



Retail leases get more flexible, with escape clauses, other perks

BY DONNA MITCHELL

Retailers may discover that lease negotiations can be more agreeable than they ever imagined.

For one thing, landlords seem to be increasingly amenable to "escape" clauses that give retailers early lease-termination rights if they want to leave an unsatisfactory center.

Further, some landlords are letting highly sought-after retailers sign short-term leases just to try a center on for size.

Such trial leases are "the newest, smartest thing that landlords are doing," said Jeffrey H. Newman, chairman of the real estate department at Sills Cummis Epstein & Gross, a Newark, N.J.-based law firm. "The savviest landlords provide trial opportunities for [those] tenants that they seek, but who are unsure of the location."

This was the case when Charlotte, N.C.-based Hill Partners offered Chico's an 18-month lease in its open-air Barefoot Landing, Myrtle Beach, S.C., to give the apparel chain a chance to decide whether it might like to stay longer.

The other tenant-friendly option, the escape clause, requires both sides to agree up front on the early-termination terms.

At the Rookwood Commons and Pavilion, in Cincinnati, Ohio, that is how Abercrombie & Fitch and owner firm Jeffrey R. Anderson Real Estate ended a five-year relationship. Abercrombie signed an eight-to-10-year lease for two stores — Abercrombie & Fitch and Abercrombie Kids — with the understanding that the retailer could pull out at the five-year mark if the stores fared poorly.

These two devices are sure to appeal to retailers nervous about making a long-term commitment in a newly opened, untested shopping center, says Richard S. Friedman, a partner at Los Angeles-based law firm Hughes Hubbard & Reed.

Chico's, for example, was skeptical about leasing at Barefoot Landing because it saw Myrtle Beach as a tourist area with few affluent residents, says Robert H. Spratt Jr., CLS, president of Hill Partners. Spratt explained that the demographics were in fact

evolving and would become much like those of other Hill properties where Chico's was already leased. He pointed especially to the many new homes going up, homes that were making the community a lot more upscale.

After the 18-month trial period, Chico's saw things the same way as the landlord, and signed a long-term lease, relocating to a 5,000-square-foot unit elsewhere at the center and opening a 1,800-square-foot White House/Black Market store in the previous location.

For Abercrombie & Fitch and Jeffrey R. Anderson, an escape clause built into the lease at signing resulted in a different ending: Abercrombie shuttered its two stores at Rookwood Commons and Pavilion after just five years.

Anderson's director of leasing, Mark Fallon, says Abercrombie's departure was a "routine thinning of the herd." Rookwood Commons is fully occupied, he says, and has a waiting list for vacancies.

A spokesman for Abercrombie says some stronger business opportunities beckoned elsewhere, and this was the chain's reason for the decision to pull the stores.

Regardless of how the breakup was initiated, the escape clause allowed the parties to part amicably and to their mutual advantage. Anderson has already signed apparel chain New York & Co. to fill one of the empty Abercrombie stores, a move he says will cater to Rookwood's target tenant, mature and affluent women, which Abercrombie did not.

In any case, leasing experts say, it is difficult to remove a well-financed and desirable tenant such

as Abercrombie, especially in an open-air setting. The traditional kick-out is imposed on in-line regional mall tenants with insufficient sales to pay percentage rents. These tenants, the experts say, lack the corporate backing to negotiate on a better footing.

Consolidation among both tenants and landlords is a big reason more flexible lease structures are gaining in popularity, experts say.

"Landlords have always had clauses [addressing] their ability to relocate or terminate tenants," said Newman. But the issue got more sensitive after the retailer bankruptcies that sprang from the real estate market recession of the



Chico's got an 18-month lease to see if it liked Barefoot Landing, in Myrtle Beach, S.C. It did, and after the trial period, signed a long-term lease.

early 1990s. As landlords continue to buy landlords, tenants also face a smaller universe in which to negotiate.

Leases will continue to evolve along with the industry, experts say. Driving this will be trends such as the changing nature of the mall anchor, and landlords' need to be able to adjust a center's merchandise mix, especially as the changing face of retail forces them to redevelop their properties. ■