

# FOUNDATION MEMBERSHIP DEED

This Deed is made on .....[insert date]

## **PARTIES:**

**BYRON COMMUNITY LAND LIMITED ACN 623 476 639** of 69 Jonson Street, BYRON BAY NSW 2481 (“**the Company**”)

## **AND**

**BYRON SHIRE COUNCIL ABN 14 472 131 473** of 70-90 Station Street, Mullumbimby NSW 2482 (“**Byron Shire Council**” or “**the Foundation Member**”)

## **RECITALS:**

- A. The Company was incorporated in New South Wales on 18 December 2017 for the the principal purpose of acquiring land to provide charitable housing in perpetuity for people in need of charitable housing who live or work in the Byron Shire.
- B. Byron Shire Council has agreed to become a Foundation Member of the Company pursuant to clause 2.3 of the Company Constitution and the terms set out in this Deed.
- C. This Deed will form **Appendix 4** of the Constitution of the Company as set out in the Annexure.

## **THIS DEED WITNESSES AS FOLLOWS:**

### **1. Definitions and interpretation**

#### **a. Definitions**

In this Deed, unless the contrary intention appears:

“**Company**” means BYRON COMMUNITY LAND LIMITED ACN 623 476 639.

“**Constitution**” means the Company’s Constitution in the Annexure to this Deed.

### **2. Interpretation**

In this Deed, unless the context otherwise requires:

- a. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- b. the singular includes the plural and vice versa;
- c. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- d. a reference to any gender includes all genders;
- e. a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Deed;
- f. a recital, schedule, annexure or description of the parties forms part of this Deed;
- g. a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- h. a reference to any party to this Deed, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- i. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- j. where an expression is defined anywhere in this Deed, it has the same meaning throughout;
- k. a reference to "dollars" or "\$" is to an amount in Australian currency.
- l. In this Deed headings are for convenience of reference only and do not affect interpretation.

### **3. Membership of the Company**

The Foundation Member agrees to become a Foundation Member of the Company.

### **4. Constitution of the Company**

The Foundation Members agrees to be bound by the Constitution of the Company.

### **5. Consent of all members required for amendment of clauses 2.3 and 6.9 of the Constitution**

The Foundation Member understands and agrees that clauses 2.3 (Foundation Members) and 6.9 (Alteration of Constitution) of the Constitution can only be amended if all members (including any Foundation Members) of the Company consent to its amendment.

## 6. Veto right of Foundation Member

The parties agree that, according to clauses 2.3 and 6.9 of the Constitution, a Foundation Member has the right to veto any amendment to the Constitution.

## 7. General

- a. **Amendment:** This Deed may only be amended or supplemented in writing, signed by the parties.
- b. **Waiver:** The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- c. **Entire Agreement:** This Deed is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.
- d. **Severability:** Any provision in this Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in any other jurisdiction.
- e. **Counterparts:** This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- f. **Alternative Dispute Resolution - mediation:** If a dispute arises between the parties in relation to this Deed, the dispute must be dealt with in accordance with this clause. Any party claiming that a dispute exists must notify the other party in writing of the nature of the dispute. If the dispute is not resolved by agreement within five working days of the other party receiving the notice, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further five working days or, failing agreement within that period, as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited ([www.acdcltd.com.au](http://www.acdcltd.com.au)). The costs of the

