

SECURE HOME AGREEMENT

ŌTAUTAHI COMMUNITY HOUSING TRUST

[OCCUPANT NAME(S)]

PROPERTY AT: [ADDRESS]

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS	1
2. GENERAL LEASE TERMS	2
3. UP FRONT PAYMENT	2
4. RENT	2
5. YOUR OBLIGATIONS IN RESPECT OF THE PROPERTY	3
6. FAILURES BY YOU	4
7. THE BANK	4
8. IMPROVEMENTS	5
9. NO SECOND PROPERTY	6
10. PUT AND CALL OPTION	6
11. YOUR OBLIGATIONS AT THE END OF YOUR INTEREST IN THIS AGREEMENT	8
12. POWER OF ATTORNEY	9
13. INSURANCE	9
14. DESTRUCTION OR DAMAGE OF PREMISES	9
15. DISPUTE RESOLUTION	10
16. COSTS	10
17. GENERAL	10
18. INDEPENDENT LEGAL ADVICE	11

ANNEXURES

ANNEXURE A POWER OF ATTORNEY
ANNEXURE B INSURANCE

AGREEMENT DATED

PARTIES

1. **ŌTAUTAHI COMMUNITY HOUSING TRUST** (a registered charitable trust board NZBN 9429043294817) (**us** or **we**)
2. **[Full names]** (you)

BACKGROUND

- A. We own the Property, including the House and Landscaping on the Property.
- B. We have agreed to grant you a long term right to exclusively occupy the Property (including the House) in return for you making an upfront payment of \$**[insert]** and paying a monthly rental amount. Your occupation rights and responsibilities are set out in this Agreement.

THIS AGREEMENT RECORDS THAT:

1. DEFINITIONS

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

Bank means [TBC], which is to take a mortgage over your rights under this Agreement to secure its lending to you;

Exercise Date means the expiry date of a notice given under either clause 9.1 or clause 9.2.

GST is goods and services tax within the meaning of the Goods and Services Tax Act 1985;

House means the residential house on the Property;

Improvements Date means the date of a decision pursuant to clause 7.2;

Maximum Bank Loan is \$**[xxx,xxx]** or such other amount as agreed by us;

Property is the land and building situated at **[address]**, record of title **[insert RT]**;

Rent means the rent payable by you under this Agreement as referred to in clause 4;

Start Date means **[insert]**;

Upfront Payment means the sum of **[insert]** / the build cost for the House; and

Working Day means a day (other than a Saturday or Sunday) on which banks are open for general banking business in Christchurch.

2. GENERAL LEASE TERMS

- 2.1** We grant you the right to exclusively occupy the Property and House by way of a lease of the Property (including the House) for 100 years from the Start Date, on the terms of this Agreement.
- 2.2** You and your family can live at the Property without interference from us provided you comply with this Agreement.
- 2.3** You may not rent out nor part with any part of the Property (including on a night by night basis) for more than 28 days in a year, unless approved by us.
- 2.4** If both of you die then we may implement clause 10 below.
- 2.5** If you separate then we may implement clause 10 below.
- 2.6** We can inspect the Property at any time if we give you 48 hours' advance warning. In the case of an emergency we can inspect the Property without any notice.
- 2.7** We may nominate someone else to manage the Property and our rights under this Agreement.
- 2.8** If we have reason to suspect that there may be illegal substances manufactured or used on the Property then we have the right to arrange for a property inspection or testing with 24 hours' notice to you. If that inspection shows illegal substances then we may implement clause 10.1 below.
- 2.9** The Residential Tenancies Act 1986 does not apply to this Agreement or your occupancy of the Property by virtue of section 5(1)(x) of that Act.
- 2.10** We acknowledge that your rights under this Agreement constitute an "interest in land" for the purposes of the KiwiSaver rules as at the date of this Agreement.

3. UPFRONT PAYMENT

- 3.1** In consideration of us granting you the long term right to exclusively occupy the Property, you agree to pay us the Upfront Payment by way of cleared funds on the Start Date.
- 3.2** At the same time as payment of the Upfront Payment, you may register this Agreement as a leasehold interest against the title to the Property and grant a mortgage over your registered Agreement to your Bank, provided the provisions of clause 7 below have been complied with. We will arrange for any mortgagee of ours to consent to this registration.

4. RENT

- 4.1** During the term of this Agreement you must pay us Rent at an initial rate of \$[insert] per annum, paid by equal monthly instalments in advance of \$[insert] per month on the first day of each month. All Rent must be paid to us without any deduction or set-off. If payment of Rent is late by one month then we can charge you a penalty of \$[50] per month per missed payment until full payment is received. We may review the amount of this late payment penalty at any time.
- 4.2** On each anniversary of the Start Date, the Rent will be reviewed based on inflation (all indices of the Consumer Price Index as published by Stats NZ) over the previous

12 months ending on the quarter immediately preceding the respective anniversary of the Start Date. For example, if inflation was 3% for the previous 12 months, then the Rent will increase by 3%. Once calculated, we will notify you of the rate of inflation and your rent will increase by that rate on the next Rent payment date that is at least one month after our notice. You must amend your payments accordingly. On any review the Rent will never decrease (even if there has been deflation).

5. YOUR OBLIGATIONS IN RESPECT OF THE PROPERTY

5.1 You must:

- (a) pay all outgoings, amounts and costs relating to the Property including Local Authority rates, insurance, utilities and body corporate levies;
- (b) pay all amounts owing to your Bank;
- (c) maintain the Property (at your cost) to a satisfactory standard reasonably determined by us;
- (d) undertake ongoing maintenance (at your cost) in accordance with our ongoing maintenance schedule, which we will issue to you prior to the Start Date;
- (e) not do anything with your interest in this Agreement unless you receive our written consent first or unless in compliance with the terms of this Agreement;
- (f) comply with all laws relating to the Property;
- (g) if requested by us, insure the Property in your name in accordance with the Insurance Rules attached as Annexure B;
- (h) if required by us, take out life and disability insurance;
- (i) not do anything that might negate the insurance for the Property;
- (j) cover our loss if you do anything that allows the insurer to avoid paying out on any claim;
- (k) comply with the Landscaping and Fencing Improvement Rules set out in clause 8.3 below;
- (l) if demanded, pay interest on any amount owing to us under this Agreement at the rate of 15% per annum from the due date for payment until the actual date of payment. This clause does not apply to late payment of Rent, which is covered by clause 4.1 above; and
- (m) comply with any other occupation and use rules applying to the Property from time to time.

5.2 We will advise the relevant Council to send rates notices for the Property directly to you. You agree that we may check with them at any time to ensure that the rates are up to date.

6. FAILURES BY YOU

- 6.1** If you fail to do anything required to be done under this Agreement within 10 Working Days of us telling you, then we can fix the breach and recover the costs from you.
- 6.2** If you constantly and seriously breach this Agreement or your breach of this Agreement cannot be fixed, then we may implement clause 10 below.

7. THE BANK

- 7.1** You may borrow money from the Bank for the Upfront Payment and grant a mortgage over your rights under this Agreement to the Bank as security for that loan.
- 7.2** Prior to entering into this Agreement, we have entered into an agreement with your Bank under which:
- (a)** we agree to notify the Bank of any circumstances that might give rise to us being able to exercise our rights under clause 10 of this Agreement and give the bank an opportunity to remedy the issue (if it is able to be remedied);
 - (b)** the Bank has agreed with us:
 - (i)** to notify us of any material breach or default under any loan or mortgage it has with you;
 - (ii)** to provide us with a copy of any Property Law Act notice served to you (this is a notice a mortgagee needs to give a mortgagor before enforcing certain rights to recover money, including the power of sale in your mortgage);
 - (iii)** to allow us 15 Working Days to remedy any default specified in the Property Law Act notice on your behalf to avoid a mortgagee sale of your interest under this Agreement;
 - (iv)** that in the event that any such default is not remedied then the Bank's first remedy is to issue a notice on your behalf in accordance with clause 10.2 below and the provisions of clause 10.4 and 10.5 will then apply; and
 - (v)** that in the event that a notice is issued in accordance with clause 10, then the Bank agrees to take all necessary steps to discharge its mortgage over your rights under this Agreement upon payment of the Reversion Price; and
 - (c)** in the event that a notice is issued in accordance with clause 10, then on settlement we will make the payment in accordance with clause 10.6 below.
- 7.3** You:
- (a)** must pay all amounts owing to the Bank on a principal and interest repayment basis;

- (b) must ensure that the Bank has no recourse to us personally for your borrowing;
 - (c) may not borrow more than the Maximum Bank Loan (in total, whether from the Bank and/or others) unless you have our consent first;
 - (d) agree that the Bank can disclose all information it holds about your affairs (including your loan and mortgage documents together with your payment history) to us;
 - (e) cannot agree to grant any further mortgages or other security against your rights under this Agreement;
 - (f) agree that we can allow the Bank to enforce any provision of this Agreement; and
 - (g) agree that we may disclose information about you to the Bank.
- 7.4** If you get served with a Property Law Act notice stating you are in default to your Bank then you must remedy all defaults within 10 Working Days of being served.
- 7.5** If you fail to remedy any default within 10 Working Days of being served then we may (if we choose to do so) remedy the default on your behalf and/or we may implement clause 10 below.

8. IMPROVEMENTS

- 8.1** In carrying out any general improvements (being any improvements having a cost of less than \$5,000 (with such sum to increase in line with inflation on the same basis as your Rent) to the Property or are undertaking ongoing maintenance in accordance with clause 5.1(d) then:
- (a) this will be at your cost;
 - (b) you must complete them in a reasonable time to a professional and tradesman-like standard;
 - (c) you must comply with all laws and obtain all required Code Compliance Certificates (if required) and other approvals;
 - (d) you must give us copies of all related paperwork;
 - (e) you indemnify us for any losses, if the improvements or carrying them out causes us any losses; and
 - (f) you must abide by any policies developed by us relating to improvements or maintenance.
- 8.2** If you wish to make improvements in excess of \$5,000 (with such sum to increase in line with inflation on the same basis as your Rent) then the rules set out in clause 8.1 above will apply and you must also get our written consent first, which we may withhold in our absolute discretion. As part of obtaining our written consent, we must reach agreement on the value of such improvements, which amount will be added to the Reversion Price once the works are completed by you to our satisfaction. We will also reach agreement on the maintenance schedule to apply to such improvements. The date of completion of the agreed improvements will be the Improvements Date for the purposes of "E" in clause 10.5 below.

8.3 Landscaping and Fencing Improvements Rules include:

- (a) you must not make any alterations to the fences on the Property (including to the length, height or materials) without our consent;
- (b) you must not make any practical changes or additions to the landscaping (for example, adding a garden shed) without our consent;
- (c) you must ensure any irrigation system is monitored, maintained and periodically adjusted as required, including draining the irrigation system in winter and reprogramming it for spring;
- (d) you must undertake regular pruning of trees, hedges, shrubs and groundcovers as required, in particular any:
 - (i) hedges on shared boundaries must be maintained to a maximum height of 1.8 metres; and
 - (ii) hedges on road/reserve boundaries must be maintained to a maximum height of 1.2 metres;
- (e) you must undertake all other work necessary to maintain a healthy, clean, neat and tidy garden landscape; and
- (f) if you do not keep your garden tidy:
 - (i) we may require you to tidy it to our reasonable standards; and
 - (ii) if you do not meet our requirements we may employ contractors to undertake whatever work is required at your cost.

9. NO SECOND PROPERTY

9.1 You may not hold an interest in another residential property during the term of this Agreement. If you breach this clause then we may implement clause 10 below.

10. PUT AND CALL OPTION

10.1 We may require you to transfer your rights in this Agreement to us (or our nominee) by us giving you 20 Working Days' notice if:

- (a) any amounts you owe to us are more than 20 Working Days in arrears;
- (b) any of clauses 2.4, 2.5, 2.8, 6.2, 7.5 or 9.1 above or either clauses 13.3 or 13.5 below apply;
- (c) you refuse to perform your obligations under this Agreement; or
- (d) the Property is compulsorily acquired by a Government Authority.

10.2 Subject to clause 10.3 below, you (or your Bank) may require us (or our nominee) to acquire your rights in this Agreement from you at any time by giving us 20 Working Days' notice.

- 10.3** During the first three years of your occupation of the Property, you may only serve notice on us under clause 10.2 above if clause 2.5 above applies or if we agree due to you suffering undue financial hardship (the Bank may serve notice at any time if it is enforcing its rights).
- 10.4** Within 20 Working Days after the Exercise Date, we must complete settlement with you (or your executors) and make payment of the Reversion Price in accordance with clause 10.6 below. You must provide a registerable transfer of your interest in this Agreement to us or our nominee together with a registerable discharge of any mortgage registered against your interest in this Agreement to us contemporaneously with us making payment in accordance with clause 10.6 below.
- 10.5** The **Reversion Price** will be calculated as follows:
- $$A=(BxC)+(DxE)$$
- Where:
- A = Reversion Price
- B = Upfront Payment
- C = the rate of inflation (all indices) expressed as a decimal from the Start Date to the Exercise Date plus one (for example, if the CPI Index at the Start Date was 1000 and the CPI Index at the Exercise Date was 1100 then the rate of inflation is 10% or 0.10 so C = 1.10) provided that C shall never be less than one
- D = the value of any substantial improvements in accordance with clause 8.2
- E = the rate of inflation (all indices) expressed as a decimal from the Improvements Date to the Exercise Date plus one provided that E shall never be less than one
- 10.6** We will apply the Reversion Price as follows:
- (a) first, to your Bank towards amounts secured by your Mortgage;
 - (b) second, to us towards any amounts you owe us under this Agreement;
 - (c) finally, any remaining balance to you.
- 10.7** To the extent funds are not available to meet the amounts you owe us under this Agreement in accordance with clause 10.6(b) above then such additional amounts will remain owing as a debt owed by you to us, with such debt to be repayable upon us making demand.
- 10.8** For the avoidance of doubt, if the amount owed to your Bank exceeds the Reversion Price then you will remain liable to the Bank for such shortfall.
- 10.9** If for whatever reason we did not complete settlement with you in accordance with clauses 10.4 to 10.6 above within 10 Working Days of the date specified in clause 10.4 above then the following provisions will apply:
- (a) you, your Bank or a receiver appointed by the Bank will be free to transfer your rights set out in this Agreement (as amended below) to a third party;

- (b) from the date of transfer to a third party (**Transfer Date**), this Agreement will be amended as follows:
- (i) Clauses 2.3 to 2.7, 7, 8.2, 9, 10.1 to 10.7 and 11.4 will be deemed to be deleted;
 - (ii) clause 7 is deleted and replaced with “You may borrow money from a Bank and grant a mortgage over your rights under this Agreement to the Bank as security for that loan.”
 - (iii) Clause 8.1 shall be amended by deleting the words “(being any improvements having a cost of less than \$5,000 (with such sum to increase in line with inflation on the same basis as your Rent))”
 - (iv) a new clause will be deemed inserted as follows:

We may (in addition to our rights to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this Agreement by re-entering the Property at the time or at any time after that:

 - (a) *if the Rent is in arrears 20 Working Days after any Rent payment date and you have failed to remedy that breach within 20 Working Days after service on you of a notice in accordance with section 245 of the Property Law Act 2007;*
 - (b) *in case of breach by you of any covenant or agreement on your part expressed or implied in this Agreement (other than the requirement to pay Rent) after you have failed to remedy that breach within the period specified in the notice served on you in accordance with section 246 of the Property Law Act 2007; or*
 - (c) *if you are bankrupted.*
- (c) The above amendments will be recorded in a deed and registered against the title for the Property.

11. YOUR OBLIGATIONS AT THE END OF YOUR INTEREST IN THIS AGREEMENT

- 11.1** At the end of your interest in this Agreement, you must:
- (a) vacate and return the Property to us in a condition consistent with having complied with your obligations under this Agreement (in particular, clauses 5.1(c) and 5.1(d));
 - (b) remove all your fittings and furnishings and all rubbish and make good any damage caused by the installation and/or removal of such fittings and furnishings; and
 - (c) give us all keys and other security devices for the purpose of obtaining access to the Property.
- 11.2** Any fittings or furnishings left in the property five days after the end of this Agreement will be deemed to be abandoned by you and will become our property and may be removed by us at your cost.

11.3 At the end of your interest in this Agreement, any improvements to the Property become our property without any further compensation payable to you.

11.4 If you fail to comply with the provisions of clauses 11.1(a) and 11.1(b) above then an amount equal to our cost to remedy such non-compliance will be owing as a debt owed by you to us, with such debt to be repayable upon us making demand, or retained from the Reversion Price under clause 10.6(b). Further, there will also be a pro-rata adjustment for any maintenance items that are due to be completed within two years of you vacating the Property. Such costs will be set by an independent property inspector chosen by us, whose decision will be final and binding.

12. POWER OF ATTORNEY

12.1 You must, when entering this Agreement, give us the power of attorney in the form attached as Annexure A. The power of attorney is irrevocable.

12.2 We may only use the power of attorney to exercise our rights under clauses 10 and 11 above.

13. INSURANCE

13.1 At our option but subject to us obtaining the approval of your Bank, we may arrange insurance on the Property in our name on a sum insured basis, with your interest under this Agreement noted on the policy and your Bank also noted as an interested party. The costs of such insurance will be payable by you. We will ensure that the sum insured under the policy always exceeds the Reversion Price.

13.2 If any loss occurs that is covered by any insurance provided for in this Agreement, then the owner of the policy must:

- (a) apply for the insurance proceeds immediately; and
- (b) without prejudice to clauses 13.3 and 14.3 below, use the insurance proceeds towards restoring, replacing, repairing or reinstating the loss.

13.3 If insurance proceeds (together with any additional funds you contribute) are insufficient to meet the costs to restore, replace, repair or reinstate the loss then we may implement clause 10 above.

13.4 If the Property forms part of a unit title development, insurance will be arranged by the body corporate and you will pay the costs of insurance as part of the body corporate levies.

13.5 If insurance proceeds in respect of the Property are applied towards any amount owed by you to your Bank rather than applied in accordance with clause 13.2(b) then we may implement clause 10 above and the Reversion Price will be reduced by an amount equal to the insurance proceeds that have been paid to your Bank.

14. DESTRUCTION OR DAMAGE OF PREMISES

14.1 If the Property or any improvements are damaged or destroyed, you must:

- (a) make the Property safe and secure;

- (b) if required by us, give us a report from a structural engineer as to the structural stability of the Property (obtained at your cost); and
 - (c) clear any debris and rubbish from the Property.
- 14.2** In the event of damage or destruction of the Property or any improvement then you must either:
 - (a) reinstate the Property or the improvement substantially in accordance with its original design; or
 - (b) rebuild to a different design with our prior written consent.
- 14.3** You must comply with clause 8 with respect to any reinstatement or rebuild under this clause 14.
- 14.4** Despite clause 14.2, we may choose to manage the reinstatement of the Property or any improvements substantially in accordance with their original design and deal directly with the insurer in respect of those reinstatement works (whether that insurance is in your name, our name or any body corporate's name). If reasonably required, you will vacate the Property during the period of such reinstatement. Your obligation to pay Rent will cease while you vacate the Property for this purpose, but your obligation to pay any outgoings (rates, insurance, etc) will continue.

15. DISPUTE RESOLUTION

- 15.1** Unless otherwise provided in this Agreement, if either of us considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement or your occupancy of the Property, then that party will give notice to the other setting out details of the dispute. We will both endeavour in good faith to resolve the dispute within 5 Working Days of the receipt of the notice, failing which we will both endeavour in good faith within a further 10 Working Days to appoint a mediator and resolve the dispute, time being of the essence. If the dispute cannot be resolved by mediation then either party may require the dispute to be arbitrated in accordance with the Arbitration Act 1996.

16. COSTS

- 16.1** Each of us will pay our own legal costs in relation to this Agreement and any variation. You will pay our legal costs (as between lawyer and client) relating to any enforcement by us of our rights and remedies under this Agreement, including our exercise of an option under clause 10.1.

17. GENERAL

- 17.1** This Agreement constitutes the entire understanding and agreement between us.
- 17.2** Time is of the essence in the performance of obligations under this Agreement.
- 17.3** You must not register a caveat against our title to the Property.
- 17.4** You may not assign this Agreement.
- 17.5** The provisions of this Agreement will continue for the benefit of and will bind the permitted assigns and nominees of each of us.

17.6 You and us acknowledge that the Bank is not a party to nor bound by this Agreement, has no liability or obligation pursuant to it to either you or us and nothing in it will restrict, affect or impair any rights of the Bank (or any other mortgagee from time to time) whether arising pursuant to its mortgage or otherwise.

17.7 Where this Agreement confers any rights in favour of the Bank then we agree that they are for the benefit of the Bank and it may rely on and enforce those rights, including for the purposes of Part 2, Subpart 1, of the Contract and Commercial Law Act 2017.

18. INDEPENDENT LEGAL ADVICE

18.1 You acknowledge in favour of us and the Bank that you have obtained independent legal advice in respect of this Agreement and that a Barrister and Solicitor of the High Court of New Zealand has explained the nature and effect of this Agreement to you and you understand the nature and effect of this Agreement.

EXECUTED BY THE PARTIES

SIGNED on behalf of **ŌTAUTAHI
COMMUNITY HOUSING TRUST** by:

Signature of trustee

Witness:*

Name of trustee

Signature of witness

Full name of witness

Occupation of witness

Address of witness

**The witness must not be a party to this deed.*

Signed by [full name] and [full name]

in the presence of

[Full name]

Signature of witness

Full name of witness

[Full name]

Occupation of witness

City/Town of residence of witness

ANNEXURE A
POWER OF ATTORNEY

I/WE [Full names] of [place]

Dated:

APPOINT any two trustees of ŌTAUTAHI COMMUNITY HOUSING TRUST]
TO BE OUR ATTORNEY

1. in relation to our interest in the property at [Address] [RT]; and/or
2. to sign and use our names in any manner in any deed, document or writing in respect of the property at [Address] [RT];

PROVIDED THAT the above powers may only be used for a purpose allowed by the Secure Home Agreement between us and ŌTAUTAHI COMMUNITY HOUSING TRUST.

WE DECLARE AND AGREE

1. that no person or corporation dealing with our Attorney will be concerned to see or enquire as to the propriety or expediency of anything that my Attorney may do or purport or agree to do in my name by virtue of this deed; and
2. to allow, ratify and confirm everything that our Attorney may lawfully do or cause to be done under this Deed.

Signed by [Full names] in the presence of:

[Full name]

[Full name]

Signature of witness

Name of witness

Occupation

Address

ANNEXURE B

INSURANCE

Insurance Rules

Cover: Comprehensive 'all-risk' full replacement cover up to the floor area stated in valuation.

Insurer: IBANZ Member, Registered insurer in NZ and with an AM Best claims paying rating of A++, A+ (Superior) or A or A- (Excellent), or a Standard & Poor's rating of AAA (Extremely Strong), AA (Very Strong), or A (Strong).

Policy Details: Policy to be in [your name], or relevant body corporate's name with the Bank noted as an interested party due to its mortgage and the other party noted as an interested party due to this Agreement.

Policy to provide us with a 30 day notice to pay any past due premiums to ensure the policy can continue without interruption.