

Set Limits When Common Areas Are Used as Restaurant Patio

The following lease clause was drafted by Chicago attorney Carole L. Pechi. It contains important protections if a restaurant tenant wants to use part of your common areas as a patio area.

Paragraph a gives the tenant a revocable license to use the patio area and requires the tenant to comply with all legal requirements. Paragraph b limits when the tenant can operate in the patio area. Paragraph c discusses the installation of furniture, equipment, lighting, and signage in the patio area. Paragraph d places certain restrictions on the tenant's use of the patio area. Paragraph e requires the tenant to clean and repair the patio area. Paragraph f requires the tenant to reimburse you if its use of the

patio area causes damage in the common areas. Paragraph g applies the lease's provisions to the tenant's use of the patio area. Paragraph h requires the tenant to pay you percentage rent for sales made in the patio area. Paragraph i makes the right to use the patio area personal to the tenant. Paragraph j says that you're not liable to the tenant if it can't use the patio area. Paragraph k lets you revoke the tenant's license to use the patio area, at your discretion. Paragraph l lets you give or withhold your approval, at your sole discretion. Paragraph m says that certain obligations of the tenant will survive the revocation of the license.

Show this clause to your attorney.

PATIO AREA

a. Revocable License to Use Patio Area

So long as the federal, state, and local laws, codes, zoning restrictions, ordinances, regulations, and safety requirements permit, Landlord agrees that Tenant shall have, at such time during the Lease Term as Landlord shall designate, a revocable license to use the area adjacent to and immediately outside of the Premises, as described on Exhibit [insert #] attached hereto (the "Patio Area"), subject to modification by Landlord from time to time as required to comply with such laws, codes, restrictions, ordinances, regulations, or safety requirements, solely for the uses permitted by Clause [insert # of use clause] of this Lease (except for the cooking of food), provided that:

- (i) Tenant's use of the Patio Area complies with all laws, codes, zoning restrictions, ordinances, regulations, safety requirements, approvals, permits, and licenses relating thereto; and
- (ii) All necessary approvals, permits, and licenses in connection with such use are obtained and paid for by Tenant (with copies furnished to Landlord) and remain in full force and effect during Tenant's use of the Patio Area.

b. Operation of Patio Area

Tenant shall open the Patio Area for business only during those hours when the Premises are open for business.

c. Furniture in Patio Area

- (i) Tenant shall install, at its sole cost and expense, all furniture, equipment, lighting, and signage (collectively, "Furniture") in the Patio Area.
- (ii) Tenant acknowledges and agrees that:
 - (A) The 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];
 - (B) The Furniture shall not be used or placed in the Patio Area until its design, size, color, position, and method of attachment or installation are first approved by Landlord in writing; and
 - (C) Tenant shall be solely responsible for any destruction, damage, theft, or vandalism of, or to, the Furniture.

d. Restrictions on Tenant's Use

Tenant hereby covenants and agrees that it shall not:

- (i) Restrict access to the [Building/Center] or pedestrian flow through the Common Areas outside the Patio Area;
- (ii) Erect or place any canopy or other enclosure or covering on the Patio Area without Landlord's prior written approval;
- (iii) Permit any music or other similar sounds to be heard in the Patio Area without Landlord's prior written approval; or
- (iv) Permit loitering in the Patio Area by persons who are not customers of Tenant.

e. Cleanliness of Patio Area

- (i) Tenant shall clean and keep in good repair the Patio Area and Furniture and shall remove all trash generated therefrom on a daily basis or more frequently as needed.
- (ii) If Tenant fails to clean or keep the Patio Area in good repair or remove trash therefrom as required by this Clause, then in addition to and not in lieu of any other remedy to which Landlord may be entitled, Landlord shall have the right but not the obligation, upon [insert #, e.g., 24] hours' prior written notice to Tenant, to clean, repair, or remove the trash on Tenant's behalf; and Tenant shall pay Landlord [insert %, e.g., 120] percent of Landlord's cleaning, repair, or trash removal costs (including any overtime costs) immediately upon Landlord's demand therefor.

f. Repairs to Common Areas

Tenant shall reimburse Landlord immediately upon Landlord's demand therefor, the cost of repairs or restoration of the Common Areas arising out of Tenant's use of the Patio Area or acts or negligence of Tenant, its customers, employees, agents, contractors, invitees, or licensees.

g. Lease Provisions Apply to Patio Area

To the extent applicable, all provisions of this Lease shall apply to Tenant's use and occupancy of the Patio Area.

(continued on p. 4)

h. Percentage Rent

It is understood and agreed that all sales and revenues derived from services performed and sales made in the Patio Area shall be included in Gross Sales for the purpose of determining Tenant's Percentage Rent payable under Clause [*insert #*] of this Lease.

i. Right Is Personal to Tenant

Tenant's right granted herein to use the Patio Area is neither transferable nor assignable.

j. Landlord Not Liable

Landlord shall have no liability to Tenant if it is unable to use the Patio Area for any reason other than Landlord's negligence or willful misconduct.

k. Revocation of License

Tenant acknowledges and agrees that:

- (i) Notwithstanding anything herein to the contrary, Landlord shall be entitled, in its sole and absolute discretion, to revoke Tenant's license to use the Patio Area, upon [*insert*

#, e.g., 20] days' prior written notice to Tenant and to remove Tenant therefrom; and

- (ii) Prior to the revocation of such license, Tenant, at its sole cost and expense, shall remove its Furniture from the Patio Area and restore the Patio Area to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove Tenant's Furniture and restore the Patio Area, and Tenant shall pay the cost of such removal and restoration to Landlord, upon demand.

l. Landlord's Approvals

Except as otherwise provided herein, Landlord's approvals relating to use of the Patio Area may be given or withheld by Landlord in its sole and absolute discretion, including for any aesthetic reasons whatsoever.

m. Survival of Tenant's Obligations

Tenant's obligations under Paragraphs e(ii), f, and k(ii) shall survive the revocation of this license.