

FIRST HOME PARTNER

Commitment Agreement

EXAMPLE

Background – Introduction to this Commitment Agreement

(A) What does this Commitment Agreement do?

This Commitment Agreement sets out the terms and conditions that apply between you and us before the commencement of a Shared Ownership Agreement. For example, it sets out requirements for your participation in the Scheme, and things you must do before and after submitting an offer on a Property.

(B) What is not included in this Commitment Agreement?

This Commitment Agreement does not:

- Set out our eligibility criteria for participating in the Scheme. Our eligibility criteria can be accessed at this website address kaingaora.govt.nz/firsthomepartner.
 - Commit that you are or will continue to be eligible to participate in the Scheme. We have separately written to you confirming your eligibility to participate in the Scheme. We may choose to reassess your eligibility to participate in the Scheme at any time before we agree to submit an offer to purchase a Property, and/or every six months before you and we sign a Purchase Agreement as Co-Purchasers.
 - Set out our requirements for the Properties that we are willing to purchase under the Scheme. Our requirements for Properties can be accessed at this website address kaingaora.govt.nz/firsthomepartner.
 - Set out our requirements for the terms of a Purchase Agreement. Our requirements for the terms of a Purchase Agreement can be accessed at this website address kaingaora.govt.nz/firsthomepartner/legal.

(C) When do I need to return my signed Commitment Agreement to you?

We recommend you return your signed Commitment Agreement to us at any time before you want to start looking for a Property to purchase. We must have your signed Commitment Agreement before we will consider any Property or a Purchase Agreement.

SIGNING

1 OPPORTUNITY TO OBTAIN LEGAL ADVICE

This Commitment Agreement is an important contract. It deals with procedural matters (for example, how you get our approval to enter into a Purchase Agreement) and legal matters (for example, your potential liability under or relating to a Purchase Agreement). It also may affect your ability to exercise your rights as a purchaser under a Purchase Agreement.

Kāinga Ora–Homes and Communities recommends you seek legal advice on the terms of this Commitment Agreement before you sign it.

You must tick one of the following two boxes before returning your signed Commitment Agreement to us:

- I have obtained legal advice on the terms of the Commitment Agreement before signing it. My Solicitor's contact details are:

NAME

FIRM

PHONE NUMBER ()

EMAIL ADDRESS

(or)

- I have chosen not to obtain legal advice on the terms of this Commitment Agreement before signing it. I have read and understood my rights and obligations under this Commitment Agreement. Even though I have chosen not to obtain legal advice on the terms of this Commitment Agreement, I acknowledge that Kāinga Ora may require me to provide my Solicitor's contact details before it considers any Property or a Purchase Agreement.

SIGNING continued

2 YOU ARE NOT RELYING ON FINANCIAL ADVICE FROM KĀINGA ORA

Because we operate the Scheme, and because we are a Co-Purchaser under this Commitment Agreement, our discussions with you about your circumstances, the Scheme, this Commitment Agreement, a Property and/or a Purchase Agreement cannot be classified as independent legal, financial or other advice.

You must tick the following box before returning your signed Commitment Agreement to us:

I acknowledge that Kāinga Ora has not provided independent financial, legal or other advice to me.

SIGNED and **DELIVERED** as a deed

Signed by you:

SIGNED by [HOME OWNER]

SIGNATURE _____ NAME _____
SIGNATURE OF WITNESS _____ NAME OF WITNESS _____
OCCUPATION OF WITNESS _____
CITY/TOWN OF RESIDENCE _____

SIGNED by [HOME OWNER]

SIGNATURE _____ NAME _____
SIGNATURE OF WITNESS _____ NAME OF WITNESS _____
OCCUPATION OF WITNESS _____
CITY/TOWN OF RESIDENCE _____

Signed for and on behalf of Kāinga Ora – Homes and Communities by our attorney:

SIGNATURE OF ATTORNEY _____ NAME OF ATTORNEY _____
SIGNATURE OF WITNESS _____ NAME OF WITNESS _____
OCCUPATION OF WITNESS _____
CITY/TOWN OF RESIDENCE _____

This Agreement is not binding until it is signed by you (and you have ticked the relevant boxes above) and signed by us and we each deliver a signed copy to the other.

AGREED TERMS

1. DEFINITIONS

In this Commitment Agreement:

- (a) **Balance Contribution** means each Co-Purchaser's respective monetary contribution to the balance of the purchase price payable to the Vendor on the settlement date under the Purchase Agreement.
- (b) **Co-Purchasers** means you and us together, being the people considering submitting an offer on, and purchasing, a Property together. Where necessary in the context, "Co-purchaser" means either one of you or us.
- (c) **Deposit Contribution** means a Co-Purchaser's monetary contribution to the deposit payable under the Purchase Agreement (if any), as recorded in our Instructions.
- (d) **Application Information** means any information that you provide to us and which we use to consider your initial and/or continuing eligibility to participate in the Scheme.
- (e) **Instructions** means the instructions that we will give you to enable you to complete a form of offer to purchase a Property. The Instructions will include:
 - (i) a maximum purchase price;
 - (ii) the amount of the deposit, and how the deposit should be paid;
 - (iii) each Co-Purchaser's Share;
 - (iv) the earliest and the latest settlement dates that we are willing to commit to; and
 - (v) any other requirements that should be incorporated into the Purchase Agreement.
- (f) **Privacy Statement** means the privacy statement available on kaingaora.govt.nz/firsthomepartner/copyright-and-privacy.
- (g) **Property** means any property that you submit to us to review, and includes any Property that is the subject of a Purchase Agreement.
- (h) **Property Expenses** means money (including interest), outgoings, charges, taxes, penalties and fees (professional or otherwise) payable in respect of the Property and includes:
 - (i) general, special and water rates;
 - (ii) electricity, telephone, gas, and other utility connection costs and charges;
 - (iii) body corporate and residents' society levies; and
 - (iv) insurance premiums and excesses.
- (i) **Property Information Package** means:
 - (i) a form of offer to purchase a Property prepared or approved by the Vendor;
 - (ii) any information the Vendor or its real estate agent has given to you in respect of the Property; and
 - (iii) where the Property is a unit title for the purposes of the Unit Titles Act 2010, a pre-contract disclosure statement signed by the Vendor.
- (j) **Purchase Agreement** means an agreement for sale and purchase between the Vendor and each of you and us as the Co-Purchasers in respect of a Property.
- (k) **Requirements** means our requirements for Properties that we will purchase under the Scheme (available on our website kaingaora.govt.nz/firsthomepartner/), and our requirements for the terms of a Purchase Agreement (available on our website kaingaora.govt.nz/firsthomepartner/legal/).
- (l) **Scheme** means our shared home ownership scheme.
- (m) **Shared Ownership Agreement** means the shared ownership agreement that each of you and us as the Co-Purchasers will sign before they complete the purchase of a Property in the form published on our website kaingaora.govt.nz/firsthomepartner/legal/.
- (n) **Share** means each Co-Purchaser's beneficial ownership share in a Property under a Purchase Agreement, as recorded in our Instructions.
- (o) **Solicitor** means the:
 - (i) law firm; or
 - (ii) incorporated law firm; or
 - (iii) solo practising lawyer; or
 - (iv) conveyancing practitioner,that you instruct to act for you.
- (p) **Solicitor Instructions** means the instructions that we give to the Solicitor in respect of the transaction.
- (q) **We and us** means Kāinga Ora–Homes and Communities.
- (r) **Working Day** means any day of the week except:
 - (i) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, any day observed as Easter Monday or ANZAC Day, the Sovereign's Birthday, Labour Day, Waitangi Day, Ngā Mata o te Ariki Tāwhirimātea (Matariki) and the

anniversary day for the province the Property is located in; and

- (ii) any day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive.
- (s) **Vendor** means the vendor under the Purchase Agreement, and includes the vendor's agent(s) and solicitor(s).
- (t) **You** means the person or people identified as the applicant in our eligibility confirmation letter.

In this Commitment Agreement:

- (u) A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (v) Where a reference is made to any institute, body or authority, that reference will, if the relevant institute, body or authority has ceased to exist, be deemed a reference to that institute, body or authority as then serves substantially the same objects and any reference to the president of that institute, body or authority will, in the absence of that president, be deemed to be a reference to the appropriate senior office for the time being thereof.

2. RELATIONSHIP AS CO-PURCHASERS

- (a) This Commitment Agreement is between you and us as Co-Purchasers.
- (b) You and we both agree with each other to act collaboratively, honestly and in good faith in respect of, and at all times during the term of, this Commitment Agreement.
- (c) You warrant to us that any information you submit to us:
 - (i) about you, including with or in regard to your Application Information; and
 - (ii) about a Property,is, to the best of your knowledge, accurate and complete in all respects.
- (d) You agree to tell us as soon as reasonably practicable if you become aware of a change, or a potential change, in your personal circumstances that:
 - (i) means your Application Information may no longer be accurate or complete;
 - (ii) may otherwise affect your obligations under this Commitment Agreement.

- (e) You may not transfer the benefits and obligations of this Commitment Agreement or the Purchase Agreement except:
 - (i) in accordance with clause 11(b); or
 - (ii) with our written agreement (to be given at our discretion).
- (f) Subject to any other provision of this Commitment Agreement:
 - (i) the relationship between you and us is limited to carrying out the proposed purchase of a Property, and nothing contained in this Commitment Agreement creates or grants any agency, partnership or trust for any purpose; and
 - (ii) one party does not have the right to act or assume an obligation of the other party.
- (g) We have no obligations under this Commitment Agreement unless you are the same person(s) named as the applicant in our eligibility confirmation letter.

3. YOU MUST FOLLOW OUR INSTRUCTIONS WHEN SUBMITTING AN OFFER TO PURCHASE A PROPERTY

- (a) After you submit a Property Information Package to us for review, we will notify you:
 - (i) whether we agree to you submitting an offer to the relevant Vendor for the Co-Purchasers to purchase a Property; and
 - (ii) of our Instructions on the form of Purchase Agreement for the purposes of completing the offer.
- (b) If you want to submit an offer for the Co-Purchasers to purchase a Property that complies with all of our:
 - (i) Instructions; and
 - (ii) Requirements,we agree to sign the Purchase Agreement that includes our Instructions and advice from our Requirements (as relevant) when it is presented to us. We may require the Solicitor to confirm these matters.
- (c) We are not obliged to sign a Purchase Agreement if it does not comply with our Instructions or Requirements.
- (d) We may choose to reassess our Instructions at any time before we agree to submit an offer to purchase a Property.

- (e) We will not sign a Purchase Agreement if we are already party to a Purchase Agreement with you as Co-Purchaser.
- (f) Subject to any other provision of this Commitment Agreement, in submitting an offer for the Co-Purchasers to purchase a Property neither Co-Purchaser is relying on the other Co-Purchaser regarding investigations and judgments in respect of the Property (including the record of title to the Property and any interests and memorials registered on the record of title), the Purchase Agreement and the Shared Ownership Agreement. The Co-Purchasers may, however, jointly receive advice from the Solicitor on these matters.
- (g) We agree that you can choose not to submit an offer on a Property, or to withdraw an offer to purchase the Property on behalf of both of us as Co-Purchasers, at any point prior to the offer being accepted by the Vendor.

4. CO-PURCHASERS MUST COMPLY WITH THE TERMS OF A PURCHASE AGREEMENT

- (a) You and we both agree to do all things necessary to comply with the obligations of the purchaser under the Purchase Agreement.
- (b) You and we both may have a number of actions to perform under the Purchase Agreement. You and we both agree to:
 - (i) progress those actions in a manner consistent with the Purchase Agreement (and with other laws); and
 - (ii) keep each other reasonably informed in respect of such actions,in a timely manner.
- (c) If you have concerns that you may not, or will not, be able to comply with the obligations as purchaser under the Purchase Agreement, and/or your obligations to us under this Commitment Agreement, you agree to tell us in writing as soon as possible.

5. THE SOLICITOR WILL ACT FOR BOTH CO-PURCHASERS

- (a) You agree to instruct a Solicitor to act for you in respect of the conveyancing of the Property.
- (b) You agree to us instructing the same Solicitor to also act for us on the conveyancing of the Property, and advice that we may require in relation to the Property and/or the Purchase Agreement.

- (c) You agree that you will be responsible to pay the Solicitor's fees (as a Property Expense) in relation to the conveyancing of the Property on behalf of both Co-Purchasers.
- (d) Each Co-Purchaser agrees to provide necessary instructions to the Solicitor in a clear and timely manner.
- (e) Each Co-Purchaser agrees to be available to provide urgent instructions to the Solicitor as reasonably required.

6. ACTIONS REQUIRED UNDER A SIGNED PURCHASE AGREEMENT

- (a) The Purchase Agreement will contain a number of rights and obligations on the part of the Vendor and the Co-Purchasers. Unless we specify otherwise in writing, this clause sets out the Co-Purchasers' agreement on how they will address some of those rights and obligations.
- (b) **Conditions:** Where a condition is expressed to be for the benefit of:
 - (i) the purchaser and the condition relates to a requirement to obtain finance or insurance, the condition can only be satisfied or waived by both Co-Purchasers; and
 - (ii) all parties, the condition can only be waived by both Co-Purchasers (and the Vendor).
- (c) **Deposit:** Each Co-Purchaser will pay its Deposit Contribution (if any) to the Vendor in the manner prescribed by the Purchase Agreement.
- (d) **Pre-settlement inspection:** You must attend the pre-settlement inspection/s in respect of the Property. We may choose to attend the pre-settlement inspection/s with you.
- (e) **Waiving the Vendor's obligations:** Where the Purchase Agreement requires the Vendor to do, or not to do, something, that requirement can only be waived by both Co-Purchasers.
- (f) **Enforcing the Vendor's obligations:** If:
 - (i) the Vendor has not complied with an obligation under the Purchase Agreement; or
 - (ii) either Co-Purchaser has notified the Solicitor that it considers it is reasonably likely that the Vendor will not comply with an obligation under the Purchase Agreement,the Co-Purchasers together will coordinate with the Solicitor to identify and implement the course of action that the Co-Purchasers agree (acting

reasonably) best achieves a balance between protecting the Co-Purchasers' interests under the Purchase Agreement and a pragmatic approach in the circumstances.

- (g) **Variations to Purchase Agreement:** If either Co-Purchaser wants to request a variation to the Purchase Agreement (including the plans and specifications for the Property (if any)), it must obtain the written authority of the other Co-Purchaser before submitting that request to the Vendor in writing. If the Vendor requests a variation to the Purchase Agreement, both Co-Purchasers must agree to the variation in writing.

7. YOUR FINANCING ARRANGEMENTS

- (a) You agree to advise us of any change in your finance arrangements, including:
- (i) if the status of your bank's lending pre-approval changes; and
- (ii) if you become ineligible to receive any money or financing required to pay your Deposit Contribution and/or your Balance Contribution.
- (b) You will comply with the reasonable instructions of your lender in respect of its lending requirements (and will instruct the Solicitor to do the same).

8. ON SETTLEMENT

- (a) On or before the settlement date under the Purchase Agreement:
- (i) you agree to pay (or arrange for the payment of) your Balance Contribution to the Solicitor; and
- (ii) subject to the Solicitor complying with our Solicitor Instructions, we agree to pay our Balance Contribution to the Solicitor.
- (b) On or before the settlement date you must sign the Shared Ownership Agreement that we give to the Solicitor. We will ask the Solicitor to explain the Shared Ownership Agreement to you before you sign it.
- (c) As you are responsible for payment of all Property Expenses under the Shared Ownership Agreement, you agree that any Property Expenses apportioned on the Vendor's settlement statement will be paid by you.
- (d) You agree to provide us with evidence that you have insured the Property in accordance with the Shared Ownership Agreement on or before the settlement date under the Purchase Agreement.

- (e) We agree that you are entitled to receive the keys to the Property from the Vendor following settlement.

9. THIS COMMITMENT AGREEMENT WILL CONTINUE UNTIL CERTAIN EVENTS OCCUR

- (a) The Co-Purchasers will be bound by the terms of this Commitment Agreement until one of the following events occurs:
- (i) the Co-Purchasers have completed the purchase of the Property and both Co-Purchasers have signed the finalised Shared Ownership Agreement;
- (ii) you have given us written notice terminating this Commitment Agreement in accordance with paragraph 9(b) below; or
- (iii) we have given you written notice terminating this Commitment Agreement in accordance with paragraph 9(c) below.
- (b) You can terminate this Commitment Agreement at any time by giving us written notice:
- (i) before we sign a Purchase Agreement; or
- (ii) after a Purchase Agreement has been validly cancelled and before we sign another Purchase Agreement.
- (c) We can terminate this Commitment Agreement at any time by giving you written notice if:
- (i) you are no longer eligible to participate in the Scheme; or
- (ii) you have breached this Commitment Agreement.

10. BREACH OF THIS COMMITMENT AGREEMENT

- (a) If you do not comply with any of your obligations as purchaser under this Commitment Agreement we can:
- (i) require you to meet with us to discuss the matter, with a view to understanding the situation and reaching a mutually acceptable solution; and/or
- (ii) choose to comply with that obligation for you (where it is within our control to do so). If we comply with an obligation for you, we will give you notice in writing setting out the costs that we have incurred and you agree to pay us for the costs that we incurred. Payment will be due upon receipt of our notice.

- (b) If:
- (i) we have met and you have failed to provide a satisfactory answer (or you have failed to engage with us); or
 - (ii) we consider (in our sole discretion) it is appropriate for us to urgently address a situation of default or potential default,
- we may choose to exercise the rights afforded to us as your attorney under clause 11.

11. POWER OF ATTORNEY

- (a) In return for us agreeing to enter into this Commitment Agreement, you appoint us to be your attorney in relation to your rights under the Purchase Agreement. You cannot revoke this appointment.
- (b) We:
 - (i) will not act as your attorney unless you fail, or we have reasonable concern that you may fail, to comply with your obligations under the Purchase Agreement; and/or
 - (ii) may use the power of attorney to nominate us to complete the purchase of your Share where we consider this is necessary to achieve compliance with the purchaser's obligations under the Purchase Agreement. If this occurs:
 - (aa) you novate all of your rights under the Purchase Agreement, including in respect of your Deposit Contribution, to us; and
 - (bb) we will refund your Deposit Contribution (less any reasonable costs we may incur in using the power of attorney) by the earlier of:
 - (A) settlement under the Purchase Agreement; and
 - (B) the date that is 20 Working Days after we nominate ourselves to complete the purchase of your Share.
- (c) We do not have to act as your attorney, even though you have appointed us as your attorney. We will do our best to notify you at least two Working Days before we act as your attorney.
- (d) Unless we have acted negligently or in bad faith, we are not responsible for damage or loss that you or other people suffer because of our actions as your attorney, or if we do not act.

12. CONCERNS, COMPLAINTS OR DISPUTES

- (a) If either you and/or we have any concerns or complaints about each other's compliance (or non-compliance) with this Commitment Agreement, or wants to raise a dispute, you and we agree to first meet each other to discuss the concern, complaint or dispute.
- (b) If you and we do not promptly resolve the concern, complaint or dispute at the meeting contemplated above or within any further timeframe that you and we both agree to in writing either you or we can request that the other attend a mediation meeting.
- (c) A mediation meeting needs to be managed by an independent mediator. The Co-Purchasers will both decide who this person should be within 10 Working Days after a request to attend a mediation meeting. If the Co-Purchasers cannot both agree on a person, the Chair of the Resolution Institute will decide on a person.
- (d) At the mediation meeting the rules of the Resolution Institute standard Mediation Agreement (New Zealand version) will apply.
- (e) The Co-Purchasers both agree that the processes under this clause 12 do not:
 - (i) suspend any of your or our obligations under this Commitment Agreement; or
 - (ii) prevent either your and/or us from taking any other action you and/or we are entitled to take under this Commitment Agreement (including under clause 11) or at law.

13. APPROACH TO LIABILITY

- (a) You acknowledge that our potential liability to the Vendor is limited under the Purchase Agreement.
- (b) Our potential liability to you is limited by this clause 13(b). If you experience any costs, claim, loss, expense or liability (each a **Loss**):
 - (i) as a direct result of our breach of our obligations under this Commitment Agreement, we will be fully liable to you in respect of such costs, claim, loss, expense of liability; but
 - (ii) in any other circumstances where we have directly contributed to your Loss, we will be liable to you in proportion to our Share only.

- (c) Your potential liability to us is limited by this clause 13(c). If we experience any Loss:
 - (i) as a direct result of your breach of your obligations under this Commitment Agreement, you will be fully liable to us in respect of such costs, claim, loss, expense of liability; but
 - (ii) in any other circumstances where you have directly contributed to our Loss, you will be liable to us in proportion to your Share only.
- (d) Neither Co-purchaser will be liable to the other for any Loss that is a loss of profit, loss of reputation, loss of goodwill, loss of opportunity or any other indirect or consequential loss.

14. PRIVACY

- (a) In submitting your Application Information, you acknowledged that you had read and understood our Privacy Statement.
- (b) Our Privacy Statement will continue to apply to the Application Information you have already provided to us, and in addition will apply to any further “personal information” (as that term is defined in our Privacy Statement) that we collect during the term of this Commitment Agreement.
- (c) You agree that we can share your personal information (including Application Information that is personal information) with, and collect your personal information from, any person who we consider has an interest in receiving, using and/or disclosing your personal information for the purposes of this Commitment Agreement. That may include the Ministry of Housing and Urban Development / Te Tūāpapa Kura Kāinga, your bank and your insurer for a Property.

15. OTHER GENERAL TERMS

- (a) The Co-Purchasers are responsible for their own costs of entering into this Commitment Agreement.
- (b) This Commitment Agreement is governed by New Zealand Law and the Courts of New Zealand have non-exclusive jurisdiction in any court proceedings relating to this Commitment Agreement.
- (c) The Co-Purchasers each agree that the price paid for any Share of the Property under this Commitment Agreement is the lowest price that the Co-Purchasers each would have agreed to pay for that Share of the Property at that time.

- (d) Any amendments to this Commitment Agreement must be in writing and signed by you and us in order to be enforceable.
- (e) Where this Commitment Agreement requires either you or us to give notice to the other, the notice must be:
 - (i) in writing; and
 - (ii) delivered by personal delivery, posted or emailed to the address set out below:

Your address: The address you provided to us as part of your Application Information

Our address: Kāinga Ora–Homes and Communities National Office, PO Box 2628, Wellington 6140

If either you or we change address, you or we must give notice to the other. A notice delivered in person or by email is deemed to be served immediately. A notice delivered by post is deemed to be served five Working Days after it was sent.

- (f) You acknowledge that from time to time we may be required to disclose information about this Commitment Agreement where it is required by law or a regulatory or governmental body (including a relevant stock exchange, under the Official Information Act 1982, Ministers or parliamentary convention).
- (g) If any part of this Commitment Agreement is deemed not to be valid or enforceable then:
 - (i) only the valid or enforceable aspects of that part will apply; or
 - (ii) if none of the part is valid or enforceable, then it will be deleted from this Commitment Agreement but all other valid and enforceable parts will continue to apply,

provided that nothing in this clause can materially affect the purpose of, or frustrate, this Commitment Agreement.