Approved by the Registrar-General of Land, Wellington, No. 053570.1 NEW ZEALAND

# MEMORANDUM OF LEASE

40 40 539334.3 L

LESSORS: ERROL BERT CANDY of Auckland, Company Director and COLLEEN JEAN CANDY his wife

LESSEE: ERROL BERT CANDY of Auckland, Company Director and COLLEEN JEAN CANDY his wife

Schedule A

| Certificate of Title or document reference | Area | Lot and Deposited Plan number or other legal description | Encumbrances, liens and interests |
|---|---|---|---|
| 26D/406 | 933 $m^2$ | Lot 285 on Deposited Plan 17735 being part Allotment 13 Section 12 Suburbs of Auckland<br>N.Z. Stamp Duty AKD Cancelled See correct impression No. 19514<br>-5-V-77 19506 —0.00<br>for Dist. Commr. Inland Revenue | 1. Memorandum of Mortgage 157823.2 |

Schedule B

| Flat number | ~~Garage number~~ | | Deposited Plan number |
|---|---|---|---|
| 3 | | N.Z. Stamp Duty AKD | 82285 |
| | | -5-V-77 19514 —0.40— | |

Term: Nine hundred and ninety nine (999) years from the 29th day of April 1977

Annual rental: Ten cents (10c.) payable in advance each year.

The lessee covenants with the lessors as set out in Schedule C.

The lessors covenant with the lessee as set out in Schedule D.

The lessors and the lessee covenant and agree between them as set out in Schedule E.

The lessors agree between each of them as set out in Schedule F.

The lessors, being registered as proprietors of an estate in fee simple subject however to such encumbrances liens and interests as are written above in that piece of land described in Schedule A above (hereinafter called "the said land"), hereby lease to the lessee the flat and appurtenances (if any) (hereinafter called "the flat") described in Schedule B above and being part of a building (hereinafter called "the said building") erected on the said land to be held by the lessee for the term and at the rental abovementioned, and the lessee accepts this lease to be held by him as tenant subject to the conditions restrictions and covenants set forth herein.

Correct for the purposes of the Land Transfer Act

.....

Solicitor ~~for~~ the lessee.

Schedule C

THE LESSEE HEREBY COVENANTS WITH THE LESSORS:

1. TO pay the rent in the manner and at all times hereinbefore provided.

2. (i) THE lessee will upon demand in writing by the lessors or their agent pay to the lessors one third of the cost of the following repairs maintenance and other charges incurred in respect of the said land:—

(a) All levies rates and taxes assessed in respect of the said land and all buildings thereon, excluding those relating to any particular flat or flats.

(b) Care and maintenance of the grounds paths fences and other amenities on the said land.

(c) A general reserve fund to meet contingent repairs and maintenance to the grounds paths fences and other amenities on the said land.

(d) All other expenses in respect of the said land jointly incurred by the lessors and not relating solely to any particular flat or flats.

All the moneys payable under this clause shall be payable to a person nominated by the lessors or a majority of the lessors 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 Ten dollars per centum per annum from the date for payment but such demand shall be without prejudice to the rights of the lessors under this lease.

(ii) THE lessee will upon demand in writing by such lessors as are also lessees of the said building or their agent pay to such lessors one third of the cost of the following maintenance and other charges incurred in respect of the said building:—

(a) All insurance premiums assessed on the said building.

(b) Work carried out in connection with all electrical and plumbing equipment, drains and other amenities serving the said building as a whole.

(c) Work carried out in connection with the roof spouting and downpipes of the said building.

(d) Any exterior decoration or exterior cleaning of the walls of the said building.

(e) All structural repairs and maintenance necessary to the walls framework or foundations of the said building.

(f) A general reserve fund to meet contingent repairs and maintenance of the said building.

(g) All other expenses in respect of the said building jointly incurred by the lessees of the said building and not relating solely to any particular flat or flats.

All the moneys payable under this clause shall be payable to a person nominated by such lessors as are also lessees of the said building or by a majority of such lessors with instructions to disburse the same for the foregoing purposes AND in default of payment thereof by the lessee such lessors shall be entitled to demand interest on the amounts owing at the rate of Ten dollars per centum per annum from the date for payment but such demand shall be without prejudice to the rights of the lessors under this lease.

3. THE lessee will duly and punctually pay all levies rates and taxes and all charges for water electricity gas or other supplies or services relating solely to the flat or relating solely to the flat and the lessee's interest in the said land.

4. THAT 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 shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the other lessees of the said building or of any other building on the said land and shall not bring into or keep in the flat any cat, dog, bird or other pet which may reasonably be expected to interfere with the quiet enjoyment of the other lessees of the said building or of any other building on the said land or which may create a nuisance and the lessee in common with all other persons from time to time lawfully entitled will have the use and enjoyment of such parts of the said land as are not for the time being occupied by buildings or subject to exclusive rights conferred by a lease.

5. 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.

6. 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.

7. THE lessee will not leave or place in the passageway 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.

8. THE lessee will not use the flat for any illegal or immoral purposes and will refrain from causing excessive noise or disturbance upon the flat which may be likely to cause a nuisance or an annoyance to the lessees or occupants of any adjoining flats in the said building or in any other building on the said land. This clause shall not in any way affect the generality of clause 4 of these presents.

9. IT is a condition of this lease that the lessee shall at all material times remain owner as proprietor of an undivided one third share in the fee simple of the said land while he continues to be a lessee hereunder. If the lessee unless by the 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 immediately determine without however discharging the lessee from payment of any moneys 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).

10. THAT the lessee will permit such lessors as are also lessees of the said building or their representatives at all reasonable times to enter upon the flat to inspect the condition of the same.

11. THE lessee shall not make any structural alterations to the said building without the prior consent of such lessors as are also lessees of the said building first had and obtained on each occasion.

12. THAT in the event of the lessee and every other lessee of the said building agreeing to effect and keep current a separate and adequate insurance policy for such parts of the said building as each lessee holds as tenant then the lessee hereby covenants with the lessors to so effect and keep current such a policy and to have the interests of the other lessor or lessors for the time being as co-owner or co-owners of the said building noted by the insurance company with which such part of the said building is insured.

Schedule D.

THE LESSORS AND EACH OF THEM HEREBY COVENANT with the lessee:

13. 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.

14. THAT such lessors as are also lessees of the said building shall insure the said building against fire and earthquake to its full insurable value and will take out a replacement policy and will pay all insurance premiums on any 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 a tenant.

15. THAT such lessors as are also lessees of the said building will keep the exterior and roof of the said building in a good state of repair and will duly and punctually pay all items and matters referred to in paragraph 2 (ii) hereof and will cause the said building at all times to be managed and maintained on a high standard provided that in performance of the foregoing covenants such lessors shall have the right to enter the flat upon giving reasonable notice to effect such work.

16. 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 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 purpose aforesaid the lessors do irrevocably appoint the lessee hereunder the attorney of the lessors in the name of the lessors to do all such acts and in particular but not in addition 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.

29. THAT for the exclusive benefit of Flat 3 on Deposited Plan 82285 and of the Lessee thereof the Lessors (always excepting such Lessee) shall not at any time use or grant to any other person any easement or right of user of all or any part of the said land marked (C) adjoining the said Flat 3 on the said Deposited Plan to the intent that the Lessee of the said Flat 3 shall have the sole right of use and enjoy at all times all the said land marked (C) adjoining Flat 3 as aforesaid for his exclusive use and benefit.

Schedule E.

IT IS HEREBY COVENANTED AND AGREED by and between the lessors and the lessee:

17. 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 twenty-eight days of the date of receipt by the lessee of written notice from the lessors specifying such breach or default then it shall be lawful for the lessors 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 and the lessee to expel and remove but without thereby releasing the lessee from any liability for any previous breach or non-observance or non-performance of any of the said covenants conditions and restrictions.

18. THAT in the event of the said building or the 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 such lessors as are lessees of the said building in the proportion in which they respectively own the fee simple of the said land provided that if the fire was caused by the negligence of one or more of such lessors that party or parties shall bear such insufficiency PROVIDED FURTHER that if the lessee of each separate flat shall 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 the insufficiency himself and shall complete such reinstatement and making good at his own expense.

19. 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 rainwater entering the flat.

20. 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.

21. 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.

22. THAT in case of default by the lessee at any time in the observance or performance of any of the covenants 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 per centum per annum computed from the date or respective dates of such moneys being expended until payment thereof to the lessors.

23. (a) THAT the expression "a majority of the lessors" wherever herein used shall be deemed to mean any number of lessors who together own more than a one half interest in the freehold of the said land.

(b) THAT the expression "a majority decision" shall be deemed to mean a decision of a majority of the lessors.

24. THAT in the event of this lease being determined or becoming determinable in manner herein provided then the lessee hereby irrevocably appoints the lessors (other than the lessee) his attorney to dispose of the lessee's said interest in the fee simple of the said land and in that event to surrender his leasehold interest under his lease and for these purposes to execute all the necessary instruments.

25. THE lessee shall be bound by any decision arrived at in accordance with the provisions of clause 28 hereof and the lessee shall give all reasonable assistance in the carrying out and implementation of such decision.

26. 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 herein contained or the construction hereof or as to 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 or any statutory re-enactment thereof for the time being in force.

27. THE words "lessors" and "lessee" where used in this lease shall unless inconsistent with the context extend to and include the person persons company or corporation executing it and all lessors and lessees (if more than one) jointly and severally and the executors administrators successors and permitted assigns of each lessor and lessee and also all persons companies or corporations properly claiming by through or under either the lessors or the lessee and all successors in title to either the lessors or the lessee whether by transfer permitted assignment transmission or otherwise. Words importing the singular number shall include the plural and vice versa and the masculine gender shall include the feminine and (when the reference by inclusion is to a company or corporation) the neuter gender and vice versa.

Schedule F.

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

28. IN the event of 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 lessor or lessors shall give notice thereof by memorandum in writing setting out the proposed action and shall cause the same to be served upon all the other lessors 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 the lessors 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 of any proposed action but a number of lessors who together own a one half interest in the freehold of the said land approve of the proposed action in writing then the matter shall be referred to a single arbitrator in case the lessors 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 the lessors in favour of the proposed action and the other to be appointed by the remaining lessors and in either case in all respects in accordance with the provisions in that behalf contained in the Arbitration Act 1908 or any statutory re-enactment thereof for the time being in force.

(d) Whenever by reason of the act or default or neglect of the lessee, the lessors shall be entitled to serve a notice, do anything or take any step and the lessee in his capacity as one of the lessors is unwilling or unable to co-operate in such service or the doing of such things or the taking of such step, then the other or others for the time being of the lessors by these presents and without further authority shall be authorised to do so on behalf of and in the name of the lessee.

IN WITNESS WHEREOF these presents have been executed this 2nd day of May one thousand nine hundred and seventy seven

SIGNED by the said ERROL BERT CANDY
and COLLEEN JEAN CANDY
as lessors in the presence of: [signature] Solicitor Auckland

E.B. Candy
C.J. Candy

SIGNED by the said ERROL BERT CANDY
and COLLEEN JEAN CANDY
as lessee in the presence of: [signature] Solicitor Auckland

E.B. Candy
C.J. Candy

**LEASE** Flat 3 on
D.P. 82285

E.B. & C.J. CANDY ..... **Lessors**

E.B. & C.J. CANDY ..... **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

To The District Land Registrar,
Auckland.

Please note the lessors' restrictive covenant contained in clause 29 of the Lease against the fee simple title to the said land.

Solicitor for the lessee

---

Bruce Scott, Stevens
& Partridge,
Solicitors,
Auckland.

---

W. G. Allen & Co. Ltd., Law Stationers, 222 Hobson St., Auckland.

NORTH AUCKLAND DISTRICT LAND REGISTRY

MAY 24 11 16 AM '77

DISTRICT LAND REGISTRY
AUCKLAND NO. 1

5033433
260/406