

MODEL LEASE CLAUSE

Set Limits on Exclusive Use Given to Tenants

The following lease clause was drafted by Mary Beattie-Binder, senior portfolio counsel of General Growth Properties, Inc., Ohio attorney Abraham Lieberman, and Toronto attorney Stephen J. Messinger. Use it if a tenant demands that you give it an exclusive use right.

Paragraph a limits the remedy available to the tenant if you

violate the exclusive. Paragraph b lists important definitions that set out the scope of the exclusive. Paragraph c says the exclusive is voided if any one of the listed circumstances occur.

Show this clause to your attorney before putting it into your lease. **CLLI0036**

EXCLUSIVE USE

a. Exclusive Use Remedy

Notwithstanding anything contained herein to the contrary, if Landlord shall rent space in the [insert #] level of the Shopping Center in the crosshatched area shown on Exhibit [insert #] (the "Protected Area") to a Competing Business (as defined below) for the Exclusive Use (as defined below) during the [insert duration, e.g., first three years of the Term], then Tenant's sole and exclusive remedy shall be a reduction in monthly Minimum Rent to [insert agreed-upon rent reduction formula, e.g., Tenant pays a certain percentage of its minimum rent only] from the date Tenant notifies Landlord of such violation until such violation is cured. This remedy shall be exercised upon [insert #, e.g., 60] days' prior written notice that must be given to Landlord within [insert #, e.g., 30] days after the Competing Business opens for business in the Protected Area.

b. Definitions

- (i) "Exclusive Use" shall mean the operation of a [insert use].
- (ii) "Competing Business" shall mean a business not affiliated with Tenant that uses its premises in the Shopping Center primarily for the Exclusive Use; provided, however it shall exclude the following:
 - A. Any business occupying its premises directly or as an assignee, subtenant, licensee, or concessionaire under:
 - (1) A lease that was executed prior to the execution of this Lease but that is in effect as of the date of execution of this Lease (a "Prior Lease");
 - (2) A renewal or extension of a Prior Lease;
 - (3) A new lease that is executed by a business that leased or occupied premises in the Shopping Center directly or indirectly under a Prior Lease (a "New Lease"); or
 - (4) A renewal or extension of a New Lease;
 - B. If the premises currently occupied by [insert name of existing tenant] shall cease to be used primarily for the Exclusive Use, [insert #, e.g., 1] additional store (which may be located anywhere within the Shopping Center) containing a floor area not exceeding [insert square footage];
 - C. Any anchor, variety, or specialty store and any store containing a floor area in excess of [insert square footage];

- D. Any store containing a floor area less than [insert square footage];
- E. Any business which devotes less than [insert #]% of the sales area of such premises to the Exclusive Use or on an annual basis, less than [insert #]% of the gross sales from such premises are generated by the Exclusive Use; and
- F. Any business which engages in the Exclusive Use but is not specifically permitted to do so in its lease.

c. Exclusive Becomes Null and Void

This Paragraph shall automatically become null and void if:

- (i) Tenant defaults under any provision of this Lease, including but not limited to, the radius restriction set out in Clause [insert #] hereof;
- (ii) Tenant is not open and continuously, actively, and diligently using and occupying 100 percent of the Premises pursuant to the terms and conditions of this Lease;
- (iii) Tenant assigns its rights under this Lease in whole or in part or sublets all or any portion of the Premises;
- (iv) The Tenant's average monthly Gross Sales over [insert #, e.g., 6] consecutive months is an amount which is below \$[insert amount];
- (v) A sale of Tenant, a transfer of corporate shares of Tenant, or a transfer of any partnership (or limited liability company) interest of Tenant occurs that would entitle Landlord to terminate this Lease pursuant to Paragraph [insert #] herein (regardless of whether Landlord actually exercises such right to terminate);
- (vi) The Premises cease to be used primarily for the Exclusive Use; or
- (vii) Tenant fails to give Landlord the notice required by Paragraph a hereof within the time period provided therein.

d. Primary Use

The Premises shall not be deemed to be used primarily for the Exclusive Use unless:

- (i) More than [insert #]% of the sales area of the Premises is devoted to the Exclusive Use; and
- (ii) On an annual basis, more than [insert #]% of the gross sales from the Premises are generated by the Exclusive Use.