



REAL ESTATE  
COUNSELORS



## Tiny ANCHORS

### SMALL TENANTS WITH BIG ISSUES



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**National retail tenants leasing less than 5,000 square feet have unique issues that must be addressed in the leasing process.**

**Anchor Tenants** can come in all sizes, these days. Many national and regional tenants lease less than 5,000 square feet, but they may have many of the same issues and concerns faced by the big boxes. Likewise landlords who make certain concessions for big box operators may resist giving the same treatment to a small-shop in-line tenant leasing less than 2,000.

The checklist below outlines many of the issues facing landlords and tenants in connection with leasing to these tiny-anchors including change of use, go-dark rights, exclusives, environmental matters, indemnities, co-tenancy, signage and alterations, among others.

#### Frequent Discussion Points:

- **LOI Issues** – Standardized form, level of detail.
- **Construction**
  - **Landlord Construction** – New construction issues; degree center is completed; Force Majeure.
  - **Tenant Construction** – Tenant design standards; impact of CCRs and OEAs, third-party consents, level of landlord involvement.
- **Outparcel Distinctions.**
  - **Relocation & Access.**



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- **Rent & CAM**

- **Percentage Rent**

- **Partial Year Gross Sales** – Landlord’s formula vs. Tenant’s peak sales periods. How to reflect true annualized sales.
- **Reporting** – Form of certification; who must certify; frequency; consequence.
- **Exclusions** – Standardized exclusions; Landlord and Tenant’s desire to maintain consistency with prior deals.
- **Audits** – Threshold; consequence; similarities to Tenant’s right to audit Landlord’s CAM calculations.

- **CAM**

- **Fixed CAM** – Modern trends.
- **Exclusions** – Standardized exclusions; Landlord and Tenant’s desire to maintain consistency with prior deals.
- **Capped Escalations** – Modern trends.
- **Audit** – Threshold; consequence; similarities to Landlord’s right to audit Tenant’s percentage rent calculations.



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#### ▪ Customary Retail Provisions

- **Permitted Use** – Tenant’s standard language, and desired flexibility; Landlord’s need to lease-up center and avoid future conflict.
- **Exclusive Use** – Tenant’s standard language, and desired flexibility; Landlord’s need to lease-up center and avoid future conflict.
- **Opening Co-Tenancy** – Does the tenant need it? Can they get it?
- **Anchor Co-Tenancy** – Does the tenant need it? Can they get it?
- **Continuous Operations** – How often can a tenant avoid this obligation in deals where there is no percentage rent?
- **Go-Dark Recapture Right** – For deals where there is no percentage rent, is there a functional difference between the obligation to continuously operate and a Landlord recapture right?
- **Zones – No Build, Casualty, Construction, etc.**
  - **No Build** – How is it defined; natural growth of plants; new construction issues; landlord remodeling issues.
  - **Casualty** – Can the tenant terminate if other parts of the center are affected by casualty?
  - **Construction** – What percentage of the center must be “done” for the tenant to take possession?



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