

Commercial & Industrial Property Long Term Lease

(Minimum Five Year Lease)

Real Estate Institute of Northern Territory Inc.

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Commercial & Industrial Property Long Term Lease



Table of Contents

COMMERCIAL & INDUSTRIAL PROPERTY LONG TERM LEASE - PART A	6
Lease made between	6
Owner's Agent	6
Manager	7
Term of Lease	7
Particulars of Lease if option to extend lease is exercised	7
CPI Adjustment Date(s)	7
Market Review Date(s)	8
Fixed Rent Increase Date	8
Giving of Notices and Information by Electronic Means	8
The Land	9
The Premises	9
The Premises include/exclude	9
Owner's Property	9
Rent	9
Payment Method	9
Special Rent for Owner's cost of fit out	10
Encumbrances	10
Outgoings (payable by the Tenant) - Clause 10.1	10
Operating Expenses (payable by Tenant) - Clause 10.3	10
Security Deposit	10
Permitted Use	10
COMMERCIAL & INDUSTRIAL PROPERTY LONG TERM LEASE - PART B	11
1. Definitions and Interpretation	11
1.1 Definitions	11
2. Interpretation	13
3. Grant and Term of Lease	14
3.1 Grant of Lease	14
3.2 Term of the Lease	14
3.3 Option to extend	14
3.4 Holding Over	14
3.5 Holding Over Terms	14
3.6 First Payment under Holding Over	14
4. Use of Premises	14
4.1 Permitted Use	14
4.2 Business Hours	14
4.3 Suitability of Premises	15
4.4 Observe Laws	15
5. Rent	15
5.1 Rent	15
5.2 Instalments for Less than a month	15
5.3 Consumer Price Index adjustment	15
5.4 Market Review of Rent	15
5.5 Disputes over rent review	15
5.6 Information	16
5.7 Fixed Increase in Rent	16
5.8 Special rent for Owner's cost of fit out	16
5.9 No Decrease in Rent	16
5.10 Payment	16
5.11 Payments until agreement	16

Commercial & Industrial Property Long Term Lease



5.12	Adjustments	16
5.13	Interest on overdue money	16
6.	Security Deposit	17
7.	Payment Requirements	17
7.1	Method	17
7.2	Correction of payments	17
7.3	Due date for payments	17
7.4	Obligations not affected	17
7.5	Broken periods	17
8.	Notices	17
8.1	Requirements	17
8.2	How a Notice must be given	17
8.3	When Notices considered given and received	17
8.4	Persons to give Notices	18
8.5	No electronic communication of Notices	18
8.6	Time of delivery and receipt	18
8.7	General	18
9.	Tax	18
9.1	GST	18
9.2	Passing-on provision	18
9.3	GST invoice	18
9.4	Change in rate	18
9.5	Input Tax Credits	18
9.6	Confirmation to Owner	18
10.	Outgoings, Operating expenses and Costs	19
10.1	Outgoings	19
10.2	Air Conditioning	19
10.3	Operating Expenses	19
10.4	Premises Keys	19
10.5	Costs, charges and expenses	19
11.	Owners Rights & Obligations	20
11.1	Owner May Rectify	20
11.2	Quiet Enjoyment	20
11.3	Maintain the Land	20
11.4	Inspection and entry rights of Owner	20
11.5	Rules	20
11.6	Change of Owner	20
11.7	Owner's Non-Performance of Obligations	20
12.	What the Tenant must do	20
12.1	The Tenant Must:	20
13.	What the Tenant must not do	21
13.1	The Tenant must not:	21
13.2	Electrical and Drainage	21
13.3	Tenant not to allow breach	21
13.4	Head Lease	22
13.5	Tenant's Employees and Agents to comply	22
14.	Maintenance, Repair, Alterations, Additions and Inspection	22
14.1	Maintenance & Repair	22
14.2	Air Conditioning	22
14.3	Plans	22
14.4	Structural Work	22
14.5	Tenant's works	22

A handwritten signature in black ink, appearing to read "John".

Commercial & Industrial Property Long Term Lease



14.6	Requirements on completion	23
14.7	Owner's Rights	23
15.	Damage/Destruction to Premises	23
15.1	Rent Abatement	23
15.2	Proportional rent reduction	23
15.3	Owner not to repair	23
15.4	Owner intends to reinstate	23
15.5	Owner fails to reinstate	23
15.6	Tenant may terminate	24
15.7	Owner's rights not affected	24
15.8	No obligation to restore	24
15.9	Parties' Rights not affected	24
16.	Assignments and Mortgages	24
16.1	Prohibited Dealings	24
16.2	Assignment	24
16.3	Request for the Owner's Disclosure Statement	24
16.4	Consent to be given	24
16.5	Tenant's obligations before assignment	24
16.6	Variation of terms of proposed assignment	25
16.7	Change in control of Tenant	25
16.8	Leasing or charging of Tenant's Property	25
16.9	Franchises	25
16.10	Related Body Corporate	25
16.11	Assignment of Lease by change in share capital of Corporation	25
17.	Default	25
17.1	Owner's right to terminate	25
17.2	Conversion of tenancy	26
17.3	Default notice	26
17.4	Owner's Remedies	26
17.5	Essential Obligations	26
17.6	Termination	26
17.7	Tender of money	26
18.	Risk, Insurance, Guarantee and Indemnity	26
18.1	Risk	26
18.2	Tenant to insure	26
18.3	Tenant's Property to be insured	27
18.4	Increased premiums	27
18.5	Indemnity	27
18.6	Release	27
18.7	Limitation of liability	27
18.8	Independence of indemnities	27
18.9	Blanket Policy of Insurance	27
18.10	Damage by rain water	27
19.	End of Lease (Expiry or Termination)	27
19.1	Tenant to yield up Premises	27
19.2	Removal of the Tenant's Property	27
19.3	Failure by Tenant to remove the Tenant's Property	28
19.4	Tenant to indemnify and pay Owner's costs	28
19.5	Removal after re-entry	28
19.6	Shopfronts	28
19.7	Tenant's risk	28
19.8	Tenant to return keys	28

Commercial & Industrial Property Long Term Lease



19.9	Compulsory Acquisition	28
20.	Where the Tenant is a Trustee	28
20.1	Tenant's Declarations	28
20.2	Liability of the Tenant	28
20.3	Obligations of the Tenant	28
21.	PPSA	29
22.	Guarantee	29
22.1	Guarantee and indemnity	29
22.2	Guarantor's covenants	29
22.3	Extended operation of Guarantee	31
23.	General	31
23.1	Waiver and Variation	31
23.2	No Waiver	31
23.3	Approvals	31
23.4	Prior breaches	31
23.5	Warranties	31
23.6	Undertakings	31
23.7	Counterparts	32
23.8	Business Tenancies (Fair Dealings) Act	32
24.	Advice, Complaints and Disputes	32
24.1	Disputes:	32
24.2	Complaints and Advice	32
COMMERCIAL/INDUSTRIAL PROPERTY LONG TERM LEASE - PART C		33
Additional terms		33

Commercial & Industrial Property Long Term Lease



COMMERCIAL & INDUSTRIAL PROPERTY LONG TERM LEASE - PART A

Lease made between

Owner 1

Name	Graham Nominees (NT) Pty Ltd as trustee for Graham family trust	ABN/ACN
Organisation Name		

Owner 2

Name		ABN/ACN
Organisation Name		

Owner 3

Name		ABN/ACN
Organisation Name		

and

Tenant 1

Name	Full Blown Kustoms	ABN/ACN 63 206 603686
Organisation Name		

Tenant 2

Name	Pedros Paint Panel	ABN/ACN 37 424 014 098
Organisation Name		

Tenant 3

Name		ABN/ACN
Organisation Name		

Tenant 4

Name		ABN/ACN
Organisation Name		

and

Guarantor 1

Name	Geoffrey Dawson	ABN/ACN 63 206 603686
Organisation Name	Full Blown Kustoms	
Relationship to Tenant		

Guarantor 2

Name	Peter Goodwin	ABN/ACN 37 424 014 098
Organisation Name	Pedros Paint Panel	
Relationship to Tenant		

Guarantor 3

Name		ABN/ACN
Organisation Name		
Relationship to Tenant		

Guarantor 4

Name		ABN/ACN
Organisation Name		
Relationship to Tenant		

Owner's Agent (Insert name of Owner's Agent (if any) and contact details)

Trading Name Peter Norton Real Estate P/L a.t.f. Norton Doyle Unit Trust T/A First National Framptons

Address 1 1/78 Hartley Street

Address 2

Suburb Alice Springs State NT Postcode 0870

Telephone 08 8952 7833 Facsimile 08 8952 5918

Email frampton@frampton.com.au



Commercial & Industrial Property Long Term Lease



Manager	(insert name of Manager (if any) and contact details)		
<i>The manager can do anything that the Owner may or must do in the Lease.</i>			
Name	Peter Norton Real Estate P/L a.t.f. Norton Doyle Unit Trust T/A First National Framptons		
ABN/ACN	37 887 136 443		
Address 1	1/78 Hartley Street		
Address 2			
Suburb	Alice Springs	State NT	Postcode 0870
PO Box	PO BOX 182, Alice Springs NT 0871		
Phone (business)	08 8952 7833	Mobile	
Email	framptons@framptons.com.au		
Relationship to Tenant			
Term of Lease (*delete as appropriate)			
* This Commercial & Industrial Long Term Lease is fixed commencing on [REDACTED]		insert Commencement Date [REDACTED]	
		on a (*select one) *weekly / monthly / quarterly basis	
Or			
* This Commercial & Industrial Long Term Lease is fixed commencing on		insert Commencement Date Date: 01 December 2019	
		and expiring on	
		insert Expiry Date Date: 30 November 2022	
Particulars of Lease if option to extend lease is exercised			
First option to extend		Second option to extend	
First Further Term:	2 Years	Second Further Term:	
Annual Rent:		Annual Rent:	
Date first extended term commences:	Date: 01 December 2022	Date second extended term commences:	Date:
Expiry Date of first further term:	Date: 30 November 2024	Expiry Date of second further term:	Date:
Third option to extend		Fourth option to extend	
Third Further Term:		Fourth Further Term:	
Annual Rent:		Annual Rent:	
Date third extended term commences:	Date:	Date fourth extended term commences:	Date:
Expiry Date of third further term:	Date:	Expiry Date of fourth further term:	Date:
CPI Adjustment Date(s)			
From Date: 01/12/2020	to Date: 30/11/2021	From Date:	to Date:
From Date: 01/12/2021	to Date: 30/11/2022	From Date:	to Date:
From Date: 01/12/2022	to Date: 30/11/2023	From Date:	to Date:
From Date: 01/12/2023	to Date: 30/11/2024	From Date:	to Date:
From Date:	to Date:	From Date:	to Date:
Other Details:			



Commercial & Industrial Property Long Term Lease



Market Review Date(s)

From Date:	to Date:	From Date:	to Date:
From Date:	to Date:	From Date:	to Date:
From Date:	to Date:	From Date:	to Date:
From Date:	to Date:	From Date:	to Date:
From Date:	to Date:	From Date:	to Date:

Fixed Rent Increase Date

Fixed variation date(s)	Fixed percentage increase or fixed annual amount increase		
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	
From Date: _____ to Date: _____	_____ %	_____ \$	

Service of Notices by Post

Owner Postal Address	PO BOX 182, Alice Springs NT 0870
Tenant Postal Address	9 Bromley Street, Gillen NT 0870
Guarantor Postal Address	

Giving of Notices and Information by Electronic Means

Indicate below for each of the following persons whether the person agrees to notices and information being given by email or text under the *Electronic Transactions Act 2011*

	Name	Email Address	
Owner 1		framptons@framptons.com.au	Email: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Owner 2			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>
Owner 3			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>
Tenant 1	Peter Goodwin	pedrospaintandpanel@gmail.com	Email: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Tenant 2	Geoffrey Dawson	full_blownd_kustoms@outlook.com	Email: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Tenant 3			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>
Tenant 4			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>
Guarantor 1	Peter Goodwin	pedrospaintandpanel@gmail.com	Email: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Guarantor 2	Geoffrey Dawson	full_blownd_kustoms@outlook.com	Email: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/>
Guarantor 3			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>
Guarantor 4			Email: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>

Commercial & Industrial Property Long Term Lease



The Land				
Lot/Section No	01318 (Part of Lot)			
Unit No	17A			
Unit Plan No				
The Premises				
The commercial/industrial Premises are outlined in red/hatched on the attached plan.				
Address 1	17 A Brown Street			
Suburb	Alice Springs	State	NT	Postcode 0870
Lot No	01318 (Part of lot)	Hundred of	Alice Springs	
Address 2				
Suburb		State	Postcode	
Lot No		Hundred of		
Postal Address (if different from above)				
PO Box	Town/City	Postcode		
Address 1				
Address 2				
The Premises include/exclude (delete as appropriate - include any additional matters, such as parking space or storage areas provided, or any exclusions, such as sheds (if space is insufficient make a notation and use the additional space in Part C)				
Inclusions	Exclusions			
<p> </p> <p> </p> <p> </p>				
Owner's Property (fixtures, fittings, appliances, chattels including furniture and effects)				
<p> </p> <p> </p> <p> </p>				
Rent				
The rent is	\$ 39,095.12 + GST	per month /annum, payable monthly in advance		
starting on	1/12/2019			
Payment Method				
The method by which the rent must be paid is: (strikeout where applicable)				
(a) by cash or cheque or				
(b) into the following account, or any other account nominated by the Owner:				

Commercial & Industrial Property Long Term Lease



BSB number: 085 995	account number: 71 021 6746
account name: Framptons Commercial	payment reference: 17ABrown
or	
(c) <u>as follows:</u>	

Special Rent for Owner's cost of fit out

the tenant / is not required to pay any special rent for Owner's cost of fit out (indicate yes or no):

the special rent for Owner's cost of fit out is calculated as follows:

Encumbrances

Outgoings (payable by the Tenant) - Clause 10.1

(if space is insufficient make a notation and use the additional space in Part C)

All charges raised or assessed in respect of lessee's occupation and use of the leased premises for the services separately metered to the leased premises, to be paid by the punctually and directly to the relevant supplier.

1. Telecommunication(including connection and use)
2. Electricity(including air conditioning and electricity)
3. Gas

Operating Expenses (payable by Tenant) - Clause 10.3

(if space is insufficient make a notation and use the additional space in Part C)

NIL

Security Deposit

A Security Deposit of \$ 3,257.93 (NO GST)

must be paid to the Owner (or if a Manager is appointed, the Owner's Manager) before the Lease commences. The Tenant must satisfy this obligation by providing the Owner with an unconditional irrevocable bank guarantee.

Permitted Use

the Tenant is permitted to use Crash Repair and Restorations
the Premises only for

Permitted Business Hours



COMMERCIAL & INDUSTRIAL PROPERTY LONG TERM LEASE - PART B

STANDARD TERMS

1. Definitions and Interpretation

1.1 Definitions

In this Lease, unless otherwise required by the context or subject matter:

Act	means <i>Business Tenancies (Fair Dealings) Act 2003 (NT)</i> .
Adjustment	means each form of adjustment to consideration provided for in this Lease.
Air Conditioning Plant and Equipment	means any plant or equipment installed for the purpose of: <ul style="list-style-type: none"> (a) circulating or venting air around the Premises; (b) heating the Premises; or (c) cooling the Premises, (or any combination of them).
Annual Rent	means the yearly rental amount for each period of the Term as specified in Part A and otherwise varied under this Lease.
Authority	means any government, semi or local government, statutory or other body.
Building	means all buildings, structures and other improvements (including the Owner's Property) erected or situated from time to time on the Land.
Commencement Date	means the date set out in Part A.
Common areas	means any areas within the Building and upon the Land which the Owner provides for common use by the Tenant and other Tenants and includes areas such as car parking areas, stairs, corridors, lifts, toilets and footpaths.
Consumer Price Index	means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published from time to time by the Australian Bureau of Statistics or the index officially substituted for it.
Controller	has the meaning given in the Corporations Act.
Corporations Act	means the <i>Corporations Act 2001 (Cth)</i> .
CPI Adjustment Date	means each date in Part A.
Current CPI	means the Consumer Price Index number for the quarter last published immediately before the relevant CPI Adjustment Date.
Default Interest Rate	means interest calculated on daily balances at the rate equal to 2% per annum above the rate quoted from time to time by the Owner's principal bankers (as nominated by the Owner) on overdraft accommodation in excess of \$100,000.
Encumbrances	means the encumbrances specified (if any) in Part A.
Event of Insolvency	means: <ul style="list-style-type: none"> (a) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of a person or any asset of a person; (b) a liquidator or provisional liquidator is appointed in respect of a corporation; (c) any application (not being an application withdrawn or dismissed within seven days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of: <ul style="list-style-type: none"> (i) appointing a person referred to in paragraphs (a) or (b); (ii) winding up a corporation; or (iii) proposing or implementing a scheme of arrangement; (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision; (e) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within seven days; (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.



Commercial & Industrial Property Long Term Lease



Expiry Date	means subject to any valid renewal or extension of the Term, midnight on the date specified under heading Term of Lease in Part A.
Financial Year	1 July to 30 June of each calendar year.
GST	means a goods and services tax, value added tax, consumption tax or a similar tax.
Guarantor	means the person described in Part A.
Land	means the land described in Part A.
Lease	means these lease covenants, the instrument of lease which adopts these lease covenants and all annexures and schedules to the relevant instrument of lease.
Lettable Area	means the lettable area of all Premises on the Land.
Manager	means the person described at Part A or any other person who the Owner notifies the Tenant of who is employed by the Owner to manage the Land.
Market Review Date	means each date in Part A.
Operating Expenses	means the expenses for the Land set out in clause 10.3.
Outgoings	means the costs incurred by the Owner in respect of the Owner's ownership and supply of the Premises, including:
	(a) all rates, land taxes (on the basis that the Land is the only land owned by the Owner and the Owner is not assessed as a non-concessional company), and other charges imposed by any Authority and levies and charges imposed under strata, community title or similar legislation in respect of the Land;
	(b) taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any Authority including any tax imposed as a consequence of the Owner having an estate or interest in the Land but excluding;
	(c) any GST or like tax imposed because this Lease is a taxable supply;
	(d) any income tax or capital gains tax;
	(e) removal and disposal of all waste and other garbage (if any);
	(f) all water and sewerage fees which are assessed or imposed by any Authority in respect of the Land; and
	(g) any other items specified in the Owner's Disclosure Statement (if any) as outgoings to which the Tenant must contribute.
Owner	means the Owner of the Land described in Part A, and, where relevant, it includes the Manager, employee(s) or any person authorised by the Owner.
Owner's Disclosure Statement	means a disclosure statement given by the Owner to the Tenant in accordance with the Act.
Owner's Property	means all equipment, items, chattels and fittings owned and installed by the Owner from time to time listed in Part A.
Permitted Use	means the Permitted Use described in Part A.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
PPS Laws	means:
	(a) PPSA;
	(b) any regulation made under or pursuant to PPSA; and
	(c) any provision of the PPSA or regulations referred to in (b); or
	(d) any amendment to any of the above, made at any time.
Premises	means the Premises described in part A and includes the Owner's Property within the Premises.
Previous CPI	means the Consumer Price Index number for the quarter (which corresponds with the quarter relating to the Current CPI) immediately before the latest of:
	(a) the last CPI Adjustment Date;
	(b) the last Market Review Date; and
	the Commencement Date.
Reference Schedule	means the Reference Schedule attached to the back of these lease covenants.
Related Body Corporate	has the meaning given to that expression under the <i>Corporations Act 2001</i> (Cth).
Rules	means the rules of the Premises made by the Owner under clause 11.5
Security Deposit	means the amount specified in part A.



Commercial & Industrial Property Long Term Lease



Security Interest	means:
	(a) an interest or power reserved in or created or otherwise arising in or over an interest in any asset whether under a bill of sale, mortgage, charge, lien, pledge, other security interest or preferential arrangement (including retention of title), trust or power or otherwise by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation;
	(b) a security interest as defined in any Securities Laws; or
	(c) any agreement to grant or create anything referred to in paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.
Securities Laws	means PPSA Law and any other law, statute, regulation, convention or order in any jurisdiction which regulates or governs the creation, registration, priority, enforcement or other thing in respect of a Security Interest.
Serial Number	means a serial number within the meaning of the PPSA.
Services	the services running through or servicing the Premises, and includes power, water, gas, sewerage, drainage, fire sprinkler and fire protection systems, alarm systems, telephone and other telecommunication services.
Tenant	means the person or persons described in Part A and includes employees, agents, any person who acquires the Tenant's interest in this Lease whether by assignment or succession, and, where relevant, any person the Tenant allows into the Premises.
Tenant's Disclosure Statement	means a disclosure statement given by the Tenant to the Owner in accordance with the Act.
Tenant's Property	means all equipment, items, chattels and fittings owned and installed by the Tenant from time to time.
Term	means the period specified in Part A commencing on the Commencement Date and ending on the Expiry Date or including, where the context so requires, any holding over of that period.

Where any other term is used in this Lease which is defined in the Act, it shall have the meaning which it bears in the Act.

2. Interpretation

- 2.1 In this Lease, unless inconsistent with the context or subject matter, the following terms shall have the following meanings:
 - (a) the singular includes the plural and vice versa;
 - (b) 'person' includes a firm, a body corporate, an unincorporated association or an Authority;
 - (c) an agreement, representation or warranty:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- 2.2 a reference to:
 - (a) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
 - (b) a document includes any variation or replacement of it;
 - (c) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (d) a thing includes the whole and each part of it;
 - (e) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
 - (f) the president of a body or authority includes any person acting in that capacity;
 - (g) an Item means an item referred to in the Reference Schedule;
 - (h) an institution or corporation that ceases to exist shall be deemed to include any institution or corporation formed with similar objects and functions to carry on the activities previously carried on by the institution or corporation that ceases to exist; and
 - (i) 'include' (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.
- 2.3 The Lease will be governed by the Laws of the Northern Territory of Australia.
- 2.4 The Lease comprises the whole of the Agreement between the Tenant and the Owner and can only be changed if both the Tenant and the Owner agree in writing.
- 2.5 Where something has to be done under the lease within a particular time limit, and that time limit ends on a weekend or public holiday, then the action which has to be taken may be done on the next working day.
- 2.6 If a Court decides that any part of this lease is unenforceable for any reason or because of one particular part the whole of the Lease is unenforceable, then that part shall be omitted from the Lease and shall not affect the operation of the rest of the Lease.
- 2.7 Any additional terms set out in Part C will form part of the Lease. If there is an inconsistency between a special condition and any provision of the Lease, the special condition shall prevail.



Commercial & Industrial Property Long Term Lease



3. Grant and Term of Lease

3.1 Grant of Lease

The Owner grants to the Tenant and the Tenant takes a Lease of the Premises:

- (a) For the Term and at the rent specified in this Lease;
- (b) Subject to the Encumbrances; and
- (c) Upon the terms and conditions of this Lease.

3.2 Term of the Lease

Subject to the provisions of this Lease, this Lease commences on the Commencement Date and Expires on the Expiry Date.

3.3 Option to extend

- (a) The Owner grants to the Tenant an option to extend this Lease for the further term or terms (if any) specified in Part A, subject to the provisions in clause 3.3(b) and otherwise upon the terms and conditions of this Lease. The Tenant may exercise this option to extend if and only if:
 - (i) the Tenant, on each occasion, gives the Owner written notice stating that it wants to exercise the option;
 - (ii) the Owner receives that notice within the period from and including the day that is six months before the expiration of the then current term to but excluding the day that is three months before the expiration of the then current term; and
 - (iii) when the Tenant gives that notice, and on the date of commencement of the applicable further term, the Tenant is not in breach of this Lease, notice of which breach has been given to the Tenant in writing.
- (b) The terms and conditions of the Lease during any extended term of this Lease are to be identical with this Lease except that:
 - (i) if particulars of more than one option to extend are specified in Part A, the particulars of the option to extend first specified are deleted from Part A;
 - (ii) if particulars of only one option to extend is specified in Part A, this clause 3.3 and Option to Extend in Part A are deleted; and
 - (iii) the term of the extended lease, the annual rent, date the extended term commences, the expiration date of the extended term and any CPI increase, Market Value increase or Fixed Rent increase are to be those first specified in Part A.
- (c) If the Tenant validly exercises an option to extend under this clause 3.3 then, prior to expiration of the then current term, the Owner and the Tenant must execute a deed recording the extension (or such other document necessary to properly record the extension), being a deed (or document) prepared at the Tenant's cost.

3.4 Holding Over

If the Tenant continues to occupy the Premises after the Expiry Date with the Owner's approval, it does so under a tenancy for a fixed term of one month and then from month to month which either party may terminate at one month's notice ending on any day.

3.5 Holding Over Terms

Subject to clause 3.4, the monthly tenancy is on the same terms as this Lease except:

- (a) The first day of the first monthly tenancy will be a CPI Adjustment Date and rent will be adjusted in accordance with clause 5;
- (b) For those changes which are necessary to make this Lease appropriate for a monthly tenancy; and
- (c) for those changes which the Owner requires as a condition of giving its approval for the holding over.

3.6 First Payment under Holding Over

The first payment of rent due under clause 3.5 must be paid on the day following the Expiry date.

4. Use of Premises

4.1 Permitted Use

- (a) The Tenant agrees to only use the Premises for the purpose(s) specified in part A.
- (b) The Tenant agrees not to do anything upon the Premises or the Land that is or may be a nuisance, dangerous or may interfere with other tenants upon the Land or people using or occupying neighbouring properties.
- (c) The Tenant agrees to keep all doors and other means of access to the Premises locked and secure when the Premises are unoccupied.

4.2 Business Hours

The Tenant must keep the Premises open for business during the business hours specified in Part A under the heading Permitted Use, and must carry out its business in a professional and competent manner.



Commercial & Industrial Property Long Term Lease



4.3 Suitability of Premises

The Tenant acknowledges that the Owner has not made any promise or representation or made any warranty to the Tenant as to the suitability of the Premises for the Tenant's business. The Tenant acknowledges that before entering into the Lease, the Tenant carried out its own inspection of the Premises and has relied on its own enquiries with all Authorities regarding the suitability of the Premises for its business.

4.4 Observe Laws

- (a) While the Tenant occupies the Premises under this Lease it must obey all laws in force concerning the Premises or its occupation and use of the Premises.
- (b) The Tenant must not use nor permit any use of the Premises:
 - (i) for an illegal business purpose or process; or
 - (ii) which could damage or destroy the Premises.
- (c) The Tenant acknowledges and agrees that, regarding the present or future suitability or adequacy of the Tenant's intended use of the Premises, the Building or the fixtures, fittings, furnishings, plant, machinery, equipment, services and facilities provided by the Owner including, without limitation, any pre-existing fit out or partitioning installed in the Premises:
 - (i) No promise, representation or warranty was given by the Owner or by any person on behalf of the Owner to the Tenant or any person acting on behalf of the Tenant;
 - (ii) The Owner makes no warranties; and
 - (iii) Any warranties implied under the general law or by statute are excluded under this Lease and negatives to the fullest extent permitted by law.
- (d) The Tenant must at its own cost comply with and observe at all times:
 - (i) All statutes and instruments in force relating to the Premises, the business or activities of the Tenant carried on in the Premises; and
 - (ii) All requirements notices and orders of any Authority with reference to the use (including sanitation) notwithstanding to whom such notice is addressed.
- (e) If required by the Owner, the Tenant must produce on demand all certificates, logs or any other documentary evidence as reasonably required by the Owner evidencing the Tenant in compliance with and observing obligations under clause 4.4.

5. Rent

5.1 Rent

The Tenant must pay the rent specified in Part A by monthly instalments, in advance on the first day of each month with the first instalment to be paid on the Commencement Date.

5.2 Instalments for Less than a month

If an instalment is for a period of less than one month, then that instalment is that proportion of the Annual Rent with the number of days in the period bears to the number of days in that year.

5.3 Consumer Price Index adjustment

Subject to clause 5.9, the Annual Rent from and including each CPI Adjustment Date is the Annual Rent immediately before that CPI Adjustment Date multiplied by the Current CPI and divided by the previous CPI.

5.4 Market Review of Rent

(a) Owner's Notice

The Owner must give the Tenant a notice not later than one month before the Market Review Date(s) specified in Part A stating the Owner's assessment of the current annual market rent of the Premises on the Market Review Date ('Market Rent Notice').

(b) Tenant's Notice

The Annual Rent from and including the Market Review Date(s) specified in Part A is the amount stated in the Market Rent Notice unless the Tenant gives the Owner notice, disagreeing with that amount within 21 days after the Market Rent Notice is given.

5.5 Disputes over rent review

- (a) If the parties do not agree on the current annual market rent of the Premises to apply from the expiration of the Term within 21 days after the Market Rent Notice is given, then the current annual market rent must be decided by a valuer who:
 - (i) Is appointed, instructed and whose costs are paid equally by the parties (but if the parties do not agree on who to appoint within 2 weeks after the Tenant's notice under clause 5.4(b) is given, that the valuer is to be nominated at either party's request by the president or other senior executive officer of the Northern Territory division of the Australian Property Institute Incorporated);



Commercial & Industrial Property Long Term Lease



- (ii) Has at least five years experience in valuing similar retail premises;
 - (iii) Is a full member of at least five years' standing of the Australian Property Institute Incorporated and at the time of the appointment is actively engaged in valuing similar retail/business premises; and
 - (iv) Must decide what is the current annual market rent that would reasonably be expected to be paid for the Premises on the relevant Market Review Date:
 - (A) Assuming the Premises were unoccupied;
 - (B) Having regard to the terms of this Lease including a use substantially the same as the Permitted Use;
 - (C) Taking into account concessions paid or offered to the Tenant at the commencement of this Lease;
 - (D) Disregarding the goodwill of the Tenant's Business;
 - (E) Disregarding the value of the Tenant's fixtures and fittings on the Premises except to the extent that they have been contributed to by the Owner;
 - (F) Having regard to any other matters relevant to the assessment of the current annual market rent;
 - (G) Having regard to the rental value of comparable premises but in doing so must make no reduction on account of any incentive; and
 - (H) Make no reduction on account of any incentive paid, provided, or allowed to the Tenant or which would be likely to be paid, provided or allowed to a Tenant in relation to a new tenancy in respect of the Premises if they were vacant.
 - (v) Must give a written valuation setting out in detail the reasons for the valuer's decision and the matters of which the valuer had regard in making the decision within one month after being appointed; and
 - (vi) Acts as an expert and not as an arbitrator and whose decision is final and binding.
- (b) The amount decided by the valuer is the Annual Rent from and including the relevant Market Review Date.

5.6 Information

Within seven days after the valuer asks for it, the Owner must give the valuer relevant information about the leases for retail shops/business premises in the Building (or on the Land) to assist the valuer to decide on the current annual market rent.

5.7 Fixed Increase in Rent

The annual rent from and including each Fixed Increase Date is the Annual Rent immediately before the Fixed Increase Date plus the percentage specified in Part A or the amount specified in Part A.

5.8 Special rent for Owner's cost of fit out

If required in Part A, the Tenant must pay special rent for the Owner's cost of fit out in the amount specified in Part A.

5.9 No Decrease in Rent

The Annual Rent from any CPI Adjustment Date shall not be less than the Annual Rent payable by the Tenant immediately before that CPI Adjustment Date.

5.10 Payment

On the first day of the month after the information is available to make the calculation in clause 5.3, the Tenant must pay the difference between what the Tenant has paid on account of the Annual Rent and the new Annual Rent for the period from and including the relevant CPI Adjustment Date to but excluding that first day of the month.

5.11 Payments until agreement

Until the Annual Rent is agreed or decided under this clause 5, the Tenant must pay the Annual Rent applicable immediately before the Expiry Date (or any extension of the Term) by equal monthly instalments.

5.12 Adjustments

On the first day of the month after the Annual Rent is agreed or decided under this clause 5, the Tenant and the Owner must make the appropriate adjustment and payment or refund to ensure that as from the Expiry Date (or any extension of the Term) the Tenant has paid and the Owner has received the Annual Rent as varied.

5.13 Interest on overdue money

The Tenant must pay on demand interest on any money due but unpaid by the Tenant under this Lease. Interest is payable at the Default Interest Rate and is to be computed monthly from the due date for payment of the money until payment of that money in full. Interest not paid when due is to be capitalised at monthly intervals. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause. Interest is recoverable in the same way as rent in arrears.

Commercial & Industrial Property Long Term Lease



6. Security Deposit

- (a) The Tenant, must, on or before the Commencement Date, pay the Owner the Security Deposit.
- (b) The Owner may use the Security Deposit to recover any loss that it may suffer because of the Tenant's breach of the terms of this Lease.
- (c) If the Owner is required to use the Security Deposit during the Term of this Lease then the Tenant must replace any amount which the Owner uses.
- (d) At the end of this Lease and after the Tenant has vacated the Leased Premises, the Owner will refund any part of the Security Deposit which it does not need to cover a loss due to the Tenant's breach of this Lease.

7. Payment Requirements

7.1 Method

The Tenant must make all payments due under this Lease to the Owner by electronic funds transfer (or such other method that the Owner reasonably requires) to the Owner without set-off, counterclaim, withholding or deduction.

7.2 Correction of payments

If the Tenant pays an amount and it is found later that the amount was not correct, then even if the Owner has given the Tenant a receipt, the Tenant must pay the Owner (or the Owner must refund to the Tenant) the difference between what the Tenant has paid and what the Tenant should have paid within 14 days after either party gives a notice about the mistake and the party receiving the notice agrees that a mistake has been made.

7.3 Due date for payments

If this Lease does not specify a due date or period for payment of an amount, then the Tenant must pay that amount within 14 days after the Owner demands it.

7.4 Obligations not affected

Expiry or termination of this Lease does not affect the Tenant's obligations:

- (a) To make payments under this Lease for periods before or after then; or
- (b) To give information to the Owner to enable it to calculate those payments.

7.5 Broken periods

Any amounts payable for part of a month are to be calculated as a proportion of the number of days in the month and must be paid, unless this Lease says otherwise, on the first day of the broken period.

8. Notices

8.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this agreement (Notice) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in Part A or as otherwise specified by that party by Notice (Notified Contact Details); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

8.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia;
- (e) sent by facsimile; or
- (f) sent by email.

8.3 When Notices considered given and received

Subject to clause 8.6, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;

Commercial & Industrial Property Long Term Lease



- (b) if sent from a place within Australia by regular post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting;
- (e) if sent by facsimile to the facsimile number set out in the Notified Contact Details, at the time indicated by the sending party's transmission equipment as the time that the facsimile was sent in its entirety, unless the receiving party informs the sending party that the Notice is illegible or incomplete within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) of it being transmitted; and
- (f) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

8.4 Persons to give Notices

A Notice, consent or approval to be given by the Owner under this Lease may be given by any person employed by the Owner or a Related Body Corporate of the Owner bearing the title 'Manager' or by the Owner's duly appointed attorneys, solicitors or agents.

8.5 No electronic communication of Notices

A Notice must not be given by electronic means of communication other than facsimile and email as permitted under clause 8.3.

8.6 Time of delivery and receipt

If pursuant to clause 8.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

8.7 General

A party may change its contact details as set out in Part A by giving a Notice to each other party.

9. Tax

9.1 GST

- (a) The Annual Rent and other moneys payable by the Tenant under this Lease have been calculated without regard to GST.
- (b) The parties acknowledge that:
 - (i) the Owner is liable to pay GST as a result of the grant of this Lease and supplies by it to the Tenant under or in connection with this Lease; and
 - (ii) the Owner may charge the additional amount described in clause 9.2 to the Tenant in respect of GST.

9.2 Passing-on provision

The Tenant must pay to the Owner at the same time as payment is due for the supply of this Lease and under or in connection with this Lease an additional amount equal to 10% of the amount of the payment for the supply.

9.3 GST invoice

The Owner must provide the Tenant with any document in the nature of an invoice as required by any law relating to GST and containing the information required by such law.

9.4 Change in rate

If the GST rate changes then, from the date of the change clause 9.2 will be deemed amended so that the new rate applies in lieu of the percentage stated in clause 9.2.

9.5 Input Tax Credits

Consistent with the intent of Section 78-45 of A New Tax System (Goods and Services Tax) Act 1999 (Cth), the Tenant must inform its insurer of the Tenant's entitlement to claim GST input tax credits in respect of the premiums paid for insurances referred to in clauses 18.2 and 18.3 (insurance) at or before the time a claim is first made under the insurance policy since the last payment of a premium.

9.6 Confirmation to Owner

The Tenant must confirm to the Owner in writing that it has complied with clause 9.5 within seven days of complying.

Commercial & Industrial Property Long Term Lease



10. Outgoings, Operating expenses and Costs

10.1 Outgoings

- (a) The Tenant must pay all charges in respect of telephone and electricity services supplied to the Premises and any other Outgoings specified in Part A.
- (b) If the Premises are part of the Land and are not separately measured or charged for the services which the Tenant is responsible for, the Owner will pay those charges and the Tenant must reimburse the Owner for its share of the charges based on the proportion that the area of the Premises bears to the total Lettable Area of the Land.

10.2 Air Conditioning

- (a) If the Owner supplies Air Conditioning to the Premises, the Tenant must pay for the cost of supplying the service. If the Air Conditioning Plant only services the Premises the Tenant must also pay the Owner's cost of maintaining and repairing the Plant. If the Plant services more than one tenancy, the Tenant must pay the Owner's costs of maintaining and repairing the Air Conditioning Plant based upon the proportion that the area of the Premises bears to the Lettable Area which the Plant in question services.

10.3 Operating Expenses

- (a) In addition to charges for services which are supplied to the Premises, the Tenant must pay the Owner its share of the Operating Expenses specified in Part A.
- (b) Operating Expenses means the following monies which the Owner pays in respect of the Land:
 - (i) Council rates, water, electricity, gas and sewerage charges;
 - (ii) The reasonable cost of maintaining lifts and Air Conditioning plant, with the exception of expenses of a capital nature;
 - (iii) Common Area cleaning costs, garbage and rubbish removal costs;
 - (iv) Any reasonable costs which the Owner incurs in maintaining and repairing the Building and Common Areas;
 - (v) Any management costs which the Owner incurs in respect of the land.
- (c) Operating Expenses do not include:
 - (i) Expenses arising solely out of the Tenant's use of the Premises;
 - (ii) Any expenses arising solely out of any other tenants' use of the Premises; or
 - (iii) The cost of any structural repairs to the Building.
- (d) At the Commencement Date and at the commencement of each Financial Year the Owner will give the Tenant an estimate of the Tenant's share of the Operating Expenses up to the end of the next Financial Year or the end of the Lease. The Tenant agrees to pay the Owner the estimated share of the Operating Expenses in equal monthly instalments in advance on the same days that rent is paid.
- (e) The Owner estimate of the Tenant's share of the Operating expenses is based upon the proportion that the area of the Premises bears to the Lettable Area of the Land.
- (f) At the end of the Financial Year and at the end of the Lease the Owner agrees to provide the Tenant with a statement of the Operating Expenses and the Tenant's share of these expenses for the previous Financial Year or the part of the Financial Year up to the end of the Lease. In the event that:
 - (i) The Tenant's share of the Operating Expenses is greater than the estimate, the Tenant agrees to pay the Owner the difference within 30 days;
 - (ii) The Tenant's share of the Operating Expenses is less, the Owner agrees to refund the difference within 30 days of the end of the Financial Year or the end of the lease (whichever applies).

10.4 Premises Keys

- (a) The Owner shall, at its cost, provide the Tenant with two access keys/swipe card to the Premises (Premises Keys). If the Tenant requires any additional Premises Keys then it shall provide the Owner with the name and contact details of the person to whom the Premises Keys are to be given and pay the Owner the reasonable costs it incurs in providing the additional Premises Keys to the Tenant.
- (b) The Tenant shall pay the Owner's reasonable costs incurred in provided any replacement keys for the Premises.
- (c) As soon as is practicable after any of the keys for the Premises are transferred to a different person that previously notified, the Tenant must provide the Owner with the name and contact details of the person to whom the Keys are transferred.

10.5 Costs, charges and expenses

- (a) In connection with this Lease and any document or matter in connection with the Tenant must pay promptly:
 - (i) for everything it must do;
 - (ii) all stamp duty and registration fees (if applicable);

Commercial & Industrial Property Long Term Lease



- (iii) on demand, the Owner's reasonable costs, charges and expenses for negotiating, preparing, executing, stamping and registering the Owner's disclosure statement and Lease (if applicable) and any legal fees incurred by the Owner (calculated on a solicitor and own client basis) in connection with the Tenant's default;
- (iv) on demand, the Owner's reasonable costs, charges and expenses of obtaining any consents the Owner must obtain before giving approvals, considering requests for approvals, plans and surveys and exercising rights; and
- (v) all costs, charges and expenses in connection with any works the Tenant carries out, including those incurred by the Owner in considering, approving and supervising the works and those of modifying or varying the Premises because of the works.

11. Owners Rights & Obligations

11.1 Owner May Rectify

After giving the Tenant reasonable notice, the Owner may, at the Tenant's cost, do anything which the Tenant should have done under this Lease but which it has not done or which the Owner reasonably considers it has not done properly.

11.2 Quiet Enjoyment

Provided the Tenant observes its obligations under this Lease, the Owner agrees to allow the Tenant to occupy and use the Premises without interruption subject to the Owner's rights reserved by this Lease.

11.3 Maintain the Land

The Owner must:

- (a) use reasonable endeavours to ensure the Owner's Property in the Building is in good working order; and
- (b) use reasonable endeavours to maintain the Premises in a watertight condition.

11.4 Inspection and entry rights of Owner

- (a) The Owner may enter the Premises at reasonable times on 14 day's notice (except in an emergency when no notice is required) to see if the Tenant is complying with its obligations under this Lease or to do anything the Owner must or may do under this Lease including to carry out repairs and maintenance of Premises and the Owner's Property.
- (b) After giving reasonable notice, the Owner may:
 - (i) enter the Premises to show prospective purchasers through the Premises; and
 - (ii) during the period of three months immediately before the Expiry Date, enter the Premises to show prospective Tenants throughout the Premises.
- (c) If there is an emergency, the Owner may stop the Tenant and the Tenant's Employees and Agents from entering the Premises.

11.5 Rules

The Owner may make Rules which are consistent with this Lease in connection with the operation, use (including customer safety), management and occupation of the Building and Land. The Owner must give the Tenant copies of all Rules the Owner makes and notice of any changes to those Rules.

11.6 Change of Owner

If another person becomes entitled to receive the rent payable by the Tenant under this Lease, the Owner is released from any obligation under this Lease arising after that other person acquires the Owner's interest in this Lease and the Tenant and the Guarantor at the Owner's cost must enter into such covenants with the other person as the Owner reasonably requires.

11.6 Owner's Non-Performance of Obligations

The Owner is not required to perform any of its obligations under this Lease where it is not reasonable or practical because of a riot or civil disturbance, strike, lock-out, act of God or war, or by reason of any other event which is beyond the Owner's control.

12. What the Tenant must do

12.1 The Tenant Must:

- (a) Conduct its business at all times in a proper, orderly and business like manner;
- (b) Keep the Premises (including the shopfront and any signs) and everything in them clean and free or vermin and comply with the Owner's reasonable directions in that regard;
- (c) prior to obtaining any licence, approval permit or consent from any Authority required to enable the Tenant to trade in connection with the Tenant's business, the Tenant's Property or the Tenant's use or occupation of the Premises, obtain the prior written consent of the Owner for any such licence, approval, permit or consent;
- (d) comply on time with all laws and the requirements of Authorities in connection with the Tenant's business, the Tenant's Property and the Tenant's use or occupation of the Premises (including obtaining all permits);
- (e) inform the Owner of damage to the Building or the Premises or of a faulty Service immediately it becomes aware of it;



Commercial & Industrial Property Long Term Lease



- (f) be aware of and observe the maximum load weights throughout the Premises and the Building;
- (g) promptly, when asked by the Owner, do everything necessary for the Tenant to do to enable the Owner to exercise its rights under this Lease;
- (h) put up signs in the Premises prohibiting smoking if required by the Owner;
- (i) if the Owner approves the Tenant's use of a business name which is connected with the Building, terminate any right it has to use that business name on the date it must vacate the Premises;
- (j) secure the Premises when they are unoccupied and comply with the directions of the Owner about Building security; and
- (k) only use any Common Areas for the purposes of access to and egress from the Premises.

13. What the Tenant must not do

13.1 The Tenant must not:

- (a) smoke in the Premises;
- (b) overload any floor, hardstand or any electrical, mechanical or drainage service in or to the Premises. Should damage occur to floors or hardstands You will be responsible for the repair or replacement prior to vacating the tenancy;
- (c) alter or interfere with the Owner's Property or remove it from the Premises;
- (d) do anything in or around the Premises which in the Owner's reasonable opinion may be annoying, dangerous or offensive;
- (e) misuse or do anything to overload the Premises' facilities, appurtenances or Services;
- (f) install blinds, awnings, antennae or receiving dishes on any part of the outside of the Premises without the Owner's approval;
- (g) put up:
 - (i) permanent signs without the Owner's approval (which may be refused at the Owner's absolute discretion); or
 - (ii) temporary signs or advertisements on the shopfront without the Owner's approval, provided that the Owner's approval is not required for temporary signs or advertisements on the shop front if they are consistent with the standard required for the Building and are used by the Tenant in other premises where the Tenant carries out a similar business to the Tenant's business;
- (h) install or operate vending or amusement machines;
- (i) hold auction, bankrupt or fire sales in the Premises;
- (j) keep an animal or bird on the Premises (except where required for the Permitted Use);
- (k) use a business name which includes words connecting the business name with the Building without the Owner's approval;
- (l) use any method of heating, cooling or lighting the Premises other than those provided or approved by the Owner;
- (m) operate a musical instrument, radio, television, flashing lights or other equipment that can be heard or (in the case of flashing lights) seen outside the Premises; or
- (n) obstruct:
 - (i) windows in the Premises or Building;
 - (ii) air vents, air-conditioning ducts skylights, sprinklers and fire equipment in the Premises;
 - (iii) corridors, stairs, lifts, footpaths or other Common Areas of the Building and on the Land; or
 - (iv) the emergency exits from the Building or the Premises;
- (o) store any dangerous chemicals, explosives, or flammable substances upon the Premises without the consent of the Owner, unless storage or use of those substances is involved in the Permitted Use of the Premises. Should consent be granted, You must be compliant to any laws or regulations regarding the storage and disposal of hazardous materials including oil, and You will be liable for any clean-up costs in regard to environmental damage including oil spillage;
- (p) sell alcohol from the premises without consent of the Owner, unless the sale of alcohol is involved in the Permitted Use of the Premises.

13.2 Electrical and Drainage

The Tenant must not

- (a) install any electrical equipment in the Premises that will overload the cables and switchboards through which electricity is supplied to the Premises;
 - (b) make any connection to the electrical or drainage services in or to the Premises; or
 - (c) install water, gas or electrical fixtures, equipment or appliances or any apparatus for illuminating, air-conditioning, heating, cooling, cooking or ventilating,
- without the prior written consent of the Owner, which consent shall not be unreasonably withheld, provided that such consent shall not relieve the Tenant of its obligations under this Lease.

13.3 Tenant not to allow breach

The Tenant must not do anything which may result in any of the matters described in clause 13.1 occurring.

Commercial & Industrial Property Long Term Lease



13.4 Head Lease

If the Owner leases the Premises from someone else and provides the Tenant with a copy of its head lease prior to the commencement of this Lease, the Tenant must not do anything which would cause the Owner to be in breach of that head lease.

13.5 Tenant's Employees and Agents to comply

The Tenant must use its best endeavours to ensure that the Tenant's Employees and Agents comply, if appropriate, with the Tenant's obligations under the Lease.

14. Maintenance, Repair, Alterations, Additions and Inspection

14.1 Maintenance & Repair

(a) The Tenant Must:

- (i) Maintain the Premises to a standard consistent with the style, nature and location of the Building, fair wear and tear excepted;
- (ii) Keep the Premises and the Tenant's Property in good repair; and
- (iii) promptly replace worn or damaged items in or attached to the Premises (including all glass, light globes, Tenant's Property and those floor coverings and furnishings which are part of the Owner's Property) with items of similar quality.

(b) The Tenant acknowledges that with the exception of fair wear and tear in respect of the Tenant's covenant to maintain the Premises must be construed in the context of the requirement for the Tenant to maintain the Premises to a standard consistent with the style, nature and location of the Building.

14.2 Air Conditioning

- (a) Subject to clause 10.2, the Tenant must maintain at its cost (including the cost of usual service and maintenance parts), the Air Conditioning Equipment and employ or retain the services of a qualified air conditioning mechanic approved by the Owner (which approval shall not be unreasonably withheld) to service and maintain the Air Conditioning Equipment once every 12 months. The Tenant shall compensate the Owner for any damage caused to the Air Conditioning Equipment to the Premises caused as a result of the Tenant's failure to maintain and service the Air Conditioning Equipment as set out in this clause 14.2.
- (b) For the sake of clarity this clause 14.2 does not require the Tenant to replace the Air Conditioning Equipment (or any material component parts), unless such replacement is necessary due to the Tenant's failure to maintain and service the Air Conditioning Equipment as set out in this clause 14.2 or neglect or default by the Tenant or the Tenant's Employees and Agents.
- (c) Subject to clauses 14.2(a) and 14.2(b), the Owner will be responsible for the cost of replacement of material component parts to the Air Conditioning Equipment made necessary by fair wear and tear.

14.3 Plans

Before carrying out any works on the Premises, the Tenant must submit the plans and specifications for the works to the Owner and its architect and all relevant Authorities for approval.

14.4 Structural Work

The Tenant:

- (a) must not carry out structural work (including alterations or works required by law or any Authority or because of the Tenant's use or occupation of the Premises or the act, negligence or default of the Tenant or of the Tenant's Employees and Agents) to the Premises without the Owner's approval. The Owner's approval is at its absolute discretion and clause 23.3 does not apply; and
- (b) is not required to carry out any repairs of a structural nature unless the repairs are required by any law or any Authority or because of the Tenant's use or occupation of the Premises or the act, negligence or default of the Tenant or of the Tenant's Employees and Agents.

14.5 Tenant's works

The Tenant must ensure that any works it does are done:

- (a) in a proper and workmanlike manner;
- (b) in accordance with all laws and the requirements of Authorities;
- (c) in accordance with the Owner's requirements and directions;
- (d) in accordance with any construction site agreement or industrial award in connection with the Building; and
- (e) by a contractor holding insurance for the risks and amounts the Owner reasonably requires.



Commercial & Industrial Property Long Term Lease



14.6 Requirements on completion

- On completion of works performed by the Tenant in accordance with this clause 14 the Tenant must deliver to the Owner:
- (a) a certificate from all relevant Authorities stating that the works have been completed in accordance with the requirements of those Authorities;
 - (b) a certificate by the Tenant's architect or structural engineer certifying that the works have been designed and installed in structurally sound manner and in particular that the ceiling, shop front signage and shop front are properly affixed to the Premises and are supported independently from the Owner's bulk head and in ceiling services, and
 - (c) two sets of final 'as built' drawings (reduced to A3 size) in respect of the works.

14.7 Owner's Rights

- (a) The Owner reserves the right to improve the Land and to extend or alter the Building. The Owner may also change the Common Areas in any way that is reasonably necessary to protect the legitimate business interests of the Owner.
- (b) In exercising its rights, the Owner must cause as little inconvenience to the Tenant as is practicable. Where the Common Areas includes carparks for the Tenant's use and the use of its customers, the Owner must maintain a reasonable number of car parking spaces for the Tenant's use. The Owner must also remove all rubbish from the land resulting from any alteration or extension or other Building work, once the work has been completed.
- (c) The Tenant agrees that if the Owner properly exercises its rights under this clause to carry out Building works, the Owner will not be in breach of this Lease.
- (d) If the Owner carries out any alterations or additions to the Building or any other work upon the Land which restrict the Tenant's use of the Premises, then the rent, or a fair proportion of the rent, depending on the extent to which the Tenant's use of the Premises is affected, shall be suspended. The Owner shall not be liable to the Tenant for any loss of profits or reduction in income which the Tenant suffers as a result of the Owner's carrying out any Building work on the Land.
- (e) If the Owner cannot agree with the Tenant to what extent, (if any) work carried out by the Owner upon the Land has restricted the Tenant's use of the Premises, or what a fair reduction in the rent would be to compensate then Tenant for any restriction of its use of the Premises, then either the Tenant or the Owner may refer the matter to the President for the time being of the Real Estate Institute of the Northern Territory who shall nominate an experienced commercial property manager (being a member of the Royal Estate Institute of the Northern Territory) who is not the Owner's manager and who is willing to act. The commercial property manager appointed shall decide by how much and over what period the rent should be reduced. In making a decision the commercial property manager shall act as an expert and not as an arbitrator. The commercial property manager's decision shall be final and binding upon both parties. Any fee charged by the commercial property manager shall be shared equally between both parties.

15. Damage/Destruction to Premises

15.1 Rent Abatement

If the Building is damaged so that the Premises cannot be used or are inaccessible, the Tenant is not liable to pay Annual Rent to the Owner for the period that the Premises cannot be used or are inaccessible.

15.2 Proportional rent reduction

If the Premises are still useable but the Tenant's ability to trade from the Premises is diminished due to the damage, the Tenant's liability to pay Annual Rent is reduced in proportion to the reduction in useability caused by the damage.

15.3 Owner not to repair

If the Owner gives the Tenant a notice that the Owner considers that the damage is such that repairing it is impracticable or undesirable, then either the Owner or the Tenant may terminate this Lease by giving not less than seven days notice to the other and no compensation is payable for that termination.

15.4 Owner intends to reinstate

- (a) If the Owner gives the Tenant a notice within a period of three months after the damage occurs of its intention to reinstate the Building and make the Premises fit for use or accessible to the Tenant then the Owner must proceed with reasonable expedition to carry out the necessary works.
- (b) If the Owner does not give either of the notices referred to in clause 15.3 or clause 15.4(a) within a period of three months after the damage occurs then the Tenant may serve a notice requiring the Owner to give a notice under clause 15.3 or clause 15.4(a) as appropriate.
- (c) If the Owner does not give a notice under clause 15.3 or clause 15.4(a) to the Tenant within one month after receiving the Tenant's notice under clause 15.4(b) then the Tenant may terminate this Lease by giving seven days notice to the Owner.

15.5 Owner fails to reinstate

If the Owner serves a notice under clause 15.4(a) and the Owner does not carry out the necessary works then the Tenant may serve a notice requiring the Owner to carry out the necessary works.



Commercial & Industrial Property Long Term Lease



15.6 Tenant may terminate

If the Owner does not comply with the Tenant's notice referred to in clause 15.5 within a reasonable time, the Tenant may terminate this Lease by giving seven days notice to the Owner.

15.7 Owner's rights not affected

Clauses 15.1 and 15.6 (inclusive) do not affect any rights the Owner may have against the Tenant is:

- (a) The damage is caused or contributed to by; or
- (b) Rights under an insurance policy in connection with the building are prejudiced or a policy is validly cancelled or a claim is refused by the insurer because of the act, negligence or default of the Tenant or of the Tenant's Employees and Agents or any other rights the Owner may have in connection with the events specified in this clause 15.7.

15.8 No obligation to restore

This clause 15 does not oblige the Owner to restore or reinstate the Building or Premises.

15.9 Parties' Rights not affected

Termination of this Lease under this clause 15 does not affect the rights of either party in connection with a breach of any covenant of this Lease before termination.

16. Assignments and Mortgages

16.1 Prohibited Dealings

The Tenant must not:

- (a) sublet the Premises or any part of them without the prior written consent of the Owner (which consent may be withheld at the Owner's sole discretion);
- (b) Subject to clause 16.9, licence or otherwise part with possession of the Premises or any part of them; or
- (c) Grant any mortgage or Security Interest over this Lease other than by assignment unless the Mortgage or Security Interest is over the whole of the Tenant's undertaking.

16.2 Assignment

Subject to the Act and clause 16.10, the Tenant may not assign this Lease without the Owner's consent. Should the Tenant wish to assign the Lease it must:

- (a) give the Owner a notice asking for consent;
- (b) satisfy the Owner that the proposed assignee is respectable and financially sound with experience in and a good reputation for conducting the business permitted to the standard required under this Lease;
- (c) give (where applicable) the proposed assignee a copy of the Owner's Disclosure Statement and details of any changes to it since it was given to the Tenant of which the Tenant is, or could reasonably be expected to be, aware; and
- (d) must pay to the Owner on demand the Owner's estimate of the reasonable administrative and legal costs and expenses of the assignment and any enquiries which the Owner may make in relation to the proposed assignee.

16.3 Request for the Owner's Disclosure Statement

If the Tenant requests the Owner to give the Tenant a copy of the Owner's Disclosure Statement and the Owner does not give it to the Tenant within 14 days after receiving the request, then the Tenant need not comply with clause 16.2(c).

16.4 Consent to be given

- (a) The Owner will give consent if:
 - (i) The Tenant has complied with clause 16.2 (subject to clause 16.3); and
 - (ii) The Owner has not (where the Act applies) informed the Tenant within the time prescribed by the Act for an owner to consent to an assignment (or if the Act does not prescribe a time - within 30 days after the Tenant gives its notice under clause 16.2) that the Owner does or does not consent,
- (b) Then the Owner is taken to have consented to the assignment.

16.5 Tenant's obligations before assignment

Before any assignment takes effect, the Tenant must:

- (a) ensure that the proposed assignee signs a deed undertaking to the Owner to observe and perform all of the Tenant's obligations under the Lease and otherwise on terms reasonably required by the Owner;
- (b) ensure that any guarantee or guarantee and indemnity or other security reasonably required by the Owner is given;
- (c) ensure that all moneys payable by the Tenant to the Owner under this Lease are paid to the date of assignment;
- (d) remedy any default by the Tenant under this Lease unless the Owner has waived it; and
- (e) comply and ensure that the proposed assignee complies with all the Owner's reasonable requirements.



Commercial & Industrial Property Long Term Lease



16.6 Variation of terms of proposed assignment

If the terms and conditions of the proposed assignment are varied the Tenant must again comply with clause 16.2.

16.7 Change in control of Tenant

If:

- (a) the Tenant is a company which is neither listed nor wholly owned by a company which is listed on the Australian Stock Exchange; and
- (b) there is a proposed change in the shareholding of the Tenant or its holding company so that a different person or group of persons will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then the Tenant may not make that change unless it obtains the Owner's approval and complies with clauses 16.2(b) and 16.5 (except for clause 16.5(a) as if the person or group of persons acquiring control were the proposed assignee).

16.8 Leasing or charging of Tenant's Property

The Tenant must not lease or allow any security to come into existence in respect of the Tenant's Property unless:

- (a) the lease or security is a genuine lease or security to finance the Tenant's Property;
- (b) the relevant parties enter into the Owner's standard form of agreement which deals with the following:
 - (i) the times when the creditor or its agents may enter the Premises;
 - (ii) the times when the creditor must or may remove fittings, fixtures or equipment;
 - (iii) the disposal of fixtures, fittings or equipment that are not removed under the agreement;
 - (iv) the right of the creditor to enter into possession of the Premises if the Tenant defaults under the security; and
 - (v) the making good of any damage caused to the Premises; and
- (c) the Tenant pays the Owner's reasonable costs (including legal costs) in relation to the documentation.

16.9 Franchises

The Tenant may grant a licence of the Premises to a franchisee of the Tenant's Business if the Tenant:

- (a) satisfies the Owner that the franchisee is respectable and financially sound with experience in and is capable of conducting a business similar to the Tenant's Business;
- (b) gives the Owner a copy of the franchise agreement which is consistent with this Lease;
- (c) gives the Owner a copy of the licence which is consistent with this Lease;
- (d) pays to the Owner on demand the Owner's estimate of the reasonable administrative and legal costs and expenses of reviewing and consenting to the licence and any enquiries the Owner may make in relation to the franchisee;
- (e) obtains the Owner's consent; and
- (f) signs a deed of consent to licence on terms required by the Owner.

16.10 Related Body Corporate

If the assignee is a Related Body Corporate to the Tenant then the Owner must not withhold its consent to the assignment provided that the Tenant complies with the provisions of clauses 16.5(a), 16.5(c) to 16.5(e) (inclusive).

16.11 Assignment of Lease by change in share capital of Corporation

Where the Tenant is a corporation whose shares are not listed on the stock Exchange in Australia, any change in the Tenant's share capital or in the share capital of the Tenant's holding company or ultimate holding company which leads directly or indirectly to a change in the Tenant's control, as defined in the Corporations Act, shall amount to an assignment of this Lease.

17. Default

17.1 Owner's right to terminate

- (a) If:
 - (i) The Annual Rent is in arrears for 14 days;
 - (ii) any other moneys payable by the Tenant under the Lease have not been paid within 14 days of demand being made;
 - (iii) an Event of Insolvency occurs in respect of the Tenant; or
 - (iv) the Tenant does not comply with any other obligation under this Lease within a reasonable time after the Owner gives the Tenant notice of re-entry.
- (b) The Owner may, subject to first complying with the requirements of any relevant legislation, terminate this Lease by giving the Tenant notice or by re-entry.

Commercial & Industrial Property Long Term Lease



17.2 Conversion of tenancy

In addition to the Owner's rights under clause 17.1 the Owner may convert this Lease into a tenancy from month to month. The monthly tenancy is on the same terms as this Lease including in relation to payment of Annual Rent except for those changes which are necessary to make the Lease appropriate for a monthly tenancy.

17.3 Default notice

If the Tenant breaches the Lease the Owner must give the Tenant a notice requiring the Tenant to remedy the breach. If the Tenant fails to pay the rent, or fails to maintain the Premises in good condition, or use the Premises for a purpose other than that allowed under clause 4.1 the Owner must give the Tenant 2 working days notice to remedy the breach. If the Tenant breaches the Lease in some other way the Owner must give the Tenant 7 working days to remedy the breach.

17.4 Owner's Remedies

If the Tenant does not remedy the breach the Owner may do any of the following things:

- (a) Terminate the Lease by giving the Tenant seven days notice to quit;
- (b) Recover any monies owed by the Tenant from the Tenant or any guarantor;
- (c) Use the Security Deposit to recover any loss suffered by the Owner because of the Tenant's breach;
- (d) Re-enter upon the Premises and recover possession;
- (e) Remedy the breach and recover the cost from the Tenant or any guarantor; and/or
- (f) Exercise any other legal right available to the Owner.

17.5 Essential Obligations

Each obligation of the Tenant to pay money and its obligations under clauses 4, 5, 6, 7, 10, 12, 13, 14, 16, and 18 essential terms of the Lease. Other obligations under this Lease may also be essential terms.

17.6 Termination

If this Lease is terminated under this clause 17:

- (a) The Tenant indemnifies the Owner against any liability or loss arising and any cost incurred (whether before or after termination of this Lease) in connection with:
 - (i) The Tenant's breach of this Lease; and
 - (ii) The termination of this Lease including the Owner's loss of the benefit of the Tenant performing its obligations under this Lease from the date of that termination until the Expiry Date; and
- (b) The Owner must take reasonable steps to mitigate its loss.

17.7 Tender of money

Any money tendered by the Tenant and accepted by the Owner after the termination of this Lease under this clause 17, must be applied firstly on account of rent and other monies due under this Lease and secondly on account of the Owner's costs of re-entry.

18. Risk, Insurance, Guarantee and Indemnity

18.1 Risk

The Tenant agrees to occupy the Premises at its own risk.

18.2 Tenant to insure

The Tenant must:

- (a) in connection with the Premises, maintain with insurers and on terms approved by the Owner in the names of the Tenant, the Owner and any other person named by the Owner:
 - (i) public liability insurance for at least \$20 Million (as varied by notice from the Owner to the Tenant);
 - (ii) plate glass insurance for any glass in the Premises in the name of the Tenant and endorsed to extend the insurance cover provided by that policy pursuant to section 48 of the *Insurance Contracts Act 1984* (Cth) to cover the interests of the Owner;
 - (iii) employer's indemnity insurance against any liability to pay damages to an employee;
 - (iv) an insurance policy covering loss of and damage to its plant, fittings and stock in trade contained in or about the Premises resulting from fire and other usual risks, to their full insurable value; and
 - (v) any other insurances which are required by law;
- (b) give the Owner evidence that it has complied with clauses 18.2(a) and 18.3 when asked to do so; and
- (c) notify the Owner immediately if an insurance policy required by this clause 18 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Premises, the Building or Property in them.

Commercial & Industrial Property Long Term Lease



18.3 Tenant's Property to be insured

The Tenant must also insure the Tenant's Property for its full insurable value against loss or resulting from fire and other risks including water, storm and rainwater damage.

18.4 Increased premiums

The Tenant must not do anything which may affect rights under any insurance or which may increase an insurance premium payable in connection with the Premises, the Building or Property in them without the Owner's consent. If the Owner consents then the Tenant must pay any increased premiums.

18.5 Indemnity

The Tenant is liable for and indemnifies the Owner against liability or loss arising from, and cost incurred in connection with:

- (a) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Tenant or of the Tenant; and
- (b) the Owner doing anything which the Tenant must do under this Lease but has not done or which the Owner reasonably considers the Tenant has not done properly.

18.6 Release

The Tenant releases the Owner from, and agrees that the Owner is not liable for, liability or loss arising from, and cost incurred in connection with:

- (a) damage, loss, injury or death unless it is caused by the negligence of the Owner or its employees or agents;
- (b) anything the Owner is permitted or required to do under this Lease; and
- (c) if the Owner has complied with clause 11.3:
 - (i) a Service not being available, being interrupted or not working properly;
 - (ii) the Owner's Property not working properly; or
 - (iii) the Premises not being watertight.

18.7 Limitation of liability

The Tenant's liability and indemnity under clauses 18.5 and 18.6 are limited to the extent that the damage, loss, injury or death was caused or contributed to by the Tenant or the Tenant's Employees and Agents.

18.8 Independence of indemnities

Each indemnity is independent from the Tenant's other obligations and continues during this Lease and after it expires or is terminated. The Owner may enforce an indemnity before incurring expense.

18.9 Blanket Policy of Insurance

The Tenant's obligations to insure under clauses 18.2 and 18.3 will be satisfied if:

- (a) the insurances required to be effected are covered under any so-called blanket policy of insurance held by the Tenant by appropriate endorsement; and
- (b) the interests of the Owner are as protected as they would have been if the Tenant had complied with clauses 18.2 and 18.3.

18.10 Damage by rain water

Despite clause 18.6, if the Tenant's Property is damaged by rain water as a result of the Owner's negligence, the Owner is responsible for such part of the loss or damage as the Tenant is required by its insurer to meet as excess under its policy of insurance.

19. End of Lease (Expiry or Termination)

19.1 Tenant to yield up Premises

The Tenant must on the Expiry Date (or any extension of the Term) or sooner determination of this Lease return possession of the Premises to the Owner in a state of repair, which complies with the Tenant's obligations under this Lease.

19.2 Removal of the Tenant's Property

- (a) At or before the Expiry Date (unless there is a further lease in place) or sooner determination of this Lease, the Tenant must if requested by the Owner:
 - (i) remove the Tenant's Property from the Premises; and
 - (ii) reinstate the Premises to the condition they were in before any alterations were made in connection with the fitting out of the Premises including those to Services and those made to facilitate the fitting out of the Premises for the Tenant or any of the Tenant's predecessors in title.
- (b) The Tenant must not cause any damage to the Premises when removing the Tenant's Property. The Tenant must immediately make good any damage caused to the Premises by the Tenant's Property being removed from the Premises.

Commercial & Industrial Property Long Term Lease



19.3 Failure by Tenant to remove the Tenant's Property

The Owner may without being liable in any way to the Tenant:

- (a) remove and store the Tenant's Property in such a way as the Owner thinks fit:
 - (i) at the risk of the Tenant; and
 - (ii) at the cost of the Tenant;
- (b) treat the Tenant's Property as abandoned; or
- (c) deal with the Tenant's Property as if it were the Owner's Property,

if the Tenant does not remove the Tenant's Property in accordance with clause 19.1.

19.4 Tenant to indemnify and pay Owner's costs

The Tenant must indemnify and keep indemnified the Owner for:

- (a) the removal and storage of the Tenant's Property;
- (b) any damage;
- (c) all claims, expenses, losses, damages and costs which the Owner may suffer or incur because of any person (other than the Tenant) claiming an interest in the Tenant's Property;
- (d) any costs incurred by the Owner in exercising its rights under this clause 19; and
- (e) any expenses of the Owner incurred in repairing, cleaning and making good the Premises.

19.5 Removal after re-entry

If the Owner terminates this Lease by re-entry, the Tenant must remove the Tenant's Property within seven days after the date of termination of this Lease.

19.6 Shopfronts

The shopfront (if paid for solely by the Tenant) remains the property of the Tenant and must be removed by the Tenant in accordance with clause 19.2 unless the Owner otherwise agrees.

19.7 Tenant's risk

The Tenant's Property is at the Tenant's risk at all times.

19.8 Tenant to return keys

On the day the Tenant must vacate the Premises, the Tenant must give the Owner the Premises Keys held by the Tenant, the Tenant's Employees and Agents and any other person they have given them to.

19.9 Compulsory Acquisition

- (a) If the Premises are compulsorily acquired by government or any other authority having the power to do so, then with the Owner or the Tenant may immediately end this Lease by written notice to the other party.
- (b) The Owner will not be liable to pay the Tenant any compensation.
- (c) If any compensation is payable by the resuming authority, the Tenant shall be entitled to any part of that compensation which is specifically paid in respect of the Tenant's interest under the Lease. If the compensation monies are not apportioned to include compensation for the Tenant, then the Owner shall be entitled to all the compensation monies.

20. Where the Tenant is a Trustee

20.1 Tenant's Declarations

If the Tenant is a trustee then the Tenant declares that:

- (a) it is the sole trustee;
- (b) it is not in breach of its obligations under the relevant trust;
- (c) is or has a right to be the legal owner of the trust property; and
- (d) has the power and the authority to enter into this Lease.

20.2 Liability of the Tenant

If the Tenant is a trustee then the Tenant is liable under this Lease both personally and as trustee.

20.3 Obligations of the Tenant

The Tenant must, unless it has first obtained the consent of the Owner, ensure that:

- (a) the Tenant remains the sole trustee;
- (b) the trust is not vested;
- (c) the trustees right of indemnity against the trust property is not reduced;



Commercial & Industrial Property Long Term Lease



- (d) the trust documents are not varied;
- (e) there is no delegation of trust powers; and
- (f) the power of appointment is not exercised.

21. PPSA

- 21.1 Expressions used in this clause that are referred to in the PPSA have the meanings given to them in the PPSA.
- 21.2 The Owner may, at any time, register a financing statement with respect to any security interest arising out of or evidenced by this Lease over any or all of:
 - (a) the Owner's Property; and
 - (b) any Tenant's Property left on the Premises after the end of this Lease,that are personal property and must identify the property affected by the financing statement in the free text field of the statement. The Tenant waives the right to receive notice under section 157(1) of the PPSA.
- 21.3 When this Lease ends and the Tenant has vacated the Premises and performed all of its obligations under this Lease, the Owner must register a financing change statement with respect to any security interest for which the Owner has registered a financing statement other than to which clause 21.2 relates.
- 21.4 The Tenant must sign any documents and do anything necessary to enable the Owner to register the statements referred to in clause 21.3 and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, as the Tenant is a natural person, the Tenant must provide the Owner with the Tenant's date of birth and a certified copy of a Northern Territory driver's licence (or other evidence acceptable to the Owner) to confirm the Tenant's date of birth. The Owner must keep the Tenant's date of birth and any evidence provided to confirm it secure and confidential.
- 21.5 The Tenant must not register, or permit to be registered, a financing statement in favour of any person other than the Owner, with respect to any of the Owner's Property.
- 21.6 The Tenant must pay the Owner's reasonable expenses and legal costs in respect of anything done or attempted to be done by the Owner in the exercise of its rights or performance of its obligations under this clause 21 or the PPSA.
- 21.7 In accordance with sub-section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in sub-section 275(1) of the PPSA.
- 21.8 Subject to the any requirements to the contrary in the PPSA, notices under this clause 21 or the PPSA may be served in accordance with clause 8 of the Lease and the contact details for the parties contained in Part A of this Lease.
- 21.9 For the purposes of this clause 21 the definition of 'Owner's Property' is amended to read:
'means any property of the Owner, other than Land or fixtures, from time to time in the Premises or on the Land'.

22. Guaranteee

22.1 Guarantee and indemnity

In consideration of the Owner executing this Lease at the request of the Guarantor (which request is testified by the Guarantor's execution of this Lease) the Guarantor:

- (a) hereby guarantees to the Owner the due and punctual payment to the Owner of any moneys which may become due and payable to the Owner by the Tenant directly or indirectly pursuant to the terms of this Lease (and any variations, renewal or extension hereof) and also the due observance and performance of all other terms, covenants and conditions expressed or implied in this Lease (and any variation, renewal or extension hereof) and on the part of the Tenant to be observed and performed; and
- (b) as an independent liability, hereby indemnifies the Owner and agrees to keep it indemnified from and against all loss, damage, costs and expenses suffered or incurred by the Owner by reason of any breach or non-performance by the Tenant of any such terms, covenants and conditions. This indemnity shall not be limited or affected in any way whatsoever by the fact that any moneys payable by the Tenant cannot or could never be recovered from or enforced against the Tenant for any reason.

22.2 Guarantor's covenants

The Guarantor further agrees that:

- (a) this guarantee and indemnity shall continue for the duration of this Lease and for any extension or renewal hereof and any holding over hereunder and shall extend to the acts and defaults of the Tenant during such duration, extension, renewal or holding over;
- (b) any payment made to the Owner and later avoided by any statutory provision or discounted, refunded or reduced by any subsequent proceedings shall be deemed not to have discharged the Guarantor's liability and in any such event the Owner, the Tenant and the Guarantor shall be restored to the rights which each respectively would have had if the payment had not been made;
- (c) the Owner may proceed against the Guarantor (or any one or more of them) before or instead of, proceeding against the Tenant without affecting the liability of the Guarantor as herein provided;

Commercial & Industrial Property Long Term Lease



- (d) the liability of the Guarantor shall not be abrogated, prejudiced or affected by the granting of time, credit or any indulgence or concession to the Tenant or by any compounding, compromise, release, absolute or partial discharge (whether by operation of law or otherwise) abandonment, waiver, variation, novation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities on the part of the Tenant or by any omission or neglect or by any other dealing, matter or thing which, but for this provision, could or might operate to abrogate, prejudice or affect this guarantee and indemnity it being the intention of the parties hereto that this guarantee and indemnity and obligations of the Guarantor herein shall be absolute and unconditional in any and all circumstances;
- (e) this guarantee and indemnity shall not be affected by any laches, acts, omissions or mistakes on the part of the Owner;
- (f) until the Tenant shall have fully performed and observed the Tenant's covenants in this Lease (and any variation, renewal or extension thereof) and until the Owner shall have received in full all rents and other moneys due from the Tenant under this Lease (and any variation, renewal or extension thereof), the Guarantor shall be bound by this guarantee and indemnity and in the event of the Tenant becoming bankrupt or entering into any scheme of arrangement in favour of creditors, or being a company entering into liquidation, either voluntarily or involuntarily:
 - (i) the Guarantor shall not be entitled to prove or claim against the official receiver or liquidator in competition with the Owner so as to diminish any dividend or any payment which the Owner, but mat prove or claim for and on behalf of the Owner, if so authorised by the Owner, and any such proof or claim by or on behalf of the Owner shall not prejudice or affect the right of the Owner to recover from the Guarantor any payment of rent or other moneys to be made by the Tenant to the Owner under this Lease;
 - (ii) the Guarantor authorises the Owner to prove for all moneys which the Guarantor has paid under this guarantee and indemnity and to retain or to appropriate at the Owner's discretion, any amount received by the Owner; and
 - (iii) the Guarantor hereby indemnifies the Owner and agrees to keep it indemnified from and against all loss, damage, costs and expenses suffered or incurred by the Owner by reason of the Tenant becoming bankrupt or entering into any scheme of arrangement or going into liquidation including, without limitation, any amount paid to the Owner that the Owner may subsequently be obliged to pay out on the ground that the payment of such amounts was a preference. This indemnity extends to the amount of any interest that does not accrue from the date of such bankruptcy, scheme or arrangement or liquidation and is not recoverable by reason of the happening of such event and that would otherwise would have accrued and have been recoverable from the Guarantor under this guarantee and indemnity;
- (g) this guarantee and indemnity is to continue to be binding upon the Guarantor notwithstanding:
 - (i) the death, bankruptcy, insolvency or liquidation (as the case may be) of the Tenant or the Guarantor or any one or more of them;
 - (ii) any change or alteration in the constitution of the Owner the Tenant or the Guarantor;
 - (iii) the happening of any matter or thing which under the law relating to sureties would, but for this provision, have the effect of releasing the Guarantor from this guarantee and indemnity or of discharging the guarantee and indemnity;
 - (iv) any part of this Lease being severed;
 - (v) any amendment of or variation to the terms of this Lease;
 - (vi) any security taken by the Owner is or becomes void or defective or any loss or impairment of such security;
 - (vii) any transfer or assignment of this Lease by the Tenant or any sub-letting or parting with possession of or control of the Premises with or without the consent of the Owner in any such case; or
 - (viii) any surrender of this Lease by operation of law;
- (h) in the event of any part of this Lease being severed in accordance with the provision in that behalf contained or implied in this Lease, then the Guarantor shall not be entitled to rely on or claim the benefit of any such severance;
- (i) this guarantee and indemnity shall be a continuing guarantee and indemnity and shall not be considered as wholly or partially discharged by the payment of any moneys or the performance of any of the Tenant's covenants or any other matter or thing whatsoever;
- (j) the liability of the Guarantor shall not be affected by any collateral rights or obligations which may exist between the Guarantor and the Owner or between the Guarantor and the Tenant nor shall the same be affected by:
 - (i) any variation or avoidance of any such collateral rights or obligations;
 - (ii) any other securities which the Owner may hold or hereafter take from the Tenant or the Guarantor or any other person in respect of the compliance with and observance of the Tenant's obligations;
- (k) in the event of the Guarantor becoming bankrupt or entering into any scheme of arrangement in favour of creditors or, being a company, entering into liquidation, either voluntarily or involuntarily, the Owner shall be entitled to prove for the total indebtedness of the Tenant under this Lease for the duration of the Term then current, notwithstanding that any sums of money payable by the Tenant to the Owner under this Lease are not due and payable at the date of the bankruptcy, entering into the scheme or arrangement or liquidation;
- (l) the Guarantor waives in favour of the Owner all rights of the Guarantor against the Tenant;

Commercial & Industrial Property Long Term Lease



- (m) the Owner may transfer or assign the rights and benefits of the Owner under this guarantee and indemnity either absolutely or by way of security without the need for the Tenant's or the Guarantor's consent whereupon this guarantee and indemnity shall be fully enforceable by the transferee or assignee;
- (n) as long as any moneys are owing or payable by the Tenant to the Owner (whether or not the Guarantor has become liable for those moneys under this guarantee and indemnity) the Guarantor shall not:
 - (i) claim any setoff or make any counterclaim against the Tenant or the Owner;
 - (ii) invoke any defence available to the Tenant against the Owner;
 - (iii) make any claim or enforce any right against the Tenant or any other Guarantor or, where the Tenant or any other Guarantor dies, against his estate;
 - (iv) prove in competition with the Owner if the Tenant or any Guarantor becomes insolvent, whether in respect of any amount paid by the Guarantor under this guarantee and indemnity, in respect of any other amount (including the proceeds of any security) applied by the Owner in reduction of the Guarantor's liability under this guarantee and indemnity, or otherwise; or
 - (v) be entitled to the benefit of any security or guarantee or any share therein now or subsequently held by the Owner in respect of any moneys payable by the Tenant to the Owner; and
- (o) the Guarantor's liability under this guarantee and indemnity shall not be affected by:
 - (i) the fact that any other person who was intended to execute this document or otherwise to become a co-surety for the payment of moneys payable by the Tenant or any of them has not done so or has not done so effectively; or
 - (ii) the discharge under statute or any principle of law or equity of any person who is co-surety or co-indemnifier for payment of any moneys payable by the Tenant or any part thereof.

22.3 Extended operation of Guarantee

A reference in clauses 22.1 or 22.2 to 'this Lease' is a reference to any tenancy or other right whether legal, equitable or otherwise under which the Tenant occupies or is entitled to occupy the Premises including without limitation a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

23. General

23.1 Waiver and Variation

A provision of or a right under this Lease may not be varied except in writing signed by the party waiving the provision or right.

23.2 No Waiver

If the Owner:

- (a) Accepts rent or other money under this Lease (before or after termination);
 - (b) Does not exercise, or delays exercising, any right under clause 17;
 - (c) Gives any concession to the Tenant; or
 - (d) Accepts delivery of keys;
 - (e) Shows prospective tenants through the Premises; or
 - (f) Attempts to mitigate its loss,
- it is not a waiver of any breach or of the Owner's rights under this Lease. An attempt by the Owner to mitigate its loss is not a surrender of this Lease.

23.3 Approvals

If this Lease says that approval or consent must be obtained, then

- (a) it must be obtained before the act or thing is done; and
- (b) the Owner must not unreasonably withhold its consent or approval unless this Lease expressly says otherwise.

23.4 Prior breaches

Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before then.

23.5 Warranties

The Tenant warrants that it has relied only on its own enquiries in connection with this Lease including for sales estimates and pedestrian flows and not on any statement, promises, representation, warranty or undertaking by the Owner or any person acting or seeming to act on the Owner's behalf except as set out in the Owner's Disclosure Statement, the Tenant's Disclosure Statement and this Lease, and if this Lease is entered into under an Agreement for Lease, then as set out in that Agreement for Lease.

23.6 Undertakings

The Tenant must comply on time with undertakings given by or on behalf of the Tenant in connection with this Lease.

Commercial & Industrial Property Long Term Lease



23.7 Counterparts

This Lease may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

23.8 Business Tenancies (Fair Dealings) Act

The parties agree that the following covenants may apply to this Lease and then that all relevant provisions must be read as subject to them:

- (a) the 'Act' as defined in clause 1.1 and referred to in the Lease shall apply to this Lease;
- (b) an Owner's Disclosure Statement in accordance with the Act has been provided to the Tenant at least seven days prior to the Tenant executing this Lease;
- (c) to the extent that the acknowledgement in clause 23.8(b) is untrue the Tenant must provide to the Owner immediately prior to the date hereof a certificate from a Legal Practitioner of the Tenant warranting that the Tenant understands the effect of section 19 of the Act and that the giving of that certificate will result in a waiver of the time frame referred to in clause 23.8(b); and
- (d) the Tenant will provide a Tenant's Disclosure Statement to the Owner within seven days of receiving the Owner's Disclosure Statement.

24. Advice, Complaints and Disputes

24.1 Disputes:

Disputes under the *Business Tenancies (Fair Dealings) Act* (**The Act**) can be brought before:

- (a) The Commissioner of Business Tenancies;
- (b) The Local Court; or
- (c) The Supreme Court.

24.2 Complaints and Advice

Northern Territory Consumer Affairs will provide assistance with information and advice on all tenancies matters and notices, excluding Residential Tenancy Applications and processes.

COMMERCIAL & INDUSTRIAL PROPERTY LONG TERM LEASE - PART C

IMPORTANT INFORMATION

Additional terms may be included in this Lease if:

- (a) both the Owner and Tenant agree to the terms; and
- (b) the terms do not conflict with any law; and
- (c) where applicable the terms do not breach the provisions about unfair contract terms in the Consumer Affairs & Fair Trading Act; and
- (d) the terms do not conflict with the standard terms of this Lease.

ONCE THE PARTIES SIGN THIS LEASE, THE ADDITIONAL TERMS ARE BINDING UPON THE PARTIES UNLESS THE TERM IS FOUND TO BE UNLAWFUL.

Additional terms

Initials _____

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Page 33 of 40



Commercial & Industrial Property Long Term Lease



This page is intentionally left blank but additional terms between Tenant and Owner may be inserted and included in Part C by agreement between the parties. REINT has not endorsed or approved the further additional terms.

- 1.By signing this lease, the lessee is accepting the property in an as is condition.
- 2.Lessee is to arrange and install own fit out.
- 3.Lessee must seek written approval from the Lessor or the Lessors Agent prior to carrying out any alterations or additions to the property.
- 4.Any fit out works undertaken on the premises are to be completed by an approved/accredited contractor at the Lessees expense. A Certificate of Occupancy is to be issued on completion of any such works and a copy forwarded to the Lessor or the Lessors Agent.
- 5.Lessee is responsible for maintaining all fixtures and fittings associated with the tenancy during the term of the lease.
- 6.The Lessee will be responsible for the security of the premises.
- 7.Lessee is responsible for servicing and maintaining air conditioning, with servicing to be done twice a year. Major component failure will be at the Lessors expense.
- 8.The tenant is responsible for maintaining any emergency procedures and evacuation plans, as well as maintaining the fire equipment, if installed. Servicing must be arranged and completed every 6 months.
- 9.Lessee to hold public liability insurance to \$20 Million and appropriate plate glass window insurance to cover the tenancy.
- 10.Property inspections will be undertaken by the Lessor and/or the Lessors Agent on a twelve monthly basis.
- 11.No animals are permitted on the premises without the written approval of the Lessor or the Lessors Agent with the exception of 1 dog as approved by the owner.
- 12.No persons are to reside on the premises during the term of the lease with the exception of a caretaker as approved by the owner.
- 13.Lease preparation costs will be \$396.00 GST Inclusive and will be paid to First National Framptons, Alice Springs on execution of this lease.
- 14.Should the lessee wish to break the lease the lessee shall be responsible to continue paying rent & maintaining the property until a new tenant is found and there will be a break lease fee of two (2) weeks rent. All terms and conditions of the lease will remain in force.

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Page 34 of 40

Commercial & Industrial Property Long Term Lease



This page is intentionally left blank but additional terms between Tenant and Owner may be inserted and included in Part C by agreement between the parties. REINT has not endorsed or approved the further additional terms.

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Page 35 of 40

A handwritten signature in black ink, appearing to read "John" or a similar name.

Commercial & Industrial Property Long Term Lease



THE OWNER AND TENANT ENTER INTO THIS LEASE AND AGREE TO ALL ITS TERMS.

Executed by the Tenant (if a corporation, the Tenant executes this document pursuant to its constitution and the Corporations Act)

Tenant's Signature	Date	Witness (name and signature)	Date
	15/11/19	ROGER TRIBBLE	15/11/19
	15/11/19	ROGER TRIBBLE	15/11/19

CORPORATION:

Name of Corporation	ACN / ABN
Director	Director / Secretary

Executed by the Owner (if a corporation, the Owner executes this document pursuant to its constitution and the Corporations Act)

Owner / Owner's Agent Signature	Date	Witness (name and signature)	Date
	15/11/19		15/11/19

CORPORATION:

Name of Corporation	ACN / ABN
Director	Director / Secretary

Commercial & Industrial Property Long Term Lease



Guarantor's Signature	Date	Witness (name and signature)	Date
	15/11/19	ROGER TABBECK 	15/11/19
	15/11/19.	ROGER TABBECK 	15/11/19
CORPORATION:			
Name of Corporation	ACN / ABN		
Director	Director / Secretary		
A true copy of:			
(1) The Commercial & Industrial Long Term Lease has been received by the Tenant:		(2) The Relevant By-Laws pertaining to the strata complex (if applicable) has been received by the Tenant:	
Date		Date	
(Signed by Tenants)		(Signed by Tenants)	
<p>For information about your rights and obligations as an owner or tenant, contact Northern Territory Consumer Affairs on: Telephone: (08) 8999 1999 or 1800 019 319 - Fax: (08) 8935 7738 - SMS: 040 111 6801 or visit www.consumeraffairs.nt.gov.au</p>			

SUMMARY BUSINESS TENANCIES (FAIR DEALINGS) ACT (NT)

The *Business Tenancies (Fair Dealings) Act (NT)* ('BTA') applies to retail shop leases and other business leases.

If the Act applies to a lease:

- the rights and obligations of the parties will be governed not only by the terms set out in the lease, but also by the provisions of the Act. In some circumstances, the provisions of the Act may be less favourable to a landlord than those contained in the lease; and
- it will override any inconsistent provisions in the lease.

This Commercial & Industrial Property Long Term Lease contains certain provisions which may be affected if the BTA applies. Some are discussed below.

1. LANDLORD'S OBLIGATIONS

If the Act applies, the Landlord has certain **obligations** in addition to having the lease executed including:

- Produce a copy of the Lease to the tenant before negotiations;
- Provide the tenant with a Disclosure Statement in accordance with the Act before the lease is entered into.

Failure to do the above is illegal and the consequences include restrictions on enforceability and a range of penalties prescribed in the Act.

2. WHAT IS A RETAIL SHOP LEASE?

A retail shop lease is a lease of premises that are used or are to be used wholly or predominately for the sale or hire of goods by retail or the retail provision of services or the carrying out of a business in a shopping centre, other than:

- Premises with a lettable area of 1000 square metres or more; or
- A shop that is leased to a corporation listed in Australia or overseas or a subsidiary of such a corporation; or
- Premises used wholly or predominately for the carrying on of a business by a tenant on behalf of the landlord as the landlord's employee or agent.

Additionally, the act does not apply to a lease of a retail premises for a term of less than six months (where there is no right for the tenant to extend the lease); or the lease is for 25 years or more.

3. WHAT IS A 'BUSINESS LEASE'?

A business lease is a retail shop lease or any other agreement or contract (including a tenancy and sublease) under which business premises are let or hired to a person.

- Whether or not the right is a right of exclusive occupation; and
- Whether the agreement is express or implied; and
- Whether the agreement is oral or in writing, or partly oral and partly in writing.

Various enforcement obligations apply to Business Leases under the Act.

4. WHEN IS A LEASE ENTERED INTO?

A retail shop lease is 'entered into' when (whichever first occurs):

- the tenant enters into possession of the premises with the landlord's consent;
- the tenant begins to pay rent for the premises

5. PROVISIONS TO BE AWARE OF

The following provision(s) in the Lease should be given further consideration to ensure compliance with the Act:

- Clause 3.2 - Term: must be for a period totalling not less than 5 years including options for renewal, unless negated by Sect 26(4) of the Act.
- Clause 5.4 - 5.5 - Market review of rent
- Clause 5.7 - Special rent for owner's cost of fit out
- Clause 5.8 - No decrease in rent
- Clause 6 - Security deposit
- Clause 15.7 - Owner's rights not affected
- Clause 16 - Assignments

SUMMARY OF THE NEW UNFAIR CONTRACT TERM LEGISLATION

Unfair contract terms legislation ('UCT Laws') may apply to this lease. The legislation provides that any terms found to be "unfair" in standard form small business contracts will be void and unenforceable.

The laws apply to small business contracts entered into, renewed, assigned, novated and/or provisions in such documents that are varied on or after 12 November 2016. They also apply to automatic rollovers or a holding over of a contract.

1. WHAT IS A SMALL BUSINESS CONTRACT?

A contract will be a small business contract where:

- the contract is for the supply of goods or services, or a sale or grant of an interest in land;
- at least one of the businesses employs less than 20 people; and
- the upfront price of the contract is no more than \$300,000 or \$1 million if the contract is for more than 12 months.

2. WHAT IS A STANDARD FORM CONTRACT?

No definition is included in the legislation. However, the court must take into account various factors including:

- whether one party had more bargaining power
- when the contract was prepared
- whether there was effective opportunity to negotiate the terms
- whether the contract considers specific characteristics of the transaction

The more evidence of genuine negotiation and the more tailored a contract is the less likely it will be found to be 'standard form'.

Importantly, the party seeking to argue that the contract is not standard form has the onus of proving this is the case.

On its face this Lease is a Standard Form Contract.

3. WHAT TERMS MAY BE DEEMED TO BE UNFAIR?

An unfair term is a term which:

- causes a significant imbalance in the parties' rights and obligations;
- is not reasonably necessary to protect the legitimate interests of the party; and
- would cause financial or other detriment if it were relied upon.

The party seeking to argue that the term is unfair would need to establish elements 1 and 3 above. The party seeking to enforce the term would need to establish element 2 (that the term is reasonably necessary to protect its legitimate interests).

4. WHAT HAPPENS IF MY CONTRACTS CONTAIN UNFAIR TERMS?

The effect of the laws is that any term in a standard form small business contract deemed to be "unfair" will be considered void and therefore unenforceable.

5. PROVISIONS TO BE AWARE OF

This Commercial & Industrial Property Long Term Lease contains certain provisions that are potentially 'unfair' according to the UCT Laws. If the UCT laws apply then several provisions will need closer consideration by the parties including those listed below.

The following provision(s) in the Lease should be noted as potentially 'unfair':

- Clause 3.3(a)(iii) - Option to extend
- Clause 7.1 - Payment Requirements, Method.
- Clause 10.3(b)(ii) and (iv) - Operating expenses, specifically costs of maintaining lift and Air Conditioning if not used and management costs.
- Clause 11 - Owner's rights.
- Clause 11.5 - Rules
- Clause 12 & 13 - Tenants duties.
- Clause 16.5 - Assignment
- Clause 17.1 - Owner's Right To Terminate
- Clause 17.5 - Essential obligations are potentially unfair because they permit termination for often minor breaches.
- Clause 18.5 - Indemnity provision doesn't give indemnity by the Owner in favour of the Tenant and therefore may not be balanced.
- Clause 18.6 - Release
- Clause 23.2 - No waiver provision may not be considered reasonable.
- Clause 23.5 - Warranties

Commercial & Industrial Property Long Term Lease



SEEK LEGAL ADVICE

Independent legal advice should be sought before entering into this Lease.

This document is an overview of the effect the Act and UCT Laws may have on this Commercial and Industrial Property Long Term Lease, highlighting areas that parties may wish to consider more closely in light of their individual circumstances. It should not be regarded as a substitute for legal advice.