

# DEFINITIONS OF SIGNIFICANT LEASE TERMS

## **Additional Rent**

Any other payment the Tenant is required to pay under the Lease that is not in the Base Rent; for the long list of items that make up Operating Costs, for Taxes and Insurance.

## **Agency**

The legal relationship that exists between the principals (tenant or landlord) and the real estate professional.

## **Amortization**

This is the process of decreasing an amount over a preset period of time. The Landlord will calculate the rental rate they are willing to accept to give them ability to recapture the tenant improvement allowance or the dollars they will spend in the Landlord's improvements plus cover their debt service and return on their investment.

## **Assignment**

The right to transfer the entire interest and obligation you have, as tenant, to a third party that will assume all responsibility to fulfill those terms of the Lease Agreement with the Landlord.

## **As-Is**

Agree to accept a premises you are leasing or a property you are purchasing without any alterations by the current Owner.

## **Assessed Value**

The value of the real estate set by the government. The Property Taxes are a % of this value and are passed through to the tenant in a Triple Net Lease or in the Base Amount stated at inception of the lease term.

## **Base Rent**

This is the rent that is specified to be paid by the Lease.

## **Base Year or Amount**

The expense in a calendar year or a fixed dollar amount that is the base upon which all future increases will be calculated.

## **Base Building Standard**

The specifications related to finishes the Landlord offers to all prospective tenants.

## **Carefree Net Lease / Net Lease**

This is the most common type of Lease. In the Additional Rent, as defined in the lease all operating expenses, all real estate or property taxes and all building insurance expense incurred by the Landlord, are passed through to the Tenant for payment of the Tenant's prorate share.

## **Common Areas**

Those spaces in the building not leased to a specific tenant, the hallways, common washrooms, fire stairs, elevators, amenity areas. This is usually expressed as a factor or percentage.

## **Conditions Precedent**

Found in the Offer to Lease document. This is a listing of items that are important to each party but will not be dealt with unless the business terms have been agreed to and a transaction is going forward. Items that suspend the "coming into effect" of a contract – unless and until they are satisfied or an event takes place. (i.e.; Tenant knows from City they can get approval for their business in that location.)

### **Demising Walls**

The wall that separates your leased space from another tenant or from the Common Areas; these walls must meet specific codes specifications {be fire rated}.

### **Deposit / Security Deposit**

Money paid at the time the Offer to Lease is signed. Typically held by the Realtor until the Lease Agreement is fully executed, then passed to Landlord. The amount due depends on how creditworthy the Landlord considers the Tenant. It is possible to negotiate for the Deposit to apply to a future rent, but the Landlord will hold the equivalent of one month Base + Additional Rent until the Tenant has moved out and Landlord has inspected the Premises.

### **Default**

A failure to perform one of the obligations of the lease; there's monetary default (non-payment of Base or Additional Rent) and non-monetary default – any other term of the Lease that is not followed.

### **Estoppel Certificate / Certificate**

An estoppel certificate is typically used when the owner of a commercial property wants to sell or refinance the property, and the buyer or lender requires confirmation of the status of all leases in the property, to ensure that the tenant(s) do not have any claims against the landlord which would allow the tenants to offset or withhold future rent payments. The estoppel certificate identifies the tenant and landlord; the leased property location; the lease commencement date, termination date and option period, if any; the status of rent, prepaid rents and security deposits; status of any defaults by the landlord, among other information.

### **Free Rent**

The period of time you have possession of the premises without being obligated to pay Base Rent. Other charges - like payment of utilities, and non-monetary requirements – like a Certificate of Insurance naming the Landlord as Additional Insured - must be in place.

### **Fixturing Period**

The period before the Commencement Date in the Lease, typically no Base Rent or Additional Rent is payable during this period. This gives Tenant control of the space while their Tenant Improvements are installed. It is not for the purpose of Tenant occupying and operating their business.

### **Gross Lease**

A type of lease that states one fixed rental rate: the Landlord is assuming all the risk of increases in taxes or operating expenses. Typically, the stated rent per square foot will be higher because the Landlord is assuming all risk of increase, or the Landlord will grant a shorter term lease.

### **Indemnity**

Strictly speaking, indemnity is protection from loss and damage claims filed by another person. The principle behind indemnity is a financial restoration to a level just before the accident or injury or illegal act. Whatever actual losses were suffered would be repaid, but punitive damages would be a separate matter. Most lease agreements contain an indemnity clause that says you will protect the Landlord from your customer, employee or invited guests suing them for damages if an accident happens while in the Premises.

You will want to protect your interest and add “unless Landlord was negligent”

### **Insurance**

The Landlord will require Tenant to have fire and extended coverage because Tenant is responsible for the costs of repair that results from any act of the Tenant and for coverage on all personal property located in the Premises. Landlord will maintain fire and extended coverage on the Building. Both Landlord and Tenant shall be required under the lease to have comprehensive general liability coverage with a minimum amount specified. Tenant's policy shall name Landlord as additional insured.

### **Leasable Square Feet / Rental Area**

The amount of square feet used to calculate the Base Rent payable. This includes the common areas that are allocated to you. The amount of square feet for common area spaces is divided among all tenants on a prorated basis. Each tenant pays a portion of the landlord's expenses for these common areas. When these are added to the usable square feet the end result is called "leasable or rentable square feet." Be clear how the rent is being quoted. Is it for usable square feet or for rentable square feet?

### **Lease Commencement**

The date when the lease **term** begins, this is not necessarily the Possession Date or the Rental Commencement Date.

### **Lease Expiration**

This date is when the Lease Term ends, your Tenant rights and obligations are extinguished and you move. Leases prepared by a lawyer will have a provision to deal with a Tenant that holds over in possession of their space beyond this expiration date.

### **Lease Term**

A period of time specified in the lease from the beginning, Lease Commencement to the end Lease Expiration.

### **Non-Disturbance**

You have the right to quiet enjoyment of your Premises provided you are not in default of any of the terms of the Lease. You can negotiate in the Lease to have advance notice of any cases where the Landlord needs to enter or access your Premises. (intent is notice must be given for any reason except for an emergency) Landlord's mortgage holder has top priority on the property. What if the Landlord defaults with their Lender? It is possible for the Landlord to obtain a Non Disturbance Agreement with their Lender where Lender agrees not to evict Tenant, as long as tenant is not in default.

### **Operating Expenses / Additional Rent**

In NNN lease the Tenant pays its proportionate share of these costs. Most leases define this as all expenses of every nature incurred in the complete maintenance, repair, replacement, operation, insuring and management of the Property. Often the Landlord will also want to put their Capital Improvements into operating costs {roof replacement}, or marketing expenses, or an additional administrative fee on top of the actual expenses, or supplies related to the property. **It is worth spending time on this section of the Offer to Lease and Lease Agreement – before you sign it - to fully understand what is included.** It is possible to get some items removed or reduced in certain negotiations. In the due diligence period of the Offer to Lease, always have as a Condition Precedent – the Landlord will provide a statement of most recent Operating Costs detail for the property to you.

### **Possession Date**

The date the Tenant has the legal right to have access to the space and has keys. Sometimes stated as a fixed date or sometimes based on certain items being in place (certificate of insurance, signed lease agreement, etc)

### **Real Estate Taxes or Property Tax**

Taxes levied on the Owner of the property by the government, set by multiplying the tax rate by the property's assessed value.

### **Renewal Option**

Gives the Tenant the right to extend the lease term and sets out general terms that would apply. You, as Tenant, would only become obligated for the extended period by notifying the Landlord in writing you want to exercise your right.

### **Rent Abatement**

This is typically found in the Insurance clause of the lease. You would still have a lease, but because you were not able to conduct business (due to fire or flood, etc) the rent would not be payable until the Premises is restored to full operating order. The Landlord will require you to have insurance and you want to make that reciprocal and require the Landlord to have insurance too, for situations like this.

### **Rent Increases**

Tenant and Landlord will pre-negotiate this in the Offer to Lease for the initial term. It is the key business decision for both parties. Tenants will want to negotiate for renewal options to have a specified increase so they have the clear picture for their budgeting. Landlords typically want to set a formula for option periods based on a future market condition.

### **Rules and Regulations**

This is an appendix that is attached to the lease that sets out even more controls by the Landlord, it is focused on the day to day operational aspect of a property. For example: don't change locks, specifies window coverings, how you treat the common areas, etc.

### **Subletting**

Obtaining approval from the Landlord that another organization can occupy the space and pay rent to your organization. You are still 100% responsible to meet all lease obligations.

### **Tenant Improvement Allowance**

Money that the Landlord gives the Tenant; specifying it is to be spent on construction, or finishes (i.e.; painting) and fixtures that will become permanently attached to the building. Tenant provides invoices for the work from trades; the Landlord inspects that the work is complete, then reimburses Tenant or pays the trade invoice direct.

### **Tenant Inducements to Lease**

The amount of money a Landlord is willing to spend to get a prospective Tenant to make a deal to lease space from them. This can come in non-monetary forms that are real dollars to a Landlord. Such as any type of free rent. The Landlord can agree to do work in the space that customizes it to the Tenants use. The Landlord can give an actual cash allowance that will reimburse Tenant for the dollars the Tenant spent improving the space to Tenants' specifications.

### **Useable Square Feet (area inside your premises or building)**

The floor area in the space you leased that is available for people to utilize the furniture, fixtures and equipment you own.

### **Use Clause**

A definition of how the tenant can or cannot use the leased space; broad terms that give a lot of flexibility are the best way to describe your usage. Examples: for general and administrative purposes, or; for a restaurant with a bar area serving food, beer, spirits, wine and use for other ancillary purposes associated therewith and for no other purpose. The Landlord will insist on the "for no other purpose" phrase because they want to know how their property is being used.

### **Working Drawings / Specifications (as relates to Tenant Improvements)**

This is where the real detail is outlined. If the improvements are significant, the City will require these be drawn by a certified architect or designer, with supplemental drawings from mechanical or electrical engineers attached; before a building permit will be issued.