

*Creative Solutions is a bi-monthly column offering creative solutions to unusual problems in drafting leases for retail space. Please email your questions or problems you are encountering and your Creative Solutions to Glen Cornblath, gcornblath@ksc-law.com.*

This month's retail store has a customer base that is every property manager's nightmare: teenage and preteen boys arriving on skateboards, scooters and rollerblades. Once inside the store, the customers are carefully monitored and no problems arise. (The store may be an arcade or may sell skateboards or musical instruments.) But the landlord's concern is crowds of young kids loitering around the center on their way into or out of the store.

Most leases have general language prohibiting the tenant from causing disturbances in the common areas. However, this language is tied to the usual non-monetary notice and default provisions requiring at least 15 days notice before a default is declared. In addition, the landlord knows courts will be unlikely to terminate the lease under the general remedies provisions because of a "disturbance" in the common area when there is no monetary default. The tenant will also want a more tailored provision so it can have concrete objectives to meet in order to keep its lease at the center.

Here is a suggestion for a ten year lease:

1.1 During all hours that Tenant is operating in the Premises throughout the Term, Tenant shall establish and enforce rules and regulations against loitering, smoking, eating or drinking in the Premises and Tenant shall take measures to enforce said rules and regulations. In addition, Tenant shall take such reasonable actions as are necessary to prevent its customers and from loitering in the Common Areas of the Shopping Center. In the event Tenant's customers are disruptive (including, without limitation, because Tenant's patrons are loitering in the area adjacent to the Premises) (any such disruptive condition shall be referred to herein as a "*Problem Situation*"), Landlord shall notify Tenant by telephone to Tenant's store manager, with written notice to follow (a "*Disturbance Notice*") of such Problem Situation and Tenant shall take immediate steps to cure all Problem Situations identified in the Disturbance Notice, and in any event cure all identified Problem Situations within three (3) business days from receipt of such telephonic notice. If Tenant fails to cure all identified Problem Situations in a manner reasonably acceptable to Landlord within such three (3) business days, and regardless of whether or not Landlord has theretofore or concurrently exercised its right to require Tenant to hire a uniformed security guard as set forth in Section 1.2 below, such failure shall constitute a default hereunder without any additional notice from Landlord and without any additional opportunity for Tenant to cure such default, and Landlord may pursue any and all rights and remedies it has hereunder and at law and in equity.

1.2 If Landlord delivers more than two (2) Disturbance Notices per Lease Year, then concurrently with the third (3rd) Disturbance Notice, or at any time thereafter, Landlord shall have the right but not the obligation, upon ten (10) business days notice (which may be incorporated in the Disturbance Notice),

to have Tenant hire a uniformed security guard to be present at the Premises at such times as is necessary to cure said problems. In the event that Landlord believes, in its reasonable business judgment, that said problems have been cured and the security guard is no longer necessary, Landlord will so notify Tenant in writing and Tenant may dismiss the security guard, provided that if another Problem Situation arises thereafter (whether such Problem Situation involves the same problem or any other problem), regardless of whether such situation results in a default by Tenant under this Lease, Landlord shall again have the right, but not the obligation, on one (1) day's notice (a "*Rehire Notice*") (which Rehire Notice may be incorporated in the Disturbance Notice), to have Tenant hire a uniformed security guard again in accordance with this Section 1.2.

1.3 If Landlord delivers two (2) or more Disturbance Notices to Tenant during any Lease Year, or four (4) or more Disturbance Notices to Tenant during the Term, then even if all of the Problem Situations identified in such notices have been cured, in addition to all of its other rights and remedies hereunder, Landlord shall have the right, upon the occurrence of the second (2nd) or any subsequent Problem Situation during a Lease Year, or the fourth (4th) or any subsequent Problem Situation during the Term, in its sole discretion and at its option, to elect to terminate this Lease, in which event, Tenant shall cease operating in the Premises within twenty-four (24) hours of its receipt of the Landlord's Election Notice (as hereinafter defined) and this Lease shall terminate on the date (the "*Early Termination Date*") that is ten (10) days after the date that Tenant receives Landlord's Election Notice with the same force and effect as if this Lease by its terms was fixed to expire on said date. Landlord shall exercise its Election Right by delivering written notice of its election ("*Landlord's Election Notice*") to Tenant (which may be incorporated in the second (2nd) or any subsequent Disturbance Notice in any one Lease Year, or the fourth (4th) or subsequent Disturbance Notice during the Term, as the case may be) within thirty (30) days of the date Landlord delivers to Tenant the (2nd) or any subsequent Disturbance Notice in any one Lease Year, or the fourth (4th) or subsequent Disturbance Notice during the Term, as the case may be.

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