

Approved by the Registrar-General of Land, Wellington No. 212336.

North Auckland  
Land Registry Office

# MEMORANDUM OF LEASE

LESSORS: WILLIAM PHILIP GARRETT, HELEN EMILY BRYANT and JOHN MACARTHUR VINCENT and CHRISTIAAN DE WET SCHOEMAN and ALETTA DORATHEA MARIA SCHOEMAN  
LESSEE: CHRISTIAAN DE WET SCHOEMAN and ALETTA DORATHEA MARIA SCHOEMAN

## SCHEDULE OF LAND AND FLAT

Lessors Estate		
C.T. REFERENCE	DESCRIPTION OF LAND AND LOCALITY	DESCRIPTION OF FLAT
80B/357 33D/1438  Area  1201 sq m	Lot 2  Deposited Plan 77642  Situated in North Auckland Registry	Flat No. 2 on Deposited Plan 342520 (hereinafter called "the Flat") which is part of a building erected on the said land comprising Flats Nos _____ as shown on the said plan (hereinafter called "the said building").

*[Handwritten signature]*  
Wet  
1.

Encumbrances, Liens, and Interests:

*[Handwritten signatures and initials]*

**L 6429210.3 Lease**

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TERM 999 years commencing on the 1st day of January 19 90

RENTAL 10 cents per annum payable yearly in advance if demanded in writing by the Lessors prior to the commencement of the year for which it is payable.

CONDITIONS The parties hereby agree that:

- The covenants conditions and agreements set out in Schedules A, B & C herein form part of this Lease.
- In any case where the Lessors are proprietors of a leasehold estate in the said land the covenants conditions and agreements set out in Schedule D herein form part of this Lease.
- The words "Flat share" shall be deemed to mean a ~~one~~ whole share ~~calculated in terms of the number of flats contained in the said building.~~
- The words "Land share" shall be deemed to mean a one-half share calculated in terms of the number of flats contained in all buildings erected on the said land.
- In respect of Clauses 6, 13 & 22 in the Schedules hereto where neither sub-clause (a) or sub-clause (b) has been deleted, sub-clause (a) shall form part of this Lease as hereinbefore provided and sub-clause (b) shall not.

*[Handwritten signatures and initials]*

AND the Lessors DO HEREBY LEASE to the Lessee and the Lessee DO TH HEREBY ACCEPT this Lease of the Flat to be held by the Lessee as tenant and subject to the conditions restrictions and covenants set forth herein.

IN WITNESS WHEREOF these presents have been executed this

SIGNED by the Lessors  
WILLIAM PHILIP GARRETT,  
HELEN EMILY BRYANT and  
JOHN MACARTHUR VINCENT  
in the presence of:

18th day of May 2005

*[Handwritten signatures of Lessors and witnesses]*

SIGNED by the Lessors and  
Lessee CHRISTIAAN DE WET  
SCHOEMAN and ALETTA  
DORATHEA MARIA SCHOEMAN  
in the presence of:

MARGARET LIVINGSTONE  
LEGAL EXECUTIVE  
AUCKLAND

*[Handwritten signature of Lessee]*  
Schoeman

## 28. COLOUR SCHEME

That notwithstanding the provisions of Clause 27 hereof, any exterior painting of the said building shall be carried out in such a colour scheme as is agreed upon by the Lessors but if agreement cannot be reached then the colour scheme shall be as near as is practicable to the existing colour scheme.

## 29. NON-DEVOLUTION OF LIABILITY

That without negating the provisions of Sections 97 and 98 of the Land Transfer Act 1952, upon registration of a Memorandum of Transfer of the Lessee's interest hereunder to any Transferee, the Transferor shall thenceforth be released from all future liability whatsoever under the covenants and agreements herein expressed or implied but without releasing the Transferor from any liability which may have arisen hereunder prior to the registration of such Memorandum of Transfer and thenceforth after the registration of any such Memorandum of Transfer the obligations herein expressed or implied on the part of the Lessee shall in all respects devolve upon and be observed and performed by such Transferee, and the Lessors shall have no recourse to the Transferee's antecedents in title.

## 30. INTERPRETATION

That wherever used in these presents:—

- (a) The expression "the Lessors" shall include and bind the person/s executing these presents as Lessors and all the Lessors for the time being under these presents and all the respective executors administrators successors assigns and successors in title of each Lessor and if more than one jointly and severally.
- (b) The expression "the Lessee" shall include and bind the person/s executing these presents as Lessee and all the Lessees for the time being under these presents and all the respective executors administrators successors assigns and successors in title of each Lessee and if more than one jointly and severally.
- (c) The expression "a majority of the Lessors" shall be deemed to mean any number of Lessors for the time being who together own more than an undivided one-half share in the fee simple of the said land.
- (d) Words importing one gender shall include the other gender as the case may require.
- (e) Words importing the singular or plural number shall include the plural or singular number respectively.
- (f) The clause headings shall not form part of this Lease and shall have no bearing on the construction or interpretation of the same.

## SCHEDULE D (Special Covenants for Leasehold Estates)

### ~~31. IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE LESSORS AND THE LESSEE AS FOLLOWS:—~~

#### (a) Interpretation

- (i) The expression "Head Lease" means the Memorandum of Lease referred to in the Schedule of Land and Flat and the expressions "Head Lessor" and "Leasehold Estate" shall have corresponding meanings.
- (ii) The expressions "fee simple" "freehold interest" and "freehold estate" where they occur in Schedules A, B & C hereof shall unless inconsistent with the context refer to and include the leasehold estate.

#### (b) Lessee to pay share of Head Lease rental

That the Lessee will upon demand in writing by the Lessors pay to the Lessors or a person nominated by the Lessors or a majority of the Lessors a Land share of the rental from time to time payable under the Head Lease and any other moneys expended by the Lessors in the performance of their obligations thereunder or in or about any renewal thereof as hereinafter provided.

#### (c) Lessee to observe terms of Head Lease

That the Lessee will from time to time and at all times observe perform and keep all and singular the covenants agreements and conditions contained and implied in the Head Lease so far as they affect the Flat and will save and keep harmless and indemnify the Lessors from and against all costs claims damages expenses actions and proceedings for or on account of breach of covenant or otherwise under the Head Lease as shall be occasioned by breach by the Lessee of any covenant condition or agreement herein contained or implied and on his part to be observed performed or fulfilled.

#### (d) Lessors to pay Rent and observe Covenants:

That the Lessors shall and will throughout the term hereby created pay the rent reserved by and duly and punctually perform and observe all and singular the covenants and provisions expressed or implied in the Head Lease and on the part of the Lessee thereunder to be performed and observed and will not do omit or suffer any act or thing whereby or in consequence whereof the power of re-entry into possession or any of the incidental ancillary or subsidiary powers vested in the Head Lessor by the Head Lease shall or may become exercisable.

#### (e) Rights of Renewal

That the Lessors will from time to time and so often as the same shall require to be done and at all proper times for so doing give all such notices do all such things execute all such documents and pay all such costs, charges and expenses as shall or may be necessary or desirable to procure from the Head Lessor the renewal of the Head Lease and of every lease so procured AND when and so often as the Head Lessor shall grant and execute unto the Lessors hereunder a new Head Lease as aforesaid the Lessors hereunder will at the cost and expense of the Lessee hereunder deliver unto the Lessee hereunder and the Lessee hereunder shall accept and take in substitution for this present sublease or (as the case may be) for the then last preceding sublease of the Flat for the term of such newly granted head lease less the last day thereof a sublease at the same Flat share of rental and upon with and subject to the same covenants agreements conditions and provisions as are herein contained and implied including this present clause AND for the better enabling the Lessee hereunder to secure and enjoy the benefit of this present Clause the Lessors for the time being hereunder DO HEREBY JOINTLY AND EACH OF THEM DO TH SEVERALLY IRREVOCABLY NOMINATE CONSTITUTE AND APPOINT the Lessee for the time being hereunder the Attorney for them and each of them and in their name and in the name of each of them to give all such notices and to do all such acts matters and things and to make all such appointments and to pay all costs, charges and expenses and to give, make execute and deliver all such documents and paper writings as shall for all or any of the purposes aforesaid be desirable necessary or expedient.

**21. LESSORS NOT LIABLE FOR WATER DAMAGE**

That the Lessors shall not be liable to the Lessee or any other person for any water damage caused either by the overflow of the water supply to the said building or to the Flat or by rainwater entering the Flat.

**22. (a) SUBLETTING BY LESSEE**

The Lessee shall be entitled to let the Flat only to a reputable and solvent subtenant and the Lessee shall ensure that the subtenant first enters into a Tenancy Agreement with the Lessee whereby the subtenant covenants not to do or permit anything to be done in upon or around the Flat which if done or permitted to be done by the Lessee would constitute a breach of any of the covenants conditions and restrictions herein contained.

OR

~~**22. (b) RESTRICTED SUBLETTING BY LESSEE**~~

~~The Lessee shall not without the prior consent in writing of the Lessors or a majority of the Lessors first had and obtained for that purpose on every occasion sublet or part with the possession or occupation of the Flat or any part thereof but such consent shall not be unreasonably or arbitrarily withheld in any case where:—~~

- ~~(a) the proposed subletting is for a term not exceeding one year during which the Lessee is unable to personally occupy the Flat and, (b) the proposed subletting is to a reputable and solvent person who first enters into a Deed of Covenant with the Lessors to observe perform and fulfill all the obligations of the Lessee hereunder and to be bound by the provisions of this present clause such Deed of Covenant to be prepared by the solicitor for the Lessors at the cost and expense of the Lessee.~~

~~Any underletting within the meaning of Sub-section (2) of Section 109 of the Property Law Act 1952 without such consent as aforesaid shall constitute a breach of this present clause~~

**23. PERFORMANCE OF LESSEES COVENANTS BY LESSORS**

That in case of default by the Lessee at any time in the observance or performance of any of the covenants conditions and restrictions herein contained it shall be lawful but not obligatory upon the Lessors or a majority of the Lessors (but without prejudice to any of the other rights powers or remedies of the Lessors) at the cost and expense of the Lessee in all things to pay all or any moneys and to do and perform all or any acts or things in the opinion of the Lessors or a majority of the Lessors reasonably necessary for the full or partial performance or observance of such covenants conditions or restrictions or any of them and if necessary or convenient for the purpose of exercising any of the powers herein conferred upon the Lessors to enter by Servants agents contractors or workmen upon the Flat or any part thereof AND the Lessee will immediately on demand pay to the Lessors all moneys so paid by the Lessors and the costs charges and expenses of each performance and observance by the Lessors and until such payment the same shall be treated as an advance to the Lessee by the Lessors and shall bear interest at the rate of Ten dollars (\$10) per centum per annum computed from the date or respective dates of such moneys being expended until payment thereof to the Lessors PROVIDED HOWEVER that for the purposes of this Clause 23 the word "Lessors" shall be deemed to mean Lessors other than the Lessee.

**24. POWER OF SALE OF LESSEES FLAT BY LESSORS**

That in the event of this lease being determined in the manner herein provided then in any such case:—

- (a) the Lessee shall at the direction of the Lessors sell his share in the fee simple of the said land to such person and at such consideration as may be nominated by the Lessors and shall execute all such documents as shall be required to complete any such sale; and
- (b) the Lessors shall use reasonable endeavours to obtain a fair market price for the Lessee's said share in the fee simple but shall not be liable to the Lessee in respect of any loss howsoever incurred; and
- (c) the proceeds of such sale shall be paid to the Lessors who shall be entitled to deduct therefrom all moneys owing by the Lessee to the Lessors and also all expenses and costs howsoever incurred by the Lessors in connection with the arranging of such sale and the completion thereof, and any balance of such proceeds shall be paid to the Lessee by the Lessors;

AND the Lessee doth hereby irrevocably appoint the Lessors to be the Attorneys of the Lessee for the purpose of doing any act matter or thing or executing any document required in connection with the sale of the Lessee's said share in the fee simple (in the event of the Lessee making default in so doing) and no person shall be concerned to see or enquire as to the propriety or expediency of any act matter or thing done or agreed to be done by the Lessors pursuant to this Clause AND the Lessee hereby agrees to allow ratify and confirm whatever the Lessors shall do or agree to do by virtue of any of the powers herein conferred on them PROVIDED HOWEVER that for the purposes of this Clause 24 the word "Lessors" shall be deemed to mean Lessors other than the Lessee.

**25. NON-MERGER**

That there shall be no merger of this Lease with the Lessee's freehold estate in the said land.

**26. ARBITRATION**

That if any dispute or question or difference whatsoever shall arise between the parties to this Lease or their respective representatives or assigns or between one of the parties hereto and representatives of the other of them relating to these presents or any clause or anything herein contained or the construction hereof or as to duties or liabilities of either party in connection with the said land, the said building or the Flat or as to the use or occupation thereof then and in every such case the matter in difference shall be referred to arbitration in accordance with the Arbitration Act 1908 and its Amendments or any Act in substitution therefor.

**27. PROCEDURE FOR DECISIONS**

That in the event of the Lessee or any Lessor requiring any matter or thing to be done by the Lessors which the Lessors are empowered to do pursuant to the terms of this Lease or pursuant to their rights and powers as owners of the said land and the buildings thereon or which may be desirable for the efficient and harmonious administration of the said land and the buildings thereon the following procedure shall be carried out:—

- (a) Such Lessee or Lessor shall give notice thereof in writing setting out the proposed action and shall cause the same to be served upon all the other Lessors either personally or by leaving the same at or posting the same to the last known respective place of abode or address of the other Lessors and in the event of such notice being effected by post the same shall be sent by registered letter and service shall be deemed to have been effected on the day after posting thereof.
- (b) If the proposed action is not agreed to unanimously within fourteen days after the last date of service of the said notices that matter shall be deemed to be a question to be arbitrated pursuant to Clause 26 hereof.
- (c) The parties hereto shall be bound by any decision arrived at in accordance with the provisions of this Clause and the parties hereto shall give all reasonable assistance in the carrying out and implementation of such decision.

~~13. (b) PAYMENT OF PREMIUM ON REPLACEMENT POLICY EFFECTED BY LESSORS~~

~~The Lessee shall pay to the Lessors or a person nominated by the Lessors or a majority of the Lessors a Flat share of the premium and other moneys payable in respect of the policy of insurance to be effected by the Lessors pursuant to Clause 20 (b) hereof PROVIDED THAT in any case whereby arrangement between the Lessors and the insurance company the premium in respect of each Flat in the said building shall be assessed and payable separately then the Lessee shall pay the separate premium whenever the same is due direct to the insurance company and shall if and whenever required by the Lessors produce to the Lessors the receipt for payment of the same.~~

14. LESSEES OWNERSHIP OF SHARE IN FEE SIMPLE

The Lessee shall remain the owner of a Land share in the fee simple of the laid land while he continues to be a Lessee hereunder. If the Lessee (unless by these presents expressly authorised so to do) shall deal with either his interest hereunder or his interest in the fee simple in such a manner that both leasehold and freehold interests are not owned by the same person then this Lease shall immediately determine without however discharging the Lessee from payment of any moneys owing hereunder or releasing him from liability arising from any other breach previously committed provided always that this Clause shall not apply to the first Lessee hereof.

15. PAYMENT OF RATES

The Lessee shall pay all charges and rates separately charged or levied in respect of the Flat and the Lessee's undivided share in the fee simple of the said land PROVIDED HOWEVER that if no separate charges and rates are so charged or levied then the Lessee shall pay to the Lessors the Lessee's Land share of the charges and rates charged or levied in respect of the whole of the said land.

SCHEDULE B (Lessors Covenants)

THE LESSORS DO AND EACH OF THEM DO TH HEREBY COVENANT WITH THE LESSEE:

16. QUIET ENJOYMENT

The Lessee performing and observing all and singular the covenants and conditions on his part herein contained and implied shall quietly hold and enjoy the Flat without any interruption by the Lessors or any person claiming under them.

17. MAINTENANCE BY LESSORS

The Lessors shall keep and maintain in good order repair and condition:

(a) Such parts of the said building as are not the responsibility of any lessee pursuant to the leases granted in respect of any flat forming part of the said building including the electrical and plumbing equipment, drains, roofs, spouting, downpipes and other amenities serving the same; and

(b) Such parts of the said land including the grounds, paths, fences, swimming pools and other common amenities thereon as are not the responsibility of any lessee pursuant to the leases granted in respect of any flat.

AND will cause the aforesaid parts of the said building and the said land at all times to be managed and maintained to a high standard. In the performance of the foregoing covenants the Lessors or their agents shall have the right (if necessary) to enter the Flat in order to effect such work upon giving reasonable notice to the Lessee.

18. LEASES OF OTHER FLATS

The Lessors shall lease the other flats on the said land only on terms similar to those set forth in this Lease and whenever called upon by the Lessee so to do to enforce the due performance and observance by the lessees named in such other leases of all obligations as by such other leases are cast on such lessees and for the purposes aforesaid the Lessors do irrevocably hereby appoint the Lessee hereunder for the time being as the Attorney and in the name of the Lessors to do all such acts and in particular but not in limitation to serve such notices and institute such proceedings as may be necessary for the proper compliance by the Lessors of the obligations cast on them by this Clause.

18A. SEE INSERT SHEET

SCHEDULE C (Mutual Covenants)

AND IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE LESSORS AND EACH OF THEM AND BY AND BETWEEN THE LESSEES AND EACH OF THEM:

19. DETERMINATION OF LEASE FOR DEFAULT

That if and whenever the Lessee shall have made any breach or default in the observance or performance of any of the covenants conditions and restrictions herein contained and shall not have remedied such breach or default in all respects within two months of the date of receipt by the Lessee of written notice from the Lessors (other than the Lessee) specifying such breach or default then it shall be lawful for the Lessors (other than the Lessee) to re-enter the Flat or any part or parts thereof in the name of the whole and to determine this Lease and the estate and interest of the Lessee herein and to expel and remove the Lessee but without thereby releasing the Lessee from any liability for any previous breach non-observance or non-performance of any of the said covenants conditions and restrictions PROVIDED HOWEVER that any such forfeiture or determination shall be void and of no effect unless a copy of the notice specifying the breach or default by the Lessee has been served on every mortgagee of this Lease where the Lessors have actual notice of the address of the Mortgagee before or within seven days after the date of service of such notice upon the Lessee.

20. (a) RE-INSTATEMENT BY LESSEE (where Clause 13(a) applies)

That in the event of the Flat being destroyed or damaged by fire earthquake or from any cause whatsoever during the term hereby created the Lessee shall with all reasonable despatch repair and make good such destruction or damage to the reasonable satisfaction of the Lessors and the cost of so doing shall be borne by the Lessee AND in the event of such destruction or damage occurring in respect of any part of the said building not held by a lessee pursuant to any lease then the Lessors shall with all reasonable despatch repair and make good such destruction or damage and the Lessee shall bear a Flat share of the cost of so doing.

OR

~~20. (b) RE-INSTATEMENT BY LESSORS (where Clause 13(b) applies)~~

~~That the Lessors shall in the names of the Lessors and Lessee for their respective rights and interests insure and keep insured the said building against fire and earthquake and such other risks as are normally covered under a comprehensive Home-owners policy for the full amount available under a replacement policy and shall pay the premiums on such policy as the same become due AND in the event of the said building being damaged or destroyed by any cause whatsoever the Lessors shall with all reasonable despatch repair and make good such destruction or damage and in the event of the moneys received under the said policy of insurance being insufficient to repair and re-instate the said building as aforesaid then the Lessee shall bear a Flat share of such insufficiency unless such damage or destruction was caused by the negligence of one or more of the Lessors in which case the insufficiency shall be borne by that party or those parties.~~



18A. THAT the Lessors other than the Lessee shall not during the term hereby created be entitled to use occupy or enjoy that part of the said land adjacent to the flat shown marked "C" on the Deposited Plan 342520 (hereinafter called "the said area") TO THE INTENT that the foregoing restrictive covenant shall at all times during the term hereof remain appurtenant to the estate and interest of the Lessee in the flat for all purposes connected with the use occupation and enjoyment thereof, PROVIDED HOWEVER that the Lessors shall be entitled to enter upon the said area to the extent that may be necessary in order to effect repairs and maintenance to the said flat or any services relating thereto AND the Lessee shall at all times keep the said area in a neat and tidy condition and in good repair.

*Handwritten signature and scribbles*

31. THE Lessee shall not without the written consent of the Lessors in any way use or enjoy any part of the said land marked "Common Area" on Deposited Plan 342520 except for the purpose of reasonable ingress or egress by vehicle or on foot.

*Handwritten signature and scribbles*

Correct for the purposes of the Land Transfer Act.

.....  
Solicitor for the Lessee

TO: The District Land Registrar  
at North Auckland

Please note the Lessor's restrictive covenant in Clause 18A of the Lease against the fee simple title to the said land.

Please issue a composite title for the undivided 1/2 share in the fee simple and the within leasehold estate, C.T. 174622 having been allocated

.....  
Solicitor for the Lessee

Particulars entered in the Register as shown in the Schedule of Land herein on the date and at the time stamped below.

.....  
*District  
Assistant Land Registrar  
of the District of Wellington*

**LEASE**