

**Joint Venture**  
**West Berkshire Council and Sovereign Housing Association**

**DRAFT Heads of Terms**

**1. BACKGROUND**

- 1.1. West Berkshire District Council (**Council**) and Sovereign Housing Association (**Sovereign**) via its development arm, Sovereign Westinghouse Development Ltd (**SWD**), wish to work together in partnership. They intend to establish a limited liability partnership (**LLP**) to act as a joint venture vehicle to increase the delivery of housing and in particular affordable housing in West Berkshire to meet the needs of the residents of West Berkshire.
- 1.2. These will include a mixture of affordable rent model and shared ownership homes as well as market rent and other tenures. The activity may generate an income stream for both the Council and Sovereign as the members of the LLP.
- 1.3. Land adjacent to Phoenix Centre, Newtown Road, Newbury and Residential Care Home, Chestnut Walk, Hungerford are Council-owned properties that have been identified as potentially being suitable for the joint venture. Any decision by the Council to dispose of any property to the LLP would be a decision for the Council undertaken in accordance with the Council's normal governance and procedural arrangements for disposal of land.
- 1.4. Further properties (including but not limited to properties owned by the Council or Sovereign) may be identified from time to time and the parties will decide whether to pursue the acquisition and development of those properties on a case by case basis in accordance with the documents referred to in paragraph 2.
- 1.5. These heads of terms represent the commercial agreement of the parties at the current stage of negotiations.

**2. DOCUMENTATION**

- 2.1. The joint venture will be based around the following principal documentation:
  - 2.1.1. overarching strategic land agreement (**OSLA**)
  - 2.1.2. limited liability partnership members' agreement (**Members' Agreement**)
  - 2.1.3. [funding agreements]
  - 2.1.4. development management agreement (**DMA**)
  - 2.1.5. asset management agreement (**AMA**)
  - 2.1.6. residential management agreement (**RMA**)
  - 2.1.7. corporate and financial services agreement (**CFSA**)
- 2.2. In addition, the members will approve a Business Plan and financial model. Any material amendments to the Business Plan and/or financial model will require the approval of the LLP's members.

**3. OVERARCHING STRATEGIC LAND AGREEMENT**

**3.1. Parties:**

- 3.1.1. Council;
- 3.1.2. SWD [and/ or] [Sovereign]; and

### 3.1.3. LLP.

3.2. The OSLA will govern the arrangements between the Council and Sovereign as landowners and the LLP. This will allow the Council and Sovereign to establish a clear separation of duties and responsibilities when dealing with the LLP in their capacity as a landowner.

3.3. The OSLA will provide appropriate controls, protections and mechanisms for the timing of the drawdown of land from the Council and/or Sovereign into the LLP. The following controls, protections and mechanisms are envisaged:

3.3.1. the circumstances under which properties will be transferred into the LLP;

3.3.2. an option for the LLP to call down identified properties once the relevant property is vacant and/or one the planning consent is granted;

3.3.3. the obligations to be performed by each of the Council or Sovereign and the LLP in order to prepare and enable properties to be drawn down:

a) when a property is ready to be drawn down, the LLP will have a period of [ ] months within which to exercise a drawdown option and if the option is not exercised within this period it will lapse and the property will cease to be included in the OSLA;

b) all properties will be drawn down on the basis of either a lease or a freehold transfer which will be granted by the landowner to the LLP. Properties may not be drawn down for land banking but must be developed in accordance with the agreed Business Plan. The option preconditions will be framed so that at the time of draw down, a property must be ready for development in accordance with the Business Plan for that property;

3.3.4. the price to be paid for a property will be established (or verified) upon draw down on the basis of a pre-agreed appraisal and approval methodology including circumstances where less than market value consideration is to be provided;

3.3.5. preconditions for exercise of draw down option – any option to draw down a property will become exercisable by the LLP when the following have been achieved:

a) the LLP has adopted a Business Plan for the relevant property (which is consistent with the overarching LLP Business Plan) and includes an indicative development programme for the property;

b) the proposed development scheme satisfies a viability test in accordance with the overarching LLP Business Plan and there is a development appraisal adequately costed and verified in sufficient detail to support the viability test;

c) the project monitor or development manager has signed off a value for money certificate in respect of construction costs;

d) the project monitor or development manager has provided a report to the LLP on likely values and costs within specified parameters to support the development appraisal;

e) vacant possession can be obtained when needed (and/or arrangements for further decant are in place);

f) planning consent has where relevant been obtained by the LLP for the development (or first phase if a multi phased scheme). The assumption in respect of any Council property is that the costs of obtaining planning permission will be met by the LLP (funded 50:50 by the LLP's members) and the property will be valued and transferred with the benefit of planning permission;

g) funding has been agreed for the development (or first phase);

- h) any required amendments to the pro forma lease or transfer documentation for the relevant property have been approved by the landowner (acting reasonably); and
- i) any consents for disposal which have not already been obtained have been given.

3.3.6. Viability test – prior to exercising any draw down option, the LLP must be satisfied that development is viable in accordance with the Business Plan and financial model. Viability testing (and market analysis) will be on the basis of pre-agreed required levels for Internal Rate of Return (IRR) for development so that the viability test (and the resulting residual land value), is determined by external or objective market criteria. Elements such as construction costs and anticipated values must have been costed and verified in sufficient detail to ensure that the viability test is robust. This will in part be satisfied by the project monitor/development manager signing off or reporting on certain aspects of the proposed development, as set out above.

3.4. Separately, the Council may wish to obtain its own independent report to ensure it is satisfied that the resulting land value and "value for money" analysis meets the Council (as landowner)'s regulatory and constitutional requirements for land disposals.

#### 4. MEMBERS' AGREEMENT

##### 4.1. Parties:

4.1.1. Council;

4.1.2. [Sovereign] [SWD]<sup>1</sup>; and LLP.

4.2. The parties will make the following funding available by way of [capital contributions] [debt] to the LLP<sup>2</sup>:

4.2.1. Council: £[ ] on the timetable provided at Schedule [ ];

4.2.2. [Sovereign] [SWD: £[ ] on the timetable provided at Schedule [ ];

on the following terms:

4.2.3. [ ]

4.3. On terms to be agreed between the members and the LLP and recorded in member loan agreements.

4.4. The parties will hold the following interests and voting rights in the LLP:

4.4.1. Council: [50]%

4.4.2. [Sovereign] [SWD]: [50]%

4.5. The Members' Agreement will govern the commercial terms of the joint venture and how the two parties will jointly run and fund the LLP.

4.6. The stated business of the LLP will be: [ ].

4.7. Strategic control over the operation of the LLP will be retained by the members through the right to:

4.7.1. approve the LLP business plan; and

4.7.2. make decisions on a unanimous basis in respect of those matters listed at schedule 1 (**reserved matters**).

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<sup>1</sup> It was proposed by Sovereign to mitigate any risk associated with the question of whether the Council directly participate in LLP Sovereign's interest of 50% maybe shared between two entities. However in light of the Haringey ruling this is not necessary.

<sup>2</sup> Both capital and debt has been mentioned in our meetings but Council requires financial advice on how best to equitise the venture.

- 4.8. If a matter which would otherwise be a reserved matter is included in the Business Plan, then there is no requirement to obtain an additional approval in respect of that matter and the LLP has the authority to proceed and implement it. As a result, reserved matter approval should only be sought in respect of matters outside the Business Plan.
- 4.9. The parties will establish an LLP management board comprising of [six] individuals:
- 4.9.1. Sovereign appointees: [ ];
  - 4.9.2. Council appointees: [ ].
- 4.10. One member of the board shall be appointed as chair for an annual term. The right to appoint the chair shall rotate between the parties and the Council shall make the first appointment. The chair will not have a casting vote.
- 4.11. The parties do not intend that a management board member will provide any goods or services to the LLP in a personal capacity. Accordingly, the LLP shall not remunerate any member of the management board and expenses shall only be paid in accordance with a policy approved from time to time.
- 4.12. The management board will have the task of delivering the business plan.
- 4.13. Each management board member shall have one vote on any matter unless he/she has a conflict of interests. A conflict of interests in this context means a personal conflict, a conflict between his/her appointing member (or member of its group) and the LLP (including under any contracts between them) or actual or alleged default of that member under the Members' Agreement. If at any point a conflict of interest arises, the conflicted member and its appointees to the management board member shall be excluded from the LLP's decision-making processes in respect of the matter giving rise to the conflict of interest.
- 4.14. Any deadlocked decision at management board level (arising by reason of the same number of votes cast for and against a resolution, or by reason of a lack of quorum) may be referred by any management board member to the members for resolution.
- 4.15. If at any point the members are unable to agree as to how the LLP should proceed in relation to a reserved matter or a matter referred to them by the management board, a deadlock shall have arisen and the following deadlock resolution procedure shall apply:
- 4.15.1. the matter shall be escalated within each member's organisation to [ ] for the Council and [ ] for Sovereign;
  - 4.15.2. failing resolution it may be referred by either member to non-binding mediation; and
  - 4.15.3. failing resolution through mediation, either member may give notice that the LLP should be independently valued and sealed bids made by each member for the other member's equity and debt interests in the LLP. In the event neither member makes a bid, the parties shall do all things necessary to approve a winding up of the LLP.
- 4.16. If a member suffers or commits a default event under the Members' Agreement (broadly, a change of control, un-remedied material or persistent breach or insolvency), the other member shall have the right, but not the obligation, to acquire the defaulting member's equity and debt interests in the LLP at 90% of the fair value of those interests as determined by an independent valuer.
- 4.17. A member may transfer its equity and debt interests in the LLP:
- 4.17.1. at any time, to another member of its group, provided the transferee has a sufficient financial covenant to meet its obligations under the Members' Agreement, and provided that there is a transfer back in the event the transferee leaves the group of the original member transferor;
  - 4.17.2. at any time, with the prior written consent of the other member;
  - 4.17.3. after an initial lock in period (equivalent to practical completion plus one year), to a third party but only after offering those interests to the other member on the same terms.

4.18. Any incoming third party shall be required to adhere to the terms of the Members' Agreement and the Business Plan then in force. In no circumstances shall a transfer of interests in the LLP be permitted where the transferee is an "unsuitable person" (broadly, a person with a material interest in the production, distribution or sale of tobacco, alcohol or pornography, any person whose activities are incompatible with the provision of housing services or services to the public sector in general, or any person who poses or could pose a threat to national security).

4.19. On the [seventh] anniversary of the Members' Agreement and on the expiry of each subsequent seven year period, the members will consider their continued relationship and each of them will have the following rights:

4.19.1. to call for the sale of the LLP's assets and its liquidation; and

4.19.2. [alternative exit events].

## 5. DEVELOPMENT MANAGEMENT AGREEMENT

5.1. Development Management Agreement between the LLP and [Sovereign?] for the management of all development services (**DMA**).

5.2. The LLP will appoint [Sovereign?] pursuant to the DMA in a form to be agreed, but which will include the following key items:

5.2.1. a fee calculated on costs incurred basis (including costs of the Chief Executive, overheads, business rates, etc.) and as signed off by the project monitor, to be payable in accordance with the agreed relevant financial model;

5.2.2. an agreed scope of service; and

5.2.3. [other key terms to be determined including relationship with proposed project monitor role]

## 6. ASSET MANAGEMENT AGREEMENT & RESIDENTIAL MANAGEMENT AGREEMENT

6.1. The new homes will be managed by Sovereign or its subsidiary company who will provide both housing management and asset management services.

6.2. The LLP will appoint a housing and asset manager pursuant to a management agreement in a form to be agreed with:

6.2.1. an agreed scope of services and Key Performance Indicators (KPIs);

6.2.2. a fee calculated on costs incurred basis and as signed off by the project monitor, to be payable being not less than [TBA] subject to [RPI][CPI] increase; and

6.2.3. [ ]

## 7. CORPORATE AND FINANCIAL SERVICES AGREEMENT

7.1. Corporate and Financial Services Agreement between the LLP and [ ] for company secretarial, tax and accounting services (**CFSA**);

7.2. The LLP will appoint a provider pursuant to a services agreement in a form to be agreed and following an open tender process against an agreed scope of services and KPIs, and including the following key items:

7.2.1. a fee calculated on costs incurred basis and as signed off by the project monitor, to be payable being not less than [£ ] a month subject to [Retail Prices Index (RPI)] [Consumer Prices Index(CPI)] increase];

7.2.2. an agreed scope of services; and

7.2.3. [ ]

These heads of terms are non - binding and subject to contract.

.....  
Signed for and on behalf of Sovereign

.....  
Date

.....  
Signed for and on behalf of the Council

.....  
Date

CONFIDENTIAL DRAFT

## **Schedule – Reserved Matters**

### **Officers and members of the LLP**

1. Agreeing the appointment and the appointment terms (including any remuneration terms), or the removal, of any management board member other than one appointed by Sovereign or the Council.
2. Approving the admission of further members to the LLP or agreeing any rights or restrictions attaching to any shares/equity allocated to such new members.
3. Agreeing or approving any increase in the maximum size of the management board.

### **Future direction and development of the LLP**

4. Agreeing to enter into or entering into any debt facility or loan agreement other than the member loan agreements.
5. Forming any subsidiary or acquiring an interest in any other LLP or participating in any partnership or joint venture (incorporated or not).
6. Amalgamating or merging with any other LLP or business undertaking.
7. Selling or disposing of any part of the LLP.
8. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
9. Apply for the listing or trading on any stock exchange or market.

### **Management of the business of the LLP**

10. Changing the name of the LLP.
11. Adopting and/ or agreeing any material amendments or variations to a Business Plan.
12. Creating or agreeing to create a charge, security or encumbrance over the LLP's assets, interest or income.
13. Changing the nature of the business of the LLP or commencing any new business which is not ancillary or incidental to the business.
14. Agreeing to enter into or entering into any acquisition or disposal of any material assets by the LLP.
15. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the business or materially varying any such arrangements, contracts or transactions.
16. [Appointing and changing the LLP's auditors].
17. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or giving any guarantee (other than in the normal course of trading) or indemnity outside the normal course of business.
18. Changing the accounting reference date of the LLP.
19. Accepting any capital contributions in the LLP.
20. Authorising the return of any capital contributed to the LLP to a member.
21. Allocating and distributing any profit of the LLP.