



AMERICAN
BANKRUPTCY
INSTITUTE

Southwest Bankruptcy Conference 2021

Repurposing or Reimagining Distressed Real Estate

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CONCURRENT SESSION

2021

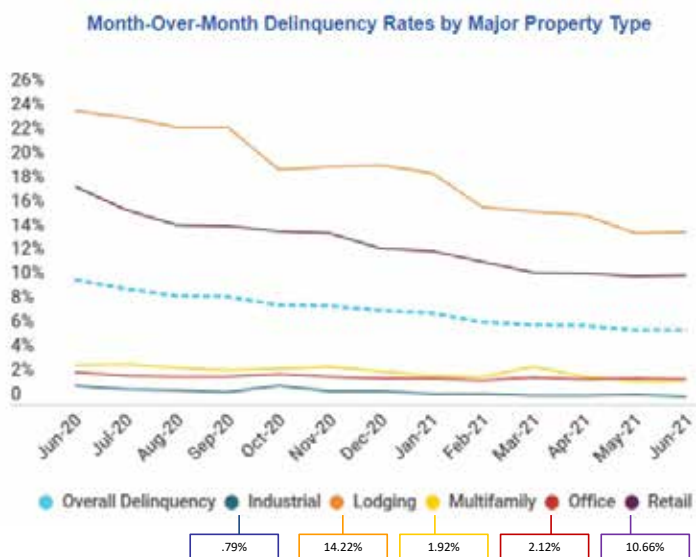


Presented by:
Beth Jo Zeitzer, Esq.
President/Designated Broker

Presented to:
August 26, 2021



CRE DELINQUENCY & GRACE PERIOD



- The overall US CMBS special servicing rate fell 41 basis points to 8.24% in June.
- One year ago, the US CMBS special servicing rate was 8.30%.
- Six months ago, the US CMBS special servicing rate was 9.81%.

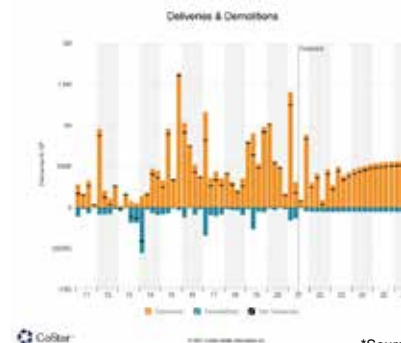
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ARIZONA OFFICE MARKET

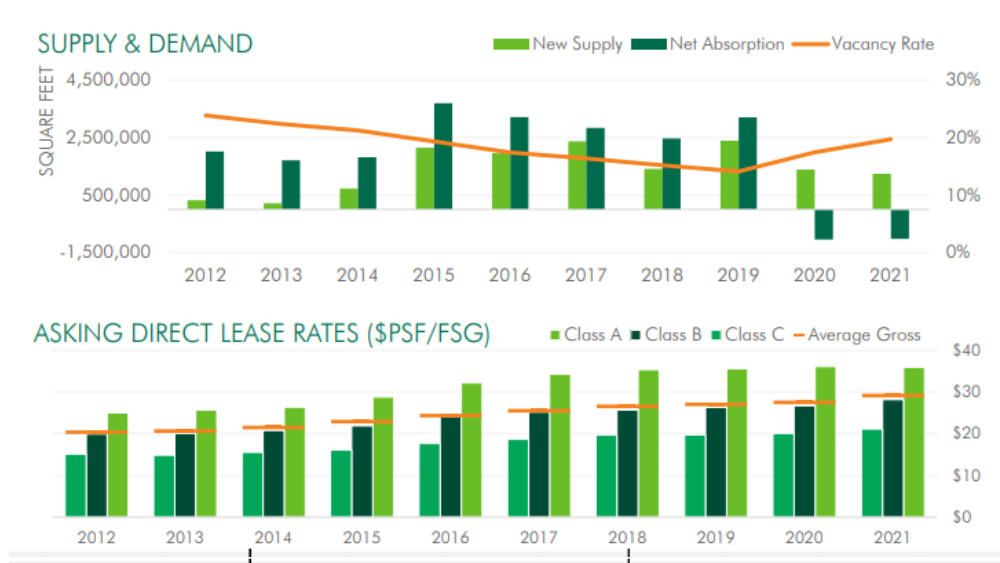
Phoenix Vacancy Rate: 14.2%



*Source: CoStar



ARIZONA OFFICE MARKET



*Source: CBRE



5

ARIZONA OFFICE MARKET

Sublease Stats

Period	Inventory (Bkgs)	Inventory (\$)	Vacant \$/ Direct	Vacant \$/ Sublet	Vacant \$/ Total	Vacant Percent % Direct	Vacant Percent % Sublet	Vacant Percent % Total	Total Available \$/ Direct	Total Available \$/ Sublet
2021 Q1 QTD	8,420	310,734,175	25,817,043	2,240,108	27,294,151	12.1%	1.2%	14.1%	30,052,405	4,496,750
2021 Q3	8,410	310,411,571	24,626,843	1,750,871	26,417,724	12.8%	0.9%	13.7%	30,342,279	4,157,115
2020 Q4	8,433	312,134,647	25,888,581	1,225,405	24,811,048	12.0%	0.6%	12.7%	29,091,600	3,216,575
2020 Q3	8,408	312,021,196	22,618,252	1,252,138	21,890,182	11.8%	0.7%	12.4%	28,300,138	3,247,880
2020 Q2	8,395	311,564,596	22,380,897	1,051,433	21,811,950	11.4%	0.5%	12.2%	27,649,711	2,478,098
2020 Q1	8,583	310,997,913	22,411,751	816,489	21,028,220	11.7%	0.8%	12.5%	26,076,496	1,871,857

Rollover / Lease Terminations-Renewals Stats

		Tenants			Square Footage		
		Number of Tenants with an Expiring Lease	Percentage of Tenants with an Expiring Lease	Cumulative Number of Tenants	Number of SF with an Expiring Lease	Percentage of SF with an Expiring Lease	Cumulative Number of SF
June	2021	33	6.6%	33	169,528	4.6%	169,528
July	2021	42	8.4%	75	163,801	4.7%	333,329
August	2021	30	6.0%	105	163,776	4.7%	497,105
September	2021	38	7.6%	143	299,224	7.4%	796,329
October	2021	54	10.8%	197	235,880	6.7%	992,209
November	2021	33	6.5%	230	568,566	16.1%	1,560,775
December	2021	51	10.2%	281	425,706	12.1%	1,986,481
January	2022	42	8.4%	323	315,087	8.9%	2,301,568
February	2022	33	6.6%	356	275,633	7.6%	2,577,201
March	2022	36	7.2%	392	288,066	8.2%	2,865,269
April	2022	46	9.2%	438	217,262	6.2%	3,082,531
May	2022	37	7.4%	475	161,760	4.6%	3,244,291
June	2022	15	3.0%	490	49,804	1.4%	3,294,095
NA		10	2.0%	500	227,235	6.5%	3,521,330
Totals		500	100.0%		3,521,330	100.0%	

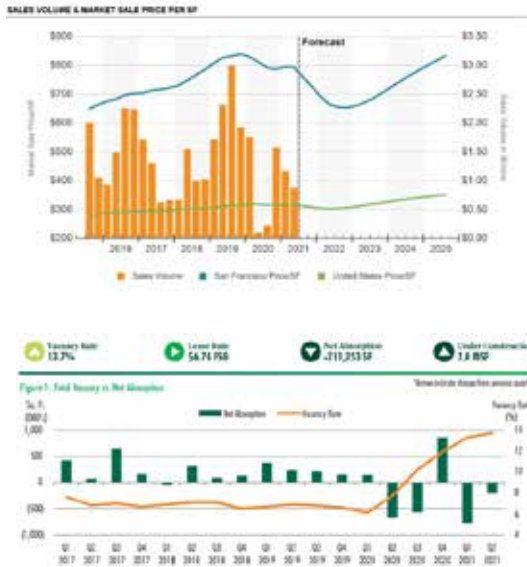
Source: CoStar



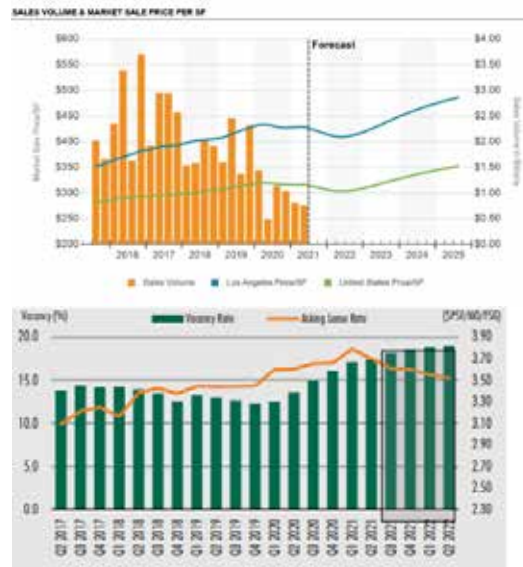
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CALIFORNIA OFFICE MARKET

San Francisco - Vacancy Rate: 13.7%



Los Angeles - Vacancy Rate: 17.4%



*Source: CoStar/CBRE



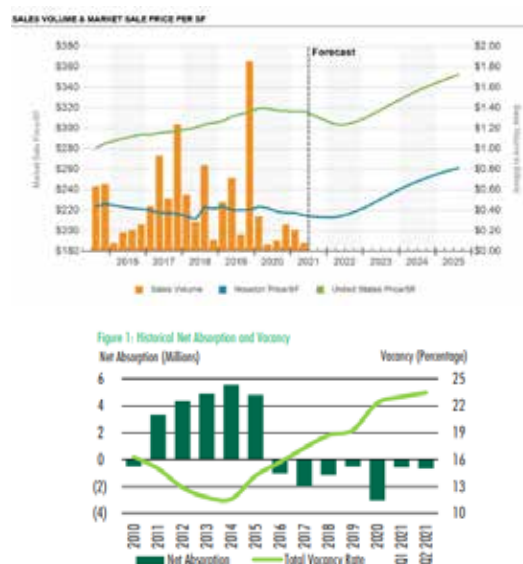
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TEXAS OFFICE MARKET

Dallas - Vacancy Rate: 24.6%



Houston - Vacancy Rate: 23.45%



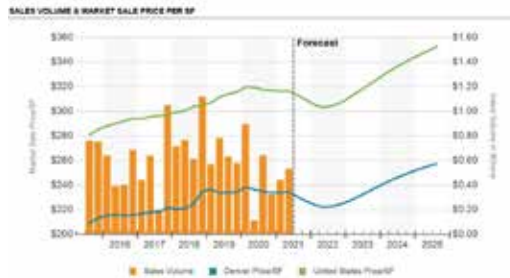
*Source: CoStar/CBRE



8

DENVER / PORTLAND OFFICE MARKET

Denver Vacancy Rate: 18.8%



Portland Vacancy Rate: 15.9%



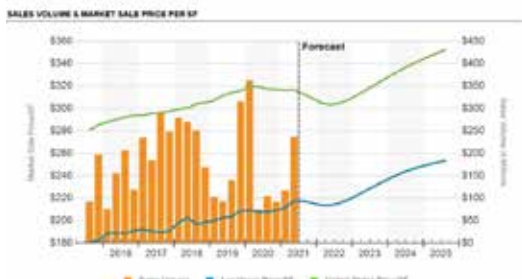
*Source: CoStar/CBRE



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LAS VEGAS OFFICE MARKET

Las Vegas Vacancy Rate: 12.5%

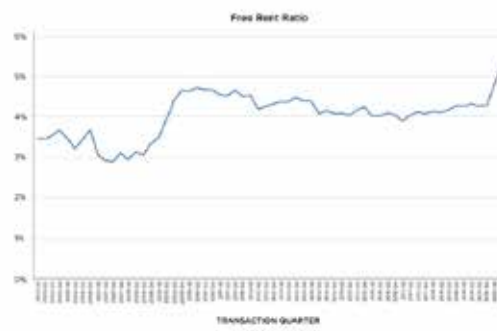


*Source: CoStar/CBRE



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RENTAL CONCESSIONS



- Office concessions are increasing and are on track to mirror the significant concessions last seen in the Great Recession.
- Since the start of 2020, there has been a 30% increase in the ratio of free rent.
- Today, free rent makes now makes up more than 5% of the total lease term.



Source: GlobeSt.

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PHOENIX RETAIL MARKET



*Source: CoStar

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NATIONAL RETAIL MARKET SALES

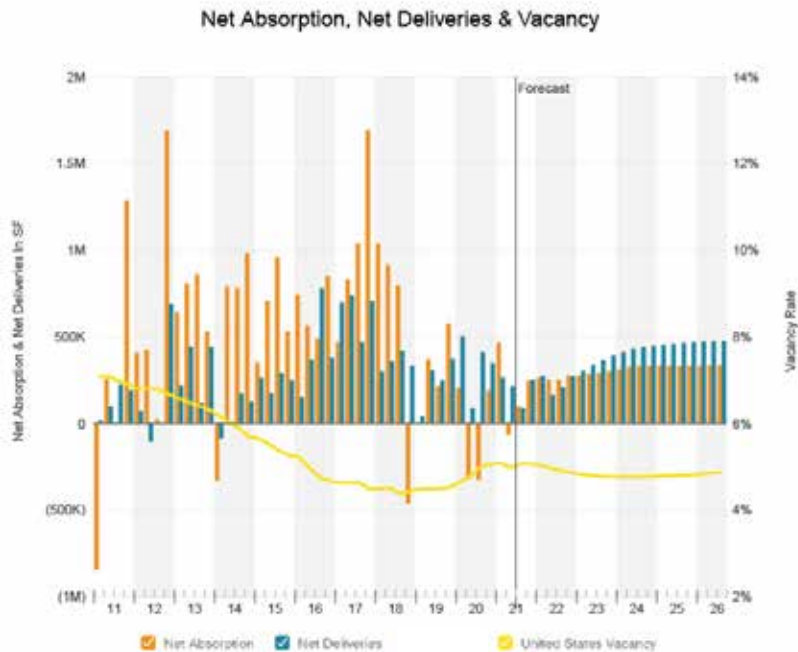


*Source: CoStar



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NATIONAL RETAIL MARKET DELIVERIES



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Trends: Service-Based Retail, and Drive-thru, Takeout and Cloud Kitchens

- From January 1 to April 30, 2021, fast food restaurants experienced a **33.06% rise in the number** of visits nationwide.*
- Digital orders at fast-food restaurants have increased by 23 percent since first implemented. It's anticipated that this will triple in 2021.**
- A number of chains are placing their bets on changed behavior for the long term by investing heavily into the drive-thru/pick-up window channels.
- Delivery-only models have been made possible recently by advances in technology and changes in consumer habits.
- Cloud/Ghost Kitchens provide lower risk and higher return, particularly in high rent areas.
- Food delivery is set to grow to a \$200 billion industry by 2025, due to shifting changes in behavior, with nearly half of consumers preferring to eat at home.***



Source: *smallbiztrends.com | *linchpinseo.com | **Forbes



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RETAIL & RESTAURANTS IN DISTRESS OR BANKRUPTCY



Source: Moneywise, Forbes, Trepp



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REGIONAL MALLS – Adaptive Re-use

	Tenant
Scottsdale Fashion Square	Office, residential, retail
Christown Mall	Residential, commercial, retail, and entertainment
Paradise Valley Mall	Residential, office, retail and entertainment
Park Central	Office, residential, retail
Metrocenter Mall	???
Foothills Mall	Residential, office, retail and entertainment
Tucson Mall	CATALYST Arts & Maker Space



City of Phoenix/concept renderings



City of Phoenix/concept renderings

- Office and multifamily use can help mall owners create foot traffic through the addition of office workers.
- Office workers benefit from easy-access mall amenities such as dining and shopping.
- Potential last-mile delivery and distribution centers.

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NATIONAL MALLS – Adaptive Re-use

	Redevelopment Uses	Location
Aiken Mall	Retail, Residential	South Carolina
Arcade Providence	Retail, Residential	Rhode Island
Berlin Mall	Retail, Residential	Vermont
Chapel Hill Mall	Industrial	Ohio
Collin Creek Mall	Retail, Residential, Office, Hospitality	Texas
Crestwood Mall	Retail, Residential	Missouri
Flat Iron Crossing	Retail, Residential, Hospitality	Colorado
Highland Mall	Retail, Residential, Office	Texas
Indio Fashion Mall	Retail, Hospitality	California
Landmark Mall	Retail, Residential, Office, Medical	Virginia
MainPlace Mall	Retail, Residential, Hospitality	California
Northland Center Mall	Retail, Residential	Michigan
Orlando Fashion Square	Retail, Residential, Office, Hospitality	Florida
River Falls Mall	Retail, Residential	Indiana
ShoppingTown Mall	Retail, Residential	New York
Stonestown Galleria	Retail, Residential, Hospitality	California
University Place Mall	Retail, Residential, Office	North Carolina

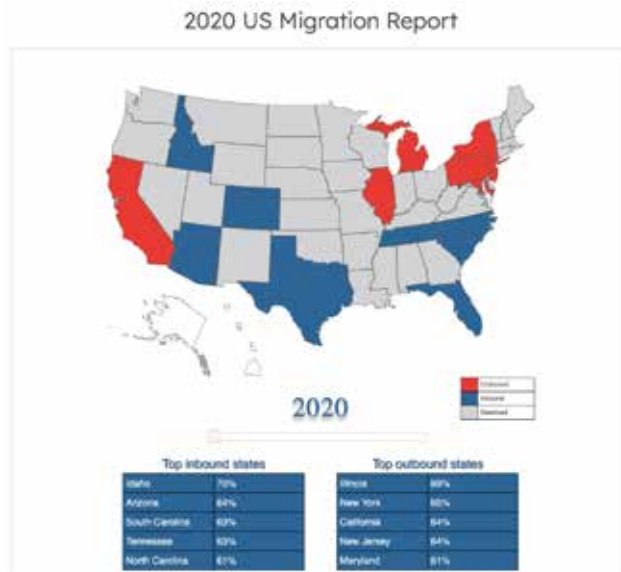


- Real estate research firms are predicting that more than half of all major U.S. department stores in malls will have permanently shuttered by the end of 2021.*
- Mall vacancy rates fell 150 basis points last year, and it is expected that they will decline an additional 170 basis points in 2021.**

Source: *Business Insider | **CoStar

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MIGRATION



- Long-distance movers into Phoenix relocated into ZIP codes with \$48,237 lower home values on average than where they moved from.
- Houses sold to out-of-towners moving to Phoenix Metro were 116 square feet larger than the movers' origin ZIP codes.
- Those moving to Phoenix Metro went to ZIPs where average home values are \$27,012 lower than where they started.
- Homes sold in their destination are 55 square feet smaller.
- The typical home value in April 2021 was \$355,822 — up 20.4% since April 2020.
- Zillow's recent Mover Report found the top metros for net in-migration, with more people moving in than out, are sunny and relatively affordable. Phoenix, Charlotte and Austin led the U.S. in terms of net in-migration.

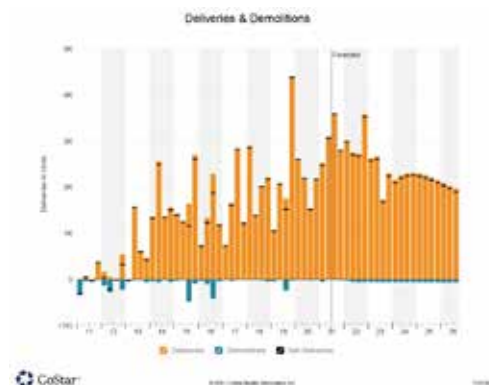


*Source: Zillow



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ARIZONA MULTIFAMILY MARKET



*Source: CoStar



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ARIZONA MULTIFAMILY MARKET: Statistics

	AVERAGE PRICE PER UNIT
2011	\$50,536
2012	\$60,433
2013	\$68,661
2014	\$50,740
2015	\$70,487
2016	\$67,319
2017	\$109,294
2018	\$127,871
2019	\$151,083
2020	\$172,302
2021	\$199,879/Unit

The average price per multi-family unit has **increased over 395.5%** in the last 10 years

Transaction Volume 2021 Q2 QTD 100+ Units v. 10-99 Units	
100+ Units	10-99 Units
\$2,315,530,000	\$358,836,500
\$395,050,000 (Q2 2020) +586% y-o-y	\$142,883,950 (Q2 2020) +251% y-o-y



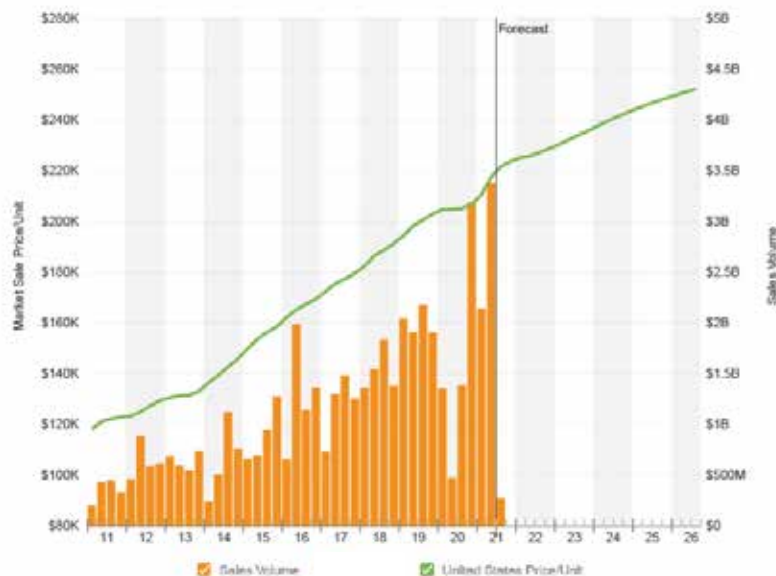
*Source: CoStar



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NATIONAL MULTIFAMILY MARKET SALES

Sales Volume & Market Sale Price Per Unit



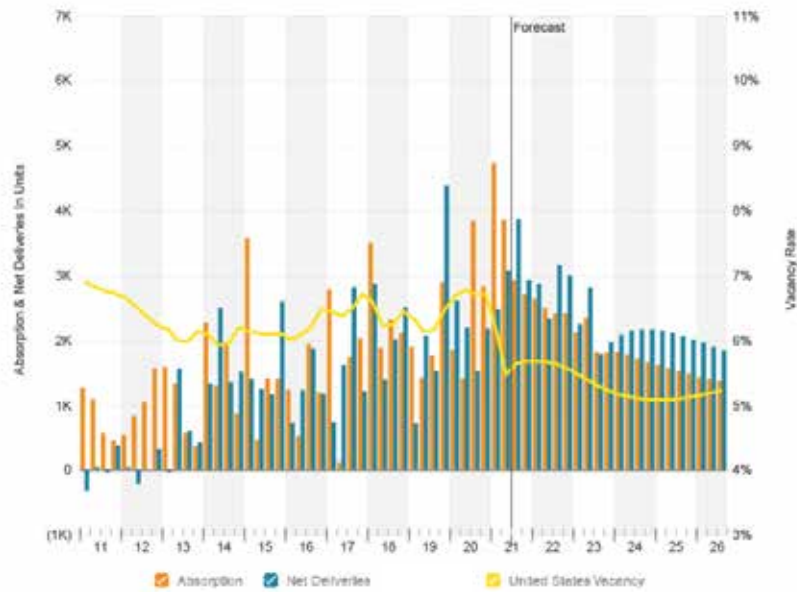
*Source: CoStar



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NATIONAL MULTIFAMILY MARKET DELIVERIES

Absorption, Net Deliveries & Vacancy



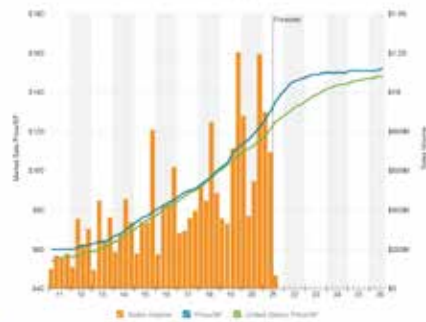
Source: CoStar



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ARIZONA INDUSTRIAL MARKET

Sales Volume & Market Sale Price Per SF



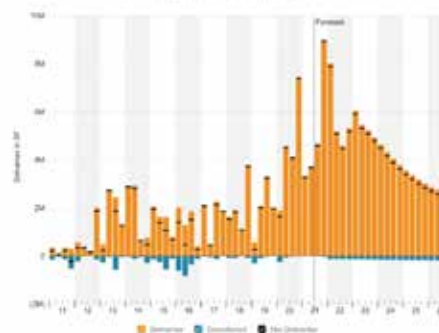
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1/1/2021



Deliveries & Demolitions



CoStar

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*Source: CoStar



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NATIONAL INDUSTRIAL MARKET SALES

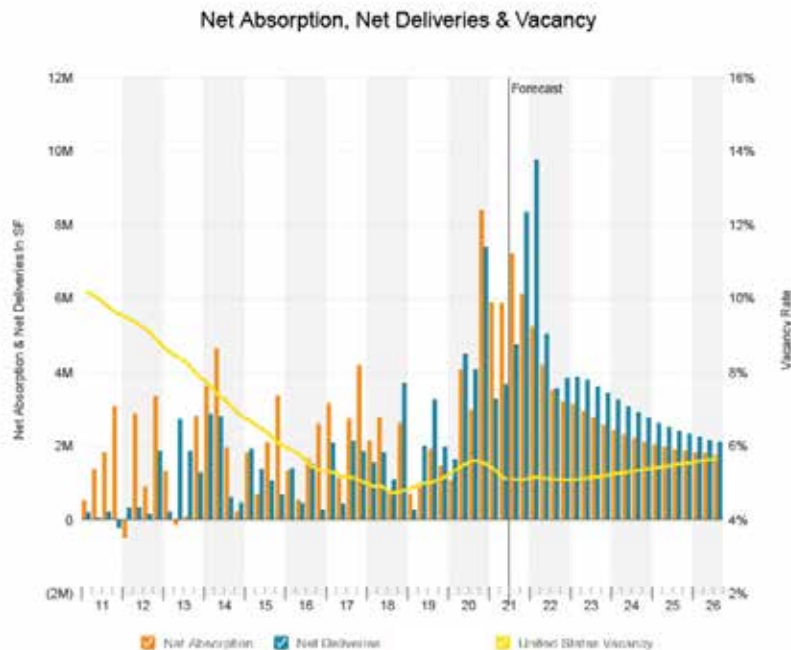


*Source: CoStar



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NATIONAL INDUSTRIAL MARKET DELIVERIES



*Source: CoStar



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ABOUT THE SPEAKER

Beth Jo Zeitzer is the Owner and Designated Broker of R.O.I. Properties, and the owner of R.O.I. Asset Management Solutions. R.O.I. Properties is a full-service real estate brokerage firm which works with business owners, investors, property owners, lenders, corporate trustees, and other fiduciaries regarding the management, marketing and sale of Commercial, Residential and Land assets. In addition to serving as Real Estate Broker, through R.O.I. AMS, Beth Jo is appointed by numerous courts as Receiver, Real Estate Special Commissioner, Special Master, Bankruptcy Trustee and Expert Witness, in real estate matters and legal proceedings.

Beth Jo is an attorney by training, and member of the State Bars of Arizona and California. She is former Corporate Counsel and Director of Commercial Properties for Del Webb Corporation. Beth Jo was named one of the 50 Most Influential Women in Arizona Business, by AZ Business Magazine. She is the Past President of AZCREW (Arizona Commercial Real Estate Women), Past President of TMA (Turnaround Management Association), Executive Council Member for Real Property and Alternative Dispute Resolution (ADR) Sections of the State Bar of Arizona, Director for APLA (Arizona Private Lenders Association), member of Risk Management Association (RMA), Arizona Trustee Association, Valley Partnership, Urban Land Institute, California Receivers Forum, and other Real Estate and Banking trade organizations. **Beth Jo can be reached at bjz@roiproperties.com or 602-319-1326.**



FENNEMORE CRAIG
ATTORNEYS

Presented to:
August 26, 2021



SPECIAL CREDITOR'S RIGHTS PROVISIONS AND IMPACT

SINGLE/SPECIAL PURPOSE ENTITY –

corporate limitations to ensure entity remains bankruptcy remote

- Covenants to be placed in loan documents but also corporate governance documents
- Usually includes list of about 20 restrictions while loan documents remain in effect. Most important are:
 - Shall remain an SPE
 - No commingling of assets with another entity
 - No guaranty or assumption of debts of another entity
 - No pledge of assets for debts of another
 - Pay liabilities from own funds
 - No holding out credit for others



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2

SPECIAL CREDITOR'S RIGHTS PROVISIONS AND IMPACT

- Follow corporate governance requirements
- No transfer of assets without lender consent
- Maintain separate tax returns
- Independent director on board required at all times
- Unanimous vote of board required to file bankruptcy or take certain actions
- Authority to file opinions provide state law and not federal law will govern the determination of who has authority to file bankruptcy



NON-RECOURSE LOANS AND CARVE OUT GUARANTEES

- Allows developer to promote project without personal liability
- If project failed the principals walk away without liability unless they commit "bad acts" such as fraud, misrepresentation, misappropriation
- Bad acts for which principal has full liability for all debt
 - Voluntary bankruptcy filing
 - Violation of SPE covenants
 - Transfer of property in violation of due-on-sale clause
 - Placing subsequent financing on property
 - Other acts that can substantially delay lender's ability to realize collateral and reduce its losses
 - All within the owner's control



NON-RECOURSE LOANS AND CARVE OUT GUARANTEES

- Bad acts for which principal will be liable only to extent of damages lender incurred
 - Fraud, misrepresentation, gross negligence or willful misconduct
 - Failure to maintain insurance
 - Failure to pay taxes
 - Misappropriation of funds
 - Commission of waste
 - Failure to pay liens
 - Misappropriation of insurance or condemnation proceeds
 - Such acts are within control of principal
 - Such acts result in losses to lender



INTERCREDITOR AGREEMENT

- Review Model Intercreditor Agreement prepared by ABA
- Typical provisions between parties provide for subordination of junior lien, acknowledgement of validity and priority of first lien, statement of collateral covered, use of funds, once default moneys to be held in trust by junior lien
- Most have bankruptcy clauses which limit rights of junior lien
 - Most clauses are enforceable
 - Must be clear and unambiguous language
 - Subordination and agreement not to object to senior lien enforceable
 - No right to object to cash collateral order or sale which the senior lien supports-- enforceable
 - No voting rights on plan by secured claim of junior lien-- not always enforceable
 - But unsecured claim of junior may be treated differently-- may not be enforceable
 - Question whether bankruptcy court has jurisdiction over dispute between creditors



EXPRESSLY AGREE TO REMEDY OF RECEIERSHIP

- Include provision in remedies that Borrower agrees to appointment of receivership
- Also agree on which court will have jurisdiction and venue to hear request for appointment
- This assures the court that the parties are in agreement on the remedy and makes the court more likely to appoint receiver
- Some rules and statutes require agreement to this remedy and if so the provision easily satisfies the requirement



WHEN THINGS START TO GO WRONG

- **PRE-WORKOUT OR PRE-NEGOTIATION LETTER**
 - Every deal is different and some clients have their own letters to use
 - Agree upon terms before you discuss workout or remedies or have substantive discussions
 - All discussions are non-binding until there is a written agreement signed by all parties
 - Just to talk there is no waiver of default or any remedy or rights
 - Most include confirmation of debt and liens
 - Most include statement from Borrower there are no defenses, offsets or counterclaims to obligations and loan or have Borrower state and identify defenses and claims
 - Most have an acknowledgement of default by Borrower
 - Include mutual termination date for negotiations if agreement not reached
- **ABA FORM FORBEARANCE AGREEMENT**

WHEN THINGS START TO GO WRONG

- **INSUFFICIENT CASH FLOW**

- If there is insufficient cash flow on project identify cause
- Identify if temporary or long term
- Find out what Borrower and Guarantors intend to do
- Would a chief restructuring officer or new consultant to Borrower help
- If new cash is needed don't advance without exploring alternatives-
 - What is amount and purpose of advance and is there a budget
 - Is there additional collateral to support advances
 - Consider advancing only in receivership to receiver and pursuant to court order
 - Consider having Borrower file bankruptcy and lender making a DIP loan with protections of order
 - Can assets be sold and how long to market
 - Consider selling Note and Lien Position



WHEN THINGS START TO GO WRONG

- **ALTERNATIVES AND REMEDIES**

- These have not changed over the years but should always be reviewed to find best remedy and path forward for parties
- Deed in lieu of foreclosure
- Assignment for benefit of creditors
- Receivership
- Sale of note and lien
- Sale of property or auction
- Use of special commissioner/ partition action
- Foreclosure and UCC sale
- Bankruptcy



CREATIVE
ALTERNATIVE
STRATEGIES

WHEN THINGS START TO GO WRONG

- **PRE-COVID BANKRUPTCY PROCESS AND OUTCOMES**

- Sale with broker and possibly auction
- DIP financing to get to a sale and closing
- Who to operate business? Principal or CRO or Trustee
- Restructure of obligations? Consensual or cram down
 - reduce interest rate
 - extend maturity
 - release prices changed
 - swap dirt for debt
 - release of guarantor
- Conversion of chapter 7 liquidation



WHEN THINGS START TO GO WRONG

- **POST-COVID ISSUES AND MOTIONS**

- Request to Extend Lease Deadlines
- Impact on Stay Relief and Adequate Protection
- Motion to Suspend Bankruptcy
- New Source of Funds
 - PPP
 - Main Street Loan Program
 - Third Party Litigation Financing
 - Sale of Insurance Policies
- Other Possible Arguments



REAL ESTATE BANKRUPTCY CASES THAT SUCCESSFULLY SURVIVED IN 2020

1. Tuesday Morning Corporation—

- Retail entity with large number of locations
- Obtained new Asset Based Loan
- Obtained sale lease back transactions on their owned property
- Continued in business and kept most employees



2. Lucky Brands Dungarees LLC—

- Numerous retail locations in shopping centers
- Simon Group and Authentic Brands were stalking horse for sale
- Combined resources to buy leases, brands, inventory, fixtures, etc.
- Buyer could continue to lease and sell goods



3. Gold's Gym—

- Retail/Customer Gym Membership
- International Buyer interested not in US but in expansion of brand internationally
- Funds available for reorganization



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REAL ESTATE BANKRUPTCY CASES THAT SUCCESSFULLY SURVIVED IN 2020

4. Several Oil and Gas Cases

- Ultra Petroleum
- Alta Mesa Resources
- Extraction Oil and Gas

5. Hertz Corp.

- Over 2,000 leases at airports, hotels and offices
- Negotiations reduced amount due at airports
- Through negotiations and rejection reduced outside footprint
- Confirmed plan



6. Stuart Olson Inc.

- Avoided Canadian and US proceeding
- Largest Canadian Construction Company in Western Canada
- Found strategic buyer
- All 600 projects completed without funds from bonding company
- Saved 3400 jobs and hundreds of trade companies



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Faculty

Oren B. Haker is a partner with Stoel Rives LLP in Portland, Ore., where he focuses on the representation of a wide range of parties in workouts, debt-restructurings, receiverships and bankruptcy cases, including corporate debtors, trade and financial creditors, creditors' committees, lessors, and strategic and financial investors acquiring assets of troubled companies. His experience includes pre bankruptcy planning, including advising directors and officers on insolvency issues, and exploring out-of-court and nonbankruptcy options in the first instance. In bankruptcy cases, Mr. Haker's experience includes cash-collateral and DIP-financing matters, intercreditor disputes, reclamation and § 503(b)(9) issues, bankruptcy sales under § 363, chapter 11 plan and post-confirmation trust formation issues, fraudulent transfer and preference litigation, and the application of the safe-harbor provisions of the Bankruptcy Code. During the 2008 financial crisis, he was a member of the legal team advising President Obama's Auto Task Force in the General Motors, Chrysler and Delphi Automotive chapter 11 cases. More recently, he has advised Oregon municipalities on public pension matters and local nonprofits and businesses with operational and financial distress. Prior to joining the firm in 2012, Mr. Haker practiced business bankruptcy law in New York City, including with the business finance and restructuring departments of Weil, Gotshal & Manges LLP and Cadwalader, Wickersham & Taft LLP. He received his B.A. in history in 1996 from Rice University and his J.D. in 2003 from Columbia Law School in 2003, where he was a Harlan Fiske Stone Scholar and served on the *Columbia Law Review*.

Cathy L. Reece is a director in the Financial Restructuring Group at Fennemore Craig, P.C. in Phoenix. She has broad experience in commercial finance and real estate workouts and bankruptcies. Ms. Reece represented the committee and plan proponent and now represents the real estate liquidating entities of Mortgages Ltd., a hard-money lender with a \$900 million loan portfolio secured by real estate with thousands of investors. She represented the committee and joint plan proponent in the *Baptist Foundation of Arizona* cases, with over 13,000 creditors and \$650 million of liabilities; a municipality that is the owner and landlord of the arena in the *Coyotes Hockey* bankruptcies; the post-petition lender and ultimate buyer of the Nevada gold mines in the chapter 15 cross-border *Veris Gold USA* cases; and the indenture trustee of the bond financings in *America West* and the *Sun Valley Parkway* cases. Ms. Reece has represented secured lenders and unsecured creditors in such large chapter 11 cases as *MicroAge*, *Einstein Bagel*, *Boston Chicken*, *Foster Grant*, *UDC Homes* and in numerous real estate cases involving shopping centers, apartments, office buildings, golf courses, mines and health care facilities. She is a member of the American Law Institute and has served in several international officer positions with TMA Global. In addition, she is the treasurer of the American College of Commercial Finance Lawyers and was chair of the ABA's Loan Workout Subcommittee. Ms. Reece is listed in *The Best Lawyers in America*, *Super Lawyers* and *Benchmark's* "Top 250 Women in Litigation." She is rated AV-Preeminent by Martindale-Hubbell and is a Fellow of the American College of Commercial Finance Lawyers, and she is Board Certified in Business Bankruptcy Law and admitted to practice before the U.S. Supreme Court. Ms. Reece received her Bachelor's degree in music with high distinction from the University of Arizona and her J.D. from Arizona State University Sandra Day O'Connor College of Law, where she served as managing editor of the *Arizona State University Law Journal*. Following law school, she clerked for Hon. Sandra Day O'Connor at the Arizona Court of Appeals.

Hon. Paul Sala is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, appointed on July 1, 2014. Previously, he practiced bankruptcy law in Phoenix for 26 years, the last 15 of which with Allen, Sala & Bayne, PLC, which he co-founded in 1999. Judge Sala's legal practice focused on representing individuals and companies in nonbankruptcy workouts and bankruptcy reorganizations. He also represented unsecured creditors' committees in many high-profile Arizona cases, including Dewey Ranch Hockey (Phoenix Coyotes), the Baptist Foundation of Arizona, Popular Stores and Sun Valley Waterbeds. In addition, he represented trustees in chapter 7 and 11 cases and was appointed in numerous cases to serve as a chapter 11 trustee and as a post-confirmation plan administrator. Judge Sala is a member of the State Bar of Arizona and was active in bar association activities. He was also a member of the President's Circle of the National Association of Bankruptcy Trustees, was selected as a master in the Arizona Bankruptcy American Inn of Court, and was listed in *The Best Lawyers in America*, *Southwest Super Lawyers* and *Arizona's Finest Lawyers*. Judge Sala received his B.S. in 1984 and his J.D. in 1987 from the University of Utah.

Beth Jo Zeitzer is the owner and designated broker of R.O.I. Properties, LLC in Phoenix and the owner of R.O.I. Asset Management Solutions. R.O.I. Properties is a full-service real estate brokerage firm that works with business owners, investors, property owners, lenders, corporate trustees and other fiduciaries regarding the management, marketing and sale of commercial, residential and land assets. In addition to serving as a real estate broker through R.O.I. AMS, Ms. Zeitzer is appointed by numerous courts as receiver, real estate special commissioner, special master, bankruptcy trustee and expert witness in real estate matters and legal proceedings. An attorney by training, she is a member of the State Bars of Arizona and California, and she is former corporate counsel and director of Commercial Properties for Del Webb Corp. Ms. Zeitzer was named one of the "50 Most Influential Women in Arizona Business" by *AZ Business* magazine. She is a past president of Arizona Commercial Real Estate Women, past president of the Turnaround Management Association, executive council member for the Real Property and Alternative Dispute Resolution ADR Sections of the State Bar of Arizona, director for the Arizona Private Lenders Association, and a member of Risk Management Association, Arizona Trustee Association, Valley Partnership, Urban Land Institute, California Receivers Forum, and other real estate and banking trade organizations. Ms. Zeitzer received her B.A. in general research with a real estate and marketing emphasis from the University of Arizona and her J.D. from the University of San Diego Law School, where she was the research editor of its law review and received the Hahn Award for Excellence in Real Estate.