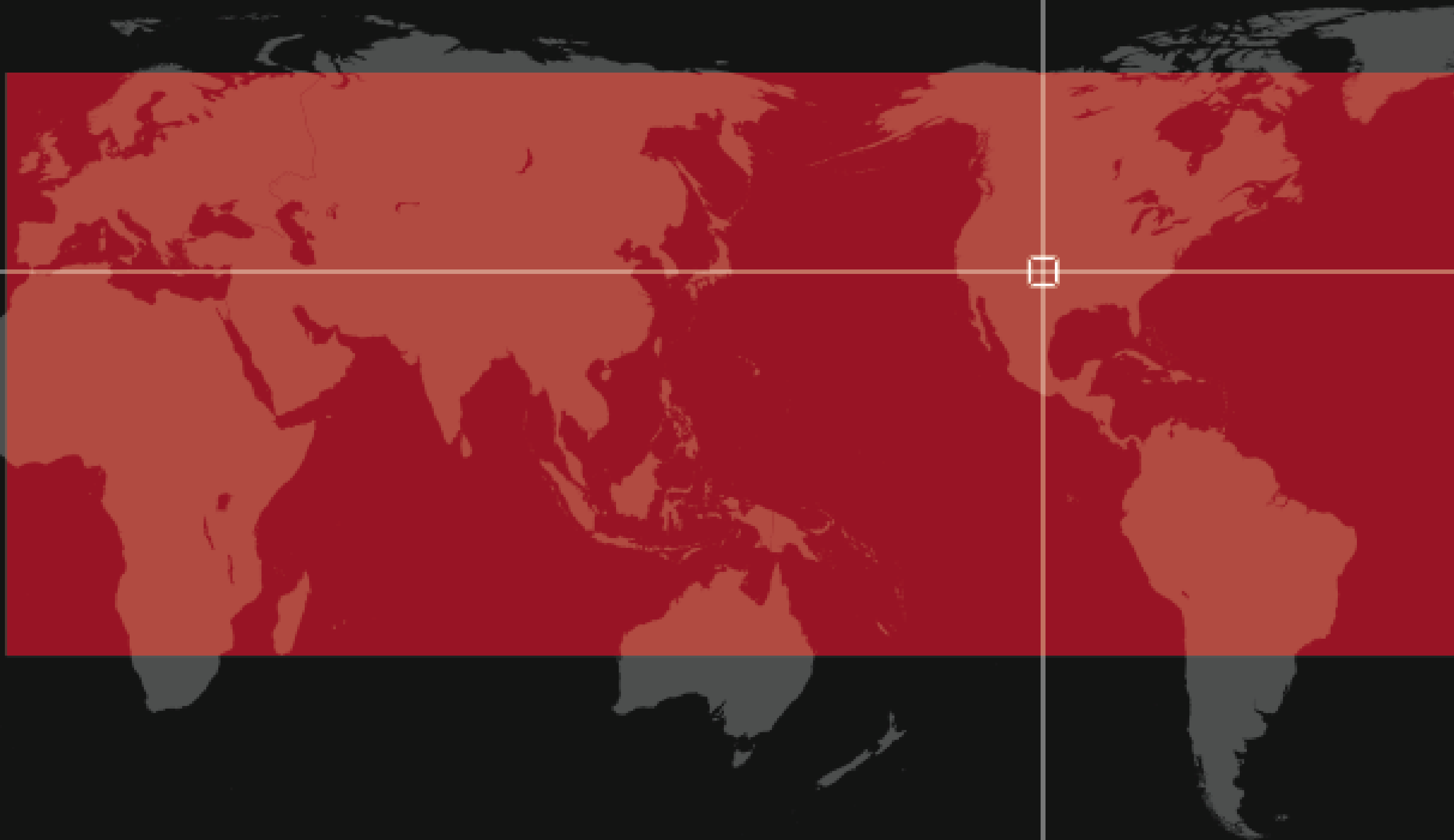
INVEST U.S.A.



REMM INTERNATIONAL

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Table of Contents

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Table of Contents

ABOUT THE AUTHORS

Robert M. Taylor, CRE, CSM, CPM

Robert M. Taylor is Chairman of the Board and President of the Robert M. Taylor Corporation, dba The REMM Group, an Accredited Management Organization (AMO), established in 1978. The REMM Group provides real estate management services to approximately 50 clients for over 200 properties inclusive of retail, office, industrial and multi-family housing located in California. The REMM Group also performs accounting services for twelve other property management companies.

Robert is a Counselor of Real Estate (CRE), Certified Shopping Center Manager (CSM), Certified Property Manager (CPM), FIABCI-USA International Property Consultant (FIPC), and Certified International Property Specialist (CIPS) with four decades of experience in acquisition, development, and management of commercial and residential real estate. He holds an MBA and BA in Business Administration and Economics from of the Mihaylo College of Business Administration and Economics at California State University, Fullerton (CSUF).

Robert is an active member of the Executive Council of the Mihaylo College of Business and Economics at CSUF and is a former President of the Council. In 2000, he was honored as Alums at the Top Award and in 2006 with the university's prestigious Vision and Visionaries Award. He has lectured at universities in the United States, Russia, and People's Republic of China.

Robert has been a consultant to government ministries and private enterprises in China since 1996 and was awarded in 2004 with the James Felt Creative Counseling Award from the Counselors of Real Estate for his consulting activity in China. He has co-published a property management book along with Joseph W. DeCarlo and Tianjin Land Resources and House Vocational College. Robert is also an investor in residential and commercial real estate and is the developer of a 728-acre residential resort community at Lake Oroville, California

Jon F. Yamaguchi, CRE, FRICS, SRPA, SRA

Jon F. Yamaguchi leads three companies, Yamaguchi & Yamaguchi, Inc. (President-CEO), Pacific Rim Consulting Group (Managing Partner) and REMM Pacific (President-Principal Broker) all based in Honolulu Hawaii. For more than 35 years, he has provided advisory services in his real estate expertise of the Hawaiian Islands and Pacific Rim areas. His specialties in real estate include consulting, valuation, arbitration, condemnation, acquisition and disposition.

A graduate of Iolani School and Colorado State University, Jon has been awarded the CRE designation from the Counselors of Real Estate, Fellow of the Royal Institution of Chartered Surveyors (FRICS), and the SRPA and SRA designations from the Appraisal Institute. He maintains a general license as a real estate appraiser and a real estate broker license in the State of Hawaii.

Jon has served in various positions and boards with the Counselors of Real Estate (CRE), Building Industry of Hawaii (BIA), Better Business Bureau (BBB), Honolulu Board of Realtors (HBR), Appraisal Institute (AI), and Fannie Mae (FNMA). He currently serves as the Vice Chair of the International Committee of the National Counselor of Real Estate Organization (CRE), is a member of the Transportation & Land Use Committee of The Urban Land Institute (ULI) Hawaii District Council, and is on the Advisory Board for REMM China.

Other memberships include the National Association of Security Dealers (NASD) Arbitration Panel, the National Association of Industrial and Office Properties (NAIOP), Urban Land Institute (ULI), The National Association of Realtors (NAR) and Mayoral appointment to serve on the Liquor Commission of the City and County of Honolulu. Hobbies include martial arts instructor, high school football coach, golf and fishing.

Joe DeCarlo, CPM, CCIM

Joe DeCarlo is a Certified Property Manager (CPM) and Certified Commercial Investment Member (CCIM), and Counselor of Real Estate (CRE). He is a licensed Real Estate Broker in California and New York and is the managing partner of JD Property Management, Inc., in Costa Mesa, where he is responsible for over 3,000 residential units and ½ million square feet of commercial space.

Joe achieved his MBA from Syracuse University and is on the National Faculty for the Institute of Real Estate Management (IREM). Joe has been an IREM Chapter President, National Committee Chairman, and recipient of the prestigious IREM National Lum Award for outstanding contributions to the property management profession. He is currently chairman of the Southern California Chapter of Counselor's of Real Estate and past President for both Orange County Commercial Association of Realtors and Coastline College Foundation. He remains a member of the Board of Directors f or Coastline College Foundations and the Los Angeles Mental Health Association and Community Housing Resources, both non-profit organizations. Joe has been an adjunct professor of real estate at Coastline Community College since 1977 and received an honorary degree from Coastline Community College for his outstanding contributions to the community. Most recently, Joe was honored as a finalist for the 2003 Ernst & Young, Entrepreneur of the Year award.

Joe is the author of several textbooks including: the popular *Property Management in California*, used at more than 40 colleges; Essential Facts: Real Estate Management, published by Boston-based Warren, Gorham & Lamont; and a national property management text published by Prentice Hall, entitled *Property Management*. Joe has also written an educational novel about real estate, Real Estate: *Adventures, Principles and Practices*. Joe has also authored a college-level property management book in partnership with The REMM Group and Tianjin Land Resources and House Vocational College. He is an owner of over 150 properties, so he speaks not only as a professor and real estate professional, but also as an investor.

INTRODUCTION

Asia is emerging as a world power, and we have been fortunate to experience its immense growth and rapid modernization. Co-author Robert M. Taylor has had experience as an advisor and real estate manager for the Government of Singapore, GSIC, Mitsui Real Estate Sales, and the People's Republic of China. In the mid-1990's, Taylor had the honor of sponsoring the first group of real estate professionals from the China Council for the Promotion of International Trade, CCPIT and the Ministry of Construction, PRC to the United States. For nearly two decades, he has developed meaningful personal and professional relationships and has been instrumental in helping privatize business in China.

Our friends and clients have asked us to help Asian real estate investors understand basic real estate concepts to assist them in making sound investment decisions in the United States. In Asia, the culture, laws, regulations, and land ownership in each country have distinct differences from the U.S. that can lead to conflicts and poor decision making. The purpose of this book is to help investors avoid making mistakes and to minimize risk. The intent of the contents is to inform. It will touch upon essential real estate topics and concepts to provide the reader with basic knowledge, along with an understanding of investment tactics or strategies implemented in the United States.

It will touch upon basic real estate knowledge and professional specialties that are utilized by accomplished practitioners. As no two properties are exactly alike, the reader needs to understand that there are distinct and important differences between residential and commercial properties. Additional detailed study and analysis may be required for more complex properties. The information contained in this book will generally apply to all states in the United States of America; however, the reader should note that real estate law differs from state to state.

The authors each have decades of specialized real estate and investment experience and can facilitate the origination and consummation of real estate sales transactions in the United States.

Chapter 1

WHY INVEST IN THE UNITED STATES?

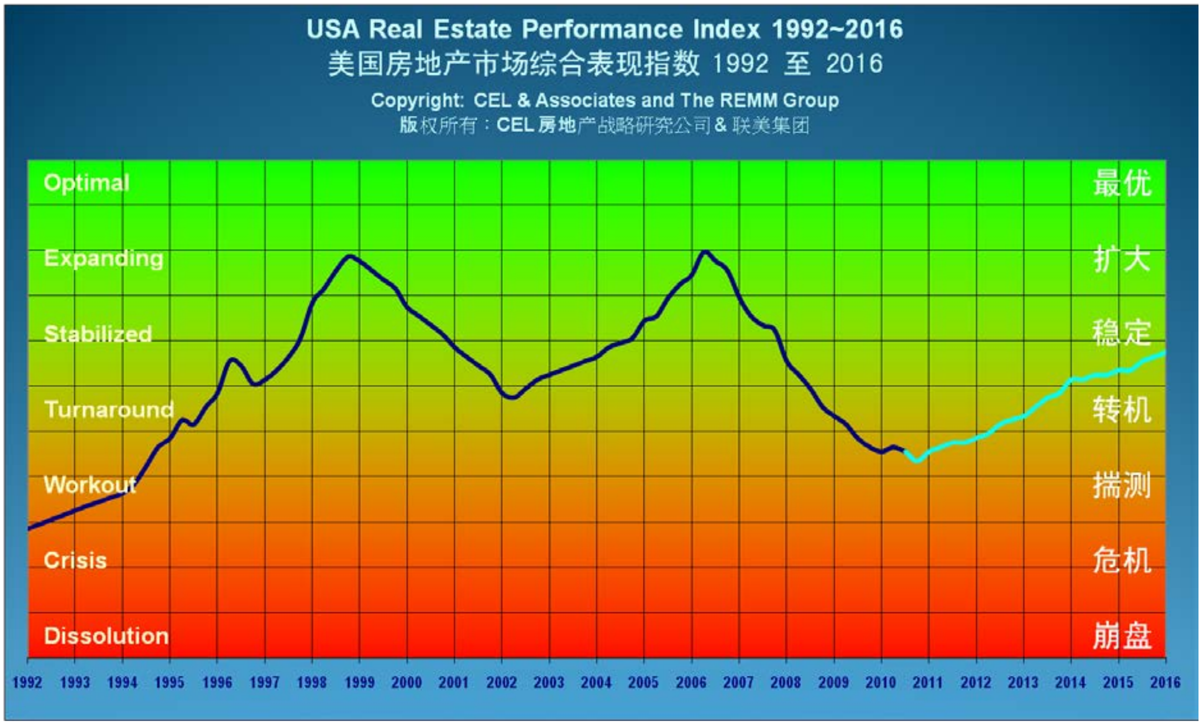
The real estate market in the United States has become more attractive than ever for investors from Asia. The economic conditions prevailing on both sides of the Pacific Ocean are creating a window of opportunity for maximizing investment capital.

The converging factors suggesting this is the right time to make investments in the United States are as follows:

- Bargains in U.S. real estate
- Prospects for future appreciation of U.S. real estate
- Lack of liquidity in the U.S. financial markets
- Stability of the U.S. Government

The following chart is a snapshot of real estate performance and projection for the future. Understanding the business cycles of real estate will assist the investor in taking advantage of opportunities in real estate. Timing is critical to minimize risk and to take advantage of periods of market recovery.

With the increase in the cost of energy, food, and other goods and services, we can expect higher inflation during the next decade. Historically, the best hedges against inflation are hard assets such as gold, silver, and real estate. Real estate provides an excellent hedge as there continues to be a shortage of developable land in the United States. The cost of construction will continue to rise with global market demand for raw construction materials depleting supplies, as well as added pressure for increased wages and employee benefits. The forecasted shortage of developable land and the demand for existing real estate will be critical.



- Date Source: CEL & Associates Inc. at www.celassociates.com and The REMM Group at www.remmgroup.com

As an example, California is reported to be growing by 500,000 people each year, producing a demand for approximately 230,000 new homes annually. Due to the cost of capital, delay in obtaining building entitlements, the supply of new homes in California are predicted to be less than 140,000 units through 2013. Once the inventory of existing homes is absorbed and the credit market recovers, home values will again increase. The increase of international trade with Asia will be a major contributor to the economic vitality of the southern California region.

The benefits for an investor are as follows:

- Cash flow from invested capital
- Diversification of investments
- Legal protection of property rights
- Facilitation of U.S. visa opportunities
- Increase in value over time
- Ownership of the land, as well as the improvements

The "American Dream" of property ownership, along with its benefits and personal enjoyment, has become very attractive. Many individuals from the west side of the Pacific are now considering investment in the United States the "Asian – American Dream." Now is the time to take advantage of this opportunity.

Chapter 2

WHAT IS THE BUYING PROCESS?

Steps to investing in the U.S.A.

1) Determine goals and objectives of investing (Chapter 2)
2) Establish a team of experts (Chapter 2)
3) Determine how to fund the Investment – financing or cash. Pre-qualify and transfer of money to the U.S.A. (Chapter 3)
4) Select the investment (Chapter 9)
5) Make the offer to purchase (Chapter 4)
6) Exercise due diligence (Chapter 6 and 7)
7) Process the Escrow (Chapter 5)
8) Secure title insurance (Chapter 5)
9) Management and leasing strategies (Chapter 8)

Determine Goals and Objectives of Investing

The goals and objectives of the buyer are critical to any investment in the United States. Your representative in the United States will need to have a clear understanding of your investment expectations in order to achieve your objectives with a minimum of risk. The following is an example questionnaire that will assist a real estate consultant in determining the investment strategy for the investor.

Investor Questionnaire
United States Real Estate Investment
Name __________________ e-mail address___________________

1. Have you been to the United States?
   - If so, when was your last trip?
   - How long were you in the United States?
2. Are you interested in EB-5 or L-1 immigration via investment opportunities? Y N
3. Do you currently have international investments in real estate? Y N
4. What are your investment interests?
   - Residential? Y N
   - Office buildings? Y N
   - Industrial buildings? Y N
   - Shopping centers? Y N
   - Land? Y N

   If single family residence:
   - Is the purchase for immigration? Y N
   - Is the purchase to provide student housing? Y N
   - Is the purchase for investment only? Y N
5. Do you wish to be the only owner or to purchase with a partner? Y N
6. Are you interested in pooling your funds with other partners to purchase a larger property? Y N
7. How many years do you expect to maintain ownership of an investment property? ____________
8. What are your expectations of return on investment? _____________
9. What is your scope of real estate knowledge?

   None -Somewhat Knowledgeable -Very Knowledgeable
10. Would you be willing to travel to the United States to view potential investments? Y N

Establish a Team of Experts

Association with the right professionals is the key to maximizing your return on investment and minimizing personal risk. Experience and reputation are key in evaluation of the real estate firm you are trusting to assist in purchasing investments in the United States.

The real estate broker needs to have knowledge of the market place and business contacts to identify opportunities. The broker should place the welfare of the investor before that of his own and must be honest with the investor to communicate the risks of the investment as well as the potential benefits. Supporting the broker will be a team of accountants, attorneys, escrow personnel, title companies, appraisers, lenders, leasing staff, and real estate managers that will work in the best interests of the investor. There is an added benefit to the investor, if members of the team of experts speak in the native language of the investor and have knowledge of the home country of the investor.

Avoid Mistakes

"Be the best or be the rest"

The two most important considerations in investing in the United States are one, to have the right real estate representatives; and two have an interpreter that understands real estate on both sides of the Pacific. The right real estate representative is important due to the fact that money is involved. Is your representative or agent looking after your interests or their own interests? It is important to qualify the company and the individual as to their integrity, experience, and understanding of marketplace.

Your representative in the United States must understand the business cycles and market conditions. We would refer to this as having a trusted advisor who is there for you in all seasons. During the spring and summer, all could be going well, and everyone is happy. But in the fall and winter when the clouds get dark and the weather turns gloomy is when the true test of the relationship is at occurs. Your representative should place your best interests above themselves and be a problem solver if problems should arise.

Real estate is a specialization; and even though there are many residential real estate brokers that are bilingual in English and an investor's native language, there are very few brokers who understand commercial or investment real estate. Translation and understanding of the United States legal system, accounting, taxation, and general documentation can be technical and confusing; therefore, the interpreter must be knowledgeable in real estate and regional business practice.

Creation of Value

Knowledge of the marketplace and attention to detail are key factors in creating value. Value creation starts with not overpaying for the property at the time of purchase, and the buyer having a plan for the property. Listed below are some examples of creation of value:

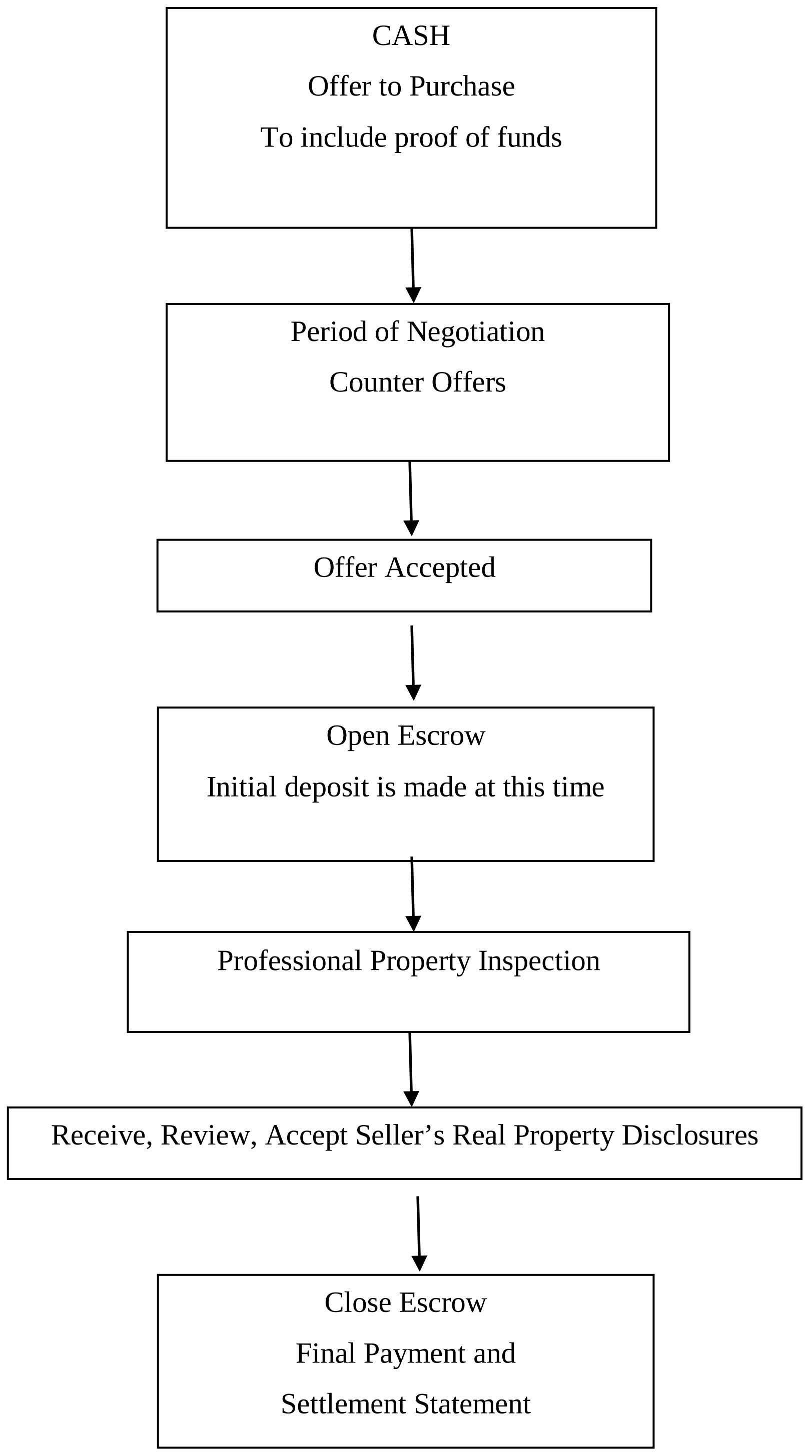
1. Purchase of a property during a distress situation where the seller is motivated to sell.
2. Purchase of a property that is in the path of future growth.
3. Purchase of a property that is in need of physical improvements that will result in higher income.
4. Purchase of a property that may be converted to a higher and better use.
5. Purchase of a property where the rents are below the market.
6. Purchase of a property where demand will exceed supply.

The two financial categories that influence Net Operating Income or Profit are Income and Expenses.

Income is normally the easiest route to maximize profit. The vehicle to being able to obtain the highest rents possible is through quality management. Experience tells us that a tenant will pay a premium for a well maintained property where attention to detail is critical. The tenant of a rentable space, whether it is residential, office, retail, or industrial will take pride in where they live and work. The surroundings are an extension of their personal life or their business and have a direct effect on their quality of life. If a property looks successful, the chances are it will be successful. It is important that your management company have pride in the property they manage and a perception of quality. One of the biggest mistakes investors make in investing in the United States is to focus on not spending money to maintain and improve the asset. Poor management which does not make repairs, does not improve the landscaping and does not keep the property looking new, will result in diminishing the attractiveness of the property, resulting in lower rents and higher vacancy.

Building expenses will always need to be monitored and evaluated. Expenses can be categorized into two categories: (1) non-controllable, such as real estate taxes and local fees and (2) controllable, such as utilities, repairs and maintenance, professional fees, salaries, and advertising. It is the proper allocation of expense costs that is important. In many cases it is to the advantage of the owner to increase expenses in certain areas such as management, landscaping, and janitorial, in order to achieve a higher rent schedule and lower vacancy.

PURCHASE CONTRACT FLOW CHART – ALL CASH



Chapter 3

FUNDING THE INVESTMENT

Transferring of Funds to the United States

It is in the best interests of the investor to make arrangements to transfer investment funds to a bank account in the United States and to retain control of the account in the name of the buyer or his trusted representative. If the money is in the account of a designated representative, the agent should show proof of a fidelity bond and maintain the funds in a separate trust account. One of the purposes of transferring funds to a designated account is to allow the agent to act quickly and bargain with the seller to lower the purchase price in trade for a quick close of escrow.

Once the goal of the investor is identified, the buyer's representative will then search the marketplace for the best property that meets those objectives. Depending on the urgency of the buyer and the opportunities available, the search may take as long as several days to several months to identify and negotiate the right deal.

Risk Analysis

"Minimize risk through Knowledge"

With any investment there is always the element of risk. One question to always ask is "if I needed to sell the property the day after its purchase, would I be able to obtain the return of my investment?" It is more important not to lose the invested capital than it is to obtain a return on the investment. A good broker will, on behalf of the buyer, investigate the risks to the best of his ability and advise the buyer of the risks. The broker must take the position that if he would not take the risk in the purchase of real estate, then he should not advise his client to make the purchase. Some risks include the following:

Supply and Demand Oversupply may create a decrease in value, while increase in demand would normally increase value. Consideration must be given for the future value of the asset. There are some areas in the central portion of the United States where property sells for the same price or less than it may have sold for twenty years ago. Properties on the East Coast and West Coast of the United States have appreciated at a much greater rate. Major contributing factors for reducing risks are to invest in areas where developable land is scarce, such as Hawaii and California.

Environmental It is recommended that the buyer investigate the former uses of the real estate being purchased. In the United States, a property owner may be responsible for cleaning up contaminated ground created by a prior owner. The prior use of the property is usually well documented. Risk of purchasing property with environmental problems is minimized by inspection of government documentation during the due diligence period prior to the close of escrow.

Government Regulations The risk of government regulations such as compliance with municipal zoning and obtaining permits is minimized by purchasing property that has been developed, as nearly all concerns involving environment, traffic, uses, and utilities have been investigated. There is a greater risk of owning land without entitlements or government permits.

Function Is there a market demand for the type of property being purchased. An example may be the over building of regional shopping centers in the U.S.A. If buyers make more purchases over the internet the future of large regional centers may diminish.

Employment The creation of jobs is a key to economic growth of an area. Likewise loss of jobs can present an investment risk. An example would be the city of Detroit, in the State of Michigan, which has lost many well-paying jobs to offshore manufacturing.

Natural Fire, flood, and storms would be the most common type of natural risk. This type of risk is covered by insurance.

Economic Timing is always important in investing in real estate, along with knowledge of the real estate cycles. In good times, you want to plan for the bad times. Fortunes are made when there are more sellers than buyers.

Uncontrollable Costs Careful due diligence and analysis of the condition of the asset prior to purchase will reduce risk of unforeseen repair and replacement. For the future, the cost of energy and scarcity of developable land will be a major concern.

Chapter 4

OFFER TO PURCHASE - STRATEGY

The investor and his representative should construct the offer in such a manner that it becomes a research tool to identify factors that are of most importance to the seller.

There are five main factors to negotiate in the purchase contract. They include the following:

- Price
- Down payment
- Seller Financing
- Term of the escrow period
- Guarantees

Price

The seller establishes the price, which is a function of not only market conditions, but the seller's motivation to sell. It is important to determine the reason for the sale and the extent of motivation prior to making an offer.

Down Payment

The amount of the deposit may vary, although it is in the best interests of the buyer to minimize the amount of the deposit. It is not uncommon to increase the deposit once the initial due diligence period is complete.

In negotiating a purchase, the larger the down payment, the more confidence the buyer has in his capacity to purchase the property. Depending on the objectives of the buyer, the down payment can be 100 percent of the purchase price (all cash purchase) or no down. Younger buyers usually prefer a low down payment because they have a lifetime to pay off the debt. A first time buyer would normally have income from his employment and be more interested in equity appreciation and less interested in cash flow.

Seller Financing

It is usually preferable to request the seller to finance the buyer's purchase. The debt is be secured by the property and is typically for a time period of three to seven years.

Term of the Escrow Period

Depending on the objective of the buyer and seller, the term of the escrow can be as short as several days or as long as a year. A long escrow is common for land purchases, where the buyer is attempting to secure permits from a local municipality to construct buildings on the property.

Guarantees

When purchasing income property, the value of the real estate is not only the value of the land and the physical improvements, but also the value of the leases and income stream. As an example, a shopping center may have 20 tenants of which ten leases may be expiring within the next year. If the leasing market is not strong and there is a good possibility that several of the tenants may not renew their leases, then it may be prudent for the buyer to request a rent guarantee for a specific period. This is money that may be held in escrow and released to the buyer if certain events do not occur. The buyer's agent who has local knowledge of the marketplace will make their evaluation and may make this a condition of purchase. Additionally, a seller may sell income producing property with a rent schedule which is higher than actual. The buyer may request from the seller a rent guarantee for a reasonable length of time to raise the rents to market value.

Identifying What is Important to the Buyer

It is best to make an offer at a lower than asking price, with a low down payment, with the seller to carry back a note for a seven to ten year term at a favorable interest rate, a long escrow, and rent guarantees from the seller. In essence, we are asking for as much as possible with the objective of identifying what the seller feels is important. The purpose of the offer is to quickly identify areas that are favorable to the buyer. The response to the offer will indicate what is of most importance to the seller. In some cases the seller will not counter offer on price and demand no seller financing.

In other cases, the seller may demand a higher price, but offer favorable concessions to the buyer. The strategy many times is to agree to the seller's specific demands as long as they are reasonable in order to gain advantages to the buyer.

This is where a good real estate broker acting in the best interests of the buyer will earn his commission saving money for his client.

A buyer who is willing to pay all cash and complete the purchase quickly once the due diligence is completed is at a strong advantage, especially when there is a shortage of liquidity for long-term financing. Cash is a wonderful bargaining tool. Depending on supply of the real estate product identified by the buyer and the existing demand, the buyer's representative may find it necessary to make numerous offers before a final purchase.

Sample Offer, Agreement and Escrow Instructions

AIR

STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE

(Non-Residential)

AIR Commercial Real Estate Association

____________________ (Date for Reference Purposes)

1. **Buyer.**

1.1 Sample Buyer __________, ("**Buyer**") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("**Seller**") (collectively, the "**Parties**" or individually, a "**Party**"), through an escrow ("**Escrow**") to close 30 or ________ days after the waiver or expiration of the Buyer's Contingencies, ("**Expected Closing Date**") to be held by ________________ ("**Escrow Holder**") whose address is ________________, Phone No. ________, Facsimile No. ________ upon the terms and conditions set forth in this agreement ("**Agreement**"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "**Date of Agreement**" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. **Property.**

2.1 The real property ("**Property**") that is the subject of this offer consists of (insert a brief physical description) Office Building ________________ is located in the City of Irvine ________, County of Orange ________, State of California ________, is commonly known by the street address of 1234 Sunny Lane ________________ and is legally described as: ________________

(APN: ________________).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of ________________ ("**Title Company**"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("**HVAC**"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and ________________ (collectively, the "**Improvements**").

2.4 The fire sprinkler monitor: ☐ is owned by Seller and included in the Purchase Price, ☐ is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, ☐ ownership will be determined during Escrow, or ☐ there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and ________________ all of which shall be removed by Seller prior to Closing.

3. **Purchase Price.**

3.1 The purchase price ("**Purchase Price**") to be paid by Buyer to Seller for the Property shall be $________, payable as follows:

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): $________

(Strike if not applicable)

(b) Amount of "New Loan" as defined in paragraph 5.1, if any: $________

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("**Existing Deed(s) of Trust**") securing the existing promissory note(s) ("**Existing Note(s)**"):

(i) An Existing Note ("**First Note**") with an unpaid principal balance as of the Closing of approximately: $________
Said First Note is payable at $________ per month, including interest at the rate of ______ % per annum until paid (and/or the entire unpaid balance is due on ________).

(Strike if not applicable)

(ii) An Existing Note ("**Second Note**") with an unpaid principal balance as of the Closing of approximately: $________
Said Second Note is payable at $________ per month, including interest at the rate of ______ % per annum until paid (and/or the entire unpaid balance is due on ________).

(Strike if not applicable)

(d) Buyer shall give Seller a deed of trust ("**Purchase Money Deed of Trust**") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("**Purchase Money Note**") in the amount of: $________

Total Purchase Price: $________

PAGE 1 OF 8

______ **INITIALS** ______ **INITIALS**

FORM OFA-6-8/06E

3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.

4. Deposits.

4.1 ☐ Buyer has delivered to Broker a check in the sum of $________________, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or ____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, <u>or</u> ☐ within 2 or ____ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder Buyer shall deliver to Escrow Holder a check in the sum of $________________. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

4.2 Additional deposits:

(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of $________________ to be applied to the Purchase Price at the Closing.

(b) Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (k) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of $________________ to be applied to the Purchase Price at the Closing.

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "**Deposit**"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is ________________. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

5. Financing Contingency. *(Strike if not applicable)*

5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least __________ % of the Purchase Price, on terms reasonably acceptable to Buyer. Such loan ("**New Loan**") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.

5.2 Buyer hereby agrees to diligently pursue obtaining the New Loan. **If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within ________ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.**

5.3 If, after due diligence, Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.

6. Seller Financing (Purchase Money Note). *(Strike if not applicable)*

6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of __________% per annum, with principal and interest paid as follows:____

____

____

____.

The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.

6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):

(a) *Prepayment.* Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.

(b) *Late Charge.* A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.

(c) *Due On Sale.* In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.

6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.

6.4 **WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.**

6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate, Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.

7. Real Estate Brokers.

7.1 The following real estate broker(s) ("**Brokers**") and brokerage relationships exist in this transaction and are consented to by the Parties (check the applicable boxes):

☐ ________________________________ represents Seller exclusively ("**Seller's Broker**");

☐ ________________________________ represents Buyer exclusively ("**Buyer's Broker**"); or

☐ ________________________________ represents both Seller and Buyer ("**Dual Agency**").

The Parties acknowledge that Brokers are the procuring cause of this Agreement. See paragraph 24 regarding the nature of a real estate agency relationship. Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers named in paragraph 7.1, and no broker or other person, firm or entity, other than said Brokers is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or other similar party, other than said named Brokers by reason of any dealings or act of the indemnifying Party.

8. Escrow and Closing.

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict

________ ________

INITIALS INITIALS

between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "**Closing**") by recording a general warranty deed (a grant deed in California) and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement.

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance.

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 9.5, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in paragraph 9.2, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall be promptly refunded all funds deposited by Buyer with Escrow Holder, less only Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.

8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this Escrow is terminated for any reason other than Seller's breach or default, then at Seller's request, and as a condition to the return of Buyer's deposit, Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property. Provided, however, that Buyer shall not be required to deliver any such report if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

9. Contingencies to Closing.

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT**. Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer. Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (l) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) *Disclosure*. Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR Commercial Real Estate Association ("**AIR**") standard form entitled "Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("**Property Information Sheet**") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or ________ days following the Date of Agreement. Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) *Physical Inspection*. Buyer has 10 or ________ days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the physical aspects and size of the Property.

(c) *Hazardous Substance Conditions Report*. Buyer has 30 or ________ days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "**Hazardous Substance**" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "**Hazardous Substance Condition**" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) *Soil Inspection*. Buyer has 30 or ________ days from the receipt of the Property Information Sheet or the Date of Agreement, whichever is later, to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days of the Date of Agreement.

(e) *Governmental Approvals*. Buyer has 30 or ________ days from the Date of Agreement to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) *Conditions of Title*. Escrow Holder shall cause a current commitment for title insurance ("**Title Commitment**") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("**Underlying Documents**"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or ________ days following the Date of Agreement. Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) *Survey*. Buyer has 30 or ________ days from the receipt of the Title Commitment and Underlying Documents to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("**ALTA**") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) *Existing Leases and Tenancy Statements*. Seller shall within 10 or ________ days of the Date of Agreement provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "**Existing Leases**") affecting the Property, and with a tenancy statement ("**Estoppel Certificate**") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.

(i) *Other Agreements*. Seller shall within 10 or ________ days of the Date of Agreement provide Buyer with legible copies of all other agreements ("**Other Agreements**") known to Seller that will affect the Property after Closing. Buyer has 10 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

(j) *Financing*. If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.

(k) *Existing Notes*. If paragraph 3.1(c) has not been stricken, Seller shall within 10 or ________ days of the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "**Loan Documents**") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("**Beneficiary Statement**") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or ________ days from the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof.

(l) *Personal Property*. In the event that any personal property is included in the Purchase Price, Buyer has 10 or ________ days from the Date of Agreement to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or

________ INITIALS ________ INITIALS

________ days of the Date of Agreement.

(m) *Destruction, Damage or Loss.* There shall not have occurred prior to the Closing, a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than $10,000.00 to repair or cure. If the cost of repair or cure is $10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than $10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than $10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(n) *Material Change.* Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "**Material Change**" shall mean a change in the status of the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(o) *Seller Performance.* The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(p) *Warranties.* That each representation and warranty of Seller herein be true and correct as of the Closing. Escrow Holder shall assume that this condition has been satisfied unless notified to the contrary in writing by any Party prior to the Closing.

(q) *Brokerage Fee.* Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("**Brokerage Fee**"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers.

9.2 All of the contingencies specified in subparagraphs (a) through (p) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "**Buyer's Contingencies.**"

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("**Disapproved Item**"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("**Seller's Election**"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 Buyer understands and agrees that until such time as all Buyer's Contingencies have been satisfied or waived, Seller and/or its agents may solicit, entertain and/or accept back-up offers to purchase the Property.

9.5 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

10. Documents Required at or Before Closing:

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

(a) Grant or general warranty deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.

(b) If applicable, the Beneficiary Statements concerning Existing Note(s).

(c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.

(d) If applicable, Estoppel Certificates executed by Seller and/or the tenant(s) of the Property.

(e) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(f) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

(g) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.

(h) If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.

10.3 Buyer shall deliver to Seller through Escrow:

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date.

(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.

(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.

(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

11. Prorations and Adjustments.

11.1 *Taxes.* Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 *Insurance.* **WARNING:** Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 *Rentals, Interest and Expenses.* Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 *Security Deposit.* Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 *Post Closing Matters.* Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

11.6 *Variations in Existing Note Balances.* In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event

INITIALS INITIALS

 FORM OFA-6-8/06E

that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof (**"Existing Note Variation"**), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 *Variations in New Loan Balance.* In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.

12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and, are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) *Authority of Seller.* Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder.

(b) *Maintenance During Escrow and Equipment Condition At Closing.* Except as otherwise provided in paragraph 9.1(m) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) *Hazardous Substances/Storage Tanks.* Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) *Compliance.* Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) *Changes in Agreements.* Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) *Possessory Rights.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) *Mechanics' Liens.* There are no unsatisfied mechanics' or materialmens' lien rights concerning the Property.

(h) *Actions, Suits or Proceedings.* Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.

(i) *Notice of Changes.* Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(n)) affecting the Property that becomes known to Seller prior to the Closing.

(j) *No Tenant Bankruptcy Proceedings.* Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

(k) *No Seller Bankruptcy Proceedings.* Seller is not the subject of a bankruptcy, insolvency or probate proceeding.

(l) *Personal Property.* Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. Possession.

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

14. Buyer's Entry.

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

15. Further Documents and Assurances.

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

16. Attorneys' Fees.

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

17. Prior Agreements/Amendments.

17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.

17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

18. Broker's Rights.

18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

19. Notices.

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger or by mail, postage prepaid, to the address set forth in this Agreement or by facsimile transmission.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. Communications transmitted by facsimile transmission shall be deemed delivered upon telephonic confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.

20. Duration of Offer.

20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of

______________________________ on the date of ______________________________,

it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph

________ ________

INITIALS INITIALS

1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

21. LIQUIDATED DAMAGES. **(This Liquidated Damages paragraph is applicable only if initialed by both Parties).**

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF ______________________. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

______________ ______________

Buyer Initials ***Seller Initials***

22. ARBITRATION OF DISPUTES. *(This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)*

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("**COMMERCIAL RULES**"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. ANY SUCH CONTROVERSY SHALL BE ARBITRATED BY 3 ARBITRATORS WHO SHALL BE IMPARTIAL REAL ESTATE BROKERS WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THEY SHALL BE APPOINTED UNDER THE COMMERCIAL RULES. THE ARBITRATORS SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

22.3 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

______________ ______________

Buyer Initials ***Seller Initials***

23. Miscellaneous.

23.1 **Binding Effect.** This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located.

23.3 **Time of Essence.** Time is of the essence of this Agreement.

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

23.5 **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange.

24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.

24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) *Seller's Agent.* A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) *Buyer's Agent.* A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the

 FORM OFA-6-8/06E

diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) *Agent Representing Both Seller and Buyer.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not without the express permission of the respective Party, disclose to the other Party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 *Confidential Information:* Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. Construction of Agreement. In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26 Additional Provisions:

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum consisting of paragraphs ____________________ through ____________________ . (If there are no additional provisions write "NONE".)

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ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.

WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.

2. IF THE BUYER IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

BROKER:	**BUYER:**
____________________________	____________________________
____________________________	____________________________

______ **PAGE 7 OF 8** ______

INITIALS **INITIALS**

 FORM OFA-6-8/06E

Attn: ______________________
Title: ______________________
Address: ______________________
____
Telephone:(___) ______________________
Facsimile:(___) ______________________
Email: ______________________
Federal ID No. ______________________

By: ______________________
Date: ______________________
Name Printed: ______________________
Title: ______________________
Telephone:(___) ______________________
Facsimile:(___) ______________________

By: ______________________
Date: ______________________
Name Printed: ______________________
Title: ______________________
Address: ______________________
____
Telephone:(___) ______________________
Facsimile:(___) ______________________
Email: ______________________
Federal ID No. ______________________

27. Acceptance.

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 Seller acknowledges that Brokers have been retained to locate a Buyer and are the procuring cause of the purchase and sale of the Property set forth in this Agreement. In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to_________ % of the Purchase Price to be divided equally between Seller's Broker and Buyer's Broker. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.

BROKER:

____
____

Attn: ______________________
Title: ______________________
Address: ______________________
____
Telephone:(___) ______________________
Facsimile:(___) ______________________
Email: ______________________
Federal ID No.: ______________________

SELLER:

____
____

By: ______________________
Date: ______________________
Name Printed: ______________________
Title: ______________________
Telephone:(___) ______________________
Facsimile:(___) ______________________

By: ______________________
Date: ______________________
Name Printed: ______________________
Title: ______________________
Address: ______________________
____
Telephone:(___) ______________________
Facsimile:(___) ______________________
Email: ______________________
Federal ID No.: ______________________

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

Chapter 5

ESCROW

The term "escrow" means any agreement between two or more parties (principals) wherein the delivery of the instruments, monies, items of value, or evidence of title to real or personal property are deposited with a 'NEUTRAL' third party, (the escrow agent). This agreement contains specific written instructions executed by all parties to the transaction.

Other parties may be brought into the escrow by virtue of the instructions and requirements of the buyer and seller, i.e., the lender, lien holders, contract vendors, etc. In order for the seller and buyer to complete the transaction, it may be necessary to receive money and documents from these other parties. These other parties will deposit their items of value into the escrow along with their written instructions which confine the items to the escrow until their conditions have been met. The escrow fee is usually split between the buyer and seller, but this can be changed by an agreement of the parties.

Some of the functions performed by the escrow agent to close a real estate transaction are listed below.

- Receive a completed and fully executed purchase and sale agreement and/or lender's instructions.
- Order and deliver a commitment for title insurance to the parties of the transaction.
- Order all necessary payoff statements and demands to clear the title.
- Prepare all necessary documents to transfer title.
- Prepare the estimated and final closing statements.
- Obtain all necessary signatures, funds, and documents to close the transaction.
- Record and deliver all necessary documents and disburse the funds according to the parties and/or lender's instructions.

Title insurance is the safeguard that an owner needs to obtain at the close of an escrow to assure oneself that there are no future problems with resale of the property. Title insurance is not expensive and in many cases the cost is shared equally between buyer and seller.

First American Title

Sample Closing Statement

GOLD COUNTRY ESCROW, INC.

18180 Yorba Linda Boulevard, Suite 503, Yorba Linda, CA 92886
(714) 579-3511 • FAX (714) 579-3525

SELLER'S CLOSING STATEMENT
Final

Escrow Number:
Escrow Officer:

Title Order Number:
Date:
Closing Date:

Buyer/Borrower:

Seller:

Property:

DESCRIPTION		DEBITS	CREDITS
TOTAL CONSIDERATION			460,000.00
PRORATIONS/ADJUSTMENTS:			
Property Tax @ 2,977.62 per 6 month(s) 5/14/2010 to 7/01/2010			793.92
Listing and Selling Agent Contribution to 2nd			9,200.00
COMMISSION(S):			
Listing Broker: The Remm Group		13,800.00	
Selling Broker: White Realty Associates		13,800.00	
TITLE CHARGES			
Sub Escrow Fee: Advantage Title Company		62.50	
Seller Reimb. - owners title policy: Advantage Title Company		1,481.00	
Seller Reimb. - County Transfer Tax: Advantage Title Company		506.00	
ESCROW CHARGES TO: Gold Country Escrow, Inc.			
Escrow Fee		1,036.00	
LENDER CHARGES			
Seller Contribution To 2nd: Wells Fargo POC $4,979.00			
LOAN PAYOFF: Wells Fargo			
Extra Proceeds	806.42		
Discharge of Mortgage	417,565.00		
Wire	25.00		
Total Loan Payoff		418,396.42	
LOAN PAYOFF: Wells Fargo - 2nd Mortgage			
Wire	25.00		
Discharge of Mortgage	20,822.00		
Total Loan Payoff		20,847.00	
ADDITIONAL DISBURSEMENTS:			
Natural Hazard Report Fee: JCP-LGS		65.00	
TOTALS		469,993.92	469,993.92

AGENT'S COPY
GOLD COUNTRY ESCROW

THIS IS A FINAL CLOSING STATEMENT

OMB No. 2502-0265

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SETTLEMENT STATEMENT

GOLD COUNTRY ESCROW, INC.
18180 Yorba Linda Boulevard, Suite 503, Yorba Linda, CA 92886
(714) 579-3511 · FAX (714) 579-3525

B. TYPE OF LOAN		
1. [ ] FHA	2. [ ] RHS	3. [X] CONV. UNINS.
4. [ ] VA	5. [ ] CONV. INS.	
6. FILE NUMBER: 59728	7. LOAN NUMBER 37-00545	
8. MORTGAGE INS. CASE NO.:		

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME & ADDRESS OF BORROWER:

E. NAME & ADDRESS OF SELLER:

F. NAME & ADDRESS OF LENDER:

G. PROPERTY LOCATION:

H. SETTLEMENT AGENT:
PLACE OF SETTLEMENT:

I. SETTLEMENT DATE: 5/14/2010 Final

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower:		**400. Gross Amount Due To Seller:**	
101. Contract sales price		401. Contract sales price	460,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower: (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance:		**Adjustments For Items Paid By Seller In Advance:**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes 05/14/10 to 07/01/10	793.92
108. Assessments to		408. Assessments to	
109.		409. Listing and Selling Agent Contribution to 2nd	9,200.00
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower:		**420. Gross Amount Due To Seller:**	469,993.92
200. Amounts Paid By Or In Behalf Of Borrower:		**500. Reductions In Amount Due To Seller:**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	28,763.50
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff 1st Mtg. Ln. Wells Fargo	418,396.42
205.		505. Payoff 2nd Mtg. Ln. Wells Fargo - 2nd Mortgage	20,847.00
206.		506. Seller Reimb. - owners title policy	1,481.00
207.		507. Seller Reimb. - County Transfer Tax	506.00
208.		508. Seller Contribution To 2nd- POCS $4979.00	
209.		509.	
Adjustments For Items Unpaid By Seller:		**Adjustments For Items Unpaid By Seller:**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower:		**520. Total Reductions In Amount Due Seller:**	469,993.92
300. Cash At Settlement From/To Borrower:		**600. Cash At Settlement From/To Seller:**	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	469,993.92
302. Less amount paid by/for borrower (line 220)		602. Less reductions in amount due seller (line 520)	469,993.92
303. Cash ([ ] FROM) ([ ] TO) Borrower:	0.00	**603. Cash ([ ] TO) ([ ] FROM) Seller:**	0.00

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Previous editions are obsolete Page 1 of 3 HUD-1

L. SETTLEMENT CHARGES		Escrow: 59728	Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700. Total Real Estate Broker Fees				
Division of Commission (line 700) As Follows:				
701. $ 13,800.00 to The Remm Group				
702. $ 13,800.00 to White Realty Associates				
703. Commission paid at settlement				27,600.00
704.				
800. Items Payable In Connection With Loan:				
801. Our origination charge	$	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen $		(from GFE #2)		
803. Your adjusted origination charges		(from GFE A)		
804. Appraisal fee to		(from GFE #3)		
805. Credit report to		(from GFE #3)		
806. Tax service to		(from GFE #3)		
807. Flood certification		(from GFE #3)		
808.				
809.				
810.				
811.				
812.				
813.				
814.				
815.				
816.				
817.				
818.				
819.				
900. Items Required By Lender To Be Paid In Advance:				
901. Daily interest charges from to @ $	/day (0 days)	(from GFE #10)		
902. Mortgage insurance premium for mo. to		(from GFE #3)		
903. Homeowner's insurance for yrs. to		(from GFE #11)		
904. Flood insurance premium for yrs. to				
905.				
906.				
1000. Reserves Deposited With Lender:				
1001. Initial deposit for your escrow account		(from GFE #9)		
1002. Homeowner's insurance 0 months @ $	0.00 per month			
1003. Mortgage insurance 0 months @ $	0.00 per month			
1004. City property taxes 0 months @ $	0.00 per month			
1005. County property taxes 0 months @ $	0.00 per month			
1006. Annual assessments 0 months @ $	0.00 per month			
1007. Flood insurance 0 months @ $	0.00 per month			
1008. 0 months @ $	0.00 per month			
1009. Aggregate Adjustment				
1010.				
1100. Title Charges				
1101. Title services and lender's title insurance		(from GFE #4)		
1102. Settlement or closing fee to Gold Country Escrow, Inc.				1,036.00
1103. Owner's title insurance		(from GFE #5)		
1104. Lender's title insurance				
1105. Lender's title policy limit $				
1106. Owner's title policy limit $				
1107. Agent's portion of the total title insurance premium				
1108. Underwriter's portion of the total title insurance premium				
1109. Sub Escrow Fee to Advantage Title Company				62.50
1110.				
1111.				
1112.				
1113.				
1114.				
1200. Government Recording and Transfer Charges:				
1201. Government recording charges		(from GFE #7)		
1202. Deed $ 0.00 Mortgage $ 0.00	Releases $ 0.00			
1203. Transfer taxes		(from GFE #8)		
1204. City/County tax/stamps Deed $ 0.00	Mortgage $ 0.00			
1205. State tax/stamps Deed $ 0.00	Mortgage $ 0.00			
1206.				
1207.				
1300. Additional Settlement Charges:				
1301. Required services that you can shop for		(from GFE #6)		
1302. Survey to				
1303. Pest inspection to				
1304. Natural Hazard Report Fee to JCP-LGS				65.00
1305.				
1306.				
1307.				
1400. Total Settlement Charge *(Enter on line 103, Section J - and - line 502, Section K)*				28,763.50

Previous editions are obsolete — Page 2 of 3 — HUD-1

ATTACHMENT TO HUD 1
Settlement Date: 5/14/2010

Escrow No.: 59728
Title No.: 1163516
Page: 1

EXHIBIT A: (HUD Section 500)
Reductions In Amount Due To Seller: - Loan Payoff Breakdown:

	Seller Amount
Wells Fargo	
Extra Proceeds To: Wells Fargo	806.42
Discharge of Mortgage To: Wells Fargo	417,565.00
Wire To: Wells Fargo	25.00
Total:	418,396.42
Wells Fargo - 2nd Mortgage	
Wire To: Wells Fargo - 2nd Mortgage	25.00
Discharge of Mortgage To: Wells Fargo - 2nd Mortgage	20,822.00
Total:	20,847.00

Chapter 6

REAL ESTATE APPRAISAL

What is the value of a property in the United States? Although this may seem like an obvious question, surprisingly, it is often overlooked.

In the past, many foreign investors new to the U.S. markets were not adequately informed about the value of the properties in various locations. Many made the mistake of comparing their own country's property values to that of U.S. property values. Today's investor should not make the same mistakes. They should investigate the value of the real estate properties in consideration of government structure, real estate laws and regulations, land tenure (land ownership), economics, local supply and demand, demographics and culture. It is also imperative that the investor engage an experienced, reputable and licensed Appraiser that will objectively evaluate the market value of the subject property they are interested in acquiring.

BASIC STEPS FOR APPRAISAL VALUATIONS

Define the Scope of Work

↓

Inspect the Subject Property and Neighborhood Properties

↓

Collect Pertinent Data

↓

Determine the Highest and Best Use of the Subject Property

↓

Apply Appropriate Appraisal Methodology or Methodologies

↓

Cost Approach ↔ **Market Comparison Approach** ↔ **Income Approach**

Cost Approach

1. Estimate the value of the land.
2. Estimate the current cost of replacing the building.
3. Estimate and deduct the amount of depreciation.
4. Add the estimated land value to the depreciated cost of the building.

Market Comparison Approach

1. Locate comparable properties in the same or similar neighborhoods.
2. Compare the selected properties with the subject property and make the appropriate adjustments.
3. Reconcile comparable information; estimate a conclusion of value based on the best market data after comparison.

Income Approach

1. Estimate the potential gross income.
2. Estimate the effective gross income.
3. Deduct annual operating expenses to arrive at net operating income.
4. Estimate the property value via: (1) direct capitalization rate and/or (2) discounted cash flow method.

↓

Correlate the Approaches to Value

↓

Complete the Appraisal Report

VALUATION

In the United States, the majority of appraisal valuations are conducted by independent appraisers licensed in their respective State jurisdictions. The investor is cautioned, however, that not all appraisers are experts in appraising different types of properties. The appraiser utilized should be competent and have the knowledge and experience in appraising the type of property that is being purchased. Appraisal valuations may be conducted for sales purposes, real property tax assessment purposes, eminent domain purposes (condemnation), collateral evaluation, securitization, estate settlement and mortgage lending purposes. All real estate investors need accurate valuations that specifically identify the intended use, the intended user and a defined scope of work.

SCOPE OF WORK

There are many types of appraisals that are done for different purposes, thus, the scope of work must be well defined and agreed upon by the appraiser and the client. The Uniform Standards of Professional Appraisal Practice (USPAP) defines scope of work as *"the type and extent of research analysis in an assignment"*. Scope of work includes, but is not limited to:

- The extent to which the property is identified;
- The extent to which tangible property is observed;
- The type and extent of data researched; and
- The type and extent of analyses applied to arrive at opinions or conclusions.

MARKET VALUE

International valuation standards were established in 1984 by the International Valuation Standards Committee (IVSC), a non-government organization member of the United Nations. There are many definitions of Market Value; however for purposes of this section, the Market Value of the International Valuation Standards Committee (IVSC) will be utilized as follows:

> *"Market value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion".*[i]

LAND TENURE (Land Ownership)

Generally, there are two forms of land ownership in the United States, fee simple estate and leasehold estate.

Fee simple estate: *"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain (condemnation), police power and escheat (the right of ownership goes to the government if a person dies without a will or discoverable heirs)"*.
In the United States the individual has the opportunity to own land by purchasing his land in fee simple; subject to the four limitations mentioned above.

Leasehold interest: *"The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions"*.
The fee simple estate owner can lease his interest for a lump sum fee payment or a periodic fee payment for a specified time period which is negotiated between landowner (lessor) and the lessee (the tenant or renter). At the end of the lease term the land reverts back to the fee simple owner.

HIGHEST AND BEST USE

The Highest and Best Use Analysis is essential in the appraisal process because it will help the appraiser define the Scope of Work that will be performed for the client.

A highest and best use analysis identifies the most probable and profitable competitive use for the subject property. Since economic conditions change, a property's highest and best use changes as well. This analysis is an essential step in the determination of market value because it establishes a framework for the proper selection of comparable properties.

There are four main tests in a highest and best use study: (1) governmental requirements and limitations like zoning and private deed restrictions; (2) physical constraints; (3) financial feasibility; and (4) maximum productivity. If more than one use survives the first three tests, then the use that produces the highest positive reward with the least risk is the highest and best use."

APPRAISAL METHODOLOGY

There are generally three basic valuation methods considered in a real estate appraisal: the Cost Approach, the Market Comparison Approach and the Income Approach.

COST APPROACH

The Cost Approach in normal circumstances can be utilized to establish the upper limit of value of a proposed or newly constructed structure. As the structure ages, the reliability of this approach to value dissipates because depreciation cannot be precisely measured and its replacement cost is difficult to estimate accurately. The cost approach consists of four basic steps:

1. Estimate the value of the land;
2. Estimate the current cost of replacing the building;
3. Estimate and deduct the amount of depreciation;
4. Add the estimated land value to the depreciated reproduction or replacement cost of the building to arrive at the total value of the property.

1. Estimate the Land Value

   The Market Comparison Approach (in the following section) can be used to determine the market value of the vacant site.

2. Estimate the Replacement Cost

   Replacement cost is the total cost of construction required to replace the subject building with a substitute of like or equal utility using current standards of materials and design. These costs include labor, materials, supervision, contractor's profit and overhead, architectural plans and specifications, sales taxes and insurance.

   Replacement Cost should not be confused with Reproduction Cost, which is the cost of replacing the exact replica of all the original materials in place. This cost is usually much higher due to the unavailability of older material, finishes and fixtures utilized when the original building was constructed. An example of this would be to estimate the cost of reproducing an exact replica of a historical building.

3. Estimate and Deduct the Depreciation

   In appraising, depreciation is *"a loss in property value from any cause: the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same day"*.

   Three components (types) of depreciation:

   - Physical deterioration- due to basic wear and tear from regular use
   - Functional obsolescence- due to a flaw in design, function and/or utility
   - External obsolescence- due to negative influences on market conditions

4. Total Value of the Property

   Add the estimated land value to the depreciated reproduction or replacement cost of the building to arrive at the total value of the property.

MARKET COMPARISON APPROACH

The market comparison approach is the most commonly used method for appraisal valuation when good market comparables similar to the subject property are available. However, in order for a property to be considered similar, it must have the same Highest and Best Use as the subject property and be reasonably comparable in size, location, physical condition, and other such characteristics.

There are three main steps in the market comparison approach:

1. Locate several comparable properties in the same or similar neighborhoods.
2. Compare the selected properties with the subject property and make appropriate plus and minus itemized adjustments to the sales prices to account for any significant differences in age, location, or physical characteristics. Note: When utilizing this approach to value for commercial income producing properties additional items of comparison such as the income ratios, capitalization rate, price per unit and price per square foot must be considered.
3. Reconcile all the comparable information and estimate a conclusion of value based on the best market data after comparison.

INCOME APPROACH

The income approach is the most important valuation technique when evaluating commercial and income producing properties. Each property is complex and contains variables unique to each individual property. Items such as existing short and long term tenant leases, capital reserve and budget analysis, investment holding periods, uneven cash flow and expenses, rent up analysis for new or vacant buildings need to be carefully investigated when appraising commercial properties.

In the income approach, the value of a property is the present worth of the projected future income stream over the property's determined investment period prior to sale or the remaining economic life of the improvements.

There are four basic steps to determine the value of a property:

1. Estimate the potential gross income;
2. Estimate the effective gross income;
3. Deduct annual operating expenses to arrive at net operating income;
4. Estimate the property value via:
   a. The direct capitalization rate method, and/or
   b. The discounted cash flow (DCF) method.

Direct Capitalization Method

In the appraisal profession the direct capitalization is the process of converting net operating income into value. This method extracts a capitalization rate (also called cap rate) from sales of similar properties via the following formula:

Net Operating Income (NOI) ÷ Sales Price (SP) = Capitalization Rate (Cap Rate)

Example: $100,000 (NOI) ÷ $1,000,000 (SP) = 10% (Cap Rate)

Implicit in an established capitalization rate are investor expectations about risk, return and change. Utilizing the above formula, once an established NOI and an appropriate Cap Rate is determined in the marketplace, the market value of the subject property can be estimated as follows:

Net Operating Income (NOI) ÷ Capitalization Rate (Cap Rate) = Market Value (MV)

Example: $100,000 (NOI) ÷ 10% (Cap Rate) = $1,000,000 (MV)

In a perfect world, with perfect data the Direct Capitalization Method of appraising would be the most accurate method of appraising commercial properties. Most commercial properties differ in location, size, design, architecture, purpose, tenant leases, holding periods, uneven cash flows and many other individual property circumstances, thus weakening this approach to value as the complexities of the commercial properties increase. For these reasons, the Direct Capitalization Method should be utilized as a guide and as a check on the other approaches to value.

Discounted Cash Flow Method (DCF)
Most institutional lenders and sophisticated investors prefer this method of valuation for income producing properties because it is property specific and incorporates the thought process of the typical purchaser/investor.

The DCF method of valuation is based on the present value of the anticipated income stream of the property. The investor will determine his holding period of the subject property which will be dependent on increasing the maximum cash flow over a period of time. This creates increased value for a future resale. Historically, future dollars are worth less due to inflation; therefore, future dollars are discounted into present worth dollars via a market derived discount rate. The Discounted Cash Flow Analysis exhibits income change, equity recapture and return on investment capital demonstrating what the typical purchaser/investor is considering in the specific marketplace. This method can also be customized to include debt service over the designated investment period to determine a specific investment value.

SUMMARY

Since there are no two properties that are exactly the same, the investor must understand the importance of an accurate appraisal report. Whether it is a residential property or a commercial property, a credible appraisal of the subject property by a knowledgeable and experienced appraiser is an essential step in the decision making process when purchasing real estate in the United States.

Unless specified, all definitions are taken from the Appraisal Institute <u>Dictionary of Real Estate Appraisal</u>, fourth edition

Chapter 7

DUE DILIGENCE

The "Due Diligence" period commences upon acceptance of an offer to purchase and is a very important aspect of the real estate transaction, as it is the period of time in which the buyer has the opportunity to investigate all aspects of a real estate property prior to the consummation of the sale. Due diligence periods are negotiable and are usually longer for larger and/or more complex properties. Due diligence is the examination of those factors and forces which influence the property's performance and financial viability.

In most cases, the investor will hire a real estate due diligence consultant/counselor to coordinate the due diligence inspections, gather the information, and report to the client. It is important for the coordinator to utilize professionals that can perform within the specified due diligence period. The workload of the various consultants and the coordination of inspection scheduling are the two major pitfalls in failing to meet the contract deadlines.

The performance of "Due Diligence" can be broken up into the following basic categories:

Examination of the property's title. Understanding what is being purchased is key in further identifying current or future possible uses of the property. Title examination will also define the boundaries of the physical property and any limitations which may exist.

Examination of the properties historical uses. Previous uses of a particular parcel of real estate could have lasting effects which, if unknown or undisclosed at the time of purchase, could contribute an undue burden on the prospective purchaser.

Examination of the permitted land uses - current and potential. Each municipality and community establishes zoning requirements for land within their jurisdiction. This permitted land use and zoning can change over time and be modified to conform to current property owners and community desires. These permitted land uses can greatly influence real estate values, especially if the structures on the property do not conform to current allowed uses. Likewise, land which has had its zoning changed to allow for higher and more profitable uses may increase in value.

<u>Examination of the property's current uses and/or tenants</u>. This study should determine if the property is being used to obtain the greatest return for the property owner. Permitted land may be amended to include additional uses. This may increase the land value of the real estate.

<u>Examination of community and regional trends</u>. Understanding the needs and growth of a community is immensely important to maximizing the development of real estate. As a community expands and changes over time, the understanding and ability to forecast what the community needs is immensely important to maximizing potential income.

<u>Examination of property's financial sustainability.</u> This is the act of studying a property's financial feasibility, along with projecting the needs for the building maintenance, that results in necessary budge capital for improvements and maintenance. By reducing surprise costs and allowing for projected maintenance there is the ability to provide for greater consistency in making monetary disbursements to owners.

The following is a non-exhaustive list of information sources for performing due diligence which should be coordinated by your real estate due diligence consultant/counselor:

- Title companies
- Local municipal building / planning department
- Lending institutions
- County Recorder's office
- Local law enforcement agencies
- Environmental research companies
- Current vendors of the property (i.e. Landscaping Company, Janitorial Company, Maintenance Company)
- Neighbors
- Property inspection companies
- Local real estate professionals
- Market research companies
- County economic development corporations
- Tenants
- Covenants, Conditions, and Restrictions

- Local laws / regulations i.e. (rent control laws)
- Local demographics including flood zones, population, fire fuel hazards (trees if near a forest), and major local employers
- Previous utility bills (for evaluation and future budgeting)

Commercial Properties

Commercial properties are complex in nature and require a thorough review of various components. The purchaser may elect to hire a due diligence coordinator that is experienced in assembling a due diligence team. The buyer's broker should assist the coordinator to obtain various documents necessary for review prior to inspection.

The following are the documents that the buyer, his coordinator and his professional consulting team should have for a "Due Diligence" investigation:

- Physical Information

  Site plan, floor plans, building plans, mechanical and electrical specifications, list of special items to be sold (if applicable)

- Financial Statements

  Income and expense report (year-to-date and previous three years), budget for the coming year, current tenant rent roster, current property tax bill, tax history

- Miscellaneous Documents

  Property deed, management agreement, tenant leases and amendments, ground lease agreement and amendments (if applicable), third party leases and operating agreements (if applicable), current financing documents (if applicable), certificate of occupancy, miscellaneous contracts, maintenance agreements, equipment leases, personal property list, insurance policies, licenses, employee lists (if applicable)

- Property capital/FF&E expenditures

  Previous three years, budget for current year, year-to-year capital expenditures, five-year projection

- Market information

  Market statistics, demographic data, area amenities

- Reports

  Phase I Environmental Audit Reliance Letter and Phase II (if necessary), American Disabilities Act report, engineering reports, preliminary title report, American Land Title Association survey, subsoil reports, development studies, previous appraisal report, copy of any property condition survey, summary of any legal action affecting property (for example, employee lawsuits).

  A Phase I Environmental Site Assessment is a report prepared for a real estate holding which identifies potential or existing environmental contamination liabilities. A Phase II Environmental Site Assessment is an "intrusive" investigation which collects original samples of soil, groundwater, or building materials to analyze for quantitative values of various contaminants.

- Forms

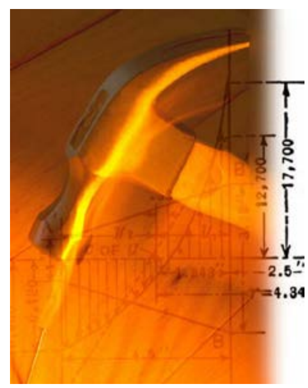
  Confidentiality agreements, proposed purchase and sales agreement and exhibits

Upon completion of the due diligence reports, the coordinator and buyer's broker will meet with the purchaser to determine the soundness of subject property. If deficient items are detected and in need of repair, the purchaser's broker will then negotiate these items of concern with the seller and/or his broker. Should an agreement between both parties be reached and a sales transaction concluded, the final steps are to secure a mortgage loan, if necessary, and obtain a clear title to the property from a reputable title and escrow company.

Chapter 8

MANAGEMENT OF THE ASSET

“Be “good to the property and the property will be good to you.” Of the various professional specialties involved in the real estate investment process such as the architect, broker, appraiser, lender, leasing agent, attorney, and accountant, it is the real estate manager who is key in the creation of value and protection of the physical asset.



Some investors spend as little as possible on maintenance and the general appearance of their properties to increase their immediate short-term financial cash flow; however, it is important to focus on quality and have a pride of ownership attitude. In doing this, you would want to direct your real estate manager to keep your property in the very best of condition. This is a long-term strategy that will result in lower costs of major repairs, achieving the highest rents in the marketplace, lower tenant turnover, a higher occupancy level, and a higher value of the property at time of sale.

When selecting a real estate manager, the fee should be secondary to the quality of the firm. The experience and education of the manager is critical to the future success of the real estate. If the management fee is too low the quality of their performance will be reflected in the profitability of the real estate. It is best to focus on having the most qualified real estate manager who will take a personal interest in your investment and work hard and smart to create value.

With the advent of urbanization in the United States during the 21st century, the real estate industry has become highly specialized and sophisticated. The twenty first century will focus on energy conservation, technology and pollution controls resulting in real estate management becoming even more complex. Trade organizations such as The Counselors of Real Estate (CRE), Building Owners and Managers Association International (BOMA), Building Owners and Managers Institute (BOMI), The Institute of

Real Estate Management (IREM), and International Council of Shopping Centers (ICSC) play an important role in promoting the exchange of ideas and best practices for the industry. The real estate industry is constantly changing, and the real estate manager must maintain a high degree of knowledge to best represent his client.

Following are some considerations to make in selecting a quality management company:

- Length of time the management company has been in business
- Education and experience of the real estate manager
- Geographic area managed
- Type of product managed
- Accounting and reporting
- Success of properties managed

Objectives of a Real Estate Manager

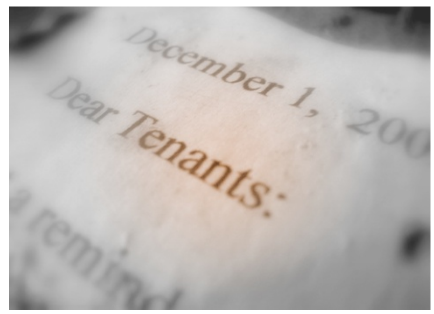
The main objectives of a real estate manager are to operate and maintain all aspects of properties on the owner's behalf; carry out all landlord responsibilities as per various leases and administer the provisions of the lease, insure that the obligations of both sides in the lease are consistently and accurately met, per the terms of the lease document; ensure that all provisions of the covenants, conditions and restrictions are carried out by all parties subject to the documents; and maximize the value of the investment for the property.

The real estate manager is the conduit between the owner and the tenants of the property. The manager represents the owner in dealing with the tenants and insulates the owner from having to deal with the day-to- day operation of the property.

It is the manager's job to ensure that the tenants are able to function in a safe, secure, and clean environment. The manager's professional training, knowledge of the "best practices" and existing laws and codes, all help to ensure that the owner's position is properly represented and the tenants' obligations under the lease, are satisfactorily met. Contracts for the many products and services that are necessary to effectively run a property are prepared and administered by the real estate manager.

The real estate manager is accountable for the efficient handling of rents, billings, and expenses that directly impact the successful financial operation of the property. Annual budget development and regular financial reporting, delineating actual performance compared to budget, are of paramount importance to the property owner. This allows the owner to have complete financial knowledge of the success of his investment. Financial reporting can be handled electronically through the Internet, allowing the owner continual monitoring of the manager's accounting activities.

A tenant retention program is developed and maintained by the real estate manager. The tenant retention program starts when a potential tenant first shows interest in becoming a building occupant and continues until that tenant has relinquished its tenancy in the building. A solid retention program put in place by the real estate manager will cause quality firms to want to become tenants in the property and to continue their tenancy long after their initial lease has been renewed.



There is an old axiom in real estate management that it is much cheaper to retain a good, quality tenant than it is to have a tenant vacate and then have to find another tenant to take their place. This is a very true statement, and it is the responsibility of the real estate manager to ensure that he is operating the owner's property as efficiently as possible, while maintaining the highest level of tenant loyalty and satisfaction.

The negotiation of leases should include the involvement of the real estate manager, whether directly or in a supporting role to the leasing team. Generally, the real estate manager has the best knowledge of his existing tenants, their demands, needs for larger or smaller spaces, their payment history with the building, etc. Most often it is the real estate manager who can best handle the renewal of an existing lease, ensuring that the needs of the tenant are met, while the property owner's financial objectives are achieved. Real estate managers are responsible for all actions that involve or influence the properties he manages.

Real estate managers are responsible for the following:

a. Planning — Creating a budget and innovative management plan that describes the anticipated operation of the property during the next year.

b. Organizing — Organizing the operations of the property to produce expected results. Establishing performance goals for the on-site managers and other supervisory personnel so that each job is directed, with teamwork toward the objectives of the management plan.

c. Staffing — Selecting, training, and motivating on-site personnel.

d. Directing — Providing administrative support to on-site personnel who have the responsibility for the day-to-day operation of the property.

e. Controlling — Overseeing collection of income and the management of expenses so as to produce the maximum economic benefit to the property.

f. Analyzing — Analyzing the operating results of the property in relationship to its management plan and making recommendations for adjustments to the plan as needed.

g. Communicating — Keeping owners advised of significant operational problems and deviations from the management plan.

Specific Responsibilities

- Ensure all funds due landlord are received in a timely manner including minimum rent, percentage rent, impounds, real estate taxes, insurance premiums, common area maintenance and late charges.
- Maintain quality tenant relations between management and tenants.
- Ensure that good relations exist between the merchants and that each merchant does not disturb his neighbor's right to quiet enjoyment.
- Respond to all tenant and customer complaints regarding center operations or lease administration and keep detailed chronological notes regarding these items.
- Keep tenants informed of all major repair work planned at the property, such as painting or resealing the parking lot.
- Maintain community relations between each property and the community.
- Interface with government officials, legal counsel, insurance companies, and merchant associations.
- Encourage cooperative advertising among merchants and represent landlord in this regard.
- Preserve the general well-being of the center.
- Approve all invoices and expenditures for property maintenance and repairs.
- Prepare annual management plan and detailed budgets for income and expense of each property and adjust tenants' impounds, as necessary.
- Calculate each tenant's pro rata share of tax liability and bill major tenants accordingly.

- Ensure that the assessment of real estate values by the County Assessor's office is reasonable for each parcel of property. If assessment is determined to be unreasonable, to protest taxes requesting re-evaluation.
- Maintain files on real estate tax assessments, bills, and correspondence.
- Prepare the calculation of year-end adjustments of impound accounts.
- Obtain a record for property summary of gross sales reports (if a retail establishment).
- Monitor trends in figures submitted on gross sales reports and take appropriate action, if necessary.
- Interpret all leases and prepare lease abstracts.
- Re-negotiate leases with existing tenants and prepare leases for signature.
- Review, modify, and prepare for signature all equipment waivers submitted by tenants.
- Assist the brokerage in leasing efforts, such as putting up leasing signs, reviewing leases before they are sent out, and making suggestions regarding tenant mix, etc.
- Post notices of non-responsibility on new tenant's premises. Prepare and serve Notice to Pay Rent or Quit.
- Enforce the use clause of each lease.
- Ensure that tenants comply with all insurance recommendations by insurance carriers.
- Monitor the collection of insurance certificates from tenants.
- Handle and submit to insurance carriers all claims by customers who have sustained damage while in the common area.
- Maintain the security of the customers in the common area.
- Monitor and control all activities in common areas, including sidewalk sales, activities by outside groups, employee parking, Christmas tree sales, abandoned cars, etc.
- Certify air conditioning units to be in good working order for new tenants, if necessary.

- Approve all sign renderings submitted by new tenants on existing properties.
- Supervise the maintenance and repair of the building and common areas of each property, including, but not limited to, sweeping, lighting, pest control, asphalt maintenance, striping, painting, refuse, landscaping, public restrooms, etc. This involves hiring and firing of contractors and negotiation of maintenance contracts.
- Maintain management files on all maintenance and repair aspects for each property.
- Maintain chronological record books of all projects, actions, etc.
- Handle all calls from new contractors soliciting work.
- Ensure that general contractors honor their warranties.
- Maintain vacant spaces at the property, including window washing, checking for roof leaks, sewer gas prevention, etc.
- Ensure that tenants leave spaces in an acceptable condition at the end of their lease term.
- In the event a property is sold, obtain estoppel certificates from each tenant and assist in the transfer of the management and lease records to the new owner.
- Keep owner informed of operations and provide monthly financial reports in accordance with needs of owner.
- Review with owner, on a periodic basis, the status of each property.

Communication between Manager and Owner

"Real estate managers create value"

The Internet has simplified the ability to communicate between the property owner and management. Financial statements, photos, and reporting can be completed in real time. Communication and understanding the objectives of the owner are critical. It is important for the management company to have associates on their staff who are bilingual and speak and write in the language of the investor.

Reporting

The real estate manager submits monthly status reports to the client. In property management, the reports not only have to be accurate, since they concern other people's money, but they must be timely as well.

Types of Reports

Monthly Summary

The monthly summary is a narrative report that summarizes the events of the past month. It comments on vacancies, delinquencies, major expenditures, budget variances, and any major problems occurring on the property.

Balance Sheet

A record of assets and liabilities for the property is presented on the Balance Sheet.

Income and Expense Report

This type of report shows a summary of rents collected and operating expenses by category (maintenance and repair, salaries, taxes, insurance, etc.). The difference between income and expense is identified as net operating income (NOI). If a loan payment is included in the report, it becomes a cash-flow statement.

Only the interest, and not the principal of a mortgage payment, is deductible on income taxes. This report also includes year-to-date summaries and comparison percentages of expense items to income collected.

Income – Expenses = Net Operating Income (NOI) – Debt Service = Cash Flow

Budget Comparison Report

The Budget Comparison Report compares the actual income and expense costs compared to the budget on a monthly, quarterly, and annual basis.

Check Register

A check register is a list of checks that includes the check date, payee, and amount.

Rent Roll

The Rent Roll lists all units in a building and provides information regarding the current tenants who occupy those units. Information is broken down by each individual tenant and includes: square footage per unit, name of the tenant, monthly charges, lease term, security deposit on hand, and accounts receivable balance.

Security Deposit Balance

The Security Deposit Balance (liability) is also shown on the Security Deposit Report. This report includes all security deposits on hand, including deposits for any former tenants. For accounting purposes, Security Deposits funds are considered liabilities and are reflected as such on the Balance Sheet. In some states, these funds must be kept separate from the property operating account funds.

Aged Delinquency Report

The Aged Delinquency Report reflects amounts billed that remain outstanding (unpaid) for each tenant at a point in time. It is sorted by tenant and provides detail of each charge, along with the total owed by each tenant. It groups outstanding charges based on the number of days past due.

Vacancy Report

The Vacancy Report provides a list of units that remain unoccupied. These vacant units will also show as vacant on the Rent Roll. This report may provide the following information regarding the unit: number of days vacant, current market rent, and historical rent obtained.

Summary

When investing in commercial real estate in the United States, the role of the real estate management professional cannot be overemphasized. It is imperative for the investor to have a quality, well-trained, well-staffed real estate management team that will effectively represent the investor’s position. The care and handling of one’s investment in real property cannot be passive. A competent management team is what is needed to ensure the investment is a long-term success for the investor.

Chapter 9

SELECTION OF AN INVESTMENT

Investors should give careful consideration to the type of investment and consider how the investment fits into their long-term business strategy. As an example, if the investor is in the manufacturing business, it would be logical to concentrate on the investment of industrial properties as the investor would have basic knowledge of this product type and comfort level. Other investors may have an interest in the purchase of retail, office, residential improved real estate or vacant land.

The following is a brief introduction of types of investment properties:

Residential Properties

Residential properties are not as complex as commercial properties; however, a due diligence period is warranted for such services as a home inspection, termite inspection, building structure review, pool inspection and any other service that is deemed necessary to satisfy the buyer's needs. Typical due diligence periods run five to fifteen working days from the acceptance of the sales contract. The length of the due diligence period is negotiable between buyer and seller. One of the most important investments a person will make is a residence, which may be a primary, secondary, or vacation home. In addition to the normal expenses of utilities and general maintenance, there are a few other costs that may not be familiar to the Asian buyer.

Condominium

Real Estate Taxes. In most states, property taxes are paid annually, usually in two installments due in April and November. In some cases, the lender will collect the property tax from a buyer each month along with the mortgage payment and will make the tax payment to the taxing authority when due. In California property tax is approximately 1.2% of the value of the real property.

Home Owners Insurance. Insurance is required if the home is encumbered by a mortgage; and like taxes, the premium may be collected by the lender and paid annually. Insurance would normally cover losses due to fire, burglary, or visitors who may be injured on your property.

Homeowners Associations. It is not uncommon in new developments, especially in urban areas, that the property being considered for purchase may belong to a home owner's association. In this situation, you and your neighbors share in the expenses, such as common area landscaping, a community swimming pool, building insurance, general maintenance, and management. The homeowner's association fees vary.

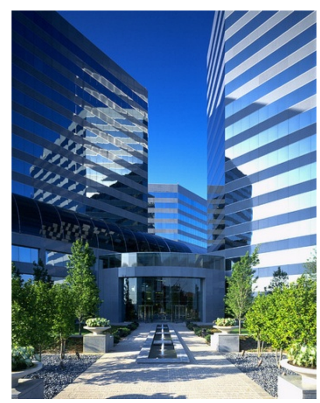
It is always a good idea to inspect the neighborhood both during the day and at night to confirm that there is not a concern with such items as noise, crime, parking, or traffic.

Single Family Home

During the due diligence period the buyer may wish to request any of the following:

1. An independent home inspection
2. A natural hazard disclosure report
3. An environmental hazards and disclosure report
4. An insurance loss history report
5. A review of all building permits for the address
6. Home Owner's Association Rules and Regulations

The Office Building



Office Building

An office building can be defined as a property that provides facilities (space) to a tenant engaged in services (legal, accounting) rather than a location where goods are sold (shopping center) or manufactured (industrial building). An investor needs to review the past history of the property and make allowances for increase in the cost of power consumption, tenant improvement expenditures, and expense to lease vacant space.

Supply and Demand

Developers build office space dependent on two types of demand.

1. Space-created demand. Typically, developers build only when the vacancy rate drops below 7 percent or when they anticipate a declining vacancy.
2. Money-created demand. Developers build because lenders have money to lend. The availability of money for their projects encourages developers to proceed with development. This results in high

vacancy rates as it ignores basic principles of supply and demand.

Desirability

Why are some office buildings at full occupancy with high rental rates while others are half empty at bargain-basement rents? The answer is "desirability and good management." Office desirability is divided into four categories or grades. The grades are achieved by ranking 12 criteria.

1. What are the benefits of the location? Based more on prestige than geographic area.
2. What are the benefits of the neighborhood? Based on appearance and upkeep of other buildings in the surrounding area.
3. Transportation. Are freeways and rapid transit systems convenient?
4. Prestige of building. Does the reputation of the tenants enhance the building and vice versa?
5. Appearance. Does the building have an attractive façade and entrance (so-called "curb appeal") which enhances an older building?
6. Lobby. Is it clean, neat, and cheerful? Is the directory neat and organized?
7. Elevators. Are they conveniently located? Are they clean? Are they high-speed?
8. Corridors. Are the colors and design coordinated? Are they cheerfully decorated and well- lighted?
9. Office interiors. Do offices have window views, good column spacing, and sufficient ceiling height?
10. Tenant mix. What is the reputation of the tenants (i.e., attorneys, CPAs, etc.)? Are their services compatible?
11. Tenant services. Are the janitorial and security services of high quality? Does the building have built-in telecommunications?

Retail – Shopping Centers

Shopping centers are a relatively new phenomenon and did not have a dominant presence until after World War II.

More than 42,000 shopping centers exist in the United States, which represents a 15-fold increase in the last three decades. California leads the way in malls with over 5,300; Florida has over 3,000; Texas, over 2,800; and New York has approximately 1,550 to round out the top five states.

Shopping center retail sales are approximately $950 billion per year and account for 55 percent of all nonautomotive retail sales. Leasable space totaled 5 billion square feet, (which equates to over 18 square feet **(**or 1.69 square meters) of retail space for every United States resident.

Shopping Center Classifications

Strip Center

1. Strip centers are small in size, consisting of several stores.
2. Strip centers are usually laid out in a straight line, L, or U shape.
3. Strip center trading area is usually the immediate neighborhood.
4. Strip centers frequently have a convenience store as a typical anchor tenant.
5. The function of the strip center is to provide convenient and accessible one-stop shopping.
6. The focus of a strip center is strictly on location and community convenience.

Strip Center

Neighborhood Center

1. Neighborhood centers are normally 25,000 to 125,000 square feet in size
2. A neighborhood center normally has one anchor (main) tenant such as a supermarket or discount store.
3. The trade area for a neighborhood center is usually up to two miles.

Neighborhood Center

Community Center

1. The typical size of a community center is 125,000 to 300,000 square feet
2. A community center contains two or more anchors such as a home improvement store, junior department store, discount store, variety store, or supermarket.
3. The trade area is usually over three miles.

Regional Center

1. The size of a regional center is up to 1,000,000 square feet.
2. A regional center normally contains apparel, jewelry, and one or two department stores.
3. The trade area for a regional center is over five miles.
4. A regional center is often an enclosed mall.

Super-Regional Center

1. A super-regional center is over 1,000,000 square feet.

2. Super-regional centers are usually built as an enclosed mall.
3. Super-regional centers contain at least three department stores.
4. A super-regional center features specialty women's and men's apparel stores and specialty shops of all kinds.
5. A super-regional center usually contains fast-food locations and one or more restaurants.
6. Super-regional malls frequently contain community or cultural centers; i.e., library, music center, etc.
7. The trade area for a super-regional center is 15 miles or more.

Super-Regional Center

Specialty Center

1. A specialty center is usually small in size with a maximum of 100,000 square feet.
2. Specialty centers do not have an anchor or large tenant.
3. A specialty center contains unique stores and boutiques.
4. A specialty center may contain one or more restaurants.
5. Specialty centers are usually located near high-income areas or major tourist attraction centers.

Other Centers

Promotional, off-price, discount, factory outlet, and "power" centers which flourish through heavy advertising and low prices that produce high-volume dollar sales are a growing trend.

Marketing Retail Space

The marketing of a new center must start at project conception. Prospective anchor (key) tenants must be convinced that the proposed or existing site will offer sufficient retail sales potential. Unless commitments from anchor tenants are obtained prior to development, financing the project will be difficult.

Trade Area

The trade area is the area from which 70 to 80 percent of the typical retail sales will be attracted. A regional center usually needs a primary trade area of at least 150,000 in population. Driving time must usually be less than 20 minutes, depending on the proximity to competing centers and the customer loyalty to certain stores.

Topographical factors, including rivers, mountains, airports, and railroad tracks, may be a barrier to the trade area. A major center may also have a secondary trade area from which customers are attracted. This area may extend 30 to 50 miles and have a driving time of up to one hour.

Populations and Income Data

Population multiplied by per-capita income equals total income for each census tract. Adding up the census tracts in the trade area gives total area income.

Retail Sales and Income

Because a close correlation normally exists between personal income and the percentage of income spent in retail sales, total retail sales are derived by multiplying the trade-area income by the ratio of retail sales to personal income.

This demographic analysis can sometimes be misleading. Psychographic analysis may determine, for example, that the trade area is a well-established, conservative, “old money” community that spends less than normal ratios for retail merchandise. Also, proximity to a tourist attraction or vacation resort may contribute many additional shoppers not reflected in demographic studies of permanent residents.

Market Share

The market share should be based on estimates of both existing and projected competition. New centers usually do not create increased buying power but reallocate expenditures among existing businesses. A leakage or displaced sales from the trade area into other trade areas can occur.

Tenant Mix

Shopping centers, even more so than office buildings, need to have a balanced, predetermined tenant makeup. The three characteristics that matter most to owners and tenants in a shopping center are traffic, traffic, and more traffic. A good tenant mix helps attract and retain customers. The goal of a good tenant mix is having a variety of stores that work well together to enhance the performance of the entire center as well as the success of each individual store. The key is determining what types of tenants work well and have a symbiotic relationship.

When determining the tenant mix, the real estate manager starts with location, competition, and customer base. These factors determine the center’s orientation, and the property manager then pursues appropriate anchor and satellite stores that complement each other. For example, desirable satellite tenants for a neighborhood center with a supermarket as the anchor tenant might include a florist, stationery or gift store, barber or beauty shop, dry cleaner, pizza parlor, and so on. This would be called a “needs-based center.” Research shows that clothes shopping is usually done on a separate shopping trip from needs-based shopping. In a “fashion center,” complementary stores would include shoe stores, men’s and women’s apparel stores, children’s stores, and accessory stores.

For a regional center with a major department store as the anchor, desirable complementary tenants would include women’s and men’s apparel stores, jewelry stores, specialty gift shops, and so on. The rental rate per square foot is usually higher in a regional center than in a smaller center, so in addition to being complementary, the tenants must have either higher markups on their goods or higher sales volumes in order to afford mall space. Regional centers tend to focus on fashion and apparel. Specialty businesses such as furniture stores may wish to cluster together to benefit from a wider draw. While two florists in a center would vie for business, certain retail uses benefit from proximity to one another, such as clothing, shoe, and jewelry stores.

Tenant Selection

If tenant selection is poor, the center loses money in lost rents and also suffers from a loss of goodwill and image. Empty or boarded-up stores that have gone bankrupt or out of business can stigmatize other merchants. Additional information can be obtained from *Dollars and Cents of Shopping Centers*, published by the Urban Land Institute, Washington, D.C.

Layout of Shopping Centers

When a center is designed, the physical layout should reflect the types of merchants and customers it hopes to attract. Shopping should be a fun, exciting, and convenient event. The developer, owner, and property manager should try to evoke those feelings in the layout of the center.

Power Centers

A recent trend is toward power centers in which each retailer is a dominant merchant in its merchandising area. These are called category killers and would include such names as Toys R Us and Home Depot. Such centers may contain four or five large anchors and only a few small tenants. The term power center comes from the ability to attract customers from a much wider radius than similarly-sized community shopping centers.

Space Planning

Undesirable “bowling alley” centers exist when the developer tries to maximize floor space by making long, narrow retail spaces. Such designs eliminate the large window display space desired by tenants and usually create wasted space in the rear of the stores.

Hide-and-seek spaces located around corners or behind columns are also undesirable to the merchant and confusing for the customer.

Enclosed malls are very desirable and almost a necessity for the regional center today. Lighting, flooring, and décor should be coordinated to make the mall cheerful and bright.

Layout Measurements

Space is usually measured from the center of each wall, except freestanding spaces, which are measured to the outside of the outer wall. Some developers measure from the end of the eaves or overhang. The real estate manager should be familiar with the space sizes and how they were measured.

Rental Rates

Rental rates for retail commercial space vary depending on location. The location of retail enterprises depends on the need for traffic, either foot or vehicular. For example, it has been customary for banks to be located in the high-rent, prime space of the first floor. In today's society, with the advent of checks and credit cards, the majority of banking transactions are done by mail, courier, phone, or computer and no longer require physical pedestrian traffic to a bank. Thus, some banks are locating in less-desirable locations, such as the second floor of downtown office buildings, in order to reduce rental costs.

Common Area Maintenance

Common-area maintenance (CAM) charges are expense reimbursement, paid by the tenant to the property owner, for maintaining, improving, and supplying common areas in a retail strip or mall. These costs include taxes, security services, insurance, repairs, landscaping, utilities, and so forth, and are charged back to the tenant. The concept of CAM is that the manager and tenant need to act in a partnership in order for both to be successful. Each tenant relies on other tenants and a clean, cheerful center to generate consumer traffic and contribute to the overall success of the shared environment. CAM costs can range from $.10 per square foot to over $2.00 per square foot per month. The tenant must be aware of and budget for these costs, which are added to the base rent. From the owner's position, being able to pass on these CAM costs and any increases ensures profitability on the lease.

Industrial

Industrial Building Characteristics

The trend of the United States economy has been away from manufacturing and toward more service-oriented industries. Even though industrial property includes all land and facilities used for heavy and light manufacturing, today's emphasis is related to the storage and distribution of goods. Throughout history, most industrial buildings have been owned and managed by the occupant manufacturer who endeavored to locate close to the source of raw materials.

As the trend changed from the production of goods and toward that of services, the size of industrial buildings changed. Newer facilities became single-story as opposed to multistoried. Locations were found closer to freeways and employee sources rather than to raw materials. Modern building layouts became more streamlined, and automated handling of goods by forklift and pallet became common practice. Many of the new buildings were conveniently located in industrial parks rather than on single-entity sites.

Industrial Building

Classification of Industry by Locational Orientation

There are six basic categories of industry.

1. Market-oriented-finished products are sold directly to consumers; for example, food, beverages, electronics, and printing. Locations tend to be close to population centers in order to reduce transportation costs.
2. Raw materials and resource-oriented companies that fall into this category need to be close to sources of raw materials to reduce transportation costs; for instance, aluminum, steel, and grain elevators.
3. Transportation-oriented companies in which freight, storage, and inventory costs are a major influence.
4. Labor intensity-oriented where labor rates and productivity are dominant factors. This can range from furniture assembly requiring cheap, unskilled labor, to high-tech computer assembly requiring highly skilled technicians.
5. Energy-oriented companies that use large amounts of fuel, such as electricity and coal, tend to be located near their sources to reduce costs.
6. Nondescript-oriented companies that do not fall into the other five categories, such as transportation, labor costs, or raw materials are not dominant, and these companies can locate in most areas. These companies are sometimes lured by tax incentives to certain communities.

An assessment of a proposed project or activity must be made to determine whether it will have significant environmental effects on the man-made or natural environment. Some significant environmental effects are as follows:

1. The displacing of existing homeowners or tenants, and

2. The altering or disrupting of a scenic, recreational, or historical sites,
3. The altering or disrupting of air or water quality,
4. The changing of land use or the causing of traffic congestion, and
5. The threatening or endangering of rare animals or plants

In order to comply with environmental quality laws, the developer may be required to undertake mitigation measures such as dedicating park land, building roads, or having an archaeologist on site during grading.

Multifamily Residential

Approximately 35 percent of the U.S. population rents the home in which they live. The key to the success of an apartment community is its proximity to jobs and transportation, along with attractive pricing, and professional property management. It is common for rental agreements to be month to month or one year in duration,

Garden Apartments

Garden apartments are usually spread-out, low-rise (two to three story), walk-up apartments containing one-and two-bedroom units. They are of low density (25 units per acre) and located mostly in the suburbs due to lower land costs. The main characteristics of garden apartments include amenities such as pools, tennis courts, ample parking, recreation rooms, extensive landscaping, central laundries, and individual air-conditioning. Garden apartments are usually individually metered.

Garden Apartment

Mid-Rise

Mid-rise apartments are usually found on the edge of urban areas and are of medium density. These apartments usually have elevators and can be four to nine stories in height. More often, these buildings are being developed in the suburbs as a result of high land cost in the urban areas. The main characteristics of the mid-rise include parking structures, central lobby areas, pools, recreation or exercise rooms, and central air-conditioning.

High-Rise

High-rise apartments are usually found in major metropolitan areas where land costs are very high and high density is a resulting necessity. They have the highest density per acre. The main characteristics of the high-rise include elevators, central air-conditioning, security, and swimming pools. The size can exceed 25 stories. Prestigious locations and views are extremely important as many of these buildings are marketed as luxury apartments.

Other Types

Other types of residential buildings include duplexes, triplexes, walk-up apartments, and single-family rental houses. In these types of properties typically there is no on-site manager due to cost considerations. Management is therefore difficult and time consuming.

Classifications of Apartment Buildings

Investors and lenders are now classifying apartment buildings into four basic types.

1) Class A apartment buildings are generally larger buildings and include newer buildings in prime areas with amenities such as garages, in-unit washer/dryers, pools, spas, exercise gyms, etc. They are usually owned by institutions.
2) Class B apartment buildings are located in good areas with many amenities, but not as nice as Class A buildings and usually over 10 years old.
3) Class C apartment buildings are older buildings that are well maintained, in blue-collar areas. Square footage in units may be smaller; have fewer amenities than Class B buildings.
4) Class D apartment buildings are older buildings in marginal areas with higher vacancies, deferred maintenance. The unit mix has more efficiency units with few, if any, amenities.

High-Rise Apartment

Chapter 10

LEASING

"Everything is an expense until vacant space is leased." One of the major functions of a real estate manager is to rent and lease the property for the owner. The manager must then be familiar with the duties, rights, and terminology involved in leasing. Successful leasing enhances appreciation and value. The manager may be involved either directly, as the leasing agent, or as a supervisor over independent leasing agents. In either case, a firm knowledge of leases and their effect on the property is mandatory.

Historically, leases have been drawn by attorneys or a Counselor of Real Estate. These documents should be reviewed periodically to confirm they reflect updates and changes in the law and business practice. The property manager is given authority through the management agreement and can usually sign leases and rental agreements as an agent on behalf of the owner.

Types of Leasehold Estates

Estate for years

An estate for years is an agreement between a lessor (owner) and lessee (tenant) for a fixed period of time. The estate for years has a specific beginning and ending date. If the term is for more than one year, the lease agreement must be in writing. As the length of time on a commercial lease may be for several years, a very detailed lease agreement frequently is used.

Estate at Sufferance

An estate at sufferance occurs when a tenant holds over (stays) on the premises after the lease has expired or after the tenant has been given notice to vacate. If the landlord or manager accepts rental payments, the lease will revert to a periodic tenancy. The period of such tenancy will usually be month to month, or in some cases for the period of time between rental payments that are specified in the original lease.

Estate from Period to Period

A periodic tenancy is most commonly referred to as a month-to-month rental agreement and is used primarily for residential properties or for small commercial spaces. The periodic tenancy has no specific ending date and can be terminated by either party giving notice usually equal to the period of time between rental payments.

Types of Leases

Gross Lease

Under a gross lease, the tenant pays the owner a fixed monthly rental sum that may include the landlord's taxes, as well as the costs of maintenance, insurance, and utilities in the gross fee. This is the common form of residential lease as maintenance and repairs are part of habitability which cannot be delegated to the tenant by the owner. It also is frequently used for small commercial sites when the lease term is for short periods of time and the lessor and lessee desire a simpler form of rental payment. A definite advantage accrues to the tenant in that the predetermined rent can be budgeted without worrying about increases in building maintenance costs.

Net Lease

Under a net lease, the tenant pays a minimum rental rate and then pays a prorated share of taxes, insurance, and maintenance. A single net lease refers to the tenant paying one of the above-mentioned items. A double net would pay for two of the above costs and triple net is whereby the tenant would pay for all three expenses of taxes, insurance and maintenance. Frequently, the lease will specify that the tenant pay for professional management or a percentage for supervision of the billings in addition to the common area charges. This supervision fee can accrue to the property management firm as part of its management fee. Sometimes this additional fee is referred to as a quadruple net lease. Because of the residential habitability issue, net leases refer to commercial leases and are not used in residential management.

Percentage Lease

Under a percentage lease, the tenant pays the higher of either a minimum base rent or a percentage of total sales each month. Used in larger shopping centers, it is primarily a retail lease. Nowhere else is the partnership relationship between the owner and tenant more evident than in a percentage lease.

A successful tenant will contribute to the shopping center being successful along with financial rewards for the property owner.

While the percentage lease is used primarily with large, national tenants, it is helpful in charting the success of small tenants. The required percentage sales reports help the manager chart the success of the tenant. Are sales going up or down? What effect does a particular tenant have on the others? What sort of rental increase can be affected? Should the lease be renewed?

Another major consideration when writing a percentage lease should be the assignable use. The expected rent from a major supermarket could be adversely affected if assignment is made to another use that produces lower monthly sales and does not draw in large numbers of shoppers to the center.

Requirements of a Valid Lease

Lease and rental agreements vary in size and content. The requirements for a valid lease are similar to those for a valid contract. Both parties must have legal capacity to enter into a mutual agreement that is legal in nature. The items listed below outline the specifics with which the property manager should be familiar.

1. **Description of property**. The property manager should indicate address, a plot plan, and a layout diagram when needed to adequately describe the space.
2. **Names of parties**. Both lessor and lessee must be named. If a corporation is a party to the lease, a corporate resolution may be necessary to validate the lease. As lessor, it may be prudent to require a "personal guarantee" from a corporate officer when dealing with small or individually owned corporations.
3. **Signature**. The signature of all parties should be obtained. Payment of rent and taking possession is sometimes considered sufficient acceptance. Common sense dictates, however, that all parties sign and be knowledgeable of the lease contents.
4. **Written agreement**. This is required for terms of over one year, but a property manager would be prudent to have all rental and lease agreements in writing.
5. **Term of lease**. The term of the lease should specify the duration. Automatic renewal options, if any, should be in bold type.
6. **Rental rate**. The rental rate and accelerations, thereof, should be specified along with payment dates and the location where the rent should be paid.
7. **Legal purpose**. The "use" of the lease must be legal in nature.
8. **Competence of parties**. Individuals must be over 18 years of age and competent to negotiate.

General Considerations:

"If a property looks successful it will be successful"

The Marketing Survey

The success of a property in meeting the goals and objectives set forth by either the property manager or owner depends primarily on the quality of the tenants occupying the property. Each building is unique and will attract different types of tenants. The property manager must examine the property to determine its strengths and weaknesses, along with highest and best use, before a management plan can be written for operating the property.

Location
Location is always paramount in real estate. If an office building is near the courthouse, it will attract attorneys as clients. A hospital-proximate building has a distinct advantage in attracting physician tenants. Location is the key to most investment success and the most important factor in the purchase decision.

Appearance
Appearance cannot be underestimated as people like to live and work in nice surroundings. Banks and institutions like to be located in prestigious, high-image buildings. An apartment building that is not well maintained will not attract renters who can afford to pay more for a “nice” place to live.

Government
Restrictive zoning and parking requirements for office/retail use could deter potential tenants. On the other hand, being next to a well-used bus line or in a city, which has good police, fire protection, and schools, is a plus.

Demographics
Where are your tenants coming from? If near a freeway interchange, your office building will attract sales-oriented businesses or companies that need easy transportation access for their employees. If an apartment building is located in a depressed area, it will be difficult to attract good tenants.

Competition
Who and where is your competition? What are their rental rates and incentive programs (e.g., free rent, free parking)?

Vacancy Rate
What is the vacancy rate in your area? The local apartment association and investment brokers for both commercial and residential are good sources of information.

Amenities

Does your property provide services and features not provided by the competition? Rental rates cannot be compared without taking a survey to determine how your amenities stack up compared to those of the competition.

Tenant Mix

The tenant mix is important in retaining and attracting new tenants. The property manager must be careful not to discriminate on the basis of race, age, religion, sex, nation of origin, or handicap.

Management

Potential tenants are attracted to a well-managed building. Are the lobbies, elevators, and restrooms clean? Is management responsive to tenant questions and problems and maintenance reports?

Measuring the Building

The two most common methods of measuring building size are those developed by Building Owners and Managers Association International (BOMA) and Institute of Real Estate Management (IREM).

Gross Area of Entire Building

This is the total sum of the areas of each floor, including lobbies and corridors, within the outside faces of the exterior walls.

Gross Rentable Area

The gross rentable area includes all areas within the outside walls, less pipe shafts, vertical ducts, elevator shafts, balconies, and stairs.

Net Rentable Area

The net rentable area is computed by deducting the following from gross rentable area: public corridors, washrooms, janitorial and electrical closets, air-conditioning rooms, and other rooms or areas not available to the tenant and the tenant's employees.

Setting the Rent Schedule

When setting the rent schedule, the property manager must take into account the criteria for ranking the building, additional amenities, general economic conditions, and the owner's break-even point.

Market Survey

The property manager should conduct a market survey of the competition. The rental rate measure most commonly used is "cost per square foot." On the West Coast, this is usually quoted on a monthly basis, but in other parts of the country it is annualized. For example, if the rent is $4,000 per month on 2,500 square feet of space, on the West Coast, the quoted rate would be $1.60 per square foot, per month. The rate in the East would be twelve months times $1.60 or an annualized rate of $19.20 per square foot. The cost is really the same; the only difference is in the semantics.

Break-Even Analysis

A break-even analysis determines the minimum rent needed to pay all of the building's expenses and costs, as well as the owner's expected return. The formula to calculate the break-even rent is as follows:

Break even rent = expenses + mortgage + return on the investment ÷ square feet of rentable area

Tenant Selection

The selection of commercial tenants is different from and can be much more important than the selection of residential tenants due the long term of the leases and the large rental rates that are involved. A mistake can be very expensive.

Major Tenants

Major tenants can be checked by using Dun & Bradstreet (D&B) reports and ratings, contacting tenant's bank account managers, and checking with tenant's vendors and landlords at other locations. Also, copies of tenant financial statements can be obtained and analyzed.

Small Tenants

Small tenants usually are not rated and may not have other locations. With smaller tenants, look more to the individuals than the business. Run credit reports on their personal credit histories. Also contact their banks and vendors. Additionally, ask for business plans (verbal or written) to ascertain their goals and objectives. To ensure rent payment, the property manager should in some cases ask for a "personal guarantee", much as a bank does, if the entity is a corporation. The property manager should obtain written permission from the prospective tenant before checking credit to avoid violating privacy laws.

Residential

Market Analysis

The property manager and on-site manager must know the geographic area, competition, schools, transportation, population, and income statistics. Rental value, except in areas of rent control, is determined by supply and demand. Supply and demand is determined by ascertaining the vacancy rate within the market area. Under uninfluenced supply and demand, rents will increase until prospective renters can find a cheaper form of housing (purchase, doubling up with family or friends, etc.).Shopping competitive properties is one of the best methods of analyzing the market.

The Rental Agreement

As with credit application, we recommend a standard form for the rental agreement. Both credit application and rental agreement should be signed and dated.

The rental agreement lists the parties, terms, and conditions of the rental. There may be clauses in the agreement, such as prohibiting a renter from having pets or a waterbed without prior written consent of the landlord or manager. The rental agreement should be signed and dated with a copy given to the resident. Waiver of resident rights are prohibited, and even if included in the agreement, are invalid. Residential landlords must retain rental applications and eviction records for two years. Also, landlords must retain rental records until a final determination of any discrimination case has been made. Property managers, however, must keep records in compliance with their state Department of Real Estate regulations.

Sample Residential Rental Application:

RENTAL APPLICATION

Page 1 of 2

Thank you for applying to rent with us. Please provide us with all the information requested below. Incomplete information only delays the processing of your Rental Application. **PLEASE PRINT CLEARLY.**

OCCUPANT

NAME ______ (First) ______ (Middle) ______ (Last) ______ (Jr., Sr., I, II) DATE OF BIRTH ______ (Mo / Yr. / Day)

DAYTIME PHONE ______ (Home) ______ (Work) SOC. SEC. # ______

SPOUSE ______ (First) ______ (Middle) ______ (Last) SOC. SEC. # ______ DATE OF BIRTH ______ (Mo / Yr. / Day)

FULL NAME (ALL OTHERS)	AGE	RELATIONSHIP

RENTAL HISTORY

PLEASE LIST YOUR RENTAL HISTORY FOR NO LESS THAN ONE YEAR:

1) CURRENT ADDRESS ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

OWNER/MGR. ______ (Full Name) ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

MORTGAGE CO. (IF OWNED) ______ (Name) ______ (Address) ______ (Loan Number)

FROM ______ (Mo/Yr) TO ______ (Mo/Yr) AMT RENT PAID ______ OWNER/MGR OR MORTGAGE CO. ______ (Area Code & Phone Number)

REASON FOR LEAVING ______

2) PREVIOUS ADDRESS ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

OWNER/MGR. ______ (Full Name) ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

MORTGAGE CO. (IF OWNED) ______ (Name) ______ (Address) ______ (Loan Number)

FROM ______ (Mo/Yr) TO ______ (Mo/Yr) AMT RENT PAID ______ OWNER/MGR OR MORTGAGE CO. ______ (Area Code & Phone Number)

REASON FOR LEAVING ______

3) PRIOR ADDRESS ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

OWNER/MGR. ______ (Full Name) ______ (Number) ______ (Street) ______ (Apt. No.) ______ (City) ______ (State) ______ (Zip)

MORTGAGE CO. (IF OWNED) ______ (Name) ______ (Address) ______ (Loan Number)

FROM ______ (Mo/Yr) TO ______ (Mo/Yr) AMT RENT PAID ______ OWNER/MGR OR MORTGAGE CO. ______ (Area Code & Phone Number)

REASON FOR LEAVING ______

EMPLOYMENT

CURRENT EMPLOYER ______ (Company Name) ADDRESS ______ (Street) ______ (City) ______ (State) ______ (Zip)

GROSS MONTHLY SALARY ______ POSITION ______ HOW LONG? ______ (Mo / Yr)

SUPERVISOR ______ (Full Name) ______ (Position) ______ (Area Code & Phone Number)

MILITARY (SEPARATION DATE) ______ RANK ______ RATE ______ BAQ: YES ____ NO ____ COM RATS: YES ____

FULL MILITARY COMMAND ______

SPOUSE'S EMPLOYER ______ (Company Name) ADDRESS ______ (Street) ______ (City) ______ (State) ______ (Zip)

GROSS MONTHLY SALARY ______ POSITION ______ HOW LONG? ______ (Mo / Yr)

SUPERVISOR ______ (Full Name) ______ (Position) ______ (Area Code & Phone Number)

BANK

BANK (CHECKING) ______ (Bank Name) ______ (Branch) ______ (City) ______ (Phone) ______ (Account No.)

BANK (SAVINGS) ______ (Bank Name) ______ (Branch) ______ (City) ______ (Phone) ______ (Account No.)

CREDIT UNION ______ (Bank Name) ______ (Branch) ______ (City) ______ (Phone) ______ (Account No.)

The information on this application is true and correct to the best of my knowledge. I hereby authorize ______ or its agents to verify the above information and obtain either a consumer or investigative credit report. I understand that the $ ______ fee for verifying this rental application is not a deposit or rent and will not be applied to future rent, or refunded, even if this application to rent is declined.

NOTE: ALL APPLICANTS MUST SIGN BELOW

______ DATE ______

______ DATE ______

Sample Residential Lease Agreement:

RESIDENTIAL LEASE

This is a legally binding agreement — read it carefully before signing.

____

owner/owner's authorized agent (hereinafter referred to as "LESSOR") agrees to rent/lease to

____

____

____

(hereinafter "LESSEE"), and LESSEE, jointly and severally, agree to lease from LESSOR the premises located at

____

____

and any designated common areas immediately adjacent thereto.

1. TERM: This lease shall take effect on ______________________, 20 __________ , and continue: (check one)

A. _____ for a fixed term until ______________________, 20 __________. Thereafter it shall become a month-to-month tenancy, unless proper notice to terminate or renew is served pursuant to paragraph 13 of this Lease.

B. _____ on a month-to-month basis until terminated by either party by serving the other party proper written notice of intention to terminate at least 30 days prior to the date of termination.

LESSEE is responsible for payment of all rents due during the term of this Lease.

2. RENT: Base rent shall be $ __________ per month, payable in advance, along with any Additional Rents described below, on the __________ day of each month.

Additional Rents: ______________________________

____

____

Changes to the above rents, if any, may occur upon proper 30-day notice to LESSEE from LESSOR.

Payments of rent and other charges are to be made at:

____

____

or at such other place as may be designated in writing by LESSOR. Cash will not be accepted. A $______________ service charge will be applied to all LESSEE checks returned by the bank for any reason whatsoever.

_____ Initial

3. LATE CHARGE: Tenant acknowledges that late payment of rent may cause landlord to incur costs and expenses, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs may include, but are not limited to, processing and accounting expenses, late charges that may be imposed on landlord by terms of any loan secured by the property, costs for additional attempts to collect rent, and the preparation of notices. Therefore, if any installment of rent due from tenant is not received by landlord within _____ calendar days after due date, tenant shall pay to landlord an additional sum of $__________ as a late charge which shall be deemed as additional rent. The parties agree that this late charge represents a fair and reasonable estimate of the costs that landlord may incur by reason of tenant's late payments. Acceptance of any late charge shall not constitute a waiver of tenant's default with respect to the past due amount, or prevent landlord from exercising any other rights and remedies under this agreement and/or as provided by law.

_____ Initial

4. SECURITY DEPOSIT: LESSEE has deposited $________________ as a deposit to secure LESSEE's full compliance with all the terms and conditions of this Lease. Said security deposit shall be held interest free by LESSOR during the term of this Lease. Upon 30 days notice from LESSOR, LESSEE agrees to increase the deposit by an amount equal to any future increases in rent, or any amounts necessary to reimburse LESSOR for expenses or costs incurred by LESSEE's breach of this Lease, including the costs of enforcing the terms and conditions of this Lease, or owed to LESSOR under the terms of this Lease. Upon termination of this Lease, the full amount of the security deposit will be refunded or accounted for pursuant to California Civil Code Section 1950.5.

5. OCCUPANTS: Only the LESSEES named in this Lease and the individuals named below may occupy the premises without prior written consent of the LESSOR.

____

____

____

Guest(s) staying more than 15 days without the written consent of LESSOR shall constitute a material breach of this Lease.

6. PETS: No pets or animals of any kind may be kept on or visit the premises, except: ______________________________

Any breach of this condition shall be considered a material breach of this Lease.

7. USE: The premises are rented for residential use only. LESSEE shall not violate any Governmental law in the use of the premises, commit waste or nuisance, annoy, molest or interfere with any other tenant, neighbor, or person on the premises, or cause or allow any noise or activity on the premises or its common areas which might disturb the peace and quiet of other tenants or neighbors.

8. UTILITIES: LESSEE agrees to pay for all utilities used by the premises except ______________________________

9. LESSEE's HOUSEHOLD BELONGINGS: None of the following items shall be kept or stored on or about the premises: water-filled furniture; any receptacle containing more than ten gallons of liquid; highly combustible materials; item(s) of unusual weight or dimension; or any item which may represent a danger to lives or property, or which may adversely affect LESSOR's insurance rates. Should LESSOR consent in writing to accept any item otherwise restricted by this paragraph, that consent can later be withdrawn upon 30-day written notice. In the event such consent is given, LESSOR may require payment of additional rents and security deposits and/or proof of specific insurance in an amount satisfactory to LESSOR.

10. PARKING: If any parking space(s) are designated for LESSEE's use on LESSOR's property, they are to be used exclusively for parking LESSEE's passenger automobiles and/or other vehicles as listed on LESSEE's Rental Application and approved by LESSOR. Said space(s) shall not be used for the washing, painting, or repair of vehicles. No other parking space(s) shall be used by LESSEE. LESSEE is responsible for oil leaks and other vehicle discharges and for any cleaning thereof deemed necessary by LESSOR. Guests may not park in spaces designated for tenants only.

11. CONDITION OF PREMISES: LESSEE acknowledges that he has inspected the premises, furnishings and equipment, if applicable, and has found them to be in satisfactory condition. All plumbing, heating and electrical units are operative. All furniture, if any, as inventoried on the attachment hereto as page __________ and incorporated herein by reference, has been inspected by LESSEE and found to be in satisfactory condition. LESSEE agrees to keep the premises and all items mentioned in this paragraph in good order and condition, and to immediately pay for any damage caused by LESSEE, his guests and/or invitee.

12. ALTERATION AND IMPROVEMENTS: LESSEE agrees not to make any alteration of, or make or add any improvement of any kind to the premises without LESSOR's written consent.

13. TERMINATION: If this Lease is for a fixed term, it will terminate automatically at the end of the term specified in paragraph 1. Any extension or renewal thereof must be agreed to by LESSOR in writing at least 30 days before termination of this Lease. If this is a month-to-month Lease, it can be terminated by either party serving upon the other proper 30 day written notice.

14. POSSESSION: LESSEE takes possession of the premises as of the effective date specified in paragraph 1 of this Lease, and shall be considered to continue in possession until all areas, including storage areas, are clear of LESSEE's belongings, and all keys and other property furnished for LESSEE's use are returned to LESSOR. LESSEE is responsible for all rents due and payable under the terms of this Lease and cannot avoid that responsibility by vacating the premises prior to the proper termination of the Lease.

15. RIGHT OF ENTRY AND INSPECTION: LESSOR may enter, inspect and/or repair the premises at any time in case of emergency or suspected abandonment. In other cases, LESSOR shall give 24 hours advance notice and may enter during normal business hours in order to show the premises to prospective renters, buyers, lenders, for smoke alarm inspections, for normal inspections and repairs, or any other legitimate purpose.

16. ASSIGNMENT AND SUBLETTING: No portion of the premises may be sublet, and this Lease may not be assigned without LESSOR's prior written consent.

17. ATTORNEY's FEES: If any legal action or proceeding be brought by either party to this agreement, the prevailing party shall be reimbursed for all reasonable attorney's fees and costs in addition to other damages awarded.

18. NOTICES: All notices to LESSEE shall be served at the premises specified in this Lease, and all notices to LESSOR shall be served at

____ .

19. NOTICE: PURSUANT TO CIVIL CODE, SECTION 1785.26, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT RECORD MAY BE SUBMITTED IN THE FUTURE TO A CREDIT REPORTING AGENCY, IF YOU FAIL TO FULFILL THE TERMS OF YOUR RENTAL/CREDIT OBLIGATIONS IN ANY WAY. THIS IS THE ONLY NOTICE THAT YOU WILL RECEIVE IN THIS REGARD.

______ Initial

20. LIABILITY: Resident agrees to hold harmless and indemnify and defend Owner and its agents from all claims or loss for damage to property and injury or debt to persons caused by the negligent or intentional acts of Resident, his children, guests or invitees, occurring on or within the premises and/or property.

21. PERSONAL PROPERTY: All items of personal property placed by Resident in any apartment or public or private storeroom within the property are so placed at Resident's sole risk, and Owner shall have no liability for any loss or damage of or to said property whatsoever. Owner does not insure personal property of the Resident. It is recommended that Resident secure insurance on household goods.

______ Initial

22. RULES AND REGULATIONS: Tenant agrees to comply with all CC&R's, By-Laws, reasonable rules or regulations, decisions of owners associations and/or the landlord which are at any time posted on the premises or delivered to tenant, and tenant further agrees to be liable for any fines or charges levied due to violations thereof.

23. The undersigned LESSEEs, whether or not in actual possession of the premises, are jointly and severally liable for all rent incurred during the term of this Lease, and for all damages to the premises caused or permitted by LESSEEs, their guests and invitees.

24. ADDITIONAL PROVISIONS: LESSOR AND LESSEE further agree as specified below:

____

____

____

EXECUTED on the day, month, and year first above written.

______________________ LESSOR	______________________ LESSEE
______________________ By Authorizing Agent	______________________ LESSEE
______________________	______________________ LESSEE

REFERENCES

Page 2 of 2

FAMILY ____
Full Name Number Street

____
City State Relationship Phone

____
City State Relationship Phone

EMERGENCY ____
Full Name Relationship Phone

PETS ____
Number Description

WATER-FILLED FURNITURE ____
Description

AUTOMOBILES/MOTORCYCLES/BOATS TO BE PARKED ON PREMISES:

____
Make Model Year License Number

____
Make Model Year License Number

HAVE YOU EVER BEEN DELINQUENT IN PAYMENT OF YOUR RENT OR ANY OTHER FINANCIAL OBLIGATION? IF YES, PLEASE EXPLAIN:

____

____

HAVE YOU EVER BEEN A DEFENDANT IN AN UNLAWFUL DETAINER (EVICTION) LAWSUIT OR DEFAULTED (FAILED TO PERFORM) AN OBLIGATION OF A RENTAL AGREEMENT OR LEASE? IF YES, PLEASE EXPLAIN: ______________________

____

____

OPTION TO RENT

The undersigned wishes to rent the property located at ____ and has made the above application in connection thereof. The Landlord hereby grants the undersigned an option to rent said property in return for the payment of $ __________ which will be credited to the first month's rent or returned if the applicant is not accepted as a resident. It is understood that said amount is separate and distinct from any sum paid to the landlord for any verification of the rental application. If applicant is accepted as a resident and subsequently does not move in on the starting date for tenancy, the amount received is hereby acknowledged as liquidated damages for non-performance and will be forfeited by the applicant as compensation for holding the apartment off the rental market.

____
Applicant

____
Applicant

NOTE TO MANAGER: Verify driver's license number and advise applicants to authorize employers, banks, and landlords to release all relevant information.

APPLICANT______________________________ D/L# ______________

APPLICANT______________________________ D/L# ______________

VERIFICATION RESULTS - FOR OFFICE USE ONLY

INVOICE # ______________ RESULTS ______________ DATE ______________

REMARKS ____

____

MOVE IN DATE __________ UNIT # __________ UNIT TYPE __________ RENT __________

NOT ACCEPTED: REASON ____

ADVISE APPLICANTS ____

Chapter 11

TAXATION

Treatment of Income

1. Active. This is income actually earned, including wages, tips, salaries, bonuses, etc.
2. Portfolio. This includes interest, annuities, dividends, and royalty income.
3. Passive. The Omnibus Budget Reconciliation Act (OBRA) of 1993 eased the passive activity loss (PAL) rules for those in the real property business for tax years beginning January 1, 1994. All rental activity is now always classified as passive, even if it's the investor's sole business activity. These passive losses are suspended and carried forward until disposition of the property. Under new rules (OBRA), a taxpayer can deduct losses from rental activities against non-passive as well as passive income if the taxpayer is in one or more real property business and the taxpayer materially participates. The term real property business includes most real property "trades or businesses," such as construction, rental, management, leasing, brokerage, acquisition, conversion, etc. The requirements for material participation include the following:

Other Tax Changes

1. Capital gains: on assets held more than one year, the tax rate remains unchanged at 15 percent.
2. 1031 tax-deferred exchange rules. These were left in their existing format. This will result in more sellers considering exchanges rather than selling in the future
3. Property tax**.** A tax levied by local governments, assessed on property owned, such as real estate that is based on the value of property. Property tax on real estate is the main source of financing for local governments and school districts.
4. State Income Tax. An income tax is levied by each individual state. Some states choose to impose no income tax (Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming). Most

states have a progressive income tax, where the rate rises as income gets larger. State income taxes are levied in addition to the Federal income tax. Some state income taxes are deductible for Federal tax purposes.

Examples of state taxes:

- Hawaii –The State Income Tax rate ranges from 1.40% to 8.25% and is based on income and filing status.
- California –State Income Tax rates begin at 1% for the first $6,827 of taxable income and rise to 9.3% for incomes at $44,814 and above. In 2005, California added a mental health tax of 1% on incomes greater than $1,000,000, making the marginal income tax rate in California 10.3% at the extreme income ranges

5. Federal Income Tax. A tax levied by the United States Internal Revenue Service (IRS) on the annual earnings of individuals, corporations, trusts and other legal entities. Federal income taxes are applied on all forms of earnings which comprise a taxpayer's taxable income, such as employment earnings or capital gains. Federal tax rates range from 10% to 35% and are based on income and filing status.
6. Capital Gain or Capital Loss. The difference between the amounts you sell a capital asset for and your purchase price.
7. Capital Gains Tax. Tax assessed by the IRS on profits realized from the sale of a capital asset, such as real estate. While you must report all capital gains, you may deduct only capital losses on investment property, not personal property. Appreciated assets sold for a gain after being held for less than a year receive the least favorable capital gains tax treatment.

Chapter 12

LEGAL OWNERSHIP

Types of Ownership

Individual Ownership. These are assets owned in a person's sole name, without any other owners. The individual owner has sole control over disposition of the property and is the sole recipient of any benefits or income, such as rent.

Corporation. A legal entity that is separate and distinct from its owners. Corporations enjoy most of the rights and responsibilities that an individual possesses; that is, a corporation has the right to enter into contracts, loan and borrow money, sue and be sued, hire employees, own assets and pay taxes. The most important aspect of a corporation is limited liability. Shareholders have the right to participate in the profits, through dividends and/or the appreciation of stock, but are not held personally liable for the company's debts.

Limited Liability Company. A company in which shareholders limit their liability exposure to their percentage of ownership or equity interest in the company. Shareholders' personal assets are protected in the event of business-related lawsuits. The tax situation for this type of company is much like that of the partnership in that it acts as a pass-through tax entity. A tax return for a partnership is filed with the IRS for information purposes only. All income and expenses are attributed to the stockholders of the LLC. According to the LLC agreement, the stockholders can allocate income and its resultant tax liability the same way as partners in a partnership.

Chapter 13

UNITED STATES VISA OPPORTUNITIES

EB-5 Visa

The EB-5 Visa for Immigrant Investors is a United States visa created by the Immigration Act of 1990. This visa provides a method to obtain a green card for foreign nationals who invest money in the United States. To obtain the visa, individuals must invest at least $1,000,000 USD, creating at least 10 jobs. By investing in certain regional centers with high unemployment rates, the required investment amount is only $500,000. The Immigrant Investor Pilot Program was created by Section 610 of Public Law 102-395 on October 6, 1992. This was in accordance with a Congressional mandate aimed at stimulating economic activity and job growth, while allowing eligible aliens the opportunity to become lawful permanent residents. This "Pilot Program" required only $500,000 of investment in exchange for permanent resident status. The investment could only be received by an economic unit defined as a Regional Center.

A Regional Center is defined as an economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. Prior law required the investment in the Regional Center to generate an increase in export sales; however, statutory amendments in 2000 and 2002 no longer require this increase. The individual receiving the visa is not required to actively manage the business investment. For investors who wish to invest in a new or existing business, have an active role in the management of the operation, and have at least one million US dollars to invest, then the traditional EB-5 visa is the best option. But for those who would prefer a passive role in the management of their investment, do not wish to be involved in the creation of the 10 U.S. full time jobs, and would rather limit their investment to $500,000 USD, then the Regional Center, or EB-5 Pilot Program is the better immigration option.

L-1 Intra-Company Transferee Visa

The L-1 intra-company transferee visa allows executives, managers, and employees with specialized skills to transfer from the foreign company to a U.S. office, subsidiary, or affiliated company to perform temporary services. L-1 visas are granted initially for one to three years with extensions available in three-year increments, with a total stay not to exceed seven years.

To qualify for an L-1 visa you must have been employed outside the U.S. as a manager, executive, or person with specialized knowledge for at least one out of the past three years, and you are to be transferred to the U.S. to be employed in a similar position. The U.S. company to which you are transferring must be a branch, subsidiary, affiliate, or joint venture partner of your non-U.S. employer. The non-U.S. company must remain in operation while you have the L-1 visa. A non-U.S. company is a company that is physically located outside the U.S. Such a company may well be a foreign division of an American-based business or it may have originated in a country outside the U.S. Either one fits our definition of a non-U.S. company.

L-2 Dependent Visa

The spouse and dependent children under 21 can obtain an L2 Visa. They are allowed to reside in the U.S. for the duration of the L-1 visa holder's authorized duration of stay. L2 visa holders can work in the United States once they are physically present in U.S., with EAD (work authorization) approved from the USCIS.

Chapter 14

SUMMARY

“Twenty years from now you will be more disappointed in what you did not do than what you did do. Cast away from the safe harbor and explore.” Mark Twain

In the 20st century the growth and cultural influence in the United States was mainly from Europe with the focus on the East Coast of the U.S. In the 21st century the United States will experience a much closer alliance with the countries of Asia. The western United States will grow as a partial result of immigration and increase in trade from the across the Pacific Ocean.

California’s population is projected to grow 75% in the next 40 years. The demand for existing improved real estate will continue to increase in value. There is very little vacant land in Southern California that is easily developable. Residential property will increase in value as cost of construction and land increases.

It is estimated that 10 million visitors from the People’s Republic of China will be visiting the United States by 2020 in addition to additional tourists from Korea, Japan, and Vietnam. Hotel properties near tourist destination areas will be in demand in California and Hawaii.

Development of real estate near the ocean or inland lakes will be difficult due to environmental concerns. The result will be increase in land values, especially for developed properties or those with governmental entitlements in place.

Investment in the United States real estate is a good hedge against inflation and brings opportunity for property owners.

INVEST U.S.A.

The REMM Group and REMM Pacific give their appreciation to the following people for their assistance with this book:

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