

**COMMERCIAL
REAL ESTATE**

FINANCING





THE NUTS AND BOLTS OF COMMERCIAL REAL ESTATE FINANCING: FROM PURCHASE AGREEMENT TO LOAN DOCUMENTS & CLOSING

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MAY 11, 2018

STAGNARO, SABA & PATTERSON Co., L.P.A.

- ▶ Full Service Law Firm
 - ▶ Business Entities/Commercial Transactions
 - ▶ Real Estate
 - ▶ Estate Planning/Probate Administration
 - ▶ Commercial/Tort Litigation
 - ▶ Labor/Employment/Workers' Compensation

THE FINE PRINT...

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OVERVIEW OF TODAY'S PRESENTATION

- ▶ Purchase Agreement, Related Acquisition Issues & Due Diligence
- ▶ Acquisition Closing Documents
- ▶ Organizational / Authority Documents
- ▶ Loan Agreement / Promissory Note
- ▶ Security Documents, Perfection and Priority

Purchase Agreement, Related Acquisition Issues & Due Diligence



Purchase Agreement, Related Acquisition Issues & Due Diligence



- ▶ PSAs
 - ▶ Types of PSAs
 - ▶ Amendments/Assignments
- ▶ Acquisition Issues
 - ▶ Leases / Zoning
- ▶ Due Diligence
 - ▶ Title / Survey

Purchase Agreement, Related Acquisition Issues & Due Diligence

- ▶ Real Estate only
- ▶ Non-real property assets (business, personal or intangible assets)
- ▶ Hybrid
 - ▶ Contemporaneous Closing?

Purchase Agreement, Related Acquisition Issues & Due Diligence

▶ Amendments and Assignments

- ▶ Physical Inspection
- ▶ Approvals (Govt, Franchisor, Zoning, Etc.)
- ▶ Assignment
 - ▶ 1031 Exchange
 - ▶ Operating Co. & RE Holding Leaseback
 - ▶ Assuming Agreements/Leases

A pair of glasses and a pen resting on a wooden desk next to a document titled 'Commercial I'.

Purchase Agreement, Related Acquisition Issues & Due Diligence

- ▶ Leases
 - ▶ Subleases
 - ▶ Recorded?
- ▶ Rent Rolls
- ▶ SNDA's
- ▶ Estoppels

Purchase Agreement, Related Acquisition Issues & Due Diligence

- ▶ Zoning
 - ▶ Reports
 - ▶ Certifications
 - ▶ Letters
- ▶ Variance/Approvals



Purchase Agreement, Related Acquisition Issues & Due Diligence

- ▶ Title & Survey
 - ▶ Vendors/Initial Reports
 - ▶ Review & Commitment
 - ▶ Requirements from Lender?
 - ▶ Proforma & Policy

Acquisition Closing Documents



Acquisition Closing Documents

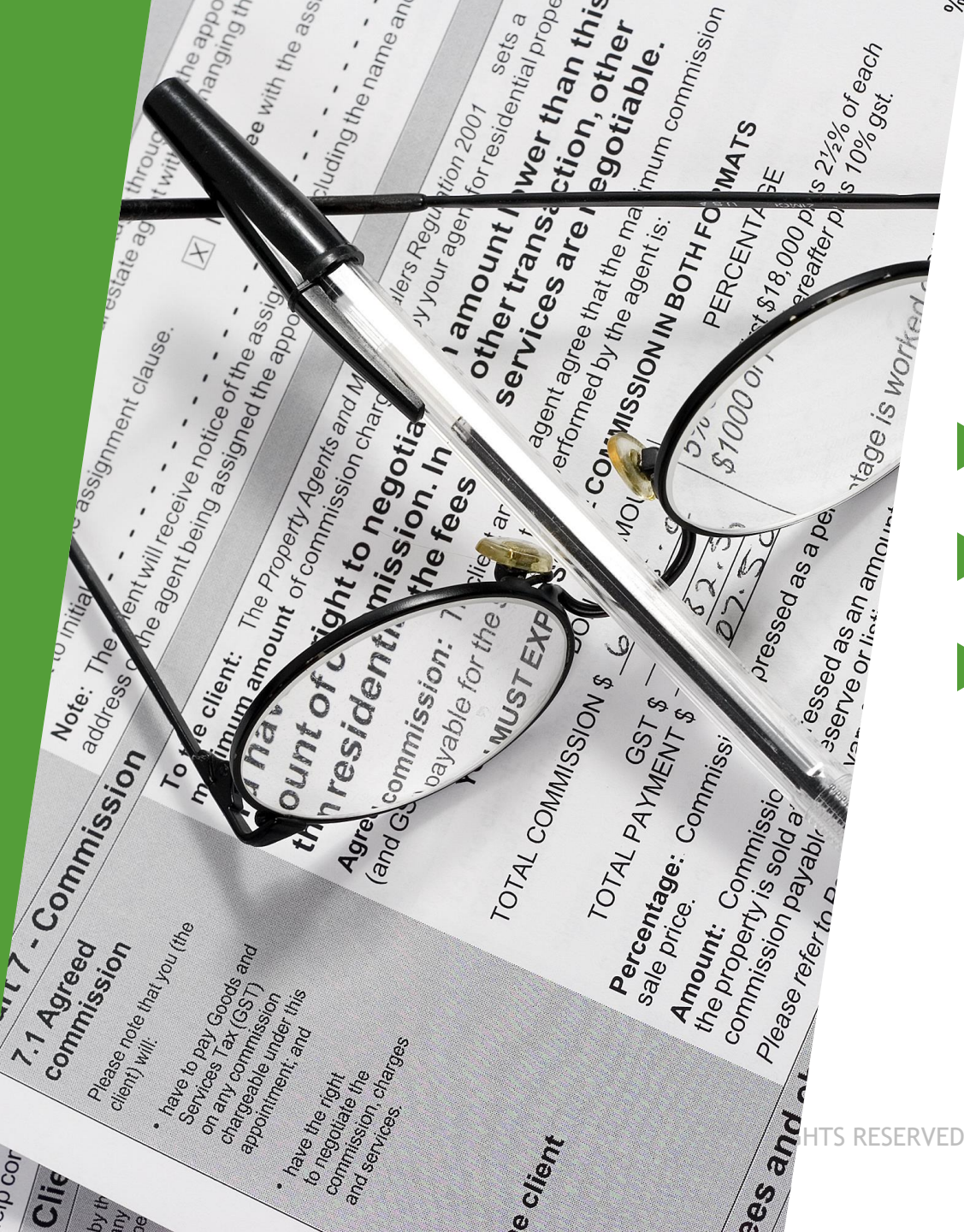
- ▶ Deeds
- ▶ Bill of Sale
- ▶ Assignment/Assumption of Leases
 - ▶ Indemnity?
- ▶ General Assignments

A blurred background image of a business meeting. In the foreground, a person's hands are visible, holding a tablet and pointing at a document on a table. The document contains charts and graphs. In the background, two people are shaking hands, suggesting a successful deal or agreement. The overall scene is brightly lit with warm, golden light.

Acquisition Closing Documents

▶ Payoffs and Releases

- ▶ Mortgage/AOR
- ▶ Tax Liens & CJs
- ▶ Broker/Mechanics



Acquisition Closing Documents

- ▶ Closing Statements
- ▶ Title Affidavit
- ▶ Tax Proration

Organizational / Authority Documents



Organizational / Authority Documents

- ▶ State Filed Documents
 - ▶ Articles
 - ▶ Good Standing
 - ▶ Certificates



Organizational / Authority Documents

- ▶ Manager's/Secretary's Certificates
 - ▶ By-Laws/Operating/Partnership Agreement
 - ▶ Authorizing Résolutions
 - ▶ Borrowing & Purchase/Sale
 - ▶ Tax ID/EIN/W-9



Organizational / Authority Documents

- ▶ Trusts
 - ▶ Certificates
 - ▶ Memorandums
 - ▶ Affidavits

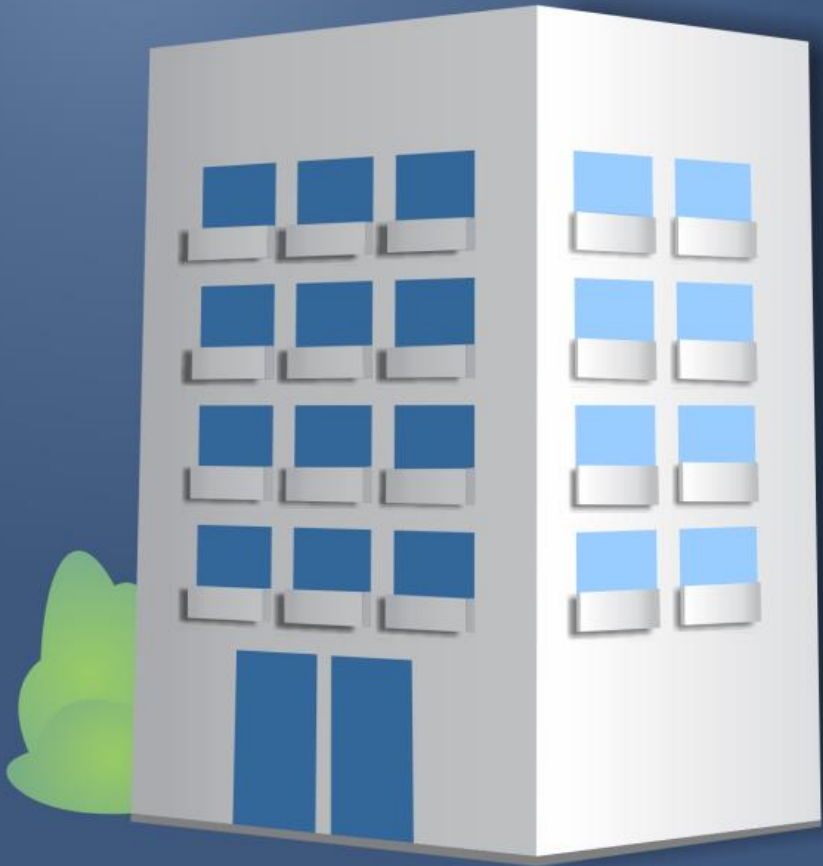
Loan Agreement / Promissory Note



PROMISSORY NOTE

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COMMERCIAL REAL ESTATE



Loan Agreement / Promissory Note

- ▶ Purpose
 - ▶ Acquisition
 - ▶ Construction
 - ▶ Refinance



Loan Agreement / Promissory Note

- ▶ Conditions Precedent
- ▶ Requirements



Loan Agreement / Promissory Note

- ▶ Covenants
- ▶ Financial Reporting
- ▶ Reps & Warranties

Loan Agreement / Promissory Note

- ▶ Payment Terms

- ▶ Int. Only / P&I / P+I

Loan Agreement / Promissory Note

► P&I (“Blended”)

Principal: \$100,000.00
Interest rate: 5.00%
Payment interval: Monthly
Number of payments: 12
Blended monthly payment: \$8,560.75

Schedule of payments (slight rounding differences)

Month	Payment	Principal	Interest	Balance
1	8,560.75	8,144.08	416.67	91,855.92
2	8,560.75	8,178.02	382.73	83,677.90
3	8,560.75	8,212.09	348.66	75,465.81
4	8,560.75	8,246.31	314.44	67,219.50
5	8,560.75	8,280.67	280.08	58,938.83
6	8,560.75	8,315.17	245.58	50,623.66
7	8,560.75	8,349.82	210.93	42,273.84
8	8,560.75	8,384.61	176.14	33,889.23
9	8,560.75	8,419.54	141.21	25,469.69
10	8,560.75	8,454.63	106.12	17,015.06
11	8,560.75	8,489.85	70.9	8,525.21
12	8,560.73	8,525.21	35.52	0.00
Total	\$ 102,728.98	\$ 100,000.00	\$ 2,728.98	0.00

Loan Agreement / Promissory Note

► P Plus I

Principal: \$100,000.00
Interest rate: 5.00%
Payment interval: Monthly
Number of payments: 12
Blended monthly payment: \$8,560.75

Schedule of payments (slight rounding differences)

Month	Payment	Principal	Interest	Balance
1	8,732.64	8,333.33	399.31	91,666.67
2	8,697.91	8,333.33	364.58	83,333.34
3	8,663.19	8,333.33	329.86	75,000.01
4	8,628.47	8,333.33	295.14	66,666.68
5	8,593.75	8,333.33	260.42	58,333.35
6	8,559.02	8,333.33	225.69	50,000.02
7	8,524.30	8,333.33	190.97	41,666.69
8	8,489.58	8,333.33	156.25	33,333.36
9	8,454.86	8,333.33	121.53	25,000.03
10	8,420.14	8,333.33	86.81	16,666.70
11	8,385.41	8,333.33	52.08	8,333.37
12	8,350.69	8,333.33	17.36	0.04
Total	\$ 102,499.96	\$ 100,000.00	\$ 2,500.00	0.00

Loan Agreement / Promissory Note

▶ Interest Rates

- ▶ Fixed

- ▶ Variable

 - ▶ Prime

 - ▶ Libor

 - ▶ “Libor Funeral Set for 2021 as FCA Abandons Scandal-Tarred Rate” - Bloomberg, July 27, 2017

Loan Agreement / Promissory Note

- ▶ Libor Phase Out 2021?
- ▶ UK Fin. Con . Auth. Not requiring banks to continue to submit
- ▶ April, 2018 - NY Fed. proposes 3 alternatives:
 - ▶ Secured Overnight Financing Rate (SOFR)
 - ▶ Broad General Collateral Rate (BGCR)
 - ▶ Tri-Party General Collateral Rate (TGCR)
- ▶ Existing Loans - Check!
- ▶ New Loans - Other Rate or Contemplate!



Loan Agreement / Promissory Note

- ▶ Yield Protection
 - ▶ If any change in law/regulations imposes upon Lender any charges, changes to remain/become compliant, etc.
 - ▶ Borrower will compensate Lender
 - ▶ Only proposed changes?
 - ▶ Equal Treatment?

Loan Agreement / Promissory Note

- ▶ Amortization
- ▶ Maturity



**Loan
Amortiz**

Loan Agreement / Promissory Note

- ▶ Default
- ▶ Rights and Remedies (Cognovit)



Security Documents, Perfection and Priority

Security Documents, Perfection and Priority

► Mortgage and AOR

Security Documents, Perfection and Priority

Security Agreements and UCC filings





Security Documents, Perfection and Priority

- ▶ Pledges
- ▶ Control
Agreements
- ▶ Collateral
Assignments
- ▶ Other Documents

Security Documents, Perfection and Priority

▶ Guarantees

- ▶ Personal vs. Corporate
- ▶ Payment / Performance
- ▶ Limited / Full
- ▶ Indemnity from other non-guarantor owners?

Security Documents, Perfection and Priority

► Waivers and Subordinations

Questions?

Our Presenters Today

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