Chapter 14

REAL ESTATE LEASING TIPS FOR LIFE SCIENCES COMPANIES

In response to the declining demand for space in the office and telecommunications sectors, many landlords are now concentrating on retaining and attracting life sciences companies such as yours. All over the country, landlords are converting existing office and warehouse buildings to accommodate the needs of life sciences companies. For example, landlords in Boston and San Francisco are currently constructing or converting approximately two million square feet to laboratory space,[1] and a shift in the New Jersey economy is resulting in biopharmaceutical tenants growing and leasing more space.[2] When a life sciences company assesses whether to lease space, it should consider several factors, including (i) land-use, zoning, licensing, and safety regulations; (ii) the condition of the property and its ability to use the leased space for the required purposes; and (iii) the economic and business terms of the lease, such as the length of the term, the rent being charged, and the assignment and subleasing provisions.

Land-Use, Zoning, Licensing, and Safety Regulations

When deciding whether to enter into a lease, you should first determine whether the property is in a zoning district that allows the intended use and whether the landlord complied with all necessary land-use and zoning regulations when constructing the building or converting it to accommodate a life sciences tenant's use. Because it is not easy to convert space for laboratory and biotechnology use, if the project is not complete, you should analyze the building's physical design and assess the financial ability of the landlord to complete the project. In addition, prior to the Company's commencing any construction of improvements in the leased space, the Company should obtain all required land-use and building permits and any licenses and special insurance required to use the leased space for a laboratory or any other special use. For example, in Philadelphia, every tenant must apply for a zoning permit and/or use registration permit from the City of Philadelphia Department of Licenses and Inspections prior to commencing any work in and occupying the leased space.

Even if all land-use, zoning, and building permits have been obtained, you should confirm that the Company's use of the leased space will comply with the Centers for Disease Control and Prevention (CDC) safety standards and the additional technological requirements being imple-

1. Spaulding & Stye Colliers and BT Commercial Real Estate.
2. "Small Is Bountiful for Biotech and Pharma Land," NJBIZ, 1/28/03.

mented due to the increased risk of bioterrorism. For example, the Laboratory Response Network is requiring all laboratories to implement a National Laboratory System that enables laboratories to share information electronically;[3] thus, the Company must confirm that the space it intends to lease will not restrict its ability to comply with these new requirements.

Condition of Property

You should evaluate the property prior to entering into a lease to determine if the space is suitable for the Company's particular needs. It is important to analyze the physical capabilities of the leased space (e.g., whether the square footage of the space is sufficient), its structural capacity (e.g., floor loads and additional space between floors for reinforcement), and any special design requirements necessary for life sciences companies (e.g., extra fire protection systems; additional sewage, plumbing, or gas requirements; heavy-duty elevators).[4] For example, one biotechnology company in Seattle agreed to lease space in a new laboratory and office building only after confirming that the building had high ceilings (at least 15 feet) to accommodate the heating and ventilation needs required for a laboratory, and low-vibration floors, which are important to protect against damage from disturbances such as earthquakes.[5] In addition, you should consider hiring your own consultants to evaluate the current condition of the property with respect to various environmental concerns, such as asbestos, indoor air quality (to protect against mold or other microorganisms that could affect the air in the laboratory), and odors or emissions caused by other tenants in the building that may interfere with the Company's use of the leased space.[6] It is important to note that even if current environmental conditions will not interfere with the Company's use of the property, the Company should nonetheless document the condition of the property when it takes possession of the leased space so that any existing problems will not be deemed to have been caused by the Company.

Use of Leased Space

In addition, the Company should focus on both the use and hazardous substance provisions of the lease to confirm that they do not restrict the Company's use of the leased space. For instance, the use and environmental provisions must be drafted to allow the Company to use the leased space for the Company's intended purpose (provided the Company obtains all required approvals, permits, and licenses from all local, state, and federal authorities), stating, as applicable, that the Company works with antibodies, antisense and triple-helix therapies, bioinformatics, dental devices, diagnostic kits and devices, gene therapy, genetic engineering, genomics, immunology, immunotherapy, orthopedic devices, plant genetics, protein chemistry, radiology devices, small molecule chemistry, surgical devices, vaccines, or vascular devices. In addition, the Company should consult with an engineer as to whether the company has any special HVAC or utility hook-up requirements and specifically

3. *Medical Laboratory Observer,* Volume 33, Issue 12.
4. *American Law Institute Course Book,* 10th ed., dated Aug. 14, 1996.
5. Luke Timmerman, *Biotech Cashes in on Real Estate: ZymoGenetics Sells, Leases Back HQ,* Seattle Times, Oct. 8, 2002.
6. *Commercial Leasing Law and Strategy,* April 2002 ed.

address such requirements in the lease. The lease should not only include the landlord's approval of such requirements, but should also set forth whose responsibility it is to install, maintain, and repair such supplemental systems.