

A SHORT DIATRIBE ON GRANTING AND CRAFTING EXCLUSIVE USE RIGHTS PROVISIONS IN LEASES

By:

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Florida Bar – Landlord-Tenant Committee

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It is the rare retail project that is unencumbered by exclusive use rights granted by a landlord to one or more tenants. While that may not have been as true in the distant past, this is now the “rule of the game.” What is more, this concept has begun to spill over into the office leasing environment.

Large space tenants have the bargaining power to demand protection against competition within the project. Conceptually, such protection is not unreasonable. Think about it. A large (often specialty) retailer draws customers to its store by dint of its reputation and expensive advertising. Uncurbed, competing businesses would locate “next door” and draw business away just as a parasite would feed on a host. In the office context, there are tenants who don’t want employees and invitees of competing businesses to be present in the lobbies, elevators, and lunchrooms.

That having been said, every exclusive use right granted to a tenant impairs the landlord’s ability to lease other space. For example, what a consumer may think is an “office supply” store, is actually a business that derives significant revenue from the sale of computers and computer related merchandise and from the sales of copying services. Every national “office supply” retailer asks for the exclusive right to sell computers, software, computer accessories, and copying services. Acceding to such a request, without modification, would bar leasing to consumer electronic companies, appliances dealers (who almost always sell computer equipment), and to parcel centers who commonly have copy machines. A toy store might not be able to sell “children’s” computer games. A card shop might not be permitted to have a single, convenience copier.

Aside from crafting the scope of a lease’s grant of “exclusive use rights,” a landlord and tenant must agree on who will bear the burden of enforcing those rights and what remedies the tenant may have if either another tenant “steps on its feet” or the landlord fails to include the applicable restriction in future leases. The range of possible solutions is nearly endless. At one extreme, a landlord might be required to pursue the infringing tenant with all of its force and with all of its might and with all its money. At the other end, the landlord might merely delegate that task to the “protected” tenant, as the ultimate beneficiary, giving the “protected” tenant, as a sole remedy, the power to pursue the wrongdoer in the landlord’s name.

As to a tenant's remedies, possible solutions can include exposing the landlord to a damage claim (possibly including consequential damages), giving the "protected" tenant the right to terminate the lease (with or without the right to pursue damages), abatement of rent, or changing from a fixed rent to a rent based on a percentage of sales.

One other major negotiating and drafting component of the "exclusive use right" grant is making sure that existing tenants may continue their businesses without interference. This means that existing tenants with broad permitted use rights (i.e., those that may use their premises for any permitted use) may, in fact, compete with the new tenant. Further, the right reserved for existing tenants to be "carved out" of the newer tenant's "exclusive use rights" should continue through lease renewals. Almost always, the "carve out" will continue regardless of a subsequent assignment or sublease. Another issue to be considered is whether lease extensions for existing tenants beyond pre-existing renewal periods should be protected against the "exclusive use rights" or whether lease modifications that expand the size of the existing tenant's space or that relocate the existing tenant would be similarly protected.

There is no limit to the creativity displayed by leasing attorneys. The following four examples illustrate that point.

NATIONAL SHOE RETAILER

Landlord's First Draft

ARTICLE XXIV

Tenant=s Exclusive Use Rights

Section 24.1. Subject to the provisions of Section 24.2, and provided that: (a) this Lease has not been terminated; (b) Tenant is not in default of this Lease beyond applicable notice and grace periods; (c) Tenant opens to the public at the Demised Premises for the Permitted Use; and (d) after it first opens to public the Demised Premises it has not ceased operating a retail store at the Demised Premises primarily as a footwear store for any period of more than ninety (90) consecutive days after the it opens for business with the retail public (other than as a result of casualty), Landlord shall include a provision in the lease of every tenant at the Shopping Center prohibiting that tenant from operating a business at the Shopping Center that primarily engages in the sale of footwear.

Section 24.2. The prohibition against primarily engaging in the sale of footwear shall not apply to: (a) any tenant whose lease is in effect prior to the Effective Date; (b) any tenant under a lease with a successor to or assignee of any tenant whose lease is in effect prior to the Effective Date; (c) any tenant leasing pursuant to a renewal, extension or modification of any lease in effect prior to the Effective Date; or (d) where the aggregate Floor Area of other premises at the Shopping Center being occupied primarily for the sale of footwear (other than by Tenant) is less than ten thousand (10,000) square feet.

Section 24.3. Should any other tenant at the Shopping Center violate the exclusive use rights granted to Tenant by this Article, Landlord shall take all prudent actions necessary or desirable to be taken to cause the offending tenant to cease its violation. Should, within a reasonable time after Tenant has given Landlord notice of an alleged breach by that other tenant, Landlord fail to proceed as provided in the previous sentence, Tenant, as its sole remedy, may proceed against that tenant, in its own name, and at its own expense, to obtain injunctive relief against the offending tenant and/or to obtain monetary damages from the offending tenant. Landlord agrees to cooperate with Tenant in any such action, but Tenant shall reimburse Landlord for any out-of-pocket expense incurred by Landlord in so doing.

Tenant's First Comment to Landlord's Draft

ARTICLE XXIV

Tenant=s Exclusive Use Rights

Section 24.1. Subject to the provisions of Section 24.2, and provided that: (a) this Lease has not been terminated; (b) Tenant is not in default of this Lease beyond applicable notice and grace periods; (c) Tenant opens to the public at the Demised Premises for the Permitted Use as required herein; and (d) after it first opens to public the Demised Premises it has not ceased operating a retail store at the Demised Premises primarily as a footwear store for any period of more than ninety (90) consecutive days after it opens for business with the retail public (other

than as a result of casualty, or any permitted closure hereunder), Landlord shall not lease any space within the Shopping Center or permit any space within the Shopping Center to be used by any person, persons, partnership or entity who devotes five percent (5%) or more of its selling area to the sale of footwear.

Section 24.2. The prohibition against primarily engaging in the sale of footwear shall not apply to those tenants listed on Exhibit I, attached hereto, and the successors and assigns of any tenant listed on Exhibit I. Provided, however, that the aggregate Floor Area of all other premises at the Shopping Center being occupied primarily for the sale of footwear (other than by Tenant) shall not exceed ten thousand (10,000) square feet.

Section 24.3. Should any other tenant or occupant at the Shopping Center violate the exclusive use rights granted to Tenant by this Article, Landlord shall take all prudent actions necessary or desirable to be taken to cause the offending tenant or occupant to cease its violation. Should, within a reasonable time after Tenant has given Landlord notice of an alleged breach by that other tenant or occupant, Landlord fail to proceed as provided in the previous sentence, Tenant shall be entitled, at its option and without limitation of any other remedy permitted by law or equity or by this Lease, to elect to pay, in lieu of Rent and Additional Rent due under this Lease, two percent (2%) of Tenant's gross sales calculated according to Tenant's standard procedures in accordance with generally accepted accounting principles.

Final Version

ARTICLE XXIV

Tenant's Exclusive Use Rights

Section 24.1. Subject to the provisions of Section 24.2, and provided that: (a) this Lease has not been terminated; (b) Tenant is not in default of this Lease beyond applicable notice and cure periods; (c) Tenant opens to the public at the Demised Premises for the Permitted Use; and (d) after Tenant first opens to public the Demised Premises it has not ceased operating a retail store at the Demised Premises primarily as a footwear store for any period of more than ninety (90) consecutive days after Tenant opens for business with the retail public (other than as a result of casualty), Landlord shall include a provision in the lease of every tenant at the Shopping Center prohibiting such tenant from operating a business at the Shopping Center that devotes more than ten percent (10%) of its selling area to the sale of footwear.

Section 24.2. The prohibition against primarily engaging in the sale of footwear shall not apply to: (a) any tenant whose lease is in effect prior to the Effective Date; (b) any tenant under a lease with a successor to or assignee of any tenant whose lease is in effect prior to the Effective Date; (c) any tenant leasing pursuant to a renewal, extension or modification of any lease in effect prior to the Effective Date; or (d) where the aggregate Floor Area of other premises at the Shopping Center being occupied primarily for the sale of footwear (other than by Tenant) is less than ten thousand (10,000) square feet.

Section 24.3. Should any other tenant or occupant at the Shopping Center violate the exclusive use rights granted to Tenant by this Article, Landlord shall take all prudent actions

necessary or desirable to be taken to cause the offending tenant or occupant to cease its violation. Should, within a reasonable time after Tenant has given Landlord notice of an alleged breach thereof by such other tenant or occupant, Landlord fail to proceed as provided in the previous sentence, Tenant, as its sole remedy, may proceed against that tenant or occupant, in its own name, and at its own expense, to obtain injunctive relief against the offending tenant and/or to obtain monetary damages from the offending tenant or occupant, unless Landlord has failed to include Tenant's exclusive in the offending tenant's lease, in which case Tenant may proceed against Landlord. Landlord agrees to cooperate with Tenant in any such action, but Tenant shall reimburse Landlord for any out-of-pocket expense incurred by Landlord in so doing.

Blacklined Comparison – Landlord's First Draft to Final Version

ARTICLE XXIV **Tenant=s Exclusive Use Rights**

Section 24.1. Subject to the provisions of Section 24.2, and provided that: (a) this Lease has not been terminated; (b) Tenant is not in default of this Lease beyond applicable notice and ~~grace~~cure periods; (c) Tenant opens to the public at the Demised Premises for the Permitted Use; and (d) after ~~it~~Tenant first opens to public the Demised Premises it has not ceased operating a retail store at the Demised Premises primarily as a footwear store for any period of more than ninety (90) consecutive days after ~~the it~~Tenant opens for business with the retail public (other than as a result of casualty), Landlord shall include a provision in the lease of every tenant at the Shopping Center prohibiting ~~that~~such tenant from operating a business at the Shopping Center that ~~primarily engages in~~devotes more than ten percent (10%) of its selling area to the sale of footwear.

Section 24.2. The prohibition against primarily engaging in the sale of footwear shall not apply to: (a) any tenant whose lease is in effect prior to the Effective Date; (b) any tenant under a lease with a successor to or assignee of any tenant whose lease is in effect prior to the Effective Date; (c) any tenant leasing pursuant to a renewal, extension or modification of any lease in effect prior to the Effective Date; or (d) where the aggregate Floor Area of other premises at the Shopping Center being occupied primarily for the sale of footwear (other than by Tenant) is less than ten thousand (10,000) square feet.

Section 24.3. Should any other tenant or occupant at the Shopping Center violate the exclusive use rights granted to Tenant by this Article, Landlord shall take all prudent actions necessary or desirable to be taken to cause the offending tenant or occupant to cease its violation. Should, within a reasonable time after Tenant has given Landlord notice of an alleged breach thereof by ~~that~~such other tenant or occupant, Landlord fail to proceed as provided in the previous sentence, Tenant, as its sole remedy, may proceed against that tenant or occupant, in its own name, and at its own expense, to obtain injunctive relief against the offending tenant and/or to obtain monetary damages from the offending tenant or occupant, unless Landlord has failed to include Tenant's exclusive in the offending tenant's lease, in which case Tenant may proceed against Landlord. Landlord agrees to cooperate with Tenant in any such action, but Tenant shall reimburse Landlord for any out-of-pocket expense incurred by Landlord in so doing.

NATIONAL ELECTRONICS RETAILER

Tenant's First Draft

30. EXCLUSIVITY AND USE.

Tenant shall initially use and Landlord represents, warrants and covenants to and with Tenant that Tenant may lawfully use the Premises (the "Permitted Use") for sales, rental, service and warehousing (and if applicable, installation in motor vehicles) of the product categories listed below, other products typically sold in the majority of Tenant's stores, and thereafter for any lawful use, subject to the Prohibited Uses and Exclusive Uses attached hereto as Exhibit G and Landlord shall not permit any person or entity other than Tenant in the Shopping Center, whose primary business is the sale, rental, service and/or warehousing (and, if applicable, installation in motor vehicles) of the following product categories: (1) electronic equipment or appliances (including, without limitation, televisions, stereos, video recorders); (2) major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers); (3) personal computers and peripherals, computer software; or (4) entertainment software including compact discs, music videos and prerecorded tapes; any substitutes for or items which are a technological evolution of the foregoing items; or any other related items carried in a majority of Tenant's stores without Tenant's prior written consent which may be granted or withheld in Tenant's sole and absolute discretion, provided the foregoing shall not apply to (i) any existing tenants of the Shopping Center if Landlord does not have control over such tenant's use; (ii) any tenant of the Shopping Center occupying an area of less than 2,000 square feet; and (iii) the incidental sale or display of the foregoing items from an area not to exceed the lesser of (i) five percent (5%) of the floor area of such tenant or (ii) 500 square feet, including in such determination of area all of any interior space and one-half (½) of the area of any aisles adjacent to such areas. In addition to the foregoing, Tenant shall have the right to (a) sell gourmet and other food items in support of and incidental to the foregoing product categories and (b) use up to ten percent (10%) of the Premises for a non-alcoholic beverage kiosk or bar, including seating area, with food, snack and bakery items incidental thereto. "Landlord," for purposes of this Article, shall be defined to include Landlord and (i) if Landlord is a corporation, its principal shareholders; or (ii) if Landlord is a partnership, its partners and any principal shareholders or partners of any partner which is a corporation or shareholder; or (iii) if Landlord is a trust, the beneficiaries of any such trust including the principal shareholders or partners of any beneficiary which is a corporation or trust, all of whom shall execute an agreement to be bound to this Article. Any approved change in the Permitted Use of the Premises shall be subject to any future exclusives granted by Landlord to tenants of the Shopping Center, provided that (i) any such tenant is a single use tenant occupying at least 30,000 square feet of space in the Shopping Center; (ii) Landlord has provided written notice to Tenant of the exclusive use; and (iii) the exclusive granted such tenant is in effect at the time of the change in the Permitted Use of the Premises.

Final Version

30. EXCLUSIVITY AND USE.

Tenant shall initially use and Landlord represents, warrants and covenants to and with Tenant that Tenant may lawfully use the Premises (the "Permitted Use") for sales, rental, service and warehousing (and if applicable, installation in motor vehicles) of the product categories listed below, other products typically sold in the majority of Tenant's stores, subject to the Prohibited Uses and the Exclusive Uses attached hereto as Exhibit G. After opening for the Permitted Use, Tenant may change the Permitted Use with the Landlord's prior consent, not to be unreasonably withheld or delayed, but no such Permitted use shall violate any Prohibited Use, any Exclusive Use or any exclusive use right granted by Landlord to any other tenant at the Shopping Center after the Effective Date. Landlord's denial of consent shall not be deemed unreasonable if Tenant's proposed Permitted use is the same as any other tenant's primary use of its premises at the Shopping Center. So long as: (a) this Lease has not terminated; (b) Tenant is conducting business for the Permitted Use in at least 30,000 square feet of ground floor area in the Premises; and (c) no uncured Event of Default has occurred, Landlord shall not lease (or permit the sublease or assignment of Lease to the extent Landlord has the right to control the use of such space) or sell any other premises in the Shopping Center to an occupant whose primary business within the Shopping Center is any one or more of categories (1) through (3) in the next paragraph, or an occupant who operates, as of the date of this Lease, a business under the same name as is utilized at more than 2,000 other locations whose primary business at such locations is the rental or sale of the items described in category (4) in the next paragraph. Notwithstanding the foregoing, the restriction in the preceding sentence shall not preclude Landlord from leasing to another Tenant in the Shopping Center where: (a) the premises are 6,250 square feet in size or smaller; (b) where it is to an existing tenant or an assignee or subtenant of that tenant and that tenant's lease permits such use; (c) where the incidental sale or display of the following items from an area not to exceed the lesser of (i) ten percent (10%) of the floor area of such tenant, or (ii) 1,000 square feet, including in such determination of area all of any interior space and one-half (½) of the area of any aisles adjacent to such areas; (d) the other tenant is primarily in the bookstore business, an office supply store in the character of Staples, Office Max or Office Depot; or (e) the other tenant is in the variety or discount business in the character of a Bradlees, K-Mart, or WalMart.

The initial Permitted Use is the sale, rental, service and/or warehousing (and, if applicable, installation in motor vehicles) of the following product categories: (1) electronic equipment or appliances (including, without limitation, televisions, stereos, video recorders); (2) major household appliances (including, without limitation, refrigerators, freezers, stoves, microwave ovens, dishwashers, washers and dryers); (3) personal computers and peripherals, computer software; or (4) entertainment software including compact discs, music videos and prerecorded tapes; any substitutes for or items which are a technological evolution of the foregoing items; or any other related items carried in a majority of Tenant's stores. In connection with Tenant's use of the Premises for the Permitted Use, and not as a separate business, Tenant shall have the right to (a) sell gourmet and other food items in support of and incidental to the foregoing product categories and (b) use up to ten percent (10%) of the Premises for a non-alcoholic beverage kiosk or bar, including seating area, with food, snack and bakery items incidental thereto.

Blacklined Comparison

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~~have control over such tenant's use; (ii) any tenant of the Shopping Center occupying an area of less than 2,000 square feet; and (iii) the incidental sale or display of the foregoing items from an area not to exceed the lesser of (i) five percent (5%) of the floor area of such tenant or (ii) 500 square feet, including in such determination of area all of any interior space and one-half (½) of the area of any aisles adjacent to such areas. In addition to the foregoing, In connection with Tenant's use of the Premises for the Permitted Use, and not as a separate business, Tenant shall have the right to (a) sell gourmet and other food items in support of and incidental to the foregoing product categories and (b) use up to ten percent (10%) of the Premises for a non-alcoholic beverage kiosk or bar, including seating area, with food, snack and bakery items incidental thereto. "Landlord," for purposes of this Article, shall be defined to include Landlord and (i) if Landlord is a corporation, its principal shareholders; or (ii) if Landlord is a partnership, its partners and any principal shareholders or partners of any partner which is a corporation or shareholder; or (iii) if Landlord is a trust, the beneficiaries of any such trust including the principal shareholders or partners of any beneficiary which is a corporation or trust, all of whom shall execute an agreement to be bound to this Article. Any approved change in the Permitted Use of the Premises shall be subject to any future exclusives granted by Landlord to tenants of the Shopping Center, provided that (i) any such tenant is a single use tenant occupying at least 30,000 square feet of space in the Shopping Center; (ii) Landlord has provided written notice to Tenant of the exclusive use; and (iii) the exclusive granted such tenant is in effect at the time of the change in the Permitted Use of the Premises.~~

MAJOR SUPERMARKET

Negotiation Draft

22. RESTRICTIVE COVENANT.

A. Landlord covenants and agrees that, except for the Demised Premises and except for existing uses permitted under existing leases, it shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for the sale of food for off-premises consumption **[open point: incidental sales -- see (6) below]**, the sale of health and beauty aids and/or the sale of prescription drugs. Landlord further covenants and agrees that it shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for any noxious or offensive use, for manufacturing or for use as a restaurant, theater, health spa, physical fitness center or similar facility, game rooms or video arcades, bowling alley, funeral parlor, warehouse, office (except for such office or warehouse use as shall be incidental to a permitted retail use) or non-retail use (nothing herein intended to characterize the uses listed in this sentence as retail uses). Notwithstanding the foregoing restrictions, portions of the buildings in the Shopping Center may be leased, used or occupied for the following purposes:

(1) Restaurants which sell food prepared on-premises for off-premises consumption or on-premises consumption shall be permitted, provided, however, that (a) no portion of any such restaurant shall be located within the area labeled "Restaurant Restricted Area" on Exhibit "A" **[open; (b) the aggregate total floor area of all such restaurants in the Shopping Center shall not exceed _____ square feet; (c) no single restaurant shall exceed square feet of total floor area; and (d) no entrances or exits (except emergency exits which are armed) front on _____;]**

(2) **[open]** One (1) bagel and/or donut shop, the floor area of which shall not exceed square feet, shall be permitted;

(3) **[open]** One (1) sandwich shop, the floor area of which shall not exceed square feet, shall be permitted; provided, however, no delicatessen shall be permitted and the sale of lunch meats, cold cuts and cheeses in bulk (i.e., by the ounce or pound) for off-premises consumption shall not be permitted;

(4) In the event that a discount department store having a floor area in excess of square feet should in the future occupy space in the Shopping Center, the operator of such discount department store shall be permitted to sell Permitted Food, as an incidental use, in no more than _____ square feet of sales floor area. "Permitted Food" shall mean food which does not include (i) fresh baked bakery products, (ii) produce, (iii) deli products, (iv) dairy products in more than _____ linear feet of shelving and/or refrigerated cases, (v) meat, (vi) poultry, and (vii) seafood **[blanks to be filled in];**

(5) A theater shall be permitted in the "Permitted Theater Area" shown on Exhibit "A," provided that it is in compliance with the provisions of Article 9A; and

(6) The incidental sale of snack foods in not more than _____ square feet of sales floor area shall be permitted.

B. Landlord expressly agrees that the covenants contained in this Article shall run with all lands affected thereby, and Landlord shall execute, acknowledge, and deliver to Tenant, in form for recording, such instrument or instruments as shall be necessary in Tenant's judgment to impose such covenants upon all lands which shall become affected thereby.

C. If any of the covenants contained in Subdivision A of this Article 22 are breached, Tenant may, in addition to all other remedies available to it under this Lease or at law or in equity, withhold payment of fixed annual rent and Charges accruing during any period from the date of any breach until same are cured, and the monies so withheld may be retained by Tenant as liquidated damages and not as a penalty.

D. If any of the covenants contained in this Article 22 are breached, then, upon notice from Tenant to Landlord, Landlord shall promptly commence and proceed with due diligence and use its reasonable good faith efforts (including litigation) to enforce the covenants contained in this Article 22. **[Open: Landlord's obligation to use its reasonable good faith efforts to enforce the covenants contained in this Article 22 shall include taking any and all necessary appeals from any adverse decision.]** In addition, if any of the covenants in this Article 22 are breached due to the willful or intentional acts of Landlord, or Landlord fails to prohibit the restricted uses in any lease signed after the date hereof or Landlord fails to promptly commence or proceed with due diligence and use its reasonable good faith efforts to enforce the covenants contained in this Article, Tenant may, in addition to all other remedies available to it, withhold payment of fixed annual rent and Charges accruing during any period from the date of any breach until same be cured and the monies so withheld may be retained by Tenant as liquidated damages and not as a penalty.

E. The restrictions set forth in Article 22A hereof shall expire and be of no further force and effect upon the expiration or earlier termination of the Lease and in the event that (i) Tenant enters into one or more subleases each having a sublease term of at least five (5) years for non-Supermarket Uses, and (ii) the aggregate floor area sublet by such sublease(s) is in excess of 33,924 square feet for non-Supermarket Uses. Tenant agrees that it will not seek to evade the provisions of the immediately preceding sentence by entering into successive subleases with any one subtenant, each with a term of less than five (5) years; provided that the provisions of this sentence shall not apply to subleases for seasonal sales. In the event that said restrictions expire in accordance with the terms of the first sentence of this Article 22E and at any time thereafter any offer to lease more than 30,000 square feet of floor area in the Shopping Center for use as a supermarket or food store is made by or to Landlord, Landlord shall (if Landlord intends to accept same) send Tenant written notice of such offer together with, in all instances, a copy of all documents pertaining thereto. Tenant is hereby granted thirty (30) days after receipt of such notice and documents in which to enter into a lease with Landlord on the same terms and conditions as therein contained. If Tenant does not exercise its right to lease said space, Landlord may enter into a lease with the person or other entity identified in the offer on the same terms and conditions as contained in such offer no later than one hundred eighty (180) days after the date of such offer. In the event that the terms and/or conditions of such offer change and/or

the Lease is not entered into within one hundred eighty (180) days after the date of such offer, then, in any of such events, Landlord shall again reoffer any such lease to Tenant. This right shall be a continuing right which shall survive any sale of Landlord's interest to others (notwithstanding Tenant's failure to exercise any rights hereunder as to any prior lease) and shall bind Landlord, its successors and assigns.

Final Version

22. RESTRICTIVE COVENANT.

A. Landlord covenants and agrees that, except for the Demised Premises and except for other tenants at the Shopping Center whose leases as of the date hereof permit use of their leased premises for any or all of the Exclusive Uses (as defined herein) and with respect to any renewals and extensions of those leases (including relocations and expansions within the Shopping Center), Landlord shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for the sale of food for off-premises consumption (other than incidental to an otherwise permitted business), the sale of health and beauty aids (other than incidental to an otherwise permitted business) and/or the sale of prescription drugs (the "Exclusive Uses"); provided that in no event for the purposes of this sentence shall a supermarket be deemed to be an incidental use. Landlord further covenants and agrees that it shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for any noxious or offensive use, for manufacturing or for use as a restaurant, theater, funeral parlor, warehouse, office (except for such office or warehouse use as shall be incidental to a permitted retail use) or non-retail use (nothing herein intended to characterize the uses listed in this sentence as retail uses). Landlord further covenants and agrees that on tax lot 1 in block 1 on the tax map of Florida Bar Township it shall not lease, rent or occupy any premises with its entrance facing State Highway 1, or permit any premises with its entrance facing State Highway 1 to be leased, subleased, rented or occupied, as a health spa, physical fitness center or similar facility, game room or video arcade or bowling alley, except where the foregoing uses are already permitted by pre-existing leases. Landlord covenants and agrees that if it leases additional space to Marshall's, it will restrict Marshall's in all of its space from Supermarket Use and from the sale of health and beauty aids and prescription drugs. Notwithstanding the foregoing restrictions, portions of the buildings in the Shopping Center may be leased, used or occupied for the following purposes:

(1) Restaurants which sell food prepared on-premises for off-premises consumption or on-premises consumption shall be permitted, provided, however, that no restaurant (other than in the "PBA," Future Outparcel Area shown on Exhibit "A," where a restaurant not in excess of 6,500 square feet shall be permitted, provided that such restaurant shall not be an Outback, Jack Creek, Texas Longhorn, Lone Star or similar steakhouse) fronting on State Highway 1 shall be located within the area labeled "Restaurant Restricted Area" on Exhibit "A";

(2) Bagel and/or donut shops shall be permitted, provided that no bagel or donut shop may front on State Highway 58 (except as an incidental use to another primary use);

(3) Sandwich shops shall be permitted;

(4) In the event that a discount department store having a floor area in excess of 65,000 square feet should in the future occupy space in the Shopping Center, the operator of such discount department store shall be permitted to sell: (a) food for on- or off-premises consumption, as an incidental use; (b) prescription drugs, as an incidental use; and (c) health and beauty aids, as an incidental use. In no event shall a supermarket (such as, for example, a Super K or Super WalMart) and/or a drugstore (such as, for example, a CVS) be deemed to be an incidental use for the purpose of the immediately preceding sentence. In no event shall a warehouse store such as Costco or Sam's occupy space in the Shopping Center if such store sells food for off-premises consumption in more than five (5%) percent of its selling floor area;

(5) A theater shall be permitted in the "Permitted Theater Area" shown on Exhibit "A," provided that it is in compliance with the provisions of Article 9A; and

(6) Any other tenant occupying more than 20,000 square feet of sales floor area shall be permitted to operate a restaurant on an incidental basis within its premises provided that such restaurant does not have a separate customer entrance to the Common Area.

B. Landlord expressly agrees that the covenants contained in this Article shall run with all lands affected thereby, and the exact language of Article 22A shall be included within the Memorandum described in Article 23.

C. During such time as Tenant is entitled to the benefit of the Exclusive Uses, Landlord shall not, unless otherwise required by law, statute or court order or unless consented to in writing by Tenant in advance thereof, execute any lease to any other tenant or consent to any sublease or assignment to any other prospective tenant or permit any other tenant to utilize any part of the Shopping Center for the Exclusive Uses. This provision shall not apply to: (a) tenants at the Shopping Center under leases executed before the execution of this Lease and whose leases permit use(s) that would otherwise be violative of the Exclusive Uses ("Existing Tenants"); (b) persons or entities holding under Existing Tenants; and (c) any or all of the foregoing persons and entities that occupy space leased by Existing Tenants after termination of the underlying lease, but, in such case, they shall have no greater rights than such person or entity would have had to use the Shopping Center for the Exclusive Use pursuant to such preexisting lease.

During such time as Tenant is entitled to the benefit of the Exclusive Uses, Landlord covenants that it will include, in all leases executed after the execution of this Lease, a provision prohibiting such future tenants from using their leased premises in violation of the Exclusive Uses. If Landlord fails to do so and such tenant(s) use their leased premises in violation of the Exclusive Uses, Tenant shall have the right to seek an injunction and/or a judgment against Landlord for damages from a court of competent jurisdiction.

If, during such time as Tenant is entitled to the benefit of the Exclusive Uses, another tenant with a lease prohibiting that tenant from use of its leased premises for the Exclusive Uses, violates such a prohibition, Tenant shall give notice to Landlord of such violation. Within a reasonable time after receipt of such notification, Landlord shall diligently pursue all reasonable

steps, including, without limitation, the seeking of injunctive relief, to stop such violating tenant from continuing such prohibited use(s). Landlord, however, shall not be required to appeal any adverse court or arbitration decision. If Landlord, in its good faith, reasonable judgment, does not believe that a violation is occurring, it shall notify Tenant of such decision. In such case, and in cases where Tenant desires to appeal an adverse court or arbitration decision, Tenant shall have the right to pursue such reasonable steps as may be warranted to enforce the prohibition. If Tenant is substantially successful, Landlord shall reimburse Tenant for its reasonable out-of-pocket expenses in doing so, including reimbursement for legal fees. For this purpose, Landlord irrevocably appoints Tenant as its attorney in fact, coupled with an interest, so that Tenant may pursue enforcement of its right to benefit from the Exclusive Uses.

D. The restrictions with respect to the Exclusive Uses set forth in Article 22A hereof shall expire and be of no further force and effect upon the expiration or earlier termination of the Lease and also in the event that (i) Tenant enters into one or more subleases each having a sublease term of at least five (5) years for non-Supermarket Uses, and (ii) the aggregate floor area sublet by such sublease(s) is in excess of 33,924 square feet for non-Supermarket Uses. Tenant agrees that it will not seek to evade the provisions of the immediately preceding sentence by entering into successive subleases with any one or more subtenants, each with a term of less than five (5) years; provided that the provisions of this sentence shall not apply to subleases for seasonal sales. In the event that said restrictions expire in accordance with the terms of the first sentence of this Article 22 D and at any time thereafter Landlord intends to offer to lease more than 30,000 square feet of floor area in the Shopping Center for Supermarket Use, Landlord shall first send Tenant notice of its intent to so lease such space and in such notice identify the space, and the intended rent and other financial and economic terms for same. Tenant is hereby granted thirty (30) days after receipt of such notice to elect to lease such space on such terms by sending written notice thereof to Landlord. If Tenant does not exercise its right to lease such space on such terms, Landlord shall be free to lease such space to any other person or entity provided that the rent and other financial and economic terms payable by such other person or entity are not more favorable to the tenant than those set forth in Landlord's notice. [For purposes of determining whether the financial and economic terms of a proposed lease are more favorable to the tenant, the discounted present value (using a 4% interest rate factor) of rent, additional rent, tenant allowances and the cost of Landlord's Work shall be used in such determination.] In the event Landlord wishes to lease such space on rent and other financial and economic terms more favorable to the tenant than those identified in Landlord's initial notice and/or such a lease is not entered into within nine (9) months from the date of the notice to Tenant (or any subsequent reoffer), Landlord must again reoffer such space to Tenant. This right shall be a continuing right which shall survive any sale of Landlord's interest to others (notwithstanding Tenant's failure to exercise any rights hereunder as to any prior lease) and shall bind Landlord, its successors and assigns.

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22. RESTRICTIVE COVENANT.

A. Landlord covenants and agrees that, except for the Demised Premises and except for ~~existing uses permitted under existing leases, it~~ other tenants at the Shopping Center whose

leases as of the date hereof permit use of their leased premises for any or all of the Exclusive Uses (as defined herein) and with respect to any renewals and extensions of those leases (including relocations and expansions within the Shopping Center), Landlord shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for the sale of food for off-premises consumption ~~{open point: (other than incidental sales — see (6) below) to an otherwise permitted business}~~, the sale of health and beauty aids (other than incidental to an otherwise permitted business) and/or the sale of prescription drugs (the “Exclusive Uses”); provided that in no event for the purposes of this sentence shall a supermarket be deemed to be an incidental use. Landlord further covenants and agrees that it shall not lease, rent or occupy or permit any premises in the Shopping Center to be occupied for any noxious or offensive use, for manufacturing or for use as a restaurant, theater, ~~health spa, physical fitness center or similar facility, game rooms or video arcades, bowling alley,~~ funeral parlor, warehouse, office (except for such office or warehouse use as shall be incidental to a permitted retail use) or non-retail use (nothing herein intended to characterize the uses listed in this sentence as retail uses). Landlord further covenants and agrees that on tax lot 1 in block 1 on the tax map of Florida Bar Township it shall not lease, rent or occupy any premises with its entrance facing State Highway 1, or permit any premises with its entrance facing State Highway 1 to be leased, subleased, rented or occupied, as a health spa, physical fitness center or similar facility, game room or video arcade or bowling alley, except where the foregoing uses are already permitted by pre-existing leases. Landlord covenants and agrees that if it leases additional space to Marshall’s, it will restrict Marshall’s in all of its space from Supermarket Use and from the sale of health and beauty aids and prescription drugs. Notwithstanding the foregoing restrictions, portions of the buildings in the Shopping Center may be leased, used or occupied for the following purposes:

(1) Restaurants which sell food prepared on-premises for off-premises consumption or on-premises consumption shall be permitted, provided, however, that ~~(a) no portion of any such restaurant~~ no restaurant (other than in the “PBA,” Future Outparcel Area shown on Exhibit “A,” where a restaurant not in excess of 6,500 square feet shall be permitted, provided that such restaurant shall not be an Outback, Jack Creek, Texas Longhorn, Lone Star or similar steakhouse) fronting on State Highway 1 shall be located within the area labeled “Restaurant Restricted Area” on Exhibit “A” ~~{open; (b) the aggregate total floor area of all such restaurants in the Shopping Center shall not exceed _____ square feet; (c) no single restaurant shall exceed _____ square feet of total floor area; and (d) no entrances or exits (except emergency exits which are armed) front on _____};~~

(2) ~~{open}~~ One (1) bagel and/or donut shop, the floor area of which shall not exceed _____ square feet, shall be permitted ~~Bagel and/or donut shops shall be permitted, provided that no bagel or donut shop may front on State Highway 58 (except as an incidental use to another primary use);~~

(3) ~~{open}~~ One (1) sandwich shop, the floor area of which shall not exceed _____ square feet, shall be permitted; provided, however, no delicatessen shall be permitted and the sale of lunch meats, cold cuts and cheeses in bulk (i.e., by the ounce or pound) for off-premises consumption shall not be permitted; ~~Sandwich shops shall be permitted;~~

(4) In the event that a discount department store having a floor area in excess of 65,000 square feet should in the future occupy space in the Shopping Center, the operator of such discount department store shall be permitted to sell ~~Permitted Food, as an incidental use, in no more than _____ square feet of sales floor area.~~ “Permitted Food” shall mean food which does not include (i) fresh baked bakery products, (ii) produce, (iii) deli products, (iv) dairy products in more than _____ linear feet of shelving and/or refrigerated cases, (v) meat, (vi) poultry, and (vii) seafood [blanks to be filled in]; (a) food for on- or off-premises consumption, as an incidental use; (b) prescription drugs, as an incidental use; and (c) health and beauty aids, as an incidental use. In no event shall a supermarket (such as, for example, a Super K or Super WalMart) and/or a drugstore (such as, for example, a CVS) be deemed to be an incidental use for the purpose of the immediately preceding sentence. In no event shall a warehouse store such as Costco or Sam’s occupy space in the Shopping Center if such store sells food for off-premises consumption in more than five (5%) percent of its selling floor area;

(5) A theater shall be permitted in the “Permitted Theater Area” shown on Exhibit “A,” provided that it is in compliance with the provisions of Article 9A; and

(6) ~~The incidental sale of snack foods in not~~ Any other tenant occupying more than 20,000 square feet of sales floor area shall be permitted to operate a restaurant on an incidental basis within its premises provided that such restaurant does not have a separate customer entrance to the Common Area.

B. Landlord expressly agrees that the covenants contained in this Article shall run with all lands affected thereby, and ~~Landlord shall execute, acknowledge, and deliver to Tenant, in form for recording, such instrument or instruments as shall be necessary in Tenant’s judgment to impose such covenants upon all lands which shall become affected thereby.~~ the exact language of Article 22A shall be included within the Memorandum described in Article 23.

C. ~~If any of the covenants contained in Subdivision A of this Article 22 are breached, Tenant may, in addition to all other remedies available to it under this Lease or at law or in equity, withhold payment of fixed annual rent and Charges accruing during any period from the date of any breach until same are cured, and the monies so withheld may be retained by Tenant as liquidated damages and not as a penalty.~~ During such time as Tenant is entitled to the benefit of the Exclusive Uses, Landlord shall not, unless otherwise required by law, statute or court order or unless consented to in writing by Tenant in advance thereof, execute any lease to any other tenant or consent to any sublease or assignment to any other prospective tenant or permit any other tenant to utilize any part of the Shopping Center for the Exclusive Uses. This provision shall not apply to: (a) tenants at the Shopping Center under leases executed before the execution of this Lease and whose leases permit use(s) that would otherwise be violative of the Exclusive Uses (“Existing Tenants”); (b) persons or entities holding under Existing Tenants; and (c) any or all of the foregoing persons and entities that occupy space leased by Existing Tenants after termination of the underlying lease, but, in such case, they shall have no greater rights than such person or entity would have had to use the Shopping Center for the Exclusive Use pursuant to such preexisting lease.

During such time as Tenant is entitled to the benefit of the Exclusive Uses, Landlord covenants that it will include, in all leases executed after the execution of this Lease, a provision prohibiting such future tenants from using their leased premises in violation of the Exclusive Uses. If Landlord fails to do so and such tenant(s) use their leased premises in violation of the Exclusive Uses, Tenant shall have the right to seek an injunction and/or a judgment against Landlord for damages from a court of competent jurisdiction.

If, during such time as Tenant is entitled to the benefit of the Exclusive Uses, another tenant with a lease prohibiting that tenant from use of its leased premises for the Exclusive Uses, violates such a prohibition, Tenant shall give notice to Landlord of such violation. Within a reasonable time after receipt of such notification, Landlord shall diligently pursue all reasonable steps, including, without limitation, the seeking of injunctive relief, to stop such violating tenant from continuing such prohibited use(s). Landlord, however, shall not be required to appeal any adverse court or arbitration decision. If Landlord, in its good faith, reasonable judgment, does not believe that a violation is occurring, it shall notify Tenant of such decision. In such case, and in cases where Tenant desires to appeal an adverse court or arbitration decision, Tenant shall have the right to pursue such reasonable steps as may be warranted to enforce the prohibition. If Tenant is substantially successful, Landlord shall reimburse Tenant for its reasonable out-of-pocket expenses in doing so, including reimbursement for legal fees. For this purpose, Landlord irrevocably appoints Tenant as its attorney in fact, coupled with an interest, so that Tenant may pursue enforcement of its right to benefit from the Exclusive Uses.

D. ~~If any of the covenants contained in this Article 22 are breached, then, upon notice from Tenant to Landlord, Landlord shall promptly commence and proceed with due diligence and use its reasonable good faith efforts (including litigation) to enforce the covenants contained in this Article 22. [Open: Landlord's obligation to use its reasonable good faith efforts to enforce the covenants contained in this Article 22 shall include taking any and all necessary appeals from any adverse decision.]~~ In addition, if any of the covenants in this Article 22 are breached due to the willful or intentional acts of Landlord, or Landlord fails to prohibit the restricted uses in any lease signed after the date hereof or Landlord fails to promptly commence or proceed with due diligence and use its reasonable good faith efforts to enforce the covenants contained in this Article, Tenant may, in addition to all other remedies available to it, withhold payment of fixed annual rent and Charges accruing during any period from the date of any breach until same be cured and the monies so withheld may be retained by Tenant as liquidated damages and not as a penalty. — E. — The restrictions with respect to the Exclusive Uses set forth in Article 22A hereof shall expire and be of no further force and effect upon the expiration or earlier termination of the Lease and also in the event that (i) Tenant enters into one or more subleases each having a sublease term of at least five (5) years for non-Supermarket Uses, and (ii) the aggregate floor area sublet by such sublease(s) is in excess of 33,924 square feet for non-Supermarket Uses. Tenant agrees that it will not seek to evade the provisions of the immediately preceding sentence by entering into successive subleases with any one ~~subtenant~~ or more subtenants, each with a term of less than five (5) years; provided that the provisions of this sentence shall not apply to subleases for seasonal sales. In the event that said restrictions expire in accordance with the terms of the first sentence of this Article 22 ~~E~~ D and at any time thereafter ~~any~~ Landlord intends to offer to lease more than 30,000 square feet of floor area in the Shopping Center for ~~use as a supermarket or food store is made by or to~~

~~Landlord~~Supermarket Use, Landlord shall ~~(if Landlord intends to accept same)~~first send Tenant ~~written notice of such offer together with, in all instances, a copy of all documents pertaining thereto~~notice of its intent to so lease such space and in such notice identify the space, and the intended rent and other financial and economic terms for same. Tenant is hereby granted thirty (30) days after receipt of such notice ~~and documents in which to enter into a lease with Landlord on the same terms and conditions as therein contained~~to elect to lease such space on such terms by sending written notice thereof to Landlord. If Tenant does not exercise its right to lease ~~said~~such space on such terms, Landlord ~~may enter into a~~shall be free to lease ~~with the~~such space to any other person or ~~other entity identified in the offer on the same terms and conditions as contained in such offer no later than one hundred eighty (180) days after the date of such offer. In the event that the terms and/or conditions of such offer change and/or the Lease~~entity provided that the rent and other financial and economic terms payable by such other person or entity are not more favorable to the tenant than those set forth in Landlord's notice. [For purposes of determining whether the financial and economic terms of a proposed lease are more favorable to the tenant, the discounted present value (using a 4% interest rate factor) of rent, additional rent, tenant allowances and the cost of Landlord's Work shall be used in such determination.] In the event Landlord wishes to lease such space on rent and other financial and economic terms more favorable to the tenant than those identified in Landlord's initial notice and/or such a lease is not entered into within ~~one hundred eighty (180) days after~~nine (9) months from the date of ~~such offer, then, in any of such events~~the notice to Tenant (or any subsequent reoffer), Landlord ~~shall~~must again reoffer ~~any~~such leasespace to Tenant. This right shall be a continuing right which shall survive any sale of Landlord's interest to others (notwithstanding Tenant's failure to exercise any rights hereunder as to any prior lease) and shall bind Landlord, its successors and assigns.

CONVENIENCE FOOD STORE

Tenant's Requested Provision

X.D. Tenant's Exclusive.

Except as may be permitted under any Existing Tenant Leases, during the Lease Term, Landlord shall not sell, lease, rent, occupy, or permit to be occupied any premises which are within the Shopping Center, and which are to be used for a supermarket, convenience food store, dollar/discount/variety store, or otherwise for the sale of, without limitation, (1) packaged or fresh seafood, meat or poultry for off-premises consumption, (2) packaged or fresh produce or vegetables for off-premises consumption, (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption, (4) packaged or fresh bakery products for off-premises consumption, (5) other grocery items, (6) tobacco or tobacco products, or (7) beer, wine and package liquors for off-premises consumption (except for package liquors sold by a governmentally-owned facility), or any of them.

During the Lease Term, Landlord, its successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord, shall not sell, lease, rent, occupy, or permit to be occupied any premises owned or controlled by Landlord or such other parties which are on any land (the "Related Land") contiguous or adjacent to the Shopping Center (including, without limitation, any land that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) and which are to be used for a full-line national or regional department store (for example, Wal-Mart or Target), a supermarket, convenience food store, dollar/discount/variety store, or otherwise for the sale of, without limitation, (1) packaged or fresh seafood, meat or poultry for off-premises consumption, (2) packaged or fresh produce or vegetables for off-premises consumption, (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption, (4) packaged or fresh bakery products for off-premises consumption, (5) other grocery items, (6) tobacco or tobacco products, or (7) beer, wine and package liquors for off-premises consumption (except for package liquors sold by a governmentally-owned facility), or any of them; provided, however, that these restrictions shall not apply to premises owned or controlled by Landlord or the other parties described above if such premises (i) are already used for the purposes stated herein at the time of execution of this Lease, (ii) are disclosed in writing to Tenant prior to the time of execution of this Lease, and (iii) continue to be used for such purposes. In addition, Landlord shall not sell or otherwise convey any such premises without imposing thereon a restriction to secure compliance herewith, or permit any tenant or occupant of the Shopping Center or any part thereof to sublet or assign in any manner, directly or indirectly, any part thereof to any person, firm or corporation engaged in any such business described above, without the prior written consent of Tenant, which consent may be withheld by Tenant in Tenant's sole discretion.

X.E. Exceptions to Exclusive and Retail Uses.

Notwithstanding the provisions of Articles X.C. (*Retail Uses Only Provision of Lease*) and X.D. above, Landlord shall have the right to lease shop spaces, not to exceed 2,400 square

feet per store, located in the Shopping Center to an ice cream or yogurt store (similar to a Bresslers or a TCBY), an “exclusive, upper-end” candy store, or a pizza restaurant or other type of restaurant facility selling prepared and precooked food for “take-out” only, and Landlord may lease or sell the out-parcels located on **Exhibit “A”** to a nationally-known restaurant similar in operation to the restaurants listed below, provided such restaurants (1) are operating their businesses in the same manner as they operate as of the date of this Lease, (2) do not violate the restrictions described in Article Y.A. herein, (3) only sell beer and wine for on-premises consumption ancillary to the sale of food products and such beer and wine sales do not exceed 50% of the business conducted therein, and (4) do not, without Tenant’s prior written approval (which approval may be withheld in Tenant’s sole and absolute discretion), sell alcoholic beverages other than beer and wine.

McDonald’s	Hardees
Wendy’s	Kentucky Fried Chicken
Pizza Hut	Churches Fried Chicken
Pizza Inn	Arby’s
Burger King	Dairy Queen
Tastee Freeze	Taco Bell
Roy Rogers	Bojangles

Landlord acknowledges that in the event of a breach of these covenants, Tenant’s remedies at law would be inadequate and, in such event, Tenant shall be entitled, at its option, (i) to terminate this Lease, provided that Tenant shall have given Landlord 30 days’ prior written notice of its election to terminate this Lease, during which 30 day period Landlord shall have the right to cure such breach of these covenants, or (ii) to seek full and adequate relief by injunction, damages or otherwise. In addition to all of the other remedies provided above, at the request of Tenant, Landlord shall use best efforts to diligently pursue and exhaust any and all remedies available at law, in equity, or otherwise, against any tenant or occupant that violates the provisions of this Article X. Landlord and Tenant hereby agree that the terms of Articles X.C. (*Retail Uses Only Provision of Lease*), X.D. and this Article X.E. are material to the execution of this Lease and the performance of the parties’ obligations hereunder and that negotiations with respect to rent and the other terms of this Lease have been based upon Landlord’s representations to Tenant that there will be no other supermarket or similar store located in the Shopping Center or the Related Land. Upon the request of Tenant, Landlord shall enter into the Declaration of Covenants, Conditions and Restrictions in the form attached hereto as **Exhibit “E”** in order to evidence the agreement of Landlord, and its successors and assigns, to abide by the terms and conditions of Articles X.C. (*Retail Uses Only Provision of Lease*), X.D., and X.E. of this Lease.

Tenant hereby acknowledges the following are existing tenants in the Shopping Center pursuant to executed lease agreements (the “Existing Tenant Leases”), and Tenant accepts the Existing Tenant Leases set forth below and the fact such tenants’ operations and/or permitted use clauses may violate one or more of the exclusives granted Tenant or any other restricted uses contained in this Article X; provided, however, the existing permitted use clauses as set forth below may not be changed without the prior written consent of Tenant. Furthermore, the tenants under those Existing Tenant Leases with an asterisk (*) beside their name may not be renewed, extended or assigned/subleased nor their existing space expanded without Tenant’s prior written consent, unless such applicable Existing Tenant Lease grants, as of the date of this Lease, the tenant thereof the right to renew, extend or assign/sublease such Existing Tenant Lease without Landlord’s prior written consent. The remaining Existing Tenant Leases may be replaced with like uses without Tenant’s prior written consent.

<u>Tenant</u>	<u>GLA</u>	<u>Lease Term</u>	<u>Existing Use Clause</u>

Final Version

X.D. Tenant’s Exclusive.

Subject to the exceptions set forth in Article X.E., and except as to the premises described by any Existing Tenant Lease even after such Existing Tenant Lease is no longer in effect, Landlord, during the Lease Term, shall not sell, lease, rent, occupy, or permit (where it has the right to deny its permission in its sole discretion) to be occupied any premises within the Shopping Center to be used for a supermarket or convenience food store or otherwise primarily used for the sale of: (1) packaged or fresh seafood, meat or poultry for off-premises consumption; (2) packaged or fresh produce or vegetables for off-premises consumption; (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption; (4) packaged or fresh bakery products for off-premises consumption; (5) other grocery items; or (6) tobacco or tobacco products, or any of them.

Subject to the exceptions set forth in Article X.E., and except as to the premises described by any Existing Tenant Lease even after such Existing Tenant Lease is no longer in effect, during the Lease Term, Landlord, its successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord, shall not sell, lease, rent, occupy, or permit (where it has the right to deny

its permission in its sole discretion) to be occupied any premises owned or controlled by Landlord or such other parties which are on any land located within a one (1)-mile radius of the Demised Premises ("Related Land") to be used for a supermarket or convenience food store or otherwise primarily used for the sale of: (1) packaged or fresh seafood, meat or poultry for off-premises consumption; (2) packaged or fresh produce or vegetables for off-premises consumption; (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption; (4) packaged or fresh bakery products for off-premises consumption; (5) other grocery items; or (6) tobacco or tobacco products, or any of them.

In addition, but subject to the exceptions set forth in Article X.E., Landlord shall not sell or otherwise convey any such Related Land without imposing thereon a restriction to secure compliance herewith, or permit (where Landlord has the right to deny its permission in its sole discretion) any tenant or occupant of the Shopping Center or any part thereof to sublet or assign in any manner, directly or indirectly, any part thereof to any person, firm or corporation engaged in any such business described above, without the prior written consent of Tenant.

Notwithstanding the foregoing or anything to the contrary set forth in this Lease, if Tenant and persons and entities holding under Tenant, in the aggregate, cease to conduct a retail business open to the public in seventy-five percent (75%) or more of the Floor Area of the Demised Premises for more than a seven hundred thirty (730) consecutive day period [not counting any days when business is not being conducted by reason of remodeling (provided the same is diligently pursued to completion and such period shall not be tolled more than fifteen (15) days in any three hundred sixty-five (365) consecutive day period), casualty, eminent, domain, war, governmental action or other similar events beyond Tenant's reasonable control], then, regardless of whether Tenant thereafter resumes its operations in the Demised Premises: (a) any and all exclusive use protections granted to Tenant pursuant to this Lease (including without limitation those provided to Tenant in this Article X.D.) shall immediately be null and void and of no further force or effect; and (b) items (xvii) and (xviii) set forth in Article X.C. (*Retail Uses Only Provision of Lease*) of this Lease shall be null and void and of no further force or effect.

X.E. Exceptions to Exclusive and Retail Uses.

Notwithstanding the provisions of Articles X.C. (*Retail Uses Only Provision of Lease*) and X.D. above, none of the restrictions set forth in Articles X.C. and X.D. shall apply:

(a) to any premises owned or controlled by Landlord or Landlord's successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord where:

(i) on the Effective Date, any portion of such premises is used for any of the purposes stated herein and Landlord discloses such use(s) in writing to Tenant prior to the Effective Date; or

(ii) any existing tenant as of the Effective Date has the right to change its use to any of such otherwise restricted or prohibited uses without Landlord's consent or where Landlord does not have the right to deny its consent;

(b) to any person or entity who may acquire the Shopping Center or any part thereof at any time during the Lease Term by foreclosure or deed in lieu of foreclosure and who, on the date of the transfer of ownership or qualified indicia of ownership of the Shopping Center, owns property on which there is an existing use that would violate Tenant's Exclusives had that property were owned by Landlord, Landlord's successors and/or assigns, representatives, subsidiaries or affiliates;

(c) as to any Related Land, to any person or entity [other than Landlord, its successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord] who owned, in whole or in part, the Related Land before acquiring an interest in all or any part of the Shopping Center; or

(d) any premises having a Floor Area of seventy-five thousand (75,000) square feet or more which is leased for use as a warehouse-type of retail establishment such as Sam's Club, BJ's, Costco, Target, Wal-Mart or a department store such as JCPenney or Sears which does not sell grocery or other items on Tenant's list of Exclusives as its primary business or source of income; provided however that notwithstanding the foregoing, no premises in the Shopping Center shall be leased for use by a large discount department or variety stores such as Super Wal-Mart, Super Target or other similar retailer.

Additionally, notwithstanding the provisions of Articles X.C. (*Retail Uses Only Provision of Lease*) and X.D. above: (x) Landlord shall have the right to lease shop spaces, not to exceed three thousand (3,000) square feet per store, located in the Shopping Center or within any Related Land to an ice cream or yogurt store (similar to a Bresslers or a TCBY), an "exclusive, upper-end" candy store, or a pizza restaurant or other type of restaurant facility selling prepared and precooked food; and (y) Landlord may lease or sell the out-parcels located on **Exhibit "A"** to any tenant for any use whatsoever, provided such use does not violate the restrictions described in Article Y.A. herein.

Landlord acknowledges that in the event of a material breach of these covenants, Tenant's remedies at law would be inadequate and, in such event, Tenant shall be entitled, at its option, (i) to terminate this Lease, provided that Tenant shall have given Landlord ninety (90) days' prior written notice of its election to terminate this Lease, during which ninety (90) day period Landlord shall have the right, but not the obligation, to nullify Tenant's termination of this Lease by curing such material breach of these covenants; or (ii) if Landlord does not cure the material breach of these covenants, to seek full and adequate relief by injunction, damages or otherwise. In addition to all of the other remedies provided above, at the request of Tenant, Landlord shall use commercially reasonable efforts to diligently pursue and exhaust any and all remedies available at law, in equity, or otherwise, against any tenant or occupant that violates the provisions of this Article X. Landlord and Tenant hereby agree that the terms of Articles X.C. (*Retail Uses Only Provision of Lease*), X.D. and this Article X.E. are material to the execution of this Lease and the performance of the parties' obligations hereunder and that negotiations with respect to rent and the other terms of this Lease have been based upon Landlord's representations to Tenant that there will be no other supermarket or similar store located in the Shopping Center or the Related Land in violation of the foregoing.

Tenant hereby acknowledges the leases of existing tenants in the Shopping Center and the permitted use provision(s) as at the Effective Date are listed on **Exhibit “J”** (“Existing Tenant Leases”), and Tenant accepts the Existing Tenant Leases and the fact such tenants’ operations or permitted use clauses may violate one or more of the exclusives granted Tenant or any other restricted uses contained in this Article X; provided, however, that if Landlord has the legal right to prevent such, the existing permitted use clauses as set forth below may not be changed to any use that would violate the terms of this Lease without the prior written consent of Tenant.

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X.D. Tenant’s Exclusive.

~~Except as may be permitted under~~ Subject to the exceptions set forth in Article X.E., and except as to the premises described by any Existing Tenant ~~Leases~~ Lease even after such Existing Tenant Lease is no longer in effect, Landlord, during the Lease Term, ~~Landlord~~ shall not sell, lease, rent, occupy, or permit (where it has the right to deny its permission in its sole discretion) to be occupied any premises ~~which are~~ within the Shopping Center, ~~and which are~~ to be used for a supermarket, or convenience food store, ~~dollar/discount/variety store,~~ or otherwise primarily used for the sale of, ~~without limitation;~~ (1) packaged or fresh seafood, meat or poultry for off-premises consumption; (2) packaged or fresh produce or vegetables for off-premises consumption; (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption; (4) packaged or fresh bakery products for off-premises consumption; (5) other grocery items; or (6) tobacco or tobacco products, ~~or (7) beer, wine and package liquors for off-premises consumption (except for package liquors sold by a governmentally-owned facility),~~ or any of them.

~~During~~ Subject to the exceptions set forth in Article X.E., and except as to the premises described by any Existing Tenant Lease even after such Existing Tenant Lease is no longer in effect, during the Lease Term, Landlord, its successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord, shall not sell, lease, rent, occupy, or permit (where it has the right to deny its permission in its sole discretion) to be occupied any premises owned or controlled by Landlord or such other parties which are on any land ~~(the “Related Land”) contiguous or adjacent to the Shopping Center (including, without limitation, any land that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) and which are to be used for a full-line national or regional department store (for example, Wal-Mart or Target);~~ located within a one (1)-mile radius of the Demised Premises (“Related Land”) to be used for a supermarket, or convenience food store, ~~dollar/discount/variety store,~~ or otherwise primarily used for the sale of, ~~without limitation;~~ (1) packaged or fresh seafood, meat or poultry for off-premises consumption; (2) packaged or fresh produce or vegetables for off-premises consumption; (3) packaged or fresh dairy products (excluding cone ice cream) for off-premises consumption; (4) packaged or fresh bakery products for off-premises consumption; (5) other grocery items; or (6) tobacco or tobacco products, ~~or (7) beer, wine and package liquors for off-premises consumption (except for package liquors sold by a governmentally-owned facility),~~ or any of them; ~~provided, however, that these restrictions shall not apply to premises owned or controlled by Landlord or the other parties described above if~~

~~such premises (i) are already used for the purposes stated herein at the time of execution of this Lease, (ii) are disclosed in writing to Tenant prior to the time of execution of this Lease, and (iii) continue to be used for such purposes~~any of them.

In addition, but subject to the exceptions set forth in Article X.E., Landlord shall not sell or otherwise convey any such ~~premises~~Related Land without imposing thereon a restriction to secure compliance herewith, or permit (where Landlord has the right to deny its permission in its sole discretion) any tenant or occupant of the Shopping Center or any part thereof to sublet or assign in any manner, directly or indirectly, any part thereof to any person, firm or corporation engaged in any such business described above, without the prior written consent of Tenant; ~~which consent may be withheld by Tenant in Tenant's sole discretion.~~

Notwithstanding the foregoing or anything to the contrary set forth in this Lease, if Tenant and persons and entities holding under Tenant, in the aggregate, cease to conduct a retail business open to the public in seventy-five percent (75%) or more of the Floor Area of the Demised Premises for more than a seven hundred thirty (730) consecutive day period [not counting any days when business is not being conducted by reason of remodeling (provided the same is diligently pursued to completion and such period shall not be tolled more than fifteen (15) days in any three hundred sixty-five (365) consecutive day period), casualty, eminent, domain, war, governmental action or other similar events beyond Tenant's reasonable control], then, regardless of whether Tenant thereafter resumes its operations in the Demised Premises: (a) any and all exclusive use protections granted to Tenant pursuant to this Lease (including without limitation those provided to Tenant in this Article X.D.) shall immediately be null and void and of no further force or effect; and (b) items (xvii) and (xviii) set forth in Article X.C. (Retail Uses Only Provision of Lease) of this Lease shall be null and void and of no further force or effect.

X.E. Exceptions to Exclusive and Retail Uses.

Notwithstanding the provisions of Articles X.C. (*Retail Uses Only Provision of Lease*) and X.D. above, none of the restrictions set forth in Articles X.C. and X.D. shall apply:

(a) to any premises owned or controlled by Landlord or Landlord's successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord where:

(i) on the Effective Date, any portion of such premises is used for any of the purposes stated herein and Landlord discloses such use(s) in writing to Tenant prior to the Effective Date; or

(ii) any existing tenant as of the Effective Date has the right to change its use to any of such otherwise restricted or prohibited uses without Landlord's consent or where Landlord does not have the right to deny its consent;

(b) to any person or entity who may acquire the Shopping Center or any part thereof at any time during the Lease Term by foreclosure or deed in lieu of foreclosure and who, on the date of the transfer of ownership or qualified indicia of ownership of the Shopping Center, owns property on which there is an existing use that would violate Tenant's Exclusives had that

property were owned by Landlord, Landlord's successors and/or assigns, representatives, subsidiaries or affiliates;

(c) as to any Related Land, to any person or entity [other than Landlord, its successors, assigns, representatives, heirs, any person(s) or entity(ies) having a direct or indirect interest in Landlord, or any Wholly-Owned Subsidiary or Affiliate of Landlord] who owned, in whole or in part, the Related Land before acquiring an interest in all or any part of the Shopping Center; or

(d) any premises having a Floor Area of seventy-five thousand (75,000) square feet or more which is leased for use as a warehouse-type of retail establishment such as Sam's Club, BJ's, Costco, Target, Wal-Mart or a department store such as JCPenney or Sears which does not sell grocery or other items on Tenant's list of Exclusives as its primary business or source of income; provided however that notwithstanding the foregoing, no premises in the Shopping Center shall be leased for use by a large discount department or variety stores such as Super Wal-Mart, Super Target or other similar retailer.

Additionally, notwithstanding the provisions of Articles X.C. (Retail Uses Only Provision of Lease) and X.D. above: (x) Landlord shall have the right to lease shop spaces, not to exceed ~~2,400~~three thousand (3,000) square feet per store, located in the Shopping Center or within any Related Land to an ice cream or yogurt store (similar to a Bresslers or a TCBY), an "exclusive, upper-end" candy store, or a pizza restaurant or other type of restaurant facility selling prepared and precooked food ~~for "take-out" only;~~ and (y) Landlord may lease or sell the out-parcels located on **Exhibit "A"** to ~~a nationally known restaurant similar in operation to the restaurants listed below, provided such restaurants (1) are operating their businesses in the same manner as they operate as of the date of this Lease, (2) do~~any tenant for any use whatsoever, provided such use does not violate the restrictions described in Article Y.A. herein, ~~(3) only sell beer and wine for on-premises consumption ancillary to the sale of food products and such beer and wine sales do not exceed 50% of the business conducted therein, and (4) do not, without Tenant's prior written approval (which approval may be withheld in Tenant's sole and absolute discretion), sell alcoholic beverages other than beer and wine.~~

McDonald's

Hardees

Wendy's

Kentucky Fried Chicken

Pizza Hut

Churches Fried Chicken

Pizza Inn

Arby's

Burger King

Dairy Queen

Tastee Freeze

Taco Bell

Roy Rogers

Bojangles

Landlord acknowledges that in the event of a material breach of these covenants, Tenant's remedies at law would be inadequate and, in such event, Tenant shall be entitled, at its option, (i) to terminate this Lease, provided that Tenant shall have given Landlord ~~30~~ninety (90) days' prior written notice of its election to terminate this Lease, during which ~~30~~ninety (90) day period Landlord shall have the right ~~to cure such~~, but not the obligation, to nullify Tenant's termination of this Lease by curing such material breach of these covenants; or (ii) if Landlord does not cure the material breach of these covenants, to seek full and adequate relief by injunction, damages or otherwise. In addition to all of the other remedies provided above, at the request of Tenant, Landlord shall use ~~best~~commercially reasonable efforts to diligently pursue and exhaust any and all remedies available at law, in equity, or otherwise, against any tenant or occupant that violates the provisions of this Article X. Landlord and Tenant hereby agree that the terms of Articles X.C. (*Retail Uses Only Provision of Lease*), X.D. and this Article X.E. are material to the execution of this Lease and the performance of the parties' obligations hereunder and that negotiations with respect to rent and the other terms of this Lease have been based upon Landlord's representations to Tenant that there will be no other supermarket or similar store located in the Shopping Center or the Related Land. ~~Upon the request of Tenant, Landlord shall enter into the Declaration of Covenants, Conditions and Restrictions in the form attached hereto as Exhibit "E" in order to evidence the agreement of Landlord, and its successors and assigns, to abide by the terms and conditions of Articles X.C. (*Retail Uses Only Provision of Lease*), X.D., and X.E. of this Lease.~~ in violation of the foregoing.

Tenant hereby acknowledges the ~~following are~~leases of existing tenants in the Shopping Center ~~pursuant to executed lease agreements (the~~ and the permitted use provision(s) as at the

Effective Date are listed on Exhibit “J” (“Existing Tenant Leases”), and Tenant accepts the Existing Tenant Leases ~~set forth below~~ and the fact such tenants’ operations ~~and/or~~ permitted use clauses may violate one or more of the exclusives granted Tenant or any other restricted uses contained in this Article X; provided, however, that if Landlord has the legal right to prevent such, the existing permitted use clauses as set forth below may not be changed ~~without the prior written consent of Tenant. Furthermore, the tenants under those Existing Tenant Leases with an asterisk (*) beside their name may not be renewed, extended or assigned/subleased nor their existing space expanded without Tenant’s prior written consent, unless such applicable Existing Tenant Lease grants, as of the date of this Lease, the tenant thereof the right to renew, extend or assign/sublease such Existing Tenant Lease without Landlord’s~~ to any use that would violate the terms of this Lease without the prior written consent of Tenant. ~~The remaining Existing Tenant Leases may be replaced with like uses without Tenant’s prior written consent.~~

<u>Tenant</u>	<u>GLA</u>	<u>Lease Term</u>	<u>Existing Use Clause</u>

What Happens When You Are Sloppy – A Case Summary:

An exclusive use clause that does not contain express limitations as to time or product line can provide “open ended” protection for any changes tenant or tenant’s affiliate stores may undertake in their product line during the life of the lease.

Interstate Realty v. Sears, Roebuck & Co., 2009 WL 1286209 (U.S. Dist Ct. D. N.J. 4/27/09)
(*not approved for publication*)

In 1996, Sears negotiated for a long term lease of 42,000 square feet in Owner’s shopping center. The original (non binding) memorandum of understanding contained the following provision relating to exclusive use: “[f]or so long as Sears operates a Sears Hardware store, Landlord shall not lease to another tenant whose principal business is paint, hardware and/or lawn and garden supplies.”

When the final lease was signed, however, the language concerning exclusive use was pretty much the standard language Sears used in its leases (if it could get away with it):

The Demised Premises may be used by Tenant for the sale, servicing and storing of merchandise, all other items or services normally sold in Sears Hardware Stores, and all other lawful retail uses.

Landlord represents and warrants to Tenant that Landlord shall not lease any portion of the Entire Tract to any tenant who intends to use more than three hundred (300) square feet of its leased premises, in the aggregate, for the sale of certain items or services which would normally be sold in a “Sears Hardware Store,” [an exception expanded the permitted competing space for very large leases] Landlord represents and warrants that Landlord shall include a restrictive covenant in all future leases or amendments to leases relating to the Entire Tract which [sic] restricts all other tenants in the Entire Tract from using more than three hundred (300) square feet of leased premises, in the aggregate, [1000 square feet for larger leases] for the sale of items normally sold in “Sears Hardware Stores,” including, without limitation, the sale of hardware materials, tools and supplies, paint, plants, and power and non-power lawn and garden equipment, tools and supplies. In the event that any tenant at the Entire Tract shall engage in such sales in violation of the aforesaid exclusive use provision, then Landlord shall take all matters which are necessary in order to enforce for the benefit of Tenant such exclusive use provision, including, without limitation, the filing of any lawsuit at Landlord’s sole expense. . . .

In 1995, Sears Hardware Stores nationwide did not sell appliances such as stoves and refrigerators, but did sell outdoor grills. When the Sears store opened at Owner’s center, it also sold a range of hardware products and outdoor grills, but no appliances.

In 2004, Sears changed the name of its store in Owner’s center to Sears Hardware and Appliance store and commenced selling home appliances. This was consistent with a nationwide strategy relating to a number of Sears Hardware Store locations.

In 2006, pursuant to negotiations it was conducting with Karls, an appliance retailer, Owner asked Sears to sign a letter confirming that the sale of washers, dryers, refrigerators,

stoves, etc. did not conflict with Sears' exclusive rights clause. Owner had already asked Karls to agree to sign a covenant that it would not violate the terms of any exclusive rights clause in the center, and Karls obviously had questions about Sears' position.

Sears promptly processed the request, and apparently concluded that the sale of appliances did violate its exclusive. In fact 80% of the Sears Hardware stores in New Jersey had been converted to Sears Hardware and Appliance Stores. Although Karls primarily sold "high end" appliances, Sears elected to invoke what it felt were its rights under the clause, and refused to consent to the leasing to Karls. There was some discussion about limiting the "exclusive" prohibition to appliances that were not "high end" and more directly competed with the Sears line, but this did not appear to go anywhere.

Owner took the position that Sears no longer operated a Sears Hardware Store and had not exclusive rights, but if it did have such rights, they were limited to the product line at the original store as it existed in 2006. Karls reached agreement with Sears that Sears would seek declaratory relief and indemnify Karls if the court did not vindicate the Karls lease.

Sears argued the opposite extreme, contending that the Exclusive Use Clause gives it the exclusive right to sell whatever is normally sold in Sears stores, or even what is normally sold just at Owner's location, at the time in question - no matter whether the Sears stores are Sears Hardware Stores or have been changed to Sears Women's Shoe Stores.

While it was suing anyway, Owner elected to include counts for breach of the duty of good faith and fair dealing (an important issue in New Jersey), tortious interference with prospective economic advantage, and tortious interference with contract.

The court ruled that neither side was correct in its interpretation. It found that Sears was entitled to protection for any product line sold in Sears Hardware stores anywhere such stores might be located, and was not limited to protection of items sold on the Owner's premises. Further, the court ruled that there was no time restriction on the exclusive rights protection, so that Sears was free to change its product line and enjoy protection for the new product line throughout the life of the lease.

But, contrary to Sears' somewhat strained argument, the court ruled that Sears could not change the name of its store location and continue to enjoy protection for whatever products it decided to sell under the new name: "Sears is correct that nothing in the Sears Lease prevents it from changing the name of its store and the products it sells at Cedar Knolls, but it does not follow that the Exclusive Use Clause will expand to cover the products sold at its new store, unless those products are normally sold at Sears Hardware Stores generally . . . [Sears] does not have the exclusive right to sell appliances because it changed its store to a Sears Appliance and Hardware Store. Rather, the Sears location at [Owner's Center] still has exclusive rights to sell products normally sold at 'Sears Hardware Stores' all over the country, even though it is now a Sears Appliance and Hardware Store."

As to the tort claims, the court found that Sear's interpretation of its rights, although incorrect, "were not so unreasonable as to be malicious."

IRA MEISLIK - MODERATOR

Ira Meislik is a principal at the Montclair law firm of Meislik & Meislik. His practice is concentrated in two areas C Business Law and Commercial Real Estate Law.

Mr. Meislik=s business law practice covers general business, commercial, and transactional matters. In this area, he handles business formations, acquisitions, mergers, contracts, negotiation, and business counseling. Mr. Meislik=s commercial real estate practice focuses on the needs of landlords and tenants primarily within shopping centers and office properties. In addition to crafting space and ground leases, he has extensive experience in the acquisition, disposition, and financing of real property.

He a one of seven members of the Uniform Law Commission=s Joint Editorial Board (JEB) for Real Property Acts. The JEB is responsible for monitoring new real property developments which may have an impact on Uniform State Laws and for making recommendations to the National Conference of Commissioners on Uniform State Laws (NCCUSL) for drafting new, proposed state laws.

Mr. Meislik holds the highest “AV” rating in the Martindale-Hubbell Law Directory and has been selected as a New Jersey *Superlawyer*⁷ every year since 2005, and is selected for inclusion in The Best Lawyers of America[®]. He was named to the 2009 BTI Client Service All-Stars list as one of only 176 attorneys cited by Fortune 1000 companies as providing excellence in client service. He is one of a small number of attorneys in New Jersey who have achieved the status of a LEED[®] Accredited Professional.

He is a frequent speaker and writer in the areas of real estate, business entity selection, attorney ethics, limited liability entities, and unincorporated business associations. He is co-editor of, and contributor to, the just released second edition of the American Bar Association=s The Commercial Lease Formbook and is a contributor to its The Sublease and Assignment Deskbook and to other real property related books. He participated in the drafting of the Revised Uniform Partnership Act, the Revised Uniform Limited Partnership Act, and the Revised Uniform Limited Liability Company Act, each then promulgated by NCCUSL.

A Fellow of the American College of Real Estate Lawyers, Mr. Meislik is also a member of the American, New York, and Essex County Bar Associations, as well as of the International Conference of Shopping Centers. He currently serves as chair of the American Bar Association=s Ground Leasing Committee and is vice-chair of its Real Property, Trust and Estate Section=s Diversity Committee. He is past chair of its Joint Committee on Limited Liability Entities. In addition, Mr. Meislik is an immediate past member of the New Jersey State Bar Association=s Real Property, Trust and Estate Law Section=s Board of Consultors and has served as a vice-chair of the Business Law Section=s Board of Directors.

Mr. Meislik holds a B.S. degree in Mechanical Engineering and an M.S. degree in Industrial Management from Polytechnic University and a J.D. degree, cum laude, from Seton Hall University School of Law. He can be reached as follows: (973) 783-3000 (voice); (973) 744-5757 (telecopier); and at imeislik@meislik.com (email). His firm reviews and summarizes recent New Jersey business and real estate cases. They are available at: <http://www.meislik.com>.