



Why Isn't There a Big Doughnut on Your Roof?

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What's in your business' facilities lease is important. What's NOT in the lease could bankrupt you.

There's an iconic doughnut shop in Los Angeles. You've probably seen it, even if you've never been to California. It's got a 30-foot doughnut on the roof, emblazoned with the company name.

Appearing everywhere from music videos to television shows to posters, it has become as recognizable as the Griffith Observatory or the Hollywood sign.

This weekend I stopped by its newest location, in an urban shopping center south of L.A., and was struck by what I saw – or rather, by what I didn't see: there was no giant doughnut towering over the building. At first, I presumed the missing cruller had been used as a bargaining chip, surrendered during the course of lease negotiations in exchange for something the tenant considered more valuable. But then I wondered, what if it was a mistake? What if the tenant hadn't negotiated the lease carefully, or hadn't even bothered to read it before signing it? What if the tenant had only discovered, once it was too late, that he didn't have the right to display the thing his company was known for – the thing that set his business apart from his competition?

It's been reported that now that the doughnut shop is franchising, that signature donut will instead appear on walls or on the ground because of zoning rules of signage. But when you clear the red tape of city rules, they also need to put the same due diligence into negotiating the lease of a location from which you intend to operate your business, it's not enough just to read the lease to make sure you like what it says. What it *doesn't* say can be just as important, or in some cases more important, that is especially true for zoning rules. Noticing the missing elements of a lease is something that takes practice. It's not easy to do unless you've read hundreds of

leases and know what to look for. Here are just a few of the many things to be mindful of when a landlord hands you its “standard” lease form.

Signage

Regardless of whether it’s a retail lease, an industrial lease, or an office lease, the initial draft of the landlord’s lease almost never says anything about signs. If the lease does address signage, it will most often completely deny or severely limit the tenant’s signage rights. Maybe you only need simple storefront or lobby signs. Maybe you need something more visible, like parking lot directional signs, street-front monument signs, building-top signs, or pylon signs. Whatever the case, if your business needs signage to thrive, make sure that’s addressed in the lease.

Trademarks and Logos

Landlords tend to like uniformity in their signage. That generally works ok for office tenants and some industrial tenants, but if you are a retail tenant, it can be the kiss of death. You want to stand out. You’ve likely invested a lot of money developing and protecting your trademarks and logos, and you want those to be part of the signs displayed on and around your business so that your customers can recognize and find you. Unfortunately, most owners of large and mid-sized retail shopping centers have developed detailed sign criteria geared towards making every tenant’s signs look the same. If you don’t object to that during lease negotiations, the landlord will strictly enforce those criteria to control how your signs will appear. Make sure you negotiate this before signing the lease, so that you obtain the right to use your trademarks and logos on all of your signs.

Parking

Many leases say nothing about parking, even though all businesses need to ensure that they have enough parking for their clientele and employees. And parking needs differ greatly, depending on the type of business operated by the tenant. A health club’s members

probably don't mind having to walk from the far corners of the parking lot to reach the club, but a physical therapist's patients are more likely to become repeat customers if they can use reserved parking immediately adjacent to the therapist's office. An ice-cream shop or mini-mart which relies on high-volume, quick turnover walk-in sales could benefit by having a few parking spaces dedicated to short term parking of 10 or 15 minutes. Businesses located in the same centers as movie theaters or restaurants – which create enormous parking burdens – might insist on having restricted parking near their premises which prohibit parking by theater or restaurant patrons. Determine your parking needs before entering into lease negotiations, and make sure the lease you sign contains objective, enforceable parking rights.

Hours of Operation

Sometimes this is left to the tenant's discretion. More often, leases will require the tenant to operate during normal "building hours" or "shopping center hours." This might not work for you. If you operate a restaurant which is only open for dinner, you don't want to sign a lease that requires you to operate at all times during the "shopping center hours" of 10 am to 6 pm. If your office staff routinely works nights and weekends, you will pay a lot of additional rent for after-hours heating and air conditioning if the landlord is only obligated to provide HVAC Monday through Friday from 8 a.m. to 5 p.m. Before signing the lease, check it carefully for this provision (often buried in the "miscellaneous" clauses at the back of the lease) to make sure the schedule mandated by the lease aligns with that of your business.

Covenants, Conditions and Restrictions

Even if your landlord is an agreeable chap and wants to make things easy for you, you may find there are some things he just can't agree to. In large office complexes or shopping centers, individual building owners – and their tenants – are often bound by recorded declarations of covenants, conditions and restrictions, typically referred to as "CC&Rs." They can be 25, 50 or 100 pages long, hard to read and harder to locate. Nevertheless, before signing a lease a

tenant absolutely must determine whether any CC&Rs affect the premises, and if so, the tenant must obtain and read those CC&Rs. Many tenants have entered into long-term leases to operate businesses as “notorious” as smoke shops and liquor stores or as seemingly innocent as barbershops and bowling alleys, only to discover that the governing CC&Rs prevent the premises from being operated for those purposes.

Zoning

Just because the lease says you can use the premises for a particular purpose, doesn’t mean that you really can do so. Almost all leases contain a statement saying that the landlord is making no representation that local zoning laws allow the use contemplated by the lease. It is incumbent on any tenant to check the local city or county zoning map and zoning code to make sure that the governing jurisdiction allows the premises to be used for the purpose contemplated by the lease. Failure to do so could mean getting stuck in a 5, 10 or 20-year lease of premises that you can’t use – but on which you still have to pay rent every month.

Before you sign your next lease, you should certainly remember to read what’s in it. But more importantly, you should remember to read what’s NOT in it. If you forget to do that, I’ll bet you dollars to doughnuts that you may regret signing it.

For more information, please contact any attorney with Frost Brown Todd’s [Real Estate](#) practice group.

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