



**COMMON
EQUITY HOUSING**
South Australia

THE CONSTITUTION OF
COMMON EQUITY HOUSING SOUTH AUSTRALIA LTD

ABN: 82 146 523 453

Version 10

As approved on 11 November 2020

THE CONSTITUTION

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**THE CONSTITUTION OF
COMMON EQUITY HOUSING SOUTH AUSTRALIA LIMITED**

**A public company having a Share Capital
and subject to Corporations Law**

The name of the Company is **COMMON EQUITY HOUSING SOUTH AUSTRALIA LIMITED**. The address of the Company is 32 West Thebarton Road Thebarton South Australia 5023.

1. DEFINITIONS

In this Constitution, unless there is something in the subject matter or context inconsistent with it: -

"Board" means the board of Directors of the Company as constituted from time to time.

"Commonwealth Act" means the Corporations Act in force from time to time or any equivalent legislation concerning or regulating the affairs of Companies.

"Company" means Common Equity Housing South Australia Ltd.

"Court" means the Federal Court of Australia or the Supreme Court of South Australia.

"Director" means any person occupying the position of director of the Company.

"General Meeting" means a general meeting of Members.

"Investment Policy" shall mean the investment policy determined by the Board of Directors from time to time.

"In writing" means written, printed or typed or partly written, or partly typed, and includes lithography or any other substitutes for writing.

"Member" means an entity incorporated under the Associations Incorporation Act 1985 (SA) or the Co-operatives National Law (South Australia) Act 2013 which subscribes to the Objects, has applied in writing for membership of the Company, has been approved for membership by the Directors and holds one or more shares in the Company and proposes to enter, or has entered, into a Property and Service Agreement with the Company. "Member" is also referring to a Member Organisation of Common Equity.

"Minister" means the Minister to whom administration of the State Act is committed for the time being.

"Month" means calendar month.

"National Regulatory System" means the system of regulation established under the State Act for the regulation of Community Housing Providers.

"Objects" means those objects as referred to in Clause 2 of this Constitution.

"Property and Service Agreement" means an agreement for the provision or supply of housing by the Company to a Member.

"SAHT" means the South Australian Housing Trust.

"Special Resolution" shall have the meaning assigned thereto by Section 9 of the Commonwealth Act.

"State Act" means the Community Housing Providers (National Law) (South Australia) Act 2013.

Words importing the singular number only, include the plural number and vice versa.

Words importing the masculine gender only, include the feminine gender.

Words importing persons include corporations.

2. OBJECTS

- (a) The principal object of the Company shall comprise the ownership or leasing of residential properties in order that housing assistance may be provided to low income households or other households in need in accordance with eligibility criteria specified by the Minister.
- (b) A second object shall comprise the establishment of new organisations eligible for registration under the State Act, and which in the opinion of the Directors could benefit from membership of the Company.
- (c) A further object of the Company shall be to own and lease to Corporations, Housing Cooperatives, Associations or individuals' residential properties for the purpose of provision of the same to any low-income person or persons who qualifies for housing assistance in accordance with eligibility criteria specified by the Minister.

3. POWERS AND ACTIVITIES

For the purpose of achieving the Objects, the Company has the powers of a natural person and may engage in the following activities:

- (a) Take and acquire by way of purchase, transfer, conveyance, option, mortgage, licence, assignment, exchange, lease, partition or otherwise, any real property of any tenure and any interest therein including all improvements thereon, fixtures, fittings, plant, machinery, equipment, materials, goods, chattels, and effects and any rights, easements, appurtenances, advantages, conveniences and concessions in connection therewith and to sell, grant options, mortgages, charge or otherwise encumber, license, exchange, lease out or otherwise deal in the same, having regard to any advice and recommendations of SAHT and Subordinate persons or bodies nominated by SAHT.
- (b) Pay all the associated costs of acquiring, owning, leasing, transferring, mortgaging, or otherwise dealing with real property.
- (c) Borrow or raise and secure the payment of money in such manner as the Company may think fit.

- (d) Accept grants of money from any Government or Authority whether Federal, State, or local, and enter into any arrangement or agreement with the same or with any public or governmental body that may seem conducive to the carrying out of the Company's objects and to obtain from any such government authority or body any rights, privileges or concessions which may be deemed advisable or of benefit.
- (e) Provide training and support programs for Members and persons who wish to rent housing from Members.
- (f) Accept, demand, and enforce payment of monies owed to the Company.
- (g) Take any gift of property or any other gift for the furtherance of the objects of the Company and establish a Gift Fund for this purpose.
- (h) Enter into joint ventures and grant leases with other entities.
- (i) Support the community development activities of Members
- (j) Operate on the basis of achieving environmental sustainability and assist Members to achieve environmental sustainability.
- (k) Directly lease residential property to eligible persons in the event that, and for as long as, such persons, having previously been housed by a Member, cannot reasonably continue to be housed or re-housed by that Member or another Member.
- (l) Provide administrative, maintenance, development and like services to Members to assist them to achieve their objectives and to achieve greater efficiency.
- (m) Do all acts and things, and execute all documents and contracts as may be reasonably incidental to the achievement or furtherance of the Objects.
- (n) Accept a transfer of real property from SAHT or any other organisation provided that
 - (i) if at the time of the transfer the property is occupied by a tenant or tenants, such tenant or all such tenants (as the case may be) must be eligible for social housing according to the policies of the SAHT or of any other statutory authority or government department of the State of South Australia; and
 - (ii) the property will be leased as soon as may be practicable by the Company on terms such that any tenant or tenants of the property at the time of the transfer shall be entitled for such period or periods as the Directors may determine after the transfer to continue in occupation of the property on terms (including terms relating to review of rent) no less favourable than the terms which applied to them before the transfer; and
 - (iii) If no Member is willing to accept a lease of the property on such terms as the Company may require then the Company may itself let the property to a tenant or to tenants on the same terms (as between the Company and the tenant) as if the property were leased to the tenant by a Member.
- (o) Apply for registration under the State Act.
- (p) Act as agent with any Member Organisation for such time and for such purposes as may

be agreed between the Company and such Member.

- (q) Accept the transfer of any residential property from a Community Housing Provider and hold the title to such property for so long as the Board may decide, without any limitations of such time, provided that the Company shall as soon as reasonably possible lease such property to a person or persons on terms similar to the terms upon which Member Organisations of the Company lease similar properties to their members.
- (r) Accept a transfer of any residential property by grant, gift or bequest provided that the Company shall lease such a property to a person or persons on such terms as similar properties are leased by Members to their members. (For the avoidance of doubt, the Company may hold, manage and lease such property without any limitation of time for so doing).
- (s) Provide on such terms as the Board may decide, management services, maintenance, rent management and/or administrative services in respect of any residential property.

4. MEMBERSHIP AND APPEALS

- (a) Membership of the Company shall be open to any Community Housing Provider which is registered under the State Act at the time of application.
- (b) Applications for membership shall be made in writing.
- (c) Acceptance of the application for membership shall be at the discretion of the Directors. Applications will not be accepted unless a proposed Member agrees in writing at the time of the application to enter into a Property and Service Agreement with the Company.
- (d) If a Member does not enter into a Property and Service Agreement with the Company prior to or within one month of becoming a Member, or within such later time as may be determined by the Directors, the Directors may resolve to expel or suspend the Member.
- (e) If a Property and Service Agreement with a Member is terminated for any reason, the Directors may resolve to expel or suspend the Member unless the Member has entered into another Property and Service Agreement with the Company.
- (f) If a Member does not at any time have a valid and operative Property and Service Agreement with the Company, the Directors may resolve to expel or suspend the Member.
- (g) Subject to giving a Member an opportunity to be heard or to make a written submission, the Directors may resolve to expel or suspend a Member for a specified period upon a charge of misconduct detrimental to the interests of the Company.
- (h) Particulars of the charge shall be communicated to the Member at least one month before the meeting of the Directors at which the matter will be determined.
- (i) The determination of the Directors shall be communicated to the Member, and in the event of an adverse determination the Member shall, (subject to Clause 4(j)), cease to be

a Member or be suspended as a Member for the specified period 14 days after the Directors have communicated their determination to the Member.

- (j) It shall be open to a Member to appeal the expulsion or suspension to the Appeals Committee constituted under Clause 4(l) below. The intention to appeal shall be communicated to the company secretary or public officer of the Company within 14 days after the determination of the Directors has been communicated to the Member.
- (k) In the event of an appeal under Clause 4(j) above, the appellant's membership of the Company shall not be terminated or suspended unless the determination of the Directors to expel or suspend the Member is upheld by the Appeals Committee after the appellant has been heard by the Appeals Committee, and in such event membership will be terminated or suspended at the date of the Appeals Committee Meeting at which the determination of the Directors is upheld.
- (l) The Company shall pass a By-law constituting an Appeals Committee for the purposes of the State Act and Regulations (as amended from time to time).
- (m) A Member or tenant of the Company may appeal any decision of the Directors to the Appeals Committee. The intention to appeal shall be communicated to the company secretary or public officer of the Company within 14 days after the determination of the Directors has been communicated to the Member or tenant.
- (n) A tenant aggrieved by a decision of the Appeals Committee has a right to appeal under section 84 of the State Act and Regulations (as amended from time to time).

5. DISTRIBUTION OF ASSETS

- (a) The income and property of the Company however derived shall be applied solely towards the promotion of the Objects, and subject to the other provisions of this clause no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Members PROVIDED THAT nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company or to any Member in return for any services actually rendered to the Company nor prevent the payment of interest or reasonable and proper rent for premises demised or let by any Member to the Company.
- (b) Any surplus or savings arising from the operations of the Company shall be applied to the provision of housing (or housing services) or in some other manner approved by the Minister.

6. WINDING UP

- (a) The Company may be wound up in the following manner:
 - 1. by the Supreme Court; or
 - 2. voluntarily, following passage of a special resolution to that effect; or
 - 3. on the certificate of the Minister.
- (b) The grounds on which the Company may be wound up by the Supreme Court are

1. That the Company has passed a special resolution that it be wound up by the Supreme Court
 2. That the Company is unable to pay its debts
- (c) The ground on which the Minister may issue a certificate for the winding up of the Company is that the Minister, pursuant to the State Act, has determined to initiate steps to wind up the Company
- (d) On the winding up of the company, any remaining assets must be transferred to another registered community housing provider or to a housing agency in the jurisdiction in which the asset is located.
(“Community housing asset”, registered community housing provider” and “housing agency” have the same meaning prescribed under the Community Housing Providers (National Law) (S.A.) Act 2013.)
- (e) Unless the Minister otherwise gives authority under the State Act, the Company shall only dispose of any real property if approved by SAHT under the Community Housing Property Transaction Policy and by the Common Equity Board of Directors.

7. LIMITED LIABILITY

The liability of the Members is limited.

8. SHARE CAPITAL

- (a) Until otherwise resolved by the Members, the capital of the Company shall be “Ordinary Redeemable Shares” and the following provision shall apply thereto:
- (i) Such shares shall only be allotted to or held by a Member, subject to Clause 8 (c).
 - (ii) The holder of such shares shall have one vote at a General Meeting of the Company for each of such shares as may be held.
 - (iii) No Member shall hold more than one such share.
 - (iv) The Directors may require such shares to be redeemed by the Company for any such Member by notice in writing giving effect to such redemption at any time after the allotment thereof on the happening of any one or more of the following events:
 1. Insolvency or Receivership or Dissolution of the Member.
 2. The Member no longer holds a valid and current Property and Service Agreement with the Company.
 3. The Member ceases to be a Member or, having been allocated a share under Clause 17, fails to become a Member within three months of the registration of the Company.
 4. The Member ceases to be registered under the State Act.

- (v) The holder of Ordinary Redeemable Shares shall not be entitled to receive any distribution out of the income or capital whether surplus or otherwise of the Company and any resolution of the Company or the Directors determining that any distribution of income or otherwise in favour of the holder of any Director Share shall be absolutely void and of no effect.
- (b) One (1) Ordinary Redeemable Share shall be issued by the Directors to any Member from the time that any Member enters into a Property and Service Agreement with the Company.
- (c) The Directors may in their discretion accept a surrender of shares by way of compromise of any question as to whether or not the same have been validly issued, or in any other case where a surrender is within the powers of the Company. Any shares so surrendered may be sold, or re-issued, or transferred to other Members in the same manner as forfeited shares.
- (d) Except as provided by Section 231 of the Commonwealth Act or as otherwise provided in the Clauses of this Constitution, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except as ordered by a Court of competent jurisdiction or as by statute required, be bound to recognise any equitable or other claim to or interest in such share on the part of any other person.
- (e) A Member will not be entitled to be issued with or hold more than one (1) Ordinary Redeemable Share even if the Member enters into more than one Property and Service Agreement with the Company.

9. SHARE CERTIFICATES

- (a) The Certificates of Title to shares shall be under the Seal of the Company and shall be in such form as the Directors may from time to time determine.
- (b) Every Member shall be entitled to one Certificate for the share or shares registered in its name.
- (c) If any certificates be worn out or defaced then upon production and delivery thereof to the Company the Directors may order the same to be cancelled, and may issue a new certificate in lieu thereof, and if any certificate be lost or destroyed then upon application to the Company by the owner thereof in accordance with the provisions of Section 182 of the Commonwealth Act the Directors shall issue a duplicate certificate in lieu thereof.

10. TRANSFER OF SHARES

Shares in the Company may be transferred as follows:

- (a) Ordinary Redeemable Shares may only be transferred to another proposed Member.

- (b) The instrument of transfer of any share shall be signed both by the Transferor and the Transferee, and the Transferor shall be deemed to remain the holder of such share until the name of the Transferee is entered in the Members' Register in respect thereof.
- (c) The instrument of transfer of any share shall be in writing, and shall be in such form as the Directors may from time to time prescribe or accept.

The Directors may refuse to register any transfer of shares without assigning any reason therefor, and their decision shall be absolute.

- (d) Every instrument of transfer shall be left at the registered office for registration accompanied by the certificate of the shares to be transferred and such other evidence (if any) as the Directors may require to prove the title of the Transferor or his or her right to transfer the shares. The Directors may waive the production of any certificate upon evidence satisfactory to them of its loss or destruction.

11. ALTERATIONS IN CAPITAL

- (a) The Company in General Meeting may cancel shares which have been forfeited, or redeemed, and diminish the amount of its share capital as may be deemed expedient.
- (b) The Company may from time to time increase the capital by the creation of new shares of such amount as may be deemed expedient.
- (c) All provisions of these Clauses shall apply to the shares in the new capital in the same manner in all respects as to the shares in the original capital of the Company.
- (d) The Company may from time to time by Special Resolution reduce its capital in any way permitted or authorised by the Commonwealth Act.

12. GENERAL MEETINGS

- (a) An Annual General Meeting (AGM) of the Company shall be held in accordance with the provisions of the State and Commonwealth Acts as if the Company were a Public Company.
- (b) All General Meetings other than the AGM shall be called 'Extraordinary General Meetings'.
- (c) The Directors may whenever they think fit, and shall when required under Section 249 (f) of the Commonwealth Act, convene an Extraordinary General Meeting of the Company.
- (d) Not less than twenty-one days notice of every Extraordinary General Meeting specifying the place day and hour of the meeting and the general nature of the business to be dealt with shall be given to the Members in the manner hereinafter provided.
- (e) Not less than twenty-one days notice of every General Meeting at which it is proposed by the Company to pass a Special Resolution specifying the place day and hour of the meeting and the intention to propose the resolution as a Special Resolution shall be

given to the Members in the manner hereinafter provided or in such manner (if any) as may be prescribed by the Company in General Meeting.

- (f) With the consent of a majority in number of the Members entitled to attend and vote at a meeting, being a majority holding not less than ninety-five per cent, in nominal value of the shares giving that right, a meeting may be convened by shorter notice than provided above.
- (g) The accidental omission to give such notice to any Members shall not invalidate any resolution passed at any such General Meeting.

13. PROCEEDINGS AT GENERAL MEETINGS

- (a) The business of any AGM shall be to receive and consider the Balance Sheet and the Profit and Loss Account, the Reports of the Directors and of the Auditors, to elect Directors and any other officers in place of those retiring, (if any), and to transact any other business which under these Clauses may be transacted at any AGM. All other business transacted at an AGM and all business transacted at an Extraordinary General Meeting shall be deemed special.
- (b) The quorum for a General Meeting shall be three Members or 25% of the Members (whichever is the greater number of Members) holding any share to which is attached the right to vote, being entitled to vote and being present in person or by proxy, attorney or representative.
- (c) The Chairperson of Directors shall be entitled to take the chair at every General Meeting or if there be no Chairperson or if at any meeting, he or she shall not be present at the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairperson.
- (d) If within thirty minutes after the time appointed for the meeting a quorum is not present, the meeting if convened upon a requisition shall be dissolved, but in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present it shall stand adjourned to the same day in the next week at the same time and place, and if at such further adjourned meeting a quorum is not present the Directors shall be Members for the purposes of Clause 13 (b) and shall be deemed to have one vote for each share held by them.
- (e) Every question submitted to a meeting shall be decided in the first instance by a show of hands by Members entitled to vote and in the case of an equality of votes the Chairperson shall not have a second or casting vote either on a show of hands or upon a poll.
- (f) At any meeting, unless a poll is demanded by a Member entitled to vote or his or her proxy or attorney, an entry in the book to be kept of the proceedings of the Company signed by the Chairperson to the effect that any resolution has been carried or carried by a particular majority, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

- (g) If a poll be demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (h) No poll shall be demanded on the election of a Chairperson of a meeting, and a poll demanded on any question of adjournment shall be taken at the meeting and without adjournment.
- (i) The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (j) The Chairperson of a General Meeting may, with the consent of the meeting, adjourn the same from time to time and place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14. VOTES OF SHAREHOLDERS

- (a) At any General Meeting of the Company, each Member present and authorised by this Constitution to vote shall be entitled to one vote upon a show of hands; save that any Member present and authorised to vote may demand a poll, in which event each such Member shall be entitled to one vote for each share held in the Company.
- (b) Votes may be given either personally or by proxy or attorney or by a representative appointed.
- (c) A proxy may be appointed in writing under the hand of the appointer or his or her attorney or, if such appointer is a corporation, under its common seal or the hand of its attorney.
- (d) The instrument of writing appointing a proxy or representative and the power of attorney (if any) under which it is signed, or proof thereof to the satisfaction of the Directors, shall be deposited at the registered office of the Company at least twenty-four hours before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote.
- (e) A vote given in accordance with the terms of any writing appointing a proxy or power of attorney shall be valid notwithstanding the previous death of the principal, revocation of the proxy or power of attorney, or transfer of the shares in respect of which the vote is given if no intimation in writing of the death, revocation, or transfer shall have been received at the office before the meeting.
- (f) Any Member may by power of attorney duly executed in the presence of one witness at least, appoint an attorney to act on his or her behalf at all meetings of the Company, and such power of attorney, or proof thereof to the satisfaction of the Directors, shall before the attorney shall be entitled to act thereunder be produced for inspection at the office together with such evidence of the due execution thereof as the Directors may require, and such attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

- (g) Any Member may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or by any class of Members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as that corporation could exercise if it were an individual Member of the Company.

15. SPECIAL RESOLUTIONS

- (a) This Constitution may only be altered by a Special Resolution.
- (b) Any Special Resolution altering this Constitution occurring within any financial year that the Company accepts or plans to accept capital funding from SAHT, shall not become effective until written approval of such resolution is given by SAHT.

16. DIRECTORS

- (a) The number of Directors shall be nine (9).
- (b) The Directors shall comprise:
 - (i) Four (4) persons nominated by the Board and selected for the benefit of their technical expertise at law, accounting, social housing, real estate, finance, residential development and other similar areas (“the Technical Directors”).
 - (ii) Four (4) Qualified Persons nominated by Members at least 28 days before the General Meeting and elected by the Members at a General Meeting (“the Member Directors”).
 - (iii) The person appointed by the Board to act as the Chief Executive Officer of the Company.
- (c) In Clause 16(b)(ii), ‘Qualified Person’ means:
 - (i) A member of a Member, or
 - (ii) An employee of a Member, or
 - (iii) A member of the Board or Committee of Management of a Member; or
 - (iv) A tenant of the Company.
- (d) Subject to clauses 16(e) and 16(g), each Director shall hold office until he or she dies, resigns, becomes disqualified under Clause 16 (o), is removed from the office under Clause 16 (p), or in the case of Directors appointed pursuant to Clause 16 (b) (ii) fails to be re-elected.
- (e) The nominations for the position of the Technical Directors to be made pursuant to Clause 16 (b) (i) shall be held at a meeting of the Board. The term of appointment of Technical Directors shall be two (2) years, provided that the Board may at its discretion reduce the length of some or all of the terms of appointment.
- (f) (i) Elections for the positions of Member Directors to be appointed pursuant to sub-clause 16(b)(ii) shall be held at each Annual General Meeting.

- (ii) If at any Annual General Meeting there are fewer nominations for the positions of Member Directors than the number of vacant positions to be filled, additional oral nominations by Members will be sought during the Meeting and in such case each Member shall be entitled to nominate one candidate during the Meeting or at any resumption of the Meeting after an adjournment.
 - (iii) If at any Annual General Meeting there are fewer candidates for election as Member Directors than, or a number of candidates equal to, the number of positions to be filled, so that no election of Member Directors shall be necessary, then the Meeting shall be called upon to ratify the election of each candidate separately; and only if the Meeting ratifies the election of a candidate shall that candidate be duly elected as a Member Director.
- (g) Except as provided in Clause 16(h), the term of the Member Directors shall be two (2) years and at the end of the two (2) year term the Member Directors shall retire from office (PROVIDED THAT such Member Directors shall be eligible for re-election). The appointment of the Member Directors shall be made as follows:
- (h) At the AGM in every subsequent year after the first AGM at least one (1) of the Member Directors shall retire from office (PROVIDED THAT such Member Directors shall be eligible for re-election if still qualified under Clause 16(b)(ii) above). The Member Director or Directors to retire at such AGMs shall be those who have been longest in office since their last election but, as between persons who became Member Directors on the same day, those to retire shall (unless they determine otherwise to agree amongst themselves) be determined by lot.
- (i) A Director, other than the Chief Executive Officer appointed under Clause 18, may serve the Company in any other capacity or hold any other office or place of profit under the Company except the office of auditor.
- (j) A Director may at any time resign his or her office by delivering written notice thereof to the Chairperson of Directors, or the Chief Executive Officer, or company secretary, or leaving it at the registered office of the Company, or by tendering his or her written resignation at a meeting of the Directors.
- (k) The Directors shall be paid out of funds of the Company by way of remuneration for their services such sum as the Company in General Meeting may from time to time decide and such remuneration shall unless otherwise decided by the Company in General Meeting be divided amongst the Directors at such time and in such proportion and manner as they may decide. A Director may also be reimbursed for such travelling, out-of-pocket and other expenses incurred in connection with the affairs of the Company as the Directors consider reasonable.
- (l) Casual vacancies shall be filled in the following manner:
 - (i) Technical Directors nominated by the Board must be replaced by an alternative nominee of the Board, and the nominee shall be determined by a majority vote of the Directors remaining on the Board.

- (ii) Member Directors must be replaced by a nominee of the Board, and the nominee shall be determined by a majority vote of the Directors remaining on the Board.
- (m) Any Member Directors appointed pursuant to Clause 16 (l) shall hold office only until the next following AGM of the Company and shall then be eligible for re-election if still qualified under Clause 16(b)(ii) above.
- (n) The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below four (4) the Directors shall not act except for the purpose of filling vacancies or convening General Meetings, except as provided in Clause 17 below.
- (o) The office of a Director shall be vacated if:
 - (i) He or she ceases to be a Director by virtue of the Commonwealth Act.
 - (ii) He or she becomes bankrupt or makes any arrangement or composition with his or her creditors generally.
 - (iii) He or she becomes prohibited from being a Director by reason of any order made under the Commonwealth Act.
 - (iv) He or she becomes permanently incapacitated by ill health.
 - (v) He or she resigns his or her office by notice in writing to the Company.
 - (vi) He or she is removed from office pursuant to Clause 16 (p).
 - (vii) He or she fails to attend three consecutive meetings of Directors without an acceptable explanation to the Board.
 - (viii) The Member which nominated him or her for election under Clause 16(b)(ii) above ceases to be a Member of the Company.
 - (ix) He or she ceases to be a Qualified Person under Clause 16(c) above.
- (p) The Company may by ordinary resolution remove any elected Director before the expiration of his or her period of Office, and if thought fit by resolution appoint another Director in his or her place.
- (q) No Director shall be disqualified by his or her Office from holding any office or place of profit under the Company or under any company in which this Company shall be a Member or otherwise interested, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way directly or indirectly interested be avoided, nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established.

- (r) The Directors shall have power to co-opt any person to the Board or a sub-committee of the Board to ensure the Company's objects and activities can be properly carried out. Such persons shall be co-opted on a non-voting basis.

Co-opted persons shall serve for periods determined by the voting Directors.

No more than two co-opted persons may serve on the Board at any one time, but the number co-opted to sub-committees shall be as determined by the voting Directors.

17. TRANSITIONAL ARRANGEMENTS

Deleted

18. CHIEF EXECUTIVE OFFICER

- (a) The Directors shall appoint such person as they see fit to be the Chief Executive Officer of the Company either for a fixed period or without limitation as to the period for which such Chief Executive Officer is to hold office, and may from time to time (subject to provisions of any contract between such Chief Executive Officer and the Company) remove or dismiss that person from office, and if thought fit appoint another in that person's place. Subject to the production of a signed Consent, that person shall be entitled to be appointed a Director of the Company.
- (b) The Chief Executive Officer shall (subject to the provisions of any contract between him or her and the Company) be subject to the same provisions as to resignation and removal as the other Directors of the Company, and if he or she ceases to hold the office of the Director from any cause whatever, he or she shall ipso facto and immediately cease to be a Chief Executive Officer and vice versa.
- (c) The remuneration of a Chief Executive Officer shall be fixed by the Directors, and may be by way of salary or allowance.
- (d) The Directors may from time to time:
 - (i) Entrust to and confer upon any Chief Executive Officer such of the powers exercisable by the Directors as they may think fit.
 - (ii) Confer such powers for such time and to be exercised for such terms and objects and purposes and upon such terms and conditions and with such restrictions as they think expedient.
 - (iii) Confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf; and
 - (iv) From time to time revoke, withdraw, alter or vary all or any of such powers.

19. PROCEEDINGS OF DIRECTORS

- (a) The Directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings as they think fit and decide the quorum necessary for the transaction of business and unless otherwise decided five (5) Directors shall be a

quorum. The Directors shall meet at least the number of times required by the National Regulatory System each calendar year.

- (b) Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the Chairperson shall not have a second or casting vote.
- (c) A Director may at any time, and the company secretary upon request of a Director shall, summon a meeting of the Directors.
- (d) A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the Constitution of the Company for the time being vested in or exercisable by the Directors generally.
- (e) A resolution of the Directors in writing signed by all the Directors for the time being shall have the same force and effect as a resolution passed at a meeting of Directors, notwithstanding that such resolution shall not have been passed at a meeting of Directors.
- (f) The Directors may by resolution, power of attorney, or writing, delegate any of their powers to Committees consisting of such Director or Directors or to any person or persons as they think fit.
 - (i) Any Committee so formed or person or persons so appointed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it or him or her by the Directors.
 - (ii) The meetings and proceedings of any Committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto.
 - (iii) The Directors will establish such Committees as are required by the National Regulatory System from time to time.
- (g) All acts done at any meeting of the Directors, or by a Committee of Directors, or by any person acting as a Director, shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- (h) For the purposes of this Constitution, the contemporaneous linking together by instantaneous communication device of a number of consenting directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to the meetings of the Directors shall apply to such meetings held by instantaneous communication device so long as the following conditions are met:
 - (i) All Directors for the time being entitled to receive notice of the Meeting of Directors (including any alternate for any Director) shall be entitled to notice determined by Directors from time to time of a meeting by instantaneous communication device and to be linked by instantaneous communication

device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by the Constitution.

- (ii) Each of the Directors taking part in the meeting by instantaneous communication device must be able to hear each of the other Directors taking part at the commencement of the meeting.
- (i) A Director may not leave the meeting by disconnecting his or her instantaneous communication device unless he or she has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless he or she has previously obtained the express consent of the Chairperson of the meeting to leave the meeting.
- (j) A minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting and by the company secretary.
- (k) For the purposes of this clause 'instantaneous communication device' shall include telephone, computer conference link or any other audio and/or visual device which permits instantaneous (or near as practicable thereto) communication.

20. POWERS OF DIRECTORS

- (a) All the powers of the Company, and the management and control of its business and affairs, shall be vested in the Directors who, in addition to the powers and authorities by these Clauses expressly conferred upon them, may pay all costs and expenses of the formation and registration of the Company, and may carry into effect all or any of the Objects, and may exercise all such powers, and do all acts and things, as may be exercised or done by the said Company, and are not hereby or by statute expressly directed or required to be exercised or done by the Company in General Meeting, but subject nevertheless to any By-Laws from time to time made by the Company in General Meetings, but no By-Law so made shall invalidate any prior act of the Directors which would have been valid if such By-Law had not been made.

21. OFFICE HOLDERS

- (a) The Directors may elect one of their number as Chairperson of their meetings and decide the period for which he or she is to hold office. But if no Chairperson is elected, or if at any meeting the Chairperson or Vice Chairperson is not present at the time appointed for holding a meeting, the Directors present shall choose one of their number to be Chairperson of such meeting. The Chief Executive Officer may not hold the office of Chairperson.
- (b) The Directors may elect one of their number to act as Vice-Chairperson and decide the period for which he or she is to hold office. The Vice Chairperson shall carry out such duties as the Directors may refer to him or her, and shall, if available, act in the place of the Chairperson when the Chairperson is unavailable.

- (c) The Directors shall appoint a Company Secretary in accordance with the Commonwealth Act who shall be present at the office of the Company himself or herself or shall be represented by a member of the Company staff or other nominated person on the days and at the hours during which the office is required to be accessible to the public. Unless otherwise determined by the Directors, the Chief Executive Officer shall hold the office of Company Secretary.
- (d) The Directors shall appoint a Treasurer from among their number, who shall ensure that all monies received are paid into an account authorised by the Directors in the name of the Company.

Payments shall be as petty cash, electronic transfer or by cheque signed by two (2) authorised signatories of whom there shall be no more than four (4) appointed by the Directors. These signatories shall comprise the Chairperson, Chief Executive Officer and two (2) other Directors.

Major or unusual expenditure shall be authorised in advance by the Directors. The Treasurer shall ensure that records are kept of all receipts and payments and other financial transactions. Such records shall be available for inspection by any Director. The Treasurer shall ensure that financial budgets and statements are prepared and shall submit a financial report to each meeting of the Directors and the AGM. The Treasurer shall ensure that the annual financial reports are audited, before they are presented to the AGM, by an independent auditor.

22. MINUTES

- (a) The Directors shall cause proper minutes to be kept of all resolutions and proceedings of the Directors and of all General Meetings.
- (b)
 - (i) If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have passed at a meeting of the Directors held on the day which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
 - (ii) For the purposes of Sub-Clause (i), 2 or more documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
 - (iii) A reference in Sub-Clause (i) to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

23. THE SEAL

The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors to act on their behalf, and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Company Secretary or by a second Director or by some person appointed by the Directors.

24. CHEQUES, BILLS, ETC.

All cheques, bills of exchange, bank transfers by electronic means and promissory notes shall be signed, drawn, accepted, made, or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time decide.

25. RESERVES

- (a) The Directors shall before adopting the Annual Accounts:
- (i) Write off from the earnings of the Company such amount for loss or depreciation of any of the Company's property as they think fit.
 - (ii) Set aside out of the profits of the Company such sums as they think proper as a reserve fund to meet contingencies, or for repairing, improving, and maintaining any of the property of the Company, and for such purposes as the Directors in their discretion think conducive to the interests of the Company.
 - (iii) Invest, lend, or dispose of the sums so set aside in any way they think fit and from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company subject to the Investment Policy.
 - (iv) Divide the reserve fund into such special funds as they think fit with full power to employ the assets constituting the reserve fund in the business of the Company, and without being bound to keep the same separate from other assets.

26. DIVIDENDS

The Company is prohibited from paying a Dividend.

27. ACCOUNTS

- (a) The Directors shall cause Accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place and of the transactions, assets, credits and liabilities of the Company, and shall cause a balance sheet and Income and Expenditure to be made out in accordance with generally accepted accounting principles and standards as required by the law.

- (b) The books of account shall be kept at the office or at such other place or places as the Directors think fit and shall at all times be open to inspection by the Directors.
- (c) The Directors may from time to time decide at what times and under what conditions or regulations the books of account of the Company or any of them shall be open to the inspection of the Members, and no Member shall have any right of inspecting any books of account or document of the Company unless and except as conferred by statute or authorised by the Directors, or by a resolution of the Company in General Meeting.
- (d) The financial year of the Company shall be from 1 July to the following 30 June.

28. INSPECTION OF RECORDS

Notwithstanding any provisions relating to rights of inspection of Company documents conferred under the State Act and Regulations, the Company shall afford Directors, Auditors and other officers' access – from when they are appointed until seven years after their retirement or resignation – to all relevant Company records which came into existence during their term of office.

29. AUDITORS

- (a) Not less than once in every 12-month period, the Accounts of the Company shall be examined by one or more properly qualified Auditor/s and the correctness of the profit and loss account and the Balance sheet be ascertained by the auditor.
- (b) At each AGM the Company shall appoint an auditor who shall hold office until the happening of one of the events specified in the Commonwealth Act.
- (c) Any casual vacancy in the office of auditor shall be filled in accordance with the provisions of the Commonwealth Act.

30. SERVING OF NOTICES

- (a) All notices may be served upon any Member either personally or by sending the same through the post addressed to such Member at the Member's address as entered in the Register, or may be given electronically if a Member nominates an electronic address or in exceptional circumstance may be served by advertisement in a least one daily national newspaper if such notice be intended for all Members of the Company. Notices of meeting served by advertisement in newspapers shall contain details of the nature and purpose of the meeting.
- (b) The accidental omission to give notice of a meeting to, or the non-receipt of such notice by a Member shall not invalidate the proceedings of a meeting held in pursuance of such notice.
- (c) Notwithstanding anything contained in Clause 13 notice of a General Meeting of the Company specifying an intention to propose a resolution as a Special Resolution shall be served by sending the same through the post or electronically if a Member nominates an electronic address. Notice in the Annual Report of the Company forwarded to each Member shall constitute sufficient notice within the meaning of this Clause.

- (d) Any notice sent by post shall be deemed to have been served on the third working day following posting.
- (e) Notice of every General Meeting shall be given in any manner hereinbefore authorised to: -
 - (i) every Member except those Members who (having no registered address within the State) have not supplied to the Company an address within the State for giving of notices to them;
 - (ii) each Director; and
 - (ii) the auditor for the time being of the Company.
- (f) No other person shall be entitled to receive notices of General Meetings.

31. INDEMNITY

- (a) Every Director and Company Secretary, Auditor and other Officer for the time being of the Company or other person duly authorised by the Board of Directors shall be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of their office which is incurred by that person in defending any proceedings, whether civil or criminal, in which judgement is given in that person's favour or in which that person is acquitted or in connection with any application under the Law in which relief is granted to that person by the court in respect of any negligence default breach of duty or breach of trust.
- (b) No Director or Company Secretary, Auditor or other Officer for the time being of the Company or other person duly authorised by the Board of Directors shall be answerable or responsible for any act, receipt, omission, neglect or default of any other person notwithstanding any receipt or other document signed or act done for the sake of conformity or for any loss or damage whatsoever suffered by the Company unless the loss or damage shall happen through that person's own dishonesty or fraud.
- (c) Nothing contained or implied in Clauses 31 (a) and 31 (b) hereof shall operate to exempt any person from or to indemnify any person against any liability which by virtue of any rule of law would otherwise attach to that person in respect of any negligence default breach of duty or breach of trust of which that person may be guilty in relation to the Company.

32. ARBITRATION

- (a) In the event of an equality of votes for a resolution at a meeting of the Directors of the Company, then such resolution may be determined by a meeting of Members whose decision shall be final. In the event that a simple majority of Directors determines that the matter be inappropriate to put to Members, or if a quorum of Members is unable to be assembled to determine the matter, the President of the Law Society of South Australia will be requested, by the Company and at the Company's cost, to appoint an independent arbitrator to determine the matter. If the matter is not resolved by one of these procedures the resolution shall be deemed not to have been passed.

- (b) In the event of any of the persons aforesaid being unable or unwilling to act as such arbitrator then an arbitrator shall be appointed in accordance with the provisions of the Commercial Arbitration and Industrial Referral Agreements Act 1986 (South Australia).
- (c) Upon any such arbitrator making his or her determination in pursuance of such arbitration then each of the Members and/or Directors of the Company as the case may be shall (so far as he or she may legally do so) convene or cause to be convened a meeting of the Company and/or of the Directors for the purpose of passing any resolution necessary to give effect to the determination of the arbitrator, and each such Member and/or Director shall (so far as he or she may legally do so) vote in favour of each and every such resolution, and do or concur in doing all acts and things necessary to give effect to such determination.

33. INTERPRETATION OF THIS CONSTITUTION

- (a) If a Clause or part thereof is, or may become, unenforceable at law for any reason whatsoever, this Constitution is severable in respect of such Clause or part thereof and the remainder of this Constitution is to be read and construed for all intents and purposes as if the same did not form part of this Constitution.
- (b) If any doubt shall arise as to the proper construction or meaning of any of this Constitution made hereunder or any of them or of any expression therein, the decision of the Board of Directors thereon shall be final and conclusive provided such decision be reduced to writing and recorded in the Minute Book of the proceedings of the Board of Directors.

HISTORY

Effective Date	Clause Name	Amendment
July 2010	Original lodged with ASIC.	
9 Feb 2012	Substitute Chief Executive Officer for Managing Director Alteration to Powers and Activities Alteration to Directors Changes to transitional Arrangements	All of document. Clause 3(l) delete. New Clause 3(l) added. Clause 16 deleted. New Clause 16 added. Clause 17(g)(v) deleted. New Clause 17(g)(v) added.
27 Sep 2012	Alteration to Composition of Board Alteration to Composition of Board Alteration to Composition of Board Alteration to Powers and Activities Power to Co-opt.	Clause 16(b)(ii) amended. Clause 16(f) deleted. New Clause 16(f)(i) - (iv) added. New Clause 3(n)(i) to (iii) added. New Clause 16(r) added. Page numbering in Index.
24 Oct 2013	All of document. Alteration to Definitions All of document. All of document. New definition All of document. All of document. Powers and Activities Membership and Appeals. Transitional Arrangements Votes of Shareholders Proceedings of Directors. Clause 21 Secretary and Treasurer	New version of document created; dated 24 October 2013. "Act" removed and replaced with "State Act" definition or "Commonwealth Act" definition. References to "Act" in entire document removed and replace with State Act or Commonwealth Act. All references to secretary or board secretary removed, replaced with Company Secretary. New National Regulatory System included. References to housing association and housing co-operative replaced with Community Housing Provider. References to South Australian Co-operative and Community Housing Act 1991 replaced with State Act. New clause 3 (o). Clause 4(a) amended. Clause 4(n) amended. Contents of clause deleted. Clause 14(a) amended. Clause 19(a) amended. Clause 19(g) amended. Renamed Office Holders with new references to Vice Chairperson and Company Secretary
13 March 2014	Objects. Winding Up	Clause 2(a) amended. Clause 6(d) and 6(e) amended. Following paragraph numbers adjusted.
30 Oct	Winding Up	Clause 6(d) and 6(e) amended.

2014		Contents page updated.
29 Oct 2015	Objects Powers and Activities	New clause 2(c) Clause 3 amended at various sub-clauses
26 Oct 2016	Directors	Amend clause 16 (b) (ii) by deleting in this sub-clause wording after (“the Member Directors”). Amend clause 16 (c) by adding new (c) (iv). Amend by deleting sub-clause 16 (f) (iii). Amend any clause numbering in clause 16.
November 2020	Member Sale of Property	Updated definition to state that members are registered under the Associations Incorporation Act 1985 (SA) or the Co-operatives National Law (South Australia) Act 2013 and not under the State Act because Common Equity is the registered Community Housing Provider. Updated clause 6 (e) to align to new SAHT policy & procedures on property sales