

Dated: 2023

between

[insert OPERATOR details]

and

THE HOUSING AND SUSTAINABLE COMMUNITIES AGENCY

Cost Rental Investment and Equity Participation Agreement

KEY TERMS SECTION

Date of Agreement	
Operator	
Development Address	
Purchase Price/Cost of Development of Development	€
Operator Equity Contribution	
The Housing Agency Equity Contribution	€
The Housing Agency Equity	_____% (____ per cent)
Senior Lender	[] ¹

¹ PL: Senior Lender details to be inserted depending on transaction structure

THIS AGREEMENT is made on *[insert date]*

BETWEEN:

- (1) *[insert name]* of *[insert address]* (the “**Operator**” which expression shall include the Operator’s permitted successors and assigns)

AND

- (2) **THE HOUSING AND SUSTAINABLE COMMUNITIES AGENCY** (the “**Housing Agency**” which expression shall include its successors and assigns)

(together the “**Parties**”).

RECITALS:

- (A) The Operator has been assessed by the Housing Agency as eligible for an equity share contribution towards the purchase price/development costs of the Development pursuant to Part 3 (Cost Rental Dwellings) of the Affordable Housing Act 2021 and any relevant regulations under the Act.
- (B) The Housing Agency is entitled to the Housing Agency Equity in the Development pursuant to the terms of the agreement between the Parties as set out herein.

IT IS HEREBY AGREED:

DEFINITIONS AND INTERPRETATION

- 1.1 The Cost Rental Investment and Equity Participation Agreement is hereinafter referred to as this Agreement.
- 1.2 Unless the context otherwise requires, each of the following words and expressions shall have the following meanings:

“**Act**” means the Affordable Housing Act 2021;

“**Conveyancing Act**” means the Land and Conveyancing Law Reform Act 2009;

“**Cost Rental Conditions**” means the conditions and undertakings set out in Clauses 4.1 to 4.4 (Operator Cost Rental Undertakings) of this Agreement;

“**Cost Rental Dwelling**” means a Cost Rental accommodation unit constructed or to be constructed as part of the Development and specified in a Cost Rental Designation made or to be made pursuant to the Cost Rental Scheme more specifically listed in Schedule 2 (Cost Rental Units);

“**Cost Rental Designation**” means a designation by the Minister pursuant to Part 3 (Cost Rental Dwellings) of the Act;

“**Cost Rental Scheme**” means the cost rental dwelling scheme as constituted by the Act;

"Cost Rental Tenancy" means subject to the Eligibility Requirements, a lease of a Cost Rental Dwelling in a form and substance which meets the requirements of the Act and such mandatory terms as may be prescribed by the Minister pursuant to Section 31 of the Act;

"Cost Rental Tenant" means subject to the Eligibility Requirements in respect of a Cost Rental Dwelling, a tenant of the Operator pursuant to a written Cost Rental Tenancy;

"Decision" means Commission Decision (2012/21/EU) of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest;

"Development" means each of the Cost Rental Dwellings set out in Schedule 1 (Development) of this Agreement to be [constructed/acquired] by the Operator in accordance with the Specifications;

"Eligibility Requirements" means such eligibility requirements as may be prescribed by the Minister with respect to lettings of Cost Rental Dwellings pursuant to his powers under the Act, in particular Section 31(3) of the Act;

"Equity Share" means an equitable share in the value of the Property held by the Housing Agency pursuant to Housing Agency Equity Contribution made by the Housing Agency, calculated in accordance with Clause [8.15];

"Equity Share Security" means a legal charge in favour of the Housing Agency as security for the Housing Agency Equity;

"Housing Agency Equity Contribution" means the monetary contribution made by the Housing Agency towards the purchase or construction of the Development by the Operator [as stated in the Key Terms Section];

"Housing Agency Equity" means the Equity Share expressed as a percentage in the value of the Property due to the Housing Agency in respect of the Development as stated in the Key Terms Section;

"Initial Rent" means the cost rent which may be charged by the Operator on the first Cost Rental Tenancy of a Cost Rental Dwelling set out in column [] of the table(s) appended at Schedule 2 (Cost Rental Units) as may be reviewed from time to time in accordance at all times with [Clause [4.1.5] (Rent Review)] and the Act, and references to Rent shall be construed accordingly;

"Intercreditor Agreement"² means the intercreditor agreement dated in or about the date of this Agreement between (1) []³ as senior lender and (2) the Housing Agency in respect of the Housing Agency Equity Contribution and the Equity Share Security;

"Key Terms Section" means the information set out in the table at the beginning of this agreement and headed Key Terms Section;

"Market Value" has the meaning given to it by Clause 9 (*Market Value*);

² PL: Definition to be considered depending on structure of transaction.

³ PL: TBC depending on senior lender involved

“Minister” means the Minister for Housing, Local Government and Heritage, which shall include any replacement, substitute or successor to such office as may be appointed from time to time;

“Option” means the option granted to the Housing Agency pursuant to Clause 7.1.4 of this Agreement in the event of the Operator offering the Development (i) for sale, or (ii) for rent on terms other than Cost Rental.

“Permitted Financial Indebtedness” means the loan facilities made available or intended to be made available by the Senior Lender in an amount not exceeding [€] [subject to a maximum increase of 10% of this amount on any refinance of such permitted financial indebtedness];⁴

“Permitted Security” means a mortgage and/or charge over the Development in favour of:

1. [] as senior lender; and
2. the Housing Agency in respect of the Housing Agency Equity pursuant to this Agreement;

“President” means the President for the time being of the Society of Chartered Surveyors Ireland and includes the Vice-President or any person authorised by the President to make appointments on his behalf;

“Realisation Event” has the meaning given to it in Clause 8 (*Realisation Event*);

“Realisation Notice” means the notice referred to in Clause 8 (*Realisation Event*) requiring the realisation of the Housing Agency Equity in the form specified in Schedule 3 (*Realisation Notice*);

“Rent” means the Initial Rent as may be modified, varied, increased or reduced from time to time in accordance with [Clause [4.1.5] (*Rent Review*);

“SGEI” means a service (or services) of general economic interest, which is a commercial service of general economic utility subject to public service obligations, as further described in clause 18 (*Services of General Economic Interest*) of this Agreement;

“Specifications” means the drawings, plans and specifications for the Development which have been supplied to, the Housing Agency in response to its call for submissions and approved as a condition to this Agreement;

“Term” means 50 years from the date of this Agreement or such longer period as may be agreed in writing between the Operator and the Housing Agency from time to time;

“Valuer” means an independent valuer in the valuation of property similar to the Development and is acquainted with the market in the area in which the Development is located, appointed to determine the Market Value pursuant to the provisions of this Agreement.

1.3 In this Agreement, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

⁴ PL: refer to para 9.2 of the STAR brochure requiring consent to additional indebtedness.

- 1.3.2 any reference to a “person” includes a body corporate, unincorporated association of persons (including a partnership), government, state, agency, organisation, and any other entity whether or not having a separate personality and an individual, his estate and personal representatives;
- 1.3.3 references to statute or statutory provision or statutory instrument, include a reference to that statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.3.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.3.5 any reference to a document is to that document as amended, varied, assigned or novated from time to time otherwise than in breach of this Agreement or that document;
- 1.3.6 the headings in this Agreement are for ease of reference only and shall not affect its interpretation;
- 1.3.7 references to Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules to this Agreement;
- 1.3.8 Reference to the Housing Agency in the agreement includes all servants and agents of the Housing Agency.

TERM OF AGREEMENT

- 2.1 The Operator and the Housing Agency have agreed to enter into this Agreement for the purposes of acknowledging the Housing Agency Equity Contribution made by the Housing Agency, the Housing Agency Equity, and the Equity Share hereby granted by the Operator and created in favour of the Housing Agency in the Development and regulating how they will deal with the Development.
- 2.2 In consideration of the Housing Agency Equity Contribution made by the Housing Agency, the Operator declares that the Housing Agency is entitled to an Equity Share and the Housing Agency Equity in the Development pursuant to the terms of this Agreement.
- 2.3 The purchase price and/or the development cost of the Development to be paid, the Housing Agency Equity Contribution made by the Housing Agency (sum) and the Housing Agency Equity (percentage) to be held by the Housing Agency are as set out in the Key Terms Section of this Agreement.
- 2.4 The Development shall not be sold by the Operator other than in accordance with Clause 7 (*Sale*).
- 2.5 The Market Value of the Development at any relevant time shall be determined in accordance with Clause 9 (*Market Value*).
- 2.6 The Housing Agency may realise the Housing Agency Equity on the occurrence of a Realisation Event in accordance with Clause 8 (*Realisation Event*).

- 2.7 The Housing Agency hereby consents to the [Permitted Financial Indebtedness] and the Permitted Security granted by the Operator in respect of the acquisition of the Development and the priority ranking of the security interests thereby created in accordance with the provisions of the Intercreditor Agreement
- 2.8 This Agreement shall commence and take effect from the date of signing hereof and shall continue in full force and effect until the expiry of the Term and the Housing Agency Equity is redeemed by the Operator or realised by the Housing Agency in accordance with the terms of this Agreement.

OPERATOR COVENANTS AND WARRANTIES

The Operator hereby covenants and warrants with the Housing Agency throughout the subsistence of this Agreement:

- 3.1 that the Development shall only be used in accordance with the Cost Rental Conditions;
- 3.2 to grant the Equity Share Security over the Development in favour of the Housing Agency as security for its obligations under this Agreement;
- 3.3 to assent to the registration of the Cost Rental Designation in the Land Registry;
- 3.4 other than the Permitted Security or a Cost Rental Tenancy Agreement, not to allow any third party to acquire any interest, right or entitlement in the Development adverse to or which might become adverse to the interest of the Housing Agency therein and to take all necessary steps to prevent any third party advancing a claim of adverse possession or exercise any rights capable of giving rise to rights through prescription or long user;
- 3.5 to permit the Housing Agency to inspect the Development for the purposes of:
- 3.5.1 confirming compliance with the terms and conditions of this Agreement;
- 3.5.2 determining the Market Value of the Development in accordance with Clause 9 (*Market Value*);
- or both, provided that the Housing Agency has given reasonable notice of such inspection;
- 3.6 to, at Operator's own cost, insure and keep insured in its name (or in the case of the Development forming part of a managed development to procure that the management company at the cost of the Operator insures and keeps insured) the Development against loss or damage by fire, lightning, explosion, earthquake, storm, flood, subsidence, riots, or civil commotion, heave and landslip, malicious damage, escape of water or oil, impact, aircraft and other aerial devices or articles dropped therefrom and such other risks (if any) normally insured against (or where relevant the management company at the Operator's or the management company's own discretion) in accordance with prudent practice including public liability or any other liabilities that are resulting from the Operator's ownership of the property including covering the Housing Agency in such policy, coverage to include a waiver of subrogation clause for the benefit of the Housing Agency, and such other risks as the Housing Agency shall from time to time reasonably require in a sum equal to the replacement or

reinstatement value thereof from time to time including, where applicable, the cost of demolition and site clearance, architects' surveyors and other professional fees and incidental expenses in connection with the replacement or reinstatement and value added tax. This policy must be effected either with the Housing Agency's interest noted thereon;

- 3.7 The Operator shall be responsible for ensuring the adequacy and scope of the insurance cover. In the event of an insurance claim, the Housing Agency shall not be liable to the Operator if the sum insured does not cover the full reinstatement cost of the Development;
- 3.8 in the event of the Development or any part thereof being destroyed or damaged by fire or by any other cause to lay out all monies received in respect of insurance proceeds as soon as practicable in or upon rebuilding, repairing or reinstating the Development in a good and substantial manner having obtained all necessary statutory approvals consents and licences including planning consents.
- 3.9 Not to do anything, or permit anything to be done in or upon or relating to the Development or any part thereof, which may make void or voidable any insurance in connection therewith;
- 3.10 to observe and perform all covenants relating to the Development and comply with the provisions of all legislation for the time being affecting the Development;
 - 3.10.1 to observe and comply in all respects with the provisions and requirements of any and every enactment of the Oireachtas for the time being in force and any orders or regulations made thereunder for the time being in force and as are or shall be properly directed or necessary to be done or executed upon or in respect of the Development or any part thereof and at all times during the said term to comply with all the recommendations or requirements of the appropriate authority whether notified or directed to the Operator in relation to fire precautions pursuant to the relevant regulations in force.

OPERATOR COST RENTAL CONDITIONS AND UNDERTAKINGS

- 4.1 Until such time as the Housing Agency Equity is repaid to the Housing Agency in full, the Development shall be used at all times exclusively for the provision of Cost Rental Dwellings in accordance with the Cost Rental Scheme and the Eligibility Requirements and the Act, including but not limited to the following terms:
 - 4.1.1 The Initial Rent charged by the Operator for the first Cost Rental Tenancy shall be no greater than as set out in column []⁵ of the table appended at Schedule 2 (Cost Rental Units):
 - (a) In the case of any subsequent letting the Rent to be charged shall not exceed the Initial Rent as modified, varied or restated by increase or decrease as hereinafter provided;

⁵ PL: TBC

- (b) The Operator shall not require as a condition of a Cost Rental Tenancy that, a proposed Cost Rental Tenant pay an amount representing more than one month's Rent less an amount of €50 in advance and/or a security deposit representing more than one month's Rent less an amount of €50.
- 4.1.2 An open and transparent tenant selection process must be adhered to, including advertisement, for all tenancies granted in respect of Cost Rental Dwellings in compliance with all requirements of the Cost Rental Scheme;
- 4.1.3 The Operator shall ensure at all times that it and each Cost Rental Tenancy complies with the requirements in respect of Cost Rental Dwellings in the Acts, the Cost Rental Designation and any regulations prescribed by the Minister thereunder;
- 4.1.4 The Operator must comply, and must procure that any managing agent complies, with all obligations under the Residential Tenancies Acts 2004 to 2021, as may be amended, varied or substituted from time to time, in relation to the letting of the Cost Rental Dwellings;
- 4.1.5 The Initial Rent may be adjusted by the Operator upwards or downwards on each anniversary of the date of commencement of the relevant tenancy in a Cost Rental Dwelling (the "**Review Date**") by a maximum of the change indicated by the Harmonised Index of the Consumer Price Index for the previous 12 months or any replacement thereof (hereinafter called the "**Index**") issued by the authority of the Central Statistics Office of Ireland and at present officially published on website www.cso.ie and as provided in accordance with section 33(4) of the Act to account for any amount prescribed by the Minister (or such other Index as may be specified or prescribed for this purpose from time to time by the Minister or pursuant to the Act), and shall be calculated by increasing or decreasing, as the case may be, the Rent payable immediately prior to the relevant Review Date in direct proportion to the rise or fall in the Index from the last Review Date to the relevant Review Date.
- For the purpose of this clause, the Index figure current on the Review Date shall be that published on such date on website www.cso.ie in the Irish Statistical Bulletin or other official publication or if not published on such date then the date last published on the said website or publication immediately before it.
- If during the Term the Index shall no longer exist and there is no replacement index, then there shall be substituted in the calculation of the Rent as at the Review Date such other index as the Housing Agency shall designate.
- 4.1.6 Each of the Cost Rental Dwellings must comply at all times with the relevant standards set out in the Housing (Standards for Rented Houses) Regulations 2019 (the "**2019 Regulations**") and any statutory extension, modification, amendment or re-enactment of such regulations.
- 4.1.7 Each Cost Rental Dwelling shall be supplied fitted out in accordance with the Specification in a manner fit for habitation and in good working

order (fair wear and tear accepted), including but not limited to white goods (as such are described in Article 8 of the 2019 Regulations), floor finishes, blinds or other appropriate window coverings.

- 4.2 The Operator shall deliver and comply with the following conditions following entry into this Agreement:
- 4.2.1 Within the period specified by the Minister to return to the Minister the Cost Rental Designation document issued by the Minister to the Operator pursuant to Section 30 of the Act and an assent to registration of the completed Cost Rental Designation (the “Assent”) each duly executed by the Operator and to:
- (a) concur and provide such assistance as may be required by the Minister or his/her agents to enable the registration of the Assent to be registered as a burden on the Development pursuant to Section 30(5) of the Act; and
 - (b) within 5 Business Days of receipt from the Minister of the Cost Rental Designation sealed by the Minister, to furnish a copy of the fully executed Cost Rental Designation to the Housing Agency.
- 4.3 The Operator shall:
- 4.3.1 immediately provide such information as the Housing Agency may require in order to satisfy itself as to compliance with the matters provided for in this Clause 4 (Operator Cost Rental Conditions and Undertakings) and such other information, records or documentation as may be prescribed from time to time by the Minister in respect of Cost Rental Dwellings.
- 4.3.2 Provide an annual report to the Housing Agency on each anniversary of this Agreement a report detailing:
- (a) The Cost Rental occupancy ratio of the Cost Rental Dwellings and any periods of vacancy during the period;
 - (b) The current rent payable in respect of the Cost Rental Dwellings;
 - (c) The number of vacant Cost Rental Dwellings (if any) at the date of the report;
- 4.3.3 Immediately notify the Housing Agency and provide details of:
- (a) any notice received in respect of any of the Cost Rental Dwellings from the local or any statutory authority, together with a copy of such notice.
 - (b) any significant or material damage that may be occasioned to the Cost Rental Dwellings.
 - (c) [any material changes to the Senior Lender’s facility agreement or security]⁶.

⁶ PL: TBC if necessary

REPRESENTATIONS, UNDERTAKINGS AND WARRANTIES

The Operator makes the representations and warranties set out in this Clause 5 (Representations, Undertakings and Warranties) to the Housing Agency:

- 5.1 It is a [limited liability company/designated activity company] duly incorporated and validly existing under the laws of Ireland;
- 5.2 It has the power to own its assets and carry on its business as it is being conducted;
- 5.3 The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- 5.4 The entry into and performance by it, and the transaction contemplated by, this Agreement does not and will conflict with:
 - a) any law or regulation applicable to it;
 - b) its constitutional documents;
 - c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.
- 5.5 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions thereby contemplated.
- 5.6 No limit on its powers will be exceeded as a result of the borrowing, grant of security, or giving of guarantee or indemnities contemplated by this Agreement.
- 5.7 All authorisations required or desirable:
 - a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement;
 - b) to make this Agreement admissible in evidence in IrelandHave been obtained or effected and are in full force and effect.
- 5.8 All authorisations necessary for conduct of the business, trade and ordinary activities of the Operator have been obtained or effected and are in full force and effect.
- 5.9 The choice of governing law of this Agreement will be recognised and enforced in Ireland.
- 5.10 No:

Corporate action, legal proceeding or other procedure or steps has been taken or, to its knowledge threatened in relation to:

- a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
- b) a composition, compromise, assignment or arrangement with any of its creditors;
- c) the appointment of a liquidator, receiver, examiner or similar officer in respect of it; or
- d) enforcement of any security over any of its assets;
- e) any expropriation, attachment, sequestration, distress or execution affecting any its assets.

5.11

- a) it is able to pay its debts as they fall due;
- b) it has not suspended or threatened to suspend making payments on any of its debts;
- c) it has not by reason of actual or anticipated financial difficulties commenced negotiations with any of its creditors with a view to rescheduling any of its indebtedness.

5.12 That:

- a) any factual information submitted to the Housing Agency in relation to this Agreement was true and accurate in all material respects as at the date the information is expressed to be given;
- b) the financial model has been prepared in accordance with generally accepted accounting principles in Ireland and the projections contained therein are fair and based on reasonable assumptions and approved by the board of directors;
- c) no event or circumstance has occurred or arisen and no information has been omitted from its application under this Agreement and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the application or financial model being untrue or misleading in any material respect.
- d) all material information provided to the Housing Agency in connection with the Development and this Agreement on or before the date of this Agreement, and not superseded before that date, is accurate and not misleading in any material respect and all projections provided to the Housing Agency on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied;

5.13 That:

- a) no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined

are reasonably likely to have a material adverse effect on the Operator have been stated or threatened against it;

- b) no judgement or order of court, arbitral body or agency which is reasonably likely to have a material adverse effect has been made against it;

- 5.14 It has carried on its business in compliance with applicable anti-corruption laws and has instituted policies and procedures designed to promote and achieve compliance with such laws.
- 5.15 No security or encumbrance exists over the Development other than as permitted by this Agreement;
- 5.16 The Equity Share Security has or will have the ranking in priority which it is expressed to have in the Inter-Creditor Agreement and is not subject to any prior ranking or pari passu ranking security;
- 5.17 It has good, valid and marketable title to, and all appropriate authorisations to use the Development for its intended purpose.

REDEMPTION AND REALISATION

The Housing Agency Equity shall be redeemed by the Operator and realised by the Housing Agency by means of one or more of the following:

- 6.1 payment by the Operator following a sale in accordance with Clause 7 (*Sale*); and
- 6.2 realisation by the Housing Agency in accordance with Clause 8 (*Realisation Event*).

SALE

- 7.1 The Development shall not be sold, transferred or otherwise disposed of by the Operator during the Term without:
 - 7.1.1 prior written notice to the Housing Agency and agreement in writing with the Housing Agency on the redemption of the Housing Agency Equity; and
 - 7.1.2 compliance with such alternative conditions as the Housing Agency may stipulate; and
 - 7.1.3 the Operator requesting in writing the revocation of the Cost Rental Designation by the Minister and until the Minister has provided its consent in writing to such revocation on such terms and conditions as the Minister may deem appropriate from time to time.

For the purposes of this Clause 7.1 the Housing Agency shall not unreasonably withhold or delay its consent to sale where the Operator gives notice of its intention to sell the Development on condition that the identity of the proposed acquirer is approved in writing by the Housing Agency and the proposed acquirer (the “**Acquiring Entity**”) continues to operate the Development as Cost Rental Dwellings subject to the Housing Agency Equity and such Acquiring Entity entering into a binding

agreement on the same terms as this Agreement with the Housing Agency and granting in favour of the Housing Agency, Equity Share Security on the same terms as the Operator.

- 7.1.4 For the purposes of this Clause 7.1 (Sale) in the event that (i) the Operator intends to terminate this Agreement and/or requests the revocation of the Cost Rental Designation for the purposes of offering the Development for sale on the open market, or (ii) the Acquiring Entity is not approved by the Housing Agency for the purposes of Clause 7.1.3 above, it shall first notify the Housing Agency, which is hereby granted the option of first refusal to purchase the Development for an amount representing the Market Value (less such amount which is equal to the value of the Housing Agency Equity then existing in the Development) as calculated in accordance with Clause 9 (Market Value) of this Agreement (the “**Option**”). The Housing Agency shall have a period of three (3) months following the agreement of the Market Value in accordance with this Agreement to enter into a binding contract for sale for the purchase of the Development.
- 7.2 The Housing Agency shall engage with the Operator to agree the redemption of the Housing Agency Equity having regard to the objective of realising the Housing Agency Equity from the proceeds of any such sale after discharge of prior incumbrances including but not limited to the Permitted Security.
- 7.3 As soon as reasonably practicable after consideration of the notification to sell and subject to the Housing Agency receiving all information relevant to the sale, the Housing Agency shall cooperate with the Operator in relation to the sale on the basis that the Housing Agency Equity will be redeemed in full out of the proceeds of any such sale.
- 7.4 Any sale shall be conducted in accordance with any conditions included in the written agreement of the Housing Agency and or the Minister as the case may be.
- 7.5 After the Operator enters into an enforceable contract for any sale in respect of which agreement has been provided under this Clause but prior to the completion of that sale, the Operator shall notify the Housing Agency of the actual sale price, and the monetary value of the Housing Agency Equity shall be determined by the Housing Agency in accordance with the valuation mechanism in Clause 8 (*Market Value*) and in accordance with the following formula and shall be notified to the Operator:

$$(C/(C+D)) \times (B-A)$$

Where:

A = Initial property capital cost;

B = Open market value on the date realisation;

C = State Equity Investment;

D = Equity investment by Operator;

- 7.6 Unless permitted in writing by the Housing Agency and subject to any agreement with the Operator, the sale by the Operator shall not be completed until the monetary value of the Housing Agency Equity is determined and notified to the Operator by the Housing Agency.
- 7.7 Subject to Clause 7.8 (Sale), upon the payment by the Operator to the Housing Agency of the sum representing the monetary value of the Housing Agency Equity, the Housing Agency shall execute all documents and take all steps reasonably necessary to effect the discharge of this Agreement, the Equity Share Security and the Housing Agency Equity and facilitate any registration thereof in the Land Registry and/or in the Registry of Deeds.
- 7.8 If the proceeds of sale remaining, after discharge of prior incumbrances (including but not limited to the Permitted Security) and the vouched legal and agent's charges, costs and expenses reasonably and properly incurred by the Operator as incident to the sale, are insufficient to discharge the Housing Agency Equity, the Housing Agency shall comply with Clause 7.7 (Sale) upon payment of the remaining proceeds of the sale.
- 7.9 Subject to any Inter-creditor Agreement with the Senior Lender that may be in existence, in the case of a sale of the Development by the Senior Lender having rights in priority to the rights of the Housing Agency in the Development;
- 7.9.1 [the Senior Lender] shall be entitled to sell the Development without the consent of the Housing Agency,
- 7.9.2 the Housing Agency shall be deemed the person entitled, pursuant to section 107(2) of the Conveyancing Act, to receive the residue of the proceeds of such sale after discharge of the mortgage moneys due to [the Senior Lender or] such mortgagee upon the trusts provided for in section 107(3) of the Conveyancing Act, and
- 7.9.3 upon receipt of the residue of the proceeds of such sale, the Housing Agency shall retain the proceeds pending agreement or determination of the monetary value of the Housing Agency Equity, and shall apply such proceeds towards the discharge of the Housing Agency Equity, and—
- (a) any residue of the proceeds held after discharge of the Housing Agency Equity shall be held by the Housing Agency upon the trusts provided for in section 107(3) of the Conveyancing Act and distributed accordingly, and
- (b) if the proceeds held are insufficient to discharge the Housing Agency Equity solely due to an act, omission, wilful misconduct or fraud of the Operator which negatively impacts the Market Value of the Development, the balance due to the Housing Agency shall be recoverable by the Housing Agency from the Operator as a simple contract debt.

REALISATION EVENT

- 8.1 Where a Realisation Event occurs, the Housing Agency shall be entitled to serve a Realisation Notice to demand the redemption of the Housing Agency Equity

and realisation of its Equity Share. Such realisation should be completed in accordance with this Clause.

8.2 For the purposes of Clause 8.1 (*Realisation Event*), each of the following shall be a Realisation Event:

- (a) the expiry of the Term of this Agreement upon notice in writing by the Housing Agency to the Operator unless otherwise extended by further agreement in writing between the parties for a minimum period of 5 (five) years as provided for in Clause 10.1.2;
- (b) the Development or any part thereof ceases to be available for [Cost Rental/for a Cost Rental Tenancy];
- (c) a breach of any of the Cost Rental Conditions which is not remedied within 14 Business Days of such breach;
- (d) following the giving of notice by the Housing Agency to the Operator to remedy a material breach of a covenant this Agreement within such reasonable period as may be specified in the notice, the breach is not remedied in the period specified;
- (e) the Development becomes subject to an order or process for compulsory purchase;
- (f) the Development is demolished or destroyed, whether by fire or otherwise, or is damaged so as to materially affect its Market Value and is not reinstated in its entirety to the satisfaction of the Housing Agency within six (6) months or a satisfactory reinstatement plan is not agreed with the Housing Agency within six (6) months of such demolition or destruction;
- (g) the sale of the Development or any part thereof by the Operator, SAVE WHERE an Acquiring Entity in accordance with Clause 7.1.3 of this Agreement agrees to continue to operate the Development as Cost Rental Dwellings and enters into an agreement on substantially the same terms as this Agreement (including an assent to a Cost Rental Designation) and providing Equity Share Security to the Housing Agency;
- (h) any representation or statement made or deemed to be made by the Operator in this Agreement or in its application to the Housing Agency is or proves to have been incorrect or misleading in any material respect when made;
- (i) the Operator is or becomes Insolvent;
- (j) the Operator suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
- (k) it is or becomes unlawful for the Operator to perform any of its obligations under this Agreement or any security created or expressed to be created or evidenced by the Equity Share Security ceases to be effective.

- 8.3 The Housing Agency may communicate with the Operator for the purposes of advising, consulting or negotiating with the Operator in relation to any actual or anticipated Realisation Event provided that the occurrence of a Realisation Event shall not oblige the Housing Agency to serve a Realisation Notice and neither its failure to serve a Realisation Notice nor any advice, consultation or negotiations with the Operator shall constitute any waiver of its entitlement to serve a Realisation Notice.
- 8.4 A Realisation Notice shall specify a period, not shorter than 3 months commencing on the date of its service (save in exceptional circumstances where the Housing Agency's ability to realise the Housing Agency Equity would otherwise be compromised), after which the Housing Agency shall be entitled subject to the Intercreditor Agreement to realise the Housing Agency Equity in accordance with this Clause unless the Operator has first redeemed in its entirety the Housing Agency Equity.
- 8.5 Where following the service of a Realisation Notice in accordance with this Clause, in the reasonable opinion of the Housing Agency, the Development:
- 8.5.1 is no longer in compliance with the Cost Rental Conditions;
 - 8.5.2 is at risk of destruction or damage; or
 - 8.5.3 its use; or
 - 8.5.4 its condition constitutes a risk to the health or safety of any person,
- subject to the Intercreditor Agreement, the Housing Agency shall be entitled to enter upon, secure and take possession of the Development pending the realisation or redemption in its entirety of the Housing Agency Equity and in such case the Housing Agency shall not be liable to the Operator for any loss save for any damage caused to the Development by the Housing Agency in the course of effecting such entry or during such possession.
- 8.6 Where the Housing Agency takes possession of the Development under Clause 8.5 (*Realisation Event*) it may return possession of the Development to the Operator if it is satisfied that the risks have abated.
- 8.7 Upon the expiration of the period specified in the Realisation Notice, or such further period as may be specified in writing by the Housing Agency;
- 8.7.1 Subject to the provisions of this Clause, the Housing Agency shall be entitled to sell or concur with any other person in selling, the Development and shall have all powers reasonably necessary to effect such sale, including the powers set out in Clause 8.8 (*Realisation Event*).
 - 8.7.2 for the purpose of effecting such sale, the Housing Agency shall be entitled to demand and take possession of the Development, giving not less than one month's notice to the Operator (save in exceptional circumstances where delay would prejudice the Housing Agency's ability to realise the Housing Agency Equity),
 - 8.7.3 unless possession has been yielded up by the Operator, the Housing Agency may;

- (a) peaceably enter and take possession of the Development, or
 - (b) apply to the relevant Court of jurisdiction for an order for possession of the Development,
- 8.7.4 upon taking possession of the Development, the Housing Agency shall, within a reasonable period, take steps to exercise the power of sale and to sell the Development at the best price reasonably obtainable within that period,
- 8.7.5 nothing in this Agreement shall inhibit the Housing Agency and the Housing Agency shall not be answerable for any involuntary loss resulting from the exercise or execution of the power of sale, of any trust connected with it, or of any power or provision contained in this Agreement.
- 8.8 Incidental to the power of sale conferred in Clause 8.7.1 (*Realisation Event*) and subject to the Intercreditor Agreement are the powers to—
 - 8.8.1 sell the Development:
 - (a) subject to prior charges or not,
 - (b) by public auction, tender or private contract,
 - (c) subject to such conditions respecting title, evidence of title, or other matter as the Housing Agency or other person selling thinks fit,
 - 8.8.2 rescind any contract for sale and resell the Development.
- 8.9 Subject to the terms of the Intercreditor Agreement, nothing in this Clause shall prejudice the rights of any mortgagee of the Development and, for the avoidance of doubt, the Housing Agency that has taken possession of the Development pursuant to this Clause may hand over the possession of the Development to any such mortgagee having an entitlement to such possession on demand therefore by the mortgagee, and, without prejudice to the right of the Housing Agency to resume such possession by agreement with such mortgagee, such mortgagee may proceed to sell the Development and where it does so Clause 7.9 (*Sale*) will apply.
- 8.10 At any time after the service of a Realisation Notice, save as may be provided in the Intercreditor Agreement, nothing in this Agreement shall inhibit the Housing Agency from:
 - 8.10.1 demanding and obtaining from any mortgagee whose mortgage or charge ranks in priority to the Housing Agency Equity particulars of the moneys secured on such mortgage and any ancillary information reasonably necessary to exercising its powers under this Clause, and
 - 8.10.2 exercising the powers referred to in Clause 8.7 (*Realisation Event*) notwithstanding any priority of such mortgage or charge.
- 8.11 Neither the power of sale nor the right to possession nor any other right or power of the Housing Agency shall be postponed by the service of any notice to make a Redemption Payment or for consent to sell the Development or any procedures arising therefrom, provided that the Housing Agency shall be entitled

to grant such extensions of time as it considers appropriate to facilitate any such notices or procedures.

- 8.12 If, upon entry by the Housing Agency into possession of the Development, there is any furniture or there are any other goods of the Operator in or about the Development, the Housing Agency may serve notice on the Operator to remove the same and any furniture or goods not removed within a period of 21 days beginning on the date on which the notice is served may be removed and stored, sold, destroyed or otherwise disposed of as the Housing Agency deems appropriate, by the Housing Agency as agent for the Operator, and at the expense of the Operator, and any moneys realised on any sale of the furniture or goods shall be held as part of the residue of the proceeds of sale referred to in Clause 7.9.2 (*Sale*).
- 8.13 If the Operator or any person claiming through it suffers loss as a consequence of an unauthorised or improper exercise of the power of sale, their remedy (if any) shall be in damages against the Housing Agency exercising the power.
- 8.14 The receipt in writing of the Housing Agency exercising the power of sale conferred by Clause 8 (*Realisation Event*) is conclusive discharge for any money arising under the said power of sale and a person paying or transferring the same to the Housing Agency is not required to inquire whether any money remains due to the Housing Agency pursuant to this Agreement.
- 8.15 Following the occurrence of a Realisation Event, the monetary value of the Housing Agency Equity shall be determined in accordance with the valuation mechanism in Clause 9 (*Market Value*) in accordance with the following formula:

$$(C/(C+D)) \times (B-A)$$

Where:

A = Initial property capital cost;

B = Open market value on the date realisation;

C = State Equity Investment;

D = Equity investment by Operator;

- 8.16 Money received by the Housing Agency that arises from the sale of the Development shall be applied in the following order—
- 8.16.1 in discharge of prior incumbrances, if any, to which the sale was not made subject or payment into court of a sum to meet any such prior incumbrances,
- 8.16.2 in payment of all charges, costs and expenses properly incurred by the Housing Agency as incident to the sale or any attempted sale or otherwise,

- 8.16.3 in discharge of the Housing Agency Equity, and any costs and expenses properly incurred by the Housing Agency in any proceedings necessary to recover possession of the Development.
- 8.17 Any residue of the money received by the Housing Agency after the discharge of the amount due under Clause 8.16.3 (*Realisation Event*) shall be held by the Housing Agency upon the trusts provided for in section 107(3) of the Conveyancing Act and distributed accordingly.
- 8.18 If the proceeds held are insufficient to discharge the amount due to the Housing Agency under Clause 8.16.3 (*Realisation Event*) solely due to an act, omission, wilful misconduct or fraud of the Operator which negatively impacts the Market Value of the Development, the balance due to the Housing Agency shall be recoverable by the Housing Agency from the Operator as a simple contract debt.

MARKET VALUE

- 9.1 For the purposes of this Agreement, “**Market Value**” means the price for which the Development might reasonably be expected to be sold on the open market for the estate purchased by the Operator, freed and discharged of any mortgage or incumbrance (including this Agreement) disregarding any reduction in the value of the Development attributable to any want of repair or other breach by the Operator of any term or covenant in this Agreement.
- 9.2 The Market Value of the Development at the date of this Agreement is the purchase price or cost of construction of the Development as set out in the Key Terms Section.
- 9.3 During the Term of this Agreement and for the purpose of determining the Market Value of the Development where required under this Agreement, the Housing Agency shall nominate an independent valuer from a panel of suitably qualified persons established by the Housing Agency to assess the Market Value of the Development, the cost of such valuation will be for the account of the Operator.
- 9.4 Within 21 days of receipt of the valuation, the Operator shall serve a notice on the Housing Agency, confirming that it is in agreement with the valuation. Where the Operator confirms, in writing, agreement with the valuation, The Housing Agency shall consider the valuation and respond to the Operator if it accepts the valuation. The Housing Agency may request further information and if required carry out an inspection as part of the valuation approval process. If both parties accept the valuation, the price referred to therein shall be deemed to constitute the Market Value of the Development for the purpose obtained.
- 9.5 If either party confirms, in writing, disagreement with the valuation, the Housing Agency shall nominate another independent valuer from the panel of suitably qualified persons established by the Housing Agency to assess the Market Value of the Development, the cost and expenses of which will be for the account of the Housing Agency and Operator in equal shares. Within 21 days of receipt of the valuation, both parties shall notify the other if it is in agreement with the valuation. If both parties accept the valuation, the price referred to therein shall be deemed to constitute the Market Value of the Development for the purpose obtained.

- 9.6 If agreement cannot be reached between the parties on this valuation, the Market Value will be determined by the Valuer to be appointed by the President on the written application of either party. The Valuer shall:

9.6.1 act as an arbitrator in accordance with the Arbitration Action 2010;

9.6.2 within sixty (60) days of his appointment, or within such extended period as the parties shall jointly agree in writing, give to each of them written notice of the amount of the Market Value as determined by him/her

The fees and expenses of the Valuer shall be payable by the parties in equal shares who shall each bear their own costs, fees and expenses. The determination of the Valuer shall be final and binding on the parties.

- 9.7 For the purposes of assessing the Market Value, the Operator shall retain and make available (when required) all information reasonably required relating to any Material Alteration that could impact on the Market Value.

EXPIRY

- 10.1 Upon expiry of the Term of this Agreement, this Agreement shall terminate and the Equity Share shall become payable unless:

10.1.1 a notice in writing is delivered by the Operator at least 6 months in advance of the expiry of the Term requesting the extension of this Agreement and the Cost Rental Designation; and

10.1.2 prior to such expiry, by agreement in writing between the Housing Agency and the Operator it is agreed to renew and/or extend this Agreement on such terms and conditions as may be agreed at the relevant time and/or subject to such further period of Cost Rental Designation as may be provided for, subject to such minimum cost rental period extension as may be provided for by the Act; or

10.1.3

- 10.2 In the event that (i) the Term expires and no extension is agreed or (ii) the Operator issues a notice in writing of its intention to terminate this Agreement during the Term giving at least six months prior notice of termination, then subject to the right of first refusal hereby granted to the Housing Agency pursuant to clause [10.2.1] below, the Operator may:

10.2.1 terminate the Agreement subject to payment to the Housing Agency of its Equity Share for the purposes of;

- (a) redevelopment by the Operator of the Development;
- (b) sale of the Development by the Operator;
- (c) rental of the Development by the Operator on the open market;

in the case of sub-paragraphs (b) and (c) above, the Housing Agency shall have the Option entitling it to the right of first refusal to acquire the Operator's interest in the Development at the Market Value (as determined pursuant to clause 9

(Market Value) of this Agreement, adjusted to take account of the value of the Housing Agency Equity at the relevant date.

NOTICES

11.1 Except as otherwise expressly provided in this Agreement, no notice or other communication from one party to the other party shall have any validity under this Agreement unless made in writing and served in accordance with this Clause.

11.2 Any notices or requests for consent required or permitted to be given or served under the terms of this Agreement shall be duly and validly given or served:

11.2.1 on the Operator if delivered by hand or sent by pre-paid ordinary post to the Operator at the its registered office, and

11.2.2 on the Housing Agency if delivered by hand or sent by pre-paid ordinary post to its principal offices or such other address that the Housing Agency may specify from time to time.

11.2.3 by electronic mail or other electronic means to the following addresses:

(a) in the case of the Housing Agency:

Email: jim.baneham@housingagency.ie

(b) in the case of the Operator:

Email: []

Any electronic communication made between the Housing Agency and the Operator will be effective only when actually received in readable form and in each case of any electronic communication made by the Housing Agency to the Operator only if it is addressed in such a manner as the Housing Agency shall specify for this purpose.

10.2 The Operator will notify the Housing Agency of any changes to its contact details.

ASSIGNMENT AND DISCLOSURE OF INFORMATION

11.1 The Operator shall not assign, transfer or otherwise dispose of, or create an encumbrance over, all or any of its rights, title, interest, benefits or obligations under this Agreement or the Housing Agency Equity, in whole or in part and any such assignment, transfer, disposal or encumbrance shall be void as against the Housing Agency.

11.2 The Housing Agency may assign, charge, transfer (by way of novation or otherwise) all or part of the Housing Agency Equity or this Agreement and to any third party, either without notice to or the prior consent of the Operator. The Operator irrevocably authorises and consents to any such assignment, charge or transfer and shall enter into such documents (if any) and without limiting the foregoing in any way, use reasonable endeavours to procure that any third party takes such steps and enters into such documents, as in each case as the Housing Agency may reasonably stipulate in order to effect any such assignment, transfer or securitisation.

- 11.3 The Operator irrevocably acknowledges and agrees that the Housing Agency will be entitled to give any proposed assignee, chargee, transferee or sub-participant, and its and their professional advisors such information as the Housing Agency deems necessary relating to the Operator and the Housing Agency Equity. The Operator agrees to execute any documentation (including without prejudice to the generality of the foregoing, any deed of novation) which the Housing Agency requests it to execute in connection with any such assignment or transfer.
- 11.4 The Operator irrevocably acknowledges and agrees that the Housing Agency will be entitled to request the Senior Lender to provide any information and supporting documents reasonably requested by the Housing Agency in relation to the Senior Lender's security on the Development including any balance outstanding, defaults and arrears.
- 11.5 The Operator hereby consents to the Senior Lender (if required by The Housing Agency) releasing any title deeds to the Development held by it directly to the Housing Agency in circumstances where the Permitted Security has been discharged but the Housing Agency Equity has not been redeemed.

FURTHER ASSURANCE

- 12.1 The Operator must promptly, at its own expense, take whatever action, execute and deliver such documents and perform such acts as the Housing Agency or any assignee or nominee of the Housing Agency may require for the purpose of:
- 12.1.1 reflecting, registering or protecting the Housing Agency Equity;
 - 12.1.2 facilitating the realisation of the Housing Agency Equity or the exercise of any right, power or discretion exercisable, by the Housing Agency or any assignee or nominee of the Housing Agency in respect of the Housing Agency Equity;
 - 12.1.3 reflecting, registering or protecting the Cost Rental Designation to be registered on the title to the Development pursuant to clause 15 (Assent to Registration of Designation).
- 12.2 In consideration of the Housing Agency Equity Contribution and by way of security for the performance of his/her/their obligations under this Agreement, the Operator irrevocably appoints the Housing Agency or any assignee or nominee of the Housing Agency to be its attorney (with full powers of substitution and delegation) in its name and otherwise on its behalf, and as its act and deed to:
- 12.2.1 execute, deliver and perfect any agreement or form, and take any action (including the making of registrations, filings or notifications), which the Operator is required to execute, deliver, perfect or take pursuant to this Agreement whether for the purposes of perfecting the Housing Agency Equity or facilitating the realisation of the Housing Agency Equity; and
 - 12.2.2 generally use its name in connection with the exercise of any rights under this Agreement.

12.3 The Operator agrees that:

12.3.1 it will be deemed to have ratified and approved anything done by any attorney pursuant to Clause 12.2 (*Further Assurance*); and

12.3.2 all monies expended by any such attorney in its capacity as such will be recoverable from the Operator on demand.

PUBLICATION

13.1 The Operator hereby consents to the publication of details of this Agreement, the Cost Rental Dwellings the subject of this Agreement by the Housing Agency on its website.

GOVERNING LAW AND JURISDICTION

13. This Agreement shall in all respects be governed by and interpreted in accordance with the laws of Ireland. The Parties hereby irrevocably agree that the Courts of Ireland are to have jurisdiction in all or any disputes which arise in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement where not so determined may be brought in such Courts.

COUNTERPARTS AND EXECUTION

14.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and the Agreement may be executed by the affixing of the signatures of each of the Parties to one or more of such counterpart signature pages, all of such signature pages shall be read as though one and shall have the same force and effect as though all of the signatories had signed a single signature page. The exchange of signature pages portable document format (PDF) transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes. Signatures of the Parties transmitted portable document format (PDF) shall be deemed to be their original signatures for all purposes.

14.2 The Parties hereto consent to the execution by or on behalf of each or any other party of this Agreement and the witnessing thereof (if applicable), by electronic signature, provided that such manner of execution is permitted by law. An electronic signature is conclusive evidence of a party's intention to be bound by this Agreement and has the same legal validity and enforceability as a wet ink signature for all purposes. The Parties also agree that an executed copy of this Agreement and/or copies of executed counterparts of this Agreement may be retained in electronic form and acknowledge that such electronic form shall constitute an original of this Agreement and may be relied upon as evidence of this Agreement.

ASSENT TO REGISTRATION OF DESIGNATION

15. The Operator as registered owner (or party entitled to be registered as owner) hereby assents to the registration of a Cost Rental Designation under this

Agreement by an entry in the Land Registry of a burden on the folio or folios for the Development pursuant to the Part 3 of the Housing Act 2021

NO PARTNERSHIP

16. Nothing in this Agreement shall constitute a partnership or agency between the Operator and the Housing Agency

LEGAL COSTS

17. Each party shall bear its own legal costs in respect of this Agreement

SERVICES OF GENERAL ECONOMIC INTEREST

- 18.1 The Parties note that:

18.1.1 Pursuant to S.I. No. 264/2012 - Housing and Sustainable Communities Agency (Establishment) Order 2012 (the “**2012 Order**”), the Housing Agency was established to provide the services laid out in Article 5 of the 2012 Order including, *inter alia*, the “*arrangement, co-ordination and provision of social and economic regeneration, including the development and improvement of land and infrastructure*”;

18.1.2 Part 3 of the Act provides for the designation of “*cost rental dwellings*”, with the Minister being granted special and specific powers in that context;

18.1.3 In furtherance of stated Irish State housing policy, and pursuant to the terms of this Agreement (which sets out the terms of the Cost Rental Designation and the Housing Agency Equity Contribution pursuant to Part 3 of the Act), the Housing Agency entrusts the Operator with the provision of a SGEI in accordance with the Decision. The SGEI is, in this instance, the provision of Cost Rental Dwellings to eligible tenants (*i.e.*, Cost Rental Tenants) by the Operator during the Term, as applicable, in accordance with this Agreement including the Cost Rental Conditions;

18.1.4 The Parties acknowledge that this Agreement shall serve as the act of entrustment of the SGEI as between the Parties.

- 18.2 Pursuant to the terms of this Agreement, the Operator shall ensure that, during the period for which the SGEI is entrusted:

18.2.1 The Operator shall make the Developments available as Cost Rental Tenancies for the Term; and

18.2.2 The Parties acknowledge that the Cost Rental Dwellings are being made available by the Operator in accordance with the provisions of the Decision.

- 18.3 In addition to the foregoing, the Parties further note and agree that:

18.3.1 The Housing Agency Equity Contribution shall be the maximum amount of any SGEI-related compensation payments made from, by and/or on behalf of the Housing Agency to the Operator;

18.3.2 The Operator shall maintain separate accounts with an account specifically designated to receive the Housing Agency Equity Contribution and Rent from Cost Rental Tenants;

18.3.3 In the context of Article 6 of the Decision, the Housing Agency will ensure that the Operator is not being overcompensated by the Housing Agency Equity Contribution in the Operator's provision of a SGEI by using, without limitation, the following non-exhaustive measures both (i) at the time the Housing Agency Equity Contribution is being made, and (ii) on an ongoing and periodic basis throughout the Term:

(i) **At the time that the Housing Agency Equity Contribution is made:**

(A) The Housing Agency shall satisfy itself and ensure that the Rent set by the Operator is at a level that:

- i. Is reflective of the costs incurred by the Operator and is consistent with all applicable laws governing cost rental dwellings, including the Cost Rental Dwellings. This will require the Housing Agency to independently evaluate the reasonableness of any costs submitted by the Operator as part of this process;
- ii. Aligns the Operator's level of costs and Rent with a range of costs and rent submitted by comparable operators/applicants who are willing to provide Cost Rental Dwellings as part of the Housing Agency's Secure Tenancy Affordable Rental Investment Scheme;
- iii. Ensures that the proposed initial gross rental yields shall not exceed the level deemed appropriate by the Housing Agency; and
- iv. Is at least 25% below market rates for what the Housing Agency, at its discretion, considers as comparable dwellings.

AND

(B) The Housing Agency shall measure the gross rental yield that will be earned by the Operator on the capital costs, including fit-out costs, of the Development in its proposed first year of operation as a Cost Rental Dwelling, which for the avoidance of doubt shall not include, in the calculation of the relevant amount, the amount contributed by way of the Housing Agency Equity Contribution. The Housing Agency shall verify the Operator's relevant capital costs and fit-out costs provided as part of this calculation and the Operators agrees to provide the Housing Agency with any and all information that the Housing Agency may request in this regard.

In undertaking this calculation, the Housing Agency shall satisfy itself and ensure that the gross rental yield will not exceed gross rental yields available for similar residential investments in the residential housing market in the same geographic location as the Development(s) in Ireland. Notwithstanding the foregoing, and for the avoidance of doubt, the Operator shall not be entitled to, nor guaranteed, any gross rental yield as a result of this Agreement at any stage during the Term.

In addition, and for the avoidance of doubt, the calculation of the gross rental income in the proposed first year of operation shall be based on 100% occupancy of the relevant Cost Rental Dwelling(s) and shall disregard, without limitation, (a) the phasing of delivery of relevant Cost Rental Dwelling(s), (b) any period during which the Cost Rental Dwelling(s) may be vacant, (c) deposit income, and (d) any bad debts (herein the “gross rental income”).

The following formula will be used by the Housing Agency in ensuring that it is satisfied any anticipated gross rental yield for the Operator shall be at a satisfactory level:

$$Y = \frac{GI}{(C - E_S)}$$

In this equation:

- *Y* represents the anticipated gross rental yield in a given year and is calculated by dividing gross rental income in that given year by the value of the construction or acquisition costs, *C*, minus the Housing Agency Equity Contribution, *E_S*.

Using the foregoing, the gross rental yield shall be calculated by reference to the expected gross rental income that will be earned on investment in the Development(s) in the first year of its operation as a Cost Rental Dwelling and it shall be at the Housing Agency's discretion as to whether it is satisfied that such yield is at an acceptable level for the purposes of this Agreement.

(ii) **After the Housing Agency Equity Contribution is made and on an ongoing and periodic basis during the Term:**

- (A) After the Housing Agency Equity Contribution has been made, the Housing Agency shall thereafter monitor at a minimum of three-yearly (3-yearly) intervals, or such other lesser period as the Housing Agency may decide at its discretion, the real gross rental yield earned by the Operator to ensure that such real gross rental yield shall not be in excess of the level identified by the Housing Agency at the outset of the Development(s) as an appropriate threshold for similar residential investments in the residential housing market in the same geographic location as the Development(s) in

Ireland. The real gross rental yield represents the level of return on the initial investment in real terms in a given year.

The following formula will be used by the Housing Agency to calculate the value of gross rental income in real terms for a given period during the Term:

$$RGI_t = \frac{GIA_t}{(1+\pi_1)(1+\pi_2)\dots(1+\pi_t)}$$

In this equation:

- RGI_t represents real gross rental income in period t ;
- GIA_t is the gross rental income in period t ;
- π_1 is inflation in period 1, the year in which the Housing Agency Equity Contribution was made (this inflationary amount calculated to take account of any change in the harmonised index of consumer prices as published by the Central Statistics Office in Ireland (the “**Consumer Price Index**”));
- π_2 is inflation in the next year (etc.); and
- π_t represents inflation in the period t for which real gross income is being calculated.

For any three-year (3-year) period, the above calculation should be undertaken for GIA_t , GIA_{t+1} and GIA_{t+2} .

Real gross rental yields over a defined period are therefore calculated as:

$$A = RGI_t + RGI_{t+1} + RGI_{t+2}$$

In this equation:

- A represents real gross rental yields over the defined period.

In the assessment of whether these real gross rental yields have exceeded the relevant defined threshold, the following formula will be used by the Housing Agency:

$$B = ((C - E_S) \times YT) \times P$$

In this equation:

- B represents the level of real gross rental yields implied by the maximum level of the defined yield threshold;
- YT is the identified gross rental yield threshold;
- C is the value of the construction or acquisition costs for the Development(s);
- E_S is the Housing Agency Equity Contribution; and
- P is the number of years over which the potential for overcompensation is being assessed.

Based on the foregoing metrics, the following formula shall be used by the Housing Agency to identify any instance of overcompensation during the Term:

$$A \geq B$$

- (B) The Housing Agency shall also monitor at three-yearly (3-yearly) intervals, or such other lesser period as the Housing Agency may decide at its discretion, all changes imposed on the Rent payable by the Cost Rental Tenant(s) for the Cost Rental Dwelling(s) in the Development(s) over the applicable timeframe to ensure that such changes are line with, and do not exceed, a maximum of the growth in the harmonised index of consumer prices as published by the Central Statistics Office which applied in Ireland during the relevant timeframe.

18.4 The Operator shall:

18.4.1 Promptly make available and provide to the Housing Agency and/or the Minister (including, in the Clause 18.4, the Department of Housing, Local Government and Heritage, including its successors and assigns) all information that the Housing Agency and/or Minister may from time to time request, and allow the Housing Agency and/or Minister use same to:

- (i) Monitor and, as necessary, report to the European Commission, including on a periodic basis (for example, every three (3) years or otherwise as the Housing Agency and/or Minister may decide), on, strictly without limitation, the amount of any SGEI related compensation provided to and/or received by the Operator, the amounts received by the Operator in Rent from Cost Rental Tenants and any other such information that the Housing Agency and/or Minister may consider or deem necessary, including to ensure that the compensation granted to the Operator for the operation of the SGEI meets the requirements of the Decision (including, but without limitation, by reference to Clause 18.3.3); and
- (ii) Assist the Housing Agency and/or Minister in the preparation of any reports which the Housing Agency and/or Minister may be required to submit to the European Commission or any other relevant authority from time to time in respect of the terms of this Agreement, including, though without limitation, its SGEI;

18.4.2 The Operator shall keep all information which may be reasonably considered to be necessary to determine whether the SGEI related compensation granted pursuant to this Agreement is compatible with the Decision and provide and make same available in accordance with the provisions of Clause 18.4.1 above (which includes, for the avoidance of doubt, any and all information required by the Housing Agency for the purposes of Clause 18.3.3); and

18.4.3 Where overcompensation is identified during the Term, including in accordance with, but without limitation to, Clause 18.3.3(ii), the Operator shall repay an amount equivalent to the amount identified as constituting overcompensation to the Housing Agency by way of electronic funds transfer to an account nominated by the Housing Agency within twenty-one (21) days of such a demand having been made by the Housing Agency.

18.5 The Operator acknowledges that:

18.5.1 the information it provides pursuant to Clause 18.4 of this Agreement shall not be considered confidential and may be published by the Housing Agency and/or the Minister or any regulatory authority to whom such information is provided, including the European Commission;

18.5.2 this Agreement does not entitle the Operator to any projected level of rental income and/or gross rental yield as a result of entering into this Agreement, and the Operator acknowledges that the value of the foregoing as well as the Operator's investment may increase or decrease depending on prevailing market conditions; and

18.5.3 as a result of this Agreement, it is not eligible for, and shall not apply for, any other forms of State aid related housing assistance in connection with the Development(s), save in circumstances where the Operator has the prior written consent of the Housing Agency, acting at its discretion, to apply for such assistance.

In witness whereof the parties have affixed their seals hereto

SCHEDULE 1

(the “Development”)

ALL THAT AND THOSE the property known as [] being the property comprised in
Folio [] County [].

SAMPLE

SCHEDULE 2

(Cost Rental Units)

SAMPLE

SCHEDULE 3

(Realisation Notice)

To: [Insert Operator Details]

Re: Cost Rental Development at [Address] subject to a Cost Rental Equity Investment Agreement dated [] between the Housing and Sustainable Communities Agency (the "Housing Agency") and [Operator] (the "Equity Investment Agreement")

Dear Sirs,

We refer to the Equity Investment Agreement, this is a Realisation Notice pursuant to Clause 7 thereof.

A Realisation Event has occurred as defined in the Equity Investment Agreement and in accordance with the Equity Investment Agreement the Housing Agency hereby require the realisation and repayment of the Housing Agency Equity in accordance with the terms of the Equity Investment Agreement.

We hereby require a valuation of the Market Value of the Development to be obtained in accordance with the Equity Investment Agreement and the redemption of the Housing Agency Equity pursuant to the terms of the Equity Investment Agreement.

Yours faithfully

**For and on behalf of the
Housing and Sustainable Communities Agency**

EXECUTION PAGES

SIGNED and **DELIVERED**
as a **Deed**
by the **Operator**
in the presence of:

Witness: _____

Print Name:

Address:

Occupation

SAMPLE

Present when the common seal of THE
**HOUSING AND SUSTAINABLE COMMUNITIES
AGENCY** was affixed to this deed and this
deed was delivered:

Director

Director/Secretary

SAMPLE