

bake

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BUSINESS. ACCURACY. KNOWLEDGE. EXECUTION.

THE STORE DESIGN ISSUE:

blueprint for change

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PREP BEFORE YOU SIGN

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prep before you sign

The most important factors to getting a fair and profitable lease come before the final draft.

BY BOB SIMS
PHOTOGRAPHY TIMMY TRABON

"Standard" commercial lease agreements do not exist — all points on a commercial lease agreement are negotiable. However, that doesn't mean your landlord has to negotiate any of them. Some landlords

will negotiate different points than others, and some landlords will negotiate nothing at all. Regardless of your situation, there are important steps to take before signing the right lease.

Below: The Country Club Plaza is the top location for retail space in the Kansas City area, due to the continuous consumer traffic.



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GENERAL LEASING ISSUES

Rent : If the rent includes escalations for taxes, operating expenses or common area maintenance, try to figure out the overall effect of those increases over time.

Build-out : How will the landlord contribute to the tenant's initial construction in the space?

Insurance : Are insurance requirements reasonable and appropriate? Early in the process, tenant should have its insurance broker or consultant review insurance provisions.

Tenant alterations : Have the landlord approve tenant's initial plans as part of the lease signing. Require landlord to approve reasonable tenant alterations in future.

Sale of business : Make sure you can sell the business (including a transfer of the lease or all the stock or other equity of the tenant) without a requirement for landlord consent. Usually, landlords will insist on at least having a right to "reasonably consent" to any such transaction.

Nondisturbance : If there's a mortgage, then ideally the lender will agree to leave the tenant in place if the lender ever forecloses on the landlord. Small tenants often can't get such protection.

Removal/Restoration of Improvements : Try to eliminate any requirement to "repair" or "restore" the premises at the end of the term. Try to avoid any obligation to return the premises at the end of the term in any particular condition. These are invitations to lawsuits.

Provided by Joshua Stein PLLC, www.joshuastein.com

Lawyer up

The best way to secure the right property with the right leasing agreement is to hire an attorney with experience in commercial real estate or contracts. While it might seem like a large initial cost, having a competent real estate attorney guide you through the process will prove invaluable over the long term.

With two locations in the Kansas City metro area, Vicki Goellner, co-owner of Natasha's Mulberry and Mott, attributes the quality of her lease in Leawood, KS, to having a contract attorney in her corner. "We had several drafts of the lease from what it started with because our attorney just went through it with a red line," Goellner says. The non-compete clause in the lease, a direct result of her attorney's contract acumen, gave her the ability to tell her landlord "no" when a cupcake shop wanted to move into the same shopping center. "We have such a good lease because of our attorney," she says. "He's worth every penny."

Landlords want an obligation to have the rent paid and will often ask for a personal signature on a lease to ensure this will happen. Depending on the situation, this request can be non-negotiable. This means the bakery owner agrees to pay rent for the entire term of the lease regardless of what happens to the business. Joshua Stein, New York real estate attorney, says many landlords of small businesses will ask the business owner to sign a guarantee of the lease. He suggests the owner should instead try to sign just a "good guy guarantee," a common practice in New York and elsewhere.

A good guy guarantee allows the business owner to personally sign, but not the entire lease. The owner agrees to vacate the space, should the business fold, and personally commits to paying the rent until the space is vacated and ready for another tenant to move in. Once the business has completely moved out of the space, the owner can stop paying the rent. As an alternative, a tenant will sometimes have the right to terminate the lease early by paying some fee.

Know your plan

The best area and best price don't necessarily make the best option for your shop. If you're not able to use the space for what you want to do now — or in the

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Vicki Goellner, Natasha’s Mulberry and Mott, Kansas City, MO

future — price and location become irrelevant. The lease’s use clause is imperative to making the right decision. If you want to offer coffee, make sure the use clause conforms. “Think about everything you are planning to do and reasonably likely to do as brand extension or expansion of your business, and make sure the lease allows you to do that,” Stein says.

Crack the codes

Fire, FDA, city and health department codes must all be met, and they all differ from organization to organization. Just because you have met the FDA code doesn’t mean you will pass the Health Department’s code, and the same goes for the city. Also, there is usually a hierarchy; figuring out what this is and working your way through from the top down is the best way to go.

Different areas of a city will need different focuses when preparing the property. For example, space in an older part of town might not be able to pass codes because the systems are out of date. The plumbing, electricity, etc. should all be looked at by an engineer. Oftentimes, the city or regional supplier of electricity or gas will not modify, even if you pay for it.

When Goellner found out her electric range needed three phase in an older part of town, the power company told her no. She ended up selling her range and purchasing one that would work, putting her behind on opening. She also found herself re-installing sprinkler heads. After installing them according to the specs of the fire department — which were different from the manufacturer’s suggested procedure — she ended up switching back to the manufacturer’s method after being told they were installed wrong. This cost her thousands of dollars.



Goods for Natasha’s on The Plaza are produced at a different location and delivered to the smaller, retail-only shop.

Work the numbers

Square footage pricing varies, depending on the area of the space, the area of town and what kind of deals a landlord may cut a tenant willing to make improvements on the space. To get the best deal, do some legwork and math. It might just be that two leases in different areas, one production and one retail, equate to a savings over one larger space for both.

Goellner’s newest location is in Kansas City, MO, in the upscale Country Club Plaza area (“The Plaza”), one of the top high-end retail shopping districts in the area. For a permanent lease on The Plaza, square foot pricing ranges anywhere from \$55 to \$125 per sq ft. Downtown Kansas City is just a short drive away from The Plaza, and production kitchen space downtown ranges from \$3 to \$5 per sq ft. With the right lease for the right space in both areas, she will cut costs considerably by producing downtown and delivering goods to the retail space on The Plaza.

If you can get a smaller retail space and produce in a lesser area of town, it can certainly be worth it.

Costs can go well beyond the rent before you ever even sign a lease. You need to understand what those are before you’ll know what it actually costs to run a bakery in a retail location. Do all the legwork necessary, be creative and thorough with your business plan and get help from people who know what you don’t. It will save you time and money. [B](#)