

# **AGREEMENT REGULATING THE IMPLEMENTATION OF A HOUSING DEVELOPMENT PROJECT BY A PRIVATE DEVELOPER ON BEHALF OF THE BENEFICIARIES**

## **1. PARTIES**

1.1 The parties to this agreement are:

1.1.1 Provincial Government of \_\_\_\_\_, herein represented by the Member of the Executive Council responsible for \_\_\_\_\_ (herein after referred to as the MEC);

1.1.2 The \_\_\_\_\_, represented herein by \_\_\_\_\_ in his/her capacity as \_\_\_\_\_, under and by virtue of a resolution passed by the Company on \_\_\_\_\_ (herein after referred to as the Developer).

1.2 The parties agree as set out below.

## **2. DEFINITIONS AND INTERPRETATION**

2.1 In this agreement, unless inconsistent with or otherwise indicated by the context-

2.1.1 "The/This Agreement" means the agreement as set out in this document together with all annexures hereto by both parties;

2.1.2 "Beneficiary" means a person whose housing subsidy application was attached to the project application and has been approved by the MEC;

2.1.3 "The legal entity" means the entity established by the beneficiaries to enable them to enter into contracts;

2.1.4 "Farm resident" means a person residing on land which belongs to the farm owner and who will benefit from the housing opportunities to be created by the farm owner;

2.1.5 "Farm workers" means persons who are formally employed by the farm owner to work on the farm;

2.1.6 "Municipality" means a Local or District or Metropolitan Municipality as described in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

- 2.1.7 "Project application" means the approved application, submitted by the Developer through the \_\_\_\_\_ Municipality to the MEC, a copy of which is attached hereto as Annexure A.
- 2.1.8 "Project" means the farm residents housing project referred to in clause 2.1.7 above to be implemented by the Developer.

2.2 In this Agreement:

- 2.2.1 Reference to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as amended from time to time;
- 2.2.2 Reference to one gender shall be deemed to include reference to the other gender and the singular shall include plural, and vice versa;
- 2.2.3 Any reference to natural persons shall include juristic persons and vice versa;
- 2.2.4 If a definition imposes substantive obligations on or confers rights to a party such obligations or rights shall be enforceable and shall be given effect to notwithstanding that they are contained in a definition;
- 2.2.5 Definitions in this Agreement shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which a definition appears;
- 2.2.6 If there is any conflict between any definitions in this Agreement then, for the purposes of interpreting any clause of the Agreement or paragraph of any annexure, the definition appearing in that clause or paragraph shall prevail over any other definition elsewhere in the Agreement;
- 2.2.7 If any period is referred to by way of a number of days, the days shall be reckoned exclusive of the first day and inclusive of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding baseness day;
- 2.2.8 Any provision in this Agreement which may become illegal, invalid or unenforceable shall be ineffective to the extent of such illegality invalidity or unenforceability and shall be treated as having not being written (*pro non scripto*) and be severed from the balance of this agreement, without invalidating the remaining provisions of this agreement;
- 2.2.9 The expiration or termination of this Agreement shall not affect the provisions of this Agreement which are expressly provided to operate after such expiration or termination, or which of necessity must continue

to have effect after such expiration or termination, notwithstanding that the relevant provisions do not provide for this;

2.2.10 In this agreement the rule of construction that the contract shall be interpreted against or to the advantage of the party responsible for the preparation and drafting of the Agreement (the *contra proferentum* rule) does not apply;

2.2.11 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

### **3. RECORDAL**

3.1 The beneficiaries have each acquired a farm portion/ are in the process of acquiring ownership of the farm portions\* shown on the diagram attached hereto as Annexure B for housing purposes and small scale /subsistence farming activities;

3.2 The beneficiaries have formed a legal entity called \_\_\_\_\_ to represent them in the implementation of the project;

3.3 The legal entity has appointed the Developer to implement the housing development project on behalf of the beneficiaries;

3.4 The project, as set out in the project application, will commence as soon as this agreement has been signed by the relevant parties.

(\* Delete whichever is not applicable)

### **4. COMPLIANCE WITH APPROVED PROJECT APPLICATION, APPLICABLE CONDITIONS AND LAWS**

4.1 The Developer will implement the project in accordance with:

4.1.1 The approved project application;

4.1.2 The MEC'S conditions as set out in the approval of the project documents;

4.1.3 All applicable laws;

4.1.4 The provisions of this Agreement.

## 5 MINIMUM BASIC SERVICES

- 5.1 The developer will ensure that all the newly created farm portions are provided with minimum basic services that are sustainable in the long run as provided for and in accordance with the services mentioned in the approved project application.
- 5.2 In the event that circumstances exist on the farm portions which makes it not feasible or practicable to provide minimum basic services as per the approved project application, the MEC may, on request by the developer, consider approving norms and standards designed to meet the local condition requirements provided that such standards are approved by the beneficiaries and the municipality and that the local solutions for the provision of basic water and sanitation are designed by a professional expert, are environmentally acceptable and are supported by geotechnical investigations that confirm the suitability of the services options selected.
- 5.3 Where extraordinary geotechnical conditions necessitate special precautionary measures to ensure durable and quality houses the developer may apply for additional funding in accordance with the provisions of the Variation Manual contained in the Technical and General Guidelines of the National Housing Code.

## 6 TOP STRUCTURES

- 6.1 The Developer will register with the NHBRC and enrol all new residential dwellings as prescribed by the NHBRC before the commencement of the project.
- 6.2 The houses will comply with the following minimum norms and standards:
  - 6.2.1 The gross floor area of the residential structures must not be less than 40 (forty) square meters.
  - 6.2.2 Each house must at least include:
    - 6.2.2.1 two bedrooms;
    - 6.2.2.2 a separate bathroom with a toilet, a shower and a hand basin;
    - 6.2.2.3 a combined living area and a kitchen with a wash basin; and
    - 6.2.2.4 a ready board electrical installation where electricity supply is available and this service is provided by a service provider.<sup>1</sup>

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<sup>1</sup> If electricity is not available clause 6.2.2.4 should be deleted.

- 6.3 The Developer will ensure that all construction methods, materials and workmanship employed in the development of the land are of an acceptable standard.
- 6.4 The Developer will employ mostly local labour for the construction of the houses.

## **7 BUILDING PLANS**

- 7.1 The Developer will obtain approval of all building plans from the relevant municipality and will comply with the technical norms and standards of the National Building Regulations.

## **8 THE PROCUREMENT PROCESS**

- 8.1 The following strategy will be employed regarding the acquisition of materials and services:
- 8.1.1 The Developer must follow a fair, open and competitive procurement process in the appointment of all service providers;
- 8.1.2 Services and products will be sourced locally whenever it is feasible and practicable;
- 8.1.3 The developer must give preference to previously disadvantaged people and organisations owned by previously disadvantaged people; and
- 8.1.4 The Developer will invite tenders or obtain quotations from material suppliers/service providers where this is feasible and practicable.

## **9 PROGRESS PAYMENTS**

- 9.1 The Developer will finance the construction work from his own resources until the first payment milestone has been achieved as the MEC will institute progress payments on the basis of the principle of achievement of value for money.
- 9.2 The parties agree to the following progress payments:
- 9.2.1 \_\_\_\_\_% on the completion of foundations;
- 9.2.2 \_\_\_\_\_% when the top structure reaches window height;
- 9.2.3 \_\_\_\_\_% when the top structure reaches roof height;
- 9.2.4 \_\_\_\_\_% on completion of roofing.

9.2.5 \_\_\_\_\_% on completion of the house

9.2.6 \_\_\_\_\_% as retention payable 3 (three) months after completion.

## **10 TIME FRAMES**

10.1 The development project will be implemented according to the programme outlined in clause 10.2 below.

10.2 The Developer will:

10.2.1 Obtain the approval of building plans within 6/8\* months from the date of commencement of this agreement; and

10.2.2 Complete the development within 12/18/24\* months from the date of the approval of the building plans.

( \*delete whichever is not applicable)

## **11 REFUNDING IN CASE OF OVERPAYMENTS**

11.1 The parties agree that in the event that the Developer has received an amount in excess of what he is entitled to receive the amount so overpaid will be set off against the amount payable on the attainment of the subsequent milestone(s).

11.2 If the overpayment is with regard to the last milestone or cannot be fully recovered from the subsequent claims the developer will refund the MEC within 14 (fourteen) days from the date of demand, instituted by the MEC.

## **12 BREACH OF CONTRACT**

12.1 Should either of the parties fail to timeously or fully perform any obligation arising from this agreement the other party (aggrieved party) may call upon the defaulting party in writing to remedy such default within a reasonable period, appropriate under the circumstances; which period shall not be less than 14 (fourteen) days.

12.2 Should the defaulting party fail to remedy such default within the stipulated period the aggrieved party will be entitled to claim for damages and loss he may have suffered as a result of the default.

## 13 NOTICES AND *DOMICILIA*

13.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in clause 13.2 for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

13.2 For the purposes of this agreement the parties' respective addresses shall be:

13.2.1 \_\_\_\_\_

13.2.2 \_\_\_\_\_

13.2.3 Or at such other address which one party may give the other in writing, provided that the new address is not a post office box or *poste restante* ('mail to be collected by the recipient' arrangement).

13.3 Any notice in terms of this agreement shall be in writing and shall:

13.3.1 If delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

13.3.2 If posted by prepaid registered post, be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) day following the date of such posting;

13.3.3 If transmitted by facsimile, be deemed to have been received by the addressee on the day following the date of the dispatch, unless the contrary is proved.

13.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such party.

## 14 WHOLE AGREEMENT

14.1 This agreement constitutes the whole agreement between the parties and no agreements, representations or warranties between the parties regarding the subject matter of this agreement other than those set out herein are binding on the parties.

**15 VARIATION**

15.1 No additions to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its termination shall be of any force or effect unless reduced to writing and signed by both parties or their duly authorised representatives.

**16 RELAXATION**

16.1 No latitude, extension of time or other indulgence which may be given or allowed by either party to the other party in respect of the performance of any obligation hereunder; and no delay or forbearance in the enforcement of any right by either party arising from this agreement ; and no partial exercise of a right by either party shall, in any circumstances, be construed as an implied consent by such party or operate as a waiver or a novation of or otherwise affect any of such party's rights in terms of or arising from this agreement and the said party shall be entitled at any time to require strict and punctual compliance with each and every provision or term of this agreement by the other party.

THUS DONE AND SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ in the presence of the undersigned witnesses.

AS WITNESSES:-

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
FOR AND ON BEHALF OF THE  
PROVINCIAL GOVERNMENT



THUS DONE AND SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of  
\_\_\_\_\_ 20... in the presence of the undersigned witnesses.

AS WITNESSES:-

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
FOR AND ON BEHALF OF THE  
DEVELOPER