



REAL ESTATE  
COUNSELORS



## Mixed Use Projects:

*When Retail Tenants lease space in Office Buildings*



Bruce Rosen  
BRosen@RECDC.com  
(202) 868-2755



Mark Ricardo  
MRicardo@RECDC.com  
(703) 740-1765

**A RECENT NAIOP EVENT CONFIRMED A CENTRAL THEME:** Major office REITs want more mixed-use projects in the central business districts of large US cities. Although this is sensible given the changing demographics of our country, such a strategy creates unique challenges for tenants leasing space from traditionally office-centric landlords.

This article addresses several of the more important issues that traditional retail tenants should consider when leasing ground floor space from office landlords.

- **Toss the Office Lease Form** - Since the amount of office space in mixed-use office buildings usually far exceeds that of retail space, many landlords fail to take the time to develop a properly crafted, stand-alone retail lease form for their retail space. Instead, they often just take their form office lease and insert certain retail provisions. Unfortunately, this approach often leads to an awkward blend of conflicting office and retail leasing concepts with poorly defined pass-through, operating and construction provisions.
- **Services & Access** - A major difference between office and retail leases is the level of services and maintenance that the landlord is obligated to provide to the tenant. In a typical retail lease, the landlord is not responsible to provide utilities and frequently provides no HVAC or janitorial services. In addition, most landlords do not maintain, insure, or restore a retail tenant's build-out in the event of a casualty.



[www.RECDC.com](http://www.RECDC.com)  
DC ♦ MD ♦ VA ♦ NY

DC: (202) 868-2755  
MD: (240) 252-3386

NY: (646) 820-3013  
VA: (703) 740-1766



REAL ESTATE  
COUNSELORS



## Mixed Use Projects:

*When Retail Tenants lease space in Office Buildings*

- **Shell Condition & Building Systems** – The retail tenant will want to make sure it clearly understands the condition of the premises upon delivery including whether the landlord is providing any warranty that the HVAC system serving the premises is operational. The retail tenant should independently assess the condition of the HVAC system, and if there's a chance it might have to be replaced during the term, negotiate for the landlord to bear a portion of the expense of a new HVAC to the extent the replacement would survive the tenant's term.
- **CAM** – Retail tenants may attempt to limit an office landlord's pass-through of CAM charges by excluding certain expenses that benefit only office tenants (e.g., office janitorial services, elevator lobby maintenance). Tenants without negotiating leverage may find, however, that a landlord with a portfolio of properties will be very reluctant to change its CAM accounting procedures significantly just for the retail tenant.
- **Operational Issues** – To avoid disputes with the landlord (and possibly other tenants), the retail tenant should make sure its lease clearly addresses waste removal, pest and vermin extermination, permitted exterior signage, any outdoor sale, seating or display areas, façade dress, and, if relevant, issues concerning odors and noises coming from the retail space.
- **Utilities** - Unlike office tenants, most retail tenants obtain utilities directly from the service provider. The retail tenant should know in advance where utilities are stubbed, if the electrical service will be sufficient for the tenant's intended equipment, and if the utilities are directly metered. Restaurant tenants, and gyms who have on-site showers and/or laundry service for towels, typically use a disproportionately large amount of water, so this may also be a concern. If direct metering is not possible, a sub-meter or check-meter should be used to more equitably calculate the retail tenants utility charges. If a sub-meter is to be installed, the lease should clearly state who's responsible to install the meter, and who pays for its cost.



[www.RECDC.com](http://www.RECDC.com)  
DC ♦ MD ♦ VA ♦ NY

DC: (202) 868-2755  
MD: (240) 252-3386

NY: (646) 820-3013  
VA: (703) 740-1766



**REAL ESTATE  
COUNSELORS**



## Mixed Use Projects:

*When Retail Tenants lease space in Office Buildings*

- **Permitted & Exclusive Uses** - Unlike a typical office lease in which the tenant usually has the right to use its premises for any legally permitted office use, retail leases usually have much more detailed use provisions. The retail tenant should make sure it's permitted use is broad enough to cover ancillary and incidental services or product lines, as well as flexibility for changes in the future. Franchise tenants also need to think about the flexibility their franchisor may require (if the franchise expands its product or service line).

An additional consideration is that since most retail space is visible from the exterior of the building, the landlord may want the tenant to continuously operate during a regular building hours, even if the landlord is not collecting percentage rent.

The retail tenant, in turn, may want to consider how the building's occupancy will impact the tenant's operations. The retail tenant may try to negotiate (in advance) a reduction in its rent, similar to a retail co-tenancy provision, if the building vacancy rises significantly, which could happen if a major office tenant vacates.

Depending upon the amount of retail space in the office building, the retail tenant may also want an exclusive on its particular business. As may be imagined, however, the scope of the exclusive use right heavily negotiated. Usually, the exclusive use right is limited only to the tenant's main line of business, even though the tenant's permitted use may be much broader. Depending on what products or services the tenant wants the exclusive right to sell, a landlord may view the request as an easy concession or a difficult constraint.

**Conclusion** - The issues discussed in this article are not an exhaustive list, but hopefully will help retail tenants address the unique challenges of leasing space in a mixed-use office building.



[www.RECDC.com](http://www.RECDC.com)  
DC ♦ MD ♦ VA ♦ NY

DC: (202) 868-2755  
MD: (240) 252-3386

NY: (646) 820-3013  
VA: (703) 740-1766