

# Commonly Used Terms In a Commercial Lease

**Additional Insured.** An Additional Insured is a person or organization that enjoys the benefits of being insured under an insurance policy, in addition to whoever originally purchased the insurance policy (the “name insured” tenant). The Additional Insured does not usually pay for this privilege, but instead is added because of some covenant requiring the same in the lease.

**Additional Rent.** This is the amount of money that is added to the Base Rent and typically includes the tenant’s pro rata share of the CAM costs, the tenant’s pro rata share of the real estate taxes assessed against the entire project and the tenant’s pro rata share landlord’s insurance premiums paid in exchange for insurance on the entire project. Other fees and charges may be identified in the lease (like a fee to be able to advertise on a monument sign), and once identified will then be called Additional Rent.

**Assignment.** An assignment of any contract, including a lease, means that an original party (the “assignor”) is assigning to the “assignee” all of the assignor’s right, title, and interest in and to the Premises. In other words, the assignee is stepping into the shoes of the assignor as though he or she was the original tenant. In that case, the landlord must look first to the assignee for performance under the lease. Compare this to the Sublease situation.

**Base Rent.** The minimum rent due to the landlord. Typically, it is a fixed amount, but is not the only money paid to the Landlord. Added to the Base Rent will be CAM charges, taxes, insurance, and other fees.

**Common Area.** For lease purposes, the areas of a building (and its site) that are available for the nonexclusive use of all its tenants, such as lobbies, corridors, and parking lots. (Real Estate Information Standards)

**Common Area Maintenance (CAM).** Charges paid by the tenant for the upkeep of areas designated for use and benefit of all tenants. CAM charges are common in shopping centers. Tenants are charged for parking lot maintenance, snow removal, and utilities.

**CAM Cap.** The maximum amount for which the tenant pays its share of common area maintenance costs. The owner pays for any CAM expenses exceeding that amount.

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**CAM Expense.** This is the tenant's share of the CAM expenses. The tenant's share is usually expressed as a percentage where the numerator is the tenant's square footage, and the denominator is the total of all of the Rentable Square Footage. For instance, if the tenant is leasing 1,000 square feet of a 10,000 square foot property, the tenant's share of the CAM Expenses is 1,000/10,000 or 10%.

**Exclusive Use.** An Exclusive Use covenant is something to be negotiated into a commercial lease. In this covenant you are asking the landlord to allow you to be the only tenant that provides the services identified in your Permitted Use. Some landlords will grant this right while others will not. The more specific your Permitted Use can be worded, the more likely it will be that the Exclusive Use will be granted. While the landlord will not offer an Exclusive Use for a "restaurant", it may grant an Exclusive Use, when the Permitted Use is defined as: "a pizza restaurant serving salads, calzones, and beer and wine."

**Holding Over.** Refers to the tenant's continued possession of the Premises after the lease has expired or has been earlier terminated.

**Option to Renew.** This means the covenants in the lease in which the landlord grants the tenant the option to renew. The option is typically contingent upon the tenant being in good standing under the lease, upon the tenant agreeing to a new Base Rent, and upon other criteria. Usually the Option to Renew must be exercised by the tenant no later than a stated-date before the end of the prior Term (i.e. 180 days before the end of the then-current Term)

**Permitted Use.** This means that tenant's intended use of the Premises. It can be identified generally—"a restaurant"—or can be more specific—"a pizza restaurant serving salads, calzones, and wine and beer."

**Renewal Term.** This means any period of time after the passage of the Initial Term which the landlord has agreed to offer the tenant. The Renewal Term begins on the day following the last day of the Initial Term. There may be several Renewal Terms offered.

**Rent.** Typical the Base Rent and all Additional Rent is collected under the single word Rent. Thus, whenever one sees the word "Rent" in the contract, the landlord is referring to the Base Rent plus all items that make up the Additional Rent.

**Security Deposit.** This means the funds that the tenant delivers to the landlord to insure the tenant's faithful performance of the terms of the lease. The Security Deposit may be any amount but is usually 1 or two months' worth of Base Rent. The Security Deposit can be used by the landlord to offset any losses that the landlord may suffer at the hands of the tenant. For instance, it will be used if the tenant fails to make a payment of rent and will be used after the tenant has left the premises to offset any cleaning costs, lost rent, or other damages. Using the Security Deposit for any purpose does not excuse the tenant from performing. Thus, the failure to pay the rent and the landlord's use of a portion of the Security Deposit does not mean that the tenant does not have to pay the rent that was missed. Instead the landlord will immediately demand that the Security Deposit be funded to make up for the use of some of its funds so that the Security Deposit will always be fully paid.

**Sublease.** The tenant has a limited right to sublease the Premises to a third party called the "sublessee". In this case, the sublessee is not taking the place of the tenant. Instead, the tenant (sometimes called the "sublandlord") is allowing the third party to carry out the terms of the lease while still being primarily liable for the performance of all of the terms of the lease. In essence, the tenant is adding (with the landlord's permission of course) another tenant to the lease who has agreed to perform the tenant's obligations. From the landlord's point of view, the tenant is still on the lease and can be called upon at any time to perform under the lease if the subtenant fails to do so.

**Term or Initial Term.** This means the period of time that the tenant will initially lease the Premises. This may be expressed as a number of months (i.e., 60 months), a number of years (i.e., 5 years) or a mixture of both. This does not include any renewal period.

**Usable Square Footage Vs. Rentable Square Footage.** Usable square feet includes the specific area the tenant will occupy in order to do business and includes all of space plus any storage or private restrooms. There are no exclusions for columns, recessed entries, or the like, either--column space is fair game in the calculation of total usable square feet.

A commercial lease project is not made up of single stores. Corridors, walkways, , stairways, restrooms, and so on are used by all tenants, and landlords charge for the use of this space as well. "Rentable square footage" means the usable square feet of the space plus a pro-rata share of common areas.

