

Commercial Real Estate Terminology

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I. RENT INFORMATION

Absolute Net - Lease requiring tenant to pay in addition to base rent all costs associated with the operation, repair and maintenance of the building, all real estate taxes, and utilities including repairing and maintenance of the building's structure and roof. Often the tenant is directly responsible both for all such costs and for the active handling of the items themselves. It is distinguished from Triple Net (see below) by tenant's responsibility for maintenance and repair of the building structure and roof.

Additional Rent - Any amounts due under a lease that are in addition to base rent. Most common form is operating expense increases.

Base Rent - A specific amount used either as a minimum rent in a lease (retail) which uses a percentage of sales or overage for additional rent or sets a base onto which is added expenses and taxes in a net lease or increases in those items in a fully serviced lease.

Base Year - The 12 month period upon which a direct expense escalation of rent is based. Typically the calendar year the lease commences.

Effective Rent - The average per square foot rent paid by the tenant over the term of a lease. Takes into account only free rent and stepped rents. Does not include allowances, space pockets, free parking and other similar landlord concessions.

Escalation - A clause in a lease providing for an increased rental at a future time. May be accomplished by several types of clauses, such as: (1) fixed increases -- a clause which calls for a definite, periodic rental increase; (2) cost of living -- a clause which ties the rent to a government cost of living index, with periodic adjustments as the index changes; (3) direct expense -- the rent adjusted according to changes in the expenses of the property paid by the lessor, such as tax increases, increased maintenance costs, etc.

Free Rent - A concession granted by a landlord to a tenant whereby the tenant is excused from paying rent for a stated period during the lease term.

Full Service Gross – A lease in which the stated rent includes the operating expenses and taxes for the building.

Gross Lease - A lease in which the stated rent includes the operating expenses of the building. Same as Fully Serviced Lease. Opposite of Net Lease.

Modified Gross - Landlord covers base year taxes and insurance, any increases over base year are passed through to tenant.

Net - Today this generally indicates a lease in which the stated rent excludes the insurance, utilities, operating expenses and real estate taxes for the building. The tenant is then responsible for payment of these costs either directly or as additional rent.

Net Net (Double Net) - Landlord pays for roof and structure and taxes.

Net Net Net (Triple Net) - A lease requiring the tenant to pay in addition to a fixed rental, the expenses of the property leases, such as taxes, insurance, main tenancy, utilities, cleaning, etc.

Rent - Consideration paid for the occupancy and use of real property. Also a general term covering any consideration (not only money).

Rental Rate - The amount of Rent paid for the occupancy and use of real property. Typically stated on a per square foot per month or per year basis.

II. BUILDING CLASS

Class - Class is usually used in conjunction with an office property and refers to the quality of property. Class definitions fall with the following guidelines:

Class A+ - Landmark quality, highrise building with prime central business district location (the best of the Class A buildings).

Class A - Generally 100,000 s.f. or larger (five or more floors), concrete or steel construction, built since 1980, business/support amenities, strong identifiable location/access.

Class B - Renovated and in good locations. Newer building, smaller in size, wood frame construction, and/or in non-prime location.

Class C - Older, unrenovated of any size in average to fair condition.

III. MISCELLANEOUS

ADA - Americans With Disabilities Act passed by Congress in 1994 with intent to provide persons with disabilities accommodations and access equal to or similar to that of the general public.

Agency - Any relationship in which one party (agent) acts for or represents another (principal) under the authority of the latter. Agency involving real property should be in writing, such as listings, trusts, powers of attorney, etc.

Allowance - A set dollar amount provided by the Landlord under a lease to be used by the Tenant for a specific purpose. Examples include allowances for tenant improvements, moving expenses design fees, etc. If the expense exceeds the allowance amount, such excess is the Tenant's responsibility. If the expense is less than the allowance, the savings are retained by the Landlord unless their agreement specifies otherwise.

Alternative Workspace - Term embodies numerous concepts related to utilization of space including telecommuting, hotelling, office sharing and open office plans.

Amortization - Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments. May also be used in a lease where the landlord incurs costs for additional tenant improvements which are effectively treated as a debt and repaid by tenant over the term of the lease.

Assignment - A transfer to another of any property, real or personal, or any rights or estates in said property. Common assignments are of leases, mortgages, deeds of trust, but the general term encompasses all transfers of title.

Base Building - The existing shell condition of a building prior to the installation of tenant improvements. This condition varies from building to building, landlord to landlord, and generally involves the level of finish above the ceiling grid.

BOMA - Building Owners and Managers Association. BOMA publishes the definition of rentable and useable area, which is used to determine the square footage leased in most commercial office buildings.

CAM Charges - Common Area Maintenance charges. Those charges levied on or the expenses incurred in maintaining the common areas of a building.

Churn - Moving people from one workspace to another within the leased premises. Usually involves relocation of furniture, phones, and the like and can be very expensive and time consuming. A high churn rate is to be avoided.

Circulation - Those areas (hallways, corridors, etc.) in an office space that are used to travel between offices, cubicles and the like.

Commencement Date - The date on which a lease begins. This is typically but not always the day on which the tenant takes possession of the leased space, which usually occurs upon substantial completion of the tenant improvements. (See occupancy Date).

Common Area - Common area is the area used in common by the tenants of an office building. Common area includes building and elevator lobbies, restrooms and the corridor leading from an elevator lobby to a tenant space.

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Contingent Fees - Fees to be paid only in the event of a future occurrence. Examples include: Attorneys (especially in negligence cases) paid based on winning the suit and collecting damages; and a broker's commission paid only upon closing the sale of a piece of property.

Certificate of Occupancy (COO) - A statement issued by a local government verifying that a newly constructed building is in compliance with all codes and may be occupied.

Demised Area - The walled off and secured area of a leased space, separated from spaces leased to others (by a "demising" wall). Also measured as useable area. **Discount Rate** - The rate of interest used in a present value analysis representing the "time value of money".

Effective Useable Area - Excludes those areas within the Useable Space (see below) that the tenant pays rent on but effectively cannot use such as columns and sharply angled spaces.

Equivalent Level Rate (ELR) - The ELR is the flat rate per square foot that, if paid each year in nominal dollars, will equal the same total present value as a proposed lease's variable cash flows. The ELR is calculated by discounting all cash flows to a net present value per square foot and then amortizing this lump sum amount evenly over the term of the lease on a cost per square foot basis.

Estoppel Certificate - An instrument which itself prevents individuals from later asserting facts different from those contained in the document. Often required by the buyer of an office building. The tenant and landlord both sign the estoppel certificate, confirming the lease and pertinent facts thereto. Thereafter, neither party may make claims to the contrary.

Exclusive Listing - Any property where the owner has signed an agreement with a real estate broker to lease and/or sell their property. That broker has an "exclusive listing" on the owner's property.

Expansion Option - A right granted by the landlord to the tenant whereby the tenant has the option(s) to add more space to its premises pursuant to the terms of the option(s).

Expense Stop - A fixed amount (typically per square foot) in a lease where the tenant is responsible for all building operating expenses and taxes in excess of said amount.

Extension Option - An agreed continuation of occupancy under the same conditions, as opposed to a renewal, which implies new terms or conditions. In a lease, it is a right granted by the landlord to the tenant whereby the tenant has the option to extend the lease for an ad.

Fair Market Rent - The rent which would be normally agreed upon by a willing landlord and tenant in an "arm's length transaction" for a specific property at a given time, even though the actual rent may be different. In a lease, the term "fair market rent" is defined in a number of different ways and is subject to extensive negotiation and interpretation.

Gross Up - An adjustment made to operating expenses to account for the occupancy level in a building. When operating expenses are "grossed up", it means that the building's variable expenses have been adjusted upwards to the level that those expenses would be incurred if the building was fully occupied (typically 95%).

Ground Lease - A lease of land only, (either vacant or exclusive of any buildings on it). Usually a net lease on a long term basis (30 years+). Ground rent should not be charged back to the tenant as an operating expense.

Hotelling - An alternative workspace concept where rather than having an assigned exclusive workspace, an employee accesses one space, perhaps being one of many such spaces in common with others on an as needed basis, and otherwise works outside of the office.

Hotelling - *(Another usage is what those members of an office relocation committee are entitled to after going through a relocation or office redesign, making use of a commercial shelter offering food, lodging, etc.; preferably in some warm spot like Hawaii.)*

HVAC - Heating, Ventilation, Air Conditioning. A general term encompassing any system designed to heat and cool a building in its entirety, as opposed to a space heater.

Landlord (Lessor) - The party (usually the owner) who gives the lease (right to possession) in return for a consideration (rent).

Lease Term - The specific period of time in which the Landlord grants to the tenant the right to possession of real estate.

Lessee (Tenant) - The party to whom a lease (the right to possession) is given in return for a consideration (rent).

Lessor (Landlord) - The party (usually the owner) who gives the lease (right to possession) in return for a consideration (rent).

Letter of Intent - There are potentially multiple uses of this term. Generally a written statement that two parties to a prospective transaction (buyer/seller or lessor/lessee) intend to proceed to a final agreement in good faith on stated principal business terms of the deal to be entered into. This meaning applies when executed by both parties. Alternatively such a document may be signed only by one party and is then an indication of a willingness to enter into agreement on the

stated terms and conditions. To avoid legal issues regarding offer and acceptance and thus formation of a binding contract, care should be taken to include a clause stating that there is not a specific offer and no intent to be a legally binding obligation. However, an obligation to continue to negotiate in good faith to conclusion can be created.

Listing Agent - The real estate agent hired by the property owner to lease a property on their behalf. The agent obtains a listing agreement, which calls for that agent to act on the owner's behalf as a fiduciary in leasing the property.

Load Factor (also *Core Factor*)- In a lease, the load factor is the multiplier to a tenant's useable space that accounts for the tenant's proportionate share of the common area (restrooms, elevator lobby, mechanical rooms, etc.). The load factor is usually expressed as a percentage and ranges from a low of 5% for a full tenant to as high as 15% for a multi-tenant floor. Subtracting one (1) from the quotient of the rentable area divided by the useable area yields the Load Factor. At times confused with the "loss factor" which is the total rentable area of the full floor less the useable area divided by the rentable area. (If a full floor broken up into multiple tenancies has a useable area of 18,000 s.f. and a rentable area of 20,000 s.f., the load factor is 11.1% and the loss factor is 10%.

Master Lease - A lease controlling subsequent leases. May cover more property than subsequent leases. For example: "A" leases an office building, containing ten offices, to "B". "B" subsequently subleases the ten offices individually. The ten subleases from "B" as sublessor are controlled by the lease from "A" to "B" (master lease).

Net Present Value (NPV) - The calculation of NPV takes into account both the netting of cost and benefits **and** the time value of money. See Present Value.

Net Rentable Area - (Same as Rentable Area). The area (square footage) for which rent can be charged. Generally it is the gross area of the full floor less the area of all vertical penetrations (elevator shafts, stairwells, mechanical shafts etc.) Rentable area can be measured in many ways, but the most common measurement for office buildings is according to BOMA standards. Net Rentable area includes the tenant's premises plus an allocation of the common area directly benefiting the tenant, such as restrooms, common corridors, mechanical and janitor's rooms and the elevator lobby on the tenant's floor.

Nondisturbance - So long as lease is not in default, its rights to occupancy under the lease will not be disturbed by the lessor or its successors or assigns.

Occupancy Cost - Any cost or charge incurred by a tenant pursuant to its lease, such as rent, operating expense increases, parking charges, moving expenses, remodeling costs, etc.

Occupancy Date - Unless specifically stated otherwise in the lease, it is the date on which the tenant takes possession of its leased premises. (See also "Commencement Date").

Open Listing - Any property that is leased directly by the owner. Sometimes, the owner will employ an in-house leasing agent. Typically, these are called open listings, where the owner will

pay a full commission to any broker who brings a tenant to the property.

Operating Expenses - The cost of operating an office building, such as janitorial, management fees, utilities, and similar day to day expenses, as well as taxes, insurance, and a reserve for replacement of items which periodically wear out. Should not include capital expenses such as roof replacement nor expenses associated with the production of income such as leasing commissions and legal fees.

Owner's Representative - An agent who is an advocate for the owner and/or landlord.

Pass Throughs - An increase in operating expenses over the base year amount that is billed to the tenant as additional rent. See escalation.

Premises - Typically the entire rentable area leased by lessee. Sometimes used to designate solely the useable area leased by lessee, i.e. that for which the lessee has exclusive occupancy as opposed to the common areas.

Present Value - The present value is the amount that must be invested now to produce the known future value. For any sum invested at a given interest rate, the amount one would receive at the end of the period can be determined by taking the investment times one (1) plus the interest rate of the period to the power of the period. For example, if \$10 is invested in an interest rate of 10% for one year, the investment would grow to \$11 at the end of the year. It follows, then, that \$11 one year from now is worth \$10 today; that is \$10 is the present value of \$11.

Reasonable Consent - A standard applied in a lease (most often in a sublease clause) which limits the landlord's ability to withhold consent in its sole discretion. If a reasonable person would give consent to an action given the circumstances, so must the landlord.

Renewal Option - The right of a tenant to renew (extend the term of) a lease for a stated period of time at a rent to be determined (i.e. 9.5% of "fair market rent").

Rentable Area - The (square footage) for which rent can be charged. Generally it is the gross area of the full floor less the area of all vertical penetrations (elevator shafts, stairwells, mechanical shafts etc.) Rentable area can be measured in many ways, but the most common measurement for office buildings is according to BOMA standards.

Request For Proposal (RFP) - A document typically issued by a tenant's agent to an owner(s) of real property, inviting the owner(s) to submit a proposal to the tenant for the leasing of a vacant space. The RFP sets forth the specific areas of concern to the tenant, such as the space in question, the lease term, expansion and renewal options, rental rate, and tenant improvements and other allowances to be provided by the owner.

Right of First Offer or First Opportunity - A right, usually given by an owner to a tenant, which gives the tenant a first chance to buy the property or lease a portion of the property if the owner decides to sell or lease. Unlike under a Right of First Refusal, the owner is not required to have a legitimate offer which the tenant can then match or refuse. If the tenant refuses to make an offer or if the parties cannot agree on terms, the property can then be sold or leased to a third party.

Right of First Refusal - A right, usually given by an owner to a tenant, which gives the tenant a first chance to buy the property or lease a portion of the property if the owner decides to sell or lease. The owner must have a legitimate offer which the tenant can match or refuse. If the tenant refuses, the property can then be sold or leased to the offeror.

Right of Offset - A specific clause in a lease where the tenant has the right to deduct from the rent certain costs which are due to the tenant from the landlord. Included may be the costs incurred by tenant to cure defaults of the landlord, after notice and failure by landlord to cure the defaults. These are called "self help".

Space Planning - Term is often loosely used. Most often it is the planning of the layout of the interior space of a building to meet the needs of the user. Can also include detailed interior design and preparation of construction drawings. Space planning and interior design only need not be licensed architects. Preparation of construction drawings for permit have to be prepared by architects licensed in the jurisdiction.

Space Pocket - A portion of a leased premises that is set aside to accommodate future growth on the part of the tenant. The space pocket is typically fully improved at the commencement of the lease and no rent is due on the pocketed area until the earlier of "actual use" or a specified future date.

Sublease - A lease, under which the lessor is the lessee of a prior lease of the same property. The sublease may be different in terms from the original lease, but cannot contain a greater property interest. Example: "A" leases to "B" for five years. "B" may sublease to "C" for three years, but not for six years. (Rent can be greater or less than that in the prior lease.)

Subordination - To make subject or junior to.

Substantial Completion - Generally used in reference to the construction of tenant improvements (TIs). The tenant's premises is typically deemed to be substantially completed when all of the TIs for the premises have been completed in accordance with plans and specifications previously approved by the tenant. Sometimes used to define the commencement date of a lease.

Tenant (Lessee) - A holder of an interest in property for a specific term under a lease or other rental agreement (generally a right to occupancy and use).

Tenant Improvements (TI's) - Improvements to land or buildings to meet the needs of tenants. May be new improvements or remodeling, and be paid for by the landlord, tenant or part by each.

Tenant Representative - An agent who is an advocate for the tenant. The relationship is most often the product of a signed representation agreement.

Turnkey - Referring to an owner making a property ready for a tenant to begin business by having the tenant furnish only furniture, phone and inventory, if any. Turnkey tenant

improvements are provided at the landlord's expense according to plans and specifications previously agreed upon by the parties. Unlike an allowance where the tenant pays for costs in excess of the allowance amount, the landlord bears the risk of construction in a turnkey situation.

Value Engineering - Process by which costs can be decreased or benefits can be added to an undertaking or project through redesign, prioritization or other similar actions.

Useable Area - The secured area (square footage) occupied exclusively by tenant within a tenant's leased space. The useable area times the load factor for common area results in rentable area on which rent is charged. Useable area can be measured in many ways, but the most common measurement for office buildings is according to BOMA standards.

Virtual Office - An office that moves with the person. Typically used in a sales organization where the salespeople are given portable computers, modems, and cellular phones in return for having their offices taken away.

Vertical Transportation - Elevators, stairs or escalators moving people or freight between floors in a building.

Work Letter - Specifications for tenant improvements usually attached to a lease and/or letter of intent. The work letter provides the basis for working drawings and contractor pricing and may allocate costs between the parties. Also establishes critical dates for approval of drawings and processes.

Working Drawings - Drawings prepared by a licensed architect and used by contractors in the construction of tenant improvements. Shows all architectural detail such as electric, plumbing, partitions, etc.

IV. LEGAL

Attornment – An agreement to become a tenant or recognize a new owner of a property and to pay rent to such new owner in place of the former owner. A tenant will often be asked to sign a SNDA (Subordination, Nondisturbance and Attornment Agreement) where tenant agrees to attorn to the landlord's lender if the lender forecloses on the property.

Breakpoint – A breakpoint is gross sales figure that a retail tenant must reach before it must begin paying percentage rent to a landlord. The “natural breakpoint” is the point where the base rent equals the percentage rent. This is generally calculated by dividing the base rent by the percentage. The breakpoint can be higher or lower than the natural breakpoint depending on what the parties negotiate. (See Percentage Rent.)

Distraint for Rent - A lease clause, based on the common law, permitting a Landlord to seize, without prior court approval, and eventually sell, a tenant's property that is located on a leased property after a default. Such clauses are not permitted in many jurisdictions.

Eviction (Unlawful Detainer) – An expedited legal process by which an owner can recover possession of real property from a tenant or other party by obtaining a court order called a “Writ of Restitution”.

Exclusive Use – A lease clause which limits the landlord’s right to lease space to another tenant with a competing use. The scope of the “exclusive” and the remedies for breach are negotiated by the parties.

Force Majeure - A lease clause that protects the parties if they are prevented from performing their obligations by problems beyond their reasonable control.

Novation – The substitution of one party to a contract for another by agreement of all the parties. A novation will discharge one of the parties and substitute a new party in its place.

Percentage Rent – A rental charge, usually in a retail lease, based upon a specified percentage of tenant’s gross sales. (See Breakpoint.)

Quiet Enjoyment – A lease covenant where the landlord promises that the tenant will enjoy the possession and use of the premises in peace and without disturbance.

Subrogation – A substitution of one party in place of another with regard to a claim or right. Insurance companies, guarantors and bonding companies generally can step into the shoes of the party they are obligated to pay and sue any party that the original claimant could have sued.