

In this Issue

- Retail Leasing ..... FEATURE 1
- LearningRx ..... RISING STAR 3
- Weber / Day ..... MEMBER PROFILES 5
- Membership ..... COMMITTEE CHAT 5
- RE Revolution ..... PROGRAM RECAP 6



**FEATURE**

Guest Authors: **Daniel A. Piper** and **Mary S. Ranum, Fredrikson & Byron**

# RETAIL LEASING

This article addresses select provisions that are often included in retail leases: operating covenants, exclusives, early termination rights, radius restrictions and permitted use clauses.

## OPERATING COVENANTS

An operating covenant is an affirmative obligation of a tenant to operate in a particular manner for a specific time period. Typical operating covenants include covenants to open, covenants to operate continuously, covenants to operate for certain hours, covenants to operate a particular business and covenants to operate under a particular trade name.

It is important to note that even if a lease does not expressly include an operating covenant, a court may infer such an obligation from other provisions within the document. For example, an operating covenant may be implied if the lease obligates a tenant to pay only percentage rent or percentage rent with a minimum rent that a court determines is inadequate. For this reason, a tenant should seek to eliminate provisions in the lease that may give rise to

an implied operating covenant and even to add explicit statements disclaiming the existence of a covenant. Landlords, on the other hand, will prefer that the lease be silent if no operating covenant is explicitly included.

## Landlord's Perspective

Landlords often seek operating covenants from anchor tenants to sell a project to other tenants. A landlord may need anchor tenants to meet co-tenancy requirements (discussed below) or may seek the operating covenant simply to increase traffic flow to the project.

Many landlords view the covenant to open as a fall back position if they cannot get a continuous operation provision from a tenant. Landlords can also rely on the fact that the tenant has invested a huge amount of money to open a store and is likely as a result of that investment to operate for a certain period of time even if the store is unprofitable.

If a tenant refuses to agree to continuously operate, a landlord will often require a recapture right. This right allows

**SNAPSHOT**

# CROSSROADS OF CHANHASSEN



**Location:** SWQ of the new Hwy 212 and Hwy 101  
**Month/Year Opened:** Kwik Trip is now open. Additional retail/restaurants projected to open Summer 2011.  
**Owner:** Kraus-Anderson, Incorporated  
**Developer:** Mike Korsh, Kraus-Anderson Realty Company  
**Leasing Agent:** Dave Stalsberg & Jim Stimmler Kraus-Anderson Realty Company; (952) 881-8166  
**Architect:** Architectural Consortium, LLC  
**Construction Contractor:** Kraus-Anderson  
**GLA:** Approximately 75,000 sf of freestanding and multi-tenant retail and professional/medical office space  
**Demographics:** 113,194 residents within a 5-mile radius with a median household income of \$123,925  
**Market Area Served:** Chanhassen, Chaska, Eden Prairie, Victoria, Shakopee, Minnetonka  
**Additional Facts/Narrative:** New development, now pre-leasing, along the new Hwy 212 at Hwy 101. Located across from the SW Transit Park & Ride and near the recently opened Chanhassen High School. BTS opportunities and pad sites available for sale. Fantastic median household incomes.

## Retail Leasing - continued

the landlord to terminate the lease if the tenant goes dark, which addresses the landlord's underlying desire to control space that is no longer operational.

### Tenant's Perspective

To maintain flexibility, tenants will resist operating covenants and any other attempt to control or restrict the tenant's business. Because of the risk that an operating covenant might be implied, a tenant should seek to have the issue of operating covenants specifically addressed in the lease. If a tenant must agree to an operating covenant, the duration should be for as short a time as possible, and appropriate carve-outs (e.g. holidays, alterations, casualty, etc.) should be made.

A tenant should be hesitant to agree to operate its store in any particular manner, because the tenant needs flexibility to adapt the way the business is run at any particular store. As a compromise, a tenant with multiple locations may agree to operate in a manner comparable to a majority of its other stores.

If a recapture right is included in lieu of an operating covenant, a tenant will want to ensure that it is given some time after going dark and prior to landlord's recapture rights so that the tenant can attempt to assign the lease or sublease the premises and recoup a portion of its investment in the premises.

### EXCLUSIVES

An exclusive is the right of a tenant to operate a specific type of store or sell specific items to the exclusion of the other tenants of a project. If an exclusive is included in the lease, it is important to both the landlord and the tenant that the agreement be specific about: 1) what the exclusive covers (e.g. the tenant's primary business); 2) the land subject to the exclusive; 3) the duration of the exclusive; and 4) whether the exclusive can be terminated, and if so, how it can be terminated (e.g. upon a change in the tenant's use of the premises).

### Landlord's Perspective

To maintain maximum flexibility some large landlords take the position that they will not grant any exclusive rights at all. If a landlord does grant exclusives, it should proceed with caution. An overly broad exclusive may keep a landlord from leasing space to an attractive tenant that only marginally competes with an existing tenant. Landlords should exclude "incidental" sales of exclusive items by certain tenants. Landlords should also attempt to exclude

small tenants from the coverage of the exclusive on the theory that small spaces can be the most difficult to lease and should not pose a competitive threat to a larger tenant. Landlords also commonly seek to exempt anchor tenants.

Exclusives can be difficult for a landlord to administer. To successfully administer exclusives, an exclusive should not apply to existing tenants. The theory is that an existing lease was not drafted with a future exclusive in mind and the vague wording of the existing lease may allow the existing tenant to engage in an activity protected by an exclusive. To avoid disputes, landlords should also attach a schedule of exclusives to all leases that uses the exact language of the lease containing the exclusive.

Landlords should attempt to limit a tenant's remedy upon violation of an exclusive to an action for an injunction to stop the violating use. Landlords should also be sure that the exclusive is terminated if the tenant ceases business operations or if the tenant changes its specific business operation.

### Tenant's Perspective

A tenant's primary concern is to ensure that a landlord will enforce the exclusive. Language in a lease that prevents a landlord from leasing to other tenants who would violate the exclusive is not enough. It is important for a tenant to secure the ability to abate rent, terminate the lease or otherwise seek the right to enforce the landlord's default remedies against a breaching tenant.

### CO-TENANCY RIGHTS

A co-tenancy provision gives tenants certain rights if a particular tenant or percentage of tenants do not open and/or remain open. A violation of this provision often allows a tenant to terminate the lease or go dark until the particular tenant is operating again. Other remedies include abatement of minimum rent and payment of percentage rent only until the co-tenancy requirements are achieved.

### Landlord's Perspective

Landlords are reluctant to grant co-tenancy rights for fear that the loss of one tenant may create a domino effect. Also, a lender may refuse to finance a retail project containing an excessive number of co-tenancy rights. A landlord who grants co-tenancy rights should seek an opportunity to find a comparable replacement tenant and should seek to limit the remedies available to a tenant (e.g. rent reduction rather than termination).

continued on page 7 →

## 2010 SPONSORS

ACI Asphalt Contractors, Inc.  
American Engineering Testing, Inc.  
Aspen Waste Systems, Inc.  
Bremer Bank, N.A.  
Brookfield Properties  
CB Richard Ellis  
CSM Corporation  
Chuck & Don's Pet Food Outlet  
Classic Asphalt & Sealcoating Co. Inc.  
Faegre & Benson LLP  
Fendler Patterson Construction, Inc.  
Fredrikson & Byron, P.A.  
Gray Plant Mooty  
Great Clips, Inc.  
H.J. Development, Inc.  
Inland Real Estate Corporation  
JE Dunn Construction  
Jones Lang LaSalle  
Kraus-Anderson Companies  
Larkin Hoffman Daly & Lindgren Ltd.  
Lawn Ranger  
Leonard, Street and Deinard  
M & I Bank  
MFRA, Inc.  
Messerli & Kramer P.A.  
Mid-America Real Estate -  
Minnesota LLC  
Midwest Maintenance &  
Mechanical, Inc.  
Minneapolis/St. Paul Business  
Journal  
Minnesota Real Estate Journal  
NorthMarq  
Olsson Associates  
Oppidan, Inc.  
Opus Northwest, L.L.C.  
Paster Enterprises  
RJM Construction  
RLK Incorporated  
RSM McGladrey, Inc.  
Reliable Property Services  
Reliance Development Company, LLP  
Robert Muir Company  
Robins, Kaplan, Miller & Ciresi L.L.P.  
Ryan Companies US, Inc.  
Solomon Real Estate Group Inc.  
Stewart Title Guaranty Company  
Sunde Land Surveying, LLC  
TCF Bank  
TCI Architects/Engineers/  
Contractor, Inc.  
Target Corporation  
U.S. Bank  
United Properties  
Venture Mortgage Corporation  
Wells Fargo Bank, N.A.  
Welsh Companies  
Westwood Professional Services, Inc.  
Wipfli LLP

## FEATURED SPONSORS

### H.J. Development, Inc.

At H.J. Development, we strive to maintain our goal of superb performance in retail development, management, and investments resulting in successful, long-term ownership.

### Opus Northwest LLC

To be the most respected full service real estate company in North America. Our leading reputation will set an example for others to follow.

### Solomon Real Estate Group Inc.

To develop a variety of properties that effectively meet the needs of our clients and the communities they serve.

### Sunde Land Surveying, LLC

The vision of Sunde Land Surveying, LLC is to provide a quality service based on our knowledge, experience and determination of striving for excellence while maintaining the highest regard for the needs of our clients.

### Wells Fargo Bank, N.A.

To be a premier, nationwide provider of financial services to middle-market real estate developers, investors and builders, to satisfy all of our customer's financial needs, help them succeed financially, and be known as one of America's great companies.

### Welsh Companies

To be the preeminent real estate service provider/investor in the Midwestern United States.

## SMALL TALK



## BOOKMARK: GEARING UP FOR AUTUMN

Summer is fading, but the change of seasons gives us all an opportunity to get back into the routine of a fall reading schedule. Check out these reads for some great nuggets of business knowledge.

**It's Not Just Who You Know: Transform Your Life (and Your Organization) by Turning Colleagues and Contacts into Lasting, Genuine Relationships.** (Hardcover), Tommy Spaulding; Crown Business; August 10, 2010. To be successful today, leaders need more than an impressive title and superficial "friends" in high places. They need to be able to do some basic things—build partnerships, share leadership, and develop and empower people—to name just a critical few. The challenge is that none of these are possible if people don't trust or believe in their leaders. In the bestselling tradition of Dale Carnegie's classic, *It's Not Just Who You Know* shows how each and every one of us can use the power of netgiving—of helping others—to expand our world and achieve our goals, and make a difference in our job, our career, and our community.

**Good to Great: Why Some Companies Make the Leap... and Others Don't** (Hardcover), Jim Collins; HarperBusiness October 16, 2001. Collins and his team of researchers began their quest by sorting through a list of 1,435 companies, looking for those that made substantial improvements in their performance over time. They finally settled on eleven—including Fannie Mae, Gillette, Walgreens, and Wells Fargo—and discovered common traits that challenged many of the conventional notions of corporate success.

**Leading at a Higher Level, Revised and Expanded Edition: Blanchard on Leadership and Creating High Performing Organizations** (Softcover) Grant Wahl; Three Rivers Press; June 1, 2010. From *The One Minute Manager* - to *Raving Fans*, Ken Blanchard's books have helped millions of people unleash their power and the potential of everyone around them. The Ken Blanchard Companies has helped thousands of organizations become more people oriented, customer centered, and performance driven.

Have a reading recommendation? Contact Christopher Max Naumann at [christopher@christophermax.org](mailto:christopher@christophermax.org) or Judy Lawrence at [jlawrence@karealty.com](mailto:jlawrence@karealty.com).

## RISING STAR by Judy Lawrence, Kraus-Anderson Realty Company

My younger brother had a learning problem. I don't know, yet today, if it was more difficult on my brother for not being able to learn or my mother who was unable to "make" him learn. If only we had had LearningRx back then.

According to its marketing material, "LearningRx is a training center that offers unique programs that dramatically enhance learning ability and helps struggling students overcome frustrating learning and reading problems in as little as 12 to 24 weeks. The unique power of LearningRx is our focus on cognitive skills testing and individualized one-on-one learning-skill training."

I found it enlightening to read that the struggle to learn is a symptom rather than a diagnosis. The testing is designed to uncover the causes of the struggle. Once identified, LearningRx will develop a learning program to target learning weaknesses and strengthen the student's cognitive arsenal. Some of those skills include auditory processing, visual processing, memory, processing speed, attention, logic and reasoning.

Put another way, these training centers differ from traditional tutoring by teaching "how" to learn rather than "what" to learn. Once you know how to learn, you will be empowered to learn faster and easier. The Brain Training model has a number of applications from basic skills to Alzheimer's prevention.

There are currently a number of centers in the Twin Cities including Chanhassen, Eagan and Maple Grove.

[www.LearningRx.com](http://www.LearningRx.com)

LEARNINGRX

LearningRx

## EVENTS

- Sep 16 **Third Thursdays Networking**
- Oct 6 **Professional Development**
- Oct 21 **Third Thursdays Networking**
- Nov 3 **Retail Report Program**  
(afternoon program)
- Nov 18 **Third Thursdays Networking**
- Dec 7 **Year-End Ceremonies, STARR<sup>SM</sup> Awards**  
(afternoon/evening)

For more info, please log on to  
[www.msca-online.com](http://www.msca-online.com)

## 2010 LEADERSHIP

### OFFICERS

#### President

**Stephen Egger**, Target Corporation

#### 1st Vice President

**Peter Berrie**, Faegre & Benson LLP

#### 2nd Vice President

**Paula Mueller**, Northtown Mall/Glimcher Properties

#### Treasurer

**Eric Bjelland**, NorthMarq

#### Secretary

**Deb Carlson**, Cushman & Wakefield of Minnesota, Inc.

### DIRECTORS

**Dana Andresen**, Chuck & Don's Pet Food Outlet

**John Dietrich**, RLK Incorporated

**Steve Johnson**, Solomon Real Estate Group Inc.

**Andy McDermott**, Shea, Inc.

**Tricia Pitchford**, NorthMarq

**Ronn Thomas**, NorthMarq

**Jeff Wurst**, Caribou Coffee Company, Inc.

**Immediate Past President** (as Director):

**Cindy MacDonald**, Kraus-Anderson Companies

### COMMITTEE CHAIRS

#### Program

**Barry Brothlund**, InSite Commercial Real Estate, Inc.

**Tom Goodrum**, MFRA, Inc.

#### Membership

**Brad Kaplan**, NorthMarq

**Matt Parten**, Doran Companies

#### Newsletter

**Andy McDermott**, Shea, Inc.

**JoAnn Maloney**, Fredrikson & Byron, P.A.

#### Awards

**Steve Young**, Arbor Commercial Group

**Tony Barranco**, Ryan Companies US, Inc.

#### Legislative

**Howard Paster**, Paster Enterprises

**Jack Amdal**, KKE Architects, Inc.

#### Retail Report

**Janet Goossens**, Kraus-Anderson Companies

**Jim Mayland**, Cassidy Turley

#### Technology

**Tom Madsen**, Benson-Orth Associates, Inc.

**Jase Slumph**, LS Black Constructors, Inc.

#### Golf

**Rick Schroeder**, Robert Muir Company

**Ryan Burke**, Kraus-Anderson Companies

#### Sponsorship

**Janele Tavoggia**, LEO A DALY

**Ned Rukavina**, NorthMarq

#### MSCA Cares

**Stefanie Meyer**, Mid-America Real Estate - Minnesota LLC

**Jesseka Doherty**, Mid-America Real Estate - Minnesota LLC

### STAFF

#### Executive Director

**Karla Keller Torp**

(P) 952-888-3490 (C) 952-292-2414 (F) 952-888-0000

[ktorp@msca-online.com](mailto:ktorp@msca-online.com)

#### Associate Director

**Stacey Bonine**

(P) 952-888-3491 (C) 952-292-2414 (F) 952-888-0000

[sbonine@msca-online.com](mailto:sbonine@msca-online.com)

#### Executive Assistant

**Danielle Pelton**

(P) 952-345-0452 (F) 952-888-0000

[dpelton@msca-online.com](mailto:dpelton@msca-online.com)

## MN MARKETPLACE

**Franklin Street Bakery** has opened a second location near 44th and France, next to the Convention Grill.

**Pizza Lucé** opened on August 9 in Hopkins and offers breakfast, brunch and their well known menu of gourmet pizza, pasta, hoagies and salads.

Now open at MSP airport, just beyond security checkpoint 2 is

**Surdyk's Flight**. The Northeast Minneapolis-based liquor store's Terminal 1 location has an eat-in cafe and mini-version of the NE wine/gourmet shop, making it a huge boon for gift buying, as well as in-house and grab-and-go dining.

**Sauce Pizza** has opened at the Shops at West End. The first location of this Arizona-based franchise offers thin crust pizza.

**Ace Hardware** is now open in downtown Chaska next to Cooper's County Market. In addition to general hardware store-type merchandise, Ace Hardware will feature a gourmet cooking section.

**Toby Keith's I Love This Bar and Grill** is now open at Shops at West End, St. Louis Park, featuring down home cooking and live high energy bands.

**Five Guys** has opened in Rochester. Its new north side location is on 41st Street NW near Target.

**Spruce Flowers and Home** opened this summer at 4751 Chicago Avenue, Minneapolis. The store features mostly locally sourced flowers, gifts and home décor items.

**Style Minneapolis**, a unique concept combining antiques, repurposed treasures, vintage jewelry and more, is open at 4501 Nicollet Avenue S., Minneapolis.

**Marshalls** in the HUB Shopping Mall, Richfield, is one of six Marshalls stores that has been specially redesigned by the company this summer.

**Walgreens** has opened up a new store in Roseville on the southwest corner of Co. Rd C and Rice Street. The 14,820 sf store with a new drive-thru and an expanded new parking lot replaced an existing Walgreens store on the site.

**Total Hockey** has opened a 6,000 sf store in the Maplewood Town Center located at I-694 and White Bear Avenue in Maplewood. This is their first location in the Twin Cities. A second location will open later this fall in Minnetonka.

Design is complete on **Cocina del Barrio**, and construction is beginning on the third installment of the wildly popular taco and tequila joint at 50th and France in Edina, which is set to open this fall.

### ROSEDALE CENTER

PANDORA • BRIGHTON COLLECTIBLES  
BARE ESSENTUALS • HOT MAMA  
FRANCESCA'S COLLECTIONS • FOSSIL  
CALIFORNIA PIZZA KITCHEN

CARTER'S (NOW OPEN)

Opening Fall 2010

Forever 21

Marbles the Brain Store

Rosedale Center; 160 retailers, 7 full-service restaurants,  
AMC Theatre featuring 14-screens and IMAX.  
[www.myrosedale.com](http://www.myrosedale.com)



# WATCH

## MEMBER PROFILES

### Cindy Weber

Engelsma Construction, Inc.



**Primary Career Focus:** Creating and preserving client relationships

**Hometown:** Rogers, MN

**Education:** St. Cloud State University

**Family:** Boyfriend, Chad and a very energetic yellow lab, Kobi

**Hobbies:** Running, biking, yoga, hiking, cooking and baking

**Very First Job:** Waitress

**Dream Job:** Professional baker or runner (perhaps both simultaneously to offset one another!)

**Secret Talent:** The ability to fill up my social calendar for an entire year in the blink of an eye; it drives my loved ones crazy, which is half the fun.

**Favorite Quote:** "There is no telling how many miles you will have to run when chasing a dream." ~ unknown

**Mentors:** Energetic, motivated individuals who don't settle for second best

**Favorite Place Traveled:** NYC, Sonoma Valley, and anywhere along the coast

**MSCA Involvement:** Golf Committee

### Steve Day

J.L. Sullivan Construction, Inc.



**Primary Career Focus:** Construction Project Management

**Hometown:** Cedar Rapids, IA

**Education:** BS – Construction Engineering, Iowa State University

**Family:** Wife, Andrea and kids, Alex and Karina

**Hobbies:** Golf, softball, camping, attending sporting events

**Dream Job:** Working for a professional sport franchise

**Secret Talent:** Scrabble

**Favorite Food:** Anything on the breakfast menu

**Favorite Book:** All the President's Men

**Favorite Quote:** "If we don't take care of the customer...somebody else will."

**Favorite Place Traveled:** Fiji

**MSCA Involvement:** Membership Committee

## NEW MEMBERS

### Eric S. Anderson

Fredrikson & Byron, P.A.

### Erik DeWitt

Roof-to-Deck

### Jim Volp

Coldwell Banker  
Commercial Griffin  
Companies

### Jenny Johnson

Jones Lang LaSalle

### Anne Kreiser

Lawn Ranger

## MEMBER NEWS

**DLR Group Acquires KKE.** DLR Group and KKE Architects announced that DLR Group has acquired Minneapolis-based design firm KKE Architects. In Minneapolis, the offices of DLR Group and KKE will merge to operate as DLR Group KKE from DLR Group's downtown office location.

**Welsh Named One of "Best Places to Work."** The Minneapolis St. Paul Business Journal has selected Welsh as one of the "Best Places to Work" in the Twin Cities for the second consecutive year.

## COMMITTEE CHAT

By **Brad Kaplan, Northmarq and Matt Parten, Doran Companies**

The MSCA Membership Committee has been hard at work on brainstorming new ideas to bring additional value and networking to MSCA.

## MEMBERSHIP

1) **Honorary and Transitional memberships** were implemented this year. The Honorary membership was created for those MSCA members who have achieved retirement and allows seasoned professionals to stay involved with MSCA. The Transitional membership fulfills a need to assist members who've been affected by increased unemployment in this troubled economy. MSCA offers displaced workers an opportunity to stay involved through their transitional period.

2) **Third Thursdays** coffee networking events were introduced in June 2010 as a causal networking opportunity hosted throughout the Twin Cities by region.

3) **Post monthly program networking** has been a growing trend and our goal is to make the MSCA October 6 program the largest gathering yet. Join us for the monthly program and stay for the networking after. Reacquaint yourself with an old friend or get to know new friends. It's not what you know but who you know.

MSCA continues to be a strong real estate association due to our dedicated members. The Membership Committee will continue to generate new ideas in order to provide added value. We welcome any idea you'd like to share!

## "THIRD THURSDAYS"

September 16, 2010  
Caribou Coffee

Eden Prairie Transit Station  
Eden Prairie 55344

Hosts: **Cindy MacDonald, Kraus-Anderson Companies** and **Matt Parten, Doran Companies**

## REAL ESTATE REVOLUTION: SUCCESS STRATEGIES FOR ALL CENTER SIZES

The MSCA program on Wednesday, August 4, entitled The Retail Real Estate Revolution: Success Strategies For All Center Sizes, focused on strategizing ideas for future growth and overall success in all shopping center sizes and dynamics. Panelists included Holly Rome, Mall of America (MOA), Paula Mueller, Northtown Mall/Glimcher Properties, and Howard Paster, Paster Enterprises.

Howard Paster opened the program with a glimpse inside Paster Enterprises, a family owned Twin Cities management, ownership and leasing company that focuses on creating shopping centers as the community focal point, such as Mendota Plaza, which is currently under renovation.

What types of strategies does Paster Enterprises incorporate into its small shopping centers? With 70% of its tenants being "mom and pop" tenants, Paster Enterprises encourages success through grand openings for all tenants while zeroing in on value and convenience. Paster also noted the importance of being realistic about the rise in vacancy, knowing that you may have to accept a B-type tenant in an A-type property for the same or even less rent, yet limiting rent concessions to only those who can make a strong business case and have already tried all alternatives, marketing, etc. to improve the business condition.

Next, Paula discussed the renovation of Northtown Mall. For this mid-size mall, Glimcher's strategies for success include: anticipating any changes that may need to be addressed in the future by planning projects 5 years out or as funding comes up and focusing that funding towards the leasing effort and those items that will help their tenants achieve success for the long haul. At the same time, it's important for landlords and tenants to have "equal skin in the game." If tenant improvement allowances are agreed to, they should benefit both the tenant and the shopping center. In addition, letters of intent can take over a year or more, and while some go away, it's important to continue to work closely with potential tenants to be ready once they're ready.



August presenters: I to r  
**Paula Mueller**, Northtown Mall/Glimcher Properties  
**Bruce Carlson**, moderator, Mid-America Real Estate – Minnesota LLC  
**Holly Rome**, Mall of America  
Not pictured: Howard Paster, Paster Enterprises

Holly followed with MOA's insight into what it takes to operate this giant retail hub. With sales up 9.0% and traffic up 4.7% in 2009, the MOA has built its success in part by hosting a tourism department onsite. This department offers over 70 different tourism packages to over 30 different countries, and hosts 400 events with 100 celebrity appearances, contributing an extra \$400 million in revenue in 2009 for the mall.

In addition, to ensure the success of its tenants, MOA likes to "cluster" tenants by placing them next to other tenants where they will be the most successful through merchandising based on where customers like to shop (restaurants by restaurants, high end stores by other high-end stores, juniors by juniors, etc.)

Whether you're that retail giant or the little guy, this month's program had something for everyone.

### SMALL TALK

#### WEBSITES: CHANGING SEASONS

As summer winds down, the active Fall season is moving into full spin! Check out these links for various fall activities resources in Minnesota.

[www.exploreminnesota.com](http://www.exploreminnesota.com)

[www.yelp.com/events/minneapolis](http://www.yelp.com/events/minneapolis)

<http://festivalnet.com/state/minnesota/mn.html>

[www.ci.minneapolis.mn.us/visitors/](http://www.ci.minneapolis.mn.us/visitors/)

### AUGUST PROFESSIONAL SHOWCASE



#### Reliable Property Services

Reliable Property Services year round provider of exterior services, specializing in snow and ice removal serving small retail sites to the largest corporate customers.

### SMALL TALK

#### YOUR MSCA WEBSITE TIP: REFER POTENTIAL MEMBERS

Do you know someone who can benefit from networking with over 650 retail real estate industry leaders? Then referring them to MSCA will be the easiest task you have done this year. In this ever-changing environment and economic times, we need to continue to build relationships by supporting our colleagues. Please consider referring one person to MSCA, its fast and easy to do.

#### How to refer a potential member:

Visit [msca-online.com](http://msca-online.com), login with your ID and password, and click **Resources**. From this page you will see the referrals tab on the far right of your screen. Click the tab and provide the name, company, phone number and email address of the potential member and the amazing staff at MSCA will take care of the rest.

## Retail Leasing - continued

### Tenant's Perspective

Some tenants cannot successfully operate at retail projects without the traffic generated by a particular anchor tenant. These tenants should insist upon termination rights in the event the co-tenancy requirements are not met.

### RADIUS RESTRICTIONS

A radius restriction prevents a tenant from operating a similar business within a defined radius. The restrictions are typically required by a landlord whenever a tenant is paying percentage rent. It is important for both parties that the restricted area bear some relationship to the business restricted. Landlords must be cautious because unusually large restricted areas may be unenforceable.

### Landlord's Perspective

A landlord's goal is to avoid a reduction in percentage rent revenues caused by a tenant's operation of another store in close proximity to the premises. A landlord should attempt to include sales from the other location in the percentage rent calculation for the store in the project. An aggressive landlord may even require a radius restriction for non-percentage rent tenants in an attempt to increase customer traffic.

### Tenant's Perspective

A tenant will want to limit the application of the restriction to as small an area as possible and to the same business under

the same trade name on the theory that a different business will not compete with the other business.

### PERMITTED USE

A permitted use provision defines the business operations that may be conducted at the premises.

### Landlord's Perspective

A landlord will want to maintain control over the uses allowed in a retail project. The permitted use provision allows a landlord to control the types of businesses that are operated at the premises, and avoid uses that could decrease the value of the property (e.g. the use of hazardous substances) or make the retail project less attractive to other potential tenants.

### Tenant's Perspective

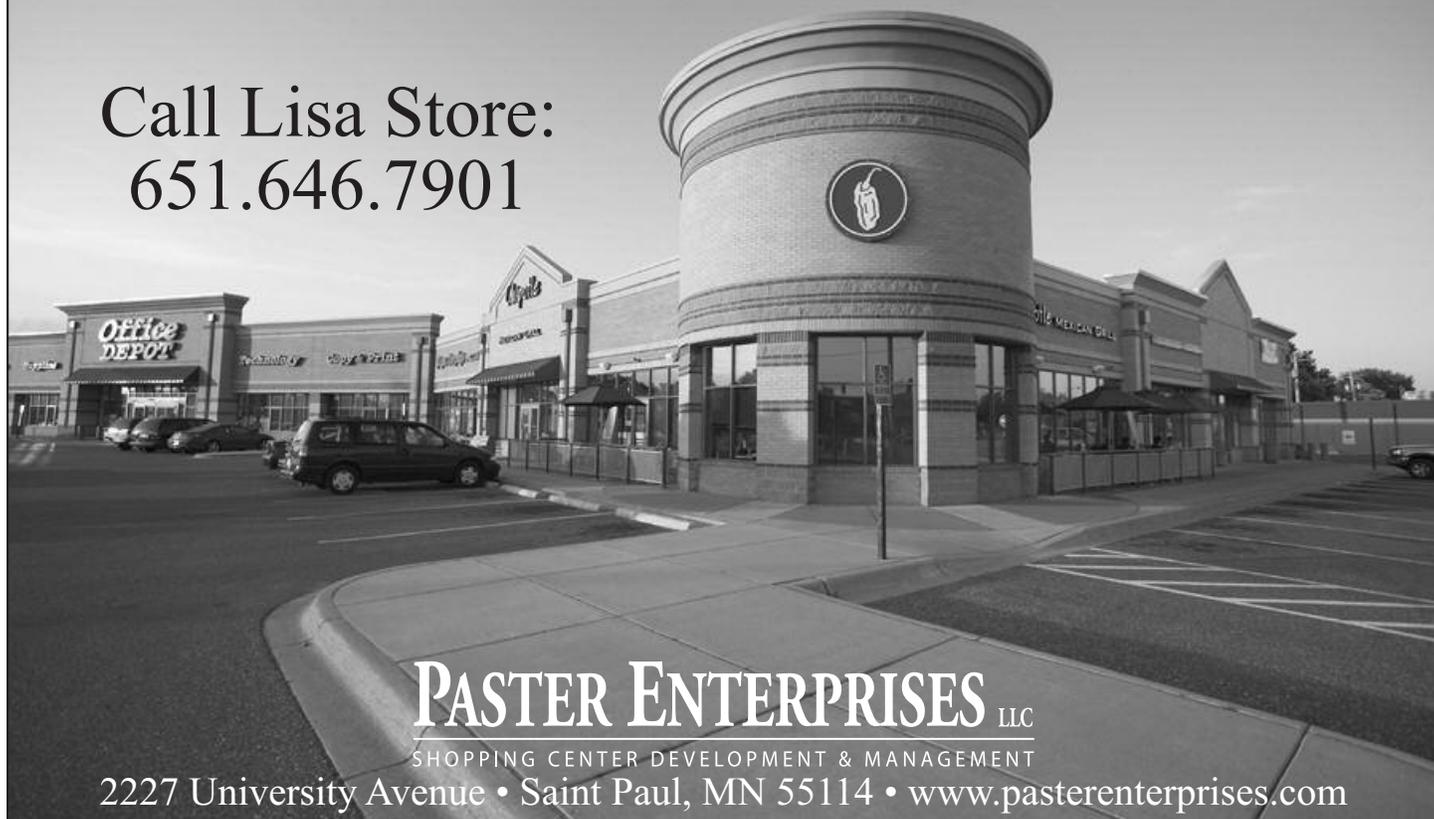
A narrow permitted use provision has the effect of limiting a tenant's ability to evolve and change the character of its business over time and to assign or sublet in the future. To provide flexibility for future changes, a tenant should seek as broad a permitted use clause as possible.

### CONCLUSION

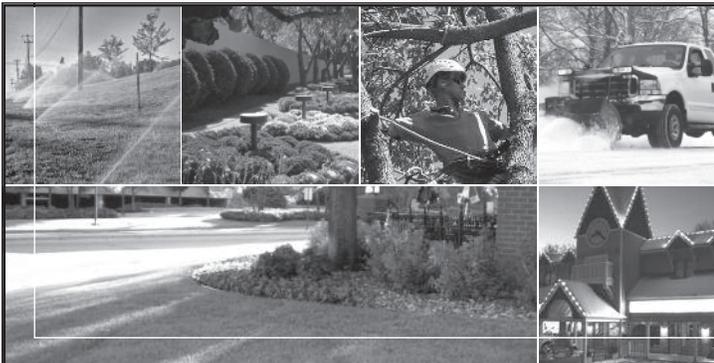
Negotiating the provisions of a retail lease agreement can be tricky, due to the competing interests of landlords and tenants. For additional insight on how such negotiations might be resolved in your favor, please contact your lawyer.

DEDICATED TO PROVIDING NEEDED GOODS AND SERVICES TO COMMUNITIES SINCE 1946

Call Lisa Store:  
651.646.7901



**PASTER ENTERPRISES** LLC  
SHOPPING CENTER DEVELOPMENT & MANAGEMENT  
2227 University Avenue • Saint Paul, MN 55114 • [www.pasterenterprises.com](http://www.pasterenterprises.com)



## Your One Source for Outdoor Services

At Lawn Ranger, we emphasize personal service and provide high-quality work at competitive prices. Our certified landscape architects, designers, ISA-certified horticulturists, irrigation specialists and service professionals are ready to handle your outdoor service needs. We offer:

- Landscape Design and Development
- Grounds Maintenance
- Tree and Plant Healthcare
- Irrigation Systems
- Snow and Ice Management
- Holiday Lighting and Décor



**phone:** 952-937-6076    **fax:** 952-937-6008  
**e-mail:** info@lawnrangermn.com    **web:** www.lawnrangermn.com

We're **not** a  
different company.

Just a better looking one.

(re) Introducing

**mfra**  
 innovation beyond design

Consultants focused on  
 service, quality and innovation.

[www.mfra.com](http://www.mfra.com) (763) 476.6010

engineering surveying planning energy

MINNESOTA SHOPPING

CENTER ASSOCIATION

8120 Penn Avenue South, Suite 464, Bloomington, MN 55431



FIRST-CLASS MAIL  
 U.S. POSTAGE  
 PAID  
 MINNEAPOLIS, MN  
 PERMIT NO. 27334