

PROPERTY SHARING AGREEMENT

between

xxxx

and

xxxx xxxx xxxx

Property at:

xxxx

Property Sharing Agreement

Date:

Parties

1. **xxxx** ("us" or "we")
2. **xxxx xxxx xxxx** ("you")

Background

The Parties intend to buy the Property in shares subject to the terms of this Agreement.

Terms

1. Ownership and Occupation of Property and Succession

1.1 When the Property is purchased:

- a. we will pay for and own a **xxxx** share ("our Share");
- b. you will pay for and own a **xxxx** share ("your Share");

in the Property as tenants in common.

1.2 You and your family can live at the Property provided you comply with this Agreement. You live there as a part-owner of the Property rather than as a tenant.

1.3 The Property can only be used as your family home.

1.4 You may not rent out or part with any part of the Property except with our consent.

1.5 If both of you die then we may implement clause 11 below.

1.6 If you separate then we may implement clause 11 below.

1.7 We can inspect the Property at any time provided we give you 48 hours advance warning. We do not need to warn you in the case of an emergency.

1.8 We may engage the Queenstown Lakes Community Housing Trust or its nominee to manage our interest in the Property together with our rights under this Agreement on our behalf.

2. Your Obligations in Respect of the Property

2.1 You must:

- a. pay all amounts and costs relating to the Property;
- b. pay all amounts owing to the Bank;
- c. maintain the Property to a good standard as determined by us;
- d. not do anything that might negate the insurance or cause the insurance premium to increase;
- e. not do anything with your Share unless you receive our written consent first;
- f. pay the Annual Fee. If payment is late by one month then we can charge you a penalty of \$20 per month until full payment is received;

- g. comply with all laws relating to the Property;
- h. cover our loss if you do anything that allows the insurer to avoid paying out on any claim;
- i. insure the Property in accordance with Insurance Rules attached as Annexure B;
- j. comply with the Landscaping and Fencing Improvement Rules set out in clause 5.2 below;
and
- k. comply with any occupation and use rules designated by us from time to time.

3. **Failures by You**

- 3.1 If you fail to do anything required to be done under this Agreement within ten Working Days of us telling you then we can fix the breach and recover the costs from you.
- 3.2 If you constantly and seriously breach this Agreement or your breach of this Agreement cannot be fixed then we may implement clause 11 below.

4. **The Bank**

- 4.1 The Bank has a mortgage registered against the Property to secure your borrowing.
- 4.2 You:
 - a. must pay all amounts owing to the Bank on a principal and interest repayments basis;
 - b. must ensure that the Bank has no recourse to us personally for your borrowing;
 - c. cannot borrow more than the Maximum Bank Loan unless you have our consent first;
 - d. cannot redraw on any principal repaid to the Bank unless you have our consent first;
 - e. agree that the Bank can disclose all information about your affairs (including your loan and mortgage documents together with your payment history) to us;
 - f. cannot agree to grant any further mortgages or charges against the Property;
 - g. and we agree that the Bank may enforce any provision of this Agreement and that the Contracts (Privity) Act 1982 applies; and
 - h. agree that we may disclose information about you to the Bank.
- 4.3 Nothing in this Agreement shall cause the Bank to be bound to release any mortgage it may have over the Property or to consent to any sale of the Property.
- 4.4 The Parties acknowledge that the Bank is not a party to nor bound by this Agreement and has no liability pursuant to this Agreement to any of the Parties.

5. **Improvements**

- 5.1 General Improvements - if you wish to carry out general improvements then:
 - a. you must get our written consent first which may be withheld in our sole discretion;
 - b. they are at your cost;
 - c. you must complete them in a reasonable time to a professional and tradesman-like standard;
 - d. you must comply with all laws and obtain all Code Compliance Certificates (if required);

- e. you must give us copies of all related paperwork;
- f. you must cover us for any losses if carrying out the Improvements causes us any losses; and
- g. you must abide by any policies developed by us relating to carrying out Improvements.

5.2 Landscaping and Fencing Improvements Rules include:

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

6. If You Wish to Sell

- 6.1 Except as agreed by us, you may not offer to sell your Share to us until after the second anniversary of the date of purchase of the Property.
 - 6.2 If you wish to sell your Share then you must first offer it to us in writing. You must pay us the Processing Fee at the same time.
 - 6.3 We will provide you with a list of two Valuers. You must choose a Valuer within five working days. If you fail to choose then we will choose. We then get a Current Valuation from the chosen Valuer and provide you with a copy.
 - 6.4 You then have 15 Working Days to decide whether you still wish to sell your Share to us based on the Current Valuation. We must advise you if we wish to buy your Share based on the Current Valuation within the same time frame. If neither you nor we say anything, then both you and we are deemed to be not wishing to proceed. Notices to each other must be in writing.
 - 6.5 If both you and we wish to proceed then:
 - a. the price payable by us for your Share is:
 - i. your Share times the Current Valuation;
- less

- ii. the Transfer Fee;
less
- iii. any amounts you owe us under this Agreement;
- b. you and we will sign a Sale Agreement;
- c. settlement will be on the Settlement Date;
- d. on settlement, you must discharge the Bank's mortgage and pay all rates up to the Settlement Date; and
- e. on settlement, this Agreement terminates except for prior breaches.

7. **Sale on Open Market**

- 7.1 If neither you nor we wish to proceed as above, you can place the Property on the open market for sale with an agent approved by us. You must not sign any commission agreement nor agree to any marketing campaign unless we approve it first.
- 7.2 If you receive an offer which you wish to accept from an independent third party then you must show it to us first before you sign it. We then have the right to buy your Share based on that offer price. We must give you our decision within two Working Days.
- 7.3 If we decide to buy then clause 6.4 above applies except that the price payable shall be calculated based on the offer price from the independent third party.
- 7.4 If we decide not to buy, then the entire Property can be sold to the third party on the offer terms with the net funds paid out as set out in clause 12. We agree to sign all paperwork necessary to complete the sale to the third party.
- 7.5 If we do nothing then we are deemed to be not wishing to proceed to buy your share at the offer price from the independent third party.
- 7.6 If any offer price for the Property decreases before settlement then you must go through the mechanism in clauses 7.2 to 7.5 above again before agreeing to any decrease.

8. **Avoiding a Mortgagee Sale**

- 8.1 If you get served with a Property Law Act Notice pursuant to Sections 117 and 118 of that Act then you must remedy the default within 10 Working Days of being served.
- 8.2 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 11 below.

9. **If You Wish to Buy Our Share**

- 9.1 You may offer to buy our Share only if you intend to use the Property as your family home for at least one year from the date you intend to buy our Share.
- 9.2 You can offer to buy part of our Share at any time in multiples of 5% except that once you get to 85% or more then any offer must be for all of our Share. Such offer must be in writing.
- 9.3 You can also offer to buy out all of our Share at any time. Such offer must be in writing.
- 9.4 Except as agreed by us, you may not offer to buy all of our Share from us until after the second anniversary of the date of purchase of the Property.
- 9.5 Any offer under either clause 9.2 or 9.3 above must be accompanied by the Processing Fee.

- 9.6 We then provide you with a list of two Valuers. You must choose a Valuer within five working days. If you fail to choose then we will choose. We then get a Current Valuation from the chosen Valuer and provide you with a copy.
- 9.7 You then have 10 Working Days to decide whether you still wish to buy part or all of our Share based on the Current Valuation. We must advise you if we wish to sell part or all of our Share based on the Current Valuation within the same time frame. Notices to each other must be in writing. We will not sell if the Current Valuation is less than the original purchase price for the Property. If neither you nor we say anything then both you and we are deemed to be not wishing to proceed.
- 9.8 If we both wish to proceed then:
- a. the price payable by you is:
 - i. part or all of our Share times the Current Valuation;
plus
 - ii. any amounts you owe us under this Agreement;
 - b. you and we will sign a Sale Agreement;
 - c. settlement will be on the Settlement Date; and
 - d. on settlement, this Agreement terminates except for prior breaches or clause 9.1 which shall survive termination.
- 9.9 You must obtain the written consent of your Bank before you notify us that you wish to buy part or all of our Share in accordance with the above provisions.

10. Restrictions on Us

- 10.1 We may sell, transfer or otherwise dispose of our Share to any party provided such party agrees to be bound by this Agreement as if that party was us.
- 10.2 In that event, you must sign all documentation reasonably required by us to complete the transfer.
- 10.3 Provided the Bank consents, we may mortgage or charge our Share provided our mortgagee or chargeholder agrees to be bound by the provisions of this Agreement.

11. Our Rights

- 11.1 For the purposes of clauses 1.5, 1.6, 3.2, 8.2, or 14.3 we may either:
- a. require you to sell your Share to us based on a Current Valuation obtained by us with clause 6.4 to then apply; or
 - b. require that the Property be placed on the open market for sale with an agent nominated by us and we shall have sole power to accept an offer for the Property with the net funds to be paid out as set out in clause 12.

12. Pay out of Net Funds

- 12.1 If the Property is sold to a third party then the sale price less agent's commission and reasonable conveyancing legal fees (the "net sale price") shall be paid out in the following order of priority:
- 1st Bank – all amounts needed to obtain a discharge of the Bank's mortgage;
 - 2nd Us – our Share of the net sale price;

3rd Us – any amounts you owe us under this Agreement; and

4th You – the balance funds (if any).

13. **Power of Attorney**

13.1 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.

13.2 We can only use the Power of Attorney to exercise our rights under Clause 11.

14. **Review of Financial Position**

14.1 At any time we may require you to provide us with a statement of financial setting out your income, assets and liabilities.

14.2 If, in our reasonable opinion, we believe you are in a financially stable position due to:

- a. your net asset position;
- b. your debt servicing ratio being less than 30% of Gross Income; and
- c. your Bank being supportive;

we may require you to buy part or all of our Share in accordance with clause 9 above and you shall be deemed to be willing to purchase for the purposes of clause 9.7.

14.3 If at any time we discover that you have not been truthful in your disclosure of your personal information to us (either before or after entering into this Agreement) or acted fraudulently in any way then we may implement clause 11 above. In such instance that the price payable by us under clause 11.1.a will be based on the lower of Current Valuation or original purchase price of the Property.

15. **Sunset Date**

15.1 On the tenth anniversary of the date of purchase of the Property, you shall be deemed to have issued a notice offering to buy all of our Share pursuant to clause 9.3 above.

15.2 If you decide not to proceed to buy our Share pursuant to clause 9.7 above then we can decide to either:

- a. buy your Share at the price set by the valuation under clause 9.6 above; or
- b. require that the Property be sold on the open market in accordance with clause 7 above.

16. **General**

16.1 **Entire agreement:** This Agreement constitutes the entire understanding and agreement of the Parties.

16.2 **Time of essence:** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

16.3 **No Caveat:** You must not register a caveat against the title to the Property.

16.4 **Assignment:** You may not assign this Agreement.

16.5 **Costs:** Each Party will pay its own costs in relation to the negotiation, preparation and execution of this Agreement.

16.6 **Binding on permitted assigns and nominees:** The provisions of this Agreement shall continue for the benefit of and shall bind the permitted assigns and nominees of the Parties.

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 and Interpretation**

18.1 In this Agreement unless the context requires otherwise:

“**Agreement**” means this agreement;

“**Annual Fee**” is \$350 plus GST (paid in arrears) to cover administration costs of running the Shared Ownership programme, which may be increased annually by a reasonable sum advised by us reflective of costs increasing;

“**Bank**” is xxxx which is to take a mortgage over the Property to secure its lending to you;

“**Current Valuation**” is a current market valuation of the Property undertaken by the Valuer;

“**General Conditions**” is the latest form of the Auckland District Law Society Incorporated's Agreement for Sale and Purchase of Real Estate;

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

“**Improvements**” are any works undertaken on or to the Property which need a resource and/or building consent;

“**Maximum Bank Loan**” is xxxx but reducing on a reducing principal basis as principal payments are made by you;

“**Processing Fee**” is \$1,000 plus GST to cover valuation and related administration costs, which may be increased annually by a reasonable sum advised by us reflective of costs increasing;

“**Property**” is the land and building situated at xxxx, certificate of title xxxx;

“**Sale Agreement**” is an Agreement for Sale and Purchase incorporating the General Conditions prepared by our solicitors;

“**Settlement Date**” means 15 working days after the Sale Agreement is signed;

“**Transfer Fee**” means 2.5% of the value of your Share in the Property based on the Current Valuation;

“**Valuer**” is a registered valuer experienced in valuing properties in the area administered by the Queenstown Lakes District Council; and

“**Working Day**” has the same meaning as set out in the General Conditions.

18.2 references to the Parties include their respective executors, administrators, successors and permitted assigns;

18.3 the singular will include the plural and vice versa;

18.4 any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

- 18.5 headings have been inserted for convenience only and will not affect the construction of this Agreement; and
- 18.6 reference to a statute includes all statutes amending, consolidating or replacing the statute referred to and any regulations made pursuant to those statute.

Executed by the Parties

Signed by **xxxx** by:

Authorised signature

Authorised signature

Full name

Full name

Signed by **xxxx xxxx xxxx** in the presence of:

xxxx

xxxx

Signature of witness

Name of witness

Occupation

Address

I, _____,

Barrister and Solicitor of the High Court of New Zealand confirm that I have explained the nature and effect of this Agreement to xxx xxx xxx and have reasonable grounds to believe they understand the nature and effect of this Agreement

Signature _____

Annexure A – Power of Attorney

I/WE **xxxx xxxx xxxx** of **Wanaka**

Dated:

APPOINT any two directors of **xxxx**

TO BE OUR ATTORNEY

- 1. in relation to our interest in the property at **xxxx**, certificate of title **xxxx** and/or
- 2. to sign and use our names in any manner in any deed, document or writing in respect of the property at **xxxx**, certificate of title **xxxx**;

PROVIDED THAT the above powers may only be used for a purpose allowed by the Property Sharing Agreement between us and **xxxx**.

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 **xxxx xxxx xxxx** in the presence of:

xxxx

xxxx

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 (or names) with the Bank noted as an interested party due to its mortgage and us noted as an interested party due to us being a joint owner of the insured property.
- Policy to provide us with a 30 day notice to pay any past due premiums to ensure the policy can continue without interruption.