

**“WARNING: We strongly recommend that you seek advice from an independent financial adviser and legal adviser if availing of this product”**

Dated:

between

*[insert details]*

and

*[Name of HOUSING AUTHORITY]*

### **AFFORDABLE DWELLING PURCHASE AGREEMENT<sup>1</sup>**

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**“WARNING: Property prices can go up and down. As the equity facility is linked to the value of your home, any change in property prices will affect any partial or final redemption amounts. If property prices increase/decrease over time, the percentage equity you have to redeem will remain the same but the € amount will increase/decrease. See example in the case of a price increase below:**

Your home is valued at time of purchase at €300,000 and the Housing Authority has an equity share in your home of 10% (initially valued at €30,000).

Sometime in the future you decide to buy out the Council’s equity share. The home is now valued at €350,000. As the Housing Authority’s equity share is unchanged at 10%, you will now need €35,000 to redeem the Housing Authority’s equity share in the home.

**If you do not comply with your obligations under this agreement, you may be liable for any shortfall or loss incurred by the Housing Authority as a result of such breach or non-compliance”**

**THIS AGREEMENT is made on *[insert date]***

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<sup>1</sup> Under the Local Authority Affordable Purchase Scheme

BETWEEN:

- (1) *[insert name]* and *[insert name]* of *[insert address]* (the “**Homeowner**” which expression shall include the Homeowner’s executors and administrators)

AND

- (2) [*Council*] having its principal office at *[insert address]* (the “**Housing Authority**” which expression shall include its successors and assigns)

(together the “**Parties**”).

RECITALS:

- (A) The Homeowner has been assessed by the Housing Authority as eligible for an affordable dwelling purchase arrangement pursuant to Part 2 of the Affordable Housing Act 2021 [and any relevant Regulations under the Act].
- (B) The Homeowner has entered into an agreement to acquire the Dwelling and the Housing Authority has agreed to make available the Affordable Dwelling Contribution on the terms set out in this Agreement.
- (C) The Housing Authority has agreed to acquire the Affordable Dwelling Equity in the Property pursuant to the terms of agreement between the parties as set out herein.

IT IS HEREBY AGREED:

DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires, each of the following words and expressions shall have the following meanings:

“**Abandoned**” means in relation to the Property, means that the Property is no longer the Normal Residence of the Homeowner or any member of the Homeowner’s Household;

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

“**Affordable Dwelling Contribution**” means the contribution made by the Housing Authority towards the purchase of the Property by the Homeowner as detailed in Part 2 of Schedule 1 to this Agreement;

“**Affordable Dwelling Equity**” means the percentage beneficial interest held by the Housing Authority in the Property as detailed in Part 2 of Schedule 1 to this Agreement;

“**Approved Mortgage**” means a mortgage and/or charge of the Property with a Lender granted in conjunction with the entry into this Agreement with a Lender who has advanced a loan for the purposes of acquiring the Property or any further mortgage and/or charge approved by the Housing Authority as provided in clause 3.2;

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

“**Dwelling**” includes any building or part of a building occupied or intended for occupation as a Normal Residence and includes any out-office, yard, garden or other land and any

easements, rights and privileges appurtenant thereto or usually enjoyed therewith and includes a house, flat, apartment or maisonette;

**“Household”** means a person who lives alone or 2 or more persons who, in the opinion of the Housing Authority, have a reasonable requirement to live together;

**“Lender”** means a holder of a licence under the Central Bank Act 1971, a building society, other financial institution or a Housing Authority;

**“Long Stop Date”** means the date after which the Affordable Dwelling Equity may be realised by the Housing Authority, if not previously redeemed in its entirety by the Homeowner, in accordance with Clause 7;

**“Market Value”** has the meaning given to it by Clause 8;

**“Material Improvements”** means any addition or alteration to the Property but does not include repairing, painting or decorating;

**“Normal Residence”** is a Dwelling owned and occupied as the Homeowner’s only, or main, residence and the following absences will not impact on whether a Dwelling is considered a normal residence;

- (i) the Homeowner could not live in the Property because his/her employer required the Homeowner to live elsewhere (up to a maximum period of four years);
- (ii) the Homeowner has a position of employment, all the duties of which are performed outside the Republic of Ireland;
- (iii) the Dwelling remains unoccupied, and the Homeowner is either:
  - receiving care in a hospital, nursing home or convalescent home.
  - resident in a retirement home on a fee-paying basis.

**“Priorities Agreement”** means an agreement (either generally or in relation to a particular Property) with a Lender regulating the order of priority as between either or both of an Affordable Dwelling Equity and any terms of an Affordable Dwelling Purchase Agreement and a mortgage and/or charge proposed to be created in favour of that Lender;

**“Property”** means the lands and Dwelling set out in Part 1 of the Schedule 1 to this Agreement;

**“Realisation Event”** has the meaning given to it in Clause 7;

**“Realisation Notice”** means the notice referred to in Clause 7;

**“Redemption Notice”** means the notice referred to in Clause 5.

**“Redemption Payment”** means a payment to redeem in whole or in part the Affordable Dwelling Equity in accordance with Clause 5.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

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

## **TERM OF AGREEMENT**

- 2.1 The Homeowner and Housing Authority have agreed to enter into this Agreement for the purposes of regulating how they will deal with the Property.
- 2.2 In consideration of the contribution of the Affordable Dwelling Contribution made by the Housing Authority the Homeowner declares that the Housing Authority is entitled to the Affordable Dwelling Equity in the Property pursuant to the terms of this Agreement.
- 2.3 The purchase price of the Property to be paid by the Homeowner, the Affordable Dwelling Contribution made by the Housing Authority (sum) and the Affordable Dwelling Equity (percentage) to be held by the Housing Authority are as set out in Part 2 of Schedule 1 to this Agreement.
- 2.4 The Homeowner may at any time prior to a sale in accordance with Clause 6 redeem in whole or in part (subject to the minimum redemption payment) the Affordable Dwelling Equity by means of one or more than one payment, in this agreement referred to as a Redemption Payment, in accordance with Clause 5.
- 2.5 The minimum redemption payment shall be as set out in Part 2 of Schedule 1 to this Agreement.
- 2.6 The Property shall not be sold by the Homeowner other than in accordance with Clause 6.
- 2.7 The Market Value of the Property at any relevant time shall be determined in accordance with Clause 8.

- 2.8 The Long Stop Date shall be as set out in Part 2 of Schedule 1 to this Agreement.
- 2.9 The Housing Authority may realise the Affordable Dwelling Equity on the occurrence of a Realisation Event in accordance with Clause 7.
- 2.10 Subject to the terms of this Agreement, the Homeowner will have the exclusive right to reside in the Property.
- 2.11 This Agreement shall commence and take effect from the date of signing hereof and shall continue in full force and effect until the Affordable Dwelling Equity is redeemed by the Homeowner or realised by the Housing Authority in accordance with the terms of this Agreement.

## HOMEOWNER COVENANTS AND WARRANTIES

The Homeowner hereby covenants and warrants with the Housing Authority throughout the subsistence of this Agreement:

- 3.1 not to sell, assign, transfer, assure or otherwise dispose of any legal and/or beneficial interest in the Property (other than in accordance with clause 6) without the prior written consent of the Housing Authority, such consent not to be unreasonably withheld and subject to any conditions imposed in any such prior written consent;
- 3.2 not to mortgage and/or charge any legal and/or beneficial interest in the Property (save for the Approved Mortgage) without the prior written consent of the Housing Authority, such consent not to be unreasonably withheld and subject to any conditions imposed in any such prior written consent;
- 3.3 that the Property shall only be occupied as the Normal Residence of the Homeowner or a member of the Homeowner's Household (save where the Housing Authority has given its prior written consent, and in which case subject to such conditions as may be imposed in such written consent);
- 3.4 to assent to the registration of the rights under this Agreement as an inhibition on the Property in the Land Registry;
- 3.5 to keep the Property in good and substantial repair and condition;
- 3.6 to ensure that any structural alterations or additions to the Property are completed in a good and workmanlike manner, with good quality materials and in compliance with all planning requirements and planning permission (if applicable), building regulations and any other statutory requirements and obtain all necessary evidence of compliance of the works with all statutory requirements upon completion;
- 3.7 not to allow any third party to acquire any interest, right or entitlement in the Property adverse to or which might become adverse to the interest of the Housing Authority therein and to take all necessary steps to prevent any third party advancing a claim of adverse possession or exercise any rights capable of giving rise to rights through prescription or long user;
- 3.8 to permit the Housing Authority to inspect the Property for the purposes of:
- 3.8.1 confirming compliance with the terms and conditions of this Agreement;
- 3.8.2 determining the Market Value of the Property in accordance with Clause 8;

or both, provided that the Housing Authority has given reasonable notice of such inspection;

- 3.9 to, at Homeowner's own cost, insure and keep insured in his/her/their name (or in the case of the Property forming part of a managed development to procure that the management company at the cost of the Homeowner insures and keeps insured) the Property against loss or damage by fire, lightning, explosion, earthquake, storm, flood, burst pipes, subsidence, riots, or civil commotion, heave and landslip, malicious damage and accidental damage, escape of water or oil, impact, aircraft and other aerial devices or articles dropped therefrom and such other risks (if any) as the Homeowner normally insured against (or where relevant the management company at the Homeowner's or the management company's own discretion) in accordance with prudent practice including public liability or any other liabilities that are resulting from the Homeowner ownership of the property including covering the Housing Authority in such policy, coverage to include a waiver of subrogation clause for the benefit of the Housing Authority, and such other risks as the Housing Authority shall from time to time reasonably require in a sum equal to the replacement or reinstatement value thereof from time to time including, where applicable, the cost of demolition and site clearance, architects' surveyors and other professional fees and incidental expenses in connection with the replacement or reinstatement and value added tax. This policy must be effected either with the Housing Authority's interest noted thereon or in the joint names of the Housing Authority and the Homeowner as the Housing Authority may decide in its absolute discretion;
- 3.10 in the event of the Property or any part thereof being destroyed or damaged by fire or by any other cause to lay out all monies received in respect of insurance proceeds as soon as practicable in or upon rebuilding, repairing or reinstating the Property in a good and substantial manner having obtained all necessary statutory approvals consents and licences including planning consents;
- 3.11 to be responsible for ensuring the adequacy and scope of the insurance cover. In the event of an insurance claim, the Housing Authority shall not be liable to the Homeowner if the sum insured does not cover the full reinstatement cost of the Property (the Homeowner making up any shortfall out of the Homeowner's own monies);
- 3.12 not to do anything, or permit anything to be done in or upon or relating to the Property or any part thereof, which may make void or voidable any insurance in connection therewith;
- 3.13 to observe and perform all covenants relating to the Property and comply with the provisions of all legislation for the time being affecting the Property;
- 3.14 to discharge all payments owing to the Lender pursuant to the Approved Mortgage and to provide any information and supporting documents reasonably requested by the Housing Authority in relation to the Approved Mortgage including any balance outstanding, defaults and arrears;
- 3.15 to be responsible for all taxes (including stamp duty on the full Market Value of the Property and VAT), Local Property Tax, assessments, charges, impositions and outgoings affecting the Property;
- 3.16 to observe and comply in all respects with the provisions and requirements of any and every enactment of the Oireachtas for the time being in force and any orders or regulations made thereunder for the time being in force and as are or shall be properly directed or necessary to be done or executed upon or in respect of the Property or any part thereof and at all times during the said term to comply with all the recommendations or requirements of the appropriate authority whether notified or directed to the Homeowner in relation to fire precautions pursuant to the relevant regulations in force;

- 3.17 not to allow any easement or right belonging to or used with the Property to be obstructed or lost and not to allow any encroachment to be made or easements to be acquired on under or over the Property and to give notice to the Housing Authority immediately of any encroachment which might have that effect and to make such objection or take such proceedings as are necessary to prevent such encroachment;
- 3.18 not to store or keep upon the Property or any part thereof any substance of an explosive or of an inflammable or dangerous nature such as might increase the risk of fire or explosion;
- 3.19 upon receipt of any notice, order, requisition, direction or any correspondence from a competent authority relating to the Property to forthwith deliver same or a copy of same to the Housing Authority and to take all necessary steps to deal with such notice, order, requisition, direction or correspondence.

### **REDEMPTION AND REALISATION**

The Affordable Dwelling Equity shall be redeemed by the Homeowner and realised by the Housing Authority by means of one or more of the following:

- 4.1 making a redemption payment in accordance with Clause 5
- 4.2 payment by the Homeowner following a sale in accordance with Clause 6; and
- 4.3 realisation by the Housing Authority in accordance with Clause 7.

### **REDEMPTION PAYMENT**

- 5.1 The following procedure shall be followed to make a Redemption Payment;
  - 5.1.1 the Homeowner shall serve a notice on the Housing Authority (in this Agreement referred as a Redemption Notice), in such form (including electronic form) as may be required by the Housing Authority, of the Homeowner's intention to make a Redemption Payment, including details of the sum intended to be paid;
  - 5.1.2 the Market Value of the Property at the date of the Redemption Notice, and the reduction in the Affordable Dwelling Equity following the sum referred to in the Redemption Notice being paid, calculated in accordance with Clause 5.2 of this Agreement, shall be determined in accordance with the valuation mechanism specified in Clause 8;
  - 5.1.3 a Redemption Payment may be made not later than 3 months from the date on which the matters referred to in Clause 5.1.2 are determined;
  - 5.1.4 a Redemption Payment made in accordance with Clause 5.1.3 shall be accepted by the Housing Authority and in the event of any variation between the sum notified under paragraph 5.1.1 and the sum actually paid (including where any contribution to the cost of an independent valuer due to the Housing Authority in accordance with the valuation mechanism as specified in Clause 8 to this Agreement is deducted from the sum paid by way of set off), the reduction in the Affordable Dwelling Equity following the actual sum paid shall be varied pro rata;

5.1.5 following the making of a Redemption Payment, the Housing Authority shall give notice in writing of the revised Affordable Dwelling Equity to the Homeowner;

5.1.6 the Housing Authority shall maintain and keep a record of Redemption Payments made by a Homeowner under this Clause and the revised Affordable Dwelling Equity.

5.2 The reduction in the Affordable Dwelling Equity following a Redemption Payment shall be that percentage of the Market Value of the Property at the date of the Redemption Notice that is represented by the Redemption Payment, and the Affordable Dwelling Equity shall be recalculated after the making of the Redemption Payment as a percentage in accordance with the following formula:

$$X\% - ((\text{€Y} \times 100) / \text{€Z})\%$$

where –

(a) X% is the Affordable Dwelling Equity as set out in this Agreement unless Redemption Payments have previously been made, in which case it shall be the Affordable Dwelling Equity as revised pursuant to the last previous Redemption Payment made,

(b) €Y is the sum paid to the Housing Authority as the Redemption Payment, and

(c) €Z is the market value of the Property determined under Clause 5.1.2.

5.3 If the Homeowner redeems the entirety of the outstanding Affordable Dwelling Equity by means of one or more than one Redemption Payment, the Housing Authority shall, upon written request and at the expense of the Homeowner, execute all documents and take all steps reasonably necessary to effect the discharge of this Agreement and the Affordable Dwelling Equity and facilitate any registration thereof in the Land Registry and/or in the Registry of Deeds.

5.4 Where the Homeowner exercises his/her/their entitlement to redeem the Affordable Dwelling Equity under this Clause after the Housing Authority has incurred reasonable costs in the exercise of a power or right under Clause 7, the Homeowner shall, as a precondition to the discharge of the Affordable Dwelling Equity, be responsible for the discharge of those reasonable costs.

## **SALE**

6.1 The Property shall not be sold by the Homeowner prior to the redemption of the Affordable Dwelling Equity without the prior written consent of the Housing Authority following a request from the Homeowner.

6.2 The Housing Authority shall not unreasonably withhold its consent under Clause 6.1 having regard to the objective of realising the Affordable Dwelling Equity from the proceeds of any such sale after discharge of prior incumbrances including but not limited to the Approved Mortgage.

6.3 A request by the Homeowner for consent to sell prior to the redemption of the Affordable Dwelling Equity shall include the proposed minimum selling price and all information reasonably necessary to enable the Housing Authority to consider the request for consent.

6.4 The Homeowner after making a request shall allow the Housing Authority to inspect the Property prior to the Housing Authority making a decision under Clause 6.5.



- 6.5 As soon as reasonably practicable after consideration of the request for consent to sell, the Housing Authority shall notify the Homeowner in writing of its decision which shall be a decision—
- 6.5.1 to refuse to grant its consent and, where it so refuses, the notification shall state the reasons for the refusal, or
- 6.5.2 to grant consent subject to a stated minimum selling price and subject to such other conditions (if any) as the Housing Authority may impose for the purposes of securing the realisation of the Affordable Dwelling Equity out of the proceeds of any such sale.
- 6.6 Any sale shall be conducted in accordance with any conditions included in the written consent of the Housing Authority.
- 6.7 After the Homeowner enters into an enforceable contract for any sale in respect of which consent has been granted under this Clause but prior to the completion of that sale, the Homeowner shall notify the Housing Authority of the actual sale price, and the monetary value of the Affordable Dwelling Equity shall be determined by the Housing Authority in accordance with the valuation mechanism in Clause 8 and in accordance with the following formula and shall be notified to the Homeowner
- $X\% \times (\text{€}Y - \text{€}Z)$
- where –
- (a) X% is the Affordable Dwelling Equity as set out in Part 2 of Schedule 1 to this Agreement unless Redemption Payments have previously been made, in which case it shall be the Affordable Dwelling Equity as revised pursuant to the last previous Redemption Payment made,
- (b) €Y is the Market Value of the Property provided that for the purpose of such determination, the price referred to in Clause 8.1, to be adjusted (if relevant) by reference to the matters referred to in Clause 8.1(a) and Clause 8.1(b), shall be the actual sale price, and
- (c) €Z is the amount of the vouched legal and agent's charges, costs and expenses reasonably and properly incurred by the Homeowner as incident to the sale.
- 6.8 Unless permitted in writing by the Housing Authority and subject to any conditions of such permission, the sale shall not be completed until the monetary value of the Affordable Dwelling Equity is determined and notified to the Homeowner by the Housing Authority.
- 6.9 Upon the payment by the Homeowner to the Housing Authority of the sum representing the monetary value of the Affordable Dwelling Equity, the Housing Authority shall execute all documents and take all steps reasonably necessary to effect the discharge of this Agreement and the Affordable Dwelling Equity and facilitate any registration thereof in the Land Registry and/or in the Registry of Deeds.
- 6.10 If the proceeds of sale remaining, after discharge of prior incumbrances (including but not limited to the Approved Mortgage) and the vouched legal and agent's charges, costs and expenses reasonably and properly incurred by the Homeowner as incident to the sale, are insufficient to discharge the Affordable Dwelling Equity, the Housing Authority shall comply with Clause 6.9 upon payment of the remaining proceeds of the sale, and the remaining balance due to the Housing Authority shall be recoverable by the Housing Authority from the Homeowner as a simple contract debt.

- 6.11 Subject to any Priorities Agreement that may be in existence, in the case of a sale of the Property by a mortgagee having rights in priority to the rights of the Housing Authority in the Property;
- 6.11.1 the mortgagee shall be entitled to sell the Property without the consent of the Housing Authority,
- 6.11.2 the Housing Authority shall be deemed the person entitled, pursuant to section 107(2) of the Conveyancing Act, to receive the residue of the proceeds of such sale after discharge of the mortgage moneys due to such mortgagee upon the trusts provided for in section 107(3) of the Conveyancing Act, and
- 6.11.3 upon receipt of the residue of the proceeds of such sale, the Housing Authority shall retain the proceeds pending agreement or determination of the monetary value of the Affordable Dwelling Equity, and shall apply such proceeds towards the discharge of the Affordable Dwelling Equity, and—
- (a) any residue of the proceeds held after discharge of the Affordable Dwelling Equity shall be held by the Housing Authority upon the trusts provided for in section 107(3) of the Conveyancing Act and distributed accordingly, and
- (b) if the proceeds held are insufficient to discharge the Affordable Dwelling Equity, the balance due to the Housing Authority shall be recoverable by the Housing Authority from the Homeowner as a simple contract debt.

## REALISATION EVENT

- 7.1 Where a Realisation Event occurs, the Housing Authority shall be entitled to serve a Realisation Notice to demand the redemption of the Affordable Dwelling Equity. Such realisation should be completed in accordance with this Clause.
- 7.2 For the purposes of Clause 7.1, each of the following shall be a Realisation Event
- a) the Affordable Dwelling Equity has not been redeemed in its entirety by the Homeowner by the later of the following dates:
- (i) the Long Stop Date;
- (ii) the date 3 months from the date on which written notice of the expiration of the Long Stop Date is given by the Housing Authority to the Homeowner, (such notice is to be given not earlier than 6 months prior to the Long Stop Date);
- b) the Homeowner (or where more than one person, all of such persons) who purchased the Property, dies;
- c) the Property is Abandoned;
- d) following the giving of notice by the Housing Authority to the Homeowner to remedy a material breach of a covenant this Agreement within such reasonable period as may be specified in the notice, the breach is not remedied in the period specified;
- e) any mortgagee, incumbrancer or receiver enters into possession of all or part of the Property or the rents and profits thereof;

- f) the Homeowner (or where more than one person, all of such persons) who purchased the Property, commits an act of bankruptcy, or is adjudicated a bankrupt;
- g) the Property becomes subject to an order or process for compulsory purchase;
- h) the Property is demolished or destroyed, whether by fire or otherwise, or is damaged so as to materially affect its Market Value;
- i) the Housing Authority is satisfied that the Homeowner wilfully misled it in respect of any material fact having regard to which the eligibility or priority of the Homeowner for an affordable dwelling purchase arrangement in respect of the Property under the Act was determined;

Provided always that the Realisation Events specified at paragraphs (f), (g), (h) and (i) of this clause will not be exercisable by the Housing Authority until the Approved Mortgage has been discharged in full.

- 7.3 The Housing Authority may communicate with the Homeowner for the purposes of advising, consulting or negotiating with the Homeowner in relation to any actual or anticipated Realisation Event provided that the occurrence of a Realisation Event shall not oblige the Housing Authority to serve a Realisation Notice and neither its failure to serve a Realisation Notice nor any advice, consultation or negotiations with the Homeowner shall constitute any waiver of its entitlement to serve a Realisation Notice.
- 7.4 A Realisation Notice shall specify a period, not shorter than 3 months commencing on the date of its service (save in exceptional circumstances where the Housing Authority's ability to realise the Affordable Dwelling Equity would be compromised), after which the Housing Authority shall be entitled to realise the Affordable Dwelling Equity in accordance with this Clause unless the Homeowner has first redeemed in its entirety the Affordable Dwelling Equity.
- 7.5 Where following the service of a Realisation Notice in accordance with this Clause, in the reasonable opinion of the Housing Authority, the Property has been Abandoned and is at risk of destruction or damage or its use or condition constitutes a risk to the health or safety of any person, the Housing Authority shall be entitled to enter upon, secure and take possession of the Property pending the realisation or redemption in its entirety of the Affordable Dwelling Equity and in such case the Housing Authority shall not be liable to the Homeowner for any loss save for any damage caused to the Property by the Housing Authority in the course of effecting such entry or during such possession.
- 7.6 Where the Housing Authority takes possession of the Property under Clause 7.5 it may return possession of the Property to the Homeowner if it is satisfied that the risks have abated.
- 7.7 Upon the expiration of the period specified in the Realisation Notice, or such further period as may be specified in writing by the Housing Authority;
  - 7.7.1 subject to the provisions of this Clause, the Housing Authority shall be entitled to sell or concur with any other person in selling, the Property and shall have all powers reasonably necessary to effect such sale, including the powers set out in Clause 7.8.
  - 7.7.2 for the purpose of effecting such sale, the Housing Authority shall be entitled to demand and take possession of the Property, giving not less than one month's notice to the Homeowner (save in exceptional circumstances where delay would

- prejudice the Housing Authority's ability to realise the Affordable Dwelling Equity),
- 7.7.3 unless possession has been yielded up by the Homeowner, the Housing Authority may;
- (a) peaceably enter and take possession of the Property, or
  - (b) apply to the Circuit Court for the county in which the Property is situated for an order for possession of the Property,
- 7.7.4 upon taking possession of the Property, the Housing Authority shall, within a reasonable period, take steps to exercise the power of sale and to sell the Property at the best price reasonably obtainable within that period,
- and
- 7.7.5 nothing in this Agreement shall inhibit the Housing Authority and the Housing Authority shall not be answerable for any involuntary loss resulting from the exercise or execution of the power of sale, of any trust connected with it, or of any power or provision contained in this Agreement.
- 7.8 Incidental to the power of sale conferred in Clause 7.7.1 and regulated by section 19 (3) (a) of the Act are the powers to—
- 7.8.1 sell the Property:
- (a) subject to prior charges or not,
  - (b) by public auction, tender or private contract,
  - (c) subject to such conditions respecting title, evidence of title, or other matter as the Housing Authority or other person selling thinks fit,
- 7.8.2 rescind any contract for sale and resell the Property.
- 7.9 Subject to the terms of any Priorities Agreement, nothing in this Clause shall prejudice the rights of any mortgagee of the Property and, for the avoidance of doubt, a Housing Authority that has taken possession of the Property pursuant to this Clause may hand over the possession of the Property to any such mortgagee having an entitlement to such possession on demand therefor by the mortgagee, and, without prejudice to the right of the Housing Authority to resume such possession by agreement with such mortgagee, such mortgagee may proceed to sell the Property and where it does so Clause 6.11 will apply.
- 7.10 At any time after the service of a Realisation Notice, nothing in this Agreement shall inhibit the Housing Authority from:
- 7.10.1 demanding and obtaining from any mortgagee whose mortgage or charge ranks in priority to the Affordable Dwelling Equity particulars of the moneys secured on such mortgage and any ancillary information reasonably necessary to exercising its powers under this Clause, and
  - 7.10.2 exercising the powers referred to in Clause 7.7 notwithstanding any priority of such mortgage or charge.

- 7.11 Neither the power of sale nor the right to possession nor any other right or power of the Housing Authority shall be postponed by the service of any notice to make a Redemption Payment or for consent to sell the Property or any procedures arising therefrom, provided that the Housing Authority shall be entitled to grant such extensions of time as it considers appropriate to facilitate any such notices or procedures.
- 7.12 If, upon entry by the Housing Authority into possession of the Property, there is any furniture or there are any other goods of the Homeowner in or about Property, the Housing Authority may serve notice on the Homeowner to remove the same and any furniture or goods not removed within a period of 21 days beginning on the date on which the notice is served may be removed and stored, sold, destroyed or otherwise disposed of as the Housing Authority deems appropriate, by the Housing Authority as agent for the Homeowner, and at the expense of the Homeowner, and any moneys realised on any sale of the furniture or goods shall be held as part of the residue of the proceeds of sale referred to in Clause 7.21.
- 7.13 The Housing Authority exercising the power of sale conferred by this Clause 7 and regulated by Section 19 of the Act shall have the power to convey the Property—
- 7.13.1 freed from all estates, interests and rights in respect of which this Agreement has priority,
- 7.13.2 unless discharged by the Housing Authority, subject to all estates, interests and rights which have priority over this Agreement.
- 7.14 Subject to Clause 7.15, a conveyance by the Housing Authority shall:
- 7.14.1 vest the entire estate or interest of the Homeowner and the Housing Authority in the Property in the purchaser freed and discharged from the Affordable Dwelling Equity,
- 7.14.2 vest any fixtures included in the Property and the sale in the purchaser.
- 7.15 Where the Property comprises registered land, the conveyance is subject to section 51 of the Registration of Title Act 1964.
- 7.16 Where a conveyance is made in professed exercise of the power of sale conferred by this Clause 7 and regulated by Section 19 of the Act, the title of the purchaser is not impeachable on the ground—
- 7.16.1 that no Realisation Event had occurred to authorise service of the Realisation Notice,
- 7.16.2 of any actual or alleged irregularity in the Realisation Notice or in the service thereof, or
- 7.16.3 that the power of sale was otherwise improperly exercised,
- and a purchaser is not, either before or on conveyance, required to see or inquire whether the power of sale was properly exercised.
- 7.17 If the Homeowner or any person claiming through him/her/them suffers loss as a consequence of an unauthorised or improper exercise of the power of sale, their remedy (if any) shall be in damages against the Housing Authority exercising the power.

7.18 The receipt in writing of the Housing Authority exercising the power of sale conferred by this Clause 7 and regulated by Section 19 of the Act is conclusive discharge for any money arising under the said power of sale and a person paying or transferring the same to the Housing Authority is not required to inquire whether any money remains due to the Housing Authority pursuant to this Agreement.

7.19 Following the completion of the sale, the monetary value of the Affordable Dwelling Equity shall be determined in accordance with the valuation mechanism in Clause 8 in accordance with the following formula:

$$X\% \times (\text{€Y} - \text{€Z})$$

where –

- (a) X% is the Affordable Dwelling Equity as set out in Part 2 of Schedule 1 hereto unless redemption payments have previously been made, in which case it shall be Affordable Dwelling Equity as revised pursuant to the last previous Redemption Payment made,
- (b) €Y is the market value of the Property provided that for the purpose of such determination, the price referred to in Clause 8.1, to be adjusted (if relevant) by reference to the matters referred to in Clause 8.1(a) and Clause 8.1(b), shall be the actual sale price and
- (c) €Z is the amount of the vouched legal and agent's charges, costs and expenses reasonably and properly incurred by the Housing Authority as incident to the sale.

7.20 Money received by the Housing Authority that arises from the sale of the Property shall be applied in the following order—

7.20.1 in discharge of prior incumbrances, if any, to which the sale was not made subject or payment into court of a sum to meet any such prior incumbrances,

7.20.2 in payment of all charges, costs and expenses properly incurred by the Housing Authority as incident to the sale or any attempted sale or otherwise,

7.20.3 in discharge of the Affordable Dwelling Equity and any costs and expenses properly incurred by the Housing Authority in any proceedings necessary to recover possession of the Property.

7.21 Any residue of the money received by the Housing Authority after the discharge of the amount due under Clause 7.20.3 shall be held by the Housing Authority upon the trusts provided for in section 107(3) of the Conveyancing Act and distributed accordingly.

7.22 If the proceeds held are insufficient to discharge the amount due to the Housing Authority under Clause 7.20.3 the balance due to the Housing Authority shall be recoverable by the Housing Authority from the Homeowner as a simple contract debt.

## MARKET VALUE

8.1 For the purposes of this Agreement, "Market Value" means the price for which the Property might reasonably be expected to be sold on the open market for the estate purchased by the Homeowner, freed and discharged of any mortgage or incumbrance (including this Agreement)—

- (a) disregarding any increase in the value of the Property attributable to any Material Improvements carried out by the Homeowner, and
- (b) disregarding any reduction in the value of the Property attributable to any want of repair or other breach by the Homeowner of any term or covenant in this agreement.

8.2 The Market Value of the Property at the date of this Agreement is as determined by the Housing Authority and set out in Part 2 of the Schedule 1 to this Agreement.

8.3 During the currency of this agreement and for the purpose of determining the Market Value of the Property where required under this Agreement, the Housing Authority, having been given such information and afforded such inspection facilities as it reasonably requires in order to do so, shall serve a notice on the Homeowner setting out the Housing Authority's estimate of the Market Value of the Property in accordance with Clause 8.1.

8.4 Where the Homeowner confirms, in writing, agreement with the notice referred to in Clause 8.3 or does not respond in writing within a period of 21 days beginning on the date on which the notice is served or such extended period as may be agreed, the matters contained in the notice shall be deemed to constitute the Market Value of the Property, any values or sums calculated by reference to the market value and any facts relevant to that calculation, as the case may be.

8.5 If the Homeowner confirms, in writing, disagreement with any matter stated in the notice within a period of 21 days beginning on the date on which the notice is served or such extended period as may be agreed, the Homeowner shall nominate an independent valuer from a panel of suitably qualified persons established by the Housing Authority (in accordance with the Act and any Regulations made thereunder) to whom the matter in disagreement shall be referred by the Housing Authority, and the determination of the said valuer shall be final and binding;

8.6 Notwithstanding that the Housing Authority shall discharge the reasonable fees of the independent valuer referred to in Clause 8.5, one half of such fees shall be recoverable by the Housing Authority from the Homeowner as a simple contract debt.

## **NOTICES**

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

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

9.2.1 on the Homeowner if delivered by hand or sent by pre-paid ordinary post to the Homeowner at the Property,

9.2.2 on the Housing Authority if delivered by hand or sent by pre-paid ordinary post to its principal offices or such other address that the Housing Authority may specify from time to time; and

9.2.3 by electronic mail or other electronic means, if the Housing Authority and the Homeowner:

- (a) Agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) Notify each other in writing of their electronic mail address and/ or any other information required to enable the sending and receipt of information by that means;
- (c) Notify each other of any change to their address or any other such information supplied by them;

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

9.3 The Homeowner will notify the Housing Authority of any changes to its contact details.

#### **ASSIGNMENT AND DISCLOSURE OF INFORMATION**

- 10.1 The Homeowner shall not assign, transfer or otherwise dispose of, or create an encumbrance over, all or any of its rights, title, interest, benefits or obligations under this Agreement or the Affordable Dwelling Equity, in whole or in part and any such assignment, transfer, disposal or encumbrance shall be void as against the Housing Authority.
- 10.2 The Housing Authority may assign, charge, transfer (by way of novation or otherwise) all or part of the Affordable Dwelling Equity or this Agreement and to any third party, either without notice to or the prior consent of the Homeowner. The Homeowner irrevocably authorises and consents to any such assignment, charge or transfer and shall enter into such documents (if any) and without limiting the foregoing in any way, use reasonable endeavours to procure that any third party takes such steps and enters into such documents, as in each case as the Housing Authority may reasonably stipulate in order to effect any such assignment, transfer or securitisation.
- 10.3 The Homeowner irrevocably acknowledges and agrees that the Housing Authority will be entitled to give any proposed assignee, chargee, transferee or sub-participant, and its and their professional advisors such information as the Housing Authority deems necessary relating to the Homeowner and the Affordable Dwelling Equity. The Homeowner agrees to execute any documentation (including without prejudice to the generality of the foregoing, any deed of novation) which the Housing Authority requests it to execute in connection with any such assignment or transfer.
- 10.4 The Homeowner irrevocably acknowledges and agrees that the Housing Authority will be entitled to request a Lender to provide any information and supporting documents reasonably requested by the Housing Authority in relation to the mortgage on the Property including any balance outstanding, defaults and arrears.
- 10.5 The Homeowner hereby consents to and directs the Lender (if required by the Housing Authority) to release any title deeds to the Property held by it directly to the Housing Authority in circumstances where the Approved Mortgage has been discharged but the Affordable Dwelling Equity has not been redeemed.



## **FURTHER ASSURANCE**

- 11.1 The Homeowner must promptly, at its own expense, take whatever action, execute and deliver such documents and perform such acts as the Housing Authority or any assignee or nominee of the Housing Authority may require for the purpose of:
- 11.1.1 reflecting, registering or protecting the Affordable Dwelling Equity; and
  - 11.1.2 facilitating the realisation of the Affordable Dwelling Equity or the exercise of any right, power or discretion exercisable, by the Housing Authority or any assignee or nominee of the Housing Authority in respect of the Affordable Dwelling Equity.
- 11.2 In consideration of the Affordable Dwelling Contribution and by way of security for the performance of his/her/their obligations under this Agreement, the Homeowner irrevocably appoints the Housing Authority or any assignee or nominee of the Housing Authority to be its attorney (with full powers of substitution and delegation) in its name and otherwise on its behalf, and as its act and deed to:
- 11.2.1 execute, deliver and perfect any agreement or form, and take any action (including the making of registrations, filings or notifications), which the Homeowner is required to execute, deliver, perfect or take pursuant to this Agreement whether for the purposes of perfecting the Affordable Dwelling Equity or facilitating the realisation of the Affordable Dwelling Equity; and
  - 11.2.2 generally use its name in connection with the exercise of any rights under this Agreement.
- 11.3 The Homeowner agrees that:
- 11.3.1 he/she/they will be deemed to have ratified and approved anything done by any attorney pursuant to Clause 11.2; and
  - 11.3.2 all monies expended by any such attorney in its capacity as such will be recoverable from the Homeowner on demand.

## **GOVERNING LAW AND JURISDICTION**

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

## **COUNTERPARTS AND EXECUTION**

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

of the Parties transmitted by facsimile or portable document format (PDF) shall be deemed to be their original signatures for all purposes.

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

#### **ASSENT TO REGISTRATION OF INHIBITION**

14. The Homeowner as registered owner (or party entitled to be registered as owner) hereby assents to the registration of the rights arising under this agreement by the entry in the Land Registry of an inhibition (in the form comprised in Schedule 2) on the folio or folios for the Property pursuant to section 98 of the Registration of Title Act 1964 and section 13 (2) of the Act.

#### **STATUTORY CERTIFICATES**

15. It is hereby certified that for the purposes of Section 238 of the Companies Act 2014 (as amended) the Housing Authority and the Homeowner are not connected parties.

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**SCHEDULE 1**

**PART 1**

**(the "Property")**

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

**PART 2**

Market value of the Property at the date of this Agreement, as determined by the Housing Authority	
Purchase price paid by the Homeowner	
Affordable Dwelling Contribution made by the Housing Authority (sum)	
Affordable Dwelling Equity held by the Housing Authority (percentage)	
Minimum Redemption Payment:	€10,000 (except in the case where a payment of less than €10,000 is required to redeem the housing authority's equity in full).
Long Stop Date	40 years from the date of this Agreement

## SCHEDULE 2

### (Form of Inhibition)

No registration under a disposition by or transmission from the Registered Owner (Homeowner) is to be made without the consent of the Applicant (Housing Authority).

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**CONFIRMATION OF LEGAL AND FINANCIAL ADVICE**

I, [INSERT NAME OF HOMEOWNER] of \_\_\_\_\_, hereby confirm that:

1. I have taken legal advice from \_\_\_\_\_ of \_\_\_\_\_ in relation to this Agreement.
2. I confirm I am fully aware of and understand the terms of this Agreement, the effect of which has been explained to me by my solicitor and understood by me.
3. I confirm that it has been advised and recommended to me by the Housing Authority to seek and obtain financial advice in relation to this Agreement.
4. (a) *[delete if not applicable]* [Having been advised by the Housing Authority, I hereby confirm that I wish to decline to take financial advice in relation to the agreement in the circumstances]; or  
  
(b) *[complete if applicable or delete if not applicable]* [I confirm that I received independent financial advice in relation to the agreement.
5. I confirm that I have read and agree to be bound by and fully accept all of the terms and conditions contained in the Agreement.

Signed by the Homeowner  
In the presence of;

\_\_\_\_\_  
[insert Homeowner's name]

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

**Witness:** \_\_\_\_\_

\_\_\_\_\_

**Print Name:**

**Address:**

**Occupation**

**PRESENT** when the seal of  
[ \_\_\_\_\_ ] **COUNCIL**  
was affixed hereto:

\_\_\_\_\_  
Cathoirleach  
Or

\_\_\_\_\_  
Person nominated pursuant to Section 11  
(8) of the Local Government Act 2001

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