



**Kāinga Whenua
(Land Tenure and Security Interest)
Agreement**

DRAFT

Part 1: Agreement

Date:

Parties:

- (1) the person named in Part 5 to this Agreement as Landowner (**Landowner**)
- (2) the person named in Part 5 to this Agreement as Occupier (**Occupier**)
- (3) the person named in Part 5 to this Agreement as Debtor (**Debtor**)
- (4) Kāinga Ora - Homes and Communities (**Secured Party**)

Background

- A. The Kāinga Whenua Loan scheme is an initiative by Lender and Secured Party to assist Māori to achieve home ownership on multiple-owned Māori Land. The scheme provides access to finance that may otherwise be unavailable to build, buy or relocate, or to repair or maintain, a house on Māori Land.
- B. Through the scheme, Secured Party is granted security over the house (and not the house and the land as is usually the case with secured lending for home ownership). The scheme does not involve any security over the Māori Land that the house sits on and, if the security over the house is enforced, Secured Party may not sell the Māori Land (unlike with usual secured lending for home ownership).
- C. Landowner is the owner of the Land described in Part 6: Land, Site, House, Licence Term and Licence Initial Rent details.
- D. If Occupier does not already have a licence to occupy the Site:
 - a. Occupier has sought a right from Landowner to use the Land to enable Debtor to purchase a house, or construct a house (including relocating a house), on the Site for the personal residence of Occupier and Occupier's immediate whānau or to formalise the existing arrangements for Debtor's house already on the Site that needs to be repaired or maintained; and
 - b. Landowner has agreed to grant to Occupier a licence to occupy the Site on

- the terms set out in Part 3: Licence to Occupy (as those terms may be amended or supplemented in Part 9: Special Terms).
- E. Lender has agreed to make the Loan to Debtor to finance the purchase, construction, repair or maintenance of the House on the basis that Secured Party insures the Loan for the benefit of Lender.
 - F. Secured Party has agreed to insure the Loan for the benefit of Lender on the basis that:
 - a. specifically, Debtor grants the security interest in the Collateral on the terms set out in Part 4: Security Interest (as those terms may be amended or supplemented in Part 9: Special Terms); and
 - b. generally, Landowner, Occupier and Debtor enter into this Agreement with Secured Party.
 - G. In consideration for Secured Party's agreement to insure the Loan (so that Lender will make the Loan), Landowner, Occupier and Debtor have agreed to enter into this Agreement.

The Parties agree:

1. **Documents forming this Agreement:** The following documents form part of, and are to be read and construed together as, this Agreement:
 - a. Part 1: Agreement
 - b. Part 2: General Terms
 - c. Part 3: Licence to Occupy (where there is no pre-existing licence to occupy)
 - d. Part 4: Security Interest
 - e. Part 5: Parties and Contact details
 - f. Part 6: Land, Site, House, Licence Term and Licence Initial Rent details
 - g. Part 7: Debtor details (for PPSA registration)
 - h. Part 8: Form of Notice of Intention
 - i. Part 9: Special Terms
2. **Inconsistency or ambiguity:**
 - a. If there is any inconsistency or ambiguity in the documents forming this Agreement, precedence in resolving that inconsistency or ambiguity is to be given to those documents in the following order:

- i. Part 9: Special Terms
- ii. Part 1: Agreement
- iii. Part 2: General Terms
- iv. Part 5: Parties and Contact details
- v. Part 6: Land, Site, House, Licence Term and Licence Initial Rent details
- vi. Part 4: Security Interest
- vii. Part 3: Licence to Occupy (where there is no pre-existing licence to occupy)
- viii. Part 8: Form of Notice of Intention

- ix. Part 7: Debtor details (for PPSA registration)
- b. If there is any inconsistency or ambiguity between this Agreement and any pre-existing licence to occupy, precedence in resolving that inconsistency or ambiguity is to be given to this Agreement.

3. **Performance:** The parties will perform their obligations, and exercise their rights, in accordance with, and as set out in, this Agreement.

SIGNED as an agreement.

SIGNED by
Landowner:

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

SIGNED by
Occupier:

_____	_____
Name	Signature
_____	_____
Name	Signature

SIGNED by Debtor:

_____	_____
Name	Signature
_____	_____
Name	Signature

SIGNED for and on behalf of
KĀINGA ORA – HOMES AND COMMUNITIES
as **Secured Party** by:

DRAFT

Part 2: General Terms

1. Interpretation:

1.1 **Words with a specific meaning:** In this Agreement, unless the context requires another interpretation, the following words and expressions have the following meanings:

Acceptable Occupier means any person that Landowner is authorised by its constitutional documents (including an order establishing a trust), and is prepared, to grant a licence to occupy the Site (including a Landowner Shareholder/Beneficiary)

Agreement means this Agreement between Landowner, Occupier, Debtor and Secured Party
at risk has the meaning in CCCF Act section 83E(2) (which, as at the date of this Agreement, is that Secured Party believes, on reasonable grounds, that any part of the Collateral has been, or will be, destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of this Agreement)

CCCF Act means the Credit Contracts and Consumer Finance Act 2003

Collateral means:

- a. the House (including all tangible personal property affixed to the House in such a manner that it becomes part of the structure of the House) whether located on the Site or while being constructed off-site;
- b. all of Debtor's rights in the Land Tenure;
- c. all of Debtor's rights to be paid the House Insurance Proceeds; and
- d. all the House Insurance Proceeds, and the proceeds of all these assets

CPI means the consumer price index, all groups published by Statistics New Zealand

Enforcement Event means:

- a. Debtor defaults under, or is in breach of, the Loan Agreement or the Land Tenure;
- b. Lender requires Debtor to repay the Loan early;
- c. any breach of any guarantee given of Debtor's obligations under the Loan Agreement, the Land Tenure or this Agreement;
- d. the Land Tenure is terminated (including by expiry of the Licence Term) or cancelled;
- e. Debtor fails to pay Secured Money when due;
- f. Debtor breaches a Secured Obligation;

- g. Debtor becomes bankrupt;
- h. Debtor gave Lender or Secured Party incorrect or misleading information in connection with the Loan Agreement or this Agreement; or
- i. the Collateral is *at risk*

House means the dwelling for personal residence on, or to be constructed on, or following construction off-site, located on, the Site more particularly described in Part 6 owned by Debtor and that may be in need of repair or maintenance
House Insurance means the insurance of the House against damage or destruction risks (including, if the House is subject to construction, repair or maintenance, builders' risk insurance)

House Insurance Proceeds means the proceeds of the House Insurance payable, or paid, to Debtor by the insurer under the House Insurance

Land means the Māori Land described in Part 6 owned by Landowner

Landowner Shareholder/Beneficiary means, if Landowner is:

- a. a Māori incorporation established pursuant to Te Ture Whenua Māori Act 1993 (or its predecessor legislation), a shareholder of that incorporation; and
- b. a trust constituted pursuant to Te Ture Whenua Māori Act 1993 (or its predecessor legislation), a beneficiary of that trust

Land Tenure means the Licence

Lender means Kiwibank Limited

Licence means the licence to occupy the Site, granted to Occupier, by Landowner:

- a. as set out in Part 3 (as those terms may be amended or supplemented in Part 9: Special Terms); or
- b. if not set out in Part 3, a pre-existing licence to occupy approved in writing by Secured Party (that may be attached to this Agreement as Attachment 1)

Licence Commencement Date means the date the Licence is, as the case may be, noted, or confirmed, by the Māori Land Court

Licence Initial Rent means the amount set out in Part 6

Licence Rent means the Licence Initial Rent as it is progressively varied pursuant to the Licence

Licence Term means the period set out in Part 6

Loan means the loan of money made by Lender to Debtor to purchase, construct, repair or maintain the House

Loan Agreement means the loan agreement between Debtor and Lender in respect of the Loan

Māori Land means Māori customary land and Māori freehold land as those terms are defined in Te Ture Whenua Māori Act 1993

Market Valuation in situ Basis means the value of improvements in their existing position within a defined area of location (not including the land) completed on the basis of:

- a. the depreciated replacement cost approach (being the value of the improvements based on their estimated replacement cost less an allowance for depreciation and obsolescence (where necessary) due to age and condition); and
- b. the sales comparison approach (being the principle of substitution whereby the price of a property established by a given market is limited by the prices commonly paid for properties that compete with it for market share)

Notice of Intention means a notice to Landowner from Secured Party setting out its intention to sell the House in the form set out in Part 8

Offer means an offer to sell the House as specified in a Notice of Intention 1.2

PPSA means the Personal Property Securities Act 1999

Principal Sum means the principal amount of money advanced to Debtor under the Loan Agreement, which may comprise one loan or more than one loan, together with any further advances of money, provision of credit or giving of value

Principles means:

- a. maximising the value of the House so that, after crediting the sale proceeds toward the Secured Money, either:
 - i. if there is a shortfall in the sale proceeds, the residual debt owed by Debtor to Secured Party is reduced; or
 - ii. if there is a surplus of sale proceeds, Debtor has a return on its investment in the House; and
- b. to the extent reasonably possible, retaining the House on the Site for use by an Acceptable Occupier

Rent Payment Date means the first day of each calendar month during the Licence Term

Secured Money means all moneys secured to Secured Party by this Agreement, and includes:

- a. the Principal Sum together with all interest, charges and other amounts payable under the Loan Agreement upon the amounts being assigned to Secured Party by Lender; and
- b. all interest, charges and other amounts payable by Debtor to Secured Party under this Agreement

Secured Obligations means all present and future obligations of whatever nature, which Debtor (whether alone or with any other person and in any capacity and for any reason) has or owes to Secured Party (whether alone or with any other person and in any capacity and for any reason) under this Agreement and, upon assignment, under the Loan Agreement, other than obligations to pay any Secured Money

Security Interest means the security interest in the Collateral (and associated rights and obligations) as set out in Part 4 (as those terms may be amended or supplemented in Part 9: Special Terms)

Site means that part of the Land identified as the site on which the House is situated, or is to be constructed, described in Part 6.

Construction:

- a. *Headings* and the *table of contents* are for convenience only, and do not affect interpretation.
- b. The *singular* includes the *plural* and the converse.
- c. A *gender* includes all genders.
- d. A *part* or *any* includes the whole or all, and the converse.
- e. A reference to a *clause* is to a clause of this Agreement.
- f. A reference to a *party* to, or *beneficiary* under, this Agreement or any other document includes that party's successors, executors, administrators and permitted substitutes and assigns (as applicable).
- g. A reference to a *person* includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any governmental authority, in each case whether or not having separate legal personality.
- h. A reference to a *document* is to the document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Agreement.

- i. A reference to *legislation* or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a regulation, rule, order or instrument made under or issued pursuant to it.
- j. Anything which may be done *at any time* may also be done *from time to time*.
- k. *Time is of the essence* in relation to Debtor's and Occupier's obligations.
- l. A *contingent liability* includes a liability for which a person may become actually or contingently liable if a contingency occurs, whether or not that liability will actually arise.
- m. The term *includes* or *including* (or any similar expression) is deemed to be followed by the words *without limitation*.
- 1.3 **Debtor and Occupier:** Each reference to **Debtor** is also a reference to **Occupier** (where relevant) and each obligation of **Debtor** is also an obligation of **Occupier** (where relevant).
- 1.4 **Joint and several:** All obligations in this Agreement that are agreed to be performed by more than one person are joint and several and, unless the context requires otherwise, an obligation on one party is to be construed as an obligation for the benefit of the other parties.
- 2 House:**
- 2.1 **Consent:** If the House is to be constructed, before constructing the House, Debtor shall obtain Landowner's and Lender's written consent to the plans and specifications for the House.
- 2.2 **Debtor's responsibility for House suitability:** Debtor alone is responsible for ensuring that the House is suitable for Debtor's needs in every respect. Neither Secured Party's agreement to insure the Loan, nor Landowner's and Lender's consent to the plans and specifications for the House, is a warranty by Secured Party, Landowner or Lender that any plans and specifications for the House, or the House itself, are sound, or that no other consents are required, or that the House is of any particular quality or that it is suitable for Debtor's intended purpose.
- 2.3 **Debtor's responsibility for House consents and construction:** Debtor alone is responsible for:
- obtaining all local authority consents for the House;
 - if the House is to be constructed, repaired or maintained, ensuring that the House is constructed, repaired or maintained in strict compliance with any building consent issued for that work; and
 - upon completion of construction, repair or maintenance (if any) of the House, obtaining a code compliance certificate (if required) from the local authority having jurisdiction over the Land.
- 2.4 **No changes:** After any plans and specifications for the House have been approved by Landowner and Lender, no changes may be made to those plans and specifications without Landowner's and Lender's written consent.
- 2.5 **Maintenance:** Debtor will maintain the House in good order, repair and condition.
- 2.6 **House insurance:** Debtor will, at all times, insure the House for an amount not less than the Principal Sum in the names of Debtor and Secured Party for their respective rights and interests, and will, if Secured Party requests, provide to Secured Party evidence of currency of that insurance.
- 2.7 **Personal residence:** Debtor may only use the House as a personal residence for Debtor (and Debtor's immediate whānau).
- 2.8 **No transfer of possession of House:** Debtor may not part with possession of the House, or grant any lease or licence in respect of the House to any person, without obtaining Landowner's and Secured Party's written consent.
- 2.9 **Section 18(1) Order:** Upon execution of this Agreement, Occupier shall, at Occupier's sole expense, apply to the Māori Land Court pursuant to section 18(1) of Te Ture Whenua Māori Act 1993 for an order determining that the House is the sole and exclusive property of Debtor. (However, for the avoidance of doubt, regardless of whether Occupier does, or does not, obtain such an order, that does not change the status, ownership or Security Interest in respect of the House as between the parties as set out in this Agreement.)
- 3 Secured Party's role in Kāinga Whenua loans:** Debtor acknowledges that:
- Secured Party insures the Loan to protect Lender should Debtor default under, or breach, the Loan Agreement;
 - Secured Party is not providing Debtor with insurance in respect of its liabilities under the Loan or the Land Tenure or in respect of the House;
 - for the purposes of the CCCF Act, Lender disclosed the Security Interest constituted by

this Agreement to Debtor with its disclosure about the Loan; and

- d. upon a default under, or breach of, the Loan Agreement and an insurance claim made by Lender on Secured Party under the insurance of the Loan, Lender will assign and transfer to Secured Party all Lender's rights against Debtor in respect of the Loan and the Loan Agreement such that Debtor will then owe the Principal Sum, and any other Secured Money owed to Lender, and the Secured Obligations under the Loan Agreement, to Secured Party.

4 Landowner's warranties: Landowner warrants to the other parties that:

- a. it has full authority in terms of its ownership of the Land to enter into this Agreement;
- b. it knows of no adverse interest, including legal and equitable interests, to the interests of Occupier, Debtor or Secured Party in this Agreement;
- c. it has not granted any mortgage or other security interest over the Land nor entered into any agreement to sell the Land; and
- d. it does not have any interest in the House.

5 Communications:

5.1 **Contact details:** The parties are to communicate with each other using the details sent out in Part 5 (or such other details as may be given to each of the parties from time to time) or as provided in the Property Law Act 2007, the CCCF Act or other applicable legislation.

5.2 **Update contact details:** If a party's contact details change, they must promptly give written notice of that change to the other parties.

6 Transfer:

6.1 **Secured Party:** Secured Party may transfer (giving such notice to the other parties as is mandatory under applicable legislation) any of its rights and obligations in this Agreement (and any related document) to another person without the consent of the other parties (where that transfer is not to the detriment of the other parties). (As part of that transfer process, Secured Party may disclose to the proposed transferee information about the other parties in respect of this Agreement (and any related document).)

6.2 **Other parties:** Landowner, Occupier and Debtor may only transfer their rights and obligations under

this Agreement with the prior written consent of all the other parties.

7 Trustee liability: If any Landowner is acting as a trustee, then that trustee is only personally liable for their fraud or wilful breach of the constitutional documents (including an order establishing the trust) or this Agreement, and otherwise their collective liability under, or in relation to, this Agreement is limited to the trust's net assets.

8 Expenses:

8.1 **Initial expenses:** Unless otherwise agreed in writing, Debtor is responsible for paying for all actions taken and all reasonable expenses incurred by Landowner, Occupier and Debtor in entering into this Agreement.

8.2 **Secured Party expenses:** Debtor is responsible for paying, on demand and on a full indemnity basis, for all actions taken, and all expenses (including all legal expenses on a solicitor and own client basis) incurred, by Secured Party under this Agreement. If Debtor does not pay such expenses, Secured Party may add them to the Secured Money and interest will accrue on such amounts at the same rate and in the same way as provided in the Loan Agreement.

9 General:

9.1 **Waiver:** No failure or delay by a party to exercise any right or remedy under this Agreement or by law will constitute a waiver of that, or any other, right or remedy, nor will it restrict the further exercise of that, or any other, right or remedy. No single or partial exercise of a right or a remedy will prevent or restrict the further exercise of that, or any, other right or remedy.

9.2 **Amendment:** No amendment to this Agreement is effective unless it is in writing and signed by all parties.

9.3 **Severability:** If any term of this Agreement is declared invalid, unenforceable or illegal, all other terms of this Agreement will remain in full force apart from that term which will be deemed to be deleted.

9.4 **Rights and remedies cumulative:** The rights and remedies arising under this Agreement are cumulative and not exclusive (except as expressly provided in this Agreement) of any rights and remedies provided by law.

9.5 **Legal advice:** The parties acknowledge that they have obtained, or otherwise waived their right to,

independent legal advice before entering into this Agreement and that they understand the respective rights and obligations this Agreement creates.

9.6 **Counterparts:** This Agreement may be signed by each party in separate counterpart copies. When each signatory has signed at least one counterpart copy of this Agreement, the separately signed counterpart copies (whether originals, facsimiles or other electronic copies of this Agreement) will, once brought together, form a binding and enforceable agreement between the parties.

9.7 **Entire agreement:** This Agreement and any document expressly incorporated into this Agreement:

- a. contains all terms of the arrangements between the parties about the respective subject matters of this Agreement; and
- b. supersedes and extinguishes all prior discussions and arrangements between the parties about the respective subject matters of this Agreement.

9.8 **Governing law and jurisdiction:** This Agreement will be governed by, and construed in accordance with, New Zealand law. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any dispute or proceeding arising out of, or in any way connected with, this Agreement.

Part 3: Licence to Occupy

1. **Licence:** Landowner grants to Occupier a licence to occupy the Site and grants full exclusive occupation and possession of the Site from the Licence Commencement Date for the purposes of a personal residence for Occupier (and their immediate whānau).
 2. **Nature of Licence:**
 - 2.1 **Exclusive use and possession:** The Licence gives Occupier full exclusive use and possession of the Site but not to the exclusion of Landowner or Landowner's authorised agents who may, at all reasonable times and upon giving reasonable notice, enter upon the Site (including when Occupier is not present), for the purposes of ensuring the terms of the Licence are being fulfilled by Occupier and for any other purposes associated with the administration of the Land.
 - 2.2 **No interest in Land:** The Licence does not give Occupier any interest in the Land within the Site. Legal right to possession and control of the Site remains with Landowner. Occupier has no caveatable interest in the Land.
 - 2.3 **Personal property:** Any House on the Site is, and remains, personal property owned by Debtor (subject to the Security Interest) and is not, and will not become, notwithstanding any physical connection to the Land, a fixture attached to, or part and parcel of, the Site and the Land.
 3. **Term:**
 - 3.1 **Period:** Unless terminated earlier in accordance with clause 11, the term of the Licence is the Licence Term or until the death of each Occupier, whichever event is sooner.
 - 3.2 **Death of Occupier:** Upon the death of all Occupiers, the Licence will be deemed to be at an end, subject to the rights of an Occupier's spouse, civil union partner or de facto partner under Part 4 of Te Ture Whenua Māori Act 1993. If a Debtor (who is not also an Occupier) is still living, they may remain on the Site on terms agreed, at the sole discretion of Landowner, until such time as Landowner requires them to leave in accordance with the Licence.
 - 3.3 **Successor to Occupier:** Subject to the rights of an Occupier's spouse, civil union partner or de facto partner under Part 4 of Te Ture Whenua Māori Act 1993, upon the death of Occupier, the successor to Occupier's interest in the House can
 - 3.4 **Landowner discretion:** Landowner will then have the opportunity to consider the application and at its complete discretion make a decision on whether or not to grant the application, subject to the rights of an Occupier's spouse, civil union partner or de facto partner under Part 4 of Te Ture Whenua Māori Act 1993.
- 4 Rent:**
- 4.1 **Licence Rent payment:** Occupier shall pay the Licence Rent to Landowner for the Site, payable in advance in equal monthly instalments on each Rent Payment Date to Landowner's address set out in Part 5 or by such other means as Landowner may reasonably notify to Occupier in writing.
 - 4.2 **Licence Initial Rent:** For the first 12 months of the Licence Term, the Licence Rent is the Licence Initial Rent.
 - 4.3 **Licence Rent increase:** If, before each anniversary of the Licence Commencement Date, Landowner gives written notice to Occupier, the Licence Rent will increase on the anniversary of the Licence Commencement Date in accordance with the change in CPI. The CPI increase in the Licence Rent is calculated in accordance with the following formula:
Increased Licence Rent = PLR x (CPI 1/CPI 2)
- Where:
- PLR** means the Licence Rent applying immediately before the relevant anniversary of the Licence Commencement Date
- CPI 1** means the CPI for the 12 month period immediately before the relevant anniversary of the Licence Commencement Date

CPI 2 means the CPI for the 12 month period one year before the period to which CPI 1 relates.

5 Rates:

5.1 **Share of rates:** If the Site is:

- a. separately rated, Occupier shall pay all rates levied in respect of the Site; and
- b. not separately rated, Occupier shall pay a fair share of the rates levied in respect of the Land.

5.2 **Rates rebate:** Any rates rebates shall benefit the party that pays the rates.

6 Māori Land Court:

6.1 **Application to Māori Land Court:** Occupier will, as soon as possible after execution of this Agreement, at Occupier's sole expense, apply to the Māori Land Court having jurisdiction for, as the case may be, noting or confirmation of the Licence.

6.2 **Māori Land Court conditions:** If the Māori Land Court declines to note or confirm the Licence or will only note or confirm the Licence subject to conditions, Landowner and Occupier shall use their best endeavours to, (subject to Secured Party's prior written consent) agree to amendments to the Licence which meet the requirements of the Māori Land Court, whereupon Occupier shall reapply for such noting or confirmation.

7 **Restrictions on Use:** Occupier shall:

- a. only use the Site for a residential dwelling and associated activities for Occupier or members of Occupier's immediate whānau;
- b. not permit the Site to be used for training or any commercial purpose including renting out any dwelling;
- c. at all times keep the Site and any dwelling house or buildings on the Site in a well maintained and tidy condition;
- d. not have parked on the Site any caravan without the prior written consent of Landowner;
- e. not have more than 10 people living on the Site without the prior written consent of Landowner;
- f. not make any structural alterations or additions to any buildings on the Site without the prior written consent of Landowner;

- g. not keep animals on the Site without the prior written consent of Landowner;
- h. not make or permit noise or behaviour on the Site that would interfere with the peaceful enjoyment of the other occupiers of the Land;
- i. not fence off the Site from the surrounding land without the prior written consent of Landowner, such consent not to be unreasonably withheld;
- j. not take, or permit, any action or omission that may adversely affect the House (including any tangible property affixed to the House), the Site or the Licence; and
- k. not obstruct the Land or access to the Land.

8 Access and infrastructure:

8.1 **Access:** Landowner and Occupier shall agree in writing the means of access to the Site and Occupier shall pay all expenses associated with constructing such access and maintaining and repairing that access.

8.2 **Infrastructure:** Occupier shall be responsible for all infrastructure required for the Site from the Land boundary in accordance with the building and resource consents approved by Landowner.

9 Security interest:

Occupier may not (other than as granted in favour of Secured Party pursuant to this Agreement) grant, or create, any security interest over the Licence, the Site or the House or assign or remove or sell the House or the Licence without the prior written consent of Landowner.

10 **Renewal:** If Occupier or its successor remains alive at the end of the Licence Term, Landowner and Occupier may at their option agree to a renewal of the Licence for such term and upon such conditions as they may agree.

11 Termination:

11.1 **By agreement:** Occupier may terminate the Licence by agreement with Landowner and Secured Party.

11.2 **Serious breach:** Subject to complying with Part 4 clause 10, Landowner may terminate the Licence without Occupier's agreement if one of the following events occurs and is not remedied within a reasonable period of time:

- a. Occupier removes or attempts to remove the House without the prior written consent of Landowner and Secured Party;
- b. Occupier ceases to occupy the House;
- c. Occupier has not commenced and completed construction of the House on the Site within one year of the Licence Commencement Date.

12 Purchase of House:

12.1 **Landowner/Acceptable Occupier offer:** Upon termination of the Licence either by expiry of the Licence Term or pursuant to clause 11, subject to the Security Interest, the following provisions shall apply:

- a. Landowner and/or any Acceptable Occupier may (acting consistently with the Principles) within six months before the date of termination of the Licence (or as otherwise agreed) give notice in writing to Occupier or the Occupier's executors, administrators or personal representatives stating that, as the case may be, Landowner or Acceptable Occupier offers to purchase the House on the Site and specifying the purchase price they are prepared to pay for the House and any other terms of purchase;
- b. the purchase price offered pursuant to paragraph a. may not be less than the amount of the valuation of the House as independently valued by a registered valuer, with the valuation to be completed on a Market Valuation in situ Basis;
- c. if an offer to purchase the House pursuant to paragraph a. is accepted, the purchaser shall then pay the purchase price to Occupier or the Occupier's executors, administrators or personal representatives (and any other Debtor) within two months from the date of that acceptance (less any moneys owing to Landowner and any moneys (which may be more than the purchase price offered and accepted for the House) that are required to be paid to discharge the Security Interest (which amount the purchaser will pay to Secured Party)). Upon such payments being made, the House shall immediately become the property of the purchaser unencumbered by the Security Interest.

12.2 If no offer is made to purchase the House pursuant to paragraph a. before the date of

termination of the Licence, or an offer is made but is not accepted within one month from the date of the offer, Occupier shall within the following four months, subject to the Security Interest, remove the House from the Site. Occupier shall, at Occupier's own expense, make good all damage to the Land caused by the removal of the House.

- 12.3 If the House is not removed by Occupier within the period specified in clause 12.2, then Landowner may, subject to the Security Interest, thereafter either:
- a. acquire ownership of the House by providing written notification to Occupier; or
 - b. remove and dispose of the House, in which case Occupier will at Landowner's discretion be liable to reimburse Landowner for the expense involved in doing so.

13. Dispute Resolution:

- 13.1 **Expenses:** All expenses relating to dispute resolution are to be borne equally between the parties.
- 13.2 **Negotiation and mediation:** If any dispute arises out of the Licence, Landowner and Occupier will endeavour to resolve that dispute by negotiation. If the dispute is not resolved within 14 days, then the matter will proceed to mediation in accordance with Part 3A of Te Ture Whenua Māori Act 1993.
- 13.3 **Arbitration:** If the dispute is not resolved by mediation within two months or such longer time as Landowner and Occupier may agree, then Landowner or Occupier may refer the dispute to arbitration before a sole arbitrator. For the purposes of article 11(2) of the First Schedule of the Arbitration Act 1996, if Landowner and Occupier are unable to agree upon an arbitrator, then either Landowner or Occupier may request the Registrar of the Māori Land Court at which this Agreement is noted or confirmed to make that appointment. Article 1 of the Second Schedule of the Arbitration Act is excluded.
- 13.4 **Final and binding:** Landowner and Occupier agree that the award of the arbitrator will be final and binding.

Part 4: Security Interest

1. **House is personal property:** As between all parties to this Agreement, and for all purposes, and at all times (including before, and after, any severance of the House from the Land):
 - a. the House is, and remains, personal property and is not, and will not become, notwithstanding any physical connection to the Land, a fixture attached to, or part and parcel of, the Site and the Land; and
 - b. if an Enforcement Event occurs, Secured Party, in the exercise of its enforcement rights under this Agreement, may sever, and remove, the House from the Land.

2. **Security interest:** Debtor grants to Secured Party a security interest (including a mortgage of the House) in all of the Collateral to secure:
 - a. the payment of all the Secured Money; and
 - b. the performance of, and compliance with, all the Secured Obligations.

3. **Debtor's warranties:** Debtor warrants to Secured Party that:
 - a. Debtor has good title to, and sufficient rights in, the Collateral to grant the Security Interest over the Collateral to Secured Party; and
 - b. the Collateral is free and clear from any other security interest other than those that have been disclosed in writing to, and agreed in writing by, Secured Party prior to the date of this Agreement.

4. **Debtor's general obligations:**
 - 4.1 **Performance:** Debtor will duly perform its obligations under:
 - a. this Agreement;
 - b. the Loan Agreement; and
 - c. any Land Tenure that is not a part of this Agreement.
 - 4.2 **No other security interest:** Debtor will not:
 - a. grant, create, or allow to exist any security interest (other than the Security Interest) over the Collateral;
 - b. sell the House; or
 - c. transfer the Land Tenure, without Secured Party's prior written consent.
 - 4.3 **Further assurances:** Debtor will, at Debtor's cost, do and exercise all such acts, deeds, matters, things required to give Secured Party a valid perfected security interest over the Collateral as Secured Party may from time to time reasonably require.
 - 4.4 **No prejudice:** Debtor will not do, or allow, any act which might prejudice the Collateral or the Security Interest.
 - 4.5 **Not amend Land Tenure:** Debtor may not amend the Land Tenure without Secured Party's prior written consent.
 - 4.6 **Amounts due on House and Site:** Debtor will duly pay all amounts (including rates) from time to time coming due in respect of the Site or the House directly or pursuant to the Land Tenure. If Debtor does not make due payment of any such amounts, Secured Party may pay any such amount which is unpaid after its due date, and Debtor shall, on demand, pay such amount to Secured Party, and if not so paid, Secured Party will add such amount to the Secured Money and interest will accrue on such amounts at the same rate and in the same way as provided in the Loan Agreement.
 - 4.7 **Not remove or alter House:** Debtor may not:
 - a. remove, or allow the removal of, the House from the Site; or
 - b. alter the House from that consented to at the time of the Loan Agreement (or as subsequently approved by Landowner and Lender) (including changing the House's degree of physical attachment to the Land), without Secured Party's prior written consent.
 - 4.8 **House confiscated, taken or damaged:** If the House is confiscated, taken or damaged, Debtor will immediately give written notice to Secured Party.
 - 4.9 **House owned by joint tenants:** If there is more than one Debtor, the Debtors will, during the term of this Agreement, own the House as joint tenants and not as tenants in common and they may take no steps that are inconsistent with them owning the House as joint tenants.
 - 4.10 **House Insurance Proceeds:** Debtor will ensure that, at the option of Secured Party, any House Insurance Proceeds are applied in or towards:
 - a. replacement or reinstatement of the House; or
 - b. satisfaction of the Secured Money.

5. **PPSA:**
 - 5.1 **Security Interest.** The Security Interest is a security interest within the meaning of PPSA section 17, in respect of which Secured Party is

entitled to register a financing statement pursuant to PPSA section 141.

- 5.2 **Financing statement:** Debtor will provide Secured Party with all information necessary (including in Part 7) for Secured Party to register a financing statement in accordance with the PPSA in respect of the Security Interest.
- 5.3 **No verification statement:** For the purpose of PPSA section 148, Debtor waives their right for Secured Party to provide Debtor with a copy of any verification statement issued in respect of registration of the Security Interest.
- 5.4 **Change of name:** Debtor will not change its name during the continuance of the Security Interest without first giving to Secured Party seven days' written notice of the intention to do so.
- 5.5 **Discharge:** Upon payment in full of the Secured Money, and the discharge of Secured Obligations, Secured Party will register a discharge of registration under the PPSA and, at the request of Debtor, execute a deed of release.
- 6. Secured Party access to Land, Site and House:**
- 6.1 **Entry:** Landowner and Debtor each authorise Secured Party (and its employees and agents) to, at all reasonable times (including when Debtor is not present), enter on to the Land and the Site from time to time for the purposes of inspecting the House and to exercise its rights under this Agreement.
- 6.2 **Notice:** Except in an emergency and/or where the House is at risk, Secured Party will give reasonable notice to Landowner and Debtor before exercising its right of entry to the Land, the Site and the House.
- 7. Enforcement Event:**
- 7.1 **Enforcement:** If an Enforcement Event occurs, Secured Party may (subject to complying with its obligations under any applicable legislation) but is not required to:
- a. take any action that may remedy the Enforcement Event; and
 - b. exercise its enforcement rights under this Agreement.
- If there is a conflict between the provisions of the Security Interest and that applicable legislation, the provisions of that legislation (to the extent that they are mandatory) take precedence.
- 7.2 **Disclosure to Landowner:**

- a. Secured Party will (and Debtor authorises Secured Party to) disclose to Landowner that an Enforcement Event has occurred, or seems reasonably likely to occur, and the details of any Enforcement Event or reasonably likely to occur Enforcement Event.
- b. If Secured Party does not comply with paragraph a., Secured Party is not liable to any party and that does not affect Secured Party's exercise of its enforcement rights under this Agreement.

7.3 Disclosure to Secured Party:

- a. Landowner will (and Debtor authorises Landowner to) disclose to Secured Party that an Enforcement Event has occurred, or seems reasonably likely to occur, and the details of any Enforcement Event or reasonably likely to occur Enforcement Event.
- b. If Landowner does not comply with paragraph a., Landowner is not liable to any party.

7.4 Copies of notices:

- a. If, following an Enforcement Event, Secured Party sends notices to Debtor, Secured Party shall also (and Debtor authorises Secured Party to) send copies of those notices to Landowner for its information.
- b. If Secured Party does not comply with paragraph a., Secured Party is not liable to any party and that does not affect Secured Party's exercise of its enforcement rights under this Agreement.

7.5 Enforcement rights: If the Enforcement Event is not remedied within any period provided for such remedy, Secured Party may exercise any one or more of the following enforcement rights:

- a. demand payment of the Secured Money;
- b. require Debtor, or any other person in possession of the House, to deliver up possession (real or apparent) of the House to Secured Party (such that Debtor or any other person in possession of the House may no longer occupy the House);
- c. take possession (real or apparent (including preventing Debtor or any other person from occupying the House by changing the locks on, or putting in place new locks to, the House)) of the House and sever and remove the House from the Site;

- d. with or without taking possession of the House, sell (on such terms as Secured Party thinks fit (including on the Site) the House, whether by auction or public tender or private contract (subject to clause 8) to any person;
- e. realise the value of the Collateral; and
- f. exercise such other rights as Secured Party may have under the PPSA, the CCCF Act, the Property Law Act 2007 and/or by other applicable legislation.
- 7.6 **Shortfall:** Secured Party is not responsible to Debtor for any shortfall to Debtor that may result from Secured Party's exercise of its enforcement rights under this Agreement.
- 7.7 **Expenses added to Secured Money:** Secured Party may (to the extent that they are actually incurred by Secured Party) add the following expenses incurred in connection with this Agreement to the Secured Money (and interest will accrue on such amounts at the same rate and in the same way as provided in the Loan Agreement):
- a. arrears of instalments (including interest and other charges) owing under the Loan Agreement;
 - b. repossession costs;
 - c. costs of holding, storage, repairs, and maintenance;
 - d. costs of valuing and preparing Collateral for sale and conducting that sale;
 - e. costs of re-delivery;
 - f. the costs of remedying any Debtor action that constitutes an Enforcement Event; and
 - g. any legal or other costs incurred as between solicitor and client (on a solicitor and own client basis).
- 7.8 **Third party liability:** If Secured Party incurs any liability to any third party in the exercise of Secured Party's enforcement rights under this Agreement, Debtor indemnifies Secured Party against that liability upon demand by Secured Party (and, if not paid on demand, Secured Party may add the amount of that liability to the Secured Money and interest will accrue on such amounts at the same rate and in the same way as provided in the Loan Agreement).
8. **Right of first refusal:**
- 8.1 **Principles:** Each of the parties acknowledges that, in exercising their rights and performing their obligations under this clause 8, they are to act consistently with the Principles.
- 8.2 **Process:** If Secured Party is entitled to exercise its enforcement rights under this Agreement to sell the House:
- a. Secured Party will offer to sell the House to Landowner and any Acceptable Occupier in accordance with clause 8.3; and
 - b. if that offer is not accepted within the timeframe specified in clause 8.3, Secured Party has the option of exercising any other enforcement right under this Agreement, including the right to enter the Land to re-possess (and sever and remove from the Site) the House.
- 8.3 **Offer to sell:** If Secured Party is required to offer to sell the House pursuant to clause 8.2a:
- a. first, Secured Party will have the House independently valued by a registered valuer, with the valuation to be completed on a Market Valuation in situ Basis;
 - b. second, Secured Party will send to Landowner a Notice of Intention, specifying:
 - i. the minimum price at which Secured Party is prepared to sell the House (which shall be not less than the value determined by the registered valuer);
 - ii. the timeframe for which the Offer is able to be accepted, which shall be not less than two calendar months from the date of the Notice of Intention; and
 - iii. the other terms of the Offer;
 - c. third, Landowner shall forward that Notice of Intention to each Acceptable Occupier within 14 days of receipt of that Notice of Intention;
 - d. fourth, if either Landowner or any Acceptable Occupier intends to accept the Offer (and, in so accepting, may offer a purchase price that is greater than the value determined by the registered valuer), they shall give written notice of that binding intention to Secured Party;
 - e. fifth, Secured Party, subject to the terms of any counter offer, will sell the House to whichever of Landowner or Acceptable Occupier offers the purchase price for the House that is the greatest amount above the value determined by the registered valuer;
 - f. sixth, if Secured Party sells the House to an Acceptable Occupier, then Landowner will (in the absence of an appropriate occupation order made by the Māori Land Court) grant

- a relevant licence to occupy the Site to that Acceptable Occupier.
- 8.4 **Not obliged to sell:** For the avoidance of doubt, Secured Party is not obliged to sell the House to Landowner, or any Acceptable Occupier, for an amount less than the value determined by the registered valuer.
- 9. Application of Proceeds Following Enforcement Event:**
- 9.1 **Proceeds:** Secured Party will credit the sale proceeds, or other proceeds, of the Collateral towards the Secured Money.
- 9.2 **Shortfall/surplus:** If, after crediting the sale proceeds, or other proceeds, of the Collateral towards the Secured Money, there is:
- a shortfall in the proceeds, that shortfall will be a debt owed by Debtor to Secured Party; and
 - a surplus of proceeds, that surplus will, subject to clause 9.3, be a debt owed by Secured Party to Debtor.
- 9.3 **Application of surplus:** Any surplus proceeds of the Collateral are to be applied in accordance with applicable legislation.
- 10. Landowner's obligations:**
- 10.1 **Consent to Security Interest:** To the extent necessary, Landowner consents to Debtor's grant of the Security Interest.
- 10.2 **Not mortgage or transfer ownership of Land:** Landowner will not grant any mortgage (or other interest that may have an adverse effect on Occupier's, or Secured Party's, interests) over, or transfer ownership (including any change of trustees or a transfer to trust beneficiaries) of, the Land, without first giving written notice to Occupier and Secured Party and requiring the mortgagee (or other contemplated interest holder) or transferee to agree on terms reasonably satisfactory to Secured Party to acknowledge this Agreement and not to take any action contrary to those interests.
- 10.3 **Not amend Licence:** Landowner may not amend the Licence without Secured Party's prior written consent.
- 10.4 **Reasonable endeavours:** Landowner will use its reasonable endeavours to ensure that Debtor observes all its obligations in this Agreement.
- 10.5 **Land Tenure termination:** If Landowner is entitled to terminate the Land Tenure, Landowner must:
- promptly give written notice of that situation to Secured Party;
 - work with Secured Party and, if relevant, Lender to assist Occupier to remedy that situation; and
 - not exercise any rights it may have to:
 - terminate the Land Tenure;
 - acquire ownership of the House; or
 - remove or dispose of the House, unless Secured Party, acting reasonably, gives its written consent to the exercise of such rights.
- 10.6 **Assistance:** Landowner will:
- not do, or actively permit to be done, any act adverse to the interests of Secured Party (with, upon Landowner written request, Secured Party to confirm (acting reasonably) whether an act is adverse to the interests of Secured Party under this Agreement);
 - give Secured Party reasonable assistance in its exercise of its enforcement rights following an Enforcement Event, including the right of access to the Site, and a right of access over any adjacent land owned by Landowner, for that purpose;
 - not intervene in any way in disputes between Secured Party and Debtor (except to make representations) and, in particular, will not intervene to prevent Secured Party exercising any of its enforcement rights; and
 - at the reasonable request of Secured Party, exercise any right Landowner may have to terminate the Land Tenure if that will assist Secured Party exercise its enforcement rights under this Agreement.
- 10.7 **Landowner disclosure to Secured Party:** If any action that Landowner takes pursuant to this clause 10 involves disclosure of information about Debtor to Secured Party, to the extent necessary, Debtor authorises Landowner to make that disclosure.

Part 5: Parties and Contact details**1. Parties:**

- (1) Landowner:
- (2) Occupier:
- (3) Debtor:
- (4) Secured Party: Kāinga Ora - Homes and Communities

2. Contact Details**Landowner**

Address:

Facsimile:

Telephone:

Attention:

Occupier and Debtor

Address:

Facsimile:

Telephone:

Attention:

Secured Party

Address: Level 5
7 Waterloo Quay
PO Box 2628
WELLINGTON

Facsimile: (04) 472 5752

Telephone: (04) 439 3000

Attention: Senior Product Manager

Part 6: Land, Site, House, Licence Term and Licence Initial Rent details**1. Land details:**

Legal Description:

- Block number:
- Record of Title reference:

The Land is recorded as Māori Land in the Māori Land Court:

- District:
- Minute reference:

2. Site details:

(It is important that a site plan be included, identifying the Site clearly in relation to other houses or features. The site plan should be attached to this Agreement as a separate sheet and initialled for identification.)

3. House details:

4. Licence Term: years from the Licence Commencement Date

5. Licence Initial Rent: \$ (plus GST, if any) per annum

Part 7: Debtor details (for PPSA registration)

First Name:	Middle Name(s): _____
Last Name:	Date of birth:
Form of Verification: <input type="checkbox"/> birth certificate; <input type="checkbox"/> passport; <input type="checkbox"/> driver's licence; <input type="checkbox"/> Other	
If "other", specify type: _____	
Trading name (if applicable):	
Contact address:	
City/town:	
Telephone:	Facsimile: _____
e-mail address:	

First Name:	Middle Name(s): _____
Last Name:	Date of birth:
Form of Verification: <input type="checkbox"/> birth certificate; <input type="checkbox"/> passport; <input type="checkbox"/> driver's licence; <input type="checkbox"/> Other	
If "other", specify type: _____	
Trading name (if applicable):	
Contact address:	
City/town:	
Telephone:	Facsimile: _____
e-mail address:	

Part 8: Form of Notice of Intention

[*Kāinga Ora – Homes and Communities letterhead*]

[*date*]

[*Landowner*]

[*address*]

Attention: []

**Kāinga Whenua (Land Tenure and Security Interest) Agreement
Notice of Intention
Offer to Sell
House**

1. I refer to the **Kāinga Whenua (Land Tenure and Security Interest) Agreement** dated [*date*] between [], [], [] and Kāinga Ora - Homes and Communities (*Agreement*).
2. Pursuant to Part 4 clause 8.3 of the Agreement, Secured Party offers to sell the House (described as [*details*]) to Landowner and Acceptable Occupier.
3. The price is to be not less than that set out in the attached valuation of the House (undertaken in accordance with Part 4 clause 8.3 of the Agreement).
4. The terms of the offer are those attached to this Notice of Intention.
5. The last date for accepting this offer is [] being not less than two calendar months from the date of this Notice of Intention.
6. If you have any questions about this Notice of Intention, please contact:

[*name*]
[*contact details*]

Yours faithfully

[*name*]
[*title*]

Part 9: Special Terms

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Attachment 1: Pre-existing licence to occupy approved in writing by Secured Party

(Please note: if Part 3: Licence to Occupy of this Agreement is blank, and there is no pre-existing licence to occupy attached to this Agreement as Attachment 1, Secured Party may still have approved such a pre-existing licence to occupy. As such, further enquiries should be made to locate such a pre-existing licence to occupy approved by Secured Party.)

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