

MEMORANDUM NO. 1995/4018

Land Transfer Act 1952

LEASE

**Registered Pursuant to Section 155A
Land Transfer Act 1952**

**District Land Registrar
Land Registry
(Abstract number/date)**

**HALL COTTON LAWRENCE
SOLICITORS
DUNEDIN**

Form 11

Lease instrument

(Section 91 Land Transfer Act 2017)

| Record of Title (unique identifier) | All/part | Area/Description of part |
|-------------------------------------|----------|------------------------------------|
| OT372/167 ✓ | Part | Lot 3 Block 59 deposited Plan 1188 |

Lessor

Ronald Barry Wade ✓

Lessee

P M Property Holdings Limited ✓

Estate or Interest

Insert "fee simple"; "leasehold in lease number" etc.

Fee simple

Lease Memorandum Number (if applicable)

1995/4018 ✓ *- same memorandum.*

Term

Twenty-one years from and including the 1st of October 2018 ✓

Rental

Thirteen Thousand Dollars Plus GST per annum (\$13,000.00 plus GST per annum) ✓

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected record of title(s) for the Term and at the Rental and on the Terms of Lease set out in the above Lease Memorandum or in the Annexure schedule(s) (if any).

Insert instrument type

Lease

Continue in additional Annexure Schedule, if required

1. **The parties agree to the incorporation of the following additional clauses to the Lease Memorandum**
 - 1.1 The Lessor shall not be obliged to give consent to any matter requiring the Lessor's consent pursuant to the Lease unless the Lessee has provided all necessary documentation for execution and all information reasonably required for the Lessor to make a decision on whether to give or withhold consent. The Lessee shall not require the Lessor to give such consent or execute such documentation earlier than 15 working days following receipt by the Lessor of the documentation and information referred to in this clause.
 - 1.2 The expression "working days" as herein used bears the same meaning as that expression is given in the Property Law Act 2007.
 - 1.3 The covenants and provisions implied in this Lease by the Land Transfer Act 1952 and the Property Law Act 2007 or any amendment or re-enactment thereof shall be negated or modified in respect of this Lease to the extent that they are or may be inconsistent with the modifications hereby made or the covenants and provisions expressed herein.
 - 1.4 The parties hereby confirm and agree that the Lessor is not required to insure the Land and the Lessee shall indemnify the Lessor in respect of any claims, losses or matters arising from an insurable risk (this indemnity is without prejudice to any other indemnity therein contained).
 - 1.5 Time is of the essence as regards the performance by the Lessee of the Lessee's obligations under this Lease.
2. **The Terms of the Lease Memorandum shall be varied as follows:**
 - 2.1 Clause 5 shall be amended by the deletion of the following phrase:
"without the previous consent in writing of the Lessor" at line 3.
 - 2.2 Clause 7 shall be amended by the deletion of the following phrase:
"without the previous consent in writing of the Lessor" at line 2.
 - 2.3 All references in the Lease Memorandum to "thirty (30) days" shall be substituted with "twenty (20) working days" as defined in the Property Law Act 2007.

Insert instrument type

Lease

- 2.4 Clause 10 shall be deleted.
- 2.5 Clause 11 shall be amended as follows:
- 2.5.1 At Line 6 after the words "in that behalf to" the words "cancel this Lease by re-entry" shall be inserted and the word "re-enter" shall be deleted.
- 2.5.2 At line 7 after the words "of the whole" the words "in accordance with the provisions of Section 243-246 inclusive of the Property Law Act 2007" shall be inserted.
standard terms relating to cancellation of lease.
- 2.5.3 The following shall be deleted – "provided that in the event of default the Lessor shall be obliged to give any registered mortgagees of the Lessee written notice of the default and the mortgagee shall be given twenty-eight (28) days from receipt of the notice to remedy the default at the option of the mortgagee before the Lessor exercises any right or remedy against the leasehold interest of the Lessee".
- 2.6 References to the "Arbitration Act 1908" shall be replaced with reference to the "Arbitration Act 1996".
- 2.7 References to "forfeiture or determination" in the Lease Memorandum shall be replaced with "cancellation".
- 2.8 Clause 15(18) of the Lease Memorandum shall be amended by the deletion of reference to "Section 152 of the Property Law Act 1952" and the insertion in its place with "Section 352-361 of the Property Law Act 2007".
- 2.9 All references to the "Property Law Act 1952" shall be replaced with the "Property Law Act 2007".
- 2.10 All references to "the Distress and Replevin Act 1908" in the Lease Memorandum shall be deleted.
- In all other respects the terms of the Lease Memorandum are confirmed.

5. That the Lessee shall not carry on, or permit, or suffer to be carried on upon the land any noxious, noisome, offensive, or immoral activity and shall not create, permit, or suffer to be created any nuisance upon the land and will not without the previous consent in writing of the Lessor make any excavations in or alter the levels of the land or any part thereof.
6. That the Lessee will during the term keep and maintain in good and tenantable condition and repair all buildings fences erections and drains now or hereafter erected or laid upon or under the land.
7. That the Lessee will not subdivide as defined under the Resource Management Act 1991 the land without the previous consent in writing of the Lessor.
8. Before commencing the erection or alteration of any building or structure on the land the Lessee will supply to the Lessor for its approval concept details of such proposed work and the Lessee will obtain all approvals permits and consents necessary to enable the proposed work to be lawfully effected.
9. That the Lessee will not without the previous consent in writing of the Lessor assign sublet or otherwise part with the possession of the land or any part thereof or encumber the Lessee's interest therein or remove or take away any buildings or erections which are now or may hereafter be erected on the land or any part thereof.

The Lessor and the Lessee agree and declare:

10. That if and whenever the rent for the time being payable hereunder or any part thereof shall at any time be in arrear or unpaid for thirty (30) days after the same shall have become due (whether the same shall have been legally or formally demanded or not) the Lessor shall be entitled to levy by distress the rent so in arrear and unpaid.
11. That if and whenever the rent for the time being payable hereunder or any part thereof shall at any time be in arrear or unpaid for thirty (30) days after the same shall have become due (whether the same shall have been legally or formally demanded or not) or if the Lessee shall make default in the due observance or performance of any of the covenants conditions and agreements by the Lessee herein contained or implied then and in any such case it shall be lawful for the Lessor or any person duly authorised by it in that behalf to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the Lease and every clause and thing herein contained shall absolutely cease determine and become void but without prejudice to any right of action or remedy of the Lessor for or in respect of any rent which shall have then accrued due under these presents or for or in respect of any antecedent breach or nonobservance of any of the covenants by the Lessee herein contained or implied provided that in the event of default the Lessor shall be obliged to give any registered mortgagee of the Lessee written notice of the default and the mortgagee shall be given twenty eight (28) days from receipt of the notice to remedy the default at the option of the mortgagee before the Lessor exercises any right or remedy against the leasehold interest of the Lessee.
12. That the Lessor shall not be liable for any loss or damage sustained by the Lessee in respect of the land or any part thereof or of any buildings erections or improvements thereon by reason of any landslip or subsidence of the land or any part thereof or by reason of any underground drainage or through any other cause whatsoever whether occasioned by any act neglect or default of any tenants of other lands of the Lessor or of any other person or persons whatsoever.

13. That the Lessor will not be responsible for any injury to the Lessee or any servant or licensee or invitee of the Lessee or for any damage to any goods fixtures fittings buildings improvements or other property of the Lessee caused whether directly or indirectly by the escape or seepage into the land of any water sewerage gas or other deleterious liquid substance or thing whatsoever including fire whether such escape or seepage shall be from premises occupied by the Lessor or from premises occupied by any other person including any licensee or tenant of the Lessor or otherwise and notwithstanding how such seepage or escape may have been caused whether by negligence of the Lessor or otherwise.

14. That the Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or any amendment or re-enactment thereof or regulations thereunder or otherwise to contribute towards the cost of erection or repair of any boundary fences between the land hereby leased and any adjoining land of the Lessor but this provision shall not enure for the benefit of any Lessee or occupier of such adjoining land.

15. (1) On the expiry by effluxion of time of the term of the lease provided the Lessee shall have duly and punctually paid the rent up to the date of expiry by effluxion of time of the term whether or not such rent shall have become legally payable and shall have duly and punctually paid performed and observed all and singular the covenants conditions and agreements by the Lessee herein contained or implied the Lessee shall have a right to obtain in accordance with the provisions hereinafter contained a renewal Lease of the land at a rent for the first seven (7) years of the term of the renewal Lease to be determined in accordance with the said provisions for the term of twenty one (21) years computed from the expiration of this Lease and subject to the same covenants and provisions as this Lease including this present provision for the renewal thereof and all provisions ancillary or in relation thereto. The rent for subsequent periods of seven (7) years of the term of the renewal Lease shall be determined in the manner provided in Clause 16 hereof.
- (2) Not earlier than nine (9) calendar months and not later than three (3) calendar months before the expiry by effluxion of time of the term of the Lease or as soon thereafter as may be the Lessor shall cause a valuation to be made by a person whom the Lessor reasonably believes to be competent to make the valuation of the fair annual rent of the land so that the rent so valued shall be uniform throughout the first seven (7) years of the term of the renewal Lease.
- (3) In making the said valuation no account shall be taken of the value of the improvements on the land.
- (4) As soon as possible after the said valuation has been made the Lessor shall give to the Lessee notice in writing informing him of the amount of that valuation and requiring him to notify the Lessor in writing within two (2) calendar months whether he will accept a renewal Lease at the rent specified in the notice.
- (5) Within two (2) calendar months after the giving of that notice to the Lessee, the Lessee shall give notice in writing to the Lessor stating:
- (a) That he desires to accept a renewal Lease at the rent stated in the notice given to him by the Lessor; or

- (b) That he requires the rent for the renewal Lease to be determined by arbitration; or
 - (c) That he does not desire to accept a renewal Lease.
- (6) If the Lessee fails to give to the Lessor within the time specified in sub-clause (5) of this Clause the notice referred to in that sub-clause and to the intent that such time shall be deemed to be of the essence he shall be deemed to have agreed to accept a renewal Lease at the rent specified in the notice given to him by the Lessor.
 - (7) Where the valuation of the rent payable under a renewal Lease is to be determined by arbitration that valuation shall be made by two persons as Arbitrators each such person being reasonably believed by the party appointing him to be competent to make the valuation one of whom shall be appointed by the Lessor and the other by the Lessee.
 - (8) The Arbitrators before commencing to make the said valuation shall together appoint a third person who shall be an Umpire as between them.
 - (9) The decision of the two Arbitrators if they agree or in such respects as they agree or of the Umpire if the Arbitrators do not agree or in such respects as they do not agree shall be binding on all parties.
 - (10) The duty of the Umpire on reference to him of any question shall be to consider the respective valuations of the two Arbitrators in the matters in which their valuations do not agree and then to make an independent and substantive valuation and the last mentioned valuation shall be the decision of the Umpire but in giving his decision on any question so referred to him the Umpire shall in every case be bound to make a valuation not exceeding the higher and not less than the lower of the valuations made by the Arbitrators respectively.
 - (11) The provisions herein contained for the making of the said valuation shall be deemed to be a submission to arbitration under and within the meaning of the Arbitration Act 1908 or any enactment for the time being in force in substitution therefor or amendment thereof and all the provisions of any such enactment shall so far as applicable apply accordingly.
 - (12) Within two (2) calendar months after the making of the said valuation and the giving of notice thereof to the Lessee the Lessee shall give notice in writing signed by him or by his agent duly authorised in that behalf and delivered to the Lessor stating whether the Lessee desires to accept a renewal Lease of the land and to the intent that time hereof shall be deemed to be of the essence as to the right of the Lessee to obtain a renewal Lease of the land hereunder.
 - (13) Any such notice may be given by the Lessee within the time aforesaid although the term granted has already expired by effluxion of time or although the said valuation has not been made or notice thereof has not been given to the Lessee until after the expiry of the term by effluxion of time unless before the giving of such notice by the Lessee he has given up to the Lessor the possession of the land or has been duly ejected therefrom in pursuance of the judgement or order of any Court of competent jurisdiction.

- (14) If the Lessee fails within the time aforesaid to give any notice under sub-clause (12) of this Clause as to whether he desires a renewal Lease or not or if he gives notice in writing signed by himself or by his agent duly authorised in that behalf that he does not desire a renewal Lease his right to a renewal Lease shall cease on the expiry of the time aforesaid or on the date at which the notice is received by the Lessor as the case may be.
 - (15) Any notice by the Lessee under sub-clause (5) or sub-clause (12) of this Clause of his desire to accept a renewal Lease shall be deemed to constitute a contract between the Lessor and the Lessee for the granting and acceptance of a renewal Lease at the rent accepted by the Lessee or determined by arbitration as the case may be for the first seven (7) years of the term and for the term and subject to the covenants and provisions referred to in sub-clause (1) of this Clause.
 - (16) The term of any renewal Lease shall run from the date of the expiry of the prior Lease and the rent under the renewal Lease shall accrue as from the said date instead of the rent reserved in the prior Lease notwithstanding the fact that the renewal Lease may not be executed until after that date.
 - (17) If the Lease is not renewed in accordance with the foregoing provisions or if it is determined by forfeiture re-entry or otherwise all buildings and improvements on the land shall absolutely revert to the Lessor free from any payment or compensation whatever. The Lessee shall be liable to pay to the Lessor the rent reserved in the Lease up to the date the said building and any improvements on the land shall revert to the Lessor as aforesaid.
 - (18) Any notice required to be given to the Lessee in accordance with the foregoing provisions shall be given in the manner prescribed by Section 152 of the Property Law Act 1952.
 - (19) Nothing in the foregoing provisions shall exclude or restrict the right of the Lessee to obtain relief against any forfeiture or determination of the Lease or of his right to a renewal thereof in the same cases and on the same conditions as if the Lease had been granted otherwise than in the execution of statutory powers in that behalf.
16. (1) Not earlier than nine (9) months and not later than three (3) months before the expiry by effluxion of time of any such period of seven (7) years (not being the last such period of the term of the Lease) or as soon thereafter as may be the Lessor shall cause a valuation to be made by a person whom the Lessor reasonably believes to be competent to make the valuation of the fair annual rent of the land for the next ensuing period of the term of the Lease so that the rent so valued shall be uniform throughout the whole of that ensuing period.
- (2) As soon as possible after that valuation has been made the Lessor shall give to the Lessee notice in writing informing him of the amount of that valuation and requiring him to notify the Lessor in writing within two (2) months whether he agrees to the amount of that valuation or requires the valuation to be determined by arbitration in accordance with sub-clause (3) of this Clause.
 - (3) Within two (2) months after the giving of that notice to the Lessee he shall give notice in writing to the Lessor stating whether he agrees to the valuation specified in the notice given to him or requires the valuation to be determined by arbitration.

If he so requires the valuation shall be determined in accordance with the provisions of Clause 15 hereof which shall with the necessary modifications apply as if the valuation were being made to determine the rent payable under a renewal Lease.

- (4) If the Lessee fails to give the Lessor the notice referred to in sub clause (3) of this Clause within the time specified in that sub-clause and to the intent that such time shall be deemed to be of the essence the Lessee shall be deemed to have agreed to the valuation set out in the notice given to him under sub-clause (2) of this Clause.
- (5) The yearly rent so valued shall be the yearly rent payable hereunder for the succeeding period of seven (7) years and shall be binding on both the Lessor and the Lessee and unless and until either party shall at any time require that a Memorandum of Variation of the Lease shall be entered into (such Variation to be prepared by the Solicitors for the Lessor at the cost of Lessee) the Award of the Valuer or Arbitrators as applicable shall be conclusive evidence of the rent payable for the period of seven (7) years to which it relates.

17. That the covenants and provisions implied in Leases by the Land Transfer Act 1952 and the Property Law Act 1952 or any amendment or re-enactment thereof shall be negated or modified in respect of this Lease in so far as the same are or may be inconsistent with the modifications hereby made or the covenants and provisions herein expressed.

18. The Lessee will pay the costs of the Solicitors for the Lessor for the preparation and engrossment of the Lease and any variation or renewal thereof and will pay all stamp duty and registration fees incidental thereto and if and as often as the Lessee shall have become in default hereunder the Lessee will pay the costs of the Lessor (as between Solicitor and client) of and incidental to the enforcement or attempted enforcement by the Lessor of its rights remedies and powers hereunder including the giving of all notices under the Property Law Act 1952 and the Distress and Replevin Act 1908 and any other statutes or regulations as the case may require.

19. The expression "Lessor" as herein used includes the successors and assigns of the Lessor and the expression "Lessee" as herein used includes the executors administrators successors and assigns of the Lessee.

Dated this 10 day of April 1996

Execution: The Common Seal of Port Otago Limited was hereunto affixed in the presence of:



Director

Director/Secretary

[Handwritten signature]
[Handwritten signature]