

TOP 10 TIPS FOR NEGOTIATING YOUR LEASE

Most franchises require an office or retail space. Unfortunately, many new franchise owners begin and end their lease negotiations with the amount of the monthly rent. A savvy franchisee understands that dozens of provisions in the landlord's standard lease form are likely to be negotiable, and that some attention paid up front can save the franchisee big headaches, and big money, down the road. Here, in no particular order, are our top 10 tips for negotiating your lease.

- 1. Take the LOI Seriously.** Most lease negotiations start with a letter of intent ("LOI") outlining the basic lease terms. Although the LOI is normally non-binding, once the tenant signs it, the landlord will be unlikely to agree to different or additional terms in the final lease. Review the LOI carefully and do not sign it until you agree with all of its terms.
- 2. Don't Underestimate the Time for Your Buildout.** In most retail leases, the tenant's first rent payment is due when the tenant takes possession of the premises or at a specified number of days after that. If the rent begins before the tenant's buildout is complete, the tenant can be stuck paying rent for many months before opening for business. A good rule of thumb is to give yourself at least 6 months after signing the lease to prepare plans and construction improvements before the rent commences.
- 3. It's Never Too Early to Engage a Contractor and Architect.** Make sure you understand what construction work the landlord will perform before you take possession. Do not sign the lease until you and your construction experts have performed a comprehensive site inspection, and have a thorough understanding of the condition of the premises.
- 4. Negotiate the Exclusive Use Provision into the LOI.** If you expect to have exclusive use rights in the center (for example, the right to be the only bakery operating in the center), these rights should be detailed in the LOI. It is difficult to negotiate an exclusive use clause into the lease if it is not in the LOI.
- 5. Limit the Landlord's Administration and Management Fees.** Landlords often add hidden administrative and management fees to the tenant's common area maintenance "CAM" charges. Try to limit the combined management and administrative fees to no more than 15 percent of the landlord's actual CAM expenses, not including the charges for taxes and insurance.
- 6. Don't Allow Relocation.** Many standard landlord lease forms include a relocation provision giving the landlord the right to move the tenant to another location in the center at any time during the lease. Make sure your lease prohibits the landlord from relocating your business; otherwise, you may lease a perfect location in the front of the center only to be moved to a less desirable location after your business has become established.
- 7. Avoid Fair Market Rent Adjustments.** Many leases give the tenant an option to extend the lease, provided the rent is increased to the "fair market rent." The tenant often is required to decide whether to exercise

this option before they even know what the new rent will be. At a minimum, negotiate for a cap on the amount of the rent increase during option periods.

- 8. Require Flexibility on Assignment.** Often a franchisee tenant's long-term plan is to build the business and sell it for a profit to a new franchisee. Selling the business will require the buyer to take over the seller's lease. A provision in the lease permitting the tenant to assign the lease to an "approved" franchisee can prevent the landlord from unreasonably interfering with the sale.
- 9. Sign the Lease as a Business Entity.** Too many tenants sign their leases in their individual names. In most cases, it is better for the tenant to form a separate business entity (LLC or corporation) and have that business entity sign the lease, even if the landlord requires a personal guaranty.
- 10. Define Each Party's Maintenance Obligations.** The lease should clearly spell out the maintenance obligations of the landlord and the tenant. Especially with shorter lease terms (for example, 5 years), the tenant should have a limited obligation to pay for maintenance of "big ticket" items like the HVAC system and the roof.

We highly recommend, that you have an experienced real estate lawyer negotiate your letter of intent and your lease.

COMPLIMENTARY REVIEW

of Your Letter of Intent

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