

Secure Home Agreement

QLCHT Property Portfolio Limited

and

Full name

Property at: [address]

Version 2, August 2020

Secure Home Agreement

Dated:

Parties

QLCHT Property Portfolio Limited (Company No. 3044794) (“us” or “we”)

[Full names] (“you”)

Background

- A. We own the Property, including the House.
- B. We have agreed to grant you a long term right to exclusively occupy the Property (including the House) in return for you making an upfront payment of \$[insert] and paying monthly rentals. The terms of your long term right to exclusively occupy the Property are as set out in this Agreement.

Terms

1. General Lease Terms

- 1.1. We agree to grant you a long term right to exclusively occupy the Property by way of a lease of the Property (including the House) to you for 100 years from the Start Date on the terms set out in this Agreement.
- 1.2. You and your family can live at the Property without interference from us provided you comply with this Agreement.
- 1.3. The Property can only be used as your family home.
- 1.4. You may not rent out nor part with any part of the Property (including on a night by night basis) for more than 28 days per annum, unless approved by us.
- 1.5. If both of you die then we may implement clause 9 below.
- 1.6. If you separate then we may implement clause 9 below.
- 1.7. We can inspect the Property at any time provided we give you 48 hours advance warning. In the case of an emergency we can inspect the Property without advance notice.
- 1.8. We may engage the Queenstown Lakes Community Housing Trust or its nominee to manage the Property and our rights under this Agreement on our behalf.
- 1.9. If we have reason to believe or suspect that there may be illegal substances manufactured or used on the Property then we have the right to arrange for a property inspection or testing with 24 hours’ notice to you. If that inspection shows illegal substances then we may implement clause 9.1 below.

- 1.10. We both agree that the Residential Tenancies Act 1986 does not apply to this Agreement or your occupancy of the Property.

2. Up Front Payment

- 2.1. In consideration of us granting you the long term right to exclusively occupy the Property as set out in this Agreement, you agree to pay us the Upfront Payment by way of cleared funds on the Start Date.
- 2.2. At the same time as payment of the Upfront Payment, you may register this Agreement against the title to the Property and grant a mortgage over your registered Agreement to your Bank provided the provisions of clause 6 below have been complied with.
- 2.3. We agree to have our solicitors hold the Upfront Payment in trust until registration of this Agreement and the mortgage to your Bank.

3. Rent

- 3.1. During the term of this Agreement you must pay us Rent at an initial rate of \$[insert] per annum, with such Rent to be paid by equal monthly instalments in advance of \$[insert] per month on the 1st day of each month. All Rent shall be paid without any deductions or set-off. If payment of Rent is late by one month then we can charge you a penalty of \$50 per month per missed payment until full payment is received. We may review this late payment penalty at any time.
- 3.2. On each anniversary of the Start Date, the Rent will be reviewed based on inflation (All Indices) over the previous 12 months ending on the quarter immediately preceding the respective anniversary of the Start Date. For example, if inflation was 3% for the previous 12 months then the Rent shall increase by 3%. Once calculated, we will notify you of the rate of inflation and your rent will increase by that rate on the date which is one month after our notice. You must amend your payments accordingly. On any review the Rent shall never decrease.

4. Your Obligations in Respect of the Property

- 4.1. You must:
 - 4.1.1. pay all outgoings, amounts and costs relating to the Property including Local Authority rates, insurance, utilities and body corporate levies;
 - 4.1.2. pay all amounts owing to your Bank;
 - 4.1.3. maintain the Property (at your cost) to a satisfactory standard as determined by us;
 - 4.1.4. undertake ongoing maintenance (at your cost) in accordance with our deferred maintenance schedule, which we will issue to you prior to the Start Date;

- 4.1.5. not do anything with your interest in this Agreement unless you receive our written consent first or unless in compliance with the terms of this Agreement;
- 4.1.6. comply with all laws relating to the Property;
- 4.1.7. insure the Property in accordance with Insurance Rules attached as Annexure B;
- 4.1.8. if required by us, take out life and disability insurance;
- 4.1.9. not do anything that might negate the insurance for the Property;
- 4.1.10. cover our loss if you do anything that allows the insurer to avoid paying out on any claim;
- 4.1.11. comply with the Landscaping and Fencing Improvement Rules set out in clause 7.3 below;
- 4.1.12. if demanded, pay interest on any amount owing to us under this Agreement at the rate of 15% per annum from the due date for payment until the actual date of payment. This clause shall not apply to late payment of Rent as per clause 3.1 above; and
- 4.1.13. comply with any occupation and use rules applying to the Property.

5. Failures by You

- 5.1. If you fail to do anything required to be done under this Agreement within 10 Working Days of us telling you then we can fix the breach and recover the costs from you.
- 5.2. If you constantly and seriously breach this Agreement or your breach of this Agreement cannot be fixed then we may implement clause 9 below.

6. The Bank

- 6.1. You may borrow money from a Bank for the Upfront Payment and grant a mortgage over your rights under this Agreement to the Bank as security for that loan.
- 6.2. Prior to advancing the loan, you and the Bank must enter into an agreement with us under which:
 - 6.2.1. We agree to notify the Bank of any circumstances that might give rise to us being able to exercise our rights under clause 9 of this Agreement and give the bank an opportunity to remedy the issue (if it is able to be remedied);
 - 6.2.2. The Bank agrees with us:

- 6.2.2.1. To notify us of any material breach or default under the loan or mortgage;
- 6.2.2.2. To provide us with a copy of any Property Law Act Notice served to you;
- 6.2.2.3. To allow us 15 Working Days to remedy any default on your behalf to avoid a mortgagee sale of your interest under this Agreement;
- 6.2.2.4. That in the event that a default is not remedied then the Bank's only remedy is to issue a put option notice on your behalf in accordance with clause 9.2 below and the provisions of clause 9.4 and 9.5 shall then apply; and
- 6.2.2.5. That in the event that a call or put option notice is issued in accordance with clause 9 then the Bank agrees to take all necessary steps to discharge its mortgage over your rights under this Agreement upon settlement of the transfer of this Agreement back to us or our nominee.

6.3. You:

- 6.3.1. must pay all amounts owing to the Bank on a principal and interest repayments basis;
 - 6.3.2. must ensure that the Bank has no recourse to us personally for your borrowing;
 - 6.3.3. cannot borrow more than the Maximum Bank Loan unless you have our consent first;
 - 6.3.4. cannot redraw on any principal repaid to the Bank unless you have our consent first;
 - 6.3.5. agree that the Bank can disclose all information about your affairs (including your loan and mortgage documents together with your payment history) to us;
 - 6.3.6. cannot agree to grant any further mortgages or charges against your rights under this Agreement;
 - 6.3.7. agree that we can allow the Bank to enforce any provision of this Agreement; and
 - 6.3.8. agree that we may disclose information about you to the Bank.
- 6.4. You and us acknowledge that the Bank is not a party to nor bound by this Agreement and has no liability pursuant to this Agreement to either you or us.

- 6.5. If you get served with a Property Law Act Notice stating that you are in default to your Bank then you must remedy the default within 10 Working Days of being served.
- 6.6. If you fail to remedy the default within 10 Working Days of being served then we may remedy the default on your behalf and then implement clause 9 below.

7. Improvements

- 7.1. In carrying out any general improvements (being any improvements having a cost of less than \$5,000 (with such sum to increase in line with inflation)) to the Property or undertaking ongoing maintenance in accordance with clause 4.1.4 then:
 - 7.1.1. they are at your cost;
 - 7.1.2. you must complete them in a reasonable time to a professional and tradesman-like standard;
 - 7.1.3. you must comply with all laws and obtain all Code Compliance Certificates (if required);
 - 7.1.4. you must give us copies of all related paperwork;
 - 7.1.5. you must cover us for any losses if carrying out the improvements causes us any losses; and
 - 7.1.6. you must abide by any policies developed by us relating to carrying out improvements or maintenance.
- 7.2. If you wish to make substantial improvements in excess of \$5,000 (with such sum to increase in line with inflation) then the rules set out in clause 7.1 above shall apply plus you must get our written consent first, which we may withhold in our absolute discretion. In addition, if such substantial improvements are approved by us then you may apply to increase the Reversion Price of the Property by an amount equal to the market cost of such improvements. You must supply us with copies of all invoices relating to the improvements to support such increase. If there is any dispute then our decision will be final. The date of our decision shall be the Improvements Date for the purposes of clause 9.5 below.
- 7.3. Landscaping and Fencing Improvements Rules include:
 - 7.3.1. you must not make any alterations to the fences on the Property (including extending the length, increasing the height, or changing the materials) without our consent;
 - 7.3.2. you must not make any practical changes or additions to the landscaping (for example, adding a garden shed) without our consent;
 - 7.3.3. you must ensure the irrigation system is monitored, maintained and periodically adjusted as required, including draining the irrigation system in winter and reprogramming it for spring;

- 7.3.4. you must undertake regular pruning of trees, hedges, shrubs and groundcovers as required, in particular:
 - 7.3.4.1. hedges on shared boundaries must be maintained to a maximum height of 1.8 metres; and
 - 7.3.4.2. hedges on road/reserve boundaries must be maintained to a maximum height of 1.2 metres;
- 7.3.5. you must undertake all other work necessary to maintain a healthy, clean, neat and tidy garden landscape; and
- 7.3.6. if you do not keep your garden tidy:
 - 7.3.6.1. we may require you to tidy it up to our reasonable standard; and
 - 7.3.6.2. if you do not adhere to our request we may employ contractors to undertake whatever work is required at your cost.

8. No Second Property

- 8.1. You may not acquire or own an interest in another residential property during the term of this Agreement. If you breach this prohibition then we may implement clause 9 below.

9. Put and Call Option

- 9.1. We may require you to transfer your rights in this Agreement to us (or our nominee) by us giving you 20 Working Days' notice if:
 - 9.1.1. any moneys owing to us are more than 20 Working Days in arrears;
 - 9.1.2. any of clauses 1.5, 1.6, 1.9, 5.2, 6.6 or 8.1 above apply;
 - 9.1.3. you refuse to perform your obligations under this Agreement; or
 - 9.1.4. the Property is compulsory acquired by a Government Authority.
- 9.2. Subject to clause 9.3 below, you (or your Bank in accordance with clause 6.2.2 above) may require us (or our nominee) to acquire your rights in this Agreement from you at any time by giving us 20 Working Days' notice.
- 9.3. During the first 3 years of your occupation of the Property, you may only serve notice on us under clause 9.2 above if clauses 1.5 or 1.6 above apply or if we agree to allow you to serve notice on us during this initial term due to you suffering undue financial hardship.
- 9.4. Within 20 Working Days of the Exercise Date we must pay you (or your executors) the Reversion Price. You must provide a registerable transfer of your interest in this Agreement to us or our nominee together with a registerable discharge of any mortgage registered against your interest in this Agreement to us

contemporaneously with us making payment of the Reversion Price. If required by your Bank, we will pay the Reversion Price directly to your Bank.

9.5. The "Reversion Price" shall be calculated as follows:

$$A = ((B \times C) + (D \times E)) - F$$

Where:

A = Reversion Price

B = Upfront Payment

C = the rate of inflation (all indices) expressed as a decimal from the Start Date to the Exercise Date plus one (for example, if the CPI Index at the Start Date was 1000 and the CPI Index at the Exercise Date was 1100 then the rate of inflation is 10% or 0.10 so $C = 1.10$) provided that C shall never be less than one

D = the value of any substantial improvements in accordance with clause 7.2

E = the rate of inflation (all indices) expressed as a decimal from the Improvements Date to the Exercise Date plus one provided that E shall never be less than one

F = any amounts owing by you to us under this Agreement, in particular under clause 10.4 below

9.6. Upon completion pursuant to clause 9.4 above, you shall be released from your obligations under this Agreement.

9.7. If for whatever reason we did not complete settlement with you in accordance with clauses 9.4 to 9.5 above within 10 Working Days of the date specified in clause 9.3 above then the following provisions shall apply:

9.7.1. You shall be free to transfer your rights set out in this Agreement (as amended below) to a third party;

9.7.2. From the date of transfer to a third party ("**Transfer Date**"), this Agreement shall be amended as follows:

9.7.2.1. clauses 1.3 to 1.6, 6, 7.2, 8, and 9.1 to 9.6 shall be deleted;

9.7.2.2. clause 7.1 shall be amended by deleting the words "(being any improvements having a cost of less than \$5,000 (with such sum to increase in line with inflation))"

9.7.2.3. a new clause shall be deemed inserted as follows:

"We may (in addition to our rights to apply to the Court for an order for possession) and subject to section 245(2) of the

Property Law Act 2007 cancel this Agreement by re-entering the Property at the time or at any time after that:

- (a) if the Rent shall be in arrears 20 working days after any Rent payment date and you have failed to remedy that breach within 20 working days after service on you of a notice in accordance with section 245 of the Property Law Act 2007;
- (b) in case of breach by you of any covenant or agreement on your part expressed or implied in this Agreement (other than the requirement to pay Rent) after you have failed to remedy that breach within the period specified in the notice served on you in accordance with section 246 of the Property Law Act 2007;
- (c) if you are bankrupted.

9.7.3. The above amendments will be recorded in a Deed and registered against the title for the Property.

10. Your obligations at the end of your interest in this Agreement

10.1. At the end of your interest in this Agreement, you must:

10.1.1. vacate and return the Property to us in a condition consistent with you having complied with your obligations under this Agreement (in particular, the obligations at clauses 4.1.3 and 4.1.4);

10.1.2. remove all your fittings and furnishings and all rubbish and make good any damage caused by the installation and/or removal of such fittings and furnishings;

10.1.3. give us all keys and other security devices for the purpose of obtaining access to the Property.

10.2. Any fittings or furnishings left in the property 5 days after the end of this Agreement will be deemed to be abandoned by you and will become our property and may be removed by us at your cost.

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

10.4. If you fail to comply with the provisions of clauses 10.1.1 and 10.1.2 above then the cost to remedy such non-compliance shall be deducted from the Reversion Price. Further, there shall also be a pro-rata adjustment for any deferred maintenance items which have not been completed as at the transfer date but which are due to be completed within 2 years of you exiting the Property. Such costs shall be set by an independent property inspector chosen by us, whose decision shall be final and binding on both of us.

11. Power of Attorney

- 11.1. You must, contemporaneously with entering this Agreement, give us the power of attorney in the form attached as Annexure A. The power of attorney shall be irrevocable.
- 11.2. We can only use the Power of Attorney to exercise our rights under Clauses 9 and 10 above.

12. Insurance

- 12.1. If any loss occurs which is covered by any insurance provided for in this Agreement, you must:
 - 12.1.1. apply for the insurance proceeds immediately;
 - 12.1.2. subject to 13.2 below, use the insurance proceeds and your own funds if needed to restore, replace, repair or reinstate the loss.

13. Destruction or Damage of Premises

- 13.1. If the Property or any improvements are damaged or destroyed, you must:
 - 13.1.1. make the property safe and secure;
 - 13.1.2. if required by us, give us a report from a structural engineer as to the structural stability of the Property; and
 - 13.1.3. clear all debris from the Property.
- 13.2. In the event of damage or destruction of the Property or any improvement then provided we consent, you may:
 - 13.2.1. reinstate the Property or the improvements substantially in accordance with their original design; or
 - 13.2.2. rebuild to a different design.
- 13.3. You must comply with clause 7 with respect to any reinstatement or rebuild under this clause 13.

14. Dispute Resolution

- 14.1. Unless otherwise provided in this Agreement, if either of us considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement or your occupancy of the Property, then that party shall immediately give notice to the other setting out details of the dispute. We will both endeavour in good faith to resolve the dispute within 5 Working Days of the receipt of the notice, failing which we will both endeavour in good faith within a further 10 Working Days to appoint a mediator and resolve the dispute, time being of the essence.

15. Costs

- 15.1. Each of us will pay our own legal costs in relation to this Agreement and any variation. You shall pay our legal costs (as between lawyer and client) relating to any enforcement by us of our rights and remedies under this Agreement, including our exercise of our call option under clause 9.1.

16. General

- 16.1. This Agreement, and the agreement with you and the Bank to be entered into pursuant to clause 6.2, constitute the entire understanding and agreement between us.
- 16.2. Time is of the essence in the performance of obligations under this Agreement.
- 16.3. You must not register a caveat against the title to the Property.
- 16.4. You may not assign this Agreement.
- 16.5. The provisions of this Agreement shall continue for the benefit of and shall bind the permitted assigns and nominees of each of us.

17. Independent Legal Advice

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

18. Definitions

- 18.1. In this Agreement unless the context requires otherwise:
- 18.1.1. "**Bank**" is [Bank] which is to take a mortgage over your rights under this Agreement to secure its lending to you;
- 18.1.2. "**Exercise Date**" means the expiry date of a notice given under either clause 9.1 or clause 9.2.
- 18.1.3. "**GST**" is goods and services tax within the meaning of the Goods and Services Tax Act 1985;
- 18.1.4. "**House**" means the residential house constructed on the Property;
- 18.1.5. "**Improvements Date**" means the date of our decision pursuant to clause 7.2 above;
- 18.1.6. "**Maximum Bank Loan**" is \$xxx,xxx but reducing on a reducing principal basis as principal repayments are made by you;
- 18.1.7. "**Property**" is the land and building situated at [address], RT [insert RT];

18.1.8. "**Rent**" means the rent payable by you under this Agreement as referred to in clause 3 above;

18.1.9. "**Start Date**" means [insert];

18.1.10. "**Upfront Payment**" means the sum of [insert];

18.1.11. "**Working Day**" has the same meaning as set out in the General Terms of the ADLS Agreement for Sale and Purchase of Real Estate.

Executed by the Parties

Signed by QLCHT Property Portfolio Limited by its Authorised Signatory under delegated authority in the presence of

Authorised Signatory's signature

Signature of witness

Full name of witness

Occupation of witness

City/Town of residence of witness

Signed by [full name]
in the presence of

[Full name]

Signature of witness

Full name of witness

[Full name]

Occupation of witness

City/Town of residence of witness

Annexure A – Power of Attorney

I/WE [Full names] of [Town]

Dated:

APPOINT any two directors of QLCHT Property Portfolio Limited

TO BE OUR ATTORNEY

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

PROVIDED THAT the above powers may only be used for a purpose allowed by the Secure Home Agreement between us and QLCHT Property Portfolio Limited.

WE DECLARE AND AGREE

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

Signed by [Full names] in the presence of:

[Full name]

[Full name]

Signature of witness

Name of witness

Occupation

Address

Annexure B – Insurance Rules

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

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

Policy Details: Policy to be in your name with the Bank noted as an interested party due to its mortgage and us noted as an interested party due to this Agreement.

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