

## **1. AGREEMENT TO LEASE – LEGAL SUMMARY**

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

### **Term**

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

### **Conditions**

- 1.3 The Lessor's obligation to grant you a lease is conditional on:
- (a) an Agreement to Build being entered into between you and Whai Rawa Kainga;
  - (b) a Put Option being entered into between you and Ngāti Whātua Ōrākei Housing Trustee Limited;
  - (c) all of the Class of Lessees (meaning all Purchasers, including you) entering into an agreement to lease (together with the Agreement to Build and Put Option) on substantially the same terms as your Agreement to Lease and all of those agreements becoming unconditional; and
  - (d) the Lessor confirming that it has all of the resource consents it requires to build the Home and undertake the leasehold subdivision of the Land.
- 1.4 These conditions must be satisfied within 20 Working Days from the date of the Agreement to Lease. If they are not satisfied, or waived, by this date then either you or the Lessor can terminate the Agreement.

### **Licence**

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

### **Lease**

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

**Lessor's Works**

- 1.7 Certain infrastructure and landscaping works are being carried out on the Lessor's wider landholdings at the same time that your Home is being constructed. The Lessor retains the right to vary the final nature of these works provided that it does not adversely affect your ability to use your Premises.

**Default**

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

**Assignment**

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

**Disputes**

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

## **2. LEASE – LEGAL SUMMARY**

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

### **Rent**

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

### **Lease Term**

- 2.3 The Lease will commence upon registration of the Lease, the timing of which will be notified to you by the Lessor and will expire in 2173 (unless terminated earlier). The precise date of expiry will be confirmed following registration.
- 2.4 The Lease will be registered and will commence once this registration has occurred.

### **Lessee's Outgoings**

- 2.5 You will be required to pay:
- (a) your proportion of Council rates as they relate to the Precinct (the entire Hawaiki Site);
  - (b) all costs associated with the utilities and services that you consume (i.e. electricity, water, gas, and telephone). Some of these costs for utilities may be charged to you directly by the utility provider, and others where you are not separately metered will be on-charged by the Lessor;
  - (c) your proportion of the costs associated with the utilities and services used in relation to the common areas within the Precinct (i.e. electricity for lighting, water for maintaining the grounds);
  - (d) into the Maintenance Fund your proportion of the annual costs that the Lessor estimates will be incurred in maintaining the Improvements within the Precinct; and
  - (e) your proportion of the Lessor's costs of insuring the Improvements on the Common Property (i.e. that part of the Precinct available for all Home owners to use).
- 2.6 These costs (other than in relation to bullet point 4.5(b) above) will form part of the weekly payment you make.
- 2.7 Your proportion of costs will be equal to your ownership interest proportion.

### **Solar Panels**

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

### **Renovations**

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

### **Maintenance and Repair**

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

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

#### **Maintenance Fund**

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

#### **Insurance**

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

#### **Assignment**

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

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

#### **Sub-letting**

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

#### **Permitted Use**

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

### **Community Rules**

- 2.34 You must comply with the Community Rules in place from time to time. These Rules will be prepared by the Lessor (with input from you and the other Lessees) and govern things like parking, noise, garbage bins etc.
- 2.35 You are expected to make a positive contribution to the activities, well-being and welfare of the Ngāti Whātua Ōrākei community.

### **Redevelopment of the Land**

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

### **Default**

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

### **Disputes**

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