

tenant improvements do not apply to all property types. The standard maintenance and upkeep of an apartment unit before renting the unit to a new tenant is not usually considered a tenant improvement, unless the cleaning and refurbishment exceed the typical levels needed to maintain the property's competitiveness in the market. If the tenant improvements directly affect net operating income and are recorded above the *NOI* line item in a reconstructed operating statement, they are considered above-the-line expenses. More often, they are treated as below-the-line expenses.

A developer or owner may be responsible for a certain level of build-out or tenant improvements, and that will be reflected in the rent as defined in a tenant workletter. Improvements in excess of that level are the responsibility of tenants and are not reflected in the rent, or they may be provided by the landlord and amortized over the lease term. The level of build-out may be different for new space and for retrofitting an existing space, and the level of tenant improvements may be different for a renewal tenant and a new tenant.

Noncompetes, Dark Store, and Exclusive Use Clauses

Leases may contain a provision that prohibits tenants from operating a business in a nearby, competing shopping center. For example, a tenant who sells sporting goods may agree not to open another, competing sporting goods facility near the shopping center. This is known as *radius restriction*.

In some jurisdictions, a lease may include a clause that states that the tenant must continue to occupy the site throughout the term of the lease and is barred from opening a competitive store within a certain period after the expiration date of the lease. A **dark store clause protects a landlord, whose property could be put in a poor releasing position if a tenant moves out and opens another store within the same trade area. A dark store clause may be especially important in a percentage lease involving an anchor or other major tenant.**¹

An exclusive use clause may be written into a lease to control the retail mix of the shopping center. Such a clause may also be sought by a tenant who wants to achieve some degree of monopoly status (e.g., a fast food retailer that wants to have the only restaurant of its type in the shopping center).

above-the-line expense

An expense that is recorded "above" the net operating income line in a reconstructed operating statement typically developed for valuation purposes and therefore is considered part of the total operating expenses for the property.

below-the-line expense

An expense that is recorded "below" the net operating income line in a reconstructed operating statement and therefore is not considered part of the total stabilized operating expenses for the property. Tenant improvements and leasing concessions are the most common line items recorded below the net operating income line for analytical purposes.

exclusive use clause

A provision that limits the landlord from leasing to any other tenants in the property or in a defined area who are conducting a similar business, most often in shopping center leases. Also called an *exclusivity clause*.

1. A dark store clause may sometimes be referred to as a *go dark clause*, which is also sometimes used to describe the kickout clause discussed previously.