

**MODEL LEASE
CLAUSE**

Get 18 Lease Protections When Letting Tenants Use Outdoor Dining Spaces

Allowing restaurant, bar, retail, and other tenants to use adjacent outdoor space can be a great revenue generator, provided that you make the right kind of legal arrangement. Here's a Model Lease Clause that incorporates the protections you need. Speak to your attorney about tailoring it to your own business model, property configuration, and other specific circumstances and needs.

OUTDOOR DINING SPACE

- a. Revocable license to use area:** Subject to the terms and conditions set forth below, Landlord agrees that Tenant shall have, at such time during the Term as Landlord designates, a revocable license to use an area adjacent to and immediately outside of the Leased Premises, fronting on _____ Street, and comprising approximately _____ square feet (the "Outdoor Dining Space"). The initial location and configuration of the Outdoor Dining Space as designated by Landlord is shown in the approximate location outlined in green on Schedule A attached hereto.
- b. Prior consent:** Tenant must obtain Landlord's prior written consent to its proposed use of the Outdoor Dining Space, which consent shall not be unreasonably withheld;
- (i) Tenant, at its sole expense, shall submit to Landlord drawings and such other documentation that Landlord may reasonably require to enable Landlord to fully understand the proposed configuration of the Outdoor Dining Space;
 - (ii) Tenant's proposed configuration and use of the Outdoor Dining Space must fully comply with all federal, state, and local laws, codes, zoning restrictions, ordinances, health and safety rules, and other applicable legal requirements;
 - (iii) Tenant shall obtain the prior written consent and approval of all government authorities having jurisdiction thereover, and shall provide Landlord with certified copies of all such consents and approvals together with a warranty that all such consents and approvals obtained by Tenant are in fact all the consents and approvals that are necessary to permit the Tenant to use the Outdoor Dining Space;
 - (iv) Landlord agrees to cooperate, at Tenant's expense, with Tenant in obtaining such consent and approvals described in Section b(iii), provided that Tenant is not in default under the terms of the Lease;
 - (v) Tenant shall, at its sole expense, install any barrier around the Outdoor Dining Space that may reasonably be required by Landlord or required by any governmental authority having jurisdiction hereover.
- c. Lease terms apply to Outdoor Dining Space:** Tenant acknowledges and agrees that all terms, requirements, conditions, duties, and provisions contained in the Lease shall apply to Tenant's use and occupancy of the Outdoor Dining Space to the extent relevant, including, without limitation, the duty to use the Outdoor Dining Space for the same use and subject to the same restrictions as set out in Sections __ and __, respectively, of the Lease.
- d. Operating hours of Outdoor Dining Space:** Tenant shall open the Outdoor Dining Space for business only during the hours when the [Building/Center/Premises] are open for business.
- e. Furniture:** Tenant may, at its sole expense, install furniture, equipment, lighting, and signage (referred to collectively as "Furniture") in the Outdoor Dining Space, subject to the following terms and conditions:
- (i) Furniture shall meet the highest standards of quality and appearance consistent with a first-class restaurant and the design and construction of the [Building/Center/Premises];
 - (ii) Furniture shall not be used or placed in the Outdoor Dining Space unless and until its design, size, color, position, and method of installation or attachment are first approved in writing by Landlord;
 - (iii) Tenant shall remove and store Furniture, at its sole expense, during periods in which it does not use the Outdoor Dining Space lasting one month or more;

OUTDOOR DINING SPACE (continued)

- (iv) Tenant shall be solely responsible for any destruction, damage, theft, vandalism, or loss of or to Furniture.
- f. Restrictions on Tenant use:** Tenant hereby covenants and agrees that it shall not:
 - (i) Block, impede, obstruct, or in any way limit access to the [Building/Center/Premises] or pedestrian flow through the Common Areas outside the Outdoor Dining Space;
 - (ii) Erect or place any canopy or other enclosure or covering on the Outdoor Dining Space without Landlord's prior written approval;
 - (iii) Generate or permit loud music, excessive noise, noxious odors, smoke, or any other nuisance within the Outdoor Dining Space that may interfere with another tenant's use and enjoyment and/or endanger the health and safety of any person;
 - (iv) Permit loitering in the Outdoor Dining Space by persons who are not customers of Tenant.
- g. Cleanliness:** Tenant covenants and agrees that it shall clean and keep in good repair the Outdoor Dining Space and Furniture and shall remove all trash generated therefrom at least once a day or more frequently as required. In the event Tenant fails to keep the Outdoor Dining Space clean and in good repair or remove trash therefrom in accordance with this provision, then, in addition to and not in lieu of any other remedy or right to which Landlord may be entitled, Landlord shall have the right (but not the obligation), upon ___ days' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf, and Tenant shall pay Landlord __ percent [*list rate of above 100%, e.g., 120%*] of Landlord's cleaning, repair, or trash removal costs including, without limitation, any overtime costs, upon Landlord's demand therefor as Additional Rent.
- h. Repairs to Common Areas:** Upon Landlord's demand, Tenant shall pay Landlord, as Additional Rent, for the costs of repairs or restorations to the Common Areas arising out of Tenant's use of the Outdoor Dining Space, including but not limited to acts of vandalism or negligence in the Outdoor Dining Space by Tenant, its employees, contractors, vendors, customers, invitees, licensees, or agents.
- i. Security:** Tenant shall be responsible for maintaining security and controlling its customers within the Outdoor Dining Space. If, in Landlord's opinion, the security Tenant provides is inadequate, then Landlord shall have the right, upon providing Tenant __ days' prior written notice, to employ, at Tenant's expense, its own security personnel or measures to ensure the necessary security and control. Tenant shall, upon Landlord's demand, pay the costs for such security personnel or measures as Additional Rent.
- j. Payment by Tenant:** Without limiting any other Tenant payment obligations provided for herein, Tenant shall pay for use of the Outdoor Dining Space:
 - (i) ___ dollars per month for each month that the Outdoor Dining Space is in use (the "Outdoor Dining Space Rent"), which amount shall not form part of the Base Rent and shall be payable on the first day of each month in which the Outdoor Dining Space is in use;
 - (ii) All Taxes payable related to the Outdoor Dining Space as allocated or attributed by Landlord to the Outdoor Dining Space in accordance with Section __ of the Lease, prorated to represent the Taxes so payable for that portion of the Rental Year during which Tenant carries on business within the Outdoor Dining Space;
 - (iii) All utility charges payable with respect to the Outdoor Dining Space;
 - (iv) All out-of-pocket costs and expenses incurred directly by Landlord for security and cleaning as a result of Tenant's use and operation of the Outdoor Dining Space;
 - (v) All other costs, claims, damages, or expenses due to or arising from the use and operation of the Outdoor Dining Space.
- k. Percentage Rent:** Tenant agrees and acknowledges that all sales and revenues derived from services performed and sales made in the Outdoor Dining Space shall be included in Gross Sales for the purposes of determining Tenant's Percentage Rent payable under the Lease.
- l. Nontransferability of Outdoor Dining Space use rights:** Tenant agrees and acknowledges that the right to use the Outdoor Dining Space granted herein is personal to Tenant and may not be transferred or assigned to any third party.

OUTDOOR DINING SPACE (continued)

- m. No Landlord liability:** Landlord shall have no liability to Tenant if Tenant is unable to use the Outdoor Dining Space for any reason other than Landlord's negligent or willful misconduct.
- n. Indemnification:** Tenant shall indemnify Landlord and hold it harmless from and against all loss, claims, actions, damages, liability, and expense in connection with loss of life, personal injury, property damage, or any other loss or injury whatsoever arising from or out of the Outdoor Dining Space or Tenant's use thereof.
- o. License revocation and modification:** Tenant agrees and acknowledges that:
 - (i) Notwithstanding anything herein to the contrary, Landlord shall be entitled, in its sole and absolute discretion, to modify or revoke Tenant's license to use the Outdoor Dining Space and remove Tenant from said Outdoor Dining Space or any part thereof, upon ___ days' prior written notice to Tenant; and
 - (ii) Prior to any such modification or revocation and immediately after receiving notice of such modification or revocation, Tenant, at its sole cost and expense, shall remove its Furniture or barriers required in accordance with Section b(v) above from the Outdoor Dining Space part thereof and restore the Outdoor Dining Space or part thereof to its condition prior to Tenant's use thereof, other than ordinary wear and tear. If Tenant fails to comply with its foregoing removal obligations, then Landlord shall have the right to remove Tenant's Furniture or barriers required in accordance with Section b(v) above and restore the Outdoor Dining Space or part thereof, and Tenant shall, upon Landlord's demand, pay Landlord, as Additional Rent, the costs Landlord incurs in connection with such removal and restoration.
- p. Landlord approvals:** Except as otherwise provided herein, Landlord's approvals relating to use of the Outdoor Dining Space may be given or withheld by Landlord in its sole and absolute discretion, including for reasons related to aesthetics.
- q. Survival of Tenant's obligations:** Tenant's obligations under Sections g, h, i, and o(ii) hereto shall survive the revocation or termination of Tenant's license to use the Outdoor Dining Space.