

1031 Like-Kind Exchange

A 1031 Like-Kind Exchange is a transaction in which a taxpayer is allowed to exchange one investment property for another by deferring the tax consequence of a sale. The transaction is authorized by §1031 of the IRS Code. The IRS Code actually reads: “No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment, if such property is exchanged solely for property of like kind, which is to be held either for productive use in a trade or business or for investment.”

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.

Abstract

A collection of legal documents that chronicle transactions associated with a particular parcel of land. Generally included are references to deeds, mortgages, wills, probate records, court litigations, and tax sales—basically, any legal document that affects the property.

As-Is/As-Built

The space will be leased exactly the way it is now, the landlord won't fund any improvements.

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).

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.

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.

Building Classifications

Buildings are categorized as either “A”, “B”, or “C”. A building classified as an “A” property is typically the best and most sought-after building type as they possess the finest construction elements, high quality building infrastructure and normally have the best curb appeal. Class “B” is next in line as they are generally a little older but still have notable building infrastructure and distinguished property features. Class “C” is the lowest classification for buildings as they were built much earlier than other properties in the market and are located in less desirable areas that may be in need of extensive renovations.

CAM Charges

Common Area Maintenance (CAM) charges refer to those areas within a building that are available for the common use by all tenants such as lobbies and restrooms as well as landscaping and snow removal, etc.

Capitalization Rate (CAP 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".

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.

Comparables

In order to determine the fair market lease rate for your property, a Listing Agent will assemble a list of comparable properties with similar characteristics to the subject property. Some of the features that are evaluated include size, construction quality, age, use and typically located within the same submarket as the subject property.

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.

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).

Contingencies

These are items that have to be met, changed, or remedied in order for a deal to close.

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.

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.

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.

End Cap

The store at a corner of a strip mall type development.

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).

Fair Market Value (FMV)

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.

First Right of Opportunity

A contractual obligation by the owner of an asset to a rights holder to negotiate the sale of an asset with the rights holder before offering the asset for sale to third parties.

First Right of Refusal (ROFR or RFR)

A contractual right that gives its holder the option to enter a business transaction with the owner of something, according to specified terms, before the owner is entitled to enter into that transaction with a third party. A first refusal right must have at least three parties: the owner, the third party or buyer and the option holder. In general, the owner must make the same offer to the option holder before making the offer to the buyer.

Fit-Out

Fit out' is a term used to describe the process of making interior spaces suitable for occupation. It is often used in relation to office developments, where the base construction is completed by the developer, and the final fit out by the occupant.

Fit-Out Allowance

In a commercial lease negotiation, a tenant improvement allowance (also referred to as a TA, TIA, TI allowance and leasehold improvement allowance) is an agreement from the landlord to compensate the tenant for all or a portion of the funds required to construct the commercial space.

Full-Service Gross Lease

Refers to an “all inclusive” lease in which the pre-determined rental rate includes maintenance, upkeep, taxes, insurance and utilities and other operating expenses for a property. A pure full-service lease is the best type of lease for a tenant as they can focus on growing their business without micromanaging additional fees and services.

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.

Hard Corner

At an intersection, the hard corner is the lot that is right at the corner, with one edge on each road.

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.

Holdover

A renter who remains in a property after the expiration of the lease. If the landlord continues to accept rent payments, the holdover tenant can continue to legally occupy the property, and state laws and court rulings determine the length of the holdover tenant’s new rental term.

HVAC

The acronym for “Heating, Ventilating, and Air-Conditioning”.

In-Line Space

Refers to space that is in a strip center, or side-by-side in a center fronting the parking lot or street (as opposed to an interior mall space or stand-alone building).

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).

Letter of Intent (LOI)

Generally, this is a written statement that expresses a desire to enter into a contract without actually doing so. It can also set the binding ground rules of a negotiation. The reason LOIs are utilized is they generally cost less to develop and negotiate than a formal lease for both the buyer/seller and lessor/lessee.

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.

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.

Market Rent

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

Market Value

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

Modified Gross Lease (MG)

Although very similar to a Full-Service Gross Lease, a gross lease excludes utilities, janitorial and sometimes trash from their rental rates. The landlord is responsible for the maintenance of all common areas and the buildings structural components, but the tenant must maintain certain areas stated within the lease. A modified gross lease is commonly associated with multi-tenant office buildings.

Net Lease

When a Net Lease is agreed upon, the tenant is required to pay some, or all of the expenses related to real estate ownership on top of a fixed rental rate. The common expenses are divided into three categories and are referred to as the three nets, including: Property Tax, Insurance and Maintenance. Depending on which expenses are to be covered by the Tenant, you will hear the terms Single Net (N), Double Net (NN) or Triple Net (NNN), with their appropriate expenses represented.

Net Operating Income (NOI)

Income that a landlord gets from a property after paying expenses.

Non-Compete Clause

This clause prevents the Landlord from leasing space on the premises to a direct competitor of yours, or to those who own a business similar to yours. Although it is hard to enforce, the obvious reason to include this in your lease agreements would be to limit potential competitors near your business operations

Non-Disturbance Agreement

Refers to an agreement between a tenant and the landlord's lender to ensure the tenant will remain in possession of the leased property, despite any foreclosure action against the landlord.

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.

Option to Purchase

A contract on a specific piece of real estate that allows the buyer the exclusive right to purchase the property. Once a buyer has an option to buy a property, the seller cannot sell the property to anyone else.

Option to Renew

Upon the tenant's exercise of the option, the provisions of the agreed-upon option are adopted for another defined term. The terms of the option can include the length of the new term, a change in rent, and other modifications.

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).

Phase I Environmental Study

Phase I Environmental Site Assessment (ESA) reports are prepared for real estate and business transactions such as: land purchases, building purchases, leases, business purchases, new residential developments and bank loans. The analysis typically addresses both the underlying land as well as physical improvements to the property.

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.

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, full floor occupancy will have an R/U Factor of 1.10 while partial floor occupancy will have an R/U Factor of 1.12 to 1.16 times the Usable Area.

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.

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

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.

Tenant Improvement

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.

Title Insurance

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.

Triple Net (NNN) Rent/Lease

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.

Turnkey

Simply means that the space being rented or purchased is move-in ready for immediate use. Specifically, all of the wiring, fixtures, flooring and superficial decorative items are already in place.

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.

Vanilla Shell

A term that refers to a landlord or seller delivering a space to a tenant with the basic finishings. The finishings typically include fire taped walls ready to paint, electrical panel and outlets, sealed concrete or finished floor, finished ceiling with lighting, HVAC including duct work and controls, finished bathroom (if there is no common area bathroom), and sprinkler system, if required by code.

Warm Vanilla Shell

A warm vanilla shell is essentially the same as a vanilla shell building with an HVAC system installed. A warm vanilla shell is a commercial or residential building with a minimally finished interior, usually with ceilings, minimal lighting, plumbing, heating and cooling (HVAC), interior walls (painted or unpainted), electrical outlets around the perimeter and to code, elevator (if applicable), rest room(s), and a concrete floor.

Zoning

Each city is divided into zones, which have specific regulations regarding structural and architectural design and intended use of buildings respectively. For example, a commercial building cannot be built in a residential area and vice versa, unless there is a modification in zoning ordinances. Similarly, if you are a tenant needing manufacturing space, you will need to find an area that is zoned industrial as these places usually present environmental concerns, like noise, water, or air pollution.