



COMMON EQUITY NSW LTD

&

CO-OPERATIVE AGREEMENT

(CCA)

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AGREEMENT

This Agreement is made on the _____ day of _____ 20_____

BETWEEN

Common Equity NSW Ltd (THE COMPANY)
Level 3, 362 Kent St
Sydney NSW 2000

As owner, lessor, NSW Co-operative Program Manager of the NSW Co-operative Housing Program and service provider to Co-operatives.

AND

_____ [*Insert Co-operative Name*]
(THE CO-OPERATIVE)

As Member of THE COMPANY, lessee and service recipient.

Chief Executive Officer
Common Equity NSW Ltd

Chairperson
Co-operative

RECITALS

Common Equity NSW or THE COMPANY (hereafter THE COMPANY), was founded in 2009/2010 by amalgamating the assets and income of those NSW Housing Co-operatives formerly resourced by ARCH, in order to:

- Facilitate the growth of the NSW co-operative housing sector.
- Support existing (and future) Co-operatives to meet their objects and the International Principles of Cooperation,
- Provide effective education and training in co-operative housing issues.

THE COMPANY was incorporated as the single registered Housing Provider for NSW co-operatives in response to a feasibility analysis initiated by Housing NSW (Development of a NSW Co-operative Housing Strategy, Alt Beatty & Elisabeth Rowe Consulting 8th December 2008).

This study included the following recommendations:

- THE CO-OPERATIVE is a member of Common Equity NSW Ltd
- Common Equity NSW Ltd holds the head lease over THE CO-OPERATIVE premises
- The head lease agreement is formed with the NSW Land and Housing Corporation

Four key documents govern the relationship between THE CO-OPERATIVE and Common Equity NSW Ltd:

- The Land and Housing Corporation head lease
- The Common Equity NSW and Co-operative Agreement
- The NSW Co-operative Housing Program Procedures Handbook
- The Constitution of Common Equity NSW Ltd

Core obligations of Co-operatives and Common Equity NSW are set out in Clauses 8 and 9. As part of its obligations, THE COMPANY commits to providing timely responses to communication between the parties, and welcomes feedback

This Agreement:

1. Is made with reference to the International Principles of Co-operation
2. Defines the mutual obligations, expectations, rights and responsibilities between THE CO-OPERATIVE and THE COMPANY in accordance with the International Principles of Co-operation and the NSW Co-operative Housing Program Procedures Handbook.

3. Clarifies the contractual relationship between THE COMPANY and its Member Co-operatives with respect to the long-term leasing of premises and the minimum standards of service provision and recognises that,

- 3.1. Security of tenure is of paramount importance to both THE COMPANY and THE CO-OPERATIVE members and underlies the nature of this Agreement,
- 3.2. THE COMPANY and THE CO-OPERATIVE work together to further the interests of THE CO-OPERATIVE and the NSW Co-operative Housing Program in keeping with the International Principles of Cooperation and the unique identity of co-operatives in the housing sector,
- 3.3. THE COMPANY and THE CO-OPERATIVE share responsibility and consult in regard to the maintenance and asset management of the premises under this Agreement,
- 3.4. THE COMPANY shall provide a minimum defined level of service delivery to its Member Co-operative in a timely and effective manner,
- 3.5. THE CO-OPERATIVE shall provide THE COMPANY - as the NSW Co-operative Program Manager - information in line with government data collection requirements to enable it to meet its contractual, legal and regulatory obligations,
- 3.6. THE COMPANY shall act consistently with information privacy principles in data collection and reporting subject to its contractual, regulatory and legal obligations.
- 3.7. THE COMPANY may investigate serious allegations of mismanagement by THE CO-OPERATIVE to protect the interests of the NSW Co-operative Program as a whole,
- 3.8. Best efforts shall be made between the parties to this Agreement to resolve all disputes and avoid litigation.

4. Presumes that,

- 4.1. THE COMPANY is meeting its obligations under the Corporations Act 2001 or any other subsequent Act in a reasonable and timely manner,
- 4.2. THE CO-OPERATIVE is meeting its obligations under the Co-operatives Act 1992 or any subsequent Act, in a reasonable and timely manner.

5. Notes that:

- 5.1. In some instances THE COMPANY is the owner of the premises

DEFINITIONS

- AMP - Asset Maintenance Plan is a document that maps a 10 year's projection of maintenance expenditure for each property.
- CRA - Commonwealth Rent Assistance is financial help provided to tenants who receive a Centrelink payment to assist the co-operative to provide a rent subsidy. 100% of this assistance is forwarded to the co-operative landlord.
- CAPMH - Community and Private Market Housing Directorate is a business unit of Housing NSW, a division of Family and Community Services. CAPMH is the primary relationship and contract manager of registered community housing providers in NSW. CAPMH was formerly known as CHD - Community Housing Division.
- Company Rent is the rent the co-operative pays to THE COMPANY under the terms of this agreement at Clause 5.
- Headlease or Community Housing Agreement - Lease, is the agreement between NSW Land and Housing Corporation and THE COMPANY which secures the lease over the co-operative premises.
- Market rent is the maximum rent that can be charged for the premises.
- NSW Co-operative Housing Program Procedures Handbook was previously the Book of Directives. The Procedures Handbook outlines the operating procedures for THE COMPANY member co-operatives
- The National Regulatory Code for the National Regulatory System for Community Housing sets out the performance requirements that registered housing providers must comply with in providing community housing under the National Law.

Performance Area 1: Tenant and housing services

The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients.

Performance Area 2: Housing assets

The community housing provider manages its community housing assets in a manner that ensures suitable properties are available at present and in the future.

Performance Area 3: Community engagement

The community housing provider works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities.

Performance Area 4: Governance

The community housing provider is well-governed to support the aims and intended outcomes of its business.

Performance Area 5: Probity

The community housing provider maintains high standards of probity relating to the business of the provider.

Performance Area 6: Management

The community housing provider manages its resources to achieve the intended outcomes of its business in a cost effective manner.

Performance Area 7: Financial viability

The community housing provider is financially viable at all times.

RESIDENTIAL TENANCY AGREEMENT is the formal agreement between THE CO-OPERATIVE and the tenant outlining the rights and responsibilities of the tenant in relation to the property occupied by the tenant

THE COMPANY is Common Equity NSW Ltd

THE CO-OPERATIVE refers to each co-operative member of THE COMPANY

CLAUSES

1. **PREMISES**

THE COMPANY lets to THE CO-OPERATIVE the premises as listed by address in the First Schedule to this Agreement (together with all fixtures, fittings and chattels in working order attaching to and belonging to the premises).

2. **SECURITY OF TENURE**

THE COMPANY and THE CO-OPERATIVE acknowledge that security of tenure is of paramount importance and underlies the nature of this Agreement, and the NSW Co-operative Program management, asset development or redevelopment must be balanced against maintaining security of tenure for Co-operative members.

3. **TERM**

- (a) The term of this Agreement shall be for the period specified in the Second Schedule commencing and ending on the commencement date and termination date specified in the Second Schedule
- (b) THE COMPANY acknowledges that THE CO-OPERATIVE has or will be entering into Tenancy Agreements with the Tenants of THE CO-OPERATIVE that:
 - comply with the *Residential Tenancies Act* and;
 - are in a standard Residential Tenancy Agreement form; and,
 - are for a term no greater than 1 year, with any options for renewal that total no longer than this Agreement less one day, including the original term of the tenancy agreement.

4. **TENANT RENT - RENT PAYABLE BY TENANTS TO THE CO-OPERATIVE**

- 4.1 All sub-leases and tenancies are subject to the Headlease and/or CCA provisions. If either the Headlease and/or CCA ends or is terminated, then that also terminates any sub-leases and tenancies.
- 4.2 (a) The maximum rent payable for any property under the Residential Tenancy Agreement is the Market Rent. THE CO-OPERATIVE must use *Community Housing Rent Policy* as the guide for calculation of all rents.
(b) Tenants can apply for Subsidised Rent if they cannot afford the market rent. Subsidised rent is based on a percentage of assessable household income as prescribed in the *Community Housing Rent Policy at 5.2*. Subsidised rent CANNOT exceed the market rent for the property.

(c) Subsidised Rents are based on a household paying no more than 25% of income plus 100% of CRA where applicable.

(d) This agreement acknowledges a minimum of 65% of tenants within THE CO-OPERATIVE must be eligible for public housing. THE CO-OPERATIVE must seek to maintain this proportion only by selection of appropriate new tenants as vacancies occur.

(e) Company rent is rent payable by THE CO-OPERATIVE to THE COMPANY

Clause 5 clarifies the application of revenue and the calculation of company rent

5. APPLICATION OF REVENUE - by both THE CO-OPERATIVE and THE COMPANY

5.1 CO-OPERATIVE

The rental revenue raised by each Co-operative contributes towards THE CO-OPERATIVE'S operating costs, including but not limited to:

- Company rent;
- Council rates;
- Water supply charges (and water usage charges where appropriate);
- Co-operative administrative expenses;
- Vacancy and bad debts;
- Responsive maintenance;
- Cyclical maintenance (for example but not limited to, stoves, floor coverings, internal and external painting, hot-water cylinders, pest inspections - excluding termite inspections) and, see schedule 3

5.2 COMMON EQUITY NSW

THE COMPANY'S operating costs, including:

- Third schedule works and specified cyclical maintenance included in schedule 3; (see schedule 3)
- Company administrative expenses;
- Insurances;
- Loan repayments;
- Development and growth.

5.3 COMPANY RENT CALCULATION

THE COMPANY Rent payable by THE CO-OPERATIVE at the commencement of this Agreement is 55% of chargeable rental income. The 55% of chargeable rental income paid to THE COMPANY is utilised to fulfill obligations included in 5.2. The 45% retained by THE CO-OPERATIVE is utilised to fulfill obligations included in 5.1.

Company Rent is calculated by reviewing the chargeable rental income for properties in each co-operative based on the information provided in the unit

level reporting data for the previous year (ie January to December). Calculations of Company Rent will occur in April of each year and be applied from July 1st of that year.

At the conclusion of each financial year, an adjustment will be made to refund or collect any variations from the 55% chargeable rental income collected. This process will be fully implemented from the 2014-2015 year.

6. RENT REVIEW

THE COMPANY and THE CO-OPERATIVE acknowledge to each other that any change to the system of determining Tenant or Company Rent shall be in consultation with Member Co-operatives, and where necessary CAPMH.

This clause describes the method of rent review applied by i) THE CO-OPERATIVE to each tenancy and ii) the method of review for Company Rent

6.1 CO-OPERATIVE Tenant Rent Review:

Co-operatives are required to implement the rent review obligations set out in the *Community Housing Rent Policy*, which stipulates 6-monthly rent reviews for tenants receiving rebated rent and annual reviews for tenants paying market rent. See also clause 9.

6.2 THE COMPANY Rent Review:

Company Rent will be set at 55% as outlined in 5.3. Company Rent is reviewed annually. THE COMPANY may vary to the rent payable to THE COMPANY by THE CO-OPERATIVE, outside the rent review period, where a property is added or removed from the First Schedule. The calculation of THE COMPANY Rent may consider the date by which the property is added or removed from the First Schedule and the overall financial commitment of THE CO-OPERATIVE.

7. OBLIGATIONS OF THE CO-OPERATIVE

The obligations of THE CO-OPERATIVE include:-

- Rent Collection
- Tenancy management
- Financial Viability
- Reputation of co-operative sector
- Comply with the Residential Tenancies Act 2010 (NSW)
- Attend or contribute to THE COMPANY meetings - consultation, regional, AGM etc

(a) Use of Premises

- i) Use the premises in accordance with provisions of the Residential Tenancies Act 2010 (NSW)

- ii) Use the premises for the purpose of providing residential accommodation and/ or services to the members of THE CO-OPERATIVE and tenants;
- iii) Not assign, sublet or part with possession of the premises or any part thereof to any person other than a member of THE CO-OPERATIVE without notifying THE COMPANY.

(b) Payments

- i) Pay THE COMPANY Rent; and,
- ii) Pay all municipal rates, water rates, sewage and drainage rates in respect of all the premises listed in the First Schedule for the term of this Agreement and any period of over holding.

(c) Maintenance

- i) Conduct not less frequently than once each year a documented inspection of the premises using the specified THE COMPANY form;
- ii) Maintain the premises in good order and condition and in a fit state for habitation, subject to THE COMPANY'S obligations pursuant to clause 8g) of this Agreement. THE CO-OPERATIVE shall notify THE COMPANY in writing as quickly as practicable (and in any event within 14 days) of becoming aware of such circumstances specifying any items THE COMPANY is required to repair pursuant to clause 8g) of this Agreement;
- iii) not make any renovation, alteration or addition to the premises, demolish any part of the premises, install any fixture or erect any new buildings on the premises without the previous written consent of THE COMPANY whose consent will be conditional on THE CO-OPERATIVE obtaining all relevant permits at THE CO-OPERATIVE'S cost and expense and ensuring that the work is completed according to all applicable building standards and in conformity with all regulations;
- iv) make good at THE CO-OPERATIVE'S cost and expense any structural damage occasioned to the premises as a result of THE CO-OPERATIVE'S failure to carry out its obligations pursuant to this Agreement or pursuant to the Tenancy Agreement;
- v) repair and make good at THE CO-OPERATIVE'S cost and expense any damage to the premises resulting from neglect or any deliberate or careless act by THE CO-OPERATIVE, or by the Tenant or by any person who is on the premises with the consent of THE CO-OPERATIVE or with the consent of the Tenant; and,
- vi) notify THE COMPANY immediately of any structural or malicious damage to the premises or any damage likely to render the premises unfit or unsafe for habitation as soon as THE CO-OPERATIVE becomes aware of such damage. Such notice shall be in writing or confirmed in writing as soon as possible thereafter.
- vii) Work within the framework of an agreed asset maintenance plan

(d) Reports

- i) Provide within the specified timeframe (where possible 28 days) of being requested by THE COMPANY to do so (unless an alternative timeframe has been agreed to), information required by the Community and Private Market Housing Directorate (CAPMH), Housing NSW, other government or statutory authorities or financiers in order for THE COMPANY to be able to meet its legal and contractual obligations;
- ii) Provide within the specified reporting timeframe (where possible 28 days) of being requested by THE COMPANY to do so (unless an alternative timeframe has been agreed to), summary of the information in relation to the occupancy and the profile of Tenants by completing a form prescribed by THE COMPANY for each household occupying the premises;
- iii) Advise THE COMPANY within 14 days if the premises are vacant for a period of at least 28 days (or any other period notified) to enable THE COMPANY to meet its insurance coverage obligations; and,
- iv) Provide a copy of the annual audited or auditor reviewed financial statements to THE COMPANY within 28 days of conducting THE CO-OPERATIVE'S Annual General Meeting. The report is to detail all income including Tenant rents collected from premises, rebates and other income and expenditure including but not limited to the following categories: -
 - maintenance
 - payments to THE COMPANY
 - rates and charges
 - administration costs
 - bad debts

8. OBLIGATIONS OF THE COMPANY

(a) The obligations of THE COMPANY in no particular order of importance include:- Consultation Commit to consultation with its Member Co-operatives as an essential part of its decision making process particularly when there is a change of fundamental importance. Such changes include but are not restricted to:

- Any new system of determining THE COMPANY and Tenant rents;
- Changes to this agreement and the NSW Co-operative Housing Program Procedures Handbook;
- Program funding options; and,
- Changes affecting Co-operative, Company or Program viability;

(b) Decision-making

Ensure the transparency of decision-making and reporting of operations by providing to each Member Co-operative, the following:

- Access to monthly Board Minutes and monthly Financial status;
- A quarterly Board Report of major changes and topical issues; and,
- THE COMPANY'S Annual Report to Members;

(c) State of the Properties

Ensure that the premises are in a reasonably clean and tenable condition on handover to THE CO-OPERATIVE under this Agreement;

(d) Maintain Privacy and Information Management Policy with regard to the handling of information regarding tenants for the purposes of reporting, data analysis, assisting with Tribunal hearings, assisting with rent reviews or any other matter in which individual information is provided. The Privacy and Information Management Policy is included in schedule 5.

(e) THE COMPANY undertakes to provide as much notice as possible for any requested information. Further, the Company aims to provide at least 28 days notice for such information but notes in some instances the 28 day notice period may not be possible. In these instances, THE COMPANY undertakes, in the first instance, to negotiate an extension with the specific department or agency. In the event the negotiation is not successful, THE CO-OPERATIVES will be given as much notice as possible and the reason for the shorter timeframe will be given.

(f) Tenants' Quiet Enjoyment

Not interfere with the right of THE CO-OPERATIVE'S Tenants to quiet enjoyment of the premises;

(g) Maintenance

Maintain the premises in good order and condition and in a fit state for habitation (fair wear and tear excepted) in relation to the items specified in the Third Schedule attached, except where the maintenance is required by reason of THE CO-OPERATIVE failing to comply with its obligations under Clauses 7 c) iv) v) and vi) of this Agreement;

(h) Insurance

Pay for insuring the premises as listed in the First Schedule;

(i) Repairs

Repair and make good any damage to the premises resulting from the neglect or any deliberate or careless act by THE COMPANY, or any person on the premises with the consent of THE COMPANY other than the Tenant;

(j) Asset Inspections

Complete an asset inspection at least every three years and then provide:

- i) A report to THE CO-OPERATIVE within two months of completing the asset inspection, including any identified Third Schedule maintenance work and indicative timeframes for when the work will be completed; and,
- ii) A replacement First Schedule documenting any additions or removal of additional amenity items for any premises listed in the First Schedule;

(k) Third Schedule

Complete the Third Schedule Works items identified in the report as near as practicable to the indicative timeframes set out in the report;

(l) Funding of Third Schedule Work

Ensure reasonable funds are available to meet Third Schedule maintenance obligations;

(m) Maintain good stewardship of THE COMPANY and financial viability.

(n) Support

Make staff from THE COMPANY available upon request to attend, at least once each year, either a Directors meeting or a General meeting of THE CO-OPERATIVE; and,

(o) Representation

THE COMPANY as the Registered Housing Provider is required to represent THE CO-OPERATIVE in any matter before any Tribunal or Court including the NSW Civil and Administrative Tribunal (NCAT) acknowledging THE COMPANY'S role as an essential third-party.

(p) Training and Advice

Provide to THE CO-OPERATIVE timely assistance, advice, resource material and/or relevant training following queries from THE CO-OPERATIVE relating to but not limited to the following matters:

- Maintenance and upkeep of the premises;
- Matters related to tenancy management and the *Residential Tenancies Act*;
- Financial systems and record keeping;
- Rights and responsibilities as defined under the *Co-operatives Act*, and,
- If required, bookkeeping, rent reviews, maintenance inspections on an agreed fee-for-service basis.
- Changes in policies of CAPMH or other regulatory bodies.

- (q) THE COMPANY is required under the terms of the Community Housing Agreement - Lease, with Land & Housing Corporation, to manage the Premises in compliance with Community Housing Rent Policy; Community Housing Eligibility and Access Policy; and other policies as notified by the Corporation from time to time.
- (r) The Regulatory Code (*replacing Community Housing Standards*) requires THE COMPANY monitor compliance, performance and governance of The Co-operative Housing Program in response to the Regulatory Code.
- (s) THE COMPANY will provide a proposed schedule of works to each co-operative identified as requiring schedule 3 works in the financial year (as per the AMP) up to three months prior to the anticipated work commencing. This does not apply to works that have become urgent and which are occurring outside the usual AMP schedule.
- (t) Provide advocacy for the Co-operative sector, facilitate sector growth and engage in the community/government debate regarding the unique nature of the sector.

9. RENT ARREARS MANAGEMENT

- (a) THE CO-OPERATIVE shall seek to manage rent arrears in line with the current benchmark of no more than 4% of quarterly gross rental income.
- (b) THE CO-OPERATIVE will supply THE COMPANY with a quarterly Rent Arrears Report (see Schedule 4).
- (c) Where THE CO-OPERATIVE has more than 4% arrears, THE COMPANY and THE CO-OPERATIVE will collaborate to develop strategies to reduce the arrears.

10. RIGHTS OF ENTRY

- (a) THE CO-OPERATIVE shall, within 21 days after receiving written notification from THE COMPANY to that effect, permit THE COMPANY and/or its authorised agents to enter and view the premises. In addition THE CO-OPERATIVE shall also permit, with written notice, THE COMPANY and/ or its authorised agents to enter the premises at a reasonable time or times in order to enable THE COMPANY to carry out THE COMPANY'S obligation under 8g) of this Agreement.

- (b) THE COMPANY, the Company's agent or any other person authorised by THE COMPANY may enter THE CO-OPERATIVE'S premises without notice in an emergency.
- (c) If THE COMPANY receives a written complaint alleging improper practices of a serious nature within THE CO-OPERATIVE in relation to the *Co-operatives Act* or the NSW Co-operative Housing Program Procedures Handbook or CCA from a current member of THE CO-OPERATIVE, a statutory officer, registered auditor or legal authority, THE COMPANY shall call for a meeting of the Directors of THE CO-OPERATIVE upon giving THE CO-OPERATIVE 14 days' notice to the Directors of THE CO-OPERATIVE to that effect and THE CO-OPERATIVE agrees to allow representatives of THE COMPANY to attend the meeting.

11. SERVICE OF NOTICES

- (a) Any notice required or authorised by this Agreement shall be sufficiently served on either THE COMPANY or THE CO-OPERATIVE respectively if addressed to THE COMPANY or THE CO-OPERATIVE left at or sent to its registered office for the time being or the last known mailing address of either THE COMPANY or THE CO-OPERATIVE, as the case may be. Where a notice is posted by prepaid post it shall be deemed to have been received five (5) working days after the date on which it was so posted.
- (b) Either party shall notify the other in writing within 10 working days of any change of address of its registered office or any change of its mailing address.

12. NOTICE BY THE CO-OPERATIVE OF A BREACH BY THE COMPANY

- (a) THE CO-OPERATIVE may serve written notice on THE COMPANY if it considers that THE COMPANY is in breach of any terms of this Agreement. The notice must specify the breach and how to remedy or compensate THE CO-OPERATIVE for any loss it has suffered as a result of the breach.
- (b) THE COMPANY will use its best endeavours to resolve the matter with THE CO-OPERATIVE within 14 days of receipt of the notice or a mutually agreed longer timeframe. Where agreement cannot be reached the matter will then be referred to the formal Disputes procedure (Clause 15).
- (c) If after 14 days from receiving the notice, THE COMPANY does not dispute what is contained in the notice or does not remedy the breach, the Chief Executive Officer of THE COMPANY must meet with THE CO-OPERATIVE to discuss the breach and the possible remedies.

- (d) If the matter then remains unresolved 7 days after this meeting, THE CO-OPERATIVE may make a formal submission to the Board of THE COMPANY and the Board of THE COMPANY must provide a written response to THE CO-OPERATIVE within 30 days of receiving the submission from THE CO-OPERATIVE. In addition the Directors and/or Members of THE CO-OPERATIVE may communicate directly with the members of the Board of THE COMPANY.
- (e) If following a written response from the Board of THE COMPANY, THE CO-OPERATIVE is not satisfied that an appropriate remedy is in place then it may invoke the dispute procedures commencing at Stage 3 of Clause 15 of this Agreement.

13. NOTICE BY THE COMPANY OF A BREACH BY THE CO-OPERATIVE

- (a) Except where THE CO-OPERATIVE is in breach of the Agreement by its failure to pay THE COMPANY rent (which is dealt with under Clause 14 of this Agreement) THE COMPANY may serve written notice on THE CO-OPERATIVE if it considers that THE CO-OPERATIVE is in breach of any terms of this Agreement.
- (b) The notice must specify the breach and how to remedy or compensate THE COMPANY.
- (c) If after 28 days from receiving the notice, THE CO-OPERATIVE does not remedy the breach to the satisfaction of THE COMPANY, THE COMPANY may serve a notice on the Directors of THE CO-OPERATIVE requiring them to meet with THE COMPANY'S Chief Executive Officer on a date not earlier than 21 days after the service of the notice, to discuss possible remedies of the breach and the Directors of THE CO-OPERATIVE must meet on the date specified in the notice with the Chief Executive Officer of THE COMPANY for this purpose.
- (d) If the Directors of THE CO-OPERATIVE fail to meet with the Chief Executive Officer of THE COMPANY on the date specified in the notice or if after 14 days from the date of the meeting THE COMPANY is not satisfied with THE CO-OPERATIVE'S response to the breach set out in the notice, THE COMPANY may invoke the dispute procedures commencing at Stage 3 of Clause 15 of this Agreement.

14. NON PAYMENT OF COMPANY RENT BY THE CO-OPERATIVE

- (a) If THE COMPANY Rent or any part of it shall remain unpaid after 14 days from the due date for payment, THE COMPANY may issue a written notice to THE CO-OPERATIVE requiring THE CO-OPERATIVE to make payment in full within 14 days.
- (b) If following this notice THE CO-OPERATIVE has not paid the rent or entered into an arrangement with THE COMPANY to pay the rent or any part of it remains unpaid after 60 days from the due date for payment then THE COMPANY may by written notice to THE CO-OPERATIVE terminate this Agreement and assume the landlord's rights of THE CO-OPERATIVE in relation to the Tenants occupying the premises.

15. DISPUTE RESOLUTION

- (a) THE COMPANY and THE CO-OPERATIVE will make every attempt to negotiate a settlement of disputes in relation to this Agreement:

Stage 1 THE COMPANY and THE CO-OPERATIVE will use their best endeavors to reach a solution. If no resolution is reached, then,

Stage 2 the Chief Executive Officer of THE COMPANY to meet with Directors of THE CO-OPERATIVE to resolve the dispute. If no resolution is reached, then,

Stage 3 the dispute is referred to an independent and agreed mediator, with both parties agreeing to assist the mediator to reach an acceptable solution. An agreed mediator may be an individual of satisfactory standing skill and independence, who will work with both parties to reach a satisfactory conclusion to the dispute

In the absence of an agreement as to the mediator to be appointed, a mediator will be appointed by the Australian Commercial Disputes Centre (ACDC). If no resolution is reached then,

Stage 4 the dispute is referred to an arbitrator, appointed by the ACDC. The decision of the arbitrator is final and binding on both parties. The arbitrator will make an order with respect to costs. A party may only appeal the decision of the arbitrator on a matter of law to a competent court.

- (b) THE COMPANY shall bear all costs attempting to reach a resolution up to and including Stage 3.
- (c) It is acknowledged between the parties that during stages 1 to 3, the parties will try to resolve the dispute between themselves without recourse to legal representation.

16. VARIATION TO THE FIRST SCHEDULE

- (a) THE CO-OPERATIVE may remove a premises from the First Schedule of this Agreement by giving written notice to that effect to THE COMPANY effective from the date of the service of the notice, other than where THE CO-OPERATIVE is in default under Clause 7c) of this Agreement or where the Tenant is in default under the Tenancy Agreement where circumstances render the premises destroyed totally or to the extent that they are unsafe, or unfit for human habitation.
- (b) Co-operative Notice to THE COMPANY
 - i) In all other cases, where THE COMPANY is unable to meet its other obligations under Clauses 8 a) to j) inclusive, of this Agreement, then THE CO-OPERATIVE may give written notice to THE COMPANY specifying the default and requiring THE COMPANY to remedy the default or where the default is not capable of remedy make compensation in money for the default within 28 days.
 - ii) If at the expiry of 28 days, THE COMPANY has not remedied the default (or where the default is not capable of a remedy make compensation in money for the default) then THE CO-OPERATIVE may give THE COMPANY notice of its intention to hand back the premises on the date specified in the notice which is to be not less than 28 days from the service of the notice, thus excusing the Co-op from liability for continuing Company Rent for the premises.
- (c) If THE COMPANY defaults under Clauses 8 a) to j) inclusive for the third time, after having previously twice remedied the same default, THE CO-OPERATIVE is not required to give a third 28 days' notice to THE COMPANY to remedy the default but may give THE COMPANY notice of its intention to hand back the premises to THE COMPANY on a date which is not less than 28 days from the service of the notice.

(d) Variation of the First Schedule by mutual consent

THE COMPANY may at any time, with the consent of THE CO-OPERATIVE, vary the First Schedule of this Agreement by adding premises and or by removing premises from the First Schedule of this Agreement and the First Schedule of this Agreement shall be deemed to have been accordingly amended and the parties shall execute any document necessary to give effect to the amendment.

17. TERMINATION OF THIS AGREEMENT BY THE CO-OPERATIVE

THE CO-OPERATIVE may terminate this Agreement by providing six (6) months written notice of intention to terminate to THE COMPANY, where THE CO-OPERATIVE has voted to no longer continue to operate as a Co-operative. It is THE CO-OPERATIVE'S responsibility to serve appropriate notices to vacate on all Tenants and return the premises to THE COMPANY with vacant possession, unless other arrangements have been negotiated between THE CO-OPERATIVE and THE COMPANY.

18. TERMINATION OF THIS AGREEMENT BY THE COMPANY

(a) THE COMPANY may terminate this Agreement in accordance with Clause 13 of this Agreement.

(b) THE COMPANY may remove any of the premises listed in the First Schedule from this Agreement by giving written notice to THE CO-OPERATIVE, effective from the date of the service of the notice, where the premises has been destroyed totally or to the extent that they are unsafe, or where any Statutory Authority deems the premises unfit for human habitation, whereupon this Agreement shall be read and be construed as no longer applying to the premises so removed.

(c) Where THE CO-OPERATIVE has otherwise failed to carry out its obligations set out in Clause 7 of this Agreement, and THE COMPANY has followed processes set out in Clause 13 of this Agreement and the matter remains unresolved, then THE COMPANY may give THE CO-OPERATIVE notice that it is terminating the lease for any or all of the premises listed in the First Schedule on the date specified in the notice which is not to be less than 28 days from the date of the service of the notice and the First Schedule of this Agreement shall be deemed to have been accordingly amended. The notice shall be deemed to be withdrawn where THE CO-OPERATIVE remedies the default or makes compensation in money for the breach (as the case may be) prior to the expiry of the period specified in the notice for the termination of the lease.

- (d) If THE CO-OPERATIVE defaults under Clause 7 of this Agreement for a second time, THE COMPANY will notify each member of THE CO-OPERATIVE of the breach and organize a meeting with all members with a view to rectifying the breach.
- (e) If THE CO-OPERATIVE defaults under Clause 7 of this Agreement for the third time, after having previously twice remedied the same default, THE COMPANY may give THE CO-OPERATIVE notice of its intention to remove any one or more or all of the premises from the First Schedule of this Agreement on a date which is not less than 28 days after the service of the notice regardless of whether if THE CO-OPERATIVE remedies the default to the satisfaction of THE COMPANY and the First Schedule of this Agreement shall be deemed to have been accordingly amended.

19. CANCELLATION OF THIS AGREEMENT

To protect security of tenure, in the event that this Agreement is terminated by either THE COMPANY or THE CO-OPERATIVE, THE COMPANY shall inform all Tenants within seven days of such termination. Upon such termination all of the Tenants shall then become the Tenants of THE COMPANY in respect of the relevant premises on the same terms so far as applicable as the terms of the Tenancy Agreement and THE CO-OPERATIVE shall if requested by THE COMPANY assign its interest in the Tenancy Agreement to THE COMPANY.

20. PERIODIC REVIEW

- (a) Within 18 months of operation of this Agreement, THE COMPANY and THE CO-OPERATIVE will undertake a formal review process to ensure that the terms, obligations and intent of this Agreement are being satisfactorily performed by the parties.
- (b) This review will be conducted in a manner and form agreed by the parties and will undertake to review, but not be limited to, the following matters:
- Compliance with this Agreement;
 - Upkeep of the premises by both THE COMPANY and THE CO-OPERATIVE;
 - Service provisions by THE COMPANY;
 - Tenancy management by THE CO-OPERATIVE;
 - Financial performance of both parties;
 - Obligations under the *Co-operatives Act* and all other relevant Acts;
- (c) And in the absence of either party agreeing to the conduct of the review, either party may initiate a dispute process in accordance with Clause 15 of this Agreement.

21. INDEMNITIES

(a) THE CO-OPERATIVE will and does hereby indemnify THE COMPANY against all liability which might otherwise attach to THE COMPANY as a result of any injury, damage or loss (personal or proprietary) suffered by any person, where such injury, damage or loss has been caused by or contributed to by any act or omission of THE CO-OPERATIVE or its employees, agents, invitees, tenants where such injury, loss, or damage occurs on the premises listed in the First Schedule.

(b) THE COMPANY will and does hereby indemnify THE CO-OPERATIVE against all liability which might otherwise attach to THE CO-OPERATIVE as a result of any injury, damage or loss (personal or proprietary) suffered by any person, where such injury, damage or loss has been caused by or contributed to by any act or omission of THE COMPANY or its employees, agents, invitees, where such injury, loss, or damage occurs on the premises listed in the First Schedule.

22. OVERHOLDING OF THE PREMISES

No over-holding of the premises after the expiry of the term hereby created shall be construed as creating a lease from year to year or any fixed term **AND** notwithstanding that THE CO-OPERATIVE may not yield up the premises upon the expiration of the term or that THE COMPANY may not require possession or that THE CO-OPERATIVE may pay and THE COMPANY receive rent or other moneys in respect of THE CO-OPERATIVE'S use of the premises the occupancy by THE CO-OPERATIVE of the premises after the expiration of the said term may be determined by THE COMPANY at any time upon giving to THE CO-OPERATIVE 1 month's notice in writing in accordance with Clause 11 of this Agreement.

FIRST SCHEDULE

This schedule attaches to this Agreement and in relation to the premises known as:-

THE COMPANY shall provide to THE CO-OPERATIVE a replacement First Schedule upon:

- i.) any additions or removal of non-standards items for any premises listed in the First Schedule,
- ii.) any change in THE COMPANY Rent,
- iii.) any change in the Market Rent,
- iv.) any additional premises being allocated to THE CO-OPERATIVE,
- v.) a lease being terminated either by THE CO-OPERATIVE or THE COMPANY,
- vi.) a hand back of premises by THE CO-OPERATIVE.

Dated: _____

Replacement First Schedule Dated: _____

Chief Executive Officer
Common Equity NSW Ltd

Chairperson
Co-operative

SECOND SCHEDULE

Term of this Agreement: Three Years

Commencement Date: May 1st, 2014

Termination Date: April 30th, 2017

Further Terms: **Subject to:**

a) satisfactory performance, and

b) mutual review

Payment of Rent: Rent payment by THE CO-OPERATIVE to THE COMPANY is due each month on the 15th for that current calendar month, with the method of payment being either by direct transfer, cheque or any other method as agreed by the parties.

THIRD SCHEDULE

The following aspects of premises maintenance, improvement and rehabilitation are the responsibility of THE COMPANY, subject to the terms of this Agreement:

- complete replacement of stairs, patio and porch, balconies and ramps;
- roof replacement and major repair (more than 40% of roof surface);
- major rewiring;
- re-stumping;
- underpinning and associated works;
- all underground pipe repairs
- sewerage replacement;
- stormwater replacement;
- hot/cold waterpipe replacement;
- full re-cladding;
- rising damp rectification;
- complete (kitchen) joinery upgrade;
- complete bathroom upgrade;
- structural flooring replacement above 8 metre square;
- window replacement(where multiple windows required or significant repair associated with window replacement); and
- major repair of driveways, crossovers, sheds and garages.
- Termite inspections
- Annual fire safety inspections for affected properties and co-ordination of remedial works where required (the cost of subsequent repairs and replacements remains the responsibility of THE CO-OPERATIVE)
- Tree lopping, pruning or removal when the project is large (> \$7,000) or where there is an imminent danger the structure of the property
- Tree lopping pruning or removal application process for both those included on schedule 3 and those under the responsibility of THE CO-OPERATIVE
- THE COMPANY provides a small per annum fund to partially support property improvements which have a communal benefit, not included in the asset maintenance plan

Notes to Schedule 3:

THE COMPANY provides a disability upgrade fund for the significant disability upgrades of bathrooms etc when required. Minor modifications eg installation of a handrail remain the responsibility of THE CO-OPERATIVE.

Where disability or heritage issues have imposed a demonstrated cost impost on THE CO-OPERATIVE, THE COMPANY will provide a grant of up to 20% of the total maintenance costs to the affected co-operative

Where building standards or compliance issues dramatically change, there may be a need for THE CO-OPERATIVE to seek assistance for specific works not anticipated in the usual cyclical and responsive maintenance budget.

All other aspects of premises maintenance, improvements and rehabilitation are the responsibility of THE CO-OPERATIVE.

A current schedule of rates as provided by CAPMH used as a benchmark for costing's of property maintenance, can be found at:

<http://www.commonequity.com.au/index.php/coop/policies-a-fact-sheets/schedule-3-maintenance>

FOURTH SCHEDULE

The dates of these report schedules may change over the term of the CCA. THE COMPANY will issue amended schedules when required

Type of report	Who/why required	Period report covers	Date due
Unit Level Reporting	Community Housing Agreement reporting obligations to Community and Private Market Housing Directorate (CAPMH), a business unit of Housing NSW	Quarterly	14 th April; 14 th July; 14 th October; 14 th January
Audited or auditor reviewed financial statements	CCA -Clause 7 d) iv)	Annually	Within 28 days of conducting THE CO-OPERATIVE'S Annual General Meeting.
National Rental Affordability Scheme (NRAS) Only applies to Kapit Bahayan Cooperative Ltd and Van Lang Co-operative Ltd	Community Housing Agreement reporting obligations to Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)	Annually	31 st March

FIFTH SCHEDULE

PRIVACY AND INFORMATION MANAGEMENT POLICY

Common Equity NSW Ltd (THE COMPANY) is committed to ensuring the privacy and confidentiality of tenants is respected. This policy outlines the types of information THE COMPANY collects about individuals and how privacy obligations in relation to personal information are met.

THE COMPANY complies with its obligations under the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth) and the Health Records and Information Privacy Act 2002 (NSW).

Collection of Information

THE COMPANY collects personal information about tenants, household members and prospective tenants as needed for the purpose of assessing eligibility for community housing, providing services, maintaining tenancies and for meeting the requirements of registration as a community housing provider. Sensitive information may only be collected where this is required of the Company by key stakeholders.

The types of information collected may include, but is not limited to:

Full name, current contact details and address, sex, date of birth, nationality, languages spoken, level of education, emergency contact, relationship with household members, employment, health information, financial information (asset and income), other relevant background information.

THE COMPANY will not collect information unless it is for a proper and lawful purpose. THE COMPANY further acknowledges that where some types of information is not able to be collected 'not known' is the appropriate response.

In order to protect the privacy of individuals and ensure information held is accurate, personal information will be collected, as far as practicable, directly from the individual themselves by the landlord co-operative and changes to information held will only be made once the accuracy of the change has been established.

Securing Information

THE COMPANY takes precautions to secure personal information it holds, against loss, misuse or alteration.

A number of security measures to protect information are in place including:

- Security access to the business premises; files containing personal information are kept in locked filing cabinets;
- Technology is in place to prevent unauthorised computer access via networks, for example firewalls and password protection;
- Files containing personal information will be kept in such a way that they can only be accessed by individuals authorized to do so, that is, staff or cooperative members in a position of responsibility;
- Staff receive training on protecting the privacy of personal information;
- Electronic and hardcopy files are held securely as per the legally required timeframe, and then destroyed in full.

Sharing Information

Minimal, basic information will be shared with THE COMPANY contractors and representatives for specific activities such as repairs to property, conducting condition and pest inspections, obtaining quotes and other activities conducted during the normal course of providing community housing and services.

Information about a tenant provided to one employee of THE COMPANY will be available to other employees of THE COMPANY where it is required in the normal course of their duties. THE COMPANY employees keep personal information confidential and secured and only share information relevant at the time.

Personal information will only be shared with another Agency where the interested party has provided consent and/or where it is legally required.

De-identified aggregated information about THE COMPANY tenants and cooperative tenants is provided to NSW Housing for the annual data collection. Non-identifying information, such as survey responses and feedback on services, is also used to plan for future needs.

Access to Information

Tenants can request access to personal information THE COMPANY holds about them by submitting a written request to the senior field officer.

In general:

- a request to access information held will be approved;
- original documents will not be removed from files, however tenants will be able to make copies;
- access to information will be provided at THE COMPANY'S office in the presence of a staff member at a pre-arranged time.
- amendments will be made to ensure information held is accurate, complete and up-to-date.

In some circumstances, THE COMPANY may deny access to information held if:

- providing access would pose a serious and imminent threat to the life or health of any individual; or
- providing access would have an unreasonable impact upon the privacy of other individuals; or
- the request for access is frivolous or vexatious; or
- denying access is required or authorised by or under the law or,
- providing access would result in any of the exceptional situations listed in schedule 3 of the Privacy Act 1988 occurring.

THE COMPANY will inform the tenant why their request to access information was denied.

Related Documents

Code of Conduct
Tenant Handbook