

Sub Lease

### Lease Instrument

(Section 91 Land Transfer Act 2017)

**Record of Title (unique identifier)**

All/part

Area/Description of part or stratum

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|  |  |  |
|--|--|--|

**Lessor**

Ngāti Whātua Ōrākei Housing Trustee Limited

**Lessee**

[X]

*Insert "fee simple", "leasehold in lease number" etc*

**Estate or interest**

Leasehold Unit Title in record of title

**Lease Memorandum Number** *(if applicable)*

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|  |
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**Term**

Commencing on the Commencement Date and expiring on the Expiry Date.

**Rental**

\$1.00 plus GST

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

**Lease and Terms of Lease**

The Lessor leases to the Lessee and the Lessee accepts the lease on the above Estate or Interest in the land in the affected computer register(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). The Lessor grants to the Lessee the right to use the Common Property in common with the Lessor and others.

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*Continue in additional Annexure Schedule, if required*

## 1. DEFINITIONS AND INTERPRETATIONS

### Definitions

1.1 In this Lease, unless the context otherwise requires:

"**Agreement to Lease**" means the agreement pursuant to which this Lease is entered into;

"**Agreement to Build**" means the agreement dated on or around the date of the Agreement to Lease between the Lessee and Whai Rawa Kainga Development Limited;

"**Approved Valuer**" means a registered valuer selected by the Lessor to undertake an Improvements Valuation;

"**Authority**" means any local body, government or other authority having jurisdiction or authority over, or in respect of, the Precinct, any Improvements, or their use including any activity on the Premises;

"**Bank Rate**" means the one (1) year fixed interest charged from time to time by the Lessor's principal New Zealand registered trading bank for its fixed home loans that are secured by a registered first mortgage;

"**Body Corporate**" means the body corporate created upon lodging of the Unit Plan;

"**Body Corporate Rules**" means the rules of the Body Corporate from time to time;

"**Builder**" means Whai Rawa Kainga Development Limited;

"**Building Elements**" includes the external and internal components of any part of an Improvement on the Premises or any land forming part of the Precinct that are necessary to the structural integrity of the Improvement, the exterior aesthetics of the Improvement, the health and safety of the persons who occupy or use the Improvement and including without limitation the roof, balconies, decks, cladding systems, foundation systems (including all horizontal slab structures between adjoining buildings or underneath the lowest level of a building), solar panels, retaining walls and any other walls or other features for the support of an Improvement;

"**Capped Transfer Price**" means from time to time an amount equal to the Improvements Market Value plus 10%;

"**Carpark**" means the carpark comprising part of the Premises;

"**Commencement Date**" means [insert date of registration of lease];

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**"Common Property"** means those parts of the Precinct that are not subject to a registered lease of premises intended for residential use and are available for the use of the Lessee in common with the Lessor and others;

**"Community Rules"** means rules established from time to time by the Lessor to be observed by the Lessee and others having access to the Precinct and are made for the safety, care, operation and cleanliness of the Precinct, for the preservation of good order, safety and comfort of the Precinct residents and their guests and the effective operation of the Ngāti Whātua Ōrākei community, which rules shall be recorded in writing and retained by the Lessor and which may be varied from time to time by the Lessor in accordance with clause 14.3;

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

**"Consent"** includes any designation, plan change, rule, approval, consent (including resource consent under the Resource Management Act 1991), licence, permit or other authorisation relating to the Premises, any Improvement, or any activity (whether current or proposed) on or in relation to the Premises granted, issued, made or otherwise created by an Authority;

**"Construct"** includes construct, demolish, erect, improve, install, place, remove and upgrade, and **"Construction"** and **"Constructed"** have corresponding meanings;

**"CPI"** means the Consumers Price Index (All Groups) for New Zealand as calculated by Statistics New Zealand and published quarterly or such replacement index as is reasonably nominated by the Lessor if the Consumers Price Index (All Groups) ceases to exist;

**"Default Interest Rate"** means:

- (a) 6% above the Bank Rate from time to time during the continuance of the default; or
- (b) if, (but only if): –
  - (i) the Bank Rate is not available or has ceased to exist; or
  - (ii) there is no Bank Rate displayed for a period of 90 days; or
  - (iii) the basis of calculation of Bank Rate is changed after the date of this Lease such as, in the reasonable opinion of the Lessor, it ceases to be relevant for the purposes of this Lease;

then the Default Interest Rate shall be 6% above the nearest equivalent rate to the Bank Rate as determined by the Lessor in its reasonable discretion;

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**"Expiry Date"** means [insert date being 1 day prior to expiry of Head Lease];

**"Head Lease"** means the memorandum of lease dated [X] day of [X] 2023 and made between Ngāti Whātua Ōrākei Trust Limited (as trustee of the Ngāti Whātua Ōrākei Trust) as lessor and Ngāti Whātua Ōrākei Housing Trustee Limited (as trustee of the Ngāti Whātua Ōrākei Housing Trust) as lessee;

**"Home"** means the dwelling (and all ancillary buildings) on the Premises;

**"Improvement"** includes any artworks, bridges, buildings (including the Home), courts, crossings and culverts, drains, erections, equipment, facilities, fences, gates, fittings, fixtures, footpaths, soft and hard landscaping including gardens and shrubs and trees, lighting, machinery, motor vehicle parking and loading and unloading, plant, ponds, pools, roads, solar panels, signage, site development works, structures, tanks, services, utilities (including for the delivery, generation, supply and transmission of electronic data, electricity, gas, heating and cooling, signals, telecommunications, and water, fire detection and suppression, security, and the collection and disposal of rubbish, sewerage, storm water and wastewater);

**"Improvements Market Value"** means at any time the market value of the Improvements on the Premises that are owned by the Lessee as set out in the then most recent Improvements Valuation (provided that Improvements Valuation is not more than 24 months old on the date on which the Improvements Market Value is to be determined) or, at the election of the Lessor or at the request of the Lessee in accordance with clause 8.15, an Improvements Valuation undertaken at the time the Improvements Market Value is to be determined;

**"Improvements Valuation"** means a valuation procured by the Lessor to assess the market value of the Improvements on the Premises that are owned by the Lessee undertaken by an Approved Valuer and which value shall be assessed by deducting the market value of the bare land comprising the Premises from the market value of that bare land assuming the Improvements owned by the Lessee remain on the land;

**"Lease"** means this Lease instrument, any Schedules attached, and any amendments made from time to time;

**"Leasehold Unit Title"** means the Lessor's leasehold unit title as described on the front page of this Lease;

**"Lender"** means the lender from time to time pursuant to a Loan Agreement;

**"Lessee"** means the original lessee named as a party to this Lease and the Lessee's executors, administrators, successors, permitted assigns and transferees and, where not repugnant to the context, includes the agents, licensees, invitees, contractors and any other persons under the control or direction of the Lessee;

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"**Lessee's Proportion**" means that proportion equal to the ownership interest (as defined in the Unit Titles Act 2010) or (where applicable) the utility interest assigned to the Premises pursuant to the unit titling of the Head Lease which at the Commencement Date is [*specify proportion*]%;

"**Lessor**" means the original lessor named as a party to this Lease, and the Lessor's successors and assigns and transferees and, where not repugnant to the context, includes the employees, agents, contractors and authorised representatives of the Lessor and any other person having an interest in the Premises by, through or under the Lessor and any person entitled to receive the rent payable pursuant to the Lease;

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

"**Loan Agreement**" means any loan agreement entered into by the Lessee, secured by a mortgage over the Lease which complies with clause 10.9;

"**Maintain**" includes:

- (a) inspect, test, fix, overhaul, renew, repair, replace and service; and
- (b) any improvement addition or alteration to any Improvement that is required pursuant to any regulatory requirements,

and "**Maintenance**" has a corresponding meaning;

"**Maintenance Fund**" means the fund established in accordance with clause 8.18;

"**Member**" means a member of Ngāti Whātua Ōrākei as defined in the Trust Deed;

"**Permitted Use**" means the use of the dwelling on the Premises as a single residential dwelling and the principal place of residence of the Lessee and the use of the Carpark for car parking;

"**Precinct**" means Lot 2, DP [ ] which area has been developed as a residential community providing housing for Members;

"**Premises**" means the land comprised in the Leasehold Unit Title;

"**Spouse of a Member**" means, unless expressly specified otherwise in this memorandum, any wife or husband of a Member. For the purposes of this definition, the terms "wife" and "husband" shall include a de facto wife or husband and the widow or widower of the wife or husband or defacto wife or husband, but shall not include a wife or husband who has been separated from, and is no longer living with, the Member for a continuous period of 12 months or more;

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**"Trust Deed"** means the deed of trust dated 5th day of November 2011 and establishing the Ngāti Whātua Ōrākei Trust;

**"Term"** means the period beginning on the Commencement Date and ending at midnight on the Expiry Date, or if this Lease is terminated, either for breach or by mutual agreement then to the date of such termination;

**"Unit Plan"** means the unit plan deposited at LINZ to effect the unit titling of the Head Lease; and

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

### **Interpretation**

1.2 In this Lease, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) one gender shall include the other genders;
- (c) words denoting 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 they have a separate legal identity;
- (d) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (e) reference to anything of a particular nature following 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;
- (f) mentioning anything after "include", "includes" or "including" does not limit what else might be included;
- (g) reference to sections, clauses and schedules are references to sections, clauses and schedules in this Lease;
- (h) the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Lease, and do not form part of this Lease, or affect its interpretation in any way;
- (i) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances, or bylaws amending, consolidating or replacing the same;

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- (j) where the Lessor's consent or approval is required pursuant to any provision of this Lease such consent or approval may be given or withheld by the Lessor in its absolute uncontrolled discretion unless otherwise provided in this Lease. Such consent or approval shall be required for each separate occasion, notwithstanding any prior consent or approval obtained for the like purpose of any prior occasion; and
- (k) to the extent permitted by law, the covenants, conditions, agreements and restrictions implied in leases by the Property Law Act 2007 are modified or negated to the extent that they are inconsistent with or contradictory or repugnant to the covenants, conditions, agreements and restrictions contained in this Lease, but not otherwise, provided however, to the extent permitted by law, the covenants, conditions, and powers implied in this Lease by Sections 4, 5, 10 and 13 of Parts 11 and III of Schedule 3 of the Property Law Act 2007 are expressly negated.

**2. TERM****Commencement and expiry of Term**

- 2.1 Unless terminated earlier in accordance with the terms of this Lease or by written agreement, the Term begins on the Commencement Date and expires at midnight on the Expiry Date.

**3. RENTAL**

- 3.1 The Lessee must pay the Rental to the Lessor if demanded in writing.
- 3.2 The Lessee acknowledges and agrees that the payments and the manner (including any review methodology) in which those payments are calculated referred to in clauses 3.1 and 4.1 to 4.10 (inclusive) of this Lease comprise the upfront price to be paid under this Lease.

**4. LESSEE'S OUTGOINGS****Payments in respect of the Premises**

- 4.1 The Lessee must punctually pay to the Lessor any rates, charges, assessments, duties, impositions, fees taxes, costs or expenses of the Lessor properly or reasonably assessed or assessable, paid or payable, or otherwise incurred, in respect of the Premises (including any Improvements), including any taxes accruing as a result of the Lessor having any estate or interest in the Premises or value added taxes, but excluding anything (other than GST payable under clause 20) that is payable in respect of, or

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arising from or in relation to, the Rental or the Lessor's income tax or any other tax assessed in respect of the Lessor's income, profits or capital gains. Where any such amount is payable in respect of the Precinct, the Lessee shall pay the Lessee's Proportion of such amount.

**Payment of charges**

4.2 The Lessee must punctually pay to the proper Authority all charges and expenses in respect of all services, utilities, and amenities supplied to or used by the Lessee on or in relation to the Premises or any Improvements on the Premises including:

- (a) electricity;
- (b) water;
- (c) gas;
- (d) telephone rent and charges;
- (e) internet or other form of communications connectivity and usage charges;
- (f) collection charges and levies in respect of the removal of rubbish from the Premises; and
- (g) New Zealand Fire Service charges.

4.3 The Lessee must punctually pay to the Lessor the Lessee's Proportion of all charges and expenses in respect of all services, utilities and amenities supplied to or used on or in relation to the Common Property or any Improvements on the Common Property including:

- (a) electricity;
- (b) water;
- (c) gas;
- (d) telephone rent and charges;
- (e) collection charges and levies in respect of the removal of rubbish from the Common Property;
- (f) New Zealand Fire Service charges;



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- (g) maintenance of the soft and hard landscaping within the Common Property including lawns, gardens, planted areas, yards, paths, playgrounds and associated equipment, decking, barbeque areas; and
- (h) maintenance of any roading and parking areas within the Common Property.

**Body Corporate Levies**

- 4.4 The Lessee shall pay the Lessor any amounts levied on the Lessor from time to time by the Body Corporate in respect of the Premises.

**Metering**

- 4.5 If required by an Authority, the Lessee must install and Maintain at the Lessee's cost any meter or other measuring device necessary for the proper charging of any of the services, utilities or amenities supplied to or used by the Lessee on the Premises or any Improvements.

**Payment**

- 4.6 The Lessee must pay all the payments, charges and expenses which the Lessee is obliged to pay under this section at the times, and in the manner from time to time required by the relevant Authority or supplier of the services, utilities and amenities (as the case may be) to avoid penalties, and otherwise must make such payments on demand. If the Lessee defaults in making any payment:
- (a) the Lessor may (but shall not be obliged to) make the payment, and in addition to the Lessor's other remedies under this Lease, may recover the amount so paid plus interest under clause 17.5; and
  - (b) the Lessee must also, in addition, pay all penalties incurred by the Lessor as a result of the Lessee's default.

**Contribution to Maintenance Fund**

- 4.7 The Lessee must pay to the Lessor, at the times and in the amounts as notified pursuant to clauses 8.20 and 8.21, the Lessee's Proportion of the costs (plus GST) incurred by the Lessor in undertaking the Maintenance of the Improvements within the Precinct (including the Home and Carpark) which are the responsibility of the Lessor in accordance with this Lease or are not otherwise the responsibility of the Lessee or any other lessee to maintain. The Lessor may recover contributions to the Maintenance Fund that are different to the Lessee's Proportion of costs if the Maintenance to be undertaken is substantially for the benefit of one or more of the premises or lessees in the Precinct, and not for others. Any such expense shall be recoverable from the Lessee in the proportion the Lessor reasonably considers appropriate having regard to the relative benefits to the lessees of the Maintenance work.

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*Continue in additional Annexure Schedule, if required***Insurance**

- 4.8 The Lessee must punctually pay to the Lessor the Lessee's Proportion of the costs of effecting insurance of the Improvements on the Premises and the Common Property that are properly and reasonably incurred. Such costs shall be deemed to include any insurance excess (but not exceeding [\$1,500.00] **Note: Amount to be confirmed**) plus GST (adjusted in accordance with CPI from the Commencement Date)) in respect of any claim, and insurance premiums and related valuation fees.
- 4.9 The Lessee must not carry on or allow to be done any act or thing which:
- (a) makes any policy of insurance on any of the Improvements void or voidable; or
  - (b) may render any increased or extra premium payable for any policy of insurance except where, in circumstances in which any increased premium is payable, the Lessee has first obtained the consent of both the insurer of the Improvements and the Lessor and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Lessee in a reasonable manner of the Permitted Use shall be deemed not to be a breach of this clause.
- 4.10 The Lessee must pay any payment due to the Lessor pursuant to this clause 4 in equal weekly instalments by automatic payment to the Lessor's nominated bank account or otherwise as the Lessor may direct.

**Lessee's Proportion**

- 4.11 The Lessee's Proportion assessed as at the Commencement Date shall apply until such time as the Lessor shall give notice to the Lessee that the Lessee's Proportion has been varied in accordance with the Unit Titles Act 2010.

**Payments to the Lender**

- 4.12 For so long as the Loan Agreement remains in place, the Lessee must pay the Lender any amounts due to the Lender pursuant to the Loan Agreement.
- 4.13 Prior to the Completion Date, notwithstanding the foregoing provisions of this clause 4, up to and including the Completion Date, the Lessor shall pay all amounts set out in clauses 4.1 to 4.10 (inclusive) and the Lessee shall have no liability in respect of the same.

**5. BODY CORPORATE**

- 5.1 The Lessee shall comply with the Body Corporate Rules.

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**6. DEVELOPMENT OF PREMISES**

**Development of the Premises by the Lessee**

- 6.1 The Lessee must not Construct any Improvements on the Premises after the Commencement Date other than the Improvements detailed in the Agreement to Build that have not been completed by the Commencement Date.
- 6.2 Notwithstanding clause 6.1, the Lessee may undertake internal works on the Home that are non-structural in nature. These works may include redecoration, non-structural kitchen and bathroom renovations, and the replacement of carpet and floor coverings.
- 6.3 The Lessee shall notify the Lessor of any such works within a reasonable period of undertaking the works.

**7. SOLAR PANELS AND THE PROVISION OF ELECTRICITY**

**Installation**

- 7.1 The Lessor may arrange for the installation or replacement of solar panels and any associated equipment on the Improvements and/or the Precinct for the purpose of generating electricity for use within the Precinct or otherwise for the benefit of some or all of the occupants of the Precinct. The Lessee must permit the Lessor and the Lessor's invitees at all reasonable times and on reasonable written notice to enter the Premises, including the roof of any building erected, for a reasonable period for the purpose of installing solar panels and any associated equipment.

**Ownership of equipment**

- 7.2 The Lessee acknowledges any solar panels and associated equipment may be owned by an independent third party and installed and maintained pursuant to a contract made between that party and the Lessor.

**Ownership of electricity**

- 7.3 The Lessee acknowledges that the Lessee has no proprietary right to any electricity produced from the solar panels and associated equipment and that such electricity shall remain the property of the Lessor.

**8. MAINTENANCE AND REPAIR**

**Lessee to Maintain Premises and Improvements**

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*Continue in additional Annexure Schedule, if required*

- 8.1 Save to the extent that the Lessor is obliged to do so pursuant to clause 8.24, the Lessee must Maintain the Premises and any Improvements on the Premises in good clean and tidy order, repair and condition having regard to their age and usage, subject to fair wear and tear arising from reasonable use and damage caused by fire, earthquake, earth subsidence, flood, storm, or other event beyond the reasonable control of the Lessee.
- 8.2 The Lessee must at all times during the continuance of the Term keep the Premises clean and free from gorse, brier, broom and noxious weeds and all hazardous substances and materials which may damage the Premises or cause or threaten to cause a hazard to the Premises or to the health or safety of persons on or about the Premises.
- 8.3 Without prejudice to the generality of clause 8.1, the Lessee must:
- (a) Maintain:
- (i) the interior of the Home on the Premises; and
- (ii) any yard, deck or similar area on the ground floor intended for the exclusive use of the Lessee,
- in good clean and tidy order, repair and condition having regard to their age and usage, subject to fair wear and tear arising from reasonable use and damage caused by fire, earthquake, earth subsidence, flood, storm or other event beyond the reasonable control of the Lessee; and
- (b) without prejudice to the generality of clause 8.3(a), keep clean all glass contained in windows or doors of the Home, and replace any cracked or broken glass as soon as possible with glass of the same or better weight and quality.
- 8.4 The Lessee will at all times Maintain in a good and useable condition all drains, ditches, water, gas, electricity, telephones, pipes and conduits and all other utilities on the Premises.
- Disrepair caused by Lessee**
- 8.5 If any Maintenance that is required to be undertaken by the Lessor, pursuant to this Lease, is rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of the Body Corporate Rules, the Community Rules or any of the terms of this Lease, by the Lessee, the Lessor may recover from the Lessee any reasonable expense it incurs in completing such Maintenance.
- Right to inspect**
- 8.6 Provided the Lessor has given reasonable prior written notice, and provided the Lessor complies with the requirements of this clause, the Lessee must permit the Lessor and its agents, servants or contractors to enter onto the Premises to view the condition of the

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Premises and any Improvements on the Premises. The Lessor may enter onto the Premises to inspect the interior of the Improvements once during each twelve month period from the Commencement Date and following any request for consent to assign the Lease. The Lessor may enter onto the Premises to inspect the exterior of the Improvements no more than four times during each twelve month period from the Commencement Date. The following provisions apply in respect of the inspections:

- (a) the Lessor may give notice in writing to the Lessee specifying any defects and breaches of covenant for which the Lessee may be liable; and
- (b) the Lessee must within such reasonable time as shall be specified in the notice, make good such defects and breaches of covenant for which the Lessee is liable.

**Lessor may make good Lessee's failure**

- 8.7 If the Lessee fails to comply with the notice within the time specified the Lessor may, at its option within such time as it deems reasonable and without prejudice to any other rights, powers or remedies, take such steps, expend such money and do such other acts and things as the Lessor shall consider necessary to make good such failure and any money expended by the Lessor in doing so, together with interest at the Default Interest Rate computed from the time or respective times of such money being actually spent by the Lessor until actual payment by the Lessee to the Lessor, shall be payable on demand by the Lessee to the Lessor.

**Recovery of costs incurred by the Lessor**

- 8.8 The Lessor may at its option recover the amount payable by the Lessee pursuant to clause 8.7 as if it were rent in arrears payable by the Lessee.

**Improvements**

- 8.9 On the expiry or sooner determination of this Lease the Lessee shall ensure the rights, clear title and interest in all Improvements owned by the Lessee will pass to the Lessor and the Lessee shall not be required or entitled to remove any Improvements from the Premises. The Lessor must (subject to clause 17.7) pay compensation to the Lessee on the expiry or earlier determination of this Lease. Such compensation shall (subject to clause 8.12) be equal to the Improvements Market Value. The Lessee must, on or before the expiry or earlier termination of the Lease obtain a release of any security given over the Lease and/or the Improvements owned by the Lessee (or any part of these Improvements) to the intent that the Lessor will, on the transfer of the Improvements in accordance with this clause, obtain clear title to the Improvements free of any interests whatsoever. The Lessee must, on or before the expiry or earlier termination of the Lease, remove all items from the Premises that do not fall within the definition of Improvements.

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8.10 The Lessee shall not grant any security interest over or in respect of any Improvement other than pursuant to a mortgage of the Lease (which shall be subject to clause 10).

8.11 The Lessee acknowledges that the Lessor owns all of the Improvements on the Premises other than those Improvements completed by the Builder pursuant to the Agreement to Build or completed by the Lessee after the Completion Date.

**Deduction for non-compliance**

8.12 The amount of compensation payable pursuant to clause 8.9 shall be reduced by an amount equal to any costs incurred in rectifying (or which the Lessor, acting reasonably, determines are required to be incurred to rectify) any non-compliance by the Lessee with any of the terms of the Lease and, unless otherwise agreed by the Lessor, less the cost incurred by the Lessor to engage the Approved Valuer to complete the Improvements Valuation.

8.13 The Lessee covenants that, in order to ensure clear title can be passed to the Lessor, the compensation paid to the Lessee under clause 8.12 will be applied towards the repayment of the outstanding amount (if any) of the mortgage registered on the Leasehold Unit Title, and the Lessee shall pay any additional amount that remains outstanding, such that the mortgage may be discharged upon the transfer of the Leasehold Unit Title to the Lessor.

8.14 In the event that Improvements owned by more than one lessee of the Precinct are located on any parcel of bare land, the value of the land and of the Improvements on that parcel of bare land shall be apportioned between the lessees on such basis as the valuer shall determine.

**Lessor to provide an Improvements Valuation upon Lessee's request**

8.15 The Lessee may require the Lessor to undertake an Improvements Valuation (at the Lessee's cost) to determine the current Improvements Market Value from time to time. In the event that the Lessee requires the Improvements Market Value in connection with:

(a) the expiry or earlier termination of this Lease (including pursuant to clause 16);  
or

(b) a proposed assignment of this Lease in accordance with clause 10,

it shall provide notice to that effect to the Lessor a reasonable period prior to the relevant event to enable the Lessor to procure the Improvements Valuation.

**Lessee to quietly yield up**

8.16 The Lessee will at the expiry or earlier termination of the Term yield up the Premises and Improvements existing on the Premises, and in the condition the Premises and

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Improvements were in, 1 year before the expiry or earlier termination. This obligation is subject to fair wear and tear arising from reasonable use and damage caused by fire, earthquake, earth subsidence, flood, storm, or other event beyond the reasonable control of the Lessee occurring during the year prior to the expiry or earlier termination. This obligation is also subject to the provisions of clauses 8.1 and 8.3.

#### **Standard of work**

- 8.17 The Lessee must ensure that all work carried out by the Lessee pursuant to this clause is carried out in accordance with all regulatory requirements and in accordance with the terms of this Lease and any land covenants or interests registered against the freehold or leasehold title to the Premises.

#### **Establishment of Maintenance Fund**

- 8.18 The Lessor must establish and maintain an operating account with a registered New Zealand bank for the purpose of:
- (a) holding the contributions to the Maintenance Fund paid by the Lessee in accordance with clause 4.7; and
  - (b) meeting the costs properly incurred in the Maintenance of any of the Improvements (including the Building Elements) situated within the Precinct that are the responsibility of the Lessor to Maintain or are not otherwise the responsibility of the Lessee or any other lessee to Maintain.

#### **Payment to Maintenance Fund**

- 8.19 The Lessor must ensure all payments made pursuant to clause 4.7 are paid into the Maintenance account and may apply funds held in such account for the purposes outlined in clause 8.18 only. All funds held in such account must be held in accordance with best practice and in a manner that adequately protects the interests of the Lessor and the Lessee and enables the Lessor to comply with its Maintenance obligations pursuant to the Lease.

#### **Estimate of annual contribution**

- 8.20 In each year during the Term, as soon as practical following the expiry of the Lessor's financial year, the Lessor will, by written notice, advise the Lessee of the Lessor's assessment of the Lessee's Proportion of the Maintenance Fund that will be payable in the following lease year and the instalments in which such amount shall be paid.
- 8.21 The costs payable to the Maintenance Fund in any lease year may include an accrual towards a sinking fund for costs expected to be incurred in future lease years. The Lessor may, at any time, notify the Lessee of a revised assessment of the amounts payable to the Maintenance Fund (together with revised amounts of the instalments and

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payment dates (if applicable)) only where some unforeseen matter arises which has or is likely to have a significant effect on the Maintenance obligations and the revised estimate will apply in lieu of the earlier estimate.

#### **Maintenance Fund report**

- 8.22 In each year during the Term, as soon as practical following the expiry of the Lessor's financial year (and at the expiry of the Term) the Lessor must provide a report to the Lessee in respect of the Maintenance Fund, which report must have been audited by an independent chartered accountant and which report must include full details of the funds held in the Maintenance Fund received in the previous 12 months (or relevant broken period) and their application. The Lessee shall have no right to call for a further audit of the Maintenance Fund other than in the case of manifest error.

#### **Maintenance Fund wash up**

- 8.23 If the amount of the costs (including any accrual for a sinking fund) payable by the Lessee for Maintenance pursuant to the Lease is greater than the total of the payments made by the Lessee for Maintenance pursuant to the Lease during the preceding lease year or broken period, the Lessee must pay the difference to the Lessor punctually on receipt of an invoice. If the amount of the costs (including any accrual for a sinking fund) payable by the Lessee for Maintenance pursuant to the Lease is less than the total of the payments made by the Lessee as aforesaid, the Lessor must credit the difference against the payments due in the following year except that at the expiry or earlier termination of the Lease, such funds shall be refunded to the Lessee or, at the Lessor's option, applied in the rectification of any default by the Lessee of the lease terms.

#### **Lessor's obligation to Maintain Building Elements and Common Property**

- 8.24 The Lessor must keep and Maintain the Building Elements (but excluding any items included in clause 8.3) and the Common Property in good order and repair but the Lessor shall not be liable for:

- (a) repair or maintenance which the Lessee is responsible to undertake;
- (b) repair or maintenance which is not reasonably necessary for the Lessee's use and enjoyment of the Premises or the Precinct, including the Common Property; or
- (c) loss suffered by the Lessee arising from any want of repair or defect unless the Lessor shall have received notice in writing of that from the Lessee and has not within a reasonable time after that taken appropriate steps to remedy the same,

and provided the Lessor's obligation pursuant to this clause shall only be to Maintain such Improvements to the extent permitted by funds contributed by the Lessee and the other



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lessees of the Precinct to the Maintenance Fund for that purpose. The Lessor shall not be obliged to expend any more than the sum that is held in the Maintenance Fund for the purpose of meeting the costs of such Maintenance.

- 8.25 The Lessee must permit the Lessor at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the Premises (including the roof of any building erected on the Premises) for a reasonable period for the purpose of complying with its obligations pursuant to clause 8.24. If in the Lessor's reasonable opinion, the Lessor requires the Lessee to vacate the whole or part of the Premises to enable such work to be carried out, the Lessor may give the Lessee written notice requiring the Lessee to vacate and specifying a reasonable period for which the Lessor requires possession. The Lessor must act in good faith and have regard to the nature, extent and urgency of the works when exercising the right to access.

#### **Long Term Maintenance Plan**

- 8.26 The Lessor must establish and regularly maintain a long term maintenance plan in respect of all Improvements within the Precinct. The long term maintenance plan shall comply with the requirements of, and purposes outlined in, the Unit Titles Act 2010.

#### **Removal of earth etc**

- 8.27 The Lessee shall not sell nor dispose of any earth, clay, gravel, shingle, or sand from the Precinct nor shall any of the same be removed from the Precinct except so far as shall be necessary for the execution of Improvement works on the Premises that have previously been approved by the Lessor in accordance with this Lease.

#### **Compliance with easements**

- 8.28 The Lessee will perform and observe the obligations of the Lessor in connection with any easement of any kind for the time being affecting the Precinct (whether as dominant or servient tenement) including the carrying out, effecting or contributing to any works, repairs, or maintenance.

### **9. INSURANCE**

#### **Lessor to insure**

- 9.1 The Lessor must insure any Improvements on the Premises and the Common Property and keep such Improvements insured to their full replacement value, or at the sole discretion of the Lessor, to their full insurable value on an indemnity cover basis against normal risks subject to any normal exclusions, limitations and reasonable excess. The Lessor must ensure any insurance is held in the joint names of the Lessor and the Lessee for their respective interests.

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9.2 For the purposes of section 269 to 271 (inclusive) of the Property Law Act 2007, the Lessee expressly acknowledges that to the extent of any excess or deductible applicable to the Lessor's insurance, the Lessor has not insured and is not required to insure the Improvements or the Premises on which the Improvements are situated against destruction or damage arising from any of the events referred to in section 268(1) of the Property Law Act 2007 (which, for the purposes of section 271 of that Act, are deemed to be specified in this Lease).

9.3 The Lessor will, if requested in writing by the Lessee, provide the Lessee with a certificate of currency to confirm the insurance policies required pursuant to clause 9.1 are in place.

## **10. ASSIGNMENT**

10.1 The Lessee must not assign, transfer (whether by transmission or otherwise), sublet, mortgage, charge or otherwise part with the possession of the Premises or any part thereof or any estate or interest therein except by way of:

- (a) an assignment in accordance with clause 10.2 or clause 10.6;
- (b) a subletting in accordance with clause 11; or
- (c) a mortgage in accordance with clause 10.9.

10.2 The Lessee may only assign its interest in the Lease as follows:

- (a) no assignment is permitted prior to the Completion Date; and
- (b) following the Completion Date, the Lessee may assign its interest in the Lease provided that:
  - (i) the conditions precedent in clause 10.3 have been met;
  - (ii) the Lessee has complied with the provisions of clause 10.4; and
  - (iii) the prior written approval of the Lessor (such approval not to be unreasonably withheld) has been obtained.

10.3 The conditions precedent to an assignment are:

- (a) the assignee must be:
  - (i) a natural person or the Official Assignee appointed pursuant to the State Sector Act 1988 or a person to whom an assignment is made in accordance with clause 10.3;

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- (ii) a Member or the Spouse of a Member who is also a Lessee;
  - (iii) an assignee who will use the Home erected on the Premises as their principal place of residence; and
  - (iv) respectable, responsible, solvent, and suitable and intending to use the Premises for residential purposes in accordance with the terms of this Lease;
- (b) the price payable (including all consideration payable by or on behalf of the assignee for the assignment of the Lease by whatever name and whether included in the agreement for sale and purchase or in any collateral or associated agreement) for the assignment of the Lease shall not be greater than the then current Capped Transfer Price;
- (c) all Rental and other money payable by the Lessee to the Lessor up to the date of proposed assignment have been paid;
- (d) there must not be any existing unremedied breach of any of the terms of the Lease;
- (e) following an inspection of the Premises and Improvements on the Premises the Lessor is satisfied that the Lessee has Maintained the Premises and the Improvements in accordance with the terms of the Lease provided the requirements of this sub-clause may be met by the Lessee paying the Lessor an amount equal to the sum the Lessor reasonably considers is sufficient to rectify any default by the Lessee of its Maintenance obligations under the Lease;
- (f) the Lessee shall procure the execution by the assignee of a covenant with the Lessor, in a form acceptable to the Lessor, that the assignee will at all times during the continuance of the Term:
- (i) duly pay the Rental reserved and any other payments due pursuant to the Lease at the times and in the manner mentioned in the Lease; and
  - (ii) observe and perform all the covenants conditions and agreements contained in the Lease or implied on the part of the Lessee to be observed and performed,

and the proper execution and delivery to the Lessor of such a covenant and the registration of a transfer of the interest of the Lessee to the assignee shall operate to release the assignor from the Lessee's obligations to pay the Rental and observe and perform the other covenants and conditions on the part of the Lessee contained or implied in the Lease from the date of the transfer; and

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- (g) all reasonable costs incurred by the Lessor (whether or not the proposed assignment proceeds to completion) have been paid by the Lessee.

10.4 Subject to clause 10.5, prior to entering into an assignment of the Lease:

- (a) the Lessee must first offer the assignment of the Lease to the Lessor (or to the Lessor's nominee) in writing specifying the terms and conditions on which the Lessee is prepared to assign the Lease (which shall include compliance with clause 10.3(b));
- (b) the Lessor (or the Lessor's nominee) shall have 10 Working Days from receipt of the written notice to advise the Lessee in writing whether it wishes to take an assignment of the Lease on the terms specified. If the Lessor advises the Lessee in writing that it proposes to take the assignment of the Lease, then from the receipt by the Lessee of the Lessor's written notice a binding agreement shall exist for the Lessee to assign the Lease to the Lessor;
- (c) if the Lessor does not respond to the notice received from the Lessee, or if the Lessor advises it does not wish to take an assignment of Lease on the terms and conditions specified, then the Lessee may, within the period of 12 months following the date of the Lessee's notice given pursuant to clause 10.4(a), assign the Lease to a third party (subject to compliance with clause 10.2(b)) on terms and conditions no less onerous (in the opinion of the Lessor) than those provided in the Lessee's notice to the Lessor; and
- (d) if the Lessee wishes to assign the Lease on terms and conditions that are more favourable than those specified in its original notice to the Lessor or after the expiry of the period referred to in clause 10.4(c), it shall re-offer the assignment of the Lease to the Lessor and subclauses 10.4 (a), (b) and (c) shall apply.

10.5 The terms of clause 10.4 shall not apply to a deemed assignment which is deemed to have been consented to by the Lessor in accordance with clauses 10.6(a), (b) and (c).

10.6 The death of a Lessee shall be deemed an assignment for the purposes of clause 10.1 provided that consent is deemed to be given to an assignment 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 or as administrator for the purposes of managing the Lessee's estate); and
- (c) the transfer from such personal representative to the trustee or guardian of a child or grandchild of the Lessee who is a minor provided that such assignment shall require that the Lease be assigned by the trustee or guardian to a Member

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once the child or grandchild is no longer a minor or if the child or grandchild ceases using the Home on the Premises as their principal place of residence whichever is the earlier,

but in respect of an assignment to a party listed in sub-clause 10.6(b), on the basis that the Lease must be assigned to a Member within 3 years of the date of the assignment.

#### **Assignment documents**

10.7 The Lessee must:

- (a) provide not less than 20 Working Days prior notice (along with all details and information reasonably required by the Lessor to demonstrate compliance with clause 10.3) of any proposed assignment of its interest in the Lease; and
- (b) provide a copy of each document recording the assignment, to the Lessor, promptly following any assignment.

#### **Maintenance funds on assignment**

10.8 The parties acknowledge that on an assignment, transfer, mortgage, charge or any parting of possession the Lessee shall not be entitled to a refund of any funds held by the Lessor in the Maintenance Fund, irrespective of whether funds have been collected from the Lessee and not yet applied for Maintenance purposes. Any funds held shall continue to be retained by the Lessor and applied for the purposes they were collected.

#### **Mortgage**

10.9 The Lessee shall not mortgage its interest in the Lease without obtaining the prior written approval of the Lessor which shall not be unreasonably withheld in circumstances where:

- (a) the mortgagee is a New Zealand registered bank; and
- (b) the amount borrowed from the Lender and secured by the mortgage (excluding interest and costs or fees) does not exceed an amount equal to the Capped Transfer Price.

#### **Improvements Valuation**

10.10 The Lessee may from time to time request the Lessor to notify the Lessee of the then applicable Improvements Market Value.

10.11 In the event that the Lessee is considering assigning its interest in the Lease it shall (in addition to the other obligations set out in this clause 10) provide the Lessor with reasonable notice to enable the Lessor to procure, if required, an Improvements Valuation (which shall be at the cost of the Lessee).

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## **11. SUBLETTING**

### **Consent to sub-lease required**

11.1 The Lessee must not sub-lease the Premises or Improvements or any part of the Premises or Improvements or, by any act or deed procure the subleasing of any Premises or Improvements or any part of the Premises and Improvements unless the conditions precedent in clause 11.2 have been met and the Lessor has approved the subletting (such approval not to be unreasonably withheld).

11.2 The conditions precedent to a subletting of the Lease shall be:

- (a) each proposed sub-lessee must be a natural person;
- (b) at least one of the named sub-lessees must be a Member or a Spouse of a Member or whanau of a Member who will use the Home erected on the Premises as their principal place of residence;
- (c) the sub-lease is for a term of no more than 12 months;
- (d) at least 5 years have elapsed since the commencement of any previous sub-lease;
- (e) the sub-lessee must be respectable, responsible, solvent and suitable and intending to use the Premises for residential purposes in accordance with the terms of this Lease;
- (f) all rent and other money payable by the Lessee to the Lessor up to the date of proposed sub-lease have been paid;
- (g) there is not any existing unremedied breach of any of the terms of the Lease;
- (h) following an inspection of the Premises and Improvements on the Premises, the Lessor is satisfied that the Lessee has Maintained the Premises and the Improvements in accordance with the terms of the Lease provided the requirements of this sub-clause may be met by the Lessee paying the Lessor an amount equal to the sum the Lessor reasonably considers is sufficient to rectify any default by the Lessee of its Maintenance obligations under the Lease;
- (i) the Lessee shall procure the execution by the sub-lessee of a deed of sub-lease, in a form acceptable to the Lessor, which sub-lease provides that the sub-lessee will at all times during the continuance of the Term:
  - (i) duly pay the Rental reserved and any other payments due pursuant to the Lease at the times and in the manner mentioned in the Lease; and

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(ii) observe and perform all the covenants conditions and agreements contained in the Lease or implied on the part of the Lessee to be observed and performed; and

(j) all costs incurred by the Lessor (whether or not the proposed sub-lease proceeds to completion) have been paid by the Lessee.

**Notice and sublease documents**

11.3 The Lessee must:

- (a) provide not less than 20 Working Days prior notice along with all details and information reasonably required by the Lessor to demonstrate compliance with clause 11.2 of any proposed sub-lease; and
- (b) provide a copy of each sub-lease, to the Lessor, promptly following the grant of any sub-lease.

11.4 The sub-lessee shall not be permitted to assign or sub-lease its interest in the sub-lease.

**12. CONSENT**

12.1 The Lessee is deemed to have consented to any covenant, easement, right of way, encumbrance or other interest or instrument registered over or for the benefit of the Precinct as at the Commencement Date. The Lessee must use the Premises and the Common Property in accordance with such registered covenant, easement, or other interest or instrument.

12.2 In addition to the covenants, easements, rights of way, encumbrances and other interests and instruments described in clause 12.1, the Lessee is deemed to have consented to any covenant, easement, right of way, encumbrance or other interest or instrument registered over or for the benefit of the Premises at any time after the Commencement Date provided such interest does not adversely affect the value of the Premises or the use to which the Premises can be put. The Lessee must use the Premises in accordance with such registered covenant, easement, right of way, encumbrance or other interest or instrument.

12.3 The Lessee will provide any authorisations, approvals and consents (including under section 95E of the Resource Management Act 1991) to any application for consent for any activity permitted or required under this Lease when requested by the Lessor, and will not oppose, or procure or fund any opposition to, any such application or activity, or withdraw any authorisation, approval or consent.

12.4 The Lessee will provide any authorisations, approvals and consents (including under section 95E of the Resource Management Act 1991) to any application for consent for

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any activity permitted or required under the Trust Deed when requested by the Lessor, and will not oppose, or procure or fund any opposition to, any such application or activity, or withdraw any authorisation, approval or consent.

### **13. LESSOR'S COVENANT**

#### **Quiet enjoyment**

- 13.1 If the Lessee pays the Rental and all other moneys payable by the Lessee under this Lease in the manner required by this Lease, and complies with the obligations of the Lessee under this Lease, the Lessor shall permit the Lessee to quietly hold and enjoy the Premises, without interruption by the Lessor, or by any person claiming under the Lessor, until the expiry or sooner termination of the Term.

### **14. USE OF PREMISES**

#### **Permitted Use**

- 14.1 The Lessee may use the Premises for the Permitted Use only. The use of a home office in a Home will not of itself amount to a breach of this obligation provided the home office is incidental to the use of the Home as a principal place of residence. The Lessee must ensure that, at all times during the Term, the Premises is used as the principal residence of at least one of the Members who is named as a current registered proprietor of the Lease.

#### **Community Rules**

- 14.2 The Lessee must at all times comply with the Lessee's obligations under the Community Rules.
- 14.3 The Lessor may, subject to providing the Lessee with reasonable written notice, vary the Community Rules to the extent that they do not derogate from the Lessee's rights under this Lease and are, in the reasonable opinion of the Lessor, required for the safety, care, operation and cleanliness of the Precinct and the preservation of good order, safety and comfort of the Precinct's residents and their guests and the effective operation of the Ngāti Whātua Ōrākei community.
- 14.4 The Lessor will ensure a copy of the Community Rules and any proposed variation to them is available to the Lessee on request.

#### **Lessee's contribution to the community**

- 14.5 The Lessee must, throughout the Term, contribute positively to the activities, well-being and welfare of the Ngāti Whātua Ōrākei community.



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- 14.6 The Lessor does not in any way warrant that the Premises is or will remain suitable or adequate for any of the purposes of the Lessee and to the fullest extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negated. Should any of the purposes of the Lessee be permissible only with the consent of any Authority under or in pursuance of any statute, ordinance, regulation, by-law or other enactment or order of court the Lessee shall obtain such consent at the sole cost and expense of the Lessee including but not limited to any costs of complying with any conditions of any such consent.

**Offensive acts**

- 14.7 The Lessee will not at any time during the continuance of the Lease do, exercise or carry out or permit or suffer any other person or persons to do exercise or carry out on the Premises or any part thereof any noxious, harmful, or offensive or illegal act, trade, business, occupation or calling or any act, matter or thing whatsoever which shall or may be or become or cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of any adjoining or adjacent land or to the Lessor. The following activities are deemed to be breaches of this clause:
- (a) parking any vehicles, caravans, boat trailer or similar in any part of the Premises that is not designated as a parking area;
  - (b) noise that the Lessor from time to time determines is excessive; and
  - (c) the installation of and temporary structure including (but not limited to) a portable cabin or motorhome on the land or any other part of the Premises.

**Compliance with statutes and indemnity**

- 14.8 The Lessee must, at all times, comply with all statutes, ordinances, regulations and bylaws affecting or relating to the Premises or any Improvements, or to the use or occupation of the Precinct or the Improvements, and must also comply with the provisions of any licences, requisitions, notices or orders, made or given by any Authority. The Lessee acknowledges that such statutes, ordinances, regulations or bylaws may impose obligations on owners, or on both owners and occupiers, of land and covenants and agrees with the Lessor to do all acts, matters and things necessary to comply with any such obligations imposed on the Lessor, but at the cost in all things of the Lessee.

**Subdivision**

- 14.9 The Lessee must not subdivide the Premises or any part of the Premises whether in accordance with the Resource Management Act 1991, the Unit Titles Act 2010 or

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otherwise. The Lessee must not grant any easement or register any covenant against the Premises or any part of the Premises.

**Compliance with fire requirements**

- 14.10 The Lessee will at all times and in all respects comply with the requirements of any Authority and with the requirements of any relevant statute regulation by-law or other notice issued by any Authority relating to fires.

**Lessee to occupy Premises at own risk**

- 14.11 The Lessee shall occupy and use the Premises at the Lessee's risk, and shall release the Lessor (to the full extent permitted by law) from all claims and demands of any kind, and from all liability which may arise in respect of any accident, damage, or injury occurring to any person or property in or about the Premises or any Improvements.

**15. LESSEE'S INDEMNITIES AND LIMITATIONS ON LIABILITY**

**Lessee's indemnities**

- 15.1 The Lessee shall indemnify and keep indemnified the Lessor from and against any action, claim, demand, loss, damage, cost, expense and liability which the Lessor may suffer or incur, or for which the Lessor may become liable in respect of or arising from:
- (a) the loss, damage or injury from any cause to property or persons caused or contributed to by the use or misuse of the Premises or the Common Property or any Improvements by the Lessee or by the condition of the Premises and any Improvements or any part thereof;
  - (b) the loss, damage, or injury from any cause to property or persons on the Premises or the Common Property, caused or contributed to by any act, omission, neglect, breach or default on the part of the Lessee; or
  - (c) any failure by the Lessee, to comply with any obligation imposed on the Lessee under this Lease or by law,

to the extent that the Lessor has not caused or contributed to the relevant event.

**Liability not to be abrogated**

- 15.2 The liability and obligations of the Lessee pursuant to the indemnity contained in clause 15.1 shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding;

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- (a) the granting of time or any indulgence or other concession to the Lessee or by any compounding, compromise, agreement, abandonment, waiver, variation or extension of any of the rights of the Lessor against the Lessee or by any neglect or omission to enforce any rights of the Lessor or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Lessee in whole or in part from the Lessee's obligations under this Lease;
- (b) the insolvency, liquidation, winding up, receivership, dissolution, or a judicial or statutory management of the Lessee; or
- (c) the Lessor obtaining judgment against the Lessee.

## **16. REDEVELOPMENT OF THE LAND**

- 16.1 If, on the 50th anniversary of the Commencement Date or any subsequent 25th anniversary of the Commencement Date, in the reasonable opinion of the Lessor any of the Improvements on the Premises require renovation, remediation, rebuilding, alterations or removal the Lessor may give notice in writing to the Lessee no later than 3 months following that date that it requires the Lease to be surrendered on a date to be specified in the notice but in any event not earlier than 3 months after the date of service of the notice. In such event the Lease shall be deemed to be surrendered as at the date specified in the notice, the Lessee must vacate the Premises on or before such date and the provisions of this Lease that apply on the expiry or sooner determination of the Lease (including but not limited to clause 8.9 which is the clause pertaining to the payment of compensation) shall apply as at that date.
- 16.2 Notwithstanding the surrender of the Lease, the Lessee shall not be released from any liability or obligation arising from the Lease and relating to the period prior to the date of surrender.

## **17. DEFAULT BY LESSEE**

### **Grounds for re-entry and termination**

- 17.1 Termination of the Lease will not release the Lessee from any liability then due or for any antecedent breach of any of the terms contained or implied in the Lease.
- 17.2 If the Lessee makes default in the observance or performance of any of the terms contained in this Lease and to be complied with by the Lessee that are of such a nature or in such a manner that has a material adverse effect on the Lessor, ("**Material Terms**") the Lessor may serve notice on the Lessee requiring remedy of the default and provide a copy to the Lender. If that default continues for 60 Working Days after notice given by the Lessor to the Lessee to remedy that default then, the Lessor may serve a further notice

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on the Lessee of its intention to cancel the Lease and provide a copy to the Lender and, if, at the expiry of a period that is reasonable in the circumstances the breach has not been remedied, the Lessor may:

- (a) cancel the Lease; or
- (b) without prejudice to the Lessor's right of re-entry and determination or the Lessor's other remedies under this Lease do anything, including pay money necessary to remedy the default.

17.3 Material Terms for the purpose of clause 17.2 shall include:

- (a) the obligation to pay rent or any other payment due pursuant to this Lease;
- (b) the obligation to comply with the Loan Agreement;
- (c) the obligations pertaining to the assignment of the Lease or subletting of the Premises;
- (d) the requirement to use the Premises for the Permitted Use only; and
- (e) the obligations pertaining to insurance of the Premises and/or Improvements.

If the Lessee makes default in the observance or performance of a term contained in the Lease that is not a Material Term the provisions of clause 17.2 shall apply except that the Lessor shall not be entitled to cancel the Lease but shall be entitled to remedy the default.

**Lessee to meet costs of remedy**

17.4 The Lessee must pay on demand the Lessor's actual and reasonable costs and expenses (including legal costs) incurred in remedying or attempting to remedy any breach by the Lessee of the terms of this Lease.

**Default interest**

17.5 Without prejudice to the other rights, powers, and remedies of the Lessor under this Lease, if any money payable by the Lessee under this Lease is in arrears and unpaid for fourteen (14) days (whether or not any formal demand for payment has been made) (and without any formal demand being necessary), such money shall be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full provided that the Lessor may, in its sole discretion, determine that default interest is not payable in respect of all or any part of such sum.

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**Assignment**

17.6 In the event that the Lessor is entitled to cancel the Lease in accordance with clause 17.2, the Lessee shall upon request by the Lessor, enter into such documents as the Lessor may require to assign the Lessee's interest in the Lease to the Lessor. The compensation which would otherwise have been payable to the Lessee pursuant to clause 8.9, upon the determination of the Lease, shall be paid to the Lessee on the assignment of the Lease in accordance with this clause 17.6.

**Loan Agreement**

17.7 In the event that upon the cancellation of the Lease in accordance with this clause 17, there are any amounts owing to the Lender, the Lessor:

- (a) may deduct from the compensation otherwise payable to the Lessee pursuant to clauses 8.9 and 17.6, an amount equal to the amount owed to the Lender; and
- (b) in the event that it does make any such deduction, undertakes to apply the amount deducted towards repayment of the amounts owed to the Lender.

**18. HEAD LEASE**

18.1 Provided the Lessee is not in breach of any of the Lessee's obligations in this Lease, the Lessor must:

- (a) exercise all rights and remedies which the Lessor may have under the Head Lease to require the lessor under the Head Lease to observe and perform the lessor's covenants in the Head Lease; and
- (b) comply with all of the obligations in the Head Lease which are binding on the Lessor as lessee.

**19. GENERAL**

**Waiver or failure to act**

19.1 No waiver or failure to act by the Lessor in respect of any one or more breaches by the Lessee of any obligation imposed on the Lessee under this Lease shall operate as a waiver of another breach of any of such obligation.

**Artefacts**

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19.2 All fossils, artefacts, coins, articles of value or antiquity and structures and other remains or things or geological, historical, archaeological or cultural interest or value to Members discovered on or under the surface of the Precinct (including the Premises) shall, as between the Lessor and the Lessee be deemed to be the absolute property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged, and shall notify the Lessor of such discovery and, carry out at the expense of the Lessor, the Lessor's orders as to the delivery up or disposal of such articles or things.

**Notices**

- 19.3 Any notice or other document required to be given delivered or served under this Lease must be in writing and must be delivered or transmitted as follows:
- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
  - (b) in all other cases, unless required by sections 352 to 361 of the Property Law Act 2007:
    - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
    - (ii) by personal delivery.

**Receipt of notices**

19.4 Any notice or other document shall be deemed to have been given or served and received by the other party at the times specified in the Property Law Act 2007.

**Authority for notice**

19.5 In the case of any notice or document required to be served or given by the Lessor to the Lessee the notice may be signed on behalf of the Lessor or any other person authorised by the Lessor from time to time.

**Unknown address of Lessee**

19.6 In the case of a notice to be served on the Lessee, if the Lessor is unaware of the Lessee's last known address in New Zealand, any notice placed conspicuously on any part of the Premises shall be deemed to have been served on the Lessee on the date on which it is affixed.

**Statutory provisions**

*Insert instrument type*

Lease

*Continue in additional Annexure Schedule, if required*

19.7 Any provisions contained in the Land Transfer Act 2017 or Property Law Act 2007 which are inconsistent with or contradictory to anything contained in this Lease, shall be, and are hereby, negated or modified to the extent of such inconsistency.

**Severability**

19.8 If any term covenant or condition of the Lease or the application thereof to any person or circumstance shall be or become invalid or unenforceable the remaining terms conditions and covenants shall not be affected thereby.

**Non-merger**

19.9 The covenants conditions agreements and obligations of the parties in the Lease shall not merge with or be extinguished by the grant of any further or other lease but shall remain in full force and effect and operative according to their tenure.

**Negative obligations**

19.10 Any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

**Residential Tenancies Act 1986**

19.11 The parties acknowledge the Residential Tenancies Act 1986 does not apply to this Lease by virtue of section 5(1)(x) of the act.

**Lessee not a trustee**

19.12 The Lessee warrants that the Lessee does not hold the interest as Lessee on trust for any person or pursuant to any other fiduciary duty.

**Lessor a trustee**

19.13 The parties acknowledge that the Lessor enters into this Lease in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust.

**Exclusion of implied terms**

19.14 Any implied covenant arising from the Property Law Act 2007 (regardless of when any such implied covenant is legislated) is expressly negated from this Lease.

**Lessor to procure the performance of Body Corporate obligations**

19.15 The Lessor acknowledges that:

*Insert instrument type*

Lease

*Continue in additional Annexure Schedule, if required*

- (a) various of the obligations of the Lessor in this Lease will be complied with by the Body Corporate; and
- (b) at the Commencement Date the Lessor is the sole member of the Body Corporate.

19.16 Notwithstanding the other provisions in this Lease, if, at any time during the term of this Lease, the membership of the Body Corporate is not as stated in clause 19.15(b) in respect of all of those matters which are stated to be the obligation of the Lessor and which are matters that are obligations of the Body Corporate pursuant to the Unit Titles Act 2010 or which would ordinarily, pursuant to good estate management, be undertaken by the Body Corporate, the obligation on the Lessor shall be deemed to be varied to be an obligation to use reasonable endeavours to procure compliance with the relevant obligation by the Body Corporate.

**Lessor to consult with Lender**

19.17 Prior to taking any steps to terminate this Lease, (in addition to complying with its obligations under the Property Law Act 2007), the Lessor shall consult with the Lender. This clause 19.17 is intended to be enforceable by the Lender for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

**20. GOODS AND SERVICES TAX**

**Definitions**

20.1 In this section:

"**Default GST**" means any interest or penalties imposed on the Lessor under the Tax Administration Act 1994 as a result of the non or late-payment of GST other than interest or penalties accruing after the date on which the Lessor receives payment for the GST and Default GST (owing as at the date of such payment);

"**GST**" means goods and services tax charged in accordance with the GST Act;

"**GST Act**" means the Goods and Services Tax Act 1985; and

"**Tax Invoice**" has the meaning given in the GST Act.

20.2 The Rental and any other payments due by the Lessee under this Lease are exclusive of GST.

**Lessee to pay GST**

20.3 If GST is payable by the Lessor on a supply under this Lease:



*Insert instrument type*

Lease

*Continue in additional Annexure Schedule, if required*

- (a) the Lessee will, on receipt of written evidence that GST is payable by the Lessor, pay to the Lessor an amount equal to that GST together with any associated Default GST;
- (b) the Lessor will issue a Tax Invoice to the Lessee; and
- (c) as between the Lessor and the Lessee, the Lessor is not obliged to pay any GST or Default GST or to take any other steps to minimize its liability in respect of such amounts until the corresponding payment is received in full from the Lessee pursuant to this clause 20.3.

**21. ARBITRATION****Disputes to be arbitrated**

- 21.1 Any difference or dispute which may arise between the parties concerning this Lease, or any thing to be done, allowed, or omitted under this Lease, or concerning the construction of this Lease, except as otherwise expressly and separately provided, this Lease shall be referred to the chair person from time to time of the Ngāti Whātua Ōrākei Trust for resolution. The chair person may in their own discretion either:
- (a) resolve to determine the dispute in which event the chair person shall advise the Lessor and the Lessee of the process the parties must follow for the dispute resolution; or
  - (b) refer the matter to arbitration.
- 21.2 If the chair person refers the matter to arbitration it shall be referred to the arbitration of a single arbitrator if the parties can agree on one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with, and subject to the provisions of the arbitration statutes for the time being in force in New Zealand.
- 21.3 Reference to Ngāti Whātua Ōrākei Trust and/or arbitration shall be a condition precedent to the commencement of any action at law.