

## Sample Restaurant Lease Provisions

The sample provisions are provided as examples only and may need to be adapted to particular restaurant/food service environments. Landlords and Tenants should always consult with their local leasing attorney before using a specific lease provision.

### Menu Approval

*Tenant's menu offerings will initially be consistent with the sample menu attached as **Exhibit** \_\_\_ and there shall be no material changes permitted (other than to replace items with similar offerings to reflect change in available supplies/sources and/or seasons) without the prior written consent of Landlord.*

### Use of Outdoor Dining Area

*During the term of the Lease Landlord grants Tenant a revocable license to use the area immediately adjacent to and/or immediately outside of the Premises solely for outdoor dining consistent with the Permitted Use, provided that Tenant complies with all Applicable Laws.*

### Trash Removal

*Tenant shall store all its recyclables, compostables and trash within the interior of the Premises in rat and insect proof containers, and remove it at least once per day. All recyclables, compostables, trash and refuse disposal shall be made in a manner intended to minimize release of odors; only through entry-ways and elevators provided for such purposes; and, at such times and subject to such reasonable regulations as Landlord shall designate.*

### Exclusive Use

Landlord hereby agrees that after the Commencement Date, Landlord shall not enter into a new permanent lease with a tenant for premises in the Shopping Center whose primary use is for the sale of [INSERT EXCLUSIVE USE] (the "Competing Use"). However, the foregoing covenant is conditioned upon all of the following: (i) the originally Tenant named on this Lease remains the Tenant under this Lease, (ii) Tenant is not in default (after notice and expiration of any applicable cure period) under this Lease, (iii) Tenant has at all times during the Term continuously operated from the Premises in accordance with the provisions of this Lease, and (iv) Tenant continues to operate the Premises for the Permitted Use as originally stated on the Data Sheet. Further, the foregoing covenant shall not apply to: (1) any tenant or occupant whose premises is 20,000 contiguous square feet or more; (2) any tenant or occupant of the Shopping Center entitled to possession under a lease or occupancy agreement in existence as of the Rental Commencement Date (an "Existing Tenant"); or (3) the non-primary sale of such item(s) by any tenant or

occupant [as used herein, “non-primary sale “ shall mean such item(s) are displayed and sold in an area which is less than \_\_\_\_\_ percent (\_\_\_\_\_%) of the sales Floor Area of their respective premises].

Tenant shall give Landlord written notice of the operation of a Competing Use by any tenant (the “Competing Tenant”), which shall be subject to verification by Landlord within 30 days of receipt of Tenant’s notice. If verified by Landlord, and Landlord fails to cause such Competing Use to cease within 30 days after receipt of Tenant’s notice and Landlord’s subsequent verification, and Tenant’s Gross Sales decline by ten percent (10%) or more for the six (6) month period (the “Measuring Period”) following the later of the date that the Competing Tenant (i) opens for business to the public or (ii) begins operating with the Competing Use [such sales comparison to be made to Tenant’s Gross Sales for the corresponding six (6) month period of the prior year], then at the expiration of the Measuring Period, Tenant may pay [\_\_\_\_] percent (\_\_\_\_%) of the Minimum Annual Rental set forth in the Data Sheet (“Alternate Minimum Annual Rental”) through that date which is the earlier of (x) the date the Competing Use ceases, or (y) the last day of the sixth (6<sup>th</sup>) full calendar month following the end of the Measuring Period, at which time Tenant shall resume payment of Minimum Annual Rental as set forth in the Lease and if such Competing Use shall continue at that time, Tenant may, within 30 days thereafter, time being of the essence, exercise a one-time right to terminate the Lease upon ninety (90) days prior written notice. The remedies set forth in this subsection 7.01(b) shall be Tenant’s sole remedies for a violation of this subsection 7.01(b).

Tenant covenants and agrees to indemnify and hold Landlord harmless from any claims, actions, damages, loss, costs or expenses (including reasonable attorneys’ fees), arising from any claim or action brought by any third party asserting that the foregoing provision violates any state or federal law; provided, however, that Tenant may, at Tenant’s option, waive such provision in order to avoid such obligation to indemnify Landlord. Landlord shall be deemed in compliance with the foregoing provision if Landlord demands cessation of the Competing Use by a tenant operating a competing store in violation of such tenant’s permitted use provision in writing and, if necessary, then commences and diligently pursues an action for specific performance, declaratory relief or other appropriate legal action in order to cause such Competing Use to cease.

Further, the rights under this subsection 7.01(b) are personal to Tenant and shall automatically terminate upon any assignment, transfer, hypothecation or encumbrance of this Lease, or upon any sublease of the Premises.

## **Gross Sales**

*The term “Gross Sales” of Tenant, as used in this Lease, is defined to be the gross selling price of all merchandise or services sold in or from the Premises, or delivered to customer at the Premises, by Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit and whether made by store personnel or by approved vending or video machines, which shall be adjusted by excluding the following: (a) The amount of any refunds or credits made by Tenant to the purchaser for returned merchandise, the selling price of which was theretofore included in Gross Sales, provided that there shall be no deduction from Gross Sales for the return of merchandise to the Premises that was ordered by the customer from Tenant’s website (or other electronic media) or that was ordered from Tenant’s catalog, unless such orders were initiated at the Premises; provided, however, that this exclusion shall not include any amount paid or payable for what are commonly referred to as “trading stamps” (b) Goods returned to sources, or*

*transferred to another store owned by or affiliated with Tenant; (c) Sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Sales; (e) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers; (f) Sales of fixtures, equipment or property which are not stock in trade; and (g) Gift certificate or like vouchers until such time as the same shall have been converted into a sale by redemption.*

*In addition, Gross Sales shall include the amount of sales resulting from all orders (including, without limitation, catering orders served from the Premises, but excluding orders not served from the Premises) taken in or from the Premises even if accounted or paid for at another location, including any orders initiated at the Premises through Tenant's website (or other electronic media), catalog and other orders although said orders may be received by telephone, facsimile, computer terminal or mail, or filled or delivered elsewhere. Each sale upon installment or credit shall be treated as a sale for the full cash price at the time of sale.*

## **Liquor License Contingency**

This Lease is contingent upon the issuance of a liquor license (the "Liquor License") to allow the sale, serving and consumption of alcohol beverages in the Premises in accordance with the Permitted Use. Tenant represents that no liquor license or application made by Tenant (or any affiliate of Tenant or Tenant's parent company) has ever been denied or once granted has ever been suspended, cancelled, revoked or otherwise involuntarily terminated. Tenant shall diligently and in good faith take all necessary action in order to cause the Liquor License to be issued within the Licensing Period (as defined below) including, without limitation, all of the following (collectively, the "License Conditions"): (i) on or before [TBD], Tenant shall submit all required applications, documents, and any other information necessary (collectively, the "Liquor License Application") to the applicable authority(ies) for the issuance of the Liquor License at the earliest possible time and shall diligently follow-up on the Liquor License Application (Tenant shall provide Landlord with a copy of the Liquor License Application); (ii) Tenant shall pay all fees required by the applicable authorities in order for the liquor license to be issued and represents that it has sufficient funds to complete the application process for the Liquor License; (iii) if customary in the jurisdiction, Tenant shall hire a permit expeditor to help with the Liquor License Application; and (iv) Tenant shall cooperate with the applicable authorities by submitting additional information or documents, as required, in a timely manner and by responding to any questions or comments in a timely manner.

In the event the Liquor License is not issued within [TBD] days (the "Licensing Period") after submission of Tenant's complete and correct Liquor License Application, then within thirty (30) days following the expiration of the Licensing Period, either party shall have the right to terminate this Lease (the "Liquor License Termination Right") upon written notice to the other party. If either party exercises the Liquor License Termination Right, then this Lease shall terminate on the thirtieth (30<sup>th</sup>) day following the date of such notice of termination (the "Liquor License Termination Date"); provided, however, if Tenant exercises its Liquor License Termination Right as provided herein, Landlord shall have the option, in its sole and absolute discretion, at any time prior to the Liquor License Termination Date, to elect to attempt to cause the Liquor License to be issued to Tenant on terms reasonably satisfactory to Tenant, in which case this Lease shall remain in effect for a period up to one hundred eighty (180) days ("Landlord Liquor License Period") following the date of Tenant's notice of termination. If Landlord is unsuccessful in obtaining the issuance of the Liquor License within the Landlord Liquor License Period, then this Lease shall terminate as of the date immediately following the expiration of the Landlord Liquor License Period. In the event Landlord does not elect to assist Tenant to obtain the

issuance of the Liquor License then this Lease shall terminate on the Liquor License Termination Date. Notwithstanding the foregoing, in the event Tenant's failure to obtain the Liquor License within the Licensing Period is due to Tenant's default under this Lease (after any applicable notice and cure period provided for in this Lease), including but not limited to Tenant's failure to comply with the License Conditions, such failure shall be a material default under this Lease and Tenant shall not have the right to terminate this Lease as provided herein, however, Landlord shall have the right to terminate this Lease and to pursue all actions and remedies available at law or in equity for such default. Further, if Landlord determines that Tenant has failed to meet any one of the License Conditions during the Licensing Period, Landlord shall have the right to terminate this Lease prior to the end of the Licensing Period. The foregoing notwithstanding, Tenant's failure to exercise the Liquor License Termination Right within such thirty (30) day period shall be deemed to be Tenant's waiver of such Liquor License contingency and its right to terminate related thereto.

In the event either party terminates this Lease as provided herein, (i) Tenant shall reimburse Landlord for all third-party costs incurred by Landlord in connection with this Lease including, without limitation, broker commissions and costs to perform Landlord's Work (the "Reimbursable Early Termination Expenses"), (ii) Tenant shall, at Landlord's sole election and discretion cause the Premises to be returned to Landlord in substantially the same condition that it was delivered to Tenant on the Delivery Date (the "Early Termination Surrender Obligations"), and (iii) both parties shall be fully released from any other liability under this Lease as of the Liquor License Termination Date except for any obligations that expressly survive the expiration or earlier termination of this Lease (including, without limitation, Tenant's obligations to complete the Early Termination Surrender Obligations, and pay Landlord the Reimbursable Early Termination Expenses).

**INSERT IF DEAL INCLUDES A TENANT ALLOWANCE:** Notwithstanding anything to the contrary contained in this Lease including all Exhibits thereto, in no event will any portion of the Tenant Allowance be payable until the Liquor License has been issued or Tenant has waived its right to terminate hereunder

## **Force Majeure**

*The Parties agree that with respect to any service or obligation to be provided or performed by either party, in no event shall either party be liable for failure to provide or perform the service or obligation when prevented by one or more of the following: strike, lockout, accident, failure of supply and materials providers; availability of employees to furnish such services or meet other obligations; acts of terrorism; fire, flood, earthquake or other acts of God; war, military operations, invasion, social unrest, or other emergency; pandemic, epidemic or public health emergency; for any cause beyond the reasonable control with the party obligated for such performance; for any cause due to any act or omission of the other party or its agents, employees, licensees, invitees or any persons claiming by, through, or under the other party; or the failure of any public utility to furnish services; or arising from an order or regulation of any federal, state, county or municipal authority (collectively, "**Force Majeure Events**") provided that Force Majeure Events shall not include any event caused by the negligence or intentional misconduct of the party (including such party's employees, agents and contractors) seeking to have its performance excused or time for performance delayed by such event.*