

DATE: [*]

AMENDMENT I TO THE INVESTMENT AGREEMENT

Between

Agentúra štátom podporovaného nájomného bývania

and

WBG Wohnen und Bauen Gesellschaft mbH Wien

THIS AMENDMENT I TO THE INVESTMENT AGREEMENT dated 31 January 2023 (the “**Investment Agreement**”) is entered into on [*] pursuant to the Rental Housing Act¹ and par. 269 sec. (2) of the Commercial Code

BETWEEN:

Agentúra štátom podporovaného nájomného bývania, with its seat at Námestie 1. Mája 7286/18, 813 70 Bratislava-Staré Mesto, the Slovak Republic, Id. No. 54 779 189, registered with the Ministry of Interior of the Slovak Republic, Public Administration Section in the Register of the Interest Associations of Legal Persons (the “**Agency**”); and

WBG Wohnen und Bauen Gesellschaft mbH Wien, with its seat at Triester Straße 40/3/1, 1100 Wien, Austria, Id. No. 127784 v, registered in the register of Commercial Court Wien, UID – number: ATU55628100 (the “**Investment Partner**”).

BACKGROUND:

- (A) On 31 January 2023, the Agency and Investment Partner entered into the Investment Agreement based on the Rental Housing Act, Government Regulation and other supportive legislation aiming to achieve a construction of accessible rental housing in Slovakia.
- (B) In accordance with Clause 3.1.1 of the Investment Agreement and Article 36 (2) of the Civil Code, one of the conditions precedent of the Investment Agreement is obtaining the EU Approval by the Slovak Republic;
- (C) The Government of the Slovak Republic, at its 51st session held on 25 September 2024, instructed the Transport Minister by its resolution No 560/2024, , after the issuance of the so called letter of advice (*Comfort Letter*) by the European Commission to ensure the withdrawal of the state aid notification to the European Commission for the purpose of assessing whether the measures introduced by the Rental Housing Act and/or the Government Regulation could be considered as state aid.
- (D) In accordance with Clause 3.1.2 of the Investment Agreement, if the European Commission does not issue the EU Approval or EU Non - Approval until first anniversary of signing of the Investment Agreement by the Parties or anytime issues, in the first instance, either EU Non – Approval, or EU Approval in a manner or under conditions which are different from those set out in the Rental Housing Act and/or Government Regulation, the Investment Partner shall have the option to do any of the following:
 - (a) request the Agency to initiate a challenge of the decision of the European Commission (i. e. EU Approval or EU Non – Approval) before the appropriate EU judicial authorities (for purpose of clarity, the Investment Partner admits exclusive power of Slovak authorities to consider whether they will challenge or not challenge the decision of the

¹ Capitalised terms not specifically defined in this Amendment I shall have the meaning ascribed to them in the Investment Agreement. If this Amendment I removes certain definitions of the Investment Agreement prior to effectiveness of this Amendment I, yet uses them elsewhere in this Amendment I, the relevant terms shall have the meaning as ascribed to them in the Investment Agreement prior to effectiveness of this Amendment I.

European Commission (i. e. EU Approval or EU Non – Approval) before the appropriate EU judicial authorities irrespective of the opinion of the Parties); and/or

- (b) either prior to, during, or after (or instead of) the procedure mentioned in paragraph (a), accept in writing such different form or conditions of approved State Aid, in which case the other provisions of the Investment Agreement shall apply accordingly; and/or
 - (c) either prior to, during, or after (or instead of) the procedure mentioned in paragraph (a) or (b) enter into good faith discussions with the Agency to explore and seek whether the Investment Agreement can survive in an amended form; and/or
 - (d) either prior to, during, or after (or instead of) the procedure mentioned in paragraphs (a) to (c) terminate the Investment Agreement subject to Clause 16 of the Investment Agreement.
- (E) As of the day of this Amendment 1 the European Commission has not issued an EU Approval or EU Non – Approval until first anniversary of signing of the Investment Agreement by the Parties.
- (F) The European Commission sent a so called letter of advice (*Comfort Letter*) dated 16 October 2024 to the Slovak Republic declaring that on the basis of the information and justifications provided by the Slovak Republic it had come to the preliminary conclusion that the notified measures do not appear to constitute a state aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and asked the Slovak Republic to withdraw the state aid notification.
- (G) Even though the European Commission has not issued an EU Approval or EU Non – Approval until first anniversary of signing of the Investment Agreement by the Parties, relying on the Comfort Letter the Parties remain interested in performance of the Investment Agreement, carried out good faith discussions per (C and E) above to explore and seek whether the Investment Agreement could survive in an amended form and came to the conclusion that it was possible.

IT IS THEREFORE AGREED AS FOLLOWS:

1. SUBJECT MATTER OF AMENDMENT I

The Parties agreed on amendments and modifications to the Investment Agreement as stipulated in Clause 2 of this Amendment I.

2. AMENDMENTS TO THE INVESTMENT AGREEMENT

- 2.1 Clauses 3.1 and 3.2 in Clause 3 of the Investment Agreement shall be replaced by the following wording:

“3.1 State Aid

3.1.1 *The Agency and the Investment Partner acknowledge the content of the Comfort Letter, which sets the prerequisites for the legitimate expectations of the Agency and the Investment Partner that this Agreement, the Rental Housing Act and Government Regulation are not subject to an assessment of the European Commission on whether any and all measures introduced by this Agreement, the Rental Housing Act and/or Government Regulation could be recognized as state aid (the “**State Aid**”).*

3.1.2 *Taking into consideration the Comfort Letter, the Agency and the Investment Partner note that the European Commission, in its preliminary assessment, has not identified such facts that would justify the risks that this Agreement will grant State aid to the Investment Partner within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union, and therefore, on the basis of the utmost diligence, declare a consensus of opinions that the measures of the Rental Housing System, which are defined in particular by the following instruments:*

- (a) a reduced VAT of 5%,*
- (b) creation and maintenance of a registry of landlords and potential tenants, and*
- (c) tax-deductible employers' contributions to employees' housing,*

represent individually and jointly support instruments (which will be provided on the territory of the Slovak Republic as a member state) stimulating affordable housing within the framework of the social policy of the member state, which, from the assessment of these measures so far, do not distort or threaten to distort competition by favouring certain entrepreneurs or production of certain types of goods, and that these measures are compatible with the internal market of the European Union and do not affect trade between the member states of the European Union.

3.1.2 *If, however, the European Commission initiates a procedure related to the granting of unlawful State Aid to the Investment Partner or Landlord (the “**Unlawful State Aid Procedure**”), the Investment Partner shall have the option to do any of the following:*

- (a) request the Agency to act in the Unlawful State Aid Procedure within the scope of the powers conferred on the Agency and initiate such acts and measures in a way that would, by all means possible, defend and further the prerequisites/declarations of the Agency and the Investment Partner pursuant to Clause 3.1.1 and 3.1.2; and/or*
- (b) either prior to, during, or after (or instead of) the procedure mentioned in paragraph (a), terminate this Agreement subject to Clause 16 of this Agreement.”*

3.2 Unlawful State Aid Procedure

- 3.2.1 *If, in the future, the European Commission were to initiate Unlawful State Aid Procedure in relation to the granting of State aid under the Rental Housing System, the Agency shall use its best efforts, and procure cooperation with the Governmental Entities, especially the Antimonopoly Office, in relation to the Unlawful State Aid Procedure to prevent a decision by the European Commission on unlawful State Aid (the “**European Commission Decision**”) and in case that the European Commission Decision is issued, shall use its best efforts, and procure cooperation with the Governmental Entities, especially the Antimonopoly Office, to have the European Commission Decision overruled by any possible remedies (the “**Appeal Procedure**”).*
- 3.2.2 *The Agency undertakes to inform the Investment Partner without undue delay and to the extent permitted by the relevant legislation, on any communication between the Antimonopoly Office, other Governmental Entities, and the European Commission in connection with the Unlawful State Aid Procedure or the Appeal Procedure.*
- 3.2.3 *The Agency undertakes to enable the Investment Partner (at his expense) to support the Agency and the Governmental Entities in the Unlawful State Aid Procedure or the Appeal Procedure, provide its opinions on filings within the Unlawful State Aid Procedure or the Appeal Procedure, and to support the Agency and the Governmental Entities in another way, as per the discretion of the Investment Partner, to prevent the European Commission Decision or to have the European Commission Decision overruled.”*

- 2.2 Clauses 10.11 to 10.16 shall be added in the Clause 10 of the Investment Agreement in the following wording:

*“10.11 Unless otherwise stated below, in case of a Relevant Event set out in Schedule 1 limb (iv) of the Relevant Event definition (the “**Relevant Event (iv)**”), the Clauses 10.11 to 10.16 apply provided that the Investment Partner cannot be indemnified for the amount of unlawful State Aid and related interest and accessory.*

*10.12 In the event of Relevant Event (iv), the Agency will have a special indemnification obligation and the Investment Partner will be entitled to indemnification pursuant to Clauses 10.11 to 10.16 with the purpose to leave the Investment Partner in Neither Better Nor Worse situation. The Investment Partner will be entitled to indemnification if the Investment Partner cumulatively satisfies the following conditions (the “**Compensation for Relevant Event (iv)**”):*

- (a) notification of the Agency (by the Investment Partner) of the request for Compensation for Relevant Event (iv) without undue delay, but no later than ninety (90) days after the Investment Partner becomes aware of Relevant Event (iv),*
- (b) no later than 15 days from the delivery of the notification under the subparagraph (a):*

- (i) *provision and submission to the Agency (by the Investment Partner) a detailed explanation of the consequences of Relevant Event (iv) on the Investment Partner, including the loss of the Investment Partner's revenue, increase in costs and capital expenditures and the required amount of the Compensation for Relevant Event (iv),*
- (ii) *notification of the Agency (by the Investment Partner) of any other relevant information relating to Relevant Event (iv),*

provided, however, that if the foregoing information is not submitted by the Investment Partner within fifteen (15) days of the delivery of the notification pursuant to subparagraph (a), the Investment Partner shall submit all available information within such fifteen (15) day period and shall thereafter provide additional information to the Agency every five (5) Business Days after receipt of notification pursuant to subparagraph (a) until such detailed information and supporting documentation has been provided.

(c) *proving to the Agency, that*

- (i) *Relevant Event (iv) has resulted or will result in a failure by the Investment Partner or the Landlord (under the Investment Partner's Control) to meet other obligations, costs increase or reduction of the generated proceeds (or the failure to realise proceeds or the realisation of proceeds at a later date) by the Investment Partner or the Landlord (under the Investment Partner's Control), whereby the proceeds from the increase in the market value of the Apartments and/or the Rental Apartment Buildings forming part of the Rental Housing Project, shall not be deemed to be the proceeds included by the Investment Partner or the Landlord in the Business Plan, and*
- (ii) *the Investment Partner has used its best efforts in accordance with Good Industry Practice to avoid or mitigate the consequences of Relevant Event (iv) such that the amount of the Compensation for Relevant Event (iv) is only that portion of the consequences of Relevant Event (iv) that the Investment Partner could not have avoided or mitigated by the use of reasonable efforts. For the avoidance of doubt, the Investment Partner's application of Good Industry Practice shall include all reasonable efforts to achieve the highest possible income with respect to the alternative use or disposition of the Apartments and/or Rental Apartment Buildings forming part of the Rental Housing Projects (including the sale thereof in a form that will maximise the revenue/income from the sale thereof, which sale may not be refused by the Investment Partner without good reason approved by the Agency, whereas such reason being only if the sale would cause the consequences of the Relevant Event to be worsened and increase in the need for Compensation for Relevant Event (iv)) if the alternative use or disposition of the Apartments and/or Rental Apartment Buildings can prevent or mitigate the consequences of Relevant Event (iv), whereas the actual revenue/income*

from such alternative use or disposition of the Apartments and/or Rental Apartment Buildings forming part of the Rental Housing Projects will be used to reduce claims arising from Relevant Event (iv) by offsetting them on the side of the revenues. For the avoidance of doubt, it is agreed that should such income/revenue exceed the amount of the Investment Partner's costs related to the Relevant Event (iv), the difference shall remain with the Investment Partner.

whereby the above will be demonstrated by the Investment Partner through an independent professional assessment by a sufficiently experienced and qualified professional advisor or expert, which will be approved by the Agency upon the Investment Partner's proposal, no later than within ten (10) days of the receipt of the proposal by the Investment Partner. In the event of disapproval by the Agency, which must be reasonably justified, the Investment Partner shall appoint up to two and the Agency shall also appoint up to two sufficiently experienced and qualified expert advisors/experts, from among whom the Agency shall select the expert advisor/expert who shall carry out the expert evaluations by draw, in the presence of the Investment Partner and the Notary Public. The costs of the professional assessments will be included in the amount of the Compensation for Relevant Event (iv).

10.13 If the Investment Partner proves that he complied with the obligations under Clause 10.12, the Agency will issue a written decision confirming that the Relevant Event (iv) occurred and determining the amount of Compensation for Relevant Event (iv). Such decision shall be issued no later than one month after the date of the detailed explanation and other information required under Clause 10.12. Within one hundred and twenty (120) days of the issuance of the decision, the Agency shall pay the Compensation for Relevant Event (iv) to the Investment Partner in order to leave the Investment Partner in Neither Better Nor Worse situation. If the Investment Partner disagrees with the Agency's written decision provided in accordance with this clause or if the Agency fails to provide its decision within the prescribed time period, any dispute will be resolved in accordance with Article 18.

10.14 Instead of the payment of Compensation for Relevant Event (iv), the Agency may determine and undertake in its resolution that, within one (1) year after the date of provision of the detailed explanation and other information required under Clause 10.12, it will cause the Rental Housing System to be amended and/or modified by the Governmental Entities, including but not limited to the Rent increase, in order to leave the Investment Partner and/or the Landlord (under the Investment Partner's Control) in Neither Better Nor Worse situation. In the event that the Agency issues a decision pursuant to the previous sentence and the Rental Housing System is amended by the Governmental Entities within the time period pursuant to the previous sentence, the Investment Partner will not be entitled to any other Compensation for Relevant Event (iv) and the Agency's obligation to pay the Compensation for Relevant Event (iv) pursuant to clause 10.13 shall be deemed satisfied. If, however, the Governmental Entities fail to change and/or modify the Rental Housing System within one (1) year after the date of provision of the detailed explanation and other information required

under Clause 10.12, including but not limited to the Rent increase, in order to leave the Investment Partner and/or the Landlord (under the Investment Partner's Control) in Neither Better Nor Worse situation, the Investment Partner will be entitled to terminate this Agreement and the Agency shall pay the Compensation for Relevant Event (iv) within thirty (30) days from the termination.

10.15 The Parties declare that Clauses 10.11 to 10.14 do not constitute a state guarantee or other measures that would constitute State Aid, as they provide a mechanism to ensure that the legitimate expectations of the Investment Partner are met and do not entitle the Investment Partner to compensation for the actual recovery of the State Aid. For the avoidance of doubt, however, it is expressly stated that if the European Commission were to find that State Aid is unlawful by virtue of provisions 10.11 to 10.14 of this Agreement, the Investment Partner shall not be entitled to Compensation for Relevant Event (iv) to the extent that provisions 10.11 to 10.14 of this Agreement would constitute State Aid. Provisions of Article 3 of this Contract apply even in the event of an action by the European Commission under this provision.

10.16 If the Agency has the special indemnification obligation and the Investment Partner is entitled to indemnification pursuant to Clauses 10.11 to 10.14, the Investment Partner shall not be entitled to any further indemnification under this Agreement including the Indemnification Obligation under Clauses 10.1.1 to 10.1.3.

2.3 Clause 16.2 of the Investment Agreement shall be replaced by the following wording:

16.2.1 The Agency may, by (written) termination notice delivered to the Investment Partner, prematurely terminate this Agreement and all Implementation Agreements to which the Agency is a party if:

- (a) there is a Persistent Breach by the Investment Partner or the Landlord (under the Control of the Investment Partner);*
- (b) the Event of Force Majeure will occur pursuant to Clause 11.5;*
- (c) after the entry into force of this Agreement, the European Commission issues first instance, non-final European Commission Decision, which could substantially affect the Rental Housing Projects, and the Parties do not find a solution to change and amend this Agreement to facilitate the preparation and operation of the Rental Housing Projects in accordance with the expectations of the Parties within one year of the formal commencement of their discussions; the Agency may terminate pursuant to this subparagraph c) only before the Decision European Commission enters into force; or*
- (d) pursuant to the Statistical Office Assessment the Agency's Agreement Undertakings form part of the General Government Debt or the Statistical Office Assessment is not issued by 30 November 2025.*

16.2.2 *Prior to the termination the Agency is obliged to notify the Investment Partner of the intention to terminate and provide the Investment Partner an additional reasonable period, but not less than sixty (60) days, to rectify and/or address, as applicable, the situation and/or find an amicable solution satisfactory to the Parties.*

16.2.3 *Following the termination by the Agency pursuant to Clause 16.2.1 (a), the Investment Partner shall pay to the Agency an amount corresponding to the difference between the VAT (Standard Rate) and the VAT (Reduced Rate) with respect to all the Apartments and Rental Apartment Buildings (as the case may be) acquired by all the Landlords (with the Investment Partner's participation "on pro-rata basis" reflecting its shareholding stake in the Landlord), within ninety (90) days after receipt of the termination notice (the "**Settlement Payment**"). The Investment Partner undertakes to submit to the Agency (the latest by thirty (30) calendar days following the Agency's request) any and all supportive documentation the Agency may require from the Investment Partner to determine the Settlement Payment; otherwise, the Agency will determine the amount of the Settlement Payment upon the documents available to the Agency. The Settlement Payment will not apply in case of termination by the Agency pursuant the Clauses 16.2.1 (b) to (d).*

16.2.4 *Following the termination of this Agreement by the Agency under Clause 16.2.1 from the effective date of the termination (which is a day of delivery of the termination notice to the Investment Partner), this Agreement shall be deemed to have been terminated and the Parties specifically agree that the following shall apply:*

(a) the Investment Partner shall have no obligation to perform the Agreement and any of the Implementation Agreements (to the extent permissible by law); and

(b) the Landlord (under the Control of the Investment Partner) shall have no obligation to continue and perform the Rental Housing Projects (approved by the Agency) and any of the Implementation Agreements (to the extent permissible by law); for the avoidance of doubt, any and all Rental Contracts will last until they will be duly terminated either upon agreed terms and conditions or in compliance with applicable law.

2.4 Clause 16.3 of the Investment Agreement shall be replaced by the following wording:

"16.3.1 The Investment Partner may, by (written) termination notice delivered to the Agency, prematurely terminate this Agreement and all Implementation Agreements if:

(a) the Event of Force Majeure will occur pursuant to Clause 11.5;

(b) there is a Persistent Breach by the Agency;

(c) in case of second and each subsequent occurrence of the Qualifying Change in Law;

- (d) *after the entry into force of this Agreement, the European Commission issues first instance, non-final European Commission Decision, which could substantially affect the Rental Housing Projects, and the Parties do not find a solution to change and amend this Agreement to facilitate the preparation and operation of the Rental Housing Projects in accordance with the expectations of the Parties within one year of the formal commencement of their discussions; the Investment Partner may terminate pursuant to this subparagraph d) only before the Decision European Commission enters into force;*
- (e) *the Rental Housing System will not be amended and/or modified by the Governmental Entities within 1 year after the date the detailed explanation and other information required under Provision 10.12 is provided, if the Agency has resolved to proceed pursuant to the Clause 10.14; or*
- (f) *pursuant to the Statistical Office Assessment the Agency's Agreement Undertakings form part of the General Government Debt or the Statistical Office Assessment is not issued by 30 November 2025.*

16.3.2 Prior to the termination the Investment Partner is obliged to notify the Agency of the intention to terminate and provide the Agency an additional reasonable period, but not less than sixty (60) days, to rectify and/or address, as applicable, the situation and/or find an amicable solution satisfactory to the Parties. This does not apply to the termination based on the grounds set out in Clause 16.3.1 limb (e).

16.3.3 Following the termination of this Agreement by the Investment Partner under Clause 16.3.1, from the effective date of the termination (which is a day of delivery of the termination notice to the Agency), this Agreement shall be deemed to have been terminated and the Parties specifically agree that the following shall apply:

- (a) *the Investment Partner shall have no obligation to perform the Agreement and any of the Implementation Agreements (to the extent permissible by law);*
- (b) *the Landlord (under the Control of the Investment Partner) shall have no obligation to continue and perform the Rental Housing Projects (approved by the Agency) and any of the Implementation Agreements (to the extent permissible by law); but for purpose of clarity any and all Rental Contracts shall last until they will be duly terminated either upon agreed terms and conditions or in compliance with applicable law;*
- (c) *the Agency, shall have no right to claim the Loss and Settlement Payment from the Investment Partner, and*
- (d) *in case of the withdrawal pursuant to Clause 16.3.1(d), the Investment Partner shall not be entitled to Compensation for Relevant Event (iv);*

- (e) *in case of termination based on the grounds set out in Clause 16.3.1 limb (e), the Agency shall comply with Clause 10.14.*

16.3.4 In case this Agreement is terminated and unless otherwise stated herein, any and all Implementation Agreements will survive until they will be duly terminated upon the terms and conditions agreed or in compliance with the applicable laws.”

- 2.5 Clause 17.2.1 of the Investment Agreement shall be replaced by the following wording:

“17.2.1 This Agreement is entered into on the date on which it is executed by the Parties (upon previous consent of the Government of Slovakia) and becomes effective on the date of meeting any and all conditions precedent as follows:

- (a) *the publication of the Agreement in the Central Register of Contracts; and*

- (b) *the Condition Precedent (General Government Debt)/Agreement,*

save for Clauses 3, 7, 8.2, 11, 12, 13, 14, 15, 16, 17.2, 17.8, 17.11, 17.13, 18, 19 and Schedule 1 which shall become effective immediately upon this Agreement publication in the Central Register of Contracts.”

- 2.6 Clause 17.2.3 of the Investment Agreement shall be replaced by the following wording:

“17.2.3 The Agency shall inform the Investment Partner without undue delay on meeting of the Condition Precedent (General Government Debt)/Agreement after they have been duly met and the Agency became aware accordingly.”

- 2.7 In Schedule 1 – Interpretation, the definitions of “Condition Precedent (State Aid)”, “EU Approval”, and “EU Non – Approval” shall be removed.

- 2.8 In Schedule 1 – Interpretation, the definition of “Relevant Event” shall be replaced by the following wording:

“Relevant Event means either:

- (i) *an acceptance of an amount requested by a Party to be paid by the Party requested to pay that amount;*
- (ii) *agreement of the Parties on the requested amount to be paid by the respective Party; or*
- (iii) *DAB decision or an arbitral decision with no further right of appeal stating the amount to be paid by a Party to the other Party*
- (iv) *enforceable European Commission Decision on unlawful State aid.”*

- 2.9 In Schedule 1 – Interpretation, the definition of “*Comfort Letter*” shall be added in the following wording:

*„**Comfort Letter** is a so-called letter of advice from the European Commission dated 16 October 2024, in which the European Commission declared that, on the basis of the information and justifications provided by the Slovak Republic, it had come to the preliminary conclusion that the notified measures did not appear to constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and suggested to the Slovak Republic to withdraw the notification of State aid.“*

3. FINAL PROVISIONS

- 3.1 This Amendment I amends the Investment Agreement to the extent expressly specified herein. Other provisions of the Investment Agreement remain intact hereby.
- 3.2 This Amendment I is made in the Slovak and English language. In case of any discrepancies between the Slovak and English version of the Amendment I, the Slovak version shall prevail.
- 3.3 This Amendment I is executed (signed) in two (2) original counterparts while each Party shall receive one original counterpart duly signed by both Parties.
- 3.4 This Amendment I is an amendment and modification to the Investment Agreement and shall be binding after meeting of any and all conditions precedent as follows:
- (a) the consent by the Government of Slovakia;
 - (b) published in the Central Register of Contracts; and
 - (c) the Condition Precedent (General Government Debt)/Amendment.

IN WITNESS WHEREOF this Amendment I has been signed by the Parties (or their duly authorized representatives) on the date stated at the beginning of this Amendment I.

[SIGNATURES ON THE FOLLOWING PAGE]

Signatures

For the Agency:

For the Investment Partner:

By:

By:

Printed Name:

Printed Name:

PhDr. Denis Marko, PhD., MBA, LL. M.

Mathias Moser

Title: Chairman of the Board

Title: Executive Director

By:

Printed Name:

Mgr. Boris Cehlárik

Title: Member of the Board of Directors

**The Agency of the State-Supported rental
housing**

**WBG Wohnen und Bauen Gesellschaft mbH
Wien**