

LAND AVAILABILITY AGREEMENT

Between

THE LOCAL MUNICIPALITY OF MANTSOPA

herein represented by **Constance Lineo Masefora Rampai** in her capacity as MUNICIPAL MANAGER, duly authorized thereto in terms of Sections 59(1)(a) and (b) and 59(2)(d) of the Local Government: Municipal Systems Act, 32 (Act No 32 of 2000) and Sections 77(1)(c) and (d) and 79(1) and 3(d) of the Municipal Finance Management Act, 56 (Act 56 of 2005).

and

DEPARTMENT OF HUMAN SETTLEMENTS

(HEREIN REPRESENTED BY **MPHO MOSES MOKOENA** IN HIS CAPACITY AS HEAD OF DEPARTMENT)

THE PARTIES HEREBY AGREE TO THE FOLLOWING:

1. INTERPRETATION:

In this agreement and save where the context clearly indicates the contrary:

1.1 "Council" means **THE LOCAL MUNICIPALITY OF MANTSOPA**

1.2 "Contractor" means identified contractors appointed by the Developer in order to erect improvements on identified erven, financed by a housing subsidy allocated to an approved beneficiary by the Free State Province, Co-operative Governance, Traditional Affairs and Human Settlements Department;

1.3 "Developer" means **DEPARTMENT HUMAN SETTLEMENTS**.

1.4 "Development" means the development of 400 pre-identified erven within the area of jurisdiction of the municipality, be undertaken by the Developer, in terms of this agreement;

1.5 "Erf" means any erf identified by the municipality or contained in the development and on approved general plan;

1.6 "General Plan(s)" means the general plan approved by the Surveyor-General in respect of the identified township within the area of jurisdiction of the municipality;

1.7 "Implementation Manual" means the Implementation Manual issued in respect of the Housing Subsidy Scheme of the Government of South Africa;

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- 1.8 "Land Availability Agreement" means the agreement between the **Council** and the **Developer** - in terms of which the **Developer** and the Free State Provincial Government agreed to avail 400 subsidies in respect of- and for the development;
- 1.9 "Project linked subsidies" means subsidies as defined in and regulated by Part 3 of the Implementation Manual;
- 1.10 "Project Subsidy Agreement" means the agreement between the **Developer** and the **Free State Provincial Government**, in terms of which the Department Co-operative Governance, Traditional Affairs and Human Settlements undertook to avail 400 project linked subsidies in respect of the **development**;
- 1.11 "Property" refers to 400 erven to be identified by the **Council** on the land described on **General Plans**;
- 1.12 The singular includes the plural and vice versa and reference to one gender includes a reference to the other gender.

2. RECORDAL:

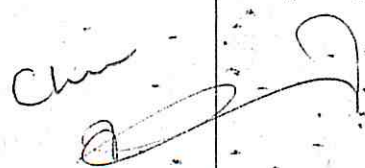
- 2.1 The **Council** owns the property and herewith confirms that there exist no other legal agreements or cessions or appointments of consultants or other developers in respect of the property that could impact on the development and therefore the **Council** avails the property to the **Developer** for the development. The **Developer** will develop the property with **project linked subsidies**.
- 2.2 It is hereby recorded that township registers have already been opened in respect of the property, filed in the Deeds Registry Offices, Bloemfontein and that the identified 400 erven, which are the subject of the **development** are plotted on the said townships.

3. BASIS OF AGREEMENT:

This agreement is based on the allocation of 400 housing subsidies to pre-approved beneficiaries by the **Developer**, in order to erect improvements on pre-identified erven according to a plan and the requirements as set by the **Developer**.

4. CONVEYANCING:

- 4.1 It is hereby agreed that the **Developer** will appoint Conveyancers, for the transfer of the housing units into the names of the beneficiaries, subject to the following conditions:
- 4.1.1 that all costs for transporting of transfer documentation (Deeds, Clearance Certificates, etc.) or registration or registration fees shall be at risk and for the account of the **Developer**;
- 4.1.2 that it will be required that full particulars of beneficiaries approved per stand be confirmed by the **Developer** to **Council** for issuing of Clearance Certificates by the **Council's** Chief Financial Officer;
- 4.1.3 that the Conveyancers shall confirm record of registered erven in the Deeds Registry Offices to the **Developer**;



4.1.4 that the Conveyancers appointed take full responsibility for correctness of all transfer documentation or the de-registration of erroneous title deeds;

4.2 It is hereby recorded for Deeds Registry purposes:

4.2.1 That MUNICIPAL MANAGER is authorized to conclude a Land Availability agreement on behalf of the Council with the Developer, at the cost of the Developer; and

4.2.2 that the Municipal Manager performs function listed 4.2.2.1 TO 4.2.2.4:

4.2.2.1 to conclude Deeds of Sale with identified and / or approved beneficiaries;

4.2.2.2 to sign any transfer document for housing delivery purposes that the Council is legally empowered to execute as line function as well as to give legal effect to Council resolutions relevant to this project;

4.2.2.3 to issue certificates in section 4 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and Provincial Notice 185 of 2000, or section 12 notice, as provided for in terms of section 14(1)(4)(a) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998); or

4.2.2.4 to confirm to the Deeds Registry Offices that this project forms part of a housing delivery project in Metsimholo, which is regarded as a "land reform project" and that the Council confirmed that the lodgement of transfer duty receipt or exemption as endorsed on the REV683/684 forms are not required.

4.2.2.5 the Municipal Manager shall acknowledge receipt of all title deeds from conveyancers.

5. PROJECT MANAGEMENT:

5.1 The Developer shall ensure that the Contractors appointed by the Developer, shall at their cost:

5.1.1 appoint Project Managers to manage the project; and

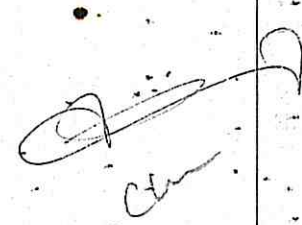
5.1.2 Consulting Engineers to inspect the raft foundations of the houses;

5.2 The Developer shall confirm the names and contact details of the Project Managers and Consulting Engineers appointed by the Contractors to the Council.

5.3 It is hereby further recorded that the following Contractors had been appointed by the Developer for the erection of houses within the area of jurisdiction of the Council:

NO	COMPANY NAME	HOUSES ALLOCATED	TOWN
1	Makana Woman Construction	100	Ladybrand
2	Makoya Trading	300	Ladybrand

6. SPECIFIC CONDITIONS, ADMINISTRATIVE- AND CONSTRUCTION ARRANGEMENTS:

- 6.1 The **Developer** shall ensure and furnish the **Council** with the names of the approved beneficiary lists at the cost of the **Developer**;
- 6.2 It is hereby recorded that in terms of national policies, that a pre-emptive right of **eight (8) years** will be registered in favour of the Department Co-operative Governance, Traditional Affairs and Human Settlements of the Free State Government, for even to be transferred to the identified beneficiaries;
- 6.3 The **Developer** shall be compelled to commence with the construction of houses on the identified registered even within **30 (thirty) days** from the date of registration of transfer of an erf in the name of an approved beneficiary;
- 6.4 Any earthworks or building work that the **Developer** does / did on an erf before registration of transfer of the erf in name of the Beneficiary, will be at the cost and risk of the **Developer** and the **Council** shall not be responsible for payment of any compensation or for losses for any reason whatsoever;
- 6.5 The **Developer** shall at its costs:
- 6.5.1 submit standard pre-approved site plans and one building plan in book form to **Council** and in batches of 100, within **90 (ninety) days** after completion of houses;
- 6.5.2 move any informal structures and its occupants to a suitable location / point on the 400 erven in order to develop or erect houses on the erven concerned;
- 6.5.3 utilize local sub-contractors and local labour within the area of jurisdiction of the **Council** in the completion of the development;
- 6.5.4 pay any pre-scribed building plan fees to the **Council** in respect of the project;
- 6.5.5 The **Developer** shall be responsible for:
- 6.5.5.1 the removal or re-location of existing electricity meters from the existing informal structures to the houses to be erected on the said erven, in consultation with the **Council**; and
- 6.5.5.2 the connection of sewer pipes to main sewer lines, toilets shall be installed in all units and in cases not possible to connect to main sewer lines, that "sewer connection pipes" be handed over by the **Developer** to **Councils** Directorate Technical and Infra Structural Services on completion of the housing delivery project(s), for connection by a contractor to be appointed by **Council** for "sewer installations" at a later stage.
- 6.5.6 invite the **Councils** Housing Steering Committee members to the **Developers** or appointed **Contractors** meetings, which committee will monitor the progress of the development;
- 6.6 It is specifically agreed that the **Council** shall not be responsible or liable for identification of erf boundaries or corner pegs per approved General Plans and that the **Developer** shall ensure that the appointed **Contractors** erect houses within erf boundaries and adhere to the following minimum construction requirements:
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6.6.1 that arrangements be made with the **Councils** Division Building Inspectorate for Inspections on at least:

6.6.1.1 completion of the foundations and to ensure that the appointed Engineer submit Certificates to this effect;

6.6.1.2 completion of wall plate level; and

6.6.1.3 completion of the house for final approval of the happy letter by the Section Building Inspectorate; and

6.6.1.4 if found or identified at any stage during or after the construction period:

(a) that a foundation or house was indeed erected over the boundaries of an erf, that such erf creation (subdivision, consolidation, rezoning) will be executed by **Council** at the cost of the **Developer**; or

(b) that where erf creation will not be possible that such house will be demolished and replaced at the cost of the **Developer**.

6.7 A retention period of 3 months from date of completion of the project will be applicable to confirm quality work on structural aspects, such as walls, frames roofs, etc. and the **Developer** shall liable to repair or replace any structural faults.

7. LAND PRICE

7.1 It is hereby recorded and agreed that the purchase price of the pre-identified 400 erven and situated within the area of jurisdiction of the **Council** and payable by the **Developer** to the **Council**, shall be (Five hundred rand) (VAT included) per stand and shall be paid by the **Developer** to the **Council**, prior to the issuing of "occupational certificates" or individual "happy letters" by the **Council**.

7.2 Any arrangements for electronic transfer of the agreed purchase price or portions thereof by the **Developer** to the account of the **Council** referred to, hereinafter shall be confirmed in writing by the **Developer** to the **Council** for audit / control or record purposes:

7.2.1 Bank:

7.2.2 Branch Code:

7.2.3 Account Number:

7.2.4 Account in name of:

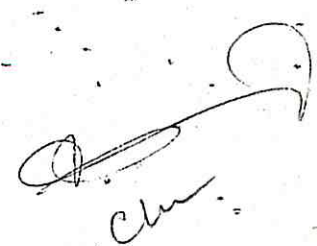
7.3 Clearance Certificates to the beneficiary for re-transfer purposes shall only be issued by **Council** on request of the beneficiary and if the erf price, levies and service charges has been paid in full by the **Beneficiary**;

8. COMMUNITY LIAISON OFFICERS:

8.1 If and when required thereto the **Developer** shall ensure that the appointed **Contractors** identified for the 400 Project Linked Subsidies, shall appoint at their costs one Community Liaison Officer who will be identified and nominated by the Executive Mayor of the **Council**;

8.2 If and when required thereto a second Community Liaison Officer may be identified and nominated by the Executive Mayor of the **Council**, at the **Developer's** cost;

9. RATES & TAXES AND OCCUPATION:



It is hereby specifically recorded and agreed:

9.1 that a Clearance Certificate in terms of Section 118 of the Local Government Municipal Systems Act, 32 (Act 32 of 2000) or the Housing Arrangements Act, 1993 (Act No 155 of 1993) will not be required in case of a first transfer of property to a person to whom a subsidy in respect of such property has been allocated by the Free State Provincial Government and on application by the **Developer**, the Chief Financial Officer of the **Council** shall issue a certificate in terms of Section 119 of the Local Government Ordinance O.8 of 1962, confirming this fact; and

9.2 The **Developer** has no obligations to pay Municipal rates, levies or service charges on any erf. Such rates, levies and charges shall be payable by the beneficiary / person who purchase the erf, with effect from the date upon which that erf is registered into the beneficiaries name.

10. **BREACH AND TERMINATION:**

10.1 If either the **Developer** or **Council** fails to comply with any of the material obligations of this agreement, the other party shall be entitled to give **thirty (30) days** written notice to the defaulting party requesting the latter to comply with the agreement or within a stated period that is reasonable. If the defaulting party fails to comply with the obligations contained in this agreement, the other party could cancel the agreement, but only after further written notice of such intention.

10.2 The **Council** shall have the option to institute any action or proceedings arising out of this agreement in the Magistrate's Court or in a High Court of competent jurisdiction.

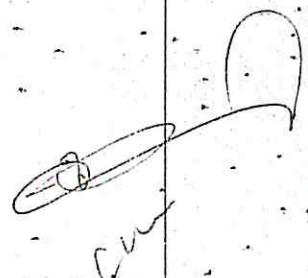
11. **DOMICILIUM:**

11.1 For the purpose of this agreement and of any proceedings which may be instituted in terms hereof and of the service of any notice, the parties each hereby choose ***domicilium citandi et executandi*** at their respective addresses set out hereunder.

11.1.1 **The Council**

Mantsopa Local Municipality
38 Joubert Street
LADYBRAND
9745

Tel (051) 9240654
Fax (051) 924 0020



11.1.2

DEPARTMENT OF HUMAN SETTLEMENTS

7th Floor
Lebohang Building
Corner Markgraaf and St Andrews Str.
(PO Box 211)
BLOEMFONTEIN
9301

Tel (051) 405 4727
Fax (051) 403 3699

- 11.2 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if given in writing.
- 11.3 Any notice given in terms hereof shall either be sent by pre-paid registered post, in which event it shall be deemed to have been received on the eight day after posting, or delivered by hand, in which event it shall be deemed to have been received when so delivered.
- 11.4 Any party shall be entitled, on **14 (FOURTEEN) days** notice to the other, to change its *domicilium citandi et executandi* to another physical address in the Republic of South Africa.

12. ENTIRE AGREEMENT:

The terms and conditions set out herein constitute the entire agreement between the parties. No amendment or variation of whatsoever nature of the terms hereof and no consensual cancellation of this agreement shall be binding unless reduced to writing and signed by both parties.

13. COSTS:

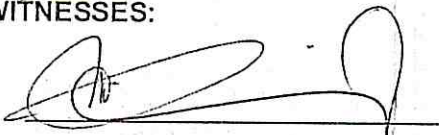
The **Developer** will bear the cost for the drafting of this agreement or specific costs as referred to in this Agreement.

SIGNED AT Ladybrand
October 2010.

ON THIS THE 27th DAY OF

AS WITNESSES:

1.



2.




COUNCIL

SIGNED AT BLOEMFONTEIN ON THIS THE _____ DAY OF _____ 2010.

AS WITNESSES:

1. _____

2. _____

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DEVELOPER