

Notes

Insert the name of the company

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These notes and the accompanying model Memorandum and Articles have been updated to take into account the relevant provisions of the Companies Act 2006 which have already come into force or are due to come into force on 1 October 2008. They do not take into account those provisions which do not come into force until 1 October 2009.

Clause 1 - In general, the Commission can accept any name unless it infringes the principles set out in section 6 of the Charities Act 1993, which are explained in our publication *Registering as a Charity* (CC21) and in our Operational Guidance (OG18 - 'Names') available on our website. In very broad terms, the name should not be misleading, offensive or likely to be confused with the name of an existing charity.

Clause 2 - Choose one of the options.

Clause 3 - Insert the purpose for which the company has been formed. A charity's objects must be expressed in exclusively charitable terms and this can be quite difficult. Guidance is available in our publication *Choosing and Preparing a Governing Document* (CC22). The key elements to include are:

- the purpose itself (eg establishing and running a school);
- the people who can benefit (in our example, school age children); and, if appropriate;
- any geographic limits which may be needed to define the area of benefit. This will not always be necessary. If you do include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished.

July 2008

COMPANY LIMITED BY GUARANTEE

FRIDAY



LD4 08/05/2009 249
COMPANIES HOUSE

Memorandum of Association of

GREATWOOD CARING FOR RETIRED RACEHORSES LIMITED

1 The company's name is

GREATWOOD CARING FOR RETIRED RACEHORSES LIMITED

(and in this document it is called the charity).

2 Option 1

The charity's registered office is to be situated in England.

Option 2

~~The charity's registered office is to be situated in Wales.~~

3 The charity's objects (the Objects) are

(a) THE WELFARE OF SICK, NEGLECTED, INJURED AND RETIRED RACEHORSES AND THEIR RELIEF FROM SUFFERING.

(b) THE RELIEF OF THE SUFFERING OF SUCH OTHER HORSES AND OTHER ANIMALS WHICH ARE SICK, INJURED OR NEGLECTED AS THE CHARITY SHALL THINK FIT.

(c) THE PROVISION OF RECREATIONAL FACILITIES TO ENABLE DISABLED AND UNDERPRIVILEGED CHILDREN TO PARTICIPATE IN THERAPY PROGRAMMES WITH THE HORSES AND OTHER ANIMALS WHICH THE CHARITY CARES FOR WITH THE OBJECT OF IMPROVING THEIR CONDITION OF LIFE AND ASSISTING IN THEIR TREATMENT AND CARE.

(d) THE PROVISION OF AN EDUCATIONAL PROGRAMME FOR THE BENEFIT OF CHILDREN WITH DISABILITIES AND/OR SPECIAL EDUCATIONAL NEEDS AND/OR UNDERPRIVILEGED CHILDREN WHEREBY THE CHILDREN LEARN ABOUT THE ANIMALS THAT THE CHARITY CARES FOR AND LEARN ABOUT THE COUNTRYSIDE AND THE ENVIRONMENT WHICH SUSTAINS THOSE ANIMALS AND TO PROVIDE THE CHILDREN WITH THE OPPORTUNITY TO EXPERIENCE AND LEARN ABOUT THE COUNTRYSIDE AND ITS CONSERVATION GENERALLY.

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Clause 4 - It is useful to include these powers to avoid any misunderstanding of the nature of the key powers available to the charity and the conditions that have to be met when exercising the powers. Examples of powers that companies already have include a power to insure and a power to amend the memorandum and articles of association; note however that this power of amendment may in certain circumstances only be exercised with our prior consent under s.64 of the Charities Act 1993 (see our Operational Guidance (OG47) "Alterations of governing documents: charitable companies" on our website).

Clause 4(1)(a) - This sub-clause provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies. The only restriction here is that it does not allow the charity to engage in substantial permanent trading for the purpose of raising funds. (Trading on a small scale is allowed. HM Revenue and Customs provides guidance on the tax treatment of different sorts of trading). If your charity is likely to raise funds from trading, our publication *Trustees, Trading and Tax* (CC35) provides detailed advice. The terms of this power do not prevent trading in order to carry out the charity's object - for example, an educational charity can charge fees for the educational services it provides.

Clause 4(1)(b) - This power is helpful if the charity is to acquire property either for use as office premises or functionally (such as a playground or school site). Our publication *Acquiring Land* (CC33) contains further guidance on the issue.

Clause 4(1)(c) - This power enables the charity to dispose of its property. Sections 36 and 37 of the Charities Act 1993 as amended by the Charities Act 2006, apply to most charities and require compliance with certain conditions to ensure that charity property is disposed of for the best terms reasonably obtainable. Our publication *Disposing of Charity Land* (CC28) provides more information about this.

Clause 4(1)(d) - This provides the Company with an explicit power to borrow. It also makes clear that if this power involves securing the loan on land of the Charity, it must comply with the requirements of the Charities Act 1993 as amended by the Charities Act 2006. Briefly, the Act requires that the Directors take advice and provide certain certificates/statements when they are borrowing money by way of mortgage. Our Operational Guidance OG22 ("Borrowing and Mortgages") on our website provides detailed information on this.

Notes for Clause 4 continue on page 5.

- 4 (1) In addition to any other powers it may have, the charity has the following powers in order to further the Objects (but not for any other purpose):
- (a) to raise funds. In doing so, the charity must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations;
 - (b) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
 - (c) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the charity must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006;
 - (d) to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed. The charity must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if it wishes to mortgage land;
 - (e) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
 - (f) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
 - (g) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity formed for any of the Objects;
 - (h) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
 - (i) to employ and remunerate such staff as are necessary for carrying out the work of the charity. The charity may employ or remunerate a Director only to the extent it is permitted to do so by clause 5 and provided it complies with the conditions in that clause;
 - (j) to:
 - (i) deposit or invest funds;
 - (ii) employ a professional fund-manager; and
 - (iii) arrange for the investments or other property of the charity to be held in the name of a nominee;
- in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;

(n) to receive all legacies due to Greatwood Caring for Retired Homes (charity number 1077080), to which the Charity is the Successor body;

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Clause 4(1)(i) - This power cannot be used to employ Directors as staff. See Clause 5.

Clause 4(1)(j) - The Trustee Act 2000 provides wide powers of investment and requires the Charity to take advice and to consider the need to invest in a range of different investments. Our publication *Investment of Charitable Funds: Basic Principles* (CC14) provides more information about Charity investments. The powers to employ agents, nominees and custodians are of particular use where the Charity wishes to use an investment manager.

(k) to provide indemnity insurance for the Directors or any other officer of the charity in relation to any such liability as is mentioned in subclause (2) of this clause, but subject to the restrictions specified in subclause (3) of the clause;

(l) to pay out of the funds of the charity the costs of forming and registering the charity both as a company and as a charity;

(m) to do all such other lawful things as are necessary for the achievement of the Objects.

(2) The liabilities referred to in sub-clause (1)(k) are:

(a) any liability that by virtue of any rule of law would otherwise attach to a director of a company in respect of any negligence, default breach of duty or breach of trust of which he or she may be guilty in relation to the charity;

(b) the liability to make a contribution to the charity's assets as specified in section 214 of the Insolvency Act 1986 (wrongful trading).

(3) (a) The following liabilities are excluded from sub-clause (2)(a):

(i) fines;

(ii) costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud, dishonesty or wilful or reckless misconduct of the Director or other officer;

(iii) liabilities to the charity that result from conduct that the Director or other officer knew or must be assumed to have known was not in the best interests of the charity or about which the person concerned did not care whether it was in the best interests of the charity or not.

(b) There is excluded from sub-clause 2(b) any liability to make such a contribution where the basis of the Director's liability is his or her knowledge prior to the insolvent liquidation of the charity (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the charity would avoid going into insolvent liquidation.

Clause 5(1) - The income of a charity must be applied solely to further its objects and not to benefit the members. The Directors have a duty to ensure that the funds are correctly applied in accordance with this principle.

5 (1) The income and property of the charity shall be applied solely towards the promotion of the Objects.

(2) (a) A Director is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.

(b) Subject to the restrictions in sub-clause 4, a Director may benefit from trustee indemnity insurance cover purchased at the charity's expense.

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Clause 5(4) - A Charity Director may not derive any financial benefit from his or her office unless specifically authorised to do so by the Charity Commission or the express terms of the governing document of the Charity. This prohibition extends to people closely connected to the Director - see clause 5(7)(b).

Use Option 1 and delete Option 2 (subclauses 4-5) if the Charity will want to prohibit the Directors from receiving any payment from the Charity other than for the type of expenses permitted at sub-clause (5)(2). Any departure from this principle would require the authority of the Charity Commission - our publication *Trustee Expenses and Payments* (CC11) advises on the considerations when seeking the Commission's authority in these circumstances.

Use Option 2 (sub-clauses 4-5) and delete Option 1 if it is thought that it will be in the interests of the charity to allow one or more of the Directors to enter into the sorts of transactions covered in 5(5).

As from 1 October 2008 directors will be under a specific duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (section 175(1) of the Companies Act 2006).

In the case of a charitable company this duty can be modified as regards a conflict of interest arising in relation to a transaction or arrangement with the company if it is permitted by the company's articles of association (section 175(3) of the Companies Act 2006). Although the present clause is contained in the memorandum, there is a provision in the articles that all those provisions in the memorandum which could be contained in the articles shall take effect as if repeated in the articles.

Where a benefit is authorised by an order of the Court or of the Charity Commission, the duty to avoid a conflict of interest does not arise (section 26(5A) of the Charities Act 1993).

In addition, authorisation may be given by the unconflicted directors to a conflict of interests where the company's constitution includes provision enabling them to provide such authorisation (section 175(5)).

Clause 5(4) and (5) in Option 2 of the memorandum provides the necessary structure for all the benefits previously authorised by Option 2 of the model memorandum and articles to continue to be authorised after 1 October 2008. These

(c) A Director may receive an indemnity from the charity in the circumstances specified in Article 49.

(3) None of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the charity. This does not prevent a member who is not also a Director receiving:

(a) a benefit from the charity in the capacity of a beneficiary of the charity;

(b) reasonable and proper remuneration for any goods or services supplied to the charity.

Option 1

~~(4) No Director may:~~

~~(a) buy goods or services from the charity;~~

~~(b) sell goods, services or any interest in land to the charity;~~

~~(c) be employed by or receive any remuneration from the charity;~~

~~(d) receive any other financial benefit from the charity;~~

~~unless the payment or transaction is:~~

~~(i) permitted in accordance with, and subject to the conditions in, section 73A or 73F of the Charities Act 1993 [services provided by a charity trustee to the charity; trustee indemnity insurance]; or~~

~~(ii) previously and expressly authorised in writing by the Charity Commission.~~

Option 2

(4) No Director may:

(a) buy any goods or services from the charity;

(b) sell goods, services, or any interest in land to the charity;

(c) be employed by, or receive any remuneration from the charity;

(d) receive any other financial benefit from the charity;

unless:

(i) the payment is permitted by sub-clause (5) of this clause, does not exceed an amount that is reasonable in all the circumstances, and does not result in a majority of the Directors having received a financial benefit from the charity; or

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are all accommodated within the terms of section 175(3) or are to be authorised by the Commission so that the duty in section 175(1) does not apply. In addition, because of the impending specific duty, some provision has been made for conflicts of duty where a director owes a duty of loyalty to another organisation but the unconflicted directors consider it is in the interests of the charity for that director to continue as a director. This provision can be found at Clause 5(7).

Note that Article 39 of the Articles of Association imposes a duty on the Directors to declare an interest in any transaction of the Charity and to absent themselves from any discussion where there may be a conflict between their personal interests and those of the Charity. This would include, for example, discussions about the need for the provision of a particular service which one of the Directors might have an interest in supplying (although in this example the terms of section 73A of the Charities Act 1993 would already make it necessary for the director to absent him/herself). Statutory duties to declare any interests will come into force on 1 October 2008 (sections 177 and 182 of the Companies Act 2006).

Clause 5(4)(a) - This does not prevent a Director from buying or leasing land from the charity; such transactions will however require the Commission's consent under s.36 of the Charities Act 1993, as amended by the Charities Act 2006.

Clause 5(4)(d) - Our publication *Trustee Expenses and Payments* (CC11) explains the circumstances in which we will authorise a payment to a Director.

Clause 5(5) - Sub-clauses 5(5)(a) - (e) set out possible powers to permit a range of different benefits for Directors if Option 2 is used and it is going to be in the interests of the charity to include these.

These powers cannot be adopted by existing charities without the authority of the Charity Commission. None of these options permits the Directors to receive payment for acting as Director.

Clause 5(6) - If Option 1 is chosen, renumber this as clause 5(5) and replace '(5)' with '(4)' after '(2)' in the first line. Renumber subsequent subsection (7) as (6).

- (ii) the Directors obtain the prior written approval of the Commission and fully comply with any procedures it prescribes.
- (5) (a) (i) A Director may receive a benefit from the charity in the capacity of a beneficiary of the charity.
- (ii) A Director may enter into a contract for the supply of goods or services to the charity where that is permitted in accordance with, and subject to the conditions in, section 73A of the Charities Act 1993.
- (iii) A Director may receive interest on money lent to the charity at a reasonable and proper rate which must be 2% (or more) per annum below the base rate of a clearing bank to be selected by the Directors.
- (iv) A company of which a Director is a member may receive fees remuneration or other benefit in money or money's worth provided that the shares of the company are listed on a recognised stock exchange and the Director holds no more than 1% of the issued capital of that company.
- (v) A Director may receive rent for premises let by the Director to the charity if the amount of the rent and the other terms of the lease are reasonable and proper and provided that such a Director shall withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (vi) The Directors may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the Directors in accordance with the terms of, and subject to the conditions in, section 73F of the Charities Act 1993.
- (b) The employment or remuneration of a Director includes the engagement or remuneration of any firm or company in which the Director is:
 - (i) a partner;
 - (ii) an employee;
 - (iii) a consultant;
 - (iv) a director; or
 - (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Director holds less than 1% of the issued capital.

(6) In sub-clauses (2)-(5) of this clause 5:

- (a) "charity" shall include any company in which the charity:
 - holds more than 50% of the shares; or

- controls more than 50% of the voting rights attached to the shares; or
- has the right to appoint one or more directors to the Board of the company;

(b) "Director" shall include any child, parent, grandchild, grandparent, brother, sister, spouse or civil partner of the Director or any person living with the Director as his or her partner.

(7) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in this memorandum or the articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply:

- (a) the conflicted Director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
- (b) the conflicted Director does not vote on any such matter and is not to be counted when considering whether a quorum of Directors is present at the meeting;

(c) the unconflicted Directors consider it is in the interests of the charity to authorise the conflict of interest in the circumstances applying.

6 The liability of the members is limited.

7 Every member promises, if the charity is dissolved while he or she is a member or within twelve months after he or she ceases to be a member, to contribute such sum (not exceeding £10) as may be demanded of him or her towards the payment of the debts and liabilities of the charity incurred before he or she ceases to be a member, and of the costs charges and expenses of winding up, and the adjustment of the rights of the contributories among themselves.

8 (1) The members of the charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the charity be applied or transferred in any of the following ways:

- (a) directly for the Objects; or
- (b) by transfer to any charity or charities for purposes similar to the Objects; or
- (c) to any charity for use for particular purposes that fall within the Objects.

Clause 8 - The Charity has power under the Companies Acts to wind up. The Directors must comply with company law in using that power and provide Companies House with the required documentation. In these circumstances, Directors will need to send to us promptly a copy of the relevant resolution and a copy of the final accounts.

- (2) Subject to any such resolution of the members of the charity, the Directors of the charity may at any time before and in expectation of its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision made for them, shall on dissolution of the charity be applied or transferred:
- (a) directly for the Objects; or
 - (b) by transfer to any charity or charities for purposes similar to the Objects; or
 - (c) to any charity or charities for use for particular purposes that fall within the Objects.
- (3) In no circumstances shall the net assets of the charity be paid to or distributed among the members of the charity (except to a member that is itself a charity) and if no such resolution is passed by the members or the Directors the net assets of the charity shall be applied for charitable purposes as directed by the court or the Commission.

GREATWOOD CHARITY LIMITED
COMPANY NUMBER: 05903838
CHARITY REG NUMBER: 1117322
(the "Company")

PRIVATE COMPANY LIMITED BY GUARANTEE WITHOUT SHARE CAPITAL

WRITTEN SPECIAL RESOLUTION OF THE MEMBERS

Circulation Date: 2017

1 SPECIAL RESOLUTION

- 1.1 Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as a special resolution (the "Special Resolution"):

1.1.1 **THAT** the companies memorandum of association be altered by inserting the following new objective as sub-clause 3 (e):

1.1.2 "3 (e) The provision of educational and recreational programmes for the benefit of adults with disabilities and/or mental health/emotional or learning difficulties and/or from a disadvantaged background whereby they participate in programmes with horses and/or within the Greatwood environment with the object of improving their condition of life and assisting in improving employment opportunities."

2 AGREEMENT

- 2.1 Please read the notes at the end of this document before signifying your agreement to the resolution.
- 2.2 The undersigned, the persons entitled to vote on the above resolutions on 16 November 2017, hereby irrevocably agrees to the Special Resolution:

Signed by Helen Mary Yeadon

Date

16 November 2017

Signed by Michael Bradley Yeadon

Date

16 Nov 2017

3 NOTES

- 3.1 If you agree with the Special Resolution, please indicate your agreement by signing and dating this document where indicated above.
- 3.2 If you do not agree to the Special Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.
- 3.3 Once you have indicated your agreement to the Special Resolution, you may not revoke your agreement.

Unless by the 2017, sufficient agreement has been received for the Special Resolution to pass, it will lapse.
