

1. SUMMARY OF LEGAL DOCUMENTS

1.1 You will be asked to sign 5 different documents in connection with the Hawaiki Development:

- (a) an Agreement to Lease;
- (b) an Agreement to Build,
- (c) a Put Option;
- (d) a Shared Ownership Agreement; and
- (e) a Privacy Consent Letter.

These documents, and the annexures to them, will form the basis of the legal obligations between you, as a homeowner and lessee, the Ngāti Whātua Ōrākei Group as lessor, Whai Rawa Kainga Development Limited as developer and, in the case of shared ownership, Ngāti Whātua Ōrākei Housing Trust No. 2 (**Sister Trust**) as co-owner. In addition to the above, your lender will require you to sign additional documents where you are obtaining a home loan and mortgage.

1.2 The Privacy Consent Letter will need to be signed before Whai Rawa can consider your eligibility for shared ownership and, in any event, will need to be signed before you obtain a home loan.

1.3 The Agreement to Lease, Agreement to Build, Put Option and Privacy Consent Letter will be entered into after you have selected your home (our aim is to have all of these documents signed by no later than 2 June 2023). If you are using the shared ownership scheme, the Shared Ownership Agreement will also be entered into at this time.

1.4 When your home is completed, and we are ready to hand over the keys you will be required to pay the balance of your deposit / cash contribution towards the purchase price, and the remainder will be lent to you by your lender.

1.5 At the time your home is completed, you will need to authorise your lawyer to register your leasehold title in accordance with the Agreement to Lease, your lender's mortgage and, in the case of shared ownership, a land covenant, against the leasehold title.

1.6 There may be minor changes to some of these documents before they are signed. If that is the case, we will make sure that we advise you of the changes and explain them fully.

1.7 Set out on the following pages is a more detailed explanation of the documents. Where terms start with capital letters, they are defined in the relevant document.

2. AGREEMENT TO BUILD

- 2.1 The Agreement to Build is an agreement between you, as the Owner, and Whai Rawa Kainga Development Limited (**Whai Rawa**) as the Developer. If you are using the shared ownership scheme, the Sister Trust will also be party to this agreement.
- 2.2 The Agreement to Build places the obligation on Whai Rawa to build your Home for the Contract Price stated in the Agreement to Build.

Whai Rawa's key obligations

- 2.3 Whai Rawa is required to obtain all necessary approvals ("**Approvals**") to be allowed to build the Home on the Land.
- 2.4 Whai Rawa is also required to design and build the Home in a good and workmanlike manner, and to appropriate architectural and engineering standards. In doing so, Whai Rawa has the right to engage others to actually carry out the Works.
- 2.5 The Home must be built in accordance with the Approvals, and generally in accordance with the Plans and Specifications attached to the Agreement. However, Whai Rawa does have the right to make substitutions of products or make other changes to the Plans and Specifications. If it does make these changes, Whai Rawa needs to preserve the quality and intent of the Home to the extent that it is practicable to do so.

Warranties and Guarantees

- 2.6 There are a number of warranties that relate to the construction of a home contained in Sections 362I to 362K of the Building Act 2004, and also guarantees contained in the Consumer Guarantees Act 1993. Whai Rawa will be required to fix any defects in the Homes in accordance with these statutory provisions, at no cost to you.
- 2.7 There will also be a number of warranties and guarantees that Whai Rawa will receive from its sub-contractors and suppliers in connection with the construction of the Home and the various materials used. If they can be assigned, Whai Rawa will assign the benefit of these warranties and guarantees to you. If they cannot be assigned, Whai Rawa will continue to hold these warranties and guarantees for your benefit and, at your request, take reasonable steps to enforce those warranties and guarantees at your cost.

Payment

- 2.8 You are required to pay the Contract Price.
- 2.9 You will be required to make two payments - \$5,000 at the time that you sign the Agreement to Build, and the balance of the Contract Price at the time that Practical Completion occurs, your leasehold title can be registered, and you are able to take possession of the Home.
- 2.10 If, for some reason, the Home is not completed, you will be entitled to have the \$5,000 returned to you.

Completion

- 2.11 The Agreement to Build provides for an expected completion date for the Home. Whai Rawa will not be responsible for any delays in the completion of the Works for any reason beyond its control, however if the Home is not completed by a date specified in the agreement ("**Sunset Date**"), you will be entitled to cancel the Agreement to Build (and the Agreement to Lease will also come to an end).
- 2.12 To reach Practical Completion, Whai Rawa must obtain a certificate of code compliance from Auckland Council confirming that the Home is complete and is in accordance with the Approvals and the Building Code. Once this has occurred, the engineer to the project will issue a certificate confirming Practical Completion.
- 2.13 After Practical Completion, Whai Rawa may still carry out work to finish any incomplete works or to rectify any defects. It will also be required to remedy (at its cost) any defects that you identify within the first 12 months following Practical Completion.

Assignment

- 2.14 Except in very limited circumstances, as set out in the agreement, you are not entitled to assign your interest in the Agreement to Build.

Disputes

- 2.15 If a dispute arises, you are first required to attempt to negotiate an outcome with Whai Rawa. If that is not possible, the Agreement to Build contains a mechanism for mediation of the dispute or, as an alternative, for the dispute to be referred to the Building Disputes Tribunal.

Cancellation

- 2.16 Whai Rawa will be entitled to cancel the Agreement to Build if you fail to pay the deposit on time or if the Agreement to Lease is cancelled.

3. AGREEMENT TO LEASE

3.1 The Agreement to Lease creates an obligation on the part of the Lessor (Ngāti Whātua Ōrākei Housing Trustee Limited) to grant you a lease of the land on which your Home is being built. If you are using the shared ownership scheme, the Sister Trust will also be party to this agreement.

Term

3.2 The Lease will commence upon registration of the Lease, the timing of which will be notified to you by the Lessor and will expire in 2173 (unless terminated earlier). The precise date of expiry will be confirmed following registration.

Conditions

3.3 The Lessor's obligation to grant you a lease is conditional on:

- (a) an Agreement to Build being entered into between you and Whai Rawa Kainga;
- (b) a Put Option being entered into between you and Ngāti Whātua Ōrākei Housing Trustee Limited;
- (c) all of the Class of Lessees (meaning all Purchasers, including you) entering into an agreement to lease (together with the Agreement to Build and Put Option) on substantially the same terms as your Agreement to Lease and all of those agreements becoming unconditional; and
- (d) the Lessor confirming that it has all of the resource consents it requires to build the Home and undertake the leasehold subdivision of the Land.

3.4 These conditions must be satisfied within 20 Working Days from the date of the Agreement to Lease. If they are not satisfied, or waived, by this date then either you or the Lessor can terminate the Agreement.

Licence

3.5 Under the Agreement, the Developer is granted a licence to access the Premises as may be necessary to undertake the construction of your Home on the Land from the Commencement Date of the Lease.

Lease

3.6 Your Lease will commence on the date of registration of the Lease. To give effect to this lease, you will have to sign some further documents, including documents authorising the registration of the Lease.

Lessor's Works

3.7 Certain infrastructure and landscaping works are being carried out on the Lessor's wider landholdings at the same time that your Home is being constructed. The Lessor retains the

right to vary the final nature of these works provided that it does not adversely affect your ability to use your Premises.

Default

- 3.8 If either party breaches its obligations under the Agreement, there is a 15 Working Day period for the breach to be remedied. If the breach is not remedied within that period, then the other party can exercise any rights it has at law or in equity.

Assignment

- 3.9 Except in very limited circumstances, as set out in the agreement, you are not entitled to assign your interest in the Agreement to Lease.

Disputes

- 3.10 If there is a dispute between you and the Lessor, it will be resolved in accordance with the dispute resolution provisions in the Lease.

4. LEASE

4.1 The Lease is the document that will govern your on-going relationship with the land owner and, in some respects, your neighbours. If you are using the shared ownership scheme, the Sister Trust will be a lessee with you as a tenant in common.

Rent

4.2 The Annual Rent is stated to be \$1.00 per annum. The Lessor may not collect this rent.

Lease Term

4.3 The Lease will commence upon registration of the Lease, the timing of which will be notified to you by the Lessor and will expire in 2173 (unless terminated earlier). The precise date of expiry will be confirmed following registration.

4.4 The Lease will be registered and will commence once this registration has occurred.

Lessee's Outgoings

4.5 You will be required to pay:

- (a) your proportion of Council rates as they relate to the Precinct (the entire Hawaiki Site);
- (b) all costs associated with the utilities and services that you consume (i.e. electricity, water, gas, and telephone). Some of these costs for utilities may be charged to you directly by the utility provider, and others where you are not separately metered will be on-charged by the Lessor;
- (c) your proportion of the costs associated with the utilities and services used in relation to the common areas within the Precinct (i.e. electricity for lighting, water for maintaining the grounds);
- (d) into the Maintenance Fund your proportion of the annual costs that the Lessor estimates will be incurred in maintaining the Improvements within the Precinct; and
- (e) your proportion of the Lessor's costs of insuring the Improvements on the Common Property (i.e. that part of the Precinct available for all Home owners to use).

4.6 These costs (other than in relation to bullet point 4.5(b) above) will form part of the weekly payment you make.

4.7 Your proportion of costs will be equal to your ownership interest proportion.

Solar Panels

- 4.8 The Lessor can arrange for solar panels to be placed on certain Homes. If they do so, you must allow the Lessor to enter on the Premises to install the relevant equipment. You will not own any solar panels that are installed on your Home.

Renovations

- 4.9 You are permitted to make renovations to the Home that are internal and non-structural. For example, renovations of a bathroom or the kitchen. You must inform the Lessor of your renovation plans within a reasonable time of them being undertaken.

Maintenance and Repair

- 4.10 You are required to maintain the interior of your Home and any yard, deck or similar area on the ground floor of your Premises in good, clean and tidy order, repair and condition taking into account the age of the property. You are also required to keep the Premises (where appropriate) tidy and free from noxious weeds and hazardous substances, and you must not do anything that disturbs or interferes with any drains, cables, pipes etc. that may run through your property.
- 4.11 Provided you pay your weekly contribution into the Maintenance Fund, the Lessor will be responsible for ensuring that the infrastructure within the Precinct such as driveways, the open spaces, and the key building elements (structure, roof, cladding etc) are maintained. You will still need to look after your own lawn and garden, and generally keep your Home and Premises tidy at your own cost.
- 4.12 If your actions (or inactions) result in damage to the Precinct, the Land or your Home then you may be liable to pay for any costs associated with the repair of that damage. This liability will be over and above your obligation to make your regular contribution to the Maintenance Fund.
- 4.13 The Lessor will be entitled to carry out an inspection inside your Home once every 12 months, and from the outside no more than 4 times every 12 months. At this point in time we don't believe that these inspections will be undertaken as frequently as this, but want to retain the ability to carry out inspections if the Lessor feels that it is necessary in the future.
- 4.14 If you don't carry out the maintenance work that you are required to under this Lease, the Lessor has the option to do the work and recover the cost of doing this work from you.
- 4.15 At the end of the Term of the Lease (or if the Lease is terminated prior to that date), the ownership of the Home and any other Improvements will pass to the Lessor. At that time, the Lessor has to compensate you for the market value of the Home and the Improvements. The total amount received by you will be the market value of the Home and Improvements less:
- (a) any costs incurred by the Lessor in rectifying any non-compliance with the Lease; and
 - (b) the amount required to be applied to repayment of the outstanding mortgage amount (if any).

- 4.16 At the end of the Term of the Lease, you are required to return the Home, and any Improvements, and the Land to the Lessor in the same condition as it was in 1 year prior to that date.
- 4.17 Any works that you undertake on the Land or the Home must be done in accordance with all regulatory requirements i.e. if a building consent is required, it must be obtained and complied with.
- 4.18 The Lessor is required to establish a long term maintenance plan in respect of the Homes and the wider Precinct. This will provide on-going guidance to the Lessor to assist it in making Maintenance decisions.

Maintenance Fund

- 4.19 The Lessor is required to establish and maintain a separate account for the purposes of the Maintenance Fund. The purpose of this fund is to ensure that the costs incurred in carrying out the maintenance that the Lessor is undertaking on your behalf is funded.
- 4.20 Each year the Lessor will give you written notice of its estimate of your annual contribution to the Maintenance Fund. At the end of the year, the Lessor is then required to provide you with an audited report of what funds have been paid into the Maintenance Fund, and how they have been spent. If you have paid more money into the Maintenance Fund than was required in any particular year, you will receive a credit against your obligation to contribute in the following year. If you have paid an insufficient amount, you will be advised and have the option to make a top up payment.

Insurance

- 4.21 The Lessor will procure insurance for the Land and the Home, and other Improvements within the Precinct. You will be required to pay for your proportion of the insurance costs.

Assignment

- 4.22 There are significant restrictions on who you can assign your interest in the Lease to. The maximum price to be paid on transfer cannot exceed the price of the valuation received plus 10%. The Lessor's written approval must be obtained to an assignment which shall not be unreasonably withheld where the below conditions are met.
- 4.23 You will be required to show that the assignee:
- (a) is a Member or is a Member and the Spouse of a Member (where more than one assignee is identified);
 - (b) is respectable, responsible, solvent and suitable; and
 - (c) intends to use the Home for its primary place of residence.
- 4.24 At the time, you must also have brought up to date all of your financial obligations under the Lease, including any costs associated with the maintenance of the Land and Home and bringing it up to the standard required by the Lease.

- 4.25 You will also be required to procure the execution by the assignee of a covenant with the Lessor whereby the assignee covenants to pay all sums due under the Lease and to observe and perform all duties of the lessee contained in the Lease.
- 4.26 There is a “deemed consent” where assignment is to:
- (a) the surviving Spouse of a Lessee who has died;
 - (b) the personal representative of a Lessee who has died (for the purposes of holding the Lease as trustee and executor), in which case it must be on-assigned to a Member within 3 years; and
 - (c) the transfer to a trustee or guardian of a child or grandchild of the Lessee who is a minor, provided that the Lease must then be assigned to the child or grandchild once they turn 18 if they live in the home or, if the grandchild or child no longer lives in the home, it must immediately be assigned to another Member.
- 4.27 The Lessor will have a right of first refusal in the case of an assignment. If the Lessor does not exercise this right, you will be free to assign to another Member on terms that are “no more favourable” than those offered to the Lessor, provided the other assignment conditions are met.
- 4.28 When assigning your interest in the Lease, you must provide the Lessor with reasonable notice of your intention to do so such that they can request a valuation of the Home to help determine the price to be paid on transfer of the interest.
- 4.29 There will be no refund to you of any unspent contribution to the Maintenance Fund.

Sub-letting

- 4.30 You can only sub-let the Home and Land with the consent of the Lessor. The intention is that anyone taking a sub-lease is also a Member.
- 4.31 You will only be entitled to sub-lease the Premises for 1 year every 5 years.
- 4.32 Prior to any sub-letting, similarly as with an assignment of the Lease, you must also have brought up to date all of your financial obligations under the Lease, including any costs associated with the maintenance of the Land and Home and bringing it up to the standard required by the Lease.

Permitted Use

- 4.33 You must use the Home as a single residential dwelling and the principal place of residence for one or more of the named Lessees at any time and you must use the Carpark for car parking.

Community Rules

- 4.34 You must comply with the Community Rules in place from time to time. These Rules will be prepared by the Lessor (with input from you and the other Lessees) and govern things like parking, noise, garbage bins etc.

- 4.35 You are expected to make a positive contribution to the activities, well-being and welfare of the Ngāti Whātua Ōrākei community.

Redevelopment of the Land

- 4.36 If, after the first 50 years of the Term (and any subsequent 25th anniversary), the Lessor is of the reasonable opinion that any of the Improvements on the Land require renovation, remediation, rebuilding, alterations or removal, the Lessor has the right to require you to surrender your Lease. In such circumstances you would be compensated for the market value of your Home at that time.

Default

- 4.37 Usual default provisions are included in the Lease. The most extreme scenario would be for the Lessor to cancel the Lease but you would have plenty of notice, and opportunity to remedy the default, before those steps were taken.

Disputes

- 4.38 All disputes between you and the Lessor will initially be referred to the Chair of Ngāti Whātua Ōrākei Trust for resolution. The Chair can either resolve the issue himself or herself or, alternatively, refer the issue to arbitration.

5. PUT OPTION

- 5.1 The Put Option is the document that gives you the right to require the Lessor (under the Agreement to Lease and the Lease) to buy the Home back from you. This right expires on 16 December 2031.
- 5.2 To exercise your rights, you will have to advise Whai Rawa in writing that you are exercising the put option before 16 December 2031. The effect of delivering this notice is to create a binding agreement for sale and purchase between you and Whai Rawa. The essential terms of the agreement are that:
- (a) Whai Rawa (or someone else that Whai Rawa nominates) will purchase your Home and your interest in the lease;
 - (b) the purchase price will be equal to the amount you paid to the Lessor under the Agreement to Build. If the Lessor is required to rectify any non-compliance with the Lease by you, the cost of doing so will be deducted from the purchase price paid to you; and
 - (c) settlement will take place at a date chosen by the Lessor, this date cannot be later than 13 months following your exercising of the option.
- 5.3 The other terms will follow the standard Auckland District Law Society/Real Estate Institute of New Zealand Agreement for Sale and Purchase.
- 5.4 Any purchase price paid will, however, have to be applied to repay any outstanding debt owed under the mortgage or the Lease at the settlement date (including returning the Home to the condition it is required to be kept in under the Lease), so you will get the “net” amount.
- 5.5 The rights under the Put Option are personal to you. If you assign or sell your Home to someone else, the rights under the Put Option will not be transferred to the new owner.
- 5.6 You will also be entitled to exercise your rights under this Put Option where Practical Completion of the Works is not achieved by the Sunset Date, as contemplated by the Agreement to Build. In this case, the deposit paid to the Developer under the Agreement to Build will be returned to you.

6. SHARED OWNERSHIP AGREEMENT

- 6.1 The Shared Ownership Agreement is an agreement between you, as the Homeowner, and the Sister Trust as the Provider. The goal is for you to eventually purchase the Sister Trust's full share while occupying the Premises as a co-owner until purchasing the full share is achieved.
- 6.2 The Shared Ownership Agreement is structured to support shared ownership of the Premises between you and the Sister Trust as tenants in common. It sets out the Goals, terms and conditions for co-ownership of the Premises.
- 6.3 The Sister Trust's maximum contribution towards a home purchase is 25% of the amount payable in respect of the home. The Sister Trust may, from time to time, increase its maximum contribution in its sole discretion.

Eligibility Criteria

- 6.4 The Shared Ownership Agreement sets out the eligibility criteria. Some of the key criteria are set out below:
- (a) you must meet the lending requirements of a participating bank to receive a home loan;
 - (b) you must be able to contribute a minimum of 5% of all amounts payable under the Agreement to Build. This minimum contribution can include money:
 - (i) saved in the bank;
 - (ii) from KiwiSaver first-home withdrawal;
 - (iii) from a first home grant approval (eg. Kāinga Ora – if eligible); and / or
 - (iv) gifted by a family member;
 - (c) you must meet the means testing requirements of the Sister Trust to ensure that as a general rule a purchaser should make use of their own resources in buying a property before shared ownership; and
 - (d) any other criteria the Sister Trust may determine from time to time in its sole discretion.

Buying a full share in one lump-sum or progressively

- 6.5 You agree to use your best endeavours to buy the Sister Trust's full Share prior to the expiry of the Best Endeavours Period (being the 30th Anniversary Date or the expiry of the Initial Mortgage Term, whichever is shorter).
- 6.6 You may choose to purchase the Sister Trust's share in one lump-sum or over time in smaller payments provided the Minimum Purchase Amount is met.

- 6.7 You will need to submit a Share Purchase Request and follow the process set out in the Shared Ownership Agreement should you wish to buy some or all of the Sister Trust's Share.
- 6.8 Where you have not purchased the Sister Trust's full Share by the Best Endeavours Date or it is reasonably foreseeable to the Sister Trust that you will not be in a position to purchase the Sister Trust's full Share by the Best Endeavours Date you commit to working collaboratively with the Sister Trust to explore and implement all reasonably practicable alternative options available so that you and your household can continue to achieve the Goals, including but not limited to, you using your equity in the Premises to fund the purchase of the Sister Trust's full Share (through refinancing with the Mortgagee or another lender).

Ownership Share Register

- 6.9 The Ownership Share Register records your and the Sister Trust's respective shares in the Premises expressed as a percentage.

Your rights and responsibilities as a tenant in common

- 6.10 You will be subject to an Initial Home Loan Limit and Other Loan Limit which limits the amount of loans or financial indebtedness you may incur while you are using the shared ownership scheme.
- 6.11 Other Loans can include but not limited to any type of credit card debt or any loans from a bank or non-bank. The initial Other Loan Limit is \$10,000.
- 6.12 By signing the Shared Ownership Agreement you agree that you will not grant any legal or beneficial interest in the premises to a third party unless we have agreed in writing.
- 6.13 You agree to always keep the Premises in good condition and to repair or replace any broken or damaged parts of the Premises as soon as reasonably possible.
- 6.14 In addition to any requirements in any Lease documents, you agree to pay all premises expenses when they are due and meet all payment and other obligations you have under a Home Loan when they are due.

Selling the Lease

- 6.15 If you want to sell the Lease while using the shared ownership scheme, you will need to submit a Lease Sale Request and follow the process set out in the Shared Ownership Agreement.

Option Notice

- 6.16 The Shared Ownership Agreement contains an Option Notice regime which applies if you don't comply with your obligations under the Shared Ownership Agreement. Under this regime, the Sister Trust may elect to buy your Share and/or the Lease may be sold.
- 6.17 The Shared Ownership Agreement contains detailed information around how these mechanisms can be used.

Sale proceeds

- 6.18 Sale proceeds will be calculated by splitting the total sale proceeds in accordance with your and the Sister Trust's respective shares on the Ownership Share Register.
- 6.19 Any money payable to the Mortgagee in relation to your Home Loan will be paid out of your share. If your share is insufficient to repay the Home Loan, the remaining amounts owing to the Mortgagee will be treated as having been paid out of the Sister Trust's Share (but the Sister Trust will not be liable for any amounts owing to the Mortgagee after this).
- 6.20 Any leftover sale proceeds (if any) will be divided between you and the Sister Trust so that:
- (a) the Sister Trust receives all money up to the amount equal to its Share of the total sale proceeds; and
 - (b) you receive any leftover sale proceeds net of any other amounts owing to the Sister Trust, including any unpaid Service Fee, together with the costs of obtaining the Improvements Valuation (if applicable) and any Premises Expenses. (You might be required by the Mortgagee to pay those leftover sale proceeds towards repayment of any Other Loan you have with the Mortgagee.)

Personal Information

- 6.21 By signing the Shared Ownership Agreement you agree that the Sister Trust can share your Personal Information with any person considered to have an interest in receiving, using and /or disclosing your Personal Information for the purposes of the Shared Ownership Agreement.

Termination

- 6.22 The Shared Ownership Agreement will end when:
- (a) you buy the Sister Trust's full Share;
 - (b) you and the Sister Trust sell the Lease; or
 - (c) the Sister Trust buys your full Share.

Administration Fees

- 6.23 The Sister Trust may charge you a service fee to cover its reasonable costs of administering the scheme if you have not purchased the Sister Trust's full share by the 15th Anniversary Date.

7. PRIVACY CONSENT LETTER

- 7.1 The Privacy Consent Letter is an agreement between you and Ngāti Whātua Ōrākei Whai Rawa Limited under which you consent to the disclosure of personal information to Ngāti Whātua Ōrākei Group and an independent financial advisor retained by Ngāti Whātua Ōrākei Whai Rawa Limited in connection with the Hawaiki Development.
- 7.2 Please note that Westpac and Bank of New Zealand have separate forms of this letter. You will be required to sign a privacy consent letter specific to each bank you contact to obtain a home loan.
- 7.3 To the extent you are a candidate for shared ownership with Whai Rawa, Personal Information may also be used by the Ngāti Whātua Ōrākei Group and any Independent Financial Advisor in connection with assessing eligibility and management of the Whai Rawa shared ownership scheme.
- 7.4 The purpose of this letter is to obtain your consent to:
- (a) the sharing of personal information about you as part of the application process for the Hawaiki Street project and, if you are successful, during the term of any lease that is granted to you; and
 - (b) draw certain other matters relating to the scheme documents for the Hawaiki Street project to your attention.
- 7.5 The personal information which is the subject of this letter relates to your ability to meet your obligations to Ngāti Whātua Ōrākei Group and the Mortgagee in connection with the Hawaiki Development.
- 7.6 The Privacy Consent Letter is required as part of the arrangement that has been put in place between Ngāti Whātua Ōrākei and each of Bank of New Zealand and Westpac in connection with the Hawaiki Development.