



Family &  
Community Services

# Community Housing Assistance Agreement

## Vesting of Capital Properties

(Vesting Agreement)

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The Secretary  
Department of Family and  
Community Services

ABN 84 608 917 940

(Housing Agency)

And

[Name Of Provider]

ACN XXX XXX XXX

(Provider)

# Vesting of Capital Properties

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Contract Edition Date: November 2015

# Agreed Terms

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## 1. Background

- (a) **(Community Housing Assistance Agreement)** This agreement is a Community Housing Agreement within the meaning of Section 16 of the Act.
- (b) **(Housing Agency)** The Secretary of the Department of Family and Community Services is a Housing Agency within the meaning of the Act and the National Law and is entitled to give Assistance to registered Community Housing Providers.
- (c) **(Registered Provider)** The Provider is registered as a Community Housing Provider under Part 3 of the National Law and is eligible to receive Assistance from the Housing Agency.
- (d) **(Company)** The Provider is a company registered under the Corporations Act.
- (e) **(Constitution)** The Provider's constitution meets the requirements specified in Section 15(2)(c) of the National Law in relation to the disposition of Community Housing assets in which the Housing Agency has an Interest if the Provider is wound-up.
- (f) **(Vested Properties)** The Housing Agency is entering into this Community Housing Assistance Agreement with the Provider with respect to the land listed in Schedule 1 of this Agreement being vested in or transferred to the Provider as described in Section 16(1)(b) of the Act.

## 2. Objectives

The objectives of the Housing Agency providing Assistance to the Provider are to:

- (a) Support the growth of not for profit community housing providers capable of increasing the supply of affordable rental accommodation for people in need in NSW.
- (b) Enable community housing providers to strategically manage assets to better meet future housing demand and the changing needs of residents.
- (c) Provide a secure asset base for community housing providers to leverage additional finance for investment in social housing and affordable housing.

## 3. Provision of Assistance

### 3.1 Assistance

The Housing Agency agrees to provide Assistance to the Provider in the form of Vested Properties, subject to the Provider meeting and continuing to meet its obligations under the Act, Policies, Guidelines and this Community Housing Assistance Agreement.

## 4. Use of Vested Properties

### 4.1 Use of Vested Properties

The Provider may only use or allow a Vested Property to be used:

- (a) to provide Social Housing; or

- (b) for purposes approved by the Housing Agency.

## **4.2 Change in Use**

If the Provider wishes to change the use of a Vested Property from that permitted under clause 4.1 or from that previously approved by the Housing Agency it may do so only with the written approval of the Housing Agency.

## **4.3 Sale or Disposal**

The Net Sale Proceeds of a Vested Property must only be used to acquire Land or Property for the provision of Social Housing or ancillary purposes as specifically set out in Clause 4.1.

# **5. Housing Agency's Interest**

## **5.1 Interest Exists**

- (a) The Provider acknowledges and agrees that the Housing Agency has an Interest within the meaning of Section 14 of the Act in each Vested Property or any Land or Properties purchased wholly or in part using the Net Sale Proceed of a Vested Property; and
- (b) The Provider agrees to do all things necessary to facilitate the registration of the Housing Agency's Interest on the title to each Land or Property to which the Housing Agency is entitled to register an Interest under Section 14 of the Act and this Agreement.

## **5.2 Costs**

The Housing Agency will pay the cost of registering its interest on the title of each Vested Property. Otherwise all costs and expenses related to this Community Housing Assistance Agreement will be paid in accordance with the Act and the Common Terms.

# **6. Dealing with Vested Properties**

## **6.1 No Dealings**

Except as permitted under clause 6.2 no Dealings with Vested Properties are permitted without the Housing Agency's prior written consent.

## **6.2 Exempt Transactions**

The following Dealings are Exempt Transactions:

- (a) where a Dealing is the granting of a lease not exceeding FIVE years for the purpose of providing Community Housing over one or part of one or more Vested Properties.
- (b) where a Dealing, other than as defined in clause 6.2(a), is directly for the purpose of providing Community Housing. Without limitation, a Dealing is **not** for the purpose of providing Community Housing if it is for the purpose of:
  - (i) procuring non-residential premises; or
  - (ii) withdrawing from the provision of Community Housing in a particular location.

## **6.3 Comply with Conditions**

Any Exempt Transaction must satisfy all conditions which the Housing Agency may impose on Dealings as notified in writing by the Housing Agency to the Provider from time to time.

## 7. Representations and Warranties

In addition to all representations and warranties set out in clause 4.1 of the Common Terms, the Provider represents and warrants to the Housing Agency that:

- (a) it is and will remain registered under Part 3 of the National Law as a Community Housing Provider;
- (b) it is and will remain a not for profit Entity;
- (c) it is and will remain a company limited by guarantee registered under the Corporations Act; and
- (d) the constitution or rules of the Provider:
  - (i) may only be amended by special resolution in accordance with the Corporations Act; and
  - (ii) meets the requirements of Section 15(2)(c) of the National Law and the Housing NSW Asset Ownership Policy in relation to the disposition of Community Housing Assets in the event the Provider is wound up.
- (e) Nothing in clause 7(d)(ii) limits the operation of Section 15 of the Act.

## 8. Provider's Undertakings

### 8.1 General

In addition to all undertakings and requirements set out in the Common Terms and the Act, the Provider must (unless the Housing Agency otherwise consents in writing):

- (a) **(Specified Number)** meet and maintain the Specified Number of Properties referred to in Schedule 3 which are required to be maintained as Social Housing;
- (b) **(register Interest)** upon request from the Housing Agency do all things necessary to facilitate the registration of the Housing Agency's Interest on the title to each Property to which the Housing Agency is entitled to register an Interest as provided for in Section 14 of the Act;
- (c) **(enter agreement)** enter into this Community Housing Agreement with the Housing Agency within a period of 40 days of the Housing Agency vesting or transferring land to it as required by Section 24(1)(c) of the Act or such other period as may be prescribed by the Regulations;
- (d) **(Affordable Housing)** manage Properties administered as Affordable Housing in accordance with the NSW Affordable Housing Guidelines;
- (e) **(Housing Pathways)** allocate a minimum of thirty percent of Leveraged Properties to people selected from the 'Housing Pathways' NSW housing register;
- (f) **(Social Housing eligible)** all persons meeting Social Housing eligibility criteria who are allocated a Leveraged Property must be selected from the 'Housing Pathways' NSW housing register; and
- (g) **(not be a subsidiary)** not be or become a Subsidiary, act as a trustee or amend its constitution if to do so may adversely affect its ability to provide the Community Housing, or comply with the Act, Policies, or Community Housing Agreement.

**8.2 Leveraging Target**

The Provider must, by the Leveraging Date, meet the Leveraging Target specified in Schedule 2.

**8.3 Reporting**

The Provider agrees to complete and provide the Housing Agency with a quarterly Vested Assets Leveraging Report in addition to the reporting requirements specified in the Common Terms.

**9. Status of this Agreement**

- (a) **(Principles)** This Community Housing Assistance Agreement reflects the principles agreed between the parties in relation to the vesting of ownership of the Vested Properties in the Provider for Community Housing.
- (b) **(Single agreement)** The Provider has, by signing this document, entered into a Community Housing Assistance Agreement incorporating the Common Terms, the terms and conditions set out in this Agreement and each relevant Supplementary Agreement.
- (c) **(Previous agreements voided)** This Community Housing Assistance Agreement Vesting of Capital Properties replaces and supersedes any prior Community Housing Assistance Agreement relating to the same subject matter.

**10. 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.

**11. Defined Terms**

**11.1 Defined Terms from Common Terms**

The following Terms defined in the Common Terms (as defined below) have the same meaning when used in this document.

- AFFORDABLE HOUSING
- COMMUNITY HOUSING
- COMMUNITY HOUSING PROVIDER
- CORPORATIONS ACT
- DEFAULT
- FUNDS OR FUNDING
- HOUSING AGENCY
- INSOLVENCY EVENT
- LAND
- LIABILITIES
- LIQUIDATION

LOSS  
NATIONAL LAW  
NET SALE PROCEEDS  
MINISTER  
POLICY  
REGISTRAR  
SECRETARY  
SOCIAL HOUSING

## 11.2 Other Defined Terms

In this document:

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|            |   |
|------------|---|
| <b>Act</b> | means the <i>Community Housing Providers (Adoption of National Law) Act 2012</i> (NSW). |
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|                |  |
|----------------|--|
| <b>Clients</b> | means those to whom the Provider provides, commits to provide, offers to provide or is constitutionally established to provide, Community Housing. |
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| <b>Common Terms</b> | means the document entitled ' <i>Common Terms and Conditions to Community Housing Assistance Agreements</i> ' entered into between the Provider and the Housing Agency. |
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|------------------------------------|---|
| <b>Community Housing Agreement</b> | 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. |
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| <b>Community Housing Asset</b> | has the same meaning as given in the Act, that is: <ul style="list-style-type: none"><li>(a) land vested in the provider by or under the Act; or</li><li>(b) land acquired by the provider wholly or partly with funding provided by a Housing Agency; or</li><li>(c) land vested in the provider on which a Housing Agency has constructed housing or made other improvements; or</li><li>(d) funds provided to the provider by a Housing Agency for the purposes of community housing; or</li><li>(e) any other asset of the provider that is of a class of assets declared by the Act as a community housing asset.</li></ul> |
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| <b>Corporations Act</b> | means the Corporations Act 2001 of the Commonwealth. |
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| <b>Deal Or Dealing</b> | includes any agreement, or attempt to agree, to sell, assign, transfer, dispose or part with possession of, lease, licence, redevelop, sub-divide, the granting of a mortgage or charge or otherwise deal with, any of the Vested Properties and any combination of a Deal or Dealing as defined herein. |
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| <b>Exempt Transactions</b> | means for the purposes of section 18(1)(b) of the Act those transactions (if any) described in Clause 6.2 of this Agreement.   |
| <b>Housing Pathways</b>    | means the NSW Housing Register containing a single list of approved clients waiting for social housing.  |
| <b>Interest</b>            | <p>Has the same meaning as expressed in section 14 of the Act, that is, a Housing Agency is taken to have an interest in land of a community housing provider in the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) if the land was owned by the Housing Agency immediately before being vested in the community housing provider; or</li> <li>(b) if the land was transferred to the community housing provider in accordance with an instruction given under section 14 of the Act; or</li> <li>(c) if the land is acquired by the community housing provider wholly or partly with funding provided by the Housing Agency; or</li> <li>(d) if the Housing Agency constructs housing or makes other improvements on the land,</li> <li>(e) if a community housing agreement with the community housing provider identifies the land as being land in which the Housing Agency has an interest.</li> </ul> |
| <b>Leveraging Date</b>     | means the 30 of June 2021 or as otherwise agreed between the Parties in writing.   |
| <b>Leveraged Property</b>  | means properties acquired by the Provider using finance raised under a facility in relation to which there is security granted by the Provider over a Vested Property or another Leveraged Property (or both).   |
| <b>Leveraging Target</b>   | means the number of Properties set out as 'Leveraging Targets' in Schedule 2 of this Agreement or otherwise as agreed between the Parties in writing.  |
| <b>Specified Number</b>    | means the number of Properties specified in Schedule 3 of this Agreement which are required to be maintained as Social Housing.  |
| <b>Vested</b>              | <p>means the process described in section 21 of the Act for transferring the ownership of a Property owned by a Housing Agency to a Registered Community Housing Provider under a Community Housing Assistance Agreement.</p> <p><i>S21(a) The Governor may, by order published in the Gazette, vest land owned by a Housing Agency in a registered community housing provider that is a company registered under the Corporations Act 2001 of the Commonwealth.</i></p>   |
| <b>Vested Property</b>     | means a Property that is Vested to a Registered Community Housing Provider under a Community Housing Assistance Agreement in accordance with section 21 of the Act.  |

## 12. Interpretation

The Interpretations listed in Clause 24 of the Common Terms apply to this document.





# Schedule 1 - Vested Properties

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Properties with Vesting Date [day, month, year]  
 NSW Government Gazette No [number]  
 [day, month, year] – Folio [number]

| N   | Property Address         | Title Particulars                                    |
|-----|--------------------------|--|
| 1   | 1 Streetname, Rd, Suburb | Lot 0 in DP 0000, Parish of [Parish] County [County] |
| 2   | 2 Streetname, Rd, Suburb | Lot 0 in DP 0000, Parish of [Parish] County [County] |
| 3   | 3 Streetname, Rd, Suburb | Lot 0 in DP 0000, Parish of [Parish] County [County] |
| Etc | 4 Streetname, Rd, Suburb | Lot 0 in DP 0000, Parish of [Parish] County [County] |

- Schedule Ends -

# Schedule 2 – Leveraging Target

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**LEVERAGING TARGET** (Clause 8.2)

The Provider agrees to deliver a Leveraging Target of **[NUMBER]** dwellings by **30 June [year]** as per the following table.

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|              | 2011/12 | 2012/13 | 2013/14 | 2014/15 | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | <b>Total</b> |
|--------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|--------------|
| Acquisitions |         |         |         |         |         |         |         |         |         |         |              |
| Cumulative   |         |         |         |         |         |         |         |         |         |         |              |

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# Schedule 3 – Specified Number

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**SPECIFIED NUMBER** (Clause 8.1(a))

The Specified Number of Properties which the Provider must maintain as Social Housing is:

**[NUMBER OF PROPERTIES]**

# Signing Page

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## EXECUTED AS AN AGREEMENT

### DATED:

**THE SECRETARY** 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 – Housing NSW* by

### (Name of Delegate)

(Title of delegate)

in the presence of:

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Signature of Delegate

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Signature of Witness

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Name of Delegate in FULL

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Name of Witness in FULL

## THE PROVIDER – [NAME OF PROVIDER] ACN 000 000 000

Signed by the Directors )  
Under Section 127 of the Corporations Act 2001 )

| Name in full | Position              | Signature |
|--------------|-----------------------|-----------|
| <hr/>        | Director              | <hr/>     |
| <hr/>        | Director or Secretary | <hr/>     |