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## **GLOSSARY OF LEASE TERMS**

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## **GLOSSARY OF LEASE TERMS**

Business leases contain many unique words and phrases readily understood by landlords, leasing agents and real estate attorneys. However, these words and phrases may not be part of the typical tenant's vocabulary. The following is a brief explanation of commonly used words and phrases (in alphabetical order) contained in business leases.

**"Abatement"** usually means the situation when the tenant does not have to pay rent for a period of time usually due to a fire or other casualty that renders all or a portion of the premises untenable.

**"Acceleration"** usually means the right of the landlord to demand that all of the rent to be paid over the entire term of the lease (future rent) becomes immediately due and payable (not just the back rent) upon the tenant's default.

**"Additional Rent"** usually means payments by the tenant to the landlord other than base rent such as for taxes, insurance, common area maintenance (CAM), repairs and maintenance, etc.

**"Appurtenances"** usually means a right to use something in addition to the premises that comes along with the lease of property like an easement, parking spaces, etc.

**"Anchor Store"** usually means a large department store, supermarket or other retailer which draws consumers to the center.

**"As-Is"** usually means that the landlord makes no promise to you as to the condition of the premises and any furnishings, fixtures and equipment in the premises at the time the tenant takes occupancy.

**"Assignment"** usually means the transfer of the tenant's interest under the lease to another person who becomes the tenant under the lease.

**"Attornment"** generally means to agree to become the tenant for a new owner of the property such as a new buyer of the property or the lender of the landlord if the lender forecloses on the landlord's interest in the property.

**"Base Rent"** usually means the fixed minimum rent a tenant is required to pay.

**"Break Point" or "Break Even"** usually means the point where the percentage rent equals the base rent. For example, if the base rent is \$40,000 per year and the percentage rent is 4% of gross sales, the break point is \$1,000,000 of gross sales.

**"Center"** usually means all the land, buildings, other improvements and common areas including parking lots in which the premises is located and are a part.

**"Commencement Date"** usually means the date when rent begins .

**"Common Areas"** means the parking areas, sidewalks, courts, malls, roof, streets, roadways, loading platforms, service areas, stairways, comfort stations, reflecting pools, lounges and shelters,

staff offices and other facilities designated by the landlord from time to time for the nonexclusive use of the tenant and the other tenants in the center, their respective employees, agents, customers, licensees and invitees.

**"Common Area Maintenance (CAM)" or "Operating Charges"** usually means all costs and expenses of every kind and nature paid and incurred by the landlord in operating, managing, cleaning, protecting, equipping, lighting, repairing, replacing and maintaining walkways, corridors, public areas, common restrooms and meeting areas, vehicle parking areas, driveways, drainage facilities, traffic signals and other traffic control devices, heating, ventilating, air conditioning and other expenses in maintaining the common areas, including a management fee and/or administrative fee.

**"Condemnation"** usually means the taking of all or a portion of the property or property rights by a governmental unit for public purposes (for example, road widening).

**"CPI"** usually means the Consumer Price Index published by the U.S. Department of Labor which measures inflation.

**"Curb Cut"** usually means a road improvement allowing for vehicles to enter and exit a parcel of property.

**"Default"** usually means a breach (violation) of the lease by a party.

**"Easement" or "Cross-Easement"** usually means the right of one property owner to be able to cross over another person's property. This is commonly entered into between 2 adjoining property owners so that they and their tenants and guests can travel over each other's property.

**"Egress"** usually means the ability to exit the property over a road and through a curb cut (see **Ingress and Egress** below).

**"Estoppel Certificate"** usually means a statement by the tenant or the landlord to a third party about the status of the lease.

**"Event of Default"** usually means a default which still exists after the giving of any required notice of default and the expiration of all applicable time (grace) periods in which to cure the default and, thereby, entitling the landlord to, possibly among other things, terminate the lease and evict the tenant.

**"Eviction"** usually means the process by which a tenant loses the right to continue to occupy the premises and must vacate (leave) the premises.

**"First Generation Space"** usually means premises in a new building never previously occupied by a tenant or the owner and in which no leasehold improvements have been made.

**"Force Majeure"** is a French term meaning superior or irresistible force. It usually means acts beyond the control of the parties such as acts of terrorism, earthquakes, floods, riots and other acts of God.

**"Free Rent"** means the period in which the tenant does not have to pay rent, usually at the beginning of the lease term, when the tenant is building out the premises and is not yet open for business and earning revenue.

**"Generally Accepted Accounting Principles"** generally means those principles of accounting which fairly represent the financial position of the particular entity and which are employed by certified public accountants which principles have become, through their use, generally accepted by the accounting industry, including those principles set forth in the opinions and statements of the Accounting Principles Board, Accounting Research Bulletins, Statements of the International Accounting Standards Committee, Statements, Opinions, Interpretations and Technical Bulletins of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or other principles which have substantial authoritative support and are applicable in the circumstances as of the date of any report required in the lease or as of the date of an application of such principles as required in the lease.

**"Gross Leasable Area"** generally means the gross leasable area of the premises that is measured from the outside of the exterior walls or the center of any common walls, as the case may be, without deduction for columns or other structural elements within the premises. This is usually the figure from which base rent on a "dollars per square foot per year" basis is calculated.

**"Gross Sales" or "Gross Revenues"** usually means the sales price of all merchandise sold and the charges for all services performed by the tenant or any other person, firm or corporation selling merchandise or performing services in, upon, and from any part of the premises, including rentals, mail or telephone orders received or filled at the premises, all deposits not refunded to purchasers and all merchandise sold or service performed for cash or for credit, regardless of collections or for any other consideration. Installment, credit or layaway sales are usually treated as a sale for the full price in the month in which such sale is made, regardless of when the tenant receives payment from its customer. Barter or "trade-outs" are usually included. No deduction is usually allowed for uncollected or uncollectible credit accounts or bank or credit card charges. Gross sales usually do not include: (a) sales or retail excise taxes imposed by and duly constituted government authority on sales collected by the tenant and paid to such authority; (b) exchanges of merchandise between the tenant's stores unless for the purpose of consummating a sale made in, upon or from the premises; (c) the sales price of goods delivered in exchange for goods returned to the tenant, or returned to the manufacturer, vendor or shipper; and (d) sales of fixtures outside the tenant's ordinary course of business that are not a part of the tenant's stock in trade.

**"Guaranty"** is the promise by a person to be responsible for the obligations of another. In leasing, it usually means the promise by a person other than the tenant (for example, a shareholder) to be responsible for the monetary and other obligations of the tenant (for example, a corporate tenant) to the landlord under the lease.

**"Hazardous Substance"** usually means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, a state or the United States government. "Hazardous Substance" includes any and all material or substances, which are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance," pursuant to state, federal or local

governmental law. "Hazardous Substance" includes asbestos, polychlorobiphenyls ("PCB's") and petroleum.

**"Holdover"** usually means the situation where the tenant continues to occupy the premises after the expiration of the lease without signing a new lease.

**"HVAC System"** usually means the heating, ventilating and air conditioning system.

**"Indemnification"** usually means a promise by one party to restore another party of a loss by payment of money, replacement or repair.

**"Ingress"** usually means the act or right of entering to obtain access to property usually over a road and through a curb cut.

**"Key Money"** usually means a special up-front fee a landlord charges the tenant as a premium to lease the premises. Key money is common in Europe but not in the U.S.

**"Landlord"** usually means the owner of the real estate being leased. The owner is sometimes called the "Lessor."

**"Landlord's Work"** usually means the work to be performed by the landlord to build out the premises.

**"Landlord's Lien"** usually means the right of the landlord, by statute or by a provision in the lease, to have a lien on the tenant's property located in the premises as security for the tenant's obligations under the lease, including the payment of rent.

**"Landlord's Allowance" or "Landlord's Credit"** usually means a dollar allowance contribution or credit by the landlord towards the tenant's construction of leasehold improvements with the tenant being responsible for any excess costs.

**"Late Charge"** usually means a charge imposed by the landlord if the tenant pays the rent late.

**"Lease Term"** usually means the initial term and all renewal terms of the lease.

**"Lease Date"** usually means the date the lease is signed.

**"Leasehold Improvements"** usually means the construction of the interior of the premises, including walls, shelving, flooring, partitions, etc.

**"Lien"** usually means a charge, security interest or other encumbrance on property.

**"Mechanics' Lien" or "Contractors' Lien"** usually means a lien on the premises filed by a contractor or supplier of materials who did work at the premises.

**"Merchant's Association"** usually means an association composed of all the tenants at the center who engage in collective advertising activities.

**"Non-Recourse"** usually means that a person has no right to assert an otherwise valid claim against another.

**"Percentage Rent"** usually means the rent paid by the tenant as a percentage of the tenant's gross sales.

**"Permitted Use"** usually means the specific use or purpose for which the tenant may use and occupy the premises.

**"Premises"** usually means the interior space rented by the tenant. It is sometimes also called the "leased premises" or the "demised premises."

**"Restrictive Covenant"** is a promise of the owner of the land to do or not to do something that binds the owner and all later purchasers of the property (for example, to use the land for a restaurant only).

**"Second Generation Space"** usually means premises in a building which were previously constructed with leasehold improvements and occupied by a prior tenant or tenants.

**"Security Deposit"** usually means the amount of money that the tenant must give the landlord in advance as security for the tenant's obligation to pay rent and maintain the premises.

**"Sublease"** usually means a transaction where the tenant leases all or a portion of the premises to another person while remaining the tenant under the lease with the landlord. In effect, the tenant becomes the subtenant's landlord.

**"Subordination"** usually means the process by which a person's rights are ranked below (behind) the rights of others.

**"Subrogation"** usually means the right to step into the shoes of another person to enforce a claim against a third party.

**"Substantial Completion"** usually means the period when the center and/or the premises are complete enough for the landlord or tenant to obtain a certificate of occupancy from the local governmental body and allow the tenant to move in. There still may be additional repairs or improvements (for example, landscaping), which are required to totally complete the building or the premises.

**"Subtenant"** usually means the person who subleases from a tenant.

**"Tenant"** usually means the person receiving rights to use and occupy the premises. He, she it is sometimes called the "lessee."

**"Tenant's Work"** usually means the leasehold improvements which are the obligations of the tenant.

**"Turn Key"** usually means that the landlord completes the space in accordance with the landlord's build-out proposal and the tenant's plans usually at the expense of the landlord. This most often occurs with first generation space.

**"Untenantable"** usually means the circumstance whereby the tenant can no longer occupy or use the premises for its intended purposes.

I hope that this information is helpful to you.

*Keith J. Kanouse, Esq.*