

"Landowner"

LANDOWNER

Mr & Mrs Occupier

"Occupier"

DEED OF LICENCE TO OCCUPY

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Dated _____ 20**

PARTIES

1. (Landowner).
2. *Mr & Mrs Occupier* (Occupier).

BACKGROUND

- A. The Landowner is a Māori incorporation, incorporated under the Te Ture Whenua Māori Act 1993 (the **Act**), and is the registered proprietor of Māori freehold land (the **Land**) pursuant to orders of the Māori Land Court.
- B. The Land consists of some 215 hectares more or less having a legal description of Lot 1 on Deposited Plan 65413 and Part Mangatawa Papamoa Survey Office Plan 452445. The Land is recorded as Māori Freehold Land in the Māori Land Court.
- C. The Occupier is a shareholder in the Landowner entity.
- D. The Occupier has requested that the Landowner grant a Licence to Occupy a house site area on the Land for the purpose of residential housing.
- E. The Landowner has agreed to grant to the Occupier a Licence to Occupy, in order for the Occupier to build a home, which will be affixed to a concrete pad on part of the Land for the purpose of residential housing (the **Dwelling**), subject to the terms and conditions outlined in this Deed.
- F. The Landowner has agreed to hold the Dwelling and all benefits accruing from it upon Trust for the Occupier. The Landowner and the Occupier have entered into a separate Trust Deed of even date (the **Trust Deed**) establishing a Trust with respect to the Dwelling.
- G. The Occupier has entered into a separate agreement with Kiwibank Limited (**Kiwibank**) to acquire funding to enable the construction of the Dwelling (the **Loan Agreement**).
- H. The Landowner has entered into an agreement with Housing New Zealand Corporation pursuant to which the Landowner has granted a put option to Housing New Zealand advanced under the Loan Agreement (the **Deed relating to Put Option in respect of Defaulting Kāinga Whenua Loans**). The Deed relating to Put Option in respect of Defaulting Kāinga Whenua Loans also sets out what happens in the event that the Landowner is called on to purchase that loan.

INTERPRETATION

- a. Where obligations bind more than one person those obligations shall bind those persons jointly and severally;

- b. The benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any permitted assigns or transferees and references to the parties shall be construed accordingly;
- c. Words importing one gender include all other genders and words importing the singular number include the plural and vice versa;
- d. The reference to "Landowner" and "Occupier" includes any individual, company, corporation, incorporated society, limited partnership, firm, partnership, joint venture, association, organisation, trust, state, or agency of state, government department or territorial authority, in each case whether or not having separate legal personality;
- e. Where there is more than one Occupier the occupiers shall hold the Licence to Occupy jointly;
- f. Any schedules to this Deed shall have the same effect as if set out in the body of this Deed;
- g. Clause headings are inserted for reference only and shall not affect the interpretation of this Deed;
- h. References to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and:
- (i) References to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to (including any enactment passed in substitution therefore); and
 - (ii) ~~References to any statute defined as contained in any Act shall have the meaning in this Deed.~~

AGREEMENT

1. Licence

The Landowner hereby grants to the Occupier, a Licence to Occupy (the **Licence**) an area of land owned by the Landowner (and including, for the avoidance of doubt, the Dwelling), and grants full exclusive occupation and possession of the site from the date of this Deed for the purposes of residential living for the Occupier and his or her Whanau (family).

2. The Site

The site for which the Licence is granted is shown on the site plan attached to this Deed (the **Site**). The Site is the total area the Occupier will occupy including the footprint of the Dwelling as well as the yard area, being [●] square metres more or less and as more particularly outlined at Schedule 1 to this Deed.

3. Nature of Licence

- 3.1 The Licence gives the Occupier, as joint tenants, full exclusive use and possession of the Site but not to the exclusion of the Landowner or their authorised agents who shall have the right at all reasonable times to enter upon the Site for the purposes of ensuring the terms and conditions of the Licence are being fulfilled by the Occupier, to enforce its rights under this Licence, and for any other purposes associated with the administration of the Land.
- 3.2 The Licence does not give the Occupier any interest in the Land within the Site. Legal right to possession and control of the Site remains with the Landowner. As such the Occupier recognises that he or she has no caveatable interest in the Land.
- 3.3 The Licence does not grant to the Occupier any rights to any Dwelling on the site. The Trust Deed sets out the Occupier's beneficial rights to the Dwelling.

4. Term

- 4.1 This Deed shall take effect from the date of its execution (the **Licence Commencement Date**).
- 4.2 Unless terminated earlier, pursuant to the Licence, the term of the Licence shall be 35 years from the Licence Commencement Date (the **Term**).
- 4.3 Upon the death of the Occupier (and if more than one Occupier then all the Occupiers), the Licence will be deemed to be at an end. If a relative of the Occupier is still living in the Dwelling, they may remain on the Site on terms agreed, at the sole discretion of the Landowner, until such time as the Landowner requires them to leave.
- 4.4 Upon the death of the Occupier (and if more than one Occupier then all the Occupiers), a further licence to occupy if they wish to remain in occupation of the Site. In making an application the Occupier's successor must attach any relevant supporting information to the application including (but not limited to):
- (a) Death certificate;
 - (b) Details of shares in the Land;
 - (c) Map of Site area;
 - (d) Whakapapa details; and
 - (e) Succession order.
- 4.5 The Landowner will then have the opportunity to consider the application and at their complete discretion make a decision on whether or not to grant the application.

5. Rental

The Occupier shall pay the Landowner the sum of \$[●] plus GST (if any) per annum as rental for the Site, payable in advance in equal monthly instalments on the first day of each calendar month during the Term (the **Rent Payment Date**), to the registered office of the Landowner as set out in Schedule 2 of this Deed (the **Rent**).

6. Rent Reviews

If, before an anniversary of the Licence Commencement Date, the Landowner gives written notice to the Occupier, the Rent will increase on the next anniversary of the Licence Commencement Date in accordance with CPI. The CPI increase in the Rent is calculated in accordance with the following formula:

$$\text{Increased Rent} = \text{PLR} \times (\text{CPI 1} / \text{CPI 2})$$

Where:

PLR means the 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; and

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

7. Rates

Where the Site is separately rated the Occupier shall pay all rates levied in respect of the Site. Where the Site is not separately rated the Occupier shall pay a fair share of the rates levied in respect of the Land. Rates rebates shall benefit the party that pays the rates.

8. Dwelling

8.1 The parties acknowledge that while the Dwelling is affixed to the Site, the Dwelling is beneficially held for the Occupier by the Landowner pursuant to the Trust Deed.

8.2 The Occupier agrees that he or she will obtain the prior written approval of the Landowner to any building plans for buildings intended to be erected on the Site and shall obtain any associated consents at their cost. The Landowner shall not withhold their approval unreasonably.

8.3 The Occupier will, as soon as possible after execution of this Deed and at their expense, apply to the Māori Land Court having jurisdiction for, as the case may be, noting or confirming the Licence.

8.4 Where the Court declines to note or confirm the Licence, or will only note or confirm the Licence subject to conditions, the parties will use their best endeavours to agree amendments to the Licence which meet the requirements of the Māori Land Court, whereupon the Occupier shall reapply for such noting or confirmation.

8.5 Upon execution of this Deed, the Occupier shall, at the Occupier's sole cost, apply to the Māori Land Court to have the Occupier's interest in the land pursuant to this Deed noted in the Memorial Schedules of the Land. However for the avoidance of doubt, whether the Occupier does, or does not, have the interest noted it will not change their interest in the residential dwelling as set out in clause 3.3 of this Deed.

9. Restrictions on Use

9.1 The Occupier shall:

- (a) Only use the Site for residential dwelling and associated activities for the Occupier or members of the Occupier's immediate whānau.
- (b) Comply with the Landowner's Papakāinga Maintenance Programme (as notified to the Occupier), including, without limitation, the Landowner's requirements regarding maintenance contributions, fencing and gardening.
- (c) Not permit the Site to be used for training or any commercial purpose.
- (q) At all times keep the Site and the Dwelling in a well maintained and tidy condition.
- (e) Not have parked on the Site any caravan without the prior written approval of the Landowner.
- (f) Not have more than 10 people living on the Site without the prior written approval of the Landowner.
- (g) Not make any structural alterations or additions to the Dwelling without the prior written approval of the Landowner.
- (r) Not keep animals on the Site without the written consent of the Landowner.
- (i) Not make or permit noise or behaviour on the Site that would interfere with the peaceful enjoyment of the other occupiers of the Land.
- (j) Not fence off the Site from the surrounding land without the consent of the Landowner, such consent not to be unreasonably withheld.
- (k) Not obstruct the Land or access to the Land.

10. Access and Services and Infrastructure

- 10.1 The Landowner and Occupier shall agree the means of access to the Site and the Occupier shall pay all costs associated with constructing an access and maintaining and repairing the access.
- 10.2 The Occupier shall be responsible for all infrastructure required to the Site from the Land boundary in accordance with the building and resource consents obtained by the Occupier and approved by the Landowner.

11. Occupier

- 11.1 The Occupier shall, at its cost, keep the Dwelling insured to its full insurable replacement value in the names of both the Occupier and the Landowner. Unless Kiwibank requires that the proceeds from the insurance policy be used to repay any loan under the Loan Agreement, those proceeds must be applied towards replacement or reinstatement of the Dwelling.
- 11.2 The Occupier will perform its obligations under the Loan Agreement, and will not further grant, or create, any security interest over the Site or Dwelling. In the event that, pursuant to the Deed relating to Put Option in respect of Defaulting Kāinga Whenua

Loans, the Landowner purchases the loan made under the Loan Agreement, all amounts then owing by the Occupier under the Loan Agreement will immediately become a debt owing by the Occupier to the Landowner.

11.3 The Occupier may not remove or disassemble the Dwelling without the prior written consent of the Landowner.

11.4 The Occupier must notify the Landowner immediately upon receiving any default notice (or similar default warning notification) from Kiwibank, and must keep the Landowner informed as to any changes to the terms of the Loan Agreement. The Occupier will provide the Landowner with related documentation when reasonably requested to do so.

12. **Transfer of the Licence and Dwelling**

12.1 The Occupier may transfer its rights and interests in the Licence and in the Dwelling to any other shareholder of the Landowner (the **Transfer**) provided that:

- (a) The proposed transferee and relevant transfer documentation is first approved in writing by the Landowner, Kiwibank and Housing New Zealand Corporation; and
- (b) Any proceeds from the Transfer are sufficient to repay all amounts owing by the Occupier under the Loan Agreement and all amounts owing by the Occupier to the Landowner; and
- (c) Notwithstanding the Dwelling does not form part of the Licence, the Transfer must be of all the rights and interests in the Licence and in the Dwelling (neither may be dealt with independently) and with the Transfer of all those rights and interest being to the same transferee.

12.2 Proceeds from the Transfer shall be applied as set out in clause 15.2.

12.3 The Landowner agrees to make reasonable endeavours to facilitate the Transfer including the entry into all documents (including without limitation a new trust deed) required to effect the Transfer.

13. **Renewal**

13.1 If the Occupier remains alive at the end of the Term the parties may at their option agree to a renewal of the Licence for such term and upon such conditions as agreed by the Landowner.

14. **Termination**

14.1 The Occupier may terminate the Licence by agreement with the Landowner.

14.2 The Landowner may terminate the Licence without the Occupier's agreement on no less than one month's written notice, if one of the following events occurs and is not remedied within a reasonable period of time of the Occupier being made aware of the relevant event:

- (a) The Occupier removes or attempts to remove any building on the Site, or any part of a building on the Site, without permission of the Landowner;
- (b) The Occupier ceases to occupy the Dwelling; or
- (c) The Occupier has not completed construction of the Dwelling within one year of the Licence Commencement Date.

14.3 The Landowner may, in accordance with applicable legislation, terminate the Licence without the Occupier's agreement on no less than one month's written notice, without giving the Occupier an opportunity to remedy, if the Occupier is in default of the Loan Agreement and the Landowner is required, pursuant to the Deed relating to Put Option in respect of Defaulting Kāinga Whenua Loans, by Housing New Zealand Corporation to purchase the loan made under the Loan Agreement.

15. Dealing with Dwelling on Termination

15.1 Upon termination of the Licence either by effluxion of time, death of all the Occupiers or pursuant to the provisions of clause 14, subject to the grant of a new licence to occupy pursuant to clause 4.4, the following provisions shall apply:

- (a) The Landowner will, as trustee under the Trust Deed, upon reasonable notice and in accordance at all times with applicable legislation, require the Occupier, or any other person in possession of the Dwelling, to deliver up possession of the Dwelling to the Landowner such that the Occupier or any other person in possession of the Dwelling may no longer occupy the Dwelling;
- (b) The Landowner will, as trustee under the Trust Deed, in accordance with applicable legislation, take possession (real or apparent (including preventing the Occupier or any other person from occupying the Dwelling by changing the locks on, or putting in place new locks to, the Dwelling)) of the Dwelling; and
- (c) The Landowner will, as trustee under the Trust Deed, within a reasonable period of time following termination, sell or otherwise transfer for value the Occupier's beneficial interest in the Dwelling to a third party, or otherwise realise the value of the Dwelling, (the **Sale**).

15.2 The Landowner will, as trustee under the Trust Deed, on behalf of the Occupier, apply the proceeds arising from the Sale and balance of the Trust Fund (as defined in clause 3 of the Trust Deed) as follows:

- (a) First, to the payment of outstanding amounts owed by the Occupier under the Loan Agreement;
- (b) Secondly, to the payment of any amounts owing to the Landowner by the Occupier;
- (c) Thirdly, to the payment of any costs of repairs and maintenance reasonably required in relation to the Dwelling which the Occupier agrees are necessary to protect the Dwelling and obtain best price in the circumstances and which shall be a charge against the Dwelling; and
- (d) Fourthly, to the Occupier, or their estate.

15.3 The Landowner will use reasonable endeavours to obtain the best price reasonably obtainable in respect of the Dwelling, as at the time of the Sale. In this respect, the obligations shall be substantially the same as those extending to mortgagees pursuant to section 176(1) of the Property Law Act 2007 (as if the Occupier was the *current mortgagor*).

15.4 If the proceeds of the Sale are insufficient to repay amounts owing to the Landowner under clause 15.2, such amounts will remain a debt owed by the Occupier to the Landowner.

16. **Costs**

16.1 The Occupier shall pay the Landowner's reasonable legal costs incurred in connection with preparation, negotiation and execution of this Deed, costs of obtaining the Landowner's consent and the costs of noting the Licence on the records in the Māori Land Court.

17. **Dispute Resolution**

17.1 All expenses relating to dispute resolution are to be borne equally between the parties.

17.2 If any dispute arises out of this Deed, the Landowner and the Occupier will endeavour to resolve that dispute by negotiation. If the dispute is not resolved through negotiation, within 14 days, then the matter will proceed to mediation in accordance with the mediation protocols of the Arbitrators' and Mediators' Institute of New Zealand Incorporated, with a mediator to be appointed unless the Landowner and the Occupier can agree otherwise.

17.3 pursue resolution of the dispute through Court processes.

18. **Entire Agreement**

This Deed contains everything the parties have agreed on between themselves in relation to the Occupier occupying the Site and neither party shall be entitled to make any claim in equity or law other than as provided for in this Deed.

19. **Legal Advice**

The Parties acknowledge that they have obtained or otherwise waived their right to independent legal advice before entering into this Deed and that they understand the respective legal rights and obligations it creates.

20. **Contracts (Privity) Act 1982**

The Occupier's agreement to obtain the prior written approval of Kiwibank and Housing New Zealand Corporation contemplated in clause 12.1 of this Deed, is given for the benefit of, and is enforceable in terms of the Contracts (Privity) Act 1982 by, each of Kiwibank and Housing New Zealand Corporation. That Occupier's agreement may not be varied by the parties to this Deed without the prior written approval of Kiwibank and Housing New Zealand Corporation.

21. **Notices**

21.1 Any notice required by this Deed to be served by any party on another shall be served in accordance with the following provisions.

- (a) In the case of service on the Landowner, service shall be by personal service on the Landowner or by ordinary prepaid mail to the address for notices specified by the Landowner in Schedule 2 of this Deed.
- (b) In the case of service of any document on the Occupier, service shall be personal service or by ordinary prepaid mail to the Occupier's address specified in Schedule 2 of this Deed.

EXECUTED by the parties:

SIGNED by the Proprietors of)
 Mangatawa-Papamoa Blocks)
 as Landowner in the presence of:)

Witness
 Signature _____

Name _____

Occupation _____

Address _____

SIGNED by)
Sample Signing sample as Occupier in)
 the presence of:)

Witness
 Signature _____

Name _____

Occupation _____

Address _____

SCHEDULE 1

Site Plan

[insert below or attach behind this page]

SCHEDULE 2

Address for notices

Occupier's address for notices:

SAMPLE

Landowner's address for notices:

Additional contact address for
Occupier: (e.g. Relative with
Fixed address):