



Rialtas na hÉireann
Government of Ireland

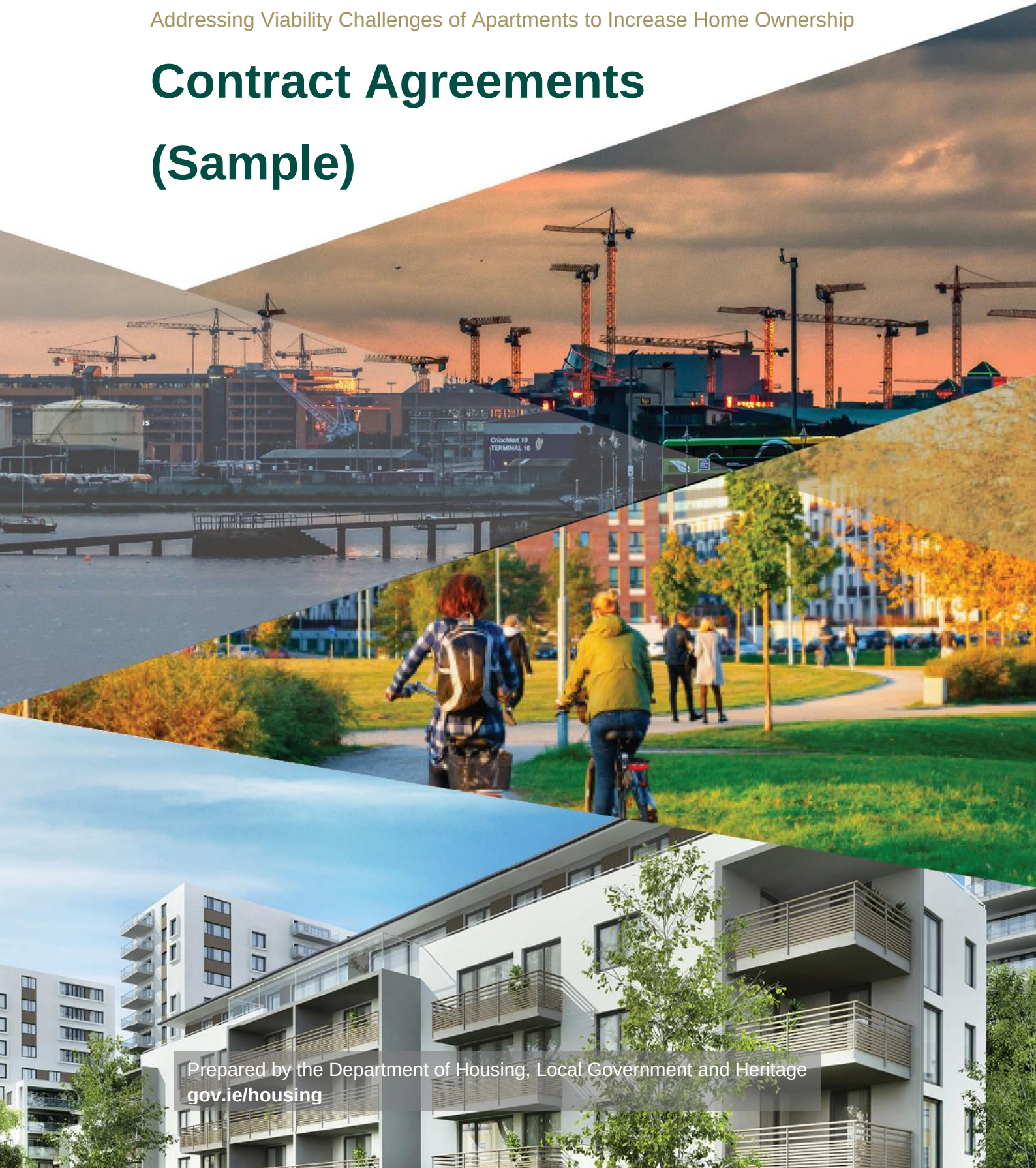


An Ghníomhaireacht
Tithíochta
The Housing Agency

Croí Cónaithe (Cities) Scheme

Addressing Viability Challenges of Apartments to Increase Home Ownership

Contract Agreements (Sample)



Prepared by the Department of Housing, Local Government and Heritage
gov.ie/housing



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SUBJECT TO CONTRACT/CONTRACT DENIED
THE HOUSING AND SUSTAINABLE COMMUNITIES AGENCY RESERVES THE
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The Housing and Sustainable Communities Agency

and

[●]¹

**DESIGNATION and
DEVELOPMENT AGREEMENT**

in respect of the development of build to sell
apartments
at [XXXX]²

under the Croí Cónaithe (Cities) Fund

¹ Insert name of developer

² Insert location of development

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THIS AGREEMENT is made on the day of [] 20[];

BETWEEN:

- (1) The Housing and Sustainable Communities Agency of 53 Mount Street, Dublin 2 (hereinafter called “the **Agency**” which expression shall include its successors and assigns).
- and
- (2) [●] a company incorporated under the laws of Ireland (registered number [●]) and having its registered office at [●] (hereinafter referred to as the “**Developer**” which expression shall include its successors and permitted assigns).

WHEREAS:

- (A) The Agency has issued an Expression of Interest dated []¹ for applications for Croí Cónaithe (Cities) funding. The Agency has assessed the applications received, including an application from the Developer and is satisfied that the apartment development submitted by the Developer is suitable for designation and funding under the terms of this Agreement.
- (B) The Developer is the owner of the Site, as hereinafter defined, and has secured planning permission for the development of apartments on the Site. The Developer intends to commence the construction of the apartments on the Site.³
- (C) In consideration of the payment of the Croí Cónaithe (Cities) Subsidy, as hereinafter defined, by the Agency to the Developer, the Developer has agreed to develop the apartments in accordance with the terms and conditions of this Agreement and to sell the dwellings to Purchasers on the terms as set out in this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement (save where the context otherwise requires or implies):

"Actual Designated Units Delivery Cost" means the cost (without double counting and with appropriate apportionment in respect of any delivery cost that relates to delivery of any units other

¹ Housing Agency to confirm

³ Amend to refer to a phase of the development, where appropriate.

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than the Designated Units) that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers (including but not limited to, site cost construction costs, development contributions and costs of procuring bonds, utility connection costs, professional fees, sales costs, legal fees, finance costs, developer/risk margin, contingency, VAT and any other delivery cost howsoever arising) as determined in accordance with clause 7 below.

“Actual Market Sales Units Price” means the purchase price paid by a Purchaser in respect of a Designated Unit which must be at the Open Market Value.

“Agency’s Requirements” means the Developer’s output specification set out in Schedule 1 or such updated output specification provided such updated output specification contains the minimum specification detailed in Schedule 1⁶.

“Agreement” means this agreement as amended or supplemented from time to time.

“Anticipated Croí Cónaíthe (Cities) Subsidy” means the Anticipated Designated Units Delivery Cost in respect of each Designated Unit less the Anticipated Market Sales Units Price in respect of that Designated Unit.

“Anticipated Designated Units Delivery Cost” means (without double counting and with appropriate apportionment in respect of any delivery cost that relates to delivery of any units other than the Designated Units) the all-inclusive cost that the Developer expects to incur in order to deliver the Designated Units for sale to the Purchasers (including but not limited to, site cost construction costs, development contributions and cost of procuring bonds, utility connection costs, professional fees, sales costs, legal fees, finance costs, developer/risk margin, contingency, VAT and any other delivery cost howsoever arising) as set out in Schedule 7.

“Anticipated Market Sales Units Price” means the anticipated purchase price to be paid by a Purchaser in respect of a Designated Unit, as set out in Schedule 5.

“Approved Lender” means a bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, servicing, purchasing or investing in loans, securities or other financial assets and which is lawfully entitled to carry on their relevant business in Ireland.

⁶ For clarity, it is expected that the Agency’s Requirements will be provided by the Developer and shall consist of the Developer’s drawings and technical specification for the Development.

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"Building Control Act" means the Building Control Acts 1990 to 2014 and any amendments thereto and any regulations made thereunder.

"Building Contract" means the building contract for construction of the Development.

"Building Regulations" means the Building Control Regulations 1997 to 2021 and any amendments thereto including without limitation the Building Control (Amendment) Regulations 2014.

"Caution" means the caution to be registered on title of a Designated Unit pursuant to the Clawback Agreement.

"Clawback Agreement" means the clawback agreement to be entered into between the Agency and the Purchaser(s) of a Designated Unit in the form attached hereto at schedule 11.

"Commenced" means the carrying out of any works to the Designated Units that would require a Commencement Notice to be filed within the meaning of Section 6 (2)(k) of the Building Control Act.

"Completion Date" means the [●] as same may be extended in accordance with clauses 3.6 – 3.11 below,

"Completion Requirements" means receipt of the following in respect of a Designated Unit:

1. the Declaration duly executed by the Purchaser(s) of the Designated Unit and dated within 20 Working Days of the completion date of the acquisition of the Designated Unit by the Purchaser(s);
2. the Clawback Agreement duly executed by the Purchaser(s) of the Designated Unit in duplicate;
3. Written confirmation (in a form satisfactory to the Agency (acting reasonably)) from the solicitor for the Developer that the sale of the Designated Unit has completed;
4. a certified copy of the dated and executed Deed of Transfer / Conveyance / Lease of the Designated Unit (together with copy Tailte Éireann approved scheme map) as evidence of the sale having been completed;
5. Written confirmation (in a form satisfactory to the Agency (acting reasonably)) from the solicitor for the Developer that the agreed net sales proceeds in respect of the Designated Unit have been transferred to the lender to the Developer (or where applicable any trustee or agent of the lender to the Developer) (where applicable);

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6. Written confirmation (in a form satisfactory to the Agency (acting reasonably)) from the solicitor for the Developer that the lender to the Developer (or where applicable any trustee or agent of the lender to the Developer) has agreed to provide a release or discharge of any security held by such lender over the Designated Unit (where applicable);
7. To the extent not already provided to the Agency², acknowledgement of the lender to the Purchaser(s) (in a form satisfactory to the Agency (acting reasonably)) that consent to registration of the Caution in favour of the Agency is not required.
(In the event of the lender to the Purchaser(s) not being a member of Banking and Payments Federation Ireland and/or has not provided an acknowledgement, specific acknowledgement (or consent if so preferred by that lender) of the lender to the Purchaser(s) (in a form satisfactory to the Agency (acting reasonably) to registration of the Caution in favour of the Agency shall be provided);
8. Written confirmation (in a form satisfactory to the Agency (acting reasonably)) from the Developer that it shall provide the Agency with details of the dealing number relating to the Purchaser's application for registration as owner of the Designated Unit with Tailte Éireann as soon as practicable post completion but in any event within 2 Working Days of receipt of same from the purchaser's solicitor;
9. Proof of HomeBond / Structural Insurance in respect of the Designated Unit;
10. Copy Certificate of Compliance on Completion under the Building Regulations in respect of each Designated Unit together with satisfactory evidence that same has been entered onto the Register under the Building Regulations;
11. Copy Architect's Certificate of Compliance with Planning Permission in respect of the Designated Unit.

"Costs Review Date" is defined in clause 7.5;

Costs Review Event means, on the Costs Review Date, the aggregate of:

- (a) the percentage change in the **Wholesale Price Index** (between the most recent Wholesale Price Index published as of the date of this Agreement and the most recent Wholesale Price Index published as of the Costs Review Date) multiplied by 0.6; and
- (b) the percentage change in the **Hourly Rate for Craftspersons** (between the most recent Hourly Rate for Craftspersons published as of the date of this Agreement and the most recent Hourly Rate for Craftspersons published as of the Costs Review Date) multiplied by 0.4;

² The Housing Agency will confirm to Developer which lenders (who are members of the Banking and Payments Federation Ireland ("BPFI") as at May 2025) have provided a letter of acknowledgement in a form satisfactory to the Agency.

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is < - 3.00% and so that for the avoidance of doubt:

- (i) -3.01% < -3.00%;
- (ii) -5.00% < -3.00%;
- (iii) -2.00% > -3.00%;
- (iv) +1.00 % > -3.00%

Worked examples of sample calculations are contained in Schedule 9 (Costs Review Event Sample Calculations).

"Costs Review Event Notification" is defined in clause 7.9.2;

"Croí Cónaithe (Cities) Subsidy" means the subsidy payable to the Developer by the Agency under the Croí Cónaithe (Cities) fund as determined in accordance with this Agreement.

"Date of Practical Completion" means the date upon which a certificate of practical completion has been issued in respect of the Designated Units (or any of them as the context requires) in accordance with the Building Contract.

"Declaration" means the form of statutory declaration set out in Schedule 8.

"Designated Units" means XXXXX (XXX) apartments, within the Site, more particularly described in the Agency's Requirements and identified in the plan at Part 2 of Schedule 3, to be delivered by the Developer and sold to Purchasers and each a "Designated Unit".

"Designated Units Delivery Cost Certificate" is defined in clause 7.9.2.

"Development" means the design and construction of the Designated Units together with all associated and ancillary works on the Site¹³.

"Developer's Representative" means an architect, quantity surveyor or other appropriately qualified professional retained by the Developer and approved by the Agency;

"DR Certificate" is defined in clause 7.5.3 below and shall be in the form set out at Schedule 10 of this Agreement;

¹³ To be amended to reflect the position (i.e. whether the agreement relates to the whole development or a phase within a development)

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"Estimates" is defined in clause 7.5.1.

"Insurance" means the insurance as outlined in Clause 4.

"Insured Delay Event" is defined in clause 3.6.

"Final Completion Date" means the date occurring 15 (fifteen) calendar months after the Completion Date provided that notwithstanding any other term of this Agreement (including any term that provides for the extension of the Completion Date) the Final Completion Date shall not be a date that is later than [31/12/2026].

"Force Majeure" means an exceptional event which could not have been reasonably foreseen and which is beyond the parties control, including: (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; (c) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Developer's use of such munitions, explosive, radiation or radio-activity; (d) natural catastrophes such as earthquake, hurricane, volcanic activity and typhoon; (e) pandemic, save that Covid-19 shall be considered a Force Majeure event only in circumstances where the known status and circumstances relating to Covid-19 materially change after the date of this Agreement.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced builder and developer engaged in Ireland in the design and construction of works seeking in good faith to comply with its contractual obligations, complying with all applicable laws, codes of professional conduct, relevant codes of practice, Irish, European and other relevant standards, building regulations, all conditions of planning and other consents.

Hourly Rate for Craftspersons means the hourly rate for a Craftsperson in the Sectoral Employment Order (Construction Sector) published under subsection (1) of Section 17 of the Industrial Relations (Amendment) Act 2015 (No. 27 of 2015) (as adapted by the Business, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. 519 of 2020) and the Enterprise, Trade and Employment (Delegation of Ministerial functions) Order 2020 (S.I. 579 of 2020) (or where applicable published under any replacement sectoral order from time to time).

"Laws" means every act of the Oireachtas that may be relevant to the Development and the Site, its use or to any thing or any person on the Site at any time including, (without limitation), every act of the Oireachtas whether named in this Agreement or not or whether in force today or not and any subsequent statutory re-enactment or modification of any act of the Oireachtas and any other order,

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regulation, directive, bye-law, rule, consent or licence made or granted under any act of the Oireachtas or by any public or local authority (acting in its official capacity) or by any court of competent jurisdiction and any law, regulation or directive of the European Union.

“Maximum Subsidy” means one hundred and twenty thousand euros (€120,000) (inclusive of VAT) for each Designated Unit.

“Months” means calendar month(s) and **“Month”** shall be construed accordingly.

“Open Market Value” means the estimated amount for which a Designated Unit should exchange on the date of valuation and / or sale (as appropriate) between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion and on the assumption that (ii) (where a Designated Unit is not complete) that the Designated Unit is completed as of the valuation / sale date and (ii) on the assumption that the Designated Unit is to be sold to a Purchaser(s).

“Purchasers” means a natural person or persons who

- a) purchase a Designated Unit; and
- b) as of the date of purchase of the Designated Unit do not have a legal or beneficial interest in any other apartment which has been the subject of a subsidy provided by the Agency and / or The Department of Housing Local Government and Heritage under the Croí Cónaithe (Cities) fund; and
- c) purchase the Designated Unit with the intention (as of the date of purchase) of occupying the Designated Unit as his / her / their principal place of residence following the acquisition of the Designated Unit (which intention is to be evidence by completion by such Purchaser(s) of a Declaration); and
- d) shall also be required to enter into the Clawback Agreement with the Agency and provide the Declaration to the Agency

“Planning Permission” means the grant of planning permission with planning reference [XXX/XXX] obtained in relation to the Development a copy of which set out at Schedule 2, including any additional grants of planning permission.

“Practical Completion” means the issuance of a certificate of practical completion in respect of the Designated Units (or where the context requires, any of them) in accordance with the Building Contract.

“Proposed Market Sales Units Price” means the expected Open Market Value of a Designated Unit on the Date of Practical Completion of the Designated Unit (or where the context requires on any other applicable valuation / sale date).

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"Requisite Consents" means those permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary to lawfully to commence, carry out, maintain and complete the Development including (but without limitation):

- (i) Planning Permission;
- (ii) fire safety certificate;
- (iii) disability access certificate;
- (iv) Building Regulations, Building Control Act, consents and bye-law approvals; and
- (v) the requirements of all competent authorities regulating the Development and/or the use of the Site;

"Revised Proposed Market Sales Units Price" is defined in clause 6.4;

"Safety and Health Legislation" means the Safety, Health and Welfare at Work Act 2005 and any and all legislation pursuant thereto (including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013), as may be amended, modified or extended from time to time; and any guidance requirements issued from time to time by the Health and Safety Authority.

"Site" means the property at [] as delineated in the site plan set out at Part 1 of Schedule 3.

"Snagging Items" means minor defects, deficiencies or omissions of a snagging nature in the works carried out by the Developer in connection with the Designated Units.

"Special Conditions" means the special conditions set out in Schedule 12 hereto.

"VAT" means Value Added Tax.

"Wholesale Price Index" means the Wholesale Price Index (Excl. VAT) for Building and Construction Materials monthly series (WPM28) published by the Central Statistics Office (or where applicable any replacement index published by the Central Statistics Office from time to time).

"Working Day(s)" means a day on which banks are open for business in Dublin

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2. INTERPRETATION

In this Agreement:

- 2.1 words importing the singular shall where the context so requires include the plural and vice versa;
- 2.2 words of the masculine gender include the feminine and neuter genders and all such words shall be construed interchangeably in that manner;
- 2.3 words such as “hereunder”, “hereto”, and “herein” and other words commencing with “here” shall refer to the whole of this Agreement and not to any particular Clause;
- 2.4 save as otherwise provided herein, any reference to a Clause, paragraph or Sub-Clause (as the case may be) of this Agreement and any reference in a Clause to a paragraph or Sub-Clause shall be a reference in a Clause to a paragraph or Sub-Clause of the Clause in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- 2.5 the headings and captions to the Clauses are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this Agreement;
- 2.6 reference to a statute or Act or a provision of a statute or Act shall include any statute or Act or provision of a statute or Act amending consolidating or replacing it for the time being in force;
- 2.7 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction includes an obligation not to permit or allow infringement of the restriction; and
- 2.8 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.

3. EXECUTION OF THE DEVELOPMENT

- 3.1 The Developer shall at its own cost and expense procure the carrying out and Practical Completion of the Designated Units in accordance with the Agency’s Requirements and (without prejudice to the termination rights of the Agency as set out in clause 5 of this Agreement) shall use all reasonable endeavours to do so by the Completion Date.
- 3.2 The Developer shall procure that the Development is carried out:
 - 3.2.1 with due skill, care and diligence reasonably to be expected of a prudent and experienced developer;
 - 3.2.2 in a good and workmanlike manner and in accordance with Good Industry Practice;
 - 3.2.3 using only good quality materials and well-maintained plant;
 - 3.2.4 in accordance with this Agreement, the Agency’s Requirements, the Planning Permission and the Requisite Consents;
 - 3.2.5 in accordance with all statutory or other legal requirements and

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- the recommendations or requirements of the local authority or statutory undertakings;
 - 3.2.6 in compliance with all relevant Irish standards, codes of practices and good building practice (or, if there are no such Irish standards, the relevant EU standards and codes of practice);
 - 3.2.7 by selecting and using materials so as to avoid hazards to the health and safety of any person and to ensure the long-term integrity of the Development;
 - 3.2.8 in accordance with Safety and Health Legislation; and
 - 3.2.9 in accordance with all covenants, stipulations, rights and conditions affecting the Site.
- 3.3 The Developer acknowledges, represents and warrants to the Agency and agrees with the Agency that:
- 3.3.1 based on the information available to it at the date of this Agreement, it has satisfied itself as to the character, quality and quantity of the labour, materials, equipment and facilities needed for the Development, wage levels, safety requirements, environmental matters, availability of utilities, legal and regulatory requirements and approvals and all other matters which may affect the satisfactory provision of the Development; and
 - 3.3.2 on or prior to the date of the completion of the sale of a Designated Unit to a Purchaser(s), it shall procure that such Purchaser(s) execute a Declaration and Clawback Agreement; and
 - 3.3.3 it shall comply with its obligations pursuant to Part V of the Planning and Development Act 2000 and, as appropriate, enter into a separate agreement with the relevant local authority in this regard; and
 - 3.3.4 it has not Commenced construction of any of the Designated Units prior to the date hereof.
- 3.4 The Developer shall:
- 3.4.1 keep the Agency informed on a quarterly basis as to progress of the completion of the Designated Units;
 - 3.4.2 notify the Agency of the proposed purchase price agreed between the Purchaser and the Developer for the relevant Designated Unit within fifteen (15) Working Days of agreeing (subject to contract) the sale of a Designated Unit to a Purchaser and accepting a booking deposit and to keep the Agency informed on a regular basis as to how the sale is progressing (to include, but not limited to, when a contract for sale is entered into by the Purchaser and the Developer);
 - 3.4.3 utilise the Agency's Special Conditions without any material amendment in the contract for the sale of the Designated Unit between the Developer and the Purchaser;
 - 3.4.4 sell each of the Designated Units to a Purchaser at the Open Market Value;
 - 3.4.5 ensure the completion of the Snagging Items for each Designated Unit to the satisfaction of the Purchaser (acting reasonably) on or before the completion date of the sale of each Designated Unit;

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- 3.4.6 promptly notify the Agency of any material problems or delays in the progress and completion of the Designated Units together with the Developer's recommendations for overcoming and/or mitigating them; and
- 3.4.7 use the Croí Cónaithe (Cities) logo (the "**Logo**") on any site signage and ensure that any sales material, brochures or websites (whether the Developers or its sales agent) used to advertise the Development shall use the Logo and state that a Croí Cónaithe (Cities) Subsidy has been obtained for the Development.
- 3.5 The Developer shall, in addition to complying with the Requisite Consents, pay any fees or charges demandable by law pursuant to the provisions of any Act of the Oireachtas, any instrument rule or order made under any Act of the Oireachtas and any regulations and bye-laws of any local authorities and/or any public service company or authority relating to the works or with whose systems same are or will be connected.
- 3.6 The Developer shall be entitled to an extension of time to the Completion Date due to any delay to the completion of the Designated Units resulting from damage caused by a risk which is insured against by the Developer or the contractor under the Building Contract (an "**Insured Delay Event**") and where the relevant insurer has confirmed cover and that insurance monies are or will be available and the Agency is satisfied (acting reasonably) that the Developer will be in a position to procure completion of the Designated Units in accordance with the terms of this Agreement by the Final Completion Date (subject always to the obligation of the Developer to take reasonable steps to, and procure that the Developer's contractor takes reasonable steps to mitigate the impact of the Insured Delay Event on the completion of the Designated Units).
- 3.7 Following notice of an Insured Delay Event, and once the Developer has determined the extent of the actual delay caused to the completion of the Designated Units by the Insured Delay Event, the Developer shall notify the Agency of the date the Insured Delay Event ceased to cause the delay to the completion of the Designated Units and the period of delay caused to completion of the Designated Units by the Insured Delay Event.
- 3.8 Subject to clauses 3.9 to 3.11, the Completion Date shall be extended by the number of days that completion of the Designated Units has been delayed due to the Insured Delay Event as notified to the Agency pursuant to clause 3.7.
- 3.9 If the Agency disputes that an Insured Delay Event has occurred or the number of days by which the Completion Date should be extended, the determination of such dispute shall be referred to an independent and appropriately qualified expert (being an architect with in excess of 20 years practice in the area of residential development of apartment schemes) to be agreed upon between the parties within 5 Working Days and in the event that the parties cannot agree an expert, to be nominated in accordance with the provisions of clause 13.3 of this Agreement.
- 3.10 If such expert determines that the Insured Delay Event has not occurred, the Completion Date shall not be extended.
- 3.11 If such expert determines that the Insured Delay Event has delayed the completion of the Designated Units for a different period than that notified by the Developer pursuant to

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clause 3.7 the Completion Date shall be extended by such number of days as such expert determines the Insured Delay Event has delayed the completion of the Designated Units.

- 3.12 Notwithstanding any other term of this Agreement (including any term of this Agreement providing for an extension to the Completion Date) the Final Completion Date shall not be capable of extension past the [31/12/2026]

4. DEVELOPER'S INSURANCE OBLIGATIONS

- 4.1 The Developer shall ensure that a HomeBond insurance policy or equivalent is in place upon the completion of the Designated Units.
- 4.2 The Developer shall ensure that all appropriate insurances, in terms of insurance types and levels, are in place and maintained for a development of this scale and nature.

5. TERMINATION

- 5.1 Without prejudice to any other rights, remedies or other powers herein contained or otherwise available to the Agency:

- 5.1.1 if all of the Designated Units are not completed by the Final Completion Date; or
- 5.1.2 if a receiver, liquidator or examiner is appointed in respect of the Developer or the building contractor engaged by the Developer to carry out and complete the Development (as the case may be) and if such appointment is not terminated or set aside within twenty one (21) days of the date of such appointment and if the carrying out of the Development is wholly or substantially suspended for more than fourteen (14) days as a result of such appointment and such suspension shall continue for and shall not be remedied within one (1) month after service on the Developer by the Agency of a notice specifying the suspension and invoking the provisions of this Clause; or
- 5.1.3 if the Developer commits a material breach of this Agreement and such breach is not remedied within forty five (45) days after service on the Developer by the Agency of a notice specifying the breach and invoking the provisions of this Clause; or
- 5.1.4 if the representation and warranty from the Developer to the Agency contained in clause 3.3.4 hereof is not true in all material respects as of the date hereof;

then and in any such case this Agreement may be determined by the Agency by notice in writing to that effect (such notice to take effect without prejudice to the rights of the parties hereof in respect of antecedent breach).

- 5.2 If this Agreement is terminated pursuant to Clause 5.1 above (or pursuant to any other clause of this Agreement), the Developer shall not be entitled to payment of the Croí Cónaithe (Cities) Subsidy or any other payment whatsoever in respect of any Designated Unit which has not been sold to a Purchaser as of the date of termination or is not the subject of a duly binding contract for sale between the Developer and a Purchaser as of the date of termination provided that for the avoidance of doubt, in the case of any Designated Unit which has been sold to a Purchaser as of the date of termination or is the subject of a duly binding contract for sale between the Developer and a Purchaser as of the date of termination same shall remain eligible for payment of a Croí Cónaithe (Cities) Subsidy on

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the terms set out in this Agreement (including without limitation prior receipt by the Agency of the Completion Requirements) as if this Agreement had not been terminated.

6. MARKET SALES PROCESS

- 6.1 Prior to the advertisement of any of the Designated Units for sale and / or launch of the sales process for the Designated Units the Developer shall:
- 6.1.1 instruct a suitably qualified, experienced and independent valuer to estimate the Proposed Market Sales Units Price for each Designated Unit. For the avoidance of doubt such valuation must be prepared on the basis of:
- (a) The Royal Institution of Chartered Surveyors (RICS) (Red Book) OR:
 - (b) The International Valuation Standards Committee/TeGoVa (Blue Book):
- 6.1.2 notify the Agency in writing of the Proposed Market Sales Units Price for each Designated Unit; and
- 6.1.3 receive written confirmation from the Agency within fifteen (15) Working Days of such notification from the Developer that it is satisfied with the Proposed Market Sales Units Price for each Designated Unit.
- 6.2 In the event that the Agency is not satisfied with the Proposed Market Sales Units Price for each Designated Unit, the Agency may, within fifteen (15) Working Days of notification to the Agency as per clause 6.1.2 appoint a separate suitably qualified, experienced and independent valuer to forecast the Proposed Market Sales Units Price, with such forecast to be provided to the Developer within 10 Working Days of the appointment by the Agency of such independent valuer. Following the separate valuation, the parties shall engage in good faith for a period of no longer than 10 Working Days with a view to agreeing the Proposed Market Sales Units Price. If such an agreement cannot be reached by the parties, either party may, following the expiry of the 10 Working Day engagement period, elect to have the matter referred to an expert for determination in accordance with Clause 13.
- 6.3 The Developer shall advertise the Designated Units for sale at the Proposed Market Sale Units Price, as ascertained pursuant to Clause 6.1 or 6.2 (as case may be), through any advertising media used by the Developer to sell the Designated Units and shall not advertise any of the Designated Units for sale at a price which is less than the Proposed Market Sales Units Price.
- 6.4 If the Developer has failed to agree the sale of a Designated Unit (subject to contract) within 56 calendar days of advertising the first of the Designated Units for sale at the Proposed Market Sales Units Price or if at any time a period of 56 calendar days elapses from the date of agreeing a sale of a Designated Unit (subject to contract) without agreeing a sale of any other Designated Unit (subject to contract), then the Developer:
- 6.4.1 may advise the Agency that it wishes to instruct a suitably qualified, experienced and independent valuer to estimate a revised Proposed Market Sales Units Price ("**Revised Proposed Market Sales Units Price**") for each Designated Unit. For the avoidance of doubt such valuation must be prepared on the basis of:
- (a) The Royal Institution of Chartered Surveyors (RICS) (Red Book) OR:

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(b) The International Valuation Standards Committee/TeGoVa (Blue Book):

- 6.4.2 may instruct a suitably qualified, experienced and independent valuer to estimate a Revised Proposed Market Sales Units Price for each Designated Unit;
 - 6.4.3 shall notify the Agency of the Revised Proposed Market Sales Units Price for each Designated Unit and provide (to the Agency in writing) the rationale of the Developer for seeking to advertise the Designated Units for sale at the Revised Proposed Market Sales Units Price and including details of all sales and marketing campaigns undertaken to date, details of all signage, web advertising, newspaper advertisements, show-units made available for viewing, the level of enquiries received in respect of Designated Units to date and the number of viewings of Designated Units to date; and
 - 6.4.4 shall (subject to clause 6.5 below) receive written confirmation from the Agency, within fifteen (15) Working Days of such notification from the Developer, that it is satisfied with the Revised Proposed Market Sales Units Price for each Designated Unit whereupon the Developer shall be entitled to advertise the Designated Units for sale at the Revised Proposed Market Sale Units Price through any advertising media used by the Developer to sell the Designated Units and shall not advertise any of the Designated Units for sale at a price which is less than the Revised Proposed Market Sales Units Price.
- 6.5 In the event that the Agency is not satisfied with the Revised Proposed Market Sales Units Price for each Designated Unit, the Agency may, within fifteen (15) Working Days of notification to the Agency as per clause 6.4.3, appoint a separate suitably qualified, experienced and independent valuer to forecast the Revised Proposed Market Sales Units Price, with such forecast to be provided to the Developer within 10 Working Days of the date of appointment by the Agency of such independent valuer. Following the separate valuation, the parties shall engage in good faith for a period of no longer than 10 Working Days with a view to agreeing the Revised Proposed Market Sales Units Price. If such an agreement cannot be reached by the parties, either party may, following the expiry of the 10 Working Day engagement period, elect to have the matter referred to an expert for determination in accordance with Clause 13.
- 6.6 Within 15 (Fifteen) Working Days of agreeing (subject to contract) the sale of a Designated Unit to a Purchaser and accepting a booking deposit, the Developer shall notify the Agency of the purchase price of the Designated Unit as agreed with the Purchaser which shall reflect the Open Market Value and which will become the Actual Market Sales Units Price should the sale proceed to closing.
- 6.7 In the event that (1) the Actual Market Sales Units Price for a Designated Unit is less than the Proposed Market Sales Units Price and (2) the Agency has issued written communication to the Developer within 15 (Fifteen) Working Days of receipt by the Agency from the Developer of the Actual Market Sales Units Price (pursuant to clause 6.6), that the Agency is not satisfied that the purchase price of the Designated Unit agreed with the Purchaser reflects the Open Market Value for the Designated Unit, the Agency may within fifteen (15) Working Days of receipt by the Agency from the Developer of the Actual Market Sales Unit Price (pursuant to clause 6.6) appoint a suitably qualified, experienced and independent valuer to ascertain the Open Market Value for the Designated Unit. Following this valuation, the parties shall engage in good faith for a period of no longer than 10 Working Days with a view to agreeing the Open Market Value. If such an agreement cannot be reached by the parties, either party may, following the expiry of the immediately preceding ten (10) Working Day engagement period, elect to have the matter referred to an

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expert for determination in accordance with Clause 13. In such a scenario, the calculation of the Croí Cónaithe (Cities) Subsidy payable to the Developer in respect of that Designated Unit shall be based on the Open Market Value of the Designated Unit as agreed between the parties or as determined by the expert appointed pursuant to Clause 13 (as applicable).

6.8 For the avoidance of doubt, where the Developer completes a sale of a Designated Unit to a Purchaser:

(i) prior to the expiry of the first period of fifteen (15) Working Days referred to in clause 6.7 above (and in circumstances where the Agency has not confirmed that it is satisfied that the purchase price of the Designated Unit agreed with the Purchaser reflects the Open Market Value for the Designated Unit); or

(ii) in circumstances where the Agency has, prior to the expiry of the first period of fifteen (15) Working Days referred to in clause 6.7 above, issued written communication to the Developer pursuant to clause 6.7 above (that the Agency is not satisfied that the purchase price of the Designated Unit agreed with the Purchaser reflects the Open Market Value for the Designated Unit);

but the Open Market Value of that Designated Unit has not been determined pursuant to clause 6.7, then subject to the Developer's compliance with Clause 3.3.2 of this Agreement and prior receipt by the Agency of the Completion Requirements (and subject also to the terms of clauses 7.14 and 7.15 of this Agreement), within 5 (Five) Working Days of the date of the completion of the sale of that Designated Unit to a Purchaser the Agency shall pay to the Developer in respect of that Designated Unit a provisional Croí Cónaithe (Cities) Subsidy calculated using the Anticipated Market Sales Units Price for that Designated Unit in place of the Actual Market Sales Units Price. The provisions set out in clause 7.14 to 7.16 shall apply in the event that such provisional Croí Cónaithe (Cities) Subsidy is paid.

6.9 A summary of the market sales process is set out in Schedule 4.

7. PAYMENT OF THE CROÍ CÓNAITHE (CITIES) SUBSIDY

7.1 Subject to

7.1.1 the Developer's compliance with Clause 3.3.2 of this Agreement; and

7.1.2 prior receipt by the Agency of the Completion Requirements; and

7.1.3 clause 6.7, 6.8 and this clause 7 of this Agreement;

within 5 Working Days of the date of the completion of the sale of a Designated Unit to a Purchaser(s), the Agency shall pay to the Developer the Croí Cónaithe (Cities) Subsidy in respect of the relevant Designated Unit (inclusive of VAT).

7.2 Notwithstanding any other term of this Agreement, the Croí Cónaithe (Cities) Subsidy payable in respect of any Designated Unit shall not exceed the Maximum Subsidy.

7.3 The Anticipated Croí Cónaithe (Cities) Subsidy for each Designated Unit is set out in Schedule 6.

7.4 The Croí Cónaithe (Cities) Subsidy payable in respect of a Designated Unit shall equate to the Actual Designated Units Delivery Cost in respect of that Designated Unit less the Actual Market Sales Units Price for that Designated Unit provided that for the avoidance of doubt, for the purposes of calculation of the Croí Cónaithe (Cities) Subsidy payable in respect of a Designated Unit, the Actual Designated Units Delivery Cost of that Designated Unit shall be either equal to or less than the Anticipated Designated Units Delivery Cost in respect of that

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Designated Unit and shall never be a figure that is higher than the Anticipated Designated Units Delivery Cost in respect of that Designated Unit.

- 7.5 On a date occurring between 20 Working Days and 1 Working Day prior to the Date of Practical Completion of the first of the Designated Units (the "**Costs Review Date**") the Developer shall:
- 7.5.1 provide the Agency with the updated all-inclusive cost that the Developer has incurred (with estimates (acting reasonably) in respect of any costs which remain to be incurred ("**Estimates**") in order to deliver the Designated Units for sale to Purchasers (including but not limited to, site cost construction costs, development contributions and costs of procuring bonds, utility connection costs, professional fees, sales costs, legal fees, finance costs, developer/risk margin, contingency, VAT and any other delivery cost howsoever arising) same to be provided by the Developer to the Agency in the same form as the document attached hereto at Schedule 7 with such amendments as approved by the Agency (acting reasonably); and
 - 7.5.2 provide the Agency with a comparison of delivery costs incurred in respect of each item set out in the document to be provided pursuant to clause 7.5.1 above as against the anticipated cost of that item as set out in the document attached hereto at Schedule 7; and
 - 7.5.3 provide the Agency with a certificate from the Developer's Representative (a "**DR Certificate**") confirming whether or not the updated all-inclusive cost that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers (as set out in the document referred to in clause 7.5.1 above) is less than, equal to or greater than the Anticipated Designated Units Delivery Cost.
- 7.6 With regard to any Estimates the Agency may dispute that any such Estimates are reasonable by serving a notice in writing on the Developer within five (5) Working Days of the date of receipt of the DR Certificate. If the Agency serves such a notice then the Costs Review Date shall not have occurred. The parties shall then engage in good faith for a period of no longer than ten (10) Working Days with a view to agreeing such Estimates. If such agreement cannot be reached by the parties, either party may elect to have the matter referred to an expert for determination in accordance with Clause 13. Following agreement or determination of the Estimates (as appropriate) the Developer shall on a date occurring within ten (10) Working Days of the date of agreement or determination of the Estimates (as appropriate) (which date shall then constitute the **Costs Review Date** for the purposes of this Agreement):
- 7.6.1 provide the Agency with a revised updated all-inclusive cost that the Developer has incurred (incorporating such agreed and / or determined Estimates) in order to deliver the Designated Units for sale to Purchasers; and
 - 7.6.2 provide the Agency with a revised comparison of delivery costs incurred in respect of each item set out in the document to be provided pursuant to clause 7.6.1 above as against the anticipated cost of that item as set out in the document attached hereto at Schedule 7; and
 - 7.6.3 provide the Agency with a revised DR Certificate (which shall constitute the DR Certificate for the purposes of this Agreement) confirming whether or not the updated all-inclusive cost that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers (as set out in the document referred to in clause 7.6.1 above) is less than, equal to or greater than the Anticipated Designated Units Delivery Cost.

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- 7.7 With regard to any documents and information referred to in clause 7.5 and 7.6 above, the Developer represents and warrants to the Agency on the date of this Agreement and on the date of delivery of such documents and information that:
- 7.7.1 any such documents and information shall be true and accurate in all material respects as at the date at which they are given or stated to be given; and
 - 7.7.2 any relevant financial projections or estimates contained in such documents shall be prepared on the basis of reasonable assumptions.
- 7.8 (Subject to clause 7.9 below) if the DR Certificate certifies that the updated all-inclusive cost that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers is equal to or greater than the Anticipated Designated Units Delivery Cost then the Anticipated Designated Units Delivery Cost shall constitute the Actual Designated Units Delivery Cost for the purposes of this Agreement and the Croí Cónaithe (Cities) Subsidy payable to the Developer in respect of a Designated Unit shall be calculated on the basis that the Anticipated Designated Units Delivery Cost for that Designated Unit is the Actual Designated Units Delivery Cost for that Designated Unit.
- 7.9 If:
- 7.9.1 the DR Certificate certifies that the updated all-inclusive cost that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers is less than the Anticipated Designated Units Delivery Cost; or
 - 7.9.2 if on the Costs Review Date a Costs Review Event occurs (the Agency shall notify the Developer in writing (a "**Costs Review Event Notification**") within 5 Working Days of the Costs Review Date if a Costs Review Event has occurred);

then the Agency shall review the documents and information provided by the Developer pursuant to clause 7.5 or 7.6 above (as appropriate) and shall (within 10 Working Days of the date of the Costs Review Event Notification or 10 Working Days of the date of receipt of the documents and information referred to in clause 7.5 or 7.6 above (as appropriate)) issue a certificate to the Developer certifying the Actual Designated Units Delivery Cost ("**Designated Units Delivery Cost Certificate**") which for the avoidance of doubt will be either less than or equal to the Anticipated Designated Units Delivery Cost.
- 7.10 If the Developer does not agree with the Actual Designated Units Delivery Cost as certified by the Agency in the Designated Units Delivery Cost Certificate then the parties shall engage in good faith with a view to agreeing the Actual Designated Units Delivery Cost within 10 Working Days of the date of issue of the Designated Units Delivery Cost Certificate.
- 7.11 If the parties cannot reach agreement within 10 Working Days of the date of issue of the Designated Units Delivery Cost Certificate the Developer may at any time prior to the expiry of 15 (Fifteen) Working Days of the date of issue of the Designated Units Delivery Cost Certificate elect to have the matter referred to an expert for determination in accordance with Clause 13. In such a scenario, the calculation of the Croí Cónaithe (Cities) Subsidy payable to the Developer shall be based on the Actual Designated Units Delivery Cost as determined by the expert appointed pursuant to Clause 13 (and which for the avoidance of doubt shall be deemed to be either equal to or less than the Anticipated Designated Units Delivery Cost and shall never be a figure that is higher than the Anticipated Designated Units Delivery Cost).
- 7.12 If the Developer does not make a referral to an expert pursuant to clause 7.11 above within 15 (Fifteen) Working Days of the date of issue of the Designated Units Delivery Cost Certificate then the Developer will be deemed to have accepted the Actual Designated Units

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Delivery Cost as certified by the Agency pursuant to the Designated Units Delivery Cost Certificate and the Croí Cónaithe (Cities) Subsidy payable to the Developer shall be based on the Actual Designated Units Delivery Cost as certified by the Agency in the Designated Units Delivery Cost Certificate.

- 7.13 For the avoidance of doubt where the Developer completes the sale of a Designated Unit to a Purchaser in circumstances where the Actual Designated Units Delivery Cost has not been determined in accordance with clauses 7.5 to 7.12 above then subject to the Developer's compliance with Clause 3.3.2 of this Agreement and prior receipt by the Agency of the Completion Requirements, and subject also to clauses 7.14 and 7.15 below, within 5 (Five) Working Days of the date of the completion of the sale of that Designated Unit to a Purchaser the Agency shall pay to the Developer in respect of that Designated Unit a provisional Croí Cónaithe (Cities) Subsidy calculated using the Anticipated Designated Units Delivery Cost for that Designated Unit in place of the Actual Designated Units Delivery Cost.
- 7.14 Following determination of the Actual Designated Units Delivery Cost of a Designated Unit pursuant to clauses 7.5 to 7.12 above and / or following determination of the Open Market Value of a Designated Unit pursuant to clause 6.7 of this Agreement if it transpires that a provisional subsidy paid to the Developer in respect of a Designated Unit is more than the Croí Cónaithe (Cities) Subsidy payable in respect of that Designated Unit then at the option of the Agency:
- 7.14.1 the Developer will, within five (5) Working Days of a demand in writing to the Developer made by the Agency, repay the Agency the amount of the overpayment or
- 7.14.2 the Agency shall deduct an amount equivalent to the overpayment from any further payments of the Croí Cónaithe (Cities) Subsidy payable by the Agency to the Developer in respect of the sales of any of the other Designated Units.
- 7.15 Following determination of the Actual Designated Units Delivery Cost of a Designated Unit pursuant to clauses 7.5 to 7.12 above and / or following determination of the Open Market Value of a Designated Unit pursuant to clause 6.7 of this Agreement if it transpires that a provisional subsidy paid to the Developer in respect of a Designated Unit is less than the Croí Cónaithe (Cities) Subsidy payable in respect of that Designated Unit then the Agency will pay the outstanding balance of the subsidy payable in respect of that Designated Unit to the Developer within 5 Working Days.
- 7.16 For the avoidance of doubt:
- 7.16.1 no change to the Anticipated Designated Units Delivery Cost will be permitted after the date of this Agreement.
- 7.16.2 there shall be no Croí Cónaithe (Cities) Subsidy payable to the Developer should the Actual Market Sales Units Price (as determined in accordance with this Agreement) exceed the Actual Designated Units Delivery Cost; and
- 7.16.3 In the event of an overpayment of the Croí Cónaithe (Cities) Subsidy by the Agency to the Developer the sum in question shall be a debt owing to the Agency by the Developer and shall be repayable on demand by the Developer to the Agency.

8. SALE OF DESIGNATED UNITS

- 8.1 In the event that the Developer fails to enter into a contract for sale or does not complete the sale of a Designated Unit to a Purchaser, the Developer will continue to make the Designated Unit available for sale to a Purchaser until a date falling twelve (12) months

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after the Date of Practical Completion of the Designated Unit (the “**Designation Period**”). If following the expiry of three (3) months from the end of the Designation Period the Designated Unit has not been purchased by a Purchaser, then the Developer shall be entitled to sell the Designated Unit on the open market to any purchaser and it will no longer be eligible for the Croí Cónaithe (Cities) Subsidy.

9. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall constitute a partnership or agency between the Agency and the Developer.

10. ASSIGNMENT

The Developer shall not be entitled to assign, mortgage, charge, declare a trust of or deal in any other manner with any of its rights or obligations under this Agreement to any third party without the prior written approval of the Agency (such approval not to be unreasonably withheld or delayed), save that the Agency shall consent to the grant of security over this Agreement to any Approved Lender or Approved Lenders that are providing finance to the Developer to fund the development of the Designated Units subject to such Approved Lender or Approved Lenders executing a direct agreement in a form acceptable to the Agency (acting reasonably)

11. CONFIDENTIALITY

11.1 The parties shall and shall procure that their agents shall, subject to Clause 11.2, keep confidential this Agreement and all matters relating to this Agreement which are expressly stated to be, or if in writing marked as, confidential.

11.2 Clause 11.1 shall not apply to:

- 11.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under this Agreement;
- 11.2.2 any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 11;
- 11.2.3 any disclosure which is required by law;
- 11.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 11.2.5 any provision of information to the parties' professional advisers, insurance advisers or lenders;
- 11.2.6 any registration or recording of any documents necessary to give effect to this Agreement with any governmental body; and
- 11.2.7 any disclosure to the Revenue Commissioners.

12. FORCE MAJEURE

12.1 Without prejudice to the termination rights of the Agency as set out in clause 5 of this Agreement the parties hereto shall be relieved from liability under this Agreement to the

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extent that by reason of Force Majeure they are not able to perform their obligations under this Agreement. The Agency shall have the right to terminate this Agreement in circumstances where the Force Majeure continues for a period in excess of 6 months and where such Force Majeure period has the effect of causing the Date of Practical Completion to occur after the Final Completion Date. When Force Majeure ceases or no longer causes the parties to be unable to comply with their obligations under this Agreement, the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure. The parties shall at all times following the occurrence of Force Majeure use all reasonable endeavours to prevent and mitigate the effect of any delay, provided that the Developer shall be entitled to an extension of time to the Completion Date in respect of any delay caused by reason of Force Majeure which is just and equitable in the circumstances then pertaining.

13. APPOINTMENT AND POWERS OF EXPERT

- 13.1 In the event of a dispute arising between the parties in relation to agreeing:
- 13.1.1 the Proposed Market Sales Units Price for a Designated Unit pursuant to Clause 6.2; and/or
 - 13.1.2 the Revised Proposed Market Sales Units Price for a Designated Unit pursuant to clause 6.5; and / or
 - 13.1.3 the Open Market Value for a Designated Unit pursuant to clause 6.7; and / or
 - 13.1.4 the Actual Designated Units Delivery Cost for the purposes of clause 7.11 of this Agreement;
 - 13.1.5 any Estimates for the purposes of clause 7.6:
- 13.2 such dispute shall, be referred to the decision of an independent and appropriately qualified expert (to be agreed between the parties and in the event that the parties cannot agree an expert within a period of 5 Working Days, to be nominated by (i) in the case of a dispute referred to in clause 13.1.1, 13.1.2 or 13.1.3 above the President of the Society of Chartered Surveyors Ireland upon the application of either party and (ii) in the case of a dispute referred to in clause 13.1.4 above the President of the Society of Chartered Surveyors Ireland upon the application of the Developer to determine the matter and (iii) in the case of a dispute referred to in clause 13.1.5 above the President of the Society of Chartered Surveyors Ireland upon the application of either party to determine the matter).
- 13.3 In the event of a dispute arising between the parties in relation to agreeing whether an Insured Delay Event has occurred and / or the number of days by which the Completion Date should be extended, such dispute shall be referred to the decision of an independent and appropriately qualified expert (being an architect with in excess of 20 years practice in the area of residential development of apartment schemes) to be agreed between the parties within 5 working Days and in the event that the parties cannot agree an expert, to be nominated by the President of the Royal Institute of the Architects of Ireland upon the application of either party to determine the matter.
- 13.4 The expert shall give his decision on the matters in dispute within a period of 10 (ten) Working Days from the date of the referral of the question of dispute to him. It is hereby agreed that the decision of the expert shall be final and binding on the parties.
- 13.5 The expert shall be entitled to award and determine that the costs incurred in such referral, including the experts fees and expenses, shall be paid by the Agency or the Developer, or shall be entitled, at his discretion, to award and determine that such fees, costs and

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expenses, shall be apportioned, in such proportion as the expert shall determinate, as between them. The decision of the expert on the question of costs and expenses shall be binding on the parties.

14. LAW AND ARBITRATION

- 14.1 This Agreement and any dispute arising out of this Agreement shall be governed by the Laws of Ireland.
- 14.2 The parties shall attempt to amicably settle any dispute or difference arising out of or in connection with this Agreement, other than a dispute coming within the provisions of Clause 13.1 or 13.3, within ten (10) Working Days after written notice that such a situation exists.
- 14.3 Should the process outlined in Clause 14.2 not succeed in resolving the dispute, then, at the election of either party the matter shall be referred to and finally resolved by arbitration. Any such arbitration shall be governed by the Arbitration Act 2010.
- 14.4 The person to be appointed as Arbitrator shall be agreed between the parties, or failing such agreement within ten (10) Working Days, to be nominated, on the application of either party, by the President for the time being of the Chartered Institute of Arbitrators (Irish branch)
- 14.5 The language of arbitration shall be English and the place of arbitration shall be Dublin.
- 14.6 Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential: the referral to arbitration, all awards together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain- save and to the extent that this disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 14.7 No party shall be entitled to suspend performance of this Agreement merely by reason of the reference of a dispute to arbitration or to the courts.

15. REMEDIES CUMULATIVE

No delay by or omission on the part of the Agency and / or the Developer in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy by the Agency and / or the Developer shall not preclude any other or future exercise thereof or the exercise by the Agency and / or the Developer of any other right, power, privilege or remedy. The rights, powers, privileges and remedies provided to the Agency and / or the Developer by this Agreement are cumulative and not exhaustive and are not exclusive of any rights or remedies provided by law.

16. ENTIRE AGREEMENT

Save as expressly stated herein, this Agreement constitutes the entire understanding between the parties relating to the subject matter hereof and supersedes all previous agreements, understandings and commitments between the parties, representations made by either party, whether oral or written, with respect to the subject hereof.

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17. NOTICES

Notices relating to this Agreement may be given by any party hereto by:

a) email to the address specified below (or such other email address as any such party hereto may from time to time notify to the other parties hereto in writing in accordance with the provisions of this Agreement) and any such notice shall be validly given or made at the time of delivery:

- (i) in the case of the Agency: croiconaithe@housingagency.ie;
- (ii) in the case of the Developer []

b) or by letter addressed to the Developer at its registered office for the time being and the Agency at its principal offices for the time being and any such notice given by letter shall be deemed to have been given at the time at which the letter would be delivered by first class post or by hand (including courier);

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9.00 a.m. to 5.00 p.m. on a Working Day), such notice or other communication shall be deemed to be given or made at the start of working hours on the next succeeding Working Day.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed and delivered shall constitute an original, all the counterparts together constituting the same instrument. No counterpart shall be effective until each party has executed and delivered at least one counterpart. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement and each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

19. LEGAL COSTS

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

20. DATA PROTECTION

For the purposes of the Data Protection Acts 1988 to 2018, EU General Data Protection Regulation (EU) 2016/679 and all applicable data protection and privacy legislation in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communication) ("**Data Protection Legislation**") any Personal Data provided to the Agency under this Agreement shall be processed by the Agency as Processor, with the Department of Housing, Local Government and Heritage being the Controller. For the purposes of this Agreement, 'Personal Data', 'processing',

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'process', 'processed', 'Controller' and 'Processor' shall have the meaning set out under Data Protection Legislation. The Agency shall only use Personal Data provided to it under this Agreement as set out in the Controller's data protection policy which is available on the Agency's website.

IN WITNESS whereof the Agency and the Developer have executed and delivered this Deed on the date first before written.

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GIVEN under the Common Seal
of the **Agency** and
DELIVERED as a **DEED**

Authorised Signatory

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GIVEN under the Common Seal
of the **DEVELOPER** and
DELIVERED as a **DEED**

Director

Director/Secretary

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SCHEDULE 1

AGENCY'S REQUIREMENTS

SAMPLE

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SCHEDULE 2

PLANNING PERMISSION

SAMPLE

SUBJECT TO CONTRACT / CONTRACT DENIED

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SCHEDULE 3

PART 1 PLAN OF SITE

SAMPLE

PART 2
PLAN OF DESIGNATED UNITS

SAMPLE

SCHEDULE 4

MARKET SALES PROCESS

1. Prior to the advertisement of any of the Designated Units for sale, the Developer shall:
 - 1.1 instruct a suitably qualified, experienced and independent valuer to estimate the Proposed Market Sales Units Price for each Designated Unit. For the avoidance of doubt such valuation must be prepared on the basis of:
 - 1.1.1 The Royal Institution of Chartered Surveyors (RICS) (Red Book) OR:
 - 1.1.2 The International Valuation Standards Committee/TeGoVa (Blue Book);
 - 1.2 notify the Agency in writing of the Proposed Market Sales Units Price for each Designated Unit; and
 - 1.3 receive written confirmation from the Agency within fifteen (15) Working Days of such notification from the Developer, that it is satisfied with the Proposed Market Sales Units Price for each Designated Unit.
2. In the event that the Agency is not satisfied with the Proposed Market Sales Units Price for each Designated Unit, the Agency may, within fifteen (15) Working Days of notification to the Agency as per clause 1.2 above, appoint a separate suitably qualified, experienced and independent valuer to forecast the Proposed Market Sales Units Price, with such forecast to be provided to the Developer within ten (10) Working Days of the appointment by the Agency of such independent valuer. Following the separate valuation, the parties shall engage in good faith for a period of no longer than (ten) 10 Working Days with a view to agreeing the Proposed Market Sales Units Price. If such an agreement cannot be reached by the parties, either party may, following the expiry of the ten (10) Working Day engagement period, elect to have the matter referred to an expert for determination in accordance with Clause 13.
3. The Developer shall advertise the Designated Units for sale at the Proposed Market Sales Units Price, as ascertained pursuant to Clause 6.1 or 6.2 (as case may be) and shall not advertise any of the Designated Units for sale at a price which is less than the Proposed Market Sales Units Price.
4. If the Developer has failed to agree the sale of a Designated Unit (subject to contract) within 56 calendar days of advertising the first of the Designated Units for sale at the Proposed Market Sales Units Price or if at any time a period of 56 calendar days elapses from the date of agreeing a sale of a Designated Unit (subject to contract) without agreeing a sale of any other Designated Unit (subject to contract), then the Developer:
 - 4.1 may advise the Agency that it wishes to instruct a suitably qualified, experienced and independent valuer to estimate a revised Proposed Market Sales Units Price ("**Revised Proposed Market Sales Units Price**") for each Designated Unit. For the avoidance of doubt such valuation must be prepared on the basis of:
 - 4.1.1 The Royal Institution of Chartered Surveyors (RICS) (Red Book) OR:
 - 4.1.2 The International Valuation Standards Committee/TeGoVa (Blue Book);
 - 4.1.3 may instruct a suitably qualified, experienced and independent valuer to estimate a Revised Proposed Market Sales Units Price for each Designated Unit;

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- 4.1.4 shall notify the Agency of the Revised Proposed Market Sales Units Price for each Designated Unit and provide (to the Agency in writing) the rationale of the Developer for seeking to advertise the Designated Units for sale at the Revised Proposed Market Sales Units Price; and
 - 4.1.5 shall (subject to clause 5 below) receive written confirmation from the Agency, within fifteen (15) Working Days of such notification from the Developer, that it is satisfied with the Revised Proposed Market Sales Units Price for each Designated Unit whereupon the Developer shall be entitled to advertise the Designated Units for sale at the Revised Proposed Market Sale Units Price and shall not advertise any of the Designated Units for sale at a price which is less than the Revised Proposed Market Sales Units Price.
- 5. In the event that the Agency is not satisfied with the Revised Proposed Market Sales Units Price for each Designated Unit, the Agency may, within fifteen (15) Working Days of notification to the Agency as per clause 4.1.4, appoint a separate suitably qualified, experienced and independent valuer to forecast the Revised Proposed Market Sales Units Price with such forecast to be provided to the Developer within ten (10) Working Days of the date of appointment by the Agency of such independent valuer. Following the separate valuation, the parties shall engage in good faith for a period of no longer than ten (10) Working Days with a view to agreeing the Revised Proposed Market Sales Units Price. If such an agreement cannot be reached by the parties, either party may, following the expiry of the ten (10) Working Day engagement period, elect to have the matter referred to an expert for determination in accordance with Clause 13.
- 6. Within 15 (Fifteen) Working Days of agreeing (subject to contract) the sale of a Designated Unit to a Purchaser and accepting a booking deposit, the Developer shall notify the Agency of the purchase price of the Designated Unit as agreed with the Purchaser which shall reflect the Open Market Value and which will become the Actual Market Sales Units Price should the sale proceed to closing.
- 7. The Developer shall notify the Agency of the Practical Completion of the Designated Unit and the anticipated date for the completion of the sale of the Designated Unit;
- 8. Subject to the Developer's compliance with Clause 3.3.2 of this Agreement and prior receipt by the Agency of the Completion Requirements and subject to the terms of clauses 6 and 7 of this Agreement, the Agency shall pay the Croí Cónaithe (Cities) Subsidy in respect of the relevant Designated Unit (inclusive of VAT) to the Developer within 5 (five) Working Days of the date of the completion of the sale of the Designated Unit by the Developer to the Purchaser.
- 9. If there is any conflict between the terms of this schedule 4 and clauses 6 and 7 of the Agreement, clauses 6 and 7 of the Agreement shall prevail.

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SCHEDULE 5

ANTICIPATED MARKET SALES UNITS PRICES

SAMPLE

ANTICIPATED CROÍ CÓNAITHE (CITIES) SUBSIDIES

SAMPLE

SCHEDULE 7

ANTICIPATED DESIGNATED UNIT DELIVERY COSTS

SAMPLE

SCHEDULE 8

DECLARATION

SAMPLE

SCHEDULE 9

Costs Review Event

Costs Review Event Sample Calculations

Example One

Wholesale Price Index

a) Wholesale Price Index in December 2022: ³⁰	142.9
b) Wholesale Price Index in January 2025: ³¹	<u>148.4</u>
	+5.5
c) Percentage Change in Index: ³²	+3.8%
d) 60% of Percentage Change in Index: ³³	+2.3%

Craftsperson rate in Sectoral Employment Order

e) Hourly Rate for Craftspersons December 2022: ³⁴	20.52
f) Hourly Rate for Craftspersons January 2025: ³⁵	<u>22.14</u>
	+1.62
g) Percentage Change in Index: ³⁶	+7.89%
h) 40% of Percentage Change in Index:	+3.16 ³⁷ %
Aggregate of figures (d) and (h):	+5.46%

+5.46 is > - 3.00% therefore a Costs Review Event has not occurred.

³⁰ Assumed date of Agreement for the purposes of this sample calculation

³¹ Notional figure at Costs Review Date for the purposes of this sample calculation

³² 5.5 divided by 142.9 multiplied by 100 rounded to one decimal place

³³ Rounded to one decimal place

³⁴ Assumed date of Agreement for purposes of this sample calculation

³⁵ Notional Figure at Costs Review Date for the purposes of this sample calculation

³⁶ 1.62 divided by 20.52 multiplied by 100 rounded to two decimal places

³⁷ Rounded to two decimal places

Example Two

Wholesale Price Index

a) Wholesale Price Index in December 2022:	142.9
b) Wholesale Price Index in January 2025:	<u>132.9</u> -10
c) Percentage Change in Index:	-7.0%
d) 60% of Percentage Change in Index:	-4.2%

Craftsperson rate in Sectoral Employment Order

e) Hourly Rate for Craftspersons December 2022:	20.52
f) Hourly Rate for Craftspersons January 2025:	<u>20.52</u> 0
g) Percentage Change in Index:	0%
h) 40% of Percentage Change in Index:	0%

Aggregate of figures (d) and (h): **-4.2%**

-4.2% is < - 3.00% therefore a Costs Review Event has occurred.

Example Three

Wholesale Price Index

a) Wholesale Price Index in December 2022:	142.9
b) Wholesale Price Index in January 2025:	<u>132.9</u> -10
c) Percentage Change in Index:	-7.0%
d) 60% of Percentage Change in Index:	-4.2%

Craftsperson rate in Sectoral Employment Order

e) Hourly Rate for Craftspersons December 2022:	20.52
f) Hourly Rate for Craftspersons January 2025:	<u>25.52</u> +5.0
g) Percentage Change in Index:	+24.37%
h) 40% of Percentage Change in Index:	+9.75%

Aggregate of figures (d) and (h): +5.55%

+5.55% is > - 3.00% therefore a Costs Review Event has not occurred.

Example Four

Wholesale Price Index

a) Wholesale Price Index in December 2022:	142.9
b) Wholesale Price Index in January 2025:	<u>132.9</u> -10
c) Percentage Change in Index:	-7.0%
d) 60% of Percentage Change in Index:	-4.2%

Craftsperson rate in Sectoral Employment Order

e) Hourly Rate for Craftspersons December 2022:	20.52
f) Hourly Rate for Craftspersons January 2025:	<u>18.52</u> -2.0
g) Percentage Change in Index:	-9.75%
h) 40% of Percentage Change in Index:	-3.9%
Aggregate of figures (d) and (h):	-8.1%

-8.1% is < -3.00% therefore a Costs Review Event has occurred.

SCHEDULE 10

DR Certificate

[On headed paper of Developer's Representative]

The Housing and Sustainable Communities Agency
53 Mount Street
Dublin 2

Dated _____

Designation and Development Agreement dated [] (in respect of the development of build to sell apartments at [] under the Croí Cónaithe (Cities) Fund) between The Housing and Sustainable Communities Agency and [Developer] (the "Designation and Development Agreement")

Dear Sir / Madam

We refer to the Designation and Development Agreement.

This is the DR Certificate as such term is defined in the Designation and Development Agreement. Defined terms (not otherwise defined herein) have the meaning given to them in the Designation and Development Agreement.

We hereby certify that the updated all-inclusive cost that the Developer has incurred in order to deliver the Designated Units for sale to Purchasers (as set out in the document referred to in clause 7.5.1 or clause 7.6.1 (as appropriate) of the Designation and Development Agreement a copy of which is attached hereto at Schedule 1) is [less than / equal to / greater than]³ the Anticipated Designated Units Delivery Cost.

[DR Representative]

³ DR Representative to amend as appropriate

Schedule 1

SCHEDULE 11

Form of Clawback Agreement

SAMPLE

Special Conditions

1. For the purpose of this Special Condition:

"Clawback Agreement" means the form of clawback agreement in the form specified in Appendix [•] hereto to be entered into between the [Purchaser/Employer*], and the Housing and Sustainable Communities Agency;

"Declaration" means the form of declaration in the form specified in Appendix [•] hereto to be executed by the [Purchaser/Employer*] for the benefit of inter alios the Housing and Sustainable Communities Agency;

"Consent" means the consent of the [Purchaser / Employers] lender to the registration of the Caution in favour of the Housing and Sustainable Communities Agency

The [Vendor/Contractor*] has entered in to a Designation and Development Agreement with the Housing and Sustainable Communities Agency under the Croí Cónaithe (Cities) Fund. The [Purchaser/Employer*] acknowledges and agrees that prior to the Closing Date, the [Purchaser/Employer*] shall furnish to the [Vendor/Contractor]:

- (a) the Clawback Agreement in duplicate duly executed by the [Purchaser/Employer*];
- (b) the Declaration duly executed by the [Purchaser/Employer*];
- (c) confirmation that the [Purchaser/Employer*] has submitted appropriate identification documentation to the Housing and Sustainable Communities Agency; and
- (d) the Consent.

in order that the [Vendor/Contractor*] can comply with the terms and conditions of the Designation and Development Agreement. The [Purchaser/Employer*] confirms that at the Date of Sale it has read and understands the contents of the Clawback Agreement and Declaration and enters into this [Contract for Sale / Agreement] with full knowledge thereof. Completion shall not occur unless and until such time the [Vendor/Contractor*] has received the documents at (a)-(d) above from the [Purchaser/Employer*] duly executed.

The [Purchaser/Employer*]'s hereby irrevocably authorises their Solicitor to provide to the [Vendor/Contractor*]'s Solicitor details of the dealing number relating to the Purchaser's application for registration as owner of the Property with Tailte Éireann as soon as reasonably practicable post completion.

**to be amended as appropriate to tie in with defined terms in the relevant Contract for Sale / Building Agreement*

DATED _____ 2023

(1) THE HOUSING AND SUSTAINABLE COMMUNITIES AGENCY

AND

(2) [DEVELOPER]

AND

(3) [LENDER]

*Direct Agreement relating to a
Designation and Development Agreement in respect of the development of build to sell
apartments at*

[xxxx] under the Croí Cónaithe (Cities) Fund

BETWEEN:

- (1) The Housing and Sustainable Communities Agency of 53 Mount Street, Dublin 2 (hereinafter called "the **Agency**" which expression shall include its successors and assigns).

And

- (2) [●] a company incorporated under the laws of Ireland (registered number [●]) and having its registered office at [●] (hereinafter referred to as the "**Developer**" which expression shall include its successors and permitted assigns).
- (3) [●] (hereinafter referred to as the "**Lender**" which expression shall include its successors and permitted assigns).

WHEREAS:

- (A) The Developer is the owner of the Site and has secured planning permission for the development of apartments on the Site. The Developer intends to commence the construction of the apartments on the Site.⁴
- (B) The Developer has agreed to develop the apartments in accordance with the terms and conditions of the Designation and Development Agreement and to sell the apartments to Purchasers on the terms as provided for in the Designation and Development Agreement.
- (c) Pursuant to the Facility Agreement the Lender has entered into an agreement for the provision of certain finance in connection with the construction of apartments on the Site and the Developer has granted a Security to the Lender in respect of its right, title and interest in the Site.
- (d) At the request of the Lender and the Developer the Agency has agreed to enter into this Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

- 1.1 In this Agreement (including the Recitals), all terms and expressions shall, unless otherwise defined in this Agreement or the context requires otherwise, have the meaning attributed to such terms in the Designation and Development Agreement.
- 1.2 In this Agreement (including the Recitals), the following terms and expressions shall, unless the context otherwise requires, have the following meanings:

"Appointed Representative" means the Lender or a Receiver;

"Approved Lender" means a bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, servicing, purchasing or investing in loans, securities or other financial assets and which is lawfully entitled to carry on their relevant business in Ireland.

⁴ Amend to refer to a phase of the development, where appropriate.

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"**Croí Cónaithe (Cities) Subsidy**" has the meaning given to it in the Designation and Development Agreement;

"**Development**" has the meaning given to it in the Designation and Development Agreement;

"**Designation and Development Agreement**" means the Designation and Development Agreement dated on or about the date hereof between the Developer and the Agency (and as may be further amended, supplemented or varied from time to time);

"**Designation and Development Agreement Termination Right**" has the meaning given to it in clause 4.1;

"**Designated Units**" has the meaning given to it in the Designation and Development Agreement;

"**Facility Agreement**" means [●];

"**Final Completion Date**" has the meaning given to it in the Designation and Development Agreement;

"**Immediate Termination Event Clauses**" means any of clauses [5.1.1 or 5.1.4] of the Designation and Development Agreement;

"**Lender Notice of Termination**" means a notice in writing served by the Agency on the Lender notifying of its entitlement to terminate the Designation and Development Agreement pursuant to clause [5.1.2 or 5.1.3] of the Designation and Development Agreement (as the case may be);

"**Parties**" means the parties to this Agreement and each a "**Party**";

"**Purchasers**" has the meaning given to it in the Designation and Development Agreement;

"**Receiver**" means a receiver and/or receiver and manager appointed by the Lender under the Security Document;

"**Standstill Period**" means the period commencing on the date on which the Agency shall serve a Lender Notice of Termination on the Lender and ending **60** calendar days later;

"**Site**" means [●];

"**Security**" means a mortgage, charge, assignment, pledge, lien, encumbrance or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Document**" means [*Debenture dated on or about the date hereof between the Developer and the Lender*];

"**Step In Date**" means the date specified in the Step In Notice as the Step In Date which date shall be no later than the date occurring **1** calendar day from the date of the Step In Notice;

"**Step In Notice**" means a notice served by the Lender or a Receiver in the form prescribed in Schedule 1 hereto notifying of the Lender or the Receiver's (as the case may be) intention to exercise its rights to step in to the Designation and Development Agreement whereupon all the rights and obligations of the Developer under the Designation and Development Agreement shall thereafter be performed and exercised by the Appointed Representative;

"**Step In Undertaking**" is defined in clause 4.4 (b); and

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“Working Day(s)” means a day on which banks are open for business in Dublin

2. INTERPRETATION

In this Agreement including the recitals (save where the context otherwise requires or implies):

- 2.1 words importing the singular shall where the context so requires include the plural and vice versa;
- 2.2 words of the masculine gender include the feminine and neuter genders and all such words shall be construed interchangeably in that manner;
- 2.3 words such as “hereunder”, “hereto”, and “herein” and other words commencing with “here” shall refer to the whole of this Agreement and not to any particular Clause;
- 2.4 save as otherwise provided herein, any reference to a Clause, paragraph or Sub-Clause (as the case may be) of this Agreement and any reference in a Clause to a paragraph or Sub-Clause shall be a reference in a Clause to a paragraph or Sub-Clause of the Clause in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- 2.5 the headings and captions to the Clauses are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this Agreement;
- 2.6 reference to a statute or Act or a provision of a statute or Act shall include any statute or Act or provision of a statute or Act amending consolidating or replacing it for the time being in force;
- 2.7 words denoting an obligation on a Party to do any act matter or thing shall include an obligation to procure that it be done and words placing a Party under a restriction includes an obligation not to permit or allow infringement of the restriction; and
- 2.8 where any Party comprises more than one person the obligations and liabilities of that Party under this Agreement shall be joint and several obligations and liabilities of those persons.

3 NOTICE AND CONSENT TO SECURITY

- 3.1 The Developer hereby gives notice to the Agency that, pursuant to the Security Document, it has granted security to the Lender by way of charge and / or security assignment over (inter alia) all its present and future rights, title, benefit and interest in and to the Designation and Development Agreement.
- 3.2 The Agency acknowledges notice of, and consents to, the grant of security as more particularly referred to in paragraph 3.1 above.
- 3.3 The Agency confirms to the Lender that it has not received notice of any other Security over the Designation and Development Agreement.
- 3.4 The Agency confirms that at the date hereof it is not aware of any non-performance, non-observance or breach by the Developer of any of the terms of the Designation and Development Agreement.
- 3.5 The Agency confirms that (except as otherwise provided by its terms) it will not agree to any variation or amendment of the terms of the Designation and Development Agreement without the prior consent in writing of the Lender.
- 3.6 The Agency confirms that it shall provide the Lender with any information concerning the Designation and Development Agreement (and compliance by the Developer with the terms thereof) as requested by the Lender from time to time.

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4 STEP IN RIGHT

4.1 In consideration of the mutual covenants and conditions contained herein, the Agency agrees with the Lender that it will not exercise any rights which it may have to terminate or determine the Designation and Development Agreement on foot of clauses 5.1.2 or 5.1.3 of the Designation and Development Agreement (a "**Designation and Development Agreement Termination Right**") without first having served on the Lender a Lender Notice of Termination and following the service of a Lender Notice of Termination, during the Standstill Period will not exercise any such rights.

4.2 The Agency shall, at the same time as it issues the Lender Notice of Termination advise the Lender of the grounds for service of the Lender Notice of Termination and the actions needed to remedy same.

4.3 The Agency shall, during the Standstill Period, provide the Lender with such further information, as the Lender may request (acting reasonably), in relation to the grounds for service of the Lender Notice of Termination and any outstanding obligations to be performed by the Developer under the Designation and Development Agreement.

4.4 Subject to clause 4.7, the Agency's entitlement to exercise the Designation and Development Agreement Termination Right shall cease if within the Standstill Period the Lender or a Receiver serves:

- a) a Step In Notice on the Agency confirming that an Appointed Representative (details of which shall be specified in the Step In Notice) shall with effect from the Step In Date assume all of the rights and obligations of the Developer under the Designation and Development Agreement; and
- b) an undertaking (in the form specified in schedule 2 hereto) (a "**Step In Undertaking**") executed under seal by the Appointed Representative undertaking to be bound by the Designation and Development Agreement from the Step In Date and to perform all of the obligations of the Developer thereunder.

4.5 Notwithstanding any other term of this Agreement, any Step In Notice and / or any Step In Undertaking, the Parties hereto hereby acknowledge, accept and agree that any Receiver (in the service of any Step In Notice or Step In Undertaking) shall act in his / her capacity as receiver only and it is hereby agreed that any such Receiver and his / her estate shall have no personal liability in respect of any Step In Notice, any Step In Undertaking or any matter arising in connection therewith.

4.6 If within the Standstill Period:

- a) the Lender or a Receiver serves a Step In Notice on the Agency; and
- b) the Lender or a Receiver serves a Step In Undertaking on the Agency;

1.1 the Designation and Development Agreement shall continue in full force and effect as if it had been originally entered into between the Appointed Representative (as the Developer) and the Agency (as the Agency) to the exclusion of the Developer (but without prejudice to any rights or claims of the Agency against the Developer in respect of any prior breach of the terms of the Designation and Development Agreement).

4.7 For the avoidance of doubt, without prejudice to any other rights remedies or other powers available to the Agency, at any time after the Step In Date:

- a) if all of the Designated Units are not completed by the Final Completion Date; or
- 1.2
- b) if a receiver, liquidator or examiner is appointed in respect of the Appointed Representative or any building contractor or other professional engaged by the Appointed Representative or any other person to carry out and complete the Development (as the case may be) and if such appointment is not terminated or set

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aside within twenty one (21) days of the date of such appointment and if the carrying out of the Development is wholly or substantially suspended for more than fourteen (14) days as a result of such appointment and such suspension shall continue for and shall not be remedied within one (1) month after service on the Appointed Representative by the Agency of a notice specifying the suspension and invoking the provisions of this Clause; or

1.3

c) if the Appointed Representative commits a material breach of the Designation and Development Agreement and such breach is not remedied within forty five (45) days after service on the Appointed Representative by the Agency of a notice specifying the breach and invoking the provisions of this Clause; or

d) if (the Appointed Representative being a Receiver) the Receiver is removed as receiver under the Security Document or the appointment of the Receiver is held to be invalid or is otherwise terminated;

1.4

then and in any such case the Designation and Development Agreement may be terminated and determined by the Agency by notice in writing to that effect to the Appointed Representative (such notice to take effect without prejudice to the rights of the Agency in respect of any prior breach).

4.8 If the Designation and Development Agreement is terminated for any reason the Appointed Representative (and for the avoidance of doubt the Developer) shall not be entitled to payment of the Croí Cónaithe (Cities) Subsidy or any other payment whatsoever in respect of any Designated Unit which has not been sold to a Purchaser as of the date of termination or is not the subject of a duly binding contract for sale between the Appointed Representative and a Purchaser as of the date of termination provided that for the avoidance of doubt, in the case of any Designated Unit which has been sold to a Purchaser as of the date of termination or is the subject of a duly binding contract for sale between the Appointed Representative and a Purchaser as of the date of termination same shall remain eligible for payment of a Croí Cónaithe (Cities) Subsidy on the terms set out in the Designation and Development Agreement (including without limitation prior receipt by the Agency of the Completion Requirements) as if the Designation and Development Agreement had not been terminated.

4.9 For the avoidance of doubt:

a) No liability under the Designation and Development Agreement or otherwise shall attach to the Lender, a Receiver or an Appointed Representative (as applicable) unless and until a Step In Notice is served in accordance with the provisions of Clause 4.4;

b) the service by the Agency of a Lender Notice of Termination on the Lender in accordance with Clause 4.1 shall not oblige the Lender to exercise any step in rights under this Agreement; and

c) (save where amended, varied or supplemented pursuant to the terms of this Agreement) the rights and obligations of an Appointed Representative after the Step In Date shall be the same in all respects as those of the Developer prior to the Step In Date.

4.10 The Agency and the Lender agree that they shall each procure that its appropriate employees or professional advisors shall meet within 5 Working Days of a request for a meeting in that regard to discuss the circumstances giving rise to the breach referred to in a Lender Notice of Termination or any other known outstanding breaches of the Designation and Development Agreement and to discuss the actions required to be undertaken for the purpose of rectifying any alleged default under the Designation and Development Agreement.

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- 4.11 For the avoidance of doubt, notwithstanding any other term of this Agreement, the Agency shall be entitled to terminate the Designation and Development Agreement pursuant to the Immediate Termination Event Clauses of the Designation and Development Agreement without serving any prior notice on the Lender and without the Lender being entitled to exercise any step in rights in respect of the Designation and Development Agreement.

5 ASSIGNMENT OF DEVELOPERS INTEREST IN DESIGNATION AND DEVELOPMENT AGREEMENT

The Parties hereto note the terms of clause 10 of the Designation and Development Agreement which provides that *"The Developer shall not be entitled to assign, mortgage, charge, declare a trust of or deal in any other manner with any of its rights or obligations under this Agreement to any third party without the prior written approval of the Agency (such approval not to be unreasonably withheld or delayed)..."*. If at any time the Developer (or where relevant the Lender as mortgagee / chargee or a Receiver) assigns its rights and obligations under the Designation and Development Agreement to any third party (a **"Successor Developer"**) in accordance with the terms of clause 10 of the Designation and Development Agreement (which for the avoidance of doubt shall require the prior written approval of the Agency as aforesaid), the Agency agrees that it shall, at the cost of the Successor Developer enter into an Agreement on substantially the same terms as this Agreement with any funder to such Successor Developer which is an Approved Lender.

6 ASSIGNMENT AND TRANSFER

- 6.1 Subject to clause 6.2 below the Lender may not assign any of its rights or transfer any of its rights or obligations under this Agreement. The Lender shall not be entitled to assign, mortgage, charge, declare a trust of or deal in any other manner with any of its rights or obligations under this Agreement.
- 6.2 The Lender may transfer by novation all (but not some of) its rights and obligations under this Agreement to an Approved Lender to which it has transferred its interest in the Security Document (and the facilities related thereto).
- 6.3 The Developer may not assign any of its rights or transfer any of its rights or obligations under this Agreement. The Developer shall not be entitled to assign, mortgage, charge, declare a trust of or deal in any other manner with any of its rights or obligations under this Agreement.

7 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall constitute a partnership or agency between the Agency and any of the other Parties to this Agreement.

8 CONFIDENTIALITY

- 8.1 The Parties shall and shall procure that their agents shall, subject to Clause 8.2, keep confidential this Agreement and all matters relating to this Agreement which are expressly stated to be, or if in writing marked as, confidential.

- 8.2 Clause 8.1 shall not apply to:

- 2.1.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under this Agreement;
- 2.1.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause;
- 2.1.3 any disclosure which is required by law;
- 2.1.4 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 2.1.5 any provision of information to the Parties' professional advisers or insurance advisers;

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2.1.6 any registration or recording of any documents necessary to give effect to this Agreement with any governmental body; and

2.1.7 any disclosure to the Revenue Commissioners.

9 LAW

This Agreement and any dispute arising out of this Agreement shall be governed by the Laws of Ireland. The courts of Ireland are to have exclusive jurisdiction to settle any disputes, including any disputes of a non – contractual nature which may arise out of or in connection with this Agreement.

10 REMEDIES CUMULATIVE

No delay by or omission on the part of the Agency in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy by the Agency shall not preclude any other or future exercise thereof or the exercise by the Agency of any other right, power, privilege or remedy. The rights, powers, privileges and remedies provided to the Agency by this Agreement are cumulative and not exhaustive and are not exclusive of any rights or remedies provided by law.

11 ENTIRE AGREEMENT

Save as expressly stated herein, this Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof and supersedes all previous agreements, understandings and commitments between the Parties and representations made by any Party, whether oral or written, with respect to the subject hereof.

12 NOTICES

12.1 Communications in writing

1.5 Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter.

12.2 Addresses and Notices

1.6 The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of the Agency:

(i) ATTN: [Director of Delivery & Innovation]

(ii) Address: **53 Mount Street, Dublin 2**

2.2 in the case of the Developer:

(i) ATTN: The Directors / Secretary

(ii) Address: [●]

2.3 in the case of the Lender:

(i) ATTN: [●]

(ii) Address: [●]

or any substitute address or department or officer as the Agency or Developer or Lender may notify to each other by not less than five Working Days' notice.

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1.7

12.3 Delivery

1.8 Any communication or document made or delivered by one person to another under or in connection with this Agreement will be effective only if by way of letter and it has been left at the relevant address or two Working Days after being deposited in the post postage prepaid in an envelope addressed to it at that address. Any communication or document to be made or delivered to the Agency will be effective only when actually received by the Agency and then only if it is expressly marked for the attention of the department or officer as set out in clause 12.2 above (or any substitute department or officer as the Agency shall specify for this purpose). Where a communication or document is received by the Agency after 5.00 pm on any Working Day, it shall be deemed to be received at 9.30 am on the next subsequent Working Day.

13 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when executed and delivered shall constitute an original, all the counterparts together constituting the same instrument. No counterpart shall be effective until each Party has executed and delivered at least one counterpart. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement and each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

14 LEGAL COSTS

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

15 VARIATION

1.9 This Agreement may not be varied except by an agreement in writing signed by each of the Parties.

16 MISCELLANEOUS

- a) The illegality, invalidity or unenforceability to any extent of any provision of this Agreement under the law of any jurisdiction shall affect its legality, validity or enforceability in such jurisdiction to such extent only and shall not affect its legality, validity or enforceability under the law of any other jurisdiction, nor the legality, validity or enforceability of any other provision.
- b) For the purposes of the Data Protection Acts 1988 to 2018, EU General Data Protection Regulation (EU) 2016/679 and all applicable data protection and privacy legislation in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communication) ("**Data Protection Legislation**"), any Personal Data provided to the Agency under this Agreement shall be processed by the Agency as Processor, with the Department of Housing, Local Government and Heritage being the Controller. For the purposes of this Agreement, 'Personal Data', 'processing', 'process', 'processed', 'Controller' and 'Processor' shall have the meaning set out under Data Protection Legislation. The Agency shall only use Personal Data provided to it under this Agreement as set out in the Controller's data protection policy which is available on the Agency's website.

1.10

1.11 **IN WITNESS** whereof the Agreement has been executed as a deed on the date which first appears on page 1 above.

SCHEDULE 1

STEP IN NOTICE

To: The Housing and Sustainable Communities Agency of 53 Mount Street, Dublin 2

Dated: _____ 20

Re: Direct Agreement relating to a Designation and Development Agreement in respect of the development of build to sell apartments at [xxxx] under the Croí Cónaithe (Cities) Fund (the "**Direct Agreement**")

Dear Sir / Madam

I / We refer to the Direct Agreement.

In this Step In Notice, capitalised terms and phrases have the same meaning as ascribed to them in the Direct Agreement unless expressly stated otherwise herein.

I / WE HEREBY GIVE YOU NOTICE that I / we [Lender / Receiver] intend to exercise my / our right, pursuant to the Direct Agreement, to step into the Designation and Development Agreement

WHEREUPON

[Lender / Receiver] (the "**Appointed Representative**") will with effect from [] (the "**Step In Date**") assume all of the Developer's rights and perform all of the Developer's obligations under the Designation and Development Agreement.

I / we hereby irrevocably instruct and authorise you to accept the Appointed Representative's instructions under the Designation and Development Agreement to the exclusion of the Developer with effect from the Step In Date.

[The Receiver in the service of this Step In Notice acts in his / her capacity as receiver only and the Receiver and his / her estate shall have no personal liability in respect of this Step In Notice, the Designation and Development Agreement or any matter arising in connection therewith].

This Step In Notice shall be governed by and construed with the laws of Ireland.

Yours faithfully

[Lender / Receiver]

SCHEDULE 2

STEP IN UNDERTAKING

To: The Housing and Sustainable Communities Agency of 53 Mount Street, Dublin 2

Dated: _____ 20

Re: *Direct Agreement relating to a Designation and Development Agreement in respect of the development of build to sell apartments at [xxxx] under the Croí Cónaithe (Cities) Fund (the "Direct Agreement")*

Dear Sir / Madam

We refer to the Direct Agreement.

This is a Step In Undertaking for the purposes of the Direct Agreement.

In this Step In Undertaking, capitalised terms and phrases have the same meaning as ascribed to them in the Direct Agreement unless expressly stated otherwise herein.

I / WE HEREBY IRREVOCABLY AND UNCONDITIONALLY UNDERTAKE TO YOU TO be bound by the Designation and Development Agreement with effect from [] (the "**Step In Date**") and to perform all of the Developer's obligations under the Designation and Development Agreement.

[The Receiver (in the service of this Step In Undertaking) acts in his / her capacity as receiver only and the Receiver and his / her estate shall have no personal liability in respect of this Step In Undertaking, the Designation and Development Agreement or any matter arising in connection therewith].

For the avoidance of doubt, without prejudice to any other rights, remedies or other powers available to the Agency under the Designation and Development Agreement the terms of clauses 4.7 and 4.8 of the Direct Agreement are accepted, acknowledged and agreed by the Appointed Representative.

This Step In Undertaking shall be governed by and construed with the laws of Ireland.

IN WITNESS whereof this Step In Undertaking has been executed as a deed on the date hereof.

[Execution Block to be inserted]

SUBJECT TO CONTRACT/CONTRACT

THE AGENCY

[Housing Agency execution block to be inserted]

THE DEVELOPER

[Developer execution block to be inserted]

THE LENDER

[Lender execution block to be inserted]

SAMPLE

The Housing and Sustainable Communities Agency

And

[Purchasers]

CLAWBACK AGREEMENT

THIS AGREEMENT is made on _____202[].

BETWEEN:

- (1) The Housing and Sustainable Communities Agency of 53 Mount Street, Dublin 2 (hereinafter called "the **Agency**");

AND

- (2) [●] of []⁵ (hereinafter called the "**Purchaser**").

WHEREAS:

- (A) The Purchaser has on or about the date of this Deed purchased the Apartment from the Developer;
- (B) The Developer has received (or shall receive as applicable) the Croí Cónaithe (Cities) Subsidy from the Agency in respect of the Apartment;
- (C) The parties to this Deed have agreed to enter into this Agreement to record the terms upon which the Clawback Payment may become payable by the Purchaser to the Agency;

IT IS HEREBY AGREED as follows:

3. DEFINITIONS & INTERPRETATION

- 1.1 In this Agreement (save where the context otherwise requires or implies):

"Account" means such account as notified by the Agency to the Purchaser from time to time.

"Agreement" or **"Deed"** means this agreement as amended or supplemented from time to time.

"Apartment" means apartment [].

"Caution" means the caution to be registered on the title of the Apartment referencing this Clawback Agreement.

"Capital Gain Amount" means the amount which equates to the difference between the price received by the Purchaser in respect of the Disposal of the Apartment and the Purchase Price paid by the Purchaser in respect of the purchase of the Apartment provided that if the Capital Gain Amount is less than zero it shall be deemed to be zero.

⁵ Details to be inserted where there is more than one Purchaser

"Clawback Payment" means a Year 0 – 5 Clawback Payment or a Year 6 – 10 Clawback Payment.

"Croí Cónaithe (Cities) Subsidy" means the subsidy paid or payable by the Agency to the Developer in respect of the Apartment under the Croí Cónaithe (Cities) fund being the amount set out in Schedule 1 Part 1 of this Deed (provided that where the amount of the Croí Cónaithe (Cities) Subsidy payable in respect of the Apartment has not been finally determined as of the date hereof for the purposes of the Designation and Development Agreement and an amount representing a provisional Croí Cónaithe (Cities) Subsidy has been entered into Schedule 1 Part 1 of this Deed, then upon determination of the final Croí Cónaithe (Cities) Subsidy payable in respect of the Apartment pursuant to the Designation and Development Agreement, the amount entered into Schedule 1 Part 1 of this Deed shall be deemed to be amended to refer to the final Croí Cónaithe (Cities) Subsidy payable in respect of the Apartment as determined in accordance with the Designation and Development Agreement).

"Declaration" means the statutory declaration of the Purchaser dated on or about the date of this Deed whereby the Purchaser has declared that he / she / they intend to occupy the Apartment as and from the date of acquisition of the Apartment as his / her / their normal place of residence.

"Designation and Development Agreement" means the Designation and Development Agreement entered into by the Agency and the Developer relating to inter alia payment of the Croí Cónaithe (Cities) Subsidy.

"Developer" means [].

"DHLGH" means the Department of Housing, Local Government and Heritage.

"Disposal" includes a sale, transfer, assignment, lease for a term exceeding 70 years, declaration of trust or other disposal and **Dispose** will be construed accordingly but for the avoidance of doubt shall not include a lease of the Apartment (or part of the Apartment) for a term of less than 70 years.

"Purchase Price" means the purchase price paid by the Purchaser to the Developer in respect of the acquisition of the Apartment being the amount set out in Schedule 1 Part 3 of this Deed.

"Relevant Percentage" means the percentage figure obtained by expressing the Croí Cónaithe (Cities) Subsidy in respect of the Apartment as a percentage of the Total Delivery Cost of the Apartment.

"Total Delivery Cost" means the total delivery cost of the Apartment being the amount specified in Schedule 1 Part 2 of this Deed (provided that where the actual Total Delivery Cost in respect of the Apartment has not been finally determined as of the date hereof for the purposes of the Designation and Development Agreement and an amount representing the anticipated Total Delivery Cost has been entered into Schedule 1 Part 2 of this Deed, then upon determination of the actual Total Delivery Cost in respect of the Apartment for the purposes of the Designation and Development Agreement the amount specified in Schedule 1 Part 2 of this Deed shall be deemed to be amended to refer to the actual Total Delivery Cost in respect of the Apartment as determined in accordance with the Designation and Development Agreement).

"Working Day(s)" means a day on which banks are open for business in Dublin.

"Year 0 – 5 Clawback Payment" means a sum equating to the Capital Gain Amount multiplied by the Relevant Percentage. A worked example of a sample calculation is contained in Schedule 2 of this Deed.

"Year 6 – 10 Clawback Payment" means a sum equating to the Capital Gain Amount multiplied by a figure that equates to 50% of the Relevant Percentage. A worked example of a sample calculation is contained in Schedule 2 of this Deed.

1.2 In this Deed:

- a) words importing the singular shall where the context so requires include the plural and vice versa;
- b) words of the masculine gender include the feminine and neuter genders and all such words shall be construed interchangeably in that manner;
- c) words such as "hereunder", "hereto", and "herein" and other words commencing with "here" shall refer to the whole of this Agreement and not to any particular Clause;
- d) save as otherwise provided herein, any reference to a Clause, paragraph or Sub-Clause (as the case may be) of this Agreement and any reference in a Clause to a paragraph or Sub-Clause shall be a reference in a Clause to a paragraph or Sub-Clause of the Clause in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- e) the headings and captions to the Clauses are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this Agreement;

- f) reference to a statute or Act or a provision of a statute or Act shall include any statute or Act or provision of a statute or Act amending consolidating or replacing it for the time being in force;
- g) words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction includes an obligation not to permit or allow infringement of the restriction; and
- h) If the expression "Purchaser" consists of two or more persons:
 - (i) such expression shall in this Deed mean and include such two or more persons and each of them or (as the case may require) any of them;
 - (ii) all agreements, obligations, covenants and undertakings herein expressed or implied on the part of such persons shall be deemed to be made or undertaken by such persons jointly and severally and the act or default of any one of such persons shall be deemed to be the act or default of all of them;
 - (iii) none of such persons shall as against the Agency be entitled to any of the rights or remedies legal or equitable of a surety as regards the indebtedness, obligations or liabilities of any of the other of them or be entitled in competition with or priority to the Agency to claim or exercise any of the rights (in the nature of contribution or otherwise) of one joint (or joint and several) debtor against another;
 - (iv) each shall be bound even if any of the others of them intended or expressed to be bound by this Deed shall not be so bound; and
 - (v) the Agency shall be at liberty to release or discharge any one or more of them from any liability under this Deed or to take any composition from or make any other arrangements or variation with any one or more of them without thereby releasing or discharging any other or others of them or otherwise prejudicing its rights or remedies against any other or others of them.
- i) A party to this deed includes its successors in title, permitted assigns and permitted transferees from time to time.

2. **CLAWBACK**

- 2.1 The Purchaser acknowledges that the Apartment was delivered by the Developer with the assistance of the Croí Cónaithe (Cities) Subsidy.
- 2.2 The Purchaser further acknowledges the Declaration provided by the Purchaser to the Agency on or about the date of this Deed declaring that it is the intention of the Purchaser to occupy the Apartment as and from the date of acquisition of the Apartment as his / her / their normal place of residence.
- 2.3 The Purchaser agrees and covenants that if the Apartment is Disposed of by the Purchaser at any time during the period from the date of this Deed until the date occurring

on the 5th anniversary of the date of this Deed, that he / she / they shall pay to the Agency as trustee for the DHLGH within 10 Working Days of the date of Disposal, by way of payment of such amount to the Account, the Year 0 – 5 Clawback Payment (together with any value added tax if exigible).

- 2.4 The Purchaser agrees and covenants that if the Apartment is Disposed of by the Purchaser at any time during the period from the day subsequent to the date occurring on the 5th anniversary of the date of this Deed to the date occurring on the 10th anniversary of the date of this Deed, that he / she / they shall pay to the Agency as trustee for the DHLGH within 10 Working Days of the date of Disposal, by way of payment of such amount to the Account, the Year 6 – 10 Clawback Payment (together with any value added tax if exigible).
- 2.5 The Purchaser consents to the registration on the Folio of any registered land in which the Apartment is comprised, of a Caution in favour of the Agency (and to the production of a copy of this Agreement to Tailte Éireann). The Purchaser shall do all such acts and execute all such documents as the Agency may reasonably require in order to procure the registration of such a Caution.
- 2.6 The Purchaser agrees that it shall notify the Agency (by way of service of a notice in writing to the principal place of business of the Agency from time to time) within 5 Working Days of entry into an agreement for the Disposal of the Apartment (a "**Purchaser Notice of Disposal**") which Purchaser Notice of Disposal shall specify the consideration / sale price agreed by the Purchaser in respect of the Disposal and an address at which the Agency may correspond with the Purchaser (and in default of a Purchaser Notice of Disposal specifying such an address the Agency may correspond with the Purchaser by way of service of any relevant letter or notice to the Purchaser at the Apartment).
- 2.7 The Agency shall notify the Purchaser in writing of the Clawback Payment payable (a "**Notice of Clawback Payable**") by way of service of a notice in writing to the Purchaser within 10 Working Days of the date of receipt by the Agency of a Purchaser Notice of Disposal. Any determination of the Agency of the amount of a Clawback Payment payable shall, in the absence of manifest error, be conclusive.
- 2.8 The Agency agrees that:
- A) At any time during the period from the date hereof until the date occurring 10 years from the date hereof, subject to receipt by the Agency from the Purchaser of (i) evidence (in a form satisfactory to the Agency acting reasonably) that the Apartment is the subject of a contract for a Disposal; and (ii) a duly populated Tailte Éireann Form 75 with the requisite details, the Agency will provide the Purchaser with a signed Tailte Éireann Form 75 to enable the Purchaser to procure the cancellation of the Caution as a burden on the Folio of any registered land in which the Apartment is comprised; and
 - B) At any time after the date occurring 10 years from the date hereof, subject to receipt by the Agency from the Purchaser of a duly populated Tailte Éireann Form 75 with the requisite details the Agency will provide the Purchaser with a Tailte Éireann Form 75 to enable the Purchaser to procure the cancellation of the Caution as a burden on the

Folio of any registered land in which the Apartment is comprised.

3. **ASSIGNMENT**

The Purchaser may not assign any of his / her rights or transfer any of his / her rights or obligations under this Agreement.

4. **LAW**

This Agreement and any dispute arising out of this Agreement shall be governed by the laws of Ireland. The courts of Ireland are to have exclusive jurisdiction to settle any disputes, including any disputes of a non – contractual nature which may arise out of or in connection with this Agreement.

5. **REMEDIES CUMULATIVE**

No delay by or omission on the part of the Agency in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy by the Agency shall not preclude any other or future exercise thereof or the exercise by the Agency of any other right, power, privilege or remedy. The rights, powers, privileges and remedies provided to the Agency by this Agreement are cumulative and not exhaustive and are not exclusive of any rights or remedies provided by law.

6. **ENTIRE AGREEMENT**

Save as expressly stated herein, this Agreement constitutes the entire understanding between the parties relating to the subject matter of this Deed and supersedes all previous agreements, understandings and commitments between the parties, representations made by either party, whether oral or written, with respect to the subject of this Deed.

7. **NOTICES**

Notices relating to this Agreement may be given by any party to this Deed by letter addressed to the other party at:

- a) In the case of the Purchaser, the Apartment; and
- b) In the case of the Agency, its principal place of business from time to time;

and any such notice given by letter shall be deemed to have been given at the time at which the letter would be delivered by first class post or by hand (including courier).

8. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed and delivered shall constitute an original, all the counterparts together constituting the same instrument. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement and each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

9. **LEGAL COSTS**

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

10. **DATA PROTECTION**

For the purposes of the Data Protection Acts 1988 to 2018, EU General Data Protection Regulation (EU) 2016/679 and all applicable data protection and privacy legislation in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communication) ("Data Protection Legislation"), any Personal Data provided to the Agency under this Agreement shall be processed by the Agency as Processor, with the Department of Housing, Local Government and Heritage being the Controller. For the purposes of this Agreement, 'Personal Data', 'processing', 'process', 'processed', 'Controller' and 'Processor' shall have the meaning set out under Data Protection Legislation. The Agency shall only use Personal Data provided to it under this Agreement as set out in the Controller's data protection policy which is available on the Agency's website.

IN WITNESS whereof the parties hereto have executed and delivered this Deed on the date first before written.

Schedule 1

Part 1 - Croí Cónaithe (Cities) Subsidy in respect of Apartment

Apartment	Subsidy
[Address]	€[Figures] Words

Part 2 - Total Delivery Cost of Apartment

Apartment	Total Delivery Cost
[Address]	€[Figures] Words

Part 3 – Purchase Price of the Apartment

Apartment	Purchase Price
[Address]	€[Figures] Words

Schedule 2

Worked Examples

Worked Example of Clawback One

Relevant Percentage

Croí Cónaithe (Cities) Subsidy in respect of Apartment	€100,000
Total Cost of Delivery of Apartment	€500,000
Relevant Percentage	20%

Year 0 – 5 Clawback Payment

Purchase Price of Apartment	€400,000
Disposal Price of Apartment in Year 4	€450,000
Capital Gain Amount	€50,000
Year 0 – 5 Clawback Payment (€50,000 x 20%)	€10,000

Year 6 – 10 Clawback Payment

Purchase Price of Apartment	€400,000
Disposal Price of Apartment in Year 8	€600,000
Capital Gain Amount	€200,000
50% of Relevant Percentage (50% of 20% = 10%)	10%
Year 6 – 10 Clawback Payment (€200,000 x 10%)	€20,000

Year 11 onwards – No Clawback Payment due

Worked Example of Clawback Two

Relevant Percentage

Croí Cónaithe (Cities) Subsidy paid in respect of Apartment	€90,000
Total Cost of Delivery of Apartment	€520,000
Relevant Percentage	17.31%

Year 0 – 5 Clawback Payment

Purchase Price of Apartment	€430,000
Disposal Price of Apartment in Year 4	€470,000
Capital Gain Amount	€40,000
Relevant percentage	17.31%
Year 0 – 5 Clawback Payment (€40,000 x 17.31%)	€6,924

Year 6 – 10 Clawback Payment

Purchase Price of Apartment	€430,000
Disposal Price of Apartment in Year 8	€600,000
Capital Gain Amount	€170,000
50% of Relevant Percentage – 8.655%)	8.655%
Year 6 – 10 Clawback Payment (€170,000 x 8.655%)	€14,713.50

Year 11 onwards – No Clawback Payment due

GIVEN under the Common Seal
of the **Agency** and
DELIVERED as a **DEED**

SIGNED AND DELIVERED
as a Deed by []
in the presence of:-

[] hereby confirms that:

- (a) he / she is fully aware of the nature of this Deed, the effect of which has been explained to, and understood by him / her;
- (b) he / she has been advised to take and has taken separate independent legal advice on the effect of this Deed;
- (c) he / she is now willing to be legally bound by the terms of this Deed.

STATUTORY DECLARATION

I / We,

_____ of _____ and
_____ of _____;

being each aged 18 years and upwards SOLEMNLY AND SINCERELY DECLARE as follows:

1. This Declaration relates to the property known as Apartment [] purchased or to be purchased by me / us on or about the date hereof (the "**Apartment**") and in respect of which I / we have executed a Clawback Agreement with The Housing and Sustainable Communities Agency on or about the date of this Statutory Declaration.
2. It is my / our intention to occupy the Apartment as and from the date of acquisition of the Apartment by me / us as my / our normal place of residence.
3. I / We hereby confirm that I / we have no legal or beneficial interest in any other apartment which has been the subject of a subsidy provided by Housing and Sustainable Communities Agency and / or The Department of Housing Local Government and Heritage under the Croí Cónaithe (Cities) Scheme.
4. I / We understand the effect and import of this Declaration which has been fully explained to me / us by my / our Solicitor.
5. I / We make this Solemn Declaration conscientiously believing it to be true for the satisfaction of Housing and Sustainable Communities Agency and The Department of Housing Local Government and Heritage and pursuant to the provisions of the Statutory Declarations Act, 1938.

Declared before me by the said
on the _____ day of _____ 20 , at

in the city/county of _____
before me a Commissioner for Oaths /
Practicing Solicitor and the deponent
DELETE AS APPROPRIATE - is personally
known to me / is identified to me by _____ who
is personally known to me / whose identity has
been established by reference to a relevant
document (insert particulars of document)
containing a photograph

Commissioner for Oaths/Practicing Solicitor

9590701.2

gov.ie/housing

Department of Housing, Local Government and Heritage



Rialtas na hÉireann
Government of Ireland