

SALE AND DEVELOPMENT AGREEMENT – Teitei Drive, Ohakune

RUAPEHU DISTRICT COUNCIL

HOUSING NEW ZEALAND BUILD LIMITED

CONFIDENTIAL



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PARTIES

1. RUAPEHU DISTRICT COUNCIL (the Council)
2. HOUSING NEW ZEALAND BUILD LIMITED (NZ Company Number 6837775) (HNZ Build)

BACKGROUND

- A. The Council is the local territorial authority for the Ruapehu district. It has its head office in Taumarunui with a second major office in Ohakune and a small service centre in Ohakune and a small service centre in Raetihi.
- B. The Council was established on 1 November 1989 from the former Taumarunui Borough Council, Taumarunui County Council, Waimarino County Council and part of the Rangitikei County Council. The Council's leadership and governance follows the role and principles of local government as per the Local Government Act 2002 and subsequent amendments namely;
 - To enable democratic local decision-making and action by, and on behalf of, communities; and
 - To promote the social, economic, environmental and cultural well-being of communities in the present and for the future.

- C. The Council adopted a 1 page housing strategy and plan of action (dated May 2021). This includes:

***Our Vision:** Supportive and thriving communities where there is a diversity of warm, dry, safe homes that residents and workers across the District can afford.*

***Our Mission:** Working with others to increase the overall supply of homes and enable and facilitate the delivery of more emergency, social and affordable homes and papakāinga to meet the diversity of whanau, family and individual needs.*

The Council in this strategy sought to leverage off the Crown Infrastructure Partners (CIP) process, attract capital, co-investment, scale builders, Community Housing Providers, Kāinga Ora and developers to all Ruapehu.

- D. Kāinga Ora is a Crown entity for the purposes of the Crown Entities Act 2004, established by section 8 of the Kāinga Ora – Homes and Communities Act 2019 (**Kāinga Ora Act**) with the objective to contribute to sustainable, inclusive, and thriving communities that:
 - a. provide people with good quality, affordable housing choices that meet diverse needs;
 - b. support good access to jobs, amenities, and services; and
 - c. otherwise sustain or enhance the overall economic, social, environmental, and cultural well-being of current and future generations.


- E. Kāinga Ora undertakes the functions set out in section 13 of the Kāinga Ora Act, which include providing housing and undertaking urban development. In relation to urban development, Kāinga Ora also acts in accordance with the objectives, functions, and duties set out in the Urban Development Act 2020.
- F. Kāinga Ora acts in a manner consistent with the operating principles set out in section 14 of the Kāinga Ora Act. These principles fall under five headings: public housing solutions that contribute positively to well-being, housing supply meets needs, well-functioning urban environments, stewardship and sustainability, and collaboration and effective partnerships.
- G. HNZ Build is a wholly owned subsidiary of Kāinga Ora and, as a result, is also a Crown entity for the purposes of the Crown Entities Act 2004 and is required:
- a. to the extent they relate to HNZ Build, to act consistently with the objectives and operating principles set out in section 13 of the Kāinga Ora Act and the Kāinga Ora statement of intent current at any given time;
 - b. to act consistently with the Government Policy Statement issued (as amended) under the Kāinga Ora Act; and
 - c. to perform its functions in a manner consistent with the spirit of service to the public and in collaboration with other public entities.
- H. In July 2020, the Council submitted an application for funding to CIP for two 'shovel-ready' projects to enable the delivery of more social and affordable housing in the district. Project 1 (Council Social Housing at Moore Street, Ohakune) was approved and 6 new social housing are near completion. Project 2, the development of 44 lots at 6 Teitei Drive, was not approved at the same time as Project 1. Rather, additional due diligence was undertaken by the various government agencies before Ministerial approval to proceed was given. In the case of Project 2, and to ensure delivery of homes on the 44 lots, the Council entered into discussions with Kāinga Ora and Ngāti Rangī so that a form of partnership arrangement could be made to achieve housing and community well-being outcomes at the Teitei Drive site.
- I. In December 2021, the Infrastructure Reference Group Ministers, acting on the advice of CIP, approved the release of the CIP Funding to the Ministry of Housing and Urban Development (HUD). HNZ Build will enter into a funding agreement with HUD in order to receive the CIP Funding for the purposes of the Project.
- J. In broad terms, the Project involves the following:
- a. The subdivision of a Super Lot of approximately 1.6 ha from the Council's overall land holding of 9.4356 ha at Teitei Drive, Ohakune;
 - b. The sale of the Super Lot to HNZ Build;
 - c. Master planning of the whole site for delivery of approximately 150 to 200 homes;
 - d. Design and development of infrastructure (roads and three waters) to service the whole site, with the Super Lot being prioritised for delivery of new homes by HNZ Build, and the balance of the site (the Future Stages) receiving "trunk" infrastructure and installation of as much as possible of the civil and infrastructure works as the remaining balance of the CIP Funding will permit; and
 - e. Construction of 44 new homes by HNZ Build to be used for the mixed uses of public housing, affordably-priced home ownership and long term worker-rental housing.

- K. In accordance with its functions and the operating principles and to meet its objective, Kāinga Ora has undertaken engagement with Māori and other persons and communities regarding Teitei Drive. Kāinga Ora has undertaken that engagement in accordance with the principles in He Toa Takitini – our Partnership and Engagement Framework.
- L. HNZ Build and the Council have agreed to enter into this Agreement recording in full the agreement reached between them for the sale and development of the Super Lot as the Project.

This Agreement records the parties' agreement as set out in the Specific Terms and General Terms.

SIGNATURES

SIGNED on behalf of RUAPEHU DISTRICT COUNCIL by:



Signature of authorised signatory

Clive A Manley, Chief Executive

Name of authorised signatory

SIGNED on behalf of HOUSING NEW ZEALAND BUILD LIMITED by:



Signature of authorised signatory

Neil Mayo

Name of authorised signatory



SPECIFIC TERMS

Land		
Land:	Address: 6 Teitei Drive, Ohakune Record of Title: WN24D/752 Estate: Fee Simple Area: 9.4536 hectares more or less Legal Description: Lot 2 Deposited Plan 54909	
Super Lot:	Legal Description: 1.6 hectares more or less described as “Stage One” and marked on the Master Plan.	
Payments		
Purchase Price:	\$s9(2)(j) plus GST (if any) Date for payment of purchase price: In accordance with ADLS general terms 3.8	
Milestones		
Milestones and Milestone Dates: (Refer clause 15)	Milestones	Milestone Dates
	Milestone 1: Finalisation of Master Plan	30 September 2023
	Milestone 2: Completion of the infrastructure works described in clause 8.1(a)	30 June 2025
	Milestone 3: The floor slab of the first Home on the Super Lot has been laid.	30 November 2025
	Milestone 4: Practical Completion of all of the Homes on the Super Lot.	30 April 2028
Conditions		
Conditions: (Refer clause 2)	Condition	Date for Satisfaction
	Council Approval Condition	31 March 2023
	Due Diligence Condition	60 working days from the date of the Agreement
	HNZ Build Approval Condition	30 June 2024
	Resource Consent Condition	30 January 2024

Settlement Date:	The date 10 Working Days after the later of: <ul style="list-style-type: none"> the date that a record of title for the Super Lot has issued from LINZ; all Conditions have been satisfied or (if applicable) waived; and the infrastructure works described in clause 8.1(a) have reached practical completion (as certified by HNZ Build's project manager) in relation to the Super Lot.
Licence Commencement Date	The date that the parties have executed this Agreement and executed a licence in the form set out in this Agreement.
Homes to be delivered by HNZ Build	
Total number of Homes on the Super Lot	44 Homes (Note: this includes the Public Homes, Affordable Homes and Worker-Rental Homes)
Public Homes, Affordable Homes and Worker-Rental Homes <i>(Refer clause 17)</i>	
Public Homes:	15 Homes
Affordable Homes:	15 Homes
Worker-Rental Homes:	14 Homes
Other Details	
Council's Address for Notices:	Ruapehu District Council Private bag 1001 Taumarunui 3920 Email: Clive.Manley@ruapehudc.govt.nz
Council's GST No.:	52-064-023
HNZ Build Address for Notices:	Floor 5, 7 Waterloo Quay, Pipitea, Wellington, 6011 Giles.Tait@kaingaora.govt.nz ; Colleen.McCorkindale@kaingaora.govt.nz
HNZ Build GST No.:	125-981-623
Insurances:	<ul style="list-style-type: none"> Public Liability: \$15M for any one claim and \$15M in aggregate Contract Works: Full replacement value

<p>Council's initial DPM Representatives: <i>(Refer clause 1.1)</i></p>	<p>Clive Manley (RDC CE) Melissa Jackson (Manager Policy and Strategy) melissa.jackson@ruapehudc.govt.nz</p>
<p>HNZ Build initial DPM Representatives: <i>(Refer clause 1.1)</i></p>	<p>Giles Tait, Senior Development Manager – Greenfield and Complex Projects +s9(2)(a) [redacted] Giles.Tait@kaingaora.govt.nz</p> <p>Colleen McCorkindale, Project Director – Greenfield and Complex Projects +s9(2)(a) [redacted] Colleen.McCorkindale@kaingaora.govt.nz</p>
<p>Council's Senior Manager: <i>(Refer clause 25.5)</i></p>	<p>Clive Manley (RDC CE) [redacted] clive.manley@ruapehudc.govt.nz +s9(2)(a) [redacted]</p>
<p>HNZ Build Senior Manager: <i>(Refer clause 25.5)</i></p>	<p>Graeme Broderick, Regional Director – Taranaki, Whanganui and Manawatu [redacted] Graeme.Broderick@kaingaora.govt.nz s9(2)(a) [redacted]</p>



GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Access Licence (Preliminary and Infrastructure) means the form of licence set out in Schedule 5;

Agreement means this agreement, including all schedules and attachments;

Affordable Homes means the buildings to be constructed on the Super Lot that are to be made available to purchase by eligible purchasers pursuant to the relevant Affordable Housing Programme and developed in accordance with the Specific Terms and clause 17;

Affordable Housing Programme means the an affordable housing programme administered Kāinga Ora,

Amended ADLS Terms means the general terms of sale as amended and attached as Schedule 1;

Authority means Ruapehu District Council and any other local body, government or other authority having jurisdiction over, or authority for, the Project or the Development;

Building Works means the design and construction of all Homes and surrounding improvements including all below ground (foundation) and above ground works, the Public Area Works (if any), all as set out in the Design Documents;

Change Notice has the meaning given to that term by clause 7.2

CIP Funding means the sum of \$5,200,000 plus GST (if any) for civil works, infrastructure, building platforms and planning costs, including allowances for contingencies and professional fees, to be advanced to HNZ Build by HUD in accordance with the Funding Agreement.

Conditions means the conditions set out in the Specific Terms or implied by statute and 'Condition' means any one of them;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- (c) is provided by either party or a third party 'in confidence';
- (d) either party knows or ought to know is confidential; or
- (e) is of a sensitive nature or commercially sensitive to either party;

Consents means the Resource Consents and all building consents and other permits, licences, approvals and any other similar items legally required by HNZ Build to undertake the Project;

Council DPM Representative means the individual identified in the Specific Terms as the Council DPM Representative, or:

- (a) if more than one individual is identified in the Specific Terms, any one of them;
- (b) any replacement individuals notified in writing to HNZ Build; or
- (c) in relation to a particular matter, any individual or individuals identified by the Council as the party to act as the Council DPM Representative;

Date for Satisfaction means, in relation to each Condition, the date for satisfaction set out in the Specific Terms for that Condition;

Default Interest Rate means 6% above the Bank of New Zealand 90-day bank bill rate;

Delay Event means a delay to the progress of the Works caused by:

- (a) a delay in the granting of any Consent;
- (b) the Expert determination or dispute resolution procedures of a dispute relating to the Project;
- (c) any industrial action, worker dispute, strike, lockout which affects the provision of labour, materials or any builder, contractor or supplier of material in any way involved in carrying out or providing materials, services or work;
- (d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration, act of civil or military authority;
- (e) an epidemic or pandemic;
- (f) any delay caused by the Council in the performance of its obligations or the exercise of its rights under this Agreement;
- (g) a material change in government housing policy (having a material adverse effect on the Super Lot);
- (h) any event, series of events or circumstances arising from the physical impacts of climate change that prevents a party from performing its obligations under this Agreement and includes, but is not limited to:
 - (i) disruption of logistics and transport systems relied on for the supply of key resources;
 - (ii) unsafe working conditions due to extreme weather;
 - (iii) unavailability of insurance; or
- (i) any other event or circumstance which is beyond the reasonable control of HNZ Build and which could not have been foreseen by an experienced developer,

in each case which could not have been prevented by the exercise of reasonable care, skill and diligence by HNZ Build but does not include any lack of funds or change in economic conditions (unless caused by a Delay Event listed above);

Design Documents means all drawings, plans, specifications and materials and colour schedules for the various:

- (a) typologies/categories of Homes to be constructed as part of the Project by HNZ Build; and
- (b) any Public Areas forming part of the Project,

which will be high quality, professional and detailed design plans and specifications that comply with the Design Guidelines;

Design Guidelines means the minimum design guidelines (which include Homestar 6, carbon zero or healthy homes requirements) which will apply to the Super Lot, established pursuant to the Urban Planning and Design Services and which will be of at least the same standard as required by Kāinga Ora in its published design guidelines (available here: <https://kaingaora.govt.nz/publications/design-guidelines>)

Design Review Panel means the panel formed, no later than three months before Milestone 3 is achieved, by the Council and Kāinga Ora, together with a representative from Ngāti Rangī, in relation to the Super Lot to provide written recommendations and approvals on draft land use and subdivision consent applications, building consent applications and Design Documents against the requirements of the approved Design Guidelines;

Design Review Process means the Design Review Process established by the Council, Kāinga Ora and Ngāti Rangī pursuant to the Urban Planning and Design Services for the promotion of good design and compliance with the Design Guidelines in the Development.

Development means the development of the Land, including the Project and Future Stages, in accordance with the Master Plan to create an integrated urban community;

Development Framework means:

- (a) the Design Guidelines;
- (b) the Design Documents (once approved under clause 5);
- (c) the Master Plan (subject to clause 5.7);
- (d) the Project Plan;
- (e) the District Plan of the Council; and
- (f) the Programme,

and, once issued, the Final Assessment Report;

Development Partner Meeting or **DPM** means the meetings to be held between representatives of HNZ Build, the Council and Ngāti Rangī as required by clause 4;

Encumbrance means:

- (a) any interest, equity or other right of any other person (including any right to acquire, option, right of first refusal or right of pre-emption), mortgage, charge, pledge, lien, restriction, assignment, hypothec, security interest, title retention, sale and buy-back, sale and lease-back or any other interest in property that

legally or in substance secures any obligation of any person, or other arrangement of any nature having similar economic effect (and includes any "security interest" within the meaning of the Personal Property Securities Act 1999); or

- (b) any agreement or arrangement to create any of the above;

Expert means an expert to be appointed under clause 24.2 to determine a dispute who:

- (a) has been qualified in the general subject matter of the dispute or difference for not less than 10 years;
- (b) has had 5 years' relevant experience in the past 10 years in relation to the type of matter in dispute; and
- (c) who is a specialist in relation to the relevant subject matter;

Final Assessment Report means a final assessment report issued by the Design Review Panel in relation to the Project Plan and Design Documents (both as reviewed by it), as contemplated by clause 5;

Funding Agreement means the agreement between HUD and HNZ Build which advances the CIP Funding to HNZ Build for the purposes of the Project;

Future Stages means the balance of the Land remaining after the creation of the Super Lot to be developed by the Council and which could deliver approximately 150 further dwellings;

GST Act means the Goods and Services Tax Act 1985;

Health and Safety Legislation means the Health and Safety at Work Act 2015 and any regulations made under that Act, and codes of practice and standards approved under that Act and any replacement legislation;

Homes means:

- (a) the Public Homes, Worker-Rental Homes, Affordable Homes; and
- (b) all associated fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and recycling facilities forming part of the Project whether as proposed by HNZ Build (and approved under clause 5) or as required by the Design Review Panel as part of the approval process described in clause 5 or by any Authority;

Intellectual Property means all intellectual property rights and interests (including the goodwill and any other common law rights and interests) owned, licensed or held by a party or used by it domain names, patents, designs, copyrights, know how, trade names, symbols, logos and licenses or similar use rights in respect of such rights and interests and any other intellectual property rights enforceable in New Zealand and elsewhere;

Investigative Works means all purposes HNZ Build considers incidental to its due diligence including conducting invasive investigations in, on or under the Land (such as soil testing).

Land has the meaning given to that term in the Specific Terms;

Land Use Consents means all Authority consents and approvals (including variations of any existing consent) to enable the Homes to be built on the Lots, as intended under the Project Plan;

Law or Laws means all statutes, regulations and bylaws of government, local and other public authorities;

Lot or Lots means, as the case may be, each and every lot and/or unit created by HNZ Build out of the Super Lot as identified in the Project Plan;

Master Encumbrance means the encumbrance in gross to be registered against the record(s) of title to the Super Lot in favour of the Council or otherwise as elected by the Council, as encumbrancee, substantially on the terms and conditions set out in Schedule 3;

Master Plan means the master plan for the Development as developed by the Council, Kāinga Ora and Ngāti Rangi pursuant to the Urban Planning and Design Services and clause 5.6;

Material Breach means:

(a) in relation to HNZ Build a breach of this Agreement that is material, including the following examples of breach, which do not limit the range of possible breaches that may be deemed to be material, and which will be considered to be material at all times during the period that this Agreement remains in force:

- (i) failure to pay the balance of the Purchase Price due in respect of the Super Lot on the due date for payment (without prejudice to clause 23.1(a));
- (ii) failure to comply, in all material respects, with the approved Design Documents in carrying out construction of the Works;
- (iii) failure to achieve Milestone 4 by the relevant Milestone Date;

(b) in relation to either party:

- (i) a failure by that party to complete Settlement as described in clause 23.1(a) (which is a Material Breach for all purposes other than clauses 23.1(b) to (e));
- (ii) a wilful or grossly negligent act or omission (whether in breach of clause 21, another provision of this Agreement or otherwise) that affects materially the reputation of HNZ Build, Kāinga Ora, the Council or the Development;
- (iii) a persistent, flagrant or wilful failure to carry out its obligations under this Agreement;

Milestones means the milestones set out in the Specific Terms;

Milestone Dates means each date associated with a particular Milestone as set out in the Specific Terms, as may be modified or extended in accordance with this Agreement;

No Objection Covenant means the covenant (in gross in favour of the Council or otherwise as elected by the Council) to be registered against the record(s) of title to the Super Lot and the Lots on substantially the terms and conditions set out in Schedule 4;

Practical Completion means, in relation to each Home, the later of the date on which:

- (a) a Code Compliance Certificate has been issued by the relevant Authority in respect of the Home;
- (b) practical completion of the Home has been achieved in accordance with the terms of the relevant construction contract for that Home;
- (c) any fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and recycling facilities or other outdoor works specified in the Design Documents for the Lot have been completed;

provided that there may still be works of a minor nature to be completed, to the extent permitted by the Council (acting reasonably), that do not prevent the Home being used as a residence;

Programme means the specific and detailed development and construction timetable (being a GANTT chart or (if agreed between the parties from time to time)) equivalent chart detailing the steps to be taken to satisfy the Conditions and the implementation of the Works and achievement of Milestones prepared and then maintained by HNZ Build in accordance with clause 15;

Project means:

- (a) the development of the Super Lot by HNZ Build to deliver the Lots and the Homes, in accordance with the Development Framework;
- (b) the Subdivision Works;
- (c) the Building Works; and
- (d) the project otherwise known to CIP as the “Ohakune Social Housing Project”.

Project Completion means the later of the date on which:

- (a) a record of title is issued for each Lot;
- (b) Practical Completion is achieved in respect of the last Home forming part of the Project;
- (c) all of the Works have been completed in accordance with this Agreement,

Project Objectives means the objectives set out in clause 3.1;

Project Plan means the detailed plan for the Project submitted for approval in accordance with clause 5;

Proposed Variation has the meaning given to that term by clause 7.1;

Public Area means those areas of the Super Lot that are designated in the Project Plan or Master Plan to be accessed and enjoyed by the public at large (whether or not they are to be vested in a local authority or government body);

Public Area Works means any works set out in the Design Documents to be carried out within any Public Area;

Public Homes means the buildings to be constructed on the Super Lot and transferred to Kāinga Ora (or its subsidiary, including Housing New Zealand Limited) for public housing purposes in accordance with the Specific Terms and clause 17;

Releases has the meaning given to that term by clause 18.3;

Resource Consents means all of the Super Lot Consents, Land Use Consents and the Subdivision Consents to be obtained by HNZ Build under the Resource Management Act 1991 for the Project;

Settlement means in relation to the Super Lot the moment in time when each party has performed their settlement obligations under clause 11;

Settlement Date means the settlement date allocated to the Super Lot in the Specific Terms (subject to clause 11.3);

Specific Terms means the table headed 'Specific Terms' that precedes these General Terms;

Subdivision Consents means all Authority consents and approvals required to enable new records of title to be issued for the Lots;

Subdivision Works means all construction, engineering and other works, including the design, construction and installation of all utilities, facilities and other infrastructure required to comply with the requirements of the Subdivision Consents:

Super Lot means all of the land comprising the Super Lot specified in the Specific Terms, being part of the Land, to be contained in the separate record(s) of title to be issued;

Super Lot Consents means the land use consents (if any) and subdivision consents relating to the subdivision of the Land and creation of the Super Lot;

Termination Event means the occurrence of any of the events set out in clause 23.1;

Typologies means the typologies for the Homes approved as part of the approval of the Design Documents under clause 5;

Urban Planning and Design Services means the scope of services attached at Schedule 2;

Vision means the vision for the Development to build on and contribute to the vibrant diverse community within Ohakune while maintaining a sense of place and to set new benchmarks for quality, affordable, dense and diverse urban development with a focus on innovation, affordability and a low climate impact;

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Matariki Holiday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and any other statutory holiday observed in the location of the Super Lot (and each includes any day on which



the relevant statutory holiday is observed due to it falling on a Saturday or Sunday); and

- (b) a day in the period commencing on the 15th day of December in any year and ending on the 15th day of January in the following year, both days inclusive; and

Worker-Rental Homes means the buildings to be constructed on the Super Lot in accordance with the Specific Terms and clause 17;

Works means the Subdivision Works and Building Works, and all other works required to design, construct and complete the Project (including those described in clause 8.1).

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) expressions defined
 - (i) in the main body of this Agreement; or
 - (ii) as items listed in the Specific Terms,have the defined meaning throughout this Agreement, including the background;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) references to any party include that party's executors, administrators, successors and permitted assigns;
- (d) references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) references to the singular include the plural and vice versa;
- (f) references to clauses and schedules are to clauses in, and the schedules to, this Agreement;
- (g) references to any statute or statutory provision are to statutes or statutory provisions in force in New Zealand and include any statute or statutory provision which amends or replaces the statute or statutory provision, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under the statute or statutory provision;
- (h) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (i) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**.

1.3 ADLS Amended Terms: Words which are used in the Amended ADLS Terms which are not defined in paragraph 1.1 of the Amended ADLS Terms (Definitions), shall, unless the context otherwise requires, have the meaning ascribed to those words in clause 1.1 of the Sale and Development Agreement.

2. CONDITIONS

2.1 Conditions: The following Conditions apply:

- (a) Council Approval Condition:
- (i) this Agreement is conditional on the Council obtaining the necessary internal approvals to the Council's entry into this Agreement by the relevant Date for Satisfaction;
 - (ii) the Council will not be required to provide any reason for any failure to satisfy the Council Approval Condition; and
 - (iii) the Council Approval Condition is inserted for the sole benefit of the Council;
- (b) HNZ Build Approval Condition:
- (i) this Agreement is conditional on HNZ Build obtaining the necessary internal approvals to HNZ Build entry into this Agreement by the relevant Date for Satisfaction;
 - (ii) HNZ Build will not be required to provide any reason for any failure to satisfy HNZ Build Approval Condition; and
 - (iii) HNZ Build Approval Condition is inserted for the sole benefit of HNZ Build;
- (c) Due Diligence Condition:
- (i) this Agreement is conditional on HNZ Build being entirely satisfied, by the relevant Date for Satisfaction, with its due diligence investigations in relation to the land comprising, or to comprise, the Super Lot, and its suitability for the Project; and
 - (ii) the Due Diligence Condition is inserted for the sole benefit HNZ Build; and
- (d) Resource Consent Condition:
- (i) this Agreement is conditional on HNZ Build obtaining, by the relevant Date for Satisfaction, the Resource Consents (on terms satisfactory to HNZ Build and the Council, acting reasonably and subject to clauses 2.1(d)(ii) and (iii));
 - (ii) HNZ Build's approval of the terms of a Resource Consent may only be withheld in circumstances where those terms do not enable the number and mix of Homes set out in the Specific Terms to be developed or will, or are substantially likely to, have a material negative impact on HNZ Build's ability to undertake the Project in compliance with the terms of this Agreement;
 - (iii) The Council's approval of the terms of a Resource Consent may only be withheld in circumstances where those terms:

- (A) would not enable the number and mix of Homes set out in the Specific Terms to be developed; or
- (B) would result in an adverse legal or financial impact on the Council;

(iv) the Resource Consent Condition is inserted for the benefit of both the Council and HNZ Build.

2.2 Application of Amended ADLS Terms: Clause 9 of the Amended ADLS Terms applies to the operation of all of the Conditions. Where there is any conflict between the Amended ADLS Terms and this Agreement, this Agreement will prevail.

2.3 Benefit of Conditions: Any Conditions that are for the benefit of one party may only be waived by that party. Any conditions that are for the benefit of both the Council and HNZ Build are not capable of waiver.

2.4 Assessments required for Conditions: Where a Condition relates to an assessment by one party of matters relating to knowledge or information held or controlled by another, the party holding or controlling that knowledge or information must (at no cost to the other party) provide that knowledge and information to the party requiring it to enable it to carry out the relevant assessment:

- (a) in a format reasonably required by the party requesting the information or knowledge; and
- (b) within 5 Working Days of a request being made,

and if the information is not provided within that timeframe, the relevant Date for Satisfaction will be extended by a period of time equal to the delay.

2.5 Due Diligence Assistance: the Council must promptly disclose (and, where relevant, provide copies of) to HNZ Build all relevant information (including authorisations) and records relating to the Land of which it is aware and which is in its possession or under its control. The purpose of disclosure is to enable HNZ Build to carry out and undertake its due diligence investigations in a complete and full manner. The Council warrants that all information and records disclosed to HNZ Build is true and correct.

2.6 Investigations: From the date of this Agreement and until the Settlement Date:

- (a) the Council will allow HNZ Build and its agents, employees and contractors access to the Land for Investigative Works. HNZ build must give prior written notice to the Council before commencing Investigative Works with details of the Investigative Works to be undertaken; and
- (b) HNZ Build will undertake all Investigative Works in a good and workmanlike manner in compliance with the Health and Safety at Work Act 2015 and in compliance with the reasonable directions of the Council and the Council's safety requirements. HNZ Build agrees to reinstate the Land to the condition it was prior to undertaking the Investigative Works (if required).

3. PROJECT OBJECTIVES

3.1 Project Objectives: The parties acknowledge and record that they are committed to achieving the following objectives in relation to the Project:

- (a) delivery of the Public Homes, Affordable Homes and Worker-Rental Homes as required by clause 17;
- (b) The overall Project remaining cost-neutral to the Council, taking into account the sale of Super Lot for a nominal purchase price;
- (c) Building capacity and capability within the Council, so that the Future Stages can be sold and developed by the Council on a commercial-basis;
- (d) The creation of local employment opportunities, where possible and consistent with the objectives of the Funding Agreement;
- (e) Supporting the development of housing solutions for whanau and the wider Ohakune community;
- (f) That the design of the homes and the overall housing outcomes of this Agreement reflects Ngāti Rangi values and Crown partnership;
- (g) compliance with the functions and operating principles set out in 12, 13 and 14 of the Kāinga Ora–Homes and Communities Act 2019;
- (h) implementation of the Master Plan objectives in compliance with the Development Framework by procuring the construction of the Homes;
- (i) develop the Super Lot as a cohesive part of the Development;
- (j) protect the integrity of the Vision throughout the development processes;
- (k) use the land within the Development efficiently and responsibly and in a manner that promotes increasingly efficient buildings and construction process that have a low climate impact;
- (l) preserve the unique natural features of Ohakune;
- (m) build on the existing built diverse community by incorporating good urban design principles with built forms to a high standard of design and quality incorporating innovative housing and construction features, optimising utilised space based on leading urban design principles, including adopting future technologies as they arise, to the end and intent that a community is further established in Ohakune which sets benchmarks within the industry as to the design and quality and pace of delivery of all of the components of the Project;
- (n) to ensure that the simultaneous undertaking of works for the Project and other parts of the Development are streamlined and each undertaken with care, clear communication and in line with the Project Objectives so as to reduce any negative impact on other development sites and Ohakune’s existing inhabitants (including the residents businesses, facilities and the general public of Ohakune) through careful planned construction, the timing of works and the delivery of products to the public;

3.2 Commitment to Project Objectives: The parties both record their commitment to the achievement of the Project Objectives reflecting the following basic principles:

- (a) support by the parties for activities that build on the Project Objectives and Vision;



- (b) full participation by the parties in terms of this Agreement and the Partnering Concept;
- (c) transparency and co-operation in good faith and commitment to all aspects of planning, design, development and implementation;
- (d) recognition of the need for a skilled workforce and building local capacity where possible; and
- (e) promotion of innovation and alternative ways of addressing all planning, design, development and implementation issues, where necessary to achieve continued improvement.

3.3 Partnering Concept: The Partnering Concept is an over-arching principle which will govern and guide the contractual and working relationships between the parties and which recognises and comprises the following objectives and principles:

- (a) the establishment of a long-term enduring relationship based on mutual trust, respect and reciprocity;
- (b) the need for a shared understanding and consideration of each other's position;
- (c) the importance to each party of them being kept informed, and being able to have their say on matters that are important to them;
- (d) the shared intention to achieve (by constructive and harmonious working together) each party's objectives;
- (e) openness, promptness, consistency and fairness in all dealings and communications between the parties and their agents and representatives, including in relation to the resolution of any differences or disputes which may arise;
- (f) communication that includes feedback so each party can understand how their viewpoint has been considered and how it has influenced the decision of the other;
- (g) non-adversarial dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions;
- (h) promotion of a problem solving approach between the parties; and
- (i) notification of issues of concern at the earliest practical opportunity;

(Partnering Concept).

3.4 Relationship: The parties record their commitment to the Partnering Concept and acknowledge that:

- (a) the parties must, both in their day-to-day interaction and in performing their obligations under this Agreement, conduct themselves in a manner which is consistent with the Partnering Concept;
- (b) each party will ensure that its representative, subcontractors, and consultants are made aware of the parties' respective rights and obligations under this

clause and will use their reasonable endeavours to ensure that such representatives, sub-contractors, and consultants have regard to and abide by, in performing their obligations in respect of the Project, the objectives and principles recognised by and comprising the Partnering Concept; and

- (c) each party will:
 - (i) respect the other party's strategic and operating environments;
 - (ii) consider the effects that their operations or activities, beyond just the carrying out of the Works or the Development, may have on the other party and work together to try and minimise or mitigate any adverse effects where reasonably possible; and
 - (iii) promote good urban and environmental design having regard to the Master Plan;
- (d) HNZ Build must comply with over-arching statutory obligations and Government policies in place from time to time which obligations and policies will, in the event of any conflict, take precedence over the terms of this Agreement and which may from time to time impact on how partnering is given effect to;
- (e) The Council must comply with its duties and exercise the rights, conferred on it by the Local Government Act 2002, the Resource Management Act 1991 and any other enactment.

3.5 No Partnership or Joint Venture: Despite the Partnering Concept, and clause 4 (in its entirety) neither this Agreement nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.

3.6 No UDA Development Agreement: This Agreement is not a development agreement for the purposes of section 235 of the Urban Development Act 2020.

3.7 Non-Regulatory Function of the Council: The Council enters into this agreement in its non-regulatory capacity only and not withstanding anything to the contrary elsewhere in this Agreement, nothing in this Agreement shall be taken as preventing the Council from exercising its regulatory functions with respect to the Project.

4. DEVELOPMENT PARTNER MEETINGS

4.1 Development Partner Meeting Representatives: The parties will appoint two representatives each to attend Development Partner Meetings for the Project. A further representative of Ngāti Rangī will also be appointed on the advice of Ngāti Rangī. The parties' initial Development Partner Meeting representatives are those set out in the Specific Terms (if any). A party may substitute a representative, by written notice to the other party, provided that the replacement person is competent, informed and authorised to make decisions (subject to clause 4.3). The parties must use all reasonable endeavours to ensure that at least one of its representatives (or a qualifying substitute) attends each DPM. It is agreed by the Parties that the Council may, in addition to its two representatives on the DPM, appoint to the DPM up to two external consultants as non-voting advisors to the Council on DPM functions, operations and matters, and that such advisors may attend and participate in DPM meetings.

4.2 Functions of Development Partner Meetings: The general functions of the Development Partner Meetings will be to:

- (a) foster the Partnering Concept and ensure the Project Objectives are being met (or are on track to be met);
- (b) provide a forum for communication between the Council, HNZ Build and Ngāti Rangi in respect of both the Project and progress with the Development;
- (c) monitor any progress, or lack of progress, made toward the satisfaction of any Conditions;
- (d) provide an open and transparent forum for the sharing of information, ideas and plans to ensure the streamlining of approval processes and timely implementation of the Project in a high quality manner;
- (e) monitor and observe the progress of the Project in accordance with this Agreement;
- (f) discuss and agree upon the most cost-effective use of the CIP Funding;
- (g) receive, consider and provide feedback on any reports required to be produced by HNZ Build;
- (h) review, discuss and consider any Proposed Variation;
- (i) act as an initial forum to discuss issues and identify acceptable solutions before initiating formal dispute resolution procedures;
- (j) provide a forum for presentation of, and feedback on, the proposed Design Documents prepared by HNZ Build prior to its submission to the Design Review Panel;
- (k) review, discuss and consider (to the extent relevant):
 - (i) Consent applications;
 - (ii) survey plans for the Project;
 - (iii) any Consent granted; and
 - (iv) the progress made towards the issue of records of title to the Super Lot and the Lots;
- (l) monitor and review HNZ Build's compliance with its health and safety obligations, the Health and Safety at Work Act 2015 and under clause 16.1 of this Agreement; and
- (m) monitor and review HNZ Build's compliance with the criteria used for selection of HNZ Build as a development partner for the Development (as set out in the information memorandum or request for proposals that HNZ Build submitted a tender in respect of, or other selection process documents used);
- (n) proactively consider, discuss and decide on methods of improving the way that the Project is being, or is to be, delivered and actions to be taken by either party

to assist in giving effect to those decisions including interactions with third parties.

4.3 Decisions and Authority: All decisions of the parties at DPMs must be unanimous between the representatives of the Council, HNZ Build and Ngāti Rangi and will be binding on the parties to this Agreement. Where the Council and HNZ Build fail to agree on any matter, the matter may be dealt with as a dispute under clause 25. The representatives at DPMs are only authorised to make decisions that relate to the day to day operation and undertaking of the Project and decisions made are not intended to avoid the need to obtain any other authority or approval required by this Agreement. The parties at DPMs are not authorised to make any decision that:

- (a) amounts to a variation of this Agreement; or
- (b) has the effect of limiting or restricting a decision that the Council or HNZ Build is entitled to make under this Agreement except to the extent that a delegation by the Council or HNZ Build allows its DPM representatives (or one of them) to do so.

4.4 Meetings: DPMs will be held at the times agreed by the parties (attendance may be via video or audio link), but in any event at intervals of not less than once every 6 weeks, with the first DPM to occur within 6 weeks of the date of signing this agreement. The parties agree:

- (a) 3 Working Days before each DPM, HNZ Build is to provide the Council and Ngāti Rangi representatives with a report (in a format reasonably required by the Council) addressing the items set out in Schedule 6 to the extent relevant to the current stage of the Project;
- (b) a quorum for any Development Partner Meeting will be one representative of the Council and one representative of HNZ Build;
- (c) a representative of the HNZ Build will be the chairperson of all meetings and the parties will ensure that:
 - (i) due notice of the meeting location, time and date is given to other members of the DPM;
 - (ii) meetings are held with appropriate formality;
 - (iii) minutes of each meeting are kept and distributed to all DPM representatives within 5 Working Days for review and comment; and
 - (iv) copies of the official record of the minutes are stored electronically in a location accessible by all parties;
- (d) either party may convene a special DPM by giving 5 Working Days' prior written notice to the other party's representatives.

4.5 Costs: Each party will bear its own costs incurred in relation to the activities of the DPM.

5. DESIGN APPROVAL

5.1 Preparation of Design Documents and the Project Plan: Except where all Design Documents and the Project Plan have been approved before this Agreement is signed, HNZ



Build will prepare both concept and detailed Design Documents and the Project Plan, at its own cost, and submit them to the Design Review Panel for review and approval, in accordance with the Design Review Process. The Design Documents for the Project must:

- (a) be prepared in accordance with the Development Framework (including complying with the Design Guidelines);
- (b) be consistent with the Project Objectives;
- (c) be consistent with the Programme and so that the applicable Milestone Dates can be achieved; and
- (d) meet any relevant Consent requirements.

5.2 Design and Typologies: HNZ Build acknowledges that the Design Documents and the Project Plan must encompass a variety of Home designs, formats and typologies that demonstrate innovation and significant variation in architectural variety as to the construction and delivery of Homes in terms of design, exterior construction materials, street presentation, fencing, landscaping, access lanes, paths, driveways, services, infrastructure, facilities, retaining walls, common areas, rubbish collection and recycling facilities and boundary treatments, provision of carparking, letterboxes and other exterior finishes.

5.3 Design Review Process: HNZ Build must follow and comply with the Design Review Process in force at all relevant times and (without limitation):

- (a) work collaboratively with the Council and the Design Review Panel to progress the Design Documents and the Project Plan through the Design Review Process;
- (b) respond to and address in a considered and detailed manner all the points, issues, queries and concerns raised by the Council and the Design Review Panel within the timeframes specified in the Design Review Process;
- (c) attend all pre-application meetings with the relevant Authority as required or recommended by the Council or the Design Review Panel.

5.4 Alignment with Consents: HNZ Build acknowledges that the Design Review Process will incorporate certain review steps that are required and form part of the process for obtaining the Resource Consents and where this Agreement is subject to a Resource Consent Condition the steps taken to satisfy that condition will form part of the Design Review Process. Where the review or approval of the Design Review Panel is required, HNZ Build will continue to diligently pursue that review or approval by taking into account the advice and recommendations of the Design Review Panel with a view to obtaining a Final Assessment Report, finalising the Design Documents and the Project Plan, and obtaining the Resource Consents in a timely manner having regard to the Milestones.

5.5 Final Assessment Report: Once the Final Assessment Report has been issued by the Design Review Panel HNZ Build will adopt the Final Assessment Report and incorporate it in the Design Documents and the Project Plan. HNZ Build may only vary or deviate from the Final Assessment Report in accordance with clause 7.

5.6 Creation of Master Plan: HNZ Build acknowledges that the Council has the overall strategic and master planning role for the Development. HNZ Build has offered, and the Council has accepted, a scope of Urban Planning and Design Services to the Council in order for the Council to prepare the Master Plan. The Urban Planning and Design Services will be

delivered by HNZ Build in accordance with the Partnering Concept and in furtherance of the Project Objectives.

5.7 Variations to Master Plan: The Council reserves the right to make changes to the Master Plan. Where changes to the Master Plan affect the Project materially:

- (a) the Council and HNZ Build will work together in good faith in order to minimise the net effect of the changes on the Project; and
- (b) where, despite compliance with clause 5.7(a) the changes;
 - (i) occur after the Final Assessment Report has been issued, HNZ Build will not be required to change the Design Documents or Project Plan if such a change would result in material additional costs or delays being incurred by HNZ Build unless the Council agrees to reimburse HNZ Build for any material and reasonable additional costs incurred in making such a change;
 - (ii) are either cost neutral or result in a cost benefit to HNZ Build the Project must be carried out in a manner that is consistent with the amended Master Plan;
- (c) HNZ Build will not be required to change the Design Documents to the extent that such a change would prevent HNZ Build from achieving a Milestone by the relevant Milestone Date unless the Council grants an extension of time to any relevant Milestone Dates that is reasonably required as a result of the change.

5.8 Implementation of Master Plan: HNZ Build acknowledges that, while the Council intends to implement the Master Plan, the Council does not have any obligation to HNZ Build to do so (other than the Council's obligation to deliver the Super Lot as required by this Agreement) and HNZ Build will not have any claim against the Council in relation to the Master Plan not being implemented or not being implemented in the manner anticipated by HNZ Build.

6. DESIGN REQUIREMENTS

6.1 Design Consultants: HNZ Build must:

- (a) ensure that all consultants, designers and contractors engaged in the Project are sufficiently qualified and have proven recent experience; and
- (b) as and when requested, notify the Council of the identity and contact details of such consultants, designers and contractors following their appointment.

6.2 Design Warranties: HNZ Build warrants that all design work relating to the Design Documents and the Works will:

- (a) be completed in accordance with good industry standards, principles and practices using a high level of skill and care;
- (b) be completed in accordance with the terms of this Agreement; and
- (c) comply with all Laws and all Consents.

6.3 MBIE Building for Climate Change Programme: The parties acknowledge that "good industry standards, principles and practices" will address the expected requirements of the Ministry of Business, Innovation and Employment Building for Climate Change Programme.

6.4 Responsibility for Design: Despite the supply of the Design Documents to the Council, or its acceptance or approval of it, the design of the Works will remain the responsibility of HNZ Build and neither the Council nor any of its advisers and representatives will have any responsibility in respect of the integrity, quality or suitability of that design and such acceptance, approval or evaluation will not relieve HNZ Build of its obligations contained in this Agreement.

7. VARIATIONS TO PROJECT PLAN OR DESIGN DOCUMENTS

7.1 Variations to Project Plan: HNZ Build may make minor variations to the Design Documents or the configuration or layout of the Project Plan (each a **Proposed Variation**) provided that if any Proposed Variation:

- (a) would increase the time required to achieve a Milestone, or any combination of Milestones; or
- (b) is likely to delay completion of the Project beyond the relevant dates provided for in the Programme; or
- (c) is likely to reduce the number of, or change the typology mix of Public Homes, Affordable Homes or Worker-Rental Homes forming part of the Project; or
- (d) would result in non-compliance with the Design Guidelines; or
- (e) would otherwise fundamentally affect the design outcomes of the Project or Development,

(or any combination of those) it must first obtain the prior written approval of the Design Review Panel.

7.2 Approval required: Where the approval of the Design Review Panel is required under clause 7.1 HNZ Build must, before taking steps to implement the Proposed Variation, give written notice (**Change Notice**) to the Design Review Panel with details of:

- (a) the Proposed Variation;
- (b) the reason for the Proposed Variation; and
- (c) the time within, and the manner in which, HNZ Build proposes to implement the Proposed Variation,

and the Council must cooperate with HNZ Build to obtaining a response from the Design Review Panel confirming:

- (d) if the Proposed Variation may be considered for approval by the Council at the DPM;
- (e) if paragraph (d) does not apply whether or not the Design Review Panel:

- (i) approves the Proposed Variation including specifying the terms and conditions of such approval (if any); or
- (ii) withholds its approval of the Proposed Variation; or
- (iii) requires further information (in which case this clause 7.2 will apply again following receipt of that further information).

7.3 Parameters of Approval: Where a Proposed Variation would:

- (a) reduce or increase the number of Homes forming part of the Project; or
 - (b) may, affect the health and safety of any person; or
 - (c) would result in non-compliance with the Design Guidelines,
- the Design Review Panel may withhold its approval in its absolute discretion.

8. INFRASTRUCTURE, FUNDING AND DELIVERY

8.1 Infrastructure Works: HNZ Build will as soon as reasonably practical following the later of the date of receipt of the CIP Funding and the date this Agreement becomes unconditional:

(a) Works on Super Lot:

- (i) form and seal the roads to and throughout the Super Lot, to the standards required by an Authority;
- (ii) complete stormwater, wastewater, water, power, telecommunications and fibre services connections at a location considered convenient and reasonable to facilitate connection at the boundary to the Super Lot and to further establish those services throughout the Super Lot for connection to the Homes; and

(b) Works on Future Stages:

- (i) demolish any existing buildings, foundations, fences and other above ground structures on the Future Stages provided that any new structures forming part of the Development will not be removed or demolished;
- (ii) remove all trees and hedging on the Future Stages other than any which:
 - (A) are protected by any Law; or
 - (B) form part of the Development, or which the Council has advised HNZ Build prior to entry into this Agreement, are to be retained for the purposes of supporting urban ngahere;
- (iii) form and seal the roads to the boundary of the Future Stages and, subject to clauses 8.2 and 8.3, extending the roads within the boundaries of the Future Stages in accordance with the Master Plan, to the standards required by an Authority;

- (iv) complete stormwater, wastewater, water, power, telecommunications and fibre services connections at a location considered convenient and reasonable to facilitate connection at the boundary to the Future Stages and, subject to clauses 8.2 and 8.3, extending these services within the boundaries of the Future Stages in accordance with the Master Plan; and

provided that any changes to the services and/or locations of a service to be carried out by HNZ Build resulting from a Proposed Variation approved under clause 7 will be entirely at the cost of HNZ Build in all things.

- 8.2 Priority of Works:** The Council acknowledges and agrees that priority will be given to the Works on the Super Lot described in clause 8.1(a) so that the delivery of the Homes will be achieved as soon as possible. In addition, the Works on the Future Stages described in clause 8.1(b) will prioritise infrastructure to the boundary of the Future Stages, with Works within the boundary of the Future Stages to follow.
- 8.3 CIP Funding Limit:** The Council further acknowledges that the Works described in clause 8.1(b) will only be completed by HNZ Build as far as the balance of CIP Funding will permit. In the event that the CIP Funding is exhausted, the Council will be required to contribute towards any funding shortfall in order for the remaining Works to be completed in the Future Stages.

9. CREATION OF THE SUPER LOT

- 9.1 HNZ Build responsible for development contribution levies:** HNZ Build is responsible for all development contribution levies or infrastructure growth charges imposed by any Authority for any subsequent subdivision or development of the Super Lot.
- 9.2 Super Lot Subdivision:** HNZ Build will, with all necessary assistance of the Council, and with all reasonable speed:
- (a) take all steps necessary to satisfy the conditions of any Super Lot Consents required for the issue of a certificate under section 224(c) of the RMA;
 - (b) prepare a survey plan in accordance with the Super Lot Consents;
 - (c) arrange for the Authority and LINZ to approve the survey plan for the Super Lot (Approved Survey Plan);
 - (d) apply for certificates under section 223 and section 224 of the RMA;
 - (e) lodge the Approved Survey Plan in LINZ;
 - (f) deposit the Approved Survey Plan in LINZ; and
 - (g) have LINZ issue a separate record of title for the Super Lot.
- 9.3 Assistance by the Council:** The Council acknowledges that, until such time as the Super Lot is transferred to HNZ Build pursuant to this Agreement, its status as registered owner of the Land will require it to give written, signed and certified authorisations to LINZ in order for the Super Lot Subdivision to be completed under clause 9.2. Accordingly, the assistance to be given by the Council pursuant to clause 9.2 may require external professional advice in order for the necessary authorisations to LINZ to be registered.

10. PRE-SETTLEMENT ACCESS BY HNZ BUILD

10.1 Licence to Access for Preliminary and Infrastructure Works: HNZ Build may from time to time request, in which case the Council will grant, non-exclusive access to the whole of the Land to carry out preliminary, investigative and/or infrastructure works related to the Project for a period commencing on the Licence Commencement Date. Before HNZ Build is given access to the Land the parties must enter into a licence substantially in the form of the Access Licence (Preliminary and Infrastructure).

10.2 Access by the Council: Regardless of the application of clause 10.1 or the transfer of the Super Lot to HNZ Build, the Council (including its surveyors, agents, consultants, engineers, contractors, sub-contractors and employees) will at all times after the Licence Commencement Date (including after the Settlement Date, if different) be entitled to access the Super Lot to carry out any work reasonably necessary for the Development (Development Work) provided that:

- (a) it must first consult with HNZ Build, including if time permits raising the proposed Development Work access at a Development Partner Meeting, in order to integrate the timing of the Development Work with the Works;
- (b) any interference with the Works is kept to a minimum;
- (c) the Council must ensure that anyone entering the Super Lot for the Development Work must comply with HNZ Build's reasonable health and safety requirements;
- (d) the Development Work must not materially affect HNZ Build's ability to undertake the Project as contemplated by this Agreement;
- (e) the Council must ensure that any damage caused to the Super Lot or HNZ Build's improvements or machinery is promptly reinstated or remedied,

and both parties must act reasonably and in good faith in relation to the giving and coordination of that access.

11. SUPER LOT SALE AND PURCHASE

11.1 Sale: the Council agrees to sell to HNZ Build, and HNZ Build agrees to buy from the Council, the Super Lot for the Purchase Price and on the terms and conditions set out in this Agreement.

11.2 Interests on Title: HNZ Build acknowledges that, in addition to any registered encumbrances, interests or notations existing as at the date of this Agreement, the Super Lot will be subject to:

- (a) the Master Encumbrance;
- (b) the No Objection Covenant;
- (c) any encumbrances, interests or notations required to satisfy the conditions of any Super Lot Consent; and
- (d) any encumbrances, interests or notations that in the reasonable opinion of the Council are necessary or desirable for implementation of the Master Plan or completion of the Development,

which will be registered against the record(s) of title to the Super Lot prior to the Settlement Date. The Council acknowledges that any changes to the Master Encumbrance made between the date of this Agreement and the Settlement Date for the Super Lot, and any interest registered under clause 11.2(d), must not materially adversely affect:

- (e) the value of the Super Lot; or
- (f) the ability of HNZ Build to undertake the Project.

11.3 ADLS Terms: The Amended ADLS Terms are deemed to be included in this Agreement to the extent necessary to apply to the sale of the Super Lot to HNZ Build. Where the Amended ADLS Terms apply, references to:

- (a) 'vendor' are references to the Council; and
- (b) 'purchaser' are references to HNZ Build.

11.4 Inconsistency with Amended ADLS Terms: In the event of any inconsistency between the Specific Terms, these General Terms and the Amended ADLS Terms, the General Terms will prevail over the Amended ADLS Terms and the Specific Terms will prevail over both the General Terms and the Amended ADLS Terms however, for avoidance of doubt:

(a) this clause and the termination provisions set out in clause 23 of these General Terms do not affect the operation of the following provisions of the Amended ADLS Terms:

- (i) clauses 3.12, 3.13 or 3.15 (relating to late or deferred settlement);
- (ii) clauses 11.1, 11.2 11.6, 11.7 and 11.8, (relating to settlement notices); and

(b) despite clause 11.4(a), if either clause:

- (i) 11.4 (relating to failure by a purchaser to comply with a settlement notice); or
- (ii) 11.5 (relating to failure by a vendor to comply with a settlement notice),

of the Amended ADLS Terms applies, then a Termination Event will have occurred and clause 23.2 will prevail to the extent that there is any inconsistency with the Amended ADLS Terms.

11.5 Payment Requirements: In relation to all payments required under this Agreement by HNZ Build:

- (a) those amounts will be paid:
 - (i) in cleared funds and free of any restriction or condition; and
 - (ii) without any deduction or set off; and
- (b) if a payment is not paid on its due date, as required by this Agreement, interest at the Default Interest Rate will be payable on that unpaid amount (or unpaid part of it) from its due date until the date it is paid.

12. CONTAMINATION AND ENVIRONMENTAL MATTERS

12.1 Previous Use: HNZ Build acknowledges that the Super Lot may, as a result of prior uses of the Super Lot, previously have been contaminated with substances which may include (but may not be limited to) asbestos, lead paint and hydrocarbons.

12.2 Council Liability: HNZ Build acknowledges that it has had a reasonable opportunity to assess the status of the Land and that the Council will have no liability to HNZ Build in relation to any claims, demands, damages, expenses of any nature (including legal fees and expenses), loss or liability relating to or resulting from the discovery of contaminated soil or water on the Land.

13. CONSENTS

13.1 HNZ Build to Obtain Consents: To the extent not already obtained prior to the date of this Agreement or required to satisfy any Condition (and without limiting the Design Review Process and HNZ Build's obligations to comply with it), HNZ Build will apply for and use all reasonable endeavours to obtain all necessary Consents and enter into any necessary agreements required to undertake the Project in accordance with this Agreement.

13.2 Consent Applications: HNZ Build acknowledges and agrees that it:

- (a) will prepare applications for the Consents for the Project;
- (b) will not apply for any Consent for an activity that is inconsistent with the Development Framework; and
- (c) will not promote a private plan change or apply for consent for a non-complying activity that is inconsistent with the Development Framework,

and must obtain the prior written approval of the Council (not to be unreasonably withheld or delayed) to all applications for Consents (or variations of any application, or of existing Consents) prior to submitting them to the relevant Authority.

13.3 Council Assistance: Subject to clause 3.7, the Council will provide reasonable assistance and support to HNZ Build in obtaining any Consents, provided that the Council will not be obliged to incur any third party costs (not including internal costs or overheads) and nor will the Council assume any responsibility for any outcome obtained or not obtained. The Council will separate its "applicant" role from its regulatory function and ensure there is no conflict of interest.

14. CONSTRUCTION

14.1 Proceed with Due Diligence: HNZ Build will, promptly following the Licence Commencement Date:

- (a) use all reasonable endeavours to procure that the Works are carried out and completed with all due diligence and in accordance with the Development Framework to achieve Project Completion on or before the relevant Milestone Date; and
- (b) achieve each Milestone by its Milestone Date.

- 14.2 Construction Obligations:** HNZ Build will commence the Works as soon as practicable following the Licence Commencement Date and will undertake the Works:
- (a) in a proper and skilful manner utilising good trade quality methods and materials and in accordance with good industry standards, principles and practices;
 - (b) in accordance with the Design Documents, Project Plan and Consents;
 - (c) in accordance with all statutory and regulatory requirements;
 - (d) at HNZ Build’s cost and risk in all things; and
 - (e) in accordance with, and to meet all the requirements of, this Agreement.
- 14.3 Construction Traffic:** HNZ Build must ensure that access to and exit from the various parts of the Super Lot by construction traffic is limited to the routes and times required by the Resource Consents for the Project and any related traffic management plan (which must take into account and be consistent with any traffic management plan applicable to the Development).
- 14.4 Infrastructure:** HNZ Build will be responsible for procuring the delivery of all services and infrastructure within the Super Lot required to connect the Homes to the services and infrastructure connections provided to the boundaries of the Super Lot and to ensure that any existing infrastructure is protected and preserved (other than in accordance with any Consent and with the approval of any third party whose approval is required) and HNZ Build must immediately repair any damage caused to existing infrastructure.
- 14.5 Tidy Site and Fencing:** HNZ Build will ensure that, before commencement of construction of the Project and until all exterior works have been completed (or a later date if required by any Authority) the Super Lot is:
- (a) fenced with a standard temporary construction fence with a minimum height of 1.8m (ensuring that any advertising or marketing material on such fences has been first approved by the Council);
 - (b) kept in a reasonably tidy state consistent with a high standard of residential construction practice in New Zealand.
- 14.6 Dust and Noise:** HNZ Build must use all reasonable endeavours to manage, mitigate, and monitor dust and noise emissions during construction of the Project so they do not cause an annoyance or become a nuisance to the general public or property owners and occupiers within or adjacent to the Super Lot. At a minimum, HNZ Build must:
- (a) install windbreak fabrics along the temporary construction fences to reduce dust pollution outside the Super Lot. The windbreak fabrics must be installed within 10 working days the Licence Commencement Date and prior to commencement of the Works on site;
 - (b) install temporary noise barriers where a construction noise limit is predicted to be exceeded. The noise barriers must be installed prior to commencement of the aspect of the Works on site predicted to exceed a construction noise limit and be maintained until the risk of that exceedance is no longer a risk; and
 - (c) in recognition of the importance of well-functioning urban environments, including community harmony, HNZ Build must take particular care to comply

with any dust and noise mitigation controls set out in the relevant Land Use Consent conditions.

14.7 Other Good Neighbour Measures: HNZ Build must ensure that it complies with the following good neighbourhood provisions while undertaking the Project:

- (a) complete an induction with the Council prior to commencing the Works on the Super Lot to understand the community, existing relationships and standard disruption mitigations in order to operate within social responsibility and community standards;
- (b) address issues raised by stakeholders in a timely manner and share ongoing issues with the Council at DPMs to support the Council's broader neighbourhood engagement programme;
- (c) maintain the footpath condition adjacent to the Super Lot (unless closed via a traffic management plan);
- (d) only use designated parking areas;
- (e) maintain existing berms around the Super Lot;
- (f) in relation to waste management, operate on a policy of 'what comes to site, leaves site' (i.e. take rubbish away);
- (g) having made enquiry as to the options available, take the most robust steps it considers appropriate to minimise waste resulting from the Project and to minimise the carbon emissions of both the Project and the ongoing operation of the Home;
- (h) report to the relevant Authority the dumping of any rubbish at the Super Lot frontage;
- (i) report, to the relevant Authority responsible for local roads, any damage to the road carriageway observed during Works (where the carriageway is live);
- (j) ensure banners onsite are secured, maintained and any vandalism/graffiti is reported to the Council;
- (k) ensure suitable site security is maintained;
- (l) repair damage to public or third party property caused by the Works or any other act or omission of HNZ Build or its contractors or subcontractors on the Super Lot;
- (m) ensure that any music played on the Super Lot during the carrying out of the Works is not played sufficiently loudly to breach the noise control requirements of the relevant Authority; and
- (n) ensure no deliveries are to arrive on site prior to the consented working hours.

15. PROGRAMME

15.1 HNZ Build to Maintain: HNZ Build will, promptly following the date of this Agreement prepare a Programme for the Project (in a manner that reflects the need to achieve the

Milestones by the Milestone Dates) and submit it to the Council for approval (approval not to be unreasonably withheld or delayed). HNZ Build will maintain the Programme and will, following any approved change or amendment made under clause 7, or an extension of time agreed under clause 15.4 provide a copy of any updated Programme at the next Development Partner Meeting.

15.2 Monitoring: HNZ Build will:

- (a) report on the actual progress of Works at Development Partner Meetings (to monitor the actual progress of Works as against the requirements of the Programme); and
- (b) provide updates at Development Partner Meetings to ensure the representatives are fully informed of progress and any issues in respect of the achievement of the Milestones by the Milestone Dates.

15.3 Delays to Milestone Dates: If HNZ Build becomes aware, at any time, that there will or is likely to be a delay to the extent that any Milestone Date may be missed, HNZ Build must:

- (a) in the first instance use all reasonable endeavours needed to accelerate the Works in order to achieve the relevant Milestone by the Milestone Date;
- (b) as soon as reasonably practicable and in any event within 5 Working Days after becoming aware (or of the day on which it ought to have become aware) that the Milestone Date cannot be achieved despite any reasonable steps taken to accelerate progress, submit to the Council a written notice setting out:
 - (i) the reason for the delay;
 - (ii) an evaluation of the likely effect of the delay on the Programme and the achievement of any Milestone by its Milestone Date; and
 - (iii) any strategies to avoid or mitigate the delay; and
- (c) take all steps reasonably available to it to mitigate the delay and the consequences of any delay or likely delay.

15.4 Extension of Time: Where clause 15.3 applies due to a Delay Event the Council will act reasonably in considering whether to grant an extension to the relevant Milestone Date and/or the corresponding Condition Date (if applicable). As part of its consideration it will assess the net effect of the delay resulting from the Delay Event (taking into account any failure by HNZ Build to comply with clause 15.3(c)) and, if an extension is granted, HNZ Build will update the Programme and provide a copy to the Council and the DPM.

16. COMPLIANCE WITH LAWS AND HEALTH AND SAFETY

16.1 Compliance with Laws: In completing the Project and otherwise complying with its obligations under this Agreement, HNZ Build will at all times (and at its cost) comply strictly, and take all practicable steps to ensure compliance by its workers, contractors and subcontractors, with the requirements of all relevant Laws, including (without limitation) the Building Act 2004, the Resource Management Act 1991, the Health and Safety at Work Act 2015, the Immigration Act 2009 and the Employment Relations Act 2000 (all as amended or updated from time to time).

16.2 Specific Health and Safety Obligations: Without limiting clause 16.1,:



- (a) so far as is reasonably practicable, HNZ Build will consult, co-operate and co-ordinate activities with all other persons who have a health and safety duty in relation to a matter or area;
 - (b) HNZ Build must use its reasonable endeavours to ensure that all of its contractors, employees and any other person(s) engaged by HNZ Build in the performance of this Agreement or the Project, have the necessary and appropriate policies and plans in place so as to comply with all of their obligations under the Health and Safety Legislation; and
 - (c) responsibility for health, safety and security for the Project rests with HNZ Build immediately on the Licence Commencement Date, on the basis that HNZ Build will have control and direction of all health, safety and security matters in the undertaking of the Project and the Council will have no liability in respect of HNZ Build's health, safety and security responsibilities.
- 16.3 Overlaps:** To the extent that HNZ Build and the Council have a duty in relation to the same matter imposed by or under the Health and Safety Legislation, the parties agree to consult, cooperate and coordinate activities so far as is reasonably practicable and to provide each other with all information that the other party may reasonably require. Without limitation, HNZ Build must advise the Council of any risks that it becomes aware of that might have an impact outside the Super Lot.
- 16.4 H&S Reporting:** To enable the Council to collate and share health and safety related information, trends and statistics for the improvement of health and safety generally, HNZ Build will provide information in its monthly reports at DPMs to the Council detailing HNZ Build's implementation of and compliance with this clause 16 and any activity, incidents or accidents that have occurred since the date of the last report. HNZ Build acknowledges and agrees this data may be collated, reviewed, analysed and may then be shared (anonymously) by the Council to builder partners and the industry generally for the improvement of health and safety.
- 16.5 Fair Trading Act 1986:** In accordance with section 5D of the Fair Trading Act 1986, the parties confirm:
- (a) all parties are in trade;
 - (b) the land transacted under this Agreement is being supplied and acquired in trade;
 - (c) HNZ Build has placed no reliance on any representations or agreements with the Council or their agents made prior to this Agreement and will not place any reliance on any such representations at any subsequent time.
- 16.6 Disapplication:** The parties have agreed the following sections of the Fair Trading Act 1986 do not apply to this Agreement and HNZ Build will have no rights against the Council or their agents for any contravention of these sections:
- (a) section 9 – misleading and deceptive conduct generally;
 - (b) section 12A – unsubstantiated representations;
 - (c) section 13 – false or misleading representations;

- (d) section 13(1) – false representations and other misleading conduct in relation to land,

and the parties confirm they have carefully considered their rights and obligations under the Fair Trading Act 1986, have discussed and negotiated this clause and have taken substantive independent legal advice. The parties confirm they consider it fair and reasonable that these sections should not apply to the representations and transactions of the parties relating to this Agreement.

17. PUBLIC HOMES, AFFORDABLE HOMES AND WORKER-RENTAL HOMES

17.1 Public Homes:

- (a) HNZ Build must, as part of its completion of the Project, achieve, or procure the achievement of, Practical Completion of at least the number and type of Public Homes set out in the Specific Terms.
- (b) Following the achievement of Practical Completion for the Public Homes, HNZ Build will procure the transfer of ownership of the Public Homes to Housing New Zealand Limited, a wholly-owned subsidiary of Kāinga Ora, in order for Kāinga Ora to use the Public Homes for public housing purposes.

17.2 Affordable Homes:

- (a) HNZ Build must, as part of its completion of the Project, achieve, or procure the achievement of, Practical Completion of at least the number and type of Affordable Homes set out in the Specific Terms.
- (b) Following the achievement of Practical Completion for the Affordable Homes, HNZ Build will procure, in consultation with the Council and Ngāti Rangī, the sale of the Affordable Homes to end purchasers who are eligible in accordance with the relevant Affordable Housing Programme utilised by Kāinga Ora for the sale of the Affordable Homes.

17.3 Worker-Rental Homes:

- (a) HNZ Build must, as part of its completion of the Project, achieve or procure the achievement of, Practical Completion of at least the number and type of Worker-Rental Homes set out in the Specific Terms.
- (b) HNZ Build and the Council, together in consultation with Ngāti Rangī, will develop a “go-to market” strategy for the divestment of the Worker-Rental Homes which will identify at least one mutually agreed third party provider of worker-rental accommodation for the Ohakune area (the **WR Provider**). The parties will endeavour to finalise this strategy before HNZ Build contracts with any Build Partner pursuant to clause 27.3.
- (c) Following the achievement of Practical Completion for the Worker-Rental Homes, HNZ Build will procure the sale of the Worker-Rental Homes to the WR Provider which will administer a worker-rental scheme for a minimum period of 10 years, or such other period as mutually agreed between the Council, HNZ Build and Ngāti Rangī.
- (d) Prior to the transfer of ownership provided for in clause 17.3(c), the titles to the Worker-Rental Homes will be registered with a land covenant in gross in favour

of HNZ Build and on terms and conditions reasonably required by HNZ Build in order to secure the outcomes for the Worker-Rental Homes provided for in this clause 17.3.

18. FURTHER SUBDIVISION PROCESS AND SALES

18.1 Creation of Lots: HNZ Build will, at the appropriate time to ensure that HNZ Build will be able to comply with all the Milestone Dates, at its cost and subject to all relevant Consents having been obtained:

- (a) take all steps necessary to satisfy the conditions of any Subdivision Consents required for the issue of a certificate under section 224(c) of the Resource Management Act 1991;
- (b) commence and, in accordance with this Agreement, continue and complete the Subdivision Works;
- (c) prepare a survey or unit plan (as applicable) in accordance with the Development Framework and the relevant Subdivision Consents;
- (d) obtain the approval of the relevant Authority and LINZ to the survey plan(s) prepared under clause 18.1(c);
- (e) apply for certificates under sections 223 and 224(c) (and (224(f), if relevant) of the Resource Management Act 1991 and, if relevant, any certificates required under the Unit Titles Act 2010;
- (f) lodge the approved survey or unit plan(s) with LINZ in a timely manner having regard to any relevant Milestone Dates;
- (g) deposit the approved survey or unit plan(s) with LINZ; and
- (h) have LINZ issue separate records of title for each of the Lots to be created, with each record of title to be subject to:
 - (i) any interests which either the Authority or LINZ require to satisfy any condition of the Consents or to deposit the approved survey plan(s);
 - (ii) all necessary easements for services and access; and
 - (iii) any encumbrance/covenant agreed by the parties.

18.2 Street Names: HNZ Build acknowledges and agrees that any names for the streets or private ways within the Project that are submitted to the relevant Authority for approval by HNZ Build must first be approved by the Council (not to be unreasonably withheld or delayed). HNZ Build must not submit a request for approval of names for streets within the Project without such approval.

18.3 Discharge of Master Encumbrance: HNZ Build must advise the Council promptly each time a code compliance certificate issues in respect of a Home (providing a copy of the Code Compliance Certificate(s)) following which the Council must instruct its solicitor to sign and certify the relevant partial (or full, if relevant) discharge of encumbrance instrument of the Master Encumbrance and release it into the control of HNZ Build's solicitor.

18.4 Timing of the issue of records of title: To minimise disruption to the others' registration HNZ Build and the Council must keep each other informed and coordinate the timing of registration.

19. HNZ BUILD TO SUPPORT DEVELOPMENT

19.1 Support: HNZ Build will support the Council in its undertaking of the Development, but will not be required to file a submission in support, and allow the Council and its business partners or other developers to undertake the Development without undue interference, objection, opposition or restraint from HNZ Build.

19.2 Not to Object: HNZ Build will not make or support any objection to or submission opposing any application for resource consent, district or regional plan provision or change or other authorisation for or facilitating the Development under any legislation nor will HNZ Build take issue against or cause any delay to any such application, district or regional plan provision or change.

19.3 No Proceedings: HNZ Build will not bring any proceedings for damages, nuisance or interference arising from the Development and neither will HNZ Build support, finance or contribute to the cost of any such proceedings.

19.4 No Encouragement: HNZ Build will not encourage or assist any other party to undertake any of the actions which HNZ Build has agreed not to undertake under 19.2 and 19.3 and will not procure any other party to do so.

20. COUNCIL TO SUPPORT PROJECT

20.1 Subject to clause 3.7, provided and to the extent that HNZ Build is developing the Super Lot in accordance with this Agreement:

- (a) Support:** The Council will support the Project, but will not be required to file a submission in support, and allow HNZ Build to undertake the Project without undue interference, objection, opposition or restraint from the Council;
- (b) Not to Object:** The Council will not make or support any objection to or submission opposing any application for a Resource Consent, building consent or other authorisation for or facilitating the Project; and
- (c) No Encouragement:** The Council will not encourage or assist any other party to undertake any of the actions which the Council has agreed not to undertake under this clause 20 and will not procure any other party to do so.

21. CONSULTATION AND MEDIA PROTOCOL

21.1 No Surprises, Consultation and Media Protocol: Each party acknowledges that it is important to consult with and keep each other informed about any:

- (a)** act, omission, matter or thing that might, or might reasonably be perceived to, affect in any material way the completion of the Project so that neither party is 'surprised' by that act, omission, matter or thing; and
- (b)** other act, omission, matter or thing relating to the Project as reasonably required;

provided however that HNZ Build will be under no obligation to communicate government policy changes and neither party will be required to communicate any information which may breach any duty or obligation of confidentiality that it is bound by.

21.2 Public Statements: Without limiting clause 21.1, neither party will make any public statements relating to, associated with or impacting on its relationship with the other party without the prior written approval of the other party, which approval will not be unreasonably withheld (except to the extent required by any Law). The Council acknowledges that statements made by Members of Parliament or their staff or representatives are beyond the reasonable control of HNZ Build and any statements made by them without The Council's approval will not be a breach of this clause.

21.3 Controversy: Neither party will do anything in relation to the Project that is likely to, or could reasonably be expected to:

- (a) result in the other party being subjected to reputational harm; or
- (b) harm the reputation of the Project or the Development; and
should:
- (c) a controversy arise in connection with a party's activities or its decisions; or
- (d) a controversy arise in connection with the Project generally; or
- (e) either party or any of its officers, members, employees or agents act in a way which, in the reasonable opinion of the other party, is likely to result in:
 - (i) the other party being subjected to reputational harm;
 - (ii) harm to the reputation of the Development; or
 - (iii) the Project being brought into disrespect or disrepute,

then, if required by the other party (without prejudice to any of its other rights or remedies), the party in breach of this clause must:

- (f) promptly meet (in person or otherwise) with the other party's DPM representative to commence discussions with a view to resolving such situation; and
- (g) take reasonable interim steps specifically identified by the other party to limit the harm or damage caused by the relevant matter.

22. INSURANCE

22.1 Policies: HNZ Build must:

- (a) for as long as it is subject to any outstanding obligations in respect of carrying out the Project under this Agreement effect and maintain and promptly pay all premiums for a policies of public liability insurance for the amounts set out in the Specific Terms;
- (b) procure that all contractors and subcontractors for the Project effect, maintain (in the name of the relevant contractor or subcontractor) and promptly pay all

premiums for public liability insurance for an amount of not less than set out in the Specific Terms, covering claims in respect of loss of or damage to property or injury to or death of persons arising from or in connection with the carrying out of any works by or on behalf of HNZ Build during the term of this Agreement;

- (c) maintain or, where it is not the main contractor, ensure that the main contractor for the Works effects and maintains (and promptly pays all premiums for) policies, of contract works insurance for the value of the Works underway at any given time.

22.5 Timing and Evidence of Insurance: HNZ Build must procure that all contractors, subcontractors and consultants for the Project (whichever is applicable):

- (a) effect the relevant insurance referred to in clause 22.1 before accessing the Super Lot; and
- (b) provide to the Council upon request evidence of the insurance (including copies of policies) referred to in clause 22.1 being in place.

23. TERMINATION

23.1 Termination Events: A Termination Event occurs if:

- (a) either party has failed to complete Settlement on the Settlement Date and has subsequently failed to complete Settlement by the expiry of a settlement notice to the extent that the other party is entitled under the Amended ADLS Terms to terminate the agreement to sell the Super Lot (see clause 11.3);
- (b) a party has committed a Material Breach of this Agreement and where that breach is reasonably capable of being remedied, has failed to comply with an earlier written notice given by the other party:
 - (i) specifying that breach; and
 - (ii) in the case of a notice from the Council, requiring that HNZ Build:
 - (A) to remedy that breach within 20 Working Days after receipt of the notice; or
 - (B) where such breach is reasonably capable of being remedied but not within 20 Working Days after the notice, to provide the Council, within 20 Working Days after the notice, with a detailed plan for the prompt remedy of the breach; or
 - (iii) in the case of a notice from HNZ Build, requiring the Council to remedy that breach within 20 Working Days after receipt of the notice (or such longer period as is reasonable in the circumstances); or
- (c) HNZ Build fails to comply with a plan provided under clause 23.1(b)(ii)(B) which was accepted by the Council the parties acknowledging that a failure will itself be a new Material Breach (to which clause 23.1(b)(ii)(B) will not apply);
- (d) a plan provided by HNZ Build under clause 23.1(b)(ii)(B) is rejected as not acceptable to the Council (acting reasonably) within 20 Working Days of receipt;

- (e) HNZ Build has committed a Material Breach of this Agreement, where that breach is not reasonably capable of being remedied by HNZ Build.

23.2 Termination for Breach: If a Termination Event occurs then, without limiting any other right of termination or remedy of the parties under this Agreement or any Law (including any court action injunctive or other equitable relief):

- (a) where the Termination Event relates to breaches by the Council, HNZ Build may terminate this Agreement at any time and with immediate effect by written notice to the Council;

- (b) where the Termination Event relates to breaches by HNZ Build, the Council may:

- (i) if the Super Lot has not yet transferred to HNZ Build, terminate this Agreement at any time and with immediate effect by written notice to HNZ Build;

- (ii) if the Super Lot has been transferred to HNZ Build:

- (A) terminate this Agreement at any time and with immediate effect by written notice to HNZ Build; or

- (B) direct HNZ Build to assist in devising and giving effect to a suitable strategy for HNZ Build to market and sell the Super Lot to a third party to facilitate the exit of HNZ Build from the Project in a manner that minimises detrimental commercial outcomes to the balance of the Development, in the reasonable opinion of the Council, and HNZ Build must use all reasonable endeavours to collaborate and co-operate with the Council in doing so (including taking all necessary steps and signing all necessary documents, to give effect to any resulting sale);

- (iii) exercise any rights that the Council may hold including (without limitation) the right to sue for damages arising as a consequence of HNZ Build's breach of this Agreement;

23.3 Provision of Rights: Where 23.2(b)(i) or (ii) above apply, HNZ Build:

- (a) will be deemed to have granted to the Council (or a third party nominated by the Council to take over the Project, or part of it), to the extent required to enable it to complete the Project (or any part of the Project that the Council wishes to compete), a non-exclusive, royalty-free, perpetual, transferable and irrevocable licence to use and copy any Intellectual Property owned, held, developed, modified or enhanced by HNZ Build in relation to the Project;

- (b) must use all reasonable endeavours to novate or assign any third party contracts it is a party to in relation to the Project, where the Council requires it, to the Council or a third party nominated by the Council. HNZ Build confirms that this clause in itself constitutes evidence of its agreement and consent to all such novations and assignments and may be produced to all third parties as indisputable proof of the Council's right to require and effect the novation or assignment and HNZ Build's consent.

23.4 Consequences of Termination: If this Agreement is terminated validly by either party (for any reason):

- (a) termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party (including where the losses suffered as a result of such breach occurs after the termination of this Agreement), where the breach occurred before the termination of this Agreement; and
- (b) the provisions of clauses 1 (Definitions and Interpretation) and 26 (Confidentiality), together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

23.5 No Limitation: For the avoidance of doubt, the parties acknowledge that despite anything else in this clause 23, all legal and equitable remedies (including an action for damages or injunctive relief) will be available upon the occurrence of a Material Breach whether this Agreement is terminated or not.

24. EXPERT DETERMINATION

24.1 Dispute as to Decision: This clause 24 will apply where this Agreement provides for a dispute between the parties to be referred to an Expert for determination and such a referral is made (Initiation).

24.2 Appointment of Expert: The Expert will be appointed by agreement between the parties. If within 10 Working Days of an Initiation the parties have been unable to agree on the Expert, the parties will attempt to agree on a nominating authority to appoint the Expert which will be the senior officer for the time being of an appropriate association, institute, society or board. If the parties cannot agree on the nominating authority within 15 Working Days of an Initiation, then any party to the dispute or difference may request the President of the Arbitrators and Mediators Institute of New Zealand to appoint the Expert (that appointment will be binding on the parties for the determination of the dispute).

24.3 Provision of Information: Within 5 Working Days of the appointment of the Expert, the parties to the dispute or difference must each provide the Expert with a written submission and with any relevant supporting material in respect of the dispute. As soon as the Expert has received all of the submissions, the parties must exchange submissions and will have 5 further Working Days within which to make a further written submission. The Expert must then begin the determination promptly.

24.4 Expert to Act as Expert: The Expert will act as an expert and not as an arbitrator for the purposes of resolving the dispute promptly so as to avoid any delays by either party in performing their obligations under this Agreement, and the parties will use reasonable endeavours to ensure that the Expert gives their decision as speedily as possible which will be final and binding on the parties. In determining the dispute, the Expert:

- (a) will consider the written submissions of the parties but will not be bound by them;
- (b) will take into account the context of and circumstances surrounding the matters in dispute and this Agreement (including the Project Objectives) in its entirety;
- (c) will act impartially and fairly between the parties;

- (d) may rely on their own knowledge, skill and experience in relation to the matter in dispute; and
- (e) may make their own enquiries without reference to the parties.

24.5 Replacement Expert: Upon any Expert becoming unwilling or unable to continue in that capacity, the parties will in good faith agree upon a suitable replacement expert, or failing agreement to be nominated by the authority that nominated the first Expert.

24.1 Costs: The costs of appointing the Expert and the Expert's costs and disbursements in connection with their duties will be shared between the parties to the dispute in such proportion as the Expert determines or, in the absence of such determination, then equally between them.

25. RESOLUTION OF OTHER DISPUTES

25.1 Determination of Disputes: Other than any dispute to which clause 24 applies, all disputes between the parties arising under or in relation to this Agreement must be determined in accordance with this clause 25.

25.2 Preference for resolution by agreement: Despite the provisions of this clause the parties agree to use all reasonable endeavours:

- (a) to resolve disputes by agreement; and
- (b) at each stage of the course of the dispute resolution process, to make decisions based on achieving an agreed outcome rather than holding out for the best outcome for themselves.

25.3 Referral Notice: Any party may formally raise a dispute by notice in writing to the other party to the dispute (**Referral Notice**).

25.4 DPM Referral: Any party may, within 10 Working Days after the issue of the Referral Notice, require an extraordinary DPM to be held for the dispute to be considered and discussed in an effort to find a resolution.

25.5 Referral to Senior Management: Any party may, if within 10 Working Days after a meeting being called under clause 25.4 the DPM representatives have not resolved the dispute, require the dispute to be referred to HNZ Build's Senior Manager and the Council Senior Manager (**Senior Managers**) for resolution and the following will apply:

- (a) reference to the Senior Managers must be made as follows:
 - (i) the party referring the matter must set out in writing to each of the Senior Managers, with a copy to the other party, the dispute with supporting information and detail; and
 - (ii) the other party may itself submit such information and detail as it considers relevant;
- (b) the Senior Managers must use all reasonable endeavours to issue a joint determination on any dispute put to them within 10 Working Days of the date the dispute was referred to them, but in any event must issue a joint determination in writing within 15 Working Days;

- (c) if the Senior Managers are unable to reach a resolution or fail to issue a joint determination within the time required, the dispute concerned will be unresolved and either party may then refer the dispute to arbitration;
- (d) if one or both of the Senior Managers:
 - (i) does not the authority to resolve the dispute and bind the applicable party; and/or
 - (ii) is a current DPM representative or is involved in the Project on a day-to-day basis,

an alternative appropriate senior representative of the relevant party must be made available for the purposes of this clause 25.5.

25.6 Arbitration: Where a dispute is unable to be resolved under clause 25.4 or 25.5, the parties may refer the dispute to arbitration to be determined as follows:

- (a) a notice requiring arbitration must be in writing; and
- (b) the dispute must be referred to a sole arbitrator agreed by the parties or, if the parties cannot agree within 10 Working Days of referral, then the arbitrator will be appointed by the President of the Arbitrators and Mediators Institute of New Zealand and the dispute will be finally resolved by arbitration by such sole arbitrator under the Arbitration Act 1996.

25.7 Urgency: The parties acknowledge that if a dispute arises between them it is likely to be a matter requiring urgent resolution. Each party undertakes to the other to act expeditiously and reasonably to have the dispute prepared for and determined by arbitration as soon as reasonably practicable in all of the circumstances.

25.8 Alternative Dispute Resolution: Nothing in this Agreement will prevent the parties agreeing on an alternative form of dispute resolution to resolve a dispute including referring the matter to an Expert.

26. CONFIDENTIALITY AND DISCLOSURE

26.1 Protection of Confidential Information: Each party confirms that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other party's Confidential Information to any person or organisation.

26.2 Exceptions to Confidentiality: Clause 26.1 will not prevent or restrict the use by the Council of its template documents used in the preparation of this Agreement (or any variations to it) and will not apply in the following circumstances:

- (a) if the use or disclosure is required by law (including, without limitation, under the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987), Ministers on a 'need to know' basis or parliamentary convention or any requirement to disclose to any select committee or parliamentary inquiry or required by a legally binding consent or approval obtained for the purposes of the Project;
- (b) to the extent that use or disclosure is necessary for the purposes of performing its obligations under this Agreement;

- (c) if the other party gives prior written approval to the use or disclosure;
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties;
- (e) disclosures to professional advisers and affiliates, financiers and contractors;
- (f) disclosures in defence of legal proceedings brought against any person;
- (g) any disclosure required by any applicable stock exchange listing rules;
- (h) disclosure in relation to compliance with this Agreement or the operation, variation, supplementation or interpretation of this Agreement (or similar) to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (i) disclosure to a bank or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
- (j) disclosure to LINZ as contemplated by clause 29.17; and
- (k) disclosure to an Expert or arbitrator under clauses 24 or 25.

26.3 Official Information Act: In relation to clause 26.2(a) above, each party acknowledges that HNZ Build is or may be subject to the Official Information Act 1982 (OIA) and that the Council is or may be subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA). Accordingly, each party is obliged to disclose the terms and the existence of this Agreement or other Confidential Information if so requested and if there is no good reason under the OIA or LGOIMA to withhold that Confidential Information. Each party will use reasonable endeavours to notify the other of any request received under the OIA or LGOIMA that relates to the terms and the existence of this Agreement or other Confidential Information and the response to be given to that request.

26.4 Obligation to inform staff: Each party will ensure that its personnel:

- (a) are aware of the confidentiality obligations in this Agreement, and
- (b) do not use or disclose any of the other party's Confidential Information except as allowed by this Agreement.

26.5 Public Disclosure: If a party is required by any Law, or the rules of any stock exchange, to disclose any confidential information, it will immediately, and prior to such disclosure, advise the other party and the parties will use all reasonable endeavours to not have any information that is commercially sensitive to the other party included in such release or disclosure. The parties agree that they will jointly release key learnings from the Project that may be of benefit to the construction and build market in general.

27. ASSIGNMENT

27.1 No Assignment: HNZ Build agrees and acknowledges that the Super Lot is being sold to HNZ Build to enable HNZ Build to undertake the Project. Except as otherwise provided for or contemplated by this Agreement, HNZ Build must not (unless the Council expressly agrees in writing otherwise or as permitted under this clause):



- (a) assign and/or transfer all or any of its interest in this Agreement at any time; or
- (b) on-sell, transfer or otherwise dispose of any titles to the Super Lot to any person other than as expressly contemplated by this Agreement.

27.2 Change of Control: Any change in the shareholding of HNZ Build altering the effective control of HNZ Build will be deemed to be an assignment for the purposes of clause 27.1,

27.3 Exemption to HNZ Build Assignment Restrictions: Despite clause 27.1, the Council agrees that HNZ Build may with the prior written consent of the Council, assign the whole or part of its rights under this Agreement a third party (referred to in this clause as a **Build Partner**), such consent not to be unreasonably withheld provided that:

- (a) there is no unresolved Material Breach;
- (b) the Build Partner has the financial, technical and personnel resources and experience to perform HNZ Build's obligations under this Agreement;
- (c) the Build Partner enters into a direct covenant with the Council agreeing to be bound by the terms of this Agreement (the form of the covenant to be prepared by solicitors acting for the Council);
- (d) all relevant contracts relating to the development of the Project which remain on foot are, on or before the date of the assignment, novated to the assignee (including, but not limited to, all sale and purchase agreements, consultancy appointments and construction contracts); and
- (e) to the extent required to enable the assignee to complete the Project (or any part of the Project), a non-exclusive, royalty-free, perpetual and irrevocable licence to use and copy any Intellectual Property owned, held, developed, modified or enhanced by HNZ Build in relation to the Project.

Any approved assignment to a Build Partner is not a release, and will not alter the obligations, of HNZ Build under this Agreement.

27.4 Assignment by the Council: The Council must not assign and/or transfer the whole or any part of its rights and/or obligations under this Agreement at any time without the prior written consent of HNZ Build (not to be unreasonably withheld).

28. TAX PROVISIONS

28.1 GST: The following applies to the GST treatment of the supply of the Super Lot:

- (a) any consideration payable for supply of the Super Lot under this Agreement is exclusive of any GST charged in respect of that supply;
- (b) the Council warrants that at the Settlement Date it will be a registered person for GST purposes;
- (c) HNZ Build warrants that:
 - (i) it is a registered person, its address and its GST registration number are as set out in the Specific Terms; and
 - (ii) it will continue to be a registered person for GST purposes;



- (d) the parties agree that the supply of the Super Lot sold to HNZ Build by the Council under this Agreement (**Super Lot Supply**) will be zero-rated for GST purposes under section 11(1)(mb) of the GST Act;
- (e) HNZ Build confirms that, for the purposes of section 78F(2) of the GST Act as at the Settlement Date:
 - (i) HNZ Build is acquiring the Super Lot with the intention of using it for making taxable supplies; and
 - (ii) it does not intend to use the Super Lot as a principal place of residence for HNZ Build or any person associated with HNZ Build under section 2A(1)(c) of the GST Act;
- (f) if, for any reason, the Super Lot Supply is not zero-rated for GST purposes under section 11(1)(mb) of the GST Act and the Council has the obligation to account for any GST charged in respect of the Super Lot Supply:
 - (i) HNZ Build must pay to the Council, in addition to the consideration otherwise payable for the supply, an amount equal to the GST charged in respect of the Super Lot Supply (**GST Amount**), within 2 Working Days of the Council issuing to HNZ Build a tax invoice or debit note in respect of the supply;
 - (ii) HNZ Build must pay to the Council, in addition to the GST Amount, and upon demand by the Council, an amount equal to any Default GST (as defined by the Amended ADLS Terms); and
 - (iii) it will not be a defence to a claim against HNZ Build for payment to the Council of any amount payable under clause (f)(ii) that the Council has failed to mitigate the damages suffered by the Council by paying an amount of GST when it fell due under the GST Act.

Taxable Supplies: Subject to clause 28.1 any specific terms to the contrary under this Agreement:

in relation to any taxable supply made under or in connection with this Agreement unless the consideration otherwise payable for the supply is expressly stated to be inclusive of GST, the recipient must pay to the supplier, in addition to and at the same time as the consideration otherwise payable for the supply, an amount equal to any GST charged on the supply, provided that the supplier has issued to the recipient a Tax Invoice in respect of the supply (and provided further that if, in respect of the relevant taxable supply, the statutory criteria for zero-rating under section 11(1)(mb) or any other provision of the GST Act are satisfied, the supply will be zero-rated); and

unless expressly provided otherwise, where any amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (**Relevant Expense**) for the purpose of calculating the amount payable the amount of the Relevant Expense is to be reduced by an amount equal to any deduction for input tax or any other deduction from output tax available to that party as a result of incurring the Relevant Expense, provided that if the amount payable is the consideration, or part of the consideration, for any taxable supply, clause 28.2(a) will apply, as appropriate.

28.3 Lowest Price: For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a) the aggregate consideration payable for the Super Lot as adjusted or calculated in accordance with any provision of this Agreement, plus GST (if any) is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of the Super Lot (**Lowest Price**), on the date that this Agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being the Super Lot) was transferred;
- (b) the Lowest Price is the value of the Super Lot; and
- (c) they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and they will file their tax returns on that basis.

Interpretation: Unless the context requires otherwise, words and phrases used in this clause 28 have the same meaning as those words and phrases have in the GST Act.

29. GENERAL PROVISIONS

29.1 Method of Giving Notices: Clause 1.4 of the Amended ADLS Terms will apply to all notices to be given under this Agreement.

29.2 Entire Agreement: This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters.

29.3 Changes to policies: Where this Agreement permits the Council to make changes to policies, processes, guidelines (or the like) from time to time, the altered requirements of those documents may not be enforced retrospectively if they would impose greater obligations on HNZ Build (unless the Council keeps HNZ Build whole in relation to the effect of those greater obligations).

29.4 In Writing: Any:

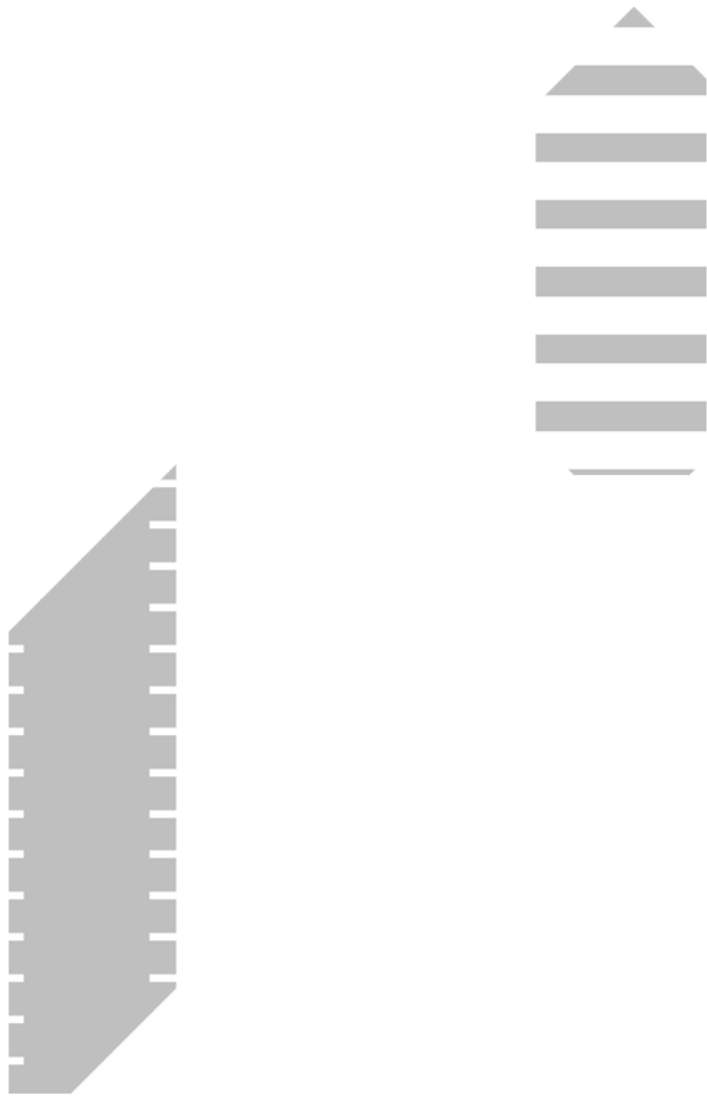
- (a) amendment to this Agreement will only be effective if it is in writing and signed by each party; provided that
- (b) consent or approval to be given under this Agreement is not required to be signed and may be given by notice in writing under clause 29.1.

29.5 Remedies: The rights, powers and remedies provided in this Agreement are cumulative and are in addition to any right, powers or remedies provided by law.

29.6 Further Assurances: Each party will do all things and execute all documents reasonably required to implement and carry out its obligations under, and contemplated by, this Agreement.

29.7 Non-Merger: The warranties, undertakings, obligations and indemnities given under this Agreement will not merge or be treated as discharged but will remain enforceable to the fullest extent, despite any rule of law to the contrary.

- 29.8 Costs:** Unless otherwise stated in this Agreement, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this Agreement.
- 29.9 Copies:** Any legible copy (with clear plans in colour where applicable) of this Agreement that is fully executed and received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this Agreement) may be relied on by any party and presented in evidence in any legal proceedings as though it were an original copy of this Agreement. This Agreement may be entered into on the basis of an exchange of signed PDF or other document reproduction format.
- 29.10 Partial Invalidity:** A provision of this agreement that is illegal, invalid or unenforceable is ineffective to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of the remainder of the agreement.
- 29.11 Survival of Representations and Warranties:** All representations and warranties in this Agreement survive the execution and delivery of this Agreement and the completion of transactions contemplated by it. Any indemnity or any obligation of confidence under this Agreement is independent of, and survives termination of, this Agreement. Any other term by its nature intended to survive termination of this Agreement or that arises on termination of this Agreement survives termination of this Agreement.
- 29.12 Successors:** The provisions of this Agreement will continue for the benefit of, and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.
- 29.13 Waiver:** Any waiver by a party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this Agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.
- 29.14 Precedence:** Where there is an ambiguity, inconsistency or conflict of obligations within this Agreement and any Schedule or other documents forming part of this Agreement, then the provisions in this Agreement will prevail.
- 29.15 Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand and with respect to any legal action or proceedings that may be brought with respect to this Agreement or any transaction contemplated by this Agreement, HNZ Build irrevocably and unconditionally submit to and accepts, for itself and in respect of its assets, the non-exclusive jurisdiction of any of the courts of New Zealand.
- 29.16 Joint and Several Liability:** If a party comprises more than one person, each person's liability is joint and several.
- 29.17 No Caveat:** HNZ Build covenants not to lodge any caveat against the records of title to the Super Lot. If HNZ Build does lodge a caveat, HNZ Build irrevocably appoints the Council to be HNZ Build's true and lawful attorney to do all things and sign all instruments, consents and documents in the name of HNZ Build, and on HNZ Build's behalf that the Council deems necessary or expedient to have that caveat removed. HNZ Build acknowledges and agrees that the production of this Agreement to LINZ will be sufficient evidence of the appointment of the Council as the attorney of HNZ Build for that purpose. The costs of removal of any caveat will be payable by HNZ Build to the Council immediately on demand.



A handwritten signature in blue ink, consisting of stylized, overlapping letters, located in the bottom right corner of the page.