

Key Decision Required:	No	In the Forward Plan:	No
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PORTFOLIO HOLDER FOR HOUSING

30 AUGUST 2019

(Report prepared by Lisa Hastings and Peter Russell)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise acceptance of the transfer of Plot 21, 4 Kidby Way, Weeley Heath, Clacton-on-Sea to the Council as an Affordable Housing Dwelling and agree to acquiring a shareholding in Kidbys Management Company Limited (Company No. 10761082).

EXECUTIVE SUMMARY

Messrs Kidby ("the Owner") submitted a planning application under reference number 16/00677/FUL and following the Planning Committee's approval, planning permission was granted for the erection of 22 dwellings at Kidbys Nurseries, Clacton Road, Weeley Heath upon completion of a Section 106 Agreement ("Agreement"). The Agreement was dated 27th January 2017 which included the provision of Affordable Housing.

Affordable Housing is the subject of the Second Schedule of the Agreement and provides for one Dwelling, being a 3 bedroom property to be transferred to the Council for the sum of One Pound. The Dwelling must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for its intended purpose.

The property is due to be inspected and any transfer will not be completed until the Housing Service are satisfied with the property.

Schedule contained additional obligations over the tenure and transfer of the dwellings.

The Dwelling must be occupied by Persons in Housing Need, *being a person or persons registered on the Council's Housing Needs Register, and for no purpose other than as Social Rented Housing.*

The obligations and restrictions contained within the Agreement shall not bind a Protected Tenant, meaning any tenant who has exercised any statutory right to buy in respect of the Dwelling.

In accordance with the Agreement, the Transfer Deed to the Council should contain:

1. All rights of access and services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings and for the purpose of the Development; and
2. Such other covenants and reservation as the Owners may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

The Transfer Deed (shown attached as **Appendix A**) has been received from the Developer includes standard provisions, rights and covenants in respect of the Property to be transferred, however particular attention is drawn to the following:

- Restrictive Covenants:

The Third Schedule of the Transfer Deed, which lists a number of Restrictive and Positive Covenants which the Council will be bound by. These are matters which will need to be included within the tenancy agreement to the nominated tenant so as to ensure the Council can control performance of its obligations. None of these are unreasonable and compliance will be monitored through the normal tenancy

rent arrangements under the Housing Revenue Account, so long as they are reasonable charges and informed at the outset. It is unlikely that the charge will exceed the maximum covered by benefits, so as to ensure the rents are affordable for the tenants. In addition, the amount of Service Charge we recover through the tenancy agreement can be reviewed when there is a change to the costs incurred. Four weeks notice is provided of any increase or decrease in the Service Charge or other charges, therefore although the estimated Service Charge and actual amounts will not accord with the Council's annual rent setting, changes can be accommodated through providing notice.

RECOMMENDATION(S)

That the Portfolio Holder for Housing notes the contents of the report and approves:

- (i) Acceptance of the transfer of Plot 21, 4 Kidby Way, Weeley Heath, Clacton-on-Sea, CO16 9FG, to the Council as an Affordable Housing Dwelling for the price of One Pound (£1); and
- (ii) acquiring a shareholding in Kidby's Management Company Ltd (Company No. 10761082) with the official representative of the Council to be nominated by the Chief Executive.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Cabinet announced its emerging Corporate Plan and Priorities at its meeting in July, the content of this report helps to support Building Sustainable Communities for Future Generations and managing our own homes under Delivering Quality Services.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Under the Local Government and Housing Act 1989, s.76, local housing authorities are under a duty to prevent a debit balance on the Housing Revenue Account. This requires an authority to set and implement their rent levels to avoid such a debit. While this exercise does not necessarily require the setting of individual rents, as opposed to a global figure for rental income, it will necessarily have an impact on the levels of rent. The requirement in s.76 (6) is to review rent levels and take reasonably practicable steps, if it becomes apparent that a debit will arise on the H.R.A. This may also require authorities to implement a rent increase.

The current estimated Maintenance Expenses and Service Charge level has been assessed and will not have a negative impact on the HRA but it is important that these elements of the rent for the council dwelling are kept under review and the impact on the HRA is regularly assessed.

The secure tenancy of the property will be managed as part of the normal estate management responsibilities.

Risk

The risks and mitigation are set out within the body of the report.

LEGAL

Pursuant to Section 9 of the Housing Act 1985 ("the 85 Act"), a local housing authority may provide housing accommodation by acquiring houses. Section 24 of the 85 Act provides that the Council acting as a housing authority may make such reasonable charges as they

Land Registry

Transfer of part of registered title(s)

TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

1	Title number(s) out of which the property is transferred: EX954412
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	<p>Property: Plot 21 Kidby Way, Weeley Heath, Clacton on Sea, Essex CO16 9FG Postal Address: 4 Kidby Way, Weeley Heath, Clacton on Sea, Essex CO16 9FG</p> <p>The property is identified</p> <p><input checked="" type="checkbox"/> on the attached plan and shown edged red:</p> <p><input type="checkbox"/> on the title plan(s) of the above titles and shown: (the "Property")</p>
4	Date:
5	<p>Transferor:</p> <p>South East Developments Ltd of Middleborough House, 16 Middleborough, Colchester, Essex, CO1 1QT</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 07117313</p> <p><u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:</p>
6	<p>Transferee for entry in the register: Tendring District Council</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:</p>
7	<p>Transferee's intended address(es) for service for entry in the register: Town Hall Station Road Clacton-on-Sea Essex, CO15 1SE</p>
8	The transferor transfers the property to the transferee

registered company number is 10761082 and registered office is at Middleborough House, 16 Middleborough, Colchester, Essex, United Kingdom, CO1 1QT

- 1.10. "the Plan" means the plan annexed to this Transfer
- 1.11. "the Planning Consent" means the planning consent pursuant to which the Property has been constructed
- 1.12. "a Proper Proportion of the Costs" means the fair and proper proportion of the contribution to the expenses of the Management Company as set by it or its agent or surveyor at its absolute discretion and intended to provide a fair division of such costs between owners and occupiers of the Estate.
- 1.13. "the Service Companies" means the relevant electricity water drainage and telecommunication companies being responsible for the supply of electricity water and telecommunications services and for the discharge of soil and surface water in the area in which the Estate is situated
- 1.14. "the Shared Driveway 1 " means the shared driveway identified hatched brown on the Plan
- 1.15. "the Shared Driveway 2 " means the shared driveway identified hatched green on the Plan
- 1.16. "the Service Installations" means all foul and surface water sewers (excluding the Estate Sewers) pipes wires cables watercourses gutters and other conducting media whatsoever (and any structures incidental to the user thereof) now or hereafter constructed within or exclusively serving the Estate
- 1.17. the expression "the Transferor" and "the Transferee" shall where the context so admits include the successors in title of the Transferor and the Transferee respectively and the expression "the Transferee" shall further include the masculine the feminine the singular and the plural and where two or more persons constitute the Transferee all covenants and agreements made by or with them shall be deemed to be made by or with them jointly and severally
2. The Transferor assigns to the Transferee the benefit (so far as the same attaches to the Property and subject to 7.2 hereof) of all covenants made with the Transferor by any other person who is the Registered Proprietor of any part of the Estate
3. **THE** Property is transferred together with the easements and other rights set out in the First Schedule
4. **THERE** are reserved out of the Property for the benefit of the whole and every part of the remainder of the Estate the rights set out in the Second Schedule
5. **THE** Transferee so as to bind the Property **COVENANTS** with the Transferor and also as a separate covenant with every other person who is the Registered Proprietor of any part of the Estate (for the benefit of the Estate and each and every part thereof) as set out in the Third Schedule
6. **THE** Transferor for itself and its successors in title covenants with the Transferee that the Transferor will construct or cause to be constructed the Estate Bellmouth, Accessways and the Estate Sewers and will indemnify the Transferee and his successors in title from and against the payment of all or any charges in respect of the construction thereof and will observe and perform the covenants in the Seventh Schedule
7. **THE** Transferor expressly reserves the right:-
 - 7.1 to make from time to time any alteration in:-
 - 7.1.1 the mode of laying out the Estate

and expenses set out in the Sixth Schedule.

11. The Transferor grants to the Management Company (until such time as it may become a successor in title to the freehold of the Estate) all such rights of way and of entry on to the Estate as may be necessary for it to perform its covenants and obligations as set out in the Fifth Schedule.
12. THE Transferor and Transferee hereby apply to the Registrar for the entry on the Register of the following standard form restriction on the title to the Property

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of Paragraph 4 of the Fourth Schedule to a transfer dated and made between (1) South East Developments Ltd and (2) Kidbys Management Company Limited and (3) Tendring District Council have been complied with or that they do not apply to this disposition
13. The Property shall not, by virtue of this transfer, have any rights or easements or the benefit of any other matters over land retained by the Transferor other than those (if any) which are expressly mentioned in or granted by this transfer and section 62 of the Law of Property Act 1925 is qualified so as not to include any liberties, privileges, easements, rights or advantages over land retained by the Transferor except as expressly mentioned in or created by this transfer.

THE FIRST SCHEDULE **The Rights Granted**

1. **THE** right for the Transferee in common with the Transferor and all other persons who have or may in future have the like right:-
 - 1.1 at all times and for all purposes in connection with the use and enjoyment of the Property with or without motor or other vehicles to pass over and along the Estate Bellmouth and Accessways PROVIDED ALWAYS that such right is restricted to pedestrian rights only over such parts of the Estate Bellmouth and Accessways as are not intended for vehicular use
 - 1.2 at all times and for the purposes only of gaining access to and egress from the Property with or without motor or other vehicles to pass over and along the Accessways subject to the Transferee contributing a fair proportion to the expense of keeping and maintaining such Accessways in good repair in common with all others entitled to use the same PROVIDED ALWAYS that such right is restricted to pedestrian rights only over such parts of the Accessways (if any) as are not intended for vehicular use
 - 1.3 a right of way on foot only over the footpaths comprising part of the Common Areas (excluding the Attenuation Area)
 - 1.4 the full and free right to connect into and of running of water soil electricity telephone and other normal domestic services into and through the Estate Sewers and Service Installations subject to the Transferee paying upon demand a fair and reasonable proportion of the cost of repairing relaying maintaining and renewing the Service Installations
 - 1.5 upon reasonable prior notice being given and with workmen materials and equipment if necessary to enter on the adjoining parts of the Estate for the purposes of:-
 - 1.5.1 maintaining repairing renewing and inspecting the Service Installations serving the Property and being in or under such adjoining parts of the Estate;
 - 1.5.2 renewing repairing painting maintaining and inspecting any dwelling garage or

reasonable times and upon giving reasonable notice (except in the case of emergency) for the purposes of constructing connecting to inspecting relaying cleansing renewing replacing enlarging repairing removing maintaining and using such Service Installations the Transferor or other the person exercising any such right making good any damage thereby occasioned without unnecessary delay

- 1.3 to enter on the Property with workmen materials and equipment for the purposes of planting on the Property trees/or shrubs in accordance with the requirements of the County or District Council and thereafter as occasion may require for staking cultivating replacing such trees and/or shrubs all damage which may be done in the exercise of such powers being made good without unnecessary delay at the cost of the person so entering
- 1.4 the right to erect up to the boundary of the Property the dwelling or dwellings and garages erected or to be erected on the adjoining land comprised in the Estate and the right of support from the Property for the walls and buildings of the said dwelling or dwellings and garages and the right to have and erect the foundations eaves roofs chimneys verges gutters windows downspouts flues and any other projection of the said dwelling or dwellings and garages overhanging or underlying the Property together with full rights to enter upon the Property with or without workmen materials and appliances at all reasonable times and upon giving reasonable notice (except in the case of emergency) for the purpose of erecting a dwelling or dwellings and garages on the said adjoining land and of inspecting repairing maintaining replacing and painting the aforesaid projections and side walls of such dwelling or dwellings and the boundary walls and fences of such the said adjoining land and all Service Installations serving the same the Transferor or other the person exercising such rights doing as little damage as possible and forthwith making good any damage thereby occasioned
- 1.5 the right to enjoy unobstructed visibility splays and sightlines over and to enter and place street and other furniture and fittings on the Property which are to be used in common or for the benefit of the Estate generally and as may be required by County District or other Councils and Service Companies or according to the layout of the Estate
- 1.6 the right to grant (and to already have granted) easements wayleaves licences in under or over the Property to County and District Councils and Service Companies in connection with services usually provided or maintained by them and to others for the benefit of the Estate for the laying connection and use of Service Installations (including Estate sewers) with ancillary rights subject to as little damage as possible being caused and any damage caused being made good to the reasonable satisfaction of the Transferee and the Transferee will if necessary, but subject to an indemnity of all associated liability and costs from the Transferor, grant to the said County and District Councils or Service Companies such easements as they shall require in connection with the provision and maintenance of the services
- 1.7 the right for a period of two years from the date hereof at all reasonable times by itself or with workmen and others to enter on un-built parts of the Property with ladders and appliances and also to erect maintain and take away scaffolding in order to carry out building operations on and repairs and alterations to adjoining property but the Transferor or the persons deriving title under it will so far as reasonably practicable make good all damage caused thereby
- 1.8 the right for the Transferor and its agents and employees to enter upon un-built parts of the Property within a period of five years from the date hereof or longer if necessary in order to comply with any of the terms and provisions of the planning permissions permitting the development of the Estate or for the purpose of effecting any rights required by the County or District Council under a landscaping or planting scheme together with the right to carry out such works the person or persons entering creating as little disturbance as possible and making good any damage caused to the reasonable satisfaction of the Transferee

Plots 5 and 6 only

10. The Transferee shall not change the layout of any front garden of the Property or change the colour of any external paintwork or staining (whether on any building wall or fence) without the prior written consent of the Transferor or the Management Company.
11. If the Property includes or is adjacent to a ditch the Transferee shall comply with all statutory obligations in relation thereto including those administered by the Environmental Agency or its successor
12. No poultry or other livestock (other than domestic pets) shall be kept on any part of the Property.
13. Not to park or allow to be parked or wait or remain temporarily any unroadworthy or untaxed or uninsured or commercial vehicle (save light van no larger than a domestic car) nor boat caravan or any house on wheels motor caravans nor any lorries or large vans exceeding 30 cwt on any part of the Property, Estate Bellmouth, Accessways, Shared Driveway 1 or Shared Driveway 2
14. To observe and perform the terms and conditions of the Planning Consent relating to the Property
15. Not to erect or cause to be erected upon the exterior of the Property any wireless television or other aerial and other apparatus for receiving wireless telegraphic or other signals and not to cause or permit any such aerial or other apparatus wholly or in part to project from the interior of the Property save that a satellite dish of reasonable size and proportion which shall not without the consent of the Transferor be visible from the Accessways may be attached to the Property
16. Not to do or cause or permit to be done on the Property anything calculated or likely to cause damage or injury to or prevent access to any Service Installations and to take all reasonable precautions (or such other area as the Service Companies shall determine) to prevent such damage or injury
17. Except with the consent of the District Council no placard or advertisement whatsoever shall be displayed or suffered to be displayed on any part of the Property or upon any wall or fence erected thereon nor shall any boarding or signboard be placed on the Property save that a single "For Sale" or "To Let" sign may be erected on the Property once the Transferor has completed the development of the Estate
18. To observe and perform the covenants contained in any present or future S.38 Agreement (under the Highways Act 1980), S278 Agreement (under the Highways Act 1980), S104 Agreement (under the Water Industry Act 1991) or any wayleave consent or easement with any of the Service Companies insofar as they relate to the Property
19. Not to plant shrubs or trees of any description erect trellis or construct a rockery or garden flowerbed or place or store garden rubbish or incinerate rubbish against the side wall of any adjoining property which forms part of the boundary of the Property
20. If required by the Transferor and subject to the Transferor providing a full and sufficient indemnity in respect of the same, to enter into easements wayleaves licences and/or privileges in such form as the County District Council or Service Companies may respectively require in respect of electricity water telecommunication or reception supplies to any part of the Estate
21. Not to build or plant over or near any works of the relevant Service Companies so as to prevent or interfere with the rights of access reserved in this Transfer
22. To observe and perform by way of indemnity only any covenants contained or referred to in the Charges Register of the title above mentioned insofar as they relate to or affect the Property and insofar as aforesaid to indemnify the Transferor in respect of any future breach

any control involving a change in the ownership of the Property to procure that the person becoming or contracting to become as a result of such transaction or disposition the owner of the Property (hereinafter called "the new owner" which expression shall be deemed to include any transferee but excluding any mortgagee)

- 4.1 becomes a member of the Management Company
 - 4.2 enters into direct covenants with the Management Company to observe and perform all the covenants by the Transferee with the Management Company herein contained including a covenant not further to transfer or part with possession of the Property save on the terms as hereinbefore mentioned and in the case of a transfer to pay the service charge and other sums hereby reserved and the costs and expenses of the Management Company in entering into such covenants shall be borne by the new owner
5. To comply with such reasonable regulations as may be imposed from time to time by the Management Company in respect of the Common Areas in the interest of good estate management.

THE FIFTH SCHEDULE Management Company Covenants

- 1. To lay out and keep properly repaired and maintained surfaced and where necessary suitably cleaned the Common Areas.
- 2. Lighting such parts of the Common Areas as the Management Company shall deem appropriate.
- 3. At the written request of the Transferee or any mortgagees of the Transferee enforce by all means available to the Management Company at the entire cost of the Transferee the covenants entered into by the several transferees of the other houses comprised within the Estate PROVIDED THAT:-
 - 3.1 the Management Company shall not be required to take any action or incur any costs under this clause until such security as the Management Company in the Management Company's reasonable discretion may require shall have been given by the Transferee or the Transferee's mortgagees requesting action
 - 3.2 the Management Company may in the Management Company's reasonable discretion require the Transferee or persons requesting such action at their expense to obtain for the Management Company from Counsel to be nominated by the Management Company advice in writing as to the merits of the contemplated action in respect of the allegations made and in that event the Management Company shall not be bound to take action unless Counsel advises that such action should be taken and that it is likely to succeed
 - 3.3 the Transferee shall indemnify the Management Company against all reasonable and proper costs and expenses reasonably and properly incurred by the Management Company arising out of this Paragraph 3.
- 4. To insure the Common Areas against the usual risks contained in a comprehensive insurance policy as the Management Company shall in its reasonable discretion decide.
- 5. To consider and issue regulations in writing for the Estate where in its reasonable opinion the management of the Estate can be improved thereby.
- 6. To provide inspect maintain repair reinstate and renew any Service Installations and other equipment and provide any other service or facility which in the opinion of the Management Company is reasonable to provide.

3. To construct and maintain the Estate Bellmouth and Estate Sewers until the same shall have become maintainable at public expense.

13 Execution

EXECUTED as a Deed by
**SOUTH EAST
DEVELOPMENTS Ltd**

acting by a Director in the presence
of an independent witness:

.....
Director

Witness

Signature:

Name:

Address:

Occupation:

EXECUTED as a Deed by
**KIDBYS MANAGEMENT COMPANY
LIMITED**

acting by a Director in the presence
of an independent witness:

.....
Director

Witness

Signature:

Name:

Address:

Occupation:

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

Attn: Michael Tyler
Peyton Tyler Mears
Middleborough House
16 Middleborough
Colchester
Essex
CO1 1QT

9th May 2017

Our Ref: F76308
(Please quote reference on all correspondence)

Attn: Michael Tyler

RE:- Kidbys Management Company Limited

Thank you for your instructions regarding the above bespoke company formation. The Company has now been incorporated and we have pleasure in enclosing the Certificate of Incorporation, Minutes and Articles of Association. The authentication code issued by Companies House for use with electronic filing is EVHWJU.

If we can be of further assistance in this matter please contact us.

Yours sincerely

Samantha Owen
Corporate Law Advisor

ENCLOSURES FOR A CLIENT FORMATION

1. **Certificate of Incorporation**
2. **Articles of Association** drafted under the new regulations Companies Act 2006.
3. **First Board Minutes** Minutes of the first board meeting should be completed and filed in the company's books. FCLS offer a service for the completion of these documents - if this service has been requested the minutes will follow under separate cover.
4. **Company Seal/Statutory Registers (if requested)**
5. Our VAT invoice will be despatched to you shortly.

NOTE:-

Additional Forms AP01 appointment of new directors, SH01 allotment of new shares, AA01 change in accounting reference date can be downloaded from Companies House or you can register online and electronically file with the Registrar of Companies direct. All forms can be e-mailed to you at your request.

Should you require any amendments or further alterations to the company such as change of name, share restructuring or any other technical service please do not hesitate to contact us. We would also recommend visiting our web site at www.fcls.co.uk for further information on our electronic company register service.

MINUTES

Subject Heading:			
SUBSCRIBER SHARES	IT WAS RESOLVED THAT THE FOLLOWING SUBSCRIBER SHARES WERE ALLOTTED ON INCORPORATION TO THE FOLLOWING INDIVIDUALS:-		
	Subscriber	Share Class	No. of Shares
	Payment in cash at par in the nominal amount of these shares was received.		
Allotment of additional shares	IN RESPONSE TO APPLICATIONS ACCOMPANIED BY PAYMENT IN CASH AT PAR IT WAS RESOLVED THAT FULLY PAID SHARES OF £1 EACH IN THE CAPITAL OF THE COMPANY BE ALLOTTED AS FOLLOWS:-		
	Name	Share Class	No. of Shares
	Total:		
	It was resolved that the names of the subscribers and any further allottees be entered in the register of members.		
Share certificates	It was resolved to issue share certificates in the names of the subscribers and allottees named above.		
	THE SECRETARY OR DIRECTOR WAS INSTRUCTED TO FILE FORM SH01 IN RESPECT OF ANY FURTHER ALLOTMENT FOR CASH REFERRED TO ABOVE		
Any other business			
If the Company proposes to trade, instructions may be included here to register for VAT and PAYE and other resolutions necessary at the commencement of business			
	Signed _____	Chairman/Director	
	_____	Secretary (if appointed)	

THE COMPANIES ACT 2006

PRIVATE COMPANY HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

OF

Kidbys Management Company Limited

Each subscriber to this memorandum of association wishes to form a Company under the Companies Act 2006 and agrees to become a member of the Company and to take at least one share.

Subscriber : SOUTH EAST DEVELOPMENTS LIMITED

Dated:- 8th May 2017

- 1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
- (a) any subordinate legislation from time to time made under it; and
 - (b) any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.6 Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles.
- 1.8 Articles 8, 9 (1), 11(2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 21, 24 (2) (c), 44(2), 49, 52 and 53 of the Model Articles shall not apply to the company.
- 1.9 Article 7 (2) of the Model Articles shall be amended by the insertion of the words '(for so long as he remains the sole director)' after the words 'and the director may'.
- 1.10 Article 20 of the Model Articles shall be amended by the insertion of the words '(including any alternate directors) and any secretary' before the words 'properly incur'.
- 1.11 Article 26 (1) of the Model Articles shall be amended by the insertion of the words "and, unless the share is fully paid, the transferee" after the word "transferor".
- 1.12 Article 27(3) of the Model Articles shall be amended by the insertion of the words 'subject to article 10' after the word 'But'.
- 1.13 Article 29 of the Model Articles shall be amended by the insertion of the words ', or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under Model Article 28(2),' after the words 'the transmittee's name'.

- 3.7 To create and maintain any capital reserves and management funds of any kind in order to contribute and pay towards all fees, costs and any other expenses incurred in the implementation of the objects of the Company and to require the Company's members to contribute towards such funds and reserves at any such times, in such amounts and in such manner as the Company may determine and to invest and deal in and with such moneys not immediately required in such manner as the Company think fit.
- 3.8 To carry on any other trade or business which may seem to the Company and its directors to be advantageous and to directly or indirectly enhance all or any of the business of the Company.
- 3.9 To sell, charge, mortgage, construct, repair, improve, develop, exchange, let on lease, grant privileges, options, rights and licences in respect of all or any part of the property of the Company.
- 3.10 To hold or otherwise deal with any investments made for the Company and as may be necessary and to be determined, to invest moneys not immediately required by the Company.
- 3.11 To grant credit, loans or advances on such terms as may be appropriate with or without security to clients and others, to enter into indemnity, contracts or guarantees and suretyships of all kinds, to receive money on loan or deposit or otherwise upon such terms as the Company may approve and to secure or guarantee the payment of any sums of money or the performance of an obligation by any company, firm or person including any parent, subsidiary or fellow subsidiary company in such manner as the Company may think fit.
- 3.12 To raise and borrow money by any method and to secure the payment of any money borrowed, raised or owing as the Company shall think fit for the purposes of or in connection with the Company's business.
- 3.13 To issue discount, accept, draw and negotiate cheques, bills of exchange, bills of lading, warrants, debentures, promissory notes and other negotiable or transferable instruments.
- 3.14 To assign to the Members of the Company in kind any assets of the Company whatsoever.
- 3.15 To do all or any of the things or matters in this Article 3 in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.
- 3.16 To do all such other things as are incidental or conducive to the above objects or any of them.

- 6.2 Article 20 of the Model Articles shall not apply to the Company so that unless otherwise determined by members via special resolution, the directors shall not be entitled to payment of any expense incurred in connection to their office as director of the Company.

7. ALTERNATE DIRECTORS

- 7.1 Any director (other than an alternate director) (in this article, **the appointor**) may appoint any person (whether or not a director) to be an alternate director to exercise that director's powers, and carry out that director's responsibilities, in relation to the taking of decisions by the directors, in the absence of the alternate's appointor.

- 7.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

- 7.3 The notice must:

- (a) identify the proposed alternate; and
- (b) Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

- 7.4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's appointor.

- 7.5 Except as the Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their appointors; and
- (d) are not deemed to be agents of or for their appointors,

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

- 7.6 A person who is an alternate director but not a director:

- (a) may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating); and

- 9.2 A director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act unless the interest has already been declared in accordance with Article 9.1 above.
- 9.3 Subject, to sections 177(5), 177(6), 182(5) and 182(6) of the Act, the disclosures required under Articles 9.1 and 9.2 and to any terms and conditions imposed by the directors a director shall be entitled to vote in respect of any proposed or existing transaction or arrangement with the Company in which he is interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present.
- 9.4 A director need not declare an interest under clause 9.1 and clause 9.2 as the case may be:
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) of which the director is not aware, although for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware;
 - (c) if, or to the extent that, the other directors are already aware of it, and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware; or
 - (d) if, or to the extent that, it concerns the terms of his service contract that have been, or are to be, considered at a board meeting.

10. DIRECTORS' CONFLICTS OF INTEREST

- 10.1 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which the director has an interest, that director is not to be counted as participating in the decision-making process for quorum, voting or agreement purposes unless:
- (a) the company passes an ordinary resolution to disapply the provisions of 10.1 above in respect of the director and interest concerned;
 - (b) the conflict relates to a guarantee given from or to be given by a director in respect of an obligation incurred by or on behalf of the Company;
 - (c) the directors interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (d) the director has declared his interest in accordance with clause 11 below

- (b) the directors shall not permit the transfer or disposal of any share at any time whilst the proposed transferor is (alone or jointly with others) a Dwellingholder; and
- (c) the price payable for any share in the Company whether transferred or allotted, shall be the nominal value:

and for the avoidance of doubt, no share shall be transferred to any person who is not a Dwellingholder, notwithstanding any tenancy agreement or licence to occupy any property in the Estate.

- 12.3 Where a Dwellingholder ceases to hold an interest in a Dwelling because of death or bankruptcy, his personal representatives or trustee in bankruptcy shall transfer his share in the Company to the party who subsequently becomes the Dwellingholder of such Dwelling and in the failure of such personal representative or trustee to observe the provisions of this Article 12.3, a director may be nominated by an ordinary resolution of the board to be the attorney of such holder and may in his name, execute, complete and deliver a transfer of the Dwellingholders' share to whoever it should be transferred.
- 12.4 The authority referred to in Article 12.2 is limited to a maximum nominal amount equivalent in pounds to one pound for each Dwelling in the Estate and may be renewed, waived or revoked by the company in general meeting by ordinary resolution.
- 12.5 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the company.

13. RECORDS OF DECISIONS TO BE KEPT

Where decisions of the directors are taken by electronic means (including but not limited to telephone, text message or e-mail), such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

14. GENERAL MEETINGS

- 14.1 In accordance with section 308 of the Act, notice of a general meeting of the Company can be given to members either in hard copy form, electronic form or posted on a website, provided that the member is notified of the presence of the notice on the website.
- 14.2 Notice of a general meeting must contain:
 - (a) the date and time of the meeting
 - (b) the place of the meeting

18. NOTICE

18.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted;
- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- (c) if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- (d) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

18.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.

19. INDEMNITY

19.1 Each director shall be indemnified out of the company's assets against: all costs, charges, losses, expenses and liabilities incurred by him as a director in the actual or purported execution and/or discharge of his duties, or in relation to them, 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 affairs but not including any of the matters set out in section 234 (3) of the Act.

19.2 The Company may provide any director with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings detailed in Article 19.1 above and otherwise may take any action to enable any such director to avoid incurring such expenditure.

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**PART 1
INTERPRETATION AND LIMITATION OF LIABILITY**

Defined terms

1. In the articles, unless the context requires otherwise "articles" means the company's articles of association;
- "bankruptcy" includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
- "chairman" has the meaning given in article 12;
- "chairman of the meeting" has the meaning given in article 39;
- "Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;
- "director" means a director of the company, and includes any person occupying the position of director, by whatever name called;
- "distribution recipient" has the meaning given in article 31;
- "document" includes, unless otherwise specified, any document sent or supplied in electronic form;
- "electronic form" has the meaning given in section 1168 of the Companies Act 2006;
- "fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;
- "hard copy form" has the meaning given in section 1168 of the Companies Act 2006;

Participation in directors' meetings

10. (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when
- (a) the meeting has been called and takes place in accordance with the articles, and
 - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- (3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

11. (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.
- (3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision
- (a) to appoint further directors, or
 - (b) to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

12. (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairman.
- (3) The directors may terminate the chairman's appointment at any time.
- (4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

13. (1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

14. (1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- (2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.
- (3) This paragraph applies when-
- (a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;
 - (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (c) the director's conflict of interest arises from a permitted cause.
- (4) For the purposes of this article, the following are permitted causes-
- (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;
 - (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub underwrite, or guarantee subscription for any such shares or securities; and
 - (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.
- (5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- (6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of, the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
- (7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Records of decisions to be kept

15. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTORS

Methods of appointing directors

17. (1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director-
- (a) by ordinary resolution, or
 - (b) by a decision of the directors.
- (2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.
- (3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

18. A person ceases to be a director as soon as-
- (a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
 - (b) a bankruptcy order is made against that person;

- (2) A transferee who produces such evidence of entitlement to shares as the directors may properly require-
 - (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and
 - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) But transferees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transferees' rights

- 28. (1) Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (2) If the transferee wishes to have a share transferred to another person, the transferee must execute an instrument of transfer in respect of it.
- (3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transferee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transferees bound by prior notices

- 29. If a notice is given to a shareholder in respect of shares and a transferee is entitled to those shares, the transferee is bound by the notice if it was given to the shareholder before the transferee's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

Procedure for declaring dividends

- 30. (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- (6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- (7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Payment of dividends and other distributions

- 31. (1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means-
 - (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
 - (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- (2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable-
 - (a) the holder of the share; or
 - (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - (c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transferee.

No interest on distributions

- 32. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by-
 - (a) the terms on which the share was issued, or
 - (b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

- 33. (1) All dividends or other sums which are-
 - (a) payable in respect of shares, and
 - (b) unclaimed after having been declared or become payable,
 - (c) may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- (2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
- (3) If-
 - (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
 - (b) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

- 34. (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution-
 - (a) fixing the value of any assets;
 - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
 - (c) vesting any assets in trustees.

Waiver of distributions

- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given) -
- (a) to the same persons to whom notice of the company's general meetings is required to be given, and
 - (b) containing the same information which such notice is required to contain.
- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

42. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43. (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- (2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

44. (1) A poll on a resolution may be demanded-
- (a) in advance of the general meeting where it is to be put to the vote, or
 - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by-
- (a) the chairman of the meeting;
 - (b) the directors;
 - (c) two or more persons having the right to vote on the resolution; or
 - (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if-
- (a) the poll has not yet been taken, and
 - (b) the chairman of the meeting consents to the withdrawal.
- (4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

45. (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which-
- (a) states the name and address of the shareholder appointing the proxy;
 - (b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
 - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
 - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as-
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

46. (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

47. (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if-
- (a) 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 chairman of the meeting may determine), and
 - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if-
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
 - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.