



## *Glossary of Real Estate Terms*

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

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

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

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

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

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

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

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

**Annual Percentage Rate (APR):** The actual cost of borrowing money, expressed in the form of an annual interest rate. It may be higher than the note rate because it represents full disclosure of the interest rate, loan origination fees, loan discount points, and other credit costs paid to the lender.

**Appraisal:** An estimate of opinion and value based upon a factual analysis of a property by a qualified professional.

**Appreciation:** The increased value of an asset.

**"As-Is" Condition:** The acceptance by the tenant of the existing condition of the premises at the time the lease is consummated. This would include any physical defects.

**Assessment:** A fee imposed on property, usually to pay for public improvements such as water, sewers, streets, improvement districts, etc.

**Assignment:** A transfer by lessee of lessee's entire estate in the property. Distinguishable from a sublease where the sublessee acquires something less than the lessee's entire interest.

**Attorn:** To turn over or transfer to another money or goods. To agree to recognize a new owner of a property and to pay him/her rent. In a lease, when the tenant agrees to attorn to the purchaser, the landlord is given the power to subordinate tenant's interest to any first mortgage or deed of trust lien subsequently placed upon the leased premises.

**Balloon Payment:** A large principal payment that typically becomes due at the conclusion of the loan term. Generally, it reflects a loan amortized over a longer period than that of the term of the loan itself (i.e. payments based on a 25 year amortization with the principal balance due at the end of 5 years). See Bullet Loan.

**Bankrupt:** The condition or state of a person (individual, partnership, corporation, etc.) who is unable to repay its debts as they are, or become, due.

**Bankruptcy:** Proceedings under federal statutes to relieve a debtor who is unable or unwilling to pay its debts. After addressing certain priorities and exemptions, the bankrupt's property and other assets are distributed by the court to creditors as full satisfaction for the debt. See also Chapter 11.

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

**Base Year:** Actual taxes and operating expenses for a specified base year, most often the year in which the lease commences. Once the base year expenses are known, the lease essentially becomes a dollar stop lease.

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

**Building Classifications:** Building classifications in most markets refer to Class "A", "B", "C" and sometimes "D" properties. While the rating assigned to a particular building is very subjective, Class "A" properties are typically newer buildings with superior construction and finish in excellent locations with easy access, attractive to credit tenants, and which offer a multitude of amenities such as on-site management or covered parking. These buildings, of course, command the highest rental rates in their sub-market. As the "Class" of the building decreases (i.e. Class "B", "C" or "D") one component or another such as age, location or construction of the building becomes less desirable. Note that a Class "A" building in one sub-market might rank lower if it were located in a distinctly different sub-market just a few miles away containing a higher end product.

**Building Code:** The various laws set forth by the ruling municipality as to the end use of a certain piece of property and that dictate the criteria for design, materials and type of improvements allowed.

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

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

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

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

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

**Bullet Loan:** Any short-term, generally five to seven years, financing option that requires a balloon payment at the end of the term and anticipates that the loan will be refinanced in order to meet the balloon payment obligation. Essentially, should the refinancing not be available, often due to the property not performing as anticipated, the borrower is "shot" and the property is subject to foreclosure. An example of this is when a developer borrows to cover the costs of construction and carry-costs for a new building with the expectation that it would be replaced by long-term (or "permanent") financing provided by an institutional investor once most of risk involved in construction and lease-up had been overcome resulting in an income-producing property.

**Capital Expenses:** This type of expense is most often defined by reference to generally accepted accounting principles (GAAP), but GAAP does not provide definitive guidance on all possible expenditures. Accountants will often disagree on whether or not to include certain items.

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

**Capitalization Rate:** The rate that is considered a reasonable return on investment (on the basis of both the investor's alternative investment possibilities and the risk of the investment). Used to determine and value real property through the capitalization process. Also called "free and clear return". See Capitalization.

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

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

**Chapter 7:** That portion of the Federal Bankruptcy code that deals with business liquidations. Chapter 11 is that part of the Federal Bankruptcy code that deals with business reorganizations.

**Chapter 11:** That portion of the Federal Bankruptcy code that deals with business reorganizations. Chapter 7 is that part of the Federal Bankruptcy code that deals with business liquidations.

**Clear-Span Facility:** A building, most often a warehouse or parking garage, with vertical columns on the outside edges of the structure and a clear span between columns.

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

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

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

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

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

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

**Construction Management:** The actual construction process is overseen by a qualified construction manager who ensures that the various stages of the construction process are completed in a timely and seamless fashion, from getting the construction permit to completion of the construction to the final walk-through of the completed leased premises with the tenant.

**Consumer Price Index ("CPI"):** Measures inflation in relation to the change in the price of a fixed market basket of goods and services purchased by a specified population during a "base" period of time. It is not a true "cost of living" factor and bears little direct relation to actual costs of building operation or the value of real estate. The CPI is commonly used to increase the base rental periodically as a means of protecting the landlord's rental stream against inflation or to provide a cushion for operating expense increases for a landlord unwilling to undertake the record keeping necessary for operating expense escalations.

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

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

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

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

**Cost Approach:** A method of appraising real property whereby the replacement cost of a structure is calculated using current costs of construction.

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

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

**Cumulative Discount Rate:** The interest rate used in finding present values that when applied to the rental rate takes into account all landlord lease concessions and then expressed as a percentage of base rent.

**Dedicate:** To appropriate private property to public ownership for a public use.

**Deed:** A legal instrument transferring title to real property from the seller to the buyer upon the sale of such property.

**Deed In Lieu Of Foreclosure:** A deed given by an owner/borrower to a lender to satisfy a mortgage debt and avoid foreclosure. See also Foreclosure.

**Deed Of Trust:** An instrument used in many states in place of a mortgage by which real property is transferred to a trustee by the borrower (trustor), in favor of the lender (beneficiary), to secure repayment of a debt.

**Default:** The general failure to perform a legal or contractual duty or to discharge an obligation when due. Some specific examples are: 1) Failure to make a payment of rent when due. 2) The breach or failure to perform any of the terms of a lease agreement.

**Deficiency Judgment:** Imposition of personal liability on a borrower for the unpaid balance of mortgage debt after a foreclosure has failed to yield the full amount of the debt.

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

**Design/Build:** A system in which a single entity is responsible for both the design and construction. The term can apply to an entire facility or to individual components of the construction to be performed by a subcontractor; also referred to as "design/construct".

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

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

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

**Earnest Money:** The monetary advance by a buyer of part of the purchase price to indicate the intention and ability of the buyer to carry out the contract.

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

**Economic Feasibility:** A building or project's feasibility in terms of costs and revenue, with excess revenue establishing the degree of viability.

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

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

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

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

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

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

**Environmental Impact Statement:** Documents which are required by federal and state laws to accompany proposals for major projects and programs that will likely have an impact on the surrounding environment.

**Equity:** The fair market value of an asset less any outstanding indebtedness or other encumbrances.

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

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

**Escrow Agreement:** A written agreement made between the parties to a contract and an escrow agent. The escrow agreement sets forth the basic obligations of the parties, describes the monies (or other things of value) to be deposited in escrow, and instructs the escrow agent concerning the disposition of the monies deposited.

**Exclusive Agency Listing:** A written agreement between a real estate broker and a property owner in which the owner promises to pay a fee or commission to the broker if specified real property is leased during the listing period. The broker need not be the procuring cause of the lease.

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

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

**Fair Market Value:** The sale price at which a property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Also known as FMV.

**Finance Charge:** The amount paid for the privilege deferring payment of goods or services purchased, including any charges payable by the purchaser as a condition of the loan.

**First Generation Space:** Generally refers to new space that is currently available for lease and has never before been occupied by a tenant. See also Second Generation Space.

**First Mortgage:** The senior mortgage which, by reason of its position, has priority over all junior encumbrances. The holder of the first or senior mortgage has a priority right to payment in the event of default.

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

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

**Fixed Costs:** Costs, such as rent, which do not fluctuate in proportion to the level of sales or production.

**Flex Space:** A building providing its occupants the flexibility of utilizing the space. Usually provides a configuration allowing a flexible amount of office or showroom space in combination with manufacturing, laboratory, warehouse distribution, etc. Typically also provides the flexibility to relocate overhead doors. Generally constructed with little or no common areas, load-bearing floors, loading dock facilities and high ceilings.

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

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

**Foreclosure:** A procedure by which the mortgagee ("lender") either takes title to or forces the sale of the mortgagor's ("borrower") property in satisfaction of a debt. See also Deed In Lieu Of Foreclosure.

**Full Recourse:** A loan on which an endorser or guarantor is liable in the event of default by the borrower.

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

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

**General Contractor:** The prime contractor who contracts for the construction of an entire building or project, rather than just a portion of the work. The general contractor hires subcontractors, (e.g., plumbing, electrical, etc.), coordinates all work, and is responsible for payment to subcontractors.

**General Partner:** A member of a partnership who has authority to bind the partnership. A general partner also shares in the profits and losses of the partnership. See also Limited Partnership.

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

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

**Grantee:** One to whom a grant is made.

**Grantor:** The person making the grant.

**Gross Absorption:** A measure of the total square feet leased over a specified period of time with no consideration given to space vacated in the same geographic area during the same time period. See also Net Absorption.

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

**Gross Lease:** A lease in which the tenant pays a flat sum for rent out of which the landlord must pay all expenses such as taxes, insurance, maintenance, utilities, etc.

**Ground Rent:** Rent paid to the owner for use of land, normally on which to build a building. Generally, the arrangement is that of a long-term lease (e.g. 99 years) with the lessor retaining title to the land.

**Guarantor:** One who makes a guaranty. See also Guaranty.

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

**Hard Cost:** The cost of actually constructing the improvements (i.e. construction costs). See also Soft Cost.

**Highest and Best Use:** The use of land or buildings which will bring the greatest economic return over a given time which is physically possible, appropriately supported, financially feasible.

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

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

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

**Improvements:** In the context of leasing, the term typically refers to the improvements made to or inside a building but may include any permanent structure or other development, such as a street, sidewalks, utilities, etc. See also "Leasehold Improvements". See also Leasehold Improvements and Tenant Improvements.

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

**Inventory:** The total amount of rentable square feet of existing and any forthcoming space (whether it be a tenant vacating space or new buildings coming on the market), in a given category, for example, all warehouse space in a specified submarket. Inventory refers to all space within a certain proscribed market without regard to its availability or condition, and categories can include all types of leased space such as office, flex, retail and warehouse space.

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

**Judgment Lien:** An encumbrance that arises by law when a judgment for the recovery of money attaches to the debtor's real estate. See also Lien.

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

**Landlord's Lien:** A type of lien that can be created by contract or by operation of law. Some examples are: (1) a contractual landlord's lien as might be found in a lease agreement; (2) a statutory landlord's lien; and (3) landlord's remedy of distress (or right of distraint), which is not truly a lien but has a similar effect. See also Lien.

**Landlord's Lien or Warrant:** A warrant from a landlord to levy upon a tenant's personal property (e.g., furniture, etc.) and to sell this property at a public sale to compel payment of the rent or the observance of some other stipulation in the lease.

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

**Lease Agreement:** The formal legal document entered into between a Landlord and a Tenant to reflect the terms of the negotiations between them; that is, the lease terms have been negotiated and agreed upon, and the agreement has been reduced to writing. It constitutes the entire agreement between the parties and sets forth their basic legal rights.

**Lease Commencement Date:** The date usually constitutes the commencement of the term of the Lease for all purposes, whether or not the tenant has actually taken possession so long as beneficial occupancy is possible. In reality, there could be other agreements, such as an Early Occupancy Agreement, which have an impact on this strict definition.

**Leasehold Improvements:** Improvements made to the leased premises by or for a tenant. Generally, especially in new space, part of the negotiations will include in some detail the improvements to be made in the leased premises by Landlord. See also Tenant Improvements.

**Legal Description:** A geographical description identifying a parcel of land by government survey, metes and bounds, or lot numbers of a recorded plat including a description of any portion thereof that is subject to an easement or reservation.

**Legal Owner:** The term is in technical contrast to equitable owner. The legal owner has title to the property, although the title may actually carry no rights to the property other than as a lien. See also Lien.

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

**Letter Of Credit:** A commitment by a bank or other person, made at the request of a customer, that the issuer will honor drafts or other demands for payment upon full compliance with the conditions specified in the letter of credit. Letters of credit are often used in place of cash deposited with the landlord in satisfying the security deposit provisions of a lease.

**Letter Of Intent:** A preliminary agreement stating the proposed terms for a final contract. They can be "binding" or "non-binding". This is the threshold issue in most litigation concerning letters of intent. The parties should always consult their respective legal counsel before signing any Letter of Intent.

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

**Lien Waiver (Waiver of Liens):** A waiver of mechanic's lien rights, signed by a general contractor and his subcontractors, that is often required before the general contractor can receive a draw under the payment provisions of a construction contract. May also be required before the owner can receive a draw on a construction loan.

**Like-Kind Property:** A term used in an exchange of property held for productive use in a trade or business or for investment. Unless cash is received, the tax consequences of the exchange are postponed pursuant to Section 1031 of the Internal Revenue Code.

**Limited Partnership:** A type of partnership, created under state law, comprised of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more special or limited partners who contribute capital and share in profits but who take no part in running the business and incur no liability over and above the amount contributed. See also General Partner.

**Listing Agreement:** An agreement between the owner of a property and a real estate broker giving the broker the authorization to attempt to sell or lease the property at a certain price and terms in return for a commission, set fee or other form of compensation. See also Exclusive Listing Agreement.

**Long Term Lease:** In most markets, this refers to a lease whose term is at least three years from initial signing until the date of expiration or renewal option.

**Lot:** Generally, one of several contiguous parcels of land making up a fractional part or subdivision of a block, the boundaries of which are shown on recorded maps and plats.

**Low Rise:** A building with fewer than 4 stories above ground level.

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

**Maker:** One who creates or executes a promissory note and promises to pay the note when it becomes due..

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

**Market Study:** A forecast of future demand for a certain type of real estate project that includes an estimate of the square footage that can be absorbed and the rents that can be charged. Also called "Marketability Study".

**Marketable Title:** A title which is free from encumbrances and could be readily marketed (i.e., sold) to a reasonably intelligent purchaser who is well informed of the facts and willing to accept such title while exercising ordinary business prudence. See also Encumbrance.

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

**Master Lease:** A primary lease that controls subsequent leases and which may cover more property than subsequent leases. An Executive Suite operation is a good example in that a primary lease is signed with the landlord and then individual offices within the leased premises are leased to other individuals or companies.

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

**Metes and Bounds:** The boundary lines of land, with their terminal points and angles, described by listing the compass directions and distances of the boundaries. Originally, metes referred to distance and bounds referred to direction.

**Mid-Rise:** A building with between four and eight stories above ground level although in a Central Business District, this might extend to buildings up to twenty-five stories.

**Mixed-Use:** Space within a building or project providing for more than one use (i.e., a loft or apartment project with retail, an apartment building with office space, an office building with retail space).

**Mortgage:** A written instrument creating an interest in real estate and that provides security for the performance of a duty or the payment of a debt. The borrower (i.e., mortgagor) retains possession and use of the property.

**Net Absorption:** The square feet leased in a specific geographic area over a fixed period-of-time after deducting space vacated in the same area during the same period. See also Gross Absorption.

**Net Lease:** A lease in which there is a provision for the tenant to pay, in addition to rent, certain costs associated with the operation of the property. These costs may include property taxes, insurance, repairs, utilities, and maintenance. There are also "NN" (double net) and "NNN" (triple net) leases. The difference between the three is the degree to which the tenant is responsible for operating costs. See also Gross Lease.

**Net Rentable Area:** The floor area of a building that remains after the square footage represented by vertical penetrations, such as elevator shafts, etc., has been deducted. Common areas and mechanical rooms are included and there are no deductions made for necessary columns and projections of the building. (This is by the Building Owner and Manager Association - BOMA, Standard).

**Net Square Footage (S.F.):** The space required for a function or staff position. Also see Circulation Factor and Usable Square Footage.

**Non-Compete Clause:** A clause that can be inserted into a lease specifying that the business of the tenant is exclusive in the property and that no other tenant operating the same or similar type of business can occupy space in the building. This clause benefits service-oriented businesses desiring exclusive access to the building's population (i.e. travel agent, deli, etc.).

**Non-Recourse Loan:** A loan which bars a lender from seeking a deficiency judgment against a borrower in the event of default. The borrower is not personally liable if the value of the collateral for the loan falls below the amount required to repay the loan.

**Normal Wear and Tear:** The deterioration or loss in value caused by the tenant's normal and reasonable use. In many leases the tenant is not responsible for "normal wear and tear".

**Open Space:** An unimproved area of land or water, or containing only such improvements as are appropriate to the use and enjoyment of the open area, and dedicated for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces.

**Operating Cost Escalation:** Although there are many variations of escalation clauses, all are intended to adjust rents by reference to external standards such as published indexes, negotiated wage levels, or expenses related to the ownership and operation of buildings. During the past thirty years, Landlords have developed the custom of separating the base rent for the occupancy of the leased premises from escalation rent. This technique enables the landlord to better ensure that the "net"

rent to be received under the lease will not be reduced by the normal costs of operating and maintaining the property. The landlord's definition of Operating Expenses is likely to be broad, covering most costs of operation of the building. Most landlords pass through proper and customary charges, but in the hands of an overly aggressive landlord, these clauses can operate to impose obligations which the tenant would not willingly or knowingly accept.

**Operating Expenses:** The actual costs associated with operating a property including maintenance, repairs, management, utilities, taxes and insurance. A landlord's definition of operating expenses is likely to be quite broad, covering most aspects of operating the building.

**Operating Expense Escalation:** Although there are many variations of operating expense escalation clauses, all are intended to adjust rents by reference to external standards such as published indexes, negotiated wage levels, or expenses related to the ownership and operation of buildings.

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

**Partial Taking:** The taking of part (a portion) of an owner's property under the laws of eminent domain.

**Pass Throughs:** Refers to the tenant's pro rata share of operating expenses (i.e. taxes, utilities, repairs) paid in addition to the base rent.

**Percentage Lease:** Refers to a provision of the lease calling for the landlord to be paid a percentage of the tenant's gross sales as a component of rent. There is usually a base rent amount to which "percentage" rent is then added. This type of clause is most often found in retail leases.

**Performance Bond:** A surety bond posted by a contractor guaranteeing full performance of a contract with the proceeds to be used to complete the contract or compensate for the owner's loss in the event of nonperformance.

**Plat (Plat Map):** Map of a specific area, such as a subdivision, which shows the boundaries of individual parcels of land (e.g. lots) together with streets and easements.

**Power Of Sale:** Clause inserted in a mortgage or deed of trust giving the mortgagee (or trustee) the right and power, on default in the payment of the debt secured, to advertise and sell the property at public auction.

**Precast Concrete:** Concrete components (i.e. walls) of a building which are fabricated at a plant site and then shipped to the site of construction.

**Preleased:** Refers to space in a proposed building that has been leased before the start of construction or in advance of the issuance of a Certificate of Occupancy.

**Prime Space:** This typically refers to first generation (new) space that is currently available for lease and which has never before been occupied by a tenant.

**Prime Tenant:** The major tenant in a building or, the major or anchor tenant in a shopping center serving to attract other, smaller tenants into adjacent space because of the customer traffic generated.

**Pro rata:** Proportionately; according to measure, interest, or liability. In the case of a tenant, the proportionate share of expenses for the maintenance and operation of the property. See also Common Area and Operating Expenses.

**Punch List:** An itemized list, typically prepared by the architect or construction manager, documenting incomplete or unsatisfactory items after the contractor has notified the owner that the tenant space is substantially complete.

**Quitclaim Deed:** A deed operating as a release that is intended to pass any title, interest, or claim that the grantor may have in the property, but not containing any warranty or professing that such title is valid.

**Raw Land:** Unimproved land that remains in its natural state.

**Raw Space:** Unimproved shell space in a building.

**REO (Real Estate Owned):** Real estate that has come to be owned by a lender, including real estate taken to satisfy a debt. Includes real estate acquired by lenders through foreclosure or, in settlement of some other obligation.

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

**Recapture:** (1) When the IRS recovers the tax benefit of a deduction or a credit previously taken by a taxpayer, which is often a factor in foreclosure since there is a forgiveness of debt. (2) As used in leases, a clause giving the lessor a percentage of profits above a fixed amount of rent; or in a percentage lease, a clause granting the landlord a right to terminate the lease if the tenant fails to realize minimum sales.

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

**Rehab:** An extensive renovation of a building or project which is intended to cure obsolescence of such building or project.

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

**Rent:** Compensation or fee paid, usually periodically (i.e. monthly rent payments, for the occupancy and use of any rental property, land, buildings, equipment, etc.

**Rent Commencement Date:** The date on which a tenant begins paying rent. The dynamics of a marketplace will dictate whether this date coincides with the lease commencement date or if it commences months later (i.e., in a weak market, the tenant may be granted several months free rent). It will never begin before the lease commencement date.

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

**Rentable/Usable Ratio:** That number obtained when the Total Rentable Area in a building is divided by the Usable Area in the building. The inverse of this ratio describes the proportion of space that an occupant can expect to actually utilize/physically occupy.

**Rental Concession:** Concessions a landlord may offer a tenant in order to secure their tenancy. While rental abatement is one form of a concession, there are many others such as: increased tenant improvement allowance, signage, lower than market rental rates and moving allowances are only a few of the many. See also Abatement.

**Rent-Up Period:** That period of time, following construction of a new building, when tenants are actively being sought and the project is approaching its stabilized occupancy.

**Representation Agreement:** An agreement between the owner of a property and a real estate broker giving the broker the authorization to attempt to sell or lease the property at a certain price and terms in return for a commission, set fee or other form of compensation. See also Exclusive Listing Agreement.

**Request for Proposal ("RFP"):** The formalized Request for Proposal represents a compilation of the many considerations that a tenant might have and should be customized to reflect their specific needs. Just as the building's standard form lease document represents the landlord's "wish list", the RFP serves in that same capacity for the tenant.

**Right Of First Refusal:** See First Refusal Right.

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

**Second Mortgage:** A mortgage on property that ranks below a first mortgage in priority. Properties may have two, three, or more mortgages, deeds of trust, or land contracts as liens at the same time. Legal sequence priority, indicated by the date of recording, determines the designation first, second, third, etc.

**Second Generation or Secondary Space:** Refers to previously occupied space that becomes available for lease, either directly from the landlord or as sublease space. See also First Generation Space.

**Security Deposit:** A deposit of money by a tenant to a landlord to secure performance of a lease. This deposit can also take the form of a Letter of Credit or other financial instrument.

**Seisen (Seizen):** Possession of real property under claim of freehold estate. This term originally referred to the completion of feudal investiture by which a tenant was admitted into the feud and performed the rights of homage and fealty. Presently it has come to mean possession under a legal right (usually a fee interest). As the old doctrine of corporeal investiture is no longer in force, the delivery of a deed gives seisen in law.

**Setback:** The distance from a curb, property line or other reference point, within which building is prohibited.

**Setback Ordinance:** Setback requirements are normally provided for by ordinances or building codes. Provisions of a zoning ordinance regulate the distance from the lot line to the point where improvements may be constructed.

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

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

**Site Development:** The installation of all necessary improvements, (i.e. installment of utilities, grading, etc.), made to a site before a building or project can be constructed upon such site.

**Site Plan:** A detailed plan which depicts the location of improvements on a parcel of land which also contains all the information required by the zoning ordinance.

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

**Soft Cost:** That portion of an equity investment other than the actual cost of the improvements themselves (i.e. architectural and engineering fees, commissions, etc.) and which may be tax-deductible in the first year. See also Hard Cost.

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

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

**Specific Performance:** A requirement compelling one of the parties to perform or carry out the provisions of a contract into which he has entered.

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

**Step-Up Lease (Graded Lease):** A lease specifying set increases in rent at set intervals during the term of the lease.

**Straight Lease (Flat Lease):** A lease specifying the same, a fixed amount, of rent that is to be paid periodically during the entire term of the lease. This is typically paid out in monthly installments.

**Strip Center:** Any shopping area, generally with common parking, comprised of a row of stores but smaller than the neighborhood center anchored by a grocery store.

**Subcontractor:** A contractor working under and being paid by the general contractor. Often a specialist in nature, such as an electrical contractor, cement contractor, etc.

**Subdivision Plat:** A detailed drawing which depicts the manner in which a parcel of land has been divided into two or more lots. It contains engineering considerations and other information required by the local authority.

**Subordination Agreement:** As used in a lease, the tenant generally accepts the leased premises subject to any recorded mortgage or deed of trust lien and all existing recorded restrictions, and the landlord is often given the power to subordinate the tenant's interest to any first mortgage or deed of trust lien subsequently placed upon the leased premises.

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

**Surface Rights:** A right or easement granted with mineral rights, enabling the possessor of the mineral rights to drill or mine through the surface.

**Survey:** The process by which a parcel of land is measured and its boundaries and contents ascertained.

**Taking:** A common synonym for condemnation or any actual or material interference with private property rights but it is not essential that there be physical seizure or appropriation.

**Tax Base:** The assessed valuation of all the real property that lies within the jurisdiction of a taxing authority, which is then multiplied by the tax rate or mill levy to determine the amount of tax due.

**Tax Lien:** A statutory lien, existing in favor of the state or municipality, for nonpayment of property taxes which attaches only to the property upon which the taxes are unpaid.

**Tax roll:** A list or record containing the descriptions of all land parcels located within the county, the names of the owners or those receiving the tax bill, assessed values and tax amounts.

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

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

**Tenant Improvements:** Improvements made to the leased premises by or for a tenant. Generally, especially in new space, part of the negotiations will include in some detail the improvements to be made in the leased premises by the landlord. See also Leasehold Improvements and Work Letter.

**Tenant Improvement ("TI") Allowance or Work Letter:** Defines the fixed amount of money contributed by the landlord toward tenant improvements. The tenant pays any of the costs that exceed this amount. Also commonly referred to as "Tenant Finish Allowance."

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

**Title:** The means whereby the owner of lands has the just and full possession of real property.

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

**Title Search:** A review of all recorded documents affecting a specific piece of property to determine the present condition of title.

**Total Inventory:** The total amount of square footage of a type of property (i.e. office, industrial, retail, etc.) within a geographical area, whether vacant or occupied. This normally includes owner-occupied space.

**Trade Fixtures:** Personal property that is attached to a structure (i.e. the walls of the leased premises) that are used in the business. Since this property is part of the business and not deemed to be part of the real estate, it is typically removable upon lease termination.

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

**Turn Key Project:** The construction of a project in which a third party, usually a developer or general contractor, is responsible for the total completion of a building (including construction and interior design) or, the construction of tenant improvements to the customized requirements and specifications of a future owner or tenant.

**Under Construction:** When construction has started but the Certificate of Occupancy has not yet been issued.

**Under Contract:** A property for which the seller has accepted the buyer's offer to purchase is referred to as being "under contract". Generally, the prospective buyer is given a certain period of time in which to perform its due diligence and finalize financing arrangements. During the period of time the property is under contract, the seller is precluded from entertaining offers from other buyers.

**Unencumbered:** Describes title to property that is free of liens and any other encumbrances. Free and clear. See also Encumbrances.

**Unimproved Land:** Most commonly refers to land without improvements or buildings but can also mean land in its natural state. See also Raw Land.

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

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

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

**Vacancy Rate:** The total amount of available space compared to the total inventory of space and expressed as a percentage. This is calculated by multiplying the vacant space times 100 and then dividing it by the total inventory.

**Vacant Space:** Refers to existing tenant space currently being marketed for lease. This excludes space available for sublease.

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

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

**Weighted Average Rental Rates:** The mean proportion or medial sum made out of the unequal rental rates in two or more buildings within a market area.

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

**Working Drawings:** The set of plans for a building or project that comprise the contract documents that indicate the precise manner in which a project is to be built. This set of plans includes a set of specifications for the building or project.

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

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