*Approved by the District Land Registrars: North Auckland 4235/75, South Auckland H.030022/1975, Canterbury 964787, Marlborough 78937, Gisborne 115146.1, Hawkes Bay 311609, Taranaki 221056, Wellington 064649, Westland 47105.*

# MEMORANDUM OF LEASE 358962.4L

THE LESSORS G.R. & D.P. SCOTT LIMITED at Hastings

THE LESSEE G.R. & D.P. SCOTT LIMITED at Hastings

The lessors being registered as proprietors of an estate in fee simple subject however to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon in all that piece of land described in Schedule A.

SCHEDULE A
LEGAL DESCRIPTION OF FEE SIMPLE

Land Registration District: Hawke's Bay
Area: 927 $m^2$
Particulars (*including title reference, encumbrances, and appurtenances*)

All that parcel of land being Lot 1 on Deposited Plan 15603 being the land in Certificates of Title H3/403, H3/404, H3/405 and H3/406

SUBJECT TO (1) Water Rights created by Transfers 76268 and 76269
(2) Mortgages 355859.2 and 355859.3
(3) Lease No's. 358962,1, 358962.2 and 358962.3.

*N.B. On no account should this margin be used*

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IN CONSIDERATION of the rent hereinafter reserved and of the covenants, conditions, and agreements on the part of the lessee herein expressed or implied to be paid performed observed and fulfilled the lessors DO HEREBY LEASE UNTO the lessee all that the flat numbered 4*

(hereinafter called "the flat") more particularly shown on Deposited Plan No. 15620 being part of the building (hereinafter called "the said building") erected on the said land and being all the land in Leasehold Certificate of Title H3/410
TO BE HELD by the Lessee as tenant for the space of 999 years as from and including 1st day of November 1978 at the yearly rental of ten cents payable in advance in each year throughout the term hereby created SUBJECT to the following covenants conditions, and restrictions that is to say:–

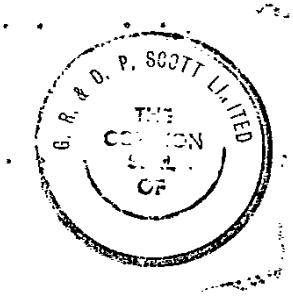
1. The lessee covenants with the lessor as set out in schedule B
2. The lessors do and each of them doth covenant with the lessee is set out in schedule C.
3. It is hereby covenanted by and between the lessors and the lessee as set out in schedule D.
4. It is hereby covenanted by and between the lessors and each of them as set out in schedule E.
5. It is hereby covenanted by and between the lessors and each of them and by and between the lessors and the lessee as set out in schedule F.
6. The parties agree that the term "proportionate share" shall be deemed to mean "one quarter share".
7. The lessee accepts this lease to be held by him as tenant subject to the conditions, restrictions, and covenants set forth herein.

** If garage, carport, or storage is included in definition of "flat", add description.*

LT23a

DATED this 1st day of November 1978

~~Signed by the~~ The COMMON SEAL of G.R. & D.P. SCOTT LIMITED was hereunto affixed as Lessors in the presence of:

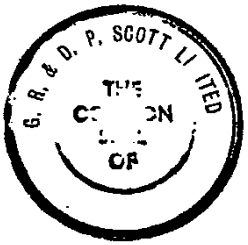



Witness's Signature .....

Occupation Nurse Draftsman

Address .....

~~Signed by the~~ The COMMON SEAL of G.R. & D.P. SCOTT LIMITED was hereunto affixed .... as Lessee in the presence of :




Witness's Signature .....

Occupation Nurse Draftsman

Address .....

*N.B. On no account should this margin be used*

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## SCHEDULE B

Lessees Covenants

**Pay rent**

1. The lessee shall pay the rent in the manner and at the times hereinbefore provided.

**Pay share of the following payments**

2. (1) The lessee shall upon demand in writing by the lessors or their duly authorised agent pay to the lessors a "proportionate share" of the cost of the following payments for repairs, maintenance, and other charges incurred or to be incurred in respect of the said land and the said buildings:—
   (a) General rates and other levies assessed on the said land and the said building
   (b) Fire insurance premiums assessed on the said building
   (c) Repairs to or reconstruction of all electrical and plumbing equipment, drains, and other amenities serving the said building as a whole
   (d) Repairs to or reconstruction of the roof, spouting, and downpipes of the said building
   (e) Charges for any exterior decoration or exterior cleaning of the walls, doors, windows, roof, and plumbing fittings of the said building
   (f) Charges for all structural repairs and maintenance necessary to the walls, framework, or foundations of the said building
   (g) Charges for care and maintenance of the grounds paths fences gates and other amenities surrounding the said building
   (h) Provision for a general reserve fund to meet contingent repairs and maintenance
   (i) Provision for and charges for the payment, performance, and observance of all moneys, covenants, and conditions to be paid, performed, and observed in respect of any mortgage or mortgages or charge or charges now or at any time hereafter raised by the lessors jointly and secured upon the whole of the said piece of land of which the lessors are registered as proprietors as aforesaid but nothing herein contained or implied shall have any reference of application to any mortgage or charge raised by any one or more of the lessors affecting the individual estate and interest of each such lessor or lessors individually
   (j) All other expenses in respect of the said land and building jointly incurred by the lessors and not relating solely to any particular flat in the said building.

**To whom payable**

2. (2) All money payable under this clause shall be payable to the person appointed by the lessors or a majority of them pursuant to clause 19 hereof as the agent of the lessors for the purpose of receiving and disbursing or applying the same for the foregoing purposes.

**If payment not made**

(3) And in default of payment thereof by the lessee the lessors shall be entitled to demand interest on the amount or amounts owing at a rate being one per cent in excess of the average rate charged from time to time by trading banks on account current which is overdrawn from the date when payment should have been made but such demand shall be without prejudice to the rights of the lessors under this lease PROVIDED ALWAYS that if any general rates and other levies fire insurances or other outgoings are hereafter assessed levied and demanded in respect of the said flat as a separate dwelling or interest in the said land then the same shall be paid by the lessee.

**Residential purposes only — no pets**

3. The lessee shall use the flat for residential purposes only 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 of the said building or which may create a nuisance.

**Not create fire hazard**

4. The lessee shall not bring into or keep in the flat any goods or any substances of a highly combustible nature or do anything (including the unauthorised use of light and power fittings) which may render an increased premium payable for the fire insurance of the said building or which may make void or voidable any such policy of insurance. The lessee shall comply with all statutes, regulations, and by-laws of any local authority insofar as they affect the use of the flat by the lessee.

**Maintain interior**

5. The lessee shall at his own cost keep and maintain the interior of the flat including the doors, windows, electrical and plumbing apparatus and all fittings of any kind in good order and condition.

**Keep clear of rubbish**

6. The lessee shall not leave or place in the passageways stairways or parking area or in the grounds surrounding the said building any receptacles or obstructions whatsoever and will not deposit any refuse or rubbish therein or thereon and will place any garbage cans in the location approved of by the lessors or a majority of them.

**Not cause nuisance**

7. The lessee shall not use the flat for any illegal or immoral purposes and will refrain from causing excessive noise or disturbance within the flat which may be likely to cause a nuisance or an annoyance to the lessors or occupants of any of the other flats in the said building.

**Right to inspect**

8. The lessee shall permit the lessors or their representatives at all reasonable times to enter upon the flat to inspect the condition of the flat.

**No structural alterations**

9. (1) The lessee shall not (without the consent in writing of the lessors or a majority of them for that purpose on every occasion first had and obtained) make any structural alterations to the flat or to any partition walls therein or to any passageway or stairways leading thereto nor take any action which might constitute danger or risk to the said building.

**Pay electricity, etc.**

10. The lessee shall duly and punctually pay all charges for water, electricity, gas, or other supplies or services relating solely to the flat.

## SCHEDULE C

### Lessors Covenants with Lessee

**Lessee's rights to exclusive occupation**

11. 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 together with the use in common with the other lessees of flats in the said building of the drives, paths, and grounds on the said land and of any stairways, balconies, and verandahs in the said building for access only to and from such flats.

~~**Lessors to insure.**~~

~~12. The lessors shall insure the said building against fire and earthquake to its full insurable value and shall take out a~~ replacement policy and will pay all insurance premiums on any such policies as and when the same shall become due and owing unless the lessee and every other lessee of the said building agrees to effect and keep current a separate and adequate insurance policy for such parts of the said building each lessee holds as tenant. All such ~~separate policies shall be effected with the one company.~~

**Repair exterior and roof**

13. (1) The lessors shall keep the exterior and roof of the said building in a good state of repair and shall at all times cause the said land and the said building and the services and amenities serving the same to be managed and maintained at a high standard and shall (from time to time as when and so often as the same respectively become necessary or desirable) execute and do the works and things and (subject to payment thereof by the lessees as provided in clause 2 hereof) duly and punctually pay the costs, charges, expenses, and outgoings specified and referred to in the said clause 2 and shall apply and deal with the said contributions to reserve fund as the lessees or a majority of them from time to time resolve or direct.

(2) In the performance of the covenants of this present clause the lessors have the right at all reasonable times in the daytime and after giving reasonable notice to the lessee by their agents, servants, contractors, and workmen to enter inspect and (if necessary or desirable so to do) to execute and do such of the said works and things as may be required to be executed and done in or from the interior of the flat.

(3) If any such work or thing is rendered necessary by the wilful act, neglect, or negligence of the lessee or of any person being a licensee or invitee of the lessee, then the cost and expense thereof shall be borne solely by the lessee.

## SCHEDULE D

### Covenants Between Lessors and Lessee

**Retain ownership of freehold**

14. (1) It is a condition of this lease that the lessee shall at all material times remain owner as proprietor of an undivided proportionate share in the fee simple of the said land while he continues to be a lessee hereunder. If the

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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 and occupied by the same person, then this lease shall be immediately determined, without however discharging the lessee from payment of any moneys owing hereunder or releasing him from liability arising from any other breach previously committed.

(2) Notwithstanding any rule of law to the contrary the transfer by the lessee of his interest hereunder shall operate as a release of the lessee from liability hereunder provided that

(i) The transfer of the lessee's interest hereunder shall contemporaneously with the grant of such transfer have vested in him the legal and beneficial ownership of the proportionate share in the fee simple at the time owned by the lessee, and

(ii) Such transfer shall not release the lessee from any antecedent liability hereunder.

**Lessors' right to terminate lease if breach**

15. If and whenever there is any breach or non-observance of any covenant, condition, or agreement on the part of the lessee contained or implied of which the lessors have given to the lessee twenty-eight days' notice in writing thereof and calling upon him to remedy such breach non-observance and if after the expiration of the said notice the lessee fails to remedy such breach non-observance or non-observance it shall be lawful for the lessors forthwith or any time thereafter to re-enter upon and take possession of the flat or any part thereof in the name of the whole whereupon the term hereby created shall absolutely cease and determine.

~~**Fire or earthquake**~~

16. ~~(1) If any flat is partially or wholly damaged or destroyed by fire or earthquake during the term hereby created, then all money received under and by virtue of any policy or policies of insurance shall thereupon be expended with all possible expedition in reinstatement of the said flat or flats and making good the loss or damage in respect of which the said insurance moneys have become payable.~~

~~(2) If the money received under and by virtue of the said policy of insurance is insufficient to reinstate the said flat or flats so damaged or destroyed, such insufficiency shall be borne by the lessors in the proportion in which they respectively own the fee simple of the above described land provided that if the fire was caused by the negligence of one or more of the lessors that party or parties shall bear such insufficiency.~~

~~(3) If the lessees of each separate flat have effected separate insurance as provided in clause 12 hereof each lessee shall expend the insurance moneys received by him in reinstatement and making good as aforesaid the damage to his own flat and shall bear any insufficiency himself.~~

**Water damage**

17. 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.

**Arbitration**

18. If any question or difference whatsoever arises between the parties to this lease or their respective representatives or assigns or between one of the parties hereto and representatives of the others of them touching these presents or any clause or anything herein contained or the construction hereof as to matter in any way connected with or arising out of these presents or the operations thereof or the rights duties or liabilities of any party in connection with the premises, then and in every case (except where the question or difference arises from the observation of the procedure set forth in clause 20 hereof) the matter in difference shall be referred to arbitration in accordance with the Arbitration Act 1908 and its amendments.

## SCHEDULE E

### Covenants Between Lessors

**Appoint agent**

19. The lessors or a majority of them shall from time to time appoint one of their number or any other person or incorporated body as an agent (hereinafter called "the agent") for the purposes of receiving, disbursing and applying moneys under clause 2 hereof and for the purposes specified in clause 20 hereof and for such other purposes as they shall from time to time determine.

**If three or more lessors — procedure to make decision**

20. (1) If the lessors are more than two in number, then and in such case in the event of any one or more (being fewer than all) of them desiring or proposing that any act matter or thing be done by the lessors which the lessors are empowered or required to do whether under these presents or as lessees of the said land or lessors of the said building or which may be considered to be necessary or desirable for the efficient and harmonious administration of the said land and/or the said building the following procedure shall be observed:

(a) Such proposing lessor or lessors shall give notice in writing setting out the proposed action and shall serve a copy thereof upon each of the other lessors (and upon the agent if the agent be not a lessor);

(b) Each of the lessors so served as aforesaid shall within seven days next after such service give notice to the agent in writing of his approval or otherwise of the proposed action. (The notice of the proposing lessor or lessors under paragraph (a) hereto shall constitute his approval for the purposes of this present paragraph);

(c) Any lessor who neglects or fails within the period aforesaid to give notice of his disapproval of the proposed action shall be deemed to have approved thereof;

(d) If all the lessors signify their approval as aforesaid, then the proposed action shall forthwith thereafter be carried into effect;

(e) If fewer than all but being a majority (as hereinafter defined) of the lessors signify their approval as aforesaid, then the agent shall forthwith give notice in writing to all the lessors of the majority decision and the proposed action may thereafter be carried into effect in the name of and so as to bind all the lessors notwithstanding that one or more (being fewer than the majority) of them shall not have signified his approval as aforesaid;

(f) If a majority of the lessors within the period aforesaid notify their disapproval of the proposed action or if the lessors are unable to arrive at a majority decision by the means aforesaid, then the proposed action shall be referred to a single arbitrator in case the parties can agree upon one and otherwise to two arbitrators (one to be appointed by the approving lessors and the other by the non-approving lessors) or their umpire in accordance with the provisions of the Arbitration Act 1908 or any statutory modification or re-enactment thereof for the time being in force.

(g) If no person be appointed as the agent then

(i) the notice to be given to the agent under subclause (b) of this clause shall in lieu thereof be given to all the other lessors and

(ii) the notice to be given by the agent under subclause (e) of this clause shall be given by or on behalf of the lessors approving of the proposed action to all the other lessors.

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**If two Lessors disagree**

(2) If the lessors are only two in number, then any proposed action on which they fail to agree shall be referred to a single arbitrator (if the parties can agree upon one) and otherwise to two arbitrators (one to be appointed by each party) or their umpire in accordance with the provisions of the Arbitration Act.

## SCHEDULE F

## Mutual Covenants

**Right to sell Lessee's flat**

21. (1) The lessee hereby covenants that he will obey and carry out any such notice in terms of clause 20 hereof as aforesaid and in the event of the lessee neglecting or failing to carry out perform observe or pay any act matter thing or moneys in strict compliance with the terms of any such notice in terms of clause 20 hereof within seven days of the date specified in such notice for the due carrying out, performance observance, or payment as aforesaid (or in the event of no date being specified in such notice then within seven days of the date of the receipt of such notice by the lessee) and/or in the event of this lease being determined or becoming determinable for a period of seven days, then the lessee hereby irrevocably appoints the lessors or such of them as shall then be willing and able to act as the lessee's attorneys upon such lessors thereupon electing so to act and serving written notice in that behalf upon the lessee to be the true and lawful attorneys of the lessee for him and in his name and on his behalf to ask, demand, sue for, recover, and receive all or any sum of money due to or become due to the lessee touching any matter herein contained or implied to demand enforce and procure compliance with and observance of all covenants, conditions, and provisions herein contained or implied to pursue and exercise all remedies and powers herein contained or implied to dispose of the lessee's said interest in the fee simple of the said land and in and under the lease hereby created either by public auction or by private contract and either for cash or upon terms and for such purposes to sign, make, execute, complete, deliver, stamp, and register all the necessary instruments, deeds, documents, and writings of every description as fully and effectually as if the lessee were personally present and acting therein.

(2) The lessors as attorneys for the lessee shall first obtain the report of a registered valuer as to the fair market value of the lessee's said interest in the fee simple and in and under the lease hereby created but shall not however be bound to sell at such valuation and shall not be liable to the lessee for selling at a price less than such valuation PROVIDED THAT they have made every reasonable endeavour to obtain a price equivalent to the said valuation.

(3) The lessors shall not be bound to take any steps hereby empowered nor shall the lessors be responsible for any involuntary loss arising upon the pursuit or exercise of any remedies or powers hereunder.

(4) No person corporation or authority dealing with the lessors as attorneys for the lessee shall be concerned to see or enquire as to the propriety or expediency of any act deed matter or thing which the lessors as attorneys of the lessee may do or perform or purport to do or perform or agree to do or perform in the name of the lessee by virtue of the foregoing provisions.

(5) The foregoing is subject to the condition that in every case before the power of attorney granted by this clause can be exercised to dispose of any party's interest in the said fee simple, a further notice in writing must be served on such party giving him or her twenty-eight days to request that the matter be referred to arbitration. If such party refuses or neglects within such twenty-eight days to reply in writing requesting reference to arbitration, then the said power of attorney may be exercised forthwith but otherwise the matter shall be referred to arbitration in all respects as if a majority decision could not be reached pursuant to the preceding clause. The net proceeds of any sale of the lessee's interest pursuant to this clause (after payment of all expenses whatsoever incurred by the lessors in any way arising out of the determination of this lease and/or the said sale or in any way relating thereto) shall be held by the lessors in trust for the lessee.

**Sale pursuant to Clause 21**

(6) If the lessors effect a sale on terms pursuant to clause 21 hereof, then those terms shall require payment in cash of not less than one-third of the total price and the securing of the balance upon first mortgage of the said fee simple and the said interest in and under this lease such mortgage being in terms as are then current for first mortgage and trustee investments made by solicitors in the district in which the property is situated.

**Notices**

22. It is further mutually agreed and declared and covenanted that any notice required to be given or served touching anything contained or implied in this lease shall be deemed to have been validly and effectually given and/or served in full compliance with the terms and conditions of this lease if such notice or notices have been given or served upon the party concerned either personally or by leaving the same at or posting the same to the last known place of abode or address of such party or parties and in the event of such service 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 or by affixing the same to the premises demised by the lessors hereof to the party or parties concerned (being part of the said building) by securely affixing the same to the main or front door exterior thereof and service shall be deemed to have been effected on the day after affixing thereof as aforesaid.

**Right to sub-let**

23. The lessee shall have the right to let the flat to a reputable tenant PROVIDED THAT the lessee shall ensure that such tenant shall be so bound as to protect all rights under this lease and the lessee shall take all reasonable steps to enforce such rights.

24. **No merger**

The parties agree that there shall be no merger in the event of the lessee acquiring or remaining a proprietor of a freehold estate in the said land.

**Interpretation**

25. (1) That wherever used in these presents —

(a) The expression "the lessors" shall extend to signify include and bind the person/s executing these presents as lessors and all the lessors for the time being hereunder (if more than one) jointly and severally and all the respective executors administrators successors and permitted assigns of each lessor.

(b) The expression "the lessee" shall extend to signify include and bind the person/s executing these presents as lessee and all lessees for the time being hereunder (if more than one) jointly and severally and all the respective executors administrators successors and permitted assigns of each lessee.

(c) The expressions "majority of the lessors" and "majority of them" shall each mean any number of lessors for the time being who and/or whose personal representatives together own more than an undivided one-half share of or interest in the fee simple and the expression "a majority decision" shall mean a decision of the majority of the lessors as so defined.

(d) The sub-headings and marginal notes do not affect the construction of these presents.

(e) Words importing one gender include the other genders as the case may require.

(f) Words importing the singular or plural number include the plural and singular number respectively.

(2) These presents shall be considered as always speaking and whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise, so that effect may be given to these presents and every part thereof according to their spirit, true intent and meaning.

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See attached sheet for clauses 26 and 27

12. That the Lessee shall insure the flat against fire and earthquake to its full insurable value and will pay all insurance premiums on any such policies as and when the same shall become due and owing.

16. That in the event of the flat being partially or wholly damaged or destroyed by fire or earthquake during the term hereby created all monies received under and by virtue of any policy of policies of insurance shall thereupon be expended with all possible expedition in reinstatement of the flat and making good the loss or damage in respect of which the said insurance monies shall have become payable and in the event of the monies received under and by virtue of the said policy or insurance being insufficient to reinstate the flat so damaged or destroyed such insufficienty shall be borne by the Lessee PROVIDED ALWAYS that if the Lessee's interest in the fee simple or his interest hereunder shall be mortgaged the foregoing shall be subject to the Mortgagees right to appropriate fire loss monies as provided in the fourth Schedule of the Property Law Act 1952.

26. The Lessee shall not without the written consent of the Lessors in any way use any part of the said land except

a) the flat
b) that part of the said land relating to the flat marked D & G on Deposited Plan 15620
~~c) that part of the said land marked on Deposited Plan but only for the purposes of reasonable ingress and egress by vehicles or on foot.~~

27. The Lessee shall at all times keep all that part of the said land (and all amenities thereon) relating to the flat marked D & G on Deposited Plan 15620 in a neat and tidy condition and in good repair.

# MEMORANDUM OF LEASE

*Correct for the purposes of the Land Transfer Act*

*(Solicitor for) the Lessee*

G.R. & D.P. SCOTT LTD ..... Lessor

G.R. & D.P. SCOTT LTD ..... Lessee

LEASEHOLD CERTIFICATE OF TITLE

H3/410

ISSUED FOR THE LESSEE'S INTEREST HEREIN

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

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

SEAL OF THE HAWKES BAY DISTRICT LAND REGISTRAR NEW ZEALAND

DISTRICT LAND REGISTRAR
HAWKES BAY

Nov 28 9 28 AM 78

McLEOD & DONKIN,
Solicitors,
NAPIER.

H3/403, 404, 405, 406

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