



BERNESLAI HOMES LIMITED

Company No. 04548803

MEMORANDUM AND ARTICLES OF ASSOCIATION

**COMPANY LIMITED BY GUARANTEE
THE COMPANIES ACT 1985 AND 1989 AND 2006**

ADOPTED 23rd September 2020

Date of Incorporation: 30 September 2002

**MEMORANDUM AND ARTICLES
OF ASSOCIATION**

**Walker Morris LLP
Kings Court
12 King Street
Leeds
LS1 2HL**

MEMORANDUM OF ASSOCIATION

1 NAME

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

2 REGISTERED OFFICE

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

3 OBJECTS

The objects of the Organisation shall be principally, but not exclusively in the areas where the Council owns or manages housing stock to:

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

- (g) providing or improving training, educational facilities or health services for local people;
 - (h) assisting local people to make use of opportunities for education, training or employment;
 - (i) meeting the special needs of local people which arise because of disability or because of their sex, sexuality, age or the racial group to which they belong.
- (5) provide, construct, maintain, improve or manage housing to be kept available for letting, sale or hostels;
 - (6) provide, manage, maintain or improve accommodation required from time to time for the benefit of persons who require temporary accommodation;
 - (7) assess applicants for housing assistance including the allocation of dwellings on behalf of the Council;
 - (8) assess applications by residents of housing stock owned or managed by the Council to exercise the right to buy under Part V of the Housing Act 1985;
 - (9) enabling or assisting any residents of the housing stock owned or managed by either the Council or the Organisation to acquire, or to acquire and enter into occupation of, houses; and
 - (10) provide services of any description for the Council.

4 POWERS

Subject to Clause 5, the Organisation may do anything that a natural or corporate person can lawfully do which is not expressly prohibited by the Memorandum and in particular it has powers:

Property

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

Staff and Volunteers

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

Fund Raising

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

Trading

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

Publicity

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

Contracts

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

Bank or Building Society Accounts

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

Borrowing and Loans

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

Insurance

- (14) to insure the assets of the Organisation to such amount and on such terms as the Board decides, to pay premiums out of income or capital and to use any insurance proceeds as the Board decides (without necessarily having to restore the asset);

- (15) to insure and indemnify in accordance with the Organisation's Articles of Association its employees and voluntary workers from and against all risks incurred in the proper performance of their duties;
- (16) to take out insurance to protect the Organisation and those who use premises owned by or let or hired to the Organisation;
- (17) to take out indemnity insurance to cover the liability of the Board Members and officers of the Organisation who are not Board Members but this insurance may not extend to:
 - a. any claim arising from any act or omission which a Board Member or officer knew was a breach of duty or breach of trust or which was committed by a Board Member or officer in reckless disregard of whether it was a breach of duty or breach of trust or not; or
 - b. the costs of an unsuccessful defence to a criminal prosecution brought against a Board Member or officer in his capacity as a Board Member or officer of the Organisation.

Investments

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

Other Organisations

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

Reserves

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

Formation expenses

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

General

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

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

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

6 APPLICATION OF INCOME AND PROPERTY

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

- (1) Of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Organisation (not being a Board Member) in return for any services rendered to the Organisation;
- (2) Of fees, remuneration or other benefit in money or money's worth to a company of which a Board Member may be a member holding not more than 2% of the share capital of the company;
- (3) To (a) any Board Member or (b) any person who is appointed by the Board to sit on a committee to which the Board has delegated any of its powers (for the avoidance of doubt, in each case in their capacity as a Board Member or person so appointed), of reasonable out-of pocket expenses and such other sums as may be determined by the Council PROVIDED THAT no sum shall be paid to a Board Member in excess of that which would be permitted to be paid to a board member of a social landlord registered under the 1996 Act and PROVIDED FURTHER THAT no sum shall be paid to a Board Member who is an elected member of the Council in excess of that permitted by the Order;
- (4) Of sums due in respect of indemnity insurance for Board Members under Clause 4(17);
- (5) Of reasonable and proper remuneration to the Council or employees thereof (not being Board Members) in return for any services rendered to the Organisation;
- (6) Of reasonable and proper rent for premises demised or let by the Council;
- (7) Of reasonable and proper interest on money lent by the Council;
- (8) Of contribution towards any expenditure by or on behalf of the Council on activities or for purposes which if carried out by the Organisation would fall within the Organisation's Objects in Clause 3.

PROVIDED FURTHER THAT nothing shall prevent the Organisation from managing a property in accordance with its objects (including the full range of activities it may undertake) notwithstanding the fact that the tenant, lessee or licensee (or prospective tenant, lessee or licensee) of such property may be a Board Member SUBJECT TO the proviso that any Board Member who is a beneficiary of the Organisation shall not be entitled to speak in any debate

or cast his/her vote in respect of any matter relating solely to the property of which they are lessee, tenant or licensee and shall absent himself/herself from such proceedings but such Board Member shall be entitled to speak and vote in respect of matters which relate not only to such property but also to other properties managed by the Organisation.

7 EQUAL OPPORTUNITIES

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

8 LIMITED LIABILITY

The liability of the Member is limited.

9 MEMBERS GUARANTEE

The Member undertakes to contribute to the assets of the Organisation, in the event of the same being wound up while they are a member of the Organisation, or within one year after they cease to be a member of the Organisation, for payment of the debts and liabilities of the Organisation contracted before they cease to be a member of the Organisation, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.

10 WINDING UP

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

11 DEFINITIONS

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

I am the subscriber to the Memorandum of Association and wish to be joined into a company in pursuance of the Memorandum.

Name and Address of Subscriber	Authorised Representative	Witnessed
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Barnsley Metropolitan Borough Council		
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Town Hall		
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Barnsley		
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South Yorkshire S70 2TA		
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Dated

ARTICLES OF ASSOCIATION

BERNESLAI HOMES LIMITED

DEFINITIONS AND INTERPRETATION

1. In the Articles unless the context otherwise requires:

"the 1996 Act"	Housing Act 1996.
"the Act"	Means the Companies Act 1985, save where and to the extent the same has been amended, replaced or superseded by the Companies Act 1989 and the Companies Act 2006.
"ALMO"	Arms-Length Management Organisation.
"the Articles"	Means these Articles of Association as originally adopted or as altered from time to time.
"Board"	Means the Board of directors of the Organisation from time to time and (where appropriate) includes a Committee and the Directors acting by written resolution.
"Board Members"	Means the directors for the time being of the Organisation.
"Board Members' Code of Conduct"	Means the code of conduct issued by the Organisation to the Board Members dated August 2013 as amended or replaced from time to time.
"Chair"	Means the independent chair of the Organisation appointed pursuant to Article 17, or in his/her absence, the Senior Independent Director, appointed pursuant to Article 34(3).
"clear days"	In relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

“Committee Member”	Means a person who sits on a committee of the Board established pursuant to Article 25.
Co-optee	“Co-optee” means a person co-opted by the Board pursuant of Article 18(7).
"Council"	Means Barnsley Metropolitan Borough Council or any successor body thereto who shall be the sole member of the Organisation.
"Council Board Member"	Means a Board Member appointed by the Council pursuant to Article 14.
"executed"	Means in relation to any contract, agreement or other document consent thereto and includes any mode of execution.
“Executive Officer”	Means any member of the Organisation’s senior management team from time together with any officer of the Organisation designated as such by the Board.
“Family Member”	Means, in relation to a Board Member, their spouse, partner, parent, parent-in-law, son, daughter, stepson, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons and “partner” means a person who lives with a Board Member as husband, wife or same sex partner.
"Independent Board Member"	Means a Board Member appointed pursuant to Article 16.
"Local Authority Person"	Means any person: <ul style="list-style-type: none"> (i) who is a member of the Council; or (ii) who is an officer of the Council (which for these purposes shall not include employees without a supervisory or managerial role apart from employees responsible for monitoring the activities of or providing advice to the Organisation or who perform duties in relation to the Council’s housing functions).
"Office"	Means the registered office of the Organisation.
“the Organisation”	Means Berneslai Homes Limited.

“the seal”	Means the common seal of the Organisation.
"Secretary"	Means the secretary of the Organisation or any other person appointed to perform the duties of the secretary of the Organisation, including a joint, assistant or deputy secretary.
Senior Independent Director	Has the meaning ascribed to in article 18(8), incorporating the Deputy Chair role.
"Tenant"	Means an individual who occupies a residential property belonging to the Council under a secure or introductory tenancy agreement or a lease of residential property of the Council.
"Tenant Board Member"	Means a Board Member appointed pursuant to Article 15.
“Tenants' Representative”	Means a tenant nominee(s) who the Board shall resolve to be the representative of the tenants of the Council whose dwellings are managed by the Organisation.
"the United Kingdom"	Means Great Britain and Northern Ireland.

2. Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the Organisation.

MEMBERSHIP OF THE ORGANISATION

ADMISSION OF MEMBERS

3. No person other than the Council shall be admitted to membership of the Organisation.
4. The Council shall 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 Council to attend meetings of the Organisation and vote thereat, and generally exercise all rights of membership on behalf of the Council. The Council may from time to time revoke the nomination of such representative, and nominate another representative in his place. All such nominations and revocations shall be in writing.
5. The rights of the Council shall be personal and shall not be transferable.

GENERAL MEETINGS

NOTICE OF MEETINGS

6. (1) All meetings other than annual general meetings shall be called general meetings.

 (2) The Board Members may call general meetings and, the Council may require the Board Members to call a general meeting pursuant to the provisions of the Act. Where the Council requires the Board Members to call a general meeting they shall forthwith proceed to convene a general meeting for a date not later than eight weeks after receipt of the request.

 (3) If there are not within the United Kingdom sufficient Board Members to call a general meeting, any Board Member or the Council may call a general meeting.
7. (1) An annual general meeting and a general meeting not called on the requisition of the Council pursuant to Article 6(2) shall be called by at least fourteen clear days' notice or by shorter notice if it is so agreed by the Council in writing.

 (2) The notice shall be in writing and specify the time, date and place of the meeting and, in the case of an annual general meeting, shall specify the meeting as such.

 (3) The notice shall be given to the Council and to the Board Members and auditors.

 (4) The notice shall be posted in such place as the Board decides in order to bring it to the attention of the Tenants.

OMISSION OR NON-RECEIPT OF NOTICE

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

QUORUM

9. (1) No business shall be transacted at any general meeting unless a quorum is present. The presence of a duly authorised representative of the Council shall be a quorum.

 (2) Tenants and Board Members may attend a general meeting and may speak but may not vote.

DECISIONS OF THE MEMBERSHIP

10. (1) With the exception of a resolution concerning the removal of a Board Member or auditor, the Council may make decisions either in a general meeting or by means of a written resolution and any such decision shall be valid and effectual as if agreed by the Organisation in general meeting.

- (2) Approval for a written resolution will be by reference to its status. A special written resolution will require seventy five percent approval and an ordinary written resolution will require fifty one percent approval. A proposed written resolution will lapse if not passed before the period of 28 days beginning with the circulation date. The circulation date being the date on which copies of the written resolution are sent or submitted to the Council.
 - (3) Any decision taken by the Council pursuant to this Article 10 shall be recorded in writing and delivered by the Council to every Board Member and to the Organisation for entry in the Organisation's minute book.
11. An entry stating that a resolution has been carried or lost in the approved minutes of any meeting shall be conclusive evidence of the fact.

PROXY

12. (1) The Council may appoint a proxy in writing. A proxy need not be a Council Board Member. The Board may from time to time prescribe a form to appoint a proxy by standing orders. A proxy may not appoint another proxy.
- (2) The document appointing a proxy may include instructions on which way to vote on particular resolutions.
- (3) A proxy will only be valid if the appointing document (and any power of attorney or other authority under which it is signed) or a properly certified copy is deposited at the Office at least twenty four hours before the start time for the meeting. For this purpose weekends and bank holidays are to be excluded.

BOARD MEMBERS

NUMBER OF BOARD MEMBERS

13. (1) The number of Board Members shall be nine.
- (2) Two Board Members shall be Council Board Members.
- (3) Two Board Members shall be Tenant Board Members.
- (4) Four Board Members shall be Independent Board Members.
- (5) One board member (The **Chair**) shall be appointed independently.
- (6) No more than two Board Members shall be Tenants.
- (7) No more than two Board Members shall be Local Authority Persons.

- (8) In the event that the number of Board Members shall be less than the numbers specified in this Article 13 the remaining Board Members shall use reasonable endeavours to appoint further Board Members but, for the avoidance of doubt, may act notwithstanding there are vacancies in their number.
- (9) The first Board Members shall be those persons named in the statement delivered pursuant to Section 10(2) of the Act who shall be deemed to have been appointed under the Articles. Future Board Members shall be appointed as provided in the Articles.
- (10) The first Tenant Board Members shall be those persons identified as Tenant Board Members in the statement referred to in Article 13(9).
- (11) No person shall be appointed as a Board Member or Committee Member if that person is a Family Member of a Board Member or Committee Member.
- (12) No person shall be appointed as a Board Member or Committee Member if that person is a paid employee of the Organisation.
- (13) No person other than the independently appointed Chair shall be appointed as a Board or Committee Member unless they have first been assessed as passing a skills threshold by a panel chosen by the Board and consisting of two or more of the following:
- (a) a Tenant Representative;
 - (b) a Council nominee;
 - (c) the Chief Executive of the Organisation or a nominee of the Chief Executive;
 - (d) the Chair of the Board or his/her nominee; and
 - (e) such other person or persons as the Board may from time to time determine.
- (14) For the avoidance of doubt, the Board may appoint different panels for different categories of Board Member.
- (15) No person shall be appointed as a Board Member unless they have first signed and accepted the terms of the Board Members' Code of Conduct from time to time in force.
- (16) No Board Member shall hold office for a period of more than two consecutive three-year terms, with further one-year terms up to a maximum of nine years by exception.
- (17) No Board Member shall seek re-election or selection for a period of three years after stepping down on reaching the maximum term of office.

- (18) The Council shall have the power to extend the term of office of any one or more Board Members for such period as it may from time to time determine.

APPOINTMENT OF COUNCIL BOARD MEMBERS BY THE COUNCIL

14. (1) Subject to Articles 13 and 18, the Council shall from time to time appoint two persons as Council Board Members and shall have the power to remove from office any such Board Member. Council nominees shall serve for a period of two consecutive three-year terms, and shall retire at the annual meeting nearest to the expiry of the term of office.
- (2) Appointment or removal pursuant to Article 14(1) shall be effected by an instrument in writing signed by the Council and shall take effect upon lodgement at the Office or such date later than such lodgement as may be specified in the instrument.
- (3) Notwithstanding any other provisions in these Articles the Council shall have power at any time by notice in writing to the Secretary to remove any Board Member.

RETIREMENT AND ELECTION OF TENANT BOARD MEMBERS

15. (1) Subject to Articles 13 and 18, there are to be two Tenant Board Members.
- (2) Tenant Board Members shall serve for a period of two consecutive three-year terms, and shall retire at the annual meeting nearest to the expiry of the term of office.
- (3) Where a Tenant Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Tenant Board Member (the **Predecessor**) under Articles 18(4) to 18(5) inclusive, the period of time for which the Tenant Board Member shall have held office shall, for the purposes only of Article 15(2), be deemed to include the period since the appointment of the Predecessor.
- (4) Prior to relevant annual general meetings, interviews shall be held among the Tenants to replace the Tenant Board Members who must retire in accordance with the operation of Article 15(2) appointed thereat. Only Tenants shall be eligible to be appointed as Tenant Board Members. Otherwise the mode and manner of any process to appoint Tenant Board Members under these Articles shall be as the Board may from time to time agree subject at all times to compliance with Article 13.

RETIREMENT AND ELECTION OF INDEPENDENT BOARD MEMBERS

16. (1) Subject to Articles 13 and 18, there are to be four Independent Board Members.
- (2) Independent Board Members shall serve for a period of two consecutive three-year terms, and shall retire at the annual general meeting nearest to the expiry of the term of office.

- (3) Where an Independent Board Member is appointed as a consequence of the death or retirement (other than by operation of this sub-paragraph) of another Independent Board Member (the **Predecessor**) under Article 18(2), the period of time for which the Independent Board Member shall have held office shall, for the purposes only of Article 16(2), be deemed to include the period since the last election or appointment of the Predecessor.
- (4) If, at the meeting at which an Independent Board Member retires in accordance with Article 16(2), there are no other candidates to fill the post the retiring Board Member shall, if willing to act, be deemed to have been re-appointed unless a resolution not to reappoint the Board Member is passed by the meeting.
- (5) No person other than an Independent Board Member retiring by rotation shall be appointed as an Independent Board Member at any general meeting unless they are recommended by the Board.
- (6) Subject to Articles 16(1) – (4) the Council may by ordinary resolution in general meeting appoint any eligible person who is willing to act as an Independent Board Member.
- (7) Not less than seven nor more than twenty-eight clear days before the date appointed for holding a general meeting, notice shall be given to the Council of any person (other than a Board Member retiring by rotation at the meeting) who is recommended by the Board for appointment or reappointment as an Independent Board Member at the meeting. The notice shall give the particulars of that person which would, if they were so appointed or re-appointed, be required to be included in the Organisation's register of Board Members.

APPOINTMENT OF CHAIR

- 17 (1) Subject to Articles 13 and 18 there shall be an independent Chair of the Board appointed by a competitive recruitment process and selected by an independent panel.
- (2) The Chair shall serve for a period of six years from appointment, subject to review after three years. Continuation of service for the remainder of the six year term will be subject to the overall progress of the Organisation, reviewed by an independent panel, as set out in Article 17.1.
- (3) The Chair will be eligible for re-appointment thereafter by re appraisal or by a competitive recruitment process and selection, by an independent panel as set out in Article 17.1 which ever shall be deemed suitable by the nominated representative of the Council.
- (4) The maximum term of office for the Chair will be six years, with further one-year terms up to a maximum of nine years by exception, unless the Council determines otherwise as set out at Article 13.18.

CASUAL VACANCIES

18 Subject to Articles 13 and 20, vacancies on the Board may only be filled according to the following:-

- (1) For Council Board Members, by the Council. If the Council shall have failed within three months of a written request by the Board to make the appropriate appointments to the Board of a Council Board Member, the Board may fill the vacancies solely until the next annual general meeting;
- (2) For Independent Board Members, by the Council following a recommendation by the Board;
- (3) If the Board fails to make a recommendation within six months of a vacancy for an Independent Board Member, the Council may appoint any person who is willing to act as an Independent Board Member to the vacancy solely until the next annual general meeting. If the Council fails within three months of a written request by the Board to make the appropriate appointments to the Board of an Independent Board Member, the Board may fill the vacancies solely until the next annual general meeting;
- (4) For Tenant Board Members, where there remains more than one year until retirement by the appropriate recruitment process according to Article 15(4) among the Tenants;
- (5) For Tenant Board Members where there remains one year or less until retirement; and
- (6) For the Chair, in accordance with Article 17.
- (7) The Board may from time to time co-opt up to a maximum of two persons to the Board, and a maximum of two persons to a committee, and may at any time revoke such co-option. Co-optees shall be entitled to attend and to speak but not to vote at meetings of the Board or of a committee of the Board and shall not be counted as part of the quorum.
- (8) The Chair shall nominate an Independent director (the "Senior Independent director"), incorporating the Deputy Chair role, to perform the duties ascribed to the Senior Independent director in the Articles, and shall be able to remove from that position and replace any director so appointed. The Chair shall promptly notify the directors and the Chief Executive, either in writing or at a meeting of the directors, of every such nomination, removal and replacement. The Senior Independent director shall perform the duties of the Chair if the Chair is by reason of absence, illness, injury or conflict unable to exercise the power vested in him/her pursuant to the Articles. In addition, the Senior Independent Director will work in partnership with the Chair of the Board to achieve effective management of Board meetings and the Chief Executive.

DISQUALIFICATION, SUSPENSION AND REMOVAL OF BOARD MEMBERS

19. The Board may with immediate effect direct that a Board Member is suspended from office either:
- (1) pending the outcome of a panel hearing which is held in accordance with the procedure for breach set out in the Board Members' Code of Conduct where pursuant to paragraph 8 of such procedure the Chair (or where appropriate the Chief Executive) considers the circumstances of the breach are such to merit suspension from office; or
 - (2) for a period determined by the panel following a panel hearing as referred to in (1) above, where the panel decides the allegation or complaint has been substantiated and a sanction of suspension from office is imposed pursuant to the sanctions set out in the Board Members' Code of Conduct.
20. A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Board Member if the relevant individual:-
- (1) ceases to be a Board Member by virtue of any provision of the Act or becomes prohibited by law from being a company director; or
 - (2) is or becomes a person disqualified from elected membership of a local authority; or
 - (3) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (4) is, or may be, suffering from mental disorder and either:-
 - (a) is 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
 - (5) resigns his office by notice to the Organisation; or
 - (6) is removed from office by a resolution of (or written notice signed by) at least three quarters of all the other Board Members from time to time provided that the Board Member concerned has first been given an opportunity to put their case and to justify why they should not be removed as a Board Member; or

- (7) fails to attend a meeting of the Board following receipt of a letter from the Company Secretary requesting attendance at the meeting. Such a letter will be sent by the Company Secretary where the individual has been absent for two consecutive meetings of the Board without having sought in writing an approved leave of absence from the Board; or
- (8) in any period of 12 months, they shall have been absent from at least three of the meetings of the Board held during that period without having sought and obtained an approved leave of absence from the Board unless the Board resolves otherwise; or
- (9) in the case of a Tenant Board Member they cease to be a Tenant PROVIDED THAT this Article 20(9) 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; or
- (10) is a Tenant Board Member and is (in the reasonable opinion of at least three quarters of all the other Board Members) in serious breach of their obligations as a Tenant; or
- (11) is a Council Board Member and is or becomes a Tenant leading to a breach of the limit in Article 13(2); or
- (12) is a Tenant Board Member and is or becomes a Local Authority Person leading to a breach of the limit in Article 13(3); or
- (13) is an Independent Board Member and is or becomes a Tenant or a Local Authority Person; or
- (14) is removed by resolution of the Council pursuant to Article 14(3); or
- (15) is convicted of any criminal offence (other than minor offences under the Road Traffic Acts or the Road Safety Acts for which a fine or non-custodial penalty is imposed); or
- (16) is or becomes a paid employee of the Organisation.

POWERS OF THE BOARD

- 21 Subject to the provisions of the Act, directions of the Council in general meeting and the Memorandum and Articles of Association, the business of the Organisation shall be managed by the Board who may exercise all the powers of the Organisation. No alteration of the Memorandum or Articles or directions of the Council shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited by any special power given to the Board by the Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

- 22 The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Organisation for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
- 23 The Board may introduce or vary its procedures and agreements relating to Board Member conduct. In particular, the Board may from time to time amend the Board Members' Code of Conduct.

BORROWING POWERS

- 24 Subject to Clauses 4.13 and 5 of the Memorandum of Association the Board may exercise all the powers of the Organisation to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and to grant any mortgage, charge or other security over its undertaking and property, or any part thereof, and to issue any debenture, whether outright or as security for any debt, liability or obligation of the Organisation or of any third party.

DELEGATION OF BOARD MEMBERS' POWERS

- 25 (1) The Board may delegate any of their powers to any committee consisting of such persons the Board considers fit to exercise such powers. They may also delegate to the Chair/ Senior Independent Director /sub committee or to any executive officer such of their powers as they consider desirable to be exercised by them.
- (2) Any such delegation may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions and this Article, the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

ALTERNATE BOARD MEMBERS

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

BOARD MEMBERS' REMUNERATION AND EXPENSES

- 27 (1) The ordinary remuneration of Board Members (including the Chair) shall be determined by delegated authority to the Remuneration Committee. No Executive Director shall be entitled to receive a fee or any other form of remuneration in respect of the performance of his/her ordinary duties as a Board Member.

- (2) 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 otherwise in connection with the discharge of their duties and such other sums as may be determined by the Council PROVIDED THAT no sum shall be paid to a Board Member in excess of that which would be permitted to be paid to a Board Member of a social landlord registered under the 1996 Act and PROVIDED FURTHER THAT no sum shall be paid to a Board Member who is an elected member of the Council in excess of that permitted by the Order.
- (3) Any person who is appointed by the Board to sit on a committee to which the Board has delegated any of its powers under Article 25 may be paid all travelling, hotel and other expenses reasonably incurred by them in connection with their attendance at meetings of such committee and such other sums as may be determined by the Council PROVIDED THAT no sum shall be paid to such person in excess of that which would be permitted to be paid to a board member of a social landlord registered under the 1996 Act and PROVIDED FURTHER THAT no sum shall be paid to such person who is an elected member of the Council in excess of that permitted by the Order.

BOARD MEMBERS' APPOINTMENTS AND INTERESTS

- 28 A Board Member may not have any financial interest personally or as a member of a firm or as a director or senior employee (being an employee with managerial status) in any contract or other transaction of the Organisation unless it is permitted by these Articles and is not prohibited by Clause 5 of the Memorandum.
- 29 Each Board Member shall ensure that the Secretary has at all times an up to date list of:-
- (1) all bodies trading in which they have an interest as:
 - (a) a director or senior employee,
 - (b) a member or partner of a firm,
 - (c) the owner or controller of more than 2% of the issued share capital in a company,
 - (2) all interests as an official or elected member of any statutory body;
 - (3) all interests as the occupier of any property owned or managed by the Organisation;
 - (4) any other significant or material interest.

PROCEEDINGS OF BOARD MEETINGS

- 30 (1) Subject to any regulations established from time to time by the Organisation in general meeting and compliance with Section 10(1) of the Local Authorities (Companies Order) 1995 the Board may regulate their proceedings as they think fit and the quorum for the transaction of the business of the Board at the time when the meeting proceeds to business shall be four comprising no fewer than one Tenant Board Member, one Independent Board Member, one Council Board Member and one other Board Member PROVIDED THAT if either the number of Board Members in one or more category of Board Member falls below one or all the Board Members in one or more category are prevented from counting towards the quorum by Article 30 then the quorum requirement shall be reduced to none in respect of such category or categories.
- (2) Board Meetings may be held in person, by telephone, video-conference, internet or such other method as the Board may from time to time determine.
- (3) $33\frac{1}{3}$ percent of the total number of Board Members (or such whole number of Board Members nearest to $33\frac{1}{3}$ percent) may call a meeting of the Board. It shall not be necessary to give notice of a meeting to a Board Member who is absent from the United Kingdom.
- (4) 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.
- (5) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then notwithstanding Article 30(1) the Board Members present shall constitute a quorum.
- 31 Questions arising at a Board Meeting shall be decided by a majority of votes and each Board Member present shall be entitled to one vote. In the case of an equality of votes, the Chair shall have a second or casting vote. Votes shall be by show of hands or at the discretion of the Chair, whose decision shall be final and conclusive, by secret ballot, administered by the Executive Officer.

- 32 (1) Any Board Member (which shall include interests of Family Members) having an interest in any arrangement between the Organisation and another person or body shall disclose that interest to the meeting before the matter is discussed by the Board or committee of the Board. Unless the interest is of the type specified in Articles 32(2) or 32(3) the Board Member concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board. Unless permitted by Articles 32(2) or 32(3) the Board Member concerned may not vote on the matter in question, but no decision of the Board or any committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.
- (2) Provided the interest has been properly disclosed pursuant to Article 32(1) a Board Member may remain present during the discussion and may vote on the matter under discussion where the interest arises because:
- (a) the Board Member is a Tenant so long as the matter in question affects all or a substantial group of Tenants; or
 - (b) the Board Member is a director or other officer of a company or body which is a parent, subsidiary or associate of the Organisation; or
 - (c) the Board Member is an official or elected member of any statutory body.
- (3) A Board Member shall not be treated as having an interest:
- (a) of which the Board Member has no knowledge and of which it is unreasonable to expect him to have knowledge;
 - (b) in the establishment of a policy in respect of Board Member expenses payable pursuant to Article 27.
- 33 If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Board Member to vote, the question may, before the conclusion of the meeting, be referred to the chair of the meeting and his ruling in relation to any Board Member other than himself shall be final and conclusive.
- 34 (1) The Chair of the Board will be the independent chair appointed for that purpose in accordance with Article 17.
- (2) Unless they are unwilling to do so, the Chair so appointed shall preside at every meeting of the Board at which they are present. But if there is no Board Member holding that office, or if the Board Member holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Senior Independent Director is to be chair of the meeting. In the event that this is not possible the Board may appoint one of their number to be chair of the meeting.

- 35 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.

DECISIONS OF THE BOARD

- 36 With the exception of a resolution concerning the removal of a Board Member or auditor, the Board may make decisions either at a meeting of the Board or by means of a written resolution if signed by:
- (1) three quarters of all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board; and
 - (2) the Chair of the Organisation or of the relevant committee; and

which satisfies the quorum requirements of Article 30(1) shall be as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Board Members.

SECRETARY

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

MINUTES

- 38 The Board shall cause minutes to be made in books and electronic records kept for the purpose:-
- (1) of all appointments of officers made by the Board Members; and
 - (2) of all proceedings at meetings of the Organisation and of the Board, and of committees of the Board and of the Council in its capacity as the sole member of the Organisation, including the names of the Board Members present at each such meeting.

RECORDS ACCOUNTS AND RETURNS

39 The Organisation shall comply with the provisions of Part V of the Local Government and Housing Act 1989, the Local Authorities (Companies) Order 1995 and Part 15 and 16 of the Act in respect of:-

- (1) the keeping and auditing of accounting records;
- (2) the provision of accounts and annual reports of the Board Members; and
- (3) in making an annual return.

THE SEAL

- 40 (1) If the Organisation has a Seal it shall only be used with the specific or general authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the Seal is affixed and unless otherwise so determined it shall be signed by a Board Member and by the Secretary or a second Board Member.
- (2) The Organisation 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

- 41 Notice of a general meeting may be given to the persons entitled to receive it in any manner permitted by the Act from time to time including (but not limited to) in hard copy, by means of a website, or by other electronic means, subject in each case to compliance by the Organisation with any requirements prescribed by or pursuant to the Act.
- 42 The Council present by duly authorised representative at any meeting of the Organisation shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

INDEMNITY

- 43 (1) Every Board Member or other officer of the Organisation shall be entitled to be indemnified out of the assets of the Organisation against all losses or liabilities as are mentioned in Section 310(3) of the Companies Act 1985 (as amended, superseded, varied or replaced from time to time) which they may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, and no Board Member or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Organisation in the proper execution of the duties of his office or in relation thereto PROVIDED THAT this Article shall only have effect in so far as its provisions are not avoided by the Act or any re-enactment or statutory modification thereto.

- (2) The Board shall have power to purchase and maintain for any Board Member or officer of the Organisation insurance against any such liability as is referred to in Section 232 of the Act.

Names & Addresses Authorised Representative Witnessed

Of Subscriber

Barnsley Metropolitan

Borough Council

Town Hall

Barnsley

South Yorkshire S70 2TA

Dated