

## 1. AGREEMENT TO BUILD – LEGAL SUMMARY

1.1 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.

1.2 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**

1.3 Whai Rawa is required to obtain all necessary approvals ("**Approvals**") to be allowed to build the Home on the Land.

1.4 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.

1.5 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**

1.6 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.

1.7 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**

1.8 You are required to pay the Contract Price.

1.9 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.

- 1.10 If, for some reason, the Home is not completed, you will be entitled to have the \$5,000 returned to you.

### **Completion**

- 1.11 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).
- 1.12 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.
- 1.13 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**

- 1.14 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**

- 1.15 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**

- 1.16 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.