

## **DEVELOPMENT RIGHTS AGREEMENT**

entered into between

### **THE INGONYAMA TRUST**

established by section 2(1) of the  
KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No KZ3 of 1994)  
(represented herein by \*  
in his capacity as a member of the Ingonyama Trust Board  
established by section 2A(1) of the said Act,  
he being duly authorised thereto and warranting such authority  
(hereinafter referred to as "the Trust")

and

### **\* MUNICIPALITY**

(represented herein by \_\_\_\_\_  
in his capacity as Municipal Manager  
he being duly authorised thereto and warranting such authority  
(hereinafter referred to as "the Municipality")

## **PREAMBLE**

### **Whereas**

the Trust and the Municipality have agreed that the area of land delineated on the plan annexed hereto marked Annexure "A", which the Trust owns, is to be developed by the provision of services and top-structures to the beneficiaries thereof in accordance with the terms and conditions of this agreement and the approval of the Department of Housing;

**and whereas** the parties wish to record their agreement in writing;

**NOW THEREFORE IT IS AGREED:-**

**1. DEFINITIONS**

1.1 In this agreement and unless inconsistent with the context:

1.1.1 words of the one gender shall include words of the other gender;

1.1.2 words importing the singular shall be deemed also to import the plural and vice versa;

1.1.3 headings to clauses shall not serve as a means of interpretation of any such clause.

1.1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

1.1.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

1.1.6 Any reference to days (other than a reference to business days), months or years shall be reference to calendar days, months or years, as the case may be.

1.2 The following words and expressions shall, unless inconsistent with the context, have the meanings assigned to them hereunder:

1.2.1 "area" the area referred to on the plan which is annexed hereto marked Annexure "A";

1.2.2 "beneficiary" a person who qualifies for a subsidy from the Subsidy Scheme and who occupies land in the area on the effective date under functional security of tenure as contemplated in the Subsidy Scheme;

1.2.3 "effective date" the date by when both parties have signed this agreement;

1.2.4 "project" the promotion of housing in the area by the Municipality through the provision of bulk and internal services and the construction of the top-structures for beneficiaries as described below;

1.2.5 "subsidy scheme" the subsidy scheme operated by the KwaZulu-Natal Provincial Department of Housing in terms of Part 3 Chapter 11 Housing Subsidy Scheme / Rural Subsidy approved by the national Department of Housing, and the Provincial Rural Guidelines for KwaZulu-Natal;

1.2.6 "traditional authority" the Traditional Authority or Community Authority having jurisdiction.

## 2. DEVELOPMENT RIGHTS OVER THE AREA

- 2.1 It is recorded that the Municipality wishes to:
  - 2.1.1 apply to the Department of Housing (KwaZulu-Natal) for funding for the project;
  - 2.1.2 obtain approval for the project from such authority as may be necessary;
  - 2.1.3 obtain funding in order to provide bulk and internal services to the area for the benefit of the occupants;
  - 2.1.4 construct top-structures for beneficiaries;
  - 2.1.5 provide the beneficiaries with confirmation of their existing tenure rights to the extent required by the Subsidy Scheme and the Trust.
- 2.2 It is recorded further that the \* Traditional Authority has consented to the project and a copy of its resolution is annexed hereto marked "B".
- 2.3 The Trust hereby makes available the area to the Municipality, which hereby accepts same, for the purposes of the project, on the terms and conditions more fully set out below.
- 2.4 Notwithstanding the provisions of clause 2.3 above, the Municipality acknowledges that it shall not infringe any rights which occupants may have in terms of the Interim Protection of Informal Land Rights Act, 31 of 1996 or the Extension of Security of Tenure Act, 62 of 1997, it being the intention of the Municipality to undertake the project for the benefit of the occupants.
- 2.5 This agreement shall commence on the effective date and shall endure for a period of 3 (three) years or such extended period as may be agreed in writing by the parties, provided that either party may terminate the agreement upon 6 (six) months' written notice to the other, provided further that such notice may only be

given in the event of the project not being undertaken for any reason whatsoever.

- 2.6 In the event that the project is completed to the reasonable satisfaction of the parties within the three year or extended period as provided in clause 2.5 then either party may terminate the agreement on one month's written notice.
- 2.7 With effect from the effective date, the Trust shall not encumber, pledge, lease, alienate or otherwise dispose of any of the land comprising the area or any interest or real right in such land to the prejudice of the beneficiaries during the currency of this agreement save under and in terms of the provisions of this agreement.
- 2.8 The Municipality shall not establish a township over the area nor shall it transfer ownership to the beneficiaries, and nothing in this agreement shall be construed as consent by the Trust thereto.
- 2.9 The Municipality will provide the Trust with a settlement plan indicating the location of each beneficiary together with a record of occupation of each and every beneficiary in the form annexed hereto marked "C". Such settlement plan and record of occupation shall be lodged with the Trust within 1 (one) month of the termination of this agreement as contemplated in clauses 2.5 and 2.6 above.
- 2.10 In the event that bulk services are provided then the Municipality or service provider will enter into a deed of servitude if so required by the Trust on terms to be agreed and subject to the Trust being indemnified from all costs involved.
- 2.11 Save with the written authority of the Trust, which authority shall not be unreasonably withheld, no electrical power or telephone pole or line or water, drainage or sewer pipe being upon or passing through, over or under the area and no replacement thereof, shall be removed or in any way be interfered with and reasonable access thereto shall be preserved to allow for inspection maintenance, repair, renewal and replacement thereof.

- 2.12 The Trust shall have the right to grant to a state department or local authority, a statutory corporation or parastatal organisation, or any non-statutory cellular telephone supplier the right freely to exercise or have public servitude over the area for the purpose of providing and maintaining public utility services and more particularly for the purpose of erecting telephone or electric power poles, installing electric or telephone wires and cables, laying down drains, sewers or water pipes and maintaining the same, provided that the Trust shall give the Municipality not less than 30 days written notice of its intention to grant a right contemplated in this clause.
- 2.13 No act, matter or thing, whatever, shall be done or permitted to be done upon the area or any part of the area by the Municipality, its employees, agents or contractors which may cause or lead to pollution of the environment or result in the creation of any hazard to the health of other persons or become a nuisance or annoyance to or damage or in any way interfere with the peace and comfort of occupiers of adjoining or other premises in the neighbourhood.
- 2.14 It is recorded that the beneficiaries shall at all times be responsible for the payment of all assessment rates and other similar outgoings which may be levied on the land that they occupy.

### **3. UNLAWFUL OCCUPATION**

3.1 The Municipality shall from and after the effective date:

3.1.1 ensure that no persons occupy any part of the area unlawfully,

3.1.2 take all reasonable steps to prevent the unlawful occupation of the area by any person, and

3.1.3 where necessary evict any persons so unlawfully occupying the area.

3.2 The Trust hereby authorises the Municipality, for and on its behalf as owner of the land comprising the area, to take all lawful and necessary steps to evict any person unlawfully occupying any part of the area, and it agrees and undertakes on request of the Municipality:

3.2.1 to give and grant to the Municipality or any duly nominated official or agent of the Municipality a Power of Attorney to take such steps as in law are required to evict any such person, and

3.2.2 to co-operate with the Municipality to achieve such objective.

#### 4. **GOOD FAITH**

4.1 The parties may not, save in accordance with the terms and conditions of this agreement, cede, assign, encumber, pledge or disclose of any rights held in terms of this agreement without the prior written consent of the other parties hereto.

4.2 The parties hereby undertake to act in the utmost good faith towards each other and cooperate in every regard in order to assist each other to achieve the objectives of this agreement.

#### 5. **ARBITRATION**

5.1 In the event of there being a dispute, it is agreed that the dispute shall be submitted to arbitration subject to the provisions of this clause.

5.2 A dispute shall include, without prejudice to the generality of that term, the

following:

- 5.2.1 any action by any party in breach of or contrary to the provisions of this agreement;
- 5.2.2 any dispute between any of the parties in connection with the interpretation of any provision of this agreement;
- 5.2.3 any other matter whatsoever dealt with in this agreement.
- 5.3 In the event of there being a dispute, either of the parties shall provide the other party with written notice that the dispute shall be submitted to arbitration.
- 5.4 The appointment of the arbitrator shall be agreed by the parties and he shall be a person with knowledge and experience in the development industry; provided that in the event of the parties failing to agree on the appointment of an arbitrator within 3 (three) days after the date on which arbitration is demanded, then in that event the arbitrator shall be a suitably qualified person with knowledge of the construction industry who shall be appointed by the President of the time being of the South African Association for Consulting Engineers.
- 5.5 The arbitration shall be held at a place agreed upon between the parties, and failing such agreement, in Durban, in accordance with the formalities and procedures to be settled by the arbitrator and may be held in an informal and summary manner.
- 5.6 The parties shall be entitled to be represented at any arbitration held in terms of this clause.
- 5.7 Without derogating from the generality of the foregoing, the arbitrator shall be entitled:



- 5.7.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of the parties to the dispute and the right to take copies or make extracts thereof and the right to have them produced or delivered at any reasonable place required by him for the aforesaid purposes;
- 5.7.2 to interview and question the parties under oath;
- 5.7.3 to decide the dispute according to what he considers to be just and equitable in the circumstances;
- 5.7.4 to make an award, including an award for specific performance, an interdict, damages or otherwise as he may in his discretion deem fit and appropriate.
- 5.8 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within 30 (thirty) days after having been demanded.
- 5.9 Immediately after the arbitrator has been agreed upon or nominated in terms of this clause, either of the parties to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and the manner in which the arbitration proceedings will be held.
- 5.10 Any award by the arbitrator:
  - 5.10.1 shall be final and binding;
  - 5.10.2 shall be carried into effect;
  - 5.10.3 may, if necessary, be made an order of any court to whose jurisdiction the

parties to the dispute are subject.

## 6. **DOMICILIUM CITANDI ET EXECUTANDI**

6.1 For the purpose of this agreement the parties choose their respective *domicilium citandi et executandi* as follows:

6.1.1 the Trust: \*

6.1.2 the Municipality: \*.

6.2 Written notice of any change in *domicilium citandi et executandi* shall be delivered by hand or sent by prepaid registered certified post to the intended recipients.

6.3 Every notice to be given in terms of this agreement shall be in writing and shall be:

6.3.1 delivered by hand to the *domicilium citandi et executandi* of the intended recipient in which event it shall be irrebuttably presumed to have been served and the intended recipient to have been informed of the contents of such notice when such notice is so delivered; or

6.3.2 posted by prepaid registered or certified post to the *domicilium citandi et executandi* or the last known postal address of the intended recipient in which event it shall be presumed to have been served and the intended recipient to have been informed of the contents of such notice on the fifth day, excluding Saturdays, Sundays, unless the contrary is proved.

## **7. VARIATIONS**

No variation, modification or waiver of any provision of this agreement or consent to any departure therefrom shall in any way be of any force or effect unless confirmed in writing and signed by the parties and then such variation, modification, waiver or consent shall be effective only in the specific instance and for the purpose and to the extent for which it was made or given.

## **8. WAIVER**

- 8.1 The waiver (whether express or implied) by either party of any breach of the terms or conditions of this agreement by another party shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereof.
- 8.2 No favour, delay or relaxation or indulgence on the part of any party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this agreement.
- 8.3 The expiry or termination of this agreement shall not prejudice the rights of either party in respect of any antecedent breach or non-performance by another party of any of the terms or conditions hereof.

## **9. WHOLE AGREEMENT**

This agreement constitutes the whole agreement between the parties in relation to its subject matter and supersedes all prior agreements and no documentation, representation, warranty or agreement not contained herein shall be of any force

between the parties.

Signed at                      on this                      day of                      2004.

AS WITNESSES :

1.

2.

---

**For and on behalf of the  
THE INGONYAMA TRUST**

Signed at                      on this                      day of                      2004.

AS WITNESSES :

1.

2.

---

**For and on behalf of  
\* MUNICIPALITY**