

H 8265502L

Approved by the Registrar-General of Land, Wellington No. 105178

South Auckland

Land Registry Office

MEMORANDUM OF LEASE

LESSORS: MICHAEL LOUIS FRANCIS OLIVER of Hamilton Radio Announcer and PENELOPE LIANNE OLIVER his wife

LESSEE: MICHAEL LOUIS FRANCIS OLIVER of Hamilton Radio Announcer and PENELOPE LIANNE OLIVER his wife

SCHEDULE A

Table with 3 columns: CT, DESCRIPTION OF FLAT AND LOT & D.P. NO., OR OTHER DESCRIPTION, ENCUMBRANCES, LIENS & INTERESTS. Row 1: 40C/781, Flat No. House 1 and Garage 1 on D.P. S.50099, SUBJECT TO Fencing covenants in 126064 and 163519 and to Memorandum of Mortgage H.784197.2

TERM: 999 years commencing on the 7th day of September 1988

RENTAL: 10 cents per annum payable by the Lessee (if demanded in writing by the Lessors by not later than the first day of December of the year in question).

- 1. The Lessee hereby covenants with the Lessors as set out in Schedule B hereof.
2. The Lessors do and each of them doth hereby covenant with the Lessee as set out in Schedule C hereof.
3. It is hereby covenanted and agreed by and between the Lessors and each of them and by and between the Lessors and the Lessee as set out in Schedule D hereof.
4. The parties hereby agree that the words "proportionate share" shall be deemed to mean a one-half share;
5. The parties hereby agree that the words "freehold share" shall be deemed to mean a one-half share;
6. The parties hereby agree that the covenants and conditions set out in Schedules B, C and D herein form part of this Lease.

AND the Lessors DO HEREBY LEASE to the Lessee and the Lessee DOT H 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 7th day of September 1988

SIGNED by MICHAEL LOUIS FRANCIS OLIVER and PENELOPE LIANNE OLIVER Lessors

in the presence of:

Handwritten signature: Andrew J.P. Michael of Hamilton

Handwritten signatures of Michael and Penelope Oliver

SIGNED by MICHAEL LOUIS FRANCIS OLIVER and PENELOPE LIANNE OLIVER Lessee

in the presence of:

Handwritten signature: Andrew J.P. Michael of Hamilton

Handwritten signatures of Michael and Penelope Oliver

SCHEDULE B

THE LESSEE DOETH HEREBY COVENANT WITH THE LESSORS:

1. TO pay the rent in the manner and at times hereinbefore provided.
  2. THE Lessee shall forthwith upon demand in writing by the Lessors or their agent pay to the Lessors or a person nominated by the Lessors:
    - (a) A ~~proportional share of all expenses and costs properly incurred by the Lessors in respect of the said building including any costs and expenses incurred pursuant to Clause 17 hereof.~~ flat
    - (b) A freehold share of all expenses and costs properly incurred by the Lessors in respect of the said land including any costs and expenses incurred pursuant to Clause 17 (b) hereof.
- PROVIDED ALWAYS that should any repairs become necessary or any work be required in respect of any part of ~~the said building or~~ the electrical and plumbing equipment, drains or other amenities serving ~~the said building or~~ any part of the said land as a result of the negligence or wilful act either of the Lessee or his servants, agents or invitees or of any person residing in the Flat then in any such event the Lessee shall pay to the Lessors the whole of the cost of such repairs or work.
3. THE Lessee shall use the Flat for residential purposes only and will not do or suffer to be done any act, matter or thing which is or may be an annoyance, nuisance, grievance or disturbance to the other lessees or occupants of any building on the said land and shall not bring into or keep in the Flat any cat, dog, bird or other pet which may unreasonably interfere with the quiet enjoyment of the other lessees or occupants of any building on the said land or which may create a nuisance.
  4. THE Lessee shall not bring into or keep in the Flat any goods or any substances of a highly combustible nature or do or permit to be done anything (including the unauthorised use of lift or power fittings) which may render an increased premium payable for any insurance covers on any part of the said building or which may make void or voidable any such insurance covers.
  5. THE Lessee shall not use the Flat for any illegal purposes and the Lessee shall comply with all Statutes, Regulations and By-Laws of any Local Authority in so far as they affect the Flat.
  6. THE Lessee shall at his own cost and expense keep and maintain in good order condition and repair both the interior and exterior of the Flat including any electrical and plumbing equipment, drains, roof, spouting, downpipes and other amenities serving the Flat.
  7. THE Lessee shall permit the Lessors or their representatives at all reasonable times to enter upon the flat to inspect the condition of the same.
  8. THE Lessee shall not leave or place in the passageways or stairways of the said building or in any parking area or in the grounds surrounding any building on the said land any obstructions whatsoever and shall not deposit any refuse or rubbish therein or thereon and shall place any garbage cans in such reasonable location approved of by the Lessors.
  9. THE Lessee shall duly and punctually pay all charges for water electricity gas or other supplies or services relating solely to the Flat.
  10. THE Lessee shall not make any structural alterations to the said ~~building~~ <sup>increasing the external dimensions of the building</sup> nor erect on any part of the said land any buildings, structure or fence without the prior consent of the Lessors first had and obtained on each occasion PROVIDED HOWEVER that such consent shall not be unreasonably withheld.

SPACES TO BE COMPLETED AND AMENDED AS NECESSARY

11. THE Lessee shall not without the written consent of the Lessors in any way use or enjoy any part of the said land except:
  - (a) The Flat ~~or Garage~~ of the said land relating to the Flat marked or shown **House 1 and Garage 1** on Deposited Plan No. **S. 50099** : (c) ~~That part of the said land marked or shown on Deposited Plan No. \_\_\_\_\_ but only for the purposes of recreation in common with the Lessors.~~
  - (d) ~~That part of the said land marked or shown on Deposited Plan No. \_\_\_\_\_ but only for the purposes of recreation in common with the Lessors.~~

12. THE Lessee shall at all times keep all that part of the said land (and all amenities thereon) relating to the Flat marked or shown **A** on Deposited Plan No. **S. 50099** in a neat and tidy condition and in good repair.

13. THE Lessee shall effect and at all times keep current a separate and comprehensive insurance policy (including fire and earthquake risks) to the full insurable value thereof ~~on such parts of the said building as such Lessee holds or retains~~ **on the flat**

14. THE Lessee shall remain the owner of a freehold share in the fee simple of the said 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. 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 freehold share of the charges and rates charged or levied in respect of the whole of the said land.

SCHEDULE C

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

16. THE Lessee performing and observing all and singular 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. 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, roof, spouting, downpipes and other amenities serving the same and~~  
 \*\* 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. THE Lessors covenant to 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 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.

SCHEDULE D

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

19. 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 upon 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 the Lessee to expel and remove 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 any registered mortgagee of this Lease within seven days after the date of service of such notice upon the Lessee. \*\*\*

- 18(A) The Lessors do and each of them DOETH HEREBY COVENANT that the Lessors throughout the term of this lease shall not use or occupy nor shall the Lessors permit any other Lessee or Lessees of the said land or building constructed thereon to use or occupy that part of the said land or building constructed thereon described as the flat in Schedule A hereto or to use or occupy that part of the said land lettered "A" on Deposited Plan S.50099 PROVIDED ALWAYS that this covenant shall not operate as a restriction on the use of the area of land so defined by the Lessee for the time being hereunder TO THE INTENT that this restrictive covenant shall be forever appurtenant to the estate and interest of the Lessees for the time being under this Lease.
32. The Lessors other than any Lessor or Lessors who are also for the time being the Lessees under this Lease or who are otherwise contractually restricted from doing so, who hold an undivided freehold share in the land shall have the right to erect on that part of the said land marked or shown "B" on Deposited Plan S. 50099 (hereinafter referred to as Area B) a single dwelling unit and building ancillary thereto (hereinafter together referred to as "the future Flat"), in which case:
- (i) Upon completion of the erection of the future Flat they shall be entitled to receive from the Lessors but at their cost in all things a registered memorandum of Lease in like terms to this Lease in respect of the future Flat but excluding however the provisions of clause 32 hereof.
  - (ii) They shall be entitled to provide in the Memorandum of Lease for the future Flat for the exclusive occupation of Area B.
  - (iii) The disposal of a freehold share in the land together with the rights contained in this clause shall not be a breach of the provisions of clause 14 hereof.
  - (iv) They shall indemnify the other Lessors in respect of all costs claims matters liens or proceedings which may during the course of construction or thereafter arise out of the application for building permit and erection of the future Flat.
  - (v) They shall conduct their operations relating to the application for building permit, the construction of the future Flat, the preparation of any replacement flats plan and all other matters in such a way as to cause a minimum of inconvenience to the other Lessors and following completion of the unit shall make good any damage to the land to the same condition as the land is now.
  - (vi) They shall indemnify the other Lessors against any claims matters costs or proceedings arising out of any defective workmanship in the future Flat.

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33. Once erection of the future Flat has been completed and the leases thereof have been registered, clause 32 hereof shall have no further force or effect save in respect of the indemnities therein contained.
34. Notwithstanding anything hereinbefore contained to the contrary the Lessee shall be entitled to enter into any such part of the said land where such entry is necessary to construct or maintain electrical, plumbing and other services to the flat. In doing so the Lessee shall cause as little inconvenience as shall be practical to the other lessees of the flat erected on the said land and the Lessee shall promptly make good at his own expense any damage caused in the construction or maintenance of such services.

\*\*\* PROVIDED HOWEVER that notwithstanding anything to the contrary hereinbefore contained should this lease be subject to a mortgage registered in the Land Transfer Office then this lease shall not be determinable nor shall the powers conferred on the lessors pursuant to Clause 19 hereof become exercisable unless and until the lessors serve on the mortgagee or mortgagees under any such mortgage a copy of the notice which the lessors have served or intend to serve on the lessee under Section 118 of the Property Law Act 1952 and the breach therein specified is not remedied and reasonable compensation therefore in money is not made within the 28 days after such mortgagee or mortgagees have been served as aforesaid.

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subject to the rights of any mortgagee of the lessee.

20. \* 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 Lessee shall with all reasonable despatch repair and make good such destruction or damage and the Lessee shall bear a proportionate share of the cost of so doing~~

21. 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. THAT the Lessee shall have the right to let the Flat to a reputable and solvent subtenant provided that the Lessee shall ensure that the subtenant 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.

23. 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 for 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. THAT in the event of this lease being determined or becoming determinable 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 purpose of this Clause 24 the word "Lessors" shall be deemed to mean Lessors (other than the Lessee).

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

26. 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 thereof.

27. That notwithstanding any provision contained or implied herein, where any part of the Flat or the electrical and plumbing equipment drains or other amenities serving the Flat also relate to or serve (a) any other flat ~~in any building~~ erected on the said land or (b) ~~any part of any such building which the Lessors are liable to maintain pursuant to this lease~~, then the same shall be maintained in good order condition and repair by the Lessee together with (a) the lessees of the other flats to which the same relate or which are served thereby and (b) ~~the Lessors where the same relate to or serve any part of any such building~~ AND the cost of so doing shall be borne by the Lessee, the lessees of such other flats and the Lessors ~~as the case may be~~ in such shares as may be fair and reasonable having regard to the use and benefit derived therefrom.

28. 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~~ <sup>Flat</sup> 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 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) That 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.

29. THAT notwithstanding the provisions of Clause 28 hereof, any exterior painting of the ~~said building~~ <sup>flat</sup> 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 it is practicable to the existing colour scheme.

30. 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.

31. 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.

PLD 

TO The District Land Registrar  
Land Transfer Office  
HAMILTON

*[Signature]*  
Solicitor for the Lessee

PLEASE issue a composite certificate  
of title for an one half share in  
the fee simple of Certificate of Title  
40C/781 and for the leasehold interest  
herein created.

MC KINNON GARBETT & CO.

Per;

Particulars entered in the Register at the date and at the  
time recorded below.

*[Signature]*  
Solicitor for the Lessee

**REGISTERED IN**  
**LEASE**      **TRIPPLICATE**  
District Land Registrar  
Assistant of the District of

"I hereby certify, for the purposes of the Stamp and Cheque Duties  
Act 1971 that no conveyance duty or lease duty is payable on this  
instrument by reason of the application of Section 24(1) or 35(1) of  
the Act, and that the provisions of Sub Section 2 of that Section do  
not apply.

*[Signature]*  
Solicitor for Purchaser/Lessee"

Composite Title 42B/526 issued for  
within Lease and a one half share  
in the fee simple

*[Signature]*  
A.L.R.

*RU of 40C/781 (1/2 share)*  
*House 1 + Garage 1 DPS. 50099*  
*On Lot 1 DPS 8873*  
*1138 m<sup>2</sup>*  
*PT Allot 78 Parish of Pakete*  
*HAMILTON city.*

*Ju 14.10.88*

McKINNON GARBETT & CO.  
SOLICITORS HAMILTON

11.00 04.OCT88 H 826550.2  
PARTICULARS ENTERED IN REGISTER  
LAND REGISTRY SOUTH AUCKLAND  
ASST. LAND REGISTRAR  
40C/781

