

**AGREEMENT BETWEEN THE FARM OWNER AND THE MEMBER OF THE EXECUTIVE
COMMITTEE**

HOUSING DEVELOPMENT BY THE FARM OWNER

1 PARTIES

1.1 The parties to this agreement are –

1.1.1 The Provincial Government of _____, herein represented by the Member of the Executive Council responsible for _____ (hereinafter referred to as the MEC);

1.1.2 _____

(ID number: _____); hereinafter referred to as the farm owner;

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 annexure 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 “Farm owner” means the current registered owner of the farm on which the farm workers and residents reside and who is prepared to provide housing opportunities for all persons on the farm who meet the subsidy qualifying criteria (“beneficiaries”);

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” includes persons which are formally employed by the farm owner to work on the farm;
- 2.1.6 “Municipality” means a Local or a District or a 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 farm owner through the _____ Municipality to the MEC, a copy of which is attached hereto as Annexure “A”.
- 2.1.8 “the Project” means the farm residents housing project referred to in clause 2.1.7 above to be implemented by the Farm Owner;

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 a reference to the other gender and the singular shall include plural, and vice versa;
- 2.2.3 Any reference to natural persons includes 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 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 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 business 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, due to 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 farm owner submitted a project application to provide housing for _____ farm workers (which does not make provision for seasonal workers) on a rental basis, to the _____ Municipality;
- 3.2 The _____ Municipality, in whose area of jurisdiction the farm _____ is situated, has:-
- 3.2.1 evaluated the project application in terms of the feasibility thereof;
- 3.2.2 confirmed its support of the proposed project; and
- 3.2.3 submitted the project application together with the confirmed support to the MEC for approval;
- 3.3 The MEC has:-
- 3.3.1 approved the project application; a copy of which is attached hereto as Annexure " A";

- 3.3.2 Reserved housing subsidy funds for the undertaking of the approved project in respect of beneficiaries who qualify for housing subsidies.
- 3.4 The farm owner undertakes to register a pre-emptive right – as security for the subsidy amount received to develop rental housing for qualifying beneficiaries – in favour of the Provincial Government, against the title deed of the farm in the Deeds Office;
- 3.4.1 The registered pre-emptive right will be binding until the contractual arrangements between the MEC and the farm owner is terminated due to:
- 3.4.1.1 An effluxion of time; or
- 3.4.1.2 In the case where the depreciation of the property has resulted in the book value of the housing stock being zero; or
- 3.4.1.3 In terms of the contract.
- 3.5 A resident committee, representing the farm residents, has been established and the development of rental housing by the farm owner (which includes matters pertaining to rentals, maintenance matters and termination of rental arrangements) is done in consultation with the committee. This resident committee will:
- 3.5.1 meet on a monthly basis;
- 3.5.2 Be informed of the progress made throughout the project.
- 3.6 All income received with regard to rental charges and/or for the right to occupy (as per rental agreements between the farm owner and the beneficiaries), will be utilised only to recover the cost of operational expenses incurred, if any, to deliver services and in respect of any maintenance work. The result hereof being that the farm owner may not require rental income to recover any part of the housing subsidy funding received.
- 3.7 The implementation of the project, as set out in the approved application, will commence as soon as this agreement has been signed by the relevant parties.
- 3.8 Accommodation for seasonal workers, if any, will be provided on the farm owner's own account. However any such accommodation must comply with the municipal by-laws and regulations pertaining to safe and healthy living conditions.

4 CONTRACT DOCUMENTS

4.1 The contract between the parties in respect of the implementation of the project comprises the following documents (“the contract documents”):-

4.1.1 this agreement;

4.1.2 the project application;

4.1.3 the project approval;

4.1.4 Rental agreement(s).

4.1.5 If there is any conflict between the provisions of any documents contained in the contract documents, those documents shall prevail over one another in the sequence set out in 4.1 above.

4.2 The entire agreement (including all the documents contained in the contract documents) is subject to the provisions of Volume 5 of Part 3 of the National Housing Code, 2009: Rural Interventions: Farm Residents Subsidies. If there is any conflict between any provisions contained in the contract documents and the provisions of Part 3, the provisions of Part 3 shall prevail.

5 PROJECT DETAILS

5.1 TECHNICAL NORMS AND STANDARDS

5.1.1 BASIC SERVICES

5.1.1.1 The farm owner will ensure that the farm portion allocated for the project is 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.

5.1.1.2 In the event that circumstances exists on the farm portion allocated for the project, 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 Farm owner, 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.

- 5.1.1.3 Where extraordinary geotechnical conditions necessitate special precautionary measures to ensure durable and quality houses, the Farm owner may apply for additional funding in accordance with the provisions of the Variation Manual contained in Volume 2 of Part 3: The Technical and General Guidelines of the National Housing Code, 2009.

5.1.2 TOP STRUCTURES

- 5.1.2.1 The Farm owner will register with the NHBRC and enrol all new residential dwellings as prescribed by the NHBRC before the commencement of the project.

- 5.1.2.2 The houses will comply with the following minimum norms and standards:

5.1.2.2.1 The gross floor area of the residential structures must not be less than 40 (forty) square meters.

5.1.2.2.2 Each house must at least include:

5.1.2.2.2.1 two bedrooms;

5.1.2.2.2.2 a separate bathroom with a toilet, a shower and a hand basin;

5.1.2.2.2.3 a combined living area and a kitchen with a wash basin; and

5.1.2.2.2.4 a ready board electrical installation where electricity supply is available and this service is provided by a service provider.¹

- 5.1.2.3 The Farm owner will ensure that all construction methods, materials and workmanship employed in the development of the land are of an acceptable standard.

¹ If electricity is not available, clause 5.1.2.2.4 should be deleted.

5.1.2.4 The Farm owner will, as far as possible, employ local labour for the construction of the houses.

5.2 BUILDING PLANS

5.2.1 The Farm owner 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.

5.3 PROCUREMENT PRESCRIPTS

The following strategy will be employed regarding the acquisition of materials and services:

5.3.1 The Farm owner will follow a fair, open and competitive procurement process in the appointment of all service providers.

5.3.2 Services and products will be sourced locally whenever it is feasible and practicable.

5.3.3 The Farm owner will give preference to previously disadvantaged people and organisations owned by previously disadvantaged people.

5.3.4 The Farm owner will invite tenders or obtain quotations from material suppliers/service providers where this is feasible and practicable.

6 PROCESS AND RULES FOR THE ALLOCATION OF THE HOUSES

6.1 The farm owner hereby confirms that farm residents who qualify as beneficiaries under the subsidy scheme will, become tenants of the houses to be built.

6.2 The identified beneficiaries will occupy the housing units in terms of:-

6.2.1 A formal rental agreement; or

6.2.2 A right to occupy the unit

6.3 The farm owner undertakes to inform the beneficiaries of their rights and obligations regarding the rental agreements. This will be done through tenant training given by the farm owner.

7 PROJECT FUNDING DETAILS INCLUDING THE RELEASE OF FUNDS

- 7.1 Funding will be made available as per the number of qualifying beneficiaries. Therefore the contractual amount will be the amount indicated in the approved project application.
- 7.2 This funding will be utilised for:-
- 7.2.1 The construction of new houses on the serviced stands; or
 - 7.2.2 The renovation/upgrading of existing services and/or housing stock (as specified in the approved project application).
- 7.3 The farm owner will have to make use of bridging finance for the construction of the units as the MEC will only institute progress payments on the basis of the achievement of value for money.
- 7.4 The farm owner is required to provide services to the property using his own funds and/or alternative funding, should it be available. However, should the farm owner be unable to provide services with such funds, he is entitled to approach the MEC for the approval of services provision from subsidy funding.
- 7.5 The parties agree to the following progress payments:-
- 7.5.1 with regard to the construction of new houses:
 - 7.5.1.1 ____% on the completion of foundations;
 - 7.5.1.2 ____% when the top structure reaches window height;
 - 7.5.1.3 ____% when the top structure reaches roof height
 - 7.5.1.4 ____% on completion of roofing;
 - 7.5.1.5 ____% on completion of the house;
 - 7.5.1.6 ____% as retention payable three (3) months after completion; OR
 - 7.5.2 With regard to renovation/upgrading of existing services and/or housing stock, payments will be made according to the progress payments as set out in the project approval.

7.6 Refunding in the case of overpayments:-

- 7.6.1 The parties agree that in the event that the farm owner has received an amount in excess of what he is entitled to receive the amount overpaid will be set off against the amount payable on the attainment of the subsequent milestone(s).
- 7.6.2 If the overpayment is with regard to the last milestone or cannot be fully recovered from the subsequent claims, the farm owner will refund the MEC within 14 (fourteen) days from the date of demand, instituted by the MEC.

8 OBLIGATION REGARDING THE MAINTENANCE OF THE STOCK

- 8.1 The farm owner agrees to maintain the housing stock created under the programme on a regular and continuous basis in such a way that the housing stock provides decent living conditions and is kept in a good condition.
- 8.2 In order to perform the task mentioned in (8.1) above, the farm owner will be entitled to charge rental from the farm residents occupying the houses: provided that such rental will be restricted to the costs for delivery of services and operational and maintenance fees.

9 OBLIGATIONS REGARDING THE TERMINATION OF RENTAL AGREEMENTS AND RESTRICTIONS IN RESPECT OF EVICTIONS FROM THE FARM

- 9.1 Farm residents who are renting housing units from the farm owner will qualify for ownership housing subsidies once they vacate their rental units, and relocate to a township. Applications for owner subsidies will be subject to the normal selection and approval processes that prevail.
- 9.2 In the case where the farm worker, who occupies a housing unit (which was financed through this programme) on the farm, retires for whatever reason, the farm owner is entitled to allow the household to continue their occupation of the unit.
- 9.3 The farm owner may decide to give a retired farm worker written notice to vacate the property and to re-allocate the unit to an alternative worker, who qualifies as a beneficiary.

- 9.4 Requirements for written notice of termination of occupation by the farm owner:
- 9.4.1 In the case where the farm worker was in the employment of the farm owner for a period of five (5) years or more, the beneficiary is entitled to at least six (6) months written notice to vacate the housing unit;
 - 9.4.2 In the case where the farm worker was in the employment of the farm owner for less than five (5) years, the beneficiary is entitled to at least sixty (60) days written notice to vacate the housing unit.
 - 9.4.3 In the case of non-employees residing on the property of the farm owner, the non-employee is entitled to at least sixty (60) days written notice to vacate the housing unit.
- 9.5 The farm owner hereby confirms that the termination of any rental agreement/occupation right of the unit(s) financed from the National Housing Programme will not affect any occupation rights to the farm land vested in the farm resident by prevailing land rights legislation. This implies (and the farm owner agrees) that the farm owner may not utilise the termination of the rental agreement/occupation right agreement to evict a resident from the farm whose occupation rights to the farm are secured in terms of legislation.
- 9.6 Any eviction of a person from his/her house must be undertaken in terms of the provisions of the Constitution, 1996 and any other applicable legislation. This condition of the contract is contained in each individual contract between the farm owner and the beneficiary.
- 9.7 Should it be established that the farm owner has violated this provision; the MEC is entitled to institute a claim against the farm owner to the value of the full subsidy investment awarded to the farm owner for this housing development project.
- 9.8 In the case where the farm worker wishes to terminate his/her employment contract and leave the farm, he or she may cancel the rental agreement/occupation right agreement on one (1) month's written notice.
- 9.9 Vacated housing units must be reallocated to qualifying beneficiaries. Where a qualifying beneficiary is not available, the units must be reserved for future occupation by such beneficiaries.

10 EXIT ARRANGEMENTS

10.1 SALE OF THE FARM

10.1.1 In the event of the farm owner selling the farm to a third party:

10.1.1.1 the farm owner hereby undertakes to repay the investment on the land made by the state;

10.1.1.2 the investment return must be determined on the basis of the depreciated replacement value of the housing stock (including any services installed); OR

10.1.2 The farm owner could sell his/her farm subject to the condition that the purchaser must enter into an agreement with the MEC regarding the housing stock created through the funding obtained under the programme, in which case

10.1.2.1 the existing contractual arrangement will be transferred to the purchaser; and

10.1.2.2 The pre-emptive right clause will be transferred to the new title deed.

10.1.3 The depreciated replacement value of the housing stock will be determined by an independent registered property value assessor.

10.1.4 In the event where the contracting parties are not able to agree on the depreciated replacement value:

10.1.4.1 an arbitration process must be initiated;

10.1.4.2 the determination of the Arbitrator will be final;

10.1.4.3 The MEC and the farm owner must agree on the appointment of the arbitrator.

10.2 THE DEATH OR INSOLVENCY OF THE FARM OWNER

10.2.1 In the event of the death or insolvency of the farm owner:

10.2.1.1 the pre-emptive right registered against the title deed will provide the Provincial Government with a preferential claim against the insolvent-; or deceased estate of the farm owner;

10.2.1.2 The value of the preferential claim will be equal to the depreciated replacement value of the housing units created through the approved housing project;

10.2.2 In the case where the farm land is sold by the executor of the insolvent/late estate of the farm owner, the MEC may be approached for approval to transfer the project agreement and pre-emptive right to the new purchaser and title deed.

10.3 RETIREMENT OF THE FARM OWNER

10.3.1 In the case where the farm owner decides to retire and/or decides to terminate the commercial farming activities, he is entitled to sustain the housing options on the farm and not terminate the rental agreements concluded with the farm residents.

10.3.2 In the case where the farm owner decides to terminate the rental agreements in respect of the housing opportunities created through this programme, the exit mechanism provisions applicable to the sale of the farm will apply, as is set out in paragraph 6.1 above.

11 BREACH OF CONTRACT

11.1 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, but in any event not shorter than 14 (fourteen) days.

11.2 In the event of the defaulting party failing to do so within the stipulated period, the aggrieved party shall be entitled without prejudice for any other rights which the party may have in law to either:-

11.2.1 Cancel this Agreement forthwith;

11.2.2 and claim damages for expenses incurred as a result of this project; or

11.2.3 Claim specific performance of all the terms and conditions of this Agreement.

12 NOTICES AND DOMICILIA

12.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in clause 11.2 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;

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

12.2.1 _____

12.2.2 _____

12.2.3 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);

12.3 Any notice in terms of this Agreement shall be in writing and shall:

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

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

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

12.4 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.

13 WHOLE AGREEMENT

13.1 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.

14 VARIATION

14.1 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 and their duly authorised representatives.

15 RELAXATION

15.1 No latitude, extension of time or other indulgence which may be given or allowed by either party to the 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 a 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

AS WITNESSES:

_____ For: MEMBER OF THE EXECUTIVE COUNCIL
REPRESENTING THE PROVINCIAL
GOVERNMENT OF _____

(NAME OF WITNESS IN BLOCK LETTERS)

THUS DONE AND SIGNED at _____ on this _____ day of

AS WITNESSES:

(NAME OF WITNESS IN BLOCK LETTERS)

FARM OWNER