

# **DERBY HOMES LIMITED**

**Company Number: 04380984**

**Date of Incorporation: 25 February 2002**

**COMPANY LIMITED BY GUARANTEE**

**THE COMPANIES ACTS 1985, 1989 AND 2006**

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## **MEMORANDUM AND ARTICLES OF ASSOCIATION**

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**As amended by special resolutions dated 15<sup>th</sup> June 2005, 29<sup>th</sup> March 2007, 25<sup>th</sup> October 2007 and 30<sup>th</sup> March 2011**

# MEMORANDUM OF ASSOCIATION

## 1. NAME

The name of the company is Derby Homes Limited ("the Organisation").

## 2. REGISTERED OFFICE

The Organisation's registered office is to be located in England.

## 3. OBJECTS

The objects of the Organisation shall be limited to the following:

(A) To:

- (1) acquire, provide, construct, improve, or manage Social Housing or any other housing;
- (2) provide, manage, maintain, improve, demolish or convert the housing stock owned or managed by the City Council or the Organisation from time to time together with any other amenities or facilities for the benefit of residents of such housing stock either exclusively or together with persons who are not residents of such housing stock;
- (3) provide amenities and services of any description for residents of housing stock owned or managed by the City Council or the Organisation from time to time either exclusively or together with persons who are not residents of such housing stock;
- (4) provide advice and assistance to all tenants, leaseholders, and licensees, of the City Council or the Organisation and applicants for housing and applicants for housing advice in respect of City Council housing or the Organisation's housing;
- (5) carry out any activity which contributes to the regeneration or development in the area of the City Council (within the meaning of Section 126 of the Housing Grants Construction and Regeneration Act 1996) including but not limited to:-
  - (a) securing that land and buildings are brought into effective use;
  - (b) contributing to or encouraging economic development;
  - (c) creating an attractive and safe environment;
  - (d) preventing crime or reducing the fear of crime;

- (e) providing, constructing, managing, maintaining, demolishing, converting or improving housing or social and recreational facilities for the purpose of encouraging people to live or work in the said area or for the purpose of benefiting people who live there;
  - (f) providing employment for local people;
  - (g) providing or improving training, educational facilities or health services for local people;
  - (h) assisting local people to make use of opportunities for education, training or employment;
  - (i) meeting the special needs of local people which arise because of disability or because of their sex or the racial or religious group to which they belong.
- (6) provide, manage, maintain or improve accommodation required from time to time for the benefit of persons who require temporary accommodation;
  - (7) carry out any function of a local housing authority (as defined in the Housing Act 1985) which is conferred by or under Part VI or Part VII of the Housing Act 1996 which the Organisation is permitted to carry out under any order made under the Regulatory Reform Act 2001 or any preceding legislation including the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996;
  - (8) assess applications by residents of housing stock owned or managed by the City Council or the Organisation to exercise the right to buy under Part V of the Housing Act 1985;
  - (9) carry out housing benefit verification (or verification in relation to any benefit replacing housing benefit) of persons on behalf of the Council;
  - (10) enable or assist any residents of the housing stock owned or managed by either the City Council or the Organisation to acquire, or to acquire and enter into occupation of, houses;
  - (11) provide services of any description for the City Council and subject to the prior written consent of the City Council, provide services to any other person to whom the City Council itself could provide such services to the extent that the provision of such services is in either case connected with or incidental to the provision of housing; and
  - (12) provide advice and assistance to persons and organisations providing, managing, maintaining, demolishing, converting or improving housing or carrying out charitable activities;
- (B) In relation to any local authority or public body (both as defined by the Local Authorities (Goods and Services) Act 1970) to provide advice services to any

such local authority or public body providing, managing, maintaining, demolishing, converting or improving housing; and

- (C) To carry on any other activity that can be carried out by a non-charitable company registered under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 as amended or replaced from time to time.

#### **4. POWERS**

Subject to Clause 5, the Organisation may do anything that a natural or corporate person can lawfully do which is not expressly prohibited by the Memorandum and in particular (without limitation to the generality of the foregoing) it has powers:

##### **Property**

- (1) to construct, alter, improve, maintain, equip, furnish and/or demolish any buildings, structures or property;
- (2) to purchase, lease, exchange, hire or otherwise acquire any real or personal property rights or privileges (including shared or contingent interests);
- (3) to sell, lease, licence, exchange, dispose of or otherwise deal with property;
- (4) to provide accommodation for any other organisation on such terms as the Board decides (including rent free or at nominal or non-commercial rents);

##### **Staff and Volunteers**

- (5) to employ staff or engage consultants and advisers on such terms as the Board may approve and to provide pensions to staff, their relatives and dependants;
- (6) to recruit or assist in recruiting and managing voluntary workers;

##### **Fund Raising**

- (7) to raise funds, to invite and receive contributions;

##### **Trading**

- (8) to trade in the course of carrying out its objects and to charge for services;

##### **Publicity**

- (9) to hold, conduct or promote meetings, conferences, lectures, exhibitions or training courses and to disseminate information to publicise the work of the Organisation and other similar organisations;
- (10) to promote or carry out research and publish the results of it;

##### **Contracts**

- (11) to co-operate with and enter into contracts with any person, including the City Council;

### **Bank or Building Society Accounts**

- (12) to draw, make, accept, endorse discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank or building society accounts in the name of the Organisation;

### **Borrowing and Loans**

- (13) subject to the prior written consent of the City Council and to such consents as may be required by law to borrow money, to issue loan stock or raise money in such manner as the Organisation shall think fit and to secure the repayment of any money borrowed raised or owing by such security as the Organisation shall see fit (including by way of floating charge) upon the whole or any part of the Organisation's property or assets (whether present or future) and also by giving similar security to secure and guarantee the performance by the Organisation of any obligation or liability it may undertake or which may become binding on it;

### **Insurance**

- (14) to insure the assets of the Organisation to such amount and on such terms as the Board decides, to pay premiums out of income or capital and to use any insurance proceeds as the Board decides (without necessarily having to restore the asset);
- (15) to insure and indemnify its employees and voluntary workers from and against all risks incurred in the proper performance of their duties;
- (16) to take out insurance to protect the Organisation and those who use premises owned by or let or hired to the Organisation;
- (17) to take out indemnity insurance to cover the liability of the Board Members and officers of the Organisation who are not Board Members but this insurance may not extend to:
  - (a) any claim arising from any act or omission which a Board Member or officer knew was a breach of duty or breach of trust or which was committed by a Board Member or officer in reckless disregard of whether it was a breach of duty or breach of trust or not; or
  - (b) the costs of an unsuccessful defence to a criminal prosecution brought against a Board Member or officer in his capacity as a Board Member or officer of the Organisation.

### **Investments**

- (18) to invest the money of the Organisation in any investments, shares, securities or property (real or personal) of any nature (including investments involving liability and those not producing income) and in any location that the Board decides;
- (19) to delegate to an investment manager power at his discretion to buy and sell investments for the Organisation in accordance with the investments policy laid down by the Board;
- (20) to make such arrangements as the Board thinks fit for any investments of the Organisation or income from those investments to be held by a corporate body which is incorporated in England and Wales (or which has established a branch or a place of business in England and Wales) as the Organisation's nominee and to pay remuneration to that corporate body;
- (21) subject to such consents as may be required by law and compliance with all formal guidance issued by the Organisation's regulators (if any) to purchase or otherwise acquire or encourage or promote and in any way support or aid the establishment and development of any subsidiary, or any other body established for the purposes of carrying on any trade or business either for the purpose of raising funds for the Organisation or for the furtherance of the objects of the Organisation;
- (22) subject to the prior written consent of the City Council to make donations, grants or loans or provide services or assistance to such persons and organisations and on such terms as the Board shall think fit to further the objects of the Organisation.

### **Other Organisations**

- (23) to establish, promote, assist or support (financially or otherwise) any trusts, companies, industrial and provident societies, associations or institutions which have purposes which include any one or more of its objects;
- (24) to co-operate or join with any voluntary body or public or statutory authority in any location whatsoever in furthering its objects or allied purposes, to exchange information and advice and to undertake joint activities with them;
- (25) to amalgamate with any organisation which has objects similar to its objects;
- (26) to affiliate, register, subscribe to or join any relevant organisation;
- (27) to act as agent or trustee for any organisation;

### **Reserves**

- (28) to accumulate income in order to set aside funds for special purposes or as reserves against future expenditure;

### **Formation expenses**

- (29) to pay the costs of forming the Organisation and of complying with all relevant registration requirements;

**General**

- (30) to do anything else within the law which promotes or helps to promote its objects.

**5. LIMIT ON POWERS**

The Organisation shall not, without the prior written consent of the City Council, have the power to:

- (1) enter into any transaction which may affect:
- (a) the City Council's affordable borrowing limits as determined from time to time by the City Council under section 3 of the Local Government Act 2003;
  - (b) any borrowing limits set by the Secretary of State under section 4 of the Local Government Act 2003 either in relation to the City Council's borrowing limits or the limits of local authorities in general; or
  - (c) the City Council's compliance with the Prudential Code for Capital Finance in Local Authorities published by CIPFA as amended or reissued from time to time.
- (2) invest or make any arrangements to invest sums other than in a building society, bank or through the City Council.

**6. APPLICATION OF INCOME AND PROPERTY**

The income and property of the Organisation shall be applied solely towards the promotion of its objects as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, save as provided below by way of dividend, bonus or otherwise howsoever by way of profit, to the City Council and no Board Member or Committee Member shall be appointed to any office of the Organisation paid by salary or fees or receive any remuneration or other benefit or money or money's worth from the Organisation PROVIDED THAT nothing herein shall prevent any payment in good faith by the Organisation:-

- (1) of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Organisation (not being a Board Member or Committee Member) in return for any services rendered to the Organisation;
- (2) of fees, remuneration or other benefit in money or money's worth to a company of which a Board Member or Committee Member may be a member holding not more than 2% of the share capital of the company;

- (3) to any Board Member or any Committee Member (for the avoidance of doubt, in each case in their capacity as a Board Member or Committee Member), of reasonable out-of-pocket expenses and in the case of Board Members such other sums as may be determined by the Organisation in compliance with the Articles of Association and with the approval of the City Council PROVIDED THAT no sum shall be paid to a Board Member or Committee Member who is an elected member of the City Council in excess of that permitted by the Order and PROVIDED FURTHER THAT in making any payment under this Clause 6(3) the Organisation shall have regard to any guidance issued by the Department of Communities and Local Government;
- (4) of sums due in respect of indemnity insurance for Board Members under Clause 4(17);
- (5) of reasonable and proper remuneration to the City Council or employees thereof (not being Board Members) in return for any services rendered to the Organisation;
- (6) of reasonable and proper rent for premises demised or let by the City Council;
- (7) of reasonable and proper interest on money lent by the City Council

PROVIDED FURTHER THAT nothing shall prevent the Organisation from managing a property in accordance with its objects (including the full range of activities it may undertake) notwithstanding the fact that the tenant, lessee or licensee (or prospective tenant, lessee or licensee) of such property may be a Board Member SUBJECT TO the proviso that any Board Member who is a beneficiary of the Organisation shall not be entitled to speak in any debate or cast his/her vote in respect of any matter relating solely to the property of which he is lessee, tenant or licensee and shall absent himself/herself from such proceedings but such Board Member shall be entitled to speak and vote in respect of matters which relate not only to such property but also to other properties managed by the Organisation.

## **7. EQUAL OPPORTUNITIES**

The Organisation shall at all times take into consideration the principles of equality of opportunity irrespective of age, gender, race, nationality, ethnic origin, religion, sexual orientation or disability.

## **8. LIMITED LIABILITY**

The liability of the Members is limited.

## **9. MEMBERS GUARANTEE**

Every Member undertakes to contribute to the assets of the Organisation, in the event of the same being wound up while he is a member of the Organisation, or within one year after he ceases to be a member of the Organisation, for payment of the debts and liabilities of the Organisation contracted before he ceases to be a member of the Organisation, and of the costs, charges and expenses of winding up, and for the



adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.

#### **10. WINDING UP**

If, upon the winding up or dissolution of the Organisation, there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall be paid or transferred to the Housing Revenue Account (as defined in the 1989 Act) of the City Council.

#### **11. DEFINITIONS**

- (a) "Order" shall mean the Local Authorities (Companies) Order 1995 as amended or re-enacted from time to time;
- (b) "the 1989 Act" shall mean the Local Government and Housing Act 1989 as amended or re-enacted from time to time;
- (c) "Social Housing" shall have the meaning assigned to it in Part 2 of the Housing and Regeneration Act 2008;
- (d) terms defined in the Articles of Association of the Organisation shall have the same meaning in this Memorandum of Association.

# Articles of Association

## DEFINITIONS AND INTERPRETATION

1. In the Articles unless the context otherwise requires:

"the Act"	Means the Companies Act 1985 (as amended by the Companies Act 1989) and any statutory modification or re-enactment thereof for the time being in force and the Companies Act 2006 (as may be amended, modified or re-enacted) for the time being in force .
"Area"	.  Means the administrative area of the City Council.
"the Articles"	Means these Articles of Association as originally adopted or as altered from time to time.
"Board"	Means the Board of Directors of the Organisation from time to time.
"Board Members"	Means the directors for the time being of the Organisation.
"Chair"	Means the Chair of the Organisation appointed pursuant to Article 39 or in his absence any vice or deputy Chair appointed pursuant to Article 39(2).
"clear days"	In relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
"Committee Member"	Means a person who is appointed by the Board to sit on a committee to which the Board has delegated any of its powers under Article 24.
"Council Board Member"	Means a Board Member appointed by the City Council pursuant to Article 14.
"City Council"	Means Derby City Council or any successor

	body thereto who shall be the sole member of the Organisation.
"DACP"	Means the Derby Association of Community Partners or any successor body thereto or such other body as the City Council shall from time to time resolve to be representative of the tenants of Derby City Council whose dwellings are managed by the Organisation.
"Department for Communities and Local Government"	Means the Department for Communities and Local Government or any other body or governmental (whether local, regional or national) department substituted for the Department for Communities and Local Government or carrying out similar, additional or replacement functions to those carried out by the Department for Communities and Local Government at the date of incorporation of the Organisation.
"DLA"	Means the Derby Leaseholders Association or any successor body thereto or such other body as the City Council shall from time to time resolve to be representative of the leaseholders of dwellings owned by the City Council that are managed by the Organisation.
"executed"	Means in relation to any contract, agreement or other document consent thereto and includes any mode of execution.
"Family Member"	Means in relation to a person any person who is a parent, brother, sister or child (whether by blood or marriage), a spouse or a partner of that person.
"Family Member of a Tenant"	Means any person who is a parent, brother, sister or child of a Tenant whether by blood or marriage, a spouse or a partner and who in every case is at least 18 years old and has lived with the Tenant for at least the previous 12 months and "Family Members of Tenants" shall be construed accordingly.
"Independent Board"	Means a Board Member appointed pursuant to

Member"	Article 16.
"Leaseholder"	Means an individual who is not a Tenant but who is a lessee of the City Council in respect of a residential property within the City Council's Housing Revenue Account or a lessee of the Organisation or who occupies land belonging to the City Council under an agreement which he holds with the City Council to which the Mobile Homes Act 1983 applies.
"Local Authority Person"	Means any person: <ul style="list-style-type: none"> <li>(i) who is a member of the City Council; or</li> <li>(ii) who is an officer of the City Council (which for these purposes shall not include employees without a supervisory or managerial role apart from employees responsible for monitoring the activities of or providing advice to the Organisation or who perform duties in relation to the City Council's housing functions).</li> </ul>
"Maximum Period of Office"	Means in relation to a Board Member other than a Council Board Member a period of more than 9 years.
"Office"	Means the registered office of the Organisation.
"the Organisation"	Means Derby Homes Limited.
"the Plan"	Means the plan annexed to the original Memorandum on the date of incorporation of the Organisation.
"the seal"	Means the common seal of the Organisation
"Secretary"	Means the secretary of the Organisation or any other person appointed to perform the duties of the secretary of the Organisation, including a joint, assistant or deputy secretary.
"Tenant"	Means an individual who occupies a residential property belonging to the City Council under a secure tenancy agreement under Part IV of the Housing Act 1985 or an individual who occupies

a residential property under an introductory tenancy agreement under Part V of the Housing Act 1996 or an individual who occupies a residential property belonging to the Organisation under an assured or assured shorthold tenancy under Part I of the Housing Act 1988.

"Tenant Board Member" Means a Board Member appointed pursuant to Article 15 who occupies a residential property belonging to the City Council under a secure tenancy agreement under Part IV of the Housing Act 1985 or a residential property belonging to the Organisation under an Assured Tenancy. under Part I of the Housing Act 1988.

"the United Kingdom" Means Great Britain and Northern Ireland.

2. (1) Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the Organisation.
- (2) In these Articles words importing individuals shall, unless the context otherwise require, include corporations and words importing the singular number shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender.
- (3) A reference to any Act of Parliament, or to any order, regulation, statutory instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force
- (4) None of the Tables A to F in the Companies (Tables A to F) Regulations 1985 applies to the Organisation.

#### **ADMISSION OF MEMBERS**

3. No person other than the City Council shall be admitted to membership of the Organisation
4. The City Council shall nominate a person to act as its representative in the manner provided in Section 323 of the Companies Act 2006. Such representative shall have the right on behalf of the City Council to attend meetings of the Organisation and vote thereat, and generally exercise all rights of membership on behalf of the City Council. The City Council may from time to time revoke the

nomination of such representative, and nominate another representative in his place. All such nominations and revocations shall be in writing.

5. The rights of the City Council shall be personal and shall not be transferable.

## **GENERAL MEETINGS AND RESOLUTIONS**

6. All general meetings other than annual general meetings shall be called general meetings.
7. The Chair or a minimum of four Board Members may call general meetings and, on the requisition of the City Council pursuant to the provisions of the Act, shall forthwith proceed to convene a general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient Board Members to call a general meeting, any Board Member or the City Council may call a general meeting.
8.
  - (1) An annual general meeting and a general meeting not called on the requisition of the City Council pursuant to Article 7 shall be called by giving at least fourteen clear days' notice or by shorter notice if it is so agreed by the City Council.
  - (2) The notice shall specify the time and place of the meeting and, in the case of an annual general meeting, shall specify the meeting as such.
  - (3) The notice shall be given to the City Council and to the Board Members and auditors.
  - (4) The notice shall be posted in such place as the Board decides in order to bring it to the attention of the Tenants and Leaseholders.
9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
  - (1) No business shall be transacted at any general meeting unless a quorum is present. The presence of a duly authorised representative of the City Council shall be a quorum.
  - (2) Tenants, Leaseholders and Board Members may attend a General Meeting and may speak with the permission of the Chair but may not vote.
10. The Chair is to chair general meetings. If the Chair is not present within 15 minutes from the time of the general meeting, the Board Members present must choose one of their number who is present and willing to act to chair the general meeting.

11. If the City Council makes a decision which is required to be taken in a general meeting or by means of a written resolution, that decision shall be valid and effectual as if agreed by the Company in general meeting. Any decision taken by the City Council pursuant to this Article 11 shall be recorded in writing and delivered by the City Council to every Board Member and to the Organisation for entry in the Organisation's minute book. Where required by law (Companies Act 2006) (Special Resolutions), the Organisation will file a memorandum of that decision at Companies House.
12. An entry stating that a resolution has been carried or lost in the approved minutes of any meeting shall be conclusive evidence of the fact.

#### **NUMBER OF BOARD MEMBERS**

13.
  - (1) The number of Board Members shall be nine.
  - (2) Three Board Members shall be Council Board Members.
  - (3) Three Board Members shall be Tenant Board Members.
  - (4) Three Board Members shall be Independent Board Members.
  - (5) The aggregate of Tenants, Family Members of Tenants, who are Board Members shall not exceed four.
  - (6) No more than four Board Members shall be Local Authority Persons.
  - (7) No person shall be appointed as a Board Member if that person is an employee of the Organisation.
  - (8) Subject to Article 13(12), no person shall be appointed as a Board Member (other than as a Council Board Member) if they have served as a Board Member of the Organisation for the Maximum Period of Office.
  - (9) In the event that the number of Board Members shall be less than the numbers specified in this Article 13 the remaining Board Members shall use reasonable endeavours to appoint further Board Members but, for the avoidance of doubt, may act notwithstanding there are vacancies in their number.
  - (10) The First Board Members shall be those persons named in the statement delivered pursuant to Section 10(2) of the Act who shall be deemed to have been appointed under the Articles. Future Board Members shall be appointed as provided in the Articles.
  - (11) The First Tenant Board Members shall be those persons identified as Tenant Board Members in the statement referred to in Article 13(10).

- (12) On application to the Board by a person for permission to be allowed to be re-appointed as a Board Member beyond the Maximum Period of Office, the Board may allow such a person to serve as a Board Member beyond the Maximum Period of Office on such terms as it deems fit.

#### **APPOINTMENT OF COUNCIL BOARD MEMBERS BY THE CITY COUNCIL**

14. (1) Subject to Articles 13, 18 and 20, the City Council shall from time to time appoint three persons as Council Board Members and shall have the power to remove from office any such Board Member.
- (2) Appointment or removal pursuant to Article 14(1) shall be effected by an instrument in writing signed by the City Council and shall take effect upon lodgement at the registered office of the Organisation or such date later than such lodgement as may be specified in the instrument.
- (3) Notwithstanding any other provisions in these Articles the City Council shall have power at any time by notice in writing to the Secretary to remove any Board Member.

#### **RETIREMENT AND APPOINTMENT OF TENANT BOARD MEMBERS**

15. (1) Subject to Articles 13 and 18, there are to be three Tenant Board Members.
- (2) Each year one Tenant Board Member is to retire pursuant to Article 15(3), and a new Tenant Board Member appointed for a term of three years.
- (3) The Tenant Board Members to retire at any - annual general meeting shall be those who have been longest in office since they last became Tenant Board Members, but as between persons who became Board Members on the same day those to retire shall be chosen by lot PROVIDED THAT where a Tenant Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Tenant Board Member ("the Predecessor") under Articles 17(4) to 17(5) inclusive, the period of time for which the Tenant Board Member shall have held office shall, for the purposes only of this Article 15(3) be deemed to include the period since the appointment of the Predecessor.
- (4) Prior to every annual general meeting, appointments shall be made by the Board from eligible Tenants following an application and interview process Otherwise the mode and manner of such appointments shall be as the Board may from time to time agree subject at all times to compliance with Articles 13, 18 and 20.
- (5) The company secretary shall announce the results of the appointments referred to in Article 15(4) at each relevant annual general meeting and the



Tenants (or Family Members of Tenants) shall be duly appointed as Tenant Board Members.

- (6) No person shall be appointed as a Tenant Board Member if, at the date of proposed appointment, they are two months or more in arrears with any rent, service charge or other payment due to the City Council or the Organisation under the terms of their tenancy, lease or agreement under which they hold residential property or land belonging to the City Council or the Organisation unless such arrears have arisen in the opinion of the company secretary as a result of administrative delays on the part of the City Council, the Organisation or persons acting on behalf of either.
- (7) In the case of a Family Member of a Tenant that person shall not be eligible to be appointed as a Tenant Board Member if, at the date of proposed appointment, the Tenant of whom they are a family member is two months or more in arrears with any rent, service charge or other payment due to the City Council or the Organisation under the terms of their tenancy, lease or agreement under which they hold residential property or land belonging to the City Council or the Organisation unless such arrears have arisen in the opinion of the company secretary as a result of administrative delays on the part of the City Council, the Organisation or persons acting on behalf of either.

#### **RETIREMENT AND APPOINTMENT OF INDEPENDENT BOARD MEMBERS**

- 16. (1) Subject to Articles 13 and 18, there are to be three Independent Board Members.
- (2) Each year one Independent Board Member is to retire, pursuant to Article 16(3) and a new Independent Board Member appointed for a term of three years.
- (3) Subject to the retirement of an Independent Board Member appointed under Article 17(3), the Independent Board Members to retire at any annual general meeting shall be those who have been longest in office since they last became Independent Board Members but as between persons who became Board Members on the same day those to retire shall be chosen by lot PROVIDED THAT where an Independent Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Independent Board Member ("the Predecessor") under Article 17(2), the period of time for which the Independent Board Member shall have held office shall, for the purposes only of this Article 16(3) be deemed to include the period since the last election or appointment of the Predecessor.
- (4) If, at the meeting at which an Independent Board Member retires in accordance with Article 16(2), there are no other candidates to fill the post

the retiring Board Member shall, if willing to act, be deemed to have been re-appointed unless a resolution not to reappoint the Board Member is passed by the meeting.

- (5) No person other than an Independent Board Member retiring by rotation shall be appointed as an Independent Board Member at any general meeting unless he is recommended by the Board.
- (6) Subject to Article 16(1) – (4) the City Council may by Ordinary Resolution in general meeting appoint any eligible person who is willing to act as an Independent Board Member.
- (7) Not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting notice shall be given to the City Council of any person (other than a Board Member retiring by rotation at the meeting) who is recommended by the Board for appointment or reappointment as an Independent Board Member at the meeting. The notice shall give the particulars of that person which would, if he were so appointed or re-appointed, be required to be included in the Organisation's register of Board Members.

#### **CASUAL VACANCIES**

- 17. Subject to Articles 13, 18 and 20, vacancies on the Board may only be filled according to the following:-
  - (1) For Council Board Members, by the City Council. If the City Council shall have failed within three months of a written request by the Board to make the appropriate appointments pursuant to Article 16(1), the Board may fill the vacancies solely until the next annual general meeting;
  - (2) For Independent Board Members, by the City Council following a recommendation by the Board;
  - (3) If the Board fails to make a recommendation within six months of a vacancy for an Independent Board Member, the City Council may appoint any person who is willing to act as an Independent Board Member to the vacancy solely until the next annual general meeting. If the City Council fails within three months of a written request by the Board to make the appropriate appointments to the Board of an Independent Board Member, the Board may fill the vacancies solely until the next annual general meeting;
  - (4) For Tenant Board Members where there remains more than one year until retirement, by direct appointment according to Article 15(4)
  - (5) For Tenant Board Members where there remains one year or less until retirement, by the DACP

## **DISQUALIFICATION AND REMOVAL OF BOARD MEMBERS**

18. A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Board Member if the relevant individual:-
- (1) ceases to be a Board Member by virtue of any provision of the Act or becomes prohibited by law from being a company director ; or
  - (2) is or becomes a person disqualified from elected membership of a local authority; or
  - (3) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (4) is, or may be, suffering from mental disorder and either:-
    - (a) is required by law to be admitted to hospital because of that disorder; or
    - (b) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his/her detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
  - (5) resigns his office by notice to the Organisation; or
  - (6) is removed from office by a resolution of (or written notice signed by) at least three quarters of all the other Board Members from time to time provided that the Board Member concerned has first been given an opportunity to put his case and to justify why he should not be removed as a Board Member; or
  - (7) in any period of 12 consecutive months, he shall have been absent from three Board meetings held during that period unless the Board (at or before such meeting where a Board Member would be removed under this Article) resolves otherwise; or
  - (8) in any period of 12 consecutive months, he shall have been absent from three Board meetings held during that period and on application to the Board they resolve not to reinstate him; or
  - (9) in the case of a Tenant Board Member he ceases to be a Tenant or a Family Member of a Tenant PROVIDED THAT this Article 18(10) shall not apply in respect of a Tenant Board Member temporarily ceasing to be a Tenant or a Family Member of a Tenant as a result of the demolition of or works carried out to that Tenant Board Member's home; or

- (10) is a Tenant Board Member and is (in the reasonable opinion of at least three quarters of all the other Board Members) in serious breach of their obligations as a Tenant; or
  - (11) is a Council Board Member and is or becomes a Tenant leading to a breach of the limit in Article 13(5); or
  - (12) is a Tenant Board Member and is or becomes a Local Authority Person leading to a breach of the limit in Article 13(6); or
  - (13) is an Independent Board Member and is or becomes a Tenant or a Family Member of a Tenant or a Local Authority Person leading to a breach in any of the limits in Article 13(5) or 13(6); or
  - (14) is or becomes an employee of the Organisation;
  - (15) is removed by resolution of the City Council pursuant to Article 14(3).
19. Where a Board Member has been reappointed absences from Board meetings incurred prior to their reappointment will not be carried over into the new term of office.
20. Subject to Article 13(12) a person shall be ineligible for appointment to the Board if they have served as a Board Member of the Organisation for the Maximum Period of Office and if already appointed shall cease to be a Board Member at the first annual general meeting on or following the date which such person has served as a Board Member of the Organisation for the Maximum Period of Office.

## **POWERS OF THE BOARD**

21. Subject to the provisions of the Act, directions of the City Council in general meeting and the Memorandum and the Articles, the business of the Organisation shall be managed by the Board who may exercise all the powers of the Organisation. No alteration of the Memorandum or Articles or directions of the City Council shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited by any special power given to the Board by the Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
22. The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Organisation for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## **BORROWING POWERS**

23. Subject to Clause 5 of the Memorandum the Board may exercise all the powers of the Organisation to borrow money without limit as to amount and upon such terms

and in such manner as they think fit, and to grant any mortgage, charge or other security over its undertaking and property, or any part thereof, and to issue any debenture, whether outright or as security for any debt, liability or obligation of the Organisation or of any third party.

#### **DELEGATION OF BOARD MEMBERS' POWERS**

24. The Board may delegate any of their powers to any committee consisting of two or more Board Members together with such other persons as the Board sees fit. They may also delegate to the Chair/or any vice or deputy Chair or to any executive officer such of their powers as they consider desirable to be exercised by him.
25. Any such delegation may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions and this Article, the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

#### **ALTERNATE BOARD MEMBERS**

26. No Board Member shall be entitled to appoint any person as an alternate Board Member.

#### **BOARD MEMBERS' EXPENSES**

27. Board Members and Committee Members may be paid all travelling, hotel, and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board or general meetings or otherwise in connection with the discharge of their duties and in the case of Board Members such other sums as may be determined by the City Council PROVIDED THAT:
  - (1) the Board shall take relevant independent advice prior to authorising payments to Board Members or Committee Members, for example (without limitation) through a remuneration committee, an independent adviser or by using published guidance and industry norms;
  - (2) no sum shall be paid to a Board Member or Committee Member who is an elected member of the City Council in excess of that permitted by the Local Authorities (Companies) Order 1995; and
  - (3) in making any payment under this Article 27 the Organisation shall have regard to any guidance issued by the Department for Communities and Local Government.

## **BOARD AND COMMITTEE MEMBERS' APPOINTMENTS AND INTERESTS**

28. A Board Member or Committee Member may not have any financial interest personally or as a member of a firm or as a director or senior employee (being an employee with managerial status) in any contract or other transaction of the Organisation unless it is permitted by these Articles and is not prohibited by Clause 6 of the Memorandum.
29. An interest of a person who is connected with a Board Member (as defined in the Act) (including a Family Member) is to be treated as an interest of that Board Member.
30. Each Board Member and each Committee Member shall ensure that the Secretary has at all times an up to date list of:-
- (1) all bodies in which he or she has an interest as:
    - (a) a director or senior employee,
    - (b) a member or partner of a firm,
    - (c) the owner or controller of more than 2% of the issued share capital in a company,
  - (2) any statutory body in which he or she is an official;
  - (3) any statutory body in which he or she is or has been in the preceding four years an elected member;
  - (4) all interests in which he or she has as the occupier of any property owned or managed by the Organisation;
  - (5) all interests in which he or she has as a member, committee member or volunteer member of any voluntary group;
  - (6) any other significant or material interest he or she has.
31. (1) Any Board Member or Committee Member having an interest in any arrangement between the Organisation and another person or body shall disclose that interest to the meeting before the matter is discussed by the Board or committee of the Board. Unless the interest is of the type specified in Articles 31(2) or 31(3) the Board Member or Committee Member concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board. Unless permitted by Articles 31(2) or 31(3) the Board Member or Committee Member concerned may not vote on the matter in question, but no decision of the Board or any committee of the

Board shall be invalidated by the subsequent discovery of an interest which should have been declared.

- (2) Provided the interest has been properly disclosed pursuant to Article 31(1) a Board Member or Committee Member may remain present during the discussion and may vote on the matter under discussion where the interest arises because:
  - (a) the Board Member or Committee Member is a Tenant or a Family Member of a Tenant so long as the matter in question affects all or a substantial group of Tenants; or
  - (b) the Board Member or Committee Member is a Leaseholder or a Family Member of a Leaseholder so long as the matter in question affects all or a substantial group of Leaseholders; or
  - (c) the Board Member or Committee Member is a director or other officer of a company or body which is a parent, subsidiary or associate of the Organisation; or
  - (d) the Board Member or Committee Member is an official or elected member of any statutory body.
- (3) A Board Member or Committee Member shall not be treated as having an interest:
  - (a) of which the Board Member or Committee Member has no knowledge and of which it is unreasonable to expect him to have knowledge;
  - (b) in the establishment of a policy in respect of Board Member or Committee Member expenses or remuneration payable pursuant to Article 27;
  - (c) in any proposal to take out Board Members' and officers' indemnity insurance in accordance with Clause 4(17) of the Memorandum of Association.

## **PROCEEDINGS OF BOARD MEETINGS**

- 32. (1) Subject to any regulations established from time to time by the Organisation in general meeting and compliance with Section 10(1) of the Local Authorities (Companies Order) 1995 the Board may regulate their proceedings as they think fit and the quorum for the transaction of the business of the Board at the time when the meeting proceeds to business shall be four comprising no fewer than one Tenant Board Member, one Independent Board Member, one Council Board Member and one other Board Member PROVIDED THAT if either the number of Board Members

in one or more category of Board Member falls below one or all the Board Members in one or more category are prevented from counting towards the quorum by Article 30 then the quorum requirement shall be reduced to none in respect of such category or categories.

- (2)  $33\frac{1}{3}$  percent of the total number of Board Members (or such whole number of Board Members nearest to  $33\frac{1}{3}$  percent) may call a meeting of the Board. It shall not be necessary to give notice of a meeting to a Board Member who is absent from the United Kingdom.
33. If a quorum is not present within half an hour from the time appointed for a Board Meeting the Board Meeting shall, if requested by a majority of those Board Members present, be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board Members present may determine.
34. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then notwithstanding Article 32(1) the Board Members present shall constitute a quorum.
35. Questions arising at a Board Meeting shall be decided by a majority of votes and each Board Member present in person shall be entitled to one vote. In the case of an equality of votes, the Chair shall have a second or casting vote.
36. A Board Member shall not be eligible to vote on any financial matter if they are two months or more in arrears with any rent, service charge or other payment due to the City Council under the terms of their tenancy, lease or agreement under which they hold residential property or land belonging to the City Council unless such arrears have arisen in the opinion of the company secretary as a result of administrative delays on the part of the City Council, the Organisation or persons acting on behalf of either.
37. A Board Member who is a Family Member of a Tenant that person shall not be eligible to vote on any financial matter if the Tenant of whom they are a family member is two months or more in arrears with any rent, service charge or other payment due to the City Council under the terms of their tenancy, lease or agreement under which they hold residential property or land belonging to the City Council unless such arrears have arisen in the opinion of the company secretary as a result of administrative delays on the part of the City Council, the Organisation or persons acting on behalf of either.
38. If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Board Member to vote, the question may, before the conclusion of the meeting, be referred to the Chair of the meeting and his ruling in relation to any Board Member other than himself shall be final and conclusive.



39. At the first Board Meeting following each annual general meeting the Board Members shall appoint one of their number to be the Chair of the Board to hold office for a period of three years subject to annual confirmation. The Board may at any time remove him from that office.
- (1) Unless he is unwilling to do so, the Board Member so appointed shall preside at every meeting of the Board at which he is present. But if there is no Board Member holding that office, or if the Board Member holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Board Members present may appoint one of their number to be Chair of the meeting.
- (2) The Board may appoint one or two vice or deputy chairs to act in the absence of the Chair on such terms as the Board shall think fit.
40. All acts done by a meeting of the Board, or of a committee of the Board or by a person acting as a Board Member shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Board Member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Board Member and had been entitled to vote.

#### **WRITTEN RESOLUTION**

41. A resolution in writing signed by:
- (1) three quarters of all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board; and
- (2) the Chair of the Organisation or of the relevant committee; and

which satisfies the quorum requirements of Article 32(1) shall be as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Board Members.

#### **SECRETARY**

42. Subject to the provisions of the Act, the Secretary and any deputy or alternate Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

#### **MINUTES**

43. The Board shall cause minutes to be made in books kept for the purpose:-

- (1) of all appointments of officers made by the Board Members; and
- (2) of all proceedings at meetings of the Organisation and of the Board, and of committees of the Board and of the City Council in its capacity as the sole member of the Organisation, including the names of the Board Members present at each such meeting.

## **RECORDS ACCOUNTS AND RETURNS**

44. The Organisation shall comply with the provisions of Part V of the Local Government and Housing Act 1989, the Local Authorities (Companies) Order 1995 and Part VII of the Act in respect of:-
  - (1) the keeping and auditing of accounting records;
  - (2) the provision of accounts and annual reports of the Board Members; and
  - (3) in making an annual return.

## **THE SEAL**

45. If the Organisation has a seal it shall only be used with the specific or general authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Board Member and by the Secretary or a second Board Member.
46. The Organisation may exercise the powers conferred by Section 39 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board Members.

## **NOTICES**

47. Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Board or of a committee of the Board need not be in writing.
48. The Organisation may give any notice to the City Council either personally or by sending it by post in a prepaid envelope addressed to the City Council at their registered address or by leaving it at that address.
49. The City Council present by duly authorised representative at any meeting of the Organisation shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
50. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be

deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## **INDEMNITY**

51. Every Board Member or other officer of the Organisation shall be indemnified out of the assets of the Organisation against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 727 of the Act in which relief is granted to him and no Board Member or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Organisation in the execution of the duties of his office or in relation thereto PROVIDED THAT this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
52. The Board shall have power to purchase and maintain for any Board Member or officer of the Organisation insurance against any such liability as is referred to in Section 310(1) of the Act.