

GLOSSARY - SHOPPING CENTRE TERMS

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 repair 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. 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.

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 Landlord retains the savings 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 that 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.

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.

BOMA - Building Owners and Managers Association. BOMA publishes the definition of rentable and useable area, which is used to determine the square meterage 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.

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 and customers of the shopping center. Common area includes common malls, parking areas, building and elevator lobbies, restrooms and the service corridors.

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 Rent - The average per square meter 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.

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 meter 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 meter and then amortizing this lump sum amount evenly over the term of the lease on a cost per square meter basis.

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.

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.

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 meter) 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.

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.

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

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.

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.

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.

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 Lease - (See also "Triple 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 the payment of these costs either directly or as additional rent. Opposite of Gross or Fully Serviced 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 meterage) 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.

Non-disturbance - 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").

Operating Expenses - The cost of operating an shopping center, 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 Thru-s - 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").

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

Rentable Area - The area 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. Common in office leases.

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

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 Allowances - A sum of money typically granted to the tenant as a landlord contribution to the construction or renovation of a tenant's store

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.

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, maintenance, utilities, cleaning etc. The terms "net net", "net net net", "triple net", and other such repetitions are used.

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.

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.