



## **Constitution**

**EACH Housing Ltd**  
**ACN 133 571 614**

A company limited by guarantee

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**1. NAME**

The name of the Company is EACH Housing Ltd.

**2. TYPE OF COMPANY**

The Company is a not-for-profit public company limited by guarantee (CLG) which is established to be, and to continue as, a charity.

**3. OBJECTS AND POWERS**

**3.1 Objects**

The Company has the following objects:

- (a) The principle object of the Company is to provide relief to persons in financially necessitous circumstances (whether by reason of infirmity, age, disability or other disadvantage) by providing those persons with affordable housing.
- (b) To raise money to further the aims of the Company and to secure sufficient funds for the purposes of the Company.
- (c) To receive any funds and to distribute those funds in a manner that best attains the objects of the Company.
- (d) To do all such things as are incidental or conducive to the attainment of all or any of the objects of the Company.

**3.2 Powers**

- (a) The Company's powers include and are not limited to the following:
  - (i) acquire, by way of purchase, lease, transfer or otherwise, real property;
  - (ii) dispose of any real property, subject to the consent of the Director of Housing under Section 109 of the Act;
  - (iii) provide security for the payment of money, subject to the consent of the Director of Housing under Section 109 of the Act;
  - (iv) apply for and accept, grants or loans from any Federal, State or local government or authority;
  - (v) enter into contracts and joint ventures with any public or private entity; and
  - (vi) do anything incidental to or in furtherance of its objects.
- (b) The Company must not act as a trustee for any person other than a Registered Agency, without the written approval of the Registrar under section 82 or 103 of the Act.

**3.3 Application of income and property**

- (a) The income and property of the Company must be applied solely towards the Principle Object.

- (b) The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in this clause 3.3 and clause 12.12.
- (c) Sub-clause 3.3(b) does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Director in their capacity as director of the Company to the extent permitted by law and this constitution.
- (d) Sub-clause 3.3(b) does not prevent payment in good faith a reasonable and proper amount with the Board's prior approval to a Member or Director, or to a firm of which a Member or Director is a partner, for:
  - (i) services supplied to the company;
  - (ii) remuneration for services to the Company (including services as a Director or services on a Board committee);
  - (iii) expenses incurred on behalf of the Company;
  - (iv) interest on money lent to the Company; or
  - (v) rent for premises let to the Company.
- (e) Sub-clause 3.3(b) does not prevent the Company from providing services or information to Members on terms which are different from the terms on which services or information are provided to persons who are not Members.

## **4. MEMBERSHIP**

### **4.1 Members**

The Members of the Company are the Members on the register of Members as at the date of adoption of this Constitution, and such other persons as the Company admits to Membership in accordance with this Constitution and who remain Members.

### **4.2 Eligibility for Membership**

An individual is eligible to be admitted as a Member if the person:

- (a) in the opinion of the Directors:
  - (i) is a fit and proper person;
  - (ii) is of good character; and
  - (iii) supports the objects of, or is otherwise interested in, the Company;
- (b) is not at the relevant time an employee of:
  - (i) the Company; or
  - (ii) a related body corporate of the Company;
- (c) in the case of Voting and Life Members, has not in the 2 years prior to the relevant time been an employee of:
  - (i) the Company; or
  - (ii) a related body corporate of the Company,

- (d) is over 18 years of age; and
- (e) has paid any fees that are payable under clause 12.11.

#### **4.3 Classes of Membership**

Members are divided into the following classes:

- (a) Voting Members;
- (b) Associate Members; and
- (c) Life Members.

#### **4.4 Rights of classes**

- (a) A Voting Member of the Company is a natural person who has applied and been admitted as a Voting Member of the Company, and who has undertaken in their application to contribute the amount specified in clause 12.11.
- (b) An Associate Member of the Company is a natural person who has applied and been admitted as an Associate Member of the Company, and who has undertaken in their application to contribute the amount specified in clause 12.11.
- (c) A Life Member of the Company is a natural person who has accepted the Board's offer of appointment as a Life Member of the Company, and who has undertaken to contribute the amount specified in clause 12.11.

#### **4.5 Form of application**

An application for Membership must comply with the following requirements:

- (a) It must be signed by the applicant.
- (b) It must be accompanied by such documents or evidence as to qualification for the category of Membership applied for as the Directors determine.
- (c) When requested, it must be accompanied by an application fee determined in accordance with clause 12.11.

#### **4.6 Admission to Membership**

- (a) The Directors must consider an application for Membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- (b) The Directors do not have to give reasons for rejecting an application.
- (c) If an application for Membership is rejected, any paid application fee must be refunded to the applicant.
- (d) If an applicant is accepted for Membership the Secretary must notify the applicant of admission in the form of a receipt for the application fee, if any, or in such other form as the Directors determine and the name and details of the applicant must be entered in the Register.
- (e) An applicant becomes a Member when they are entered on the register of Members.

#### **4.7 Register of Members**

- (a) A register of the Members of the Company must be kept in accordance with the Corporations Act.
- (b) The following details must be entered in the Register in respect of each Member:
  - (i) the full name of the Member;
  - (ii) the address for notices last given by the Member;
  - (iii) the class of Membership; and
  - (iv) the date of admission to and cessation of Membership.
- (c) The Register may also contain such other information as the Directors require, including but not limited to any alternate electronic or other address and/or telephone number of the Member.
- (d) Each Member must notify the Secretary in writing of any change in that person's name, address or other contact details previously supplied, within one month after the change.
- (e) Where a Member ceases to be a Member, their name must be removed from the Register.
- (f) Upon the removal of a Member's name from the Register:
  - (i) The Member forfeits all rights and privileges attaching to Membership and all rights which the Member may have against the Company arising out of the Membership; and
  - (ii) The Company has no liability to such Member in respect of the removal from the Register.

#### **4.8 Rights of Members**

- (a) A person who is a Voting Member or a Life Member has the right to receive notices of and to attend and be heard at any General Meeting and has the right to vote at any General Meeting.
- (b) An Associate Member has the right to receive notices and to attend and be heard at any general meeting but does not have the right to vote at any General Meeting.
- (c) Variation of class rights

Unless otherwise provided by the terms of Membership of a class of Members:

- (i) all or any of the rights or privileges attached to the class may be varied, whether or not the Company is being wound-up, only with the consent in writing of three-quarters of the Members of that class, or with the sanction of a special resolution passed at a separate meeting of the Members of that class;
- (ii) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the Members of that class; and

- (iii) the rights or privileges conferred upon the Members of that class are to be taken as not being varied by:
  - (A) the admission or appointment of further Members in that class or any other class; or
  - (B) any Member's cessation of Membership, whether under clause 5.2 or otherwise.

#### **4.9 Obligations of Members**

All Members must pay the application fee, if any, being such sum as the Directors prescribe from time to time in respect of each category of Membership and which is non-refundable.

### **5. RESIGNATION AND CESSATION OF MEMBERSHIP**

#### **5.1 Resignation of Members**

- (a) A Member may resign as a Member by written notice to the Company.
- (b) The resignation takes effect when the Company receives the Member's notice, or on a later date specified in the notice.

#### **5.2 Other cessation of Membership**

- (a) A person ceases to be a Member on:
  - (i) termination of the person's Membership in accordance with this Constitution; or
  - (ii) the Directors deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence sent to the contact details entered in the Register for that Member; or
  - (iii) in the case of a natural person:
    - (A) death;
    - (B) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
- (b) A Member whose Membership is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding the Guaranteed Amount for which the Member is liable under this Constitution.
- (c) Any person who for any reason ceases to be a Member must not represent themselves in any manner as being a Member.

### **6. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**

#### **6.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a Member or Director and:
  - (i) one or more Members;



- (ii) one or more Directors; or
  - (iii) the company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.2 until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 6.1(c), they must within 10 days:
  - (i) tell the Directors about the dispute in writing;
  - (ii) agree or request that a mediator be appointed;
  - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
  - (i) be chosen by agreement of those involved; or
  - (ii) where those involved do not agree:
    - (A) for disputes between Members: a person chosen by the Directors; or
    - (B) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the Law Institute of Victoria.
- (f) A mediator chosen by the Directors under clause 6.1(e)(ii)(A):
  - (i) may be a Member or former Member of the company;
  - (ii) must not have a personal interest in the dispute; and
  - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
  - (i) allow those involved a reasonable chance to be heard;
  - (ii) allow those involved a reasonable chance to review any written statements;
  - (iii) ensure that those involved are given natural justice; and
  - (iv) not make a decision on the dispute.
- (h) If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute through legal proceedings.

## **6.2 Disciplining Members**

- (a) In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:
  - (i) the Member has breached this constitution; or
  - (ii) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

- (b) At least 14 days before the Directors' meeting at which a resolution under clause 6.2(a) will be considered, the secretary must notify the Member in writing:
  - (i) that the Directors are considering a resolution to warn, suspend or expel the Member;
  - (ii) that this resolution will be considered at a Directors' meeting and the date of that meeting;
  - (iii) what the Member is said to have done or not done;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the Member may provide an explanation to the Directors, and details of how to do so.
- (c) Before the Directors pass any resolution under clause 6.2(a), the Member must be given a chance to explain or defend themselves by:
  - (i) sending the Directors a written explanation before that Directors' meeting; and/or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 6.2(c), the Directors may:
  - (i) take no further action;
  - (ii) warn the Member;
  - (iii) suspend the Member's rights as a Member for a period of time of now more than 12 months;
  - (iv) expel the Member;
  - (v) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
  - (vi) require the matter to be determined at a General Meeting.

## **7. MEETINGS AND RESOLUTIONS OF MEMBERS**

### **7.1 Convening General Meetings**

A General Meeting may only be called:

- (a) by a Director; or
- (b) by a resolution of the Board; or
- (c) by or at the request of Members in any of the circumstances permitted by Division 2 of Part 2G.2 of the Act, even if those provisions of the Act do not apply by force of law to the Company as a result of the ACNC Legislation.<sup>1</sup>

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<sup>1</sup> Part 2G.2 of the Act enables a General Meeting to be convened by or at the request of Members.

## **7.2 Notice of general meeting**

- (a) Written notice of a General Meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- (b) A notice of a General Meeting may be given by any form of communication permitted by the Corporations Act.
- (c) The accidental omission to give notice of any General Meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the General Meeting.

## **7.3 Cancellation of general meetings**

- (a) The Directors may cancel a General Meeting, other than a General Meeting which they are required to convene and hold under the Corporations Act.
- (b) A meeting may only be cancelled in accordance with clause (a) if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

## **7.4 Quorum at general meetings**

- (a) Business may not be transacted at a General Meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise set out in this document, the number of Voting Members present in person or by representative equal to half the number of Directors on the Board at that time is a quorum. If half the number of Directors on the Board is not a whole number, then the number of Voting Members present in person or by representative required to constitute a quorum is rounded up to the next whole number.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
  - (i) If the meeting was convened by or on the requisition of Members, it must be dissolved.
  - (ii) Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- (d) If a meeting has been adjourned to another time and place determined by the Directors, not less than seven days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

## **7.5 Quorum at adjourned general meetings**

- (a) At the adjourned meeting 1 Voting Member present is a quorum but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

## **7.6 Appointment of chairperson**

- (a) If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at every General Meeting.
- (b) The Directors present at a General Meeting must elect one of their number to chair the meeting if either of the following applies:
  - (i) A Director has not been elected as the chairperson of Directors meetings.
  - (ii) The chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
- (c) The Voting Member at a General Meeting must chair the meeting if there are no Directors present within 15 minutes after the time appointed for the holding of the meeting or all Directors present decline to take the chair.

## **7.7 Chairperson's powers**

- (a) Subject to the terms of this document dealing with adjournment of meetings, the chairperson may give a ruling on all matters relating to the order of business, procedure and conduct of the General Meeting.
- (b) The chairperson, in their discretion may expel any Member or Director from a General Meeting if the chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour. Any of the following conduct may be considered inappropriate in a General Meeting:
  - (i) The use of offensive or abusive language which is directed to any person, object or thing.
  - (ii) Attendance at the meeting while judgement is impaired by any kind of drug including but not limited to any alcoholic substance.

## **7.8 Adjournment of meetings**

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **7.9 How many votes a Member has**

Each Voting Member and each Life Member has one vote.

#### **7.10 Challenge to Member's right to vote**

- (a) A Member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- (b) If a challenge is made under clause 7.10(a), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

#### **7.11 How voting is carried out**

- (a) Voting must be conducted and decided by:
  - (i) a show of hands;
  - (ii) a poll; or
  - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- (b) Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- (c) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (d) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

#### **7.12 When and how a poll must be held**

- (a) A poll may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (i) a Voting Member or Life Member; or
  - (ii) the chairperson.
- (b) A poll must be held when and how the chairperson directs, unless clause 7.12(c) applies.
- (c) A poll must be held immediately if it is demanded under clause 7.12(a):
  - (i) for the election of a chairperson under clause 7.6(b), or
  - (ii) to decide whether to adjourn the meeting.
- (d) A demand for a poll may be withdrawn.

#### **7.13 Mode of meeting for Members**

- (a) The Company may hold a general meeting using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard and which conforms to legislation.
- (b) Anyone using this technology is taken to be present in person at the meeting.

#### **7.14 Resolution in writing**

A resolution in writing signed by all Voting Members and Life Members, excluding any such Members who have been given leave of absence, is to be

treated as a determination of the Members passed at a meeting of the Members duly convened and held.

### **7.15 Form of resolution in writing**

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- (b) If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- (c) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

## **8. PROXIES AND REPRESENTATIVES**

### **8.1 Proxies and representatives of Members**

- (a) At meetings of Members each Member entitled to vote may vote in person or by proxy or by attorney. A Voting Member, which is a corporation, may appoint an individual as a representative.
- (b) Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or as representing a corporation which is a Member has all the powers of that Member, except where expressly stated to the contrary.

### **8.2 Appointment of proxies**

- (a) A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.
- (b) A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.

### **8.3 Authority of proxies**

- (a) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- (b) Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting, except that the proxy is not entitled to vote on a show of hands.

### **8.4 Verification of proxies**

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
  - (i) The document appointing the proxy.

- (ii) If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) Those documents must be either:
  - (i) Received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 24 hours before the time for holding the meeting.
  - (ii) Produced to the chairperson of the meeting before the proxy votes.
- (c) If a general meeting has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

## **8.5 Validity of proxies**

- (a) A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this document.

## **8.6 Revocation of appointment of proxy**

- (a) A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company before the commencement of the meeting or adjourned meeting at which the document is used:
  - (i) The previous death or unsoundness of mind of the principal.
  - (ii) The revocation of the instrument or of the authority under which the instrument was executed.

# **9. BOARD**

## **9.1 Number of Directors**

- (a) The minimum number of Directors is three.
- (b) The majority of Directors on the Board at any one time must also be Directors of EACH.
- (c) The Company may, by resolution, increase or reduce the number of Directors and may also determine in what rotation the increased or reduced number is to go out of office.

## **9.2 Election and appointment of Directors**

- (a) The Members may elect a Director by a resolution passed in a General Meeting.
- (b) Each of the Directors must be appointed by a separate resolution, unless:
  - (i) the Members present have first passed a resolution that the appointments may be voted on together; and

- (ii) no votes were cast against that resolution.
- (c) A person is eligible for election as a Director of the Company if they:
  - (i) are a Member of the Company, or a representative of a Member of the Company (appointed under clause 8.1(a));
  - (ii) are nominated by two Members or representatives of Members entitled to vote (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting);
  - (iii) give the Company their signed consent to act as a Director of the Company; and
  - (iv) are not ineligible to be a Director under the Corporations Act or the ACNC Legislation.

### **9.3 Casual vacancy in the Board**

- (a) A casual vacancy is created if a Director:
  - (i) resigns;
  - (ii) dies;
  - (iii) ceases to be a Member;
  - (iv) is removed by a resolution of the Members; or
  - (v) becomes ineligible to be a Director by the Corporations Act or ACNC Legislation.
- (b) If the number of Directors is reduced to fewer than three, the continuing Director or Directors may act for the purpose of increasing the number of Directors to three or calling a general meeting, but for no other purpose.
- (c) The Directors or surviving Director may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:
  - (i) is a Member of the Company, or a representative of a Member of the Company (appointed under clause 8.1(a);
  - (ii) gives the Company their signed consent to act as a Director of the Company; and
  - (iii) is not ineligible to be a Director under the Corporations Act or the ACNC Legislation.
- (d) A Director appointed under clause holds office only until the next general meeting after the appointment and is then eligible for re-election.
- (e) A Director appointed under clause 9.3(c) must not be taken into account in determining the Directors who are to retire by rotation at that general meeting.

### **9.4 Retirement of Directors**

- (a) At each annual general meeting of the Company following the first annual general meeting the following Directors must retire from office:



- (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director;
  - (ii) one third of the Directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one third; and
  - (iii) any other Director who has been in office for three years or more since that Director's election or last re-election as a Director.
- (b) The Directors to retire at an annual general meeting are those who have been longest in office since their last election. If two or more persons became Directors on the same day, those to retire must be determined by lot unless they otherwise agree among themselves.
- (c) A Director retiring at an annual general meeting may act as a Director throughout the meeting at which that Director retires.
- (d) A Director retiring at an annual general meeting is eligible for re-election provided that:
  - (i) they are not disqualified by law from being reappointed; and
  - (ii) the re-election will not result in the person serving as a director for more than 10 continuous years.
- (e) The maximum tenure of 10 years in clause 9.4d(ii) may be waived by special resolution.
- (f) A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

## **9.5 Removal from office**

- (a) If the Director has served for a continuous period of 10 years.
- (b) The Company may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement.
- (c) A person appointed to replace a Director removed from office must retire as a Director at the time ascertained as if the person became a Director on the day on which the Director removed from office was elected or last re-elected a Director.

## **9.6 Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this document, the office of Director becomes vacant if any of the following occurs:

- (a) If the Director becomes an insolvent under administration.
- (b) If the Director becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

- (c) If the Director is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of six months and the Board resolves that the office of that Director be vacated.
- (d) If the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act or ACNC Legislation.

#### **9.7 Directors' remuneration**

- (a) Payment for expenses

The Directors may be reimbursed for all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or otherwise in the execution of their duties as Directors.

- (b) Directors fees

Subject to clause 3.3, Directors may be paid fees for their services as Directors, with the prior approval of the Board.

- (c) Payment for services

- (i) Subject to clause 3.3 a Director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the Director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, exertions or work.
- (ii) The additional amount may be paid either by fixed sum or salary determined by the Directors and either in addition to or in substitution for the fees otherwise payable to the Director.

- (d) Payment must be in good faith

Any payment made to a Director by the Company under this clause 9.7 must be made in good faith.

#### **9.8 Chair and office bearers**

- (a) From time to time as required, the Board must appoint the Chair from among the Board and determine the period for which such Chair is to hold office.
- (b) Office bearers of the Company other than the Chair may be appointed by the Board from among the Board for an annual term of office.
- (c) The description, number and duties of the office bearers may be determined by the Board from time to time.
- (d) An office bearer, including the Chair, may be appointed for more than one successive term.

#### **9.9 Secretary**

- (a) There must be at least one Secretary.
- (b) The Secretary is to be appointed by the Board on such terms and conditions as the Board thinks fit.

- (c) A person must not be appointed Secretary unless the person has given the Company a signed consent to act as Secretary.
- (d) The Board may suspend or remove a Secretary.

## **10. PROCEEDINGS OF BOARD**

### **10.1 Powers of Directors**

- (a) The Directors may exercise all the powers of the Company (in accordance with the provisions of this Constitution) that are not, by the Corporations Act or by this Constitution, required to be exercised by the Members.
- (b) The Directors may (without limiting the previous paragraph):
  - (i) borrow money;
  - (ii) charge any property or business of the Company;
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (iv) decide how negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the Company.
- (c) The Directors cannot remove a Director or auditor.

### **10.2 By-laws**

- (a) The Board has power to make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter such by-laws or regulations as it sees fit.

### **10.3 Meetings of Directors**

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

### **10.4 Convening Board meetings**

The Board may at any time, and a Secretary must on the requisition of a Director, convene a Board meeting.

### **10.5 Entitlement to receive notice of Board meetings**

- (a) Subject to this clause, notice must be given to each Director entitled to vote at a Board meeting at least 5 days before the meeting or at another time determined by resolution of the Directors.
- (b) A Director may waive the requirement to receive notice of a Board meeting.
- (c) It is not necessary to give a notice of a Board meeting to a Director who has been given leave of absence.

#### **10.6 Content of notice of Board meetings**

A notice of a Board meeting:

- (a) must specify where and how the meeting will be conducted, including any technology to be used to conduct the meeting;
- (b) must specify the day and the time of the meeting; but
- (c) does not need to specify the nature of the business to be transacted at the meeting.

#### **10.7 Chair of Board meetings**

- (a) Subject to this clause, the Chair shall preside as chair at every Board meeting.
- (b) Where a meeting of the Board is held and the Chair is not present within 15 minutes after the time appointed for the holding of the Board meeting or is unwilling to act as chair for all or part of the meeting then:
  - (i) if there is a Deputy Chair, the Deputy Chair will chair the Board meeting; and
  - (ii) if there is not a Deputy Chair present, willing and able to chair all or part of the meeting, the Directors present may elect one of their number to be chair of such meeting or part of it.

#### **10.8 Quorum for Board meetings**

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum consists of three Directors.

#### **10.9 Voting at Board meetings**

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote, unless otherwise provided in this Constitution. Such a decision is for all purposes a decision of the Board.
- (b) Where the votes cast on a motion are equal, the chair of the meeting has a second or casting vote.

#### **10.10 Establishment of committees**

- (a) The Board may establish one or more committees comprised of such persons as it thinks fit for such purposes as it sees fit. A committee may include, or be comprised of, non-Directors.
- (b) The meetings and proceedings of committees are:
  - (i) subject to any directions of the Board; and
  - (ii) otherwise governed by the provisions of this Constitution which regulate the proceedings of the Board, to the greatest extent practical.

#### **10.11 Delegation of powers**

- (a) The Board may delegate any of its powers to one or more Directors, a committee, an employee or any other person.
- (b) A delegation must be recorded in the Company's minute book.
- (c) The Board may revoke a delegation.
- (d) The Board may specify terms (including the power to further delegate).

#### **10.12 Validity of acts of Directors**

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a Member of the committee or that they or any of them were disqualified or were not entitled to vote.

#### **10.13 Use of technology in Board meetings**

- (a) The Board may hold their meetings by using any technology that is agreed to by all of the Directors.
- (b) The Directors' agreement may be a standing one.
- (c) A Director may only withdraw his or her consent within a reasonable period before the meeting.
- (d) A Director who is present at a Board meeting through the use of technology is be deemed to be present at the meeting.

#### **10.14 Resolutions without meetings**

- (a) A resolution of the Board may be passed without a meeting if:
  - (i) notice has been given of the resolution to all Directors; and
  - (ii) a majority of the Directors entitled to vote give their consent in writing.
- (b) The resolution is passed at the time when approval is given to the Secretary of the last person necessary to constitute a majority.
- (c) For the purpose of this clause:
  - (i) the notice must include the wording of the resolution;
  - (ii) approval in writing may be given by email or any other means of electronic communication; and
  - (iii) a resolution will be deemed to have failed to have been passed if it has not achieved the requisite majority by 14 days after notice was given.

### **11. BOARD MEMBERS' DUTIES AND INTERESTS**

#### **11.1 Duties of Directors**

Directors must comply with any duties imposed on them by law.

## **11.2 Disclosure of interests**

A Director must disclose any perceived actual or potential conflict of interest to the other Directors.

## **11.3 Participation in decisions**

A Director who has a material personal interest in a matter that is being considered by the Board:

- (a) must not be present while the matter is being considered at a Board meeting; or
- (b) vote on the matter

unless permitted by law.

## **11.4 Directors' interests**

- (a) A Director may:
  - (i) not hold any other position in the Company other than Company Secretary;
  - (ii) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into a contract or arrangement with the Company;
  - (iv) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
  - (v) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
  - (vi) sign or participate in the execution of a document by or on behalf of the Company; and
  - (vii) do any of the above despite the fiduciary relationship of the Director's office:
    - (A) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
    - (B) without affecting the validity of any contract or arrangement

provided the Director complies with the clauses of this Part headed "Disclosure of interests" and "Participation in decisions".

- (b) If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

## **12. ADMINISTRATION**

### **12.1 Minutes**

- (a) The Directors will cause minutes of
  - (i) all proceedings and resolutions of meetings of Members;
  - (ii) all proceedings and resolutions of meetings of the Directors, including meetings of a committee established by the Board;
  - (iii) resolutions passed by Members without a meeting; and
  - (iv) resolutions passed by Directors without a meeting,to be kept in accordance with the *Corporations Act 2001* (Cth).
- (b) The Company must ensure that:
  - (i) minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
    - (A) the chair of the meeting; or
    - (B) the chair of the next meeting; and
  - (ii) minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (c) A minute recorded and signed, either in hard copy or digitally, as required by this clause is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### **12.2 Member access to documents**

- (a) The Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, subject to the Corporations Act and this clause.
- (b) Books containing the minutes of meetings of Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.
- (c) A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors.

### **12.3 Accounts and other records of the Company**

- (a) The Company must make and keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance, and
  - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The accounts will be held at the registered office or any other place as the Directors think fit.

- (c) A Director has a right of access to the financial records at all reasonable times.
- (d) The Company must retain its financial records for at least seven years.
- (e) The Directors must take reasonable steps to ensure that the Company's records are kept safe.
- (f) Subject to the Corporations Act the Directors determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

#### **12.4 Financial year**

The Financial Year will begin on the first day of July and end on the thirtieth day of June, unless the Directors pass a resolution to change the financial year.

#### **12.5 Audit**

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (c) The Company must give the auditor any communications relating to the General Meeting that a Member of the Company is entitled to receive.

#### **12.6 Execution of documents with a seal**

- (a) The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.
- (b) If the Company has a Seal the Directors must provide for the safe custody of the Seal.
- (c) The Seal may only be used on the authority of the Directors.
- (d) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
  - (i) two Directors; or
  - (ii) one Director and one Secretary; or
  - (iii) one Director and another person appointed by the Directors for that purpose.

#### **12.7 Execution of documents without a seal**

The Company may execute a document by the signature of:

- (a) two Directors; or
- (b) one Director and one Secretary; or



- (c) another person appointed by the Board for that specific purpose or in accordance with the Authority Delegation Schedule as approved by the Board from time to time.

## **12.8 Alteration of Constitution**

- (a) The Company may only alter this Constitution by Special Resolution in accordance with the Corporations Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

## **12.9 Notices**

- (a) Persons authorised to give notices
  - (i) A notice by either the Company or a Member in connection with this document may be given on behalf of the Company or Member by a solicitor, Director or company secretary of the Company or Member.
  - (ii) The signature of a person on a notice given by the Company may be written, printed, affixed digitally, or stamped.
- (b) Notices can be served on Members or Directors by post, electronic mail, or such other means as may be generally accepted in business from time to time.
- (c) Notices directed to the last known address (including any virtual or electronic address) of a Member or Director are to be treated as duly served in such time as it would usually take for such notice to be delivered.
- (d) Persons entitled to notice of meeting
  - (i) Notice of every general meeting must be given by a method authorised by this document to all of the following persons:
    - (A) Every Member.
    - (B) Every Director.
    - (C) Every person (if any) entitled to a Membership in consequence of the death or bankruptcy of a Member who, but for the Member's death or bankruptcy, would be entitled to receive notice of the meeting.
    - (D) The auditor for the time being of the Company, if any.
  - (ii) No other person is entitled to receive notices of general meetings.
- (e) A notice:
  - (i) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
  - (ii) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs; and
  - (iii) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent.

- (f) The non-receipt of notice of a General Meeting or Board meeting, including notice of postponement or change of venue, does not invalidate anything done or any resolution passed at the meeting if the non-receipt of notice occurred by accident or inadvertent error.
- (g) A person who attends a General Meeting or Board meeting waives any objection that person may have to non-receipt of notice of the meeting.
- (h) In calculating a period of notice to be given under this Constitution, both the days on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

#### **12.10 Officers: indemnities and insurance**

- (a) The Company indemnifies every person that is or has been an Officer of the Company, or of a wholly-owned subsidiary, against all losses or liabilities (including without limitation liability for legal costs and expenses) incurred as an Officer (other than liabilities to the Company or a related body corporate) to the full extent permitted by law.
- (b) This indemnity:
  - (i) is a continuing obligation and is enforceable by an Officer even though that person has ceased to be an Officer of the company;
  - (ii) is enforceable without that person having first to incur any expense or make any payment; and
  - (iii) operates only to the extent that the loss or liability in question is not covered by insurance.
- (c) The Company may pay, or agree to pay, a premium in respect of a contract insuring its Officers and/or other personnel, to the extent permitted by law.

#### **12.11 Liability of Members**

The liability of the Members is limited to the Guaranteed Amount, being \$20.

#### **12.12 Surplus assets on winding up, dissolution or revocation of Deductible Gift Recipient status**

- (a) Upon the winding up or dissolution of the Company, or the revocation of Deductible Gift Recipient status by the Commissioner of Taxation, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to another Registered Agency under the Act as approved by the Registrar under that Act and which satisfies all of the following requirements:
  - (i) It has objects similar to the objects of the Company.
  - (ii) It is not carried on for the purposes of profit or gain to its Members.
  - (iii) Its constituent documents prohibit the distribution of its income and property among its Members on terms substantially to the effect of clause 3.3.

- (b) This is to be determined by the Members at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of Victoria.

### 12.13 Contribution of Members on winding up

Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member such amount as may be required not exceeding the Guaranteed Amount, for:

- (a) the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member;
- (b) the costs charges and expenses of winding up.

## 13. INTERPRETATION

### 13.1 Exclusion of replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the Company.

### 13.2 Definitions

In this Constitution:

**“ACNC Legislation”** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

**Act** means the *Housing Act 1983* (Vic) as amended from time to time and the subordinate legislation made pursuant to it.

**“Auditor”** may mean a reviewer, if permitted by the Corporations Act or ACNC Legislation.

**“Board”** means the board of Directors of the Company.

**“chair”** means the chairperson of a meeting.

**“Chair”** means the chair determined under clause 9.8.

**“Company”** means EACH Housing Ltd ACN 133 571 614.

**“Constitution”** means this document.

**“Deductible Gift Recipient”** means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

**“Financial Year”** means the financial year set out in clause 12.4.

**“Guaranteed Amount”** means the amount set out in clause 12.11.

**“ITAA 97”** means the *Income Tax Assessment Act 1997* (Cth).

**“Member”** means a person whose name is entered in the Register as a Member of the Company in accordance with clause 4.7 and **“Membership”** has the corresponding meaning.

**“Officer”** has the meaning given under the Corporations Act.

**“Poll”** means a method of voting where votes are cast in writing or by electronic means. It includes (but is not limited to) a vote conducted by secret ballot.

**“Principle Object”** means the purpose set out in clause 3.1(a).

**“Register”** means the register of Members of the Company under the Corporations Act.

**Registrar** means the body corporate established under Part VIII of the Act.

**Registered Agency** means a Registered Housing Association or Registered Housing Provider.

**Registered Housing Association** means a rental housing agency registered as a registered housing association under Part VIII of the Act.

**Registered Housing Provider** means a rental housing agency registered as a registered housing provider under Part VIII of the Act.

**“Seal”** means the common seal of the Company (if any).

**“Secretary”** means the secretary for the time being of the Company and if there are joint secretaries, any one or more of such joint secretaries.

**“Special Resolution”** means a resolution passed at a General Meeting:

- (a) of which notice has been given in accordance with this Constitution; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

### 13.3 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Corporations Act, the meaning from the Corporations Act shall apply to the expression - except where a contrary intention appears in this Constitution.
- (b) Words importing any one gender are deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.
- (c) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.