

**The Companies Acts 2006**

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

**Articles of Association**

**Of**

**River Clyde Homes SC329031**

**Approved: 20<sup>th</sup> June 2019**

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**SUPERSEDES MEMORANDUM & ARTICLES OF ASSOCIATION DATED 29 SEPTEMBER 2015**

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**Review date:**

**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.

**Interpretation**

- 2 (a) In these Articles, unless the subject matter or context requires otherwise:
- (i) "**Act**" means the Companies Acts 2006 including any statutory modification or re-enactment for the time being in force;
  - (ii) "**Articles**" means these Articles of Association as amended from time to time;
  - (iii) "**Board**" means the Board of the Company constituted in accordance with these Articles;
  - (iv) "**Board Member**" means a member of the Board for the time being who shall for the purposes of the Act be a director of the Company;
  - (v) "**Body Corporate**" means a legal body which exists separate and distinct from its members, including, without limitation, companies, building societies, industrial and provident societies, local authorities and bodies incorporated by Act of Parliament or charter, under declaration that unincorporated organisations such as social clubs, branch or political parties or trade unions are not bodies corporate for the purposes of these Articles;
  - (vi) "**Chairperson**" means a Board Member appointed from time to time to act as the chairperson of the Company in accordance with Article 55;
  - (vii) "**Chairperson of the Meeting**" shall mean the Chairperson or any other Board Member or member elected to be the chairperson of a Board meeting or a general meeting of the Company' in accordance with Articles 23(a) or 55(a);
  - (viii) "**Chief Executive**" means the person appointed from time to time to act as the chief executive of the Company in accordance with Article 67;
  - (ix) "**Clear Days**" means in relation to a period of notice, 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;
  - (x) "**Close Relative**" means someone who is the spouse or civil partner of a person, or (being either of the same or different sex) who cohabits with that person, or

is that person's parent, grandparent, child, stepchild, grandchild, brother or sister;

- (xi) "**Community Board Member**" means a Board Member who is neither a Council Board Member nor a Customer Board Member and Community Board Members shall be individuals (including representatives of organisations, with the exception of the representative of the Council as a corporate body who will not be eligible for Board membership) who shall have the business, professional or technical knowledge, experience, skills or expertise complementary to, and be compatible with, the objects of the Company;
- (xii) "**Community Member**" means any member designated as such pursuant to Article 9(a);
- (xiii) "**Company**" means River Clyde Homes;
- (xiv) "**Council**" means Inverclyde Council or any statutory successor to Inverclyde Council's strategic housing function;
- (xv) "**Council Board Members**" means the two persons nominated by the Council pursuant to Article 41(a) to sit on the Board, who will be deemed to be Members for the duration of their nomination;
- (xvi) "**Customer**" means an individual who (i) holds a tenancy or licence or lease of a residential property from, and occupies a property belonging to the Company, or any subsidiary of the Company or the partner or spouse residing with that individual in accordance with the definition of partner or spouse in section 108(1)(a) of the Housing (Scotland) Act 2001, or (ii) is the owner of a house in respect of which the Company or any subsidiary of the Company provides a factoring service;
- (xvii) "**Customer Board Member**" means a Board Member elected under Article 42;
- (xviii) "**Customer Member**" means a member who is at the time of admission to membership a Customer and is so designated by the Board;
- (xix) "**Customer Scrutiny Panel**", also known as the Customer Senate, means the panel established to facilitate Customer led scrutiny of the Company's services and performance and make recommendations to the Board based on its assessment of how such services might be improved. The membership and terms of reference of the Customer Scrutiny Panel shall be as determined by the Customer Scrutiny Panel from time to time in consultation with Customers;
- (xx) "**Executive Board Member**" an employee of the Company appointed as a Board Member in accordance with Article 36;
- (xxi) "**Local Authority Person**" means any person: (i) who is or has been a councillor of the Council in the preceding 12 months; (ii) who is an officer of the Council (but which shall not include employees with non-managerial posts apart from housing employees); or (iii) who is both an employee and either a director, manager, secretary or other similar officer of a company which is under the control of the Council; and who, in the case of Board Members (but for the avoidance of doubt not members) is a spouse, cohabiting partner or Close Relative of a person falling within categories (i), (ii) or (iii) above;

- (xxii) "**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;
- (xxiii) "**Remuneration and Nominations Committee**" means a sub-committee of the Board constituted in terms of Article 64;
- (xxiv) "**Office Bearer**" means the Chairperson or Vice Chairperson of the Company or any Board Member for the time being and such other office bearers as the Board may appoint under these Articles;
- (xxv) "**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 2<sup>nd</sup> Floor, Quadrant House, 9 Riverside Drive, Dundee DD1 4NY;
- (xxvi) "**Property**" shall include all heritable and moveable estate, whether owned or managed or leased to or by the Company (including loan stock certificates, books and papers);
- (xxvii) "**Scottish Housing Regulator**" means the body known as The Scottish Housing Regulator as established pursuant to Section 1 of the Housing (Scotland) Act 2010;
- (xxviii) "**Secretary**" means the person appointed from time to time by the Board to be the Secretary of the Company to perform the duties of secretary of the Company;
- (xxix) "**Vice Chairperson**" means a Board Member appointed by the Board from time to time to act as the vice chairperson of the Company;
- (xxx) "**2001 Act**" means the Housing (Scotland) Act 2001; and
- (xxxi) "**2005 Act**" means the Charities and Trustee Investment (Scotland) Act 2005 including any statutory modification or re-enactment for the time being in force.

(b) Unless otherwise required by the context of these Articles, a reference to an Article shall be deemed to be a reference to an article of these Articles; words importing the singular only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender. References to any statute or section of any statute or subordinate legislation shall include a reference to any statutory amendment, extension, modification or re-enactment thereof for the time being in force. Without prejudice to the foregoing, each reference to the 2001 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.

(c) Each and every Article of these Articles shall be read and interpreted as if it incorporated an overriding qualification to the effect that:

- (i) no expenditure of income by the Company shall be permitted for the purpose of carrying out any activities which are not wholly charitable within the meaning of Section 7 of the 2005 Act and which are also regarded as a charitable purpose in relation to the Taxes Acts; and
- (ii) in all cases in which activities permitted by the objects of the Company are in their nature capable of being exercised for purposes which are not charitable

or only partially so, as well as for the purposes which are wholly charitable, the powers exercisable by the Company in furtherance of its objects shall be limited such that any activity may be carried on only if that activity furthers a purpose that is regarded as charitable for the purposes of section 7 of the 2005 Act and which are also regarded as a charitable purpose in relation to the Taxes Acts.

- (d) Subject to the qualification in Article 2(c), the objects of the Company are:
  - (i) to provide for the relief of those in need by reason of age, ill health, disability, financial hardship or other disadvantage through the provision, construction, improvement and management of land and accommodation and the provision of care; and
  - (ii) any other purpose or object permitted under Section 24 of the Housing (Scotland) Act 2010 which is charitable both for the purposes of Section 7 of the 2005 Act and also in relation to the application of the Taxes Acts.
- (e) The Company's permitted activities and powers will include anything which is necessary or expedient to help the Company achieve the objects set out in Article 2(d).
- (f) In furtherance of its objects the Company shall as landlord or managing agent have proper regard to the requirements of public accountability, to the proper use of the public or other monies loaned, granted or gifted to or held by it, to the welfare of the Customers or occupiers of the dwellings provided or managed by it. 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.
- (g) The terms "he", "she", "him", "her" (or derivatives of any of the foregoing) and "person" shall where appropriate include a Body Corporate.

#### **Powers**

- 3 In furtherance of the foregoing objects of the Company and not further or otherwise, the Company shall have the following powers:
- (a) to seek recognition by Her Majesty's Revenue and Customs as having the status of a charity for tax purposes and to seek registration as a charity with OSCR;
  - (b) to make appeals for money, to receive and accept by way of gifts, donations, covenants, legacies, bequests, grants, subscriptions or otherwise money and property of any nature or description for the purpose of furthering the objects of the Company;
  - (c) to establish joint ventures and to promote companies whose activities may further one or more of the above objects or may generate income to support the activities of the Company, acquire and hold shares, stocks, debentures and other interests in such companies and carry out in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company;
  - (d) to undertake and execute any charitable trusts, gratuitously or otherwise, the undertaking whereof may be incidental to the attainment of the objects of the Company or any of them;
  - (e) to initiate, promote, conduct, coordinate, monitor and/or assist (whether financially or otherwise), projects, initiatives and schemes of all kinds which further any of the objects of the Company;

- (f) to provide, manage and develop necessary housing and support services and facilities;
- (g) to empower Customers and local communities so that they play a pro-active role in the provision and control of their housing;
- (h) to commission and / or conduct research, and to publish and promote the results of such research;
- (i) to provide innovative housing solutions and thereby create greater flexibility and accessibility in the housing market;
- (j) to design, prepare, publish and / or distribute information packs, leaflets, books, newsletters, magazines, posters, emails, websites and other publications, audio and video recordings, multimedia products and display materials, and to create and maintain a database or databases;
- (k) to provide information, advisory support and/or consultancy services which further the aims of the Company;
- (l) to link the provision of housing with the social and economic regeneration of the community;
- (m) to advise in relation to, prepare, organise, conduct and / or support conferences; seminars and workshops, and educational and training events, courses and programmes of all kinds;
- (n) to purchase, develop, lease or otherwise acquire and hold, sell, lease, mortgage, charge, hire, give or take in exchange or otherwise deal with, acquire or dispose of any lands, buildings, equipment, goods and other property, whether freehold, heritable, leasehold, moveable, real or personal, tangible or intangible or otherwise, and any rights or privileges necessary or convenient for the purposes of the Company and to erect, construct, lay down, enlarge, alter and maintain and from time to time renew any buildings necessary or convenient for the purposes of the Company;
- (o) to acquire and take over the whole or any part of the undertaking and liabilities of any person entitled to any property or rights suitable for any of the objects of the Company;
- (p) to apply for and hold all necessary permissions, licences and authorities which are necessary or desirable for or in connection with the carrying out of the Company's activities;
- (q) to improve, manage, enhance, exploit, develop, turn to account and otherwise deal with all or any part of the undertaking, Property and rights of the Company;
- (r) to submit to registration with and regulation by the Scottish Housing Regulator or its successor organisation;
- (s) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, cheques, warrants, debentures and other negotiable or transferable instruments;
- (t) to receive and raise money for the purposes of the Company by borrowing on such terms and whether by way of legal or equitable mortgage, fixed or floating charge or otherwise on such security as may be thought fit and by guarantees, gifts, grants, legacies or donations in response to public or private appeals or otherwise in relation to such gifts or donations to accept the same either unconditionally, or subject to such conditions as may

be agreed but so that no such conditions shall be inconsistent with the objects of the Company;

- (u) to invest and reinvest the funds and assets of the Company not immediately required for the purposes of its activities, in such investments and securities, shares, stocks debentures, loan stock, other investments or property, whether freehold, heritable, leasehold, moveable, real or personal, tangible or intangible or otherwise (in any part of the world) as the Company shall think fit (subject to compliance with any applicable legal requirement and formal regulatory guidance issued by the Scottish Housing Regulator);
- (v) to enter into and perform a Rate Cap Transaction, or series of Rate Cap Transactions, or to enter into a Collar Transaction or series of Collar Transactions or an Interest Rate Swap Transaction (each a "Transaction") where in relation to any such Transaction the following conditions are satisfied namely that:
  - (i) the relevant instruments relate solely to amounts denominated in Sterling or, if the Euro has been adopted as currency, its United Kingdom equivalent in Euros;
  - (ii) the relevant Transaction provides (in the case of an Interest Rate Swap Transaction) for the Company to undertake to pay a specified fixed rate on an applicable notional sum, but not otherwise;
  - (iii) the relevant Transaction in the case of a Collar Transaction provides for the simultaneous buying of an instrument relating to a rate cap and the selling of an instrument providing for a floor at a lower strike price to such cap;
  - (iv) any counterparty to the Transaction is one of the principal clearing banks in the United Kingdom; and
  - (v) the Board or a duly authorised sub-committee established under the Articles considers the entry by the Company into such Transaction to be in the best interests of the Company,

PROVIDED that at the time of entry into any Transaction the sum of the Calculation Amount of any Transaction previously entered into and remaining in effect, and the Calculation Amount of the proposed Transaction shall not exceed the aggregate amount of the Company's Variable Rate Borrowings then drawn down plus the amount of any existing contractually committed loan facilities not yet drawn down in respect of amounts which the Company intends at the Effective Date when drawn down will become Variable Rate Borrowings, having regard at the Effective Date to the Company's obligations to repay Variable Rate Borrowings and the amount of Variable Rate Borrowings which will be outstanding at any time on or prior to the proposed Termination Date;

- (w) before exercising its power under Article 3(v), the Company shall obtain and consider proper advice on the question whether the Transaction is satisfactory having regard to:
  - (i) the possible fluctuations in the rate of interest payable by the Company on its Variable Rate Borrowings during the terms of the relevant Transaction;
  - (ii) the Company's ability to meet its payment obligations under such borrowings during the term of the relevant Transaction if such Transaction was or were not entered into;
  - (iii) the payment obligation under the relevant Transaction; and
  - (iv) the Company's actual and projected annual income and expenditure position;



- (x) for the purposes of Article 3(w), proper advice shall mean the advice of a person who is reasonably believed by the board to be qualified by this ability in the practical experience of financial matters and the appropriate Transaction; such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer;
- (y) a person entering into a relevant Transaction with the Company who has received a written certificate signed by the Secretary confirming the Company's compliance with Articles 3(v) and 3(w) shall not be concerned to enquire further whether or not the Company has complied with the provisions of Articles 3(v) and 3(w), and such Transaction shall be valid at the date it is entered into and throughout its term in favour of such person (or any assignee or successor in title) whether or not the provision of Articles 3(v) and 3(w) have been complied with.

For the purposes of Articles 3(v), 3(w), 3(x) and 3(y):

**"Calculation Amount", "Effective Date" and "Termination Date"** have the respective meanings given in the 2000 International Swaps and Derivatives Association ("ISDA") Definitions as amended from time to time;

**"Variable Rate Borrowings"** mean any borrowing by the Company in respect of which the rate of interest has not been fixed for a term in excess of twelve months and the term "fixed" shall exclude any borrowing where the rate of interest is indexed in accordance with the retail price index or other published index;

**"Rate Cap Transaction", "Collar Transaction" and "Interest Rate Swap Transaction"** mean respectively any transaction so designated within the meaning of the category "Swap Transaction" as defined in the ISDA Definitions as amended from time to time;

- (z) to operate, carry on and supply any ancillary businesses or services necessary or desirable in connection with the Company's activities;
- (aa) to remunerate any individual in the employment of the Company and to establish, maintain and contribute to any pension or superannuation fund for the benefit of and to give or procure the giving of any donation, pension, allowance or remuneration to, and to make any payment for or towards the insurance of, any individual, who is or was at any time in the employment of the Company, and the spouse, co-habiting partner, widow or widower, relatives and dependants of any such individual and to establish, subsidise and subscribe to any institution, association, club or fund which may benefit any such person; and, where it is in the best interests of the Company and permitted by the terms of the Company's Payments and Benefits Policy agree the terms of any ex gratia payment to any employee or former employee out with that person's terms and conditions of employment;
- (bb) to employ or engage all such officers, employees, consultants, advisers and agents as may be required for the purposes of the Company;
- (cc) to enter into any agreements and / or arrangements with any organisation, government or authority and to obtain from any such organisation, government or authority any rights, concessions, or privileges that may seem to further any or all of the Company's objects or any of them;
- (dd) to enter into partnership or into any arrangement for joint, shared or mutual promotion, union of interests, reciprocal concessions or cooperation with any person, partnership or company carrying on, engaged in or about to carry on or engage in any business or transaction which the Company is authorised to carry on or engage in or any business

capable of being conducted so as to directly or indirectly further the objects of the Company;

- (ee) to acquire and take over the whole or any part of the undertaking and liabilities of any person entitled to any property or rights suitable for any of the objects of the Company;
- (ff) to promote any private Act of Parliament, Provisional Order or other authority to enable the Company to carry on its business, alter its constitution or achieve any other purpose which may promote the Company's interests, and to oppose or object to any application or proceedings which may prejudice the Company's interests;
- (gg) to effect insurance against risks of all kinds;
- (hh) to establish and support any association or other unincorporated body having objects altogether or in part similar to those of the Company and to promote any company or other incorporated body formed for the purpose of carrying on any activity which the Company is authorised to carry on;
- (ii) to amalgamate with any body, incorporated or unincorporated, having objects altogether or in part similar to those of the Company;
- (jj) to subscribe and make contributions to or otherwise support bodies, whether incorporated or unincorporated, and to make donations for any purpose connected with the activities of the Company or with the furtherance of its objects;
- (kk) to carry out any of these objects in any part of the world as principal, agent, contractor, trustee or in any other capacity including through an agent, contractor, sub-contractor, trustee or any person acting in any other capacity and either alone or in conjunction with others;
- (ll) to carry on any other activity which may seem to the Company capable of being conveniently carried on in connection with any activity which the Company is authorised to carry on or may seem to the Company calculated directly or indirectly to benefit the Company or to enhance the value of or render profitable any of the Company's properties or rights;
- (mm) to pay all or any expenses incurred in connection with the promotion, formation, incorporation, conduct and winding up of the Company or to contract with any person to pay the same; and
- (nn) to do all such other acts and things as may be incidental or conducive to the attainment of the objects of the Company or any of them;

Provided that:

- (i) 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;
- (ii) the objects of the Company shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers;
- (iii) for the avoidance of doubt Articles 3(hh), 3(ii) and 3(jj) shall not mean or imply the taking on of liabilities of third parties' activities by the Company.

In this Article 3 unless the context otherwise requires, references to members of the Board of the Company shall for the purposes of the Act be deemed to be references to directors of the Company

and references to persons shall include companies and other Bodies Corporate, firms, associations, societies, institutions, organisations, clubs, funds, trusts, local authorities and other statutory, local and public bodies and authorities.

#### **MEMBERSHIP**

- 4 The Company shall keep a proper register of Members containing the names and addresses and such other particulars of Members as is required by the Act. The subscribers to the Articles of Association and such other persons whose names are entered in the register of Members shall be the Members. The Company shall have at any given time a minimum of seven Members but there shall be no maximum.
- 5 Any Member who changes his / her main residence, or a Body Corporate which changes its registered office, is required to furnish in writing to the Company's registered office within three calendar months of such change the address of such new main residence or registered office.

#### **Applying for membership**

- 6 The Board shall set, review and publish its membership policy for admitting new Members. Subject to the provisions of Article 7, the following shall be eligible to become Members:
- (a) Customers;
  - (b) service users of the Company;
  - (c) other persons who support the objects of the Company; and
  - (d) organisations sympathetic to the objects of the Company.
- 7 (a) An applicant for membership shall forward to the Company's registered office a completed and signed application for membership in such form as the Board requires. Whilst it is the Company's intention to encourage membership, the Board has absolute discretion in deciding on applications for membership and the following shall constitute grounds for refusal of an application for membership:
- (i) where membership would be contrary to these Articles or the Company's policies;
  - (ii) where a conflict of interest may exist which, even allowing for the disclosure of such an interest, may adversely affect the work of the Company; or
  - (iii) where the Board considers that accepting the application would not be in the best interests of the Company.
- 8 (a) Every application shall be considered by the Board at its next meeting after it is received, or as soon thereafter as it is practicable. The Board will not consider an application for membership within the 14-day period immediately prior to the date of a general meeting. Such persons as are admitted to membership in accordance with these Articles shall be Members. No person (other than Council Board Members or the Council) shall be admitted as a Member unless he / she is approved by the Board which is entitled, in its absolute discretion, to grant or refuse any application for membership. The Council shall have the right to become a Member, which right shall be exercisable at any time by written notice to that effect from the Council to the Company. The Council's membership of the Company shall take effect as from the date of service of such notice on the Company.

- (b) If the application is approved, membership shall take effect from that time and within seven working days the name of the applicant shall be entered in the register of Members.
  - (c) A person shall not be admitted to membership if he / she is under 16 years of age.
  - (d) The Board may not admit any employee of the Company to membership of the Company, provided that employees of the Company who are also Customers may be admitted to membership of the Company.
- 9
- (a) Every Member (other than Council Board Members) shall be designated by the Board as a Customer Member or a Community Member. Such status shall be stated in the register of Members and the decision of the Board as to the designation of the Members shall be final and binding. A Member can only be a Member of one of the categories of Members. If a person is appointed under Article 13 as a representative of a Body Corporate then that person may not also be a Member as an individual.
  - (b) A Member representing an unincorporated body shall for all purposes be treated as an individual member but shall have entered against his / her name in the register of Members the name of the unincorporated body which he / she represents.
  - (c) The rights and privileges of a Member of the Company shall be personal and shall not be transferable or transmissible by any means.
- 10 The liability of Members is limited.

#### **Withdrawal from membership**

- 11
- (a) Any Member may withdraw from the Company by giving to the Secretary at the Company's registered office 1 calendar month's notice in writing of his / her intention to do so. Such Member shall cease to be a Member from the date the notice expires.
  - (b)
    - (i) Where the Board is satisfied that a Member has failed to notify the Company of a change in main residence (in the case of a Member who is an individual) or change in registered office (in the case of a Member who is a Body Corporate) as required under Article 5, that Member shall be deemed to have withdrawn from membership of the Company.
    - (ii) In circumstances where a member, who is also a Customer, changes his main residence by way of transfer of house or exchange of tenancy he / she shall be deemed to have given the required notification under Article 5.
    - (iii) In circumstances where a Member, who is also a Customer, ceases for any reason whatsoever to be a Customer, he / she shall be deemed to have withdrawn from membership of the Company at the date of such cessation.
    - (iv) A Customer Member may become a Community Member by virtue of ceasing to be a Customer. Likewise, a Community Member may become Customer Member by virtue of becoming a Customer.
    - (v) Where a Member has failed either to attend or submit apologies for five consecutive annual general meetings, that Member shall be deemed to have withdrawn from membership of the Company.
    - (vi) Where a Member is found to have provided false information in their application for membership, their membership may be withdrawn immediately.

- (vii) All withdrawals of membership or changes in membership groups pursuant to this Article 11(b) shall be recorded in the register of Members.
- (c) The cessations referred to in this Article 11 shall take place forthwith upon the occurrence of the events set out in this Article 11 without the need of notice being given to the Member concerned.
- (d) Any Member ceasing to be a Member shall remain liable to pay all sums for which he / she is personally liable to the Company at the date of his / her ceasing to be a Member.

#### **Expulsion of Members**

- 12 (a) A Member may be expelled by a resolution carried by the votes of two-thirds of the Members present in person or by proxy and voting on a poll at an extraordinary general meeting of the Company of which not less than 28 Clear Days' notice has been duly given, provided that a complaint in writing of conduct detrimental to the interests of the Company has been communicated to him / her by the Secretary not less than one calendar month before the meeting. Such complaint shall contain particulars of the conduct complained of and shall call upon the Member to answer the complaint and to attend the meeting under this Article 12(a). At such meeting the Members shall consider evidence in support of the complaint and such evidence as the Member may wish to place before them. If, on due notice having been served upon him / her the Member fails to attend the meeting without adequate reason being provided, the meeting at its discretion may proceed in his / her absence.
- (b) If a person's membership is ended in accordance with Article 12(a), he / she will immediately cease to be a Member from the date that the resolution to end his / her membership was passed and any further application for membership by that person will need to be approved by a resolution carried by the votes of two-thirds of the Members present in person or by proxy and voting on a poll at any general meeting of which notice has been duly given under these Articles.

#### **Representatives of Bodies Corporate**

- 13 (a) For the purposes of these Articles, a Body Corporate which is a Member may by resolution of its governing body appoint and revoke the appointment of any person it thinks fit as its representative at meetings of the Company or for membership of the Company. Such person shall, during the continuance of his / her appointment as such representative or Member of the Company, be entitled to exercise at any general meeting of the Company all the rights and powers available to the Members.
- (b) To confirm the identity of a representative, the Body Corporate must send the Company a copy of the resolution appointing an individual as a representative. This should be signed by a director, secretary or authorised signatory of the Body Corporate which signature must be witnessed, or in the case of a local authority, by the chief executive, or properly authorised officer of the local authority.
- (c) If such a person is already a Member as an individual when he / she is appointed to represent a Body Corporate then his / her individual membership will be suspended for the duration of his / her appointment as such a representative.

### **GENERAL MEETINGS**

#### **Annual General Meetings**

- 14 The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it or

them. Not more than six months shall elapse between the date of the Company's annual accounts as required by Article 74 and the date of the annual general meeting of the Company provided that so long as the Company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the Board shall approve.

#### **Extraordinary General Meetings**

- 15 (a) All general meetings other than annual general meetings shall be called extraordinary general meetings. The Secretary shall convene an extraordinary general meeting if either:
- (i) the Board orders one; or
  - (ii) not less than five per cent (5%) of the Members request one in writing in accordance with section 303 of the Act, stating the purpose for which the meeting is to be convened.
- (b) Where an extraordinary general meeting is called for under Article 15(a), the Secretary shall be under a duty to convene the meeting in accordance with Article 15(c). Without prejudice to said duty, the Secretary shall, in consultation with the Board or the Chairperson if practicable (but if such consultation is not practicable at his / her own discretion) decide the time, date and place for the meeting.
- (c) Any such extraordinary general meeting shall be held within 28 days after receipt of a Board order or Members' request. Should the Secretary fail to give notice to convene an extraordinary general meeting within 10 days after delivery to him / her of the order or request, the Board, or the Members who signed the request, may themselves give notice and convene the meeting.
- (d) An extraordinary general meeting shall not transact any business other than that mentioned in the notice convening the meeting.

#### **Notices for General Meetings**

- 16 An annual general meeting and an extraordinary general meeting shall be called by at least 14 Clear Days' notice in writing. The notice shall specify:
- (a) the place, the day and the hour of the meeting;
  - (b) whether the meeting is an annual or extraordinary general meeting;
  - (c) the business for which the meeting is called; and
  - (d) if a special resolution, or a resolution requiring special notice under the Act, is to be proposed, the intention to propose such a resolution and the exact text of the resolution,
- and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to the Members, to the Board Members and to the auditors of the Company.
- 17 Provided that a general meeting of the Company shall be deemed to have been duly called if so agreed by a majority in number of Members entitled to attend and vote at the meeting holding at least 95% of the total voting rights at that meeting of all the Members.
- 18 The accidental omission to give notice of any meeting of the Company to, or the non-receipt of a notice of a meeting of the Company by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

- 19 (a) A notice sent by post shall be deemed to have been given on the day following that on which the envelope containing the notice was posted. Proof that the envelope was properly addressed, prepaid and posted shall be conclusive evidence that notice was given.
- (b) A notice contained in an email shall be deemed to have been given on the day it is sent. For the purpose of proving that any email was sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.
- (c) A Member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

#### **PROCEDURE AT GENERAL MEETINGS**

- 20 All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance sheets and reports of the Board Members and auditors, the election of Board Members in place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.
- 21 (a) No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Seven Members present in person or by proxy shall form a quorum. However, if the membership exceeds at any time 70 Members, one tenth of the Members present in person or by proxy shall form a quorum.
- (b) If no quorum is present within half an hour after the time appointed for the meeting, the meeting shall stand adjourned to the same day in the following week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Members present shall be deemed to have formed a quorum.
- 22 (a) The Chairperson of the Meeting may with the consent of a majority of the Members present adjourn any meeting but no business shall be transacted at any adjourned meeting other than the business not reached or left unfinished at the meeting from which the adjournment took place.
- (b) Every adjourned meeting shall be deemed a continuation of the original meeting and any resolution passed at an adjourned meeting shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date. It shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 23 (a) At all general meetings of the Company the Chairperson shall preside as Chairperson of the Meeting. If there be no such Chairperson, or if he / she is not present, or is unwilling to act, the Members present shall elect either the Vice Chairperson or a Board Member who is present to be the Chairperson of the Meeting. In the absence of any Board Members, the Members present shall elect from their number a Chairperson of the Meeting.
- (b) Should the Chairperson appear at a later time during the meeting, the acting Chairperson of the meeting at his / her discretion may continue in that position but only until the current or particular item on the agenda is disposed of before vacating the chair for the Chairperson.

- 24 Except in the case of a special resolution (or any other resolution which in terms of the Act requires a majority equivalent to that required to pass a special resolution), which shall be decided by not less than a three-fourths majority of those Members voting, either upon a show of hands or on a poll where a poll is agreed or directed, a resolution put to the vote of a general meeting shall be decided by a simple majority of those Members voting, either upon a show of hands or on a poll where a poll is agreed or directed. In the case of a poll, votes may be given personally or by a proxy who need not be a Member. The maximum number of proxy votes that may be cast by one person is 10.
- 25 A resolution put to the vote at general meetings of the Company shall be decided on a show of hands unless a poll is demanded in accordance with Article 27(a):
- (a) on a show of hands every Member present in person shall have one vote;
  - (b) on a poll all Members present in person or by proxy shall be entitled to vote and shall have one vote; or
  - (c) 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 / she may have.
- 26 Unless a poll is demanded, a declaration by the Chairperson of the Meeting that a resolution on a show of hands has been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry made to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.
- 27
- (a) A poll may be demanded either before or immediately after a vote by a show of hands, by not less than one-tenth of the Members present at the meeting (in person or by proxy), or may be directed by the Chairperson of the Meeting whether pursuant to Article 24 or otherwise. A demand for a poll may be withdrawn.
  - (b) If a poll is to take place, it shall be conducted forthwith at the meeting in such manner as the Chairperson of the Meeting shall direct and the Chairperson of the Meeting may appoint scrutinisers' (who need not be Members). The result of such a poll shall be deemed to be the resolution of the Company in general meeting.
- 28
- (a) To appoint a proxy a Member, or his / her attorney (duly authorised in writing) or if the Member is a Body Corporate, its representative appointed under Article 12 or a duly authorised signatory, shall complete a letter of appointment in the following form:

*River Clyde Homes*

*Appointment of proxy*

*I, [ ] residing at [ ], being a member of River Clyde Homes (the Company) hereby appoint [ ] of as my proxy to vote for me and on my behalf at the annual/extraordinary meeting of the Company to be held on the [ ] day of [ ] and at any adjournment thereof.*

*Signed:*

*Date:*

The letter of appointment shall be sent to the Company's registered office to arrive not less than 48 hours before the time fixed for holding the meeting at which the person named in the letter of appointment is authorised to vote on behalf of the Member so



appointing. Any question as to the validity of a proxy shall be determined by the Chairperson of the Meeting.

- (b) The Member who has appointed a proxy may revoke the appointment by a letter of revocation in the following form:

*River Clyde Homes*

*Revocation of proxy*

*I, [ ] residing at [ ] being a member of River Clyde Homes (the Company) hereby revoke the appointment of proxy made by me on the [ ] day of [ ]*

*Signed:*

*Date:*

The letter of revocation must be presented to the Company before the meeting at which the person named in the letter appointing the proxy was authorised to vote convenes.

- (c) Only letters in the form as set out above appointing a proxy or revoking such appointment, which are properly completed as aforesaid, shall be treated as valid. The Chairperson of the Meeting shall report to the meeting the details of those appointments of proxy which are void.

#### **PROCEEDINGS AT GENERAL MEETINGS**

- 29 (a) No amendments shall be made to any motion of business involving the passing of a special resolution (or any other resolution which in terms of the Act requires a majority equivalent to that required to pass a special resolution).
- (b) Amendments to any original motion of business involving an ordinary resolution (that is, a resolution requiring a simple majority) may be made by a Member verbally by addressing the Chairperson of the Meeting. Amendments shall be taken in the order that they are raised; one amendment shall be dealt with before another is discussed.
- 30 (a) All speakers must direct their words to the Chairperson of the Meeting. All Members must remain quiet and orderly while this is happening.
- (b) A Member will not be allowed to speak more than once on any individual matter, unless it is to explain something or ask for an explanation, until every other Member has had the opportunity to speak. A Member will have the opportunity to speak a second time on a matter but only if the Chairperson of the Meeting agrees. Where the Chairperson of the Meeting raised the matter for discussion initially, he / she will be permitted to make a final reply on the matter.
- (c) The Chairperson of the Meeting will decide how long each speaker is allowed to speak, allowing equal time to each speaker.
- 31 Meetings must not last longer than two hours unless at least two-thirds of the Members present agree after the end of that time to continue the meeting for a further maximum period of 30 minutes.

## THE BOARD OF MANAGEMENT

### Number of Board Members

- 32 The Board shall consist of not less than seven persons nor more than 12 persons (including co-optees appointed pursuant to Article 40(a), but excluding any additional members appointed by the Scottish Housing Regulator under Article 39) and shall comprise:
- (a) up to two Council Board Members (provided the total number of Council Board Members does not exceed 24% of the total number of Board Members at any one time); and
  - (b) up to 10 Board Members who may be Community Board Members, Customer Board Members or Executive Board Members (in any combination).
- 33 Only persons who have attained 18 years of age shall be eligible to become Board Members (including co-optees and any person appointed to fill a casual vacancy).
- 34 Each of the Board Members shall, in exercising his / her role as a Board Member, act in the best interests of the Company, its Customers and service users and will not place any personal or other interests ahead of his / her primary duty to the Board; and, in particular, must:
- (a) seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its objects;
  - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - (c) in circumstances giving rise to the possibility of a conflict of interest between the Company and any other party:
    - (i) put the interests of the Company before that of the other party, in taking decisions as a Board Member; and
    - (ii) 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
  - (d) ensure that the Company complies with any direction, requirement, notice or duty imposed on it by the 2005 Act.
- 35 No Local Authority Persons shall be eligible to become Board Members, unless they are Council Board Members.
- 36 The Board can appoint to the Board any employees the Board considers are suitable to the role of Executive Board Members subject to the provisions of Article 32 and provided that Executive Board Members do not constitute a majority of the total number of Board Members at any time. Executive Board Members shall serve until removed by the Board and shall not be subject to retirement in terms of Article 42(a). Executive Board Members can also serve on any sub-committees.
- 37 The Executive Board Members can take part in discussions at the Board or any sub-committees and vote at Board Meetings and sub-committee meetings on all matters except those which directly affect the membership of the Company or the election of the Company's office bearers. The Executive Board Members may not stand for election, nor be elected as one of the Office Bearers of the Board. The presence of the Executive Board Members at Board Meetings will not be counted when establishing whether the minimum number of Board Members are present to allow the

meeting to take place as required by Article 54(b) and the presence of the Executive Board Members will not count towards the quorum for sub-committee meetings.

- 38 No Board Members may act as such until 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 in the Company's Code of Governance for Board Members.
- 39 The Scottish Housing Regulator, pursuant to its powers contained within Section 65 of the Housing (Scotland) Act 2010, may from time to time appoint additional Board Members 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 meetings thereof on all matters and shall have the same rights as the other Board Members appointed or elected pursuant to these Articles. Exceptionally, appointments made by the Scottish Housing Regulator under this provision are not subject to the "maximum 12" as outlined in Article 32.

#### **Co-optees**

- 40 (a) The Board may from time to time co-opt persons, who do not need to be Members, to the Board or to a sub-committee and may at any time revoke such co-option. Co-optees must have attained 18 years of age and cannot be Local Authority Persons. No more than three people may be co-opted on to the Board or a sub-committee at any one time. Where the only vacancies on the Board are, under Article 32, for Council Board Members, the Board may only co-opt persons where the Council shall have failed within three months of a written request by the Company to make the appropriate appointments pursuant to Article 41(a). Board Members filling casual vacancies under Article 46 are not co-optees.
- (c) The attendance of co-opted persons at meetings of the Board shall not count towards determining a quorum as defined under Article 54(b) or the quorum for sub-committee meetings.
- (d) Co-opted persons may take part in the deliberations of the Board and vote at any meetings thereof except on matters directly affecting these Articles and membership of the Company or the election or appointment of Office Bearers. Co-opted persons may not stand for election, nor be elected, as one of the Office Bearers.
- (e) Co-opted persons do not need to be Members, but they can only serve as co-optees on the Board or sub-committee until the next annual general meeting or until removed by the Board. A person co-opted to the Board can also serve on any sub-committees.

#### **Election and/or appointment of Board Members**

- 41 (a) Subject to Article 32, the Council shall have the power from time to time and at any time to nominate up to two persons as Council Board Members and to remove from office any such Council Board Member.
- (b) Appointment or removal pursuant to Article 41(a) shall be effected by an instrument in writing signed by the Council and shall take effect upon lodgement at the registered office of the Company or such later date as may be specified in the instrument.
- 42 At each annual general meeting:
- (a) any Community Board Member or Customer Board Member who has been in office for a continuous period of three years or more shall retire from office;
- (b) direct or indirect elections shall be held among the Community Members and Customer Members for the election of such number of Community Board Members and / or

Customer Board Members as is necessary to fill the vacancies arising pursuant to Article 42(a). The mode and manner of such elections shall be as the Board may from time to time agree subject at all times to compliance with Article 32. If the number of Community Board Members and Customer Board Members standing for election is equal to the number of Community Board Members and Customer Board Members to be elected, the Chairperson will declare them elected without a vote;

- (c) no person shall be eligible for election as a Community Board Member or Customer Board Member at any annual general meeting unless he/she has:
  - (i) submitted an application in accordance with Article 45(c);
  - (ii) been selected as a candidate by the Remuneration and Nominations Committee; and
  - (iii) been approved as a candidate by the Board;
- (d) each Community Board Member and / or Customer Board Member shall hold office for a fixed term expiring at the conclusion of an annual general meeting (each being a "fixed term"). The fixed term shall be for a term of three annual general meetings, unless the Board has set a lower number of annual general meetings for the Board Member. In the case of a Board Member who at the time he / she is re-elected has served as a Board Member for a continuous period of nine years or more, with the Board having determined that the Board Member in question possesses the skills, knowledge and experience that are necessary or desirable to further the objects of the Company, the fixed term applicable to that Board Member will be a term of one annual general meeting; and
- (e) for the purposes of Article 42(d), the fixed term of a Community Board Member or a Customer Board Member shall be calculated taking into account any period of service since the date on which the Community Board Member or Customer Board Member was last elected.

43 The Secretary shall certify and announce the results of the elections referred to in Article 42 at each relevant annual general meeting and declare those elected duly appointed as Community Board Members or, as the case may be, Customer Board Members.

44 The Board, prior to the annual general meeting, will advertise vacancies for Community Board Members and Customer Board Members for selection prior to and election at that meeting.

#### **Applications, Voting and Vacancies**

- 45 (a) Each Community Member and Customer Member shall be entitled to one vote for each Community Board Member and Customer Board Member vacancy to be filled and shall not give more than one vote to any one candidate.
- (b) The Company will post or send by fax or email intimation of the intended date of the annual general meeting and information on the nomination and selection procedure to each Member at the address or email address given in the register of Members not less than 28 days before the date of the meeting.
- (c) Applications for Community Board Members and Customer Board Members shall be in writing and shall be delivered to the Secretary or to the Company's registered office not later than 42 days before the date appointed for the annual general meeting, or a meeting called for the purpose of Article 47. Each application shall include the following:

- (i) the full name, address and occupation of the person applying and the reasons for their suitability to be a Board Member; and
  - (ii) a signed statement by the person applying of his / her willingness to be elected.
- (d) Board Members shall be individuals who have skills and/or experience that are necessary or desirable to further the objects of the Company. The skills and/or experience which prospective Board Members must have shall be as determined by the Board from time to time.
- 46 Subject to Article 32, the Board may appoint a Member who is willing to act to be a Board Member to fill a vacancy. The Board may only fill vacancies occurring among Council Board Members where the Council shall have failed within three months of a written request by the Company to make the appropriate appointments pursuant to Article 41(a). A Board Member so appointed shall have the same rights as other Board Members (other than co-optees) but shall hold office only until the next following annual general meeting. If not re-appointed at such annual general meeting he / she shall vacate office at the conclusion thereof.
- 47 A Board Member may be removed from office by a resolution carried by a majority of the Members present in person or by proxy and voting at an extraordinary general meeting. The vacancy created will be filled by the Board using the powers conferred on the Board by Article 46.

**Eligibility for Election, Re-election or Appointment**

- 48 Subject and without prejudice to Article 49(m), if a person resigns office by notice in writing to the Secretary that person is not precluded from being re-elected or re-appointed as a Board Member following such resignation.
- 49 A person who retires from office as a Board Member pursuant to Article 42 shall be eligible for re-election to the Board unless the application of any other provision of these Articles provides otherwise. A person shall not be eligible for election, re-election or appointment to the Board, and if already a Board Member shall be deemed to have vacated his / her office, if:
- (a) he / she has been adjudged bankrupt, has granted a trust deed for or entered into an arrangement with creditors or his / her estate has been sequestrated and has not been discharged;
  - (b) he / she 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 Charities and Trustee Investment (Scotland) Act 2005;
  - (c) he / she is a party to any legal proceedings in any court of law by or against the Company;
  - (d) he / she has been removed from the governing body of another Registered Social Landlord within the previous five years;
  - (e) he / she has been disqualified from being a company director under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002;
  - (f) he / she has been removed from a charity:
    - (i) under section 7 of the Law Reform Miscellaneous Provisions (Scotland) Act 1990 (in connection with the power of a Court to remove or suspend any person who is concerned in the management or control of a charity);

- (ii) pursuant to section 69 of the 2005 Act;
  - (iii) under section 34 of the 2005 Act (in connection with the power of a court to remove or suspend any person who is concerned in the management or control of a charity); or
  - (iv) by an order made by the Charity Commissioners for England and Wales or by Her Majesty's High Court of Justice in England on the grounds of any misconduct in the administration of the charity for which he / she was responsible or to which he was privy, or which his / her conduct contributed to or facilitated;
- (g) in the case of a Board Member who is a representative of a Member, his / her appointment by a Body Corporate is revoked in accordance with Article 13 (or, if he / she is not a representative of a Body Corporate) his / her representation is withdrawn by notice in writing to the Secretary by the relevant party;
  - (h) in the case of a Board Member who is also a Member, he / she ceases to be a Member;
  - (i) he / she absents himself from and fails to tender apologies for four consecutive Board meetings without special leave of absence previously granted by the Board;
  - (j) he / she fails to sign, and deliver to the Board, the statement confirming that he / she will meet his / her obligations to the Board and the Company as set in the Company's Code of Governance for Board Members;
  - (k) he / she is removed from office by a resolution (or written notice signed by) at least three-quarters of all the other Board Members from time to time provided that the vote to ask a Board Member to leave must relate to one of the following:
    - (i) failure to perform to the published standards laid down by the Scottish Federation of Housing Associations and / or the Scottish Housing Regulator adopted and operated by the Company;
    - (ii) failure to comply with the Company's Code of Governance for Board Members or Financial Regulations; or
    - (iii) a serious breach of these Articles or the Company's standing orders;
  - (l) the majority of the Members voting at a general meeting decide to remove him / her from the Board;
  - (m) he / she has resigned from the Board in the previous five years in circumstances where the resignation was submitted after the date of his / her receipt of notice of a special Board meeting convened to consider a resolution for his / her removal from the Board in terms of Article 49(k);
  - (n) he / she is an Executive Board Member whose period of office is ended in accordance with Article 36;
  - (o) he / she has or will be away for a period of 12 months and is thus unable to attend Board meetings for that period;
  - (p) he / she is, or has been within the last 12 months, in arrears, of an amount greater than the maximum level set by the Company in its Board membership policy, in respect of any of his financial obligations ("arrears") to the Company for a reason (in either case) which was not due to housing benefit processing delays; or

- (i) he / she is or has been in the previous 12 months, in breach of his / her tenancy or factoring agreement (other than in respect of arrears) with the Company;
- (ii) he / she damages or has in the previous 36 months damaged property leased to him / her by the Company or he causes or has in the previous 36 months caused distress or nuisance to neighbours; or
- (iii) he / she receives or has during the previous 36 months received housing benefit to which he / she is not entitled because he / she gave false information;
- (q) he / she breaches or has breached any rules of confidentiality;
- (r) he / she has claimed expenses to which he / she was not entitled;
- (s) he has failed to disclose an interest under Articles 51 and 52;
- (t) in the case of a Customer Board Member he / she ceases to be a Customer;
- (u) he / she is a Customer Board Member and becomes a Local Authority Person;
- (v) he / she is a Council Board Member and becomes a Customer;
- (w) he / she is a Community Board Member and becomes a Customer or a Local Authority Person;
- (x) he / she is removed from Board membership in accordance with Article 47;
- (y) he / she is a Customer and wishes to stand as a Community Board Member;
- (z) he / she is a co-optee pursuant to Article 40 and his / her co-option is revoked by the other Board Members;
- (aa) he / she is an employee of the Company or a Close Relative of such an employee or he / she is a Close Relative of either another Board Member or a co-optee appointed pursuant to Article 40(a).

50 Any Board Member who has not signed and delivered the statement referred to in Article 49(j) without good cause within 14 days of election or appointment to the Board shall immediately cease to be a Board Member.

**Board Members' interests**

- 51 (a) Any Board Member or person co-opted to the Board or any sub-committee who shall have any interest financial or otherwise or any conflict of interest either personally or as a member of a firm or as a director or other officer of a business trading for profit or in any other way in any contract or other transaction with the Company about to be discussed at a Board meeting shall disclose the nature of his / her interest to the Board and shall not remain at a Board meeting during its discussion of the matter, subject to Articles 51(b) to 51(f), nor vote upon the matter. If by inadvertence he / she does so remain and vote his / her vote shall not be counted.
- (b) The Board may authorise any matter proposed to it by a Board Member at a Board meeting which would, if not so authorised, involve a breach of duty by that Board Member under section 175 of the Act, including, without limitation, any matter which relates to a situation in which a Board Member has, or could have, a direct or indirect interest which conflicts, or possibly may conflict, with the interests of the Company.

- (c) The Board Member in question seeking authorisation in respect of such a conflict of interest must declare to the Board at a Board meeting the nature and extent of his / her interest in that conflict of interest as soon as reasonably practicable.
- (d) Any authorisation under Article 51(b) shall be effected in the same way that any other matter may be proposed to and resolved upon by the Board in accordance with these Articles and will be effective only if:
  - (i) it is given in accordance with the Act;
  - (ii) any requirement as to the quorum at the Board meeting at which the matter is considered is met without counting the Board Member in question or any other Board Member interested in the matter under consideration; and
  - (iii) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (e) The Board may give any authorisation under Article 51(b) upon such terms and for such duration and may impose such limits or conditions as it thinks fit and may vary or terminate any such authorisation at any time.
- (f) No declaration of interest shall be required by a Board Member in relation to an interest:
  - (i) that cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (ii) of which the Board Member in question is not aware;
  - (iii) in relation to any matter that has been authorised by the Board;
  - (iv) if, or to the extent that, the other Board Members are already aware of such interest (and, for this purpose, the other Board Members are treated as being aware of anything of which they ought reasonably to be aware); or
  - (v) if, to the extent that, it concerns the terms of his / her service contract (as defined in section 227 of the Act ) that have been or are to be considered by a meeting of the Board, or by a sub-committee appointed for the purpose of these Articles.

52 Any Board Member or person co-opted to the Board or any sub-committee who has any financial interest as described in Article 51 and who does not disclose it to the Board or who has accepted a payment, other than under Article 63(g) shall be deemed by resolution of the Board to have vacated his / her office. Any Board Member or co-opted person who fails to disclose any interest he / she is required to disclose under Article 51 shall vacate his / her office if required to do so by a majority of the remaining Board Members at a Board meeting specially convened for that purpose.

**Payments, etc.**

- 53 (a) The Company shall comply with the provisions of the Company's code of conduct in making payments and conferring benefits. If a person is a Member, employee of the Company or serves on the Board or any sub-committee or is a Close Relative of any such person, he / she must not receive any payment or benefit unless it is permitted by the code of conduct. In making any payment or conferring any benefit, the Company shall act at all times with transparency, honesty and propriety.
- (b) 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 2005 Act and as set out in the Company's



code of conduct referred to in Article 53(a). He / she must also comply with the requirements of the 2005 Act in respect of any conflict of interest that might arise.

#### **PROCEEDINGS OF THE BOARD**

- 54 (a) Subject to the provisions of these Articles and the Act and to any direction given by special resolution of the Company, the Board may regulate its proceedings as it thinks fit. Without prejudice to that generality, a meeting of the Board may consist of a conference between Board Members who are not all in the one place but who can communicate with each of the others and be heard by each of them simultaneously by telephone or video conference facilities, and the word "Board meeting" in these Articles shall be construed accordingly.
- (b) Board meetings shall be held at such times and places as the Board shall from time to time decide but not less than six meetings shall be held in each calendar year. For a quorum at Board meetings at least five Board Members must be present.
- (c) Notwithstanding any vacancies on the Board or that a quorum cannot be formed in terms of Article 54(b), the remaining Board Members may continue to act, but if at any time the number of Board Members fall below seven the Board may act by a majority of its remaining Board Members for a maximum period of two months. If at the end of that period the Board has not filled such vacancies to make up the Board membership to seven the only power which the Board may thereafter exercise shall be that of filling such vacancies as may be required to bring the number of Board Members up to seven.
- (d) In the event of decisions having to be made outside the scheduled Board timetable of meetings, the Secretary can call a meeting comprising at least three Board Members to consider the issue. At least one of these should be the Chairperson or, in their absence, the Vice Chairperson. The meeting can be held face-to-face, or by electronic communication. If this is not possible, a group email can be sent. In this case, if three quarters of the Board Members are in favour of the proposal it shall be valid and effective as if it had been passed at a properly called and constituted meeting of the Board.
- 55 (a) The Board Members shall, at a specially convened Board meeting immediately following each annual general meeting, elect a Chairperson from the Board Members to hold office until the conclusion of the next annual general meeting, unless he / she shall cease in the meantime to be a Board Member. He / she shall be the Chairperson of the Company and shall be removable from the office of Chairperson only by a vote of two-thirds of those Board Members present at a special Board meeting called for that purpose. If at any meeting of the Board the Chairperson is absent or unwilling to act the Board Members present shall elect either the Vice Chairperson or another Board Member to be Chairperson for that Board meeting.
- (b) In any case of an equality of votes the Chairperson of the relevant Board meeting shall have a second or casting vote.
- (c) The Chairperson may resign his / her office by notice in writing to the Secretary and shall vacate his / her office if for any reason he / she is deemed to have vacated his / her office as a Board Member or he / she ceases to be a Board Member and in any of these events the Board shall forthwith elect any Board Member to be Chairperson in his / her place.
- (d) The Chairperson may be re-elected but may not hold office continuously for more than five consecutive annual general meetings. On the expiry of five continuous terms of office, the retiring Chairperson shall not be eligible for election as Chairperson during the ensuing twelve months.

- (e) 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.

56 A special Board meeting may be called by a notice in writing given to the Secretary by the Chairperson, or by two Board Members, specifying the business to be transacted. The Secretary shall send a copy of the notice to all Board Members and persons co-opted to the Board within three working days of receiving it, and the meeting shall be held at the ordinary place for Board meetings not earlier than 10 days and not later than 14 days after the receipt by the Secretary of the notice. No other business shall be done at the special Board meeting than the business named in the notice. Should the Secretary fail to convene the special Board meeting as prescribed above, the Chairperson or the Board Members who have given the notice may call the special Board meeting. If the Chairperson or the two Board Members call the special Board meeting, the notice shall be sent to all Board Members and persons co-opted to the Board not less than seven days before the date of the meeting.

#### **Board procedure**

57 All speakers shall address the Chairperson of the Meeting and all Board Members must remain quiet and maintain order while this is happening. The Chairperson of the Meeting will decide who can speak and for how long.

58 If any point arises which is not provided for in these Articles, the Chairperson of the Meeting shall give a ruling on the point and his / her decision shall be final.

59 Notice of Board meetings shall be sent to the Board Members not less than seven days before the date of the meeting.

60 All matters of business for the agenda shall be in the hands of the Secretary not later than 4pm on the day preceding that on which the notice of Board meeting is issued, unless in relation to a matter of urgency and accepted by the majority of the Board meeting as such, but where urgency is known or anticipated before a Board meeting, notice in writing of the urgent business of the motion shall be transmitted to the Secretary as early as practicable before the Board meeting. The term "urgency" shall be interpreted by the Chairperson who shall have due regard to the reasonable intent of this Article 60.

61 Proceedings at any Board meeting shall not be invalidated by an accidental omission to send notice of the Board meeting to any Board Member.

#### **Powers of the Board**

62 The business of the Company shall be conducted by the Board which may exercise all such powers as may be exercised by the Company and are not by these Articles or by the Act or by any directions given by special resolution of the Company required to be exercised by the Company in general meeting. In conducting the business of the Company each Board Member shall be bound by these Articles.

63 Without prejudice to its general powers conferred by these Articles the Board may exercise the following powers:

- (a) to enter into management contracts for the management of dwelling houses owned by others and all matters consequent thereto;

- (b) to purchase, sell, feu, build upon, lease or exchang any land, including the agreeing or accepting of any liability for any expenses whatsoever in connection therewith and to enter into any contracts and settle the terms thereof;
- (c) to settle the terms of engagement and remuneration of the Chief Executive, the Secretary and/or other officers of the Company (but not, for the avoidance of doubt, Board Members) appointed under Articles 67 and 68 and of any consultant, agent or employee employed in connection with the construction, improvement or management of dwelling houses provided or to be provided or managed or to be managed by the Company;
- (d) to grant heritable securities over any land and floating charges over the whole or any part of the undertaking, Property and assets of the Company both present and future including the agreeing or accepting of any liability for any expenses whatsoever in connection therewith;
- (e) to determine from time to time the terms and conditions upon which the Property is to be let, managed or otherwise disposed of, and to make, revoke, and alter and at all times enforce as it thinks fit such terms and conditions;
- (f) to appoint and remove all solicitors, architects, surveyors and other consultants, managing agents and employees of every description;
- (g) to reimburse such out of pocket expenses including travelling expenses as are reasonable and proper and incurred by a Board Member or person co-opted to the Board or a sub-committee in the execution of his / her duties;
- (h) to compromise, settle, conduct, enforce or resist either in a court of law or by arbitration any suit, liability or claim by or against the Company;
- (i) to affiliate the Company to any organisation having objects similar to the objects of the Company.

64 The Board may delegate any of its powers to committees or sub-committees ("sub-committees" in these Articles) of the Board consisting of such Board Members and other persons who do not need to be Board Members as it thinks fit which shall, in the functions entrusted to them, conform to the instructions given to them in writing by the Board. The meetings and proceedings of sub-committees of the Board shall be governed by the provisions in these Articles for regulating the meetings and proceedings of the Board so far as they are applicable and by any other terms of reference which may be imposed on it by the Board. Any decision made by sub-committees shall be reported to the next meeting of the Board. Co-opted persons and persons who are not Board Members shall not comprise more than one-third of the total number of sub-committee members at any one time. Co-optees shall not form part of any quorum required for sub-committee meetings and may not vote on matters directly affecting these Articles and membership of the Company or the election or appointment of Office Bearers.

65 The Board must consider and respond to any representations made by the Customer Scrutiny Panel. The chairperson of the Customer Scrutiny Panel, or any person nominated by such chairperson, may attend Board meetings as an observer but may not vote in relation to any of the matters to be decided by the Board. It is at the discretion of the Chairperson as to whether or not such observer may participate in any of the discussions at Board meetings. The chairperson of the Customer Scrutiny Panel, or person nominated by the Chairperson, must not be a Board Member.

66 A resolution in writing signed by all Board Members or by all the Board Members of a sub-committee shall be as valid and effectual as if it had been passed at a meeting of the Board or sub-committee duly called and constituted, provided the said sub-committee has acted within its powers.

### **Chief Executive, Secretary and other office bearers**

- 67 Board Members may from time to time appoint a Chief Executive who shall hold office on such terms and conditions and for such remuneration as may be fixed by them. Board Members may delegate to the Chief Executive such powers and duties as they think fit. Board Members may also appoint, and in their discretion remove, such employees and agents from permanent, temporary or special services as they may from time to time think fit and may determine their powers and duties and fix their salaries and emoluments and other terms and conditions of employment or engagement.
- 68 Subject to the provisions of the Act, the Secretary shall be appointed by the Board Members for such term, as they may think fit; and any Secretary so appointed may be removed by them. The Act and the Company's standing orders govern the Secretary's duties.

### **Indemnity**

- 69 Every Board Member and every member of a committee of the Board Members, the Chief Executive and any agent, auditor, Secretary, and other officer from time to time and for the time being of the Company shall be indemnified out of the assets of the Company against 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 / she is acquitted or in connection with any application under section 1157 of the Act in which relief is granted to him / her by the court.

### **Minutes, registers and books**

- 70 Minutes of every general meeting and of every meeting of the Board and any sub-committee shall be kept and such minutes shall be read at the next of such meetings respectively and signed by the Chairperson of the Meeting at which they are so read and all minutes so signed shall be conclusive evidence of any fact stated therein as between the Company and every Member.
- 71 The Company shall keep at its registered office:
- (a) a register of Members in which shall be entered the following particulars:
    - (i) the names and addresses of the Members and their designation;
    - (ii) a statement of other Property in the Company whether in loans or loan stock held by each Member;
    - (iii) the date at which each person was entered in the register as a Member and the date at which any person ceased to be a Member; and
    - (iv) the names and addresses of the officers of the Company with the offices held by them respectively and the date on which they assumed and vacated office;
  - (b) a register in which shall be entered particulars of all loans and charges on land of the Company;
  - (c) a register of Board Members; and
  - (d) all other registers as may be required under the Act.
- 72 All books of account, registers, securities and documents of the Company shall be kept at the Company's registered office or such other place and in such manner and with such provision for their security as the Board shall from time to time determine.

73 At the last meeting of the Board before the annual general meeting the Secretary shall to the extent within his knowledge confirm in writing to the Board that all the requirements of Articles 70 to 71 have been complied with or, if they have not been complied with, the Secretary shall report in writing to the Board the reasons for such non-compliance. The confirmation or report required by this Article 73 shall be recorded in the minutes of the meeting.

#### **Accounts**

- 74 (a) The Board shall cause accounting records to be kept by the Company in accordance with section 386 of the Act.
- (b) The Board shall submit the Company's accounts and balance sheet for audit to the Company's auditor and the 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.
- (c) 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 six months of the end of the period to which they relate.

#### **Audit**

75 Auditors of the Company shall be appointed and their duties regulated in accordance with the Act.

#### **Annual returns and balance sheet**

76 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 of Companies together with all such documentation as is required under the Act.

77 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 77 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.

#### **Profits**

78 The Company shall not trade for profit. Accordingly:

- (a) the income and Property of the Company shall be applied solely towards the promotion of its objects as set out in these Articles;
- (b) no part of the income and Property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, distribution, bonus or otherwise to the Members;
- (c) no Board Member of the Company shall be appointed to any office of the Company in respect of which a salary or fee is payable; and
- (d) no benefit in money or money's worth shall be given by the Board to any Board Member of the Company except reimbursement of reasonable and proper out-of-pocket expenses and any additional allowances and payments permitted by the Scottish Housing Regulator or any successor regulatory body to any Member, agent, officer or employee of the Board of the Company.

79 Notwithstanding the above provisions, and subject to sections 67 and 68 of the 2005 Act, the Company shall be entitled:

- (a) to pay reasonable and proper remuneration (including pensions, contributory pension payments, payments of premiums to pension policies and terminal grants and gratuities) to any Board Member or Member in return for services actually rendered to the Company subject always to the Board having approved the use of that Board Member or Member for the service in question;
- (b) to pay rent at a rate not exceeding the open market rent for premises let to the Company by any Board Member or purchase assets from, or sell assets to, any Board Member or Member providing such purchase or sale is at market value;
- (c) to reimburse reasonable and proper out-of-pocket expenses and any additional allowances and payments permitted by the Scottish Housing Regulator or any successor regulatory body to any Member, agent, officer or employee of the Board;
- (d) to pay 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.

#### **Inspection of books**

80 Any Member or person having an interest in the funds of the Company shall be allowed to inspect his / her own account. They may also inspect the books containing the names of the Members, including all particulars in the register of Members. These shall be available for inspection at all reasonable hours at the Company's registered office or at any place where the same are kept. From time to time, the Board may set conditions as to the time and manner of such inspections.

#### **Alteration of the Constitution**

81 Subject to the requirements of the Act, and, where necessary, the approvals of the Scottish Housing Regulator and OSCR, the Company may alter its Articles of Association by special resolution at a general meeting (decided by not less than a three-fourths majority of those Members voting, either upon a show of hands or on a poll where a poll is agreed or directed as defined in Article 24).

#### **Disputes**

82 Every dispute between the Company or the Board and:

- (a) a Member; or
- (b) a person aggrieved who has ceased to be a Member within the previous six months; or
- (c) 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.

#### **Winding up**

- 83 Every Member undertakes to contribute such amount as may be required (not exceeding £1) to the Company's assets if it should be wound up while he / she / it is a Member or within one year after he / she / it ceases to be a Member for payment of the Company's debts and liabilities contracted before he / she / it 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.
- 84 If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any Property whatsoever the same shall not be paid to or distributed among the Members but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company and which prohibit the distribution of its or their income or Property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of Article 83, such institution or institutions to be determined by the Members at or before the time of dissolution with the prior written approval of the Scottish Housing Regulator, or failing such determination, by such court as may have jurisdiction. In so far as effect cannot be given to the foregoing provisions, the said Property shall be given or transferred to some other charitable object determined as aforesaid.