

NZ-PRlse14

## Restaurant lease agreement

**Date of lease:** [Date]

**The Landlord:** [Name]

**The Tenant:** [Name]

**Lease of:** [property address]

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**The Landlord is:** [name]

**of** [address]

**The Tenant is:** [name]

**of** [address]

**The Guarantor is:** [name]

**of** [address]

**Start date of lease:** [date]

**End date of lease:** [date]

## 1. Definitions

In this lease the following words shall have the meanings shown unless it is clear from :

“Conduit” means any medium through which a service is

“Fixtures and Fittings” means all of the Landlord’s fixtures and fittings attached to the Premises

“Hazardous” has the meaning defined in the Hazardous Substances 1996 .

“Insurance Rent” means the premium, net of any commission, paid by the Landlord to

“Kitchen and Cooking Equipment” means all of the fixed and loose equipment which constitutes the kitchen setup, the principle 3 .

“Landlord” includes the person or persons from time to time entitled to possession of the

“Lease Period” means the total of the Term plus any extension or renewal, during which

“Plan”	means the plan of the Premises attached to this lease
“Premises”	means the land and buildings at [full address] the boundaries and details
“Rent”	means [\$48,000] per year payable without any deduction, in advance, by [twelve equal monthly instalments of [\$4,000], on the first day of each / [ / ] [ / ]];
“Rent Review Date”	means [date].
OR	
“Rent Review Date”	means every [third] anniversary of the start date of the lease. A reference to the Rent
“Security Deposit”	means the sum paid by the Tenant to the Landlord as a deposit against any breach
“Sign”	means any sign, poster or advertisement or other visual message in any medium, painted onto or attached to any part of the ,
“Term”	means a term of [number] years [ / ]].
“Use Allowed”	means: [use as a fast food takeaway / restaurant / cafe] or any other use to which the Landlord consents

## 2. Interpretation

In this lease the following matters apply unless

- 2.1. Whenever more than one person or company is the Tenant or the Guarantor, their obligations can be enforced against
- 2.2. Any reference to a place or location at the Premises is a reference to
- 2.3. Any agreement by any party not to do or omit to do something is deemed to include an obligation not to allow or permit
- 2.4. [\[Except where stated otherwise\]](#), any obligation of any person arising from this
- 2.5. References to a party include references to a person to whom those rights and obligations are transferred or passed as a result of a
- 2.6. The headings to the paragraphs of this lease
- 2.7. The schedules to this lease are part of the lease and
- 2.8. All money sums mentioned in this lease are calculated net of GST, which will be charged when
- 2.9. A reference to a right of the Landlord to have access to the Premises is to be construed as extending to any head landlord or mortgagee
- 2.10. A reference to “the last year of the Term” or to the “end of the Term” is a reference to
- 2.11. A reference to a specific statute includes any statutory extension or modification, amendment or re-enactment of that
- 2.12. It is certified that there is no agreement for lease

### **3. Entire agreement**

- 3.1. This lease contains the entire agreement between the parties and supersedes all .
- 3.2. Each party acknowledges that, in entering into this lease, he does not rely on any representation, warranty, information or document or other term not forming part [ ].
- 3.3. Conditions, warranties or other terms implied by statute or common law are excluded from this .

### **4. The lease**

- 4.1. By this lease the Landlord lets and the Tenant takes the Premises for the Term at the Rent and subject .
- 4.2. The Premises are let subject to all rights, easements, restrictions, covenants .
- 4.3. The rights specified in Schedule 1 are expressly .
- 4.4. All payments which may be due by the Tenant to the Landlord from time to time shall .
- 4.5. Except so far as provided in this lease, the Landlord warrants that he will not interfere with Tenant's peaceful use ,

### **5. Rent and other payments**

- 5.1. The Tenant shall pay to the Landlord:
  - 5.1.1 the Rent;
  - 5.1.2 the Insurance Rent;
  - 5.1.3 a fair proportion (decided by a surveyor nominated by the Landlord)

5.2. For each of the above payments, an appropriate

5.3. The Tenant shall also pay

5.3.1 any works to the

5.3.2 dealing with any application by

5.3.3 preparing and serving a schedule

5.4. Payments to the Landlord shall be made by [direct debit / Internet /](#)  
/ ]

5.5. [\[Despite the above provisions, the](#)

/ ]].

## 6. Further Payments

The Tenant agrees

6.1. all periodic rates and other taxes, relating to the Premises, including

(  
) ,  
;

6.2. all charges for services at the Premises to be paid promptly to

(  
- )  
;

6.3. the cost of the grant, renewal or continuation of

## 7. Interest

All the payments to the Landlord referred to in this lease are payable on demand and if any payment is more than [seven]

[ 8 % ].

## 8. Condition and repair

In relation to :

8.1. use the Premises only for the Use Allowed;

8.2. maintain the state and condition of the

;

;

8.3. employ only ,

8.4. decorate the inside [and the outside] of the Premises in every third year of the Term and in the last three months ( ).

,

. [

,

];

8.5. [at least once in , ,

];

8.6. [keep any plate or safety glass in the Premises insured for

;

,

];

8.7. maintain and keep clean

;



8.8. clean, maintain and keep free from blockages

## 9. Tenant's positive obligations

The Tenant agrees and undertakes that he will:

9.1. give the Landlord a copy of

9.2. provide a written notice to the Landlord

9.3. immediately notify the Landlord of any encroachment on the Premises

9.4. assist the Landlord as far as reasonably possible, and

9.5. at all times care for,

9.6. conduct the business in a safe and

9.7. keep the

9.8. comply with the terms of every law regulating

9.9. comply with all laws

## 10. Restrictions on Tenant

The Tenant

- 10.1. make any alteration to the Premises;
- 10.2. in any circumstance do anything which might cause the  
;  
;
- 10.3. sleep overnight on the  
;
- 10.4. apply for planning permission relating to the  
;
- 10.5. make any  
;
- 10.6. store or leave goods or detritus on  
;
- 10.7. Fix to the Premises any pole  
,
- 10.8. pour into any pipe or drain any trade waste or  
,  
;  
;
- 10.9. bring onto the Premises  
;
- 10.10. remove or change  
;
- 10.11. remove from the  
;
- 10.12. obstruct any window on the Premises;
- 10.13. cause any nuisance or annoyance to  
;
- 10.14. bring, keep or allow any animals to be  
;
- 10.15. play or use in the Premises any musical instrument, audio or other

;

10.16. Cease carrying on business in the Premises or leave the Premises continuously unoccupied for more than [ ] [

].

10.17. do anything which might

;

10.18. change or install any locks and other

;

10.19. Use the Premises for any activity which is dangerous, offensive, noxious,

## 11. Asbestos and environmental obligations

The provisions in this

11.1. Despite any other provisions in this Lease, the Tenant shall bear no responsibility (whether directly or via the obligation to pay any other sums under this Lease) or liability

(

)

11.2. Despite the foregoing provisions of this paragraph and all

11.2.1 if asbestos is discovered as a result of investigation by the Tenant or building work commissioned by the

11.2.2 if asbestos is discovered in circumstances unconnected to work or investigation

11.2.3 in any circumstance when the Landlord has an obligation in respect

11.2.4 the Landlord shall in no circumstances be responsible for damage caused to

## 12. Signs and advertisements

12.1. Before the Tenant may place any Sign on or near to the Premises, he must

12.2. The Landlord is under no obligation

12.3. The Landlord may approve any Sign subject

12.4. The Tenant accepts full liability for and indemnifies the Landlord

## 13. Default notice by Landlord

13.1. If the Tenant is in default of any provision of this lease, the Landlord may, at its option, terminate this lease by giving written notice to the Tenant.

13.2. If the Tenant fails to remedy the default within seven days of the date of the notice, the Landlord may, at its option, terminate this lease by giving written notice to the Tenant.

## 14. Assignment of the lease

14.1. Except as specified in this lease, the Tenant may assign or transfer his interest in the lease to any person.

14.2. The Tenant may not assign or transfer his interest in the lease to any person if:

14.3. The Tenant may assign or transfer his interest in the lease to any person if:

14.4. The Landlord may not refuse consent to the assignment or transfer of the lease if:

14.5. It is a good reason (among other good reasons) for the refusal:

14.5.1 the proposed transferee is less likely to be able to pay the rent or perform the obligations of the lease;

14.5.2 the Tenant owes money to the Landlord;

14.5.3 there is no satisfactory guarantor for the proposed transferee (if the proposed transferee is a company).

14.6. In giving consent, the Landlord may require the Tenant to provide such information as the Landlord may reasonably require.

14.6.1 the assignee shall not

14.6.2 the assignment shall impose an

;

14.6.3 the assignee shall enter into direct

14.7. Within four weeks after the Premises are assigned ( ),

## 15. Tenant indemnifies Landlord

The Tenant agrees to

:

15.1. any act, omission or negligence ,

;

15.2. any breach by

;

15.3. any act, omission or negligence of the Tenant which

## 16. The Security Deposit

The parties acknowledge that

OR

16.1. The Landlord confirms that he has \$[ ]

16.2. The Landlord may use the Security Deposit

16.3. If the \_\_\_\_\_ :

16.3.1 he will tell \_\_\_\_\_ ;

16.3.2 the rights or \_\_\_\_\_ .

16.3.3 the sum used is repayable to the Landlord \_\_\_\_\_

[ 4 ]

## 17. Insurance

17.1. "Insured Risks" means the risks of loss or damage by any naturally occurring event, fire, explosion, riot, terrorism, civil commotion, malicious damage, \_\_\_\_\_ ( \_\_\_\_\_ ),

17.2. The Landlord will keep the Premises (except the plate glass) \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ .

17.3. If damage is caused to the Premises by an Insured Risk, the Landlord will \_\_\_\_\_ ( \_\_\_\_\_ ) \_\_\_\_\_ .

17.4. Once a year, if the Tenant asks, \_\_\_\_\_ .

17.5. Provided that the Tenant is not responsible for any damage for which the Landlord is compensated under the insurance policy, then if \_\_\_\_\_ , \_\_\_\_\_ , \_\_\_\_\_ .

17.6. If, within one year from the date of the damage, either party is of the

[ ]

17.7. If either party

:

17.7.1 the lease ends on expiry of the notice;

17.7.2 the insurance money belongs to the Landlord;

17.7.3 the Landlord's obligation to make good damage ceases;

17.7.4 all other provisions shall apply as

## 18. Access for Landlord

The Tenant is to give the Landlord,

,

:

18.1. to inspect the condition

;

18.2. to do works

;

18.3. to comply with any statutory obligation;

18.4. at any time during the last six months of the

"

"

,

"

"

;

18.5. to show the interior and

;

18.6. to value the Premises;

18.7. to inspect, clean or repair neighbouring

,

,

,

.

Conditions for access for the Landlord are:

18.8. the Landlord must

;



18.9. each visit must

;

18.10. the Landlord must promptly make good

## 19. Guarantor

The Guarantor agrees:

19.1. that his obligations are made to the landlord for

19.2. that his obligations will continue through the Term;

19.3. that if the Tenant assigns his interest without having

,

;

19.4. that any variation to the terms of

19.5. to indemnify the Landlord against all losses incurred as a result of any failure by the Tenant to comply with

,

,

,

;

19.6. to make payment under this indemnity to the Landlord

[ 28 ]

;

19.7. to use his best endeavours to

19.8. to accept a new lease from the Landlord if this lease ends prematurely.

,

19.9. The new lease will be:

19.9.1 for the period from

;

19.9.2 at the Rent then payable under this lease;

19.9.3 on the terms of this lease as they apply on the termination

,

19.10. The Guarantor will pay

19.11. Even if the Landlord does not require the Guarantor to enter into a new lease,

## **20. Provision for premature termination**

20.1. Despite all other provisions of this lease, the Tenant may terminate this  
[ ]

20.2. If the Tenant so terminates the lease,

20.3. Payments made to the Landlord

## **21. Renewal of the lease**

21.1. Before the expiry of the Term, the Tenant may

21.2. The Landlord need not to consent where:

21.2.1 the Tenant is

;

21.2.2 in his reasonable opinion the Tenant is

21.3. In giving consent,

:

21.3.1 the Tenant shall comply with all the

21.3.2 the Tenant shall

## 22. Forfeiture

22.1. The Landlord may

:

22.1.1 any Rent or payment treated as  
28

;

22.1.2 the Tenant or the Guarantor is in

;

22.1.3 the Tenant or the Guarantor, if an individual ( )

;

22.1.4 the Tenant or the Guarantor, if a company,  
, ( )

;

22.1.5

;

22.1.6

21

22.2.

## 23. Rent review

23.1.

23.2.

23.3.

[ 20 %]

OR

23.4.

OR

23.5.

23.6.

23.6.1

23.6.2 the Premises are vacant;

23.6.3 the Premises can immediately be used;

23.6.4

;

23.6.5

23.6.6

23.7.

23.8.

23.9.

23.10.

[ 8 ] %

## 24. Failure to agree reviewed rent

[       ]

24.1.

(       )

24.2.

24.3.

24.4.

24.5.

## 25. At the end of the lease

25.1. When this lease ends the Tenant must:

25.1.1

25.1.2

25.1.3 (

25.2.

25.3.

25.4.

25.5.

## 26. Other matters

26.1.

26.2.

26.3.

26.4.

26.5.

26.6.

26.7. [

].

26.8.

72

24

26.9.

26.10.

Signed as a deed by or for the Landlord [write name] (who certifies that he has proper authority to sign)

: .....

Witness: signature:

Name:

Address:



Signed as a deed by or for the Tenant [write name] (who certifies that he has proper authority to sign)

: .....

Witness: signature:

Name:

Address:

Signed as a deed by the Guarantor [write name]

: .....

Witness: signature:

Name:

Address:

## Schedule 1: Rights expressly reserved

1.

2.

3.

4.

5.

6.

,

.

,

## Schedule 2: (Draft) Security Deposit agreement

This agreement is dated [date] and made between:

The Landlord: [name]  
of [address]

The Tenant: [name]  
of [address]

### Background:

A.

B.

It is now agreed as follows:

### 1. Definitions

“Call Down”

“Client Account”

“Default”

“Deposit”

“Lease”

“Referee”

“Sum Claimed”

## **2. Interpretation**

2.1.

2.2.

## **3. The Referee**

3.1.

3.2.

3.2.1

3.2.2

3.2.3

3.2.4 [

].

3.2.5

3.3.

3.4.

3.5.

## 4. The Deposit

4.1. \$ [ ].

4.2. [ / ]

4.3.

4.4.

## 5. Calling down the Deposit

- 5.1.
  - 5.1.1
  - 5.1.2
  - 5.1.3
  - 5.1.4
- 5.2.
- 5.3. [ 14 ]
- 5.4. 14
- 5.5.
- 5.6.
- 5.7.

## 6. Topping up the Deposit

Signed by / on behalf of the named parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement

For, and on behalf of Landlord

[print name](#)

For, and on behalf of Tenant

[print name](#)

## **Schedule 3: Kitchen and Cooking Equipment**



# Explanatory notes:

## Restaurant lease agreement

### General matters

#### 1. What to delete

This document has been drawn for general use. It is easier for you to delete what you do not want than to add what you do want. So we have given you scope and choices. We suggest that if you are not sure of the effect

However, you will see that there are also some fundamental choices to be made which could involve major deletion. An example is whether to use a security deposit agreement or some simpler provision for

#### 2. What to take up on completion

When you meet to complete, you should expect :

- The counterpart lease: that is to say the copy signed by the tenant. (He )
- Any capital money paid to you as a premium ;
- The rent, apportioned to the next .

3. There is no legal requirement that lease must be registered. However, the parties have the option of protecting .

### Paragraph specific notes:

Notes referable to specific numbered paragraphs

#### 1. Definitions

We believe it is bad drafting practice to randomly capitalise words which are not defined terms. For example, in this document, the word "lease" is not a defined term. However, in the ,

**Conduit** is an ancient word for a pipe. In law it has a wider meaning, to include pipes, wires and anything which carries

**Insurance rent:** landlords have special powers to obtain rent which are not available for the collection of other debts. It is therefore always advantageous to specify that monies due to a landlord should be treated as rent, as they are in this lease. Insurance rent is a commonly used term.

“ ”

**Lease Period:** see note on guarantor.

Premises: substitute some alternative word if you wish. We cannot over emphasise the importance of a full specification of the subject matter of the lease. If it is complicated you could put it in a schedule. The best way is a description which refers to

A good plan may also throw up unresolved side issues such as where the bins go and whether the landlord can park a

A further tip is to take photographs, particularly close-up to any feature, so that the condition is clear. If the premises are in excellent condition, the landlord will benefit most from photographs. If the premises are in poor condition, then it is the tenant who

**Rent:** is generally calculated in \$s per square foot or \$s per square metre, but the calculation rarely appears in the lease. The landlord will often specify a particular round sum when a property is advertised.

**Security deposit:** whether you decide to take a security deposit or not is for your choice. Once decided, you have the option of using the formal agreement or simply placing the deposit

**Use allowed:** When a rent review comes up, the landlord will claim rent based on the open market value for the Use Allowed. The question of user is of course more important in longer leases where the use is much more likely to change over time. It is a mistake for the landlord to fix the use paragraph narrowly - perhaps with the thought that if the landlord needs to change the use

The point he misses is that at a rent review the new rent will be calculated by reference to the rack rent (then current rent) payable in the open market. Clearly, that market rent will be highest when the property can be used for many uses and lowest, when the use is restricted to a single, low value use. A landlord should therefore think

## **2. Interpretation**

Leave these items in place unless there is a good reason to edit or remove. Each of them

## **3. Entire agreement**

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. If other documents are to be relied on, let them be listed here, so that both parties know the basis of the deal.

## **4. The lease**

This paragraph covers a reservation of general rights. In addition, we have provided for a schedule of rights. The reason is: first, you may wish to use a schedule for the avoidance of doubt and second, the schedule could contain rights which you want to reserve from now, but which previously did not exist.

It is usual for only the cost of insurance to be treated as rent (and usually referred to as “Insurance rent”). The addition here of other expenses is

This paragraph also contains the usual landlords warranty for “quiet enjoyment”. You

## **5. Rent and other payments**

This paragraph contains detailed commercial terms. Make sure every word

Important: the last sub-paragraph provides for a rent free period. However, it is better practice to deal with any money concession to the tenant in a side letter and

## **6. Further payments**

We have no comment.

## **7. Interest**

This provision crystallises the landlord's entitlement when otherwise

## **8. Condition and repair**

The level to which repairs and maintenance must be maintained is usually to be as it is on the date of the lease. In other words the

This is done through a "schedule of dilapidations". The parties jointly appoint a surveyor to provide a list of all the deficiencies in the building. It should

Decoration: the specification for redecoration and the frequency are a matter for negotiation. Many landlords are not too concerned about the quality of the interior decoration, provided it is done really thoroughly in the last year, so that they do not have the expense of undertaking the work before

Note that the tenant must insure any plate glass. This usually refers to shop front glass. However, any modern

## **9. Tenant's positive obligations**

Encroachments happen constantly and unexpectedly. Once a neighbour has committed to the construction of a large adjacent building, the only practical remedy is damages.

## 10. Restrictions on Tenant

Here is a long

It is important to prevent anyone sleeping habitually on the

## 11. Asbestos and environmental obligations

Here we cover an area which rarely arises but which could be extraordinarily expensive if it did. It may be difficult to insure against unknown environmental problems. The

If the tenant wants to change your building in any way, asbestos may be uncovered and the statutory provisions

?

It is usual (and fair) for the Landlord to pay for any hazardous substance treatment or removal

## 12. Signs and advertisements

Traditionally drawn leases fail to cover the many possibilities for visual impact. We take the view that a Landlord is entitled to know about, and approve what his tenant wishes to show.

If a sign affects the use or enjoyment of adjacent or neighbouring premises of the Landlord,

“ ”

Because the requirements of every tenant will be different, we recommend that the landlord prepares a specification for a new tenant as to what is

For a multi-let property, the landlord will no doubt

### **13. Default notice by Landlord**

This paragraph provides a practical solution to the dilemma facing a landlord when the tenant is in breach but fails to take action. It may be

### **14. Assignment of the Lease**

When a tenant no longer requires property, he will have to transfer it to some other person in order to avoid the continuing obligation to pay the rent.

### **15. Tenant indemnifies Landlord**

Few draftsmen include an indemnity in a lease because the tenant's covenants are precise and a simple recourse is to sue on a breach. However,

### **16. The Security Deposit**

If you decide on a security deposit, we give you two alternatives. Either use this paragraph for a simple arrangement

### **17. Insurance**

The landlord should be sure that he is able to provide the cover he promises in

### **18. Access for Landlord**

Essential, but the tenant may ask for more specific arrangements

### **19. Guarantor**

Whether a guarantor is required is entirely a commercial decision. We suggest that in the case of a grant to a limited company, you should always

obtain personal

The guarantee provisions in this lease are stronger than most tenants would like. In particular, the guarantor remains in place after an

In order to remove the obligation of the guarantor for

The last sub paragraph refers to the position

## **20. Provision for premature termination**

Otherwise known as a “break clause”, that is a provision for the tenant to give notice, at some particular point in time, to terminate the lease

## **21. Renewal of the lease**

Generally a tenant may not exercise a right of renewal automatically on the expiry

Whether or not a

By

## **22. Forfeiture**

These provisions are usual.

## **23. Rent review**

The usual period for a short

We provide for three clear alternatives:

the rent is

the rent

the

The purpose of a rent review is to bring the rent into line with rents

Many older leases provide for "upwards only" review. When rents are falling, this prejudices a tenant. However,



We have provided a step by step procedure to make the process as simple

#### **24. Failure to agree reviewed rent**

A simple procedure for resolving disputes. We have made this provision because it is likely to be acceptable to all parties,

The provision for the person appointed to act as expert and not as arbitrator is

#### **25. At the end of the lease**

These provisions simply tie up loose ends.

If the tenant has fitted out the premises for /

#### **26. Other matters**

Apart from the

A provision for mediation has been included in place of the more usual

### **Schedule 1: Rights reserved**

Reserved rights are rights which the landlord is keeping back from the grant of the lease. It is usually unnecessary to specify them

· , ( , ), .

### **Schedule 2: Security Deposit agreement**

We have provided , .

It is not appropriate to involve the referee as a

· , .

**End of notes**