

LAND AVAILABILITY AGREEMENT

Between

TRIBAL COUNCIL

(Hereinafter referred to as “The Land Owner” and duly represented by **Chief** in his capacity as the Chief duly authorized).

And

MARULENG LOCAL MUNICIPALITY

(Hereinafter referred to as “Municipality” and duly represented by **Mr Lesley Muroa** in his capacity as the Acting Municipal Manager duly authorized).

And

[NAME OF IIO]

A company duly registered in the Republic of South Africa

(Herein referred to as “The Investor” and duly represented by [Name and Surname] in his/her capacity as the Representative of [IIO name] and duly authorized).

1. INTERPRETATION AND DEFINITIONS

In this Agreement, unless otherwise required or indicated by the context, the singular shall include the plural and vice versa, words indicating any one gender shall include the other genders, words indicating natural persons shall include juristic persons and bodies corporate and vice versa, terms defined elsewhere in this Agreement shall have the meanings respectively assigned to them and the following terms shall have the meanings respectively assigned to them hereunder, namely:

1.1 "**Anchor Business Plan**" means the contractually agreed project's business plan;

1.2 "**Agreement**" means this agreement contained herein including the signed PTO Agreement and all other annexures thereto;

1.3 "**Commencement Date**" means notwithstanding the signature date in this agreement, 01 October 2023.

1.5 "**Contract**" means this Agreement and the Project Agreement and the Notarial Deed of the Land read together;

1.6 "**Land Owner**" means _____ the custodian of the land fully described as _____ held under title deed number: _____;

1.6 "**Municipality**" means Maruleng Local Municipality, a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls as defined in the Municipal Structures Act, Act No. 117 of 1998 as amended

1.8 "**Parties**" means the Landowner and the IIO;

1.9 "**IIO**" means [Name of IIO], an incorporated IIO;

1.10 "**Project Agreement**" means any agreement entered into between the Municipality and the IIO of the IIO that relates to mixed property development project;

1.11 "**Pre-Feasibility and Financial Project Proposal (PFF)**" means the Pre-Feasibility and Financial Project Proposal is the project initial development concept and preliminary financial viability model as presented by the IIO.

1.12 "**Programme Manager**" means an employee of the Municipality or any person nominated in writing by the Municipality responsible for the co-ordination of the municipality's Development and/or Housing Programme;

1.13 "**Project Manager**" means an employee of the Municipality, or such other person as may be nominated in writing by the Municipality;

1.14 "**Project**" means the mixed property development to be executed on the land herein referred to;

1.15 "**Property Development Plan**" means the detailed physical design of the land and the proposed structures, buildings, landscaped areas on it including elemental specifications and costing of the project to be built on the land; and

1.19 "**Signature Date**" means the date on which this Agreement is signed by the last signing of the Parties hereto.

2. RECORDAL

The Land Owner wishes to agree on the right of use of the Land identified in this agreement by the IIO based on an **Approved Pre- Feasibility** that meets the conditions outlined in this agreement or any changes thereto agreed by parties in the process of the planning linked to this agreement and its subsequent **Project Agreement (PA)**.

3. AGREEMENT

The Land Owner and the IIO hereby agree that the terms and conditions of this Agreement shall link contractually to the Service Level Agreement signed between the municipality and the partners of the IIO, together with any future PA that govern their relationship in respect of any and all services provided by the IIO currently or at any time in the future in respect of mixed property for beneficiaries in terms of this Agreement.

4. OBJECTIVE

The objectives of this Agreement are as follows:

4.1 to provide the guarantee that the identified land will be transferred through a freehold transfer to the IIO provided they meet the development conditions outlined in this agreement

and any others agreed by the IIOs in the course of the planning of the development of this site.

4.2 To provide the opportunity for the IIO to obtain and develop land from the municipality within a framework that protects the municipality's investment of land and other resources to achieve their socio-economic housing program objectives.

5. COMMENCEMENT DATE

Notwithstanding the Signature Date hereof, this Agreement shall commence on the Commencement Date and subject to such earlier action for next performance as provided for in this clause, it shall continue in force and effect for ____ years with a potential maximum ____ year extension unless terminated by either Party. The extension term will be negotiated ____ months prior to the expiry of the initial term.

6. PROPERTY DESCRIPTION OF THE LAND FOR DEVELOPMENT

The subject property of this agreement is defined as per allocation by the respective Chief

7. CONDITIONS FOR THE DEVELOPMENT OF THE LAND

The following general conditions apply for the development of the site:

7.1 Developing mixed property portfolio that will provide access to low-moderate and high income households to good basic housing in well located environments.

7.2 Providing property management service that will develop social and economic integration at a neighbourhood level and with the rest of the municipal area.

7.3 Improving access of tenant households to the socio-economic amenities of the municipality.

7.4 The primary use of the site is to achieve the Municipality's affordable rental housing development targets with any complementary mix of market residential and other non-residential uses (if applicable), to achieve an integrated neighbourhood and a clear financial cross subsidization to the affordable housing component in densified building forms.

7.5 The Municipality can also as part of the planning process decide to make available additional incentives to make the achievement of its socio economic and urban re-structuring objectives.

8. OUTPUT OF THE LAND AVAILABILITY AGREEMENT MUST BE REFLECTED IN THE PROJECT AGREEMENT

The terms and conditions and the process of the planning undertaken during the Land Availability Agreement period should result in a “Property Development Plan” with an “Anchor Business Plan” agreed to by both IIOs that will guide the development of the land. The output of the LAA will conclude with the execution of a linked Project Agreement. The PA at a minimum, will cover the following:

8.1 The specific terms and conditions for the project development, property management development process and post construction property management details contained in the agreed Property Development Plan;

8.2 The Anchor Business Plan;

8.3 The development schedule with development time frame and milestones;

8.4 The phasing plan of the project and Performance Management Completions;

8.5 Material contribution of the IIOs;

8.6 The municipality’s Allocation Priority Target Plan, the City will provide the IIO with a list of potential applications to the IIO (6) months in advance before tenancing qualification process is started; and

8.7 Indicators of performance to the Agreement.

9. OVERALL ROLES OF THE PARTIES

9.1 The Landowner undertakes to:

9.1.1 guarantee to provide the lease agreement for the land to the IIO if its project development proposal meets the municipal vision articulated in this agreement.

9.1.2 provide access to site information that affects the site that is available to the municipality that can assist in property development planning and construction right through to tenancing and property management phase.

9.1.3 actively participate in discussion with IIO at different stages in the project planning process

9.1.4 give due consideration to additional incentives where there is a proven leverage to achieve the socio-economic and urban development vision.

9.2 The IIO undertakes to:

9.2.1 carry out the planning process for the development of the site and or building in accordance with the LAA and the subsequent PA to be executed with the municipality.

9.2.2 to provide the proper opportunities to engage with the municipality in a time expedient manner on progress and content throughout the planning process in accordance with an agreed timetable.

10. CONFIDENTIALITY

The IIO shall not, without the prior written consent of the Municipality, disclose to any third party, any information of any nature disclosed to it, or acquired by the IIO or its employees, or developed during the course of the services rendered in accordance with this Agreement without the prior written consent of the Municipality having been obtained.

11. BREACH

In the event that either Party ("the defaulting party") to this Agreement breaches any material term of this Agreement and fails to remedy such breach within 30 (thirty) days of the date of receipt of a written notice from the other Party ("the aggrieved party") requiring such breach to be remedied, the aggrieved party will be entitled immediately to cancel this Agreement by written notice to the defaulting party, which cancellation will be without prejudice to any other rights which the aggrieved party may at law enjoy arising out of such breach and/or cancellation.

12. ARBITRATION

Any dispute, question or difference arising at any time between any of the Parties with regard to any matter arising out of, or with regard to the rights and duties of any of them under, or with regard to the interpretation of, or the termination of, or any matter arising out of the termination of, or with regard to the rectification of, this Agreement shall, upon the request of any Party made to the others of them, be submitted to, and be decided by way of arbitration in terms of the provisions of the Arbitration Act, Act 42 of 1965 and the arbitration shall be held at Hoedspruit.

13. DOMICILIUM AND NOTICES

13.1 The Parties hereto choose *domicilia citandi et executandi* for all purposes of and in connection with this Agreement as follows:

The Landowner

The IIO

Municipality

13.2 Any Party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a street address and any such change shall only be effective upon receipt of notice in writing by the other Parties of such change.

13.3 Any notice given by or to either party in terms of this Agreement shall be given in writing and shall be delivered by hand to a responsible person present at or sent by prepaid registered post or facsimile transmission to the *domicilium* chosen by the addressee in terms of this Agreement.

13.4 A notice sent by one Party to another Party shall be deemed to be received:

13.4.1 on the date of delivery, if delivered by hand;

13.4.2 on the fourth day after posting, if sent by prepaid registered mail;

13.4.3 on the date sent if forwarded by facsimile transmission.

13.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

14. WHOLE AGREEMENT

This agreement constitutes the entire agreement between the Parties regarding the subject matter hereof. No agreements, guarantees or representations, whether verbal or in writing, have been concluded, issued or made, upon which either party is relying in concluding this Agreement, save to the extent set out herein.

15. NO WAIVER

No waiver or indulgence of whatsoever nature shall be of any force of effect, including a waiver or indulgence in respect of this clause 20, unless it is reduced to writing and signed by and on behalf of the Parties.

16. NO INDULGENCE

No indulgence, leniency or extension of time which a party (the "grantor") may grant or show to the other, will in any way prejudice the grantor or preclude the grantor from exercising any of his rights in the future.

17. SEVERABILITY

If any particular provision and/or term of this Agreement is found to be defective or unenforceable or is cancelled for any reason (whether by any competent Court or otherwise) then the remaining provisions and/or terms shall continue to be of full force and effect. Each provision and/or term of this Agreement shall accordingly be construed as entirely separate and separately enforceable in the widest sense from the other provisions and/or terms hereof.

18. NO CESSION OR ASSIGNMENT

Neither party hereto shall be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the other first being obtained.

19. NON VARIATION

No variation of, or addition or agreed cancellation to this Agreement shall be of any force or effect unless it is reduced to in writing and signed by or on behalf of the Parties.

Signed at Hoedspruit on this _____ day of ----- 2026.

LANDOWNER

Signed at Hoedspruit on this _____ day of ----- 2026.

IIO

(Duly authorised)

Signed at Hoedspruit on this _____ day of ----- 2026.

Municipality

(Duly authorised)