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To exclude or not to exclude: The question is whether to give your tenant an exclusive use restriction

In a perfect tenant's world, every tenant would be the "master of its domain." The theory is that competition is good, except for those that are competing.

2. A tenant occupying a property containing more than one (1) tenant space always prefers to be the only operator selling its type of goods or rendering its type of services. The landlord, on the other hand, has only one product to sell, which is the space in its building. Therefore, the landlord wants as few restrictions as possible on its ability to lease space in its building. Herein lies the difficulty in granting exclusives, and, once they are granted, managing them among the tenants.

3. The threshold question for a landlord is whether to give an exclusive. The best answer for a landlord is to resist the exclusive at all reasonable costs.



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with the increased negotiating power of tenants in the current economy, exclusives are a fact of life for retail developers and owners.

4. Once a landlord has agreed to grant the exclusive, the language must be carefully drafted to properly define exactly what is excluded. First, the parties must decide what items are excluded. A landlord should always strive to limit an exclusive

excluded items by other tenants should not violate the exclusive. If the term "incidental sales" is too general for your tenant, then many provisions are crafted to permit a certain percentage of floor area to be used for excluded items, or a certain sales volume of particular items.

6. Also, always exclude your existing tenants from an exclusive; to the extent those tenants already have the right to offer goods and/or services that would otherwise prohibit the new exclusive. There is nothing a landlord can do about a tenant with rights under a signed lease, and most tenants recognize this.

7. Lastly, try to carve out certain types of tenants that a landlord can anticipate would be a technical violation of the exclusive, but in reality would never impact the tenant for whom the exclusive is granted. For

smaller tenants, carve-out "big box" tenants. The worst case scenario would be to lose an anchor-type tenant because you have given an exclusive to a local in-line tenant.

8. Now that the exclusive is granted, how does a landlord prevent itself from getting into trouble in the future. The most important tool is to keep a running list of all exclusives, and all other restrictions contained in tenants' leases, such as parking restrictions, building restrictions and general use restrictions. That list should be attached to every subsequent lease, and each subsequent tenant should be obligated to not violate the list of restrictions. This will provide the best protection against inadvertently granting rights in the future that will violate exclusives.

9. Although potentially troublesome, with the