

Eden District Council

Executive

5 November 2019

**Heart of Cumbria Ltd Review**

<b>Portfolio:</b>	Leader
<b>Report from:</b>	Director of Corporate Services
<b>Wards:</b>	All Wards
<b>OPEN PUBLIC REPORT BUT WITH APPENDIX 1 AS A PART II ITEM EXEMPT UNDER PARAGRAPH 3 OF SCHEDULE 12A LOCAL GOVERNMENT ACT 1972 (AS AMENDED).</b>	

**1 Purpose**

- 1.1 The purpose of this report is to consider the future of the Council's wholly owned Company, Heart of Cumbria Ltd.

**2 Recommendation**

It is recommended that Option 4 be adopted in that:

- 2.1 The findings of the review of the Company (Appendix 1) are endorsed.
- 2.2 The Company should continue to operate, subject to the changes included in further recommendations below.
- 2.3 The Company Board is strengthened to include at least five Directors, all of whom should have relevant experience. These positions would be unpaid.
- 2.4 Serving Councillors should not be appointed as Directors of the Company.
- 2.5 One member of the Executive is appointed as the Shareholder representative.
- 2.6 The objectives of the Company are amended to give both clarity of purpose and allow flexibility in what the Company can do.
- 2.7 The Articles of Association of the Company are amended (Appendix 2) and the Governance Agreement (Appendix 3) is adopted to reflect recommendations in paragraphs 2.3 to 2.6 above with delegated powers granted to the Assistant Director Governance to execute the Governance Agreement on behalf of the Council.
- 2.8 An early review of the housing management contract is carried out with a view to re-tendering.
- 2.9 Development resource is made available to the Company through secondment of a suitably experienced member of staff.

- 2.10 Delegated powers be granted to the Assistant Director Finance to amend the loan funding arrangements, so that funding is sourced from Prudential Borrowing rather than from the General Reserve.
- 2.11 The changes to the Board of Directors be noted.
- 2.12 It be noted that authorisation has been given by the Board of Directors to appoint Les Clark, Director of People and Place, as a new Director.
- 2.13 The accounts for the Company for the period ending 31 March 2019 (Appendix 4) be noted.

### **3 Report Details**

- 3.1 The Heart of Cumbria Ltd was established in 2016, its set up having been approved by Council at its meeting on 14 July 2016. Subsequent decisions by Council approved the financing of the Company and the acquisition of 81 affordable homes at Carleton Meadows, Penrith from Persimmon.
- 3.2 Establishment of the Company was not without its critics in the Council and concerns were expressed over the transparency of its operations. After nearly two years of operation it was considered appropriate to review how effective the Company has been in achieving its original objectives and whether any changes need to be made to the way it operates.
- 3.3 A review of the Company has been carried out by the Strategic Advisor People and Place, who has experience of establishing local authority owned companies in other parts of the country. The full report is commercially sensitive and is attached (Appendix 1).
- 3.4 The main findings of the review are summarised below:
  - 3.4.1 The Company has only achieved against one of its objectives, the provision of affordable homes (the contract to acquire 81 homes at Carleton Meadows). While other opportunities were pursued, nothing else has been completed. The most likely reason for this low level of achievement is that the Company has had no dedicated resource to identify and work-up projects.
  - 3.4.2 The governance arrangements are robust enough to protect the Council's financial position. There are though weaknesses in the Articles of Association and Shareholder Agreement that may limit the Company's flexibility of operation and leave unclear certain powers, particularly the appointment and discharge of Directors.
  - 3.4.3 The Board of Directors is under strength and the current Directors do not have the capacity to develop the Company beyond its current acquisition programme.
  - 3.4.4 The Board has included serving Councillors and this is a requirement of the Articles of Association. This does not represent best practice as it provides a clear opportunity for a conflict of interest between a Councillor's common law responsibilities as Councillors and their legal duties as Directors under the Companies Act. There is no suggestion that the Councillors who have served as Directors have ever been compromised or acted improperly, but the potential is there and should be avoided.

- 3.4.5 There is a lack of clarity about who exercises the functions of Shareholders. The legal position is that the Executive exercises the function of Shareholder and there is a strong argument that this role should be delegated to one member of the Executive. This would allow for a clear conduit of contact and instructions to the Company and improve Company accountability to the Council.
- 3.4.6 Due to the lack of dedicated resource within the Company, the Directors have had to take responsibility for day to day operational matters. This is inappropriate and points to the need for some dedicated Company resource.
- 3.4.7 The letting and management of the properties that have been acquired is carried out by a high street estate agency. Whilst this arrangement has been satisfactory, the Council's Housing Team believe that this work should be carried out by a Registered Social Landlord, who will have more appropriate culture for dealing with tenants who are, in effect, Council tenants.
- 3.4.8 Whilst progress has only been made against one of the Company's objectives, if properly resourced the Company does have the potential to make a more positive contributions to Council objectives. In particular, if it was to operate as a small-scale residential property developer it would have the potential to make an important contribution to the Council's financial position by turning development profit into a revenue stream.
- 3.5 The Council has confirmed that the shareholder function should as a matter of law be exercised by the Executive rather than the Council as a whole.
- 3.6 It is open to the Executive to delegate power to a single member to represent the Council as shareholder which should simply governance arrangements, whilst also providing for better communication with appropriate stakeholders.
- 3.7 There was a previous proposal to hold the Annual General Meeting of the Company on 26 September 2019. It became clear however, in light of the review that the documentation required to be considered by the AGM (namely the revised Articles of Association and Governance Agreement) would not be ready to meet that timescale.
- 3.8 On this basis, the Chief Executive exercised urgent powers available under the Council Constitution to require the Council as shareholder, to delay the AGM. This was to ensure that the AGM could transact meaningful business and so as to protect the best interests of the Council.
- 3.9 Following these events, former Councillor John Owen and Councillor Gordon Nicolson tendered their resignation from the Board of Directors, leaving Gareth Owens as the sole Director.
- 3.10 Upon receipt of these resignations, the Chief Executive placed on record that the appreciation of the Council for the service that both Councillors had provided not only to the Company and the Council, but also to the people of the District that have benefitted from the housing activities of Heart of Cumbria.

- 3.11 It is recognised that both Councillors have gone to supreme lengths to make a positive contribution and the Chief Executive was keen to place the appreciation of the Council on the record.

## **4 Policy Framework**

- 4.1 The Council has four corporate priorities which are:

- Decent Homes for All;
- Strong Economy, Rich Environment;
- Thriving Communities; and
- Quality Council

- 4.2 This report meets the Decent Homes for All and Quality Council corporate priorities.

## **5 Consultation**

- 5.1 The following individuals were consulted during the review:

- a) Leader of Council;
- b) Deputy Leader of Council;
- c) Executive Members for the Housing and Eden Development Portfolios;
- d) Chief Executive;
- e) Director of Corporate Services;
- f) Assistant Directors for Governance, Planning and Economic Development, Community Services and Commissioning and Technical Services;
- g) Section 151 Officer;
- h) The three Company Directors; and
- i) Chief Executive of Eden Housing Association.

## **6 Implications**

### **6.1 Financial and Resources**

- 6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 17 September 2015
- 6.1.2 The recommendation at paragraph 2.10 to use Prudential Borrowing to support loans to the Company will have a revenue implication. However, releasing the current loan into the General Reserve will make an important contribution to the Council's transformation plans.

### **6.2 Legal**

- 6.2.1 The recommendations in this report will require amendments to be made to the Articles of Association and the Shareholder Agreement. External advice has already been obtained on the necessary changes.

### 6.3 Human Resources

- 6.3.1 If accepted, recommendation 2.9 will require either recruitment by the Company of a suitably qualified individual, or secondment to the Company by the Council of a suitably qualified individual. The Planning and Economy service currently has a part time vacancy and this could be utilised to provide the resource.
- 6.3.2 If accepted, recommendation 2.3 will require that an exercise is undertaken to recruit new Board members. It is envisaged that these would be unpaid positions, although reasonable travel expenses would be reimbursed.

### 6.4 Statutory Considerations

<b>Consideration:</b>	<b>Details of any implications and proposed measures to address:</b>
Equality and Diversity	There are no implications.
Health, Social Environmental and Economic Impact	The decision to retain the properties being acquired in Council ownership will enable the Council to meet the local housing need for affordable homes to rent.
Crime and Disorder	There are no implications.
Children and Safeguarding	There are no implications.

### 6.5 Risk Management

<b>Risk</b>	<b>Consequence</b>	<b>Controls Required</b>
Without the review of company operations, the company would not have realised the full potential for housing development and economic growth	This would be a missed opportunity when there may be potential to deliver a commercial return whilst satisfying housing need	The measures set out in the review (Appendix 1)

## 7 Other Options Considered

- 7.1 Several options have been considered.
- 7.1.1 Option 1, close the Company and bring the assets into the Council. This would result in tenants acquiring a statutory Right to Buy under the Housing Act, which would inevitably result in a reduction in the number of homes available to rent. This option is not recommended.
- 7.1.2 Option 2, close the Company and sell the assets to a third party. This option would provide a small capital receipt, although this may be reduced by Corporation Tax. However, there is no guarantee that a sale could be made that ensured the homes remained affordable for rent and the Council would lose the potential that the Company has to generate an income stream for the Council. This option is not recommended.

- 7.1.3 Options 3, keep the Company with no changes. This option is not recommended because of the deficiencies outlined in Section 3 of the report.
- 7.1.4 Option 4, keep the Company but with the changes in governance and operations outlined in Section 2 of the report. This is the recommended option.

## **8 Reasons for the Decision/Recommendation**

- 8.1 The recommendation has been made as:
- a) It will keep those homes already acquired available for rent at affordable levels; and
  - b) The changes in governance and operations will provide more strategic direction to the Company and maximise the potential for it to make an important contribution to Council finances.

### **Tracking Information**

<b>Governance Check</b>	<b>Date Considered</b>
<b>Chief Finance Officer (or Deputy)</b>	
<b>Monitoring Officer (or Deputy)</b>	25 October 2019
<b>Relevant Director</b>	24 October 2019

### **Background Papers:**

**Appendices:**

- Appendix 1 (confidential) - Review of Heart of Cumbria Ltd**
- Appendix 2 - Articles of Association**
- Appendix 3 - Governance Agreement**
- Appendix 4 - Accounts for period ending 31 March 2019**

**Contact Officer:** **Matthew Neal, Director of Corporate Services**

**REGISTERED NO. 10245262**

**Articles  
of  
Association  
  
of  
Heart of Cumbria Limited**

Incorporated: 22 June 2016

Adopted by special resolution dated [ ] 2019

**COMPANY LIMITED BY SHARES**

**THE COMPANIES ACT 2006**

Anthony Collins Solicitors LLP  
134 Edmund Street  
Birmingham  
B3 2ES

Reference: OJD/ADL: 45364.0001

# Articles of Association of Heart of Cumbria Limited

## PART A: INTRODUCTION

1.

### INTERPRETATION

1.1. In these Articles:

"the Act"	means the Companies Act 2006;
"AGM"	means an annual general meeting of the Company;
"the Articles"	means these Articles of Association of the Company and "Article" shall be construed accordingly;
"the Board"	means the board of the Company comprising the Directors and (where appropriate) includes a Committee of the Board and the Directors acting by written resolution;
"Board Meeting"	means a meeting of the Board or (where appropriate) of a Committee of the Board;
"Chair"	means (subject to the context) either the person elected as chair of the Company under Article 33 or, where the Chair of the Company is not present or has not taken the chair at a meeting, means the person who is chairing a Board Meeting at the time, or the person appointed by the Shareholders from amongst their number to chair a General Meeting;
"clear days"	in relation to a period of notice means the 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"	means a committee of the Board;



"Company"	means the company regulated by the Articles;
"Companies House"	means the office of the Registrar of Companies;
"Council"	means Eden District Council of Town Hall, Penrith, Cumbria, CA11 7QF;
"Councillor"	means an elected councillor of the Council;
"Council Officer"	means an employee or other officer of the Council;
"Director"	means a director of the Company for the time being, and includes any person occupying the position of director, by whatever name called;
"executed"	includes any mode of execution;
"Executive"	means the cabinet of the Council and (where appropriate) includes any executive committee of the cabinet and includes any individual executive/portfolio holder Councillor or a Council Officer acting under delegated authority;
"General Meeting"	means any meeting of the Shareholders;
"holder"	in relation to shares means the Shareholder whose name is entered in the register of Shareholders;
"holding company"; "subsidiary" and "wholly-owned subsidiary"	mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;

"including"	means "including without limitation" and "include" and "includes" are to be construed accordingly;
"Objects"	means the objects of the Company as set out Article 6;
"Observers"	means those persons (other than Directors) present under Article 35 at a Board Meeting;
"Registered Office"	means the registered office of the Company;
"Relevant Agreement"	means any agreement or agreements entered into between the Company and the Shareholders relating to the management, operation and activities of the Company;
"Secretary"	means the secretary of the Company (if any) as may be appointed under these Articles to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;
"Share"	means a share of any type in the capital of the Company (and includes both a fully paid and a partly paid share);
"Shareholder"	means a shareholder for the time being of the Company;
"Shareholder Reserved Matters"	means those matters designated as such in a Relevant Agreement or elsewhere where a decision is reserved to the Shareholders;
"United Kingdom"	means Great Britain and Northern Ireland.

1.2. In these Articles:-

- 1.2.1. terms defined in the Act are to have the same meaning;
- 1.2.2. references to the singular include the plural and vice versa, to the whole include part and vice versa, and to the masculine include the feminine and neutral and vice versa;
- 1.2.3. references to "organisations" or "persons" include corporate bodies, public bodies, unincorporated associations and partnerships;
- 1.2.4. references to legislation, regulations, determinations and directions include all amendments, replacements or re-enactments and references to legislation (where appropriate) include all regulations, determinations and directions made or given under it; and
- 1.2.5. the headings are not to affect the interpretation of the Articles.

2. **NAME**

The Company's name is Heart of Cumbria Limited.

3. **REGISTERED OFFICE**

The Company's Registered Office is to be situated in England.

4. **POWERS**

The Company may do anything that a natural or corporate person can lawfully do which is not expressly prohibited by the Articles.

5. **LIMIT OF LIABILITY**

The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

6. **OBJECTS**

The Company's Objects are:-

- 6.1. to undertake activities for commercial purposes; and
- 6.2. to carry on business as a general commercial company.

## **PART B. SHARE CAPITAL**

### **7. SHARE CAPITAL**

The share capital of the Company is £1,000,001 ordinary shares divided into 1,000,001 shares of £1 each.

### **8. ISSUE OF SHARES AND SHARE CERTIFICATES**

- 8.1. Subject to the Act the Company may issue Shares which must be redeemed or are liable to be redeemed at the option of the Company or the holder on such terms as the Board decides.
- 8.2. The Company may pay commissions as provided in the Act. Subject to the Act, any commission may be paid in cash and/or by the allotment of Shares.
- 8.3. Except as required by law, no person is to be recognised by the Company as holding a Share on trust. The Company is not bound to recognise any interest in a Share other than the holder's absolute right to it.
- 8.4. Unless the Shareholders decide otherwise by special resolution, any unissued ordinary Shares and any new Shares that are created must first be offered to the existing Shareholders in proportion to the number of Shares they already hold. The offer must be made by giving notice to each of the Shareholders. The notice must specify the number of Shares offered. It must give at least twenty-one days within which the offer can be accepted. Any Shares which are not accepted within this twenty-one day period will be deemed declined and must be offered, in the same proportions, to the Shareholders who have accepted the Shares offered to them. The further offer must be made on the same terms and subject to the same notice period as the original offer. Any Shares not accepted (except by way of fractions) and any Shares released from this Article by a special resolution are to be under the control of the Board. The Board may (subject to Article 8.5) dispose of them as they decide but no Shares refused by the existing Shareholders may be disposed of on terms which are more favourable to their subscribers than the terms on which they were offered to the Shareholders. Sections 561(1) and 562 of the Act do not apply to the Company.
- 8.5. The Board may not allot shares or grant rights to subscribe for or convert securities into Shares unless approved by the Shareholders.

### **9. SHARE CERTIFICATES**

- 9.1. Shareholders are entitled without payment to one certificate for all the Shares of each class they hold (and, on transferring part of their Shares, to a certificate for the balance of their holding). Every certificate shall be executed by the Company. It must specify the number, class and distinguishing numbers (if any) of the Shares to which it relates and the amount paid up for the Shares. The

Company need not issue more than one certificate for Shares held jointly. The delivery of a certificate to one joint holder is a sufficient delivery to all of them.

- 9.2. If a Share certificate becomes defaced, or worn out or is lost or destroyed it may be renewed. The Board may specify conditions to be satisfied before it is renewed. Those conditions may relate to evidence or indemnity and provide for the payment of the Company's reasonable costs in investigating evidence. Apart from any payments due as a result of compliance with the Board's conditions no other charge may be made. If the Share Certificate is defaced or wearing out the old certificate must be delivered to the Company before it can be renewed.

## **10. LIEN**

- 10.1. The Company is to have a first and paramount lien on every Share registered in the name of any person indebted or under a liability to the Company, (including a Share held jointly with another person) for all money payable by the holder or the holder's estate to the Company. The Board may exempt a Share from this Article at any time.
- 10.2. The Company may sell any Shares on which the Company has a lien if the debt secured by the lien is not paid within 14 clear days after notifying the holder of the Share (or the person entitled to it in consequence of the death or bankruptcy of the holder), demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 10.3. In order to give effect to a sale the Board may authorise any person to sign a transfer of the Shares to or as directed by the purchaser. The title of the purchaser will not be affected by any irregularity in or invalidity of the sale proceedings.
- 10.4. The net proceeds of the sale must be applied to discharge the debt secured by the lien. Any residue is to be paid to the person entitled to the Shares at the date of the sale when he surrenders the certificate for the Shares sold to the Company for cancellation.

## **11. CALLS ON SHARES AND FORFEITURE**

- 11.1. Subject to the terms of allotment, the Board may make calls on the Shareholders for any money unpaid on their Shares (whether in respect of nominal value or premium). Each Shareholder must (subject to receiving at least 14 clear days' notice specifying when and where payment is to be made) pay the Company the amount called as required by the notice. A call may require payment in instalments. A call may be revoked before the Company receives the sum due under it. Payment of a call may also be postponed. A person on whom a call is made will remain liable for the call made even if the Shares on which it was made are later transferred.
- 11.2. A call is made when the Board resolution authorising the call is passed.

- 11.3. The joint holders of a Share are jointly and severally liable to pay all calls on it.
- 11.4. If a call is unpaid after it is due the person from whom it is payable must pay interest on the unpaid amount from when it became due until payment. The rate must be fixed by the terms of allotment of the Share or in the notice of the call. If no rate is fixed the rate is to be the appropriate rate (as defined in the Act). The Board may waive payment of the interest.
- 11.5. An amount payable on a Share on allotment on a fixed date (for the nominal value or a premium or as an instalment of a call) is to be deemed to be a call. If it is not paid this Article is to apply as if it had become payable because of a call.
- 11.6. Subject to the terms of allotment, the Board may make different arrangements on the issue of Shares for the holders of the amounts and times of payment of calls on their Shares.
- 11.7. If a call remains unpaid after it has become due the Board may give the person by whom it is payable at least 14 clear days' notice requiring payment of the call and any interest due and all expenses that may have been incurred by the Company as a result of the non-payment. The notice must state where payment is to be made and that if it is not complied with the Shares on which the call was made are liable to be forfeited.
- 11.8. If the notice is not complied with then, before the payment it required is made, the Shares on which it was given may be forfeited by a resolution of the Board. The forfeiture is to include all dividends or other money payable on the forfeited Shares which were not paid before the forfeiture.
- 11.9. Subject to the Act, a forfeited Share may be sold, re-allotted or otherwise disposed of as the Board decides. This may be to its holder before the forfeiture or to any other person. At any time before the sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the Board decides. Where a forfeited Share is to be transferred to any person the Board may authorise any person to sign the Share transfer to that person.
- 11.10. Where a Shareholder's Shares have been forfeited he will cease to be a Shareholder in respect of them. He must surrender the certificate for the Shares forfeited to the Company for cancellation. He is still liable to the Company for all money which, at the date of forfeiture, was payable to the Company on them plus interest at the interest rate before forfeiture or, if no interest was payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment. The Board may waive payment or enforce payment without allowing for the value of the Shares at the time of forfeiture or the consideration received on their disposal.
- 11.11. A statutory declaration by a Director or the Secretary that a Share has been forfeited on a specified date is to be conclusive evidence of the fact stated in it as against all persons claiming to be entitled to the Share. The declaration is (subject to the execution of an instrument of transfer if necessary) to constitute a good title to the Share. The purchaser of the Share is not bound to see to the application of the consideration, if any. His title to the Share is not to be affected by any irregularity in or invalidity of the forfeiture or disposal proceedings.

## **12. TRANSFER OF SHARES**

- 12.1. A transfer may be in any usual form or in any other form the Board approves. It must be signed by or on behalf of the transferor.
- 12.2. The Board may refuse to register a Share transfer without giving any reason.
- 12.3. If the Board refuses to register a Share transfer it must notify the transferee of the refusal within two months after the date the transfer was lodged with the Company.
- 12.4. No fee may be charged for the registration of any transfer or other document relating to or affecting the title to any Share.
- 12.5. The Company may retain a transfer document which is registered, but any transfer which the Board refuses to register must (except in any case of fraud) be returned to the person lodging it when notice of the refusal is given.
- 12.6. The Board may destroy in any manner that the Board approves all instruments of transfer of Shares of the Company which have been registered as long as the following conditions are met:-
  - 12.6.1. six years have passed since the date of registration thereof; and
  - 12.6.2. the Board acts in good faith; and
  - 12.6.3. the Board, at the date of destruction, has no notice of any claim to which the instrument of transfer might be relevant.
- 12.7. The Board may destroy in any manner that the Board approves all registered Share Certificates which have been cancelled as long as the following conditions are met:-
  - 12.7.1. at least three years have passed since the date of cancellation of the Share Certificate; and
  - 12.7.2. the Board acts in good faith; and
  - 12.7.3. the Board at the date of destruction has no notice of any claim to which the Share Certificate might be relevant.
- 12.8. It shall be conclusively presumed in favour of the Company that any instrument of transfer destroyed in accordance with Article 12.6 was a valid and effective instrument duly and properly registered and that any Share Certificate destroyed in accordance with Article 12.7 was a valid Certificate duly and properly cancelled.
- 12.9. Nothing in this Article 12 shall be regarded as imposing any liability upon the Company in respect of any instrument of transfer or Share Certificate in circumstances where the conditions specified in Articles 12.6 or 12.7 (as appropriate) have not been fulfilled.

### **13. TRANSMISSION OF SHARES**

- 13.1. The survivor of a joint holder who dies and/or the personal representatives of a sole holder are the only persons the Company must recognise as having any title to the Shares. Nothing in these Articles is to release the estate of a deceased Shareholder from any liability in respect of any Share which had been jointly held by him.
- 13.2. A person entitled to a Share on the death or bankruptcy of a Shareholder may, on producing such evidence as the Board requires either become the holder of the Share or nominate some person to be registered as the transferee. If he elects to become the holder he must notify the Company in writing. If he elects to have another person registered he must transfer the Share to that person. The Articles relating to Share transfer are to apply to the notice or transfer as if it were a transfer signed by the Shareholder.
- 13.3. A person entitled to a Share on the death or bankruptcy of a Shareholder is to have the same rights as the Shareholder had except that the right to attend or vote at General Meetings or at a class meeting of the holders of any class of Shares shall not arise before that person is registered as the holder of the Share.

### **14. ALTERATION OF SHARE CAPITAL**

- 14.1. The Company may by ordinary resolution:-
  - 14.1.1. increase its share capital by new Shares of such amount as the resolution prescribes;
  - 14.1.2. consolidate and divide its share capital into Shares of a larger amount than its existing Shares;
  - 14.1.3. subject to the Act, sub-divide any of its Shares into Shares of smaller amount and create a preference in favour of some of the Shares resulting from the subdivision over the others; and/or
  - 14.1.4. cancel unissued Shares which have not been agreed to be taken up and reduce its share capital by the amount of the cancelled Shares.
- 14.2. Where as a result of a consolidation of Shares any Shareholders would become entitled to a fraction of a Share, the Board may, on behalf of those Shareholders, sell the Shares representing the fraction for the best price reasonably obtainable to any person (including, subject to the Act, the Company) and distribute the net sale proceeds among those Shareholders. The Board may authorise a person to sign the Share transfer to, or as directed by, the purchaser. The purchaser is not required to see to the application of the purchase money. His title to the Shares is not to be affected by an irregularity or invalidity in the sale proceedings.
- 14.3. Subject to the Act, the Company may by special resolution reduce its share capital, any capital redemption reserve and any share premium account.

### **15. PURCHASE OF OWN SHARES**



- 15.1. Subject to the Act, the Company may purchase its own Shares (including any redeemable Shares) and pay for the redemption or purchase other than out of the Company's distributable profits or the proceeds of a fresh issue of Shares.

## **16. DIVIDENDS**

- 16.1. Subject to the Act, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the Shareholders. No dividend may exceed the amount recommended by the Board.
- 16.2. Subject to the Act, the Board may pay interim dividends if it appears to it that they are justified by the distributable profits of the Company. If the Share capital is divided into different classes, the Board may pay interim dividends on Shares with deferred or non-preferred dividend rights as well as on Shares which confer preferential dividend rights, but no interim dividend may be paid on Shares with deferred or non-preferred rights if any preferential dividend is in arrear at the time of payment. The Board may also pay any dividend payable at a fixed rate at such intervals as they decide if it appears to them that the distributable profits justify the payment. Provided the Board acts in good faith the Directors are not to be liable to preferred Shareholders for any loss suffered by the lawful payment of an interim dividend on any deferred or non-preferential Shares.
- 16.3. Except where the rights attaching to Shares provide otherwise, all dividends are to be paid according to the amount paid up on the Shares on which they are paid. Where the amount paid up changes over the period for which the dividend is payable, the dividend must be apportioned and paid proportionately to the amount paid up on the Shares during each part of the period for which the dividend is paid. If a Share is issued on terms that it is to rank for dividend as from a particular date that Share is to rank for dividend accordingly.
- 16.4. On the recommendation of the Board the Company (whether by General Meeting or written resolution) when declaring a dividend may direct that it is to be satisfied wholly or partly by the distribution of assets. In administering the distribution the Board may:-
- 16.4.1. issue fractional certificates;
  - 16.4.2. fix the value of any assets;
  - 16.4.3. adjust the rights of Shareholders by paying cash to any Shareholder based on the asset values so fixed;
  - 16.4.4. vest any assets in trustees; and/or
  - 16.4.5. settle any difficulty which arises over the distribution.
- 16.5. Any dividend or money payable on a Share may be paid by cheque posted to the registered address of the person entitled (or as he/she may direct in writing). If two or more persons hold the Share or are jointly entitled to it because of the death or bankruptcy of the holder it may be sent to the person first named in the register. Cheques are to be payable to the person entitled (or as he/she directs in writing). Payment of the cheque is to be a good discharge to the Company.

Any joint holder or other person jointly entitled to a Share may give receipts for any dividend or other money payable on a Share.

16.6. No dividend or other money payable on a Share is to bear interest against the Company unless the rights attached to the Share provide otherwise.

16.7. Any dividend unclaimed twelve years after its payment date may be forfeited by a resolution of the Board.

## **17. CAPITALISATION OF PROFITS**

17.1. The Board may, with the authority of an ordinary resolution of the Company:-

17.1.1. capitalise any profits of the Company not required for paying a preferential dividend (whether or not they are available for distribution) or any sum in the Company's share premium account or capital redemption reserve;

17.1.2. subject to Article 17.2, appropriate the sum resolved to be capitalised to the Shareholders who would have been entitled to it if it were distributed by dividend (in the same proportions) and apply it in paying up any amounts unpaid on any part paid Shares they hold and/or in paying up in full and allotting to them (or as they direct) unissued Shares or debentures in the Company of a nominal amount equal to that sum;

17.1.3. provide for Shares or debentures distributable in fractions by the issue of fractional certificates or by payment in cash; and/or

17.1.4. authorise a person to enter into an agreement with the Company on behalf of all the Shareholders concerned, providing for the allotment to them of any Shares or debentures credited as fully paid to which they are entitled upon such capitalisation. Any agreement made under such authority is to bind all such Shareholders.

17.2. The Share premium account, the capital redemption reserve and any profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued Shares to be allotted to Shareholders credited as fully paid.

## **PART C. GENERAL MEETINGS**

### **18. AGM**

- 18.1. The Company may hold an AGM each year unless it resolves not to do so by passing an elective resolution.
- 18.2. The AGM (if any) is to be held at such time and place as the Board appoints.
- 18.3. The business of the AGM is:-
  - 18.3.1. to receive the annual Directors' report;
  - 18.3.2. to consider the accounts and auditor's report;
  - 18.3.3. to appoint the auditor (if necessary); and
  - 18.3.4. to transact any other business specified in the notice convening the meeting.

### **19. GENERAL MEETINGS**

- 19.1. All General Meetings are to be called by the Board.
- 19.2. If there are insufficient Directors in the United Kingdom to form a quorum at a Board Meeting to call a General Meeting it may be called in the same way as a Board Meeting.
- 19.3. On receiving a requisition from the requisite number of Shareholders as specified under Section 303 of the Act the Board must immediately call a General Meeting.

### **20. NOTICE OF GENERAL MEETINGS**

- 20.1. General Meetings must be called by at least 14 clear days' notice.
- 20.2. A General Meeting may be called by shorter notice if this is agreed by a majority in number of the Shareholders who may attend and vote and who together hold 90% or more in nominal value of the Shares giving that right.
- 20.3. The notice must specify:-
  - 20.3.1. the time and place of the General Meeting;
  - 20.3.2. the general nature of the business to be transacted; and,
  - 20.3.3. in the case of an AGM, that it is an AGM.
- 20.4. No business may be transacted at a General Meeting except that specified in the

notice convening the meeting.

- 20.5. Notice of a General Meeting must be given to all of the Shareholders (except any living outside the United Kingdom who have not given an address for service in the United Kingdom), the Directors and the Company's auditors (if any).
- 20.6. The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice will not invalidate the proceedings at that General Meeting.

## **21. QUORUM FOR GENERAL MEETINGS**

- 21.1. No business may be transacted at a General Meeting unless a quorum is present.
- 21.2. A quorum is one Shareholder entitled to vote upon the business to be transacted present in person or represented by a duly authorised representative (appointed pursuant to Article 24.4) but in order for a General Meeting to be quorate a duly authorised representative of the Council must be present if the Council is a Shareholder.
- 21.3. If a quorum is not present within 30 minutes from the time of the General Meeting or a quorum ceases to be present during a General Meeting it must be adjourned to such time and place as the Board decides.
- 21.4. Notice of an adjournment of a General Meeting because of a lack of quorum and the time and place of the adjourned General Meeting must be given to all Shareholders under Article 20.3.
- 21.5. If a quorum is not present within 30 minutes from the time of the adjourned General Meeting it is to be dissolved.
- 21.6. If there is an equality of votes on a show of hands or a ballot the Chair is entitled to a second or casting vote.

## **22. CHAIR AT GENERAL MEETINGS**

- 22.1. The Shareholders present and entitled to vote must choose one of their number to chair the General Meeting (hereafter in this Part C referred to as "the Chair").

## **23. ADJOURNMENT OF GENERAL MEETINGS**

- 23.1. The Chair may, with the consent of a General Meeting at which a quorum is present (and must if so directed by the General Meeting), adjourn it to a time and place agreed by the General Meeting.
- 23.2. The Chair may also, without the consent of a General Meeting, adjourn it (whether or not it has commenced or is quorate) if it appears to the Chair that:-
  - 23.2.1. the number of persons wishing to attend is greater than could reasonably have been expected and cannot conveniently be accommodated in the meeting room;

- 23.2.2. unruly conduct is likely to prevent the orderly holding of the meeting;
  - 23.2.3. an adjournment is necessary for the business of the meeting to be conducted properly; or
  - 23.2.4. a proposal of such importance is made that its consideration by a larger number of Shareholders is desirable.
- 23.3. When a meeting is adjourned under Article 23.2, the time and place for the adjourned meeting is either to be fixed by the Chair at the time of the adjournment or in default it is to be fixed by the Board.
- 23.4. The only business which may be transacted at an adjourned General Meeting is that left unfinished from the General Meeting which was adjourned.
- 23.5. It is not necessary to give notice of a General Meeting which is adjourned under Article 23.1 or Article 23.2 unless it is adjourned for 14 days or more in which case 7 clear days' notice must be given.
- 23.6. Resolutions passed at an adjourned General Meeting are to be treated as having been passed on the date on which they were actually passed.

## **24. VOTING AT GENERAL MEETINGS**

- 24.1. Resolutions are to be decided on a show of hands unless a ballot is properly demanded.
- 24.2. Every Shareholder present has one vote on a show of hands.
- 24.3. Directors who are not Shareholders may speak but not vote at General Meetings.
- 24.4. A Shareholder which is an organisation may, by resolution of its governing body (which shall in the case of the Council mean the Executive) or a committee or an officer of the organisation acting under powers delegated by its governing body, authorise such person as it thinks fit to act as its representative at General Meetings.
- 24.5. A person authorised under Article 24.4 may exercise the same powers on behalf of the organisation as the organisation could exercise if it were an individual Shareholder.
- 24.6. If there is an equality of votes on a show of hands or a ballot the Chair is entitled to a second or casting vote.
- 24.7. An objection to the qualification of any voter may only be raised at the General Meeting at which the vote objected to is tendered. Every vote not disallowed at the General Meeting is valid. An objection made in time must be referred to the Chair whose decision is final.
- 24.8. A declaration by the Chair that a resolution has been carried (or not carried) unanimously, or by a particular majority, which is entered into the minutes of the

meeting is conclusive evidence of the fact unless a ballot is demanded.

## **25. BALLOTS**

- 25.1. A ballot may be demanded at any time during the General Meeting by the Chair or any Shareholder.
- 25.2. The demand for a ballot may be withdrawn before the ballot is taken. If the demand for a ballot is withdrawn the result of the show of hands will stand.
- 25.3. The demand for a ballot will not prevent the General Meeting continuing to transact business other than the question on which the ballot is demanded.
- 25.4. A ballot is to be taken as the Chair directs. The Chair may appoint scrutineers (who need not be Shareholders) and set a time and place to declare the result. The result will be the resolution of the General Meeting at which the ballot was demanded but will be treated as passed when the result is declared.
- 25.5. A ballot on the election of a chair or an adjournment must be taken immediately. A ballot on any other question may be taken either immediately or at such time and place as the Chair directs.
- 25.6. At least 7 clear days' notice must be given of the time and place at which the ballot is to be taken unless the time and place are announced at the General Meeting at which it is demanded.

## **26. SHAREHOLDERS' WRITTEN RESOLUTIONS**

- 26.1. Subject to the Act, a written resolution signed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the holders of the Shares entitled to attend and vote at a General Meeting is as valid as if it had been passed at a General Meeting.
- 26.2. A resolution under Article 26.1 may consist of several documents in similar form each signed by one or more Shareholders.
- 26.3. A resolution under Article 26.1 may be signed for a corporate body or an organisation which is a Shareholder by its authorised representative, a Member of its governing body or secretary, its solicitor or by an attorney.

## **26A AMENDING RESOLUTIONS AT A GENERAL MEETING**

- 26A.1 An ordinary resolution to be proposed at a General Meeting may be amended by ordinary resolution if:

- 26A.1.1 Notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the General Meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chair may determine); and

- 26A.1.2 The proposed amendment does not, in the reasonable opinion of the Chair, materially alter the scope of the resolution.
- 26A.2 A special resolution to be proposed at a General Meeting may be amended by ordinary resolution, if:
- 26A.2.1 The Chair proposes the amendment at the General Meeting at which the resolution is to be proposed; and
- 26A.2.2 The amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 26A.3 If the Chair, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

## PART D. DIRECTORS

### 27. APPOINTMENT AND RETIREMENT OF DIRECTORS

- 27.1. Unless the Shareholders decide otherwise by ordinary resolution the number of Directors shall not be less than two or more than seven and must contain at least one Council officer.
- 27.2. All of the Directors are to be appointed by ordinary resolution of the Shareholders.
- 27.3. The appointment of a Director takes effect at the point at which the Shareholder resolution appointing him is passed.
- 27.4. No Director may be appointed except as set out in the Articles.
- 27.5. Subject to sections 168 and 169 of the Act, the Shareholders may remove any or all of the Directors at any time (with or without reason) by ordinary resolution.
- 27.6. The Shareholders may appoint a person as a Director either in substitution for a Director it has removed or to fill a casual vacancy.
- 27.7. A Director will cease to hold office if he:-
  - 27.7.1. dies;
  - 27.7.2. ceases to be a Director under the Act or is prohibited by law from being a Director;
  - 27.7.3. resigns by written notice to the Company delivered to the Registered Office;
  - 27.7.4. is removed by ordinary resolution of the Shareholders;
  - 27.7.5. he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - 27.7.6. he is, or may be, suffering from mental disorder and either:-
    - 27.7.6.1. he 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 (Care and Treatment) (Scotland) Act 2003; or
    - 27.7.6.2. an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a deputy, curator bonis or other person to exercise powers with respect to his property or affairs.
  - 27.7.7. ceases to be a Councillor or Council Officer (only where that person was



a Councillor or Council Officer on appointment as a Director);

- 27.7.8. is appointed by the Shareholders for a specific period of office as a Director (**Term**) and that Term ends without the Director having been appointed to any further Term.

## **27A ALTERNATE DIRECTORS**

27A.1 Any Director (the "Appointer") may appoint as an alternate ("Alternate Director") any other Director, or any other person from a list of persons approved by resolution of the Shareholders to:-

27A.1.1 exercise that Director's powers; and

27A.1.2 carry out that Director's responsibilities;

in relation to the taking of decisions by the Board or any Committee in the absence of the relevant Appointer.

27A.2 Any appointment or removal of an Alternate Director must be effected by notice in writing to the Company signed by the Appointer or in any other manner approved by the Board.

27A.3 The notice must:-

27A.3.1 identify the proposed Alternate Director; and

27A.3.2 in the case of a notice of appointment of an Alternate Director contain a statement signed by the proposed Alternate Director that he is willing to act as the alternate of the Director giving the notice.

27A.4 An Alternate Director's appointment terminates on the earlier of either of the following:-

27A.4.1 the date specified in a notice from the Appointer to the Company revoking the appointment of the Alternate Director; or

27A.4.2 the date the Appointer ceases to be a Director in accordance with Article 27.7

## **27B RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS**

27B.1 An Alternate Director may act as an Alternate Director to more than one Director and has the same rights in relation to any decision of the Board as the relevant Appointer.

27B.2 Except as the Articles specify otherwise, Alternate Directors:-

27B.2.1 are deemed for all purposes to be Directors when acting as an Alternate Director;

27B.2.2 are liable for their own acts and omissions;

27B.2.3 are subject to the same restrictions as their Appointer;

27B.2.4 are not deemed to be agents of or for their Appointer; and

27B.2.5 in particular and without limitation, each Alternate Director shall be entitled to receive notice of all meetings of the Board and all Committees of which his Appointer is a member.

27B.3 An Alternate Director who is not in their own right a Director:-

27B.3.1 may be included for the purposes of determining whether a quorum is present for any Board Meeting or a Committee provided that his Appointer is eligible to be included in the quorum and is not participating;

27B.3.2 may participate in a decision of the Board or any Committee provided that his Appointer is eligible to participate in the decision of the Board or Committee but is not participating; and

27B.3.3 shall be counted as more than one Director for the purposes of Article 27B.3.1 where he is appointed by two different Appointers.

27B.4 An Alternate Director who is a Director in his own right is entitled in the absence of his Appointer:-

27B.4.1 to be counted twice for the purposes of quorum in his own right as a Director and as an Alternate Director for his Appointer provided that both he and his Appointer are eligible for quorum; and

27B.4.2 to have a separate vote on behalf of his Appointer, in addition to his own vote on any decision of the Board or a Committee provided that he and his Appointer are both eligible to take part in the decision. Where only the Appointer is eligible to take part then the Alternate Director will only have one vote.

27B.5 An Alternate Director may be paid expenses and may be indemnified by the Company to the same extent as his Appointer but shall not be entitled to receive any fee from the Company for serving as an Alternate Director except such part of the Appointer's fee (to the extent the Appointer receives any fee in accordance with Article 28) as the Appointer may direct by notice in writing to the Company. An Alternate Director may only receive part of the Appointer's fee or expenses in accordance with this Article where this would be permitted by Article 28 if references to a Director in that Article were read as an Alternate Director.

## **28. DIRECTORS' FEES AND EXPENSES**

28.1. Subject to Article 28.3 and Article 28.5 a Director who is not a Councillor or a Council Officer may be paid such fee as the Shareholder may from time to time determine by ordinary resolution.

28.2. This provision applies if the majority of the issued share capital of the Company

is held by a charity. In such circumstances any Director who is a trustee or director of that charity will be entitled to receive a fee only if and to the extent he would be able to receive such payment from the charity but has not in fact done so.

- 28.3. Directors who are not Councillors or Council Officers are entitled to be paid all reasonable expenses properly incurred by them in attending Board Meetings and General Meetings and in carrying out their duties as Directors. Directors who are Council Officers may claim expenses in line with their contracts of employment with the Council.
- 28.4. Where any Director is a Councillor, or an elected member or directly elected mayor of any other local authority that is a Shareholder then such a Director may only be paid such fees and/or expenses as are permitted by the Local Authorities (Companies) Order 1995. Where any Director is a Council Officer then they shall not be entitled to any fee and/or expenses from the Company.
- 28.5. The payment of expenses to Directors who are not Councillors or Council Officers is subject to the production of satisfactory receipts.

## **29. DIRECTORS' INTERESTS**

- 29.1. A Director who has a direct or indirect interest in any contract, proposed contract, arrangement or dealing with the Company must declare his interest under sections 177 or 182 of the Act (as appropriate) before the matter is discussed by the Board.
- 29.2. Every Director must ensure that at all times a list is kept at the Registered Office including details of:-
  - 29.2.1. any other body of which he is a director or officer;
  - 29.2.2. any firm of which he is a partner;
  - 29.2.3. any firm or organisation of which he is an employee;
  - 29.2.4. any public body of which he is an official or elected Shareholder;
  - 29.2.5. any company whose shares are publicly quoted in which he owns or controls more than 2% of the shares;
  - 29.2.6. any company whose shares are not publicly quoted in which he owns or controls more than 10% of the shares;
  - 29.2.7. any property owned by the Company or the Parent in which he has an interest or which he occupies; or
  - 29.2.8. any other interest which is significant or material including any direct or indirect financial interest which may influence his judgement on matters being considered or to be considered by the Board.
- 29.3. A decision of the Board will not be invalid because of the subsequent discovery

of an interest which should have been declared.

29.4. Every Director must ensure that at all times he declares to either the Secretary in writing or to a Board Meeting if a person with whom he is “connected” for the purposes of Section 252 of the Act:-

- 29.4.1. is likely to receive a payment or benefit from the Company;
- 29.4.2. is a director, officer or employee of a company, body or organisation which is likely to receive a payment or benefit from the Company;
- 29.4.3. is a partner of a firm which is likely to receive a payment or benefit from the Company;
- 29.4.4. is an official or elected shareholder of a public body which may make or receive a payment or benefit to or from the Company;
- 29.4.5. is the owner or controller of more than 2% of the shares of a company whose shares are publicly quoted and which may make or receive payment or benefit to or from the Company;
- 29.4.6. is the owner or controller of more than 10% of the shares of any company whose shares are not publicly quoted, which may make or receive a payment or benefit to or from the Company; or
- 29.4.7. is a tenant or occupier of any property owned by the Company or is seeking accommodation from the Company.

29.5. A general notice to the Board that a Director has an interest, of the nature and extent specified in the notice, in any transaction or arrangement in which a specified person or class of persons is interested, is to be treated as a disclosure that the Director has an interest in any such transaction of the nature and extent specified.

29.6. For the purposes of this Article 29 an interest of which a Director has no knowledge and of which it is unreasonable to expect him/her to have knowledge is not to be treated as an interest of that Director.

**29.7. Personal Interests**

29.7.1. A Director has a personal interest in a matter which is to be discussed or determined by the Board if he or a member of the Director’s family as defined in section 253 of the Act will be directly affected by the decision of the Board in relation to that matter.

29.7.2. A Director who has a personal interest in a matter which is to be discussed or determined by the Board:-

29.7.2.1. may not count towards the quorum in relation to that matter;

29.7.2.2. may not take part in the discussion in relation to that matter;

29.7.2.3. may not vote in relation to that matter; and

29.7.2.4. must leave the Board Meeting at which the matter is discussed and determined.

29.8. Despite having a personal interest in the outcome, a Director may count towards the quorum, take part in the discussion and vote on a resolution of the Board (other than a resolution to make a payment or grant a benefit to the Director personally which is not at the same time being granted to the other Directors):-

29.8.1. to take out Directors and officers indemnity insurance;

29.8.2. to give an indemnity or to establish a policy for the Company to give indemnities to the Directors generally under Article 38; or

29.8.3. to set a policy for the payment of Directors' fees and expenses under Article 28.

29.9. In the event that there are not sufficient Directors to hold a quorate Board Meeting because one or more Directors have a personal interest in a relevant matter and are not permitted to form part of the quorum, then those Directors with a personal interest may form part of the quorum for the purposes of agreeing to circulate an ordinary resolution to the Shareholders detailing the extent of the conflict arising from the personal interest and requesting the Shareholders to authorise the Director's conflict arising from their personal interest.

29.10. In the event that a resolution is passed by the Shareholders in accordance with Article 29.9, the Director(s) with such an authorised personal interest may then count as part of the quorum and for voting purposes in relation to the relevant matter.

#### **29.11. Non-Personal Interests**

29.11.1. A Director who has an interest in a matter which is to be discussed or determined by the Board but which is not a personal interest may, subject to his fulfilling his duty to act in the best interests of the Company and to the right of the remaining Directors to require that he should withdraw from the Board Meeting at which the matter is to be discussed or determined:-

29.11.1.1. count towards the quorum in relation to that matter;

29.11.1.2. take part in the discussion in relation to that matter;

29.11.1.3. remain in the Board Meeting at which the matter is to be discussed or determined; and

29.11.1.4. vote in relation to that matter.

29.11.2. A Director is not to be regarded for the purposes of this Article 29 as having a non-personal interest in any matter if his interest in that matter arises solely because:-

29.11.2.1. he is a Director or an officer of any body the accounts of which are consolidated with the Company's accounts;

29.11.2.2. he is a Councillor or Council Officer, or an elected member or directly elected mayor of any other local authority that is a Shareholder;

29.11.2.3. he is a director or officer of any subsidiary of the Company; and/or

29.11.2.4. he is a director or officer of the Company's holding company or another person that wholly owns the Company; but he must nonetheless disclose his interest in accordance with Article 29.1.

29.12. A Director may disclose the business of the Company to the Council where the Council is a Shareholder.

## **PART E. BOARD MEETINGS**

### **30. POWERS OF THE BOARD**

- 30.1. Subject to the Act, the Articles and any Relevant Agreement, the business of the Company is to be managed by the Board who may exercise all the powers of the Company.
- 30.2. Alterations of the Articles do not invalidate earlier acts of the Board which would have been valid without the alteration.
- 30.3. The Shareholders may, by special resolution, direct the Board and/or any Director to take, or refrain from taking, specified action.
- 30.4. No special resolution under Article 30.3 shall invalidate anything which the Board and/or any Director may have done before the resolution is passed.
- 30.5. Decisions on matters specified in a Relevant Agreement or otherwise and designated as "Shareholder Reserved Matters" shall be reserved to the Shareholders of the Company from time to time for their prior approval.

### **31. BOARD MEETINGS**

- 31.1. Subject to the Articles and any Relevant Agreement, the Board may regulate Board Meetings as it wishes.
- 31.2. Board Meetings are to be called by any Director or the Secretary (if any).
- 31.3. Seven clear days' notice of Board Meetings must be given to each of the Directors but it is not necessary to give notice of a Board Meeting to a Director who is out of the United Kingdom.
- 31.4. Notice of any Directors' meeting must indicate:-
  - 31.4.1. Its proposed date and time;
  - 31.4.2. Where it is to take place; and
  - 31.4.3. If it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 31.5. A Board Meeting which is called on shorter notice than required under Article 31.3 is deemed to have been duly called if at least two Directors certify in writing that because of special circumstance it ought to be carried as a matter of urgency.
- 31.6. Questions arising at a Board Meeting are to be decided by a simple majority of votes and each Director is to have one vote. Where a Director is also an Alternate Director then he has an additional vote on behalf of each Appointer who is:-

- 31.6.1. Not participating in the Board Meeting; and
- 31.6.2. Would have been entitled to vote if they were participating in it.
- 31.7. If there is an equality of votes the Chair (to include any other Director chairing the meeting) is entitled to a second or casting vote.
- 31.8. A technical defect in the appointment of a Director or in the delegation of powers to a Committee of which the Board is unaware at the time does not invalidate decisions taken in good faith.
- 31.9. If the Company only has one Director and no provision of these Articles requires it to have more than one Director then that Director may act alone and take decisions without regard to any of the provisions of these Articles relating to Board or Director's decision-making.

## **32. QUORUM FOR BOARD MEETINGS**

- 32.1. Subject to Article 32.3, the quorum for Board Meetings is three Directors.
- 32.2. A Director may be part of the quorum of a Board Meeting if he can hear comment and vote on the proceedings through telephone, video conferencing or other communications equipment.
- 32.3. The Board may act despite vacancies in its number but if the number of Directors is less than three the Board may act only to procure the appointment of Directors by ordinary resolution of the Shareholders under Article 27.2.
- 32.4. At an inquorate Board Meeting or one which becomes inquorate for more than 20 minutes the Directors present may act only to call a General Meeting.

## **33. CHAIR**

- 33.1. The Company must have a Chair. The Chair (and any deputy who serves in his/her place) must be elected by the Directors from amongst their number.
- 33.2. The Chair is to hold office for 3 years or such other period as the Board shall from time to time determine.
- 33.3. The Chair may resign from his position at any time (without necessarily resigning as a Director at the same time).
- 33.4. Where there is no Chair the first item of business of a Board Meeting must be to elect one.
- 33.5. The Chair may be removed from the office of Chair (but not as a Director) only at a Board Meeting called for the purpose where the resolution to remove him is passed by 75% of the Directors who are present and voting. The Chair must be given an opportunity to say why he should not be removed.
- 33.6. The Chair is to chair all Board Meetings at which he is present unless he does



not wish to do so.

- 33.7. If the Chair is not present within 10 minutes after the starting time of a Board Meeting another Director must chair that Board Meeting during the Chair's absence.
- 33.8. If the Chair is absent or does not wish to chair the Board Meeting then the Board must elect one of the other Directors who is present to chair the Board Meeting during the Chair's absence.

#### **34. DELEGATION**

34.1. The Board may:-

- 34.1.1. establish Committees consisting of those persons the Board decides;
  - 34.1.2. delegate to a Committee any of its powers as they think fit;
  - 34.1.3. create rules of procedure for all or any Committees which prevail over rules of procedure derived from the Articles, if they are not consistent with them;
  - 34.1.4. determine the quorum for Committee meetings; and
  - 34.1.5. revoke (in whole or in part) or alter a delegation at any time.
- 34.2. The Members of a Committee are to be appointed by the Board to hold office for whatever period the Board decides and may be removed or replaced by the Board at any time.
- 34.3. The Board may specify the financial limits within which any Committee must function.
- 34.4. The Board may authorise a Committee to operate any bank account. The Board must decide upon the way in which that account must be operated.
- 34.5. The Board and/or any individual Director may also delegate to any Directors or any other person such of their powers as they consider desirable to be exercised by him. The Board or the Director (as appropriate) may revoke (in whole or in part) or alter such a delegation at any time.

#### **35. OBSERVERS**

- 35.1. The Board may allow individuals who are not Directors to attend Board Meetings as Observers on whatever terms they decide.
- 35.2. Observers may not vote, but may take part in discussions unless the Board decides otherwise.
- 35.3. The Board may exclude Observers from any part of a Board Meeting where the Board considers the business is private.

### **36. DIRECTORS' WRITTEN RESOLUTIONS**

- 36.1. A written resolution signed by all of the Directors entitled to receive notice of a Board Meeting (provided they would constitute a quorum at a Board Meeting) is as valid as if it had been passed at a Board Meeting.
- 36.2. A written resolution signed by all of the members of a Committee (provided they would constitute a quorum of that Committee) is as valid as if it had been passed at a meeting of that Committee.
- 36.3. A resolution under Articles 36.1 or 36.2 may consist of several documents in similar form each signed by one or more of the Directors or Committee members and will be treated as passed on the date of the last signature.

## **PART F. OFFICERS**

### **37. THE SECRETARY**

- 37.1. The Board may decide whether to appoint a Secretary and for what term.
- 37.2. Where appointed a Secretary may be removed by the Board at any time.
- 37.3. No Director may occupy a salaried position of Secretary.
- 37.4. Where any Secretary appointed is a Council Officer then he shall not be paid any fee or expenses by the Company.

### **38. INDEMNITIES AND INSURANCE FOR OFFICERS AND EMPLOYEES**

- 38.1. No officer or employee is to be liable for losses suffered by the Company except those due to his own dishonesty or gross negligence.
- 38.2. Subject to Article 38.3, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
  - 38.2.1. each relevant officer may be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:
    - 38.2.1.1. in the actual or purported execution and/or discharge of his duties, or in relation to them; and
    - 38.2.1.2. in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),
  - 38.2.2. including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and
  - 38.2.3. the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 38.2.2 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.
- 38.3. This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

38.4. The Board may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

38.5. In this Article:

38.5.1. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate;

38.5.2. a "relevant officer" means any Director or other officer or former Director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor); and

38.5.3. a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company.

## **PART G. STATUTORY AND MISCELLANEOUS**

### **39. MINUTES**

- 39.1. The Board must arrange for minutes to be kept of all Board and General Meetings. The names of the Directors present must be included in the minutes.
- 39.2. Copies of the draft minutes of Board Meetings must be distributed to the Directors as soon as reasonably possible after the meeting.
- 39.3. Minutes must be approved as a correct record at the next General Meeting (as regards minutes of General Meetings) or Board Meeting (as regards minutes of Board Meetings). Once approved they must be signed by the person chairing the meeting at which they are approved.
- 39.4. The Board must keep minutes of all of the appointments made by the Board.

### **40. ACCOUNTS ANNUAL REPORT AND ANNUAL RETURN**

- 40.1. The Company must comply with Part 15 of the Act in:-
  - 40.1.1. preparing and filing an annual Directors' report and annual accounts; and
  - 40.1.2. making an annual return to the Registrar of Companies.
- 40.2. The Company must comply with Part 16 of the Act in relation to the audit or examination of accounts to the extent that the law requires.
- 40.3. The annual Directors report and accounts must contain:-
  - 40.3.1. the revenue accounts and balance sheet for the last accounting period;
  - 40.3.2. the auditor's report on those accounts (if applicable); and
  - 40.3.3. the Board's report on the affairs of the Company.
- 40.4. The accounting records of the Company must always be open to inspection by a Director.

### **41. BANK AND BUILDING SOCIETY ACCOUNTS**

- 41.1. All bank and building society accounts must be controlled by the Directors and must include the name of the Company.
- 41.2. Cheques and orders for the payment of money must be signed in accordance with the Board's instructions.

### **42. EXECUTION OF DOCUMENTS**

- 42.1. If the Company has a seal it may only be used with the authority of the Board (which may be given generally for documents of a particular type).
- 42.2. Unless the Board decides otherwise, documents to which the seal is attached or which are executed as deeds must be signed by:-
  - 42.2.1. two Directors; or
  - 42.2.2. one Director and the Secretary (where appointed); or
  - 42.2.3. one Director in the presence of a witness who attests the Director's signature.

#### **43. NOTICES**

- 43.1. Notices under the Articles must be in writing (which shall include suitable electronic means) except notices calling Board Meetings.
- 43.2. A Shareholder present in person at a General Meeting is deemed to have received notice of the General Meeting and (where necessary) of the purposes for which it was called.
- 43.3. The Company may give a notice to a Shareholder, Director or auditor:-
  - 43.3.1. personally;
  - 43.3.2. by sending it by post in a prepaid envelope;
  - 43.3.3. by suitable electronic means;
  - 43.3.4. by leaving it at his address; or
  - 43.3.5. as the Board prescribes from time to time.
- 43.4. Notices under Article 43.3.2 to 43.3.4 may be sent:-
  - 43.4.1. to an address in the United Kingdom which that person has given the Company;
  - 43.4.2. to the last known home or business address of the person to be served; or
  - 43.4.3. to that person's address in the Company's register of Shareholders.
- 43.5. Any notice given in accordance with the Articles is to be treated for all purposes as having been received:-
  - 40.5.1 24 hours after being sent by electronic means or delivered by hand to the relevant address;

- 40.5.2 48 hours after being sent by first class post to that address;
  - 40.5.3 on being handed to a Shareholder or Director personally;
  - 40.5.4 as soon as the Shareholder or Director acknowledges actual receipt.
- 43.6. A notice may be served on the Company by delivering it or sending it to the Registered Office or by handing it to the Secretary (where appointed).
- 43.7. The Board may make standing orders to define other acceptable methods of delivering notices.

#### **44. STANDING ORDERS**

- 44.1. Subject to Article 44.4:-
- 44.1.1. the Board may from time to time adopt, alter, add to or repeal make standing orders for the proper conduct and management of the Company; and
  - 44.1.2. the Company in General Meeting may alter, add to or repeal the standing orders.
- 44.2. The Board must use such means as they think sufficient to bring the standing orders to the notice of Shareholders.
- 44.3. Standing orders are binding on all Shareholders and Directors.
- 44.4. No standing order may be inconsistent with or may affect or repeal anything in the Articles.

**DATED**

**2019**

**GOVERNANCE AGREEMENT**

between

**(1) HEART OF CUMBRIA LIMITED**

**(2) EDEN DISTRICT COUNCIL**

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham B3 2ES

Tel: 0121 200 3242

Ref: OJD/ADL: 45364.0001



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**THIS AGREEMENT IS DATED**

**2019**

## **PARTIES**

- (1) **Heart of Cumbria Limited** (Company Registration Number: 10245262) whose registered office is at Town Hall, Penrith, Cumbria, CA11 7QF (the “**Company**”);
- (2) **Eden District Council** of Town Hall, Penrith, Cumbria, CA11 7QF (the “**Council**”);

## **BACKGROUND**

- (A) The Company is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement is wholly owned by the Council.
- (B) The Council has established the Company under section 1 and section 4, Localism Act 2011 to act as a commercial purpose and trading entity.
- (C) The Company is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authorities (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of the Company and the relationship between the Company and the Council.
- (E) The Council's role as shareholder is exercised by the Executive and references in this agreement to decision making on behalf of the Council shall be taken to refer to the Executive unless otherwise stated, or unless the Council otherwise decides.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“Act” means the Companies Act 2006;

“Adequate Procedures” means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

“Articles”	means the Articles of Association of the Company as amended or superseded from time to time;
“Board”	means the board of Directors of the Company as constituted from time to time;
“Business”	has the meaning given in clause 2.1 and as may be further defined in any adopted Business Plan;
“Business Case”	means any business case for a particular activity by the Company that has been developed by the Company and adopted by the Board (where in accordance with the Business Plan or any other authority given to the Board by the Council) or by the Council;
“Business Day”	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
“Business Plan”	means the document that may be agreed and adopted by the Company in accordance with clause 6;
“Confidential Information”	has the meaning given in clause 11;
“Director”	means a director of the Company;
“District”	means the administrative area of the Council;
“electronic form”	has the meaning given in section 1168 of the Act;
“Encumbrance”	means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;  means the cabinet of the Council and (where

“Executive”	appropriate) includes any executive committee of the cabinet and includes any individual member of the Cabinet/portfolio holder or council officer acting under delegated authority;
“Financial Year”	in relation to the Company, means the period of 12 months commencing on 1 April and ending on 31 March each year;
“Group”	in relation to a company, means that company, any Subsidiary or Holding Company from time to time of that company and any Subsidiary from time to time of a Holding Company of that company; and each company in a Group is a member of the Group;
“Holding Company and Subsidiary and Wholly-Owned Subsidiary”	mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;
“Named Officer”	the officer or officers who is/are notified by the Council to the Company from time to time for the purposes set out in this agreement but in the absence of such notification is taken to be the Council's Director of People and Place from time to time
“Party/Parties”	the Council and/or the Company as appropriate;
“Share(s)”	means the 1,000,001 £1 shares in the Company;
“Shareholders”	means the holders of Shares in the Company;
“Shareholder Reserved Matters”	means the Shareholder Reserved Matters listed in Schedule 2;

“Support Services”	has the meaning set out in Schedule 1;
“Support Services Agreement”	the agreement(s) made between the Council and the Company relating to the provision of support services by the Council to the Company,

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A person includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, references to the singular include the plural and vice versa, and to the whole include part and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to writing or written includes faxes and email but no other electronic form.
- 1.10 Documents in agreed form are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this Agreement to other documents referred to in this Agreement is a reference to the following documents: the Articles and the Support Services Agreement.

- 1.13 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.15 Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

## **2. THE BUSINESS OF THE COMPANY**

- 2.1 The business of the Company is to undertake activities for commercial purposes and to trade within the District and beyond (the "Business").
- 2.2 The Business may be modified to include such further activities as the Council may designate.
- 2.3 The Business shall be carried out by the Company in accordance with any Business Plan adopted and any Business Case adopted under that Business Plan or otherwise approved by the Council.
- 2.4 The Company shall at all times:
- (a) comply with any adopted Business Plan;
  - (b) ensure that social and ethical considerations are taken into account in decision making and all other matters;
  - (c) comply with the provisions of this Agreement and the Articles.

## **3. DIRECTORS AND MANAGEMENT**

- 3.1 The Directors of the Company are appointed and dismissed by the Council.
- 3.2 The Board has responsibility for the supervision and management of the Company and its business. The Board shall ensure that the Company shall not transact any of the business described in the Shareholder Reserved Matters without first referring the matter to the Council for decision.
- 3.3 Where the Directors are employees or officers of the Council they shall not be entitled to any remuneration from the Company in their capacity as Directors and their expenses shall be reimbursed by the Council (and re-charged to the Company by the Council). Where the Directors are elected members of the Council then they shall only be entitled to remuneration and expenses in accordance with the Local Authorities (Companies) Order 1995.

- 3.4 Any Secretary appointed in accordance with Article 37 who is an employee or officer of the Council shall not be entitled to any remuneration from the Company in their capacity as Secretary and their expenses shall be reimbursed by the Company.
- 3.5 The Company shall procure that Board meetings occur at least quarterly.

#### **4. LAND AND FINANCE FOR THE COMPANY**

- 4.1 There is no obligation on the Council to provide any land, capital or other finance to the Company unless the Parties agree otherwise in writing.
- 4.2 If the Council provides land, capital or other finance pursuant to this clause 4 the Parties shall negotiate in good faith on any terms to apply to such capital or other finance.

#### **5. ANTI-CORRUPTION**

- 5.1 The Company undertakes to the Council that:
- (a) it will not, in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
  - (b) it will maintain in place, anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures;
  - (c) it will maintain in place, anti-money laundering procedures in substantially the same form as the Council's anti-money laundering procedures; and
  - (d) from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 5.1(a) to clause 5.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

#### **6. THE BUSINESS PLAN**

- 6.1 The Company must adopt a Business Plan for each Financial Year except for any Financial Year where the Council by ordinary resolution disapplies this requirement.
- 6.2 The Board is responsible for preparing, reviewing and updating any Business Plan.
- 6.3 In accordance with the Shareholder Reserved Matters, the Council must approve the adoption of any Business Plan and any revision or update thereof ahead of adoption by the Board.

- 6.4 The Company shall consult the Named Officer of the Council ahead of presenting a Business Plan or revision or update thereof to the Council for approval under clause 6.3.

## **7. ACCOUNTING**

- 7.1 The Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 7.2 The Company shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 7.3 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any employees (if any) of the Company.
- 7.4 The Company shall supply the Named Officer of the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:
- (a) a copy of any proposed Business Plan for approval in accordance with clause 6 and the Shareholder Reserved Matters;
  - (b) a copy of the audited accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within two months of the end of the year to which the audited accounts relate; and
  - (c) quarterly management accounts of the Company to be supplied as soon as reasonably practicable following the end of the months to which they relate and in any event by the final day of the month following the month to which the accounts relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require.
  - (d) a copy of any report reviewing or monitoring the implementation and operation by the Company of Adequate Procedures such report to be provided within 10 Business Days of it being reported to the Board.
  - (e) copies of any proposed or adopted Business Cases.
- 7.5 The Council may require the Company, and the Company shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary to enable the Council to comply with filing, elections,



returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

## **8. DIVIDENDS**

8.1 The Parties agree that the Company shall consult and have regard to the views of the Named Officer of the Council prior to:

- (a) the Board recommending any dividend payment/distribution for approval by the Council; and/or
- (b) the Board making any interim dividend payments.

## **9. TERMINATION**

9.1 This Agreement may be terminated at any time by the Council serving notice to terminate on the Company.

9.2 The following provisions of this Agreement remain in full force after termination:

- (a) Clause 1 (Interpretation);
- (b) this clause 9;
- (c) Clause 11 (Confidentiality);
- (d) Clause 13 (Whole Agreement);
- (e) Clause 16 (Variation and Waiver);
- (f) Clause 17 (Costs);
- (g) Clause 21 (Notice);
- (h) Clause 23 (Language);
- (i) Clause 24 (Severance);
- (j) Clause 27 (Governing Law and Jurisdiction); and
- (k) Clause 28 (Dispute Resolution).

9.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

## **10. STATUS OF THE AGREEMENT**

10.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this Agreement shall prevail over the Articles unless the Council directs otherwise. The Parties shall procure that

the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

## **11. CONFIDENTIALITY**

11.1 In this clause Confidential Information means any information which:

- (a) any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 7);
- (b) any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of another Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or
- (c) relates to the contents of any adopted Business Plan or Business Case.

but excludes the information in clause 11.2.

11.2 Information is not Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
- (b) a Party can establish to the reasonable satisfaction of the other Parties that it found out the information from a source not connected with the other Parties or its Group and that the source is not under any obligation of confidence in respect of the information;
- (c) either Party can establish to the reasonable satisfaction of the other Parties that the information was known to the first Party before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

11.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries shall keep confidential), any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;
- (b) with the written consent of the Party to whom the Confidential Information belongs or relates to or any member of its Group that the information relates to;

- (c) as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995) or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other Parties and which would not thereby prevent the disclosing Party from complying with its legal obligations;
  - (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
  - (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 11.3)
- 11.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary informs) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:
- (a) to keep it confidential; and
  - (b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).
- 11.5 Upon termination of this Agreement, any Party may demand from any other Party the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the second Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its officers and employees and those of its Subsidiaries shall):
- (a) return such documents; and
  - (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,
- save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.
- 11.6 The obligations of the Parties in this clause 11 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

## **12. INFORMATION, SCRUTINY AND ACCOUNTABILITY**

- 12.1 Subject to clause 12.4, the Parties acknowledge that the Council and the Company are each subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (Information Legislation). The Parties shall use

reasonable endeavours to assist, within the timescale specified by a Party in receipt of a request for information under the Information Legislation ("the receiving Party"), the receiving Party in responding to any requests for information under that legislation to include the provision of any and all documents that the receiving Party considers reasonably necessary to enable it to respond to the information request.

- 12.2 The Company shall, and shall procure that its employees and agents shall, comply at all times with the Council's policies and procedures on Freedom of Information.
- 12.3 Notwithstanding clauses 12.1 and 12.2, the Company shall comply at all times with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 as that legislation applies directly to the Company.
- 12.4 Where the Company is in receipt of any request for information under the Information Legislation, then it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 12.5 The Company shall use reasonable endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 12.6 The Company shall use reasonable endeavours to assist the Council in responding to any requests for information about the Company and/or the Business submitted by elected members of the Council.
- 12.7 The Company shall, if the Council on reasonable notice so decides, make available officers and/or employees of the Company to attend before and answer questions at any meeting of:
  - (a) the Executive;
  - (b) an executive committee / sub-committee of the Executive;
  - (c) any overview and scrutiny committee of the Council; and/or
  - (d) officers and/or elected members of the Council (other than those listed at (a) to (c)).
- 12.8 The Company shall supply any information to the Executive, executive committees, executive sub-committees, overview and scrutiny committees, or officers (including the Named Officer) of the Council as the Council and/or the Named Officer may reasonably request.
- 12.9 The Company shall allow one or more representatives of the Council to attend as Observers at meetings of the Board of the Company; or at committees of the Board.

12.10 The Company shall use reasonable endeavours to assist the Council in responding to any inquiry or investigation of/by the Local Government and Social Care Ombudsman (or any successor).

### **13. LOCAL AUTHORITIES (COMPANIES) ORDER 1995**

13.1 The Company shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time relation to the operation, management and activities of a local authority owned company.

### **14. WHOLE AGREEMENT**

14.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

14.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

14.3 Nothing in this clause 14 shall limit or exclude any liability for fraud.

### **15. ASSIGNMENTS**

15.1 The Company may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council in accordance with Schedule 2.

15.2 Each person that has rights under this Agreement is acting on its own behalf.

### **16. VARIATION AND WAIVER**

16.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.

16.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

16.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

- 16.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 16.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 16.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

## **17. COSTS**

Unless otherwise provided or agreed in writing, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

## **18. NO PARTNERSHIP**

The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

## **19. GOOD FAITH**

- 19.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.
- 19.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

## **20. THIRD PARTY RIGHTS**

- 20.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.
- 20.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

## **21. NOTICE**

- 21.1 A notice given under this Agreement:
- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

- (b) shall be sent for the attention of the person, and to the address, email address, or fax number, given in this clause 21 (or such other address, email address, fax number or person as the relevant Party may notify to the other Party); and
- (c) shall be:
  - (i) delivered personally; or
  - (ii) delivered by commercial courier; or
  - (iii) sent by fax; or
  - (iv) sent by email to such email addresses as may be notified by each Party to the other. As at the date of this Agreement the email addresses for each Party are:
    - (A) The Council: []; and
    - (B) The Company: []; or
  - (v) sent by pre-paid United Kingdom first-class post or recorded delivery.

21.2 The addresses for service of notice are:

- (a) The Council and the Company – the addresses stated at the beginning of this Agreement.

21.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) if sent or supplied by fax, one hour after the notice was sent or supplied; or
- (d) if sent by email, on the day of transmission if before 4.00 pm on a Business Day otherwise at 10.00 am on the next Business Day thereafter provided that the sender has a transmission report showing a successful transmission to the correct email address (delivery receipt) and evidence of the email having been opened (read receipt); or
- (e) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or 5 Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least 5 Business Days was guaranteed at the time of sending and the sending Party receives a confirmation of delivery from the courier service provider; or

- (f) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

21.4 To prove delivery, it is sufficient to prove that notice was transmitted by fax to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

## **22. INTEREST ON LATE PAYMENT**

22.1 Where a sum is required to be paid under this Agreement but is not paid before or on the date the Parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 22.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).

22.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

## **23. LANGUAGE**

If this Agreement is translated into any language other than English, the English language text shall prevail.

## **24. SEVERANCE**

24.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

## **25. FURTHER ASSURANCE**

Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.



## **26. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

## **27. GOVERNING LAW AND JURISDICTION**

- 27.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 27.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **28. DISPUTE RESOLUTION**

- 28.1 In the event that any dispute arises between the Council and the Company then in the first instance the dispute shall be referred for resolution to the Named Officer of the Council and the Chair of the Board.
- 28.2 If any dispute arises in connection with this Agreement which cannot be resolved in accordance with clause 28.1, the Parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with [the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR Notice**) to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 28.3 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the Parties cannot agree within 14 Business Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.
- 28.4 Unless otherwise agreed, the mediation will start not later than twenty Business Days after the date of the ADR Notice. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings.
- 28.5 Where the Parties are unable to resolve a dispute in accordance with clauses 28.1 to 28.4 then the Council may at any time serve a notice in writing on the Company directing the Company and the Board to take and/or refrain from taking actions specified in the notice – such notice to be lawful and consistent with the Act, any

applicable legislation and/or the fiduciary duties of the Directors and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

- 28.6 The Company must comply with any notice served pursuant to clause 28.5 within the timescales specified in the notice, provided always that where the relevant Board considers that compliance with any such notice may, in the view of the Board, place the Directors in breach of their fiduciary duties to the Company then the Board shall seek shareholder approval before implementing the requirements of the notice.

## **29. INTERNAL COUNCIL DECISION MAKING**

- 29.1 The Company acknowledges that the Council in its capacity as the Shareholder will make decisions through the Executive and that the Executive may report on its activities and the performance of the Company to the Council (including meetings of the Full Council and Council committees) for the purposes of Overview and Scrutiny. References therefore in this agreement to the Council refer to the Executive.
- 29.2 The Company shall ensure that:
- (a) Copies of Board minutes are made available to the Council following each Board meeting; and
  - (b) Not less than twice in every Financial Year, the Board produces a report on the performance and activities of the Company and provides the same to the Council.
- 29.3 Notwithstanding, clause 12.7 the Company shall make available the Chair of the Board (or a substitute Director) to attend meetings of the Council unless the Council confirms in writing that attendance is not required.
- 29.4 The Company shall consult the Council prior to adopting any policy or procedure for the operation and management of the Company.
- 29.5 The Council may require that the Company adopts certain policies or procedures in the Company's operation from time to time.
- 29.6 Where the Board considers that compliance with any requirement of the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to the Company then the Board shall seek shareholder approval of the actions required and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

This Agreement has been executed and delivered as a deed on the date stated at the beginning of it.

## **Schedule 1      Support Services**

The Council will provide all support services to the Company, unless the services provided by the Council does not meet the needs of the Company.

The Council and the Company will enter into a separate service level agreement.

DRAFT

## Schedule 2      Shareholder Reserved Matters

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
<b>1. Business Plan</b>	<p>Adopting the first and all future Business Plans.</p> <p>Approving any material change to any previously approved Business Plan, which the Board is unable to approve.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change in the budgeted revenue is less than £500,000 in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions which relate to commitments up to a value of £100,000.</p>
<b>2. Appointment and Removal of Directors</b>	<p>Appointment and removal of all Directors; including the approval of the list of possible Alternate Directors.</p>	<p>Appointment and removal of all Board advisers (to include terms and conditions of relationship).</p>	<p>None.</p>
<b>3. Variations to the Articles of Association</b>	<p>Any variations to the Company's Articles.</p>	<p>None.</p>	<p>None.</p>

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
<b>4. Executive Director Remuneration</b>	The approval of the terms and conditions of employment of any executive director of the Company (if any).	Non-material alterations to terms and conditions  Performance related pay awards	None.
<b>5. Employee Recruitment and Remuneration</b>	Approval of a pay framework and job evaluation scheme for the Company.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K and is within the approved pay framework.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £75K and is within the approved pay framework.
<b>6. Shares</b>	The acquisition of any shares or any option over shares in the capital of any company.  The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation,	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	allotment, issuing or redemption of any such shares or securities.		
<b>7. Issuing or Accepting of Borrowing / Loan Capital</b>	<p>Entering into any borrowing, the issuing of any loan capital or entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan.</p> <p>Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.</p>	Entering into any borrowing or issuing any loan capital where this is approved in the current Business Plan, to the extent and on the terms set out in the approved Business Plan.	None.
<b>8. Nature of Company</b>	Any material changes to the nature of the Company's	Any changes to the nature of the Company's business, or commencing	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
<b>Business</b>	business, or commencing any new business not contemplated by the approved Business Plan.	any new business, but only where this is contemplated by the approved Business Plan.	
<b>9. Acquisitions or Disposals</b>	The acquisition of any freehold or leasehold land or building or the entering into of any option in respect of any land or building where this is not contemplated by the approved Business Plan.	The acquisition of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan.	None.
<b>10. Company / Group Structure</b>	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture  Amalgamating or merging with any other company or undertaking	None.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
<b>11. Stock Exchange Listing</b>	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
<b>12. Appointment of Agents or Subcontractors or Arms' Length Transactions</b>	None	Appointment of contractors or subcontractors where this is in pursuance of the approved Business Plan	Appointment of contractors or subcontractors in pursuance of the approved Business Plan up to a value of £100,000.
<b>13. Part sale of the business</b>	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
<b>14. Business Name and Location</b>	Changing the Company name, trading name, or registered office, or changing the location of any offices outside of the Company's registered office to a	Changing the location of any offices outside of the Company's registered office to another location within the District only.	None.



Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	location outside of the District.		
<b>15. Intellectual Property</b>	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	Where necessary to effect decisions delegated as above up to £100,000
<b>16. Encumbrances</b>	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens arising in the normal course of business.	None	None
<b>17. Redundancy</b>	None	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or	Dismissing any employee in circumstances in which the Company will incur or agrees to bear

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
		other costs (including actuarial costs) in excess of £75K.	redundancy or other costs (including actuarial costs) no greater than £75K.
<b>18. Pension</b>	<p>Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.</p> <p>Changes to pension arrangements for staff whether in the Local Government Pension Scheme or otherwise. Any other decisions of the Company which will have an effect on liabilities of the Shareholder under the Local Government Pension Scheme or any associated guarantee.</p>	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
19. <b>Company Winding up</b>	Passing any resolution for the winding up of the Company, or presenting any petition for its administration (save for in insolvency).	None.	None.

The **COMMON SEAL** of  
**EDEN DISTRICT COUNCIL**

was affixed to this Deed in the presence  
of:

.....  
[INSERT DETAILS]

Executed as a **DEED** by **HEART  
OF CUMBRIA LIMITED** acting by  
[.....], a  
director, in the presence of:

.....  
Director

.....  
SIGNATURE OF WITNESS

.....  
NAME OF WITNESS (IN BLOCK  
CAPITALS)

.....  
ADDRESS OF WITNESS

.....  
OCCUPATION OF WITNESS

# **APPROVAL**

Registration number: 10245262

**Heart of Cumbria Limited**  
**Directors' Report and Financial**  
**Statements**  
**31 March 2019**



# Heart of Cumbria Limited

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# **Heart of Cumbria Limited**

## **Company Information**

**Directors** P Breen  
G M Nicolson  
J M Owen  
G R Owens

**Company secretary** P G Foote

**Registered office** Town Hall  
PENRITH  
CA11 7QF

**Auditors** Dodd & Co Limited  
Chartered Accountants & Registered Auditors  
FIFTEEN Rosehill  
Montgomery Way  
Rosehill Estate  
CARLISLE  
CA1 2RW

## Heart of Cumbria Limited

### Directors' Report for the Year Ended 31 March 2019

The directors present their report and the financial statements for the year ended 31 March 2019.

#### Directors of the company

The directors who held office during the year were as follows:

P Breen

S J Lancaster (resigned 7 September 2018)

G M Nicolson

J M Owen

G R Owens

#### Principal activity

The principal activity of the company is property letting.

#### Disclosure of information to the auditors

Each director has taken steps that they ought to have taken as a director in order to make themselves aware of any relevant audit information and to establish that the company's auditors are aware of that information. The directors confirm that there is no relevant information that they know of and of which they know the auditors are unaware.

#### Small companies provision statement

This report has been prepared in accordance with the special provisions relating to companies subject to the small companies regime within Part 15 of the Companies Act 2006.

Approved by the Board on 27 June 2019 and signed on its behalf by:



J M Owen  
Director



## **Heart of Cumbria Limited**

### **Statement of Directors' Responsibilities**

The directors acknowledge their responsibilities for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law the directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). Under company law the directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing these financial statements, the directors are required to:

- select suitable accounting policies and apply them consistently;
- make judgements and accounting estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

## Heart of Cumbria Limited

### Independent Auditor's Report to the Members of Heart of Cumbria Limited

#### Opinion

We have audited the financial statements of Heart of Cumbria Limited (the 'company') for the year ended 31 March 2019, which comprise the Profit and Loss Account, Balance Sheet, and Notes to the Financial Statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including FRS 102 Section 1A 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' (United Kingdom Generally Accepted Accounting Practice).

In our opinion the financial statements:

- give a true and fair view of the state of the company's affairs as at 31 March 2019 and of its profit for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

#### Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the FRC's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

#### Other information

The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.



## Heart of Cumbria Limited

### Independent Auditor's Report to the Members of Heart of Cumbria Limited (continued)

#### Opinion on other matter prescribed by the Companies Act 2006

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Directors' Report for the financial year for which the financial statements are prepared is consistent with the financial statements; and
- the Directors' Report has been prepared in accordance with applicable legal requirements.

#### Other matters

The prior period financial statements are unaudited.

#### Matters on which we are required to report by exception

In the light of our knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified material misstatements in the Directors' Report.

We have nothing to report in respect of the following matters where the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all the information and explanations we require for our audit; or
- the directors were not entitled to prepare the financial statements in accordance with the small companies regime and take advantage of the small companies' exemptions in preparing the Directors' Report and from the requirement to prepare a Strategic Report.

#### Responsibilities of directors

As explained more fully in the Statement of Directors' Responsibilities [set out on page 3], the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

#### Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of our auditor's report.

## **Heart of Cumbria Limited**

### **Independent Auditor's Report to the Members of Heart of Cumbria Limited (continued)**

#### **Use of our report**

This report is made solely to the company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

.....  
Martin S Ward (Senior Statutory Auditor)  
For and on behalf of Dodd & Co Limited, Statutory Auditor

FIFTEEN Rosehill  
Montgomery Way  
Rosehill Estate  
CARLISLE  
CA1 2RW

27 June 2019



## Heart of Cumbria Limited

### Profit and Loss Account for the Year Ended 31 March 2019

	Note	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
Turnover		22,037	-
Cost of sales		<u>(6,243)</u>	<u>-</u>
Gross profit		15,794	-
Administrative expenses		(26,027)	(40,285)
Other operating income		<u>11,674</u>	<u>40,285</u>
Operating profit		1,441	-
Gain/(loss) on investment properties at fair value through profit and loss account		29,630	-
Interest payable and similar charges		<u>(1,441)</u>	<u>-</u>
Profit before tax		29,630	-
Taxation	5	<u>(4,085)</u>	<u>-</u>
Profit for the financial year		25,545	-
Other profit and loss reserve movements		<u>(25,545)</u>	<u>-</u>
Retained earnings carried forward		<u><u>-</u></u>	<u><u>-</u></u>


The notes on pages 9 to 14 form an integral part of these financial statements.

**Heart of Cumbria Limited**  
**(Registration number: 10245262)**  
**Balance Sheet as at 31 March 2019**

	Note	31 March 2019 £	31 March 2018 £
<b>Fixed assets</b>			
Investment property	6	520,500	7,737
<b>Current assets</b>			
Debtors	7	574,252	1
Cash and cash equivalents		38,582	25,681
		612,834	25,682
<b>Creditors:</b> Amounts falling due within one year	8	(53,703)	(33,418)
<b>Net current assets/(liabilities)</b>		559,131	(7,736)
<b>Total assets less current liabilities</b>		1,079,631	1
<b>Creditors:</b> Amounts falling due after more than one year	8	(50,000)	-
<b>Provisions for liabilities</b>		(4,085)	-
<b>Net assets</b>		1,025,546	1
<b>Capital and reserves</b>			
Allotted, called up and fully paid share capital		1,000,001	1
Non-distributable reserve		25,545	-
Total equity		1,025,546	1

These financial statements have been prepared in accordance with the special provisions relating to companies subject to the small companies regime within Part 15 of the Companies Act 2006.

Approved and authorised by the Board on 27 June 2019 and signed on its behalf by:

  
 J M Owen  
 Director



## **Heart of Cumbria Limited**

### **Notes to the Financial Statements for the Year Ended 31 March 2019**

#### **1 General information**

The company is a private company limited by share capital, incorporated in England & Wales.

The address of its registered office is:

Town Hall  
PENRITH  
CA11 7QF

#### **2 Accounting policies**

##### **Summary of significant accounting policies and key accounting estimates**

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

##### **Statement of compliance**

These financial statements have been prepared in accordance with Financial Reporting Standard 102 Section 1A - 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' and the Companies Act 2006.

##### **Basis of preparation**

These financial statements have been prepared using the historical cost convention except that as disclosed in the accounting policies certain items are shown at fair value.

##### **Reclassification of comparative amounts**

Some of the comparatives have been reclassified in order to provide a better presentation of the company's activities. An amount of £319 in respect of travel expenses was reclassified from distribution costs to administrative expenses in the profit and loss account. There were no adjustments impacting on the profit for the year.

##### **Revenue recognition**

Turnover comprises the fair value of the consideration received or receivable for the sale of goods and provision of services in the ordinary course of the company's activities. Turnover is shown net of sales/value added tax, returns, rebates and discounts.

The company recognises revenue when the amount of revenue can be reliably measured; it is probable that future economic benefits will flow to the entity; and specific criteria have been met for each of the company's activities.

##### **Government grants**

Government grants in respect of capital expenditure are credited to a deferred income account and are released to profit over the expected useful lives of the relevant assets. Grants of a revenue nature are credited to income so as to match them with the expenditure to which they relate.

##### **Tax**

The tax expense for the period comprises deferred tax. Tax is recognised in profit or loss, except that a change attributable to an item of income or expense recognised as other comprehensive income is also recognised directly in other comprehensive income.



## **Heart of Cumbria Limited**

### **Notes to the Financial Statements for the Year Ended 31 March 2019 (continued)**

Deferred tax is recognised in respect of all timing differences between taxable profits and profits reported in the financial statements.

Unrelieved tax losses and other deferred tax assets are recognised when it is probable that they will be recovered against the reversal of deferred tax liabilities or other future taxable profits.

Deferred tax is measured using the tax rates and laws that have been enacted or substantively enacted by the reporting date and that are expected to apply to the reversal of the timing difference.

#### **Investment property**

Investment property is carried at fair value, derived from the current market prices for comparable real estate determined annually by external valuers. The valuers use observable market prices, adjusted if necessary for any difference in the nature, location or condition of the specific asset. Changes in fair value are recognised in profit or loss.

#### **Cash and cash equivalents**

Cash and cash equivalents comprise cash on hand and call deposits, and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of change in value.

#### **Trade debtors**

Trade debtors are amounts due from customers for the sale of goods or services performed in the ordinary course of business.

Trade debtors are recognised initially at the transaction price. They are subsequently measured at amortised cost using the effective interest method, less provision for impairment. A provision for the impairment of trade debtors is established when there is objective evidence that the company will not be able to collect all amounts due according to the original terms of the receivables.

#### **Trade creditors**

Trade creditors are obligations to pay for goods or services that have been acquired in the ordinary course of business from suppliers. Trade creditors are classified as current liabilities if the company does not have an unconditional right, at the end of the reporting period, to defer settlement of the creditor for at least twelve months after the reporting date. If there is an unconditional right to defer settlement for at least twelve months after the reporting date, they are presented as non-current liabilities.

Trade creditors are recognised initially at the transaction price and subsequently measured at amortised cost using the effective interest method where due after more than one year.

#### **Share capital**

Ordinary shares are classified as equity. Equity instruments are measured at the fair value of the cash or other resources received or receivable, net of the direct costs of issuing the equity instruments. If payment is deferred and the time value of money is material, the initial measurement is on a present value basis.

### **3 Staff numbers**

The average number of persons employed by the company (including directors) during the year, was 4 (2018 - 5).



# Heart of Cumbria Limited

## Notes to the Financial Statements for the Year Ended 31 March 2019 (continued)

### 4 Auditor's remuneration

	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
Audit of the financial statements	3,750	-
<b>Other fees to auditors</b>		
All other non-audit services	2,250	-

### 5 Taxation

Tax charged/(credited) in the profit and loss account

	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Deferred taxation</b>		
Arising from origination and reversal of timing differences	4,085	-

## Heart of Cumbria Limited

### Notes to the Financial Statements for the Year Ended 31 March 2019 (continued)

#### 6 Investment properties

	£
At 1 April 2018	7,737
Additions	483,133
Fair value adjustments	<u>29,630</u>
At 31 March 2019	<u><u>520,500</u></u>

The investment properties are all residential properties with fair value being determined at 31 March 2019 by an appropriately qualified independent valuer.

#### 7 Debtors

	31 March 2019 £	31 March 2018 £
Other debtors	574,252	1
Less non-current portion	<u>(486,652)</u>	<u>-</u>
	<u><u>87,600</u></u>	<u><u>1</u></u>

##### Details of non-current trade and other debtors

£486,652 (2018 -£Nil) of other debtors is classified as non current. The company has paid a deposit to secure the acquisition of future investment properties and an appropriate amount will be released upon completion of each future property purchase. The non current element relates to properties expected to be acquired after one year.

## Heart of Cumbria Limited

### Notes to the Financial Statements for the Year Ended 31 March 2019 (continued)

#### 8 Creditors

	31 March 2019 £	31 March 2018 £
<b>Due within one year</b>		
Trade creditors	120	5,882
Other creditors	<u>53,583</u>	<u>27,536</u>
	<u>53,703</u>	<u>33,418</u>
<b>Due after one year</b>		
Amounts owed to group undertakings and undertakings in which the company has a participating interest	<u>50,000</u>	<u>-</u>
	<u>50,000</u>	<u>-</u>
	<u>50,000</u>	<u>-</u>
After more than five years by instalments	<u>50,000</u>	<u>-</u>
	<u>50,000</u>	<u>-</u>

Creditors include £50,000 (2018 - £0) due to the company's parent which are secured by way of a legal charge over the company's investment properties. Interest of £1,441 (2018 - £0) has been charged to the profit and loss account.

#### 9 Reserves

A reconciliation of the opening and closing non-distributable reserve for the current year is as follows:

	Non-distributable reserve £
Brought forward	-
Transfer	29,630
Other movement	-
Deferred tax	<u>(4,085)</u>
Carried forward	<u>25,545</u>

The non-distributable reserve represents revaluation surpluses relating to investment properties. The net amount after deferred tax recognised in the profit and loss account during the year was £25,545 (2018 - £0).

## **Heart of Cumbria Limited**

### **Notes to the Financial Statements for the Year Ended 31 March 2019 (continued)**

#### **10 Financial commitments, guarantees and contingencies**

##### **Amounts not provided for in the balance sheet**

The total amount of financial commitments not included in the balance sheet is £3,252,961 (2018 - £Nil).

The above commitment relates to an agreement to purchase 81 properties at Carleton Meadows in Penrith. The commitment at 31 March represents the total due to be paid less a 15% deposit paid up front and less properties purchased to date.

#### **11 Related party transactions**

The company is a wholly owned subsidiary member of its group and has therefore taken advantage of the provisions of paragraph 1AC.35 of FRS 102 - Small Entities not to disclose transactions with entities that are wholly owned members of the group.

There are no other related party transactions that are required to be disclosed.

#### **12 Parent and ultimate parent undertaking**

The company's immediate parent is Eden District Council, a Local Council registered in England. The address of Eden District Council is Town Hall, Penrith, Cumbria, CA11 7QF.



## Heart of Cumbria Limited

### Detailed Profit and Loss Account for the Year Ended 31 March 2019

	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
Turnover	22,037	-
Cost of sales	<u>(6,243)</u>	<u>-</u>
Gross profit	<u>15,794</u>	<u>-</u>
<b>Administrative expenses</b>		
Employment costs	(17,885)	(23,904)
General administrative expenses	(8,018)	(16,363)
Finance charges	<u>(124)</u>	<u>(18)</u>
	(26,027)	(40,285)
Other operating income	<u>11,674</u>	<u>40,285</u>
Operating profit	1,441	-
Gain/(loss) on investment properties at fair value through profit and loss account	29,630	-
Interest payable and similar charges	<u>(1,441)</u>	<u>-</u>
Profit before tax	<u><u>29,630</u></u>	<u><u>-</u></u>

# Heart of Cumbria Limited

## Detailed Profit and Loss Account for the Year Ended 31 March 2019 (continued)

	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Turnover</b>		
Rents receivable	22,037	-
	<u>22,037</u>	<u>-</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Cost of sales</b>		
Service charges	522	-
Management fees	3,950	-
Other property costs	1,771	-
	<u>6,243</u>	<u>-</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Employment costs</b>		
EDC salary recharges	17,885	23,904
	<u>17,885</u>	<u>23,904</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>General administrative expenses</b>		
Sundry expenses	169	52
Room hire	918	67
Travel and subsistence	271	319
Accountancy fees	-	600
Auditor's remuneration - The audit of the company's annual accounts	3,750	-
Auditors' remuneration - non audit work	2,250	-
Consultancy fees	-	7,961
Legal and professional fees	660	7,364
	<u>8,018</u>	<u>16,363</u>

# Heart of Cumbria Limited

## Detailed Profit and Loss Account for the Year Ended 31 March 2019 (continued)

	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Finance charges</b>		
Bank charges	124	18
	<u>124</u>	<u>18</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Other operating income</b>		
Grants receivable	11,674	40,285
	<u>11,674</u>	<u>40,285</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Gain/(loss) on investment properties at fair value through profit and loss account</b>		
Gain/(loss) on investment properties at fair value through profit and loss account	29,630	-
	<u>29,630</u>	<u>-</u>
	1 April 2018 to 31 March 2019 £	1 July 2017 to 31 March 2018 £
<b>Interest payable and similar charges</b>		
Interest payable to group undertakings	1,441	-
	<u>1,441</u>	<u>-</u>

