

Agreement to Lease

PARTIES

Ngāti Whātua Ōrākei Housing Trustee Limited (as trustee of the
Ngāti Whātua Ōrākei Housing Trust)

Lessor

[Insert Purchaser(s)]

Lessee

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AGREEMENT dated

2023

PARTIES

Ngāti Whātua Ōrākei Housing Trustee Limited (as trustee of the Ngāti Whātua Ōrākei Housing Trust)

("Lessor")

[Insert Purchaser(s)]

("Lessee")

INTRODUCTION

- A. Ngāti Whātua Ōrākei Trustee Limited (as trustee of the Ngāti Whātua Ōrākei Trust) owns the Property as trustee for the Ngāti Whātua Ōrākei Trust.
- B. Ngāti Whātua Ōrākei Trustee Limited (as trustee of the Ngāti Whātua Ōrākei Trust) has leased the Property to Ngāti Whātua Ōrākei Housing Trustee Limited (as trustee of the Ngāti Whātua Ōrākei Housing Trust) (as lessee) pursuant to the Head Lease.
- C. The Lessor intends to develop the Property for the purpose of providing housing and communal facilities to Members of Ngāti Whātua Ōrākei.
- D. The Lessee is a Member of Ngāti Whātua Ōrākei or, where a Shared Ownership Agreement has been entered into, the Lessee comprises, as tenants in common, a Whanau Member and Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2).
- E. The Lessor has agreed to:
 - (a) grant the Lease of the Premises, by way of sublease, to the Lessee; and
 - (b) procure the unit titling (pursuant to the Unit Titles Act 2010) of the Head Lease,in each case on the terms and conditions contained in this Agreement.

SIGNATURES

SIGNED by the **LESSOR** by:

Signature of Authorised Signatory

Name of Authorised Signatory

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by the **LESSEE** by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

[Note: Agreement to be signed in wet ink so that Power of Attorney is effective]

SCHEDULE 1

PREMISES	That part of the Property identified as PU [insert] and AU [insert] as outlined on the Subdivision Plan (subject to final measure).
PROPERTY	The property owned by Ngāti Whātua Ōrākei Trustee Limited, leased to the Lessor and comprising Lot 2, DP [] as identified on the Subdivision Plan.
LEASEHOLD UNIT TITLE	The unit title comprising PU [] and AU [] as outlined on the Subdivision Plan (subject to final measure) and to be created through the unit titling of the Head Lease, pursuant to the Unit Titles Act 2010.
COMMENCEMENT DATE	The Settlement Date
ESTIMATED SETTLEMENT DATE	[] (as updated pursuant to clause 9.2 from time to time).
TERM	Commencing on the Commencement Date and expiring on the Expiry Date.
RENT	\$1.00 per annum plus GST (if any).
PERMITTED USE	In respect of: <ul style="list-style-type: none"> a) the principal unit included in the Premises, a single residential dwelling and private curtilage to be used as the Lessee's principal place of residence; and b) the accessory unit, a carpark
WHANAU MEMBER IS AN ELIGIBLE PERSON	Yes / No (Delete as applicable)
SHARED OWNERSHIP AGREEMENT IN PLACE	Yes / No (Delete as applicable)
CONTACT DETAILS	The Lessor: Attn: Address: Telephone: Email: The Whanau Member: Attn: Address: Telephone: Email:

SCHEDULE 2**TERMS OF AGREEMENT****1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless inconsistent with the context:

"**Access Date**" means the date being 5 Working Days following this Agreement becoming unconditional;

"**Agreement**" means this Agreement as varied from time to time by written agreement between the Lessor and the Lessee and includes the recitals and schedules of this Agreement;

"**Agreement to Build**" means the written agreement dated on or around the date of this Agreement between the Lessee and the Builder for the erection of a home (on the principal unit) and a carpark (on the accessory unit) on the Premises;

"**Body Corporate Rules**" shall have the meaning set out in the Lease;

"**Builder**" means Whai Rawa Kainga Development Limited in its capacity as the counterparty to the Agreement to Build;

"**Building Works**" means the home and carpark works described in the Agreement to Build, to be undertaken by the Builder;

"**Class of Lessees**" means the Whanau Member together with all of the other lessees who have entered into an agreement to lease on substantially equivalent terms to this Agreement for the acquisition of a leasehold interest in the Development;

"**Common Property**" means those areas (subject to final measure and subject to this Agreement) within the Property and identified on the Subdivision Plan as common area, and which will be more particularly detailed on the Unit Plan;

"**Completion Date**" shall have the meaning set out in the Agreement to Build;

"**Development**" means the development of 24 townhouses on the Property together with the Common Property, carparking and ancillary development in accordance with this Agreement and the Agreement to Build;

"**Eligible Person**" has the meaning given to that term in the 'Progressive Home Ownership Fund – Guidance for responding to the Invitation to Participate in the Te Au Taketake pathway of the fund' as is amended from time to time;

"**Expiry Date**" means **[Note: insert date one day before expiry of Head Lease]**;

"**Handover Date**" means the date being the later of:

- (i) the Completion Date; and
- (ii) the date on which the Lessee has paid to the Builder all amounts due on the Completion Date pursuant to the Agreement to Build;

"**Head Lease**" shall have the meaning set out in the Lease;

"**Lease**" means the form of lease attached as Schedule 5 completed in accordance with the provisions of this Agreement;

"**Lessor's Works**" means:

- (iii) the installation of services, utilities and infrastructure necessary for the completion of the Development and completion of the Subdivision;
- (iv) the development of the Common Property, generally in accordance with the concept plan and specifications in Schedule 4; and
- (v) for the avoidance of doubt, excludes the works to which the Agreement to Build relates;

"**LINZ**" means Land Information New Zealand;

"**Loan Agreement**" means an agreement between the Whanau Member and one of the Nominated Banks pursuant to which the Nominated Bank agrees to lend to the Whanau Member the funds required by the Whanau Member to enable it to pay all amounts becoming due pursuant to the Agreement to Build and, where applicable, the Shared Ownership Agreement;

"**Member**" has the same meaning as set out in the Lease;

"**Nominated Bank**" means [●];

"**Practical Completion**" has the same meaning as set out in the Agreement to Build;

"**Put Option**" means the put option dated on or around the date of this Agreement between the Lessee and the Lessor in the form attached as Schedule 6;

"**Relevant Authority**" means any government, local statutory or non-statutory authority or body having jurisdiction over the Property or the Development;

"**Settlement Date**" means the date on which the deposit of the Unit Plan and registration of the Lease is effected at LINZ pursuant to the e-dealing described at clause 7.6;

"**Shared Ownership Agreement**" means a written agreement (if any) dated on or around the date of this Agreement between the Whanau Member and Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2) to assist the with the purchase of the Premises and providing for the shared ownership of the Lease between the Whanau Member and Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2) as tenants in common;

"**Subdivision**" means the unit titling of the Head Lease in accordance with clause 7;

"**Subdivision Plan**" means the plan outlining the Development (including the Premises) attached as Schedule 3;

"**Transaction Documents**" means this Agreement, the Agreement to Build and the Put Option;

"Unit Plan" means the unit title survey plan to be prepared and lodged with LINZ in accordance with the terms of clause 7;

"Whanau Member" means:

- (i) where no Shared Ownership Agreement has been entered into, the Lessee; and
- (ii) where a Shared Ownership Agreement has been entered into, that party comprising the Lessee who is also a Member; and

"Working Day" has the meaning set out in the Property Law Act 2007.

1.2 Whenever words appear in this Agreement that also appear in Schedule 1 then those words shall mean and include the details supplied after them in Schedule 1.

1.3 In this Agreement, unless the context otherwise requires:

- (a) the illegality, invalidity, or unenforceability of any provision in this Agreement shall not affect the legality, validity, or enforceability of any other provision;
- (b) singular words shall include the plural and vice versa;
- (c) one gender shall include the other genders;
- (d) words referring to persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body, in each case whether or not having a separate legal identity;
- (e) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (f) reference to anything of a particular nature following upon a general statement shall not in any way derogate from or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (g) any reference to month or monthly shall mean respectively calendar month or calendar monthly;
- (h) references to sections, clauses and schedules are references to sections, clauses and schedules in this Agreement;
- (i) the index, the section headings and clause headings have been inserted for convenience only and must be ignored in construing the Lease; and
- (j) reference to any statute, regulation, ordinance or bylaw is a reference to all statutes, regulations, ordinances or bylaws as amended, consolidated, or substituted from time to time and shall include any regulations that may be passed under that statute.

2. CONDITIONS

Lessor's and Lessee's conditions

2.1 This Agreement is conditional on:

- (a) the Lessee entering into the Agreement to Build and the Put Option;
- (b) the Lessee paying the deposit in accordance with the Agreement to Build;
- (c) all of the Class of Lessees, other than the Lessee, entering into an agreement to lease (together with the Agreement to Build and the Put Option in each case as defined in that agreement to lease) on substantially the same terms as this Agreement and all of those agreements becoming unconditional; and
- (d) the Lessor confirming in writing to the Lessee that it has obtained all resource consents it deems necessary for completing the Lessor's Works and the Development and that such consents are on terms satisfactory to the Lessor.

These conditions must be satisfied within 20 Working Days of the date of this Agreement.

Non-Fulfilment of condition

2.2 If a condition is not fulfilled or waived by the date for fulfilment (time being of the essence) either the Lessor or the Lessee may at any time before the relevant condition is fulfilled or waived void this Agreement by giving notice in writing to the other.

Benefit of conditions

2.3 The conditions set out at clauses 2.1(a) and (d) are for the benefit of both parties and may not be waived. The remaining conditions are for the sole benefit of the Lessor and may be waived by the Lessor by giving written notice to that effect to the Lessee.

3. LICENCE AND NO OCCUPATION

3.1 The Lessor grants the Builder and its contractors a non-exclusive licence allowing access to the Premises. The term of the licence shall commence on the Access Date and continue until the Commencement Date for the purposes of completing the Building Works.

3.2 The Lessee grants to the Lessor and its contractors a non-exclusive licence allowing access to the Premises. The term of the licence shall commence on the day following the Commencement Date and continue until Practical Completion for the purposes of completing the Lessor's Works.

Integration of works

3.3 The Lessor shall, and the Lessee shall procure the Builder to, co-operate with one another to ensure that to the maximum extent possible, both the Lessor and the Builder are able to properly complete the Lessor's Works and the Building Works respectively from the Access Date by integrating the undertaking of the Lessor's Works and the Building Works.

3.4 The Lessee agrees that for the period from the Commencement Date to the Handover Date, it shall not occupy, or allow anyone claiming through the Lessee to occupy the Premises or any other part of the Property.

3.5 The rights granted to the Builder in this clause 3 shall be for the benefit of the Builder for the purposes of the Contract and Commercial Law Act 2017.

4. GRANT OF LEASE

Terms

4.1 The Lessor agrees to lease to the Lessee, and the Lessee agrees to take on, the Lease. The Lease shall be upon the terms and conditions specified in the Lease, completed to incorporate the terms of this Agreement.

5. TERM

5.1 The Term of the Lease shall commence on the Commencement Date.

6. LESSOR'S WORKS

6.1 If the Lessor shall have first obtained all necessary consents, the Lessor shall complete the Lessor's Works:

- (a) in a good and workmanlike manner; and
- (b) in accordance with all regulatory requirements.

6.2 The concept plans and specifications for the Lessor's Works in Schedule 4 are drafts only. The Lessor's Works may vary from the drafts. The Lessor may alter or vary the plans and specifications of the Lessor's Works as the Lessor may determine provided that any such variation does not adversely affect the use by the Lessee of the Property.

6.3 The Lessor's Works shall, for the purposes of the Lease, be owned by the Lessor and be included in the Lease demise.

7. UNIT TITLE SUBDIVISION

Implementing the Subdivision

7.1 The Lessor will, as promptly as possible following execution of this Agreement by both parties:

- (a) obtain any consents from any Relevant Authority necessary to complete the Subdivision that have not been obtained prior to the date of this Agreement;
- (b) instruct its surveyor to prepare the Unit Plan substantially in conformity with the consents and the details set out in the Subdivision Plan;
- (c) carry out all work required to undertake the Subdivision;

- (d) comply with all terms and conditions imposed by the Relevant Authority in the consents;
- (e) submit the Unit Plan to the Relevant Authority for approval;
- (f) deposit the Unit Plan with LINZ; and
- (g) obtain from LINZ a record of title for each of:
 - (i) the Leasehold Unit Title;
 - (ii) the other principal units and accessory units shown on the Unit Plan; and
 - (iii) a supplementary record sheet incorporating the Body Corporate Rules.

Costs of Subdivision

7.2 The Lessor (in its capacity as lessee under the Head Lease) will pay all costs, charges, expenses and disbursements incurred in complying with its obligation under clause 7.1 above, including:

- (a) all fees relating to any consents;
- (b) all survey costs;
- (c) all costs associated with the preparation and deposit of the Unit Plan and establishing the Body Corporate;
- (d) any reserve or development contributions payable to the Relevant Authority;
- (e) the cost of undertaking the Lessor's Works;
- (f) all costs incurred in complying with any terms and conditions imposed by the Relevant Authority in the consents; and
- (g) all LINZ costs.

Leasehold Unit Title

7.3 The Lessee acknowledges that the Leasehold Unit Title shall be subject to:

- (a) the instruments and encumbrances registered against the fee simple title to that part of the Property comprising the Premises; and
- (b) any other instruments, encumbrances or consent notices required to be registered as a condition of the Subdivision, or which the Lessor considers to be necessary or desirable for the Development.

Shared Ownership Agreement

7.4 Where the parties comprising the Lessee have entered into a Shared Ownership Agreement, a land covenant is to be registered on the record of title for the Lease in accordance with the Shared Ownership Agreement, in a form reasonably required by Ngāti Whātua Ōrākei

Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2) , to record:

- (a) that the Lease is held as tenants in common between the Whanau Member and Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2)in accordance with the Shared Ownership Agreement; and
- (b) the respective obligations of the Whanau Member and Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust No. 2)under the Shared Ownership Agreement.

E-dealing

- 7.5 The Lessee acknowledges that the Lease will be granted subject to those matters to which the Leasehold Unit Title is subject as set out in clause 7.3.
- 7.6 The Lessor shall procure that the e-dealing which effects the deposit of the Unit Plan at LINZ shall include:
 - (a) registration of any instruments, encumbrances or consent notices as referred to in clause **Error! Reference source not found.**(where applicable);
 - (b) registration of the Lease following deposit of the Unit Plan; and
 - (c) registration of the covenant referred to in clause 7.4 (where applicable).
- 7.7 The Lessee shall on request execute all documents necessary to effect the e-dealing to register the Lease and the covenant referred to in clause 7.4 (where applicable).
- 7.8 The Lessor shall provide to the Lessee a copy of the record of title for the Lease once issued by LINZ.
- 7.9 The Lessor shall notify the Lessee from time to time of any change to the Estimated Settlement Date.

8. FUNDING

- 8.1 The Lessee shall take all steps necessary to ensure that it has all funds required to meet its obligations under the Agreement to Build.
- 8.2 As at the date of this Agreement, the Lessee confirms it has received pre-approval from one of the Nominated Banks for a loan for the funds (in addition to funds obtained by the Lessee from other sources) the Lessee requires to pay all amounts becoming due pursuant to the Agreement to Build.
- 8.3 If the Lessee enters into a Loan Agreement, the Lessee shall take all necessary steps to satisfy any conditions precedent in the Loan Agreement that need to be satisfied for funds to be made available to the Lessee pursuant to the Loan Agreement.
- 8.4 In the event that, as a consequence of an unforeseen change in circumstances following the date of this Agreement, the Lessee is unable to secure the funds required to meet its obligations under the Agreement to Build, the Lessee must promptly notify the Lessor, and:

- (a) in the event that notice is served by the Lessee not later than 3 months prior to the then most recently notified Estimated Settlement Date, the Lessor will endeavour to find a substitute lessee to replace the Lessee; and
 - (b) in the event that clause 8.4(a) does not apply, the Lessee and the Lessor shall work together in good faith to consider whether there are any options available which would enable the Lessee to meet its obligations in the Agreement to Build.
- 8.5 In the event that the Lessee has not notified the Lessor pursuant to clause 8.4 and nonetheless fails to pay any amount when due pursuant to the Agreement to Build the Lessee shall, upon request by the Lessor, work with the Lessor in good faith to consider whether there are any options available which would enable the Lessee to meet its obligations in the Agreement to Build.
- 8.6 In the event that either of clauses 8.4 or 8.5 apply and the Lessor identifies a substitute lessee, the Lessee shall, when requested by the Lessor, enter into deeds or agreements (to be prepared by the Lessor) to novate all of its rights and obligations under the Transaction Documents to the substitute lessee. If the Lessor fails to identify a substitute lessee within a reasonable period (or prior to the Settlement Date if clause 8.4(a) applies), the Lessor shall so notify the Lessee and the Lessor may (but shall not be obliged to) take a novation of the Transaction Documents in which event the Lessee shall, when requested, enter into deeds or agreements (to be prepared by the Lessor) to novate all of its rights and obligations under the Transaction Documents to the Lessor or its nominee.
- 8.7 Where the parties comprising the Lessee have entered into a Shared Ownership Agreement, references to the Lessee in clauses 8.1 to 8.5 (inclusive) shall be deemed to be references to the Whanau Member.

9. DEFAULT

Notice

- 9.1 If any party defaults in the performance or observance of any covenant or agreement to be observed or performed by them under this Agreement then the non-defaulting party may without prejudice to any of its other remedies, give written notice of the default to the defaulting party in the manner provided in the Lease.

Specify default

- 9.2 Such notice shall specify the default and state that if the default continues for a period of fifteen (15) Working Days after service of the notice then the non-defaulting party will be entitled to exercise its remedies under this Agreement.

Remedies

- 9.3 If the default continues for a period of fifteen (15) Working Days after service of the notice given in accordance with this clause 9 (time being of the essence) then the non-defaulting party may exercise any of its rights or remedies available at law or in equity.

Default by the Lessee

- 9.4 If the Lessee defaults in complying with any obligation imposed on the Lessee under this Agreement and the Lessee has failed to remedy such breach within the specified period following service of a notice under section 245 or 246 of the Property Law Act 2007 then the Lessor may (subject to clause 9.7) cancel this Agreement.
- 9.5 If any money payable by the Lessee to the Lessor under this Agreement is unpaid for seven days after the due date for payment then without prejudice to the Lessee's other remedies, such money shall bear interest computed from the due date for payment, until the date of payment in full at the default interest rate of 12% per annum. This is the case whether any formal or legal demand for payment has been made or not and without the necessity for any formal or legal demand for payment to be made.
- 9.6 The parties agree that a notice period of fifteen (15) Working Days will be a reasonable period for remedying a breach of any obligation imposed on the Lessee under this Agreement.
- 9.7 In the event that the Lessor becomes entitled to cancel this Agreement, the Lessee shall upon request enter into deeds or agreements (prepared by the Lessor) to novate all of its rights and obligations under the Transaction Documents to the Lessor (or its nominee).

10. ASSIGNMENT AND SUBLEASING**Assignment**

- 10.1 Except as provided for in clause 8.4, the Lessee must not assign, novate or otherwise part with its interest in this Agreement.

Subleasing

- 10.2 The Lessee must not sublease any part of the Premises until after the Handover Date and then only in accordance with the terms of the Lease.

11. GENERAL**Costs**

- 11.1 Subject to clause 11.2, each party shall be responsible for their own legal costs in the negotiation, preparation, drafting and engrossing of this Agreement, the Lease and (where applicable) the Shared Ownership Agreement.
- 11.2 The Lessor will reimburse the legal costs of the Lessee up to:
- (a) \$[X] (including GST) where a Shared Ownership Agreement is in place; and
 - (b) \$[X] (including GST) where a Shared Ownership Agreement is not in place,
- subject to receiving satisfactory evidence that the Lessee has incurred the same.

No merger

- 11.3 The obligations and warranties of the parties contained in this Agreement shall not merge in so far as they have not been fulfilled at the time of the execution of the Lease but shall remain in full force and effect.

Conflict

- 11.4 If there is any conflict between the terms or provisions of this Agreement and the terms or provisions of the Lease the terms and provisions of this Agreement shall prevail.

Waiver

- 11.5 A waiver by any party of any breach of any of the obligations of any other party under this Agreement shall not prevent the subsequent enforcement of those obligations and shall not be deemed a waiver of any subsequent breach.

No authority to act

- 11.6 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided for in this document or by express agreement between the parties.

Capacity

- 11.7 The parties acknowledge that the Lessor has entered into this Agreement in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust.

Acknowledgement of Crown contribution

- 11.8 Where the Whanau Member is identified as an Eligible Person in Schedule 1, the Whanau Member acknowledges that it is receiving the benefit (directly or indirectly) of funding via the Progressive Home Ownership Fund administered by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development.

Acknowledgement of Shared Ownership Agreement

- 11.9 Where the parties comprising the Lessee have entered into a Shared Ownership Agreement, the parties acknowledge that where any notice is required to be delivered to the Lessee under this Agreement, delivery of that notice shall be satisfied where it is delivered to the Whanau Member.

Notices

- 11.10 All notices must be in writing and must be served in the manner set out in the Lease.
- 11.11 Notices served under this Agreement may be served to the addresses set out in Schedule 1.

Power of Attorney

- 11.12 The Whanau Member agrees to appoint the Lessor as its attorney ("**Attorney**") to execute, for the Lessee, the documents referred to in relation to clauses 8.6 and 9.7 of this Agreement. This appointment shall be irrevocable.
- 11.13 Where the Lessor has requested that the Lessee execute deeds of novation in accordance with either clauses 8.6 or 9.7, and the Lessee fails to execute those deeds of novation within a reasonable period, the Attorney shall have the authority to act on the Lessee's behalf and execute all documents as may be reasonably required by the Lessor to give full effect to the matters dealt with in those clauses.

12. **DISPUTE RESOLUTION**

Any difference or dispute which may arise between the parties concerning this Agreement or any thing to be done, allowed or omitted under this Agreement or concerning the construction of this Agreement shall be determined in accordance with clause 21 of the Lease.

SCHEDULE 3
SUBDIVISION PLAN

SCHEDULE 4
LESSOR'S WORKS

SCHEDULE 5
FORM OF LEASE

SCHEDULE 6

PUT OPTION