



CITY OF YORK COUNCIL

**SHAREHOLDERS AGREEMENT
EXECUTIVE SUMMARY**

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CITY OF YORK COUNCIL

Shareholders Agreement – Executive Summary

Words and expressions used in this executive summary (“**Summary**”) have the means ascribed thereto by the Shareholder’s Agreement (the “**Agreement**”), a copy of which is appended to this Summary.

This Summary sets out details of what we believe are the key provisions of the Agreement. We have sought to identify the key issues of which the City of York Council (the “**Council**”) should be aware, However this Summary is not exhaustive and consequently the Council should read the Agreement in its entirety and not just this Summary in isolation.

1 COVENANTS

The provisions of Clause 3 of the Agreement provide that each of the Company and the Council covenant with each other in the terms of Part 1 and Part 2 of Schedule 2.

Covenants provided by the Company to the Council include:

- Shareholder Consents – these include matters on which the Company must seek the prior written consent of the Council before it takes any of the actions listed. Such actions include the allotment of further shares in the Company (whether to a third party shareholders or the Council), entering into or establish any joint venture with a third party, incurring certain levels of material expenditure or financial indebtedness or making any amendments to the Business Plan;
- Decision making by the Board – paragraph 3 of Part 1, Schedule 2 provides that any material decisions made by or on behalf of the Company are either approved at a properly convened Board meeting or by a written resolution approved by all of the Directors unanimously;
- Information and reporting obligations – the Company must provide certain information to the Council at regular intervals, for example the provision of a quarterly information pack containing management accounts, as well as the ongoing obligation to keep the Council informed of matters relating to the progress of the Business. We can discuss with the Council any further requirements it may have in this regard.

The covenant given by the Council is such that the Council undertakes to the Company that it will generally act in a manner that will promote the Business and the best interests of the Company at all times acting in good faith, subject always to its statutory and common law duties.

2 **PURPOSE AND MANAGEMENT**

This Clause 6 of the Agreement sets out the primary purpose of the Company, being the development of the Business in accordance with the Business Plan. It provides that the Company will at all times operate policies which are consistent with the Company Mission Statement and the Council Mission Statement (the Company Mission Statement being a term to be defined upon further discussion between Cobbetts and the Council) and that the Company will conduct the Business and its affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan.

Consideration should be given as to whether any other specific requirements should be included in this Clause.

3 **BOARD AND MEETINGS**

Clause 7 details the constitution of the Board of directors. As per our instructions, the Board is to be made up of at least four directors, including at least one non-executive director. It is envisaged that such a non-executive director will be a representative of the Council in its capacity as a shareholder.

A Chairman is to be appointed to the Board, who may be an executive or non-executive director. Any such Chairman shall not have a casting vote.

The provision also deals with the frequency of such Board meetings, being quarterly.

4 **SHAREHOLDER COMMITTEE**

Clause 8 provides for the establishment of a Shareholder Committee. It is envisaged that the Shareholder Committee will be made up of representatives from the Council.

As currently drafted the Shareholder Committee is not to take an operational role but will be the means by which the Council will appoint and remove Directors, review the Annual Business Plan, discuss and review the financial performance of the Company and its performance as a whole.

5 **DIVIDENDS**

Clause 9 sets out the dividend policy to apply to the Company. To the extent that the Company has any surplus contributions available, such cash is to be applied to the provision of working capital for the Company and the retention of appropriate levels of profits in the Company, with any balance being distributed to the Council as shareholder.

We would recommend that the Council seeks the appropriate tax advice in relation to any dividends it is seeking to take from the Company.

6 TERMINATION

Clause 16 deals with the duration of the agreement and what will happen in the event that the Agreement is terminated (which can be either at the mutual agreement of the Council and the Company, or in the event that a resolution is passed or an order is made for the winding-up of the Company).

7 RECLASSIFICATION

We have not included provisions as to the classification or subsequent reclassification of the Council from a “Best Value” authority. Given the changes in legislative requirements as a result of the 2009 Trading Order, the Council may consider that such provisions are not necessary. However, appropriate provisions can be included as to the termination of the agreement and the winding up of the Company in the event that the Council is reclassified from Best Value status if so required.

8 BUSINESS CASE AND BUSINESS PLAN

The Agreement has been drawn on the basis that the Business Case, as required by the 2009 Trading Order, has been prepared and approved by the Council prior to the entry into the Agreement.

It is envisaged that the Company shall prepare, and agree with the Council, a Business Plan setting out, amongst other matters, the proposed business activities of the Company and the expected financial performance of the Company for the coming year. Any material deviation from the Business Plan is to be at the prior written approval of the Council (please see Covenants 1.2.1 and 1.1.1).

Cobbetts LLP

27 June 2011

APPENDIX

The Shareholder's Agreement