



Family &
Community Services

Community Housing Assistance Agreement

Community Housing Leasing Program -
Social Housing Portfolio Funding

The Secretary of the Department of
Family and Community Services

(ABN 84 608 917 940)

(Housing Agency)

and

The Illawarra Community Housing
Trust Ltd

(ABN 18 739 426 566)

(Provider)

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3.2 Financial Management

The Provider must:

- (a) account for all Funding received under this Community Housing Assistance Agreement and interest obtained from the Funding in accordance with the relevant Australian Accounting Standards, all legislation applicable to the Provider and appropriate record keeping standards; and
- (b) establish and maintain separate accounts in its accounting systems for the Funding received by the Provider under this Community Housing Assistance Agreement and to process and record all Funding receipts and expenditures in those separate accounts, in order to enable identification of Funding receipts and expenditure for that Funding.

3.3 Conditions of Funding

The Funding is conditional on the Provider meeting the following:

- (a) The Provider must:
 - (i) Only use the Properties to deliver Social Housing in New South Wales;
 - (ii) only use the Funding, and any income and surplus generated from the Program for the purposes specified in clause 3.1(b); and
 - (iii) meet the requirements specified in the Community Housing Leasing Program Guidelines (**Guidelines**).
- (b) The Provider will use its best endeavours to ensure that the total number of Capital Properties or Leasehold Properties under this Program's management at any one time is not less than the number indicated in Schedule 2 (**Property Quota**).
- (c) The Provider will manage the Properties in accordance with Community Housing policies as applicable to Social Housing, as follows:
 - (i) rents charged to client must be determined in accordance with *The Community Housing Rent Policy*;
 - (ii) persons housed in the Properties must meet the eligibility requirements set out in *The Community Housing Eligibility Policy*;
 - (iii) properties must be allocated in accordance with *The Community Housing Access Policy*;
 - (iv) subleases must comply with the *Residential Tenancies Act 2010*; and
 - (v) the management of Capital Properties must meet the standards, specifications and benchmarks specified in:
 - (A) *The Community Housing Asset Management Policy* (Asset Management Policy); and
 - (B) Those specified in subsidiary documents referred to in the Asset Management Policy including "Asset Standards" and "Design Standards".

4. Capital Properties

- (a) The Provider may use the Funding to assist the acquisition of one or more capital properties in accordance with the Guidelines.

Agreed Terms

1. Background

- (a) The Provider is a Registered Community Housing Provider providing Social Housing.
- (b) The Secretary is a Housing Agency designated under section 4 of the Act and is entering into this Community Housing Assistance Agreement with the Provider for the purpose of providing Assistance under section 15 of the Act.
- (c) Under this Community Housing Assistance Agreement the Housing Agency has agreed to provide this Assistance in the form of Funding to assist the Provider with the provision of Social Housing under the Community Housing Leasing Program.

2. Duration

- (a) This Community Housing Assistance Agreement commences on the First day of July 2014 and continues until it is replaced or superseded, or terminates or is terminated. Nothing in this clause limits the operation of the Common Terms or the operation of Clause 5 of this Agreement.
- (b) This Agreement supersedes, replaces and terminates any previous Agreement issued for the same or similar purpose.

3. Funding

3.1 Funding

- (a) The Housing Agency will provide the Provider with the amount of Funding specified in Schedule 1 of this Agreement (**Funding**).
- (b) The Provider must only use the Funding, interest obtained from the Funding, all rental income and other revenue from Clients of the Properties:
 - (i) in the case of Leasehold Properties to:
 - (A) lease properties from the private market; and
 - (B) meet tenancy management and related costs of Leasehold Properties.
 - (ii) in the case of Capital Properties to:
 - (A) finance the purchase of Capital Properties from the private market;
 - (B) meet the costs and outgoings associated with Capital Properties;
 - (C) meet the asset, property repair and maintenance costs of Capital Properties; and
 - (D) meet the tenancy management costs of Capital Properties.

- (A) that as between the Housing Agency and the Provider the relationship under this Community Housing Assistance Agreement has ceased;
 - (B) any composition agreed to by the Housing Agency;
 - (C) any judgment or order against the Provider; or
 - (D) any other thing.
- (h) In the event the Provider disputes any of the details set out in the Repayment Notice then the parties will be in dispute and the relevant clause of the Common Terms applies.
 - (i) Nothing in this clause limits the rights of the Housing Agency under the Act, the National Law or the Housing Act.

6. Amendment or Termination

6.1 Voluntary Amendment or Termination

- (a) The Provider agrees that this Agreement will not be assigned;
- (b) This Agreement may be amended from time to time by an instrument in writing executed by both parties; and
- (c) This Agreement may be terminated at any time if both parties so agree in writing, subject to negotiation as to the return of any Funding, surplus, interest, relocation of clients and disposition of Properties.

6.2 Termination by Default

The Housing Agency may terminate or amend this Agreement if any one or more of the following occurs or has occurred:

- (a) **(failure to maintain registration)** the Provider is no longer a Registered Community Housing Provider within the meaning of the Act or National Law;
- (b) **(improper use of Funding)** the Provider fails to use the Funding advanced or paid to it by or on behalf of the Housing Agency for the purposes specified in this Agreement or the Guidelines or in the manner required by the Agreement or Guidelines; or
- (c) **(improper use of Property)** fails to use a Property for the purpose specified or in the manner required by this Agreement, the Guidelines or the Policies; or
- (d) **(failure to apply Policy)** fails to apply Community Housing policies or fails to apply any Policy in the manner required by each; or
- (e) **(project discontinued)** the Provider discontinues the work for which the Housing Agency makes the Funding available; or
- (f) **(breach of undertaking)** the Provider breaches any undertaking given at any time to the Housing Agency or fails to comply with any condition imposed by the Housing Agency in agreeing to any matter (including any waiver); or
- (g) **(breach of Agreement)** the Provider breaches a provision of this Agreement such that in the Housing Agency's reasonable opinion:
 - (xli) is not able to be remedied; or
 - (xlii) is capable of remedy and the Provider does not comply with a Notice to Remedy the breach within the period specified in that notice; or

- (b) The Housing Agency will not make any charge, interest, mortgage or caveat on capital properties acquired by the Provider using Funding under this Agreement.
- (c) The Housing Agency will not provide any additional funding outside of or separate to this agreement to assist the Provider to finance or otherwise acquire a capital property.
- (d) Should this Agreement terminate, expire or cease operation for any reason, the Provider will have full responsibility and the Housing Agency will have no responsibility for managing any financial arrangement governing the purchase of the capital properties.

5. Repayment of Funding

5.1 Repayment on Termination

- (a) Subject to clause 5.2, if this Community Housing Assistance Agreement is terminated for any reason, the Provider must repay to the Housing Agency part or all of the Funding together with part or all of the surplus and interest earned on that Funding.

5.2 Repayment on Default

- (a) Without limiting the rights of the Housing Agency, in the event of Default by the Provider the Housing Agency may, by serving notice on the Provider, require the Provider to pay or repay to the Housing Agency (**Repayment Notice**) any or all of the Funding and any interest earned on the Funding.
- (b) Clause 5.2(a) applies regardless of whether, as at the date of the Repayment Notice, part or all of the Funding has already been expended by the Provider.
- (c) The Repayment Notice must contain the following information:
 - (i) the Default on which the Housing Agency relies to require repayment of the Funding;
 - (ii) the amount of Funding (and any interest and surplus) required to be repaid by the Provider to the Housing Agency; and
 - (iii) the date on which the repayment of Funding (and any interest and surplus) must be paid to the Housing Agency.
- (d) The Provider must pay to the Housing Agency the amount of Funding (and any interest and surplus) stipulated in the Repayment Notice by the due date stipulated in that Repayment Notice.
- (e) The amount of Funding (and any interest and surplus) stipulated in the Repayment Notice is a debt due and owing by the Provider and, without limiting the rights of the Housing Agency, the Housing Agency may commence legal proceedings in any court of competent jurisdiction to recover that debt.
- (f) If the Provider fails to pay an amount on its due date for payment under clause 5.2(a), the Provider must on demand pay the Housing Agency interest calculated at the Overdue Rate on the amount in default from the due date until it is paid in full.
- (g) The Housing Agency may:
 - (i) capitalise, on a monthly or other periodical basis as the Housing Agency determines, any part of any interest which becomes due and payable, and interest is payable in accordance with this Community Housing Assistance Agreement on capitalised interest; and
 - (ii) continue to capitalise interest despite:

8. Common Terms

- (a) This Community Housing Assistance Agreement incorporates the Common Terms.
- (b) The parties acknowledge and agree to comply with their respective obligations under the Common Terms.
- (c) To the extent that there is any inconsistency between this document and the Common Terms, this document shall prevail unless otherwise indicated herein.

9. Goods and Services Tax

9.1 Goods and Services Tax

- (a) The Provider warrants that it is registered under the GST Law. If the Housing Agency requests written evidence of registration the Provider will promptly produce evidence satisfactory to the Housing Agency.
- (b) The Provider will provide to the Housing Agency on request all documents and information that will permit the Housing Agency to claim an input tax credit or similar benefit. This term is in addition to any other obligation of the Provider under the GST Law.
- (c) Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (d) Unless expressly included, the consideration for any supply made under or in connection with this Community Housing Assistance Agreement does **not** include an amount on account of GST in respect of the supply (GST Exclusive Consideration) except as provided under this clause.
- (e) Any amount referred to in this Community Housing Assistance Agreement which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST **exclusive** basis.
- (f) To the extent that GST is payable in respect of any supply made by a party (Supplier) under or in connection with this Community Housing Assistance Agreement, the consideration to be provided under this Community Housing Assistance Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (g) The recipient must pay the additional amount payable under clause 7.1(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (h) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Community Housing Assistance Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 7.1(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

9.2 Recipient Created Tax Invoice

- (a) The Recipient will issue a Recipient Created Tax Invoice in respect of such Taxable Supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 7.1(d) or at such other time as the parties agree.

- (h) (event) an Insolvency Event or an Indemnifiable Event occurs, has occurred or is about to occur with respect to the Provider.

6.3 Termination or Amendment by Other Cause

The Housing Agency may terminate or amend this Agreement if any one or more of the following occurs or has occurred:

- (a) all or part of the Agreement is or becomes void, avoided, illegal, invalid, unenforceable or limited in its effect; or
- (b) an event or change occurs which would, in the reasonable opinion of the Housing Agency, have or be likely to have a material adverse effect on:
 - (i) the validity or enforceability of all or a material part of this Agreement or any Community Housing Assistance Agreement;
 - (ii) the Housing Agency's material rights or remedies under this Agreement or under any Community Housing Assistance Agreement;
 - (iii) the ability of the Provider to observe or perform its obligations under this Agreement or under any Community Housing Assistance Agreement; or
 - (iv) the assets, operations, condition (financial or otherwise) or business of the Provider; or
- (c) if, in the Housing Agency's reasonable opinion, there is a change in the management, ownership or control of the Provider which would have a material adverse effect as described in clause 6.3(b).

6.4 No Limitation

- (a) Nothing in this clause 6 limits the operation of the Act, the National Law, the Common Terms or the Policies.

7. Reporting

- (a) In addition to all reporting requirements in the Common Terms and the Act, the Provider must also provide the Housing Agency on demand with the following reports in the format and within the time period specified by the Housing Agency:
 - (i) all reports in respect of the Program as per the Guidelines;
 - (ii) an annual audited financial statement;
 - (iii) all information reasonably requested by the Housing Agency including, but not limited to, information which will enable the Housing Agency to determine whether the Provider is complying with the terms and conditions of this Agreement;
 - (iv) all information required under the contract compliance and performance management framework/s and related documentation;
 - (v) all disclosures and all information required by the Housing Agency to comply with its reporting or other obligations to the Minister, Parliament or Government Agencies; and
 - (vi) access to, and copies of, all records relevant to the performance of the Provider's obligations under this Agreement.

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| Funds or Funding | means the funds provided by the Housing Agency to the Provider under this Agreement (whether spent or unspent), any interest obtained from the funds and any surpluses obtained by the Provider from the Properties.. |
| Guidelines | means the Community Housing Leasing Program Guidelines (June 2014) or any document that succeeds or replaces it. |
| Housing Act | Means the Housing Act 2001 (NSW) |
| Housing Agency | means (as the case may be) the Secretary of the Department of Family and Community Services or the Housing Corporation or any other entity or official so defined in accordance with section 4 of the Act and in certain circumstances may be a combination of them. |
| Indemnifiable Event | Means, in respect of the Provider, any of the following occurring: <ul style="list-style-type: none"> (a) the Provider states in writing to the Housing Agency that it is insolvent; or (b) the Provider's registration under the Act is cancelled; or (c) the circumstances of section 24(1)(c) of the Act apply in respect of the Provider; or (d) the Provider breaches a provision of this document or any Community Housing Assistance Agreement; or (e) the Provider engages in or commits any unlawful conduct or wilful misconduct relating to this document or any Community Housing Assistance Agreement; or (f) the Provider is negligent in the performance of its obligations in or pursuant to this document or of any Community Housing Assistance Agreement; or (g) a Default occurs. |

- (b) The Housing Agency will in respect of the Taxable Supply pay to the Supplier the amount shown on such RCTI at the time and in the manner described in Schedule 1 of this Agreement.
- (c) For purposes of any Recipient Created Tax Invoice:
- (i) The **Recipient** is *Family and Community Services – Housing NSW ABN 84 608 917 940*
 - (ii) The **Supplier** making Taxable Supplies to the Recipient is the Provider.
 - (iii) The Supply to which this agreement relates is *the provision of property and tenancy management services and the acquisition of properties.*
- (d) The **Supplier** warrants that:
- (i) it is registered for GST when it enters into this agreement;
 - (ii) it will notify the Recipient if the Supplier ceases to be registered for the GST;
 - (iii) the Recipient may issue Tax Invoices in respect of the above mentioned supplies; and
 - (iv) it will not issue Tax Invoices to the Recipient for supplies made to the Recipient.
- (e) The **Recipient** warrants that:
- (i) it is registered for the GST when it enters into this agreement;
 - (ii) it will notify the Supplier if the Recipient ceases to be registered for the GST; and
 - (iii) it will not issue a document that would otherwise be an RCTI, on or after the date when the Recipient or the Supplier has failed to comply with any of the requirements of the determination attached to Tax Ruling GSTR2000/10.
- (f) Certain terms used in this clause 7 are defined in clause 8.2 of this Agreement

10. Defined Terms

10.1 In this document:

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| Act | means the Community Housing Providers (Adoption of National Law) Act 2012 (NSW). |
| Capital Properties | means the Properties which the Provider purchases using wholly or partly the Funding provided under this Community Housing Assistance Agreement |
| Clients | means those to whom the Provider provides, commits to provide, offers to provide or is constitutionally established to provide, Social Housing. |
| Common Terms | means the Common Terms and Conditions to Community Housing Assistance Agreements entered into between the Provider and the Housing Agency. |
| Community Housing Agreement | means, in the case of each Provider, the aggregation of agreements and arrangements including each Community Housing Assistance Agreement in effect from time to time between the Provider and the Housing Agency made in accordance with the Act and National Law. |
| Corporations Act | means the Corporations Act 2001 of the Commonwealth. |

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| Secretary | means the Secretary of the Department of Family and Community Services, a Housing Agency within the meaning of the Act. |
| Social Housing | means accommodation for people on a very low or low income that meet the required eligibility criteria for community housing in New South Wales, as it applies to Social Housing, as defined in the policy document Community Housing Eligibility Policy, or any document or policy that amends, replaces or succeeds the same. For purposes of this Agreement Social Housing does not include Crisis Housing, Transitional Housing, or Co-operative Housing. |
| Subsidised Capital Purchase | means properties approved by the Housing Agency to be purchased using the Funding |

10.2 Defined terms used in clause 8 (Goods and Services Tax)

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| Housing NSW | Housing NSW (ABN 84 608 917 940) (a division of the Department of Family and Community Services) is an entity registered under the GST law and under the Australian Business Number Act 1998 that, for purposes of this Community Housing Assistance Agreement, acts through the legal person of the Secretary. For the purposes of the GST Law, until notified otherwise any supplies and acquisitions resulting from the legal obligations entered into by the Housing Agency under this Agreement will be supplies and acquisitions made by Housing NSW and not the Secretary. |
| GST | means a tax, levy, duty, charge, deduction imposed by the GST Law together with any related additional tax, interest, penalty, fine, or other charge calculated by reference to the value of anything supplied other than one imposed on net income GST. |
| GST Law | means any law imposing a GST and includes <i>A New Tax System (Goods & Services Tax) Act 1999</i> , or if that Act does not exist for any reason, means any Act imposing, or relating, to a GST and any regulation made pursuant to any such Acts. |
| Recipient | means Department of Family and Community Services – Housing NSW ('Housing NSW'). |
| Recipient Created Tax Invoice (RCTI) Scheme | is a scheme where the Housing Agency (Recipient) draws a RCTI on behalf of a Provider (Supplier) who is registered for GST purposes and has entered into an Agreement with the Housing Agency (this Agreement). RCTIs are issued for supplies made after 30 June 2000 and are subject to GST liability under the law. RCTIs are issued at the time of payment for the supply made, including an amount equal to the GST liability. Under the Scheme, Providers do not issue a Tax Invoice to the Housing Agency for the same supplies. |
| Supplier | means the Provider funded under this Agreement. |

11. Interpretation

- (a) Headings: Headings and sub-headings are included for the sake of ease of reference and the terms covenants conditions or restrictions in this Agreement are not to be construed or interpreted by reference to such headings or sub-headings.

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| Insolvency Event | <p>means, in respect of the Provider, any of the following occurring:</p> <ul style="list-style-type: none"> (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act; (b) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or (c) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation; (d) an External Administrator is appointed to it or any of its assets or a step is taken to do so; (e) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration; (f) an analogous or equivalent event to any listed above occurs in any jurisdiction; or (g) it stops or suspends payment to creditors generally. |
| Leasehold Properties | means the properties which the Provider leases from the private rental sector using the Funding provided under this Community Housing Assistance Agreement. |
| Minister | Means the Minister for Family and Community Services or as otherwise defined in section 4 of the Act. |
| National Law | means the Appendix to the Community Housing Providers (Adoption of National Law) Act 2012 (NSW) , which establishes the National Regulatory System for Community Housing. |
| Overdue Rate | means the rate per annum which is 2% above the rate prescribed by the Uniform Civil Procedure Rules 2005 for the payment of interest after judgement under the Civil Procedure Act 2005, corresponding to the due date for payment. |
| Property or Properties | means a property that is leased or purchased from the private market for Social Housing using the Funding provided under this Agreement. |
| Property Portfolio | means all properties including improvements however held owned, leased or controlled by the Provider and available to provide Community Housing. |
| Property Quota | means the number of properties which the Provider must use best endeavours to maintain as Social Housing under this Agreement as set out in Schedule 2. |
| Registered Community Housing Provider | means a Community Housing Provider that is registered under Part 3 of the National Law. |

The Illawarra Community Housing Trust Ltd

Schedule 1 – Funding

The Housing Agency will allocate the following Funding to the Provider for Community Housing Leasing Program Social Housing for 2014/2015, subject to the Provider meeting the terms and conditions of this Agreement and requirements of the Act. Funding will be issued on a quarterly basis.

Funding: \$2,316,000.00

GST: \$231,600.00

Total: \$2,547,600.00

Schedule 2 – Property Quota

244 Properties

- (b) Providers severally bound: Where two or more Persons are Providers the covenants and obligations on their part contained in this Agreement will bind them jointly and each of them severally.
- (c) Plurals And Genders: Words importing the singular or plural number include the plural and singular numbers respectively and words of each gender will include any other gender.
- (d) Severability: If any term covenant or condition of this Agreement or the application thereof to any Person or circumstances will be or become invalid or unenforceable the remaining terms covenants and conditions will not be affected thereby and such terms covenants and conditions of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- (e) Statutes And Regulations: Reference to Statutes and Regulations Ordinances or By-Laws will be deemed to extend to all Statutes Regulations Ordinances or By-Laws amending consolidating or replacing the same.
- (f) One Agreement: The Provider has, by signing this document, entered into a Community Housing Agreement incorporating the Common Terms, the terms and conditions set out in this Community Housing Assistance Agreement and each Supplementary Agreement.

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Signing Page

EXECUTED AS AN AGREEMENT

DATED: 11 August 2015

THE SECRETARY OF THE DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

EXECUTED for and on behalf of the Crown in right of the state of New South Wales acting through the Department of Family and Community Services by:

MYCHELLE CURRAN

Acting Executive Director
Community, Homes and Place
Family and Community Services

In the presence of:

Donna Doty
Name of Witness in FULL

[Signature]
Signature of Delegate
[Signature]
Signature of Witness

THE PROVIDER The Illawarra Community Housing Trust Ltd

EXECUTED BY

| NAME IN FULL | POSITION | SIGNATURE |
|------------------------------|-------------------------------|--------------------|
| <u>DAVID ANDREW CAMPBELL</u> | Director | <u>[Signature]</u> |
| <u>FRANCES JOAN FRANCES</u> | Secretary or Director | <u>[Signature]</u> |
| <u>Concetta Raschilla</u> | In the presence of WITNESS | <u>[Signature]</u> |

Under section 127 of the Corporations Act or Provider's Constitution

