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Memorandum of Lease - FLAT No. 5.

RECEIVED
DISTRICT LAND REGISTRAR
NORTH AUCKLAND
15 1973

W.T. SWAIN LIMITED a duly incorporated company having its registered office at Auckland

(Who with his respective executors administrators and assigns is hereinafter called "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 containing ONE ROD SEVEN DECIMAL FOUR PERCHES (1 7.4 p.) more or less, being Lot 17 deposited Plan 7941, and being portion Allotment 13, Section 12, Suburbs of Auckland and being all the land comprised and described in Certificate of Title Volume 374 folio 235 North Auckland Registry) SUBJECT TO Fencing Agreement contained in Volume 169 folio 167 North Auckland Registry

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IN CONSIDERATION of the covenants on the part of the Lessee herein expressed or implied the Lessor DOTH HEREBY LEASE UNTO W.T. SWAIN LIMITED a duly incorporated company having its registered office at Auckland

(herein with his executors administrators and assigns called "the Lessee") Flat No. 5 together with Garage ~~No~~ being part of the building (hereinafter called "the said building") erected on the said land as is ~~more particularly described in the Schedule hereto and~~ shown on Deposited Plan No. 71275 (hereinafter called "the flat") TO BE HELD by the lessee as tenant for a period of nine hundred and ninety-nine years (999) as from and including the 22nd day of November 1973 at the rental of ten cents per annum payable in advance in each year throughout the term hereby created SUBJECT to the following conditions and provisions that is to say:

The Lessee DOTH HEREBY COVENANT with the Lessors:

1. To pay the rent in the manner and at the times hereinbefore provided.
2. The Lessee will upon demand in writing by the Lessors pay to the Lessors one-fifth of the cost of the following repairs maintenance and other charges 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 same building.
 - (c) All electrical and plumbing equipment, drains and other amenities serving the said building as a whole.
 - (d) The roof spouting and downpipes of the said building.
 - (e) Any exterior decoration or exterior cleaning of the walls of the said building.
 - (f) All structural repairs and maintenance necessary to the walls framework or foundations of the said building.
 - (g) Care and maintenance of the grounds paths fences gates and other amenities surrounding the said building.
 - (h) A general reserve fund to meet contingent repairs and maintenance.
 - (i) All other expenses in respect of the said land and building jointly incurred by the Lessors and not relating solely to the flat.

All moneys payable under this clause shall be payable to a person nominated by the lessors or a majority of them with instructions to disburse the same for the foregoing purposes.

AND in default of payment thereof by the Lessee the Lessors shall be entitled to demand interest on the amount or amounts owing at the rate of seven dollars per centum per annum from the date of payment but such demand shall be without prejudice to the rights of the lessors under this lease.

3. THAT the Lessee shall use the flat for residential purposes only and shall not bring into or keep in the flat any cat, dog, birds 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.
4. THAT 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 lease of the flat.
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.
6. THE Lessee will not leave or place in the passageways stairways or parking area or in the ground 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.
7. THE Lessee will not use the flat for any illegal or immoral purposes and will refrain from causing excessive noise or disturbance in the flat which may be likely to cause a nuisance or any annoyance to the Lessors or occupants of any adjoining flats in the said building.
8. IT is a condition of this lease that the Lessee shall at all material times remain owner as proprietor of an undivided one-fifth 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 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 (provided always that this clause shall not apply to the first Lessee hereof).
9. THAT the Lessee will permit the Lessors or their representatives at all reasonable times to enter upon the flat to inspect the condition of the same.
10. THE Lessee shall not make any structural alterations to the building without the prior written consent of the Lessors had and obtained.
11. THE Lessee will duly and punctually pay all charges for water electricity gas or other supplies or services relating solely to the flat.

AND THE LESSORS DO AND EACH OF THEM DOOTH HEREBY COVENANT with the Lessee as follows:

12. 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.
13. THAT the Lessors shall insure the said building against fire and earthquake to its full insurable value and will take out a comprehensive 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 and the mortgagees (if any) agrees to effect and keep current a separate and adequate insurance policy for such parts of the said building each Lessee holds as lessee.
14. THAT the Lessors will keep the exterior and roof of the said building in a good state of repair and will duly and punctually pay all the items and matters referred to in paragraph 2 hereof and will cause the building at all times to be managed and maintained on a high standard provided that in performance of the foregoing covenants the Lessors shall have the right to enter the flat upon giving reasonable notice to effect such work. AND IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE LESSORS AND THE LESSEE.
15. IF and whenever there shall be any breach or non-observance or non-performance of any covenant condition or agreement herein on the part of the lessee contained or implied of which the Lessors shall have given to the Lessee twenty-eight days' notice in writing thereof and calling upon him to remedy such breach non-observance or non-performance and if after the expiration of the said notice the Lessee shall fail to remedy such breach non-observance or non-performance 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.
16. THAT in the event of the said building or flat being partially or wholly damaged or destroyed by fire or earthquake during the term hereby created all moneys 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 building or the flat and making good the loss or damage in respect of which the said insurance moneys shall have become payable and in the event of the moneys received under and by virtue of the said policy of insurance being insufficient to reinstate the said building or the flat 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.
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 by rain water entering the flat.
18. THAT if any 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 touching these presents or any clause or anything herein contained or the construction hereof or 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 either party in connection with the premises 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.

AND IT IS HEREBY AGREED BY AND BETWEEN the Lessors and each of them—

19. IN the event of any Lessor (or Lessors) 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 building or which may be desirable for the efficient and harmonious administration of the said land and building the following procedure shall be carried out:

- (a) Such Lessor or Lessors 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 place of abode or address of the other Lessors 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.
 - (b) If after the lapse of seven days from the service of the said notice as aforesaid the Lessors or a majority of them approve of the proposed action in writing the Lessors (so approving shall forthwith notify all the other Lessors of the majority decision) and may thereafter carry into effect the proposed action in the name of all the Lessors and all actions taken (by the consenting Lessors) as aforesaid coming within the scope of the memorandum shall be binding on the Lessors and any obligation undertaken by such (consenting) Lessors shall be enforceable against any Lessor who shall not have consented thereto.
 - (c) That if the Lessors shall be unable to arrive at a majority decision then any dispute doubt or question shall be referred to a single arbitrator in case the parties can agree on one and otherwise to two arbitrators or their umpire in the case of a disagreement one of the arbitrators to be appointed by each party in dispute and in either case in all respects with the provisions in that behalf contained in the Arbitration Act 1908 or any statutory modification or re-enactment thereof for the time being in force.
 - (d) The foregoing is subject to the condition that if the expenditure involved in carrying into effect the said proposed action will or is likely to cause the total expenditure to be in excess of \$400 in any one year an aggrieved party hereto may give notice in writing (within seven days after the service of notice of the majority decision upon him or her) to the other parties hereto requiring the matter or thing in difference to be referred to arbitration in the same manner as if a majority decision could not be arrived at.
20. THE Lessee hereby agrees that he will obey and carry out any such notice as aforesaid and in the event of this lease being determined or becoming determinable then the Lessee hereby irrevocably appoints the Lessors his attorneys to dispose of the Lessee's said interest in the fee simple of the said land and for this purpose to execute all the necessary instruments PROVIDED THAT 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 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.
21. THE Lessee shall have the right to let the flat to a reputable tenant for any reasonable period when the Lessee cannot personally occupy the same provided that the Lessee shall ensure that a Tenancy Agreement is signed protecting rights under this Lease.
22. 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.
23. The Lessor doth hereby covenant with the Lessee that the Lessor throughout the term of this lease shall not use or occupy nor shall the Lessor permit any Lessee of the said land (other than the Lessee under this Lease) to use or occupy for any purpose whatsoever that part of the said land shown on Deposited Plan 71275 marked "E" to the intent that this restrictive covenant shall forever be appurtenant to the estate and interest of the Lessee under this Lease.

~~THE SCHEDULE~~

THE abovenamed Lessee DOTH HEREBY ACCEPT this lease of the flat and garage to be held by him as tenant and subject to the conditions restrictions and covenants above set forth.

DATED this 22nd day of November 1973.

SIGNED by the abovenamed

as Lessor in the presence of:

THE COMMON SEAL of
W.T. SWAIN LIMITED as
 Lessor was hereunto
 affixed in the presence
 of :



.....
M. J. Swain
D. L. Swain

SIGNED by the abovenamed

as Lessee in the presence of:

THE COMMON SEAL of
W.T. SWAIN LIMITED as
 Lessee was hereunto
 affixed in the presence
 of :



.....
M. J. Swain
D. L. Swain

27 c / 1097

Correct for the purposes of the Land Transfer Act.

No.

LEASE - FIAT No. 5.

Lot 117, D.P. 7941, Suburbs of Auckland.

A.S. Keyburn
Solicitor for the Lessee

W.T. SWAIN LIMITED Lessors

W.T. SWAIN LIMITED Lessee

Particulars entered in the Register Book

Volume Folio

the day of 196
at o'clock.

District
Assistant Land Registrar

of the District of North Auckland.

Composite Certificate of Title issued
Register 271/1097
Including $\frac{1}{5}$ share in fee simple.

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REYBURN, McARTHUR, BOYES & LYON
SOLICITORS, AUCKLAND

W&P 42417



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District Land Registry
Auckland No. 4
271/1097
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