

**ANNEXURE E**

**SHARED OWNERSHIP AGREEMENT**

# **SHARED OWNERSHIP AGREEMENT**

## **BRIDGE HOUSING CHARITABLE TRUST**

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**AGREEMENT** dated

## **PARTIES**

- (1) **BRIDGE HOUSING CHARITABLE TRUST** ("BHCT")
- (2) of ("Shared Home Owner")

## **BACKGROUND**

The Parties have agreed to be bound by the provisions in this Agreement which describes their respective rights and obligations in respect of the Property.

## **TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement unless the context requires otherwise:

- (a) **"A&I form"** is a form approved by the New Zealand Law Society authorising and instructing BHCT's solicitors to register at LINZ a transfer of part or all of the Shared Home Owner's share to BHCT as and when required by this Agreement;
- (b) **"Administration Fee"** is a sum equal to 1.5% of the value of the Share being sold pursuant to clause 9.3 plus GST;
- (c) **"Current Market Valuation"** is a valuation undertaken by a Valuer from a List of Valuers describing that Valuer's opinion of the current market value of the Property and **"Current Market Value"** has a corresponding meaning;
- (d) **"Default Interest Rate"** the rate of 5% above the then current Reserve Bank of New Zealand official cash rate (the ordinary interest rate);
- (e) **"Debt Servicing Ratio"** is the ratio between gross household income and mortgage servicing costs;
- (f) **"General Conditions"** is the form of Agreement for Sale and Purchase of Real Estate (REINZ/ADLS approved) that is current at the time of execution of this Agreement and amended as reasonably required by the BHCT's solicitors.
- (g) **"GST"** is goods and services tax within the meaning of the Goods and Services Tax Act 1985;
- (h) **"Improvements"** are works undertaken to the Property other than works required to be undertaken to the Property pursuant to clause 3.1(c);

- (i) **“List of Valuers”** is a list of at least 3 experienced and properly qualified and registered valuers practising or experienced in the region the Property is situated which is prepared by BHCT and disclosed to the Shared Home Owner as and when required by this Agreement and may include a Valuer required to be used by a Mortgagee;
- (j) **“LINZ”** is Land Information New Zealand or its successor;
- (k) **“Maximum Mortgage Loan Amount”** is \$ being % of the value of the Shared Home Owner’s Share at the commencement of this Agreement;
- (l) **“Mortgagee”** is the lender to the Shared Home Owner which has its mortgage registered against the title to the Property;
- (m) **“Net Profit”** is any profit made on a sale of the Property due to any increase in the value of the Property since the date of the last Current Market Valuation less any agent’s commission on the sale of the Property;
- (n) **“Parties”** are the Shared Home Owner and BHCT and **“Party”** means either one of them as the context requires;
- (o) **“Property”** is the land and building (including all chattels and fixtures and fittings with the land and buildings at the date of this Agreement) situated at which is the land comprised and described in Computer Register as being ;
- (p) **“Real Estate Agents”** has the meaning given to it in the Real Estate Agents Act 2008;
- (q) **“Sale Agreement”** is an agreement for sale and purchase incorporating the General Conditions in a form required by BHCT and prepared by BHCT’s solicitors;
- (r) **“Share”** is the share in the Property at any time of either Party and **“Shares”** has a corresponding meaning;
- (s) **“Share Allocation”** is, at the date of this Agreement, % of the Property which is owned by the Shared Home Owner and % of the Property which is owned by BHCT but, notwithstanding these Shares or what may be shown on the title to the Property, an up to date, conclusive and accurate record of the ownership of the Shares is shown on the Share Allocation Register and **“Share Allocations”** has a corresponding meaning.
- (t) **“Share Allocation Register”** is the register comprising Annexure B;
- (u) **“Transfer Fee”** is a sum equal to 2.5% of the value of the Transfer Price plus GST or, in the case of the sale pursuant to clause 8.2, 2.5% of the price contained in any offer to or from a third party;
- (v) **“Transfer Price”** is a sum equal to the Current Market Value of the Property as determined by a Valuer multiplied by the percentage ownership of the Party

transferring its Share (or part of its Share in the case of a purchase of a part of a Share by the Shared Home Owner pursuant to clause 11.1) has in the Property in accordance with the Share Allocation at the time of transfer of that Party's Share inclusive of GST (if any);

- (w) **“Valuer”** is a valuer is listed on the List of Valuers;
- (x) **“Working Day”** is a day, other than on the weekend, on which New Zealand trading banks are open for the transaction of business in Auckland or Wellington but excludes any day between 21 December and 5 January (both days inclusive);
- (y) references to the parties include their respective executors, administrators, successors and permitted assigns;
- (z) references to person include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them (in each case whether or not having separate legal personality);
- (aa) the singular will include the plural and vice versa;
- (bb) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (cc) headings have been inserted for convenience only and will not affect the construction of this Agreement;
- (dd) reference to a statute includes all statutes amending, consolidating or replacing the statute referred to and any regulations made pursuant to those statutes;
- (ee) references to clauses and schedules will be construed as references to clauses of, and schedules to, this Agreement; and
- (ff) references to currency are to \$NZ exclusive of GST (if any).

## **2. OWNERSHIP AND OCCUPATION OF PROPERTY AND SUCCESSION**

- 2.1 The Parties have agreed to purchase the Property and own it in accordance with the Share Allocation as tenants in common on the basis described in this Agreement.
- 2.2 The Shared Home Owner may occupy the Property for the purposes and on the basis described in this Agreement for as long as it observes and performs its obligations described in this Agreement. The parties however confirm that nothing in this Agreement shall give rise to the Shared Home Owner having a tenancy in or any leasehold interest over the Property.
- 2.3 Where the Shared Home Owner is more than one individual, on the death of any of those individuals the survivor, if there is a survivor, shall continue to be the Shared Home Owner.

- 2.4 On the death of the individuals comprising the Shared Home Owner or the survivor (as the case may be) the Shared Home Owner's Share does not automatically vest in BHCT and the Shared Home Owner is deemed to have given valid notice pursuant to clause 7.1, but with BHCT choosing the Valuer and clause 7.3 having no application, so that BHCT may, in that circumstance, purchase the Shared Home Owner's Share in accordance with clause 7.
- 2.5 BHCT shall have the right to enter and inspect the Property on reasonable notice, except in emergency when no notice is required, at least annually.

### **3. OBLIGATIONS IN RESPECT OF THE PROPERTY**

3.1 The Shared Home Owner shall:

- (a) pay all sums (including interest), outgoings, charges, penalties and fees (professional and otherwise) in respect of the Property including but not limited to general and water rates, electricity, telephone, gas, other utilities, body corporate levies and insurance premiums, excesses and valuation fees when they are due;
- (b) meet all obligations it has under any loan agreements or mortgages or any other instrument or other document affecting or secured against the Property;
- (c) at its cost keep the Property in good and substantial repair and well maintained at all times and shall not do anything to vitiate or otherwise affect the insurance policy or increase the insurance premium;
- (d) not grant, permit or allow (by conduct, omission or otherwise) any interest in the Property nor transfer, mortgage, sublet or otherwise part with possession of the Property or cease to occupy the Property without the previous written consent of BHCT;
- (e) not add to or alter the property or otherwise undertake any building work (as that expression is used in the Building Act 2004) without the previous written consent of BHCT;
- (f) comply with all relevant legislation in respect of the Property including but not limited to the Health Act 1956, the Resource Management Act 1991 and the Building Act 2004 and only occupy it or allow it to be occupied for single family residential purposes and not use the Property or allow it to be used for any illegal activity;
- (g) pay to BHCT an annual management fee as described in Annexure C (increased annually by a reasonable sum advised by BHCT reflective of the costs incurred by BHCT in respect of the Property) on 1 April in each year which sum shall be apportioned for any part of a year;
- (h) pay BHCT the cost of BHCT considering and approving any application to sell or purchase the Property or a Share and any related costs such as the cost of engaging professional services as part of that process;

- (i) not own, part own, or have any beneficial interest in any other property;
- (j) use the Property exclusively as the Secured Home Owner's primary place of residence; and
- (k) not vacate the Property for any more than four weeks over a 12 month period.

3.2 If the Shared Home Owner fails to make any payment required to be paid pursuant to clause 3.1 when it is due to be paid, or when required by BHCT, BHCT may make the payment itself and charge the Shared Home Owner the cost of the payment plus all its costs of making the payment plus interest on the quantum of the payment at the Default Interest Rate calculated on a daily basis from the date the payment is made until the date the payment has been repaid in full .

3.3 The Shared Home Owner shall insure the Property at its cost through a nominated insurance company or broker previously approved by BHCT and shall insure the Property for its full reinstatement and replacement value in the name of BHCT and the Shared Home Owner and the Mortgagee noted as an interested party and disclose a copy of the policy to BHCT and the Mortgagee on request.

3.4 If the Shared Home Owner fails to insure the Property pursuant to clause 3.3 through the nominated insurance company or broker BHCT shall, for as long as it holds an equity share in the Property, arrange for the Property to be insured for its full reinstatement and replacement value with the nominated insurance company or broker in the name of BHCT and the Shared Home Owner and the Mortgagee noted as an interested party and shall disclose a copy of the policy to the Shared Home Owner and the Mortgagee on request. If BHCT is required to make the payment for the Property to be insured pursuant to clause 3.3, BHCT shall charge the Shared Home Owner pursuant to clause 3.2.

#### **4. FAILURE OF SHARED HOME OWNER TO PERFORM**

4.1 In the event that the Shared Home Owner fails to observe and perform its obligations described in this Agreement, including those contained in clause 3.1, and does not rectify the failure within 10 Working Days of receiving written notice from BHCT requiring the failure to be rectified, BHCT may rectify any such failure itself and the cost of doing so shall be payable on demand by the Shared Home Owner to BHCT. Should the Shared Home Owner fail to pay the cost of rectifying the breach to BHCT, BHCT may, in addition to any other remedies and rights it may have, acting reasonably and properly at all times, following BHCT giving not less than 10 Working Days' written notice to that effect to the Shared Home Owner, reduce the Share in the Property owned by the Shared Home Owner, and consequently increase BHCT's Share, to the extent of the cost of rectifying the Shared Home Owner's failure to observe and perform its obligations plus the Transfer Fee following which the Share Allocation shall adjust accordingly.

4.2 For the purposes of any adjustment in the Share Allocation in accordance with clause 4.1 the Shared Home Owner's Share shall have the value it had at the most recent



valuation undertaken of the Property by a valuer from a List of Valuers. BHCT may at its discretion and cost obtain a Current Market Valuation of the Property from a Valuer from a List of Valuers for the purposes of calculating the value of the Shared Home Owner's Share at the time notice is given by BHCT to the Shared Home Owner pursuant to clause 4.1 that its Share is to be reduced.

## **5. SHARED HOME OWNER AS MORTGAGOR**

5.1 The Shared Home Owner may borrow money to purchase its Share in the Property although if the lender to the Shared Home Owner wishes to take a mortgage over the Property the Shared Home Owner shall not agree to any party lending to it without the previous written approval of BHCT (which shall be deemed to be given if BHCT signs the relevant loan documentation and mortgage).

5.2 The Shared Home Owner:

- (a) shall not borrow more than the Maximum Mortgage Loan Amount and shall not borrow more than it initially borrows unless it is for the purpose of purchasing an increased Share from BHCT;
- (b) shall only borrow to purchase the Property and repay on a principal and interest basis and not interest only;
- (c) consents to all loan and mortgage documents being disclosed to and signed by BHCT prior to being signed by the Shared Home Owner and confirms that any such disclosure (or any other disclosure by the Mortgagee to BHCT in connection with this Agreement) and signing shall not be a breach of the Privacy Act 1993;
- (d) agrees that no subsequent mortgages to the Mortgagee's mortgage may be given against the Property;
- (e) shall ensure that all documentation it enters into or wishes to enter into with any Mortgagee contains provision (whether by way of side letter acknowledgement or otherwise) that the Mortgagee has no recourse to BHCT whatsoever in respect of the Shared Home Owner's liability to the Mortgagee other than to the proceeds on realisation of the Property.
- (f) and BHCT agree that following any sale of the Property by a Mortgagee the surplus proceeds of the sale (if any) following repayment to the Mortgagee shall be distributed as follows:
  - (i) the lesser of (1) the surplus sale proceeds; and (2) BHCT's Share multiplied by the sale price, shall be paid to BHCT; and
  - (ii) the balance (if any) shall be paid to the Shared Home Owner.
- (g) agrees that the Share Allocation Register may be disclosed by BHCT at any time to a Mortgagee,

- (h) has no recourse to BHCT pursuant to any documentation it enters into with a Mortgagee.

## **6. IMPROVEMENTS TO PROPERTY BY SHARED HOME OWNER**

- 6.1 Should the Shared Home Owner wish to make Improvements to the Property it shall first seek the written consent of BHCT to undertaking those Improvements and shall undertake and complete within a reasonable time the Improvements at its sole cost, in strict accordance with the plans and specifications approved by BHCT, in a professional and tradesman-like manner and in accordance with all relevant legislation and consents granted and shall indemnify BHCT against any loss, cost or damage suffered by BHCT as a result of the Shared Home Owner undertaking the Improvements.

## **7. SALE BY SHARED HOME OWNER OF ITS SHARE TO BHCT**

- 7.1 If the Shared Home Owner wishes to sell its Share it must first offer its Share to BHCT by giving to BHCT written notice to that effect enclosing a non-refundable application fee as described in Annexure C (increased annually by a reasonable sum advised by BHCT).
- 7.2 On receipt of the written notice and application fee from the Shared Home Owner pursuant to clause 7.1 BHCT shall within 5 Working Days of receipt give a List of Valuers to the Shared Home Owner and the Shared Home Owner shall choose a Valuer from the List of Valuers within 10 Working Days of receipt of the List of Valuers and notify BHCT of its choice. If the Shared Home Owner does not choose a Valuer within that 10 Working Day period and notify BHCT of its choice BHCT may choose a Valuer. Once a Valuer is chosen the Shared Home Owner shall arrange for that Valuer to prepare a Current Market Valuation of the Property at the Shared Home Owner's cost. The valuation shall determine the Transfer Price and the Valuer shall take into account all breaches of any of the Shared Home Owner's obligations contained in this Agreement, including those contained in clause 3.1 (to the extent that the valuation has been adversely affected by the breaches).
- 7.3 Should either the Shared Home Owner or BHCT either not choose a Valuer in accordance with clause 7.2 or should the Shared Home Owner not advise BHCT that it wishes to proceed to sell its Share to BHCT within 5 Working Days of receipt of a copy of the valuation or should BHCT advise the Shared Home Owner that it does not wish to purchase the Shared Home Owner's Share within 5 Working Days of receipt of a copy of the Current Market Valuation the sale shall not proceed.
- 7.4 Should BHCT and the Shared Home Owner agree to the valuation undertaken pursuant to clause 7.2 the Shared Home Owner shall sell and BHCT shall purchase the Shared Home Owner's Share for the Transfer Price less the Transfer Fee. The sale shall settle and BHCT shall pay the Transfer Price to the Shared Home Owner less the Transfer Fee in cleared funds in one lump sum on the day 20 Working Days after the day the parties

agree in writing to the Current Market Valuation undertaken in respect of the Shared Home Owner's Share pursuant to clause 7.2 at which time the sale shall be settled.

- 7.5 The sale shall be governed by a Sale Agreement which the Parties shall enter into within 5 Working Days after the parties agree to the Current Market Valuation pursuant to clause 7.4.
- 7.6 The Shared Home Owner shall sign all documentation and do all things necessary in order that its Share may be transferred to BHCT free of all mortgages or other encumbrances.
- 7.7 On the settlement of the sale of the Shared Home Owner's Share to BHCT this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties and the Shared Home Owner shall provide vacant possession of the Property.

**8. SALE OF THE PROPERTY TO A THIRD PARTY (SUBJECT TO BHCT'S RIGHT TO PURCHASE THE SHARE)**

- 8.1 If the Property is valued pursuant to clause 7.2 but the Shared Home Owner does not give notice to BHCT that it wishes to proceed to sell its Share to BHCT within 5 Working Days of the date the Shared Home Owner receives the Current Market Valuation either BHCT or the Shared Home Owner may place the Property on the market for sale with a reputable firm of Real Estate Agents approved by BHCT. For the avoidance of doubt, this clause shall not apply where clause 7.3 applies.
- 8.2 If the Property is placed on the market for sale pursuant to clause 8.1 then the Shared Home Owner will be solely responsible for all marketing costs and agent's fees associated with a sale of the Property.
- 8.3 Neither Party may accept any offer from a third party to purchase the Property or make an offer to a third party to sell the Property to a third party without the Shared Home Owner first offering to transfer its Share to BHCT for the price contained in any offer multiplied by the Shared Home Owner's Share Allocation at the time of the offer less the Transfer Fee by giving notice to that effect to BHCT and such offer to BHCT must attach to it a true copy of the offer made to or from the third party.
- 8.4 If within 10 Working Days of receiving a valid notice given pursuant to clause 8.3 BHCT does not give to the Shared Home Owner a notice accepting the Shared Home Owner's offer either Party may accept or make an offer to that third party to sell the Property to it on the terms and conditions set out in the notice.
- 8.5 If the terms and conditions of the sale to the third party (including the price) become more favourable than those set out in the notice served pursuant to clause 8.3 neither Party may proceed to sell the Property to the third party until the Shared Home Owner has first offered to sell its Share to BHCT on the basis described in clause 8.3 but reflecting those more favourable terms and conditions by way of a revised notice,

attaching to it a true copy of those more favourable terms and conditions, which shall be treated as if it was first served pursuant to clause 8.3.

- 8.6 If within 10 Working Days of receiving a valid notice pursuant to clauses 8.3 or 8.5 BHCT serves on the Shared Home Owner a notice accepting the Shared Home Owner's offer the Shared Home Owner shall transfer and BHCT shall take a transfer of the Shared Home Owner's Share on the basis described in clause 8.3 except that BHCT may deduct the Transfer Fee from the price payable to the Shared Home Owner by BHCT.
- 8.7 Following the date BHCT serves notice pursuant to clause 8.6 BHCT shall at its cost arrange for a Sale Agreement to be prepared by its solicitors incorporating the terms of the notices given pursuant to clauses 8.3 or 8.5.
- 8.8 The price shall be payable to the Shared Home Owner by BHCT in cleared funds by a payment of the price less the Transfer Fee in cleared funds together with any apportionments and all arrears and outstanding charges in one lump sum.
- 8.9 The sale shall be governed by a Sale Agreement and shall be settled on the day 20 Working Days from the day BHCT serves notice pursuant to clause 8.6.
- 8.10 The Shared Home Owner shall sign all documentation (including an A&I form) and do all things necessary in order that its Share may be transferred to BHCT free of all mortgages or other encumbrances.
- 8.11 On the settlement of the sale of the Shared Home Owner's Share to BHCT this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties.
- 8.12 If BHCT does not serve a notice on the Shared Home Owner pursuant to clause 8.6 either Party may make or accept an offer to sell the Property to a third party on the terms notified to BHCT pursuant to clauses 8.4 or 8.5 and governed by a Sale Agreement with the sale settling 20 Working Days after the day the offer to or from the third party is accepted. On settlement the net proceeds shall be distributed to the Parties in accordance with the Share Allocation at the time of settlement.

## **9. SALE BY SHARED HOME OWNER OF ITS SHARE TO AN APPROVED THIRD PARTY**

- 9.1 The Shared Home Owner may sell its Share to a third party if it first obtains the written consent of BHCT and the Mortgagee to the transfer of the Share and otherwise complies with the requirements described in clause 7.1 and BHCT advises that it does not wish to purchase the Share.
- 9.2 When applying to BHCT for consent to the transfer of the Share to the approved third party the Shared Home Owner shall supply all information as BHCT shall reasonably request in respect of the third party and details of what the Share is proposed to be sold for, which shall not be less than what is owed to the Mortgagee or the Share proposed to

be sold multiplied by the Current Market Valuation, and a Current Market Valuation for the Property.

- 9.3 BHCT need not consent to the sale of the Shared Home Owner's Share to the third party unless it receives and approves all the matters described in clause 9.2 and confirmation from the third party that it will immediately on the settlement of the sale of the Shared Home Owner's Share enter into an agreement in substantially this form, or any updated form, with BHCT and pay to BHCT the Administration Fee and all fees associated with the sale and any new mortgage including legal and LINZ fees.
- 9.4 The sale shall be governed by a Sale Agreement and shall be settled not earlier than the day 10 Working Days from the day BHCT gives its approval to the transfer of the Share to the third party but not earlier than the day all the matters described in clause 9.3 have been fully complied with to BHCT's satisfaction.
- 9.5 Following the settlement of the sale of the Shared Home Owner's Share to the third party this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties.

## **10. SECTION 119 NOTICE**

- 10.1 If the Mortgagee serves a notice on the Shared Home Owner and/or BHCT pursuant to section 119 of the Property Law Act 2007 ("Section 119 Notice") and BHCT gives notice to the Shared Home Owner that BHCT wishes to purchase the Shared Home Owner's Share the Shared Home Owner is deemed to have immediately offered its Share to BHCT.
- 10.2 BHCT shall within 10 Working Days of the date BHCT gives notice to the Shared Home Owner pursuant to clause 10.1 give a List of Valuers to the Shared Home Owner and the Shared Home Owner shall choose a Valuer from the List of Valuers within 5 Working Days of receipt of the List of Valuers and notify BHCT of its choice. If the Shared Home Owner does not choose a Valuer within that 5 Working Day period and notify BHCT of its choice BHCT may choose a Valuer. Once a Valuer is chosen by either BHCT or the Shared Home Owner BHCT shall arrange for that Valuer (or another Valuer from the List of Valuers if the Valuer chosen is not available) to prepare a Current Market Valuation for the Property. The valuation shall determine the Transfer Price and the Valuer shall take into account all breaches of any of the Shared Home Owner's obligations contained in this Agreement, including those contained in clause 3.1 (to the extent that the valuation has been adversely affected by the breaches).
- 10.3 Following receipt of the Current Market Valuation undertaken pursuant to clause 10.2 should BHCT give written notice to the Shared Home Owner that it wishes to purchase the Shared Home Owner's Share the Shared Home Owner shall sell and BHCT shall purchase the Shared Home Owner's Share for the Transfer Price less the Transfer Fee and less the cost of valuing the Property and transferring the Shared Home Owner's Share to BHCT. BHCT shall pay the Transfer Price to the Shared Home Owner less the Transfer Fee in cleared funds lump sum on the day 15 Working Days from the day the

day the Valuer completes the valuation anticipated by clause 10.2 at which time the sale shall be settled.

- 10.4 The sale shall be governed by a Sale Agreement which the Parties shall enter into within 5 Working Days after BHCT gives notice to the Shared Home Owner pursuant to clause 10.3 that it wishes to purchase the Shared Home Owner's Share.
- 10.5 The Shared Home Owner shall sign all documentation and do all things necessary in order that its Share may be transferred to BHCT free of all mortgages or other encumbrances.
- 10.6 Following the settlement of the sale of the Shared Home Owner's Share to BHCT this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties.
- 10.7 If at any time prior to the settlement of the sale of the Shared Home Owner's Share to BHCT pursuant to clause 10.3 the Mortgagee advises BHCT that the breach described in the Section 119 Notice has been remedied:
- (a) the sale of the Shared Home Owner's Share to BHCT shall not proceed;
  - (b) the offer deemed to be made pursuant to clause 10.1 is void and of no effect unless the parties agree otherwise; and
  - (c) the Shared Home Owner shall pay to BHCT a sum equal to the costs incurred by BHCT as a result of the Mortgagee serving the Section 119 Notice.

## **11. PURCHASE BY SHARED HOME OWNER OF BHCT'S SHARE**

- 11.1 The Shared Home Owner may, by giving to BHCT written notice to that effect at any time and enclosing a non-refundable application fee (as described in Annexure C), require BHCT to offer to sell to the Shared Home Owner its Share or any part of its Share provided it is more than a minimum of 5% of the Current Market Value of the Property prepared by a Valuer, subject to Clause 11.2.
- 11.2 Once the Shared Home Owner's Share is 85% or more of the Property the Shared Home Owner may only require that BHCT sells to it BHCT's remaining Share in the Property.
- 11.3 In the event that notice is given pursuant to clause 11.1 BHCT shall give a List of Valuers to the Shared Home Owner and ask the Shared Home Owner to choose a Valuer from the List of Valuers within 5 Working Days and notify BHCT of its choice. On receipt of that notification the Shared Home Owner shall arrange at its cost for a Valuer from the List of Valuers to prepare a Current Market Valuation to be undertaken assuming that all the Shared Home Owner's obligations contained in clause 3.1 have been fully complied with. The valuation shall determine the Transfer Price.
- 11.4 Should BHCT and the Shared Home Owner agree to the valuation undertaken pursuant to clause 11.3 the Shared Home Owner shall purchase and BHCT shall sell its Share (or

the part of its Share described in the notice given pursuant to clause 11.1) to the Shared Home Owner for the Transfer Price. BHCT shall not agree to the valuation where it shows that the Property is worth less than it was at the date of this Agreement. The Shared Home Owner shall pay the Transfer Price to BHCT in cleared funds together with a settlement fee (as described in Annexure C) any apportionments and all arrears and outstanding charges in one lump sum on the day 20 Working Days from the day the Valuer completes the valuation anticipated by clause 11.3 at which time the sale shall be settled.

- 11.5 The sale shall be governed by a Sale Agreement which the Parties shall enter into within 5 Working Days after the parties agree to the Current Market Valuation pursuant to clause 11.4.
- 11.6 Should the Shared Home Owner either not choose a Valuer within 20 Working Days of receiving the List of Valuers from BHCT pursuant to clause 11.3 or either Party not wish to proceed with the sale and purchase of BHCT's Share having reviewed the Current Market Valuation undertaken pursuant to clause 11.3 the sale shall not proceed and the notice given pursuant to clause 11.1 shall be void and of no effect.
- 11.7 If BHCT's Share is being sold to the Shared Home Owner BHCT shall sign all documentation and do all things necessary in order that the sale of its Share (or the part of its Share described in the notice given pursuant to clause 11.1) may be transferred to Shared Home Owner free of all mortgages and encumbrances (other than the Mortgagee's mortgage).
- 11.8 If BHCT sells its total Share to the Shared Home Owner then following the settlement of the sale of BHCT's Share to the Shared Home Owner this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties.

## **12. PRE-EMPTIVE RIGHT FOLLOWING SALE TO SHARED HOME OWNER**

- 12.1 Once the Shared Home Owner owns 100% of the Property it cannot offer to sell the Property or accept an offer to buy it without on each occasion first offering it to BHCT at the price and on terms of any offer by giving to BHCT written notice to that effect. On receipt of the written notice from the Shared Home Owner BHCT shall within 10 Working Days of receipt advise the Shared Home Owner if it wishes to purchase the Property from the Shared Home Owner on those terms. Should BHCT advise the Shared Home Owner that it does not wish to purchase the Property the sale to BHCT shall not proceed. Should BHCT agree to purchase the Property from the Shared Home Owner the Shared Home Owner shall sell and BHCT shall purchase the Property for the agreed price and the sale and purchase shall settle together with any apportionments and all arrears and outstanding charges in one lump sum on the first working day 20 Working Days after the day BHCT agrees to purchase the Property. The sale shall be governed by an agreement prepared by the solicitors acting for BHCT and be based on a form universally used and incorporate the terms of the agreement reached. The Shared Home

Owner shall sign all documentation and do all things necessary in order that the Property may be transferred free of all mortgages or other encumbrances.

**13. PAYMENT TO BHCT FOLLOWING SALE OF PROPERTY BY SHARED HOME OWNER WITHIN 12 MONTHS**

- 13.1 If, in accordance with clause 12.1, the Shared Home Owner wishes to sell the Property and BHCT advises that it does not wish to purchase the Property then the Shared Home Owner may place the Property on the market for sale. If, within the period of 12 months following the Shared Home Owner acquiring BHCT's Share of the Property, the Shared Home Owner accepts an offer to purchase the Property for a price that is higher than the Current Market Valuation of the Property at the time the Shared Home Owner acquired BHCT's Share of the Property in accordance with clause 11.4 then the Shared Home Owner shall on settlement pay to BHCT an amount equal to the Net Profit multiplied by BHCT's Share.
- 13.2 The Shared Home Owner shall register an encumbrance against the title to the Property at LINZ recording the obligations contained in clause 13.1 immediately following it acquiring 100% ownership of the Property.

**14. RESTRICTION ON SALE BY BHCT OF ITS SHARE**

- 14.1 Other than as is described in clause 11, BHCT may only sell its Share to a central or local government-controlled agency or to a similar organisation to BHCT with similar structure, intents and obligations but in any case not without the prior written consent of the Mortgagee.
- 14.2 In that event the Shared Home Owner shall sign all documentation reasonably required in order that:
- (a) BHCT's Share may be properly transferred;
  - (b) this Agreement is properly novated on the same terms (unless the parties agree to vary the terms of this Agreement in the novation) to record that, inter alia, the Property will be owned by the Shared Home Owner and the successor to BHCT; and
  - (c) the Mortgagee's interest in the Property is protected.

**15. CONTINUED OR MATERIAL BREACH BY SHARED HOME OWNER**

- 15.1 In the event of continued or material breach of any of the obligations of the Shared Home Owner contained in this Agreement or any mortgage given over the Property by the Shared Home Owner BHCT may require, by written notice to that effect given to the Shared Home Owner, that the Shared Home Owner sell to BHCT the Shared Home Owner's Share in the Property.



- 15.2 In that event BHCT shall arrange for a registered valuer of BHCT's choice to value the Shared Home Owner's Share following which the Shared Home Owner shall sell its Share to BHCT pursuant to a Sale Agreement for the value of the Shared Home Owner's Share as determined by the Valuer less the Transfer Fee and less the cost of BHCT rectifying the Shared Home Owner's breach of its obligations or commitments to its lender or pursuant to this Agreement with the transfer settling 20 Working Days following BHCT giving notice pursuant to clause 15.1 or such other time as BHCT requires.
- 15.3 Following the settlement of the sale of the Shared Home Owner's Share to BHCT this Agreement shall terminate and cease to have effect although without prejudice to the antecedent rights of the parties.

## **16. SHARE ALLOCATION REGISTER**

- 16.1 A current record of the Parties' Shares at any time during the currency of this Agreement shall be kept by recording those Shares in manuscript in the Share Allocation Register and that record is conclusive evidence of the Parties' shares notwithstanding what Shares the title to the Property reflects. If there is any inconsistency between the Share Allocation Register held by BHCT and that held by the Shared Home Owner the Share Allocation Register held by BHCT shall prevail.
- 16.2 Whenever there is a change in the respective Shares the Parties shall cause the Share Allocation Register to be completed and shall sign it in order that the Share Allocation Register is always an up to date, conclusive and accurate record of the Share Allocation.

## **17. POWER OF ATTORNEY**

The Shared Home Owner shall, whenever required by BHCT, enter into a power of attorney in the form attached as Annexure A which may be used by BHCT to rectify a breach by the Shared Home Owner of any of its obligations in this Agreement (following receipt of notice from BHCT requiring the breach to be rectified within a reasonable time) to execute any necessary documentation (not limited to an A&I form) in order to transfer the Shared Home Owner's Share or part of it to BHCT pursuant to clauses 4 or 15. The power of attorney shall be irrevocable.

## **18. MORTGAGEE OF PROPERTY**

- 18.1 Nothing in this Agreement shall cause the Mortgagee to be bound to release any mortgage it may have over the Property or to consent to any sale of the Property.
- 18.2 The Parties acknowledge that the Mortgagee is not a party to nor bound by this Agreement and has no liability pursuant to this Agreement to any of the Parties.
- 18.3 BHCT acknowledges that the Mortgagee may communicate directly with the Shared Home Owner in respect of the Property.

## 19. REVIEW OF RELATIONSHIP AND STAIRCASING

- 19.1 The Parties shall meet annually to discuss the performance of the Shared Home Owner pursuant to the Agreement and the ability of the Shared Home Owner to purchase some or all of BHCT's Share.
- 19.2 On the 2nd, 4<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> anniversaries of the date of this agreement, or at other times requested by BHCT, the Shared Home Owner shall supply BHCT with details of the Shared Home Owner's income, expenditure and debt in a statement in the form required by BHCT with suitable supporting documentation. BHCT may require the statement to be certified as correct by an appropriate professional person.
- 19.3 If, after having reviewed the details of the Shared Home Owner's income, expenditure and Debt Servicing Ratio BHCT and any Mortgagee believes that the Shared Home Owner could increase its Share BHCT shall obtain a Current Market Valuation and may give notice to the Shared Home Owner requiring it to purchase some or all of BHCT's Share. The notice shall state the percentage of BHCT's Share the Shared Home Owner is required to purchase and the cost of the purchase of the Share and, provided the Mortgagee agrees, require the purchase to settle within 20 Working Days of the day BHCT gives notice pursuant to this clause.
- 19.4 The sale and purchase shall settle on the day described in clause 19.3 and be governed by a Sale Agreement.
- 19.5 If at the 10<sup>th</sup> anniversary of the date of this Agreement the Shared Home Owner has not purchased or been given notice to purchase all of BHCT's Share the Shared Home Owner shall be deemed to have given notice to BHCT offering to sell its Share to BHCT pursuant to clause 7.1.

## 20. CONTRACT AND COMMERCIAL LAW ACT 2017

The parties agree and acknowledge that for the purposes of the Contract and Commercial Law Act 2017 (and without limiting clause 10) the Mortgagee has entered into lending arrangements with the Shared Home Owner in reliance on this Agreement and shall have the benefit of and may (at its discretion) enforce the provisions of this Agreement against the Shared Home Owner and/or BHCT.

## 21. GENERAL

- 21.1 **Entire agreement:** This Agreement constitutes the entire understanding and agreement of the parties relating to the matters dealt with in it and supersedes and extinguishes all prior agreements, statements, representations and understandings whether verbal or written given by or made between the parties relating to the matters dealt with in this Agreement.
- 21.2 **Reliance on advice, investigations and judgement:** For the avoidance of any doubt, the Shared Home Owner confirms it has received independent legal advice and

acknowledges that it has purchased its Share solely in reliance upon its own investigations and judgement, including undertaking a full and thorough investigation into the title to the Property and all notations and encumbrances on that title, and not in reliance on any representation or warranty made by BHCT or any servant, agent or contractor of BHCT.

- 21.3 **No partnership/agency:** Nothing contained in this Agreement is deemed to constitute the Parties partners nor, except as otherwise expressly provided in this agreement constitute any party the agent or legal representative of another party. No Party has authority to act or to assume any obligation or liability on behalf of any other Party except as expressly provided in this Agreement.
- 21.4 **Severability:** Any unlawful or voidable provision in this Agreement shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without effecting the validity, legality or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Agreement.
- 21.5 **No merger:** The warranties, covenants, undertakings, agreements or other obligations of a Party shall not merge or be extinguished on any completion or settlement in terms of this Agreement but shall remain in full force and effect.
- 21.6 **Further acts:** Each Party shall sign and deliver any documents and undertake any acts, matters and things which are reasonably required or requested by the other Party to carry out and give effect to the intent and purpose of this Agreement.
- 21.7 **Governing law and jurisdiction:** This Agreement is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceedings relating to it.
- 21.8 **Time of essence:** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.
- 21.9 **Counterparts:** This Agreement may be signed in counterparts which together shall constitute one Agreement binding on the Parties, notwithstanding that both Parties are not signatories to the original or same counterpart.
- 21.10 **No Caveat:** The Shared Home Owner shall not register a caveat against the title to the Property. If the Shared Home Owner does register a caveat against the title to the Property the Shared Home Owner shall be liable for all costs incurred in connection with the caveat including the costs of removal and any costs or expenses incurred directly or indirectly by BHCT and shall withdraw the caveat immediately on being requested to do so by BHCT.
- 21.11 **Accruals:** The price paid for the Property is the lowest price the Parties would have agreed on for the Property at the time of entering into this Agreement on the basis of payment in full at the time the Property is to be transferred to the Parties on the settlement date.

- 21.12 **Waiver:** No waiver by a Party of the other Party's obligations contained in this Agreement shall constitute a waiver of any other obligations expressed or implied herein.
- 21.13 **Amendments:** No amendment to this Agreement shall be binding upon any party unless confirmed in writing by the Parties.
- 21.14 **Assignment:** The Shared Home Owner may not assign any rights or obligations under this Agreement without the prior consent in writing of BHCT. BHCT may assign its rights or obligations under this Agreement without notice to or consent from the Shared Home Owner.
- 21.15 **Notices:** Any notice given pursuant to this Agreement shall, unless otherwise expressly stated, be in writing and shall be deemed to be validly given if personally delivered, posted or emailed to the registered office of the Party or the Party's lawyer or if not a company at the address of the Party from time to time during the currency of this Agreement. In the case of service by email the notice shall be deemed to have been served if it is sent to an email address known to be of a person associated with the Party and reasonably considered to be authorised to accept service on behalf of that Party.
- 21.16 **Costs:** Each Party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.
- 21.17 **Binding on Successors in Title:** The provisions of this Agreement shall continue for the benefit of and shall bind the successors and permitted assigns and nominees of the Parties.
- 21.18 **Agreement not Binding until Executed:** This Agreement is not binding on any Party until it has been properly executed by the Parties to it.
- 21.19 **Intellectual Property Rights:** The ownership of all intellectual property rights (including but not limited to all rights to copyright) in this Agreement and the programme described in this Agreement is and will remain vested in BHCT.
- 21.20 **Independent Legal Advice:** The Parties shall obtain independent legal advice when required pursuant to this Agreement

## 22. ACKNOWLEDGEMENTS

The Shared Home Owner acknowledges and agrees in favour of BHCT and the Mortgagee that:

- (a) it has obtained independent legal advice in respect of this Agreement and that a Barrister and Solicitor of the High Court of New Zealand or Registered Legal Executive has explained the nature and effect of this Agreement to the Shared Home Owner and the Shared Home Owner has understood the nature and effect of this Agreement; and
- (b) the Mortgagee and BHCT may share information in respect of the Shared Home Owner and its obligations pursuant to this Agreement and to the Mortgagee and that BHCT is entitled to request and receive from the Mortgagee information in

respect of the Shared Home Owner's obligations to the Mortgagee without the Shared Home Owner claiming that the Mortgagee's duties of confidentiality or obligations under Privacy Act 1993 have been breached and the Shared Home Owner waives its rights in that respect irrevocably and shall irrevocably sign all or any approvals or release forms for the purposes of such information disclosure;

- (c) the Shared Home Owner will keep BHCT copied in on all correspondence the Shared Home Owner has with the Mortgagee and agrees to the Mortgagee copying in BHCT on all correspondence the Mortgagee has with the Shared Home Owner

**EXECUTED** by the Parties.

**EXECUTED** for and on behalf of )  
**BRIDGE HOUSING CHARITABLE** )  
**TRUST** in the presence of: )

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**EXECUTED** by in the presence of: )  
 )  
 )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**EXECUTED** by in the presence of: )  
 )  
 )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

R)

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

I, \_\_\_\_\_

Barrister and Solicitor of the High Court of New Zealand confirm that I have explained the nature and effect of this Agreement to the Shared Home Owner and have reasonable grounds to believe that the Shared Home Owner has understood the nature and effect of this Agreement.

## ANNEXURE A

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### POWER OF ATTORNEY

**I/WE** of

in consideration of the payment of \$1, receipt of which is acknowledged,

**IRREVOCABLY APPOINT BRIDGE HOUSING CHARITABLE TRUST**

**TO BE MY/OUR ATTORNEY** (and the person or persons so acting is hereinafter referred to as "my Attorney")

1. to act for me/us in my/our name on my/our behalf and in my/our interests in all matters with or in which I/we shall be in any way connected, interested or concerned (whether solely or otherwise) as fully and effectually as if I/we could if personally present in respect of the property at .
2. to sign and use my/our name in any manner in any deed, document or writing in respect of the property at .

**WITHOUT LIMITING** the generality of the foregoing **I/WE DECLARE** that my/our Attorney has the power for me/us and in my/our name

1. to enter into or to perform any contract in relation to the property at ;
2. to exercise any right, power, authority or discretion of whatsoever nature which the ownership or possession of the property at or my/our legal relation thereto confers upon me/us or which by virtue of any fact or circumstance I am/we are entitled to exercise;
3. to appoint in place of my/our Attorney one or more attorney or attorneys to exercise any or all of the powers and authorities hereby conferred and from time to time to revoke any such appointment and appoint any further one or more attorney in place of such attorney.

### **I/WE DECLARE AND AGREE**

1. that no person or corporation dealing with my/our Attorney shall be concerned to see or enquire as to the propriety or expediency of any thing which my/our Attorney may do or purport or agree to do in my/our name by virtue of this deed; and
2. to allow, ratify and confirm everything that my/our Attorney shall lawfully do or cause to be done by virtue of these presents; and
3. that the appointment of my/our Attorney is irrevocable and shall remain in full force and effect until terminated by my/our Attorney

**IN WITNESS** this deed has been executed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

---

**SIGNED** by the said in the presence )  
of: )  
)

\_\_\_\_\_  
Signature

.....  
Witness signature

.....  
Full name

.....  
Occupation

.....  
Address

**SIGNED** by the said in the presence )  
of: )  
)

\_\_\_\_\_  
Signature

.....  
Witness signature

.....  
Full name

.....  
Occupation

.....  
Address



**ANNEXURE B**

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**SHARE ALLOCATION**

<b>Date</b>	<b>BHCT %</b>	<b>Shared Home Owner %</b>	<b>Signed for BHCT</b>	<b>Signed for Shared Home Owner</b>

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## ANNEXURE C

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### SCHEDULE OF FEES

**Annual Management Fee**                      clause 3.1(g)                                      \$350 + GST

This will cover BHCT's affordable programme and associated administration costs including an annual inspection of the Property and review with Shared Home Owner.

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**Application Fee**                                      clauses 7.1 and 11.1                                      \$500 + GST on any application by the Shared Home Owner to sell or purchase Shares to or from BHCT plus the cost of obtaining the valuation to be paid by the Shared Home Owner directly to the Valuer.

**Settlement Fee**                                      clause 11.4                                      \$300 + GST on each settlement when the Shared Home Owner purchases Shares from BHCT.

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**Transfer Fee**                                      clauses 7 and 8

This will be charged if the Shared Home Owner sells its Share in the Property to BHCT and is set at 2.5% of the value of the Share being sold plus GST.

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**Administration Fee**                                      clause 9.3

This will be charged if the Shared Home Owner sells its Share in the Property to a third party and is set at 1.5% of the value of the Share being sold plus GST.

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The above fees will be reviewed annually and notified to the Shared Home Owner.

There is no application fee at the initial purchase of the Property.