
FREETHS

Rushmoor Development Partnership LLP (“RDP”) Summary of Key Documents

Members Agreement

This is the principal agreement setting out the relationship between the parties and how RDP will operate (LLPs do not have a set of formal “articles” as a company does).

Key provisions, objectives and powers – primarily to deliver growth and regeneration in the Surrey and Hampshire areas including Aldershot and Farnborough as sub-regional centres, to maximise financial return, to achieve “targeted area development” and procure a return commensurate with investment and risk.

Management and operation of the LLP – all major decisions are to be made by the Investment Partnership Board which can have up to 8 members but initially 3 Council representatives and 2 Hill representatives.

To be quorate, an Investment Partnership Board meeting must have at least 2 Council and 1 Hill representative.

The Investment Team – deals with more day-to-day matters related to projects and have 3 representatives from each party.

General Duties – each party confirms that it will co-operate in the running of the LLP and notify the other of matters as they become aware and take steps to ensure meetings have a quorum (of not less than 2 Council and 1 Hill representatives).

Accounts – annual accounts are provided, including quarterly management accounts to each of Hill and the Council.

Capital Contributions – each party’s initial contribution is limited to £100, additional capital contributions may be made but equality should be protected. Typically, the LLP will obtain its working capital through borrowing, either from shareholders (covered via Loan Notes) or from third parties.

Land Transfer – there is a process for the Investment Partnership Board determining whether a site should be developed. The Council are required to consult the LLP concerning potential sale of sites under its ownership other than disposal to voluntary bodies, following which an exclusivity arrangement may be agreed.

Any site transfers will have to be in accordance with the Council's Section 123 duties to achieve best consideration, but payment will typically be by virtue of the issue of a Loan Note to the assessed value of the property.

Profit Shares – profits after deduction of all LLP costs are dealt with in accordance with the capital contributions, ie 50:50.

Investment Plan

The LLP operates in accordance with an Investment Plan with a 5 year duration, updated annually. Each project will not be signed off until a Project Plan has been adopted for that site, identifying the location of the site, the price, proposed use, budget, programme, anticipated income returns and whether it is proposed to create a specific Special Purpose Vehicle Company to carry out that project.

Disputes – either party can raise a dispute if the other party has either failed to honour the agreement or is insolvent. If a breach cannot be resolved, either the LLP is wound-up or the non-defaulting party can buyout shares at a value to be assessed by an independent valuer.

Assignment – neither party may transfer its interest to another party without the consent of the other LLP party, transfers connected with a reorganisation of local government are excluded from this, eg transfer into the hands of a Combined Authority.

Power of Attorney

In order to ensure that anybody signing documents on behalf of RBC as a member of RDP is properly authorised, it is suggested that a Power of Attorney be entered into naming the chosen individuals.

Loan Note

The Loan Note document is a record of monies loaned by either Hill or RBC into the LLP with a financial sum attached to it and a redemption date (eg 2038) by which the monies must be repaid. This will be used both as a way to recover the value of RBC land transferred to the LLP (as the LLP will have no free monies of its own), or monies which either party decides to invest within the LLP to help it facilitate developments.

Pre-payments – instalments of the Loan Note can be paid down at any time. It is anticipated that, in practice, as developments go forward Loan Notes will be repaid, as the terms of the Members Agreement require loans to be repaid in preference to profits being shared. When monies are paid, a revised Certificate is issued showing how much money is still outstanding.

The loan may attract interest, as agreed.

LLP Security Agreement / Debenture

The Debenture (or “Security Agreement”) provides formal security for the payment of monies due under a Loan Note. The base provision of the Debenture is that the LLP charges as security and is registered at Companies House against RDP. The Charge has the effect of charging sites as if there were a mortgage (against property listed in the Schedule) and all other assets such as rights to equipment, monies and goodwill. The Debenture is described as being a “Floating” Charge, but if the LLP were to be subject to an insolvency situation the Charge can convert to a “Fixed” Charge against the property. Additional security over sites cannot be created without the consent of the Security Trustee, nominated as Hill Investment Partnership Limited.

Loan Note Exchange Agreement

Because of the structure to be followed, for example with individual SPVs (“Special Purpose Vehicle Companies”) potentially being created to deal with the development of an individual site, the Loan Note Exchange Agreement allows loans granted to the SPV to be exchanged so that they are Charges over the assets of the LLP itself.

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