Law & Accounting

A primer: Colorado real estate and the cannabis industry



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Though cannabis industry operators often focus on the complicated and competitive licensing necessary to operate cannabis-related businesses, many times, operators overlook threshold considerations relating to one of the most essential needs for a CRB: real estate.

As in many other states, Colorado CRB licensing is tied to the real estate. That means if suitable real estate is not preemptively secured by the CRB applicant – whether by lease or deed – then the prospect of obtaining a cannabis business license is dead on arrival.

However, the importance of real estate in CRB continues well beyond licensure. Nearly a decade since Colorado first legalized adult-use cannabis licensing, the real estate considerations for landlords and CRB tenants may be even more important, particularly as many CRBs are experiencing economic distress and must determine how to resolve outstanding liabilities (including mortgage or lease obligations).

First, CRBs need to understand the threshold requirements for securing suitable real estate. To apply for a CRB license, real estate must be secured by either lease or deed in the name of the applicant. Moreover, the property must be situated within a municipality which authorizes the issuance of the desired CRB license type and within a zone district authorized for the intended use (i.e. dispensary; cultivation facility; manufacturing). Although many CRBs initially sought to purchase their own real estate, in recent years, many CRBs have refinanced, where possible, or even sold their property to third parties. These buyers include real estate investment trusts established specifically for investing in real estate servicing CRB tenants. Selling often frees capital for CRB operations (as opposed to being tied up in a mortgage).

Notably, if leasing real estate, CRBs need to lease the real estate prior to applying for the CRB license, which may create a several month delay prior to receiving the CRB license and obtaining a Certificate of Occupancy. Proper attention should be paid in the lease to rent commencement dates, tenant improvement allowances and other carrying costs of the lease prior to the anticipated date of commencing operations (and generating revenue).

Beyond simply securing real estate, there are numerous considerations for both landlords and tenants at or subsequent to lease commencement. More recently, as many CRBs become financially distressed, additional considerations have arisen that require attention.

Often, landlords discount the availability of conventional financing such as banking of rent rolls, insurance and title services and other ancillary services customarily available to landlords. However, when considering a cannabis tenant, none of these services are a foregone conclusion.

Though early concerns of potential civil forfeiture due to the federal illegality of cannabis never materialized, landlords still often face default upon mortgages if a mortgagee is disallowing of CRBs. The result leaves landlords facing a re-finance to higher rates or with hard-money lenders tolerant enough of the presumed risk of CRB tenants. Moreover, many conventional providers of title and escrow services and insurance products simply refuse to provide such services in relation to CRB tenants. Those providers that make exceptions and do provide offerings to CRBs do so with much more stringent due diligence and with premium rates, again reflective of the presumed risk.

Lastly, care must also be taken in the context of sales of real estate occupied by CRBs – there are certain industry-specific risks that inspections and due diligence should contemplate. One commonly cited example is that the humidity required within indoor cultivation facilities, which may also invite unseen or undetected mold growth.

More recently, as more and more tenants face insolvency, landlords are faced with the decision on how best to handle defaults – working cooperatively through settlement with tenants; foreclosing upon assets (if available); or otherwise. Notably, if the CRB's assets (including its license and/or inventory) secure the CRB's obligations, the landlord must also be willing to satisfy the procedural hurdles to foreclosing on the CRB's assets. For example, a landlord must first obtain approval itself to foreclose upon certain regulated assets (i.e., licenses or inventory), or otherwise must appoint an approved receiver to handle the liquidation and dissolution of those assets.

Turning to the tenant side, there are likewise many considerations for selecting real estate and performing leasehold obligations during the course of the lease and in anticipation of the expiration or early termination of the lease. CRB tenants historically have commanded premium rental rates, although such premiums appear to have subsided in recent years. Likewise, upon annual license renewals, CRBs must be able to show at least 12 months remaining on the existing lease, thus requiring due consideration to the term of the lease and any applicable extensions and guarding against providing any landlord undue leverage in negotiating or renegotiating the material terms of the lease.

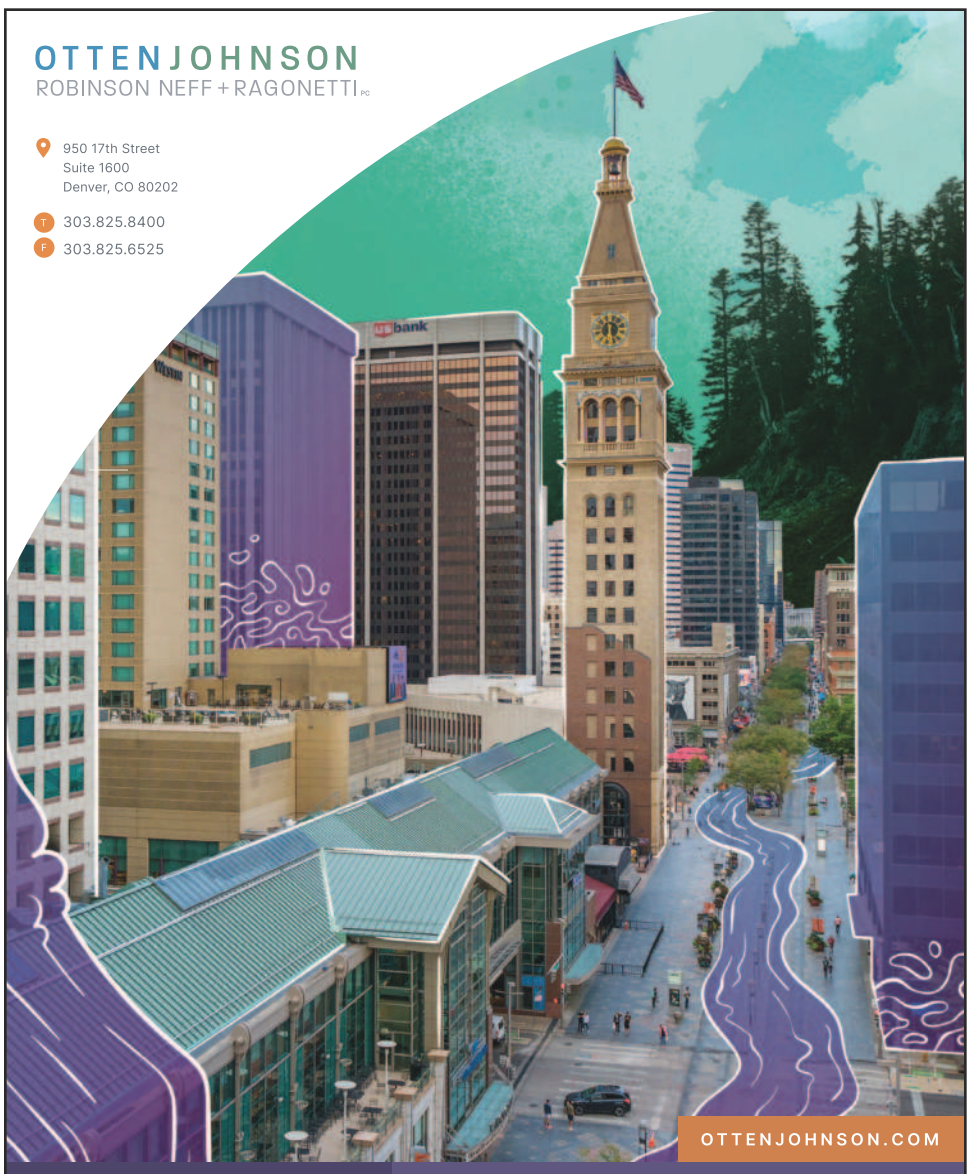
For example, a CRB tenant might consider prenegotiating extension rental rates, if favorable to the tenant, to ensure continuity of a leasehold interest without being "held hostage" in negotiations at the expiration of the initial term of the lease. Given

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Greenberg Traurig lawyers are prepared to assist Colorado property owners in seeking a fair market value assessment for properties impacted by the current sustained growth, including pursuing a tax abatement or refund.

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