

SMD 21st June 2012 – Retention of Right to Buy Receipts

Agreement – Section 11(6) of the Local Government Act 2003

This agreement is made pursuant to section 11(6) of the Local Government Act 2003.

Parties

The Secretary of State for Communities and Local Government (“the Secretary of State”) and

..... (“the Authority”).

This agreement comprises 10 pages

General

1. In this agreement :

“the due date”, “quarter” and “the relevant quarter” have the same meaning as in the Regulations;

“receipts” means the receipts to which Schedule 1 to the Regulations applies;

“retained amount” means the amount calculated in Part 1;

“the Regulations” mean the Local Authority (Capital Finance and Accounting) (England) Regulations 2003;

“social housing” means low cost rental accommodation as defined by section 68(1)(a) of the Housing and Regeneration Act 2008;

“the sub-liability” means the sub-liability calculated under Schedule 1 to the Regulations;

the terms “A”, “E”, “F”, “G”, “J” and “K” used in this agreement have the same meaning as in Schedule 1 to the Regulations.

2. This agreement applies to receipts received on or after 1st April 2012 (“the commencement date”).
3. The Authority is not required to pay to the Secretary of State such portion of the sub-liability calculated in accordance with Part 1 of this agreement provided the Authority complies with the conditions set out in this agreement.
4. The Authority must use the retained amounts for the provision of social housing. Any amounts not used for this purpose must be paid to the Secretary of State and interest will be payable calculated in accordance with paragraph vi of Part 1.
5. The Authority must provide the information set out in Parts 1 and 4 of this agreement to the Secretary of State at the times and in any format the Secretary of State may request.
6. This agreement may be terminated by the Secretary of State by giving notice of one quarter.
7. This agreement may be amended by agreement.

Part 1 - Calculation of the portion of the sub-liability that the Authority may retain.

- i. Where in any quarter –

A is more than $(3.39847729 \times G) + E + F + J$

the Authority may retain an amount (“the retained amount”) up to–

K less $(2.398347729 \times G)$.

- ii. The Authority must inform the Secretary of State of the following by the due date of the relevant quarter-
 - (a) the value of K less $(2.398347729 \times G)$;
 - (b) the retained amount; and
 - (c) any amount not retained by the Authority.
- iii. Where the Authority has informed the Secretary of State (under paragraph ii(c)) that an amount will not be retained, the Authority must pay that amount to the Secretary of State by the due date of the relevant quarter.
- iv. Where the Authority has informed the Secretary of State that an amount will not be retained and fails to pay that amount on the due date of the relevant quarter, interest is payable and incurred from the due date until the Authority pays that amount to the Secretary of State.
- v. Where the Authority does not inform the Secretary of State of the amount it will not retain by the due date of the relevant quarter, it will be assumed that the retained amount for that quarter is the full amount the Authority may retain and where an amount is not retained and is paid to the Secretary of State, interest will be payable and incurred from the due date until the date the Authority pays that amount to the Secretary of State.
- vi. The Authority may pay any part of the retained amount to the Secretary of State and where it does so, interest is payable and incurred from the due date of the relevant quarter in which the retained amount was retained by the Authority until the date it is paid to the Secretary of State.

Part 2– Return of retained amounts

- i. This Part applies where 13 quarters have expired since the commencement date.

ii. In this Part :

“the reckonable quarter” means the quarter 12 quarters prior to the relevant quarter;

“quarter 1” means the quarter in which the commencement date falls;

A is the total of the retained amounts for all quarters from quarter 1 to the reckonable quarter;

“the total amount spent on the provision of social housing” is the amount spent on the provision of social housing from quarter 1 to the last day of the relevant quarter;

R is the total of the returnable amounts calculated under paragraph iv of this Part and amounts paid to the Secretary of State under paragraph vi of Part 1 for all the quarters from quarter 1 to the reckonable quarter.

iii. The total retained amount is calculated as follows –

$$A - R.$$

iv. Where on the last day of the relevant quarter, the total retained amount exceeds 30% of the total amount spent on the provision of social housing, the Authority must pay to the Secretary of State the portion of the total retained amount in excess of 30% of the total amount spent on the provision of social housing (“the returnable amount”).

v. Where the Authority must pay a returnable amount to the Secretary of State under paragraph iv of this Part, interest is payable, calculated and incurred from the due date of the reckonable quarter until the date the returnable amount is paid to the Secretary of State.

Part 3 - Calculation of interest

Where interest is payable under this agreement, it will be calculated at a rate of 4% above the base rate on a day to day basis compounded with three-monthly rests and “base rate” has the same meaning as in the Regulations.

Part 4 - Provision of information

On the due date of each relevant quarter the Authority must provide to the Secretary of State the details of the number of starts on site since the commencement date.

“Start on site” means the earlier of commencement of the following by the Authority or other body to which the Authority has paid all or part of the retained amount for the purpose of providing social housing:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving; or
- (d) drainage work specific to the buildings forming part of the scheme.

Part 5 – The amount spent on the provision of social housing

- i. The amount spent on the provision of social housing shall not include any expenditure which has been used or which the authority intends to use to-
 - (a) reduce a capital receipt under regulation 15(1)(c) of the Regulations (capital allowance); or
 - (b) buy back a relevant interest defined in paragraph 3(1)(b) of the Schedule to the Regulations and claim buy back

allowance in respect of that expenditure under paragraph 3 of the Schedule to the Regulations.

- ii. The amount spent on the provision of social housing shall not include any expenditure on dwellings which are social housing at the time of the expenditure.
- iii. The amount spent on the provision of social housing is the amount spent by the Authority or by a body to which the Authority has paid some or all of the retained amounts (such body must not be a body in which the Authority holds a controlling interest) on the development costs associated with the provision of social housing for the benefit of the Authority's area.
- iv. Where the Authority has paid all or some of the retained amounts to a body for the purpose of contributing towards the cost of providing social housing, the Authority must ensure that only retained amounts provided by the Authority have been used by such body for the provision of social housing for the benefit of the Authority.
- v. Social housing is provided for the benefit of the Authority where it is situated in the area of the Authority or the Authority has nomination rights in respect of the social housing.
- vi. The amount spent on social housing includes the following:
 - (a) the development costs associated with the acquisition of dwellings to be used as social housing;
 - (b) the development costs associated with the acquisition of land for the construction of dwellings to be used as social housing;
 - (c) the development costs of the construction of dwellings to be used as social housing.

- vii. In this Part “development costs” means the costs set out in Part 6.

Part 6 – Development costs

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

Heads of expenditure

1 Acquisition

1.1 *Purchase price of land/site.*

1.2 *Stamp Duty Land Tax on the purchase price of land/site.*

2 Works

2.1 *Main works contract costs (excluding any costs defined as on costs).*

2.2 *Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.*

2.3 *statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.*

2.4 *Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.*

2.5 *Irrecoverable VAT on the above (where applicable).*

3 On costs

3.1 *Legal fees and disbursements.*

3.2 *Net gains/losses via interest charges on development period loans.*

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 Community directives, and any requirements relating to energy rating of dwellings, Eco-Homes certification and Housing Quality Indicators.*
- 3.6 *In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note 1 below).*
- 3.7 *Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).*
- 3.8 *Contract performance bond premiums.*
- 3.9 *Borrowing administration charges (including associated legal and valuation fees).*
- 3.10 *An appropriate proportion of the development and administration costs of the Authority or the body in receipt of funding from the Authority.*
- 3.11 *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 builder's design fee element of the contract sum. The amount included by the builder for 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 the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

- *works to any 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 is situated;*
- *district heating systems;*
- *trunk sewers and sewage disposal works;*
- *special refuse treatment buildings;*
- *public conveniences;*
- *community halls, club rooms, recreation 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 both to 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 respect of which the retained amount may be paid.

Signed on behalf of the Authority by

(insert name and position in capitals)

..... (add signature and date)

Signed on behalf of the Secretary of State by Graham Duncan – Deputy
Director – Affordable Housing Regulation and Investment

.....(add signature
and date)