that separates the real Property of one party from the real Property of another party.

Deposit: the funds provided at the signing a Letter of Intent or contract to convey that the buyer is committed to the transaction. If the deal goes ahead after the diligence period or other contract conditions to Go Hard are complete, the Deposit becomes non-refundable and applied to the purchase price. If the buyer terminates the contract during the diligence period or the seller defaults after the Go Hard date, the Deposit is returned to the would-be buyer. Also known as Earnest Money or Good Faith Deposit.

Depositary (Depository Bank): a bank that agrees to hold a Borrower's accounts in a financing and to administer them in accordance with instructions that leave no discretion to the Depositary.

Depreciation: an accounting method of allocating the acquisition cost of a tangible asset or Property over the expected useful life of such asset or Property by attributing portions of such cost to the periods during which the asset is being "used up" to earn revenues. Depreciation is not a method of Valuation but rather cost allocation. The Depreciation of an asset for accounting purposes is not necessarily a reflection of the asset's current market value. In accounting speak, a tangible asset Depreciates over time whereas an intangible asset Amortizes.

Design Development: the phase of Construction in which the design of a project goes from schematic drawings to drawings that specify design elements and lay out mechanical, architectural, structural, and other details.

Designated Individual: a person designated by a partnership or limited liability company to act on behalf of the Partnership Representative and the partnership or limited liability company if the Partnership Representative is an entity.

Development Density: the maximum aggregate amount of land per land parcel that is permitted to be developed. REITs often use the term Development Density when discussing the characteristics and value of their Real Estate Assets.

Development Management Fee: a fee paid to a party that is responsible for overseeing and managing the Construction and development of a project.

Development Yields: the Net Operating Income that the development of an asset expects to generate upon the Stabilization of such asset, expressed as a percentage of the cost of developing such asset, including the cost of a Lease-Up.

Dilution: a reduction in the ownership percentage held by an owner of a company, which typically results from the issuance of additional equity interests in the company to other owners or the conversion of convertible securities held by others.

Diminution: the typical measure of Damages applied by courts in determining Damages to Award in cases of Waste (material and permanent injury to Premises or Property). Diminution of Value compares the value of the Premises or Property after the Waste to the value of the Premises or Property prior to the Waste (as contrasted with "cost of repair," which determines Damages awarded based upon the reasonable cost of repairing the damage done to the Premises or Property). Also known as Diminution of Value and Diminution of Premises.

DIP Financing: see Debtor in Possession Financing.

Direct Metering: when a utility company installs a meter to measure energy consumption, and the tenant pays the utility company directly.

Disbursement Agreement: an agreement between the developer and the lender that establishes the Terms to govern the Construction and the maximum disbursement amount to cover the Construction costs. It also identifies the parties authorized to sign requests for the disbursement of borrowed funds.

Discharge: the release of a Borrower's obligation to pay the lender when the lender receives payment in full of the debt. Also used to describe a release of a Mortgage secured by the debt being paid.

Discount Rate: when used in connection with a bank's cost of money, the Interest Rate charged to a member bank to borrow money from the US Federal Reserve. Also, the Interest Rate used to determine present value.

Discounted Cash Flow: a method for determining the value of an asset based upon discounting the estimated future Cash Flows of the asset to the asset's net present values.

Disguised Sale: under certain circumstances, a contribution of Property to a partnership in exchange for a Partnership Interest, preceded or followed by an actual or deemed (see Debt Maintenance) Distribution of cash or other Property by the partnership to the contributing Partner, may be treated, in part, as a sale of the Property to the partnership for tax purposes. This term may also refer more generally to a Transfer of Property to an entity that is in the form of a tax-free or tax-deferred contribution to the entity but is in substance a taxable sale to the entity.

Disposition Fee: fees levied at the time of the disposition of an asset.

Dispute Resolution Provision: a provision designed to serve as an agreed-upon way for parties to resolve certain disputes. In the context of a joint venture or fund agreement, the mechanism may involve a Buy-Sell provision, Forced Sale Right, or Arbitration provision as the means to resolve an impasse.

Disregarded Entity (DRE): an entity wholly owned, directly or indirectly through other Disregarded Entities, by a taxpayer, whose separate existence from such taxpayer is disregarded for income tax purposes.

Dissolution: the termination and winding up of an agreement, contract, or business entity.

Distribution: the distribution of cash, Property, or securities by a company to an owner of the company.

Diversification: a technique that seeks to reduce risk and enhance returns by blending the types and classes of assets held within a Portfolio.

Dividend Coverage: the extent to which a company's net income is sufficient to support the company's dividend payments.

Dividend Payout Ratio: a measure of the amount of a REIT's earnings returned to shareholders that is attributable to recurring Cash Flows, generally expressed as the yearly dividend per share divided by FFO or AFFO.

Dividend Reinvestment Plan (DRIP): a company-sponsored plan that permits shareholders to have all or a portion of the dividends they would otherwise receive (sometimes along with additional amounts paid by such shareholders) automatically used to purchase additional company stock, sometimes on advantageous terms.

Dividends Paid Deduction (DPD): a deduction, equal to the sum of the dividends paid during the Taxable Year and the Consent Dividends for the Taxable Year, that a REIT is entitled to take to reduce its taxable income, generally allowing the REIT to avoid entity-level tax with respect to such deducted amount. Except in the case of a Publicly Offered REIT, any Preferential Dividend is not considered a dividend for purposes of computing the Dividends Paid Deduction.

Doctrine of Merger: a proposition of real Property law that states that all prior negotiations and agreements (including the purchase agreement) merge into the Deed when the Deed is conveyed. Pursuant to this doctrine, any Covenants or guarantees made in the contract that are not reflected in the Deed are extinguished when the Deed is conveyed to the purchaser of the real Property.

Domestically Controlled REIT: a REIT in which at all times during a five-year testing period non-US persons held directly or indirectly less than 50% in value of its stock. Domestically Controlled REIT status is relevant for non-US investors because the stock of such a REIT is not treated as a USRPI under the FIRPTA rules.

Dominant Tenement: the real Property that benefits from an Easement or right to use a portion of another real Property that is usually adjacent.

DownREIT: a Subsidiary partnership used to acquire and hold Real Estate Assets by a REIT that is not an UPREIT. The DownREIT partnership is intended to replicate the benefits to contributors of appreciated Property that might be obtained from an UPREIT. Generally, owners of appreciated Property will contribute such Property to the DownREIT in exchange for Partnership Interests bearing some degree of economic similarity or exchangeability for the stock of the REIT General Partner. Because the returns to the contributor come from the assets in the DownREIT partnership (rather than all the assets of the REIT in an UPREIT structure), the contributor to a DownREIT partnership often enjoys a preferential distribution right equal to the REIT dividend.

Drag Along Right: a provision allowing an owner of a company (usually a majority owner) to require that other owners of such company (usually minority owners) participate in a sale of their ownership interests to a third party. The idea is that an owner may not be able to recognize the full value of its holdings unless it can sell the entire company to a third party by dragging along the other owners. Drag Along Rights would generally provide that the minority owner receive the same Terms as the majority owner. In contrast, see Tag Along Right.

Dragnet Clause: a clause in a Mortgage pursuant to which any Property acquired by the applicable Borrower after the date of such Mortgage is automatically made subject to the Lien of the Mortgage and/or any additional debt incurred by the same Borrower to the lender following the date of the Mortgage will be automatically secured by the existing Mortgage.

Draw: a funding under a Construction Loan, typically subject to satisfaction of certain conditions for such funding, such as completion of a portion of work and delivery of Lien Waivers.

Dry Closing (Pre-Closing): a transaction (commonly a lending or sale transaction) in which all of the required Closing documents are executed and delivered but no money is funded, pending satisfaction of one or more conditions subsequent, at which point the Closing occurs (the loans are made or the sale price is paid).

Dry Powder: cash reserves kept on hand to cover future Obligations or to purchase assets if conditions are favorable.

Dual Agency: when the Listing agent and the buyer's agent are both licensed by the same broker, or when the same agent represents both buyer and seller. In this arrangement, a dual agent can never get the highest price for the seller and the lowest price for the buyer. Dual Agency must be agreed to in writing between the parties, and is not legal in every state.

Due Diligence: a process of conducting an intensive investigation of a Property or corporate entity to understand fully, among other things, all of the assets and obligations of an entity, title issues, environmental issues, Zoning issues, Building Code issues, pending and potential lawsuits, Leases, Warranties and contracts, and engineering or Property condition issues.

Due Diligence Period (Inspection Period): the time period following acceptance of an offer during which the buyer may investigate the Property to ensure that they are satisfied before finalizing the purchase.

Due on Sale Clause: a clause in a Mortgage contract that requires the Mortgagor/Borrower to repay the Mortgage in full if the Mortgaged Property is transferred or sold.

Duty to Mitigate: a non-breaching party's duty to make reasonable efforts to limit losses resulting from the other party's breach. Not doing so may preclude the party from collecting Damages that might have been avoided.

Early Access: when a landlord allows a tenant to move into or begin performing work on a Property before the Lease is fully negotiated and executed or before the commencement date occurs.

Earn Out: a provision in a Mortgage ensuring that the Borrower will be able to obtain additional funds if certain conditions of the business are met. This allows for the Borrower to reap the benefits of projected earnings, since the lender is not willing to loan additional funds for those future earnings.

Earnings Before Interest, Taxes and Amortization (EBITA): a common measure of company financial performance. Other measures include: EBITDA; Earnings Before Interest, Taxes, Depreciation, Amortization and Management Fees (EBITDAM); and Earnings Before Interest, Taxes, Depreciation, Amortization and Restructuring or Rent Costs (EBITDAR).

Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA): a common measure of company financial performance.

Easement: the legal right to use another's real Property for a specified purpose such as for Ingress or Egress across a neighbor's real Property, for a right to construct a pipeline under the land, or for a grant to a utility provider to construct or maintain utility lines above or below ground.

Easement by Necessity: an Easement over a real Property that is required for the enjoyment of another real Property. This often results when both parcels of land were previously owned by the same party, but can also occur when a landlocked parcel of land requires an Easement over an adjacent Property in order to reach a public road.

Easement in Gross: an Easement that benefits a particular individual, not the real Property.

EBITDA: Adjusted: EBITDA adjusted to eliminate the impact of certain unusual or non-cash items that a Borrower (or its Sponsor) believes are not indicative of the future performance of its business. Also EBITDA on steroids.

Economic Interest: interest in an entity that entitles the owner of such interest only to Distributions and related allocations of income and loss but not to any management, voting, information, or other rights in the entity.

Egress: to exit, go out from, or leave from.

Eligible Independent Contractor (EIK): an Independent Contractor that, at the time such contractor enters into a Management Agreement or other similar service contract with a TRS to operate a Qualified Lodging Facility or a Qualified Healthcare Property leased to the TRS by a REIT in a RIDEA Structure, is actively engaged in (or is related to a person actively engaged in) the trade or business of operating Qualified Lodging Facilities or Qualified Healthcare Properties (as applicable) for any person who is not related to the REIT or the TRS.

Emergency Capital Requirements: the right of a manager or owner of a company to contribute capital or spend capital on an emergency basis without the approval of other owners, often to the extent necessary to prevent injury to persons or Property.

Emerging Issues Tax Force (EITF): a standing committee of the FASB intended to identify and work on recommendations and responses to emerging financial accounting issues.

Encroachment: an intrusion where a Property owner infringes a neighbor's Property rights by building a structure in whole or in part on a neighbor's Property or by letting something encroach onto a neighbor's Property.

Encumbrance: a claim against a Property by another party that does not prohibit passing title but often impedes transferability by diminishing title value. Common Encumbrances on real Property include outstanding Mortgages or unpaid Property taxes. Other types of less problematic Encumbrances include Easements such as utility and Access Easements.

Endorsement: a supplement to an insurance policy agreed to by the Issuer of the insurance to address specific risks or concerns. Endorsements are available for title insurance, liability, casualty, Worker's Compensation, Business Interruption, and other types of insurance policy. With respect to title insurance, there is a great variety in the nature, scope, cost, and negotiability of Endorsement coverages, and from jurisdiction to jurisdiction. Examples of title Endorsements include usury, same-as-survey, contiguity, and Access.

Engagement Letter: a letter agreement pursuant to which consultants are retained for a particular purpose, such as preparation of Appraisals, Property condition reports, environmental reports, and the like.

Engineering Report: a description of the physical condition of the Property and its Building Systems, as well as an amount to calculate reserves for possible replacement. An Engineering Report is drafted by an architect or engineer.

Enterprise Value: a measure of a company or REIT's total value that demonstrates the takeover price of the enterprise. Enterprise Value is typically calculated as the company's market capitalization plus Indebtedness, minority interests, and Preferred Equity, minus cash and Cash Equivalents.

Environmental Indemnity: an agreement between the lender and Borrower that provides that the Borrower (and typically the Guarantor) will be liable for any environmental hazards, conditions, or problems that occur on the Property.

Equitable Subordination: the power of a Bankruptcy court (which is a court of Equity, after all) to subordinate a claim of a party that engaged in fraudulent or otherwise unsportsmanlike conduct, in order to provide a remedy for innocent creditors and shareholders that suffered an injury as a result of the bad conduct. Equitable Subordination is a remedial, not penal, measure. A claim is subordinated only to the extent necessary to offset the harm caused by the culpable creditor. Claims by insiders are subject to more rigorous scrutiny for Equitable Subordination than are claims by non-insiders.

Equity: money from an owner invested in a project or financing. It is an abbreviation of Equity of Redemption, an ancient doctrine that prohibited a secured lender from effecting a strict Foreclosure on Collateral (i.e., keeping it) when the Borrower had made a substantial reduction of the debt, since this would leave the lender with both the Collateral and the debt repayment to-date. The Borrower was provided the just outcome (equity) of being allowed to sell the Property to pay off the debt (Redemption), and keep the difference (now called the Equity). Equity also refers to the owner of an asset, as in “that Credit Agreement allows distributions to Equity if Debt Service Coverage Ratios are above 1.4x.”

Equity Kicker: when a lender agrees to take a share of ownership in the business or Property for which the loan is advanced. In return, the lender charges a lower Interest Rate.

Equity Market Capitalization: the total market value of all Equity interests in a particular company or market segment.

Equity of Redemption: an opportunity for the Mortgagor/Borrower to save their Property from Foreclosure proceedings by paying the lender in full, plus Interest, even after Foreclosure proceedings have begun.

Equity Recharacterization: the recharacterization of debt as Equity in a Bankruptcy based on a number of factors considered by the Bankruptcy court. Such “Equity” interest is then subordinate to the claims of other creditors.

Equity REIT: a REIT that invests in and holds primarily real Property and derives its revenue primarily from rental payments from tenants. In contrast, see Mortgage REIT and Hybrid REIT.

Escalation Provision: a clause in a contract allowing for an increase in price in the event of certain conditions such as inflation or an increase in production costs.

Escrow Instructions: written instructions provided to an Escrow agent identifying the parties to a deal and specifying the conditions required to complete a transaction and/or to release Escrowed funds. The Escrow agent may only act within the scope of the instructions, so they are often extremely detailed.

Escrow Style Closing: a Closing where all the parties involved deposit their signed documents and funds into an account and with a neutral third party such as a title company or law firm until the ultimate release of signatures and funds at Closing. In contrast, see New York Style Closing.

Estoppel: when somebody does or fails to do a thing, such that a court will view that person as not fairly entitled to make a claim later. For example, if a neighbor helps a boy hang a rope swing on the neighbor's tree and the boy falls off and breaks his arm, the neighbor can't argue that the boy was trespassing — the neighbor is "estopped" from making that argument. Lenders and purchasers typically require delivery of Estoppel Certificates from at least major tenants of the Property being mortgaged or acquired, wherein the tenant acknowledges the Rent amount, that the Rent is current, that the tenant is not otherwise in Default, and other negotiated provisions. Estoppel Certificates are also typically required to be delivered from ground lessors of a ground-leased properties.

Estoppel Certificate: a series of statements about the Lease and the landlord-tenant relationship that the tenant certifies to the current landlord or to a potential purchaser or lender as accurate and true. The tenant is thus legally barred from ever asserting a contrary claim. Often a Closing condition in connection with the sale of a Property or the financing of a Property.

Event of Default: a contractual provision that sets out specific events that would result in a Default beyond any applicable notice or Cure Periods (if any), allowing the lender to accelerate repayment in full of the loan and all financial Obligations owed to lender before it was due.

Evergreen: a contractual provision that allows for the automatic renewal of a contract (e.g., Letter of Credit) unless notice for termination is given usually by the Beneficiary thereof. Like evergreen trees in the winter, the contract will keep going.

Eviction: the lawful expulsion of an occupant from real Property.

Excess Cash Flow: the amount left at the bottom of a Waterfall, or after paying Operating Costs and debt service, and funding all Reserve Accounts. Excess Cash Flow is either dividended to the Sponsor or subjected to a Excess Cash Flow Sweep or Cash Trap.

Excess Cash Flow Sweep: a contractual provision that stipulates a percentage (which could be 100%) of Excess Cash Flow that the Borrower will repay a lender (or that the lender may be able to hold as cash collateral) during a specified period. The percentage is calculated as an amount of Excess Cash Flow.

Exchange Accommodation Titleholder (EAT): an intermediary that assists taxpayers to obtain Like-Kind Exchange treatment in certain transactions that would not qualify for such treatment without the participation of such intermediary. Ordinarily, Like-Kind Exchange treatment does not apply if the Replacement Property is acquired before the Relinquished Property is transferred. If the owner of the Replacement Property must sell that Property before the Relinquished Property can be transferred, Like-Kind Exchange treatment may apply if certain requirements are met, including having an EAT acquire and hold the Replacement Property until the Relinquished Property can be transferred by the taxpayer, at which time the EAT would Transfer the Replacement Property to the taxpayer. The taxpayer will generally own and control the operation of the Replacement Property while it is owned by the EAT (e.g., through a Lease). An EAT must meet certain requirements, including that such person is subject to US federal income tax and holds qualified indicia of ownership of the Property.

Exclusive (Exclusivity): when one broker is granted the Exclusive right to sell or Lease a Property, that broker is entitled to compensation if the Property sells or is leased within a specified amount of time (regardless of whether such broker finds the buyer or not).

Exculpation: the concept of contractually relieving a party of liability to another party.

Executory Contract: a contract that has not been fully performed, or a contract under which continuing Obligations exist for one or both parties to the contract.

Exit Rights: the ability of an investor to sell its interest in a company or to cause or force the sale or Liquidation of all or part of the company's assets. It is the bucket of rights given to an investor to allow such investor to liquidate its holdings in a company and "exit" even if the other investors do not want to sell.

Expansion Right: a Lease provision allowing a tenant to lease additional space in the building where its current Demised Premises are located or in another Property owned by the same landlord, if desired.

Expansion Space: the additional area that is the subject of an Expansion Right.

Extend and Pretend: an Amendment or extension of a loan that is not performing by the lender to avoid having to enforce remedies at such time (e.g., Foreclosing on a Property the lender does not really want to own). Also known as Amend and Extend and Kicking the Can.

Extended Coverage Title Policy: a policy that minimizes the exceptions from coverage found in a standard title policy and offers affirmative coverage including insuring against loss occasioned by defects that are ascertainable, but undiscovered or unreported, by an examination of the public records and from defects that are not ascertainable from the public records (e.g., parties in Possession, unfiled Mechanic's Liens, and matters that would be disclosed by an accurate survey). The basic Extended Coverage removes the standard pre-printed exceptions in a title policy or limits them to take exception only for matters that occur after the date of the title policy.

Extension Right: a contractual right, typically in a Lease or Loan Agreement, to continue the Term of the same contract for a specified period beyond the original contractual period, which Extension Right is typically conditioned upon satisfaction of certain specified conditions such as no Events of Default, payment of extension fees, and other items.

Externally Managed: a REIT managed by a third party rather than an internal team, generally because an outside manager can leverage experience and analytics from overseeing other, related enterprises. External management is typically less costly than developing an internal infrastructure team but can involve conflicts of interests and corporate governance challenges.

Fair Market Value (FMV): the price for which Property can be sold (or, as applicable, the Rent for which it can be leased) in an "arms-length" transaction, or between informed, unrelated, and willing parties, each of which is acting rationally and in its own best interest.

Falling Out of Escrow: when one or more Terms of the Property sale cannot be met, the deal may fall apart.

Federal Funds: overnight borrowings made by commercial banks to maintain required reserves at the US Federal Reserve.

Federal Home Loan Mortgage Corporation (Freddie Mac): a US government-sponsored enterprise that purchases mortgage loans to be pooled and then Securitized as mortgage-backed securities. Freddie Mac guarantees payment of the underlying mortgage loans securing the mortgage-backed securities, thereby eliminating credit risk and stimulating the secondary market for mortgages.

Federal National Mortgage Association (Fannie Mae): a US government-sponsored enterprise that expands homeownership through the creation of a secondary Mortgage market. Fannie Mae purchases and guarantees Mortgages that it then Securitizes as mortgage-backed securities and sells to investors.

Fee (Fee Simple Title): a type of real Property interest in which the Property holder has outright ownership of the land. Fee Simple Title is the largest and most comprehensive real Property interest under the law. The Fee Simple Title Property owner has Exclusive ownership until they die without heirs.

Fiduciary Duty: the highest standard of care that can be imposed on a party at law or in Equity and which typically requires one party to act in the best interests of another party.

Filing: the act of depositing an original instrument (or an authentic official copy), such as a Deed or Mortgage, in a public registry to protect a person's interest in the Property against subsequent purchasers or mortgagees. A Filing generally must be made with the Register of Deeds or the Recording Office in the county where the real Property is located. Also known as Record / Recordation.

Financeable: either provides for Subordination of the landlord's Fee interest or contains provisions to protect the Leasehold Mortgagee from certain risks associated with loss of the Leasehold Interest as a result of the termination of the Ground Lease such as notice and Cure rights, granting of a new Lease in the event of termination, and similar rights.

Financial Accounting Standards Board (FASB): a private-sector organization formed by the US accounting profession to study accounting procedures and formulate accounting standards to be employed in the preparation of Financial Statements.

Financial Covenant: a Covenant contained in a Credit Agreement requiring the Borrower to meet certain tests, such as EBITDA relative to Indebtedness. Breach of the Financial Covenant leads to an Event of Default. However, Project Finance Credit Agreements and mortgage loans typically do not contain Financial Covenants since declaring an Event of Default based on Financial Covenant breach would not motivate the Borrower to repay the limited recourse debt. Project Finance Credit Agreements and mortgage loans include other protections, such as Cash Sweeps and Reserve Accounts.

Financial Industry Regulatory Authority (FINRA): a private-sector organization formed to self-regulate the US securities industry. FINRA is the successor to the National Association of Securities Dealers (NASD).

Financial Statements: statements reflecting the financial condition of a company or Property, including Income Statements, Balance Sheets, and Cash Flow / revenue summaries, typically prepared by an accountant or a financial Officer.

Financial Statements: Audited: Financial Statements prepared by an auditor adhering to GAAP. Lenders typically require that annual Financial Statements be audited, often by a Big Four accounting firm.

Financial Statements: Balance Sheet: an account of a company's assets, liabilities, and ownership equity. Balance Sheets are typically included in Financial Statements.

Financial Statements: Cash-Flow Statement: a reflection of a business's Liquidity. The Cash-Flow Statement shows cash and Cash Equivalents, as affected by changes in income and Balance Sheet accounts. Cash-Flow Statements are typically included in Financial Statements.

Financial Statements: Certified: an Audited Financial Statement that has been approved by an accountant.

Financial Statements: Unaudited: Financial Statements not prepared according to GAAP, even if prepared by an auditor. Lenders typically will accept Unaudited Financial Statements for quarterly or monthly reporting.

Financing (Leverage Policy): a policy adopted by the board or management of a REIT setting forth the amount of Leverage the REIT may employ.

Financing Contingency: when a deal hinges on whether or not the buyer is able to obtain financing to fund all or a portion of the purchase price.

Financing Fee: the fee payable from a Borrower (usually at the time of Closing) to a lender in Consideration of the lender making a loan to the Borrower. It is usually expressed as a percentage of the total loan proceeds made available to the Borrower.

Financing Statement (UCC-1, UCC-3): the first thing to know is that these are not the Financial Statements. The purpose of Financing Statements is to Perfect a Security Interest in many classes of personal Property, including Fixtures. A Financing Statement is used in a Secured Financing and is a simple document that contains the name and address of each of the debtors and the secured party (i.e., the lender) and contains a brief description of the Collateral (and in the case of a Financing Statement being filed as a Fixture Filing, a Legal Description of the real Property). The Financing Statement serves as public notice of the Security Interest. To be effective, the Financing Statement must be completed properly (particular attention must be paid to the exact legal name of the debtor) and be filed in the proper filing office. It is always advisable to file a Financing Statement as soon as possible, but in any event, within 10 days of the Closing date, in order to avoid Preference concerns if the debtor were to file for Bankruptcy.

Finder's Fee: the Commission paid to an intermediary in a business transaction. Often, a Finder's Fee is paid by a landlord or seller to a broker for finding a buyer or tenant for a Property.

Fire Sale: a sale at a heavily discounted price, often well below the intrinsic value of the Property or asset.

FIRPTA Distribution: a distribution by a REIT to a non-US individual, non-US corporation, or another REIT that is attributable to gain from the sale by the distributing REIT of a USRPI, which is treated as gain recognized by such non-US individual, non-US corporation, or other REIT from the sale of a USRPI. Such distribution is subject to US federal income tax and withholding under the FIRPTA rules, unless such distribution is with respect to any Class of Stock of a REIT that is regularly traded on an established US securities market and the applicable shareholder held 10% or less of such Class of Stock during a specified testing period.

Fiscal Year: a year as defined by a company. A company's Fiscal Year is typically a 52- or 53-week period that the company uses to calculate its annual Financial Statements. Although a fiscal year often lines up with a calendar year, it is not necessary for it to run from January 1 through December 31.

Fitch: shorthand for Fitch Ratings, a Subsidiary of Fimelac, S.A. Fitch is a Rating Agency.

Fixed Charge Coverage: a means of evaluating a REIT's ability to pay fixed charges (primarily Interest expense and dividends on Preferred Stock) using its available Cash Flows, typically measured using EBITDA or Adjusted EBITDA.

Fixed Rate: an Interest Rate that is locked in upon issuance of the debt and does not change over the course of the life of the debt.

Fixed Rate Loan: a loan that accrues Interest at a Fixed Rate.

Fixture: a statutory exemption from SEC registration requirements that permits offers and sales of Securities that are deemed to be conducted outside of the United States.

Fixture Filing: a type of Financing Statement that is Filed in county real estate records to notify third parties of a secured party's Lien in Fixtures. The Fixture Filing can be in the form of a Financing Statement: UCC-1 or it can be included as part of the Mortgage or Deed of Trust. In almost all jurisdictions, there is no advantage to having a Fixture Filing separate from the Mortgage. However, some local counsel require a separate Filing prior to such counsel issuing an opinion.

Fixtures, Furniture and Equipment (FF&E): fixtures, furniture, and equipment that are not permanently connected to the structure of a building or utilities.

Flip: a transaction in which a buyer purchases real Property with the intent to sell quickly and realize on the Appreciation in value.

Floating Rate: an Interest Rate that periodically adjusts based on a market Index rate, such as the Base Rate or LIBOR.

Floating Rate Loan: a loan that accrues Interest at a Floating Rate.

Flood Certificate: a report prepared by a surveyor or engineer that determines whether a real Property is in a Flood Zone.

Flood Zone: an area subject to floods. The US Federal Emergency Management Agency (FEMA) maintains a list of different Zones to designate areas with a higher propensity for flooding. The particular Flood Zone a real Property is located in will often influence the Mortgage and insurance rates.

Floor: the dollar threshold in Damages suffered by a party that must be reached before Indemnification can be claimed. See also Interest Rate Floor.

Floor-Load: the weight that a structure's floor may be expected to bear safely if uniformly distributed, usually calculated in pounds per square foot of area. Leases will often regulate the Floor-Load of a particular piece of equipment or machinery to be installed.

Floor-to-Area Ratio (FAR): the ratio of total building square footage to the square footage of the Lot on which the building is located. Frequently used in Zoning and as a measure of Developmental Density.

Flow Through Entity: a business entity whose income "flows through" to its owners. The income is treated as direct income of the owners, and therefore only the owners — and not the entity — pay income tax (avoiding double taxation that may be associated with, for example, a C Corporation). Common examples include partnerships, S corporations, and Disregarded Entities. Also known as a Pass Through Entity or Fiscally Transparent Entity.

Food and Beverage (F&B): a portion of operating revenue as well as a component of hotel operations, whether managed internally, leased out, or operated by a third party under a Management Agreement.

Forbearance: an agreement the Borrower arranges with its lenders pursuant to which the lenders agree to refrain from accelerating the debt for a limited period of time while the Borrower endeavors to get its act together. In a typical situation, lenders might agree not to exercise remedies while giving the Borrower time, beyond any available Cure Period, to improve performance, find a new financing source, or otherwise agree upon an appropriate Amendment to the facility to reflect the new (and usually unpleasant) circumstances. The lenders will typically seek to tighten Terms, such as demanding additional Collateral, increased pricing, and stricter financial reporting in exchange for their Forbearance.

Force Majeure (Act of God): literally, an overpowering force. A typical Force Majeure event would include a hurricane, war, earthquake, terrorism, or another occurrence beyond the control of the party claiming Force Majeure, but usually would not include things that result in an inability to pay money. A Force Majeure event excuses a party from performance under a contract. The party claiming Force Majeure has to have done everything reasonably possible before and after the event to avoid the effects.

Forced Sale Right: the right of one or more investors to force a company to sell an asset without the approval of the other investors in the company.

Forcible Entry: the act or an instance of taking Possession of real Property by force, unlawfully and against the will of those in lawful Possession.

Foreclosure: in a real Property context, the act by a mortgagee of following certain legally prescribed procedures to realize upon the real Property that is security for debt owed to the mortgagee, usually by advertising the Property is for sale and selling it in an auction process for cash. US Foreclosure laws are state-specific and a mortgagee must abide by the laws of the jurisdiction where the real Property is located (e.g., some states allow for Non-Judicial Foreclosure, while other states only allow for Judicial Foreclosure). A Foreclosure by a Senior mortgagee wipes out any junior Liens as well as the owner's interests. A Foreclosure by a junior mortgagee also wipes out the owner's interests (and those of any even more junior mortgagee), but leaves intact any Senior Liens. (Some of these outcomes can be altered through an Intercreditor Agreement.) It is rare for anybody other than the mortgagee to bid at a Foreclosure, simply because you are bidding on the value of the Property in excess of the debt (aka the Equity). If there were any such value, most often the owner would not have let the Property go into Foreclosure in the first place. Also, typically bidders must bid cash or Cash Equivalents, except that the Foreclosing mortgagee may Credit Bid.

Foreign Investment in Real Property Tax Act (FIRPTA): provisions in the Internal Revenue Code that generally impose US federal income tax and withholding and related tax return filing requirements with respect to the disposition of USRPIs by non-US persons.

Fractional Interest (Fractional Ownership): the division of Property into portions or shares. In the case of real Property, the title or Deed can be legally divided into shares or Fractional Ownership, which is contrasted with time-sharing, in which the owner has use rights but does not own part of the title.

Franchise Agreement: an agreement that outlines a hotel franchisor's terms and conditions for the franchisee to use the Brand Name owned by the franchisor and the services associated with the use of the Brand Name. The agreement also states the Obligations of the franchisor and franchisee regarding the operation of the hotel, the training and operational support the franchisor will provide (and at what cost), any radius restriction prohibiting the franchisor from granting another franchise within the specified area, the Term of the franchise, the franchise fees, rights to Transfer the agreement, and so on.

Franchise Disclosure Document (FDD): a document mandated by the US Federal Trade Commission that discloses certain proscribed information regarding a franchisor to ensure that franchises are making honest and full disclosures about their franchise operations. The FDD's purpose is to give the prospective franchise buyer all the information about the franchise before an agreement is signed. The FDD was formerly known as the Uniform Franchise Offering Circular.

Franchisor Comfort Letter: an agreement from the franchisor of a hotel to the lender of such hotel that may provide, among other things, that in the event the hotel owner defaults under its loan arrangements and the lender exercises its enforcement remedies under its loan documents, the franchisor will not terminate the Franchise Agreement provided the lender meets certain conditions. A Franchisor Comfort Letter may also address whether the lender would have the right to terminate the Franchise Agreement as part of such enforcement, and whether a termination fee would be payable. Some Franchisor Comfort Letters may also require the franchisor to give the lender notice and an opportunity to Cure a franchisee default prior to terminating the Franchise Agreement or exercising its remedies.

Fraudulent Conveyance (Fraudulent Transfer): a Transfer made by a party that subsequently becomes the debtor in a Bankruptcy proceeding (i) that was made with actual intent to hinder, delay, or defraud that party's creditors, or (ii) in which the party making the Transfer received less than reasonably equivalent value in exchange and was or became insolvent. A Fraudulent Transfer can be subject to Clawback from the transferee under certain Fraudulent Transfer laws.

Free Rent: a landlord concession granted under a Lease whereby the tenant is not required to pay Rent during a certain period of time during the Term of the Lease. Sometimes this time period occurs at the beginning of the Lease Term during an operations ramp-up period, and sometimes it is sprinkled throughout the Term.

Funded Commitment: a portion of cash that an investor has paid to the fund in connection with such investor's Commitment to contribute cash to the fund.

Funded Redemption: a REIT's public offering, the proceeds of which are used to fund the Redemption (or repurchase) of outstanding common units in its Operating Partnership from third-party Limited Partners.

Funds Flow Memorandum: a Closing document that shows in detail where the money is going. In more complex transactions, the Funds Flow Memorandum is often executed or initialed by the Borrower, particularly when the lender or title company is directed to apply the funds in some manner on the Borrower's behalf.

Funds From Operations (FFO): a measure of financial performance used by REITs and adopted by Nareit. FFO is net income or earnings increased by Depreciation and Amortization, sometimes on a per-share basis. FFO is generally understood to be a measure of a company's Cash Flow.

Further Assurances: a standard addition to most contracts providing that each party will cooperate and perform the actions necessary to accomplish the intent of the contract.

Gap Coverage (Title Coverage): coverage in title insurance whereby the title company insures the risk associated with the recording of any Encumbrance against the real Property security after the Closing of a transaction but prior to the date the lender's Mortgage or Deed of Trust is recorded in the public records.

Gap Undertaking: insurance coverage against previously recorded adverse matters that affect title between the date of Commitment and the date the documents are recorded.

Garden Style: a type of multi-family Property in which a cluster of buildings, typically not more than two or three stories high, share landscaping and paths such as Common Areas, yet retain separate addresses.

Garn-St. Germain Depository Institutions Act: US congressionally enacted deregulation of savings and loans associations that abolished the Interest Rate ceiling for banks, and authorized them to make commercial loans.

General Contractor (GC): the person in charge of a Construction project pursuant to the general contract. The GC is responsible for oversight of day-to-day activities and supplying all materials, labor, and equipment necessary for the project. Typically, the GC hires Subcontractors to perform specific aspects of the project under the GC's oversight.

General Partner: the individual or firm that organizes and manages a Limited Partnership, such as a hedge fund. The General Partner has unlimited residual legal responsibility for the liabilities of a partnership.

Generally Accepted Accounting Principles (GAAP): a set of authoritative standards for recording and reporting accounting information, and the standard by which US companies report their Financial Statements.

Go Hard: a buyer's determination not to exercise a Due Diligence out, and the expiration of a buyer's deadline to do so. After this point, the buyer will probably lose its Deposit if it cannot close, but may litigate and ultimately settle by splitting the Deposit with the seller.

Grandfathering: the use of a Property that violates current Zoning laws but is permitted as such use predates the enactment of such laws.

Grantee: an individual or entity that receives an interest in Property from a Grantor.

Granting Clause: words in the conveyance instrument (such as a Deed) that Transfer the interest from the Grantor to the Grantee.

Grantor: an individual or entity that conveys or grants an interest in Property.

Grantor-Grantee Index: an alphabetical list of the last name of parties transferring real Property kept in each county's office of official records. The Grantor Index lists sellers, while the Grantee Index lists buyers.

Gross Asset Value (Gross Real Estate Investment): the aggregate market value, without regard to Indebtedness or Preferred Equity, of the real estate owned or managed by a REIT.

Gross IRR: a calculation of the amount returned by an investment divided by the amount invested (before deducting any fund-level expenses).

Gross Lease: a Lease by which the tenant pays a flat rental amount and the landlord pays all the expenses usually associated with ownership, such as real estate taxes, insurance, utilities, and maintenance.

Gross Lease With Base Year: another name for a Modified Gross Lease. A tenant under a Gross Lease pays only the stated Rent under the Lease, and the landlord pays all Operating Expenses of the building (utilities, maintenance, insurance, and real estate taxes). Under a Gross Lease With Base Year, the tenant pays only the stated Rent for the first year of (or first full calendar year occurring during) the Lease Term. For each subsequent Lease or calendar year, as applicable, the tenant will pay, in addition to the stated Rent, the amount (or, in a multi-tenant building, that tenant's percentage share of the amount) by which the building Operating Expenses for the then-current Lease / calendar year exceeds the building Operating Expenses during the first, or Base, Lease/calendar year of the Lease.

Gross Operating Profit (GOP): describes the line "Income After Undistributed Operating Expenses" under the Uniform System of Accounts for the lodging industry. The acronym GOP is not to be confused with the Grand Old Party.

Gross Revenue: the money generated by all of a company's operations, before deduction for expenses.

Gross Sales: the sum of all sales, unadjusted for customer discounts, returns, Operating Expenses, or tax payments.

Gross-Up (Gross-Up Provision): a clause in a contract providing that all payments be made in the full amount, free of any deductions. Payments made usually contain additional funds to offset any taxes so that the receiving party still receives the net amount promised.

Ground Lease (Land Lease): a Lease of land pursuant to which a tenant may develop the land or erect buildings, and the tenant pays all relevant taxes incurred. At the end of the Lease Term, the land and all Improvements revert to the landlord.

Guarantor: a credit-worthy entity or person (typically the Sponsor) who provides a Guaranty to the lender of payment and/or performance of certain liabilities (e.g., completion of a project). See also Non-Recourse Carve-Out Guaranty.

Guaranty: a promise to pay the debt of another or to perform a duty or obligation if the person who is primarily liable fails to do so. A Guaranty must be in writing to be enforceable.

Guest Data: hotel guest or customer profiles, contact information (e.g., addresses, phone numbers, facsimile numbers, and email addresses), histories, preferences, and any other guest or customer information collected by a hotel or Brand Name.

Guest Ledger: Accounts Receivable attributable to guests currently registered at a hotel.

Guide 5: a disclosure guide published by the SEC related to the preparation of registration statements covering interests in real estate Limited Partnerships and REITs. Guide 5 most commonly applies to registration statements related to securities offerings by Non-Traded REITs.

Haircut: a discount off Par Value in selling a loan. Also a good way to prepare for a job interview.

Hard Cost: the direct cost of Construction, such as materials, equipment, and labor. In contrast, see Soft Cost.

Hard Lockbox: a Lockbox established at the Closing of a loan, under which all of the revenues from a Borrower's Property are required to be paid directly into the Lockbox, the disbursements from which require lender approval (which may be pre-approved in the form of a Waterfall in the Loan Agreement or a Cash Management Agreement).

Hard Money: funds that are loans secured by more than the Collateral that was the purpose for which the loan was obtained such as a residence, stocks, bonds, and the like, which are non-refundable. In finance, a Hard Money loan is an asset-based financing that the value of the Property secures. Hard Money is often an ongoing source of funding by an organization or the government, which provides a steady and predictable flow of funds.

Harvest Period: the time period, usually at the end of a fund's Term, in which the fund liquidates its remaining investments and distributes any returns to investors.

Hazardous Materials (Hazardous Substances): a broad category of substances that have the potential for causing injury or damage to human health, animals, or the environment, often including items that are deemed to be toxic, radioactive, flammable, or explosive, or are generally treated as a "pollutant" or "contaminant" under environmental law.

Heating, Ventilation and Air Conditioning (HVAC): systems for indoor environmental comfort that provide ventilation, heating, cooling, humidity control, and pressure control in a structure. HVAC is an important component of the design and Construction of large buildings, where healthy conditions require regulated temperature and humidity.

Hedge: an investment or strategy that takes an offsetting position in order to attempt to reduce the impact of economic exposure in an area. This could take the form of, among other approaches, selling forward, selling short, buying or selling puts or calls, or entering into a Swap. For example, if you have milestone payments payable in euros and you have budgeted to pay them in US dollars, you might enter into a foreign exchange Hedge that pays you if the value of the US dollar deteriorates versus euros. (If the US dollar appreciates, you give up the gain.)

Hedge Provider: a Counterparty willing to execute a Swap or other type of Hedge, thereby assuming the price risk associated with the subject of the Hedge.

Held for Sale: an accounting classification for assets that are actively in the process of being sold. If an asset is Held for Sale and the asset's fair value (less the cost to sell) is less than its carrying value, then the sale may result in an impairment charge.

Hell or High Water Lease: a provision in a Triple Net Lease or Bondable Lease that provides that the tenant must pay all amounts owing under the Lease and related documents, regardless of any defenses the tenant may have available to it, including defenses as against the landlord. Hell or High Water Lease clauses are critical in Leveraged Leases, other structured Leases, and Lease Securitizations, since the lenders, holders, or purchasers in such structures will want a guaranteed Cash Flow regardless of the claims that a tenant might have against a landlord. The tenant retains its right to pursue claims against the landlord or other appropriate parties.

High-Rise: generally, a building more than 75 feet high.

Hold Harmless Clause: a contractual provision stating that one or both parties agree not to hold the other party liable for any injuries or Damages associated with certain actions. A Hold Harmless Clause is often coupled with an indemnity from the party that is not being held harmless.

Holder in Due Course: an amount of Cryptocurrency charged to process a transaction and paid to a Miner.

Holding Company: a company that sits on top of (or "holds" the ownership interests of) a Subsidiary that is directly below it. This concept sometimes connotes a company that does nothing else (i.e., has no operations) other than owning one or more subsidiaries.

Holdover: a Lease provision stating that if a tenant continues to occupy the Demised Premises after the Lease Term has expired, the tenant is responsible for a specific amount of Additional Rent, typically anywhere from 150% to 200% of the current Base Rent. In addition, such tenant becomes a month-to-month Holdover tenant, whose Tenancy is typically terminable with 30 days' notice by either party.

Hurdle: the minimum return threshold typically used in a joint venture or fund agreement for a particular investment or project that must be satisfied before payment of returns is made to other parties to the agreement. For example, a certain percentage IRR.

Hurdle Rate: the stated rate of return on a project or investment that is required by an investor. See also Carried Interest and Preferred Return.

Hybrid REIT: a REIT that invests in and holds a diverse mix of real Property and real estate mortgages or mortgage-backed securities and derives its revenue from both rental payments from tenants and Interest payments on those real estate mortgages or mortgage-backed securities. Hybrid REITs are in contrast to an Equity REIT or Mortgage REIT, which owns primarily real Property or mortgage related assets, respectively.

Impact Fee: a fee imposed on developers by municipalities for the new infrastructure that must be built or increased due to new Property development.

Impermissible Services (Bad Services): services provided by a REIT to the tenants of a Property or for managing or operating the Property, other than Customary Services.

Impermissible Tenant Services Income (ITSI): income that is directly or indirectly received or accrued by a REIT with respect to any Property for Impermissible Services provided by the REIT, other than through a TRS or, in some cases, an Independent Contractor. If such amount with respect to a Property for a Taxable Year exceeds 1% of all amounts received or accrued by the REIT with respect to such Property during the Taxable Year, then all such amounts are treated as Impermissible Tenant Services Income. This income does not count as Rents From Real Property (or other Qualifying Income) under the Income Tests.

Implied Equity Market Cap: the total equity value of a REIT that has both corporate securities (REIT shares) and convertible Partnership Interests (such as UPREIT or DownREIT Partnership Interests) outstanding.

Impound Accounts: the sum of money held by a lender (usually a bank) for payment of insurance, real estate taxes, and other related expenses of a Property or Properties encumbered by a particular loan. See also Reserve Accounts.

Improvement: permanent structures or work performed on real Property that adds value to the Property.

In-House Asset Management: the management of assets held by an employee-conducted fund or by a related internal management arm of the fund, rather than by an outside management firm. If a fund hires an Affiliate to provide asset management services, it can still be considered Externally Managed.

In the Money: used in the context of valuing a contract at a specified moment, when the contract — by its nature — has a value that might fluctuate. At that moment, being In the Money means that if you offered somebody in the business of entering into contracts of that nature the opportunity to substitute themselves into your position under the contract, they would pay you for the privilege. When your Counterparty is in Default under the contract, it would seem like it's a good thing for you to be In the Money, but it's not. This is because if the contract is terminated due to the Default, you have to collect its termination value, the amount by which you are In the Money. Also a song sung by Ginger Rogers in Gold Diggers.

Incentive Fee: a fee payable to a hotel operator or Property manager if the operations of the hotel or Property meet a certain level of Profit.

Income Statement: a Financial Statement on which a company reports its results of operations over a period of time (usually monthly, quarterly, or annually). Also commonly referred to as a profit and loss statement or P&L statement.

Income Tests: the two gross Income Tests (i.e., the 75% Income Test and the 95% Income Test) that a REIT must satisfy for the Taxable Year to qualify as a REIT.

Increased Costs Provision: a common provision in a commercial credit agreement that allows the lender to charge to the Borrower the amounts necessary to compensate for increased costs or reductions in the lender's return on capital due to changes in law or regulations.

Incumbency Certificate: a certificate that establishes the incumbency — or state of being in office — of various persons holding positions in the company. The company secretary or other officer signs the Incumbency Certificate, certifying as to the genuineness of the signatures of authorized Officers of the company. Contract counterparties then look at the board resolutions, which authorize certain Officers to take actions on behalf of the company (such as sign a Loan Agreement). The loop is closed if the person who signs has the title stated in the Incumbency Certificate and the person of that title is authorized by the resolutions to bind the company.

Indebtedness: the amount that one party loans to another and is required to be repaid at a later date, usually with Interest.

Indemnification (Generally): when one party guarantees to compensate another party for any loss that may be suffered.

Indenture: a contract between an Issuer and a trustee (who acts as a sort of bondholder representative) pursuant to which bonds are issued. In a Leveraged Lease, the Indenture is the agreement between an Indenture trustee and the lessor pursuant to which the lessor grants to the Indenture trustee on behalf of the lenders the assignment of the Lease and the Lien on the leased asset. The document will also set forth the other intercreditor arrangements between the lessor and the Indenture trustee.

Independent Contractor (IK): any person (i) who does not own (actually or constructively) more than 35% of a REIT's stock and (ii) if such person is a corporation, not more than 35% of the total combined voting power of whose stock, or if such person is not a corporation, not more than 35% of the interest in whose assets or net Profits is owned (actually or constructively) by one or more persons owning 35% or more of the REIT's stock. An IK from whom the REIT derives no income generally may provide services that are customarily rendered by landlords to tenants in similar buildings in the geographic area where the applicable building is located, without causing the amounts derived with respect to such services to be treated as ITSI. The REIT rules generally require that a REIT and an IK of the REIT have an arm's-length relationship, with the IK being adequately compensated for services performed for the REIT.

Independent Director: one of the elements of Separateness used to create a Single-Purpose Entity. For real estate loans in excess of US$20 million, most institutional lenders will require at least one Independent Director be appointed either at the Borrower or Managing Member level (and if such loan is being Securitized, an Independent Director will be required by the Rating Agencies). The Independent Director is a party with no affiliation to the company for which it is being appointed or the parent entity (and is typically an employee of a corporate services firm). The main function of the Independent Director is to prevent the company from Filing Bankruptcy in bad faith; the Independent Director's consent is required in order to cause the company to file. The Independent Director typically does not have voting rights other than with respect to Bankruptcy matters.

Index: in the context of Interest Rates, a reference rate such as LIBOR or Base Rate. May also refer to an index of prices, such as the Consumer Price Index or the Henry Hub Spot Price for Natural Gas.

Index Mutual Fund: a mutual fund designed to match a particular stock market index, such as the S&P 500, the Russell 2000, etc.

Information Rights: the rights of an investor to receive financial and reporting information from the company.

Ingress: access to a location or the ability to enter a specific location.

Initial Capital Contribution: the initial amount of capital an investor contributes to a company.

Installment Sales Contract: a contract by which the buyer receives equitable title and takes Possession of the Property immediately, but the seller retains legal title until the buyer has made a series of installment payments.

Insurable Interest: a legal interest in protecting one's real Property from injury, destruction, loss, or pecuniary damage. Having an Insurable Interest is required in order to take out a title insurance policy on a Property.

Insurance: All-Risk: an insurance policy that covers all risks (excluding building risk) except for those specifically stated in the contract.

Insurance: Business Interruption: an insurance policy that protects against the loss of Profits and continuing fixed expenses due to an event that interrupts operations.

Insurance: General Liability: an insurance policy that protects the business against third-party claims when the business's negligent acts (or omissions) result in Property or bodily damage.

Insurance: Property: an insurance company agreement to indemnify the Property owner, who is the insured party, against Property damage or destruction.

Insured Protection Letter (Closing Protection Letter): a written indemnity agreement that is often requested by lenders from the underwriter of the Lender's Policy to identify the circumstances under which the underwriter will indemnify the lender and accept liability for the acts or omissions of the underwriter's Closing agent.

Intercreditor Agreement: an agreement that sets forth the rules of engagement between two or more groups of lenders with respect to shared Collateral or other intercreditor relationship matters. Think of this as a prenuptial agreement between two classes of creditors. Apart from addressing the obvious point that the first Lien lenders get paid out first from Collateral proceeds and the second Lien lenders get paid out second in first Lien / second Lien deals, Intercreditor Agreements also lay out important provisions regarding the right of each lender group to take action with respect to the Collateral generally.

Interest: the amount that a Borrower/Issuer pays for borrowing money under the credit facility / Notes, calculated at the Interest Rate.

Interest Accrual Period: the period of time (typically one month) used to calculate Interest due on Indebtedness to be paid on the applicable Interest Payment Date. The Interest Accrual Period is usually keyed off a specified date of each month.

Interest Only (I/O) Strip: in the CMBS context, the Interest portion of mortgage, Treasury, or bond payments, which may be sold separately from the Principal portion of the same payments, and therefore can be "stripped" to create synthetic zero-coupon bonds.

Interest-Only Loan: a loan for which the Borrower pays only the Interest on the Principal Balance, leaving the Principal Balance the same throughout the Term.

Interest Payment Date: the date that regularly scheduled payments of Interest (and Principal, if the loan Amortizes) are due under the loan.

Interest Rate: the rate charged for the use of money (i.e., a loan), typically expressed as an annual percentage of the Principal amount borrowed. Interest Rates may be floating or fixed. Also known as approved percentage rate or APR.

Interest Rate Cap: a derivative product that effectively "caps" a Floating Rate Loan at a specified Interest Rate (the strike rate) by requiring the Counterparty (i.e., the Issuer of the Interest Rate Cap) to pay the differential between the strike rate and the Floating Rate under the loan if such Floating Rate exceeds the strike rate for a given Interest Accrual Period.

Interest Rate Floor: the minimum Interest Rate level, in the context of a Floating Rate Loan, for the Index to which the total Interest Rate is tied, notwithstanding the actual rate of such Index.

Internal Rate of Return (IRR): the average annual rate of return earned on an investment through the life of such investment calculated by discounting the net present value of income flows to zero.

Internal Revenue Code: a set of US federal tax laws enacted by Congress in Title 26 of the United States Code (26 U.S.C.).

Internalization: a process by which an Externally Managed REIT internalizes its management functions by acquiring its own management personnel. Often structured as the REIT's acquisition of the entity that formerly acted as its external manager.

International Finance Reporting Standards (IFRS): a set of international accounting standards promulgated by the Board of the International Accounting Standards Committee delineating how financial transactions should be reflected on a company's Financial Statements. IFRS is intended to replace individual national accounting standards (such as GAAP) and help ensure that Financial Statements are understandable and comparable across national boundaries.

International Swaps and Derivatives Association (ISDA): a global organization that represents participating parties in the private negotiated derivatives market (such as Hedges, Interest Rate Caps, and Swaps). ISDA seeks to make over-the-counter derivatives markets safe and efficient. ISDA works primarily to reduce Counterparty credit risk, increase transparency, and improve operational infrastructure in the industry.

Investment Advisers Act (IAA): a US federal law — 15 U.S.C. §§ 80b-1–80b-21 — enacted to regulate the actions of investment advisers.

Investment Company Act (ICA): a US federal law —15 U.S.C. §§ 80a-1–80a-64 — designed to regulate the actions of investment companies as defined in the act.

Investment Criteria: agreed-upon types of investments that a company will pursue. Investment Criteria may include Property type, return targets, purchase price, geographical location, and other similar items.

Investment Grade: a rating of Baa3 or better by Moody's, BBB- or better by S&P, or BBB- or better by Fitch.

Investment Period: the period during which a fund actively invests its capital in new investments.

Investment Policy: a policy explaining a REIT's investment objectives, such as its focus geographies, Asset Classes, management priorities, and growth strategies.

Involuntary Bankruptcy: Bankruptcy proceedings initiated by a creditor, forcing the debtor into Bankruptcy.

Ipso Facto Clause: a contract clause that provides for an Event of Default and termination of an agreement due to a company's Bankruptcy, insolvency, or financial condition. Although many contracts include Ipso Facto Clauses, such clauses are unenforceable under the Bankruptcy Code.

ISDA Master: a master agreement in the form ISDA publishes. Parties to Swaps and other Hedges use this form agreement, which ISDA designed to be a balanced and easily administered agreement. The second-generation ISDA Master was published in 1992, and a third generation was published in 2002. However, the 1992 form is more commonly used. The ISDA Schedule is part of an ISDA Master — there is no such thing as an ISDA Master without an ISDA Schedule.

ISDA Schedule: the part of an ISDA Master that includes the specific choices/elections made by the counterparties, as well as notice information and any exceptions and addenda the parties wish to make to the preprinted form.

Issuer: the person issuing or selling debt or Equity securities (e.g., in a 144A offering).

Issuing Bank: the financial institution that issues a Letter of Credit.

Joint Tenants: two or more people who are granted real Property to hold in Fee Simple, fee tail, for life, for years, or at will. The estate they hold is called a joint Tenancy and can provide for rights of survivorship (whereby upon the death of a Joint Tenant, the remaining Joint Tenant(s) automatically acquire(s) the deceased Joint Tenant's interest in the Property). Each Joint Tenant has an equal, undivided interest in the whole Property. Each Joint Tenant may enter onto, take Possession of the whole, occupy, and use every portion of the common Property at all times and in all circumstances.

Judgment Proof: defendants or potential defendants who are financially insolvent and therefore difficult or impossible to collect from.

Judicial Foreclosure: a judgment by a court in favor of Foreclosure on a Mortgage or Deed of Trust, which orders the sale of the Mortgaged Property pursuant to statutory Foreclosure proceedings in order to satisfy the secured debt. By pursuing a Judicial Foreclosure (rather than using the Non-Judicial Foreclosure provision of the Mortgage or Deed of Trust), a lender is able to obtain a Deficiency Judgment against the Mortgagor for amounts still owed after the Foreclosure sale. In some jurisdictions, only Judicial Foreclosure is available under applicable law.

Junior Debt: a level of debt that is lower in the Capital Structure than other debt. For example, if a company has both mezzanine debt and mortgage debt, the mezzanine debt is junior. The same applies to first mezzanine debt and second mezzanine debt, or first Lien mortgage debt and second Lien mortgage debt (the second mezzanine debt and second Lien mortgage debt are junior).

Just Compensation: a payment made to the owner of real Property in connection with the government's exercise of eminent domain and the taking of all or a portion of such Property.

Key Man Provision: a provision that requires one or more identified individuals to commit a substantial part of their time to the efforts of the company. These individuals — not necessarily men — are typically seen as crucial to the success of the company.

Key Money: a payment made to a building owner, manager, or landlord by a potential tenant or Property Manager in an attempt to secure a desired Tenancy or Property Management Agreement. Key Money is typically used to improve the real Property at issue.

Keys: the number of rooms in a hotel.

Kick the Can Down the Road: a phrase used when a party to a transaction does the minimum possible to preserve (or reinstate) the status quo of a transaction until a decision-making point at a later date.

Know Your Customer (KYC): an investigation that certain financial institutions are required to conduct to ascertain certain information regarding their customers, usually with the goal of identifying or preventing money laundering or another financial crime.

Land Grant: a piece of land the government grants for a specific, often public purpose, such as for roads.

Land Use: an area of law dealing with the development of land and regulations pertaining thereto, including Zoning and subdivision laws.

Landlord's Lien (Lessor's Lien): generally, a statutory Lien on a tenant's personal Property at the Demised Premises in favor of a landlord who receives preferred-creditor status on that Property. Such a Lien usually secures the payment of overdue Rent or compensation for damage to the Demised Premises. A Landlord's Lien can also be created contractually under the Terms of the Lease if the tenant grants a Security Interest in its personal Property to the landlord to secure the tenant's Lease Obligations.

Landlord's Lien Waiver: a legal document signed by a landlord relinquishing any Landlord's Lien. Often, the landlord subordinates its Lien rights to a lender of the tenant in lieu of an outright waiver of such rights.

Landlord's Work: the landlord's Obligations with respect to work and Improvements in the leased Premises carried out for the tenant according to a specified agreement. Landlord's Work is often specified in the Work Letter that is attached to the Lease.

Last Twelve Months: a measurement period for Financial Covenants or Financial Statements.

Late Charge: an additional fee assessed on a debt when a payment is not received by the due date. Examples include Late Charges that can be imposed on overdue rental payments under a Lease or overdue loan payments under a credit facility. The fee can be a stated flat fee or a percentage of the overdue amount.

Latent Defect: a flaw or imperfection in a Property that is hidden or dormant.

Leakage: a gap or flaw in a lender's cash management system imposed under its loan documents that allow some portion of the Borrower's Cash Flow to be used other than as the loan documents intended or permitted. This term is also seen in a hotel REIT context, where the leasing arrangement with a TRS allows less than the maximum possible income to be passed up through the TRS Lease structure.

Lease: an agreement whereby one party (a landlord) grants the right to possess, occupy, and use all or a portion of a real Property to another party (a tenant) for a fixed period of time in exchange for Consideration the tenant pays to the landlord, and the landlord retains the residual estate.

Lease Incentives: a bonus or discount offered to a tenant in Consideration for the tenant's entry into a Lease. These incentives can come in the form of Rent Concessions or expense reimbursements, among others.

Lease Intangibles: assets (or liabilities) attributed to above-market (or below-market) Leases from the perspective of the acquirer of the Lease.

Leasehold Estate: the right created by a Lease in real Property.

Leasehold Financing: a secured loan by which the Borrower leases rather than owns all or a significant portion of the Property on which the revenue-generating means of repaying the loan is located. The lender takes the leasehold as security for the loan, as well as any Improvements and personal Property, obtains one or more SNDAs (if the landlord has a fee Mortgage lender or if the leasehold is subordinate by its Terms) and Estoppel Certificates (from the landlord under the Lease), and records a Leasehold Mortgage against the leasehold Property.

Leasehold Interest: the right to use, occupy, or hold Property for a fixed period of time, but not the right to Transfer or sell the Property.

Leasehold Mortgage: a security instrument encumbering a Leasehold Estate in real Property. Also known as a Leasehold Deed of Trust or Leasehold Deed to Secure Debt.

Leasehold Mortgagee: a lender holding a Leasehold Mortgage.

Leasehold Mortgagee Protections: a series of Terms and provisions that provide protection to a lender holding a Leasehold Mortgage in the event that a Borrower (tenant) Defaults under the Lease and such Default would allow the landlord to terminate the Leasehold Mortgage. The rights of a lender to have notice of and the ability to Cure tenant Defaults, and the rights to obtain a new Lease in the event of a tenant Bankruptcy and subsequent tenant attempt at rejection of the Lease are typically included in the Leasehold Mortgagee Protections.

Leasehold Policy: a policy that insures either the tenant holding a Leasehold Estate or a lender making a Mortgage-secured loan on the Leasehold Estate with respect to the title of the Property. If a tenant is prevented from using a Property because of an insured title matter, the tenant will be covered under this title insurance policy.

Lease-Up: the process by which tenants are found and acquired in order to increase the occupancy of the Property, with the goal of getting the Property Stabilized.

Leasing Commission: amounts paid to real estate brokers in connection with finding tenants and entering into Leases.

Leeching: the process by which water-soluble contaminants such as pesticides, chemicals, or hazardous or toxic substances are carried through soil and can contaminate groundwater. Typical sources of Leeching are farm waste, underground storage tanks, landfills, and industrial sites.

Legal Description: a required component of a Deed that details the specific piece of Property being transferred in sufficient detail to identify and locate the Property and its boundaries. Three basic types of Legal Descriptions are used in the US: (i) the Metes and Bounds system, (ii) the US Public Land Survey System (PLSS), and (iii) the Lot and Block system. Also known as a Land Description.

Lender Liability: a Borrower’s claim that a lender should be liable for any adverse consequences if the lender overstepped its position and became overly involved in the operation and management of a Property. This is particularly problematic in the context of budget veto rights and other operational controls afforded to the lender in the loan documents.

Lender's Policy: a type of title insurance issued to Mortgage lenders that insures the lender for the defense of the validity, Priority, and enforceability of its Mortgage. A Lender's Policy also insures the lender from title defects to the extent not excepted or excluded from the policy coverage. ALTA forms are commonly used.

Letter of Credit (L/C or LOC): a letter from a bank essentially guaranteeing certain payment Obligations of the Letter of Credit applicable to the Letter of Credit Beneficiary, up to the amount of the Letter of Credit. In the event that the applicant is unable to make payment, the Beneficiary can demand payment from the bank. In that case, the bank is required to pay the demand to the Beneficiary and then seek reimbursement from the applicant. A Letter of Credit is typically irrevocable.

Letter of Intent (LOI): a written summary of terms detailing the preliminary understanding of parties that plan to enter into a contract. A Letter of Intent typically is not meant to be binding, but rather is intended to set out certain essential terms to initiate the process of entering into a binding agreement. The parties must be careful to include appropriate language regarding the non-binding nature of the agreement and the binding nature of certain parts of the agreement (i.e., Exclusivity and confidentiality).

Leverage: the use of borrowed funds or debt combined with Equity to increase amounts available to purchase assets and thereby increase potential returns to equity investors.

Leveraged Buyout (LBO): a transaction in which debt is used to buy a target company, typically involving existing management in the transaction and future management of the emerging company. The transaction allows Sponsors and LBO firms to finance large acquisitions while contributing only a small portion of the purchase price in the form of Equity capital.

Leveraged Lease: a Lease transaction in which the lessor has borrowed a portion of the acquisition cost of the leased asset on a non-recourse basis and the lender obtains an assignment of the Lease and a Mortgage or Security Interest in the leased asset as Collateral for the debt. The Rent under the Lease is always sufficient to pay in full the debt service under the related loan.

License: a grant of permission, on a revocable or irrevocable basis, to a third party to use Property for a specified purpose. A License right is a lesser right than a Lease or an Easement as the licensee does not acquire an interest in real Property as a result of having the License but rather a contractual right.

License Agreement: an agreement granting a party permission to engage in some act that would otherwise be unlawful. A License Agreement generally permits the licensee to enter the licensor's land to do some act.

Lien: an Encumbrance upon the Property of a party granted to secure payment of a debt or performance or some other obligation owed to another party or created by law in favor of a creditor.

Lien Law: a law that allows laborers, Subcontractors, and suppliers to place a claim against a Property if they have not been paid. In some jurisdictions, claims can be made even if the owner paid the General Contractor.

Lien Theory: the legal concept that a Mortgage is a form of a Lien on real Property that does not grant the mortgagee any ownership rights until the Mortgage is Foreclosed upon. Most states have adopted the Lien Theory instead of the Title Theory.

Lien Waiver: a document from a party holding a Mechanic's Lien against a Property stating that payment has been received and waiving future Lien rights to the same Property. There are four general types of Lien Waivers: (i) unconditional waiver and release upon progress payment, (ii) conditional waiver and release upon progress payment, (iii) unconditional waiver and release upon final payment, and (iv) conditional waiver and release upon final payment.

Like-Kind Exchange (Section 1031 Exchange): a transaction in which a taxpayer exchanges (or is treated as exchanging) Relinquished Property for Replacement Property in a tax-deferred transaction under Section 1031 of the Internal Revenue Code. To qualify for Like-Kind Exchange treatment, such transaction must satisfy various requirements, including that both the Replacement Property and the Relinquished Property must be held for productive use in a trade or business or for investment. Under current law, only real property can be exchanged in a Like-Kind Exchange.

Limited Partner: a Partner in a Limited Partnership whose liability is limited to the extent of the Partner's share of ownership in the Limited Partnership. Limited Partners generally have little, if any, management rights in the Limited Partnership in which they invest.

Limited Partnership: a partnership that is managed by one or more General Partners with unlimited liability, with one or more generally passive Limited Partners who are not involved in the day-to-day management of the partnership and whose liability for partnership matters is limited to their investment in the partnership.

Limited Rental Exception: a rule under which Rent a REIT receives from a TRS that is a Related Party Tenant will not be excluded from Rents From Real Property where at least 90% of the space at the property to which the Rent relates is leased to third parties, and the Rent paid by the TRS is substantially comparable to Rents paid by other tenants of the REIT for comparable space.

Liquidated Damages: a contractual agreement upon a stated amount of Damages, or a specified formula to calculate Damages, in the event of a breach or Default if the actual Damages would be difficult or impossible to determine with precision. There are two requirements for a Liquidated Damages provision to be enforceable: (i) actual Damages must be difficult or nearly impossible to calculate, and (ii) the formula used must be a reasonable approximation of actual Damages.

Liquidation: when a company's existence is terminated, its assets are sold, and the proceeds are used to pay creditors and any remaining proceeds are distributed to its owners.

Liquidity: a person's ability to meet near-term payments and the degree to which that person's assets are cash or are readily convertible into cash.

Lis Pendens: Latin for "suit pending." Lis Pendens is a written notice filed in the office of land records stating that title to or ownership interest in a Property is the subject of a lawsuit. Potential purchasers and lenders are thus on notice about claims against the Property.

Listing: a record of a Property for Lease or sale by an authorized real estate broker.

Listing Agreement: an agreement between a Property owner and a real estate broker whereby the owner agrees to offer to sell or Rent a Property within a specified time period and authorizes the broker to solicit purchase or Lease offers.

Loan Commitment: a letter by which financial institutions commit to provide loans. A Loan Commitment consists of the actual text of a Commitment Letter, along with annexes and exhibits that lay out the Terms of the loans and the Conditions Precedent to funding.

Loan Component: a portion of a loan that may comprise a Senior or subordinate portion of one piece of Indebtedness, such as a Senior "A" Note or a subordinate "B" Note.

Loan to Own: a strategy used by a party that purchases a distressed real estate secured loan or a piece of a real estate secured loan, typically at a discount, with the goal of Foreclosing on and acquiring the Property securing such loan. For its return, this party looks to the Property's Cash Flow and/or the value of the Property upon sale after refurbishment or implementation of other value-add strategies, as opposed to the Interest Rate on the loan.

Loan to Value (LTV) Ratio: a ratio expressed as a percentage of the amount of the loan that encumbers or will encumber a Property to the value of the Property. This ratio is used in underwriting new loans as well as in the context of a maintenance Covenant or financial test (e.g., as a condition to the extension of a loan) during the Term of a loan.

Locals Market: the local market for a casino (i.e., people who live in the area).

Lockbox (Lockbox Account): an account held at a financial institution, subject to a Security Interest in favor of a lender, that is the repository of all revenue produced by a Property. See also Hard Lockbox and Soft Lockbox.

Lockbox Account Agreement: an agreement among a financial institution holding a Lockbox Account, a lender, and a Borrower. The Lockbox Account Agreement provides for the maintenance of the Lockbox Account and the circumstances under which cash may be released therefrom.

Lockout Period: the period during which a real estate loan cannot be prepaid voluntarily.

London Interbank Offered Rate (LIBOR or L+): a discontinued Interest Rate at which major financial institutions could usually borrow dollars from each other in the London interbank market. Most credit facilities had Interest Rates that were set at certain Margins above LIBOR (i.e., "L+ Margin"). See Applicable Margin.

Long-Term Capital Gain: a gain on the sale or other taxable disposition of a capital asset generally held for longer than one year. Long-Term Capital Gain is often subject to taxation at lower rates than other forms of income (e.g., short-term Capital Gain or so-called Ordinary Income).

Long-Term Capital Loss: a loss on the sale or other taxable disposition of a capital asset generally held for longer than one year. Long-Term Capital Losses can generally be used to offset Long-Term Capital Gains, but the ability of Long-Term Capital Losses to be used to offset other types of income is generally limited.

Long-Term Incentive Plan (LTIP) Units: OP Units issued to executives and other employees of an UPREIT as part of an incentive compensation program based on the performance of the company. LTIP Units are typically intended to be treated as Profits interests for tax purposes, and not taxable on receipt regardless of whether a Section 83(b) Election is made in connection with the receipt of such LTIP Units.

Loss of Rental Income Insurance: a type of insurance coverage that covers Property owners for loss of rental income from a Property starting from the date of the loss until a specified date following such loss. Loss of Rental Income Insurance is distinct from Property Insurance in that it covers the Property owner for the rental income that would have otherwise been received from the Property, not just the value of the cost to replace the Property. Also known as Business Income Insurance.

Loss Payee: the person or persons to whom an insurance company writes a check for the proceeds of a claim under a Property Insurance policy. Secured lenders want to be a Loss Payee because a casualty negatively affects their Collateral's value, and they want to ensure that the proceeds payable under the Property Insurance policy are used to either restore the Collateral or repay the debt.

Lost Note Affidavit: a statement provided by a lender or other noteholder who no longer has Possession of such Note, certifying the loss, mutilation, or destruction of the Note to another party who may be purchasing the Note or taking the Note by assignment. Many such certificates also include an indemnity from the current noteholder against claims resulting from an inability to deliver the original Note.

Lot: a parcel of real Property designated as SNDA by its Legal Description.

Lot and Block: a survey method used to locate and identify a parcel of land (see Legal Description). This system involves referencing the individual Lot within a plat map of a subdivision as well as the map's place of record.

Loyalty Program: a hotel chain's marketing effort that rewards and encourages loyal behavior from its guests, usually in the form of upgrades and complimentary rooms or services based on the number of repeat stays (or loyalty) of such guests.

MAE Qualifier: an exception to what would otherwise be an absolute assertion or representation within a loan document to account for events that may (or may not) have a Material Adverse Effect. For example, "There are no litigation proceedings, except those which, if adversely determined, would not reasonably be expected to result in a Material Adverse Effect."

Magic Page: the page in the offering document for a REIT IPO that describes the REIT's initial distribution policy, including the amount that the REIT expects to pay in dividends during its first year and the related annualized distribution rate and Dividend Payout Ratio.

Maker: the party to a Promissory Note that makes a promise to pay.

Make-Whole: a payment made to a lender that had lent at a Fixed Rate of Interest when the loan was prepaid, in order to compensate the lender for its foregone Interest if it has to reinvest the prepayment proceeds at a lower Interest Rate than the Fixed Rate of Interest under the loan. The payment is usually calculated by discounting foregone Interest payments over what would have been the remaining Term at a Discount Rate equal to the Yield on a US Treasury security having a Maturity equal to the weighted remaining average life of the prepaid loan, plus a pre-determined percentage (in real estate loans, typically 1%). The Discount Rate used in this calculation is sometimes negotiable.

Managed by Board Requirement: in order to qualify as a REIT, a REIT must be managed by a Board of Directors or trustees.

Management Agreement: an agreement that describes multiple services to be provided with respect to the operations of a Property. Services may range from day-to-day management (including the collection and disbursement of revenues and expenses for the Property) to the running of Restoration, maintenance, and Capital Improvement projects.

Management Fee: a fee paid to the manager of a hotel, which typically includes a base fee (usually based on a percentage of gross revenue) and an Incentive Fee.

Managing Member (Managing Partner): a Member or Partner responsible for the day-to-day operations and management of an entity. The Managing Member or Partner typically has discretion to make routine decisions without the approval of other investors; however, certain agreed-upon major decisions will typically require the approval of the other investors.

Mandatory Advance: an advance under a Loan Agreement that must be made by a lender upon certain conditions of the Borrower being satisfied. Also known as Obligatory Advance and Future Funding Obligation.

Mandatory Prepayment: the repayment of loan Principal prior to the payment due date that is required to be made under a loan in specified situations, such as when casualty or Condemnation proceeds are received, assets are sold, or certain other capital events occur. In those situations, the lender wants the proceeds of such events to be used to pay the loan and, therefore, requires the prepayment of the loan. See also Voluntary Prepayment.

Margin (Spread): the difference between a lender's cost of funding (e.g., issuing CDs, borrowing on the Eurodollar market, taking savings account or checking account Deposits) and the Interest Rate it charges on a loan.

Mark to Market (MTM): an accounting requirement to write the value of assets up or down in order to update a financial instrument's value relative to its current market price. GAAP requires Mark to Market for certain assets in certain industries.

Marshaling: the process of organizing, ranking, and distributing funds in order to satisfy creditors effectively and equitably.

Maryland General Corporation Law (MGCL): a significant majority of publicly traded REITs are organized in Maryland. MGCL comes up often in REIT land.

Master Landlord: in the context of a Sublease, the landlord under the Master Lease or "overlease." In other words, the Sublandlord's landlord. Also known as Overlandlord.

Master Lease: a Lease that allows an existing lessee to lease additional assets under similar terms and conditions as the current Lease without being required to negotiate a new contract. In the context of a Sublease, the Master Lease is the controlling Lease or "overlease" under which the Sublandlord is the tenant.

Master Repurchase Agreement (Master Repo): the financing vehicle structured as a sale of the underlying asset (loans, equity interests) that would otherwise serve as Collateral in a regular loan transaction. The facility is flexible in that a Borrower can add assets to the facility in exchange for funds in order to provide Leverage for its underlying business. This structure is used so that a lender/purchaser holds a direct interest (rather than a Lien) so it can, in theory, avoid the Automatic Stay that occurs when the Borrower/seller enters Bankruptcy.

Master Servicer: the servicer that oversees servicing activities when assets from multiple originators are pooled together in a single Securitization.

Material Adverse Effect: often defined to include a material adverse event with respect to (i) a party's business, operations, properties, assets, condition (financial or otherwise), or prospects; (ii) the ability of a party to fully and timely perform its Obligations under the loan document(s); (iii) the legality, validity, binding effect, or enforceability against a party of a loan document to which it is a party; and/or (iv) the rights, remedies, and benefits available to the lender under the loan document(s). See MAE Qualifier.

Material Modification: can occur in multiple contexts. Most commonly, a Material Modification is a modification to an underlying loan that could result in the loss of Priority of a Mortgage securing such loan. The analysis of whether a modification is material for purposes of affecting Mortgage Priority is a question of US state law, but it is always a holistic analysis that must consider all facts, including how such modifications would affect a third party and whether a third party should receive notice of the modification. Material Modifications include changes to the Interest Rate, Term, and/or amount of the loan, among other changes. If a modification is determined to be material, typically a lender will require the Recordation of a Mortgage modification, as well as a Datedown Endorsement to the applicable title policy (and potentially legal opinions concerning the modification). Additionally, the term Material Modification is significant in the context of REMICs. If a Securitized loan sold into a REMIC has a Material Modification, the Securitized loan could blow up a REMIC, which has significant negative tax consequences.

Maturity: the date when the amount outstanding under a loan or bond must be repaid.

Mechanic's Lien: a type of Lien against a Property by a party that has supplied labor or materials to improve that Property.

Member: the owner of an interest in a limited liability company.

Member, Appraisal Institute (MAI): a professional designation held by appraisers who are experienced in the Valuation and evaluation of commercial, industrial, residential, and other types of Properties, and who advise clients on real estate investment decisions. To receive this designation, appraisers must meet certain standards for education and experience. See also Appraisal Institute.

Membership Interest: a Member's interest in a limited liability company (including, without limitation, capital and residual Profits of the company), and the right, if any, to participate in the management of the business and affairs of the company, including the right, if any, to vote on, consent to, or otherwise participate in any decision or action of or by the Members and the right to receive information concerning the business and affairs of the company.

Memorandum of Lease: a summary of a Lease's provisions that is recorded, becomes public record, and puts the world on notice of the existence of the Lease. See also Short-Form Lease.

Memorandum of Understanding (MOU): a high-level agreement between two parties (not constituting definitive documentation) that most often comes up in the context of a plan for the development of a real estate project. In this context, the two parties are usually a governmental body and a developer.

Merger Clause (Integration Clause): a contractual provision stating that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract. For example, in a Purchase and Sale Agreement, the parties will want to provide that the provisions of the Purchase and Sale Agreement that should survive the purchase do not "merge" with the Deed.

Metes and Bounds: a survey method used to locate and identify a parcel of land (see Legal Description). This system uses a combination of directions, distances, and descriptions of geographical features.

Mezzanine Loan: a loan secured by a pledge of Equity in real Property as opposed to a Mortgage on real Property. In a typical real estate mezzanine finance Capital Structure, the Borrower under a Mezzanine Loan is the parent of the Mortgage Borrower and that mezzanine Borrower pledges its ownership interests in the Mortgage Borrower. As a result, the mezzanine lender's security is the residual Equity value in the real Property after repayment of the Mortgage lender. There can be multiple layers of mezzanine debt, known as Senior and junior mezzanine debt or first, second, and third mezzanine debt.

Mezzanine Purchase Option: a right given to a mezzanine lender, by means of an Intercreditor Agreement between a Mortgage lender and the mezzanine lender, to purchase the Mortgage loan from the Mortgage lender at Par Value. This right is given in order to prevent the Mortgage lender from exercising remedies under the Mortgage loan, which would result in the mezzanine lender's loss of all of its remaining security.

Mineral Rights: a possessory interest that entitles a person to take minerals in the ground, with or without ownership of the surface of the land. It includes the right to enter the land and occupy it in order to remove the minerals. Mineral Rights can be leased or sold, or retained upon the conveyance of Property. A landowner who leases Mineral Rights often receives a royalty, or a percentage of the value of the minerals mined by the leaseholder.

Minimum Rent: the Floor on a rental amount payable by the tenant typically arising when there is a variable rental rate in a Lease. For example, if a tenant is required to pay a percentage of Gross Sales as Rent, the Lease may include a Minimum Rent Floor on such percentage amount.

Mitigation: a common law duty imposed on those who are injured by a breach of contract to take all steps necessary to reduce (or mitigate) their Damages, rather than simply allowing themselves to be damaged and then seeking compensatory Damages from the breaching party. For example, absent a contractual provision to the contrary, if a tenant vacates Premises prior to the end of the Term of the applicable Lease, the landlord has an obligation to attempt to find another tenant. The defaulting tenant is then given credit for the value of the replacement Lease when determining the compensatory Damages owed to landlord.

Mixed Use: the multiple Property types or market requirements that a particular Property may serve, such as a mix of residences, office, and retail.

Modified Accelerated Cost Recovery System (MACRS): an accelerated system of Depreciation introduced for US federal income tax purposes in 1986, based on IRS predetermined recovery periods set forth in the Internal Revenue Code rather than the useful life standard. See also Accelerated Depreciation and ACRS.

Modified Funds From Operations (MFFO): a measure of financial performance used primarily by non-listed REITs. MFFO is net income or earnings increased by Depreciation, Amortization, and certain other generally non-recurring expenses, including acquisition expenses. MFFO does not have a uniformly agreed-upon definition.

Modified Gross Lease: a Lease in which a tenant pays Base Rent plus a proportionate share of other costs such as utilities and maintenance over time. See also Gross Lease With Base Year.

Modified Net Lease: a Lease whereby the landlord and the tenant split the cost of maintenance and expenses (including utilities, taxes, and insurance). Modified Net Leases are in contrast to Triple Net Leases by which the tenant is responsible for payment of all such costs.

Monetary Event of Default: a breach, under the definitive documentation in a real estate transaction, that relates to the payment of monetary sums that the party required to perform has not paid, even after any applicable notice and Cure periods have passed.

Month-to-Month Lease: a Lease for an undefined period of time that typically extends every 30 days on an automatic basis and is terminable at will by either landlord or tenant.

Monument Sign: a freestanding (i.e., not attached to a building) ground sign with little or no clearance underneath, and generally of low to medium height.

Moody's: shorthand for Moody's Investors Service, Inc., a Subsidiary of Moody's Corporation, one of the most powerful Rating Agencies. S&P and Fitch are other big ones.

Mortgage / Deed of Trust: a document that creates a Lien on real Property to secure debt of the Borrower. Like a Security Agreement, but for real Property. The law of the jurisdiction where the Property is located will dictate whether a Mortgage or Deed of Trust (or some other form of real Property security instrument) is the appropriate instrument, but they are functionally equivalent.

Mortgage Pool: a group of Mortgages that REMICs hold in trust as Collateral for a CMBS or mortgage-backed security issuance.

Mortgage REIT: a REIT that invests in and holds primarily real estate Mortgages or mortgage-backed securities and derives its revenue primarily from Interest payments on those investments. A Mortgage REIT is in contrast to an Equity REIT or Hybrid REIT.

Mortgaged Property: the real Property that serves as Collateral to secure the loan that a Borrower used to purchase or maintain the Property (i.e., home, land, or other type of real estate).

Mortgagor: the owner of an interest in real Property who grants a Lien on the real Property in the form of a Mortgage.

MSCI US REIT Index: a free-float adjusted market capitalization Index comprised of Equity REITs published by MSCI.

Multiple Listing Service (MLS): an information database that accumulates and disseminates information regarding Properties and Commissions, thus facilitating cooperation between real estate brokers.

Mutatis Mutandis: a Latin phrase meaning necessary changes have been made throughout. Mutatis Mutandis is a shorthand way to ensure that a concept is implied throughout a document without having to make numerous drafting changes.

National Association of Real Estate Investment Trust (Nareit): the primary trade association of the REIT industry.

National Indian Gaming Commission (NIGC): an independent US federal regulatory agency within the Department of the Interior tasked with implementing the Indian Gaming Regulatory Act of 1988. NIGC has the power to approve tribal gaming ordinances and oversee management contracts.

Negative Amortization: a contractual provision in an agreement (typically a Loan Agreement but can be a Lease or Purchase

Agreement) that prohibits a party (typically the Borrower, tenant, or buyer) from engaging in specified activities such as making investments, incurring new debt or Liens, selling assets, operating Property in a certain manner, or making acquisitions. Think of these as the “thou shalt not” Covenants. Negative Covenants are usually highly structured and customized to a party’s specific condition. In contrast, see Affirmative Covenant.

Negative Easement: the right to restrict another from using their Property in an otherwise legally allowable way. For example, if B is prevented from building a fence that blocks A’s ocean view, A has a Negative Easement from B.

Negative Pledge: a Covenant not to grant a Lien on a particular Property to any other person.

Negligence: Active, Passive, Gross, Simple, Ordinary: a legal standard meaning the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation, according to Black’s Law Dictionary. Active Negligence is negligence resulting from a positive or affirmative act. Passive Negligence is negligence resulting from a person’s failure or omission to act (such as failure to remove a hazardous condition from one’s Property). Gross Negligence is the failure to exercise the care that a reasonably careful person would use; also sometimes termed Reckless Negligence or Willful and Wanton Negligence. Simple and Ordinary Negligence refer to run-of-the mill, non-Gross Negligence.

Net Asset Value (NAV): the net value of a company’s total assets (not limited to real Property), after subtracting its total liabilities.

Net Asset Value Per Share (NAVPS): one measure for estimating the price that a REIT should trade at, calculated as the Net Asset Value of a REIT, divided by the number of shares outstanding.

Net Capital Gain: a taxpayer’s aggregate net Long-Term Capital Gain (Long-Term Capital Gains minus Long-Term Capital Losses) reduced by such taxpayer’s aggregate net short-term Capital Loss for a particular period.

Net Debt: a business’s total short- and long-term debt, less its cash and Cash Equivalents.

Net Operating Cash Flow: cash generated from the operations of a company after the payment of all Operating Expenses, but calculated through a series of adjustments to net income.

Net Operating Income (NOI): a measure of a company's financial performance consisting of gross Operating Income reduced by Operating Expenses but not taxes, Interest, Depreciation, and other non-operation costs.

Net Proceed: the amount left over from a sale of an asset after subtracting the costs associated with the sale (e.g., taxes, marketing costs, brokerage fees), or a settlement of an insurance claim after a casualty. If Mandatory Prepayments are required under a loan, the Net Proceed is the amount that must be prepaid. Also known as Net Capital Proceed.

Net Worth: the total value of a company's or individual's assets less total liabilities.

Net Worth Covenant: a promise or an agreement whereby one party assures another that it will maintain at least a stated minimum Net Worth (often including a minimum amount of liquid assets), and typically will be required to report on a periodic basis its compliance with such promise or agreement.

New York Style Closing: a Closing where all the parties involved in a transaction meet in person to "sit down" and close the transaction. In contrast, see Escrow Style Closing.

No-Action Letter: an opinion provided by a regulatory agency related to a particular set of circumstances, often at the request of an individual who is uncertain whether those circumstances could result in legal action. The determination in the opinion is contingent upon the specific facts contained in the request.

NOI: acronym for Net Operating Income.

Non-Circumvention: a provision designed to protect the opportunities of a company by preventing the investors from using confidential or proprietary information for its own use or benefit.

Non-Compete (Competition Restrictions): a provision that prohibits a person or an entity from engaging in activities that may be competitive with the business purpose of a company.

Nonconforming Use: the use of a Property that does not comply with Zoning regulations and restrictions but is sometimes permitted because such use was lawful prior to the enactment of the current Zoning laws (i.e., such use is Grandfathered).

Non-Consolidation Opinion (Non-Con): the opinion of counsel (many times delivered by special counsel) given in connection with real estate loan transactions, and always required for a CMBS origination transaction for loans above a threshold determined by S&P. The opinion describes the organizational structure of a Borrower and states that the Borrower (and certain other identified parties) will not be Substantively Consolidated with their parent, and other entities in the Borrower's organizational structure, in the event that such parent entities file for Bankruptcy. To obtain the opinion, a Borrower must comply with a defined list of SPE Covenants designed to ensure that the Borrower is clearly operating as an entity separate and apart from its parent.

Non-Contributing Member or Partner: a Member or Partner in a company who fails, or elects not to, contribute capital to a company or partnership contrary to its obligation to do so.

Non-Judicial Foreclosure: in certain jurisdictions, a lender can carry out a Foreclosure without a court order through an out-of-court private sale.

Non-Monetary Event of Default: a breach, under the definitive documentation in a real estate transaction, that relates to anything other than the payment of monetary sums (such as breach of an Affirmative Covenant or Negative Covenant) that the party required to perform has not performed, even after any applicable notice and Cure Periods have passed.

Nonqualified Publicly Offered REIT Debt Instrument: any debt instrument a Publicly Offered REIT issues that would not otherwise qualify as a Real Estate Asset if the definition of "Real Estate Asset" did not include the reference to such debt instruments (e.g., a debt instrument issued by a Publicly Offered REIT that is not secured by a Mortgage on real Property).

Nonqualifying Asset (Bad Asset): generally, an asset that is not counted in the numerator for purposes of computing the test percentage under the 75% Asset Test (i.e., generally an asset that is not a Real Estate Asset, cash, or cash item (including a receivable), or a US government security). May also apply with respect to other Asset Tests (e.g., an asset the ownership of which does not comply with the 10% Asset Test).

Nonqualifying Income (Bad Income): an item of income that is not counted in the numerator for purposes of computing the test percentage under the 95% Income Test or the 75% Income Test, as applicable. For example, Interest income from an unsecured loan is Nonqualifying Income under the 75% Income Test but not under the 95% Income Test.

Non-Recourse Carve-Out Guaranty (Bad Boy Guaranty): a Guaranty that is provided in connection with a Non-Recourse Loan /

Limited-Recourse Loan whereby a Guarantor (typically a “warm body” or credit-worthy entity) guaranties to a lender the payment of losses under certain enumerated circumstances (e.g., fraud, misappropriation), and also guaranties the payment of the entire loan (full recourse) under other circumstances, such as Bankruptcy events. These guaranties are used as Collateral support and to help shape the behavior of Borrowers in an attempt to prevent the enumerated guaranteed items from occurring during the life of the loan.

Non-Recourse Loan / Limited-Recourse Loan: a loan secured only by the Collateral therefor (such as the real estate securing such loan) and not by any other assets of the Borrower or its Affiliates. Thus, a Borrower under the loan is not liable for payment of the Indebtedness if the value of the Collateral is insufficient to repay the lender. In a real estate context, non-recourse or limited-recourse financing typically includes a Non-Recourse Carve-Out Guaranty that provides recourse to the Borrower and, usually, a parent entity for payment under certain circumstances.

Non-Traded REITs: REITs that have registered the sale of their securities with the SEC, but such securities are not traded on any securities exchange.

Non-Traditional REIT: a REIT that owns assets that may be viewed as more unique than those owned by Traditional REITs and which may be made available to users through arrangements other than leases or licenses. Examples of such non-traditional assets include billboards, cell towers, data centers, pipelines, records storage, and marinas, among others.

Non-Transferring Member or Partner: a Member or Partner who is not transferring its ownership interests in the entity in the context of a transaction where an entity’s Members or Partners are transferring their ownership interests in the entity.

Note / Promissory Note: a document by which a Borrower makes a promise to a lender to repay the full Principal amount lent to the Borrower plus Interest, Default Interest (as applicable), and costs to the lender.

Notice of Commencement: a recorded document required in certain US states establishing the date that Construction of a project commenced. Any Mechanic’s Lien filed with respect to such project will date back to the date a Notice of Commencement was filed, thereby protecting the Lien of the Construction Mortgage filed prior to such notice.

Notice of Completion: a recorded or published Notice of Completion of Construction of a project setting forth the applicable time frame for a creditor to file a Lien against the project for amounts owed (e.g., a Mechanic's Lien).

Notice of Non-Responsibility: an official announcement, recorded with the county and/or posted on the Property, to signify that the owner of the Property is not responsible for any debts incurred by a third party reconstructing, remodeling, or making Improvements on the Property. This notice is typical when a lessee makes changes to a Property, so the landlord is not liable for those debts.

Nuisance: the unreasonable, unwarranted, or unlawful use of one's Property in a manner that substantially interferes with the enjoyment or use of another person's Property, without an actual trespass or physical invasion to the land.

Objection Letter (Title Objection Letter): a letter sent to the seller of a Property and/or the title insurance company that issued a title Commitment for the Property objecting to the standard exceptions to title shown in the title Commitment and any other exceptions listed in the Commitment that are unacceptable to the buyer of the Property.

Obligation: a Borrower's responsibility to repay Indebtedness and perform its related Covenants.

Occupancy Rate: a numerical value calculating the percentage of occupied or unoccupied units or rooms in a rental or hotel Property compared with the total available units. Occupancy Rate is based on the percentage of occupied units. See also Vacancy Rate.

Occurrence Policy: an insurance policy providing coverage for any loss from an event that occurs within the policy period, regardless of the date on which a claim is made.

Offering Legends: with respect to a fund, notifications contained in a fund's Private Placement memorandum describing the terms and conditions of the sale of interests in the fund. The terms and conditions of such sale will vary by jurisdiction (state and country); thus, if the sale occurs in more than one jurisdiction, multiple Offering Legends will be required.

Office of Foreign Assets Control (OFAC) List: a list of individuals and companies owned, controlled by, or acting on behalf of targeted countries (e.g., Syria, Iran, North Korea, Cuba). It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under programs that are not country-specific.

Officer: each person designated as an Officer of a company pursuant to a company formation document.

Officer's Certificate (Secretary's Certificate): a document delivered by the secretary or another responsible Officer of a company that certifies the truth and accuracy of the statements made in the certificate (e.g., conditions to a release have been satisfied, certain documents have been issued and remain in force and effect, etc.).

Off-Track Betting (OTB): legal gambling on horse Racing that is conducted outside of a race track.

One Action Rule (One Form of Action Rule): a rule of law in some jurisdictions (e.g., New York and California) that forces a lender to bring only one court action or proceeding against a Borrower when the debt is secured by real Property. This rule can be a trap for the unwary. In a shocking California case, a bank exercised its statutory right to set off amounts in its defaulted Borrower's bank account against the debt, and that was ruled a "one action," precluding the bank from Foreclosing on the real Property security. In Portfolio deals, it is important to analyze any One Form of Action Rule implications as part of an initial action plan and prior to exercising remedies.

One-Off: something that is made or completed only once.

OP Unit Redemption Right: in an UPREIT, the right of a holder of OP Units to cause the Operating Partnership to redeem, at the holder's election, such holder's OP Units for an amount of cash equal to the current market price of an equivalent number of shares of REIT stock. Upon exercise of this redemption right, the REIT typically has the right to exchange REIT shares on a one-for-one basis for the OP Units instead of having the Operating Partnership redeem the OP Units for cash. Similar redemption and exchange rights exist with respect to DownREIT OP Units.

OP Units: units of ownership interests in the Operating Partnership of a REIT making use of the UPREIT or DownREIT structure. Holders of OP Units generally are entitled to a distribution equal to the dividend paid on an equivalent number of shares of the REIT Partner's stock and generally will have a OP Unit Redemption Right.

Opco / Propco Structure: a type of structure commonly used in hotel REITs and the healthcare industry whereby certain company Subsidiaries (the Property companies, or Propcos) own all revenue-generating properties and certain other of the company Subsidiaries serve as operators of the business at such properties (the operating company, or Opco). Opco/Propco deals allow all financing and Credit Rating issues of the Opco and Propco companies to remain separate.

As a result, such deals allow further Leverage on the company as a whole than would be permitted had the Opco and Propco functions been contained within one entity or group of entities. This structure is used at times to insulate the liabilities related to operating the business of a company in the Opcos, which do not own any of the company's hard assets.

Open Listing: a non-Exclusive Property Listing that uses multiple real estate agents. The agent that sells the Property collects the Commission.

Operating Account: the account into which all of a business's revenues are typically deposited, or directed to be deposited, so that the revenues may be used to pay Operating Expenses, debt service, and other items. For transactions in which a lender has full control over all Borrower funds, the Operating Account is an account into which the lender deposits the Borrower's budgeted amount of Operating Expenses (on a monthly basis), after all revenues generated by the Borrower's business have been deposited into a lender Lockbox Account.

Operating Cost: the total fixed and variable cost associated with the operation of a business.

Operating Expense: an ongoing or day-to-day expense incurred while running a business or operating a building. Examples of Operating Expenses for an office building include utilities, Amortized building Capital Improvements, and real estate taxes.

Operating Expense Base: in negotiating a commercial Lease, one of the most important provisions is how the landlord will recover its Operating Expenses. In most Leases, the landlord charges the tenant a fixed Rent that will cover the landlord's Operating Expenses. In contrast, in a Triple Net Lease, the tenant pays its share of Property taxes, maintenance, and insurance for the Property in addition to the Rent owed. The Base Year is an estimate of these Operating Expenses in the first year. In subsequent years, the tenant will either owe the landlord additional money to cover an increase in those expenses or the landlord may give the tenant a credit toward Rent. The tenant may be required to reimburse the landlord for its share of the Operating Expenses if the expenses exceed the amount estimated in the Base Year.

Operating Expense Exclusion: items with respect to which a tenant is not required to reimburse a landlord if the tenant is otherwise responsible for payment of its share of Operating Expenses at its leased Premises. Examples of items often excluded include Capital Expenditures, the cost of preparing space for Tenancy, costs arising from the landlord's breach of the Lease, or failure to comply with applicable law.

Operating Income: the amount of Profit realized from a business's operations after taking out Operating Expenses — such as cost of goods sold and wages — and Depreciation. Operating Income is calculated by taking gross income (revenue minus cost of goods sold) and subtracting other Operating Expenses, and then removing Depreciation. Operating Income is typically a synonym for Earnings Before Interest and Taxes; it is more common to see EBITDA.

Operating Lease (True Lease): a Lease that is treated as a true lease (as opposed to a loan or a Capital Lease) for accounting purposes. An Operating Lease is accounted for by a lessee without showing an asset (for the leased asset) or a liability (for the Lease payment Obligations) on its Balance Sheet. Periodic payments are accounted for by a lessee as Operating Expenses for the period.

Operating Partnership (OP): in an UPREIT or DownREIT structure, a Subsidiary partnership through which a REIT holds certain of its assets.

Ordinary Income: income that for US federal income tax purposes is not subject to taxation at preferential rates. Ordinary Income is typically income earned through the sale of products (as opposed to capital assets held for investment), the performance of services for compensation, or as Interest, Rents, or royalties.

Organizational Expense: with respect to a fund, expenses incurred in connection with the fund's organization and startup, typically including legal, travel, accounting, Filing, printing, capital raising, and similar expenses.

Owner's Policy: a type of title insurance issued to an owner of a Property that insures the owner from title defects to the extent not excepted or excluded from the policy coverage.

Ownership Limit: a limit on the actual ownership, Beneficial Ownership, and Constructive Ownership of a REIT's stock that is typically set forth in the REIT's Charter and is intended to protect the REIT's qualification as a REIT. Such limit is typically specified as a maximum percentage that is less than 10% (e.g., 9.8%) of the REIT's outstanding Class of Stock, so that, for example, even if five individuals actually own or Beneficially Own such maximum percentage of the REIT's stock, the 5/50 Test could not be violated.

Ownership Limit Waiver (Excepted Holder Limit): an exemption that a REIT's Board of Directors may grant to allow a person to actually own, Beneficially Own, or Constructively Own stock of the REIT in excess of an Ownership Limit. The requirements and procedures for the grant of an Ownership Limit Waiver are typically set forth in the REIT's Charter.

Paired-Share: equity securities in two separate companies, typically under unified management and traded as a single investment unit. Also sometimes referred to as Stapled Stock.

Paper Clip REIT: a REIT that does not own an operating Subsidiary, but has an intercompany agreement with a separate operating company (that typically has the same management team and stockholder base) whereby the operating company agrees to lease real Property (or provides the REIT with a Right of First Refusal to provide such real Property). Paper Clip REITs have similar tax benefits to Paired-Share REITs.

Par Value: the stated or face value of an instrument of Indebtedness. For example, if a US$1,000 Note is redeemed at Par Value, it is redeemed for the full US$1,000 (plus accrued Interest). Instruments of Indebtedness are said to be redeemed "above par" or "below par" if they are redeemed for more or less (respectively) than their Par Values. For a duffer on the golf course, Par Value may be an unattainable dream.

Pari Mutuel: a betting system in which all bets of a particular type are placed together in a pool; the house take is then removed and payoff odds are calculated by sharing the remaining pool among all winning bets.

Pari Passu: a Latin phrase meaning "with equal step" that is used to denote an obligation that is equal in right and order of payment.

Partial Taking: a public authority's seizure of only a portion of, or certain rights with respect to, a Property in Condemnation.

Participating Loan: a loan in which all or a portion of the return to the lender is obtained through a "kicker" or Participation in the Profits or other upside of the Borrower's business or Property.

Participation: a contract between a lender and another financial investor whereby the investor purchases an interest in all of the benefits and burdens of being a lender under a particular credit facility, but is not actually a party to the Loan Agreement (thus differing from an assignment). Participations carry additional risk over Syndications, since the investor is subject to the Bankruptcy risk of the lender who originally made the loan, such that if said lender were to file for Bankruptcy, it is possible that the payments due to the investor would be stuck in the Bankruptcy proceeding and not easily paid out to the investor even though the initial lender is not entitled to retain such payments.

Partner: the owner of an interest in a general partnership or Limited Partnership. May also refer to a Member of a limited liability company that is treated as a partnership for US federal income tax purposes.

Partner Minimum Gain (Member Minimum Gain): a Partner's or Member's share of the income or gain that would be recognized if an asset were transferred solely to satisfy the non-recourse liability with which it is encumbered. Its meaning is set forth in Treasury Regulations Sections 1.704-2(i)(2) and 1.704-2(i)(3).

Partner Nonrecourse Deduction (Member Nonrecourse Deduction): a Partner's or Member's share of a deduction attributable to a Non-Recourse Loan. A Partner Nonrecourse Deduction or Member Nonrecourse Deduction usually covers Depreciation attributable to an asset when the value of such asset is lower than the value of the Non-Recourse Loan with which it is encumbered.

Partnership Built-In Gain/Loss: unrealized gain or loss associated with Property transferred to a partnership (such as an Operating Partnership) in a wholly or partially tax-deferred contribution in exchange for an equity interest in the partnership. The amount of such unrealized gain or loss is generally equal to the difference between the Fair Market Value and the tax basis of the contributed Property at the time of the contribution, as adjusted from time to time. Under the provisions of the Internal Revenue Code dealing with the allocation of partnership income, the contributing Partner generally will be allocated the built-in gain or loss when it is recognized by the partnership.

Partnership Expense: with respect to a fund, expenses that are paid (or reimbursed by) the fund on an ongoing basis, often including Organizational Expenses.

Partnership Interest: a Partner's interest in a partnership (including, without limitation, capital and residual Profits of the partnership), and the right, if any, to participate in the management of the business and affairs of the company, including the right, if any, to vote on, consent to, or otherwise participate in any decision or action of or by the Partners and the right to receive information concerning the business and affairs of the partnership.

Partnership Minimum Gain (Company Minimum Gain): the amount resulting when, as a result of deductions such as Depreciation, a partnership's basis in Property falls below the outstanding balance of non-recourse debt encumbering such Property. Partnership Minimum Gain also refers to when a partnership makes a Distribution of proceeds of a Non-Recourse Loan that exceeds the partnership's net tax basis in the encumbered Property.

Partnership Representative: a person designated by a partnership or limited liability company to have the sole authority to act on behalf of the partnership or limited liability company in a US federal income tax audit, generally for Taxable Years beginning after 2017. If a Partnership Representative is an entity, the partnership or limited liability company must appoint a Designated Individual to act on behalf of the Partnership Representative and the partnership or limited liability company. See also Tax Matters Partner.

Pass Through: in Leases and purchase agreements, Property-related costs (such as Property taxes or maintenance expenses) imposed on a landlord or seller that the landlord or seller imposes on the tenant or buyer. See also Flow Through Entity.

Pass Through Expenses: in Leases and purchase agreements, Property-related costs (such as Property taxes or maintenance expenses) imposed on a landlord or seller which the landlord or seller imposes on the tenant or buyer.

Passive Income/Losses: income that for US federal income tax purposes is treated as derived from certain so-called "passive investments," including Property rentals and Limited Partnerships. Passive Losses may generally be used to offset Passive Income, but their ability to be used to offset other sources of income is generally limited.

Patriot Act: provisions in credit documents notifying a Borrower (and potentially others) that pursuant to the USA PATRIOT Act, each lender may be required to obtain, verify, and record certain information regarding the Borrower and its Sponsor(s).

Payment in Kind (PIK): another term for Capitalized Interest whereby instead of paying cash Interest, a Borrower increases the Principal amount payable to a lender by that amount that would otherwise be paid as cash Interest, which in turn earns Interest in subsequent periods. Not to be confused with a small tool for removing small bits of food between teeth.

Payment in Lieu of Taxes Agreement (PILOT Agreement): an incentive, offered by a jurisdiction, such as a city or county, to bring business and jobs to the jurisdiction, under which a company will pay, for the period of time designated in the agreement, lower Property taxes on its real and personal Property located in the jurisdiction than would ordinarily apply.

Payoff Letter: a document provided by a lender that describes loan details and the amount and how the seller/Borrower is to pay off the loan.

Penetration Index: reflects a hotel's RevPAR in relation to the RevPAR for that hotel's Competitive Set.

Pension-Held REIT: a REIT that (i) would not satisfy the 5/50 Test but for a look-through rule applicable to shareholders that are qualified trusts (e.g., pension plans) and (ii) is "predominantly held" by qualified trusts. A REIT is "predominantly held" by qualified trusts if any such shareholder holds more than 25% (by value) of the REIT's stock or one or more such shareholders (each of whom owns more than 10% by value of the REIT's stock) together hold more than 50% (by value) of the REIT's stock. Pension-Held REIT status is relevant to tax-exempt shareholders of a REIT because, although dividend income generally is not UBTI to a tax-exempt shareholder, a portion of the dividends paid by a Pension-Held REIT may be treated as UBTI with respect to shareholders that are qualified trusts and hold more than 10%, by value, of the REIT's stock.

Percentage Interest: the amount of ownership an investor has in a company, expressed as a percentage.

Percentage Rent: a form of Rent, the amount of which is determined by multiplying the percentage stated in the Lease by the Gross Revenues (sometimes absolute, sometimes in excess of a stated Breakpoint) generated by the tenant while doing business at the leased Premises. Percentage Rent is a common component of Rent in retail Leases.

Perfect / Perfection / Perfection Under Article 9: steps a Security Interest holder must take to make a Security Interest in UCC collateral enforceable against third parties and ensure it has Priority over later holders of an interest in such UCC collateral. A Security Interest that is valid and enforceable but has not been perfected is enforceable only against the debtor but not against third parties, and, most notably, not against a trustee in the debtor's Bankruptcy. There are five basic methods of Perfection under Article 9: Filing of a Financing Statement, Control, Possession (either directly or through a third party), temporary Perfection, and automatic Perfection. The easiest and most common method of Perfection is Filing a Financing Statement, which is sufficient to Perfect a Security Interest in most (but not all) UCC collateral.

Performance Test: a test applied to a hotel manager pursuant to which the owner of the hotel can terminate the hotel manager if not satisfied. The test typically requires a hotel manager to fail two prongs, one tied to its RevPAR Index and one tied to the Specific Performance of the hotel compared to a budget or a specified return on investment to the owner.

Periodic Tenancy: a Tenancy that automatically continues for successive periods of time such as month-to-month or unless terminated at the end of a period by notice from either tenant or landlord.

Permanent Lender (Take Out Lender): a Mortgage lender that provides long-term financing for a real estate project after the completion of the Construction phase of the project.

Permitted Debt / Permitted Encumbrances / Permitted Exceptions / Permitted Liens: exceptions to a Negative Covenant in secured loan transactions that otherwise prohibit a Borrower from incurring other Indebtedness, Liens, or Encumbrances on the Collateral for the loan. The definition of Lien and debt is usually so broad that the Negative Covenant would trip up even normally operating companies with no consensual Liens outstanding. Permitted Liens are the types of Liens that would normally not bother a Senior secured lender, such as Easements on the Borrower's land, Mechanic's Liens while the work is still in progress, existing consensual Liens (i.e., Liens to other secured creditors), debt for Trade Payables and normal Operating Expenses, Liens for taxes not yet due and payable and other negotiated exceptions.

Permitted Investments: limitations imposed upon the type of investments a company may invest (or allow its account bank to invest) its funds in. Permitted Investments are typically limited to cash and Cash Equivalent-type investments (e.g., Treasuries).

Permitted Transfer: the Transfer of direct or indirect interests in an asset or company that does not require the consent or approval of a third party.

Perpetual Easement: an Easement without a specified Term that will continue indefinitely. These Easements often Run With the Land and remain in place even if the affected Properties are sold.

Personalty: movable assets that are not real Property, money, or investments.

Phase I Environmental Site Assessment (Phase I ESA): a superficial investigation of real Property to determine the possibility of contamination, based on visual observation and the history of the Property. No physical testing is conducted. A Phase I ESA is mandatory in order to assert CERCLA defenses that shield from liability for future cleanup.

Phase II Environmental Site Assessment (Phase II ESA): the collection and laboratory evaluations of samples of a site's soil, groundwater, building materials, or other environmental media, to confirm whether any contamination above applicable regulatory criteria exists. The location and extent of sampling will depend upon the nature of a site and the objective of an investigation. It is typically performed after completion of a Phase I ESA. Depending on the results, further sampling events (sometimes referred to as a Phase II A, or Phase III) may be needed to delineate the extent of contamination.

Placement Agent: with respect to a fund, an individual, or an entity that is engaged by the fund to sell or "place" interests in the fund to investors.

Plan Asset Regulations: regulations promulgated by the US Department of Labor that regulate Plan Assets. Can be found at Department of Labor Regulation 29 C.F.R. § 2510.3-101.

Plan Assets: assets belonging to a pension, Profit-sharing, and other employee benefit plan to which the Employee Retirement Income Security Act (ERISA) applies; a tax-qualified retirement plan described in Section 401(a) of the Internal Revenue Code; or a tax-qualified annuity plan described in Section 408 of the Internal Revenue Code.

Plan of Reorganization: a plan filed under Chapter 11 of the Bankruptcy Code providing for the reorganization and continuation of the debtor and for the treatment of claims and interests. Also known as a Reorganization Plan.

Planned Unit Development (PUD): an alternative to traditional Zoning that permits varied Land Uses within one land area, such as commercial, residential, and public uses that are located within a single subdivision.

Plans and Specifications: scaled drawings detailing the Construction or Alteration of a building. Plans and Specifications are intended to provide precise details relating to the size, shape, height, and other necessary information relating to the Construction or Alteration project.

Plat Act: a statute that governs the subdivision of land and sets forth requirements for plats (or maps) to be recorded in the land records.

Pledge Agreement: an agreement that creates a Security Interest in a Pledgor's Equity interests owned in favor of the applicable secured parties, therefore allowing lenders to take shares of the pledged entity (typically a Borrower or its Subsidiaries) as Collateral. In many instances, the pledge of Equity interests is included in a blanket Security Agreement and a separate Pledge Agreement will not be required. However, separate Pledge Agreements are always used to take a pledge of Equity securing a Mezzanine Loan.

Pledgor: the person, under a Pledge Agreement in favor of a secured party, granting a Security Interest in its Property (sometimes all or sometimes a defined scope of the Property) to the secured party as security for the payment and performance of Obligations under a loan or other agreement.

Political Risk Insurance (PRI): an insurance policy covering a Sponsor's Equity investment in a project, or a lender's loans or other financing provided to a project, against political risk, such as the risk of expropriation or government instability.

Portfolio: a collection of investments held by a particular company or investor, or properties held by a particular company.

Portfolio Company: a company that an investment vehicle has purchased and now constitutes a part of the investment vehicle's Portfolio.

Portfolio Financing: a loan secured by more than one piece or site of real Property.

Positive Spread Investing (PSI): raising capital (by selling Equity and/or debt) at a significantly lower cost than the initial rate of return that can be obtained in real estate investments.

Possession: the fact of having, holding, controlling, or occupying Property.

Possessory Collateral: a type of Collateral that a secured party must physically hold Possession of in order to Perfect its Security Interest properly under the UCC, and should physically hold in order to have superior Priority. Examples include Promissory Notes, certificated securities, and Chattel paper.

Power of Attorney: a legal right granted to a third party that enables such third party to act on behalf of another. US state governments have specific forms of Powers of Attorney, so attention must be paid to form in the event a Power of Attorney will be used to effectuate a Closing or otherwise.

Preference: Transfers made during a certain period (either the 90 days preceding a Bankruptcy Filing or one year for Transfers to insiders) (i) to a creditor; (ii) on account of an antecedent debt owed by a transferor before the Transfer is made; (iii) while the transferor was insolvent; and (iv) that enable the creditor to receive more than it would have received in a Chapter 7 Liquidation case under the Bankruptcy Code. Preferential transfers are subject to Clawback, but creditors may avail themselves of certain defenses to a Clawback action, such as the "ordinary course of business" defense and the "new value" defense. One rationale behind Preference rules is that they prevent creditors from making a mad grab for assets once they learn that a debtor is becoming insolvent and prevent debtors from favoring some creditors over others as Bankruptcy nears.

Preferential Dividend: a distribution that provides a preference to any share of stock as compared with other shares of the same class, or a preference to one Class of Stock as compared with another class, except to the extent that the class receiving the preference is entitled to such preference. Except in the case of a Publicly Offered REIT, a Preferential Dividend is not considered a dividend for purposes of computing the Dividends Paid Deduction.

Preferred Return: with respect to a fund, the minimum return required to be earned by fund investors prior to Participation by the fund's Sponsor or General Partner in Carried Interest (or, if more than one level of Carried Interest, the next level of Carried Interest). See also Hurdle Rate.

Preferred Stock / Preferred Equity: a form of debt structured as an Equity interest that sits between debt and common stock or other equity interests in the Capital Structure of an entity. Preferred Stock / Preferred Equity has Priority over common stock in a Liquidation, generally pays a fixed dividend (the equivalent of the Interest paid on debt) and does not share in the upside of the entity to the same degree as common stock.

Preliminary Plans: initial development plans for a project, which are often used for the Construction bidding process and may be submitted to the local county for approval.

Preliminary Title Report (PTR): a legal document prepared after Escrow opens but before Closing that provides information about Property title, including Legal Description, Liens, Easements, Covenants, restrictions, Property taxes, and the like.

Premises / Demised Premises: the Property that is being leased or transferred under a Lease contract.

Prepackaged Bankruptcy (Pre-Pack): a Bankruptcy Plan of Reorganization that is formulated and agreed to between a company's equity holders and its creditors prior to the company's Filing for Bankruptcy. In fact, votes on the plan are solicited even before the Bankruptcy case is filed. A Pre-Pack is filed with the Bankruptcy court at the time of the Bankruptcy Filing, and confirmation of the plan could follow a few weeks later. The purpose of a Pre-Pack is to shorten the duration of the Bankruptcy proceedings and reduce costs.

Prepayment Penalty / Prepayment Premium / Yield Maintenance / Prepayment Fee: a fee paid by a Borrower for prepaying a loan. This fee can be expressed in a number of ways. The most simple fee is one expressed as a percentage of the amount of the loan being prepaid. Typically, Prepayment Fees will be set on a sliding scale, e.g., 2% in year one and 1% in year two. Additionally, a Prepayment Fee can be based upon a Yield Maintenance formula that looks to replicate the return a lender would have obtained if the entire loan had remained outstanding to Term. The Prepayment Fee may be applied to all prepayments of Term Loans or only those made as a result of Voluntary Prepayments, or some combination of the two. See also Mandatory Prepayment.

Prescriptive Easement: an Easement acquired by one's use in an open and continuous manner without permission for a period longer than the statute of limitations under US state law.

Prime Rate: the variable lending Rate set by banks that refers to the Interest Rate at which banks lend money to high-credit customers. Typically, the Prime Rate is approximately 300 Basis Points above the Federal Funds rate.

Priming Lien: a Lien that has Priority over other Liens currently encumbering a piece of Collateral even though the other Liens were recorded or Perfected first. Used frequently in the context of DIP Financing for a Borrower in Bankruptcy whereby a lender who provides a DIP loan obtains a Priming Lien that has Priority over all other debt. The Priming Lien allows the DIP lender to be paid before the other debt even though the other debt was first in time. The rationale is that a DIP lender is making a DIP loan at a risky time in a Borrower's life and is providing capital that will ultimately allow the pre-existing lenders to get repaid (at least in part).

Principal: the sum of money borrowed or remaining unpaid, upon which Interest is calculated.

Principal Balance: the outstanding balance of a debt, exclusive of Interest or other charges.

Priority: the right of a person's rights and claims to be ahead of the rights and claims of others. Applies to both the order in which creditors can claim against a Borrower or Collateral and to Mortgages, Deeds of Trust, or other Liens (typically given the Priority in the order of Recordation).

Private Company: a company that is privately owned and, as a result, is not generally subject to the disclosure and other legal requirements imposed on companies whose securities are more broadly held.

Private Equity: Equity capital raised from private sources, including retail or accredited investors and institutional investors (as opposed to public markets).

Private Placement: the sale of securities to a relatively small number of select investors that does not have to be registered with the SEC.

Private REIT (Baby REIT or Subsidiary REIT): a REIT, sometimes holding a single asset, the common stock of which is often owned by another REIT or in connection with a partnership or joint venture transaction. A Private REIT structure may be used to facilitate an investment that is tax-efficient for non-US or tax-exempt investors.

Privity of Contract: the direct relationship between the parties to a contract, giving them rights and Obligations with respect to each other that generally do not apply to third parties that are not party to the applicable contract.

Pro Forma: a Financial Statement that is calculated using certain assumptions and projections and/or to give effect to a particular transaction as of or during a period prior to which it occurred. Publicly traded REITs regularly are required to file Pro Forma Financial Statements giving effect to significant acquisitions or dispositions of assets.

Pro Forma Title Policy: the negotiated form of title policy to be issued upon satisfaction of all of the title company conditions. This document does not provide coverage or commit a title company to provide such coverage, but the Pro Forma can serve as a basis for interim Title Coverage, pursuant to the Closing Instruction letter, until the title policy is issued. The Pro Forma Title Policy contains the policy jacket, completed Schedules A and B, and shows the proposed insured, amount of insurance, and exceptions and Endorsements that will appear in the final policy.

Procuring Cause: the standard for determining which agent rightfully deserves the Commission for ultimately producing a sale.

Profit: the financial benefit created by a person or company when revenue exceeds expenses.

Prohibited Transaction: the sale or other disposition by a REIT of Property that is not Foreclosure Property, is Dealer Property, and fails to satisfy certain safe-harbor requirements. A REIT is subject to a 100% tax on the net income from Prohibited Transactions.

Prohibited Transaction Safe Harbor: a safe harbor, which, if met, prevents certain sales or dispositions by a REIT from being treated as Prohibited Transactions.

Project Cost: used in Project Finance to denote the cost of a project allowed under a use of proceeds Covenant of a Credit Agreement.

These costs include development costs, land acquisition, equipment, consultant fees, Construction, legal fees, initial reserves, etc.

Project Finance: a type of limited recourse financing whereby a project developer (known as the "project company" that is formed by a Sponsor) incurs debt, and in combination with Equity contributed by the Sponsor, is used to finance the development and Construction of a capital-intensive project (e.g., power plant, toll road), typically through Construction Loans that convert to Term Loans upon completion of the project. A primary feature of Project Finance is that the lenders advance debt on the basis of their evaluation of the projected revenue-generating capability of the project, rather than the credit quality of the project Sponsor. The Equity of the project company and the project assets, including the project documents and other Cash Flows, are pledged as Collateral for the debt.

Project Loan: a Mortgage loan to finance a large-scale building that provides a public benefit, such as multiple-family housing complexes, hospitals, and nursing homes. The Federal Housing Administration or a branch of the US Department of Housing and Urban Development guarantees the Project Loan.

Property: anything in which a person or an entity can hold legal title. Property may be tangible (such as goods and equipment) or intangible (such as intellectual property, contract rights, and goodwill), real (such as land and anything attached to, or erected on it, excluding anything that may be severed without injury to the land and certain rights therein, such as Easements), or personal (as in everything else but real estate).

Property Diligence Questionnaire (PDQ): a questionnaire used to determine the types of income derived from, and the services provided at, a Property. REITs and their tax advisers often use such questionnaires as part of their Due Diligence to determine whether a Property generates Qualifying Income. Also known as a Property Service Questionnaire (PSQ).

Property Management Fee: a fee paid to a party that is responsible for managing the day-to-day operations of a building.

Property Manager: the person or firm charged with operating a real estate Property in exchange for a fee. Typically, Property Managers are responsible for dealing with tenants, repairs and maintenance, cleaning, security, landscaping, collecting Rent, paying insurance premiums, taxes and other expenses, and making periodic reports to the owner.

Prorations: Rent, Tax, Utilities, Insurance: to divide the amount due into proportionate amounts based on a party's share of the cost based on time of ownership or space occupied.

Protective Advance: the money advanced by a lender to fulfill or perform an Obligation of a Borrower, which the Borrower has failed to perform (e.g., renewing insurance, paying taxes), in order to preserve the Priority of the lender's Security Interest in or Lien on the Collateral or the value of the Collateral, or for expenses, including attorneys' fees, that the Borrower has agreed to reimburse.

Publicly Offered REIT: a REIT that is required to file annual and periodic reports with the SEC under the Securities Exchange Act of 1934.

Punchlist: the part of the Construction work on a Property or Alteration that remains after Substantial Completion, consisting of tasks which, if they were never completed, would not interfere with the Property basically running as intended. For example, painting and landscaping land on the Punchlist. This is not to say the owner doesn't care if the Punchlist is ever completed; the owner does. Often, the owner is entitled to hold back two times the cost of completing the Punchlist and release those funds only as each item is crossed off.

Punitive Dilution: a disproportionate or punitive reduction in the ownership interest or Equity an investor holds in a company.

Purchase and Sale Agreement (PSA): a real estate contract that sets forth the terms and conditions of the agreement for the sale of a Property between the buyer and seller.

Purchase Money Mortgage / Owner Financing: a Mortgage granted by a purchaser, as Borrower, of real Property to a seller, as lender, as part of a purchase transaction. See also Seller Financing.

Purchase Option: an option in a contract in which the seller extends and keeps open an offer, for a fixed amount of time, to sell real estate to a particular potential buyer at a certain price.

Put Right: a contractual right pursuant to which an owner of a company has the right to force the company or another owner to purchase its ownership interest on certain terms and conditions.

Qualified Foreign Pension Fund: a non-US trust, corporation, or other organization or arrangement that (i) is established to provide retirement or pension benefits to participants or Beneficiaries that are current or former employees for services rendered, (ii) does not have a single participant or Beneficiary with a right to more than 5% of its assets or income, and (iii) is subject to certain reporting requirements and favorable tax treatment under the laws of the country in which it is established or operates. Any sale of a USRPI held directly (or indirectly through one or more partnerships) by, or any distribution received from a REIT by, a Qualified Foreign Pension Fund (or an entity wholly owned by a Qualified Foreign Pension Fund) is exempt from taxation under the FIRPTA rules.

Qualified Healthcare Property: any real Property, and any personal Property incident to such real Property, that is a healthcare facility (i.e., a hospital, nursing facility, assisted living facility, or other facility that provides certain medical or nursing or ancillary services to patients) or is necessary or incidental to the use of a healthcare facility. See also EIK.

Qualified Lodging Facility: a hotel, motel, or other facility in which more than one-half of the units are used on a transient basis, provided that wagering activities are not conducted at or in connection with such facilities. See also EIK.

Qualified Shareholder: a non-US publicly traded entity that maintains records on the identity of each of its 5%-or-greater owners and satisfies certain other requirements. Any sale of REIT stock held directly (or indirectly through one or more partnerships) by, or any distribution received from a REIT by, a Qualified Shareholder is exempt from taxation under the FIRPTA rules, subject to certain exceptions.

Qualified Transferee: an entity that meets eligibility requirements — typically financial requirements as well as qualitative requirements — and may, therefore, be a transferee of mezzanine debt on the theory that the new mezzanine lender may end up Foreclosing on the Equity of the Mortgage Borrower. In a CMBS context, a transferee of a controlling interest in mezzanine debt is required to be a Qualified Transferee in order to preserve the Credit Rating of the Senior debt.

Qualifying Asset (Good Asset): an asset that is counted in the numerator for purposes of computing the test percentage under the 75% Asset Test (i.e., generally a Real Estate Asset, cash, or cash item (including a receivable), or a US government security). May also apply with respect to other Asset Tests (e.g., ownership of a security that complies with the 10% Asset Test).

Qualifying Income (Good Income): an item of income that is counted in the numerator for purposes of computing the test percentage under the 95% Income Test or the 75% Income Test, as applicable. For example, Interest income from an unsecured loan is Qualifying Income under the 95% Income Test but not under the 75% Income Test.

Quiet Title: a legal action to settle a title dispute.

Race Statute: a statute that provides Priority of title to the first to record a conveyance even if they had knowledge of a prior conveyance or prior unrecorded claims on the Property. These statutes are currently uncommon and viewed as unfair. In contrast, see Race-Notice Statute.

Race-Notice Statute: a statute that provides Priority of title to the first to record conveyance but only if they had no knowledge of a prior conveyance or prior unrecorded claims on the Property. In contrast, see Race Statute.

Racing: the type of gaming centered around horse or dog races.

Rack Rate: the official or advertised price of a hotel room.

Racketeer Influenced and Corrupt Organizations (RICO): US federal law that punishes acts performed as part of an ongoing criminal enterprise. The law provides for both criminal penalties and a civil Cause of action. Not to be confused with Rico Suave.

Rate: Adjustable/Variable/ARM (Adjustable Rate Mortgage): Interest charged on a loan. A Rate can be either a fixed percentage (Fixed Rate), typically quoted as an annual rate but payable on a monthly basis, or it can be a Variable/Adjustable Rate that fluctuates based on an underlying benchmark Interest Rate or Index that changes periodically (typically LIBOR).

Rating Agency: an agency that rates companies, securities, and loans on a risk spectrum. The ratings directly impact the cost of borrowing. As a result, the Rating Agencies are feared by companies and bankers alike.

Ready, Willing and Able Buyer: a prospective buyer who is legally capable, prepared to comply with the terms and conditions of a purchase contract, and financially able to complete the transaction. A broker who procures this type of buyer often earns a Commission, regardless of whether the sale is completed or not.

Real Estate Asset: for purposes of the Asset Tests, this term means real Property (including interests in real Property and interests in Mortgages on real Property or on interests in real Property), shares (or transferable certificates of beneficial interest) in other REITs, debt instruments issued by Publicly Offered REITs, and any Property (not otherwise a Real Estate Asset) attributable to the temporary investment of new capital, but only if such Property is stock or a debt instrument, and only for the one-year period beginning on the date the REIT receives such capital.

Real Estate Board of New York (REBNY): an organization that promotes professional practice and ethics in the real estate field through industry standards, services, and education.

Real Estate Investment Trust (REIT): a company that owns primarily income-producing real estate, Mortgages, or other real estate-related assets. REITs are often described as “mutual funds” for real estate and allow investors, through their ownership of REIT stock, to acquire an interest in a large Portfolio of real estate-related assets. Some REITs (often referred to as Equity REITs) invest primarily in real estate (or specific types of real estate such as offices, multi-family or single-family residences, hotels, retail and shopping centers, datacenters, healthcare facilities, cell towers, pipelines, marinas, cold storage or self-storage), whereas other REITs (often referred to as Mortgage REITs) invest in Mortgages or real estate securities. Many REITs are listed on public stock exchanges, but there may also be Private REITs or Non-Traded REITs. In order to qualify as a REIT, a company must meet a number of requirements set forth in the Internal Revenue Code related to the nature of its assets, income, distributions, and organizational structure, among other things. Provided a company qualifies as a REIT, it is entitled to deduct the dividends it pays to its shareholders, substantially eliminating the “double taxation” that ordinarily results from investment in a regular C Corporation. Although a REIT generally does not pay income tax on the income it currently distributes to its shareholders, a REIT’s taxable shareholders will be required to pay tax on the dividends they receive from the REIT. Because REITs typically distribute all or substantially all of their taxable income, investments in REITs can provide investors with regular dividends and attractive Yields.

Real Estate Mortgage Investment Conduit (REMIC): an entity that holds a fixed pool of Mortgages, issues multiple classes of securities in itself to investors, and meets certain other requirements.

Real Estate Operating Company (REOC): a real estate company that has not elected to be taxed as a REIT and that, as a result, does not benefit from the favorable tax treatment afforded to REITs. At the same time, REOCs are not subject to the myriad limitations and requirements that are imposed on REITs under US tax law.

Real Estate Owned (REO): a class of Property owned by a lender (typically a bank, a government agency such as Fannie Mae, or the US Department of Housing and Urban Development, or a government loan insurer) after an unsuccessful sale at a Foreclosure auction. During a Foreclosure, the holder of a Mortgage will typically bid the full outstanding balance of the secured debt. In cases where the debt exceeds the value of the Property, the Mortgage holder will repossess the Property and list it on their books as REO. Goes well with a Speedwagon.

Realty: synonymous with real estate or real Property. Land together with Improvements thereon.

Reasonable Cause Opinion: in the event a REIT fails to satisfy one or more of the requirements for qualification as a REIT, it may be able to cure such failure if certain requirements are met, including, in most cases, that the REIT has reasonable cause for such failure. A reasoned written opinion of a tax adviser with respect to the applicable tax issue generally will establish that the REIT's failure to meet the applicable requirement was due to reasonable cause and not willful neglect.

Recapture (Recapture Right): a provision in a Lease agreement that allows the landlord to terminate the lease prior to the end of the scheduled Term as a consequence of the tenant's desire to sublet the space demised by the lease or assign the lease if certain conditions are met or not met.

Recapture of Depreciation (Depreciation Recapture): a US tax rule whereby certain Depreciation expenses related to assets held by a taxpayer that reduced such taxpayer's Ordinary Income are required to be added back to the Ordinary Income of such taxpayer if the depreciated assets at issue are subsequently sold at a gain.

Receiver (Receivership): a court-appointed Custodian of real Property who takes over control and management of the Property in order to preserve money or manage a Property that is subject to litigation. Receivers are appointed following a hearing involving all interested parties, unless such interested parties have waived the right to notice or the party seeking the appointment of a Receiver can demonstrate that an emergency exists (in which case the hearing will be held as soon as possible thereafter).

Reciprocal Easement Agreement (REA): a contract that allows two or more owners of real Property mutually to use and maintain specified areas on their respective real Property, such as Access and parking. REAs are common in shopping centers where a developer will own much of the real Property, but major retailers own certain parcels. The Terms of an REA often will extend beyond Easements to address use Covenants (such as hours of operation), design requirements for the shopping center, Common Area maintenance and operation, insurance, and other areas of mutual interest to the parties. The REA will usually be recorded against all of the affected land and will Run With the Land to bind successors and assigns.

Recorder: the governmental office that maintains a public record of the details of properly executed legal documents relating to real Property, including a Mortgage or a Deed. Also known as a Recording Office or Register of Deeds.

Recording Instruction: written instructions from the parties to a transaction or their attorneys provided to the title company specifying the conditions that must be satisfied before submitting documents for Recordation and specifying the order in which the documents should be recorded.

Recording Taxes (Recording Fees): the county keeps a public record of all Property purchases, Mortgages, and other Encumbrances recorded against a Property and charges this fee to record (or register) any such document. The fees vary in each jurisdiction.

Redemption: a process by which real estate is released or reclaimed from a Mortgage by paying the debt owed or fulfilling other conditions (see Clogging the Equity of Redemption). In certain jurisdictions, a Mortgagor has the right to redeem the real Property even after a Foreclosure has been completed (for a set period of time).

Redevelopment: any Construction on or development of Property that had been previously developed.

Redevelopment Agency: a government entity whose purpose is to promote development in areas that are underdeveloped and/or have become neglected.

Redevelopment Yields: additional Net Operating Income that is expected to be generated from the Redevelopment of an asset upon the Stabilization of such asset, expressed as a percentage of the cost of redeveloping such asset, including the cost of a Lease-Up.

Refinancing: the replacement of an existing debt with a new debt but on different Terms. Typically, debt is refinanced to extend Maturity, take advantage of more favorable Interest Rates, or take Equity out of a Property (if the value of the Property has appreciated).

Registered Representative: a person, typically employed by a brokerage company, who is licensed to buy and sell securities on behalf of clients. Registered Representatives are required to pass examinations administered by FINRA and sometimes other state agencies.

Regulation D (Reg D): an SEC regulation governing Private Placement exemptions for registration of securities under the Securities Exchange Act of 1934, and the requirements that must be met in order to circumvent the registration requirements.

Regulation S-X: an SEC regulation that sets forth the form, content of, and requirements for Financial Statements filed as part of registration statements, or as part of ongoing reporting requirements.

Regulation Z: US federal regulations promulgated under and implementing the Truth in Lending Act of 1968, which appear at 12 CFR Part 226. Regulation Z generally governs the disclosures (typically financial) that are required to be provided in connection with certain lending transactions.

Reinstatement: a Chapter 11 plan proponent's ability to reinstate the pre-default Terms of an accelerated debt by curing all Defaults (typically including paying off all late payments and arrearages and bringing the loan current).

Reinsurance: insurance purchased by one insurance company from other insurance companies as a means to manage risk.

REIT Built-In Gain Tax (Sting Tax): a REIT is required to pay an entity-level tax at the highest regular corporate tax rate on gain recognized on the sale of Property (but only to the extent of the REIT's built-in gain in the Property at the time of its acquisition) during a specified recognition period after the REIT acquired such Property from a C Corporation in a carryover basis transaction. The recognition period has varied over the years, generally ranging from five years to 10 years.

REIT Exchange Traded Funds (REIT ETF): funds that invest primarily in Equity securities of REITs and related derivatives. As the name implies, REIT Exchange Traded Funds are traded on exchanges.

REIT Investment Diversification and Empowerment Act (RIDEA) Structure: a structure pursuant to which a REIT leases a Qualified Lodging Facility or a Qualified Healthcare Property to a TRS and the TRS hires an EIK to manage such Property. Although Rent from a Related Party Tenant generally does not qualify as Rents From Real Property for a REIT, Rent from a TRS in a RIDEA Structure will constitute Rents From Real Property notwithstanding the TRS's status as a Related Party Tenant.

REIT Opinion: a written legal opinion rendered by a tax adviser that a REIT has satisfied the requirements for qualification and taxation as a REIT.

Relate Back Dividends (Pull Back Dividends or Section 858 Dividends): a procedure that allows a REIT to treat dividends paid in a Taxable Year as paid in the preceding Taxable Year for purposes of the 90% Distribution Test and also for purposes of computing the REIT's tax on undistributed income. Such dividends do not relate back for purposes of the 4% Excise Tax. To use this procedure, the REIT must (i) declare the dividend before the due date of the tax return (including extensions) for the preceding Taxable Year, (ii) pay the dividend in the 12-month period following the close of the preceding Taxable Year, and not later than the date of the first regular dividend payment made after such declaration, and (iii) elect in such tax return to have a specified dollar amount of the dividend treated as if paid in the preceding Taxable Year.

Related Party Tenant: a tenant of a REIT where (i) if the tenant is a corporation, the REIT actually owns or constructively owns 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant or (ii) if the tenant is not a corporation, the REIT actually owns or constructively owns 10% or more of the interests in the assets or net Profits of the tenant. For purposes of the Income Tests, Rents From Real Property do not include any amount received or accrued by a REIT directly or indirectly from any Related Party Tenant.

Release of Mortgage/Lien/Claims: a document filed and recorded (or registered) when all or a portion of a loan has been fully paid to certify that the lender no longer has any interest in the Property that was secured by a Mortgage that a Borrower had previously delivered to a lender as security for its loan.

Release Price: the amount a Mortgage Borrower must pay in order to pay off the entire balance of a Mortgage. Can also refer to the minimum price that must be obtained for each unit in a development in order to release that unit from the Lien of a Mortgage.

Releasing Spread: the difference between the Lease rates for new Leases compared with Lease rates for expiring Leases. Cash Releasing Spreads reflect the spread between the last cash payment on the Lease that is expiring versus the first cash payment on the renewal Lease. GAAP Releasing Spreads are calculated after giving effect to the straight-lining of Rents and non-cash adjustments.

Relief From Stay: an order granted by a Bankruptcy court lifting the Automatic Stay and enabling a creditor to take action against the bankrupt debtor to collect on the debt or take control of the Collateral securing it.

Relinquished Property: Property the taxpayer disposes of in a Like-Kind Exchange.

Renewal Option: a clause in a Lease giving the tenant one or more rights to renew or extend the Term of the Lease and that specifies the terms and conditions to properly exercise such right (such as when and how notice of exercise can or must be given), as well as the length of the renewal or extension Term and the rental rate during such Term. See also Extension Right.

Rent: Consideration the tenant pays to the landlord in exchange for the right to use and occupy the leased Premises for a period of time.

Rent Adjustment: a Lease provision that provides for future changes — usually increases — in rental Obligations, such as the Pass Through of future increases in real estate taxes and Operating Expenses, predetermined and stated rental increases, and rental increases effected by the application of Consumer Price Index multipliers.

Rent Commencement Date: may be a later date than the Commencement Date at which time the tenant is obligated to commence paying Rent under the Lease.

Rent Concession: inducement a landlord offers to a tenant as part of an overall rental package, such as Rent Abatement, offering or increasing the Tenant Improvement Allowance, a reduced rental rate, and offering a moving allowance, offering additional services at reduced rates, and other economic incentives.

Rent Insurance — Loss Rental / Rental Loss Insurance and Business Interruption Insurance: insurance that protects the landlord in the case of fire or other damage that renders the Property unusable and excuses the tenant from paying Rent. This insurance covers the revenue that would have been earned during the Business Interruption event.

Rent Roll: a list of tenants of a Property that typically includes the Rent payable and the expiration date of the Leases.

Rentable Area: the actual area that may be rented to tenants. Rentable Area is often used to calculate Rent payments. This may include tenant's pro rata share of Common Areas. Also known as Rentable Square Footage (RSF).

Rental Pool (Rental Program): a structure typically associated with Condo Hotels pursuant to which individual unit owners submit such units to a Rental Program, pursuant to which such units are rented for transient occupancy so that the Condominium project functions like a hotel.

Rents From Real Property: for purposes of the Income Tests, includes (i) Rents from interests in real Property, (ii) charges for Customary Services provided in connection with the rental of real Property (whether or not separately stated), and (iii), if the 15% Personal Property Test is satisfied, Rent attributable to personal Property leased in connection with a lease of real Property, but does not include (a) any Rent determined based on the income or Profits derived by any person from the leased Property (although Rent based on one or more percentages of Gross Revenues is generally permitted), (b) any Rent or other amount received from a Related Party Tenant, or (c) Impermissible Tenant Services Income. The agreement pursuant to which such amounts are paid can be in the form of a lease, license, or other agreement, provided the applicable requirements to qualify as a Rents From Real Property are met.

Replacement Cost (Replacement Value): a method for determining the value of an asset based upon the amount that would be required to replace the asset at the present time.

Replacement Property: Property a taxpayer acquires in a Like-Kind Exchange.

Representations and Warranties: in the CMBS context, a set of Representations and Warranties made by Mortgage loan sellers/originators regarding the loan Terms, Borrower structure, and Collateral in the Mortgage loan purchase agreements entered into between the Mortgage loan sellers/originators and the entities creating the CMBS.

Request for Notice: in the context of a Property Lien, a request, put on record, to be given notice of any default and any Lien enforcement proceedings (particularly a notice of sale) with respect to Liens recorded against a Property. In the context of Bankruptcy, a request, filed with the applicable Bankruptcy court, to receive notice of all proceedings in the Bankruptcy action.

Reserve Accounts (Reserve Funds): accounts created under the loan documents to hold the cash reserved for the payment of various Obligations, including debt service.

Restoration: the process of reinstating a Property to its original, prior, or functional/usable condition following the occurrence of damage or destruction to (or partial Condemnation of) such Property.

Restriction on Alienation: a clause in a Deed that attempts to prevent the sale or conveyance of real Property either forever or for an extremely long period of time. Such a restriction is generally unlawful and void or voidable. Also known as Restraint on Alienation.

Retainage (Retained Funds): the portion of money due under a Construction Contract or subcontract, but retained by lenders, owners, General Contractors, and Subcontractors, as applicable, to incentivize completion of Construction and issuance of Release of Liens.

Revenue per Available Room (RevPAR): a performance measure for hotel properties that takes into account total guest room revenue divided by the total number of available rooms.

Reversionary Interest: an interest in Property that the Grantor of a Property right retains after the conveyance of such Property right (such as the owner of a Fee Simple estate granting a life estate or a Leasehold Estate). At the completion of the Property right granted, the estate retained reverts back to the original Grantor.

Revolver (Revolving Facility): a loan facility that provides a Borrower with the ability to draw down, repay, and redraw loans advanced.

RevPAR Index: the measurement of a hotel's market share of its segment's (e.g., Competitive Set, market, etc.) RevPAR.

Right of First Offer (ROFO): a contractual obligation of the owner of an asset to offer the sale of the asset with a specified party before the owner of such asset may offer it for sale to other third parties. If the holder of the Right of First Offer is not interested in purchasing the asset, the seller is typically only free to sell the asset to a third party on very similar Terms as those offered to the first party and for a particular period of time before such right would be reinstated.

Right of First Refusal (ROFR): a contractual obligation of the owner of an asset to allow a specified party the right to acquire an asset on the same Terms that have already been agreed to by a third party.

Right of Reentry: a Grantor's retained right to enter and repossess Property if a certain circumstance occurs or fails to occur. This is not automatic, like reversion; the Grantor has to take affirmative steps to recover Possession and title, such as suing to Quiet Title. To the extent permitted under US state law, a Lease may contain a Right of Reentry allowing the landlord to reclaim the Premises if the tenant fails to abide by the Terms of the Lease. When the landlord exercises the Right of Reentry and reclaims the Premises, the tenant has no further right to the Premises.

Right of Way: a legally granted right-of-Access to travel across a specific route regardless of Property ownership.

Riparian Right: the right belonging to landowners to use water that flows naturally either on or adjacent to their Property.

Risk Factor: with respect to a fund, statements made in a fund's Private Placement memorandum that describe certain risks associated with investing in the fund.

Risk of Loss: determines whether the buyer or seller is financially responsible for loss that occurs between the time the contract is formed and fully performed. Most jurisdictions have adopted the UCC rules for Risk of Loss.

Roll-Up: a process or series of transactions in which a number of smaller companies (Affiliated or non-Affiliated) are combined into a single larger company, often in connection with an initial public offering or other issuance of public securities.

Rule Against Perpetuities: a rule limiting the applicability of Restraints on Alienation (and other future interests) to a maximum of lives in being, plus 21 years.

Run With the Land: a legal term that means that a Covenant, right, or restriction is attached to the Deed and, therefore, subsequent Property owners take the land subject to the covenant, right, or restriction.

S&P: shorthand for Standard & Poor's, a major Rating Agency.

S-11: an SEC registration statement form that is used to register securities that are issued by REITs or by other Issuers whose business primarily involves acquiring and holding real estate or interests in real estate for purposes of investment. The analog to Form S-1 for non-real estate companies.

Sale and Leaseback (Sale-Leaseback): the financial transaction by which a party sells an asset (e.g., real Property) and enters into a long-term Lease of the asset back from the party that purchased the asset. The transaction functions as a loan, with payments taking the form of Rent.

Sale Notice: a notice by a company or an investor to the other investors of an election to sell an asset or interest in the company.

Sale Protection: although a contribution of Property to a partnership (such as an Operating Partnership) is generally a tax-deferred transaction, contributors may recognize income in certain circumstances, including when the partnership sells a contributed Property. See also Partnership Built-In Gain / Loss. In order to defer such gain recognition, a contributor may require (e.g., in a Tax Protection Agreement) that the partnership indemnify the contributor in the event the partnership sells any Properties contributed by such contributor or engages in certain merger or sale transactions within a specified period of time following the contribution.

Same Store: a financial metric that is used to compare the performance of an established set of Properties over a given time period (such as a Fiscal Year or quarter), with the same set of properties in a period in a previous year. Same Store disregards acquisitions or dispositions during the relevant periods to focus on a set of Properties continuously held across the periods.

Schedule B-I: in a title Commitment, Schedule B-I typically sets forth requirements for insurance companies to issue title insurance policies, including the items that the seller or Borrower must submit to the title company, which include payment of the premium, executed Deed, or Mortgage, corporate authority documents, and satisfactions of existing monetary Encumbrances.

Schedule B-II: in a title Commitment, Schedule B-II typically sets forth the items excluded from coverage of the title insurance policy, which generally include standard exceptions, Liens and Encumbrances that the public records and taxes and Assessments show to be due and payable.

Schedule III: a required schedule to the Financial Statements setting forth a company's real estate and accumulated Depreciation.

Schematic Design: the basic parts and scale of a development project shown on an initial design plan.

Secondary Shelf: a registration statement filed with the SEC providing for the sale of shares owned by one or more existing security holders (rather than the Issuer itself), which may be sold all at once, on a delayed basis, in a number of tranches over a period of time, or on a continuous basis. Also a good place to store old books.

Section 704(c) Method: a method of allocation of income, gain, loss, or deduction with respect to contributed Property among a partnership's Partners, which allocates the burdens and benefits of the Partnership Built-In Gain / Loss to the contributing Partner. US Treasury Regulations authorize the following three allocation methods (but also permit other methods so long as they are reasonable): (i) the traditional method, (ii) the traditional method with curative allocations, and (iii) the remedial allocation method. Typically, the traditional method without curative allocations is the most favorable method from a contributor's perspective.

Section 83(b) Election: an election made pursuant to Section 83(b) of the Internal Revenue Code, which causes the value of unvested stock and certain other Equity interests or Property received in connection with the performance of services to be immediately taxable to the recipient as ordinary compensation income (to the extent of its value at such time), but permits subsequent Appreciation in those securities, if and when realized, to be taxable as Capital Gain, often at lower tax rates.

Section 892 Investor: a non-US investor (including non-US governments and certain of their agencies, instrumentalities, and controlled entities, such as sovereign wealth funds) that is exempt from US taxation with respect to income received from investments in the US in stocks, bonds, or other US securities, certain financial instruments, or Interest on US bank Deposits. To be eligible for such exemption, the income must not be derived from the conduct of a commercial activity, received by or from a commercial entity controlled by a non-US government, or derived from the disposition of an interest in a commercial entity controlled by a non-US government. Frequently, Section 892 Investors will own slightly less than 50% of the stock of a Private REIT (e.g., 45% to 49%), or of the interests in a partnership that owns 100% of the common stock of a Private REIT.

Secured Financing: financing secured by Collateral that allows a creditor, in the event that the Borrower Defaults, to sell the Collateral to recover some or all of the debt owed.

Securities Act of 1933: US federal law enacted to protect the investing public by governing the issuance of securities and requiring more transparency in Financial Statements. Also known as the ’33 Act.

Securities Exchange Act of 1934 (Exchange Act): US federal law enacted to protect the investing public by governing securities transactions on the secondary market (after their initial issuance) and regulating the activities of securities exchanges and broker-dealers.

Securities and Exchange Commission (SEC): the US federal agency primarily charged with enforcing federal securities laws and with regulating the US securities industry.

Securities Investor Protection Corporation (SIPC): a nonprofit corporation created under US federal law and funded by companies in the securities industry to provide certain protections to investors from losses if a securities broker fails.

Securitization (Securitized): a financial transaction in which Portfolios of Mortgages (or sometimes a single large Mortgage) are pooled to create securities that are sold to investors.

Securitization Vehicle: a tax-exempt company or trust formed to take ownership of a Portfolio of Mortgages, fund the purchase of such Mortgages, and issue securities to raise the funds necessary to complete the purchase.

Security Agreement: a legal document providing a lender with a Security Interest in specific UCC collateral.

Security Deposit: money placed with a person as Earnest Money or security for the performance of a contract, usually a Lease. If the Obligations under the contract are not performed, then the Deposit may be forfeited. Often there are statutory requirements for how a landlord may hold, apply, or return a Lease Security Deposit.

Security Interest: an interest in specific Collateral created by an agreement or law for the purpose of securing the payment of debt and/or the performance of Obligations. The Beneficiary of a Security Interest (the “secured party”) has certain preferential rights over the Collateral, typically including the right to seize and sell the Collateral to recover the debt.

Self-Help: when, in an attempt to avoid legal proceedings, a landlord uses methods such as changing the locks, removing a tenant’s furniture or cutting off utilities in order to evict the tenant. Most of these techniques are illegal. Also used in the context of a tenant performing the obligations of a landlord that has defaulted in its obligations owed to a tenant under a lease.

Self-Insurance: a risk-management method in which a calculated amount of money is set aside to compensate for potential future losses that an insurance policy would otherwise cover. It is also possible that a large company could have a captive insurance company funded by the self-insured entity. Typically, only very credit-worthy entities are permitted to self-insure.

Self-Insured Retention: otherwise known as the “deductible.” Self-Insured Retention is the amount of an otherwise-covered loss that is not covered by an insurance policy and the insured usually must pay before the insurer will pay benefits. Generally, the larger the Self-Insured Retention, the lower the premium for the related insurance policy. Typically, only very credit worthy entities are permitted to have a Self-Insured Retention.

Seller Financing: financing provided by a seller of real estate to a buyer that is secured by a Purchase Money Mortgage.

Senior: the right of a person’s rights and claims to be superior to the rights and claims of others against a Borrower or Collateral.

Senior Loan: a loan secured by a Lien against real estate that is superior in rights of payment to other loans made to the same Borrower (other than loans of equal Priority that would also be considered Senior) and in claim rights against the Borrower’s assets. A Mortgage loan that is superior in Priority to other Mortgage loans encumbering the same Property.

Separateness: how an entity will be treated as separate and legally distinct from other entities for corporate and Bankruptcy purposes. Separateness of an entity can be evidenced by SPE Covenants, such as the requirement to maintain separate bank accounts and stationary, as well as special purpose provisions limiting the purpose of an entity to a limited and specific purpose related to a single Property. Lenders want Separateness protections to ensure entities are Bankruptcy Remote (that is, not subject to consolidation into another related entity's Bankruptcy). See also Single-Purpose Entity.

Separateness Covenants: Covenants included in the loan and organizational documents of an SPE that attempt to minimize the likelihood of the SPE becoming insolvent as a result of its own activities, and insulate the SPE from Bankruptcy proceedings involving related parties. Also known as SPE Covenants.

Settlement Statement: a document that discloses all the Sources and Uses of funds and proceeds from a financing and/or Equity transaction including all fees, costs, and expenses.

Severing: the legal separation of the Note and the Mortgage, when each is held by a separate entity, such as the lender (which holds the Note) and the Mortgage Electronic Registration System, or MERS (the mortgagee).

Shareholder Demand Letter / Stock Ownership Questionnaire: the letter or questionnaire a REIT sends to its shareholders of record within 30 days after the end of each Taxable Year (generally, by January 30), requesting information regarding actual ownership of the REIT's stock during the prior year. REITs are required to collect and maintain certain records regarding ownership of their stock.

Sheriff's Sale: a public sale conducted to satisfy a judgment rendered by a court or agency, or in connection with a Mortgage Foreclosure, tax Lien, or tax sale.

Shop Drawings: detailed drawings that provide information regarding the fabrication or installation of items to be installed in a Construction project. These drawings are not provided by the architect but instead by the manufacturer, supplier, contractor, etc. Shop Drawings can be used for windows or appliances, for example.

Short Sale: a real estate sale in which the proceeds are less than the balance of the loan secured by the Property, and the lender agrees to accept less than the amount owed to the lender and release its Lien. A Short Sale is an alternative to a Foreclosure. Some US states have legislation preventing a lender from pursuing a Deficiency claim after a Short Sale.

Short-Form Lease: a condensed version of a Lease. Such Leases can be for uncomplicated tenancies. A Short-Form Lease may also be used as a recordable Memorandum of Lease which sets forth the basic Lease Terms of the actual Lease in a form suitable for recording so that the Lease can be memorialized in the real Property records (giving constructive notice of the existence of the Lease), but doesn't disclose all of the Lease details (particularly the economic details) to the public.

Short-Term Investment Income: income earned by a fund in relation to short-term investments made by the fund.

Side Car: an investment vehicle established to invest alongside a fund in certain (but not all) of the fund's investments (e.g., if the fund is unable to make the entirety of an investment itself as a result of Diversification limits imposed on the fund). Also a classic nightcap.

Side Letter: an agreement between a fund investor and the fund pursuant to which rights or benefits are provided to the investor (which are distinct from the rights and benefits provided in the fund's governing documents and subscription booklet).

Sight Draft: a bill of exchange (check) or draft that is payable when presented.

Significance Tests: three tests — including the Investment Test, the Total Asset Test, and the Pre-Tax Income Test — that determine whether the acquisitions or proposed acquisitions of businesses are "significant" within the meaning of Rule 3-05. An acquisition is significant under Rule 3-05 if: (i) the amount of the acquirer's investment in the target business compared to the acquirer's total assets is more than 20% (Investment Test) and (ii) the total assets of the target business compared to the acquirer's total assets is more than 20% (Total Asset Test). The target business's pre-tax income compared to the pre-tax income of the acquirer for its most recent full Fiscal Year is more than 20% (Pre-Tax Income Test).

Single-Member LLC: a limited liability company with only one Member. Sometimes a term means exactly what it sounds like.

Single-Purpose Entity (SPE): an entity (usually an LLC) that holds title to real estate and owes money to a lender, but has no other assets or material liabilities. The organizational documents of the entity are structured to insulate the entity's assets from other creditors and, in a Bankruptcy proceeding, to make it easier for the lender to lift the Automatic Stay and proceed with a Foreclosure. Also known as a Special Purpose Entity. See also Special Purpose Vehicle.

Site Conditions: the surface and subsurface conditions at a location planned for Construction. Site Conditions that differ from an earlier Assessment can cause delays, increases in the project cost, and possibly dangerous working conditions. The allocation of risk for unforeseeable or undetected Site Conditions should be clearly defined in the Construction Contract.

Situs: the location of real Property for legal purposes (such as determining jurisdiction).

Soft Cost: the cost related to Construction other than direct building costs, such as architect and engineering fees, design costs, and legal fees. In contrast, see Hard Cost.

Soft Lockbox: a Lockbox that permits a Borrower to withdraw funds without lender approval unless and until a Financial Covenant is tripped or a Default or Event of Default occurs.

Sold Out Lender: a lender that holds a subordinate Lien and Forecloses, and where the proceeds are insufficient to grant the subordinate lender recovery.

Sources and Uses: a statement that represents all of the inflows and outflows of cash from all sources, including Equity and debt. See also Closing Statement.

Sovereign Immunity: in the US, immunity provided to foreign nations under the Foreign Sovereign Immunity Act and various judicial doctrines whereby foreign governments are immune from the jurisdiction of federal and state courts.

Special Improvement District: as part of a revitalization plan, the organization of local businesses and Property owners who agree to pay additional taxes or fees in order to fund specialized services within the district. Also known as a Business Improvement District.

Special Purpose Vehicle: a corporate entity Subsidiary created to hold a specific set of assets and thereby isolate Bankruptcy risk from a parent company and/or sister Subsidiaries by maintaining assets and liabilities separate from the parent and the sister Subsidiaries. Also known as a Bankruptcy Remote Vehicle. See also Single-Purpose Entity.

Special Servicer: a servicer that deals with CMBS loans that are currently in or about to go into Default.

Specific Performance: an equitable remedy requiring a party to fulfill the Terms of a contract as bargained for rather than paying Damages or compensating in some other way.

Splitter: an agreement that splits Notes or Mortgages into two or more new Notes or Mortgages.

Sponsor: the ultimate owner of an SPE formed to participate in a given transaction. A Sponsor is the person with the financial substance or "deep pockets" supporting the transaction.

Springing Lockbox: a Lockbox that is required to be established in the future only if certain events occur, as set forth in the Loan Agreement or Cash Management Agreement.

Springing Member: a new Member admitted into a Single-Member LLC in the event of the named Member's death, Bankruptcy, or Dissolution, in order to prevent the death, Bankruptcy, or Dissolution of the individual owner resulting in the Dissolution of the Single-Member LLC.

Stabilization: for an asset, the point in time at which such asset achieves a projected Cash Flow and sustains such Cash Flow for a pre-determined period of time (typically trailing two-to-four quarters). Stabilization of an asset may entitle a Borrower to additional funding under a loan, release of cash from Escrows or Cash Management Accounts, and release of additional Credit Enhancement (Letters of Credit, etc.). Many REITs have a particular occupancy percentage at which point they consider a Property to be stabilized.

Standstill: where a creditor is legally and contractually entitled to exercise remedies against its Borrower due to an Event of Default, but an Intercreditor Agreement, Forbearance agreement, or some other arrangement prohibits it from doing so. Often the Standstill expires after a negotiated period of time or the happening of a specified event (typically 180 days). When the Standstill applies to the Senior creditor, it is usually to give the junior creditor time to remedy the Default to keep from being wiped out in a Foreclosure by the Senior creditor. When the Standstill applies to the junior creditor, it is because the Senior creditor does not want its Borrower distracted from fixing a problem by the possibility of a Foreclosure or other action by the junior creditor.

Staple Financing: a financing package offered up by the investment bank that is acting as the sell-side adviser in connection with the auctioning of a target company or asset. Called "staple" because the financing package is attached to the bid materials that are sent out to potential buyers. Staple Financings are a useful way for the investment bank acting as the adviser to a company that is putting itself on the auction block to also be involved in the financing of the acquisition by the buyer.

Star Report (STR Report): a performance measurement report produced by Smith Travel Research, an independent market research company. The Star Report is widely used in the hotel industry to compare the performance of a specific hotel to the performance of the market it is in and to its most comparable competitors.

Statute of Frauds: requires that certain types of contracts be evidenced by a signed, written contract in order to be enforceable (i.e., contracts for the sale of real Property). The Statute of Frauds often governs contracts involving the sales or Transfer of land.

Step-In Rights: contractual rights (sometimes local statutory rule or regulation) granted to a party to substitute its performance for the required performance of a non-performing party. These are rights apart from rights to appoint a Receiver that are often held by secured parties to protect their Collateral pending exercise of further remedies.

Stock Purchase Agreement (SPA): an acquisition agreement pursuant to which the acquirer purchases the shares or Membership Interests in an entity as opposed to the real estate itself. See also Purchase and Sale Agreement.

Stock Transfer Restrictions: provisions typically included in the REIT's Charter that restrict the ownership and Transfer of the REIT's stock to prevent disqualification as a REIT. Such provisions typically prohibit persons from actually owning, Beneficially Owning, or Constructively Owning the REIT's stock to the extent such ownership would be in excess of an Ownership Limit, would result in a violation of the 5/50 Test, or would otherwise result in the REIT's disqualification as a REIT, and prohibit Transfers of the REIT's stock that would result in a violation of the 100-Shareholder Requirement.

Stop Notice: a law providing an alternative to a Mechanic's Lien by allowing a contractor, supplier, or worker to make a claim against the Construction lender and, in some instances, the owner for a portion of the undisbursed Construction-loan proceeds.

Straight-Line: a method of calculating Depreciation or income that involves evenly spreading expenses or income over the time period an asset is to be held or used, without Acceleration.

Straight REIT: a REIT that does not employ an UPREIT structure. Straight REITs often employ DownREIT partnership strategies in order to offer similar tax-deferred consideration as UPREITs to contributors of Property that wish to avoid taxation upon the initial contribution and enjoy the potential benefits of returns based on the REIT's common stock performance.

Structural Subordination: non-contractual Subordination created if a Holding Company or other parent entity issues debt, with no guarantee from the operating Subsidiary that is the Borrower/Issuer under other

Indebtedness. The parent debt is effectively subordinated to the debt held closer to the operating assets since all the operating Subsidiary's debt gets paid in full in a Bankruptcy before anything is dividended up to the Holding Company. Similarly, if the Subsidiary's debt is in Default, dividends to the parent will be blocked. As an example, mezzanine debt is structurally subordinated to Mortgage debt.

Sub Escrow: when the transaction is ready to close Escrow, the new lender sends loan proceeds to the title company with instructions to pay off existing Liens or Encumbrances against the Property. The remaining funds after satisfying all Encumbrances, such as Mortgages or Property tax Liens, are given to the Escrow holder for disbursement.

Subcontractor: an individual or company who contracts with the principal contractor (or another Subcontractor) to complete a portion of a large-scale Construction project.

Subdivide: to divide a parcel of land into individual pieces, typically via a plat, for purposes of selling or developing such smaller parcels.

Sublease: an arrangement in which a tenant assigns the Lease or part of the Lease to a third party so that the tenant becomes the Sublessor and the third party becomes the Sublessee. The original tenant is still responsible for paying Rent to the original landlord or lessor.

Sublessee (Subtenant): a third party who leases Property from a tenant as opposed to directly from the Fee owner of the applicable Property.

Sublessor (Sublandlord): a tenant who leases some or all of its leased Premises to a third party.

Submetering: the process of separately measuring and billing the utility usage for each tenant in a multi-tenant Property.

Subordination: involves at least two parties having rights and the Subordination of the rights of one party to those of the other(s), such as two classes of creditors (Senior and junior), or the holder of an Easement and the holder of a Mortgage or Lease. The junior creditor or interest holder's rights are subject to the rights of the Senior creditor or interest holder and may include an agreement to receive payments and certain performances after the Senior creditor or interest holder.

Subordination and Non-Disturbance Agreement (SNDA): an agreement between tenants and lenders that: (i) subordinates a Tenant's Rights to those of the lender, (ii) assures tenants that even if the landlord Defaults and the lender Forecloses, the Tenant's Rights to their Premises will be preserved, and (iii) provides that the tenant will Attorn to, or continue its Obligations to the lender, as the new landlord.

Subprime: lending that is the making of loans to people who may have difficulty maintaining the repayment schedule. Subprime loans are typically characterized by higher Interest Rates and less favorable Terms to compensate for higher credit risk.

Subrogation: not the same as Subordination, or anything like it. Subrogation is only used in situations where there has been a payment made under a Guaranty or an insurance policy. If you are the Guarantor or insurer, Subrogation is your legal right to go after the entity that caused you to have to pay and recover the amount of the payment. In a Guaranty context, that would be the primary obligor. This is why guaranties often have the Guarantor waive Subrogation until the Beneficiary of the Guaranty is no longer a creditor of the primary obligor (since the Beneficiary doesn't want a new co-creditor). In an insurance context, the entity that caused you to have to pay is whoever broke the thing in the case of Property Insurance or injured the person in the case of liability insurance. For instance, if your neighbor's dead tree falls on your house, your insurance company pays you, and is then Subrogated to your rights against the neighbor, so can sue the neighbor for negligence. In contracts where your Counterparty agrees to provide and pay for Property or liability insurance covering the subject of the contract, you want the Counterparty's insurer to waive Subrogation against you. Otherwise, what is the benefit of the insurance if you can be sued for allegedly causing the injury?

Subsidiary: an entity owned wholly or in part by another entity.

Substantial Completion: the completion of a project or Build-Out to the point where the contractor or landlord is ready to turn the Property over to the owner or tenant, as applicable, subject to completion of Punchlist items. Often conditioned upon receipt of a (temporary) Certificate of Occupancy.

Substantive Consolidation: the pooling of the assets and liabilities of separate legal entities in a Bankruptcy. Creditors of substantively consolidated entities will have a claim against the single pool of assets and Guaranty claims. Historically, Substantive Consolidation has been reserved for cases where (i) the financial affairs among Affiliates are so entangled — whether by design or sloppy business practices — that an accurate assessment of which entity is obligated to a particular creditor or group of creditors cannot be determined or could only be determined at undue cost or (ii) if creditors generally had dealt with the enterprise as a single consolidated entity (rather than separate legal entities). In real estate lending transactions, Separateness Covenants are often used to help ameliorate the risk of Substantive Consolidation.

Substitute Space / Relocation Right / Swing Space: an interim working environment, often used while Construction or renovations are being completed. Some commercial Leases contain provisions allowing a landlord to move a tenant into an equivalent space for a variety of reasons, including the appearance of a larger tenant in need of Contiguous space.

Subsurface Leeching: the process by which water-soluble contaminants such as pesticides, chemicals, or hazardous or toxic substances are carried through the soil and can contaminate groundwater, Surface Water, and surrounding soil. Typical sources of leeching are farm waste, underground storage tanks, landfills, and industrial sites.

Successor Agency: a government entity established to wind down the business of Redevelopment agencies following the enactment of laws dissolving Redevelopment agencies. In this process, the Successor Agency manages existing Obligations and the disposition of assets.

Suitability: a measure of whether a person or entity is appropriate for a gaming license. The person or entity being evaluated makes a series of disclosures in order for a jurisdiction to determine if a person or entity is suitable. The disclosures concern a person's or entity's background, Financial Statements, relationships with other entities and persons, assets, and other information. Persons and entities in this industry need to be wary of all contractual relationships to ensure they are not otherwise involved with unsuitable parties that could taint their own Suitability.

Supermajority in Interest / LP Votes or Bank Group: a situation where a percentage of the lenders under a Credit Agreement or Partners/Members under an LLC agreement greater than a simple majority (typically 66.666%) is required for certain material Amendments or major decisions.

Surface Water: water-related factors for properties to consider. Surface Water is water collecting on the ground or in a stream, river, lake, wetland, or ocean.

Surplus: excess proceeds from a Foreclosure sale after the debt and all secured Obligations (including costs and expenses in connection with the Foreclosure sale) are satisfied. The Surplus is Property of the Mortgagor.

Surrender: a tenant's relinquishment of Possession of its leased Premises before expiration Term of the Lease which permits the landlord to take Possession and treat the Lease as terminated.

Survey Certification: an official statement given by a licensed professional surveyor regarding the conditions under which the survey has been prepared and indicating which standard survey items have been included in the survey.

Survey: Arial: a picture of the subject real Property taken from above that shows Improvements and visible features of such Property and which also depicts boundary lines imposed by hand by a surveyor.

Survey: As Built: a detailed map of a building or other Improvements and its relation, As Built, to the plans from which it was built. It is used to determine if the completed project accords with previously approved Plans and Specifications.

Survey: Boundary: indicates the outer limits/Property lines of the subject real Property.

Survey: Topographic/Contour Map: indicates the contour, shape, and physical features of the ground within certain boundaries.

Swap: a derivative transaction in which the parties agree to exchange specified Cash Flows at specified intervals (e.g., one party agrees with the other party that it will exchange a Floating Rate for a Fixed Rate on a specified notional amount of principal at the end of each quarter). This is a tool that Borrowers use to manage their exposure to changes in Interest Rates.

Sweep: a concept often found in loan documents, by which (i) revenue from Property operations or sales is transferred directly to a lender-controlled Cash Management Account (typically via direction letters), (ii) monies on Deposit in specified Operating Accounts are transferred to a lender-controlled Cash Management Account, and (iii) monies on Deposit in such lender-controlled Cash Management Account are applied to certain Obligations under the loan (including debt service). Also Hall of Fame NFL Coach Bill Walsh's favorite running play.

Syndication: as a verb, the process whereby an arranger of a credit facility assigns (sells) the loans and Commitments to other banks and funds or arranges for the making of multiple loans evidenced by separate Notes by a syndicate or club of lenders. As a noun, Syndication is the group of banks and funds that have become the lenders under the credit facility. In finance, investments in an LLC or LP structure can also be syndicated (Equity Syndication).

Synthetic Lease: a Lease between related parties to allow the user of the Demised Premises to retain all benefits and burdens of ownership but also keep the real Property off its Balance Sheet. Meaning, the user (lessee) would retain the benefits of Appreciation and Depreciation for tax purposes but would not show the real Property as an asset for purposes of Financial Statements. A Synthetic Lease is not a substitute for a Sale-Leaseback and is generally not a structure that is used today after falling out of favor as a result of the Enron scandal and increased scrutiny of practices by the FASB.

Synthetic Letter of Credit: a Letter of Credit under a financing that has been "pre-funded" by the lender on the Closing Date (with the proceeds from such funding typically being deposited in a cash Collateral account) rather than being funded on a later date upon the occurrence of a contingent event requiring payment under the Letter of Credit to the third party.

Synthetic Secondary: an offering by an Issuer, the proceeds of which are used to repurchase or redeem securities from existing Equity holders. In an UPREIT, the REIT might repurchase shares of common stock or it might repurchase outstanding common units in its Operating Partnership. A Funded Redemption is an example of a Synthetic Secondary.

Table Games: games, such as blackjack, craps, roulette, and baccarat, that are played on a casino table.

Tag Along Right: the contractual rights of a minority owner to participate in (or tag along in) a transaction where the majority owner is selling its interests in a company to a third party. In contrast, see Drag Along Right.

Tap-in Fee: a fee established by a local government to fund the Construction or expansion of a new public service or infrastructure or for the payment of bonds for the cost thereof. Each consumer seeking to benefit from the service must pay a Tap-in Fee to access the service. See also Impact Fee.

Tax Advance (Tax Distribution): a Distribution to a Partner or Member to enable them to pay taxes attributable to income or gain allocated to them when there is not a corresponding Distribution being made to such Partner or Member in connection with the event giving rise to such item of income or gain.

Tax Base: actual taxes for a specified Base Year (most often the year in which the Lease commences), which is used as the basis to calculate the portion of the taxes for which a tenant is responsible.

Tax Gross-Up: a concept in a Loan Agreement that increases the amount of any payment by a Borrower to a lender such that, after payment of applicable withholding taxes, the lender receives what it would have received if no withholding taxes had been imposed. A Tax Gross-Up generally protects lenders that are not otherwise subject to tax in the lender's jurisdiction from the possible imposition, after the Closing Date, of withholding taxes by a taxing authority. Tax Gross-Ups may be included in other agreements, as well.

Tax ID Number: a corporate entity's federal Employer Identification Number (EIN). It is one of the items of information a lender must obtain from the Borrower in order to comply with Patriot Act requirements.

Tax Liability Distributions: distributions made to a Partner or Member intended to assist such person with paying taxes on income or gain allocated to them by a partnership or limited liability company.

Tax Matters Partner (Tax Matters Member): a Partner or Member designated to represent the partnership or company in the event of a US federal income tax Audit generally prior to 2018. See also Partnership Representative.

Tax Protection Agreement (Tax Matters Agreement): an agreement entered into between a person who contributes Property to a partnership (such as an Operating Partnership) and the partnership, governing certain tax issues related to the contribution and the ownership of the contributed properties by the partnership, including Sale Protection, Debt Maintenance, and Section 704(c) Method.

Taxable REIT Subsidiary (TRS): a Subsidiary of a REIT that has made an election with the REIT to be treated as a TRS. A TRS is treated as a regular C Corporation for US federal income tax purposes and therefore is required to pay regular US federal corporate taxes on its income. Other than some activities relating to lodging and healthcare facilities, a TRS may generally engage in any business, including the provision of Customary Services or non-customary services to tenants of its parent REIT. A REIT's ownership of securities of a TRS is not subject to the 5% Asset Test or the 10% Asset Test. However, the aggregate value of the TRSs that may be held by a REIT is limited (see TRS Asset Test), and a REIT may be subject to a penalty tax if it fails to deal with its TRS at other than arm's-length terms.

Taxable Stock Distribution: a distribution of stock by a corporation to its shareholders that is treated as a taxable distribution of Property rather than a nontaxable distribution of stock. In the case of a REIT, any taxable stock dividend (i.e., the portion of a Taxable Stock Distribution made out of the REIT's current or accumulated earnings and profits) will qualify for the Dividends Paid Deduction. REITs typically pay at least 20% of their taxable distributions in the form of cash distributions.

Taxable Year: a company's Taxable Year ends on the last day of each calendar year or such other year as is determined by the company's Board of Directors / managers or the Internal Revenue Code.

Temporary Easement: an Easement granted for a specified amount of time.

Temporary Taking: when a government takes Property by Condemnation for a finite period of time.

Tenancy: temporary Possession by a tenant of lands or Property owned by another person.

Tenancy at Sufferance: a "hold-over" Tenancy in which a tenant remains in a Property after the Lease has expired and the landlord has not ordered the tenant to vacate. During this period, the tenant is bound by the Terms of the expired Lease.

Tenancy at Will: a Tenancy in which the tenant holds Possession of the Premises with the landlord's consent but without fixed Terms (such as for duration or Rent). The Tenancy is terminable by the landlord or the tenant upon prior notice — typically 30 days in advance and possibly reset on a calendar month.

Tenancy in Common: a form of concurrent ownership of Property. Two or more persons hold an individual, undivided ownership interest in the Property, which they can independently Transfer. There is no right of survivorship (see Joint Tenants). Tenants in Common may hold unequal interests and may acquire their interests at different times and pursuant to different instruments (as contrasted with Joint Tenants or Tenants by the Entirety).

Tenant Improvement (TI) Allowance: a negotiated sum that a landlord agrees to contribute toward the cost of a tenant's Improvements that have been agreed to be completed by the tenant or landlord at the tenant's Premises. Tenant Improvement expenses in excess of the TI Allowance must be paid by the tenant.

Tenant's Proportionate Share (Tenant's Share): the share of Operating Expenses that are the responsibility of the tenant, calculated based on the tenant's square footage in relation to the total building square footage.

Tenant's Rights: as part of the landlord-tenant relationship, a tenant has legal rights relating to their use and enjoyment of the leased Property, but these rights may vary depending on the US state. In general, a tenant has the right to actual or legal Possession of the Property when the Lease is made, uninterrupted Possession throughout the Lease Term, and the right to enforce contractual promises in the Lease. A residential tenant also has the right to Premises that are fit and suitable for human habitation.

Tenant's Work: the portion of the tenant Improvements to be performed at the tenant's Premises by the tenant as opposed to the landlord. Typically, the landlord will have approval rights over the scope and details of Tenant's Work, and sometimes the Tenant Improvement Allowance is utilized to complete it.

Tenants by the Entirety: a type of concurrent estate in real Property that allows spouses to each own the undivided whole Property, coupled with the right of survivorship, whereby upon the death of either spouse, the other automatically owns the Property outright.

Term: a fixed period of time, usually in the context of defining the duration of a contract or obligation, such as the Term of a loan or the Term of a Lease. A Term can be cut short by early termination provisions (such as the occurrence of an Event of Default) or extended pursuant to an extension option or other similar provisions.

Term Conversion / Mini-Perm: a type of loan that serves as a Construction Loan for purposes of funding the costs and expenses incurred in the development or repositioning of a project and has a conversion feature that allows the Borrower to convert the Construction Loan into a permanent Term Loan facility for a set number of years upon completion of Construction. Also a hairstyle that was popular in the '80s.

Term Loan: a loan that matures at a specified point in time.

Term Sheet: used in all aspects of real estate transactions, a document that sets forth the material terms of the transaction as agreed between the parties. A Term Sheet is often a non-binding agreement (at times with certain specified binding terms such as Exclusivity and confidentiality) or may be attached to a binding Commitment Letter as a more detailed description of the terms that the parties intend to appear in the definitive documentation.

Test Period / Measurement Period: the time period used to calculate whether a party or Property at issue has satisfied the requisite financial benchmarks contained in the definitive documentation for a transaction.

Title Instructions: in the Closing Instructions, a direction to the Escrow company not to disburse the borrowed funds until certain conditions are met. Alternatively, a Title Instruction is a document that directs a title company to record a Lien against the Property and then to issue a title insurance policy.

Title Search: the process of determining the validity of Property title, restrictions, and allowances associated with the Property, and any Encumbrances on the Property. The title company prepares the Title Search for review by the attorneys for the buyer or lender.

Title Theory: the process that divides real Property title into legal title held by a lender through a Deed of Trust while equitable title continues to be held by the Borrower.

Torrens System: a method of registering land titles and any Encumbrances on the Property, where land ownership is transferred through registration of title, not Deeds. Only a few US states use this system.

Total Taking: a taking that permanently deprives the owner of its Property. See also Partial Taking and Temporary Taking.

Traditional REIT: a REIT that owns assets of a type or class traditionally owned by REITs, such as office, retail, multifamily, industrial, hotels, healthcare, or self-storage, which it generally leases or licenses to tenants.

Transfer: any sale, assignment, conveyance, exchange, distribution, gift, Mortgage, pledge, hypothecation, or other Encumbrance or disposal of all or any portion of an owner's Equity interest in a company.

Transfer Restriction: contractual restrictions imposed on the owner of Property proscribing the owner from transferring all or some portions of its interest in the Property to a third party. The restrictions can broadly proscribe all transfers of any kind of interest in the Property (including creating Security Interests, granting Mortgage rights, or changes of Control in the owner), or they can be more narrowly tailored. Transfer Restrictions are most commonly found in loan documents (usually the Loan Agreement and/or the Mortgage) and in Leases.

Transfer Taxes: taxes imposed, generally by a US state or local authority, on the direct or indirect Transfer of securities or other Property.

Tree: the ability for multiple teams to represent multiple clients in connection with the same transaction — for example, separate teams that represent multiple bidders in an acquisition where each team is called a Tree. Also a leafy plant that provides shade, food, and oxygen.

Triple Net Lease: a Lease whereby the tenant pays all expenses associated with owning the Property, including, but not limited to, taxes, insurance, and maintenance such that the Rent received by the landlord is absolutely net to the landlord (i.e., the landlord does not have to pay any expenses associated with owning the Property).

Trustee's Deed: a signed and notarized Deed to be executed by a trustee. Trustee's Deeds are often used to Transfer Foreclosed properties.

Umbrella Partnership Real Estate Investment Trust (UPREIT): a REIT that holds all or substantially all of its assets through an Operating Partnership. The value of one OP Unit is generally intended to equal the value of one share of REIT stock, and a distribution made with respect to an OP Unit will generally equal the dividend paid with respect to a share of REIT stock. Owners generally are able to contribute their real estate to an Operating Partnership on a tax-deferred basis in exchange for OP Units and typically have an OP Unit Redemption Right with respect to their OP Units. Thus, the UPREIT structure provides REITs with a non-cash "currency" to acquire Real Estate Assets in a manner that is attractive to Property owners. Although the redemption of OP Units for cash or exchange of OP Units for REIT stock will generally be a taxable transaction for a holder, contributing Property to an Operating Partnership is attractive because it allows a Property owner to diversify its investment on a tax-deferred basis while providing an opportunity for liquidity in the future.

Underlying Documents: documents relating to a certain Property that give a legal history of various claims to the title of the Property. An attorney conducts Due Diligence by reviewing all Underlying Documents to the Property in order to determine which rights to the Property have already been given away.

Unfunded Commitment: the amount of a loan that a lender has agreed to fund at Closing but has not yet funded. The Unfunded Commitment is the total amount of Commitments less the amounts funded at any point in time under the loan.

Unlawful Detainer: the keeping of Possession of real Property by a party that was once permitted to have such Possession but no longer has such right to Possession such as when a tenant holds over after Lease termination despite the landlord's demand for Possession.

US Real Property Holding Corporation (USRPHC): a corporation that holds USRPIs, if the Fair Market Value of its USRPIs is at least 50% of the aggregate Fair Market Values of its USRPIs, interests in real Property located outside the United States, and other assets used or held for use in its trade or business.

US Real Property Interest (USRPI): an interest, other than an interest solely as a creditor, in either (i) real Property located in the United States or (ii) a US corporation that is or was a USRPHC at any time during a five-year testing period. The FIRPTA rules contain certain exceptions from USRPI treatment. For example, stock of a Domestically Controlled REIT, as well as stock of a REIT (or other C Corporation) that is regularly traded on an established securities market and held by a 10%-or-less shareholder (or, in the case of a non-REIT C Corporation, a 5%-or-less shareholder) is not treated as a USRPI.

Use Clause: a provision in a Lease stating specific permitted uses or placing restrictions on the use of the Property.

Vacancy Rate: a numerical value calculating the percentage of occupied or unoccupied units or rooms in a rental or hotel Property compared with the total available units. Vacancy Rate is based on the percentage of vacant units. See also Occupancy Rate.

Variance: an exception to Zoning regulations either for placement or for type of usage, granted by the applicable local authority upon application by the Property owner.

Vesting Deed: grants good and sufficient title to the buyer so that the buyer legally has a claim to all of the rights and interests in the Property.

Voluntary Bankruptcy: a Filing and process by which an individual or corporate entity petitions a Bankruptcy court for protection under the Bankruptcy Code because such individual or corporate entity has insufficient assets to pay its debts as those debts come due.

Voluntary Prepayment: a repayment of loan Principal prior to the payment due date made at the election of the Borrower. A payment of a Prepayment Penalty / Prepayment Premium may sometimes accompany Mandatory Prepayments and Voluntary Prepayments to ensure the lender gets the return it negotiated for when the loan was made.

Walk Through: in connection with buying a home or other Property, an opportunity to tour the Property and confirm everything is in working condition.

Waste: permanent harm done to real Property by a person or persons in legal Possession of that Property (e.g., a tenant).

Waterfall: ca the order of application of revenues earned by a Borrower (in a loan context) or company (in a joint venture context). Think of the funds in question as water running down a flight of stairs with a bucket placed on each step — the water (money) flows to the top step first and fills that bucket before the overflow continues to the second step and fills that bucket before proceeding to the third step, etc. You only “run the Waterfall” on periodic (usually monthly, quarterly, or semiannual) payment dates, since if you filled up a lower Waterfall level in between payment dates, you would be potentially depriving a higher Waterfall level of funds when needed. The exception is Operating Costs, which are paid at least monthly. The order of payments under the Waterfall will vary depending on the transaction at hand (e.g., in a loan context, whether debt service is paid first or paid after Operating Expenses and reserve Deposits; or in a joint venture context, how revenues are split up among partners, what their rates of return are, and when the partners get their promotion). Don't go chasing them. Stick to the rivers and lakes that you're used to.

Wetland: a certain type of land where saturation with water is the dominant factor. Such lands in the US are subject to the Clean Water Act and regulation by the Environmental Protection Agency. The Clean Water Act defines Wetlands as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

Wild Deed: a recorded Deed that is not connected to a Property's Chain of Title or a Deed that was improperly recorded and thus will not provide potential purchasers with constructive notice.

Wins Per Day: the theoretical number of wins per unit per day on a gaming machine.

Work Letter: a document, often attached as an exhibit to a commercial Lease, in which the landlord defines the building standards employed in constructing the tenant's space and work that the landlord will perform to build out the tenant's space.

Worker Adjustment and Retraining Notification Act (WARN Act): a US law that protects workers, their families, and communities by requiring most employers with 100 or more employees to provide notification 60 calendar days in advance of plant closings and mass layoffs. (29 USC. § 2101, et seq., as well as the rules and regulations thereto, set forth in 20 CFR 639, et seq.)

Worker's Compensation Insurance: US state-mandated insurance coverage that employers are required to maintain that covers employees who sustain injuries while on the job. Lenders also require Borrowers (or their contractors) to maintain Worker's Compensation Insurance.

Working Capital: a measure of a company's short-term Liquidity, calculated by subtracting current liabilities from current assets.

Wraparound Mortgage: a form of second Lien financing for the purchase of real Property given by a seller to a buyer. The Wraparound

Mortgage secures the second Lien financing provided by the seller in an amount equal to the underlying Senior Mortgage (also issued to the seller) on the Property plus any remaining purchase price the seller is required to be paid. The seller then makes payments to the underlying Senior mortgagee after receiving payments from the buyer. Should the new purchaser Default on those payments, the seller then has the right to Foreclose on the subject Property. Note that because title for the underlying Property encumbered by the Wraparound Mortgage is transferred from seller to buyer, the Transfer will violate any due on sale clause in the underlying Mortgage.

Yank-a-Bank: a Credit Agreement provision that allows the Borrower to throw a lender out of a credit facility if it won't agree to an Amendment (or sometimes if it asks for a Gross-Up indemnity that not all of the lenders are claiming). Certain Credit Agreement Amendments (including Amendments affecting pricing of the loans) cannot be achieved without approval of all lenders. Yank-a-Bank provisions enable the Borrower to squeeze out dissenting lenders in a 100% vote situation so long as the majority of the lenders has approved the Amendment. The "yanked" lender is replaced with a new lender who approves the Amendment and is willing to purchase the outstanding loans and Commitments of the yanked lender, usually at Par.

Yardi: integrated Property management software widely used throughout the REIT industry.

Yield: distributions received by the holder of an investment, generally consisting of Interest, dividends, or other similar payments, expressed as an annual percentage of the investment's cost, Fair Market Value, or face value. Yield and Capital Appreciation together comprise the total return on an investment in a particular asset.

Yield Spread Premium (Yield Maintenance Premium): a Prepayment Penalty that is designed to make the lender whole for lost Interest as a result of an early prepayment of a loan prior to its natural Maturity.

Zero Lot Line: real Property on which the structure comes up to or very near to the boundary of the Property line.

Zone of Insolvency (Zone of Silence): when a previously solvent Borrower gets close to insolvency, the courts have held that the Board of Directors' Fiduciary Duties morph to include duties toward the Borrower's creditors. Prior to entering the Zone of Insolvency, Borrowers do not owe their creditors any Fiduciary Duties.

Zoning: a division of Property by local governments into various zones with specified type of Land Uses permitted (or prohibited) in such Zone, such as residential, commercial, and industrial (may also include regulated characteristics).

Zoning Map: a map of all the Zoning districts within a particular area.

Zoning Ordinance: legal regulations that a local governmental agency issues specifying permitted uses within a given area of a local municipality. Zoning Ordinances may also regulate other characteristics of development within such zone (e.g., building heights, setbacks, and density).

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Boston
Brussels
Century City
Chicago
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Düsseldorf
Frankfurt
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Madrid
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Munich
New York
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Paris
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