



## Deep roots reach higher.

Developing deals, navigating complex regulatory hurdles, responding to disputes, growing an enterprise – experience the difference that law elevated makes.

REAL ESTATE PRACTICE GROUP | JULY 2014

## Otten Johnson Alert -

### Part I: Landlord's Perspective – Exclusive Use Provisions: The Devil is in the Details

It is not uncommon, especially in the retail context, for a tenant to request exclusive use rights in the negotiation of a lease. A tenant operating an ice cream parlor, for example, may want assurances that the landlord will not lease other space in the shopping center to other tenants who may also sell ice cream. This seemingly simple provision, however, may not prove to be so easy to implement in practice. A few key considerations when negotiating an exclusive use provision from the landlord's perspective include the following:

- A landlord should define the scope of the exclusive use as specifically as possible. Such specificity may provide the landlord with more flexibility as it negotiates future leases.
- A landlord should carve out incidental sales from the exclusive use provision. Using the ice cream parlor example, a landlord may not want to be obligated to restrict restaurants from offering ice cream as one of the many dessert items on its menu.
- A landlord should carve out existing leases from the exclusive use. Existing leases most likely do not restrict the tenants thereunder from violating the subsequent exclusive use, and, as such, the landlord may not be able to enforce the exclusive use against such existing tenants without amending the existing tenants' leases.
- A landlord should apply the exclusive use provision to only the portions of the shopping center controlled by the landlord from time to time. Such a carve out provides the landlord with flexibility to sell portions of the shopping center without having to rely upon its successor-in-interest to enforce the terms of the exclusive use.
- The landlord should make the terms of the exclusive use contingent upon the tenant operating its permitted use. Using the ice cream parlor example, if the tenant ceases to operate as an ice cream parlor, then the landlord may want flexibility to lease

AUTHOR:

[Stefanie L. Sommers](#)

Colorado Real Estate Blog—Otten Johnson hosts a blog about development, financing and other property news in Colorado. Our attorneys are posting information and commentary on legal issues and business developments related to the real estate industry in Colorado and the West. Check it out: [rockymountainrealestatelaw.com](http://rockymountainrealestatelaw.com).

Our lawyers are pleased to present timely, topical issue alerts on the latest legal developments, trends and other subjects of interest to our clients and colleagues. Otten Johnson publishes Otten Johnson Alerts on a monthly basis. If you do not wish to receive future Otten Johnson Alerts, you may unsubscribe by clicking the "opt out" link below. This Otten Johnson Alert has been prepared for informational purposes only and does not constitute legal advice or the opinion of Otten Johnson. Receipt of this summary does not create an attorney-client relationship between you and Otten Johnson. You should not act or rely on any information in this article without seeking the advice of an attorney. Otten Johnson provides legal advice only after being engaged to do so by a client with respect to particular facts and circumstances.

Click here to read our [full disclaimer](#).

Please visit our website: [ottenjohnson.com](http://ottenjohnson.com).

other space to other tenants who sell ice cream.

***Our Real Estate practice group has extensive experience representing business and real estate clients. For more information on this Alert or for help evaluating your current situation, contact any of the attorneys in the Real Estate practice group [\(click here\)](#).***

950 17TH STREET, SUITE 1600 | DENVER, CO 80202 | T 303.825.8400 | F 303.825.6525 | [ottenjohnson.com](http://ottenjohnson.com)