

Put Option

PARTIES

Ngāti Whātua Ōrākei Housing Trustee Limited or nominee

Lessor

("X")

Lessee

CONTENTS

1. INTERPRETATION.....	1
2. DEFINED EXPRESSIONS	2
3. GRANT OF OPTION.....	3
4. EXERCISE OF OPTION	3
5. SETTLEMENT AND POSSESSION	4
6. CONSEQUENCES OF NON-EXERCISE.....	4
7. PURCHASE PRICE	4
8. ADDITIONAL OPTION	5
9. CAPACITY	6
10. ACCRUALS	6
11. GST	6
12. ASSIGNMENT AND NOMINATION	6
13. NOTICES.....	6

AGREEMENT dated

2023

PARTIES

Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust) or nominee
("Lessor")

(X)

("Lessee")

INTRODUCTION

- A. The Lessor and the Lessee are parties to the Agreement to Lease.
- B. The Lessee has signed the Agreement to Build.
- C. The Lessor wishes to grant the Lessee the right to require the Lessor to purchase the Home and the Lessee's interest in the Lease on the terms and conditions set out in this Agreement.

AGREEMENT

1. INTERPRETATION

- 1.1 In this agreement unless the context indicates otherwise:

"**Agreement**" means an agreement for sale and purchase in the then current form of the Auckland District Law Society and Real Estate Institute of New Zealand Agreement for Sale and Purchase of Real Estate (or any substitute which is widely used for the sale and purchase of residential real estate in Auckland) to be completed in accordance with the terms of this agreement and to include a clause equivalent to clause 10 of this agreement (amended as necessary);

"**Agreement to Build**" means the agreement to build the Home dated on or about the date of this agreement between Whai Rawa Kainga Development Limited and the Lessee;

"**Agreement to Lease**" means the agreement to lease dated on or about the date of this agreement between Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust) and the Lessee;

"**Assign**" means to sell, assign, transfer, alienate or otherwise dispose of;

"**Base Price**" means the total amount paid by the Lessee for the Home pursuant to the Agreement to Build;

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

"**GST**" means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

"**Home**" means the dwelling (and all ancillary buildings) and the carpark on the Premises from time to time;

"**Lease**" means the lease between Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as trustee of the Ngāti Whātua Ōrākei Housing Trust) as lessor and the Lessee, to be granted pursuant to the Agreement to Lease;

"**Option**" means the option to require the Lessor to purchase the Home and the Lessee's interest in the Lease granted pursuant to this agreement;

"**Option Date**" means 16 December 2031;

"**Option Fee**" means the sum of \$1.00 inclusive of GST;

"**Premises**" has the meaning set out in the Agreement to Lease;

"**Purchase Price**" means the sum calculated in accordance with clause 7 inclusive of GST;

"**Shared Ownership Agreement**" has the meaning set out in the Agreement to Lease;

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

"**Works**" has the meaning set out in the Agreement to Build.

2. DEFINED EXPRESSIONS

2.1 Expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement, including the background.

Headings

2.2 Section and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this agreement.

Joint and several obligations

2.3 Where two or more persons are bound by a provision in this agreement, that provision shall bind those persons jointly and each of them severally.

Negative obligations

2.4 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

Parties

2.5 References to parties are references to parties to this agreement and include each party's executors, administrators and successors.

Persons

2.6 References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other

regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality.

Plural and singular

- 2.7 Singular words include the plural and vice versa.

Sections and clauses

- 2.8 References to sections and clauses are references to sections and clauses of this agreement.

Statutes and regulations

- 2.9 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation, whether by subsequent statute or otherwise.

3. GRANT OF OPTION

- 3.1 In consideration of the Lessee paying the Option Fee to the Lessor (the receipt of which sum the Lessor acknowledges), the Lessor grants to the Lessee the option to require the Lessor to purchase the Home and the Lessee's interest in the Lease at the Purchase Price and subject to the terms and conditions contained in this agreement.
- 3.2 The Option may only be exercised contemporaneously in respect of both the Home and the Lessee's interest in the Lease.

4. EXERCISE OF OPTION

Notice

- 4.1 To exercise the Option, the Lessee must give a written notice to the Lessor of its intention to exercise the Option. Such notice may not be given before the Completion Date and must be given no later than 5.00pm on the Option Date. Once notice is given it cannot be withdrawn except with the written consent of the Lessor.

Parties bound

- 4.2 Subject to clause 4.3, on delivery of the notice of exercise of the Option, the Lessor and Lessee will become immediately bound as purchaser and vendor respectively under a contract for the sale of the Home and Lessee's interest in the Lease, on the terms of this agreement and the Agreement.
- 4.3 If at the settlement date the terms of the Agreement that relate to the mechanics of settlement have become redundant, the parties must attend to settlement in the manner that is then deemed best practice by the New Zealand Law Society and the Agreement shall be deemed to have been amended accordingly. In all other matters the Agreement shall remain in the form provided for in this agreement.

Execution of Agreement

- 4.4 The parties must sign a formal contract in the form of the Agreement as soon as practical after the exercise of the Option.

Exercise conditions

- 4.5 The exercise of this Option and settlement pursuant to the Agreement are conditional on:
- (a) the Completion Date having occurred and the Lessee having paid all amounts becoming due pursuant to the Agreement to Build;
 - (b) the Lease remaining on foot at the date of exercise of the Option; and
 - (c) (subject to clause 7.3) the Lessee having complied with its obligations in the Lease up to settlement pursuant to the Agreement.

5. SETTLEMENT AND POSSESSION

- 5.1 The date for settlement and the giving and taking of possession under the Agreement will be the date nominated by the Lessor following the exercise of the Option by the Lessee provided that such date shall not be more than 13 months after the date on which the Lessee exercises the Option.
- 5.2 The Lessor shall notify the Lessee of the date for settlement within 20 Working Days of the date on which the Lessee exercises the Option.
- 5.3 The Lessor acknowledges that, without limiting the discretion provided pursuant to clause 5.1, the Lessor's current intention is that the date for settlement shall be within 120 Working Days of the date on which the Lessee exercises the Option.
- 5.4 The Lessee must discharge any mortgage registered against the Lease contemporaneously with settlement.

6. CONSEQUENCES OF NON-EXERCISE

- 6.1 If the Lessee does not exercise the Option by the Option Date:
- (a) this agreement and the Option will be terminated;
 - (b) the Lessor may retain the Option Fee; and
 - (c) neither party will have any right or claim against the other pursuant to this agreement.

7. PURCHASE PRICE

- 7.1 The Purchase Price for the Home and the Lessee's interest in the Lease shall be equal to the Base Price.

7.2 To the extent that any improvements on the Premises were not erected pursuant to the Agreement to Build, the Lessor may require those improvements to be removed and the Home be reinstated prior to settlement to the state it was in at completion of the Works pursuant to the Agreement to Build (fair wear and tear excepted). In the event that:

- (a) the Lessor does require the removal of any such improvements, the Lessor shall so notify the Lessee within a reasonable period of service of the notice of exercise of the Option and settlement under the Agreement shall not occur prior to the date being five Working Days following completion of the works of removal and reinstatement required by this clause 7.2; and
- (b) the Lessor does not require the removal of any such improvements, those improvements shall vest in the Lessor free from any encumbrance and without the payment of any compensation, on settlement under the Agreement.

7.3 In the event that the Lessee purports to exercise the Option in circumstances where the Lessee is in breach of its obligations under the Lease such that the condition in clause 4.5(c) is not satisfied, the Lessor may (but shall not be obliged to) accept the exercise of the Option and the provisions of clauses 5 and 7 shall apply except that:

- (a) the Lessor may set off against any amounts due to the Lessee pursuant to clause 7.1 the amounts required to pay any amounts outstanding under the Lease; and
- (b) should the Home not be in the condition required by the Lease at the time of settlement under the Agreement, the Lessor may (acting reasonably) estimate the costs of undertaking any works necessary to remediate the Home to the condition required by the Lease, and deduct an amount equal to the estimated costs from the amounts which would otherwise have been payable to the Lessee on settlement. The Lessor may, by serving notice to that effect on the Lessee, elect to defer settlement to provide it with a reasonable opportunity to prepare the estimate. Following completion, by the Lessor, of any necessary works the Lessor shall undertake a wash-up of the costs of those works and to the extent that the actual costs incurred by the Lessor are less than the estimated costs, the Lessor shall within a reasonable time pay to the Lessee an amount equal to the difference.

8. ADDITIONAL OPTION

8.1 Without prejudice to clauses 4 to 7, in addition to the rights granted pursuant to clause 4, the Option may also be exercised at any time prior to Practical Completion occurring (time being of the essence) in the event that Practical Completion of the Works has not been achieved by the Sunset Date, in which event:

- (a) the date for settlement shall be ten (10) Working Days following the exercise of the Option by the Lessee;
- (b) the Purchase Price shall be an amount equal to the deposit (if any) paid pursuant to the Agreement to Build; and
- (c) the provisions of clauses 4.1 to 4.4 (inclusive) shall apply (amended as necessary). Clause 4.5 shall not apply.

8.2 For the purposes of clause 8.1, the terms "Practical Completion" and "Sunset Date" shall have the meaning set out in the Agreement to Build.

9. CAPACITY

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

10. ACCRUALS

10.1 The parties acknowledge that, for the purposes of section EW 32 of the Income Tax Act 2007 (New Zealand), the Purchase Price is the lowest price that the parties would have agreed on at the time this agreement was entered into if payment had been required in full at the time the first right in the Home and Premises was or is to be transferred. For the purposes of this clause, the term "right" has the same meaning as in section YA 1 of the Income Tax Act 2007.

11. GST

11.1 All amounts becoming payable under this agreement include GST (if any).

12. ASSIGNMENT AND NOMINATION

12.1 The rights conferred by this agreement are personal to the Lessee named in this agreement. The Lessee must not Assign this agreement or the Lessee's interest under this agreement. In the event that the Lessee otherwise assigns its interest in the Lease, this agreement shall immediately terminate.

12.2 The Lessor may Assign the Lessor's interest or nominate another party to assume the obligations of the Lessor under this agreement. Despite any such nomination, the Lessor remains liable at all times under this agreement and the Agreement.

13. NOTICES

13.1 Any notice or other document required to be given delivered or served under this Option must be in writing and must be delivered or transmitted as follows unless required by sections 352 to 361 of the Property Law Act 2007:

- (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
- (b) by personal delivery.

Receipt of notices

13.2 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.

Signature of notices

- 13.3 Any notice or document to be delivered or served under this agreement must be in writing and may be signed by:
- (a) any attorney, officer, employee or solicitor for the party serving or giving the notice; or
 - (b) the party serving the notice or any other person authorised by that party.

Counterparts

- 13.4 This agreement may be signed in any number of counterparts all of which, when taken together will constitute one and the same instrument. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by e-mail.

14. SHARED OWNERSHIP AGREEMENT

- 14.1 The parties acknowledge that, where the Lessee comprises a Member (or Members) (as defined in the Lease) 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 pursuant to a Shared Ownership Agreement, the exercise of the Option shall be at the sole discretion of the Member(s).
- 14.2 If the Member(s) wishes to exercise the Option, the Member(s) will provide notice to Ngāti Whātua Ōrākei Housing Trustee Limited (in its capacity as the other tenant in common) and Ngāti Whātua Ōrākei Housing Trustee Limited shall do all things reasonably required to enable the Option to be exercised and subsequently settled.

SIGNATURES

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

LESSEE

By:

Signature

Signature

Name

Name

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence