

**ANGUS COUNCIL**

**ANGUS COUNCIL - 10 DECEMBER 2015**

**ARBROATH GOLF LINKS**

**REPORT BY MARK ARMSTRONG, STRATEGIC DIRECTOR - RESOURCES**

**ABSTRACT**

This Report seeks the Council endorsement of the proposed Articles of Association of a Company Limited by Guarantee called "Arbroath Golf Links Limited" which will replace the current management committee and the appointment of the Council Directors to the company.

**1. RECOMMENDATIONS**

It is recommended that the Council:

- (i) agrees the principal terms of the Articles of Association of a new company to be known as Arbroath Golf Links Limited which will take over responsibility for the future management of Arbroath Golf Links;
- (ii) approve the appointment of Councillor Alex King and Councillor Martyn Geddes as Directors of Arbroath Golf Links Limited; and
- (iii) notes that the current management agreement between the council and the Arbroath Golf Course Committee shall be assigned to Arbroath Golf Links Limited as at the date of incorporation.

**2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/CORPORATE PLAN**

This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Angus is a good place to live in, work in and visit; and
- We have improved the health and wellbeing of our people and inequalities are reduced.

**3. BACKGROUND**

Reference is made to item 12 of the minute of the meeting of Angus Council of 27 March 2014. At that time, the council agreed that it should continue to work with the Angus Golf Links Management Committee (AGLMC) to develop the option of a company limited by guarantee. The committee has now resolved to proceed to incorporation and the council's approval is sought on the proposed Articles of Association.

At present, the AGLMC consists of up to six members of the Arbroath Artisans Golf Club with a minimum of four along with two Councillors from the Arbroath Wards. As members of an unincorporated body, the two Councillors do expose themselves to the risk of personal liability. When AGLMC achieves status as a company limited by guarantee liability will be restricted to £1 for the two members – Angus Council and Arbroath Artisans Golf Club. The council directors will owe specialised and specific legal duties to the company and its members. Directors' liability insurance should be put in place to provide some protection to the directors whilst carrying out their day to day decision making. The Head of Legal & Democratic Services will provide the council directors with a briefing note detailing their responsibilities as directors.

AGLMC currently operates under a Constitution that was signed in July 2014. At the same time, a management agreement was entered into between the AGLMC and Angus Council which regulates the management of the Elliot Golf Links Course. This management agreement will be assigned to the company at the date of incorporation.

#### **4. COMPANY INCORPORATION**

The documentation required to set up the new company has been drafted by Thorntons, Solicitors on behalf of AGLMC has been approved by the Head of Legal and Democratic Services. A full copy of the Articles of Association is provided as an Appendix to this report.

There will be two initial members of the company namely the council and Arbroath Artisans Golf Club. The members may admit other golf clubs to membership. No person other than the council or a golf club member shall be admitted as a member of the company. If a golf club ceases to exist or ceases to be entitled to play golf over the courses maintained by the company then it would automatically cease to be a member of the company. Company membership is not transferrable.

Each member, including the council, has to appoint an actual person as its representative at any general meetings of the company. If necessary, the council will need to identify a representative and a copy of the authorisation or appointment should be sent to the Secretary of the company. This authorisation should be signed by the Chief Executive or another properly authorised officer of the council. A member is also free to appoint any natural person as its first alternate or second alternate representatives if it wishes to do so. For as long as Arbroath Artisans Golf Club is the only golf club member of the company then said club shall have two votes on any show of hands for poll at a general meeting.

There are no minimum or maximum numbers of directors to the company. The council is entitled to appoint a maximum of two natural persons as directors of the company and Arbroath Artisans Golf Club shall be entitled at any time to appoint four or more directors of the company. The council's directors shall comprise two elected members representing the Arbroath Wards. Each member shall also be free to appoint alternate directors.

The business of the company shall be managed by the directors who may exercise all the powers of the company. However, the members may by special resolution direct the directors to take or refrain from taking specified action.

Any of the directors powers may be delegated to any one director or committee.

The directors shall not be entitled to any remuneration although non council directors shall be permitted complimentary use of the golf course and other facilities owned by the company. In addition, the directors may be entitled to receive any other amounts and or benefits to reflect the services provided to the company.

At directors' meetings the quorum for the transaction of any business must include at least one council director.

The directors must meet no less frequently than once every quarter.

Upon winding up of the company, if any assets remain they shall be given or transferred to any appropriate body approved by Angus Council or its successors for the purposes of the management and maintenance of the golf courses at Arbroath which failing to some other charitable institution either engaged in the management and maintenance of golf courses in Angus or the promotion of sport or leisure in Angus.

The council's consent is required for any alterations to the articles, any change of name or trading style of the company or the alteration of or change in the nature of the company's trade or business to any material extent.

## **5. DIRECTORS**

It is proposed that the two council directors shall be Councillor Alex King and Martyn Geddes who represent the Arbroath Wards. It is not proposed to appoint alternate directors in line with legal advice from the Head of Legal & Democratic Services.

## **6. FINANCIAL IMPLICATIONS**

There are no financial implications for the council arising directly as a result of the recommendations contained in this Report.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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The Companies Act 2006  
COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

of

ARBROATH GOLF LINKS LIMITED

**1. PRELIMINARY**

- 1.1 The model articles of association for private companies limited by guarantee contained in Schedule 2 to the Companies (Model Articles) Regulations 2008 (SI 2008 No. 3229) shall not apply to the Company and the articles set out below shall be the articles of association of the Company (the "Articles").
- 1.2 In these Articles, any reference to a provision of the Companies Act 2006 shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.
- 1.3 The headings used in these Articles are included for the sake of convenience only and shall be ignored in construing the language or meaning of these Articles.

**2. INTERPRETATION**

In these Articles -

"AAGC" means The Arbroath Artisan Golf Club, an unincorporated association having a place of business at Elliot, By Arbroath, Angus DD11 2PE.

"the Act" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company.

"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

"communication" means the same as in the Electronic Communications Act 2000.

"electronic communication" means the same as in the Electronic Communications Act 2000.

"electronic form" has the meaning given in section 1168 of the Act.

"the Council" means Angus Council, a local authority incorporated in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at Angus House, Orchardbank Business Park, Forfar, DD8 1AN, or its statutory successor having responsibility for Angus.

"director" means any director of the company from time to time who has been validly appointed in accordance with article 21 of the Articles and the Act.

"executed" includes any mode of execution.

"office" means the registered office of the company.

"person" means any legal person, unless the context otherwise requires.

"the seal" means the common seal of the company.

"secretary" means the secretary of the company or any other person appointed to perform the duties of the secretary of the company, including a joint, assistant or deputy secretary.

"the United Kingdom" means Great Britain and Northern Ireland.

Unless the context otherwise requires, (a) words or expressions contained in these Articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these Articles become binding on the company; (b) the singular includes the plural and *vice versa*; (c) reference to the masculine gender shall include references to the feminine and neuter genders; and (d) reference to persons includes references to companies or other bodies, whether statutory or otherwise.

### 3. **OBJECTS**

The objects for which the company is established are:-

- 3.1 To encourage and promote public participation in the sport of golf in the area of Angus;
- 3.2 To promote the provision or development of recreational facilities in the Arbroath area with the object of improving the recreational facilities or activities available to citizens residing within the Arbroath area;
- 3.3 To promote the advancement of the arts, heritage, and culture for the benefit of citizens residing within the Arbroath area;
- 3.4 To promote the advancement of community development for the benefit of citizens residing within the Arbroath area; and
- 3.5 To promote the advancement of environmental protection or improvement.

4. The company's objects are, subject to article 5, restricted to those set out in article 3.

5. The company may add to, remove or alter the statement of the company's objects in article 3 (but if it is a charity, it shall first require to obtain the consent of the Office of the Scottish Charity Regulator ("OSCR") or any statutory successor to any such change) and on any occasion when it does so, it must give notice to the Registrar of Companies and the amendment will not be effective until that notice is registered on the Register of Companies.

### 6. **POWERS**

For the avoidance of doubt, the company shall (subject always to article 7 below) have the power to do any act or thing which may further or be incidental or conducive to the furtherance of any of the objects listed in article 4 above.

### 7. **RESTRICTIONS ON USE OF COMPANY'S ASSETS**

- 7.1 Subject to article 34, the income and property of the company shall be applied solely towards promoting the company's objects.
- 7.2 No part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise.

### 8. **LIABILITY OF MEMBERS**

The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for—

- (a) payment of the company's debts and liabilities contracted before he ceases to be a member,
- (b) payment of the costs, charges and expenses of winding up, and
- (c) adjustment of the rights of the contributories among themselves.

9. **MEMBERS**

9.1 The initial members of the company shall be:-

- (a) the trustees for the time being of AAGC; and
- (b) the Council.

9.2 The members may admit other golf clubs to membership in accordance with these Articles. For the avoidance of doubt, no person other than (i) the Council or (ii) a golf club formed for the playing of golf over the courses maintained by the company shall be admitted as a member of the company. In the event that a golf club ceases to exist or ceases to be entitled to play golf over the courses maintained by the company (provided that the company still maintains golf courses), then such golf club shall cease to be a member of the company.

9.3 A member is not entitled to transfer its membership to any other person.

9.4 Employees of the company shall not be eligible for membership. A person who becomes an employee of the company after admission to membership shall automatically cease to be a member.

10. **WITHDRAWAL OF MEMBERSHIP**

Any member which wishes to withdraw from membership shall lodge with the company a written notice of retiral, signed on its behalf by an appropriate authorised signatory; on receipt of the notice by the company it shall cease to be a member.

11. **CESSATION OF MEMBERSHIP**

Membership shall cease on the dissolution, liquidation, receivership or striking-off of the member.

12. **GENERAL MEETINGS**

The directors may call general meetings and, on the requisition of the members pursuant to the provisions of the Act, shall forthwith proceed to convene a general meeting for a date not later than 28 days after the date of the requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the company may call a general meeting.

13. **NOTICE OF GENERAL MEETINGS**

13.1 Any general meeting (including an annual general meeting) shall be called by at least fourteen clear days' notice. However, a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote thereat.

13.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

13.3 The notice shall be given to all the members and to the directors.

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

14. **PROCEEDINGS AT GENERAL MEETINGS**

14.1. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a duly authorised representative of a member, shall constitute a quorum.

- 14.2 Each member shall be required to appoint a natural person as its representative with regards to its membership of the company, including to represent it at general meetings and to sign written resolutions in accordance with article 14.14 below on behalf of such member. It shall be a requirement that any person appointed as aforesaid by AAGC shall be a current director of the company. To confirm the identity of a representative, a member must send to the secretary a copy of the authorisation or appointment of an individual as a representative. This should be signed by an authorised signatory of such member which signature must be witnessed, or in the case of the Council, by the Chief Executive or another properly authorised Officer of the Council. A member may change the identity of the person entitled to represent that member at any time by confirming the identity of the new representative in the manner aforesaid and withdrawing the authority of the original representative. Further, a member is free to appoint any natural persons as its first alternate representative and (if it wishes to do so) its second alternate representative with regards to its membership of the company, the first alternate representative being entitled to represent such member at general meetings (but not to execute written resolutions in accordance with article 14.14 below on behalf of such member) in the event that the principal representative of such member is unable to attend such meeting, and the second alternate representative being entitled to represent such member at general meetings (but not to execute written resolutions in accordance with article 14.14 below on behalf of such member) in the event that both the principal representative and first alternate representative of such member are unable to attend such meeting. The aforesaid provisions relating to the appointment and removal of a representative of a member shall also apply to the appointment and removal of a first alternate representative or a second alternate representative, with the exception that it shall not be a requirement that a first or second alternate representative appointed by AAGC be a current director of the company. It shall not be competent for a representative of a member appointed in accordance with this article 14.2 to appoint a proxy.
- 14.3. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine.
- 14.4. The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.
- 14.5. If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
- 14.6. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
- 14.7. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
- 14.8. A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded—
- (a) by the chairman; or
  - (b) by any member (including a person appointed as the representative of such member in accordance with article 14.2 above).

For as long as AAGC is the only member of the company that is a golf club, then AAGC shall have two votes on any show of hands or poll. Notwithstanding the foregoing, the Council shall not at any time have more than one vote on any show of hands or poll.

- 14.9. Unless a poll is duly demanded, a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 14.10. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 14.11. A poll shall be taken as the chairman directs. Notwithstanding the foregoing, a poll demanded on any matter shall be taken forthwith.
- 14.12. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a casting vote in addition to any other vote he may have.
- 14.13. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 14.14. A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members.

## 15. **VOTES OF MEMBERS**

- 15.1 Subject to the provisions of article 14.8 on a show of hands, and on a poll, every member which is represented by a person appointed to represent such member in accordance with article 14.2 shall have one vote.
- 15.2. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
- 15.3. A vote given or poll demanded by a duly authorised representative of a member shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the office before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## 16. **NUMBER OF DIRECTORS**

Provided that the directors are appointed in accordance with article 21 below, there shall be no minimum or maximum number of directors of the company. For the avoidance of doubt, the Council shall (in addition to its rights under article 21.1) have the right to appoint a Council officer to act as an adviser and to attend meetings of the directors as an observer, but who shall not have any voting rights at any such meetings.

## 17. **ALTERNATE DIRECTORS**

- 17.1. Further to appointing a director or directors in accordance with article 21, each member shall be free to appoint (i) any natural person as first alternate director in respect of a director appointed by such member, and (ii) any natural person as second alternate director in respect of a director appointed by such member. The first alternate director shall be entitled to attend meetings of the directors (but not to execute written resolutions of the directors in accordance

with article 25.6) in the event that the principal director (in respect of whom the first alternate director has been appointed) is unable to attend such meeting, and the second alternate director shall be entitled to attend meetings of the directors (but not to execute written resolutions of the directors in accordance with article 25.6) in the event that both the principal director and first alternate director (in respect of whom the second alternate director has been appointed) are unable to attend such meeting. The provisions of article 21 relating to the appointment and removal of a director shall also apply to the appointment and removal of a first alternate director or a second alternate director.

- 17.2. An 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, to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a director in his absence but shall not be entitled (i) to receive any remuneration from the company for his services as an alternate director, or (ii) to execute any written resolution of the directors in accordance with article 25.6. But it shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.
- 17.3. An alternate director shall cease to be an alternate director if the principal director in respect of whom the alternate has been appointed ceases to be a director, but may be appointed as a director or re-appointed as an alternate director in respect of any other director.
- 17.4. Any appointment or removal of an alternate director shall be by notice to the company in accordance with article 21.5.
- 17.5. Save as otherwise provided in the Articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

## 18. **POWERS OF DIRECTORS**

- 18.1. Subject to the provisions of the Act, the Articles and to any directions given by ordinary resolution of the company, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the Articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the directors by the Articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.
- 18.2. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## 19. **MEMBERS' RESERVE POWER**

- 19.1. The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 19.2. No such special resolution invalidates anything which the directors have done before the passing of the resolution.

## 20. **DELEGATION OF DIRECTORS' POWERS**

- 20.1. The directors may from time to time delegate any of their powers to any one director or committee. The members of such committees shall be appointed in accordance with article 20.2 and, except as stated in article 20.2, the persons appointed to such committees need not be directors of the company. The directors may designate the chairman or convenor of each such committee and may delegate any of their powers or discretions (other than the power to borrow) to any such committee upon such terms and conditions and with such restrictions as they think fit and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers and may revoke such delegation and discharge any such committee. Any committee so formed shall, in the exercise of the powers or discretions so delegated, conform to any regulations which may

from time to time be imposed by the directors. The proceedings of a committee shall be governed by the same provisions of the Articles that regulate the proceedings of directors, so far as they are capable of applying. The directors may make rules of procedure for all or any committees, which shall prevail over any rules derived from the Articles if they are not consistent with them or in the event of any conflict with the Articles.

- 20.2 The chairman of the board of directors shall be an ex-officio member of each committee. Members of each committee will be appointed at the first meeting of the board of directors following the annual general meeting of the company in each year. In the event of a vacancy occurring prior to an annual general meeting the board of directors shall make an appointment as soon as practicable thereafter for the balance of the current year.
- 20.3 Each committee shall appoint a minute secretary. Minutes shall be taken of all committee meetings. Votes taken at committee meetings will be recorded by the minute secretary.
- 20.4 Reports of committee meetings shall be submitted, in writing, to each member of the board of directors through the secretary of the company not less than three days prior to the date of the meeting of the board of directors at which the report is to be discussed. The board of directors will not be prevented from discussing oral reports of any committee in the case of urgency. The decision of the board of directors as to whether or not a particular matter is urgent shall be final.
- 20.5 Reports of all committee meetings shall be submitted in writing to the members of the Company at a monthly meeting of the directors.
- 20.6 At a committee meeting, unless a quorum is present, no proposal is to be voted on, except a proposal to call another meeting. The quorum for committee meetings may be fixed from time to time by a decision of the directors but at the date of adoption of these Articles is one half of the membership of the relevant committee, including *ex officio* members.

## 21. APPOINTMENT AND RETIREMENT OF DIRECTORS

- 21.1. The Council shall (subject to article 21.4) be entitled at any time and from time to time to appoint a maximum of two natural persons as directors of the company, and to remove or replace any director so appointed.
- 21.2 AAGC shall be entitled at any time and from time to time to appoint four or more directors of the company (subject always to article 16) and to remove or replace any director so appointed. It shall (subject to article 21.3 below) be a matter for AAGC as to how it identifies those persons who are to accept the foregoing appointments as directors.
- 21.3 No person may be appointed as a director of the company by AAGC unless he is a natural person who holds both a current membership of AAGC and a season ticket for the golf course issued by the company.
- 21.4 The Council's directors shall comprise two elected members representing the Arbroath wards.
- 21.5 Every appointment and removal of a director under this article shall be effected by notice in writing signed by or on behalf of the respective party, and shall take effect immediately upon receipt of such notice at the office or from such date (if any) thereafter as may be specified in such notice.
- 21.6 In the event that a director appointed by a member vacates the office of director by virtue of the provisions of article 22, such member shall be entitled to appoint a person to be director in place of the person vacating office as aforesaid.

## 22. DISQUALIFICATION AND REMOVAL OF DIRECTORS

The office of a director shall be vacated if:-

- (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or

- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (d) he resigns his office by notice to the company; or
- (e) he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated; or
- (f) in the case of a director having been appointed by the Council, he ceases to be an elected member or employee of the Council; or
- (g) in the case of a director having been appointed by AAGC, he ceases to hold either a current annual season ticket issued by the company or to hold a current membership of AAGC; or
- (h) in the case of a director having been appointed by AAGC, he is asked by AAGC to resign.

**23. DIRECTORS' REMUNERATION AND EXPENSES**

Any directors appointed in accordance with article 21 shall be entitled to receive such amounts and/or benefits to reflect services provided to the company as the company (in its sole discretion) deems appropriate, notwithstanding that no director shall be entitled to any remuneration simply for holding the office of director. For the avoidance of doubt, this includes but is not limited to complimentary use of the golf course and other facilities owned by the company, declaring however that no director appointed by the Council in accordance with article 21.1 shall be entitled to complimentary use of the golf course or any other facilities owned by the company at any time. Save as aftermentioned, the directors may, upon the production of relative receipts, be paid all travelling, hotel, and other expenses properly and reasonably incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or otherwise in connection with the discharge of their duties; Provided always that no expenses incurred in attending any company meeting in Arbroath will be reimbursed by the company.

**24. DIRECTORS' APPOINTMENTS AND INTERESTS**

24.1 Subject to article 24.2, the directors may, in accordance with section 175(5)(a) of the 2006 Act, authorise any matter which would otherwise involve or may involve a director breaching his duty under section 175(1) of the 2006 Act to avoid conflicts of interest (a "Conflict").

24.2 When a Conflict is considered by the directors the director seeking authorisation in relation to the Conflict and any other director with a similar interest:

- (a) shall not count in the quorum nor vote on a resolution authorising the Conflict; and
- (b) may, if the other directors so decide, be excluded from the board meeting while the Conflict is considered.

24.3 Each director shall comply with his obligations to disclose his interest in existing and proposed transactions or arrangements with the Company pursuant to sections 177 and 182 of the 2006 Act.

24.4 Save in relation to a resolution authorising a Conflict, a director may vote, at any meeting of the directors or of any committee of the directors, on any resolution, notwithstanding that it in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever, and if he shall vote on any such resolution his vote shall be counted; and in relation to any such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting.

24.5. For the purposes of article 24 -

- (a) a general notice given to the directors that a director is to be regarded as having 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 shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

## 25. PROCEEDINGS OF DIRECTORS

- 25.1. Subject to the provisions of the Articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
- 25.2. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be three, at least one of whom must be a Council Director.
- 25.3. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
- 25.4. The directors will appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director appointed as chairman of the board of directors shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.
- 25.5. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
- 25.6. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors; but a resolution, if it is signed by a director who has appointed an alternate director, need not be signed by the alternate director in that capacity.
- 25.7. Save as otherwise provided by the Articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the company unless his interest or duty arises only because the case falls within one or more of the following paragraphs:-
  - (a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him for the benefit of, the company or any of its subsidiaries;
  - (b) the resolution relates to the giving to a third party of a guarantee, security or indemnity in respect of an obligation of the company or any of its subsidiaries for

which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;

- (c) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by HM Revenue & Customs for taxation purposes.

For the purposes of this article, an interest of a person who is, for any purpose of the Act (excluding any statutory modification thereof not in force when this article becomes binding on the company), connected with a director shall be treated as an interest of the director.

- 25.8. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- 25.9. The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Articles prohibiting a director from voting at a meeting of directors or of a committee of directors.
- 25.10. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

## 26. **MEETINGS OF THE DIRECTORS**

- (a) Unless otherwise agreed by all the members, a meeting of the directors will be held no less frequently than once every quarter in each calendar year to review the company's business and progress and determine strategy and other policy matters to be adopted or implemented after such directors' meetings.
- (b) The exact date, time, and location of any such directors' meetings will be agreed by a majority of the directors, and reasonable prior written notice shall be given to each of the directors together with a written agenda annexing such supporting papers containing such an appropriate amount of detail on all the subjects set out in the agenda in respect of such directors' meetings. Failure to give the requisite period of notice in any particular case shall not invalidate the proceedings and decisions of the board of directors unless an objection is raised by any member of the board of directors at or prior to the meeting to which the relevant notice refers.

For the avoidance of doubt, decisions can only be taken in relation to items which are stated on the agenda.

- (c) Each of the directors shall receive a copy of the minutes of each directors' meeting not later than the next following directors' meeting. The minutes shall be deemed to be approved unless any board member gives notification to the contrary to the company secretary.
- (d) All business shall be conducted through the chair.

## 27. **RESTRICTED TRANSACTIONS**

- 27.1 Each member undertakes to each of the other members to ensure that none of the following transactions, matters or things shall be carried out or effected by the company unless prior approval has been obtained by means of a decision of a meeting of the members in accordance with these Articles (and, without prejudice to the generality of the foregoing, in accordance with article 14.8):-
  - (a) the acquisition of any business or undertaking or the subscription, acquisition or purchase of any stocks, bonds, shares, debentures, options or other securities of any other company, firm, association or entity or the amalgamation or merger with any such body or the formation of any subsidiary of the company;
  - (b) the disposal of the whole or any part of its business or undertaking or (otherwise than in the ordinary and usual course of business) of its assets, in all cases whether

by a single transaction or a series of transactions over a period of time and whether or not related;

- (c) the borrowing or raising of money in excess of Fifty Thousand Pounds (£50,000) Sterling;
- (d) the creation of any mortgage, charge, pledge, lien, (other than liens arising by operation of the law or in normal and ordinary course of trading) or other encumbrance or the giving of any guarantee or indemnity;
- (e) the granting of any general power of attorney or similar authority;
- (f) the calling of a meeting of its members for the purpose of considering a resolution for its winding up;
- (g) the appointment or removal of any director other than in accordance with article 37; and
- (h) the admission of a new member of the company, in accordance with article 9.2.

27.2 Notwithstanding the foregoing, the prior written consent of the Council shall additionally be required to (i) any alteration of the Articles; (ii) any change of name or trading style of the company or (iii) the alteration of or change in the nature of the company's trade or business to any material extent, and each member undertakes to each of the other members and the Council to ensure that no alteration of the Articles shall be made without obtaining the prior written consent of the Council thereto.

## 28. **SECRETARY**

Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

## 29. **MINUTES**

The directors shall cause minutes to be made in books kept for the purpose:-

- (a) of all appointments of officers made by the directors; and
- (b) of all proceedings and decisions taken at meetings of the company and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

## 30. **EXECUTION**

By virtue of the provisions of Section 48 of the Companies Act 2006, the company need not have a seal. The directors may determine who shall sign any instrument on behalf of the company and unless otherwise so determined it shall be signed by two directors or by a director and by the secretary or by two signatories authorised by the company.

## 31. **ACCOUNTS**

31.1. The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.

31.2 No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or authorised by the directors or by ordinary resolution of the company.

## 32. **NOTICES**

32.1. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic

communications to an address for the time being notified for that purpose to the person giving the notice.

In this article, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications.

- 32.2. The company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at its registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the company by the member. A member whose registered address is not within the United Kingdom and who gives to the company an address within the United Kingdom at which notices may be given to it, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to it at that address, but otherwise no such member shall be entitled to receive any notice from the company.

In this article and the next, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications.

- 32.3. A member represented at any meeting of the company by a person appointed in accordance with article 14.2 shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
- 32.4. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

### 33. **COMPANY RULES**

The directors may from time to time make such company rules (and may alter or repeal the same) as they may deem necessary or expedient or convenient for the proper conduct and management of the company, and in particular but without prejudice to the generality of the foregoing, they may by such company rules regulate:-

- (i) the procedure at general meetings and meetings of the directors and committees of the directors in so far as such procedure is not regulated by the articles; and
- (ii) generally, all such matters as are commonly the subject matter of company rules.

The company in general meeting shall have the power by special resolution to alter or repeal the company rules and to make additions thereto and the directors shall adopt such means as they deem sufficient to bring to the notice of members of the company all such company rules, which so long as they are in force, shall be binding on all members of the company. Provided, nevertheless, that no company rule shall be inconsistent with, or shall affect or repeal anything contained in, the memorandum of association of the company or the articles.

### 34. **WINDING UP**

If upon the winding-up or dissolution of the company there remains, after the satisfaction of all its debts and liabilities, any assets whatsoever, the same shall not be paid to or distributed among the members of the company, but shall be given or transferred to any appropriate body approved by Angus Council or its successors for the purposes of the management and maintenance of the golf courses at Arbroath, which failing, to some other charitable institution either engaged in: (a) the management and maintenance of golf courses in Angus; or (b) the promotion of sport or leisure in Angus, which shall prohibit the distribution of its income and property to an extent at least as great as is imposed on the company under or by virtue of article 7.1 and this article 34, such institution to be determined by the members of the company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object.

## 35. DIRECTORS' INDEMNITY AND INSURANCE

35.1. Subject to article 35.2, a relevant officer of the company or an associated company may be indemnified out of the company's assets against:-

- (a) any liability incurred by that officer in connection with any negligence, default, breach of duty or breach of trust in relation to the company y,
- (b) any liability incurred by that officer in connection with the activities of the company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),
- (c) any other liability incurred by that officer as an officer of the company.

35.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

35.3 In this article:-

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a "relevant officer" means any director, former director or other officer of the company or an associated company (but not its auditor).

35.4 The directors 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.

35.5 In this article:-

- (a) a "relevant officer" means any director or former director of the company or an associated company, any other officer or employee or former officer or employee of the company or an associated company (but not its auditor) or any trustee of an occupational pension scheme (as defined in section 235(6) of the Act) for the purposes of an employees' share scheme of the company or an associated company, and
- (b) 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.

## 36. CONFIDENTIALITY

36.1 Subject to the Council complying with its obligations under the Freedom of Information (Scotland) Act 2002, each of the members hereby undertakes that, except as required by law, it shall not make use of or divulge or communicate to any person and shall use its best endeavours to prevent the use, publication or disclosure of any information concerning the business or finances of the company or any dealings, transactions or affairs or other information relating to the company or any other members of the company which it (or any employees, directors, consultants, servants or agents of it) shall have received or obtained whilst it was a member. Provided that periodical reports on the activities and affairs of the company (excluding financial information not otherwise available to the public) may be made public (save where commercially sensitive) provided that the prior written consent (such consent not to be unreasonably withheld or a decision thereon unreasonably delayed) of the non-disclosing members shall have been obtained.

36.2 The restrictions contained in article 63(a) will cease to apply to information or knowledge which (a) comes into the public domain save to the extent that it shall come into the public domain through the default of a member when the said member shall remain liable pursuant to article 36.1 above; and/or (b) was already in the possession of the disclosing party (received from a third party) otherwise than as a result of a breach of article 36.1.

Names and Addresses of Subscribers

At \_\_\_\_\_ on \_\_\_\_\_ 2015

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
For and on behalf of The Arbroath Artisan Golf Club

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
For and on behalf of The Arbroath Artisan Golf Club

\_\_\_\_\_  
Witness Address

\_\_\_\_\_

At \_\_\_\_\_ on \_\_\_\_\_ 2015

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
For and on behalf of Angus Council

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Address

\_\_\_\_\_