



## RESTAURANT LEASING

### *A Menu of Issues*

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**Introduction.** Your restaurant is different from other retail businesses. So it follows that your lease should be different than a typical retail space lease as well. Many potential pitfalls can be avoided with proper planning and the help of experienced professionals.

**Involve Specialists.** It's not uncommon to come across a landlord not familiar with the unique issues a restaurant faces.

When thinking about leasing a new location, involve a good broker early in the process. Your broker will provide a snapshot of rents and leasing concessions available in your local market. Likewise, protect your interests by engaging an attorney experienced in restaurant leasing. Your attorney will help you reduce risks, making sure that the lease focuses on your issues and accomplishes your goals. Before signing a letter of intent (LOI) or a lease, it will serve you well to review both of them with your broker and your leasing attorney.

**Zoning & Permit Issues.** First make sure the building you're considering has the proper zoning for your use. Consider also issues involved in for the sale of liquor and for outdoor seating, both of which involve permit and insurance considerations.

**Build-Out Issues.** One of the key issues for a restaurant tenant is how their space is constructed or built-out. Before the LOI is executed, consider all special improvements your space requires, such as a grease trap, exhaust hoods, ADA accessible bathrooms, and the utility service and the floor load required for heavy restaurant equipment. Also consider what improvements the landlord requires you to remove when your lease ends.

**Operational Issues.** To avoid surprises, your lease should be tailored for your business today, as well as providing you with enough flexibility to permit you to change your restaurant concept over-time (including changes to interior improvements, menu, signage etc.).

**Day-to-Day Issues.** Review closely the lease provisions concerning your permitted use, building hours, gross sales obligations, how you will be charged for any utilities not separately metered, and how food waste must be disposed of.

**Flexibility.** With an eye to the future, review those lease provisions which could impact changes in your practice. Does the lease permit you to change your menu or add new areas (like take-out yogurt) or ancillary services, such as catering?

**Financing.** Does the lease permit you to finance your restaurant equipment? Most states give landlords a statutory lien on all your personal property. Some leases add such a right expressly to benefit the landlord. This limits your ability to finance equipment unless the landlord has agreed to subordinate (or waive) its lien in such situations. Certain SBA financing programs may also require a leasehold mortgage.

**Exit Strategies.** Today you need this space. Tomorrow that may not be the case. Can you sell this restaurant or your restaurant group without first getting the landlord's permission? Similarly, does your lease permit you to add or remove investors (change control) without prior landlord approval?

**General Issues.** In addition to addressing the special issues facing restaurant tenants, your lease should handle the general issues all tenants face, in a fair and comprehensive manner. Such issues include how operating expenses and other charges are billed (and whether the tenant may audit them), general rights of subletting and assignment, what services and repairs the landlord is obligated to perform and what alterations or changes to the space the tenant may perform.

**Preventative Medicine.** Leases with an expiration date 5 or 10 years in the future represent the start of a long-term relationship between you and your landlord. Working with a broker and an attorney who both have restaurant leasing experience will pay you dividends down the road.



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Real Estate Counselors is a boutique law firm specializing in commercial real estate and business transactions.

Bruce Rosen's practice includes representing restaurant and food service tenants, office and retail tenants, landlords and developers. He is the Managing Partner of Real Estate Counselors. Prior to that, he was with the law firm of Akin, Gump, Strauss, Hauer & Feld.