

Glossary of Real Estate Terms

We hope you find this list of commercial real estate leasing terms helpful.

This information is provided without warranty of any kind. These terms are provided for your information only, with the warning that terms may have different meanings or connotations in different markets, in different states, or as used in different statutes or documents. This glossary is provided by the Society of Industrial and Office Realtors (SIOR) as a reference tool for students in courses of instruction offered by SIOR. SIOR gratefully acknowledges the contribution of The Center For Commercial Real Estate of its glossary, from which this work has been developed, with permission of The Center For Commercial Real Estate.

Abatement: Often and commonly referred to as free rent or early occupancy and may occur outside or within the primary term of the lease.

Above Building Standard: Upgraded finishes and specialized design necessary to accommodate a tenant's requirements.

Absorption: The rate, expressed as a percentage, at which available space in the marketplace is leased during a predetermined period of time. Also referred to as "Market Absorption".

Absorption Rate: The net change in space available for lease between two dates, usually expressed as a percentage of the total square footage.

Ad Valorem: According to value. This is a tax imposed on the value of property (usually referred to as a general property tax), which is typically based on the local government's valuation of the property.

Add-On Factor: Often referred to as the Loss Factor or Rentable/Usable (R/U) Factor, it represents the tenant's pro-rata share of the Building Common Areas, such as lobbies, public corridors and restrooms. It is usually expressed as a percentage which can then be applied to the usable square footage to determine the rentable square footage upon which the tenant will pay rent.

Allowance Over Building Shell: Most often used in a yet-to-be constructed property, the tenant has a blank canvas upon which to customize the interior finishes to their specifications. This arrangement caps the landlord's expenditure at a fixed dollar amount over the negotiated price of the base building shell. This arrangement is most successful when both parties agree on a detailed definition of what construction is included and at what price.

Anchor Tenant: The major or prime tenant in a building, shopping center, or development.

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 2

“As-Is” Condition: The acceptance by the tenant of the premises in their existing condition at the time the lease is executed. This would include acceptance of any physical defects, code violations, or other problems with the physical and legal condition of the premises.

Assessment: A fee imposed on property, usually to pay for public improvements such as water, sewers, streets, improvement districts, which are specific to the property or its general location.

Assignment: A transfer by tenant of tenant’s entire leasehold estate in the property ending tenant’s legal duties and obligations to the landlord, which are then assumed by the assignee. Distinguishable from a sublease where the subtenant acquires something less than the tenant’s entire interest.

Attorn: To turn over or transfer to another money or goods. To agree to recognize a new owner of a property and to pay him/her rent. In a lease, when the tenant agrees to attorn to the purchaser or foreclosing lender, the lessee accepts the successor party as landlord.

Bankruptcy: Also known as insolvency, where a party’s liabilities exceed its assets, and by filing bankruptcy the party seeks protection from creditors, stays proceedings against it, but largely turns over control of its affairs to the court, a trustee, and perhaps approval of creditors. In a lease context, the tenant filing bankruptcy requires either affirmation or termination of the lease within a short period of time. Should a landlord file bankruptcy, it is likely that a trustee or receivers would be appointed by the court to act for the landlord, receive the rents, and operate the leased building. Proceedings under federal statutes to relieve a debtor who is unable to pay its debts. After addressing certain priorities and exemptions, the bankrupt’s property and other assets are distributed by the court to creditors in full satisfaction for the existing debt. See also: “Chapter 11”.

Base Rent: A set amount used as a minimum rent in a lease with provisions for increasing the rent over the term of the lease. See also “Escalation Clauses, Operating Expense Escalation and Percentage Lease”.

Base Year: Actual taxes and operating expenses for a specified base year, most often the year in which the lease commences. Once the base year expenses are known, the lease essentially becomes a dollar stop lease, meaning that the tenant pays the increases in taxes and operating expenses in excess of the base year figures.

Below-grade: Any structure or a portion of a structure located underground or below the surface grade of the surrounding land.

Building Classifications: Building classifications in most markets refer to Class “A”, “B”, “C” and sometimes “D” properties. While the rating assigned to a particular building is very subjective and relative to the market, Class “A” properties are typically newer buildings with superior construction and finish in excellent locations with easy access, attractive to credit tenants, and which offer a multitude of amenities such as on-site management or covered parking. These buildings, of course, command the highest rental rates in their sub-market. As the “Class” of the building decreases (i.e. Class “B”, “C” or “D”) one component or

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 3

another such as age, location or construction of the building becomes less desirable. Note that a Class "A" building in one sub-market might rank lower if it were located in a distinctly different sub-market just a few miles away containing a higher end product.

Building Code: The various laws set forth by the ruling municipality as to the end use of a certain piece of property and that may with varying levels of detail dictate the criteria for design, materials and type of improvements allowed, and safety measures which may be required.

Building or "Core" Factor: Represents the percentage of Net Rentable Square Feet devoted to the building's common areas (lobbies, rest rooms, corridors). This factor can be computed for an entire building or a single floor of a building. Also known as a Loss Factor or Rentable/Usable (R/U) Factor, it is calculated by dividing the rentable square footage by the usable square footage.

Building Standard: A list of construction materials and finishes that represent what the Tenant Finish Allowance/Work Letter is designed to cover while also serving to establish the landlord's minimum quality standards with respect to tenant finish improvements within the building. Examples of standard building items are: type and style of doors, lineal feet of partitions, quantity and quality of lighting, and quality of floor covering.

Building Standard Improvement Allowance: The landlord lists, in detail, the building standard materials and costs necessary to make the premises suitable for occupancy. A negotiated allowance is then provided for the tenant to customize or upgrade materials. See also: "Workletter".

Build-out: The space improvements put in place per the tenant's specifications. Takes into consideration the amount of Tenant Finish Allowance (see Tenant Finish) provided for in the lease agreement. See also "Tenant Improvement Allowance".

Build-To-Suit: An approach taken to lease space by a property owner where a new building is designed and constructed per the tenant's specifications, often a specialized use.

Capital Expenses: This type of expense is most often defined by reference to generally accepted accounting principles (GAAP), but GAAP does not provide definitive guidance on all possible expenditures. Accountants will often disagree on whether or not to include certain items as a capital expense or as an operating expense. For example, roof replacement is usually considered a capital expense, where roof maintenance or repair would likely be considered an operating expense.

Capitalization: A method of determining value of real property by considering net operating income divided by a predetermined annual rate of return.

Capitalization Rate (a/k/a "Cap Rate"): Most traditionally calculated as Net Income before debt service divided by the purchase price and expressed as a percentage. The rate that represents a reasonable return on investment (on the basis of both the investor's alternative investment possibilities and the risk of the investment). Used to determine and value an investment. Also called "free and clear return". See "Capitalization".

Carrying Charges: Costs incidental to property ownership, other than interest (i.e. taxes, insurance costs and maintenance expenses), that must be absorbed by the landlord during the initial lease-up of a building and thereafter during periods of vacancy.

Certificate of Occupancy: A document presented by a local government agency or building department certifying that a building and/or the leased premises (tenant's space), has been satisfactorily inspected and is/are in a condition suitable for occupancy.

Chapter 7: That portion of the Federal Bankruptcy code that deals with business liquidations. Chapter 11 is that part of the Federal Bankruptcy code that deals with business reorganizations, meaning that the debtor continues its business during and after bankruptcy.

Chapter 11: That portion of the Federal Bankruptcy code that deals with business reorganizations, meaning that the debtor continues its business during and after bankruptcy. Chapter 7 is that part of the Federal Bankruptcy code that deals with business liquidations.

Circulation Factor: Interior space required for internal office circulation not accounted for in the Net Square Footage. Based upon our experience, we use a Circulation Factor of 1.35 x the Net Square Footage for office and fixed drywall areas and a Circulation Factor of 1.45 x the Net Square Footage for open area workstations. Also see: Net Square Footage and Usable Square Footage.

Common Area: There are two components of the term "common area." If used in association with the Rentable/Usable or Load Factor calculation, the common areas are those areas within a building that are available for common use by all tenants or groups of tenants and their invitees (i.e. lobbies, corridors, restrooms, etc.). On the other hand, the cost of maintaining parking facilities, malls, sidewalks, landscaped areas, public toilets, truck and service facilities, and the like are included in the term "common area" when calculating the tenant's pro-rata share of building operating expenses.

Common Area Maintenance (CAM): This is the amount of Additional Rent charged to the tenant, in addition to the Base Rent (see Base Rent), to maintain the common areas of the property shared by the tenants and from which all tenants benefit. Examples include: snow removal, outdoor lighting, parking lot sweeping, insurance, and property taxes. Most often, this does not include any capital improvements (see Capital Expenses) that are made to the property.

Comparables: Lease rates and terms of properties similar in size, construction quality, age, use, and typically located within the same sub-market and used as comparison properties to determine the fair market lease rate for another property with similar characteristics.

Concessions: Cash or cash equivalents expended by the landlord in the form of rental abatement, additional tenant finish allowance, moving expenses, cabling expenses or other monies expended to influence or persuade the tenant to sign a lease.

Condemnation: The process of taking private property, without the consent of the owner, by a governmental agency for public use through the power of eminent domain.

Construction Management: When the actual construction process is overseen by a qualified construction manager who ensures that the various stages of the construction process are completed in a timely and proper manner, from obtaining construction permit to completion of the construction, to the final inspection and approval of the completed premises with the tenant. The fee for construction management is often paid to a property manager or other qualified professional.

Constructive Eviction: When the landlord, without intent to oust a tenant or deprive the tenant of possession of all or a portion of the leased premises, either by act or by inaction allows a condition to occur (e.g. roof leak, loss of utilities, failure of HVAC) denies the tenant of use and possession of all or a portion of the leased premises.

Consumer Price Index (“CPI”): Measures inflation in relation to the change in the price of a fixed market basket of goods and services purchased by a specified population during a “base” period of time. It is not a true “cost of living” factor and bears little direct relation to actual costs of building operation or the value of real estate. The CPI is commonly used to increase the base rental periodically as a means of protecting the landlord’s rental stream against inflation or to provide a cushion for operating expense increases for a landlord unwilling to undertake the record keeping necessary for operating expense escalations. There are many different consumer price indices for different markets (urban, rural), and different goods or services. When using a CPI as a basis for rent increases, care should be given to selection of the proper CPI.

Contiguous Space: (1) Multiple suites/spaces within the same building which adjoin and which can be combined and rented to a single tenant; (2) A block of space located on multiple adjoining floors in a building (i.e., a tenant leases floors 6 through 12 in a building).

Contract Documents: The complete set of design plans and specifications for the construction of a building or of a building’s interior improvements. Working Drawings specify for the contractor the precise manner in which a project is to be constructed. See also “Specifications”. “Working Drawings”.

Conveyance: Most commonly refers to the transfer of title to property between parties by deed. The term may also include most of the instruments by which an interest in real estate is created, mortgaged, or assigned.

Corporation: An artificial or legal entity created under the authority of a state or nation, which exists as an entity separate from those who operate the entity (officers, directors, employees), and whose liability is generally limited to its assets.

Core Factor: Represents the percentage of Net Rentable Square Feet devoted to the building’s common areas (lobbies, rest rooms, corridors). This factor can be computed for an entire building or a single floor of a building. Also known as a Loss Factor or Rentable/Usable (R/U) Factor, it is calculated by dividing the rentable square footage by the usable square footage.

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 6

Covenant: A written agreement inserted into deeds or other legal instruments stipulating performance, or non-performance, or perhaps prohibition of certain acts or, uses of a property and/or land.

Covenant of Quiet Enjoyment: The old "quiet enjoyment" paragraph, now more commonly referred to as "Warranty of Possession", had nothing to do with noise in and around the leased premises. It provides a warranty by landlord that it has the legal ability to convey the possession of the premises to Tenant; the landlord does not warrant that it owns the land. This is what landlord agrees to provide as consideration for the tenant's obligation to pay rent. If the landlord breaches this covenant, it may constitute an actual or constructive eviction.

Debtor: the person or entity which declares bankruptcy by filing a petition in bankruptcy.

Default: The failure to perform a legal or contractual duty or to discharge an obligation when due. Specific examples are: 1) Failure to make a payment of rent when due. 2) Failure to perform any of the terms of a lease agreement. A default which is not cured within the applicable cure period becomes a breach.

Demising Walls: The partition wall that separates one tenant's space from another or from the building's common area such as a public corridor.

Design/Build: A system in which a single entity is responsible for both the design and construction. The term can apply to an entire facility or to individual components of the construction to be performed by a subcontractor; also referred to as "design/construct." This sometimes refers to a project constructed by a developer for a prospective buyer's specific requirements on a turn key basis.

Depreciation: Spreading out the cost of a capital asset over its estimated useful life or a decrease in the usefulness, and therefore value, of real property improvements or other assets caused by deterioration or obsolescence.

Distraint: The act of seizing (legally or illegally) personal property of a tenant based on the right and interest which a landlord has in the property of a tenant in default.

Dollar Stop: An agreed dollar amount of taxes and operating expense (expressed for the building as a whole or on a square foot basis) over which the tenant will pay its pro-rata share of increases. May be applied to specific expenses (e.g., property taxes or insurance).

Easement: A right of use over the property of another created by grant, reservation, agreement, prescription, or necessary implication. It is either for the benefit of adjoining land ("appurtenant"), such as the right to cross A to get to B, or for the benefit of a specific party ("in gross"), such as a public utility easement.

Economic Rent: The market rental value of a property at a given point in time, even though the actual rent may be different.

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 7

Effective Rent: The actual rental rate to be achieved by the landlord after deducting the cost of concessions from the base rental rate paid by a tenant, usually expressed as an average rate over the term of the lease.

Efficiency Factor: Represents the percentage of Net Rentable Square Feet devoted to the building's common areas (lobbies, rest rooms, and corridors). This factor can be computed for an entire building or a single floor of a building. Also known as a Core Factor or Rentable/Usable (R/U) Factor, it is calculated by dividing the rentable square footage by the usable square footage. See "Usable Square Footage".

Eminent Domain: A power of the state, municipalities, and private persons or corporations authorized to exercise functions of public character to acquire private property for public use by condemnation, in return for just compensation. See also "Condemnation".

Encroachment: The intrusion of a structure which extends, without permission, over a property line, easement boundary or building setback line.

Encumbrance: Any right to, or interest in, real property held by someone other than the owner, but which will not prevent the transfer of fee title (i.e. a claim, lien, charge or liability attached to and binding upon real property).

Escalation Clause: A clause in a lease which provides for the rent to be increased to reflect changes in expenses paid by the landlord such as real estate taxes, operating costs and the like. This may be accomplished by several means such as fixed periodic increases, increases tied to the Consumer Price Index, or adjustments based on actual changes in expenses paid by the landlord in relation to a dollar stop or base year reference.

Estoppel Certificate: A signed statement regarding the lease certifying that certain statements of fact are correct as of the date of the statement, and can be relied upon by a third party such as a prospective lender or purchaser. In the context of a lease, this is a statement by a tenant confirming that the lease is in effect, that no rent has been prepaid and that there are no known uncured defaults by the landlord (except those specified in the estoppel certificate).

Exclusive Agency: A generic term for a representation or listing agreement between landlord and a broker, providing that such broker is the only broker hired to list the property for sale or lease, and if a buyer or tenant is procured by the exclusive agent or any other broker, the landlord is obligated to pay its exclusive agent a commission. In many states, an exclusive agency allows the landlord to procure a tenant without the assistance of the broker, without liability for commission. See Exclusive Right to Sell or Lease

Exclusive Right to Sell or Lease: A broad form of exclusive listing between owner and broker such that if a tenant or purchasers is procured during the term of the listing by the broker, the owner, or by anyone else (including another broker), then the owner is obligated to pay the listing broker a commission on the transaction.

Exclusive Use Clause: A clause that may be included in a lease (usually retail) specifying

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 8

that the business of the tenant is exclusive in the property and that no other tenant operating the same or similar type of business may occupy space in the building or shopping center. This clause benefits service-oriented businesses desiring exclusive access to the building's population (i.e. travel agent, deli, and other retail uses).

Expense Stop: An agreed dollar amount of taxes and operating expense (expressed for the building as a whole or on a per square foot basis) over which the tenant will pay its prorated share of increases. The stop may be applied to specific expenses only (e.g., property taxes or insurance), as well.

Face Rental Rate: The "asking" rental rate published by the landlord.

Finance Charge: The amount paid for the privilege deferring payment of goods or services, including any charges payable by the purchaser as a condition of the loan, or charges accruing on above standard tenant improvements made by a landlord at tenant expense, i.e. repaid in rent.

First Mortgage: The senior mortgage which, by reason of its position (i.e. earliest recording date), has priority over all junior or later recorded encumbrances. The holder of the first or senior mortgage has a priority right to payment in the event of default, foreclosure, or sale.

First Refusal Right or Right Of First Refusal (Purchase): A lease clause giving a tenant the first opportunity to buy a property at the same price and on the same terms and conditions as those contained in an offer from a third party which the owner has expressed a willingness to accept. See "Right of First Refusal".

First Refusal Right or Right Of First Refusal (to Lease adjacent space): A lease clause giving a tenant the first opportunity to lease additional space that might become available in a property at the same price and on the same terms and conditions as those contained in a third party offer that the owner has expressed a willingness to accept. This right is often restricted to specific areas of the building such as adjacent suites or other suites on the same floor. See "Right Of First Refusal" and "Right Of First Offer".

Fixed Costs: Costs, such as rent, which do not vary with changes in the level of sales or production and would continue if the entity produced and sold nothing at all.

Fixture: Usually a fixture is personal property (e.g. equipment, display pieces, shelving, racking) which becomes affixed or attached to real property. Unless the right to remove fixtures (and repair the leased premises) is reserved by the tenant, a landlord may claim ownership of fixtures at lease termination.

Flex Space: A building providing its occupants flexibility in how they utilize the space for different purposes. Usually provides a configuration allowing a flexible amount of office or showroom space in combination with manufacturing, laboratory, warehouse or distribution space. Typically this type of space also allows the flexibility to relocate overhead doors. Generally constructed with grade level loading facilities, load-bearing floors, and high ceilings but with little or no common area.

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 9

Floor Area Ratio (FAR): The ratio of the gross square footage of a building to the land on which it is situated. Calculated by dividing the total square footage in the building by the square footage of land area.

Force Majeure: A force which cannot be controlled by the parties to a contract and prevents the parties from complying with the provisions of the contract or lease. This includes acts of God such as flood or a hurricane, or acts of man such as strike, fire, or war.

Foreclosure: A procedure by which the mortgagee (“lender”) either takes title to or forces the sale of the mortgagor’s (“borrower”) property in satisfaction of an unpaid debt.

Full Recourse Loan: A loan on which a borrower or guarantor is liable in the event of default by the borrower beyond the value of the collateral (i.e. the property), usually personally.

Full Service Rent: An all-inclusive rental rate which includes operating expenses and real estate taxes for the first year. The tenant is generally still responsible for any increase in operating expenses over the base year amount.

Future Proposed Space: Space in a proposed commercial development which is not yet under construction or where no construction start date has been set. Future Proposed Projects include all those projects waiting for a lead tenant, financing, zoning, approvals, or any other event necessary to begin construction, and this term may also refer to the future phases of a multi-phase project.

General Contractor: The prime contractor who contracts for the construction of an entire building or project, rather than just a portion of the work. The general contractor hires all other trades (subcontractors) and suppliers of materials (material men,) coordinates all work, and is responsible for their performance and payment to them.

General Partnership: A form of partnership where all partners are deemed general partners, are jointly and severally liable for the acts and duties of the partnerships and the other partners in partnership business, without limitation of liability to each partner. See also “Limited Partnership,” “and Limited Liability Company”.

Graduated Lease: A lease, generally long term in nature, which provides that the rent will vary depending upon future contingencies, such as a periodic appraisal, the tenant’s gross income, or simply the passage of time.

Grant: To bestow or transfer an interest in real property by deed or other instrument; either the fee or a lesser interest, such as an easement.

Grantee: Party to whom a grant is made.

Grantor: The party making the grant.

Gross Absorption: A measure of the total square feet leased over a specified period of

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 10

time with no consideration given to space vacated in the same geographic area during the same time period. See also: "Net Absorption."

Gross Building Area: The total floor area of the building measuring from the outer surface of exterior walls and windows and including all vertical penetrations (e.g. elevator shafts, etc.) and basement space.

Gross Lease: A lease in which the tenant pays a flat sum for rent out of which the landlord must pay all expenses such as taxes, insurance, maintenance, and non sub-metered utilities, with no pass through of these expenses or increase in these expenses to tenant.

Gross Up: An adjustment made to operating expenses to account for the present occupancy level in a building as compared to a higher level such as 95% or more. When operating expenses are "grossed up", it means that the building's variable expenses have been adjusted (usually) upward to the level that those expenses would be if the building were fully or almost fully occupied (typically 95%).

Ground Rent: Rent paid to the owner for use of land, normally on which to build a building. Generally, this involves a long-term lease (e.g. 99 years) with the ground lessor retaining title to the land and owning the building upon ground lease expiration. Unless the ground lessor agrees to subordinate its interest to the ground lessee's lender, the ground lessee will not likely be able to use the land for collateral for a loan.

Guarantor: Party which makes a guaranty. See also "Guaranty".

Guaranty: Agreement whereby the guarantor undertakes collaterally to assure satisfaction of the debt or other obligation of another or perform the obligation of another if and when the debtor or tenant fails to do so. Differs from a surety agreement in that there is a separate and distinct contract rather than a joint undertaking and shared liability with the debtor.

Hard Cost: The cost of constructing the actual physical improvements (i.e. labor and material for construction). See also "Soft Cost".

High Rise: In the Central Business District, this could mean a building higher than 25 stories above ground level. In suburban sub-markets, it generally refers to buildings higher than 7 or 8 stories.

Hold Over Rent: Rent owed by a tenant to a landlord for occupying leased premises after expiration of the lease term, often expressed as a multiple of the base rent charged immediately prior to expiration of the term.

Hold Over Tenant: A tenant retaining possession of the leased premises after the expiration of a lease.

HVAC: The acronym for "Heating, Ventilating and Air-Conditioning".

Improvements: In the context of leasing, the term typically refers to the improvements made to or inside a building but may include any permanent structure or other

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 11

development, such as a street, sidewalks, utilities, etc. See also “Leasehold Improvements”.

Indirect Costs: Development costs, other than material and labor costs which are directly related to the construction of improvements, including administrative and office expenses, commissions, architectural, engineering and financing costs, also known as Soft Costs.

Inventory: Refers to the total amount of rentable square feet of existing and soon to be delivered space in a given category, for example, Class A office space. Inventory refers to all space within a certain prescribed market without regard to its availability or condition, and categories may include all types of leased space such as office, flex, retail, and warehouse space.

Judgment: The final decision of a court resolving a dispute and determining the rights and obligations of the parties. Money judgments, when recorded with the county recorder of deeds, become a lien on real property of the defendant.

Judgment Lien: An encumbrance that arises by law after recording a notice of judgment with the county recorder of deeds when a judgment for the recovery of money attaches to the judgment debtor’s real estate. See also “Lien”.

Just Compensation: Compensation which is fair to both the owner and the public when property is taken for public use through condemnation (eminent domain). The theory is that in order to be “just,” the property owner should be no richer or poorer than prior to the taking.

Landlord’s Lien: A lien which may be created by contract or by operation of law. Examples are: (1) a contractual landlord’s lien based on a lease agreement; (2) a statutory landlord’s lien; and (3) landlord’s remedy of distress (or right of distraint), which is not truly a lien, but has a similar effect when the landlord seeks to attach a tenant’s property to satisfy the landlord’s claim.

Landlord’s Lien or Warrant: A warrant from a landlord to levy upon a tenant’s personal property (e.g., furniture, machines.) and to sell this property at a public sale to compel payment of the rent or other financial obligation based on the lease, known in some states as distraint.

Lease: An agreement whereby the owner of real property (landlord) gives the right of possession to another (tenant) for a specified period of time (term) and for a specified consideration (rent).

Lease Agreement: Any agreement which gives rise to a relationship of landlord and tenant. A contract for the exclusive possession of the leased premises entered into between landlord and tenant reflecting agreed upon terms and conditions.

Lease Commencement Date: The date which usually constitutes the commencement of the term of the lease for all purposes, whether or not the tenant has actually taken

possession, so long as occupancy is possible. In reality, there could be other agreed dates, such as in an Early Occupancy Agreement, which have an impact on this definition.

Leasehold Improvements: Improvements made to the leased premises by or for a tenant. Generally, especially in new space, part of the lease negotiations will include in some detail the improvements to be made in the leased premises by Landlord or in the alternative, an allowance provided to the tenant to fund improvements made by the tenant. See also "Tenant Improvements". These improvements are usually considered landlord's property upon lease termination.

Legal Description: A description identifying a parcel of land by government survey, metes and bounds, or lot numbers of a recorded plat including a description of any portion thereof.

Legal Owner: The term is in technical contrast to equitable owner. The legal owner has legal title to the property.

Letter of Attornment: A letter from the grantor (seller) to a tenant, stating that a property has been sold, and directing rent to be paid to the grantee (buyer). See also "Attorn".

Letter of Credit: A commitment by a bank or other person, (issuer) made at the request of a customer, that the issuer will honor drafts or other demands for payment upon full compliance with the conditions specified in the letter of credit, such advance constituting a loan to the customer. Letters of credit are often used in place of cash deposited with the landlord to constitute the security deposit.

Letter of Intent: A preliminary agreement stating the proposed terms for a final contract of purchase or lease. They can be "binding" or "non-binding", depending on their terms and the intent of the parties. The parties should always consult their respective legal counsel before signing any Letter of Intent.

Lien: A claim or encumbrance against property used to secure a debt, charge or the performance of some act. Includes liens acquired by contract or by operation of law. All liens are encumbrances but all encumbrances are not liens.

Lien Waiver (Waiver of Lien): A waiver of mechanic's lien rights, signed by a general contractor and his subcontractors, that is often required before the general contractor can receive a draw under the payment provisions of a construction contract. May also be required before the owner can receive a draw on a construction loan. In roughly ½ of the states in the U.S., real estate brokers have right to assert liens on a property to secure their role or lease commission, and usually (in these states), the broker must exchange a lien waiver for payment of the claimed commission.

Limited Liability Company (a/k/a "LLC"): A business entity organized under the state's limited liability and characterized by its owners being termed member, its day to day management being accomplished by its members or by a manager (which may or may not

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 13

be a member). Liability of a member is limited to the member's contribution to the entity, while the manager's liability is not similarly limited. This entity can be taxed either as a partnership or as a corporation, as the LLC elects with the IRS.

Limited Partnership: A partnership consisting of one or more general partners (see general partnership) and other partners called limited partners, where the liability for the acts of the partnership is total for each general partner. A limited partner whose role is generally passive, as an investor, has liability only to the extent of the specific amount invested in the partnership. A type of partnership, created under state law, comprised of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in profits but who take no part in running the business, and most important, incur no liability beyond the amount they have contributed to the partnership.

Low Rise: A building with fewer than (generally) 4 stories above ground level.

Lump-Sum Contract: A type of construction contract requiring the general contractor to complete a building or project for a fixed cost normally established by competitive bidding. The contractor absorbs any loss or retains any profit, in excess of the lump sum.

Market Rent: The rental income that a property would command on the open market with a landlord and a tenant ready and willing to consummate a lease in the ordinary course of business; indicated by the rents that landlords were willing to accept and tenants were willing to pay in recent lease transactions for comparable space.

Market Value: The highest price a property would command in a competitive and open market under all conditions requisite to a fair sale with the buyer and seller each acting prudently and knowledgeably in the ordinary course of trade.

Master Lease: A primary lease that controls subsequent leases of all or portions of the leased premises. An Executive Suite operation is an example in that a master lease is signed with the landlord and then individual offices within the leased premises are leased or licensed to other individuals or companies for different (usually shorter) terms.

Mechanic's Lien: A claim created by state statute for securing priority of payment of the price and value of work performed and materials furnished in constructing, repairing or improving a building or other structure, and which attaches to the land as well as to the buildings and improvements thereon.

Metes and Bounds: A form of legal description which, with the terminal points and angles, described by listing the compass directions and distances of the boundaries. Originally, metes referred to distance and bounds referred to direction.

Mid-Rise: A building with (usually) 4 to 8 stories above ground level although in a Central Business District, this might extend to buildings up to twenty-five stories.

Mixed-Use: Space within a building or project provided for more than one use (e.g., an apartment building with office space, a hotel with office space, or a retail establishment with apartments).

Modified Gross Lease: A lease in which a tenant pays a fixed sum for rent from which landlord pays all operating expenses for the first or lease year (or dollar stop), and thereafter tenant pays all increases in operating expenses or the increases beyond the fixed ceiling, called a dollar stop.

Mortgage: A written instrument creating an interest in real estate and that provides security for the payment of a debt, usually repayment of a loan. The borrower (i.e., mortgagor) retains possession and use of the property during the period while payments are made to the lender (mortgagee).

Net Absorption: The square feet leased in a specific geographic area or defined market over a fixed period of time offset by space vacated in the same area during the same period. See also; "Gross Absorption".

Net Lease: A lease in which there is a provision for the tenant to pay, in addition to base rent, certain costs associated with the operation of the property, which include some or all of property taxes, insurance, repairs, utilities, and maintenance. There are also "NN" (double net) and "NNN" (triple net) leases, depending upon the degree to which the tenant is responsible for operating costs. See also "Gross Lease."

Net Rentable Area: The floor area of a building which remains after the square footage represented by vertical penetrations, such as elevator shafts, stairways, plumbing and HVAC chases has been deducted. Common areas and mechanical rooms are included and no deductions are made for necessary columns and projections of the building. (BOMA Standard).

Normal Wear and Tear: The deterioration or loss in value caused by the tenant's normal and reasonable use. In most leases the tenant is not responsible for "normal wear and tear," on the leased premises when the tenant vacates the premises at the end of the lease term.

Operating Expense Escalation: Although there are many variations of escalation clauses, all are intended to adjust rents by reference to external standards such as published indices, negotiated wage levels, or expenses related to the ownership and operation of buildings. During the past 30 years, landlords have developed the custom of separating the base rent for the occupancy of the leased premises from escalation rent. This technique enables the landlord to better ensure that the "net" rent to be received under the lease will not be reduced by the escalating costs of operating and maintaining the property. The landlord's definition of Operating Expenses is likely to be broad, covering most costs of operation of the building. Most landlords pass through proper and customary charges, but in the hands of an overly aggressive landlord, these clauses can operate to impose obligations which the tenant would not willingly or knowingly accept.

Operating Expenses: The actual costs associated with operating a property including maintenance, repairs, management, utilities, taxes, and insurance. A landlord's definition of operating expenses is likely to be quite broad, covering most if not all aspects of

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 15

operating the building.

Option: A stated right of a tenant with respect to leasing additional space, renewing the lease or extending its term, or perhaps purchasing the property. Options usually contain conditions such as exercise thereof in writing, within a certain time period (usually a number of months prior to lease expiration) and the option may contain a stated rent or purchase price, or perhaps simply state "at fair market rent or value," leaving the parties to negotiate the rent or sale price at the time of exercise of the option.

Parking Ratio or Index: The intent of this ratio is to provide a uniform method of expressing the amount of parking that is available or required at a given building. Dividing the total rentable square footage of a building by the total number of parking spaces for the building provides the amount of rentable square feet per each individual parking space (expressed as 1/xxx or 1 per xxx). Dividing 1000 by the previous result provides the ratio of parking spaces available per each 1000 rentable square feet (expressed as x per 1000).

Partial Taking: The taking of part of an owner's property for public use through the power of eminent domain.

Pass Throughs: Refers to the tenant's pro-rata share of operating expenses paid in addition to the tenant's base rent.

Percentage Rent: Lease provision requiring the tenant to pay a percentage of the tenant's gross sales as a component of rent. There is usually a base rent amount to which "percentage" rent is then added. This type of clause is most often found in retail leases, but is not a common element of rent.

Performance Bond: A surety bond posted by a contractor guaranteeing full performance of a contract (usually a construction project) with the proceeds to be used to complete the contract or compensate for the owner for loss or cost of completion in the event of nonperformance.

Pre-leased: Refers to space in a proposed building that has been leased prior to the start of construction or in advance of the issuance of a Certificate of Occupancy.

Punch List: An itemized list documenting incomplete or unsatisfactory items, usually prepared by the architect or construction manager after the contractor has notified the owner or tenant that the work on the property or in the leased space is substantially complete.

Raw Space: Unimproved shell space in a building.

Real Property: Land, and generally whatever is erected or affixed to the land, such as buildings, fences, and including light fixtures, plumbing and heating fixtures, or other items which would be personal property if not attached. See "Fixtures".

Recapture: (1) As used in leases, a clause giving the landlord a percentage of profits above a fixed amount of rent; or in a percentage lease, a clause granting the landlord a right to terminate the lease if the tenant fails to realize minimum sales. (2) Right of

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 16

recapture may refer to the right retained by landlord when a tenant elects to sublease or assign, and the landlord elects to terminate the lease and recapture the leased space rather than approve the proposed sublease or assignment.

Recourse: The right of a lender, in the event of a default by the borrower, to recover against the personal assets of a party who is liable for the debt (e.g. endorser or guarantor).

Rehab: Short for rehabilitation, the extensive renovation of a building or project that is intended to cure obsolescence.

Renewal Option: A clause giving a tenant the right to extend or renew the term of a lease, usually for a stated period of time and at a rent amount as provided for in the lease and option clause.

Rent: Compensation paid, usually periodically, for the occupancy and use of any rental property, land, buildings, or space in a building.

Rent Commencement Date: The date on which a tenant is obligated to begin paying rent, as contrasted with the lease commencement date when the lease term commences, but payment of rent is deferred for a period of time.

Rentable Square Footage: Rentable Square Footage equals the Usable Square Footage plus the tenant's pro-rata share of the Building Common Areas, such as lobbies, public corridors and restrooms. The pro-rata share, often referred to as the Rentable/Usable (R/U) Factor, will typically fall in a range of 1.10 to 1.16, depending on the particular building. Typically, a full floor occupancy will have an R/U Factor of 1.10 while a partial floor occupancy will have an R/U Factor of 1.12 to 1.16 ratio to the Usable Area.

Rentable/Usable Ratio: The number resulting from dividing the Total Rentable Area in a building by the Total Usable Area. The inverse of this ratio describes the proportion of the rentable leased square feet that a tenant may expect to actually utilize.

Rental Concession: Concessions a landlord may offer a tenant in order to secure the tenancy. While rental abatement or reduced rent over a fixed period of time is one form of monthly concession, there are many others such as: increased tenant improvement allowance; special signage; below market rental rates; and moving allowances. See also "Abatement".

Rent-Up Period: The period, following construction of a new building, while tenants are actively being sought and the project approaches its stabilized occupancy.

Request for Proposal ("RFP"): The formal and often customized compilation of the many considerations that a tenant might seek to reflect the tenant's specific needs. Just as a building's standard form lease document represents the landlord's "wish list", the RFP

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 17

serves in that same capacity for the tenant. A standardized RFP issued to multiple prospective landlords gives the tenant the opportunity to compare various landlord proposals on the same criteria.

Right of First Offer (“ROFO”): A tenant may hold a ROFO in its lease, meaning that if space becomes vacant or available, or if landlord should elect to sell the building, the landlord must first advise tenant of the available space, or landlord’s intent to sell the property so that if so inclined, the holder of the ROFO then has the right to make the first offer to lease the available space or to purchase the property on any terms and conditions which the ROFO holder might offer. Of course, landlord is free to accept, decline, or counter such offer, as a ROFO contains no specific terms, rent, or sale price. (See Right of First Refusal and option which are similar but have criterial differences from a ROFO).

Right Of First Refusal (“ROFR”): A right which a tenant may hold to lease additional space in the property or to purchase the property under the following circumstances. If and when landlord is prepared or has agreed (subject to this right of first refusal) to lease space to a third party or sell the property to a third party on certain terms and conditions, that same transaction must be offered to the holder of the right of first refusal who has a fixed period in which to exercise the ROFR and purchase the property or lease the subject space on the specified terms and conditions, or waive the ROFR. See definition for option and for right of first offer (“ROFO”) which is similar, but differences from ROFR should be noted.

Sale-Leaseback: An arrangement by which the owner/occupant of a property agrees to sell all or part of the property to an investor and then lease it back, continuing to occupy the property as a tenant. Although the lease technically follows the sale, both the lease and purchase and sale agreement will have been negotiated and executed as part of the same transaction.

Second Generation or Secondary Space: Refers to space which has been previously occupied and then becomes available for lease, either directly from the landlord or as sublease space.

Security Deposit: A deposit of money (or other security) by a tenant with a landlord to secure the tenant’s performance of a lease. This can also take the form of a Letter of Credit or other financial instrument in lieu of cash.

Shell Space: The interior condition of the tenant's “usable square footage” when it is delivered to the tenant without improvements or finishes. While existing improvements and finishes can be removed, thus returning space in an older building to its "shell" condition, the term most commonly refers to the condition of the usable square footage after completion of the building's "shell" construction but prior to the build-out of the tenant's space. Shell construction typically includes the floor, windows, walls and roof of enclosed premises and may include some HVAC, electrical or plumbing improvements but usually does not include completion of demising walls or interior space partitioning. In a new multi-tenant building, common area improvements, such as lobbies, restrooms and exit corridors may also be included in the shell construction. With a newly constructed office building, there will often be a distinction between improvements above and below the ceiling grid. In a retail project, all or a portion of the floor slab is often installed along with the tenant improvements, to better accommodate tenant specific under-floor plumbing requirements.

Site Analysis: The study of a specific parcel of land which takes into account the surrounding area and is meant to determine its suitability for a specific use or purpose.

Site Development: All necessary improvements made to a site before a building can be constructed, such as grading, and utility installation.

Site Plan: A detailed plan depicting the location of improvements on a parcel of land and containing all information required by the zoning ordinance, best included as an exhibit to a lease.

Slab: The exposed wearing surface laid over structural support beams of a building to form the floor(s) of the building or laid slab-on-grade in the case of a non-structural, ground level concrete slab.

Soft Cost: That portion of the total project cost other than the actual cost of the improvements themselves (generally including architectural and engineering fees, commissions, and construction loan interest) and which may often be tax-deductible in the first year of ownership. See also "Hard Cost".

Space Plan: A graphic representation of a tenant's space requirements, showing wall and door locations, room sizes, and sometimes including furniture layout. A preliminary space plan will be prepared for a prospective tenant at any number of different properties and this serves as a "test-fit" to help the tenant determine its actual space needs and which property will best meet its requirements. When the tenant has selected a building, a final space plan is prepared which addresses all of the landlord and tenant objectives, and then is approved by both parties. It should be sufficiently detailed to allow an accurate estimate of construction costs. This final space plan should be an exhibit to the lease.

Special Assessment: Any special charge levied against real property for public improvements (e.g., sidewalks, streets, water and sewer, etc.) that specifically benefit the assessed property.

Speculative Space: Any tenant space that has not been leased before the start of construction on a new building.

Statute of Frauds: In most if not all states, contracts for the sale of land or contracts which cannot be performed within one year (such as a lease with a term exceeding one year) must either be in writing or evidenced by a written memorandum thereof in order for such contract to be enforceable.

Step-Up Lease (Graduated Lease): A lease calling for set increases in base rent at set intervals during the term of the lease.

Straight Lease (Flat Lease): A lease calling for the same fixed amount of base rent to be paid periodically, usually monthly, during the entire term of the lease.

Subcontractor: A contractor working under and being paid by the general contractor.

UNDERSTANDING THE LEASE AGREEMENT

GLOSSARY OF TERMS

PAGE 19

Often a specialist in nature, such as an electrical contractor, cement contractor, including providers of construction materials (materialmen).

Subordination: To place priority of a party's right (e.g. to possession or ownership) below another party's rights, such as a tenant agreeing that its leasehold rights are lower in priority in relation to a lender's right to the property, often in exchange for the lender's agreement to allow the lease to continue (non-disturbance), so long as the tenant agrees to attorn (or treat the lender as its landlord) to the lender. Hence the common term Subordination and Non-Disturbance Agreement is often utilized.

Subordination Agreement: As used in a lease, the tenant generally accepts the leased premises subject to the lien of any recorded mortgage or deed of trust and all existing recorded restrictions, and in return for the obligation of a lender or successor owner to accept the lease and not disturb the tenancy ("Non Disturbance") so long as the tenant attorns to the lender or successor owner, the landlord is given the power to subordinate the tenant's interest to any first mortgage or deed of trust lien subsequently placed upon the leased premises.

Subrogation: Literally the substitution of one person or party in the place of another with reference to a lawful claim or right. When an insurer pays or defends a claim, the insurer may "step into the shoes" of the insured, including the right to pursue claims of the insured against others. Waiver of subrogation is an important aspect where a landlord and tenant mutually agree in the lease to require their insurers to waive subrogation on landlord claims against the tenant and tenant claims against the landlord. Mutual waiver of subrogation usually results in the equivalent of: "If one party's insurer pays or defends a claim, the other need not fear retribution for its causation."

Surety: One who at the request of another, and for the purpose of securing to him a benefit, voluntarily binds himself to be obligated for the debt or obligation of another. Although the term includes guarantor and the terms are commonly, though mistakenly, used interchangeably, surety differs from guarantor in a many respects.

Taking: A synonym for condemnation or eminent domain or any actual or material interference with private property rights. However, it is not essential that there be physical seizure or appropriation.

Tenant (Lessee): One who rents real estate from another and holds a possessory estate by virtue of a lease.

Tenant At Will: One who holds possession of premises by permission of the owner or landlord, the characteristics of which are an uncertain duration (i.e. without a fixed term) and the right of either party to terminate on proper notice.

Tenant Improvements: Improvements made to the leased premises by or for a tenant. Generally, especially in new space, part of the negotiations will include in some detail the improvements to be made in the leased premises by the landlord or at landlord's expense. See also "Leasehold Improvements" and "Workletter".

Tenant Improvement (“TI”) Allowance or Work Letter: Defines the fixed amount of money contributed by the landlord toward tenant improvements. The tenant pays costs that exceed this amount.

Time Is Of The Essence: Means that performance by one party within the period specified in the contract is essential to require performance by the other party.

Title: The means by which the owner of real property has record legal ownership of the real property.

Title Insurance: A policy issued by a title company after searching the title and which insures against loss resulting from defects of title to a specifically described parcel of real property, or from the enforcement of liens or other claims existing against it prior to the time the title policy is issued.

Trade Fixtures: Personal property used in a business and attached to a structure, but removable upon lease termination because it is deemed to be part of the business, not of the real estate. This term often refer to articles of personal property by tenants for use in their trade or business, and are often removed from leased premises at lease termination.

Triple Net (NNN) Rent: A lease in which the tenant pays, in addition to rent, certain costs associated with a leased property, which may include property taxes, insurance premiums, repairs, utilities, and maintenances. There are also Net and “NN” (double net) leases, depending upon the degree to which the tenant is responsible for all operating expenses. See also “Gross Lease”.

Turn Key Project: A project in which a third party, usually a developer or general contractor, is responsible for the total completion of a building (including interior design and construction) or tenant improvements to the customized requirements and specifications of a future owner or tenant. In a turn key project, the tenant does not bear the cost of completion, even if the cost exceeds the final bid.

Under Construction: When construction has started prior to the issue of a Certificate of Occupancy.

Usable Square Footage: Usable Square Footage is the area contained within the demising walls of the tenant space. Total Usable Square Footage equals the Net Square Footage x the Circulation Factor. Also see: Circulation Factor and Net Square Footage.

Use: The specific purpose for which a parcel of land or a building is intended to be used or for which it has been designed or arranged.

Use Clause: Lease section which described the use(s) for which the tenant may occupy the leased premises. If written broadly, it allows the tenant some latitude for alternate uses or for sub-tenant uses. If written narrowly, it proscribes all uses of the premises other than the specific use for the specific tenant, often to protect other tenants in multi-tenant

buildings or to limit wear and tear on the leased premises.

Vacancy Factor: The amount of gross revenue that pro forma income statements anticipate will be lost due to vacancy, often expressed as a percentage of the total rentable square footage available in a building or project.

Vacancy Rate: The total amount of available space compared to the total inventory of space, expressed as a percentage. Computed by multiplying vacant space times 100 and then divided by the total inventory.

Vacant Space: Refers to existing tenant space currently being marketed for lease, excluding space available for sublease.

Variance: Refers to permission that allows a property use beyond the literal requirements of a zoning ordinance that, because of special circumstances, cause a unique hardship. Included would be such things as the particular physical surroundings, shape or topographical condition of the property and when compliance would result in a practical difficulty and would deprive the owner of the reasonable use of the property.

Warranty of Possession: This is the old "quiet enjoyment" term, which of course had nothing to do with noise in and around the leased premises. It provides a warranty by Landlord that it has the legal ability to convey the possession of the premises to Tenant; the Landlord does not warrant that he owns the land. This is the essence of the landlord's agreement and the tenant's obligation to pay rent. This means that if the landlord breaches this warranty, it constitutes an actual or constructive eviction.

Workletter: A list of the building standard items that the landlord will contribute as part of the tenant improvements. Examples of the building standard items typically identified include: style and type of doors, lineal feet of partitions, type and quantity of lights, quality of floor coverings, number of telephone and electrical outlets. The Workletter often carries a dollar value but is contrasted with a fixed dollar tenant improvement allowance that may be used at the tenant's discretion.

Working Drawings: The set of plans for a project that, in combination with a set of specifications, comprise the contract documents indicating the exact manner in which a project is to be built.

Zoning: The division of a city or town into zones and the application of regulations having to do with the structural, architectural design and permitted use of the land or buildings within such designated zone (i.e. a tenant needing manufacturing space would look for a building located within an area zoned to allow manufacturing).

Zoning Ordinance: Refers to the local statute, generally, at the city or county level, controlling the use of land and construction of improvements in a given area or zone.

Sources: