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Working Out Mortgage Loans and B Notes

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I. Common Split Mortgage Loan and Subordinate Debt Structures

A. Whole Mortgage Loan (See “Exhibit A”)

   1. A mortgage loan is a loan from a lender to a borrower, the repayment of which is secured by a lien on the borrower’s interest in real property

   2. A “whole” mortgage loan is a mortgage loan which is evidenced by a single promissory note and which has not been otherwise “split” into different lender interests

B. Split Mortgage Loan

   1. A “split” mortgage loan is a mortgage loan which either is evidenced by more than one promissory note or which has been otherwise “split” into different lender interests

   2. The most common types of split mortgage loans:

      a. Pari passu loans
      b. A/B loans
      c. Non-CMBS syndicated loans

C. Pari Passu Loan Structure (See “Exhibit B”)

   1. A “pari passu” loan structure is a mortgage loan structure where the mortgage loan is evidenced by two (or more) separate promissory notes, each executed by the borrower and secured by the same collateral

   2. It is sometimes referred to as an “A/A” loan structure

   3. Primary elements of the pari passu loan structure:

      a. Evidenced by more than one promissory note
      b. Payments on the notes are made pro rata and pari passu to the A-1 and A-2 Note holders
      c. Losses are borne pro rata and pari passu by the A-1 and A-2 Note holders
      d. Each pari passu A Note can be sold into a separate securitization
      e. The pari passu loan structure is similar to the typical “syndicated loan” structure, but the rights given to the holders of the notes in a CMBS pari passu loan are typically different from those in a syndicated loan
f. Control over the servicing of the whole loan (all of the pari passu notes) typically resides in the master servicer and special servicer for the first pari passu note securitization

g. Advancing may be handled in a variety of ways

D. A/B Loan Structure (See “Exhibit C”)

1. Primary elements of the A/B loan structure:
   a. An A/B loan is a mortgage loan evidenced by two separate promissory notes, each executed by the borrower, and each secured by the same collateral
   b. The A Note is generally senior to the B Note in rights to payment of principal and interest

E. Variations of the A/B Loan Structure

1. A-1/A-2/B – pari passu senior notes and one or more subordinate notes
2. A/B/C – multiple subordinate notes
3. A/B with mezzanine – one or more subordinate notes, with additional structurally subordinate mezzanine loans made to the parent or parents of the mortgage borrower

F. Economic Terms of A/B Loan Structure

1. The A and B Notes have a senior / subordinate payment structure
2. The A Note holder is paid interest and principal first
3. The B Note holder is paid interest and principal second
4. Other:
   a. the B Note serves as “credit support” for the A Note
   b. In light of the B Note’s subordination and higher risk, the yield on the B Note is typically higher than the yield on the A Note

G. Allocation of Payments in the A/B Loan Structure

1. The priority of payments between the A Note and the B Note is referred to as the “waterfall”: 