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real estate REPORT

Understanding Joint Ventures and Funds

Recognizing the differences in the two investment structures can help investors and legal practitioners understand a counterparty's perspective.

By Sally Davis and Walter McCabe



Joint ventures and fund arrangements are two frequently used structures that coexist at opposite sides of the commercial real estate investment world. They share a common goal of providing a vehicle through which to invest in real estate assets and to enable a sponsor to acquire, manage, and ultimately dispose of assets on the investors' behalf - but they take different approaches to achieving that goal. While a JV agreement and a fund agreement will both contain similar concepts (for example, capitalization, decision-making, economics, indemnification, and removal rights), each structure handles these concepts

fundamentally differently. For investors and legal practitioners who often invest and work within just one of these structures, undertaking a transaction in the other may be challenging, in part due to lack of familiarity with the native norms and customs. Think of traveling to a different country where you don't speak the language.

But in the ever-evolving world of commercial real estate investment, these two structures continue to overlap in new ways, such as club deals, funds of one, programmatic JVs, and JVs with fund conversion features.

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New Listings



2,550 SF

NEW Office Sale - 127 Kim Acres Drive, Mechanicsburg

- 2,550 SF single-story brick office/retail building with an open floorplan, excellent parking, and good access to Route 11/15
- The property is well kept and on a corner location
- 26+/- Parking spaces available



1.03 Acres

NEW Land Sale - Kim Acres and Aspen Drive, Mechanicsburg

- Over one acre of land in a rapid growth area with a lot of new development
- Great for office and professional uses situated just off the PA Route 114/US Route 15 interchange
- Area is populated with affluent, upper middle class neighborhoods and is continuing to expand
- Perfect location for an all-night diner or small restaurant with Messiah College and Messiah Village being so close to this location



790 SF

NEW Office Lease - 3780 Trindle Road, 2nd Floor, Camp Hill

- 790 SF centrally located property along Trindle Road with great visibility and excellent access
- Second floor suite, above prestigious Mount Jewelers, features three offices and a reception area
- Very well-maintained property



30,112 SF

NEW Commercial Sale - 25 & 33 Carlisle Street, Hanover

- 30,112 SF stunning landmark in the Borough of Hanover
- This former bank building was beautifully constructed with great attention to detail and has been well-maintained throughout its years
- The adjacent (and connecting) office building is also included in the sale

Industrial Listing



1,394 SF

Sale - 140 - 148 Ole Lane, Grantville

- This nearly 1,400 SF industrial building sits on over 2 acres of paved parking
- Perfect for a trucking company or industrial user needing quick access to I-81
- Parking availability for 60+/- cars and trailers

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With these hybrid deals, some investors and legal practitioners face difficulty in translating from JV to fund (and vice versa). Below, we focus on a few key provisions found in both structures and discuss the different approaches to each.

Capitalization: A JV investor will often have discretion over some of or all the capital contribution amount (for example, the JV investor will commit to purchase an initial asset, and then any additional capital contributions following acquisition of the asset would be subject to approval). Fund investors, on the other hand, will typically agree to a capital commitment upfront, from which capital can be called by the sponsor for any/all purposes during the investment period. For example, there is no uncommitted or discretionary funding concept as in the JV. If a JV investor fails to fund a capital contribution, it may be subject to dilution and/or enable the other funding investor or sponsor to make a loan in the amount of the non-funding investor's owed contribution. In the fund context, remedies a fund sponsor may exercise for failure to fund will often be much more draconian, including withholding of distributions, elimination of voting rights, and/or a forced sale or forfeiture of the non-funding investor's position in the fund.

"For example, there is no uncommitted or discretionary funding concept as in the JV. If a JV investor fails to fund a capital contribution, it may be subject to dilution and/or enable the other funding investor or sponsor to make a loan in the amount of the non-funding investor's owed contribution."

Acquiring Assets and Decision-Making: In the JV context, an investor will likely have approval rights over new investments, including any significant add-ons. For funds, so long as a new asset meets agreed-upon investment criteria and strategy (which often are broadly defined), a fund investor will typically not have approval rights and the sponsor will be freely entitled to call from committed capital to fund such investment. Similarly, a JV investor will typically have approval rights over other major decisions relating to investments, although the number and scope of those decisions will vary across JVs, as opposed to a fund where it's not typical for investors to have approval rights over major decisions.

Indemnification: A JV sponsor will be entitled to indemnification from the JV, subject to a fair number of carve-outs for a broad range of so-called bad acts for which there is no exculpation or indemnity, such as gross negligence, willful misconduct, and breach of the agreement. Also, a JV sponsor will typically be required to come out of pocket and carry its own insurance to fund its defense costs, which are subject to reimbursement if a court ultimately finds in its favor.

A fund sponsor will similarly be entitled to indemnification from the fund, but such indemnification will often be subject to a narrower range of bad act carve-outs. Additionally, occurrence of such a bad act may need to be proven in court before it can be said to have occurred. It's also common in the fund context

Commercial Listings



Lease - 4647 Jonestown Road, Harrisburg

- 4,460 SF available in this popular retail site
- Freestanding, updated building with great curb appeal and visibility on highly traveled street
- Bright open floorplan on first floor and lower level floor features a separate entrance and drive-in door



Lease - 611 N. 12th Street, Lebanon

- Join Save-A-Lot grocery store in this newly constructed shopping center located in Lebanon City
- Tenants can acquire one suite (25' x 64') or all five up to 8,000+/- SF for retail or office use
- The vanilla shell is ready for your finishing touches



Sale - 7451 Paxton Street, Harrisburg

- Highly visible freestanding building along Route 322 with easy access to Hershey and Harrisburg
- Building was recently remodeled and is in good condition
- The entire site has also recently been repaved and there are 75 unmarked spaces available



Lease - 5129 E. Trindle Road, Mechanicsburg

- Brand new retail or office space along Trindle Road
- Great visibility and parking
- The 4,000+/- SF is an open shell - ready for your finishing touches

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for the fund to bear the cost of insurance and for a sponsor's defense costs to be advanced by the fund, at least until some level of adjudication has been obtained on the question of whether an exclusion from indemnification applies.

Removal: Typically, a JV investor will have the right to remove the JV sponsor from governance upon the occurrence of cause, with a fairly broad definition that may include not only customary bad acts but other conduct, including failures to fund capital or to perform in accordance with a performance standard or material breach of the JV agreement. Fund investors, collectively, will similarly be able to remove the fund sponsor for cause, but the definition of "cause" is likely to be limited to a narrower set of bad acts (e.g., fraud, willful misconduct, criminal conduct, gross negligence) and often only if causing a material adverse effect on the fund's operations and investments. Additionally, a key difference between JV and fund removal rights is that cause will generally need to be proven in the fund context - litigated to a final non-appealable judgment, for example - before any removal takes effect, whereas sometimes just a JV investor's claim that a bad act has occurred will be sufficient to trigger a removal of the JV sponsor.

Though not the only reason, one important reason for these different JV and fund approaches relates to the way the parties involved view the investment in their broader business strategy. For a JV - with a limited number of investors and usually a limited investment target - the baseline assumption may be that each investor expects to be an active participant in the investment activity and retain some level of control over the success of the venture and, therefore, expects that each investor will bear its own costs. In a fund - with numerous investors and a broader investment mandate - the parties may view their primary decision as choosing a manager who will then take on the responsibility for all business decisions of what is expected to become an active, operating business where the investors do not have time, interest, ability, or there are too many to participate in management. Given the fund investors' more limited role, it seems to follow that all costs and liabilities associated with a fund will generally be paid by the investors and out of investments, and the fund sponsor will make decisions and act for the fund on the investors' behalf and expect broader rights and protections in doing so.

Rationale aside, savvy investments in either of these structures or hybrid arrangements require investors and legal practitioners to be conversant in the approaches each structure takes with respect to these and other key provisions to be positioned to negotiate acceptable terms for all parties involved. ■

Editor's note: Ropes & Gray LLP attorneys Matthew Posthuma and Caitlin O'Neil contributed to this piece.

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Office Listings



Lease - 4300 Devonshire Road, Harrisburg

- Great corner location at Devonshire and Colonial Roads
- The property is well-maintained
- The available space offers a reception/waiting area, offices, and an open area that can be utilized in many configurations and private restrooms



Lease - 300 N. 2nd Street, Suite 704, Harrisburg

- Seventh floor (sublease) office space available in this downtown high-rise with excellent access to Harrisburg amenities
- The building boasts a marble and glass entranceway
- The suite has a waiting area, large conference room, private office, a storage area, kitchenette, and all furniture is included in the rent



Lease - 30 E. Shady Lane, Enola

- Medical/professional office suite available at fiercely competitive rate in a convenient location
- Property has recently been renovated and is well-maintained
- Current tenant has out-grown the space and will be leaving by the end of 2020

Office Listings



1,706 - 3,834 SF

Lease - 4823 E. Trindle Road, Mechanicsburg

- Professional office space for lease in a highly visible, conveniently located building
- Space is available for lease on the first floor and the ground level and these areas can be leased together or separately
- Expansive lot with abundant on-site parking



200 - 1,490 SF

Lease - 800 N. Third Street, Harrisburg

- Prominent downtown office building across from the State Museum and one block from the Capitol Complex
- Perfect location for attorneys and associations
- On-site parking available to tenants at below market rates
- Furnished suites available



Price Reduced

2,113 - 3,895 SF

Sale - 5006 - 5010 E. Trindle Road, Mechanicsburg

- Four condominium units available for sale (2,113 - 3,895 SF)
- Excellent location in newly developed area in Hampden Township
- Can be sold individually for owner/user or together as an investment



2,555 SF

Lease - 2008 - 2010 Market Street, Camp Hill

- Prime office/commercial space in the heart of Camp Hill Borough
- This updated, clean space has direct frontage on Market Street and is within walking distance to local restaurants and retail
- Renovations to the space included opening the floorplan, adding stylish lighting and kitchen appliances, updating the restroom fixtures, HVAC and roof



18,617 SF

Lease - 1665 Roosevelt Avenue, York

- Join OSS Health at their brand new location on Roosevelt Avenue, just off Route 30 and moments from I-83
- Approximately 14,438 USF available on the second floor with stunning views of York County
- Excellent opportunity for tenant to help design and customize their new facility to meet their unique space needs



Price Reduced

2,380 SF

Sale/Lease - 1001 S. Market Street, Mechanicsburg

- Two-story professional medical office available with efficient layout
- Recently renovated (in 2015 and 2020) with high quality finishes
- Desirable location in Southpoint Office Center at the intersection of Market Street and Shepherdstown Road and near Cumberland Parkway exit of Route 15

Office Listings



Lease - 500 N. Progress Avenue, 2nd Floor, Harrisburg

- 1,250 - 2,500 SF of available space for lease on the second floor
- The second floor consists of private offices, open work areas and a full kitchen
- Conveniently located in Susquehanna Township minutes from I-81, I-83, Route 322, downtown Harrisburg, PA Farm Show Complex & Expo Center and Harrisburg Area Community College (HACC)
- Contact Nik Sgagias or Amber Corbo for details: (717) 761-5070



Sublease - 3 Kennedy Street, Lancaster

- This 2,875 SF former bank has modern features and an intelligent layout for a variety of users
- The design includes 3 drive-thru lanes (1 ATM), 4 private offices, conference room, and a break room
- Located just minutes from the Route 30 interchange at Greenfield and Old Philadelphia Pike and Route 222



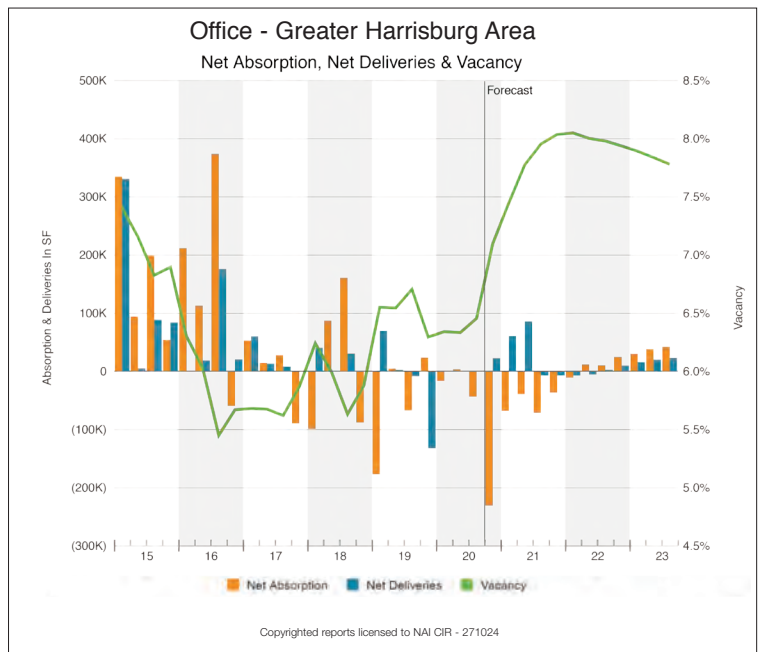
Lease - 101 N. Pointe Boulevard, Lancaster

- Class A, multi-tenanted building in the heart of Lancaster County's business area
- This beautiful building boasts large window lines, in-suite cooling/heating, in-suite music system, a guarded lobby, a common area breakroom and many high-end finishes
- Great central location with ample parking available



Lease - 301 Chestnut Street, Harrisburg

- Located at Pennsylvania Place, this is a one-of-a-kind development for the Harrisburg market that includes over 50,000 SF of Class A office space in the City's thriving downtown district
- The building offers an ultimate level of visibility, functionality and sophistication
- On-site parking, workout facility, a swimming pool and high-end finishes embody the urban luxury of this high-rise mixed-use building
- Call for **FREE RENT** details!



Investment Listing



Sale - 905 E. Chocolate Avenue, Hershey

- 15 unit Travel Inn ideally located off E. Chocolate Avenue with excellent roadside visibility and moments from Hershey attractions
- This facility is made up of 2 buildings consisting of 10 exterior guest rooms, 5 apartments and a spacious on-site manager's suite with three bedrooms, living area and kitchen
- The Hershey Travel Inn has been renovated over the years and also has solid revenue history for many years

Featured Land



Sale - Carlisle Pike (Route 11) Waterford Square, Mechanicsburg

- Located on Mechanicsburg's rapidly expanding Carlisle Pike, Waterford Square is perfectly positioned to cater to the strong business growth in the area
- Over 8.5 acres remain in the park
- Excellent access to major transportation routes

Land Listings

Location	Acres	Zoning	Type
NEW - Kim Acres Drive & Aspen Drive, Mechanicsburg, Cumberland County	1.03	Highway Commercial	Sale
370 W. Main Street, Leola, Lancaster County	1.3 - 2.8	General Commercial	Sale/Lease
1301 Eisenhower Boulevard, Harrisburg, Dauphin County	1.77	ML-Light Industrial	Sale
453 Jonestown Road, Jonestown, Union Township	2.05	Commercial	Sale
Price Reduced - 7700 Derry Street, Harrisburg, Dauphin County	2.12 (lot 4)	Commercial District General	Sale
Price Reduced - I-81 and W. Trindle Road, Carlisle, Cumberland County	2.18 (2 parcels)	Commercial Highway	Sale
SOLD - 100 Narrows Drive, NEC of US Route 422 & Narrows Drive, Lebanon	2.2	Commercial	Sale
Pending - 7700 Derry Street, Harrisburg, Dauphin County	2.3 (lot 8)	Commercial District General	Lease
1345 Eisenhower Boulevard, Harrisburg, Dauphin County	4.46	ML-Light Industrial	Sale
Kriner Road, Chambersburg, Franklin County	4.64	Commercial Industrial	Sale
Price Reduced - 755-759 Kriner Road, Chambersburg, Franklin County	4.73 - 7.83	Commercial Industrial	Sale/Lease
W. Suncrest Drive and Spring Road, Carlisle, Cumberland County	4.87 (4 parcels)	Commercial/Light Industrial	Sale
Peters Mountain Road & River Road, Halifax, Dauphin County	5.1	None	Sale
700 S. Baltimore Street, Dillsburg, York County	5.23 - 57.5	Agricultural - Conservation (AC)	Sale
Eisenhower Boulevard, Harrisburg, Dauphin County	5.39	Commercial General	Sale
Cherry Street (Lot #9) & Walnut Street, Highspire, Dauphin County	7.77	Residential Low Density	Sale
503 Jonestown Road, Jonestown, Lebanon County	7.91	Commercial	Sale
Route 441 and Orchard Drive, Harrisburg, Dauphin County	8.34	Single Family Residential District	Sale
Price Reduced - 730 Limekiln Road, New Cumberland, York County	8.64	Commercial Business	Sale
Carlisle Pike (Route 11) Waterford Square, Mechanicsburg, Cumberland County	8.78 (8 lots)	Community Commercial (C2)	Sale
Hanshue Road, Tract 2, Hummelstown, Dauphin County	9.42	Residential Agriculture	Sale
1900 State Road, Duncannon, Perry County	9.46	Commercial	Sale
Pending - Eisenhower Blvd & Highspire Road, Harrisburg, Dauphin County	10.0	Commercial District General	Sale
Price Reduced - Allentown Boulevard, Harrisburg, Dauphin County	17+	Commercial Highway (CH)	Sale

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SOLD - 349 Pleasant View Road, New Cumberland

Loxas, LLC purchased 45.48+/- acres in New Cumberland. Future commercial lots will be leveled and developed on the vacant acreage along Pleasant View Road. The Bill Gladstone Group of NAI CIR handled the transaction.



LEASED - 5275 E. Trindle Road, Suite 201, Mechanicsburg

Jones Financial Group has leased 4,545 SF of office space in Mechanicsburg. Regardless of your life stage, income or goals, Jones Financial Group can work with you to create a financial plan to help you manage your short-term goals, long-term aspirations and meeting your financial targets. The Bill Gladstone Group of NAI CIR handled the transaction.



LEASED - 4109 Derry Street, Harrisburg

Habitat for Humanity leased 1,260 SF of office space in Harrisburg. The business is a nonprofit organization that helps families build and improve places to call home. The Bill Gladstone Group of NAI CIR represented the lessor and Sean Fitzsimmons of Landmark Commercial Realty Inc. represented the lessee.