

# **City of Lincoln Council ACQUISITION POLICY**

**September 2019**

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## 1. Introduction

The City of Lincoln Council Acquisition Policy applies to the council's acquisition of land, development sites, residential properties, former council and empty homes acquired using Right to Buy receipts to increase the supply of affordable homes and to bring more empty homes back into use.

## 2. Use of capital receipts acquired through Right to Buy

Under the latest Right to Buy (RTB) regulations owners of former council homes purchased under RTB regulations must, if they wish to re sell their property within ten years of their initial purchase, offer it to their former landlord (the council), or another social landlord. Should the sale take place within the first 5 years of their ownership they must also repay a percentage of the RTB discount they have received on the purchase of the property.

Local Authorities have the ability to reinvest Right to Buy (RtB) receipts within Retention Agreements (so-called 1-4-1 capital receipt agreements) for a period of 3 years. RtB receipts can be used for 30% of the capital costs of purchase and repair of a property or new build on the basis that they provide a one for one replacement for affordable housing (as defined by section 68 (1)(a) of the Housing and Regeneration Act 2008.)

In recent years there has been an increase in the number of properties sold by the council through Right to Buy as shown in the following table.

Year	Total no of Sales	Projected sales in the Self-financing Agreement	Additional sales which give a useable receipt
17/18	67	21	46
16/17	62	20	42
15/16	53	20	33
14/15	35	19	16
13/14	32	17	15
12/13	24	15	9

As a result of the increase in sales of council homes there will be an additional pressure on the council to spend RtB retained capital receipts for the purposes of replacing social housing. Any underspend of retained capital receipts will have to be returned to the Secretary of State with interest of 4% above the base rate on a day to day basis compounded with three monthly rests.

It should be noted that following a consultation from the Ministry of Housing, Communities and Local Government on the rules of Right to Buy and use of receipts in August 2018 we are currently awaiting the Government's announcement regarding any amendments made pursuant to section 11(6) of the Local Government Act 2003. Any changes to the Act in relation to use of RtB retained capital receipts agreement will require amendments to this policy.

### **3. Criteria for Acquisition of former council homes and other individual dwellings to meet strategic need.**

It is proposed that former council properties that are offered back to the council for purchase or former council and privately owned properties for sale on the open market will be assessed and a business case prepared with a recommendation to either purchase or reject the property. We will aim to purchase up to 10 properties per annum from the council's RtB retained capital receipts fund. Properties can be purchased through the Right of Return process or through proactive engagement with local estate agents to identify properties.

The decision to purchase properties will be dependent on a business case and considered on a property by property basis which would be determined by the following factors:

- There is a specific housing need for the type, size and location of the property that is being offered, in accordance with the council's housing register.
- A property is considered of strategic importance, for example individual units within a council owned block or located within the council's defined regeneration area.
- The decision to purchase individual properties funded by retained capital receipts will be considered alongside any planned or potential purchase of larger sites/properties.
- Larger sites/properties will be prioritised over individual properties if at any time there is a limit on the availability of the council's retained capital receipts.
- The purchase price and refurbishment costs will be met by 30% of the RtB receipts and 70% through prudential borrowing or resources within the Housing Investment Programme, whichever is determined most financially prudent at the time of purchase.
- The non-availability of any RtB receipts will, however, not restrict the purchase of individual properties if there is still a business case to support the acquisition.
- The viability of the purchase, refurbishment and borrowing costs will be assessed against rent levels as set out in the council's rent policy to ensure that all purchased properties are self-funded and do not exceed the ceiling price.
- The property is purchased with vacant possession and with the exception of former council flats, properties will be freehold.
- Each party will bear the costs of their own legal and valuation fees.

The following process for the acquisition of individual private properties, including former council homes will be adopted:-

- The Housing Strategy Team (HS) undertake property searches to identify potential acquisitions and consider properties through the Right of Return process.
- HS organise and coordinate a joint viewing inspections with the Housing Repair Service and for properties identified as suitable for acquisition property services are instructed to provide a valuation.
- HS assess the valuation and repair costs and if considered value for money will make an offer subject to contract of an amount no more than the valuation. On acceptance of the offer HS prepare a business case which will include the valuation, acceptance offer, estimated repair cost, rent and Stamp Duty Land Tax. The business case will be assessed by Finance as to its viability.
- Following the assessment by Finance, approval from the Section 151 Officer, or their nominated deputy, is required to proceed with the acquisition under delegated authority, final approval for the acquisition is made by the Director of Housing and Investment, or

their nominated deputy, under delegated authority. Once all approvals are in place Legal Services are instructed by HS to undertake the conveyancing.

- On completion, the acquisition becomes part of the Council's HRA stock and void works are undertaken to enable the property to be let.

#### **4. Criteria for the purchase of all other acquisitions**

The Council is on occasions approached directly by landowners/property owners offering to sell vacant or recently developed housing sites. It is proposed that residential sites offered to the council for sale directly or that become available on the open market are assessed to determine if they meet the council's strategic priorities and a defined local housing need.

The decision to purchase sites will be dependent on a business case and considered on a site by site basis which would be determined by the following factors:

- Acquisitions will include properties for demolition, properties to be remodelled as supported housing, properties bought off-plan or as a group of acquisitions and development land. This is not an exhaustive list of properties or sites.
- Due to the financial costs and resources required by the council to purchase land/properties, larger sites will be prioritised over individual properties if resources are limited at any time.
- The viability of the purchase, new build/refurbishment and borrowing costs will be assessed against rent levels as set out in the council's rent policy to ensure that all development/developed sites/private properties are self-funded.
- Housing need will be based on the evidence from the latest Strategic Housing Market Assessment.
- The council will undertake land valuations (to be appointed internally or externally depending on the expertise/capacity available at the time) and ground surveys where necessary when considering any purchase of land sites.
- The purchase price and refurbishment costs will, in the first instance, be met by 30% RtB receipts with the balance of 70% through prudential borrowing or resources within the Housing Investment Programme. The non-availability of any RtB receipts will, however, not restrict the purchase of individual properties if there is still a business case to support the purchase.
- Where RtB receipts are used to purchase sites there is a specific housing need in location that is being offered, in accordance with the council's housing register.
- Where a site is purchased with existing housing the properties are sold with vacant possession.
- Each party will bear the costs of their own legal and valuation fees.

A business case for all sites identified for purchase by the council will need to be presented to Executive for approval unless an urgent decision is required in which case Executive delegations are in place to the 'virtual' Asset Management Group.

## 5. City of Lincoln Council Right to Buy Replacement Grant Scheme.

The use of retained capital receipts can be utilised for RtB replacement of a range of affordable housing products. RtB receipts can be transferred to ~~Registered Housing Providers (RPs)~~ providers of social housing to provide 30% of funding to deliver affordable housing within Lincoln.

To increase the number of empty homes brought back into use and further increase the supply of new build affordable housing the council will introduce a capital grants programme using RtB capital receipts which otherwise would be returned to the Treasury with interest if not spent within 3 years.

### 5.1 Grant Fund Criteria

The criteria for the grant scheme will be set out to meet the Government's funding rules and will include the following:-

- The council will require ~~RPs~~ providers of social housing to enter into a nomination agreement active for a period of 60 years from the practical completion date in relation to 100% of all new lettings and 75% of subsequent lettings of the homes delivered.
- The grant funding element from the council, or any other public body, cannot exceed 30% of the total amount invested in the capital delivery of the project.
- Funding from the Right to Buy Replacement Programme Grant Fund cannot be used in combination with funding from Homes England. However a split development site with more than one project could qualify so long as funds from the council and Homes England are not invested in delivering the same project.
- Payment of grant will be at pre-agreed stages which will form part of the grant agreement with the council.
- Strict time limits will apply to the delivery of the project and funding claims in accordance with Government funding rules for the RTB funding.
- The provider will be required to submit regular monitoring delivery reports at the end of each quarter relating specifically to:-
  - starts on site;
  - spend on each individual project
  - key programme milestones

The grant will cover the following heads of expenditure:-

#### **Acquisition**

- Purchase price of land/site
- Stamp duty land tax on the purchase price of the land/site

**Works**

- Main contract costs (excluding any costs defined as on costs)
- Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition
- Statutory agreements, associated bonds and party wall agreements (including all fees and charges attributed to such works) where applicable.
- Additional costs associated with complying with archaeological works and party wall agreement awards (including fees charges and claims attributable to such works) where applicable
- Unrecoverable VAT on the above (where applicable)

**On costs**

- Legal fees and disbursements
- Net gains losses via interest charges on development period loans
- Building society or other valuation and administration fees
- Fees for building control and planning permission
- Fees and charges associated with compliance with European Union directives, and any requirements relating to energy requirements of dwellings, Eco-homes certification and Housing Quality Indicators.
- In-house or external consultant's fees disbursements and expenses (where the development contract is a design and build contract) see note 1 below
- Insurance premiums including building warranty and building defects liability insurance (except contract insurance included in works cost)
- Contract performance bond premiums

Borrowing administration charges (including associated legal and valuation fees)

**5.2 Grant Agreement for Right to Buy 1-4-1 Replacement Schemes**

The council will assess an application for RTB grant funding based on the Right to Buy Replacement Programme Grant Fund Assessment Criteria and Scheme Requirements set out in full in appendix 2. Subject to the **RP provider of social housing** meeting the criteria the council will issue a Grant Agreement for Right to Buy Replacement Schemes to be signed by the **RP provider**. A template of the grant agreement can be viewed in appendix 3.

### **5.3 Monitoring of the Grant fund**

Once the grant has been awarded by the council the ~~RP~~ **provider** will be responsible for monitoring and reporting on delivery of the scheme to ensure that the ~~RP~~ **provider** is meeting the strict time limits that will apply to the delivery of the project and funding claims in accordance with Government RTB funding rules. A template of the monitoring form for the council's right to buy replacement grant scheme is available in appendix 4.



## Appendix 1

### Business Case and Authorisation to Purchase Land/Property

<b>Land / Property Reference</b>	
<b>Report by</b>	
<b>Date</b>	
<b>Report</b>	
To cover the following:- <ul style="list-style-type: none"> <li>• Valuation</li> <li>• Refurbishment required</li> <li>• Evidence Housing Need</li> <li>• Opportunities to improve SAP rating</li> <li>• Anticipated total costs, including works and fees</li> <li>• Proposed Offer Price</li> </ul>	
<b>Finance</b>	
141 money allocation - £  70% match - £	
<b>Recommendation</b>	
[As per the attached policy which gives delegated authority to the DOH and DOR to proceed with purchases of ex council properties]  To proceed with the purchase of property as follows:	
<b>Portfolio Holder (Sign and Date)</b>	
<b>DHI (Sign and Date)</b>	
<b>AD S&amp;I (Sign and Date)</b>	
<b>Finance (Sign and Date)</b>	
<b>Legal (Sign and Date)</b>	

## Appendix 2

### Right to Buy Replacement Programme Grant Fund Assessment Criteria and Scheme Requirements

#### Information for Applicants

Both new build and refurbishment projects are eligible for funding. In compiling your application please take note of the following key points. In many instances these are essential to ensure compliance with Government funding rules. NB delivery timescales for projects are very important and must be adhered to in order to trigger grant payments:

- 1 The Council will require you to enter into a nomination agreement active for a period of 60 years from the Practical Completion Date in relation to 100% of all new lettings and 75% of subsequent lettings of the homes delivered.
- 2 The grant funding element from the Council, or any other public body, cannot exceed 30% of the total amount invested in the capital delivery of the project.
- 3 Funding from the Right to Buy Replacement Programme Grant Fund cannot be used in combination with funding from the Homes England. However a split development site with more than one project could qualify so long as funds from the Council and HE are not invested in delivering the same project.
- 4 Payment of grant will be at pre-agreed stages which will form part of your grant agreement with the Council.
- 5 Funds can be spent on new build property or on the refurbishment of a property. Refurbished property must not be social housing properties at the time of the expenditure. All projects must take place within City of Lincoln Council Boundary.
- 6 Strict time limits will apply to the delivery of the project and funding claims in accordance with Government funding rules for the RTB funding.
- 7 Your organisation will be required to submit regular monitoring delivery reports at the end of each quarter relating specifically to:-
  - starts on site;
  - spend on each individual project
  - key programme milestones
- 8 As a minimum your organisation must agree to provide financial records/accounts and any other records requested relating to each project quarterly unless otherwise agreed. Claims should be supported by evidence of spend having been incurred (for example copy invoices). The Council's external Auditors may need to inspect your organisations financial accounts relating to the project(s) in order that the Council complies with the Government Capital Receipts Pooling requirements and the subsequent audit requirements.

- 9 Planning application progress: whilst we do not require planning to be submitted progress toward planning application submission/planning approval is important and therefore your application should clearly describe where you are in respect to the planning application process including pre app discussions and any key planning issues.

### **Eligible expenditure**

#### **The amount spent on social housing includes the following:**

- a) Development costs associated with the acquisition of dwellings to be used as social housing;
- b) Development costs associated with the acquisition of land for the construction of dwellings to be used as social housing;
- c) Development costs of construction of dwellings to be used as social housing.

Development costs mean the costs relating to the development of social housing in respect to the heads of expenditure set out below:

### **Heads of expenditure**

#### ***Acquisition***

- Purchase price of land/site
- Stamp duty land tax on the purchase price of the land/site

#### ***Works***

- Main contract costs (excluding any costs defined as on costs)
- Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition
- Statutory agreements, associated bonds and party wall agreements (including all fees and charges attributed to such works) where applicable.
- Additional costs associated with complying with archaeological works and party wall agreement awards (including fees charges and claims attributable to such works) where applicable
- Unrecoverable VAT on the above (where applicable)

#### ***On costs***

- Legal fees and disbursements

- Net gains losses via interest charges on development period loans
- Building society or other valuation and administration fees
- Fees for building control and planning permission
- Fees and charges associated with compliance with European Union directives, and any requirements relating to energy requirements of dwellings, Eco-homes certification and Housing Quality Indicators.
- In-house or external consultant's fees disbursements and expenses (where the development contract is a design and build contract) see note 1 below
- Insurance premiums including building warranty and building defects liability insurance (except contract insurance included in works cost)
- Contract performance bond premiums
- Borrowing administration charges (including associated legal and valuation fees)
- An appropriate proportion of the development and administration costs of the Authority or the body in receipt of funding from the Authority
- Irrecoverable VAT on the above

#### **Note 1**

Where the development contract is a design and build contract the on-costs are deemed to include the builders design fee element of the contract sum. The amount included by the builder for the design fees should be deducted from the works cost element referred to above, as should other non-works costs that may be submitted by the builder such as fees for building and planning permission, building warranty, defects liability insurance, contract performance bond and energy rating of dwellings.

#### **Note 2**

Some items will not qualify as development costs unless the Authority can clearly demonstrate that such costs are properly chargeable to the social housing, i.e. for the sole use of residents or to comply with any statutory obligations that may have been imposed.

#### **Examples of these are:**

- Works to roads which do not exclusively serve the social housing
- Landscaping to areas of land which lie outside the boundaries of the land on which the social housing site is located.
- District heating systems

- Trunk sewers and sewage disposal works
- Special refuse treatment buildings
- Public conveniences
- Community halls, club rooms, reception rooms

### **Note 3**

Subject to the above where any cost incurred or to be incurred by the Authority or a body in receipt of funding from the Authority is common to both the development of the social housing and to any other activity, asset or property of the Authority or a body in receipt of funding from the Authority only such part of that cost as is attributable to the development of the social housing may be treated as a cost in which the retained amount may be paid.

### **Note 4**

Approval process - where an application is received for a funding request of under £500k the Chief Financial Officer Director of Housing and Investment will approve and authorise the release of this funding from the Right to Buy Replacement Programme. Approvals for this can take up to one month. Where the funding request is over £500k the decision will have to be approved by the Executive Board. Approvals for this can take up to three months.

### **Key Assessment criteria**

**Timescales:** Strict timescales apply to spend of RTB funding and therefore delivery within agreed timescales is essential. (The grant agreement will specify dates for drawdown of funding and expenditure).

**Value for Money:** Your organisation will be expected to demonstrate that all reasonable steps have been taken to ensure best consideration and value for money. A development appraisal may be required if your project is selected at the Expression of Interest stage to go forward to a full application – the level of match funding required – development offer e.g. additional benefits that the project will deliver for the community.

**Affordability:** The Council has a preference for the properties to be let at a social rent.

**Deliverability:** Confirmation of funding availability and strength of project partnership and organisational record of delivery will be essential to the award. Other evidence to demonstrate the scheme is deliverable such as land availability/ownership will also be considered. Similarly the planning status of the scheme will be an important consideration for the allocation of grant.

**Quality standards:** The Council is committed to promoting excellence in respect of design quality, space standards and environmental efficiency. As a minimum all schemes will be expected to meet the Lincoln Standard..

**Alignment with Council Priorities:** Including Empty Homes Strategy, Housing Strategy affordable housing priorities, housing demand data.

**Learning, Training and Employment:** Schemes should demonstrate how they will ensure learning and training opportunities and how they will drive standards for apprenticeships and local labour opportunities.

**Proposed Management:** Applicants should clearly set out how the properties are to be managed, for example, whether they are to be managed by the provider or instead a managing agent be appointed. The Council reserves the right to request additional information in order to ensure that it is satisfied with the proposed management arrangements.

## Appendix 3

### City of Lincoln Council Grant Agreement for Right to Buy 1-4-1 Replacement Schemes

**THIS AGREEMENT** is made the                      day of                      Two thousand and nineteen

#### **BETWEEN:**

- (1) **CITY OF LINCOLN COUNCIL** of City Hall, Beaumont Fee Lincoln LN1 1DD ("**the Council**") and
- (2) [ ] ( **Company No.** ) whose registered office is at **ADDRESS** [ ("**the Grant Recipient**")]

#### **RECITALS:**

- (1) By an agreement dated **12 June 2012 the** Secretary of State for Communities and Local Government has permitted the Council to retain capital receipts the provision of social housing
- (2) The Council has agreed to advance grant funding to the Grant Recipient to facilitate the delivery of new social housing in the Council's administrative area
- (3) The Council will have nomination rights in respect of the social housing constructed by the Grant Recipient
- (4) The Grant Recipient has submitted a bid to the Council for grant funding to assist the Grant Recipient in the acquisition and refurbishment of Properties for social housing
- (5) The grant funding provided under this Agreement is made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

#### **PRINCIPAL CLAUSES:**

##### **1. Definitions**

In this Agreement unless the context otherwise requires:

**"Actual Programme Costs"** means in respect of the Refurbishment Programme the total amount of Eligible Programme Costs actually incurred by the Grant Recipient in acquiring and developing as such amount is warranted and certified by the Grant Recipient pursuant to the provisions of Schedule 1

**"Affordable Rent"** means a rent (inclusive of service charges) which does not exceed eighty per centum (80%) of the market rent for an equivalent property of the relevant size and location such rent to be assessed and set in accordance with the requirements of the Rent Standard or such other below market rent to be agreed from time to time by the parties

**"Affordable Rent Unit"** means a Social Housing Unit let or to be let at an Affordable Rent and not a Social Rent

**"Agreed Principles"** means the terms set out in Part 1 of Schedule 3

**"Agreed Timescale"** means:

in respect of the Start on Site Date, 28 days from the acquisition of the first Property in each Phase of the Refurbishment Programme; and

in respect of the Date of Practical Completion, within 6 months of the Start on Site Date of the last Property in each Phase of the Refurbishment Programme

**"Consents"** means all consents building regulation approvals and other necessary approvals and consents (under statute any lease or otherwise) and all other relevant statutory or regulatory requirements required to enable the Refurbishment Programme to be lawfully carried out and maintained

**"Date of Practical Completion "** means the date on which the Project Monitor notifies the Grant Recipient (such notification not to be unreasonably withheld or delayed) that they are satisfied acting reasonably that the Phase 1 and/or Phase 2 of the Refurbishment Programme is Practically Complete and has been completed within the Agreed Timescale



**"the Refurbishment Programme"** means the acquisition and refurbishment in accordance with the Refurbishment Standards of:

- (a) {} Properties in Phase 1 of the programme ("Phase 1")
- (b) {} Properties in Phase 2 of the programme ("Phase 2") for the purposes of letting the Properties on an assured short hold tenancy or a form of tenancy to be agreed in advance by the Council at an Affordable Rent or such other below market rent to be agreed from time to time by the parties

**"Eligible Programme Costs"** means those costs incurred by the Grant Recipient in carrying out the Refurbishment Programme as specified in Schedule 6 (calculated using generally acceptable accounting principles)

**"Decent Homes Standard"** means the standard described in sections 4 and 5 of the Department for Communities and Local Government's publication entitled "A Decent Home: Definition and guidance for implementation June 2006 Update";

**"Encumbrance"** means any mortgage charge pledge lien or other encumbrance

**"Event of Default"** means any of the events or circumstances set out in Schedule 4

**"the Grant"** means the Phase 1 Grant and the Phase 2 Grant totalling the maximum amount of grant payable to the Grant Recipient by the Council in accordance with the provisions of Schedule 1

**"the Grant Recipient's Obligations"** means the obligations of the Grant Recipient as set out in Schedule 3

**"Insolvency Event"** means the occurrence of any of the following in relation to the Grant Recipient:

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties,

commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness

- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities)
- (c) a moratorium is declared in respect of any indebtedness
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise)
  - (ii) a composition, compromise, assignment or arrangement with any of its creditors
  - (iii) the appointment of a liquidator, receiver, administrator, compulsory manager or other similar officer
  - (iv) enforcement of any Security over any assets of the Grant Recipient
  - (v) any analogous procedure or step is taken in any jurisdiction

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement or
- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Grant Recipient which has a Material Adverse Effect in relation to the Programme

**"the Key Personnel"** means the personnel identified by the Council as being key personnel

**"Longstop Date"** means 24 months from the date of this Agreement PROVIDED always that the Council may in its absolute discretion (but without any obligation to do so) from time to time extend the Longstop Date by giving notice in writing to the Grant Recipient fixing a revised

Longstop Date and upon the giving of such notice any such revised Longstop Date shall be substituted for the date previously fixed hereunder]

**"Material Adverse Effect"** means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Phase 1 and /or Phase 2 of the Refurbishment Programme on the basis agreed under this Agreement within the Agreed Timescales

**"the Maximum Sum"** means 30% of the Actual Programme Costs or the sum of (WORDS) s (£NUMBERS) whichever is the lesser sum.

**"Phase 1 Grant"** means £VALUE being the maximum amount of grant payable to the Grant Recipient by the Council during Phase 1 of the Refurbishment Programme in accordance with the provisions of Schedule 1

**"Phase 2 Grant"** means £VALUE being the maximum amount of grant payable to the Grant Recipient by the Council during Phase 2 of the Refurbishment Programme in accordance with the provisions of Schedule 1

**"Potential Event of Default"** means an event that with the giving of notice by the Council or lapse of time would become an Event of Default in accordance with Schedule 4

**"Practical Completion"** means that Phase 1 and /or Phase 2 of the Refurbishment Programme has been completed within the Agreed Timescale in accordance with Refurbishment Standards and the terms of this Agreement such that all the Properties within each Phase are fit for beneficial occupation as Social Housing Units, and Practically Complete shall be construed accordingly

**"Properties"** means the properties to be acquired by the Grant Recipient for refurbishment as Social Housing Units comprising NUMBER OF UNITS Affordable Rented Units or such other mix of Social Housing as the Council may from time to time agree in writing

**"Public Sector Subsidy"** means all funding or subsidy in relation to the Refurbishment Programme in money or money's worth (including the Grant) received or receivable by the Grant Recipient from public sector bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the Council provided under this Agreement

**"the Project Monitor"** means such person as the Council may from time to time notify to the Grant Recipient is to act as Project Monitor

**"Refurbishment Standards"** means the standards submitted to and agreed by the Council but which if no specific standards are agreed must as a minimum meet the Decent Homes Standard

**"Regulator"** means the HCA acting through the Regulation Committee established by it pursuant to Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions

**"Rent Standard"** means any standard set by the Regulator (including any associated explanatory notes or guidance from time to time under Section 193 Housing and Regeneration Act 2008 pursuant to any then applicable Direction)

**"Rent Standard Guidance"** means the document of that name published by the Regulator in March 2012 (including any other guidance issued by the Regulator in relation to that document) as such document and/or associated guidance may be amended, updated or replaced from time to time

**"Secure Legal Interest"** means the Grant Recipient has in respect of the Properties:

- (a) freehold title registered with title absolute
- (b) leasehold title registered with title absolute where the lease has at least 60 years unexpired duration

**"Security"** means a mortgage charge pledge lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (such as a sale or lease and leaseback a blocked account set off or similar arrangement)

**"SGEI Decision"** means the European Commission's Decision on Services of General Economic Interest dated 20 December 2011 (2012/21/EU)

**"SGEI Decision Overpayment"** means the extent to which Public Sector Subsidy (including the Grant) exceeds the maximum amount of aid under the SGEI Decision which may be provided without Unlawful State Aid arising

**"Social Housing"** has the meaning attributed to it in Section 68 of the Housing and Regeneration Act 2008

**"Social Housing Unit"** means a unit of Social Housing provided by the Grant Recipient that will be made permanently available to be let at an Affordable Rent

**"Social Rent"** means a rent calculated in accordance with the formula for calculating social rents set out in the Rent Standard Guidance

**"Start on Site Date"** means the date on which:

- (a) the Grant Recipient has taken possession of the Property and
- (b) the physical Works to the Property has commenced;

**"State Aid"** means aid granted by a member state of the European Union or through the resources of such a member state which distorts or threatens to distort competition by favouring a particular undertaking, in so far as such aid affects trade between European Union Member States

**"Successful Completion"** means Completion of the Refurbishment Programme within the Agreed Timescales

**"Unlawful State Aid"** means State Aid which has been granted in contravention of Article 107(1) Treaty of the Functioning of the European Union and which does not qualify for an exemption pursuant to any of the provisions of the Treaty of the Functioning of the European Union or any of its subsidiary instructions or legislation

**"Value Added Tax"** means any tax on value (other than Stamp Duty) or turnover (including Value Added Tax as defined by the Value Tax Act 1994) as shall be payable at the rate appropriate at the time of the relevant supply

**"Works"** means all of the works set out in Schedule 6 to this agreement and the refurbishment works required to bring the Properties up to the Refurbishment Standard such works to be agreed by the Parties in respect of each Property prior to the Start on Site Date

## **2. Interpretation**

- 2.1 References to parties and other persons include their successors and permitted assigns except where the context otherwise requires
- 2.2 References to a clause or schedule are references to a clause of or a schedule to this Agreement unless otherwise provided. Clause and schedule headings are for ease of reference only
- 2.3 References to this or any other agreement or document or statute are references to them in force for the time being and as amended varied supplemented consolidated or re-enacted from time to time and include any schedules and annexes to such agreement or document and in the case of statutes any delegated legislation
- 2.4 In this Agreement "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used
- 2.5 The schedules form part of this Agreement
- 2.6 The term 'Refurbishment Programme' include each and every Property therein

- 2.7 Words importing one gender include all other genders and the singular shall include the plural and vice versa

### **3. Purpose**

- 3.1 The Council has agreed to make the Grant available to the Grant Recipient to provide the Refurbishment Programme subject to and in accordance with the terms and conditions of this Agreement.
- 3.2 Each party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the delivery of the Refurbishment Programme.

### **Payment of the Grant**

- 4.1 Subject to the provisions of this Agreement the Council shall pay the Grant to the Grant Recipient in accordance with the provisions of Schedule 1
- 4.2 Unless the Council in its absolute discretion otherwise agrees the Council shall not be liable to pay the Grant or any part of the Grant at any time after the Longstop Date (as the same may be extended) or when:
- 4.2.1 an Event of Default has occurred and is continuing;
  - 4.2.2 the Council believes acting reasonably that an Event of Default is likely to occur as a result of the relevant payment or is imminent; or
  - 4.2.3 any of the representations and warranties contained in this Agreement would be incorrect in a material respect if it was then to be repeated
  - 4.2.4 the Council believes acting reasonably that the payment of the Grant would be Unlawful State Aid

### **5. The Grant Recipient's Obligations**

The Grant Recipient agrees with the Council that it will observe and perform the Grant Recipient's Obligations throughout the duration of this Agreement

## **6. Effect of Events of Default**

Where an Event of Default has occurred and is continuing and has not been remedied the Council may by notice in writing to the Grant Recipient:

- 6.1 suspend the payment of the Grant for such period as the Council in its absolute discretion may determine;
- 6.2 vary the Maximum Sum in which case the payment of the Grant shall thereafter (subject to the provisions of this Agreement and provided that no other Event of Default has occurred and is continuing) be made in accordance with the variation notified to the Grant Recipient; and
- 6.3 terminate this Agreement whereupon:
  - 6.3.1 the Council shall cease to be under any obligation to provide the Grant to the Grant Recipient under this Agreement;
  - 6.3.2 the Council may require the Grant Recipient to repay the whole or any part of the Grant previously paid to the Grant Recipient where the Grant Recipient has not been liable to pay and has not paid such whole or part of the Grant to a third party and it is irrecoverable and the Grant Recipient agrees that upon receipt of notice requiring repayment they shall repay the sums required within twenty eight days of receipt of such notice;

## **7. Repayment of the Grant**

- 7.1 The Grant Recipient shall, unless the Council acting in its absolute discretion agrees otherwise, repay to the Council any part of the Grant paid to the Grant Recipient as a



result of an administrative error (whether by the Council the Grant Recipient or any other person). Any sums falling to be paid by the Grant Recipient to the Council under this Clause may be deducted from any further payments of any part of the Grant that the Council may be liable to pay to the Grant Recipient

- 7.2 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Council shall be entitled to recover from the Grant Recipient the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by law to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of the Council requesting repayment

## **8. Notices**

Any notice required to be given under this Agreement shall be in writing and shall be served:

- 8.1 as regards a notice to be served on the Council by personal delivery or by sending it by recorded postal delivery to the Council's City Solicitor at City Hall Beaumont Fee Lincoln LN1 1DD; or
- 8.2 as regards a notice to be served on the Grant Recipient by personal delivery or by sending it by recorded postal delivery to the Grant Recipient's Chief Executive at the address given in this Agreement

and shall (where sent by post) be deemed to have been served and received on the second working day following the day of posting and (where delivered personally) be deemed to have been given when received by the person to whom it is addressed

## **9. Value Added Tax**

The payment of the Grant by the Council under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payment of the Grant or any part of the Grant shall be deemed to be inclusive of Value Added Tax and the Council shall not be obliged to pay any Value Added Tax over and above the amount of the Grant

## **10. Representations and Warranties**

10.1 Without prejudice to any other term of this Agreement, the Grant Recipient:

10.1.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;

10.1.2 represents and warrants in the terms set out in Part 2 of Schedule 2` to the Council on the date hereof and on each day during the currency of this Agreement; and

3.1.3 acknowledges and agrees that the Council is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

## **11. Publicity**

11.1 Subject to clause 11.2 below, the Grant Recipient shall not make or consent to the making of any public statement or announcement or engage in any promotional activity concerning this Agreement or any involvement of the Council concerning the Refurbishment Programme without the Council's prior consent

11.2 The Grant Recipient shall at all times during the carrying out of the Refurbishment Programme maintain on the Properties in a location to be agreed with the Council a sign

of a type and design approved by the Council indicating that the Refurbishment Programme has been funded by the Council

## **12. Indemnity**

The Grant Recipient shall indemnify and keep indemnified the Council from and against all costs expenses actions charges claims damages proceedings and other liabilities sustained or incurred as a direct result of any Event of Default or Potential Event of Default caused by the Grant Recipient

## **13. General**

- 13.1 Nothing in this Agreement shall constitute or create a partnership or joint venture between the Council and the Grant Recipient or constitute the Grant Recipient or its staff as agents of the Council for any purpose whatsoever and the Grant Recipient and its staff shall not in any circumstances hold itself or themselves out as such
- 13.2 Except where any agreement decision or determination to be made by the Council under or in connection with this Agreement is expressly qualified such agreement decision or determination by the Council shall be made by the Council in its sole and absolute discretion
- 13.3 Any consent approval waiver or agreement of the Council or any person acting on behalf of the Council pursuant to this Agreement shall not be deemed to be an acceptance by the Council of the correctness or suitability of the contents of the subject of the approval or consent
- 13.4 This Agreement shall be governed by the laws of England and Wales and the Council and the Grant Recipient irrevocably agree that any legal action or proceedings arising out of or relating to this Agreement may be brought and enforced in the courts of England and Wales and irrevocably submit to each jurisdiction

- 13.5 This Agreement may only be amended in writing duly executed by the Council and the Grant Recipient
- 13.6 If at any time any of the provisions of this Agreement become illegal invalid or unenforceable in any respect under any law or regulation of any jurisdiction in which they are to be performed the legality validity or enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired as a result and the Council and the Grant Recipient shall in good faith amend this Agreement to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same may comply with the laws of that jurisdiction
- 13.7 No failure or delay on the part of the Council in exercising any right or power and no course of dealing between the Council and the Grant Recipient shall operate as a waiver nor shall any single or partial exercise of any right or power of the Council prevent any other or further exercise thereof or the exercise of any other right or power of the Council. The rights and remedies of the Council are cumulative and not exclusive of any other rights or remedies which the Council would otherwise have provided that the Council has in each instance acted in good faith
- 13.8 Nothing contained in or done under this Agreement and no consents given by the Council shall prejudice the Council's rights powers or duties and/or obligations in the exercise of its functions or under any statutes bye-laws instruments orders or regulations
- 13.9 Nothing in this Agreement nor in any other document shall impose any obligation or liability on the Council with respect to any actions of or obligations or liabilities assumed or incurred by the Grant Recipient or their agents contractors or employees whether under contract statute or otherwise

- 13.10 Any disputes or differences arising as between the Council and the Grant Recipient as to their respective rights duties or obligations or as to any other matter or thing arising out of or connected with the subject matter of this Agreement (other than as herein provided) shall be referred in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force to the determination of a single arbitrator to be agreed upon by the parties or failing agreement within seven days of a written request by one of the parties requesting such agreement then (upon the request of either of the parties) to a person nominated as arbitrator by the President for the time being of the Royal Institution of Chartered Surveyors.
- 13.11 For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Council's rights powers and obligations in the exercise of its functions as a local authority and the rights powers duties and obligations of the Council under all public and private statutes bye-laws orders and regulations may be as fully and effectually exercised in relation to the Properties and the Refurbishment Programme as if this Agreement had not been executed by them
- 13.12 The Grant Recipient may not assign or sub-contract any part of this Agreement without the consent of the Council (other than pursuant to security) and the Council may only assign or sub-contract it to a body which shall supersede the Council in dealing with the subject matter of this Agreement

#### **14. Security**

The Grant Recipient consents to the entry of an agreed notice against the Grant Recipient's title to the Property at the Land Registry

#### **15. Nominations**

On the date of this Agreement the Grant Recipient will enter into a nominations agreement in the form attached at Schedule 5.

#### **16. Entire Agreement**

This Agreement constitutes the entire understanding and agreement between the Council and the Grant Recipient as to the subject matter of this Agreement and save as expressly referred to or incorporated by reference supersedes all prior negotiations submissions or understanding between the Council and the Grant Recipient with respect to the subject matter

#### **17. Fraud**

The Grant Recipient must take all reasonable steps to prevent the risk of fraud to the Council. Where such steps reveal the possibility of fraud affecting the resources of the Council the Grant Recipient shall immediately inform the Council

#### **18. Prevention of Bribery and Corruption**

The Council shall be entitled to cancel this Agreement and to recover from the Grant Recipient the amount of any loss resulting from such cancellation if:

- 18.1 the Grant Recipient shall have offered or given or agreed to give to any person any gift or consideration of any kind inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Agreement or any other agreement with the Council;
- 18.2 the like acts shall have been done by any person employed by the Grant Recipient or acting on its behalf; or
- 18.3 in relation to any agreement with the Council the Grant Recipient or a person employed by them or acting on its behalf shall:

18.3.1 have committed any offence under the Bribery Act 2010; or

18.3.2 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

18.4 In exercising its rights or remedies under this Clause 18 the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of and the identity of the person performing the relevant act

**IN WITNESS** whereof the parties hereto have executed this document as a deed the day and year first hereinbefore written

## **SCHEDULE 1**

### **Procedures for the payment of the Grant**

#### **1 Reporting**

- 1.1 Until Practical Completion or such later date as the Council shall require the Grant Recipient will deliver to the Project Monitor a written report ("the Report") each month following the date of this Agreement updating the Council on general progress in relation to the Refurbishment Programme including, but not limited to:
  - 1.1.1 details of Properties selected for acquisition
  - 1.1.2 exchanges of contract and completion of the purchases of selected Properties
  - 1.1.3 details of schedule of works and a detailed breakdown of the estimated cost of the refurbishment works for each Property
  - 1.1.4 expenditure incurred in relation to the Refurbishment Programme :
- 1.2 The Report shall be signed by one of the Key Personnel or such other person as the Council in its absolute discretion may agree
- 1.3 The Council reserves all its rights pursuant to this Agreement in relation to any material changes or anticipated changes to the Refurbishment Programme or any of the schedules to this Agreement that may be disclosed in the Report
- 1.4 The Report shall be in such form as the Council may reasonably require
- 1.5 The Grant Recipient shall deliver to the Project Monitor such information as the Council or the Project Monitor may reasonably require in support of the Report

#### **2 Application for payment**



## **2.1 Application for Payment of the Phase 1 Grant**

- 2.1.1 An Application for Payment of 50% of the Phase 1 Grant shall be submitted to the Project Monitor by the Grant Recipient on the Phase 1 Start on Site Date confirming that the Start on Site Works have commenced. The Council will pay the grant monies within 28 days of the Application for Payment
- 2.1.2 The Grant Recipient may upon the Date of Practical Completion of the last Phase 1 Property submit a further application for payment in respect of Actual Programme Costs incurred during Phase 1 of the Refurbishment Programme up to a maximum of 50% of the Phase 1 Grant ) together with the Report and

## **2.2 Application for Payment of the Phase 2 Grant**

- 2.2.1 An Application for Payment of 50% of the Phase 2 Grant shall be submitted to the Project Monitor by the Grant Recipient on the Phase 2 Start on Site Date confirming that the Start on Site Works have commenced. Subject to 2.2.3 below the Council will pay the grant monies within [28] days of the Application for Payment
- 2.2.2 The Grant Recipient may upon the Date of Practical Completion of the last Phase 2 Property submit a further Application for Payment in respect of Actual Programme Costs incurred during Phase 2 of the Refurbishment Programme up to a maximum of 50% of the Phase 2 Grant together with the Report
- 2.2.3 It is hereby agreed by the Parties that the Council may not be obliged to make a payment of grant funding in respect of a Phase 2 Application for Payment unless all Properties in Phase 1 have achieved Practical Completion within the Agreed Timescale
- 2.3 The Application for Payment shall be signed by one of the Key Personnel or such other person as the Council (acting reasonably) may agree
- 2.4 The Application for Payment shall be made in such form as the Council may reasonably require

- 2.5 The Grant Recipient shall keep in one location the documentation required to verify the accuracy of the Application for Payment and shall permit the Council on giving reasonable notice and at reasonable times access to inspect such documentation
- 2.6 The Grant Recipient acknowledges that any delay in delivering the Report the Application for Payment or any information requested by the Council pursuant to this Schedule is likely to delay the payment of the Grant or any part of the Grant to the Grant Recipient
- 2.7 The Grant Recipient will if reasonably required by the Council or the Project Monitor meet with the Council or the Project Monitor in order to review verify and discuss the Report or the Application for Payment
- 2.8 The Grant Recipient will permit the Council and the Project Monitor access to the Property in order to inspect the Properties discuss the Report and/or the Application for Payment and shall if required (on reasonable notice) by the Council or the Project Monitor arrange for the Consultants or any of the Consultants required by the Council or the Project Monitor to be available at such inspection
- 2.9 The Grant Recipient shall deliver to the Council or the Project Monitor such information as the Council or the Project Monitor may reasonably require in support of the Application for Payment

### **3 Payment of the Grant**

- 3.1 Without prejudice to the Council's rights to withhold the payment of the Grant under the terms of this Agreement the Council shall be under no obligation whatsoever to make a payment of the Grant or any part of the Grant until it is completely satisfied that such payment will be in relation to Actual Programme Costs in respect of the Refurbishment Programme

The Council shall pay the Grant to the Grant Recipient in instalments each instalment to be paid within twenty eight days of receipt of the Application for Payment PROVIDED THAT the total aggregate of all the payments made by the Council in respect of the Actual Programme Costs shall not in any event exceed the Maximum Sum

3.3 Unless the Council otherwise agrees the Council shall not be liable to pay the Grant or any part of the Grant:

3.3.1 unless the Application for Payment :

3.3.1.1 are made in the form reasonably required by the Council and are signed by one of the Key Personnel;

3.4.1.1 relate to Actual Programme Costs in relation to which the Grant Recipient has not submitted any other Application for Payment to the Council; and

3.4.1.2 includes to the reasonable satisfaction of the Council evidence that the expenditure to which the Application for Payment have been incurred and that payment is due from the Grant Recipient

3.3.2 if an Event of Default has occurred and is continuing or if the Council believes acting reasonably that an Event of Default is likely to occur as a result of payment pursuant to such Application or is imminent

3.3.3 if any of the representations and warranties contained in this Agreement would be incorrect in a material respect if then repeated by reference to the facts and circumstances then subsisting

3.3.5 if the Council is not satisfied acting reasonably that the relevant Phase of the Refurbishment Programme in relation to which the Application for Payment has been made has been satisfactorily completed

- 3.4 If the Council shall determine that any expenditure previously defrayed and the subject of a prior Application for Payment are not Actual Programme Costs or if at any time the Council has paid more than it is liable to pay under any provision of this Agreement the Council shall be entitled to deduct the amount properly stipulated by the Council as having been overpaid from any further payments of any part of the Grant
- 3.5 The Council is not under an obligation to consider any obligation to make a payment in respect of any Application for Payment made on or after a date which is 28 days prior to the Longstop Date

## **SCHEDULE 2**

### **Acknowledgments Representations and Warranties**

#### **Part 1**

##### **Agreed Principles**

- 1.1. The Grant is being made available by the Council on the express understanding that it is applied solely for the purposes of funding the Actual Programme Costs in respect of the Refurbishment Programme
- 1.2. The Public Sector Subsidy including the Grant in respect of Refurbishment Programme may not exceed an amount equal to 30% of the Actual Programme Costs incurred by the Grant Recipient in respect of the delivery the Refurbishment Programme;

#### **Part 2**

##### **Representations and Warranties**

1. The Grant Recipient is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.
2. The Grant Recipient has the power to enter into and to exercise its rights and perform the Grant Recipient's Obligations under this Agreement
3. The Grant Recipient is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Refurbishment Programme.
4. The Grant Recipient's obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with its terms.
5. The execution, delivery and performance by The Grant Recipient of this Agreement do not:

- 5.1. insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
- 5.2. conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
- 5.3. contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.
6. All Consents required in connection with the execution delivery issue validity or enforceability of this Agreement have been obtained (or will be obtained before or when required) and (where obtained) have not been withdrawn
7. To the best of the Grant Recipient's knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect in relation to the Refurbishment Programme.
8. To the best of the Grant Recipient's knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.
9. No person having any Security over the Properties or any other assets of the Grant Recipient has enforced or given notice of its intention to enforce such security.
10. It is not aware, after due enquiry, of anything which materially threatens the success or Successful Completion of the intention or purpose of this Agreement.
11. All information documents and accounts submitted by the Grant Recipient to the Council were true and accurate as at the date on which the same were supplied and that no change

has occurred since the date on which such information was supplied which renders the same untrue or misleading in any material respect (save as may have been disclosed or updated or corrected by other information supplied to the Council) and that save as so disclosed updated or corrected there has been no material adverse change in its undertaking assets operations or prospects since such information was provided.

12. The Grant Recipient has disclosed to the Council all information which it reasonably believes would influence the Council in awarding the Grant to it or the amount thereof.
13. The Grant Recipient is not aware after due enquiry of anything which materially threatens the success or Successful Completion of the Refurbishment Programme or makes it unlikely.
14. No Event of Default has occurred and is continuing and save as notified to the Council the Grant Recipient is not aware of any Potential Event of Default.
15. The Grant Recipient has a Secure Legal Interest in the Properties or will have acquired a secure Legal Interest at the date of Application for Payment in respect of any grant monies to be spent on Works at those Properties
16. The representations and warranties contained in this Schedule shall be deemed to be repeated whenever payment of the Grant or any part of the Grant is made with reference to the facts and circumstances then pertaining

## **SCHEDULE 3**

### **The Grant Recipient's Obligations**

#### **1 Consents**

- 1.1 The Grant Recipient shall not carry out any work without having first obtained all necessary Consents for that work and in particular (but without prejudice to the generality of the foregoing) shall not carry out any work constituting development for which permission is required under the Town and Country Planning Act 1990 without detailed planning consent for that work having been obtained and if requested by the Project Monitor to produce to him such documents or copy documents as the Project Monitor may reasonably require to demonstrate satisfaction of its obligations under this paragraph
- 1.2 At all times throughout the Refurbishment Programme to comply with all Consents
- 1.3 The Grant Recipient shall apply for the Reserved Matters Approval within eight weeks of the Effective Date

#### **2 Procurement**

The Grant Recipient shall comply with all applicable Procurement legislation (including the Council's own procedure rules where notified to the Grant Recipient in writing) in connection with the procurement of any part of the Refurbishment Programme and promptly provide to the Council any information which the Council may reasonably require in order to satisfy itself that the Grant Recipient has done so

#### **3 Indemnity**



The Grant Recipient shall at all times fully and effectually indemnify the Council from and against any claims made against or losses incurred by the Council in connection with this Agreement including but not limited to any proceedings of any kind that may be suffered by the Council in connection with the payment of the Grant to the Grant Recipient

#### **4 Practical Completion**

- 4.1 The Grant Recipient shall give at least fourteen days' prior written notice to the Council of the date when they anticipate that the Date of Practical Completion of the Refurbishment Programme will occur
- 4.2 Immediately following the issue by its architect of a certificate of practical completion of the Refurbishment Programme (or any part of the Refurbishment Programme) the Grant Recipient shall furnish a copy thereof to the Council

#### **5 Material alteration of the Refurbishment Programme**

Not without the prior written consent of the Council to make any alterations or variations to the Refurbishment Programme

#### **6 Dealings with this Agreement**

Not to assign or transfer or otherwise dispose of the benefit of this Agreement other than pursuant to security

#### **7 Notification by the Grant Recipient**

The Grant Recipient shall notify the Council in writing:

- 7.1 as soon as practicable thereafter in the event of any material change in the information on costs (whether actual or estimated) of carrying out the Refurbishment Programme

and the Project provided for the appraisal of the Grant or the arising of any event which materially affects the continued accuracy of such information

- 7.2 as soon as practicable thereafter in the event of any receipt by the Grant Recipient of any other Public Sector Subsidy or the offer of the same in respect of the Refurbishment Programme
- 7.3 as soon as practicable thereafter of any event which is reasonably likely to materially and adversely affect the carrying out and completion of the Refurbishment Programme
- 7.4 forthwith on becoming aware of the occurrence of an Event of Default or of a Potential Event of Default

## **8 Provision of information**

The Grant Recipient shall provide the Council with such information as the Council may reasonably require in connection with the Refurbishment Programme or any permitted variations thereto from the Start Date to the date on which the Companies have fulfilled all of their obligations under this Agreement

## **9 Inspection and audit facilities**

The Grant Recipient shall permit the Council or persons authorised by the Council (in each case on giving reasonable notice and at reasonable times) to inspect the Property and to inspect audit and take copies of all reports books accounting records and vouchers relating to the Refurbishment Programme which the Council (acting reasonably) considers relevant and in particular (but without prejudice to the generality of the foregoing and the rights and obligations of either party) to inspect any works before the issue of any certificate of partial or practical completion and the Grant Recipient shall ensure that there is due regard to any observations made by or on behalf of the Council in particular in respect of any items which

are considered need to be done or remedied before the relevant certificate is issued Provided always that the Grant Recipient may exercise its professional judgement in a reasonable manner

## **10 Further assurance**

At any time upon the written request of the Council the Grant Recipient shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be reasonably necessary for the purpose of obtaining for the Council the full benefit of this Agreement and of the rights and powers herein granted

## **11 Good faith**

The parties shall at all times act with good faith in their dealings with one another

## **12 Execution of the Refurbishment Programme**

- 12.1 The Grant Recipient shall as soon as reasonably practicable procure the commencement and thereafter with all due expedition the carrying out and completion of the Refurbishment Programme in a good and workmanlike manner with good quality materials and substances of their respective kinds in accordance with all with the Consents and with due monitoring by the Grant Recipient of progress with a view to achieving Practical Completion within the Agreed Timescales
- 12.2 Following Practical Completion the Grant Recipient shall take all steps necessary to procure the remedy without delay of all defects in workmanship and materials which may then be found

## **13 Use of the Grant**

The Grant Recipient will apply the Grant only for the carrying out of the Refurbishment Programme

#### **14 No Borrowing etc.**

14.1 The Grant Recipient will not without the Council's prior written consent (such consent not to be unreasonably withheld or delayed) create or permit to subsist any Encumbrance on any of their interests assets or revenues (including in particular but without prejudice to the generality of the foregoing the Property)

#### **15 Payment of Outgoings**

The Grant Recipient shall pay and discharge all costs expenses and other amounts required to procure the due performance of its obligations under this Schedule including all amounts of Value Added Tax payable by the Grant Recipient

#### **16 Meetings**

The Grant Recipient shall give to the Project Monitor at least five days' prior written notice (or if this is not practicable as much notice as is possible) of any meeting where the Refurbishment Programme or any item pertaining to the Refurbishment Programme is to be discussed or is likely to be discussed and shall provide him with copies of the agenda for the meeting and copies of any papers to be discussed. A representative of the Council shall be permitted to attend any such meeting and participate in any discussions taking place (but not vote) and the Project Monitor shall be provided with copies of the minutes of all such meetings including any at which the Council is not represented

## **SCHEDULE 4**

### **Events of Default**

#### **1      Insolvency**

At any time:

- 1.1    an Insolvency Event has occurred in relation to the Grant Recipient; or
- 1.2    the Grant Recipient ceases to operate

#### **2      Misuse of the Grant**

The Grant Recipient applies the Grant other than in respect of the Refurbishment Programme and fails to repay the Grant within 30 days of a demand under paragraph 3.4 of Schedule 1

#### **3      Breach of other obligations**

At any time the Grant Recipient fails to perform and observe any obligation owed to the Council under this Agreement or under any deed or document supplemental to this Agreement or creating security pursuant to this Agreement and fails to remedy such failure within 30 days of notice from the Council requiring it to do so

#### **Fraud**

At any time the Grant Recipient has acted fraudulently in relation to this Agreement or the Refurbishment Programme

#### **4      Material misrepresentation**

At any time any representation or statement made by or on behalf of the Grant Recipient in this Agreement and/or the Grant Recipient's application for the Grant and/or in any document

referred to in or delivered under this Agreement is not true and accurate in any material respect when made or deemed repeated whether deliberately or not

## **5 Commencement and completion of the Works**

The Refurbishment Programme has not been started and completed within the Agreed Timescales or such longer period (if any) as the Council at its absolute discretion may allow

## **7 Withdrawal etc. of Consents**

Any Consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the Council's opinion may materially or adversely affect the Grant Recipient's ability to perform and observe their obligations under this Agreement

## **8 Breach of Nominations Agreement**

The provisions of the Nominations Agreement are not complied with

## **SCHEDULE 5**

### **Eligible Programme Costs**

The costs eligible for Grant funding under the terms of this Agreement are:

- a) the Programme costs associated with the acquisition of the Properties to be used as Social Housing
- b) the programme costs associated with the refurbishment of the Properties to the Refurbishment Standard]in respect of the heads of expenditure set out below

#### Heads of expenditure

##### 1 Acquisition

##### 1.1 Purchase price of the Properties

##### 1.2 Stamp duty land tax on the purchase price of the Properties

##### 2 Works

##### 2.1 Such works as are notified in writing to and agreed by the Council in respect of each Property prior to the Start on Site Date for that Property

##### 2.2 2.3 Statutory agreements, associated bonds and party wall agreements (including all fees and charges attributed to such works) where applicable.

##### 2.4 Additional costs associated with complying with party wall agreement awards (including fees charges and claims attributable to such works) where applicable

##### 2.5 Unrecoverable VAT on the above (where applicable).

##### 3 On costs

##### 3.1 Legal fees and disbursements

##### 3.2 3.3 Building society or other valuation and administration fees

3.4 Fees for building control and planning permission 3.5 Fees and charges associated with compliance with European Union directives, and any requirements relating to energy requirements of dwellings, Eco-homes certification and Housing Quality Indicators.

3.

3.7 Insurance premiums including building warranty and building defects liability insurance (except contract insurance included in works cost).

3.8 Contract performance bond premiums

3.9 Borrowing administration charges (including associated legal and valuation fees).

3.10 An appropriate proportion of the administration costs of Grant Recipient

3.11 Irrecoverable VAT on the above.



**SCHEDULE 6**

**PROPERTIES**

**[if addresses of properties known at the date of the agreement]**

Executed as a deed by a .....  
director, in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

Witness occupation: .....

**THE COMMON SEAL** of **CITY OF LINCOLN COUNCIL**  
was hereunto affixed in the presence of:-

## Appendix 4

### Right to Buy Replacement Programme Monitoring Table

<b>Scheme Reference Number:</b>		<b>Period:</b>	
<b>Name of Organisation:</b>			
<b>Organisational Contact:</b>			
<b>Scheme inc. short description and unit numbers:</b>			
<b>Scheme Commencement Date:</b>			
<b>Development Period:</b>			
<b>Long Stop Date:</b>			

#### Monitoring Report:

<b>Please outline works completed within the current reporting period and expenditure occurred.</b>
<b>Please outline works to be completed within the next reporting period.</b>
<b>Where you have been unable to meet the terms of the agreement please detail:</b>
1) Reasons for the delay 2) What actions have been undertaken to mitigate this. 3) Upcoming milestones

<b>I confirm that this is an accurate record of the project funded by the Right to Buy Replacement Programme:</b>	
<b>Name</b>	
<b>Position</b>	
<b>Signature</b>	
<b>Date</b>	