

Constitution of Evolve Housing Limited

Adopted: 17 May 2016

Amended: 16 August 2018

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1 Name of Corporation

The name of the company is **Evolve Housing Limited**.

2 Status of the Constitution

2.1 Constitution of the Company

This is the constitution of the Company.

2.2 Replaceable Rules

The Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

3 Interpretation

3.1 Definitions

In the Constitution:

Annual Membership Fee means the amount (if any) to be set by the Board from time to time and must not exceed \$10.

ATO means The Australian Taxation Office.

Auditor means the person appointed for the time being as the auditor of the Company.

Board means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney, New South Wales.

Casual Vacancy means the cessation of the particular office before expiry of the natural term, for whatever reason.

Chairperson means any individual appointed for the time being as, or to perform the functions of, chairperson of the Board and elected in accordance with **clause 16**.

Chief Executive Officer means the individual from time to time appointed by the Board (on terms and conditions determined by the Board) to be the Chief Executive Officer of the Company. The Chief Executive Officer is not a Director.

Committee means any committee or sub-committee of the Board, as established by the Board from time to time.

Company means Evolve Housing Limited ACN 127 713 731.

Constitution means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying or replacing this document.

Corporations Act means the *Corporations Act 2001* (Cth).

Deputy Chairperson means any individual appointed for the time being as, or to perform the functions of, deputy chairperson of the Company and elected in accordance with **clause 16**.

Director means an individual who is a director for the time being of the Company and **Directors** means more than one Director. In relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to a Director or Directors include alternates.

Executive Committee means the committee comprised of the Chairperson, Deputy Chairperson and Chief Executive Officer.

Member means a person who is, or who is registered as, a member of the Company and **Members** means more than one Member.

Members Guarantee Amount means \$2.

Membership means being a Member of the Company.

National Law means the Community Housing Providers National Law.

Register of Members means the register of Members maintained pursuant to the Corporations Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

Seal means, if there is one, the common seal for the time being of the Company.

Secretary means any individual appointed for the time being as, or to perform the functions of, secretary of the Company and elected in accordance with **clause 24**.

Special Consent means the affirmative vote in person or by proxy of more than 75 per cent of the Members on a particular resolution.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Act 1936* (Cth) as appropriate.

3.2 Interpretation

In the Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to this document is to be construed as a reference to this document as modified or replaced;
- (c) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (d) a reference to an “entity” includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity (examples are companies, associations, trusts, not for profits and

consumer organisations) and additionally includes a corporate representative appointed pursuant to section 250D of the Corporations Act but it expressly excludes an individual;

- (e) a reference to a “person” includes an entity and an individual;
- (f) headings are used for convenience only and are not intended to affect the interpretation of this Constitution;
- (g) a reference to a faculty, college or society includes the relevant body as reconstituted from time to time and to any replacement or successor body; and
- (h) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in the Constitution.

4 Objects and purpose

4.1 Objects and purpose

- (a) The objects of the Company are to provide for the relief of poverty, sickness, destitution, helplessness and distress in the community including through the development and delivery of innovative housing services and solutions to assist members of the community in need, regardless of race, creed, colour or gender and to be a major contributor to the relief of housing stress in Australia, including by:
 - (i) increasing the availability and quality of affordable housing stock available for low and moderate income households;
 - (ii) building socially inclusive communities through the provision of facilities, amenities and services to improve social, educational and economic outcomes for members of those communities; and
 - (iii) influencing public policy outcomes through raising awareness of the causes and effects of housing stress, together with the provision of innovative solutions to address housing needs.
- (b) The Company may take any action to support the fulfilment of the objects including:
 - (i) undertaking the collection of data, research and policy analysis in relation to housing;
 - (ii) developing housing management skills and expertise at the local, regional, state and national levels;
 - (iii) negotiating with and lobbying all levels of government for the development and expansion of non-profit housing programmes and for the retention of existing low income and medium income housing stock;
 - (iv) liaising with and complementing existing housing provision services and housing support services, including the

implementation and promotion of programmes for health and wellbeing; and

- (v) undertaking commercial ventures and investments, including by entering into arrangements with third parties, to support the objects in **clause 4.1(a)**.
- (c) The purpose of the Company is to pursue charitable purposes only and to apply the profits (if any), income and property of the Company whensoever derived solely to promote the objects in **clause 4.1(a)**.
- (d) In relation to the objects set out in **clause 4.1(a)** the Company may do other lawful things incidental or conducive to the attainment of these objects.
- (e) The Company may act as trustee of a public fund, the purpose of which is to provide funds to deductible gift recipients, including the Company, in connection with the objects and purposes in this **clause 4.1**.

4.2 Limitation of powers

- (a) The Company must not distribute any of its profits, income or assets directly or indirectly to Members.
- (b) Nothing in this Constitution prevents the Company from paying its Members (including its Directors):
 - (i) reimbursement for expenses properly incurred by them;
 - (ii) reimbursement for goods supplied and services provided by them;
 - (iii) the payment of interest on money borrowed from any Member of the Company at a rate not exceeding the daily variable home loan rate of the National Australia Bank as published in the Sydney newspapers; and
 - (iv) payment for work performed in accordance with an employment contract, award or other employment related instrument approved by the Board,

if this is done in good faith on terms no more favourable than if the Member was not a Member.

- (c) The Directors may receive such remuneration as may be determined by the Company as well as reimbursement for all expenses reasonably incurred by them in the business of the Company. A general meeting will approve an annual aggregate payment for all directors.
- (d) The Company must not enter into any agreement concerning residential premises in respect of which any Member has an interest (other than as a tenant) or in respect of which any company or trust in which any member is associated in any way has an interest.

4.3 Non profit

The assets and income of the Company must be applied solely in furtherance of the Company's objects, and to this end the Company may:

- (a) apply any part of the income or capital of the Company;
- (b) accumulate any part of the income or capital of the Company insofar as it is consistent with the Company's objects and the Company's endorsement under Division 30 or Division 50 of the Tax Act (if any).

5 Modification or repeal of the Constitution

5.1 Modifying or repealing Constitution

The Constitution may be modified or repealed only with Special Consent of the Members.

5.2 Date of effect of modification or repeal

Any modification or repeal of the Constitution takes effect on the date of the Special Consent or any later date specified, or provided for, in the Special Consent.

5.3 Not prejudicial

- (a) The Company cannot modify the Constitution if it will unfairly prejudice one or more categories of Members.
- (b) The Company cannot modify the Constitution if it will impose a new or greater liability on a Member or on a category of Members, except with consent of the relevant Member.
- (c) Nothing in this **clause 5.3** prevents the Company modifying the Constitution to comply with law, provided that the approvals in **clause 5.1** are obtained.

6 Member's liability

6.1 Liability to contribute

Subject to the Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

6.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

7 Members

7.1 Current Members

The persons named in the schedule are the Members of the Company at the date of the adoption of this Constitution.

7.2 Members

- (a) The Board may from time to time make appropriate provisions for the application and admission of persons to Membership and the conditions of such Membership.
- (b) For the avoidance of doubt, an individual who is a tenant of a property owned by the Company:
 - (i) is not automatically a Member by reason of being a tenant; and
 - (ii) is not precluded from being a Member subject to the application and admission conditions that may be made by the Board under **clause 7.2(a)**.

7.3 Number of Members

The Company must have at least three Members.

7.4 Pre-condition to Membership

A person is entitled to become a Member if the person:

- (a) agrees in writing to observe the Constitution and to assume the liability to pay the Member's Guarantee Amount;
- (b) pays the Annual Membership Fee (if required); and
- (c) satisfies any requirements relating to the conditions of membership under **clause 7.2**.

7.5 Becoming a Member

- (a) The Board may prescribe the form of the application for Membership.
- (b) An application for Membership must be:
 - (i) in writing signed by or on behalf of the applicant; and
 - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form.
- (c) Subject to the Corporations Act, a person becomes a Member on the registration of its name in the Register of Members.

7.6 Eligibility for Membership and rights of Membership

- (a) An applicant for membership may only be admitted as a Member if the applicant satisfies the pre-conditions for Membership in **clause 7.4**.
- (b) The rights of Members are as follows:
 - (i) Members of the Company are entitled to attend general meetings of the Company; and

- (ii) Members of the Company are entitled to vote at general meetings of the Company in accordance with this Constitution.

7.7 Consideration for application for Membership

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application.

7.8 Registration as Member

If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person in the Register of Members.

8 Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

9 Cessation of Membership

9.1 Cessation of Membership

A Member ceases to be a Member, if the Member:

- (a) resigns as a Member in accordance with **clause 9.2**;
- (b) ceases to satisfy the eligibility requirements for Membership under the Constitution in accordance with **clause 7.6**;
- (c) is expelled as a Member in accordance with the Constitution;
- (d) dies;
- (e) fails to pay any amount payable to the Company or provide any in-kind services that are due, in either case within 60 days of being required to and the Board resolves that Membership of the Member be terminated;
- (f) is placed under external administration or makes any composition or arrangement with its creditors; or
- (g) is made bankrupt or is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

9.2 Resignation of Member

A Member may resign from the Company by giving the Board at least 30 days' written notice.

9.3 Expulsion of Member

If the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person is automatically expelled as a Member by notice in writing to the Member.

10 Maintenance of Register

10.1 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) any conditions imposed on a Member's Membership; and
- (d) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

10.2 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or principal place of business. A Member may inspect the Register of Members between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

11 General meetings

11.1 Annual general meetings

The Company must hold its first annual general meeting within 18 months after its incorporation.

11.2 Director convening a general meeting

Any Director or the Board may convene a general meeting.

11.3 Meetings requested by Members

- (a) If the Board receives a request from a Member the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Member requesting the meeting and be signed by the Member making the request.
- (c) A general meeting requested by a Member must be held no later than two calendar months after the request is received.

11.4 Notice of general meeting

- (a) At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor.
- (b) The notice must:
 - (i) state the date, time and place (or places) of the meeting;
 - (ii) state the general nature of the business to be conducted at the meeting;
 - (iii) state any proposed resolutions;
 - (iv) state the names of proxies that have been appointed (if any); and

- (v) contain a statement informing the Members of the right to appoint a proxy.

11.5 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the notice calling the general meeting on shorter notice is agreed to by all Members entitled to attend and vote at the meeting and accordingly, any such general meeting will be treated as having been duly convened.

11.6 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

11.7 General meetings at two or more places

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

11.8 Postponement or cancellation of general meeting

- (a) Subject to the Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by one or more Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Member(s).

11.9 Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

11.10 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;

- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

12 Proceedings at general meetings

12.1 Quorum

- (a) A quorum at a general meeting is three Members present in person or by proxy. The quorum must be present at all times during the general meeting.
- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

12.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of a Member, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

12.3 Chairing general meetings

The Chairperson will chair the general meeting.

12.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

12.5 Adjournment

- (a) The chair of a general meeting at which a quorum is present may adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business referred to in the notice convening the adjourned or postponed general meeting.

13 Proxy

13.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.

13.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the proxy's name or the name of the office held by the proxy; and
 - (iii) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If

an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.

- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
 - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
 - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

13.3 Proxy to be received by Company

- (a) The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

13.4 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

13.5 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

13.6 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a

particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

14 Voting

14.1 Entitlement to vote

- (a) Each Member entitled to vote at a general meeting may vote in person or by proxy.
- (b) Each Member has one vote.

14.2 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

14.3 Voting on resolution

At any general meeting the procedure for voting on a resolution will be determined by the chair of that meeting in accordance with **clause 12.4**.

14.4 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

14.5 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

14.6 Minutes

- (a) In accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;

- (ii) any declarations at each general meeting; and
- (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

14.7 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

15 Appointment and removal of Directors

15.1 Current Directors

The persons named in the schedule are the Directors of the Company at the date of adoption of this Constitution.

15.2 Number of Directors

The Company must have a minimum of six and a maximum of ten Directors. All Directors must be natural persons and at least 18 years of age.

15.3 Appointment of Directors

- (a) A person must be a Member as a condition of being eligible for appointment as a Director.
- (b) The Company may by resolution at a general meeting appoint a person as a Director nominated in accordance with this **clause 15**.
- (c) At a general meeting at which a director retires or a Casual Vacancy occurs, the vacated office may be filled by electing a person to it. Nominations for candidates to fill the vacant positions shall be sought in such manner as the Board determines. The election of directors shall be conducted at the meeting in such usual and proper manner as the Board shall direct providing however that same shall not be inconsistent with the other provisions of this clause.
- (d) All prospective directors shall be nominated prior to the annual general meeting, and elected after approval has been granted by the Members.
- (e) A Casual Vacancy which occurs other than at a general meeting must be filled by:
 - (i) resolution of the Members; or
 - (ii) appointment by the Directors.

15.4 Qualifications of Directors

The criteria and qualifications a director must possess will be determined and documented by the Board from time-to-time, having regard to the objectives of the Board comprising a mix of appropriate skills and experience.

15.5 Removal of Director

- (a) Subject to any other provisions of the Constitution, the Board may remove any Director by resolution of the Board.
- (b) At least 1 month's notice must be given to the Director of the intention of the Board to move a resolution to remove a Director.
- (c) If notice of intention to move a resolution to remove a Director is received by the Company, the Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members; and
 - (ii) speak to the motion to remove the Director at the Board meeting at which the resolution is to be put to a vote.

15.6 Cessation of Directorship

An individual ceases to be a Director and the office of Director is vacated if the individual:

- (a) ceases to be a Member;
- (b) is removed or resigns as a Director in accordance with the Constitution;
- (c) if the individual is subject to assessment or treatment under any mental health law and the Board resolves that the individual should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act; or
- (f) is absent from Board meetings for 3 or more Board meetings in any 12 month period without leave of absence from the Chairperson.

15.7 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

16 Election of Officeholders

16.1 Officeholders

The Board shall elect the following officeholders from among the Directors:

- (a) Chairperson; and
- (b) Deputy Chairperson.

16.2 Term

The Board has the power to appoint each officeholder referred to in **clause 16.1** on the terms and for such period as the Board may determine.

16.3 Vacancy

A Casual Vacancy in an officeholder's position shall be filled by a Director chosen by resolution of the Board.

17 Chairperson and Deputy Chairperson

17.1 Eligibility

Each of the Chairperson and Deputy Chairperson is to be suitably qualified and is to have experience and skills as determined by the Board from time-to-time.

17.2 Vacancy of Chair

The Board must use reasonable endeavours to ensure that a vacancy of the position of Chairperson or Deputy Chairperson will be filled by a Director.

17.3 Duties

- (a) The Chairperson shall have such duties and functions and may exercise such powers and authorities as are imposed or conferred on him or her by this document and by any resolution of the Board including the following:
 - (i) to decide any question of procedure arising at a meeting of the Board which is not provided for by this document or any prior resolution of the Board;
 - (ii) to direct such officers or employees of the Company as the Chairperson deems proper to carry out or give effect to any or all decisions or directions of the Board;
 - (iii) to ensure appropriate liaison is maintained with the Members as to the administration and management, present and future, of the Company; and
 - (iv) to perform such other duties or functions as the Board may decide.
- (b) The Deputy Chairperson shall have such duties and functions and may exercise such powers and authorities of the Chairperson, in the absence of, or as required to do so, by the Chairperson.

17.4 Removal of Chairperson or Deputy Chairperson

A person may be removed from the position of Chairperson or Deputy Chairperson by a resolution of the Board.

17.5 Resignation

A person may resign from the office of Chairperson or Deputy Chairperson by giving notice of resignation to the Secretary.

18 Powers and duties of Board

- (a) Subject to the Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to the Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting. Without limitation, this includes appointing and removing the Chief Executive Officer.
- (c) The Board may delegate any of its powers to:
 - (i) the Executive Committee;
 - (ii) the Chairperson;
 - (iii) the Deputy Chairperson;
 - (iv) a Director;
 - (v) a committee;
 - (vi) the Chief Executive Officer or any other employee of the Company;
or
 - (vii) any other individuals.
- (d) Notwithstanding any delegation made under this **clause 18** the Board may continue to perform or exercise all or any of the duties, functions, powers and authorities delegated.

19 Establishment of Committees

19.1 Establishment of Committees

The Board may establish such committee or committees of the Board as it may decide from time to time.

19.2 Composition of Committees

- (a) A committee shall consist of such individuals, whether Directors or not, as the Board may appoint to be members thereof.
- (b) The terms and conditions of appointment of individuals appointed to be members of a committee shall be as the Board prescribes or otherwise fixes.
- (c) At the time it appoints the members of a committee, and thereafter as it deems necessary, the Board shall fix the number of such members that must be present at a meeting of the committee to constitute a quorum for such a meeting.

19.3 Chairperson of Committees

- (a) The Board shall appoint a member of the committee who is a Director to be chair of the committee; provided that if the Board is of the opinion that there are special reasons arising from the nature of the duties and functions of a committee which make it in the interest of the Company

and preferable that it should do so, it may appoint to be chair of that committee a member who is not a Director.

- (b) The terms and conditions of appointment as chair of the member of the committee appointed to that office, if that member is not a Director, shall be as the Board prescribes or otherwise fixes.

19.4 Duties, functions and powers

The duties, functions, powers and authorities of a committee shall be as the Board prescribes or otherwise fixes; and these duties, functions, powers and authorities shall be performed and exercised as the Board may prescribe or decide.

19.5 Timing

- (a) A committee shall be deemed to be established when the name, duties, functions, powers and authorities thereof are prescribed or fixed and the chair thereof is appointed.
- (b) A committee shall not have power to perform any of its duties or functions while there is no chair appointed.

19.6 Subject to Board authority

- (a) Subject to this document, a committee shall be subject to the authority of the Board at all times and shall act in accordance with and not contrary to any direction of the Board.
- (b) The Board, at any time and either with or without notice of its intention so to do, may dissolve a committee by notice in writing to the chair of the committee.

20 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

21 Alternate Directors

21.1 Appointment and terms of appointment

- (a) If a Director wishes to appoint an individual as an alternate, that Director must give notice to the Company detailing:
 - (i) the name, experience and qualifications of the individual;
 - (ii) the terms upon which the Director intends to appoint the individual as an alternate, including whether the individual is to exercise some or all of the powers of the Director; and
 - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The Board may ask for further information in relation to the alternate's qualifications and experience.

- (c) If the alternate is a Director, the appointment will take effect immediately.
- (d) If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms of appointment.
- (e) Where the alternate is not a Director, an appointment of an individual as an alternate is not effective until a signed consent to the appointment is provided by that individual to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (f) An alternate is not an agent of the Director appointing the alternate.

21.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

21.3 Notice and attendance at Board meetings

- (a) If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate.
- (b) An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

21.4 Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

21.5 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

22 Board and Committee meetings

22.1 Number of meetings

The Board must meet at least five times per calendar year.

22.2 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) Any Director may at any time convene a Board meeting or a meeting of any Committee of the Board of which that Director is a member by notice to the other Directors.

22.3 Notice of meetings

- (a) Reasonable notice of each Board or Committee meeting must be given to the Directors and each alternate entitled to receive notice (if any) and in the case of each Committee meeting each member of the Committee.
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board or Committee meeting; andthe general nature of the business to be conducted at the Board or Committee meeting.

22.4 Omission to give notice

No resolution passed at or proceedings at any Board or Committee meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board or Committee meeting;
- (b) any change of place (or places) of that Board or Committee meeting;
- (c) postponement of that Board or Committee meeting; or
- (d) resumption of that adjourned Board or Committee meeting.

22.5 Use of technology

- (a) A Board or Committee meeting may be convened or held using any technology consented to by all Directors in the case of a Board meeting, or all Committee members in the case of a Committee of the Board. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board or Committee meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting as determined by the chair of the meeting to the extent appropriate.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.

22.6 Quorum at meetings

A quorum at a Board meeting is more than half of the Directors present in person. For the avoidance of doubt, Directors will be present in person (and form part of a quorum) if they participate in a meeting held in accordance with **clause 22.5**. The quorum must be present at all times during the Board or Committee meeting.

22.7 Chair of meetings

- (a) At the first Board or Committee meeting following the annual general meeting of the Company in each year, the Directors present in person may:
- (i) affirm the continuing appointment of the incumbent chair; or
 - (ii) elect any other Director as the chair of the Board or the Committee (as the case may be).

On the election of the new chair, the new chair will chair subsequent Board or Committee meetings.

- (b) If the chair is not present within 15 minutes after the time appointed for a Board or Committee meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board or Committee meeting:
- (i) the Director for the time being appointed as the Deputy Chairperson; or
 - (ii) in the absence of the chair and the deputy chair, such other Director as the Directors present in person may elect,
- will chair that Board or Committee meeting.
- (c) The Directors may elect a Director to chair a Board or Committee meeting by a majority vote.

22.8 Passing resolutions at meetings

- (a) A resolution of the Board or a Committee of the Board must be passed by a majority of the votes cast by the Directors and Committee members entitled to vote on the resolution.
- (b) Each Director and Committee member present in person or by alternate is entitled to vote and has one vote.

22.9 Conduct of meetings

The chair of each Board and Committee meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

22.10 Written resolutions

- (a) The Board or a Committee of the Board may pass a resolution without a Board meeting or Committee meeting being held if all the Directors and other Committee Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained

in more than one document, with each document to be identical to each other document.

- (b) A document produced by electronic means under the name of a Director and with the Director's authority is taken to be a document signed by the Director for the purposes of **clause 22.10(a)** and is taken to be signed when received by the Company in legible form.

22.11 Minutes of meetings

- (a) Within one month after each Board or Committee meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board and Committee meeting; and
 - (ii) all resolutions passed without a Board or Committee meeting.
- (b) The chair, or the chair of the next Board or Committee meeting, must sign the minutes at the next Board or Committee meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

22.12 Committee meetings

The rules of this Constitution relating to meetings (including resolutions and minutes) and proceedings of the Board with any necessary modifications apply to the meeting of any Committee of the Board except that a quorum for a meeting of any Committee is from time to time to be determined by the Board.

23 Director's interests

23.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

23.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

24 Appointment of Secretary

- (a) The Company must have at least one Secretary. The Board has the power to appoint a natural person to act as Secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

25 Removal and remuneration of Auditor

25.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

25.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

25.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

26 Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).

- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.

27 Financial records and banking arrangements

27.1 Member's access to financial records

Other than as required by law, ordered by a court with jurisdiction or determined to be appropriate by the Board, no Member or any other person may inspect any financial or any other record of the Company.

27.2 Directors' access to financial records

Any Director may at any time access and inspect any financial and any other record of the Company.

27.3 Access to financial records after ceasing to be a Director

The Board may determine that any individual who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

27.4 Banking Arrangements

The Board may determine the banking arrangements of the Company including procedures for signing cheques and any other form of electronic banking transfers.

28 Notices

28.1 General

Any notice, statement or other communication under this Constitution must be in writing.

28.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;
 - (ii) left at the person's current address as recorded in the Register of Members;
 - (iii) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (iv) sent by fax to the person's current fax number for notices; or
 - (v) sent by email to the person's current email address for notices.

28.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

28.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

28.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

28.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

29 Indemnity and insurance

29.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer or any individual who has been an officer of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred by the officer in or arising out of the conduct of any activity of the Company or in or arising out of the proper performance of the officer's duties including any liability, loss, damage, cost, charge and expense incurred by that officer in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, in which judgment is given in the officer's favour or in which the officer is acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the court to the officer.

- (b) This indemnity is not intended to indemnify any officer in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

29.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any officer. The Board will determine the terms of the indemnity contained in the agreement.

29.3 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer or any person who has been an officer, of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

30 Winding up

30.1 Liabilities and surplus assets

- (a) At the first occurrence of:
 - (i) the winding up of the Company; or
 - (ii) if the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, the revocation of that endorsement or the Company ceasing to be so endorsed,

any surplus assets (including all community housing assets in a participating jurisdiction) remaining, after the satisfaction of all debts and liabilities of the Company, the payment of the costs and charges and expenses of winding up, must not be paid to or distributed among the Members, but must be transferred to some (one or more) fund, authority or institution:
 - (iii) to which income tax deductible gifts can be made (but only if the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act);
 - (iv) having objects and purposes, being charitable at law, similar to those of the Company;
 - (v) which prohibits the distribution of income among its members to an extent at least as great as is imposed on this Company under or by virtue of this Constitution; and
 - (vi) subject to **clause 30.1(b)**.
- (b) To the extent that any surplus assets in **clause 30.1(a)** remaining on winding up comprise community housing assets of the Company such

community housing assets must be transferred to another organisation in a participating jurisdiction which:

- (i) is a registered community housing provider within the meaning of the National Law, in the jurisdiction in which the assets are located; or
 - (ii) is a Housing Agency within the meaning of the National Law in the jurisdiction in which the assets are located.
- (c) For the purpose of **clause 30.1(b)** the identity of the registered community housing provider or Housing Agency must be decided by the Members by ordinary resolution at or before the time of winding up or dissolution of the Company, and, if the Members cannot decide, by the person who is the Chairperson at the time of winding up or dissolution of the Company.

30.2 Revocation of ATO endorsement

The Company's endorsement (if any) under Subdivision 30-BA of the Tax Act is not considered "revoked" for the purposes of **clause 30.1** until the later of:

- (a) 60 days have elapsed since receiving written notice of revocation from the ATO; or
- (b) the finalisation of all objection processes or court proceedings, if any, in relation to the revocation.

Schedule

The following persons are the Members of the Company under this Constitution for the purpose of **clause 7.1**:

- (a) Paul Howlett;
- (b) Rhonda Hawkins;
- (c) Alan Zammit;
- (d) Philip Frost;
- (e) Robert Lang;
- (f) David Borger;
- (g) Kay Veitch; and
- (h) Natalie Walker.

The following persons are the Directors of the Company under this Constitution for the purposes of **clause 15.1**:

- (a) Paul Howlett;
- (b) Rhonda Hawkins;
- (c) Alan Zammit;
- (d) Philip Frost;
- (e) Robert Lang;
- (f) David Borger;
- (g) Kay Veitch; and
- (h) Natalie Walker.