



## **RETAIL TENANTS ARE ASKING FOR NEW LEASE PROVISIONS**

### **NEW RETAIL LEASES ARE LOOKING DIFFERENT THAN THEY DID PRIOR TO THE PANDEMIC WITH TENANTS ASKING FOR NEW PROVISIONS AND PROTECTIONS.**

By **Kelsi Maree Borland** | October 23, 2020

New retail leases are looking different than they did prior to the pandemic. Retail tenants are asking for new lease provisions and protections in a number of areas. According to **Gary Glick**, a partner at **Cox, Castle & Nicholson LLP**, these new provisions include new construction provisions, dedicated short-term parking spaces, opening requirements, operating requirements and termination rights.

For newer leases, construction provisions are central to these changes because new retail leases also come with a tenant build-out. "Once the landlord has delivered the premises to the tenant, the tenant does not want to be obligated to build out its space until it knows that certain governmental restrictions that affect its operations have been lifted," Glick tells GlobeSt.com. "For example, a gym or restaurant may not want to start construction of its tenant improvements until it knows that it can operate without significant capacity restrictions. In this situation, the landlord may want a "put right" that would compel the tenant to commence construction within a defined period of time, six months for example, or give the landlord the right to terminate the lease."

This can be tricky for landlords to navigate, particularly for individual tenant uses. "A termination may leave the landlord vulnerable if its build-out of the space includes a number of items that are specific to the tenant's use," says Glick. "In this case, the landlord may seek reimbursement from the tenant for these items."

Short-term parking spaces are also becoming more common in a post-pandemic world. Parking changes are usually driven by curbside pickup activity, which has been an essential way for

retailers to drive business during the pandemic. “During this pandemic, curbside pickup has been a lifeline for many restaurants and retailers who weren’t able to provide indoor dining or in-store shopping,” says Glick. “As a result, many retail tenants now require a few short-term parking spaces in front of their premises dedicated to pick-up and delivery.”

In most cases, this is a request that landlords can accommodate. “Most landlords should be able to accommodate this request as long as the spaces set aside are non-exclusive so as not to violate existing leases or Covenants, Conditions & Restrictions, which typically require that all parking spaces be utilized on a non-exclusive basis,” says Glick. “Landlords should ensure that they aren’t required to monitor or enforce the new designated short-term parking spaces, and that the cost for new signage is assumed by tenants.”