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Glossary of Commercial Real Estate Lease Terms



30

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Abatement

The reduction or elimination of a continuing charge (including Base Rent, expense recoveries, percentage rent and/or any other cash consideration) required to be paid by a tenant under a lease for a specified period of time.

EXAMPLE: To induce ABC Tenant to execute their lease, the Landlord provided an abatement equal to 50% of the Base Rental payments for the initial 3 months of the 5 year lease term. During these 3 months, the monthly Base Rental payment per the Lease was \$2,000. Because of the abatement, ABC Company is only required to pay \$1,000.

Ad Valorem Taxes

Taxes which are assessed “according to value”, such as property taxes.

Additional Rent

Any financial obligation of tenant payable to the landlord other than Base Rent. Additional Rent may include, among others, items such as expense recoveries, utilities, percentage rent, CPI adjustments and late fees.

Add-On Factor

The percentage by which the useable square footage of a tenant's premises is increased to arrive at net rentable square footage. The add-on reflects an allocation of the square footage of common areas within the building.

EXAMPLE: ABC Tenant's lease indicates that the square footage of the premises is 1,000 useable square feet and 1,140 rentable square feet. The add-on factor applied to the premises is 14.0%.

All-Risk Insurance

Property insurance which covers losses occurring from fire, explosion and other perils. When obtained by the landlord, the property being insured is the building itself. When obtained by the tenant, the property being insured is typically leasehold improvements and personal property of the tenant. The coverage amount is often stated as a percentage of replacement cost or replacement value. See also 'Property Insurance'.

EXAMPLE: ABC Tenant's lease requires them to obtain All-Risk Insurance equal to 100% of full replacement cost for all personal property and improvements paid for by Tenant upon the premises. A fire destroys a portion of ABC Tenant's premises, and many computers and items of furniture are lost. The All-Risk Insurance will reimburse ABC Tenant for the replacement cost of the computers and furniture.

Amendment

A legal document executed by a landlord and tenant which changes the terms or provisions of a previously executed document. Amendments are often sequentially numbered based upon the order in which they were executed (i.e., First Amendment, Second Amendment, etc.).

Amortization

The allocation of the cost of an item over its estimated useful life or the payment of an indebtedness by periodic installments.

EXAMPLE: ABC Tenant's lease gives the Landlord the right to include in recoverable operating expenses, capital expenditures as required by law, as amortized over the useful life of such expenditure on a straight line basis. The Landlord incurs a cost of \$250,000 for a capital expenditure required by law, which expenditure is determined to have a useful life of 10 years. The Landlord may include in recoverable operating expenses \$25,000 per year, representing the annual amortization of the capital expenditure.

Anchor Tenant

The primary tenant in a shopping center. Larger shopping centers may have more than one anchor tenant. Rent for anchor tenants is often significantly lower than for other tenants in a shopping center because they are the tenants who draw consumers to the center.

Assignment

The transfer of one's property, interest or rights to another. The party making the transfer is the Assignor and the party to whom the transfer has been made is the Assignee. In a lease assignment, the Assignor transfers some or all of their rights to use leased property to the Assignee for the unexpired remainder of the lease term. In most assignments, the Assignee acquires the same rights and privileges, and assumes the same obligations, which belonged to the Assignor. In addition, the Assignor typically remains liable for any lease obligations which are not fulfilled by the Assignee after the lease has been assigned, unless relieved of such obligations by the landlord. Assignments usually require landlord's consent.

EXAMPLE: ABC Tenant has been purchased by XYZ Company. The purchase agreement requires ABC to assign all of their leases to XYZ. In accordance with the terms of ABC Tenant's lease at Ellipsis Tower, ABC and XYZ enter into an Assignment and Assumption Agreement, whereby ABC agrees to assign their lease to XYZ, and XYZ assumes all of ABC's lease obligations for the unexpired term of the lease.

Assumption

The act of assuming the obligations of a tenant under a lease. An assumption is often associated with an assignment via an 'Assignment and Assumption Agreement', whereby the Assignor assigns their rights in a lease to the Assignee, and the Assignee assumes the obligations of the Assignor.

EXAMPLE: See example for Assignment.

Attornment

The formal agreement by a tenant to become the tenant of a new landlord, including the right of the new landlord to collect rent and enforce the provisions of leases. While attornment language is included in most leases, in some cases attornment provisions are tied in with subordination and non-disturbance provisions via a separate document called a 'Subordination, Non-Disturbance and Attornment Agreement'.

Base Amount (or Base Stop Amount)

For gross leases, the dollar amount (stated in terms of an actual dollar amount or a per square foot amount) which recoverable expenses must exceed before a tenant is required to begin paying Expense Recoveries. Stated differently, the Base Amount is the amount of recoverable expenses which will be borne by the landlord before a tenant is required to pay their proportionate share of such expenses. The Base Amount on a per square foot basis is included in Base Rent.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent plus its proportionate share of recoverable expenses in excess of \$9.00/sq. ft. The Base Amount is equal to \$9.00/sq. ft.

Base Rent

The minimum amount of rent due under a lease. Base Rent may be quoted on a gross basis (a portion of recoverable expenses are included in Base Rent) or a net basis (Base Rent excludes any portion of recoverable expenses, with the amount paid by a tenant being 'net' to a landlord).

Base Year

For gross leases, the recoverable expenses for an annual time period (either a calendar year or a defined fiscal year) above which a tenant is required to pay their proportionate share of such expenses. Typically, the Base Year is the year in which a lease commences.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent plus its proportionate share of recoverable expenses in excess of the actual expenses incurred for the year 2017. The Base Year in this example is the year 2017.

Breakpoint

In retail leases, the amount which Gross Sales must exceed before a tenant is required to begin paying percentage rent. Breakpoints may be 'natural' or an arbitrary dollar amount. A 'natural' breakpoint reflects the amount of Gross Sales which, when multiplied by the Overage Percentage, equals Base Rent (stated differently, a natural breakpoint is calculated as Base Rent divided by the Overage Percentage). If a breakpoint is not natural, then the amount of the breakpoint (stated as an absolute Gross Sales amount or Gross Sales per square foot) is arbitrarily determined based upon negotiation between the landlord and tenant.

EXAMPLE: ABC Retail Tenant signs a five-year lease which requires ABC to pay Base Rent of \$50,000/year plus Percentage Rent in an amount of 4% of Gross Sales in excess of \$1,250,000. The Breakpoint in this example is \$1,250,000. Furthermore, the Breakpoint is natural because when the Breakpoint of \$1,250,000 is multiplied by the Overage Percent of 4%, the result is \$50,000, which equals Base Rent.

Broker

An individual or company who acts as an intermediary to negotiate the sale, purchase or lease of real estate. For leases, the tenant, landlord or both parties may engage a broker to negotiate the terms of a lease. In many cases, the broker's commission is calculated as a stated percentage of the negotiated Base Rent, with the percentage often determined by the geographical market in which the real estate is located.

Business Hours

In retail leases, the hours during which a tenant is required to remain open for the conduct of business.

EXAMPLE: ABC Retail Tenant has a lease clause which requires them to remain open from 9:00 AM - 9:00 PM Monday thru Friday and 10:00 AM - 6:00 PM on Saturdays and Sundays. These hours represent ABC's Business Hours.

Cancellation Option

The option to terminate, either partially or entirely, a leasehold interest prior to the stated Expiration Date. In some cancellations, the lease requires the terminating party to pay a fee for the right to cancel.

EXAMPLE: ABC Tenant signs a five-year lease which gives them the right to terminate the lease after 3 years upon 6 months notice to the Landlord and payment of a cancellation fee equal to 3 months of Base Rent at the date of cancellation. The clause in the lease specifying this right is a Cancellation clause.

Cap

The maximum amount which is required to be paid by a tenant for a charge which, in the calculation of such charge, includes a component which is outside of the tenant's control. As an example, caps may be applied to expense recoveries, CPI adjustments and porter's wage adjustments. Caps may be expressed as an absolute dollar amount, an amount per square foot or a percentage increase.

EXAMPLE: ABC Tenant's lease requires ABC to pay 5% (their pro-rata share) of recoverable expenses in excess of \$10.00/sq. ft., with a cap on the reimbursement of \$2.50/sq. ft. If recoverable expenses exceed \$12.50/sq. ft., ABC Tenant will not be required to pay their pro-rata share of the excess because of the \$2.50/sq. ft. Cap.

Capital Expenditure

An improvement (as opposed to a repair) to a fixed asset which will increase the value or useful life of that asset. A capital expenditure is typically amortized or depreciated over the useful life of the asset, as opposed to a repair, which is expensed in the year incurred.

EXAMPLE: The Landlord of Ellipsis Retail Center has received numerous complaints from tenant that the roof is leaking. Rather than patch the roof where necessary, the Landlord decides to replace the entire roof. The cost of replacing the roof is a Capital Expenditure (as opposed to the cost of patching the roof, which would have been a repair).

Casualty

The complete or partial destruction of property as the result of a sudden or unexpected event, such as a flood, fire, storm, etc. Leases typically include casualty clauses which identify the rights of the landlord and tenant in the event of a casualty. These rights are often times based upon whether the casualty event causes either partial or complete destruction, and include rights to terminate, rent reduction/abatement and time to repair.

Certificate of Insurance

A document provided by an insurance company which indicates that a landlord or tenant's insurance policy is in effect and the levels of coverage contained within the policy. Leases often require the tenant and/or the landlord to provide such a certificate to the other party on an annual basis as evidence that the coverage required pursuant to the lease has been obtained and is in effect.

Commencement Date

The date upon which the landlord and tenant's rights and obligations pursuant to a lease begin.

Common Area

That portion of a property which is available for use by all tenants over which the landlord retains control and liability.

Common Area Maintenance

The operating expenses incurred by a landlord to maintain the common areas. CAM charges, as they are typically called, may be recovered from tenants on a pro-rata basis and/or included in Base Rent via the addition of an Add-On Factor to the square footage of the leased premises.

Concession

Item(s) of economic benefit granted from a landlord to a tenant to induce the tenant to enter into a lease transaction. Typical concessions include rent abatements/free rent, moving allowances, lease buyouts, above standard tenant improvement allowances and space plan/drawing allowances.

EXAMPLE: To induce ABC Tenant to execute a lease at Ellipsis Tower, the Landlord offers ABC a \$2.00/sq. ft. moving allowance, \$5.00/sq. ft. above standard tenant improvement allowance and a 3 month abatement of Base Rent. Each of these items granted to ABC by the Landlord is a Concession.

Condemnation

The taking of private property by the government for public use through the process of eminent domain.

EXAMPLE: A governmental agency has decided to build an interstate highway which will run over the land upon which Ellipsis Tower has been built. The government uses their power of eminent domain to take the property via the Condemnation process, and pays the Landlord an 'award' to compensate the Landlord for the taking.

Consumer Price Index

An index published monthly by the U.S. Bureau of Labor Statistics which measures the inflation/deflation in the prices of specified goods and services. The index may vary based upon location (national average vs. regional index), type of consumer (all urban consumers vs. wage earners and clerical workers), goods and services included (all items vs. specifically defined goods and services) and base index period (i.e., the starting point for measurement of the index, stated as 100.0).

Consumer Price Index Adjustment

An increase (and sometimes decrease) in the Rent required to be paid by a tenant based upon changes in the Consumer Price Index over a specified time period.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent of \$20,000/ annum plus annual increases based upon the increase in the Consumer Price Index over the index for the month and year for which the lease commenced. After the first year, the CPI has increased 3.5%. The Consumer Price Index Adjustment beginning in the second lease year would be \$700/ annum.

Continuous Operations Clause

A clause in a retail tenant's lease which obligates the tenant to remain open for business throughout the term of its lease. This is not to be confused with a Business Hours clause, which specifies the hours during which a tenant is required to remain open for business. A continuous operation clause helps to avoid a situation where a tenant closes its store but continues to pay rent, potentially resulting in no percentage rent and lower traffic and sales for other tenants.

EXAMPLE: ABC Retail Tenant signs a lease at Ellipsis Mall which requires them to continuously operate their business throughout their 10-year lease term. After three years, ABC is not happy with customer traffic at the mall and decides to discontinue operating. ABC would be in default of their lease pursuant to the Continuous Operations Clause.

Contraction Option

The option of a tenant or landlord to reduce the amount of space leased by such tenant. A contraction option often defines the premises subject to reduction, the notification and effective dates of contraction, the impact on Rent and any contraction fee required to be paid by the party exercising the option. An Auto-Contraction option is a form of Contraction Option whereby the size of the premises is reduced automatically on the effective date without any notification requirement.

EXAMPLE: ABC Tenant signs a 10-year lease at Ellipsis Tower for 20,000 rentable square feet on the 6th floor and 5,000 rentable square feet on the 7th floor. The lease gives ABC the option to terminate their lease for only the 7th floor space after five years upon 6 months notice to Landlord and payment of a contraction fee equal to the unamortized dollars spent by the Landlord for tenant improvements and leasing commissions for such space. The right to terminate the lease for the 7th floor space only is a Contraction Option.

Co-Tenancy

A clause in a retail tenant's lease which provides remedies to a tenant in the event that another tenant, typically an anchor or major tenant, ceases its operations at the property.

EXAMPLE: ABC Retail Tenant is concerned that traffic at Ellipsis Mall will be adversely affected if BIG Anchor Tenant ceases their operations at the mall. To alleviate this concern, ABC negotiates in their lease a Co-Tenancy clause, whereby if BIG Anchor Tenant ceases operations, ABC Retail Tenant may terminate their lease at Ellipsis Mall.

DBA

Abbreviation for 'doing business as'. Represents a tenant's trade name, as opposed to the legal name of the tenant's business.

EXAMPLE: Smith Enterprises is the legal name for Joe Smith's hot dog restaurant at Ellipsis Mall. Joe is concerned that customers will not know the nature of his business if he uses that name as the name for his restaurant. Therefore, Joe decides that his DBA name should be Joe's Hot Dogs, which is the name that will appear on the sign above his restaurant.

Default

The non-performance of a lease obligation by the landlord or tenant. An act of default may be either monetary (i.e., failure to pay rent when due) or non-monetary (i.e., failure to provide a certificate of insurance). In certain instances, the lease may allow the non-defaulting party to cure the default of the defaulting party, by either billing the defaulting party for costs incurred therein or allowing the nondefaulting party to offset costs incurred to cure against other amounts due pursuant to the lease.

EXAMPLE: ABC Tenant is late paying their Base Rent at Ellipsis Tower. The Landlord sends ABC written notice that they must pay their rent in a timely manner. If ABC fails to pay the Base Rent within 5 days of receipt of the notice, they are in Default under the lease because the lease contains a clause that the tenant has 5 calendar days after receipt of notice from Landlord to cure monetary defaults.

Effective Date

The date on which a lease clause, typically an option, becomes operative.

Eminent Domain

The right of a governmental agency to take private property for public use via condemnation in return for adequate compensation.

EXAMPLE: See example for Condemnation.

Encumbered Space

Space in a building which is subject to a right or interest of a tenant.

EXAMPLE: ABC Tenant signs a lease at Ellipsis Tower which grants them a Right of First Offer on any adjacent space. Such adjacent space would constitute Encumbered Space, as the Landlord would have to consider the rights of ABC Tenant to such space prior to leasing the space to a third party tenant.

Escalations

A lease clause which provides for an increase in rent at a specified future date(s). The most common types of escalations are (a) fixed increases in Base Rent; and (b) Consumer Price Index Adjustments.

EXAMPLE: ABC Tenant signs a five-year lease with Base Rent set at \$15.00/sq. ft. for the first year, increasing by \$1.00/sq. ft. annually thereafter. The \$1.00/sq. ft. Base Rent increases are Escalations.

Estoppel

Legally, the act of preventing (estopping) a party from claiming a different state of facts at a later date. When associated with leases, the statement of facts includes that the lease is in existence, that there are no defaults and that rent has been paid and is current as of a specified date. Estoppels are memorialized via an estoppel certificate, which is an agreement that may be relied upon by a third party such as a potential lender or purchaser. Leases often grant the landlord the right to obtain an estoppel certificate from a tenant; however, certain leases (often for larger tenants) also provide the tenant with the right to obtain an estoppel certificate from the landlord.

EXAMPLE: The Landlord of Ellipsis Tower is in the process of selling the building. As part of their due diligence, the prospective buyer requires the Landlord to obtain Estoppel Certificates from all tenants currently occupying space within the building. ABC Tenant executes the Estoppel Certificate as drafted by the Landlord. After the sale closes, ABC makes a claim to the new Landlord that is in conflict with information contained on the Estoppel Certificate. ABC would be legally 'estopped' from making such claim because they executed the Estoppel Certificate.

Exclusivity

The right granted to a tenant to be the only tenant in a property who may engage in a specified business use at that property.

EXAMPLE: ABC Tenant is a national provider of accounting services. In their lease at Ellipsis Tower, they require the Landlord to include a clause that they can be the only tenant in the building to provide accounting services throughout their lease term. This clause would grant ABC Tenant Exclusivity.

Exculpation Clause

The sheltering of a party from liability arising out of negligence. In leases, an exculpation clause operates to limit the liability of an owner or landlord from lawsuits by a tenant for breach of contract or nonperformance to the assets of the particular property in which the tenant is in occupancy. Exculpation clauses often limit the tenant from claiming rights to other properties owned by the landlord or personal liability of the landlord or any of its employees.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower includes an Exculpation clause. The Landlord commits a serious default and ABC attempts to sue the Landlord for their interest in Ellipsis Tower, 10 other buildings owned by the Landlord and all of the senior employees of the Landlord's organization personally. Because the lease with ABC contained an Exculpation clause, ABC may only file a lawsuit against the assets of Ellipsis Tower.

Expansion Option

An option granted to a tenant allowing the tenant to increase the amount of leased premises at a future date. In an expansion option, the expansion premises, notification date, effective date and rent are typically clearly defined. In addition, the right of the tenant to expand via such an option is not contingent upon the occurrence of any event related to the expansion premises (i.e., availability for lease, offer from third party). An Auto-Expansion option is a form of Expansion Option whereby the premises are expanded automatically on the effective date without any notification requirement.

EXAMPLE: ABC Tenant signs a five-year lease for 10,000 square feet in Suite 500 at Ellipsis Tower, but is concerned that more space will be needed prior to the expiration of the term to accommodate the growth in their business. ABC negotiates an option with the Landlord to lease an additional 5,000 square feet of adjacent space in Suite 525 effective on the third lease anniversary, upon 180 days prior notice to the Landlord. This is an example of an Expansion Option, whereby no contingencies exist regarding ABC's right to expand into such space.

Expense Recovery

A reimbursement by the tenant to the landlord for expenses of a property which are originally paid by the landlord. The mechanics for calculation of the Expense Recovery will depend upon whether the lease is a Gross Lease or a Net Lease. Also called a 'Pass Through'.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent plus its proportionate share of recoverable expenses in excess of the actual expenses incurred for the next 12 months. The proportionate share of recoverable expenses is an Expense Recovery.

Expense Stop

For gross leases, the amount which recoverable expenses must exceed before a tenant is required to begin paying Expense Recoveries. Stated differently, the Expense Stop is the amount of recoverable expenses which will be borne by the landlord before a tenant is required to pay their proportionate share of such expenses. The Expense Stop may be stated as an absolute dollar amount, a dollar amount per square foot or a Base Year (the recoverable expenses incurred in a defined calendar or fiscal year).

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent plus its proportionate share of recoverable expenses in excess of \$9.00/sq. ft. The Expense Stop is equal to \$9.00/sq. ft.

Expiration Date

The date upon which the landlord and tenant's rights and obligations pursuant to a lease end.

Extension Option

An option granted to tenant allowing the tenant to lengthen the lease term at a predefined rental rate. The rate may be a specified dollar amount or may be quoted as a specified percentage of the market rental for the geographical market in which the property is located. An Extension Option must typically be exercised by the provision of notice from tenant to landlord within a pre-defined time period prior to the expiration of the lease term.

EXAMPLE: ABC Tenant signs a five-year lease at Ellipsis Tower, but would like the comfort of knowing that they may remain in the building for an additional five years if they so desire at the expiration of the original five-year term. ABC negotiates an Extension Option into their lease which allows them to extend the lease term for an additional five years upon 6 months notice to Landlord at the then current Market Rent.

Free Rent

A concession granted to a tenant in the form of a partial or whole abatement of rent for a specified period of time as an inducement to enter into a lease. Items of rent which might be abated as a free rent concession include Base Rent, Expense Recoveries, Percentage Rent, Utilities Charges and CPI Adjustments.

EXAMPLE: To induce ABC Tenant to execute their lease, the Landlord provided Free Rent equal to 50% of the Base Rental payments for the initial 3 months of the 5 year lease term. During these 3 months, the monthly Base Rental payment per the Lease was \$2,000. Because of the Free Rent, ABC Company is only required to pay \$1,000.

GLA

Abbreviation for Gross Leasable Area, calculated as the summation of all rentable areas plus all common areas of a building.

Go Dark

A clause in a retail tenant's lease which allows a tenant to cease operations at a property if a defined event(s) should occur.

EXAMPLE: ABC Retail Tenant signs a lease at Ellipsis Mall that includes a Go Dark clause whereby if a) ABC's Gross Sales fall below \$500,000 for two or more consecutive years; or b) if two of the three anchor tenants vacate their premises in the mall, then ABC may cease their operations at Ellipsis Mall.

Gross Lease

A lease type whereby the landlord is responsible for the payment of all recoverable expenses of the building. Such recoverable expenses are typically included in the calculation of Base Rent. In some Gross Leases, the tenant never pays a pro-rata share of recoverable expenses. In others, the tenant pays its pro-rata share of recoverable expenses over an Expense Stop.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent of \$21.00/sq. ft. plus its proportionate share of recoverable expenses in excess of \$9.00/sq. ft. This is an example of a Gross Lease, because the Landlord is responsible for the payment of the first \$9.00/sq. ft. of recoverable expenses, and ABC is required to pay for recoverable expenses in excess of \$9.00/sq. ft.

Gross Sales

The total of all sales made by a retail tenant. For tenants who have Percentage Rent clauses in their lease, Gross Sales are compared to the breakpoint to determine whether the tenant will be required to pay percentage rent. Leases may specify certain sales which may be excluded from Gross Sales (i.e., sales tax, discounts granted to employees, etc.).

Gross Sales Exclusions

Sales items which are excluded from the definition of Gross Sales within a lease in the computation of Percentage Rent.

Gross Sales Inclusions

Sales items which are included in the definition of Gross Sales within a lease in the computation of Percentage Rent.

Gross-Up

A lease clause that allows the landlord to increase recoverable expenses which vary with occupancy to an amount that would be incurred if a defined level of occupancy was achieved. Gross-up clauses typically allow the landlord to gross-up variable operating expenses to 95% or 100% occupancy.

EXAMPLE: ABC Tenant's lease allows the Landlord to gross-up variable operating expenses to 100% occupancy for expense recovery purposes. During the year, the average actual occupancy of Ellipsis Tower is 90%. The Landlord identifies Cleaning Expense as the only variable operating expense, and the actual cost for such year is \$90,000. Due to the gross-up clause, the Landlord may include \$100,000 in recoverable expenses for cleaning, reflecting a gross-up of the \$90,000 actual cleaning expense to \$100,000 (\$90,000 divided by 90%).

Guarantors

A person or entity that agrees to perform the contractual obligations of another if the other party shall fail to so perform. Guarantors for lease obligations may either be personal or corporate.

EXAMPLE: ABC Tenant wishes to sign a lease at Ellipsis Tower. ABC is a new company with very little net worth. However, the owner of ABC, Rich Mann, is a wealthy individual. As security for entering into the lease, the Landlord requires that the owner execute a personal guaranty whereby Rich Mann agrees to personally pay any lease obligations of ABC in the event that ABC defaults on any of its monetary lease obligations. Rich Mann would be the Guarantor under the lease.

Hazardous Materials

Materials, often defined by governmental law or statute, which if introduced onto a property by either a landlord or tenant could result in a reduction of the value of the property or the ability of a tenant to use their leased premises for the purposes outlined in the lease. Hazardous Materials clauses within a lease specify the materials which are considered to be hazardous, provide for remedies if such materials are introduced on the property or in the leased premises and provide indemnities for the non-introducing party should litigation occur.

EXAMPLE: ABC Tenant performs the business of photographic development from its premises at Ellipsis Tower. Many of the chemicals used in the development process have been identified as hazardous by federal and state laws. The Landlord, to protect itself, includes a Hazardous Materials clause in the lease with ABC, whereby if any of the chemicals used by ABC are stored, handled or disposed of in violation of federal and state laws, ABC shall be responsible for all required clean-up and shall indemnify the Landlord in the event of any litigation.

Holdover

A tenant who remains in possession of leased premises after the expiration date of the lease. Leases often provide the landlord to charge holdover rent to a tenant during the holdover period, typically quoted as a percentage (greater than 100%) of either Rent, Base Rent only or Base Rent and Expense Recoveries.

EXAMPLE: Upon the expiration of their lease at Ellipsis Tower, ABC Tenant does not vacate the premises because the space that they are moving into in another building will not be ready for occupancy for an additional two months. As of the expiration date, ABC is paying the Landlord \$10,000/month for Base Rent and \$4,000/month for expense recoveries. Because of a Holdover clause in ABC's lease which allows the Landlord to charge holdover rent equal to 150% of Base Rent and Additional Rent during the holdover period, ABC must pay the Landlord \$21,000/month (\$14,000 multiplied by 150%) until they vacate Ellipsis Tower.

IC Code

Abbreviation for 'Industry Classification' Code, used to classify companies by the type of goods and/or services that they provide. A commonly used IC Code is the 'SIC Code', which stands for Standard Industrial Classification Code. Beginning in 1997, the SIC Code was replaced by NAICS, which stands for North American Industry Classification System.

J

No definitions available

Kiosk

A small, independent stand often placed within the common area of a retail structure (typically a regional mall) from which specialty goods are sold.

EXAMPLE: ABC Retail Tenant is a specialty tenant that sells ornaments during the holiday season. Since they do not need to operate their premises year round, and only need a small amount of space, they execute a short-term lease to operate a kiosk within the common areas of an enclosed mall.

Landlord

One who owns an interest in real property and has leased such interest, or a portion thereof, to another party (the Tenant). Also called a 'Lessor'.

Landlord Supervision Fee

A fee which may be charged by the landlord or a representative thereof for supervision of repairs or alterations to a tenant's premises. Supervision fees are often specified as a percentage of the total cost of the repair or alteration work to be performed.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower requires ABC to obtain Landlord's consent to perform any alterations to the premises greater than \$5,000 after the commencement date and also requires ABC to pay a 10% Supervision Fee to Landlord for such alterations, regardless of whether Landlord or a contractor selected by ABC will be responsible for performing the alterations. ABC wishes to install a new shelving system in their premises which will cost \$20,000. ABC must pay to Landlord a Supervision Fee of \$2,000 in regards to such alterations.

Late Charge

A charge assessed against a tenant for failing to pay rent when due. A Late Charge is typically a one-time charge calculated as a specific dollar amount or a percentage of the amount due. In addition to or in lieu of a Late Charge, a lease may contain an interest provision, whereby the tenant is required to pay a specified interest rate on the amount due from the due date until the date paid.

EXAMPLE: ABC Tenant's lease allows the Landlord to charge a) a Late Charge equal to 5% of the amount due for any Rent unpaid for greater than 5 days from the due date; and b) Interest equal to the current Prime Rate plus 2% for any unpaid Rent from the date due until the date paid. ABC failed to pay its Base Rent of \$10,000 which was due on March 1st until March 21st. On the next rent invoice to ABC, the Landlord included a Late Charge of \$500 for March rent and an Interest charge of \$54.79, assuming a Prime Rate of 8% (calculated as \$10,000 x 10% x 20/365).

Lease

An agreement whereby the owner of real property (i.e., the Landlord or Lessor) grants the right of possession to another party (i.e., the Tenant or Lessee) for a specified period of time (i.e., the Lease Term) and for a specified consideration (i.e., Rent). A Lease document outlines the rights and obligations of both the landlord and tenant in regards to the tenant's possession of the landlord's property.

Lease Buyout

Amount paid by landlord for Rent on the unexpired term of a tenant's lease in a building not owned by landlord. A Lease Buyout Allowance is either paid to the tenant or to the landlord of the non-owned building, and may be paid in one up-front installment or monthly for the remainder of the unexpired term.

EXAMPLE: ABC Tenant wishes to execute a ten-year lease for space at Ellipsis Tower. However, as of the projected commencement date of the Ellipsis Tower lease, ABC has an additional 6 months remaining on a lease in another building which the ABC will not longer be occupying upon commencement of the Ellipsis Tower lease. As an inducement to get ABC to execute the Ellipsis Tower lease, the Landlord agrees to a Lease Buyout, whereby the Landlord will pay the remaining 6 months of rent at the other building.

Leased Premises

Also called the 'Demised Premises', refers to the size and location of the premises to which the tenant has obtained possession pursuant to a Lease.

Leasing Commission

A fee paid to the leasing broker upon the successful execution of a lease agreement. In many cases, the broker's commission is calculated as a stated percentage of the negotiated Base Rent, with the percentage often determined by the geographical market in which the real estate is located. The calculation mechanics of a commission are often not included within a lease, but rather within a separate Commission Agreement or Brokerage Agreement entered into between the Broker and the landlord.

EXAMPLE: ABC Tenant hires MNO Brokerage, Inc. to negotiate its lease at Ellipsis Tower. MNO successfully negotiates a lease with the Landlord, and pursuant to a separate Commission Agreement, is entitled to a leasing commission equal to 5% of Base Rent for the initial 5-years of a lease term and 2.5% of Base Rent for any years in the term greater than 5 years. The lease with ABC is a 10-year lease requiring Base Rent payments of \$100,000/year for years 1-5 and \$150,000/year for years 6-10. MNO Brokerage would be entitled to a leasing commission equal to \$43,750 [(\$100,000 x 5 x .05) + (\$150,000 x 5 x .025)].

Lessee

One who has the temporary possession of real property owned by another (the 'Landlord'). Also called a 'Tenant'.

Lessor

One who owns an interest in real property and has leased such interest, or a portion thereof, to another party (the Tenant). Also called a 'Landlord'.

Letter of Credit

The agreement of a bank on behalf of a customer to honor drafts or other demands for payment upon compliance with the conditions of the letter of credit. As they relate to leases, tenants are often required to post letters of credit in lieu of or in addition to cash security deposits as security for the payment of rental obligations to the landlord.

EXAMPLE: As a condition to leasing space in Ellipsis Tower, ABC Tenant is required to provide a \$100,000 letter of credit as security for lease obligations over the five-year lease term. The lease provides that the letter of credit may be for a one-year term, renewable annually with the issuing bank. During the third-year of the lease term, ABC defaults on the payment of its rental obligations in the amount of \$55,000. The Landlord notifies the issuing bank and exercises its right to draw on the letter of credit to cover the \$55,000 of lost rental.

Liability Insurance

Protection from claims arising from death, injury or damage to other people or property.

EXAMPLE: ABC Tenant's lease requires them to obtain Liability Insurance equal to \$3,000,000 for death/occurrence, \$3,000,000 for injury/occurrence and \$1,000,000 for damage/occurrence. A visitor enters ABC's premises, slips and falls on a floor tile and sustains substantial bodily injury. The visitor sues ABC for negligence which resulted in the injury. Because ABC maintains Liability Insurance, their coverage is sufficient to pay the damages resulting from this occurrence.

Loss Factor

The percentage by which the gross area of a building is reduced to arrive at the useable area.

EXAMPLE: Ellipsis Tower has just been remeasured by an architectural firm. The remeasurement indicates that the building contains 520,000 rentable square feet and 450,000 useable square feet. The loss factor applied to the building is 13.46%.

Market Rent

The amount of rent being paid under leases for a comparable lease term at properties which are comparable in terms of size, location and quality. Market Rent is often used to define the rent to be paid by a tenant upon exercise of a renewal option, expansion option or right of first offer. Some leases include a provision for the determination of Market Rent if landlord and tenant cannot agree, including the submission of the determination to arbitration or appraisal.

EXAMPLE: ABC Tenant has a five-year renewal option for their premises at Ellipsis Tower with Base Rent for the renewal term to equal 95% of Market Rent. Ellipsis Tower is a Class A office building. By research of the local market area, the Landlord determines that five-year leases in competing Class A office buildings are currently being written at a Base Rent of \$20.00/sq. ft. gross with a \$5.00/sq. ft. tenant improvement allowance. In accordance with the terms of ABC's lease, the Market Rent for the renewal term would be established at \$19.00/sq. ft. gross (\$20.00 x .95).

Media Fund

A fund established by the landlord of a retail property whereby tenants are required to make specified contributions to the fund for the purpose of promoting the property in the local media. The fund is managed by the landlord and, in many instances, the landlord is required to make a defined number of promotions per year.

EXAMPLE: ABC Retail Tenant has a lease clause which requires that a Media Fund contribution be made in an amount equal to the lesser of \$0.50/sq. ft./annum or \$1,000/annum. Upon collection of the Media Fund contributions from ABC and all other tenants of Ellipsis Mall required to make such a contribution, the Landlord places advertisements for Ellipsis Mall in the local newspaper and on local radio stations.

Merchant Association

An association organized by a landlord of a shopping center but operated jointly by landlord and tenants of the center which collects funds for use in the advertising and promotion of the center to the benefit of all tenants. In many instances, the landlord is required to match a specified percentage of the Merchant Association Dues received from tenants.

EXAMPLE: ABC Retail Tenant has a lease clause which requires that ABC participate in the Merchant's Association at Ellipsis Mall so long as 75% of the other mall tenants are also required to participate, and pay dues equal to \$2,000/year, subject to annual increases equal to the increase in the Consumer Price Index. The lease also requires the Landlord to make a matching contribution on a quarterly basis equal to 25% of the dues received from all contributing tenants. ABC Retail Tenant is allowed to have one member serve in the association. All members meet once a month and determine how the funds collected from tenants and the Landlord should be spent to promote the mall and increase customer traffic..

Month-to-Month

A lease agreement extendable or cancellable by either the landlord or the tenant on a monthly basis.

EXAMPLE: ABC Tenant currently leases office space in Ellipsis Tower, but is running out of storage space. The Landlord has some available storage space in the Lower Level of the building. Because ABC does not know how long it will require such space, the Landlord leases one of the storage spaces to ABC on a month-to-month basis, with either party having the right to cancel the storage space lease upon 30 days notice to the other party, without penalty.

Move-in Date

The date upon which a tenant takes physical possession of the Leased Premises for the conduct of its business thereupon. Such date may or may not correspond to the Commencement Date.

Move-out Date

The date upon which a tenant relinquishes physical possession of the Leased Premises. Such date may or may not correspond to the Expiration Date.

Natural Breakpoint

The amount of Gross Sales which, when multiplied by the Overage Percentage, equals Base Rent (stated differently, a natural breakpoint is calculated as Base Rent divided by the Overage Percentage).

EXAMPLE: ABC Retail Tenant signs a five-year lease which requires ABC to pay Base Rent of \$50,000/year plus Percentage Rent in an amount of 4% of Gross Sales in excess of a natural breakpoint. The breakpoint in this example would be \$1,250,000, calculated as \$50,000 in Base Rent divided by 4%.

Net Lease

A lease type whereby the tenant is responsible for the payment of its proportionate share of all recoverable expenses of the building. Such recoverable expenses are excluded from the calculation of Base Rent. In other words, the Base Rent received by the landlord is net of expenses.

EXAMPLE: ABC Tenant signs a five-year lease which requires ABC to pay Base Rent of \$12.00/sq. ft. plus its proportionate share of recoverable expenses. During the first year of the lease term, recoverable expenses equal \$9.00/sq. ft. ABC would be required to pay Expense Recoveries in the amount of \$9.00/sq. ft. This is an example of a Net Lease, because the Tenant is responsible for its proportionate share of all recoverable expenses for the building.

Non-Disturbance

A lease provision which grants a tenant the right to remain in occupancy of the leased premises regardless of a change in the ownership of the property, so long as the tenant continues to fulfill their lease obligations. While non-disturbance language is included in most leases, some leases obligate a landlord to obtain a 'Subordination, Non-Disturbance and Attornment Agreement' from a mortgage holder or ground lessor, whereby such mortgage holder or ground lessor agrees not to disturb tenant's occupancy of the premises in the event of foreclosure as a condition to tenant's subordination of their lease to the mortgage or ground lease.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower contains a non-disturbance clause whereby ABC agrees to subordinate its lease to any mortgagees so long as any current or future mortgagee agrees to provide ABC with a Non-Disturbance Agreement providing that ABC's tenancy shall not be disturbed in the event of foreclosure. The Landlord of Ellipsis Tower defaults under their mortgage with Lender One, and Lender One forecloses on the mortgage. Because of the Non-Disturbance Agreement between Lender One and ABC, Lender One is bound by the terms of the ABC lease even though Base Rent is currently significantly below market rent.

Notification Date

The date by which either the landlord or tenant must provide notice to the other party that they wish to exercise a lease clause, typically an option.

NRA

Abbreviation for Net Rentable Area, and defined as the measurement of a building or suite upon which rent is calculated.

Offset Rights

The right of a tenant to make a deduction from rental payments in an amount equal to that expended by the tenant to make a payment which is the obligation of the landlord, often due to a landlord default. Although offset rights are not common in leases, some larger and/or more sophisticated tenants will require such a clause in their lease as a protection if they are required to perform an obligation which should have been performed by the landlord pursuant to a lease.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower requires the Landlord to provide cleaning services to ABC's premises on a nightly basis. The local janitorial union which services Ellipsis Tower goes on strike and stops providing cleaning services to the building. After a week, ABC is upset about the appearance of their premises, and hires a third party firm to clean the premises and remove the trash. The cost of this service is \$5,000. Because ABC has a lease clause allowing them to cure Landlord defaults and offset amount paid for such cure against rent, ABC may offset the \$5,000 cleaning payment against rental payments next coming due.

Operating Expenses

Amounts which are paid to operate and maintain income producing property. As opposed to non-recurring capital expenditures, Operating Expenses are typically recurring expenditures. Operating Expenses are usually paid by the landlord and may be subject to reimbursement by the tenant via Expense Recoveries. However, in certain instances, particularly with buildings occupied by a single tenant, the tenant may be required to pay some or all operating expenses directly to the vendor.

Option

A right granted to either the landlord or tenant to purchase or lease property at a specified time, at specified terms and under defined circumstances. Options typically granted via lease documentation include renewal options, expansion options, contraction options, termination options, rights of first offer, rights of first refusal, relocation options and purchase options.

Outlot

A freestanding building site within or adjacent to a shopping center. Examples of outlots include gas stations, restaurants or banks. Also called a 'Pad'.

EXAMPLE: ABC Restaurant Corp. likes the location of Ellipsis Mall as potential site for one of its restaurants. However, none of the restaurants within their chain are located within an enclosed mall; rather, they prefer freestanding buildings with separate parking and ingress and egress directly from main streets surrounding the mall. They sign a lease with the Landlord of Ellipsis Mall to lease the land at the southeast corner of the property owned by the Landlord, upon which they will build one of their restaurants. The site upon which the restaurant will be built is an Outlot.

Overage Percentage

The percentage which is multiplied by Gross Sales in the calculation of Overage (i.e., Percentage) Rent.

EXAMPLE: ABC Retail Tenant signs a five-year lease which requires ABC to pay Base Rent of \$50,000/year plus Percentage Rent in an amount of 4% of Gross Sales in excess of \$1,250,000. The Overage Percentage in this example is 4%.

Overage Rent

Rent paid by a retail tenant which is based upon a percentage of Gross Sales in excess of a specified dollar amount (the Breakpoint). Also called 'Percentage Rent'.

EXAMPLE: ABC Retail Tenant signs a five-year lease which requires ABC to pay Base Rent of \$50,000/year plus Percentage Rent in an amount of 4% of Gross Sales in excess of \$1,250,000. During the third lease year, Gross Sales of ABC equal \$1,400,000. ABC would be required to pay Overage Rent of \$6,000 (calculated as $[(\$1,400,000 - \$1,250,000) \times 4\%]$).

Pad

A freestanding building site within or adjacent to a shopping center. Examples of pads include gas stations, restaurants or banks. Also called an 'Outlot'.

EXAMPLE: See example for 'Outlot'.

Parking Ratio

The ratio calculated as the number of parking spaces available per one thousand square feet of rentable area.

EXAMPLE: ABC Tenant executes a lease for 5,000 sq. ft. of space at Ellipsis Tower. The lease contains a parking clause which entitles ABC to 2 non-reserved parking spaces for each 1,000 sq. ft. leased. Based upon this Parking Ratio, ABC would be entitled to 10 non-reserved parking spaces.

Pass Through

A reimbursement by the tenant to the landlord for expenses of a property which are originally paid by the landlord. The mechanics for calculation of the Pass Through will depend upon whether the lease is a Gross Lease or a Net Lease. Also called an 'Expense Recovery'.

EXAMPLE: See example for 'Expense Recovery'.

Percentage in Lieu

Rent paid by a retail tenant and calculated as a percentage of Gross Sales which is paid by the tenant in lieu of Base Rent. Percentage in Lieu clauses are sometimes included in retail leases to offer the tenant rent relief if Gross Sales fall below a certain level or if an anchor tenant fails to continuously operate within their premises.

EXAMPLE: ABC Retail Tenant signs a five-year lease which requires ABC to pay Base Rent of \$50,000/year plus Percentage Rent in an amount of 4% of Gross Sales in excess of \$1,250,000. The lease also contains a Percentage in Lieu clause, whereby if Gross Sales fall below \$750,000, ABC may pay, in lieu of Base Rent and Percentage Rent, 4% of Gross Sales until such time as Gross Sales exceed \$750,000.

Percentage Rent

Rent paid by a retail tenant which is based upon a percentage of Gross Sales in excess of a specified dollar amount (the Breakpoint). Also called 'Overage Rent'.

EXAMPLE: See example for 'Overage Rent'.

Percentage Rent Breakpoint

In retail leases, the amount which Gross Sales must exceed before a tenant is required to begin paying percentage rent. Breakpoints may be 'natural' or an arbitrary dollar amount. A 'natural' breakpoint reflects the amount of Gross Sales which, when multiplied by the Overage Percentage, equals Base Rent (stated differently, a natural breakpoint is calculated as Base Rent divided by the Overage Percentage). If a breakpoint is not natural, then the amount of the breakpoint (stated as an absolute Gross Sales amount or Gross Sales per square foot) is arbitrarily determined based upon negotiation between the landlord and tenant.

EXAMPLE: See example for 'Breakpoint'.

Porter's Wage

The hourly wage rate, as published by the appropriate labor union, currently being paid for the services of porters. The wage rate to be used in the calculation of a Porter's Wage Adjustment is specified in the lease, and may vary based upon a number of factors, including whether the wage rate includes or excludes fringe benefits.

Porter's Wage Adjustment

An increase (and sometimes decrease) in the Rent required to be paid by a tenant based upon changes in the Porter's Wage over a specified time period. The adjustment is typically calculated by multiplying the change in the Porter's Wage rate by a tenant's net rentable area, and then multiplying that product by a defined factor (i.e., penny-for-penny; penny-and-a-half for penny). Porter's Wage Adjustments are most typically found in leases for the New York City metropolitan area, and often replace the Operating Expense (but not Real Estate Tax) recovery.

EXAMPLE: ABC Tenant signs a five-year lease for 1,000 sq. ft. which requires ABC to pay Base Rent of \$20,000/annum and, in lieu of an Operating Expense Recovery, a Porter's Wage Adjustment based upon the increase in the Porter's Wage, including fringes, over the wage rate for the year in which the lease commenced on a penny and one-half per penny basis. After the first year, the published wage rate has increased from \$21.00/hour to \$21.75/hour. The Porter's Wage Adjustment beginning in the second lease year would be \$1,125/annum (calculated as $[(\$21.75 - \$21.00) \times 1,000 \text{ sq. ft.} \times 1.5]$).

Promotional Fund

A fund established by the landlord of a retail property whereby tenants are required to make specified contributions to the fund for the purpose of promotion of the property. The fund is managed by the landlord.

EXAMPLE: See example for 'Media Fund'.

Property Insurance

Insurance which covers losses occurring from fire, explosion and other perils. When obtained by the landlord, the property being insured is the building itself. When obtained by the tenant, the property being insured is typically leasehold improvements and personal property of the tenant. The coverage amount is often stated as a percentage of replacement cost or replacement value. See also 'All- Risk Insurance'.

EXAMPLE: See example for 'All-Risk Insurance'.

Proportionate Share

The percentage of reimbursable expenses to be reimbursed by a tenant to the landlord.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower requires ABC to pay its pro-rata share of reimbursable expenses on a net basis. The lease defines ABC's pro-rata share as 2.5%. Operating expenses for the current lease year are \$2,000,000. ABC's proportionate share of such expenses would be \$50,000.

Pro-rata Share

The percentage which, when multiplied by reimbursable expenses (less an Expense Stop if a Gross Lease), equals the amount to be reimbursed by a tenant to the landlord for Expense Recoveries. Typically, the percentage is calculated by dividing the net rentable area of a tenant's leased premises by the net rentable area of the building, although this is not always the case.

EXAMPLE: ABC Tenant's lease at Ellipsis Tower requires ABC to pay its Pro-rata Share of reimbursable expenses on a net basis. The lease defines ABC's pro-rata share as the quotient obtained by dividing the net rentable area of ABC's leased premises by the net rentable area of Ellipsis Tower. ABC is currently leasing 5,000 rentable square feet and Ellipsis Tower contains 250,000 rentable square feet. ABC's Prorata Share would be 2%.

Purchase Option

The right granted to a tenant to purchase a building (typically the building for which they are currently in occupancy) at a specified time in the future and for a specified price.

EXAMPLE: ABC Industrial Tenant signs a ten-year lease for 100% of the rentable area in a building located within Ellipsis Industrial Park. While ABC does not currently have the funds to purchase their own building, they feel that their financial situation will change over the next few years and would like the opportunity to own the building which they are occupying. ABC negotiates an option with the Landlord to purchase the building effective at any time after the fifth lease anniversary, upon 360 days prior notice to the Landlord, at a price to be negotiated between Landlord and ABC. This is an example of a Purchase Option.

Quiet Enjoyment

The right of a tenant to occupy their leased premises free from disturbance.

EXAMPLE: ABC Tenant's lease for space on the second floor of Ellipsis Tower contains a Quiet Enjoyment clause. The Landlord decides to conduct an outdoor concert summer series twice a week on the pavilion grounds immediately outside the building's lobby. The windows of ABC's premises are not soundproofed, and for the 2 hour concert length, the employees are unable to perform their assigned duties from the leased premises because of excessive noise. ABC sues the Landlord on the grounds that they are in violation of the Quiet Enjoyment clause contained within ABC's lease.

Radius Restriction

In retail leases, a clause which prohibits a tenant from opening a similar or competing store within a defined area from the location of the leased premises. The intent of a Radius Restriction clause is to protect the sales of a tenant from the leased premises, and in many cases, the landlord has the right to include the sales from the similar or competing store with the sales from the leased premises in the calculation of Percentage Rent.

EXAMPLE: ABC Coffee is a tenant on the ground floor level of Ellipsis Tower which sells gourmet coffee from their premises to the general public. ABC is required to pay, in addition to Base Rent, Percentage Rent based upon the amount of Gross Sales from the premises. ABC's lease contains a Radius Restriction clause which prohibits ABC from opening a competing coffee store within a 2 block radius of Ellipsis Tower. Because of heavy demand within the area, ABC opens another store 1.5 blocks from their store at Ellipsis Tower. Due to the Radius Restriction clause within the Ellipsis Tower lease, the Landlord can pursue default remedies against ABC and can also require that ABC include sales from the competing store in the computation of Gross Sales from Ellipsis Tower for purposes of calculating Percentage Rent.

Real Estate Taxes

Amounts payable to taxing authorities for the right to own land and/or buildings on property located within the boundaries of such authority.

Recapture (Percentage Rent)

Amounts payable by the tenant pursuant to a lease which may be offset against Percentage Rent due. Examples include the recapture of real estate or common area maintenance charges paid against Percentage Rent, or the recapture of tenant improvement dollars paid by the tenant against Percentage Rent.

EXAMPLE: ABC Retail Tenant's lease contains a clause which allows ABC to recapture amounts paid for their real estate tax and common area maintenance reimbursements against Percentage Rent. During the current year, ABC is required to pay \$12,000 for real estate tax and CAM reimbursements and, because of strong sales, \$20,000 for Percentage Rent. However, because of the Recapture provision within ABC's lease, ABC is required to pay only \$8,000 for Percentage Rent.

Recapture (Sublease/Assignment)

The right of a landlord to terminate the lease for space for which a tenant has presented notice of its intent to sublease and/or assign. If recaptured, the tenant no longer has any rights or obligations related to the space as of the recapture date. In some leases, the tenant has the option to rescind their notification of intent to sublease and/or assign if the landlord exercises their recapture right.

EXAMPLE: ABC Tenant is leasing 10,000 sq. ft. in Ellipsis Tower, of which 2,500 sq. ft. is not currently being used for business purposes. In accordance with their lease, ABC sends written notification to the Landlord of their intent to offer the 2,500 sq. ft. for sublease. Because ABC's lease is below market and the Landlord feels that they could generate a higher rent by re-leasing the space, they would like to terminate ABC's lease in regards to the 2,500 sq. ft. Upon review of ABC's lease, the Landlord learns that the sublease clause has a provision allowing the Landlord to recapture the proposed sublease space upon notice to tenant within 30 days of receipt of tenant's notice of intent to sublease.

Reconciliation Billing

Also called a 'True-up Billing', reflects a billing to tenants for the difference between estimated payments made by the tenant for an item of Rent (usually Expense Recoveries) and the actual payment due. Reconciliation Billings are made to a tenant after the landlord has determined the actual amounts to be billed in accordance with the lease provisions.

EXAMPLE: ABC Tenant's lease allows the Landlord to estimate recoverable expenses for the upcoming year and bill ABC monthly for expense recoveries based upon such estimate. The lease also provides that within 120 days after year-end, the Landlord must reconcile recoverable expenses actually incurred against the estimate used for billing purposes, and either refund excess payments made by ABC back to ABC or bill ABC for deficiencies in estimated payments. During the year, ABC made estimated payments of \$300 per month for recoverable expenses. Within 120 days after year-end, the Landlord determines that ABC should have paid \$4,000 for the previous year based upon recoverable expenses actually incurred. The Landlord sends ABC a Reconciliation Billing indicating that ABC owes an additional \$400 for expense recoveries for the previous year.

Recovery Pool

Operating Expenses of a property which may be passed through to tenants in accordance with the terms of their respective leases. Many leases will include a listing of specific expenses which may be included and which must be excluded from the pool.

EXAMPLE: The Expense Recovery section of ABC Tenant's lease indicates that in the calculation of recoveries, the Landlord may recover from ABC all expenses incurred for the operation, management, repair and maintenance of Ellipsis Tower, but specifically excluding a) depreciation; b) mortgage interest and ground rental payments; c) expenses incurred for Landlord's general corporate overhead; and d) capital expenditures, except for those as required by governmental regulations'.

Refurbishment

An allowance granted to a tenant subsequent to the commencement date of their lease to be used for the purpose of improving the leased premises. Refurbishment allowances are most often granted in long term leases, whereby the tenant may improve the appearance of the premises at a defined date during the lease term. In some instances the allowance is stipulated as a dollar amount or a dollar per square foot amount to be used at the discretion of the tenant; in other cases, the landlord will agree to provide certain improvements to the premises at their cost, such as repainting and recarpeting.

EXAMPLE: ABC Tenant would like to sign a ten-year lease for space at Ellipsis Tower, but is concerned that after five years the space would appear run down for the remainder of the term. As an inducement to ABC to sign the long term lease, the Landlord agrees to provide a \$5.00/square foot Refurbishment Allowance to be used by ABC in their discretion at any time during the sixth lease year to improve the appearance of the premises.

Relocation Option

An option granted to a landlord to change the location of a tenant's premises upon landlord's provision of notification within a certain time period prior to the relocation date. In most cases, the landlord is responsible for all costs associated with relocating the tenant and improving the new premises. In addition, some leases provide restrictions as to the location in the building to which the tenant may be located, the layout of the relocation premises or the number of times during the lease term during which the landlord may exercise its option to relocate.

EXAMPLE: ABC Tenant is leasing 3,000 sq. ft. on the 8th floor of Ellipsis Tower. The 6th, 7th and remainder of the 8th floor are currently vacant. The Landlord receives an offer from a third party tenant to lease all of the space on the 6th, 7th and 8th floors. In order to execute this large lease, the Landlord would need to relocate ABC Tenant. Upon review of ABC's lease, it is learned that the Landlord has a Relocation Option whereby the Landlord may relocate ABC to comparable premises within the building so long as the Landlord pays for the costs of relocation and improving the new space, upon 30 days notice to tenant. The Landlord relocates ABC to 3,200 vacant sq. ft. on the 4th floor, and is now free to execute the large lease for floors 6 - 8.

Remedies

The rights granted to the landlord or tenant within a lease which that party may exercise in the event of a default by the other party.

EXAMPLE: The default clause within ABC Tenant's lease indicates that upon either monetary or nonmonetary default by ABC, the Landlord may either a) terminate ABC's lease and require ABC to pay all amounts due plus the present value of all future amounts due under the lease; or b) terminate ABC's right to occupy the premises without terminating the lease, and offsetting rental amounts received from future leases executed by Landlord for such space against amounts due from ABC. These options would encompass Landlord's remedies in the event of default.

Renewal Option

The right of a tenant to extend the lease term for a specified period of time and at a pre-defined rental rate. In many instances, the rate is defined as a percent of market rent, and in others, the rate is a specified dollar amount or amount per square foot. An Auto-Renewal option is a form of Renewal Option whereby the lease term is extended automatically on the expiration date without any notification requirement.

EXAMPLE: ABC Tenant signs a five-year lease at Ellipsis Tower, but would like the comfort of knowing that they may remain in the building for an additional five years if they so desire at the expiration of the original five-year term. ABC negotiates a Renewal Option into their lease which allows them to extend the lease term for an additional five years upon 6 months notice to Landlord at the then current Market Rent.

Rent

Consideration paid by a tenant to a landlord for the right to lease real property. In the broadest sense, Rent includes any financial obligation of the tenant payable to the landlord, including Base Rent, expense recoveries, utilities, percentage rent, CPI adjustments and late fees.

Replacement Cost

The cost of replacing an improvement with one having the same utility. Replacement cost is often used to define the required coverage under All-Risk insurance policies.

Restriction

A limitation placed upon the use of the leased premises. Lease documentation may impose use restrictions on both the landlord (restricts the landlord from leasing space to certain tenants) and the tenant (restricts the tenant from using the premises for certain purposes).

EXAMPLE: ABC Tenant is a national provider of accounting services. In their lease at Ellipsis Tower, they require the Landlord to include a clause that they can be the only tenant in the building to provide accounting services throughout their lease term. In order to enforce this clause, the Landlord includes a use Restriction clause in all future leases which it executes at Ellipsis Tower prohibiting future tenants from using their premises to provide accounting services.

Right of First Offer

Also called a 'ROFO', a right granted to the tenant to lease additional, pre-defined space when such space becomes 'available for lease' and before such space is offered on the open market. Typically, the landlord has the obligation to notify the tenant that the space is available for lease, and the tenant has a pre-defined period of time after receipt of such notice to either accept or reject the offer. Rent for space leased via a Right of First Offer is typically market rent.

EXAMPLE: ABC Tenant signs a five-year lease for 10,000 square feet in Suite 500 at Ellipsis Tower, but is concerned that more space will be needed prior to the expiration of the term to accommodate the growth in their business. ABC negotiates a Right of First Offer with the Landlord whereby the Landlord must offer any space on the 5th floor which becomes available for leasing to ABC prior to offering such space to a third party. ABC has 5 days from receipt of Landlord's offer to accept the space on the terms outlined in Landlord's offer. This is an example of a ROFO, whereby ABC's right to expand is contingent upon space becoming available for lease.

Right of First Refusal

Also called a 'ROFR', a right granted to the tenant to lease additional, pre-defined space after a bona-fide offer has been received from a third party for such space. Typically, the landlord has the obligation to notify the tenant of receipt of the bona-fide offer and the terms contained therein, and the tenant has a pre-defined period of time after receipt of such notice to either lease the space on the terms contained in the third party offer or to reject the space.

EXAMPLE: ABC Tenant signs a five-year lease for 10,000 square feet in Suite 500 at Ellipsis Tower, but is concerned that more space will be needed prior to the expiration of the term to accommodate the growth in their business. ABC negotiates a Right of First Refusal with the Landlord whereby ABC has the right to refuse a deal for any space on the 5th floor for which Landlord has received a bona-fide offer to lease from a third party tenant. ABC has 5 days from receipt of Landlord's notice of intent to lease to accept the space on the terms contained in the third party tenant offer. This is an example of a ROFR, whereby ABC's right to expand is contingent upon Landlord receiving a bona fide offer to lease the encumbered space from a third party tenant.

Sales Category

In the calculation of Percentage Rent for retail tenants, the classification of Gross Sales based upon the type of merchandise/service sold. Some retail leases define multiple Sales Categories and apply different Percentage Rent calculation mechanics to each category.

EXAMPLE: ABC Gifts Tenant operates a gift store at Ellipsis Mall. ABC's lease provides a different Percentage Rent calculation mechanism based upon two different Sales Categories - Gross Sales from flowers versus Gross Sales from all other merchandise.

Sales Kick-Out Clause

A retail lease provision whereby the landlord has the right to terminate a tenant's lease in the event that the tenant does not achieve a particular level of Gross Sales.

EXAMPLE: ABC Retail Tenant would like to lease space at Ellipsis Mall. The Landlord is concerned that the product mix offered by ABC does not fit in well with the general theme of the mall and that ABC will therefore have trouble succeeding. However, the Landlord agrees to execute a five-year lease so long as the Landlord retains the right to terminate (kick-out) ABC if ABC's Gross Sales fall below \$200,000/annum.

Security Deposit

A deposit made by a tenant, in the form of cash, letter of credit or both, to secure the tenant's performance of its monetary obligations under a lease and to offset damages due to tenant's negligence.

EXAMPLE: As a condition to leasing space in Ellipsis Tower, ABC Tenant is required to provide a cash security deposit equal to two months Base Rent. The Landlord retains the right to apply this deposit against any past due rent amounts, at which time ABC must replenish the deposit to its original amount or be in default under the lease.

Self-Insurance

The right of a tenant or landlord to set aside funds to protect against losses rather than purchasing insurance for such protection. In many leases, Self-Insurance is allowed only if the tenant or landlord can meet pre-defined net worth requirements.

EXAMPLE: ABC Tenant's lease requires ABC to maintain Liability and All-Risk Insurance throughout the lease term with a reputable insurance company. However, the lease also gives ABC the option to self insure so long as ABC or its parent company maintains an ongoing net worth in excess of \$500 million.

Service Contract

A contract entered into with a third party for the provision of building services, such as janitorial, landscaping, elevator maintenance and building management.

Shopping Center

A group of retail stores with a common parking area designed to accommodate the shopping needs of a geographical market area. Categories of Shopping Centers include Regional Malls, Community Centers, Neighborhood Centers, Discount Centers and Power Centers.

Signage

The right of a tenant to provide identification of their company name or the name of key employees on or within a building. Signage types include monument, facade, building lobby, floor lobby, suite entry and lobby directory.

Stacking Plan

A floor-by-floor, graphical representation of each suite within a building, the tenant occupying each non-vacant suite, and the suite number and square footage of each suite. On many stacking plans, expiration dates are also provided (such dates are often color coded to provide a “quickview” of the occupancy exposure within a building).

Sublease

A lease executed by a tenant (the ‘Sub-Lessor’) to another lessee (the ‘Sub-Lessee’) for a term equal to or shorter than that held by the tenant under its original lease with the landlord. In most subleases, the original tenant remains primarily liable to the landlord for the performance of lease obligations, including the payment of Base Rent and Additional Rent, and the Sub-Lessee is liable for payment of sublease rent to the Sub-Lessor. Subleases usually require landlord consent.

EXAMPLE: ABC Tenant is leasing 10,000 sq. ft. in Ellipsis Tower, of which 2,500 sq. ft. is not currently being used for business purposes. In accordance with their lease, ABC sends written notification to the Landlord of their intent to sublease the 2,500 sq. ft. to XYZ Company. The Landlord grants their consent to the sublease, which provides for sublease rent in the amount of \$15.00/sq. ft./year. XYZ Company (the Sub-Lessee) makes the required sublease payments to ABC Tenant (the Sub-Lessor), and ABC Tenant continues to make its required rental payment to Landlord pursuant to the original lease.

Sublease Profits

Consideration received by a Sub-Lessor from a Sub-Lessee under a Sublease which is greater than the consideration payable by the Sub-Lessor (i.e., tenant) to the landlord under the original lease. In many subleases, the Sub-Lessor is required to share some or all of the Sublease Profits received with the original landlord.

EXAMPLE: ABC Tenant has subleased 2,500 sq. ft. to XYZ Company. Pursuant to the sublease, XYZ is required to make sublease rental payments of \$15.00/sq. ft./year. Pursuant to the original lease, ABC is making rent payments to the Landlord equal to \$13.00/sq. ft./year. The Sublease Profit recognized by ABC is \$5,000/year $[(\$15.00 - \$13.00) \times 2,500 \text{ sq. ft.}]$. If ABC's lease with the Landlord so requires, ABC might be required to share some or all of this Sublease Profit with the Landlord.

Subordination

The process by which a person or entity's claims are ranked below the claims of another party. In a lease transaction, the claims of a tenant against a landlord are often ranked below those of a mortgagee or a ground lessor; however, certain larger tenants will require subordination from a mortgagee or ground lessor. While subordination language is included in most leases, some leases obligate a landlord to obtain a 'Subordination, Non-Disturbance and Attornment Agreement', whereby either the tenant or the mortgagee/ground lessor will formally agree to subordinate their claims to those of the other party.

EXAMPLE: ABC Industrial Tenant's lease contains a right to purchase the building for which they occupy 100% of the rentable area for a price of \$2,500,000. The lease also contains a clause requiring ABC to subordinate their lease to any existing or future mortgages, and makes no mention of non-disturbance rights. Lender One forecloses on their \$2,750,000 first mortgage. Because ABC's lease is subordinate to the first mortgage and ABC has a purchase option for a price which is less than the loan amount, Lender One elects to eliminate ABC Industrial Tenant's lease.

Subrogation

The substitution of one person into the place of another with regards to a legal right or claim. Subrogation is often described as "stepping into another's shoes". With regards to lease transactions, subrogation is typically found in insurance clauses, whereby the insurance company is given the right to 'step into the shoes' of the party to whom they have provided compensation in order to recover the amount of the loss from the legally liable party, often via a lawsuit.

EXAMPLE: ABC Tenant's lease requires them to obtain Liability Insurance equal to \$3,000,000 for death/occurrence, \$3,000,000 for injury/occurrence and \$1,000,000 for damage/occurrence. A visitor enters ABC's premises, slips and falls on a floor tile and sustains substantial bodily injury. The visitor sues ABC for negligence which resulted in the injury. Because ABC maintains Liability Insurance, their coverage is sufficient to pay the damages resulting from this occurrence. In addition, because the lease gave the insurance company subrogation rights, the insurance company initiated a lawsuit against the tile manufacturer for the production of faulty tiles which resulted in the claim.

Tenant

One who has the temporary possession of real property owned by another (the 'Landlord'). Also called a 'Lessee'.

Tenant Allowance

A monetary allowance granted from the landlord to a tenant to entice tenant to move into landlord's building which will enable the tenant to prepare the leased premises for tenant's occupancy. Tenant Allowances may include a tenant improvement allowance, moving allowance, space plan/drawing allowance and/or lease buyout.

EXAMPLE: To induce ABC Tenant to execute a lease at Ellipsis Tower, the Landlord offers ABC a \$2.00/sq. ft. moving allowance and a \$20.00/sq. ft. tenant improvement allowance. Each of these allowances granted to ABC by the Landlord is a Tenant Allowance.

Term

The length of time that a lease transaction is in effect, measured as the period of time between the Commencement Date and the Expiration Date.

Termination Option

An option granted to either a landlord or tenant to end the term of a lease prior to the scheduled Expiration Date. In some terminations, the lease requires the terminating party to pay a fee for the right to cancel.

EXAMPLE: ABC Tenant signs a five-year lease for 10,000 square feet in Suite 500 at Ellipsis Tower, but is concerned that more space will be needed prior to the expiration of the term to accommodate the growth in their business. The Landlord does not have sufficient space available to grant an Expansion Option. Therefore, ABC negotiates a right to terminate the lease after 3 years (to allow them to move into another building which can accommodate their growth needs) upon 6 months notice to the Landlord and payment of a Termination Penalty equal to the summation of 2 months of Base Rent at the date of cancellation plus unamortized tenant improvements and leasing commissions.

Termination Penalty

Consideration to be paid by the terminating party to the non-terminating party in order to end the term of a lease via a Termination Option.

EXAMPLE: See example for 'Termination'

Triple Net

Rent stipulated in a lease which requires the tenant to pay its proportionate share of real estate taxes, insurance and operating expenses. In the real estate industry, the terms Triple Net and Net are often used with the same meaning.

EXAMPLE: ABC Industrial Tenant occupies 100% of the rentable area of ABC Industrial Building. Their lease requires them to pay Base Rent of \$7.50/sq. ft. triple net. In this instance, rather than the Landlord making real estate tax, insurance and operating expense payments to the appropriate taxing authorities/vendors and being reimbursed by ABC, ABC is responsible for making such payments directly to the taxing authorities/vendors.

True-Up

Also called a 'Reconciliation Billing', reflects a billing to tenants for the difference between estimated payments made by the tenant for an item of Rent (usually Expense Recoveries) and the actual payment due. Reconciliation Billings are made to a tenant after the landlord has determined the actual amounts to be billed in accordance with the lease provisions.

EXAMPLE: See example for 'Reconciliation Billing'.

Turn-key

A term used to describe a landlord's agreement to provide and pay for improvements to a tenant's premises which are required to deliver the premises in a condition ready for the tenant's stipulated use.

Use Clause

A clause that defines the business activities which may be conducted by a tenant within their leased premises.

EXAMPLE: ABC Tenant is a national provider of accounting services. In their lease at Ellipsis Tower, the use clause is defined as 'the provision of accounting services and any other general office purposes'.

USF

Abbreviation for Useable Square Footage. Represents the actual square footage contained within a tenant's premises. This may be compared to Gross Leasable Area or Net Rentable Area, which includes an allocation of the common areas within the building.

V

Vacancy

Unoccupied rentable space, which is often quoted as a percentage calculated as the net rentable area of space available for leasing divided by the net rentable area of the building.

EXAMPLE: Ellipsis Tower contains executed leases for tenants occupying 425,000 rentable square feet. The total net rentable area of Ellipsis Tower is 500,000 square feet. The building therefore contains 75,000 vacant square feet, which equates to a vacancy rate of 15%.

W

Workletter

A legal document which outlines the obligations of the landlord in regards to the improvements necessary to prepare leased premises for a tenant's occupancy. Items typically found in a workletter include a description of the improvements, the cost thereof, the portion of the cost to be paid by landlord, the completion date and insurance requirements of contractors performing the improvements.

X

No definitions available

Y

No definitions available

Z

No definitions available



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