

**SUPERSEDES ARTICLES OF ASSOCIATION DATED 11 JULY 2019**

Company number: SC220297

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

**OF**

**DUMFRIES AND GALLOWAY HOUSING PARTNERSHIP LIMITED**

**PRELIMINARY**

1. The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of the Company

**DEFINITIONS AND INTERPRETATION**

2. In the Articles (as hereinafter defined) unless the context otherwise requires:

“2005 Act”	Means the Charities and Trustee Investment (Scotland) Act 2005.
"2019 AGM"	Means the Annual General Meeting of the Company to be held in calendar year 2019.
“the Act”	Means the Companies Act 2006 and any statutory modification or re-enactment thereof for the time being in force.
"Appointment Board Meeting"	Means, in each calendar year, a meeting of the Board which shall be held in August and at which Board Members shall be appointed in terms of Article 38.
“Articles”	Means these Articles of Association as originally adopted or as altered from time to time.
“Board”	Means the Board of directors of the Company from time to time.
“Board Members”	Means the directors for the time being of the Company and shall (save where expressly excluded) include co-optees to the Board pursuant to Article 45.
“Chairperson”	Means the Chairperson of the Board appointed prior to Article 57(1) or in his absence any vice or deputy chairperson appointed pursuant to Article 57(4).
“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.
“Closely Connected”	has the meaning ascribed to that term in the Code of Conduct

“Code of Conduct”	means the code of conduct for Board Members and members of District Management Committees adopted from time to time by the Board;
"Effective Date"	means the date at which the Parent becomes a Member of the Company
“executed”	Means in relation to any contract, agreement or other document and includes any mode of execution.
"Group"	means the Parent, the Company, and any Subsidiary from time to time;
"Group Agreement"	means the written agreement from time to time between the Company and the Parent in relation to the objectives and operation of the Group;
"Guarantee"	means any guarantee and includes any obligation (including as primary obligor), including a contract of indemnity or suretyship, however described, to pay, satisfy, provide funds for the payment or satisfaction of (including, without limitation, by advance of money, purchase of or subscription for securities and purchase of assets or services), indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any Subsidiary or any other person
"Housing Act”	Means the Housing (Scotland) Act 2001.
“Independent Board Member”	Means a Board Member who is not a Tenant Board Member or the Parent Appointee;
“Independent Member”	Means any Member designated as such pursuant to Article 9(4).
“Member”	Means any person, firm, company or other organisation who is admitted to membership of the Company in accordance with the provisions of these Articles.
“Office”	Means the registered office of the Company.
“Officer Bearer”	Means the chairperson, secretary, treasurer or vice chairperson of the Company.
“OSCR”	Means the Office of the Scottish Charity Regulator, as constituted by Section 1 of the 2005 Act as a Non-Ministerial Department of the Scottish Administration and having its principal place of business at 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee, DD1 4NY.
“Parent”	means Wheatley Housing Group Limited, a company limited by guarantee and registered in Scotland (number

SC426094) having its registered office at Wheatley Housing, 25 Cochrane Street, Glasgow, G11HL;

"Recruitment Panel"	Means a recruitment panel to be established by the Board in order to consider and make recommendations to the Board in relation to candidates for appointment as Board Members, the composition and terms of reference of which recruitment panel shall be as determined by the Board from time to time.
"Registered Social Landlord"	Means a social landlord registered on the register maintained by The Scottish Housing Regulator pursuant to section 57 of the Housing Act.
"Relevant Business"	Means a business trading for profit:  (a) of which a Board Member or any person Closely Connected to a Board Member is a principal proprietor; and/or  (b) in respect of which a Board Member or any person Closely Connected to a Board Member has direct or significant management control or responsibility.
"Relevant Council"	Means Dumfries and Galloway Council or its successors in title.
"Scottish Housing Regulator"	means the body known as The Scottish Housing Regulator, established pursuant to Section 1 of the Housing (Scotland) Act and having its head office at Buchanan House, 58 Port Dundas Road, Glasgow or any other body which takes over all or substantially all of its regulatory and supervisory powers and responsibilities and any body which takes over any or all of its grant making powers and responsibilities in each case in relation to the provision of social housing.
"the seal"	Means the common seal of the Company.
"Secretary"	Means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary.
"Subsidiary"	means any organisation which is from time to time a subsidiary of the Company within the meaning of Section 164 of the Housing (Scotland) Act 2010;
"Standing Orders"	means the standing orders of the Company adopted from time to time by the Board.
"Tenant"	Means a tenant of the Company from time to time occupying a residential property under a Scottish secure

tenancy or any statutory tenancy which from time to time may replace such tenancy.

“Tenant Board Member” Means a Board Member appointed pursuant to Article 38 who is also a Tenant.

“Tenant Member” Means a Member who is at the time of admission to membership a Tenant and is designated as such in accordance with Article 9(4).

“Transfer” Means the transfer of not less than 90% of the housing stock of the Relevant Council to the Company.

“the United Kingdom” Means Great Britain and Northern Ireland.

3. 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 Company. 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.
4. Without prejudice to any of the foregoing, each reference herein to the "Housing Act" shall include reference to the equivalent or replacement provision in the Housing (Scotland) Act 2010 or to any subsequent re-enactment or amendment thereof.

## **OBJECTS**

5. The objects of the Company shall be primarily in Scotland to operate for the relief of those in need by reason of age, ill health, disability, financial hardship or other disadvantage through:
  - (1) the provision, construction, improvement and/or management of land and accommodation;
  - (2) the provision of care; and
  - (3) the undertaking of any activity allowed under Section 58 of the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2006 and the Registered Social Landlords (Purposes or Objects) (Scotland) Order 2006) which is charitable both for the purposes of section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and also section 505 of the Income and Corporation Taxes Act 1988.

## **POWERS**

6. The Company shall have power to do anything that a natural or corporate person can lawfully do which is necessary or expedient in furtherance of its objects unless prohibited in these Articles provided that:
  - (1) the Company shall not accept money on deposit;
  - (2) subject to the terms of Article 5, the Board may, determine and change conditions under which the Company borrows or lends money but from the Effective Date this must only be with the prior written approval of the Parent; and
  - (3) the Company shall not lend money to Members except as permitted by these Articles.

7. Without limiting the powers described in Article 6, the Company shall have power to:
- (1) acquire, take or grant or otherwise dispose of any interest in land;
  - (2) dispose, in such manner as the Board sees fit, of land and of other assets or interests of the Company, present or future, including by way of heritable security, floating charge, security assignment, mortgage or charge;
  - (3) carry out works to land, buildings or other property;
  - (4)
    - (a) subject to such consents as may be required by law to borrow money, issue loan stock or raise money in such manner as the Company shall think fit and to secure the repayment of any money borrowed raised or owing by such security as the Company shall see fit (including by way of floating charge) upon the whole or any part of the Company's property or assets (whether present or future) and also by giving similar security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it provided that the total borrowing at any time is not more than £500 million or such larger sum as the Company, with the prior written consent of the Parent, determines from time to time in general meeting. The Company can enter into any Guarantee in respect of or to secure by heritable security, mortgage, charge, floating charge, lien or other security which the Company is permitted by law to grant, upon the whole or any part of the Company's property or assets, the obligations and liabilities of any Subsidiary; or of any joint venture established by the Company (or by a Subsidiary) with any entity or entities. The foregoing power is valid notwithstanding, and is in no way limited by, any limits on the borrowing or lending powers of the Company (including the foregoing limits) contained in these Articles or otherwise;
    - (b) in respect of any proposed borrowing for the purposes of Article 7(3)(a) the amount remaining undischarged of any index-linked loan previously borrowed by the Company or any deep discounted security shall be deemed to be the amount needed to repay such borrowing in full if the pre-existing borrowing became repayable in full at the time of the proposed borrowing;
    - (c) for the purposes of Article 7(3)(a) in respect of any proposed borrowing intended to be index-linked or on any deep discounted security the amount of borrowings shall be deemed to be the proceeds of such proposed borrowings that would be receivable by the Company at the time of the proposed borrowing;
    - (d) the Company shall not pay more than the rate of interest which the Board considers to be the then market rate of interest on any money borrowed, having regard to the terms of the loan on any money it borrows;
    - (e) Subject to the provisions of article 6(3) and 7(4)(i), , with the prior written approval of the Parent, lend money to any person or organisation including, without limitation, the Parent; any Subsidiary; any joint venture established by the Company or by the Parent or by any Subsidiary, with another entity or entities, on terms which the Board deems appropriate at the time of entering into the transaction. Where the Company is using a loan facility to on lend it must comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time;
    - (f) borrow money from such lawful sources as is permitted by its treasury management policy subject always to the requirement that the Company will

comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time;

- (g) Subject to the foregoing provisions, the Board can, with the prior written approval of the Parent, determine and change conditions under which the Company can borrow or lend money;
  - (h) subscribe to, purchase or acquire in any other way, any incorporeal property (including but without generality of the foregoing any stock, share, security, debenture or debenture stock in each case whether preferred, deferred or secured or unsecured) of any Subsidiary; and
  - (i) With the exception of the Parent, the Company shall not lend money to Members.
- (5) To insure and arrange insurance cover for the Company from and against all such risks as the Board may think fit and to pay any premium in respect of such insurance.
  - (6) To insure and arrange insurance cover for and to indemnify its Members, employees and voluntary workers from and against all such risks incurred in the proper performance of their duties as it shall consider appropriate and to pay any premium in relation to indemnity insurance in respect of liabilities of its Board Members or any of them which would otherwise attach to them in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in respect of the Company PROVIDED THAT such insurance shall not extend to any liability in respect of an act or omission which such Board Member or Board Members knew or ought reasonably to have known was a breach of duty or trust or which was committed by such Board Member or Board Members recklessly without due regard as to whether such act or omission might be a breach of duty or trust.
  - (7) To invest any monies of the Company not immediately required for the furtherance of its objects as it determines and as permitted by law.
  - (8) Subject to such consents as may be required by law and compliance with all formal guidance issued by the Company's regulators (if any) to purchase or otherwise acquire or to encourage or promote or in any way support or aid the establishment and development of any subsidiary or associated company established for the purposes of carrying on any trade or business either for the purpose of raising funds for the Company or for the furtherance of the objects of the Company.
  - (9) To make donations, grants or loans or provide services or assistance to such persons and organisations and on such terms as the Company shall think fit to further the objects of the Company PROVIDED THAT in case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

#### **APPLICATION OF INCOME AND PROPERTY**

- 8. The income and property of the Company shall be applied solely towards the promotion of its charitable objects as set forth in Article 5 and no portion thereof shall be paid or transferred, directly or indirectly (save as may otherwise be provided in terms of this Article 8) by way of dividend, bonus or otherwise howsoever by way of profit, to Members PROVIDED THAT nothing in this Article 8 shall prevent any payment in good faith by the Company:
  - (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 Company in return for any services rendered to the Company;

- (2) of fees, remuneration or other benefit in money or money's worth to a company of which a Board Member may be a member holding not more than 2% of the share capital of the company;
- (3) to any Board Member of reasonably and properly incurred out-of pocket expenses and of any additional allowances and payments permitted by The Scottish Housing Regulator or any successor regulatory body;
- (4) of reasonable and proper remuneration to any employee thereof in return for any services rendered to the Company; and
- (5) of reasonable and proper interest on money lent by any body corporate notwithstanding that such body corporate shall be a Member or Board Member.

PROVIDED FURTHER THAT nothing shall prevent a disposal by the Company of a property whether by way of sale, lease, tenancy, licence or otherwise to any person in good faith and in pursuance of the objects of the Company notwithstanding the fact that such person may be a Member and/or Board Member and further nothing shall prevent the Company from managing a property in accordance with its objects notwithstanding the fact that the tenant, lessee, owner occupier or licensee of such property may be a Member or Board Member SUBJECT TO the proviso that any Board Member who is a beneficiary of the Company 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/she is lessee, owner occupier, 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 owned or managed by the Company.

### **ADMISSION OF MEMBERS**

9. (1) Such persons as are admitted to membership in accordance with these Articles shall be Members of the Company. Except in relation to the Parent, no person shall be admitted as a Member of the Company unless he is approved by the Board. Except in relation to the Parent, the Board is entitled at its absolute discretion to grant or refuse any application for membership.
- (2) The Board may not admit any person as a Member who is under 16 years of age.
- (3) The Board may not admit any employee of the Company to membership of the Company PROVIDED THAT employees of the Company who are also Tenants may be admitted to membership of the Company.
- (4) With the exception of the Parent, every Member shall, on admittance, be designated by the Board as a Tenant Member or an Independent Member and such status shall be stated in the register of Members. With the exception of the Parent the decision of the Board as to the designation of the Members shall be final and binding.
- (5) The Parent may apply for membership in terms of these Articles. Upon such application the Parent shall then become a Member of the Company and its name and other necessary particulars will be included in the Register of Members within seven working days.
- (6) The Parent and the Company, together with all other organisations in the Group will document, formally and in terms that are transparent and understandable, their constitutional and financial relationships through the Group Agreement or similar document. The role of the Company and

its relationship with other organisations in the Group must be undertaken in a manner consistent with the Charities and Trustee Investment (Scotland) Act 2005.

- (7) Notwithstanding the other provisions of this article 9, from the Effective Date the Parent may in its absolute discretion admit or remove any person as a Member.
  - (8) Any requirement under these Articles to seek approval, consent or ratification from the Parent shall only apply from the Effective Date.
  - (9) Any requirement under these Articles for the Parent or Parent Appointee to be issued with notice of a meeting or to form part of a quorum at a meeting shall only apply from the Effective Date.
10. A corporation which is a Member shall be invited to nominate a person to act as its representative in the manner provided in Section 323 of the Act. Such representative shall have the right on behalf of the corporation (and to the extent only to which the corporation would if a person be entitled to do so) to attend meetings of the Company and vote thereat, and generally exercise all rights of membership on behalf of the corporation. A corporation 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. A representative of a corporation may not be a Member in his own right.

#### **LIMITED LIABILITY**

11. The liability of the Members is limited.

#### **MEMBERS' GUARANTEE**

12. Every Member undertakes to contribute to the assets of the Company, in the event of the same being wound up while he/she is a Member, or within one year after he/she ceases to be a Member, for payment of the debts and liabilities of the Company contracted before he/she ceases to be a Member, 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 £1.00.

#### **CESSATION OF MEMBERSHIP**

13. Any Member may resign from the Company by giving one (1) month's notice (or such other period as the Board may in its discretion accept) in writing duly signed to the Secretary and thereupon such Member shall be deemed to have ceased to be a Member from the date of the expiration of such notice.
14. Except in the case of the Parent any Member may be removed from the Company by a resolution of the Company passed by a majority of at least two-thirds of the votes cast at a General Meeting of which not less than twenty-eight clear days' notice specifying the intention to propose such resolution shall have been sent to the Member whose removal is proposed and to all the other Members of the Company. Notice of the general nature of the grounds on which such resolution is proposed shall be sent to the Member whose removal is proposed at least twenty-eight clear days before the meeting, and he or its representative for this purpose shall be entitled to be heard by the meeting.
15. (1) The rights of any Member shall be personal and shall not be transferable and shall automatically cease if the Member, being a corporation, passes a resolution for winding-up (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Member) or a court makes an order to that effect, or being an individual commits any act of bankruptcy, becomes incapable by reason of mental disorder or dies, or



if the Member, being a corporation, ceases to carry on its business or substantially the whole of its business, or if the Member (whether a corporation or not) becomes or is declared insolvent or commits any act of bankruptcy or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or if a liquidator, receiver, administration, Trustee, manager or similar officer is appointed in relation to any of the assets of the Member or any analogous step is taken in connection with the Member's insolvency, bankruptcy or dissolution.

- (2) A Tenant Member shall automatically cease to be a Member if they cease to be a Tenant PROVIDED THAT this Article 15(2) shall not apply in respect of a Tenant Member temporarily ceasing to be a Tenant as a result of the demolition of or works carried out to that Tenant Member's home.
- (3) An Independent Member shall automatically cease to be a Member if they become a Tenant.
- (4) A Board Member shall automatically cease to be a Member if they have been removed from the Board for one of the issues referred to in Article 44(4).
- (5) The cessations referred to in Articles 15(1) to (4) above shall take place forthwith upon the occurrence of the events set out in such Articles and without the need of notice being given to the Member concerned.
- (6) Except in the case of the Parent, the Board may terminate the membership of a Member (not being a Tenant Member) if they fail to notify the Secretary of a change of address, or if they have failed to either attend or submit apologies for five annual general meetings.

## **GENERAL MEETINGS AND RESOLUTIONS**

16. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
17. The Board may call General Meetings and, on the requisition of (i) the Parent or (ii) the Members pursuant to the provisions of the Act, shall forthwith proceed to convene an Extraordinary General Meeting for a date not later than 28 days 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 any Member may call a General Meeting.
18. (1) An Annual General Meeting and an Extraordinary General Meeting called for the passing of a special resolution or a resolution appointing a person as a Board Member shall be called by at least twenty-one clear days' notice. All other Extraordinary General Meetings shall be called by at least fourteen clear days' notice but a General Meeting may be called by shorter notice if it is so agreed:
  - (a) in the case of an Annual General Meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of any other General Meeting by a majority in number of the Members having a right to attend and vote being a majority together holding (subject to the provisions of any elective resolution of the Company for the time being in force) not less than ninety-five per cent of the total voting rights at the General Meeting of all Members.
- (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 all the Members and to the Board Members and Auditors.
  - (4) Any Member entitled to attend at a General Meeting shall be entitled to appoint another person (whether a Member or not) as his proxy to attend instead of him and any proxy so appointed shall have the same right as the Member to speak at the Meeting.
  - (5) The Annual General Meeting shall be held within six months of the end of the financial year of the Company.
19. 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, other than the Parent, shall not invalidate the proceedings at that meeting. Subject to the provisions of the Act, failure of the Company to send a notice calling the meeting to the Parent will invalidate the proceedings of that meeting.
20.
  - (1) No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. The quorum for a General Meeting shall be the Parent and at least six Members or, if the number of Members at any time exceeds sixty Members, one-tenth thereof or 25 Members (whichever is lower) PROVIDED THAT if there are fewer than six such members all members of the Company shall form a quorum.
  - (2) If the Parent is not present in person or by representative and/or a quorum is not present within half an hour from the time appointed for a General Meeting the General Meeting shall stand 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 may determine. There is no need to give notice to Members of the adjourned meeting, with the exception of the Parent, who must receive such notice if it was not present in person or represented at the meeting to be rescheduled. If at the adjourned meeting a quorum is not present at the scheduled starting time then notwithstanding article 20.1, the Members present shall constitute a quorum.
  - (3) The Parent shall be deemed to be present in person at any general meeting if it is represented in person by an individual (who need not be a Member) who is appointed to act as such by or on behalf of the Parent.
21. The Chairperson or, in his absence, any vice chair appointed by the Board in accordance with Article 57(4), whom failing some other Board Member nominated by the Board Members, shall preside as chairperson of the meeting, but if neither the Chairperson nor any vice chair nor such other Board Member (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Members present shall elect a Board Member to be Chairperson.
22. If no Board Member is willing to act as Chairperson, or if no Board Member is present within fifteen minutes after the time appointed for holding the meeting the Members present and entitled to vote shall choose one of their number to be Chairperson provided that if the Chairperson arrives after the meeting has commenced, he will take over as Chairperson as soon as the current agenda item is concluded.
23. Any Board Member shall, notwithstanding that he is not a Member, be entitled to attend and speak at any General Meeting or meeting of a class or type of Member.
24.
  - (1) The Chairperson may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting

other than business which might properly have been transacted at the meeting had the adjournment not taken place.

- (2) The Chairperson may also, without the consent of the meeting, adjourn the meeting (whether or not it has commenced or is quorate) either indefinitely or to such other time and place as he or the Board Members decide if it appears to him that:-
  - (a) the number of persons wishing to attend cannot be conveniently accommodated in the place appointed for the meeting; or
  - (b) the conduct of persons attending the meeting prevents or is likely to prevent the orderly holding or continuance of the meeting; or
  - (c) an adjournment is otherwise necessary for the business of the meeting to be properly conducted; or
  - (d) a proposal of such importance is made that the consideration of a larger number of members is desirable.
- (3) When a meeting is adjourned indefinitely, the time and place for the adjourned meeting shall be fixed by the Board. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. Otherwise, it shall not be necessary to give notice of an adjournment or of the business to be transacted at the adjourned meeting to any other person except the Parent. Failure to provide notice to the Parent in accordance with this Article 24 will invalidate proceedings of the meeting.
- (4) If the Chairperson considers that the meeting place specified in the notice convening the meeting is inadequate to accommodate all those entitled and wishing to attend, the meeting shall nevertheless be duly constituted and its proceedings valid provided that the Chairperson is satisfied that adequate facilities are available to ensure that members who cannot be accommodated are able to participate in the business of the meeting and to see and hear all persons present who speak (whether by the use of microphones, loud-speakers, audio visual communications equipment or otherwise), whether in the meeting place or elsewhere, and to be seen and heard by all other persons in the same manner.

### **VOTES OF MEMBERS**

25. (1) A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:-
  - (a) by the Chairperson;
  - (b) by one-tenth of the Members present having the right to vote at the meeting or
  - (c) the Parentand a demand by a person as proxy for a Member shall be the same as a demand by a Member.
- (2) Except in relation to the special resolutions in article 26A on a show of hands, every Member present in person, including the Parent, shall have one vote.

Where, however, an appointed proxy is present in accordance with Article 18(4), and so declares, the Chairperson shall direct a poll.

- (3) Where a vote is by a poll every Member present in person, including the Parent, or who has appointed a representative has one vote. Where an appointed proxy is present, he must advise the Chairperson and the Chairperson shall direct that the vote be by poll.
- (4) In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson shall be entitled to a casting vote in addition to any other vote he may have.

26.A At any meeting called for the passing of a special resolution by the Secretary in accordance with these Articles for the purpose of considering and, if appropriate, approving:

26A.1.1 any amendments, additions or deletions to any of these Articles;

26A.1.2 the winding up or dissolution of the Company; and/or

26A.1.3 any change of name of the Company,

the Parent shall be allocated and shall be entitled to cast three quarters of the votes available to be cast on the relevant special resolution at the meeting and the other Members of the Company (collectively the "Other Members") shall among them be entitled to cast one quarter of the votes available to be cast on the relevant special resolution at the meeting (including by way of poll). Votes exercisable by the Other Members in terms of this article 26A shall be counted for and against the relevant special resolution(s) in the proportions for and against actually cast by each of the Other Members who are present and voting at the meeting in person or by proxy respectively. The Secretary shall make arrangements for such Other Members to vote on the special resolution(s) separately and shall count the number of votes in favour and against the special resolution(s) and shall notify the meeting of the totals and accordingly the manner in which the one quarter of votes available to be cast on the relevant special resolution at the meeting and exercisable by the Other Members have been cast. The Secretary shall notify the meeting of the decision of the vote having regard to the votes cast by the Parent.

26. Unless a poll is duly demanded, a declaration by the Chairperson that a resolution: has been carried; or carried unanimously or by a particular majority; or lost; or not carried by a particular majority, together with an entry to that effect in the minutes of the meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
27. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the Chairperson and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
28. A poll shall be taken as the Chairperson directs and he may appoint scrutineers (who need not be Members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
29. A poll demanded on the question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the Chairperson directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

30. Other than the Parent being given notice () no notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
31. A resolution in writing executed by or on behalf of each Member who would have been entitled to vote upon it if it had been proposed at a General Meeting at which he was present shall be as effectual as if it had been passed at a General Meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members.
32. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the Chairperson whose decision shall be final and conclusive.
33. An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointer and shall be in the form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Board may approve) set out in Appendix A to these Articles.
34. Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Board Members may approve) set out in Appendix B to these Articles. The maximum number of proxy votes that can be cast by one person shall be 10.
35. This instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Board Members may:-
  - (1) be deposited at the Office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (2) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
  - (3) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the Chairperson or to the Secretary or to any Board Member; and
  - (4) an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.
36. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the Office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## **COMPOSITION OF THE BOARD**

37. (1) The Company shall have a Board. The minimum number of Board Members shall be seven (subject to the terms of Article 55.4) and the maximum number of Board Members (including co-optees appointed pursuant to Article 45) shall until the end of the 2019 AGM, be fifteen, unless additional Board Members are appointed after nomination by The Scottish Housing Regulator under Article 37(8).
- (2) From the end of the 2019 AGM, the maximum number of Board Members shall be eleven, of whom:
- (a) no more than three Board Members may be Tenants;
  - (b) no more than seven Board Members may be Independent Members; and
  - (c) from the Effective Date, and if appointed, one Board Member shall be the Parent Appointee
- (3) In the event that at any time until the 2019 AGM there shall be fewer than seven Tenant Board Members or eight Independent Board Members then (subject to the terms of Article 55.4) the remaining Board Members shall use reasonable endeavours to appoint further Board Members and may continue to act and exercise all of the powers of the Board. In the event that at any time after the 2019 AGM there shall be fewer than three Tenant Board Members on the Board or fewer than ten Board Members in total then (subject to the terms of Article 55.4) the remaining Board Members shall use reasonable endeavours to appoint further Tenant Board Members and / or Independent Board Members and may continue to act and exercise all of the powers of the Board.
- (4) No person may act as a Tenant Board Member or an Independent Board Member unless they are a Member of the Company.
- (5) The Board may from time to time appoint additional Board Members nominated by The Scottish Housing Regulator for such period and on such terms as The Scottish Housing Regulator may specify. Such Board Members shall be entitled to take part in the deliberations of the Board and vote at any Board meetings thereof on all matters and from the date of such appointment shall be included in the expression "Board Member".
- (6) From the Effective Date no Board Member may act as such until their appointment has been ratified by the Parent and they have signed and delivered to the Board a statement, confirming that they will meet their obligations to the Board and the Company as set out in the Code of Conduct. Except in the case of the Parent Appointee any Board Member who has, without good cause, failed to sign such a statement within four weeks of appointment to the Board shall immediately cease to be a Board Member.

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

38. (1) At the Appointment Board Meeting to be held in calendar year 2019:
- (a) the Board shall appoint up to ten Board Members, up to three of whom shall be Tenant Board Members and up to seven of whom shall be Independent Board Members, such appointments to take effect from and after the end of the 2019 AGM;
  - (b) the persons appointed by the Board as Tenant Board Members and Independent Board Members in terms of Article 38(1) shall be those persons

who have been recommended to the Board by the Recruitment Panel and approved by the Board for appointment as Board Members; and

- (c) any Board Member holding office immediately prior to the 2019 AGM who has not been appointed as either a Tenant Board Member or an Independent Board Member in terms of Article 38(1) shall resign from office, such resignation to take effect from the end of the 2019 AGM.
- (2) At each subsequent Appointment Board Meeting then with the exception of the Parent Appointee:
  - (a) each Board Member who has served their Fixed Term shall retire from office, any such retiral to take effect from the end of the next Annual General Meeting following the relevant Appointment Board Meeting;
  - (b) the Board shall appoint Tenant Board Members or, as the case may be, Independent Board Members, to fill the vacancies created by any retirals under Article 38(2)(a), such appointments to take effect from and after the end of the next Annual General Meeting following the relevant Appointment Board Meeting; and
  - (c) the persons appointed by the Board as Tenant Board Members and Independent Board Members in terms of Article 38(2)(b) shall be those persons who have been recommended to the Board by the Recruitment Panel for appointment as Board Members and whose appointment from the has been ratified by the Parent.
- (3) No person shall be eligible for appointment as a Board Member in terms of this Article 38 unless he or she is recommended to the Board by the Recruitment Panel. Individuals recommended for Board Membership by the Recruitment Panel shall be individuals who have skills, experience and / or objectivity that are necessary or desirable to further the objects of the Company. The skills, experience and objectivity which prospective Tenant Board Members and / or Independent Board Members must have shall be determined by the Board and the Recruitment Panel from time to time.
- (5) The Parent may from time to time and at any time by written notice to the registered office of the Company appoint up to one person as a Board Member (the "Parent Appointee") and by like notice remove or replace the Parent Appointee and in each case, such appointment or removal shall take effect upon the date of lodgement of such written notice at the Company's registered office or such later date as may be specified in the notice.
- (6) Notwithstanding any other provision of these Articles:
  - (1) the Parent is the parent body of the Company and shall be entitled to appoint any number of Board Members and remove from office any and all Board Members as it may in its sole discretion determine;
  - (2) any appointments and removals from office in terms of article 38(6)(i) may be made from time to time and at any time in writing signed on behalf of the Parent and served on the Company and, in each case, shall take effect upon the date of lodgement of written notice at the Company's registered office or such later date as may be specified in the notice; and
  - (3) all candidates for election, re-election, appointment, or re-appointment as Board Members in terms of these Articles shall first be approved in writing by the Parent

and any such election, re-election, appointment or re-appointment of a Board Member shall not take effect unless and until such approval has been given.

39. The Tenant Board Members and Independent Board Members appointed by the Board in terms of Article 38(1) or Article 38(2) shall be appointed for a fixed term of office expiring at the conclusion of an Annual General Meeting (a "Fixed Term"). Subject to the terms of Article 40, the Fixed Term shall be three years unless the Board determines otherwise. No Fixed Term shall be set which would cause a Board Member to serve beyond their ninth consecutive year of office as a Board Member.
40. For the purposes of Article 39, the Fixed Term of a Board Member shall be calculated taking into account any period of service as a Board Member since the date on which the relevant Board Member was first elected or appointed as a Board Member.
41. Any Board Member who retires from office at an Appointment Board Meeting under Article 38(2)(a) shall, subject to the terms of Article 42, be eligible for reappointment by the Board at an Appointment Board Meeting.
42. Where any Board Member retires from office under Article 38(2)(a), that Board Member will be eligible for reappointment by the Board at an Appointment Board Meeting, provided that:
  - (1) that Board Member has been recommended to the Board by the Recruitment Panel and approved by the Board for reappointment as a Board Member;
  - (2) where the relevant Board Member has served two Fixed Terms, he/she shall only be eligible for reappointment for one further Fixed Term; and
  - (3) where any Board Member has nine years' service on the Board, that Board Member shall retire with effect from the end of the Annual General Meeting which occurs at the expiry of their ninth year of office and shall not be eligible for reappointment as a Board Member.

#### **CASUAL VACANCIES AND CO-OPTIONS**

43. (1) Subject to Article 37 the Board may appoint a person who is willing to act to be a Board Member to fill a vacancy. A Board Member so appointed shall hold office only until the next following annual general meeting. If not re-appointed at the first Appointment Board Meeting which occurs after their appointment then they shall vacate office at the conclusion of the next Annual General Meeting following that Appointment Board Meeting.
- (2) The Board may from time to time co-opt persons to the Board and may at any time revoke such co-option. Co-optees cannot be Tenants or executive officers of the Company. No more than one-third of Board Members shall be co-opted PROVIDED THAT nothing in this Article 43(2) shall preclude or prevent a Tenant from being co-opted to fill a vacancy amongst the Tenant Board Members and any such Tenant shall not be treated as a co-optee for the purposes of this Article 43(2) or Article 43(3) or Article 44(24).
- (3) Co-optees can take part in the Board's discussions and vote at Board meetings on all matters except those which directly affect these Articles, the membership of the Company or the election of the Company's Office Bearers.

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



44. Except in the case of the Parent Appointee, a Board Member must leave the Board if the majority of the Members voting at a General Meeting decide this. The Board will then appoint someone to take his/her place.

A person cannot become or remain or be re-appointed as a Board Member if that person:-

- (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) becomes bankrupt or makes any formal arrangement or composition with all of his creditors; or
- (3) is, or may be, suffering from mental disorder and either:-
  - (a) is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; 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
- (4) except in the case of the Parent Appointee, is removed from office by a resolution of (or written notice signed by) at least half of all the other Board Members from time to time provided that the vote to ask a Board Member to leave the Board must relate to one of the following issues:-
  - (i) failure to perform to the published standards laid down from time to time by the Scottish Federation of Housing Associations, The Scottish Housing Regulator and the Office of the Scottish Charity Regulator;
  - (ii) failure to comply with the Code of Conduct and/or the Financial Regulations; or
  - (iii) serious or persistent breach of the Company's Articles or Standing Orders.
- (5) in the case of a Board Member who is a Member or representative of a Member ceases to be a Member of the Company or the representative of a Member (as the case may be) or if the Member whom the Board Member represents ceases to be a Member;
- (6) except in the case of the Parent Appointee, shall for more than six consecutive months have been absent without permission of the Board from meetings of the Board held during that period;
- (7) in the opinion of a qualified medical doctor, is unable to go to Board Meetings for 12 months because of incapacity due to a physical or mental illness;
- (8) is involved in litigation with the Company (other than litigation between the Relevant Council and the Company);
- (9) has been convicted of an offence involving dishonesty which is not spent by virtue of the Rehabilitation of Offenders Act 1974 or an offence under the 2005 Act;
- (10) is or will be away for a period of 12 months and are thus unable to attend the Board Meetings;

- (11) has been removed by The Scottish Housing Regulator , Tai Cymru or any successor regulatory body from the Board of another Registered Social Landlord;
- (12) is or becomes disqualified from being a charity trustee pursuant to section 69 of the 2005 Act or have been suspended or removed as a charity trustee pursuant to section 34 of the 2005 Act;
- (13) is under the age of 18;
- (14) is or has within the last six months been in significant arrears in respect of any of their obligations to the Company for a reason which was not due to housing benefit processing delays PROVIDED THAT in assessing any such issue the Board shall act reasonably;
- (15)
  - (a) has been in serious or persistent breach of their tenancy agreement with the Company PROVIDED THAT in assessing any such issue the Board shall act reasonably;
  - (b) has damaged property leased to them by the Company or caused distress or nuisance to neighbours;
  - (c) has during the past six months received housing benefit which they were not entitled to because they gave false information;
- (16) breaches any rules of confidentiality to which Board Members may be subject in terms of the Code of Conduct or otherwise;
- (17) has deliberately claimed expenses to which they were not entitled;
- (18) has failed to disclose a financial interest personally or in respect of a Relevant Business or in any other way whatsoever in a contract or other transaction with the Company under Article 51;
- (19) has failed to disclose a relevant interest in accordance with Article 55;
- (20) in the case of a Tenant Board Member ceases to be a Tenant PROVIDED THAT this Article 44(20) shall not apply in respect of a Tenant Board Member temporarily ceasing to be a Tenant as a result of the demolition of or works carried out to that Tenant Board Member's home;
- (21) is a Tenant Board Member and becomes a Local Authority Person;
- (22) is an Independent Board Member and becomes a Tenant;
- (23) is a Tenant and wishes to stand as an Independent Board Member;
- (24) is a co-optee pursuant to Article 43 and their co-option is revoked by the other Board Members;
- (25) is or becomes an employee of the Company or Closely Connected to such an employee;
- (26) following an investigation carried out in accordance with the terms of the Code of Conduct, is found to be or have been in serious or persistent breach of any duties imposed on charity trustees pursuant to section 66 of the 2005 Act; or
- (27) has served as a Board Member for a continuous period of nine years
- (28) has been removed from the governing body of any other member of the Group; or

- (29) has left the Board and a period of five years has not expired since their departure;
- (30) is the Parent Appointee and the Parent subsequently removes them from the Board
- (31) resigns his/her position as a Board member in writing.

### **POWERS OF THE BOARD**

- 45. Subject to the provisions of the Act and the Articles, the business of the Company shall be managed by the Board who may exercise all the powers of the Company. No alteration of the Articles 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 regulation 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.
- 46. The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Company 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**

- 47. The Board may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and to grant any heritable security, floating 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 Company or of any third party.

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

- 48. The Board may delegate any of their powers to its Committees. The Board may also delegate any of their powers to any committee consisting of Board Members provided that no more than a third of the Members of such a committee may be co-optees. They may also delegate to the Chairperson/or any vice or deputy Chairperson or to any Office Bearer such of their powers as they consider desirable to be exercised by them. Any such delegation to any committee 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, the proceedings of a committee shall be governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

### **ALTERNATE BOARD MEMBERS**

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

### **BOARD MEMBERS' EXPENSES**

- 50. The Board 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 separate meetings of classes or types of Member or of the holders of debentures of the Company or otherwise in connection with the discharge of their duties.

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

- 51. Each of the Board Members shall, in exercising his/her role as a Board Member, act in the best interests of the Company, its tenants and service users and will not place any personal or other interests ahead of his/her primary duty to the Company; and, in particular, must:

- 51.1 seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its objects;
  - 51.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 51.3 in circumstances giving rise to the possibility of a conflict of interest between the Company and any other party:
    - 51.3.1 put the interests of the Company before that of the other party, in taking decisions as a Board Member; and
    - 51.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Company and refrain from participating in any discussions or decisions involving the other Board Members with regard to the matter in question; and
  - 51.4 ensure that the Company complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
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- 52.1 The Board shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Company or serves on the Board or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the policy. In making any payment or conferring any benefit the Company shall act at all times with transparency, honesty and propriety.
  - 52.2 If a person serves on the Board or any sub-committee he/she must declare any personal or other external interests on an annual basis in accordance with the Company's code of conduct for Board Members. If while serving on the Board that person has any conflict of interest in any contract or other matter about to be discussed at a meeting, he/she must tell the Board. He/she will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted. If no quorum exists for the purpose of voting on a matter only because of the operation of this article 52.2, provided that there are at least three remaining Board Members who are entitled to remain in terms of this article 52.2, such remaining Board Members are deemed to constitute a quorum for the purposes of voting and may proceed to make a decision as a quorate Board.
  - 52.3 If a person serves on the Board or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Company's policy referred to in article 52.1. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise.

## **BOARD MEETINGS**

- 53. (1) The Board may regulate its proceedings as it thinks fit provided that it must meet at least six times a year and the quorum for the transaction of the business of the Board at the time when the meeting proceeds to business shall be five including (if appointed) the Parent Appointee (unless the Parent Appointee has presented their apologies in advance of the meeting), provided that co-optees shall not be counted towards the quorum.

- (2) Board members must be sent written notice of Board Meetings posted, or delivered, by hand to the last such address for such communications given to the Secretary at least seven days before the meeting. The accidental failure to give notice to a Board Member (other than the Parent Appointee) or the failure of the Board Member to receive such notice shall not invalidate the proceedings of the relevant meeting.
  - (3) Board Meetings can take place in any manner which permits those attending to hear and comment on proceedings. A Board Member may participate in a Board Meeting by means of conference telephone, video conferencing facility or similar communications equipment whereby all the Board Members participating in the Board Meeting can communicate with each other. A Board Member participating in a Board Meeting in this manner shall be deemed to be present at the Board Meeting.
  - (2) 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. The Chairperson may also, with the consent of the meeting, adjourn the meeting (whether or not it has commenced or is quorate) either indefinitely or to such other time and place as he or the Board Members decide if it appears to him that:
    - (a) the number of persons wishing to attend cannot be conveniently accommodated in the place appointed for the meeting;
    - (b) the conduct of persons attending the meeting prevents or is likely to prevent the orderly holding or continuance of the meeting;
    - (c) an adjournment is otherwise necessary for the business of the meeting to be properly conducted; or
    - (d) a proposal of such importance is made that the consideration of a larger number of Board Members is desirable.
  - (3) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then notwithstanding Article 53(1) the Board Members present shall constitute a quorum.
  - (4) The Board will continue to act while it has vacancies for Board Members. However, if at any time the number of Board Members falls below seven, the Board can continue to act only for another two months. If at the end of that period the Board has not found new Board Members to bring the number of Board Members up to seven, the only power it will have is to act to bring the number of Board Members up to seven
54. 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 Chairperson shall have a second or casting vote.
55. (1) A Board Member must declare any personal or other external interests on an annual basis in accordance with the Code of Conduct. If any Board Member has: (a) any conflict of interest; or (b) a financial interest as described in Article 51(1); or (c) an interest other than a financial interest in any contract or other agreement about to be discussed at a meeting, which, in any case, is not permitted under these Articles, that

Board Member must tell the Board. The Board Member in question will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held. If the Board Member in question is inadvertently allowed to stay in the meeting and vote on the matter, his vote will not be counted.

- (2) For the avoidance of doubt, each of the following shall constitute a conflict of interest in terms of Article 55(1):
- (a) a contractual arrangement (proposed or actual) between the Company and any statutory body of which the Board Member is an official or elected member;
  - (b) a proposed contractual arrangement between the Company and any subsidiary or associate of the Company, where the Board Member is also a director or officer of the subsidiary or associate;
  - (c) consideration by a Tenant Board Member of their own tenancy or housing arrangements or those of any person Closely Connected to any such Tenant Board Member;
  - (d) consideration by a Board Member of any payments or benefits to be made to: that Board Member; any person Closely Connected to any such Board Member; or to a Relevant Business in accordance with the terms of the Code of Conduct.

56. 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 in respect of a particular matter, the question may, before the conclusion of the meeting, be referred to the remaining Board Members and the question shall be decided by a majority of votes. In the case of an equality of votes, the Chairperson shall be entitled to a casting vote in addition to any other vote he may have.
57. Not used
58. 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**

59. A resolution in writing signed by all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board 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.

### **SECRETARY**

- 60.1 Subject to the provisions of the Act, the Secretary and any deputy or alternate Secretary and any other Office Bearers 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. An employee of the Company, the Parent or any other member of the Group may hold the office of Secretary although shall not be a Board Member. If the Secretary cannot carry out his duties, the Board, or in any emergency the Chairperson, can ask another Office Bearer or employee to carry out the Secretary's duties.

The appointment of an Office Bearer in terms of these Articles is subject to the prior written approval of the Parent.

## **CHAIRPERSON**

- 60.2 The Chairperson will be appointed in accordance with article 60 for a period which shall commence on the date of the Chairperson's appointment and shall expire immediately prior to the next scheduled Board Meeting held after the expiry of three years from the date of the appointment (the "office term"), subject always to the provisions of article 60.4.
- 60.3 The Chairperson is responsible for the leadership of the Board and ensuring its effectiveness in all aspects of the Board's role and to ensure that the Board properly discharges its responsibilities as required by law, these Articles and the standing orders of the Company. The Chairperson will be delegated such powers as is required to allow the Chairperson to properly discharge the responsibilities of the office..
- 60.4 The Chairperson must be elected from the Board Members (excluding co-optees) which election must then be approved in writing by the Parent. The Chairperson must be prepared to act as Chairperson until the end of their office term (unless he/she resigns the post). The Chairperson can only be required to resign if a majority of the remaining Board Members present at a Board Meeting agree to this.
- 60.5 If the Chairperson is not present at a Board Meeting or is not willing to act, the Board Members present will elect another Board Member to be chairperson for the Board Meeting. If the Chairperson arrives at the meeting late, he/she will take over as chairperson of the Board Meeting as soon as the current agenda item is concluded.
- 60.6 If the votes of the Board Members are divided equally for and against an issue, the Chairperson will have a second and deciding vote.
- 60.7 The Chairperson can resign his/her office in writing to the Secretary and must resign if he/she leaves the Board or is prevented from standing for or being elected to the Board under article 44. The Board will then elect another Board Member as Chairperson.
- 60.8 The Chairperson can be re-elected upon expiry of their office term for a further maximum of two years and must not hold office continuously for more than five years, subject always to the provisions of article 38.
- 60.9 Upon expiry of their period of service as Chairperson, the Chairperson must resign as a Board Member and leave the Board. If the Chairperson resigns under article 60.7 or then they shall also be deemed to have resigned as a Board Member, regardless of the length of their period of service as Chairperson.

## **MINUTES**

61. (1) The Board shall cause minutes to be made in books kept for the purpose:-
- (a) of all appointments of officers made by the Board Members; and
  - (b) of all proceedings at meetings of the Company and of the Board, and of committees of the Board and of any class or type of Member, including the names of the Board Members present at each such meeting.

- (2) Minutes must be presented at the next appropriate meeting and signed by the Chairperson of the meeting at which they are presented. All minutes signed by the Chairperson of the meeting shall be conclusive evidence of the proceedings of the meeting.

### **RECORDS ACCOUNTS AND RETURNS**

62. (1) The Board shall cause accounting records to be kept by the Company in accordance with Part 15 of the Act.
- (2) Auditors of the Company shall be appointed and their duties regulated in accordance with the Act.
- (3) The Board shall take such steps as the Board considers necessary to ensure the continuing independence of the Company's auditor, including the periodic review of the need for audit rotation.
- (4) The Board shall submit the Company's accounts and balance sheet for audit to the Company's auditor and the Company's auditor shall make a report to the Company on the accounts examined by him and on the revenue account or accounts and the balance sheet for the year of account in respect of which he is appointed.
- (5) The Company shall furnish to the Scottish Housing Regulator, to OSCR and to such other organisations as the Board deems appropriate, a copy of its accounts and auditor's report within 6 months of the end of the period to which they relate.
- (6) Every year within the time allowed by law, the Secretary shall send to the Registrar of Companies the annual return, in the form prescribed by the Registrar, together with all such documentation as is required under the Act.
- (7) A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the auditor's report and a copy of the report of the Board, shall, not less than 21 clear days before the date of the meeting, be sent to all persons entitled to receive notice of General Meetings of the Company, provided that this Article 62 shall not require a copy of those documents to be sent to any person of whose address the Company is not aware. The accidental omission to send a copy of these documents to, or the non-receipt of the documents by, any person entitled to receive them shall not invalidate the proceedings at that General Meeting.

### **THE SEAL**

63. (1) If the Company 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.
- (2) The Company may exercise the powers conferred by Section 49 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board Members.

### **NOTICES**



64. 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.
65. The Company may give any notice to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address. A Member whose registered address is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Company.
66. A Member present, either in person or by proxy, at any meeting of the Company or any class or type of Member shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
67. 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

## **DISPUTES**

68. Every dispute between the Company or the Board and:
- (1) a Member;
  - (2) a person aggrieved who has ceased to be a Member within the previous six months; or
  - (3) a person claiming under these Articles,
- shall be dealt with in accordance with these Articles and any procedures determined by the Board from time to time but without prejudice to all rights which any person may have to raise an action on the matter in any court with competent jurisdiction, including without prejudice the Sheriff Court in the Sheriffdom in which the Company's registered office is located.

## **DISSOLUTION**

69. The Company may be dissolved with the prior written consent of the Parent) by the Company making an application to the Registrar of Companies pursuant to Part 31 of the Act to have the Company's name struck off the register of companies maintained by the Registrar of Companies under the Act.
70. If on the dissolution of the Company any property remains after satisfaction of all the Company's debts and liabilities, such property shall not be paid to or distributed among the Members but shall:
- (1) if the Company is at the time of dissolution a Registered Social Landlord, be transferred to such other charitable Registered Social Landlord as The Scottish Housing Regulator may direct; or
  - (2) if the Company is not at the time of dissolution a Registered Social Landlord, be transferred to some other charitable body or bodies (whether incorporated or

unincorporated) whose objects are similar (wholly or in part) to the objects of the Company.

71. To the extent that effect cannot be given to the provisions of Article 70, the relevant property shall be applied to some other charitable object or objects as determined by the Members at or before the time of dissolution or, failing such determination, by such court as may have jurisdiction at the time.

### **INDEMNITY**

72. (1) Every Board Member or other officer of the Company shall be indemnified out of the assets of the Company 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 1157 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 Company in the execution of the duties of his office, or in relation thereto PROVIDED THAT this Article 72 shall only have effect in so far as its provisions are not avoided by Sections 532 and 533 of the Act.
- (2) The Board shall have the power to purchase and maintain for Board Members or officers or employees of the Company insurance against any such liability as is referred to in Section 532 of the Act.

### **AMENDMENT OF ARTICLES**

73. These Articles may be amended provided that:
- (1) three quarters of the votes at a special general meeting are in favour of the amendment(s); and
- (2) the Parent has approved the amendment(s).
74. Where an amendment of these Articles affects the charitable purposes of the Company the prior approval of the Office of the Scottish Charity Regulator (“OSCR”) is required. Any other amendment of these Articles requires to be notified to OSCR within 3 months of the amendment having been made.
75. The name of the Company may be changed if:
- (1) Three quarters of the votes at a special general meeting are in favour of the change; and
- (2) the Parent has provided its written consent; and
- (3) OSCR have given their approval.

### **CONDUCT OF BOARD MEMBERS**

76. Each of the Board Members shall, in exercising his/her functions as a director of the Company, act in the interests of the Company and, in particular, must:
- (1) seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its charitable objects (as set out in these Articles);

- (2) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
- (3) in circumstances giving rise to the possibility of a conflict of interest between the Company and any other party:
  - (a) put the interests of the Company before that of the other party, in taking decisions as a Board Member; and
  - (b) where any other duty prevents him/her from doing so, disclose the conflicting interest to the Company and, subject to the terms of Articles 51 and 55, refrain from participating in any discussions or decisions involving the other Board Members with regard to the matter in question;
- (4) ensure that the Company complies with any direction, requirement, notice or duty imposed on it by the 2005 Act; and
- (5) take such steps as are reasonably practicable for the purposes of ensuring:
  - (a) that any breach of a duty under Articles 76(1) to 76(4) inclusive is corrected by the Board Member concerned and not repeated; and
  - (b) that any Board Member who has been in serious or persistent breach of any such duties is removed as a Board Member in terms of Article 44.

**EQUAL OPPORTUNITIES**

77. The Company 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.

**COMMUNICATIONS**

78 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company, including, without limitation, by sending or supplying documents or information by making them available on a website.

79. Subject to the Articles, any notice or document to be sent or supplied to a Board Member in connection with the taking of decisions by Board Member may also be sent or supplied by the means by which that Board Member has asked to be sent or supplied with such notices or documents for the time being.

80 A Board Member may agree with the Company that notices or documents sent to that Board Member in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

81. For the purposes of these Articles, a person shall be deemed to be “present” or “present in person” at a meeting if such person is participating in the meeting by virtue of some form of electronic communication, including, without limitation, by way of: telephone; video link; internet video facility; or any other similar communications system by means of which all persons participating in the meeting are able to communicate with each other.

**Signed** .....**Director, DGHP**

**Signed** .....



**APPENDIX A**

**“Dumfries and Galloway Housing Partnership Limited**

**I/We**, being a Member/Members of the above-named company, hereby appoint

, or failing him,

of

, as my/our proxy to vote

in [my/our name[s] and on [my/our] behalf at the annual/extraordinary general meeting of the

Company to be held on [ ] , and at any adjournment thereof.

Signed on this day of 20[ ].”

**APPENDIX B**

**“Dumfries and Galloway Housing Partnership Limited**

**I/We,**

being a Member/Members of the above-named company, hereby appoint

of \_\_\_\_\_, or failing him, of \_\_\_\_\_, as

my/our proxy to vote in [my/our name[s]] and on [my/our] behalf at the annual/extraordinary

general meeting of the Company to be held on \_\_\_\_\_ [ 20[ ] ], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 \*for \*against

Resolution No. 2 \*for \*against

\*Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20[ ],”

**ARTICLES OF ASSOCIATION**

**OF**

**DUMFRIES AND GALLOWAY HOUSING PARTNERSHIP LIMITED**

**Registration Number: SC220297**