

Restaurant Leases

Like Money In The Bank

As an independent restaurant operator, you will not own any more valuable asset than the lease for your real estate and building. Your lease is the legal protection that secures your investment in leasehold improvements, furniture, fixtures, equipment, and most importantly, goodwill.

A good lease may also be the only genuine form of long-term financing a restaurant operator will ever receive. Your lease is the ultimate measure of the value for your business. When you sell your restaurant, you are really selling your lease.

Partnership

Landlords and developers are not the enemy. They are risk takers, providing "patient" capital for up to 20 years, and sometimes longer. They also understand the risk-reward dimension of a lease and expect to share in a restaurant's financial success. A lease is a joint-venture partnership and should be approached accordingly.

Leading Attractions

A successful restaurant lends high public visibility to real estate that greatly enhances property values. City planners and lenders are beginning to realize that an economically viable office complex, shopping center, or industrial park must feature a certain amount of space designed solely for food service. It's not just common sense; it's a sound business practice.

Caveat Emptor

You should read and thoroughly understand every clause, paragraph, footnote, annex, and provision contained in the lease. It your most valuable asset. It may be your salvation. And often, when the time comes, it's all you've got to sell.

Caveat Lessor

A successful restaurant lease negotiation means having an appreciation of the risk as it is viewed by your landlord. But never apologize for the presence of risk—it is the driving force behind any business negotiation.

Fly With The Pros

An affordable lease is the cornerstone of a profitable restaurant. You should consider having a professional restaurant consultant assist in representing your interests in any lease negotiation. Such specialists pay for themselves many times over. When buying a restaurant and assuming an existing lease, these specialists may save big dollars by bringing issues to light that may convince you that the deal itself is not economically viable.

Finally, you must have the ultimate control; the consultant or attorney is the navigator, but you are the pilot. The more guidance, direction, and insight you get from experts, the more favorable the final lease will be.



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Key Provisions

I have identified 20 key provisions that I have found to be particularly effective when structuring your lease. Because each set of circumstances is different they should be considered conceptual approaches only, not foolproof solutions. However, when expressed in somewhat generic terms, the operational and financial priorities of a properly analyzed restaurant lease become immediately apparent. Here is a summary of 10 of the 20 key provisions to consider:

Arbitration Clause

It's fair, expeditious, and tends to favor the tenant with a minimum of lawyer involvement.

Length Of Your Lease and Options To Renew

The longer the better if you're protected with periodic options exercised at your discretion. Remember, when you sell, you'll be selling the maximum amount of lease term possible.

Minimum Rent

Must be a function of the cash flow capabilities of your operation, not the retail value of the real estate.

Common Area Charges

Pro-rata may not be the way to go. Determine a ratio between common-area charges and rental cost per square foot.

Indexing Of Minimum Rent

CPI indexing offers no logical basis for increases in minimum rent.

Definition Of Gross Sales

In percentage leases, clearly define gross sales, and do not include credit card discounts, employee meals, taxes, etc.

Periodic Closing Of The Premises For Modernization

Providing for time to reconcept is in everyone's best interest.

Liability Insurance

Dovetail coverage with the landlord's comprehensive liability policy on common areas such as stairways, lobbies, and elevators.

Assignment Or Subletting

You will probably be required to guarantee the rent, but don't let the landlord require payment of any consideration not otherwise required in the original lease.

Title To Improvements

All leasehold improvements you install shall remain your property under most circumstances.

