



## Board

27 January 2009

### YHN Charitable Subsidiary

Report by Chief Executive

Decision	Area Implications
<b>Executive Summary</b>	<p>This report follows on from the decision made by Board in December 2008 to progress with establishing a charitable subsidiary.</p> <p>This report outlines the proposed Memorandum and Articles of Association of the charitable subsidiary, which are appended in full to this report</p>
<b>Recommendations</b>	Board is asked to approve the charitable subsidiary's Memorandum and Articles of Association.

Business Implications	
<b>YHN Mission and Strategic Objectives</b>	Refurbishing and Building Homes
<b>Value for Money/Efficiencies</b>	An appraisal of the possible structures available to YHN to deliver new build development was reported to Board in the November Board Report New Build Development Process and Structures. As stated in that report there is the potential to limit the tax liability through using a charitable subsidiary to deliver new build development.
<b>Resources (financial, property, technological or human)</b>	It is anticipated that the charitable subsidiary will cost around £30,000 per annum to run. Most of the expenditure relates to YHN officer time.
<b>Impact on Services/Performance</b>	The proposal will improve the availability of social housing and enable Your Choice Homes

	to respond more effectively in meeting the housing needs of customers.
<b>Outcomes for tenants/leaseholders</b>	The proposal will improve the availability of social housing.
<b>Risk (reputation, relationship)</b>	<p>The key risks include:-</p> <ul style="list-style-type: none"> <li>• The Charity Commission does not approve the registration of the charitable subsidiary. The risk is small as the memorandum and articles of association have been drafted by legal advisors with a great deal of experience in making submissions to the Charity Commission.</li> <li>• Charitable subsidiary will not be accredited as an investment partner with the Homes and Communities Agency. The risk of this is small as the Homes and Communities Agency has been informed of the proposal and does not object in principle (YHN will need to enter into and comply with a grant agreement with the HCA).</li> <li>• Once established, the charitable subsidiary fails to operate in accordance with regulatory requirements. The risk is small as YHN officers are familiar with making financial and associated returns to various regulatory authorities. PWC have been appointed to provide tax and financial advice on draw down basis to meet any requirements.</li> <li>• The charitable subsidiary operates against the objectives of YHN. The risk is small as the objects and purpose of the charity are consistent with the objectives of YHN. YHN also nominates a trustee. Trustees control the charity and its assets. The vote of YHN as sole member will be required to change the constitution of the charity. There are also some controls in the legal agreement that will be used to transfer land to the charity, which will subsequently be used to build and provide affordable homes for rent.</li> </ul>
<b>Environmental</b>	Not directly applicable.
<b>Legal Implications</b>	The memorandum and articles have been drafted by legal advisors with a great deal of experience in making submissions to the Charity Commission. The document has also been reviewed by Newcastle City Council solicitors.

<b>Equality and Diversity</b>	Not directly applicable.
<b>Stakeholder Involvement/Consultation (planned or already carried out)</b>	<ul style="list-style-type: none"> <li>• Tenants have given the provision of new homes a high priority in recent consultation initiatives including How We Spend Your Rent; and</li> <li>• A consultation plan is being drafted to cover new build schemes.</li> </ul>
<b>Background papers</b>	
	Background papers include YHN Board Report, New Build Development Process and Structures, November 2008.
<b>Contact officers</b>	Jon Mitford, Business Strategy Manager, 28718.

## **YHN Charitable Subsidiary**

### **1. Introduction**

- 1.1 This report follows on from the decision made by Board in December 2008 to progress with establishing an YHN Charitable Subsidiary.

This report outlines the proposed Memorandum and Articles of Association of the YHN Charitable Subsidiary, which are appended to this report.

The Memorandum and Articles of Association is the proposed governing document of the YHN Charitable Subsidiary. The governing document sets out how the Charitable Subsidiary will operate. The Memorandum and Articles proposed for the Charitable Subsidiary are appended to this document.

### **2 Memorandum of Association**

- 2.1 The advice of our legal and finance advisors is to establish a charitable company. The company will be limited by guarantee and will have a legal status. This is the same type of structure as YHN. The company set up will be a charity and will become registered with the Charity Commission and Companies House.
- 2.2 A charity must have exclusively charitable purposes that fall within the descriptions of purposes capable of being charitable as set out in the Charities Act 2006 and that are for the public benefit. There are currently thirteen charitable purpose areas. An example is the prevention or relief of poverty.
- 2.3 The objects of a charity state the aims of the charity and must support one of the thirteen charitable purposes. The objects of the Charitable Subsidiary are detailed in section 3 of the Memorandum of Association. These objects are conventional housing objects and have been previously registered with the Charity Commission.
- 2.4 The powers of the charity are detailed in section 4 of the Memorandum of Association. As detailed in the November Board report the Charity Commission will need to be satisfied that the Charitable Subsidiary is operationally independent. The powers detailed in section 4 will be required by the Charitable Subsidiary if it is going to be able to operate independently and deliver its aims and objectives.
- 2.5 As stated in the November Board report assets held by the Charitable Subsidiary cannot be transferred to an organisation for non-charitable purposes. If however the Charitable Subsidiary is dissolved then it would be possible to transfer the assets to YHN or Newcastle City Council if they were transferred with a restricted use. This would mean that once in the ownership of YHN or Newcastle City Council the assets could only ever be used for the charitable purposes of the

Charitable Subsidiary and not for the general purposes of YHN or Newcastle City Council.

### **3. Articles of Association**

- 3.1 The Charitable Subsidiary will maintain a register of members, the numbers of members will be unlimited and anyone can become a member who is interested in promoting the objects of the Charitable Subsidiary and who is approved by the Trustees. The initial membership of the Charitable Subsidiary will be YHN as sole member and there will be a Membership Policy (with which Trustees must comply) to govern the admission of any further members. . Membership is outlined in detail in section 1 of the articles of association.
- 3.2 The Memorandum and Articles of Association cannot be amended without YHN and Newcastle City Council's consent. This is stated in terms of the Council in section 3.1. In terms of YHN this is through YHN being the sole member of the company.
- 3.3 Under the Charities Act, charity trustees are people responsible for the general control and management of the administration of a charity. All charities must have a clearly identifiable body of trustees. It is proposed that the trustees for the Charitable Subsidiary include:-
- One individual appointed by YHN;
  - Two individuals appointed by Newcastle City Council, one of which must be a an existing Council-nominated board member of YHN; and
  - Four ordinary trustees. Ordinary trustees not being:-
    - A director or employee of the ALMO or any other company controlled by the Council,
    - An employee or elected member of the Council, and
    - A tenant of the Charity or the ALMO.
- It is recommended by our legal advisors that the majority of trustees will need to be ordinary trustees if the Charity Commission is to be satisfied that the subsidiary is sufficiently operationally independent from both YHN and Newcastle City Council.
- 3.4 The Memorandum of Association states that trustees will have to hold at least four meetings each year. A quorum at a meeting of the Trustees is four Trustees, one of which must be the ALMO appointed trustee.
- 3.5 Trustees have a number of powers to enable them to manage the administration of the charity. These are detailed in section 15 of the articles of association. Trustees are able to appoint a Chairperson

from their number, to appoint (and remove) a company secretary and to make rules and standing orders that are consistent with the memorandum and articles of association.

#### **4. Implications**

##### **4.1 Value for Money/Efficiencies**

It will cost approximately £30,000 per annum to run the charity. This will mainly be made up of YHN officer time undertaking work on behalf of the charity. As detailed in the November report it is estimated that the tax liability would be greater than this cost if the development activity was undertaken in YHN.

##### **4.2 Resources (financial, property, technological or human)**

It is proposed that initially existing YHN resources are used to undertake the day to operational activities of the Charitable Subsidiary. This will include the management of any dwellings the Charitable Subsidiary owns. There may well be a charge from YHN to the Charitable Subsidiary for this and the tax implications of this and associated issues are being explored by financial advisors.

##### **4.2 Impact on Services/Performance**

The impact on services and performance is detailed in the Business Implications section.

##### **4.3 Outcomes for tenants/leaseholders**

The outcomes for tenants are detailed in the business implications section.

##### **4.4 Risk (reputation, relationship)**

The key risks are detailed in the business implications section. It is worth considering though the positive outcomes of establishing the Charitable Subsidiary in terms of reducing tax liabilities and maximising the outcomes of any YHN development opportunities.

##### **4.5 Environmental**

There is no direct environmental impact of establishing the Charitable Subsidiary. Developments undertaken by the Charitable Subsidiary will be through the Developer Framework, which has provision for assessing the approach developers take to sustainable construction when awarding works. In addition the Homes and Communities Agency will require units built for social use to achieve certain sustainability standards.

Legal Implications

5.6 The legal implications are detailed in the business implications section

5.7 Equality and Diversity

There are no direct equality and diversity issues in establishing the Charitable Subsidiary.

#### **4. Consultation**

4.1 Newcastle City Council's Executive has been consulted on establishing the YHN Charitable Subsidiary. In addition members briefing sessions were held in December. A consultation plan for tenants is being drafted ahead of any development activity taking place.

#### **5. Recommendations**

5.1 Board is recommended to:-

- Agree to the establishment of a YHN Charitable Subsidiary in accordance with the Memorandum and Articles of Association appended to this report subject to any minor changes approved by YHN's Chief Executive.

#### **6. Next Steps**

6.1 Board will receive recommendations on trustees through a Board report scheduled for the February Board meeting. Following approval of the trustees the registration process with Companies House and the Charity Commission will start.

**dated**

**2009**

**[Charitable Subsidiary]**

## **Memorandum and Articles of Association**

trowers & hamlins  
Sceptre Court  
40 Tower Hill  
London  
EC3N 4DX

**t** +44 (0)20 7423 8000  
**f** +44 (0)20 7423 8001  
[www.trowers.com](http://www.trowers.com)  
Dated: 14 January 2009

**Company limited by guarantee and not having a share capital**

**Memorandum of Association**

**of**

**[Charity Subsidiary]**

**1 Name**

The name of the company is [ ] (the **Charity**).

**2 Registered Office**

The registered office of the Charity is to be in England and Wales.

**3 Objects**

The Objects of the Charity are in the United Kingdom (the **Area of Benefit**):

- a to provide houses or hostels or other residential accommodation and any associated amenities for persons in necessitous circumstances upon terms appropriate to their means;
- b to provide for aged, disabled, handicapped (whether mentally or physically) or chronically sick persons in need thereof houses or hostels or other residential accommodation and any associated amenities specially designed or adapted to meet the disabilities and requirements of such persons;
- c to provide services, advice or assistance upon terms appropriate to their means to aged, disabled (whether mentally or physically) or chronically sick persons or other persons in necessitous circumstances in need thereof and providing any associated amenities specially designed or adapted to meet the disabilities and requirements of such persons;
- d the provision of recreation or other leisure facilities in the interest of social welfare with the object of improving the conditions of life for the residents of the Area of Benefit;
- e the relief of poverty amongst the residents of the Area of Benefit;
- f the advancement of education, training or retraining, particularly among unemployed people and providing unemployed people with work experience;
- g the maintenance, improvement or provision of public amenities for the public benefit in the interests of regeneration in areas of social and economic deprivation in which the Charity owns or manages housing stock;
- h such other charitable purposes beneficial to the public consistent with the objects above as the Trustees shall in their absolute discretion determine.

## 4 Powers

- 4.1 The Charity shall have the power to do anything that a natural or corporate person can lawfully do which is necessary or expedient to achieve its Objects except as expressly prohibited in the Memorandum.
- 4.2 Without limiting its general powers the Charity shall have the following powers:
- 4.2.1 to acquire or hire property of any kind,
  - 4.2.2 to construct, maintain and alter buildings,
  - 4.2.3 to provide services and facilities including not only the provision of land and buildings equipment but also the organisation of recreational or other leisure time activities,
  - 4.2.4 to co-operate and enter into arrangements with other bodies including any authorities, national, local or otherwise,
  - 4.2.5 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act),
  - 4.2.6 to promote or carry out research,
  - 4.2.7 to provide advice,
  - 4.2.8 to publish or distribute information,
  - 4.2.9 to support, administer or set up other charities,
  - 4.2.10 to raise funds (but not by means of taxable trading),
  - 4.2.11 to borrow money and give security for loans (but only in accordance with the restrictions imposed by the Charities Act),
  - 4.2.12 to make grants or loans of money and to give guarantees,
  - 4.2.13 to set aside funds for special purposes or as reserves against future expenditure,
  - 4.2.14 to deposit or invest in funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification),
  - 4.2.15 to delegate the management of investments to a financial expert, but only on terms that:
    - a the investment policy is set down in writing for the financial expert by the Trustees,
    - b every transaction is reported promptly to the Trustees,
    - c the performance of the investments is reviewed regularly with the Trustees,
    - d the Trustees are entitled to cancel the delegation arrangement at any time,
    - e the investment policy and the delegation arrangement are reviewed at least once a year,

- f all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt, and
- g the financial expert must not do anything outside the powers of the Trustees.

- 4.2.16 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required,
- 4.2.17 to deposit documents and physical assets with any company registered or having a place of business in England and Wales as custodian, and to pay any reasonable fee required,
- 4.2.18 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required,
- 4.2.19 to pay for indemnity insurance for the Trustees,
- 4.2.20 subject to clause 5, to employ paid or unpaid agents, staff or advisers,
- 4.2.21 to enter into contracts to provide services to or on behalf of other bodies,
- 4.2.22 to establish or acquire subsidiary companies to assist or act as agents for the Charity,
- 4.2.23 to pay the costs of forming the Charity, and
- 4.2.24 to do anything else within the law which promotes or helps to promote the Objects.

## 5 **Benefits to Members and Trustees**

- 5.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the members but:
  - 5.1.1 members who are not Trustees may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied,
  - 5.1.2 members (including members who are Trustees) may be paid interest at a reasonable rate on money lent to the Charity,
  - 5.1.3 members (including members who are Trustees) may be paid a reasonable rent or hiring fee for property or equipment let or hired to the Charity, and
  - 5.1.4 members (including members who are Trustees) who are also beneficiaries may receive charitable benefits in that capacity.
- 5.2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:
  - 5.2.1 as mentioned in clauses 4.2.19 (indemnity insurance), 5.1.2 (interest), 5.1.3 (rent), 5.1.4 (charitable benefits) or 5.3 (contractual payments),
  - 5.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Charity,

- 5.2.3 an indemnity in accordance with article 8,
- 5.2.4 payment to any company in which a Trustee has no more than a 1% (one per cent) shareholding, and
- 5.2.5 in exceptional cases, other payments or benefits (but only with the written approval of the Commission in advance).
- 5.3 A Trustee may not be an employee of the Charity, but a Trustee or a person who is for the purposes of the Companies Act 2006 connected (which expression shall have the meaning given thereto by section 252 of the Companies Act 2006) with a Trustee may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit if:
  - 5.3.1 the goods or services are actually required by the Charity,
  - 5.3.2 the nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Trustees in accordance with the procedure in articles 6 to 12, and
  - 5.3.3 no more than one half of the Trustees are interested in such a contract in any financial year.
- 5.4 This clause 5 may not be amended without the written consent of the Commission in advance.

## 6 **Limited Liability**

The liability of members is limited.

## 7 **Guarantee**

Every member promises, if the Charity is dissolved while he, she or it remains a member or within twelve months afterwards, to pay up to £10 (ten pounds) towards the costs of dissolution and the liabilities incurred by the Charity while he/she or it was a member.

## 8 **Dissolution**

- 8.1 If the Charity is dissolved, the assets (if any) remaining after provision has been made for all its liabilities must be applied in one or more of the following ways:
  - 8.1.1 by transfer to one or more other bodies established for exclusively charitable purposes which are the same as or similar to the Objects,
  - 8.1.2 directly for the Objects or for charitable purposes which are within or similar to the Objects,
  - 8.1.3 in such other manner consistent with charitable status as the Commission approve in writing in advance.
- 8.2 A final report and statement of account must be sent to the Commission.

9 **Interpretation**

9.1 Words and expressions defined in the Articles have the same meanings in the Memorandum.

9.2 References to an Act of Parliament are references to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

We wish to be formed into a company under this Memorandum of Association:

**Name and address of subscriber**

**Subscriber's signature**

Your Homes Newcastle Limited (reg no. 5076256)  
Barras Bridge  
Newcastle Upon Tyne  
Tyne & Wear  
NE1 8PR

dated 2009

witness to the above signature:

name:

address:

occupation:

signature

## Company limited by guarantee and not having a share capital

### Articles of Association

of

[Charitable Subsidiary]

---

#### 1 Membership

- 1.1 The Charity must maintain a register of members.
- 1.2 The subscriber to the Memorandum and Articles shall be the first member of the Charity.
- 1.3 The number of members with which the Charity proposes to be registered is unlimited.
- 1.4 Membership of the Charity shall be open to any individual or organisation interested in promoting the Objects who:-
  - 1.4.1 applies to the Charity in the form required by the Trustees,
  - 1.4.2 is approved by the Trustees, and
  - 1.4.3 consents in writing to become a member or signs the register of members.
- 1.5 The Trustees may establish different classes of membership and prescribe their respective privileges and duties and set the amounts of any subscriptions.
- 1.6 Membership is terminated if the member concerned:
  - 1.6.1 gives written notice of resignation to the Charity;
  - 1.6.2 dies (or in case of an organisation) ceases to exist;
  - 1.6.3 is six months in arrears in paying the relevant subscription (if any) (but in such a case the member may be reinstated on payment of the amount due); or
  - 1.6.4 is a member other than the ALMO and is removed from membership by resolution passed by at least seventy-five percent of the members present and voting at a general meeting after the meeting has invited the views of the member concerned and considered the matter in the light of any such views. For the avoidance of doubt the member concerned shall not be entitled to vote on the decision whether or not to remove them from membership.
- 1.7 Any organisation which is a member shall nominate a person to act as its representative by an appropriate notice to the Secretary. Such representative shall have the right on behalf of the organisation to attend meetings of the Charity and vote thereat, and generally exercise all rights of membership on behalf of the organisation. The organisation may from time to time revoke the nomination of such representative and nominate another representative in his/her place (the **Authorised Representative**). All such nominations and revocations shall be in writing to the Secretary.

1.8 Membership is not transferable.

## 2 **General Meetings**

2.1 Members are entitled to attend general meetings in person or (in the case of an organisation) through an Authorised Representative or by proxy. Proxy forms must be delivered to the Secretary at least 48 hours before the meeting. General meetings are called on at least 14 clear days' written notice specifying the business to be discussed.

2.2 No business shall be transacted at any general meeting unless a quorum is present. The presence of the ALMO through its Authorised Representative shall be a quorum.

2.3 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee elected by those Trustees present shall preside at a general meeting.

2.4 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by a majority of the votes cast.

2.5 Every member present in person or (in the case of an organisation) through an authorised representative or by proxy has one vote on each issue.

2.6 The members of the Charity may pass a resolution in writing in accordance with the terms of the Companies Act. A proposed written resolution of the members of the Charity shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

2.7 The Charity must hold an AGM in every year. The first AGM must be held within 18 months after the Charity's incorporation.

2.8 At an AGM the members:

2.8.1 receive the accounts of the Charity for the previous financial year,

2.8.2 receive the Trustees' report on the Charity's activities since the previous AGM,

2.8.3 accept the retirement of those Ordinary Trustees who wish to retire or who are retiring by rotation,

2.8.4 elect Ordinary Trustees to fill the vacancies arising,

2.8.5 appoint auditors for the Charity,

2.8.6 may discuss and determine any issues of policy or deal with any other business put before them by the Trustees.

2.9 A general meeting may be called at any time by the Trustees and, on the requisition of members pursuant to the Companies Act, the Trustees shall convene a general meeting in accordance with the provisions of the Companies Act.

## 3 **Amendments to the Memorandum and Articles**

3.1 No resolution to amend the Memorandum and Articles shall be passed by the members unless and until the Council has given its written consent to the amendments. A consent

signed by the Chief Executive of the Council (or such authorised individual) and delivered to the Secretary shall be conclusive as to the Council's consent.

#### 4 **The Trustees**

4.1 The Trustees as charity trustees shall have control of the Charity and its property and funds.

4.2 The Trustees when complete shall consist of at least four and not more than seven individuals, comprising one individual nominated by the ALMO in accordance with article 4.3.2 (the **ALMO Trustee**), two individuals nominated by the Council in accordance with article 4.3.3 (the **Council Trustee**) and four individuals appointed or elected in accordance with article 4.3.5 (the **Ordinary Trustees**).

4.3.1 The first Trustees of the Charity shall be those persons notified to Companies House as the first directors of the Charity. Future Trustees shall be appointed as provided in these Articles.

4.3.2 The ALMO Trustee shall be appointed by the ALMO to serve for such period of office as shall be confirmed by the ALMO. A written notice delivered by the Chief Executive (or such other authorised individual) of the ALMO to the Secretary shall be conclusive as to who has been appointed as an ALMO Trustee and for what period of time. The ALMO may remove and replace the ALMO Trustee at any time provided written notice is given to the Secretary.

4.3.3 The Council Trustees shall be appointed by the Council to serve for such period of office as shall be confirmed by the Council. One of the Council Trustees shall be an employee or elected member of the Council and one of the Council Trustees shall be an existing Council-nominated board member of the ALMO. A written notice delivered by the Chief Executive (or such other authorised individual) of the Council to the Secretary shall be conclusive as to who has been appointed as a Council Trustee and for what period of time. The Council may remove and replace either or both of the Council Trustees at any time provided written notice is given to the Secretary.

4.3.4 At least four of the Trustees shall be Ordinary Trustees. For the purposes of these articles an Ordinary Trustee is a person who:

- is not a director or employee of the ALMO or any other company controlled by the Council,
- is not an employee or elected member of the Council, and
- is not a tenant of the Charity or the ALMO.

4.3.5 The Ordinary Trustees shall be those persons elected by the members of the Charity in accordance with article 2.8.4. Ordinary Trustees can also be appointed in accordance with article 4.6.

4.4 Every Trustee after appointment or reappointment must sign a declaration of willingness to act as a charity trustee of the Charity before he or she may vote at any meeting of the Trustees.

- 4.5.1 One third (or the number nearest one third) of the Ordinary Trustees must retire at each AGM, those longest in office retiring first and the choice between any of equal service being made by drawing lots. Each retiring Ordinary Trustee shall be eligible for reappointment at such AGM but if they are not reappointed the retiring Ordinary Trustee(s) shall vacate office at the conclusion thereof.
- 4.5.2 If the members of the Charity, at the meeting at which a Trustee retires in the above manner, do not fill the vacancy, the Trustee shall, if willing to act, be deemed to have been reappointed unless at the meeting it is expressly resolved not to fill the vacancy.
- 4.6 The existing Trustees shall have power at any time to appoint any person to be an Ordinary Trustee, either to fill a casual vacancy or as an addition to the existing Trustees but so that the total number of Trustees shall not at any time exceed any maximum number fixed in accordance with these Articles. Any Ordinary Trustee so appointed shall hold office only until the next following AGM, and shall then be eligible for re-appointment.
- 4.7 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 4.8 A Trustee's term of office automatically terminates if he or she:
- 4.8.1 is disqualified under the Charities Act from acting as a charity trustee,
- 4.8.2 is incapable, whether mentally or physically, of managing his or her own affairs,
- 4.8.3 is absent without notice from three consecutive meetings of the Trustees and is asked by a majority of the other Trustees to resign,
- 4.8.4 resigns by written notice to the Trustees (but only if at least two Trustees will remain in office),
- 4.8.5 is removed by resolution of the members in accordance with the Companies Act,
- 4.8.6 ceases to have the required qualifications,
- 4.8.7 is an ALMO Trustee and the ALMO serves notice to the Secretary removing that Trustee from office.
- 4.8.8 is a Council Trustee and the Council serves notice to the Secretary removing that Trustee from office, or
- 4.8.9 is a Council Trustee and he or she ceases to be an employee or elected member of the Council or a Council-nominated board member of the ALMO as appropriate.

## 5 **Trustees' proceedings**

- 5.1 The Trustees must hold at least four meetings each year.
- 5.2 A quorum at a meeting of the Trustees is four Trustees.
- 5.3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants.

- 5.4 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 5.5 Every issue may be determined by a simple majority of the votes cast at a meeting, but a written resolution signed by three quarters of the Trustees is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 5.6 Except for the Chairman of the meeting, who has a second or casting vote, every Trustee has one vote on each issue.
- 5.7 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

## 6 **Trustees' interests**

- 6.1 A Trustee who is interested directly or indirectly in any matter which is under discussion by the Trustees shall disclose the nature and extent of his interest in that matter; and
- 6.2 A Trustee who is directly interested in any matter which is under discussion by the Trustees,
- 6.2.1 shall not vote on that matter, and
- 6.2.2 shall not (unless required to do so by the chair) remain during the Trustees' discussion of such matter, and
- 6.3 if a Trustee inadvertently votes on a matter to which 6.2.2 applies, his vote shall not be counted.

7 A Trustee who is a beneficiary of the Charity shall not have a direct interest for the purpose of article 6 in any decision affecting all or a substantial group of beneficiaries.

8 If a conflict of interests arises for a Trustee because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the memorandum or articles of association, the unconflicted Trustees may authorise such a conflict of interests where the following conditions apply:

- 8.1 Article 6 is complied with;
- 8.2 the conflicted Trustee is not to be counted when considering whether a quorum of Trustees is present at the meeting;
- 8.3 the unconflicted Trustees consider it is in the interests of the charity to authorise the conflict of interest in the circumstances applying.

## 9 **Permitted transactions**

9.1 For the purposes of sections 175(3) of the Companies Act 2006 as substituted by section 181(2)(a) of the Companies Act 2006 the duty to avoid conflicts of interest shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the Charity in relation to the following:

- 9.1.1 A matter authorised by the Charity Commission;
- 9.1.2 An interest in any contract, arrangement, transaction or proposal concerning the purchase and/or maintenance of any insurance policy pursuant to clause 4.2.19 of the Memorandum of Association;
- 9.1.3 Any payment permitted by clause 5 of the memorandum of association or any benefit granted to a Trustee in the capacity of a beneficiary of the Charity.

**10 Interested Trustee not to count for quorum**

- 10.1 A Trustee shall not be counted in the quorum in relation to, any resolution of the Trustees or of a committee of the Trustees concerning any contract, arrangement, transaction or any proposal to which the Charity is or is to be a party and in which he has an interest.

**11 Chairman's ruling conclusive on Trustee's interests**

- 11.1 If any question arises at any meeting as to the entitlement of any Trustee (other than the chairman of the Trustees) to vote or be counted in a quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or being counted in the quorum, such question shall be referred to the chairman of that meeting. The chairman's ruling in relation to the Trustee concerned shall be final and conclusive.

**Trustees' resolution conclusive on chairman's interest**

- 12 If any question arises at any meeting as to the entitlement of the chairman to vote or be counted in a quorum, and such question is not resolved by his voluntarily agreeing to abstain from voting or being counted in the quorum, such question shall be decided by resolution of the Trustees or committee members present at that meeting (excluding the chairman), whose majority vote shall be final and conclusive.

**Charity may ratify**

- 13 Subject to the provisions of the Companies Act, the Charity may by ordinary resolution suspend or relax the provisions of Articles 9-12 or ratify any transaction not duly authorised by reason of a contravention of these Articles 9-12 provided always that such ordinary resolution is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the Trustee (if a member of the charity) and any member connected with him and provided further that such ratification shall not extend to any matter prohibited by clause 5 of the Memorandum.

- 14 For the purposes of Articles 7-13 an interest of a person who is for the purposes of the Companies Act 2006 connected (which expression shall have the meaning given thereto by section 252 of the Companies Act 2006) with a Trustee shall be treated as an interest of the Trustee.

**15 Trustees' powers**

- 15.1 The Trustees have the following powers in the administration of the Charity:
  - 15.1.1 to appoint (and remove) any individual or corporation (who may be a Trustee) to act as Secretary in accordance with the Companies Act,

- 15.1.2 to appoint a Chairman from among their number,
- 15.1.3 to delegate any of their functions to committees consisting of two or more individuals appointed by them. At least two members of every committee must be Trustees and all proceedings of committees must be reported promptly to the Trustees,
- 15.1.4 to make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings,
- 15.1.5 to make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees,
- 15.1.6 to make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any),
- 15.1.7 to establish procedures to assist the resolution of disputes or differences within the Charity, and
- 15.1.8 To exercise any powers of the Charity which are not reserved to a general meeting.
- 15.2 There shall from time to time be policies of the Charity including in relation to Trustees' interests, recruitment of Trustees and membership. Trustees shall comply with any policy of the Charity in the exercise of their powers under the Memorandum and Articles.

## 16 **Secretary**

- 16.1 Subject to the provisions of the Companies Act, the Secretary shall be appointed by the Trustees 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.

## 17 **Records and Accounts**

- 17.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the Commission of:
  - 17.1.1 annual returns,
  - 17.1.2 annual reports, and
  - 17.1.3 annual statements of account.
- 17.2 The Trustees must keep proper records of:
  - 17.2.1 all proceedings at general meetings,
  - 17.2.2 all proceedings at meetings of the Trustees,
  - 17.2.3 all reports of committees, and
  - 17.2.4 all professional advice obtained.

17.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours and may be made available for inspection by members who are not Trustees if the Trustees so decide.

17.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or member. A copy must also be supplied, within two months, to any other person who makes a written request and pays the Charity's reasonable costs.

## 18 **Notices**

18.1 Notices under the Articles may be sent by hand, by post [or by suitable electronic means such as fax or e-mail or (where applicable to members generally) may be published in any suitable journal or newspaper circulating in the Area of Benefit or any journal distributed by the Charity.

18.2 The only address at which a member is entitled to receive notices sent by post is an address shown in the register of members.

18.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

18.3.1 24 hours after being sent by electronic means or delivered by hand to the relevant address,

18.3.2 two clear days after being sent by first class post to that address,

18.3.3 three clear days after being sent by second class or overseas post to that address,

18.3.4 on the date of publication of a newspaper containing the notice,

18.3.5 on being handed to the member (or, in the case of a member organisation, its authorised representative) personally, or, if earlier,

18.3.6 as soon as the member acknowledges actual receipt.

## 19 **Indemnity**

The Charity may indemnify any Trustee against every liability incurred by him or her in that capacity to the extent permitted by the Companies Act.

## 20 **Dissolution**

The provisions of the Memorandum relating to dissolution of the Charity take effect as though repeated here.

## 21 **Interpretation**

21.1 In the Memorandum and in the Articles, unless the context indicates another meaning:

**AGM** means an annual general meeting of the Charity,

**the ALMO** means Your Homes Newcastle Limited a company incorporated under the Companies Act (Registered Number 5076256) whose registered office is at Barras Bridge, Newcastle Upon Tyne, Tyne & Wear NE1 8PR

**Area of Benefit** has the meaning ascribed to it in the Memorandum,

**the Articles** means the Charity's articles of association,

**Authorised representative** means an individual who is authorised by the ALMO to act on its behalf at meetings of the Charity and whose name is given to the Secretary,

**Beneficiaries** means those in needy circumstances, as set out further in clause 3 of the Memorandum,

**Chairman** means the chairman of the Trustees,

**the Charity** means the company governed by the Articles,

**the Charities Act** means the Charities Act 1993 and the Charities Act 2006 including any statutory modification or re-enactment thereof for the time being in force,

**charity trustee** has the meaning prescribed by section 97(1) of the Charities Act,

**clear day** means 24 hours from midnight following the relevant event,

**the Commission** means the Charity Commissioners for England and Wales,

**the Companies Act** means the Companies Act 1985 and the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force,

**Council** means Newcastle City Council or its successor,

**custodian** means a person or body who undertakes safe custody of assets or of documents or records relating to them,

**financial expert** means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000,

**financial year** means the Charity's financial year,

**firm** includes a limited liability partnership,

**indemnity insurance** means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty,

**material benefit** means a benefit which may not be financial but has a monetary value,

**member** and **membership** refer to company membership of the Charity,

**Memorandum** means the Charity's Memorandum of Association,

**month** means calendar month,

**nominee company** means a corporate body registered or having an established place of business in England and Wales,

**the Objects** means the Objects of the Charity as defined in clause 3 of the Memorandum,

**Secretary** means the company secretary of the Charity,

**taxable trading** means carrying on a trade or business for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects, the profits of which are subject to corporation tax,

**Trustee** means a director of the Charity and 'Trustees' means the directors.

**written or in writing** refers to a legible document on paper including a fax message and electronic mail,

**year** means calendar year.

21.2 Expressions defined in the Companies Act have the same meaning.

21.3 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

**Name and address of subscriber**

**Subscriber's signature**

Your Homes Newcastle Limited (reg no. 5076256)  
Barras Bridge  
Newcastle Upon Tyne  
Tyne& Wear  
NE1 8PR

dated 2009

witness to the above signature:

name:

address:

occupation:

signature