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Practice Area: Retail Real Estate

As commercial real estate professionals do their best to navigate through the ever changing world of retail leasing, there are a few key topics that both Landlords and Tenants should have on their radar screens during their upcoming retail lease negotiations. This *Update* identifies five key leasing issues that have become especially important in the current economic landscape.

1. **Exclusive Uses.** With more businesses competing for the same customers, exclusive use rights continue to be highly-negotiated. Landlords often focus their attention on defining the scope of the exclusive in a way that will satisfy the Tenant without completely eroding their leasing flexibility. Tenants are often most concerned with enforcement provisions and the remedies available in the event that their exclusive use rights are not being respected.
2. **Co-Tenancy.** It is no secret that Tenants often select locations based on the traffic driven by a center's other Tenants, so it should be no surprise that an increasing number of Tenants are looking for protections in the event that such high-profile Tenants close their doors. Landlords are justifiably reluctant to provide such protections, but may be able obtain some protection from the potential impact of these provisions by requesting the addition of a reasonable cure period.
3. **Assignment and Subletting.** While Landlords want to retain control over the assignment and subletting of their space, it is becoming increasingly important for Tenants to have certain flexibility in this regard. An assignment or sublet provision that includes a change of ownership as a triggering event could have serious implications on a Tenant looking to reorganize, form a subsidiary, or sell or merge their company. Tenants do not want to make business decisions of this kind based on the provisions of their lease and are often going to seek carve outs for these transactions.
4. **Insurance Provisions.** As natural disasters dominate the national news, Landlords and Tenants alike are turning their attention to the insurance provisions of their leases. Both sides will be looking to ensure that they are adequately protected in the event of damage or injury and it is extremely important for each party to be well versed in commercial insurance.
5. **Radius Restrictions.** Landlords want to protect their investments and one increasingly popular way of doing this is through the inclusion of radius restrictions. While Tenants want to be able to respond to market conditions by opening additional stores as they see fit, Landlords want to prevent the diversion of their customers by restricting a Tenant's right to open an additional store close to their center. The negotiation of these provisions often centers on the appropriate radius area and the remedies available for violation of these covenants.

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