

Dated [ • ]

**CORK CITY COUNCIL**

**MARINA QUARTER LIMITED**

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**SECTION 47 AGREEMENT**

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**THIS AGREEMENT** is dated [ • ] and made between:

- (1) **CORK CITY COUNCIL** having its principal office at City Hall, Cork (the **Council**); and
- (2) **MARINA QUARTER LIMITED** a private limited company registered in Ireland with company number 628007 and having its registered office at Block B, Maynooth Business Campus, Maynooth, Kildare (the **Developer**).

## **RECITALS**

- (A) The Council is the Local Authority and Housing Authority and Planning Authority for the administrative area of the City of Cork.
- (B) The Developer is the developer and owner of a site (the **Site**) zoned for 'Mixed-Use' development and known as the 'Former Ford Distribution' site in Cork Docklands in the City of Cork.
- (C) The Developer and the Council entered into a memorandum of understanding dated 17/12/2018 in relation to the development of the Site and the construction of the Infrastructure Works (as defined below). This Agreement supersedes and replaces such memorandum.
- (D) A planning application was submitted for the Site for circa 1,000 residential units (the **Development**).
- (E) The Site directly benefits from the Government's Local Infrastructure Housing Activation Fund (**LIHAF**) awarded to the City Council to facilitate inter alia the delivery of (i) the Monahan Road extension and (ii) Marina District Park. The construction of the Marina district Park is well advanced.
- (F) The Council has entered a Grant Agreement with the Minister for Housing, Planning & Local Government which provides for the payment of €15.5M (million) as part funding to secure the construction of the Infrastructure Works to be paid to the Council subject to the conditions of that agreement.
- (G) LIHAF funding creates the opportunity to reduce the cost of the housing to be provided on the Site. The reduced cost will be to the benefit of nominees as appointed by the Council and/or any other agreed statutory body, for an affordable rent credit scheme as outlined in this agreement.

**IT IS AGREED** as follows:

### **1 COUNCIL'S OBLIGATIONS**

- 1.1 The Council shall use all reasonable endeavours to complete the construction of Marina District Park as soon as possible.
- 1.2 The Council shall use all reasonable endeavours to progress the delivery of the Monahan Road Extension Project as per the indicative timetable outlined in Section 1.3 below subject to funding, planning consent, acquisition of required lands and resolution of any other matter that may impede the delivery of the project.
- 1.3 The Council's indicative Programme for the delivery of the Monahan Road Extension Project is as follows:
  - 1.3.1 [Return of Design Team Tenders – Q3 2020 **[STAGE COMPLETED]**
  - 1.3.2 Design Team Appointment – [Q3] 2020 **[STAGE COMPLETED]**
  - 1.3.3 Design Completion – Q2 2021 **[STAGE COMMENCED]**
  - 1.3.4 Commence Part 8/Part 10 Planning Process – Q2 2021
  - 1.3.5 Tender & Contractor Appointment – Q1 2022

1.3.6 Construction Completion – Q1 2023

1.4 The Council shall also advise the developer of any revisions to the delivery programme detailed above.

1.5 The City Council shall continue engagement with the Department of Education and Skills (DES) to inform the objectives and land-use zonings in the Development Plan to ensure that the Primary and Post-Primary school needs will be met within the City Docks area based upon the best available information. The City Council will work with the DES to support them in their goal of delivering schools in a timely fashion to meet the needs of the population within the City Docks area and within the context of the wider DES Ballintemple School Planning Area and the wider City.

## 2 DEVELOPER'S OBLIGATIONS

2.1 The Developer will support the Council in its application for the Part 8/Part 10 approval, as referred to in clause 1.2.

2.2 The Developer confirms that:

2.2.1 In accordance with the affordability criteria required by the LIHAF funding, it is agreed that 40 (or such other number as the parties may agree) residential units (the **Relevant Units**) within the final constructed Development will be allocated for an affordable rent credit (the **Credit**). The Credit will be set at €470 per month per unit and for a time period of 25 years subject to the final credit range and number of units being agreed on the issue of the Grant of Planning Permission for the Site. The overall aggregate value of the Credit shall be €3.6 million (or such other amount as the parties may agree). The Developer will allocate the said units to nominees as appointed by the Council and/or any other agreed statutory body, provided that this clause 2.2.1 is subject to change if agreed by the parties.

2.2.2 The parties acknowledge and agree that in respect of the Development, the calculation of the aggregate Credit of €3.6 million is by reference to the spreadsheet as set out in Schedule 1.

2.2.3 The Relevant Units will be provided on a discounted private rental basis for those eligible for social housing supports, under such Government schemes such as HAP, RAS or their replacement and such other scheme as may be developed by Government in the future in addition to the current schemes. The Relevant Units may be provided through an affordable rental scheme for those not eligible for social housing (but who need support for renting in the private market) in the event of such a scheme being initiated by the Council or the Department of Housing, Planning and Local Government, the Council shall have exclusive right to nominate the tenants for the Relevant Units.

2.2.4 When the final grant of planning permission is issued in respect of the Development, the parties will act in good faith and use all reasonable endeavours to agree the definitive floor area permitted, the permitted tenure mix, determination of the associated development contributions including Part V and the total funds committed by the LIHAF.

2.3 The Developer will prepare a Social Infrastructure Audit (SIA) to inform the social and community infrastructure requirements for the Development and to inform the Department of Education and Skills delivery of schools in the South Docks area. The findings of the social infrastructure audit will inform the final application to be submitted to the Council or An Bord Pleanála in the event of a Strategic Housing Development and the social/community infrastructure requirements will be phased commensurate with the c.1,000 housing units to be delivered within the development.

2.4 Following the grant of a satisfactory planning permission for the Development and subject to market

conditions and force majeure events (being events outside of the Developer's control), the Developer will commence construction of the Development as soon as practicable.

### **3 GENERAL PROVISIONS**

#### **3.1 Status of Agreement**

This Agreement shall be deemed to be an agreement entered into for the purposes of Section 47 of the Planning & Development Act, 2000, and for the purposes of any and all other relevant enactments which confer statutory powers and functions on the Council, in its capacity as a Local Authority, Housing Authority, Planning Authority or in any other capacity whatsoever.

#### **3.2 Costs and Expenses**

Each party shall bear its own costs and expenses (including legal costs) in respect of the preparation and signature of this Agreement.

#### **3.3 Entire Agreement**

This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes and extinguishes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by a party.

#### **3.4 Severability**

All the terms and provisions of this Agreement are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Agreement, and the enforceability, legality and validity of the remainder of this Agreement will not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to make it valid, enforceable and legal.

#### **3.5 Waiver and Cumulative Remedies**

The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any rights or remedies provided at law or in equity or otherwise under this Agreement. The failure of any party to insist upon strict performance of any provision of this Agreement, or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

#### **3.6 Governing Law and Jurisdiction**

This Agreement, together with any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall in all respects be governed by and construed in accordance with the laws of Ireland. "Dispute" includes any dispute between the parties' dealings under this Agreement further including disputes arising out of any non-contractual obligations.

#### **3.7 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.

### 3.8 Remedies cumulative

The provisions of this Agreement and the rights and remedies of the parties are independent, cumulative and are without prejudice and in addition to any other rights or remedies which a party may have whether arising under statute, at common law, in equity, under contract, by virtue of custom or otherwise. The exercise by a party of any one right or remedy under this Agreement, under statute, at law or in equity will not (unless expressly provided in this Agreement, under statute, at law or in equity) operate so as to hinder or prevent the exercise by that party of any other right or remedy.

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**IN WITNESS WHEREOF** the Developer and the Council have executed this Agreement this the day and year first herein written.

**SIGNED** for and on behalf of

**MARINA QUARTER LIMITED** by

\_\_\_\_\_  
*(Name of Signatory)*

in the presence of:

\_\_\_\_\_

(Witness' Signature)

\_\_\_\_\_

(Witness' Name)

\_\_\_\_\_

(Witness' Address)

\_\_\_\_\_

(Witness' Occupation)

**SIGNED** for and on behalf of

**CORK CITY COUNCIL** by

\_\_\_\_\_  
*(Name of Signatory)*

in the presence of:

(Witness' Signature)

\_\_\_\_\_

(Witness' Name)

\_\_\_\_\_

(Witness' Address)

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(Witness' Occupation)

## SCHEDULE 1

### CALCULATION OF THE CREDIT

The following methodology sets out how the Credit provided is translated into a net present value of €3.6 million. A relevant example is where a HAP payment would apply. The methodology is to use the differential between the market rent and the HAP rent as the "Credit" to the occupier. The landlord would receive a HAP rent from the local authority (or the relevant nominee) with the differential being dealt with by way of a rent credit. The rent credit would apply for a period of 25 years. The net present value of the Credit is calculated by applying a discount factor of 4% to each Credit (calculated on an annual basis).

Assumptions	Yr	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Monthly credit	470																									
Annual credit	5640																									
Discount factor	4%																									
Years	25																									
Total credit	141,000																									
Total DCF	91,633																									
Units	40																									
Total																										