



**CONSOLIDATED CAPITAL GRANT AGREEMENT**

**between**

**SOCIAL HOUSING REGULATORY AUTHORITY**

**and**

**NAME OF PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS**

**and**

**NAME OF ODA  
(REGISTRATION NUMBER OF ODA),  
FUNDED AS OTHER DELIVERY AGENT**

**in respect of**

**NAME OF SOCIAL HOUSING PROJECT  
SHIP NUMBER**

**VALUE OF CCG AWARDED**

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## **ANNEXURE A – List of Conditions Precedent**

- A1.** Certificate of Accreditation (if applicable) and Resolutions by the Grant Recipient
- A2.** Business Plan including Project specific plan
- A3.** Independent Market Analysis
- A4.** Proof of Legal Status of Grant Recipient
- A5.** Project Procurement Strategy (if applicable)
- A6.** Proof of Banking Details and authorisation to view the Project Bank Account
- A7.** Development Schedule (if applicable)
- A8.** Project Financial Model (Quick-Scan C)
- A9.** Project Costs, Cash-flow and timelines
- A10.** Written proof of in principle debt funding (Funding Structure and “In principle approvals” of Debt funding and any other source of funding)
- A11.** Written proof of offer to purchase, lease or land availability agreement or ownership of land or rights to land
- A12.** Land-use and Development rights (Zoning Certificates)
- A13.** Link\Connector Services preliminary designs (If applicable)
- A14.** Draft Development Phase Agreement between Grant Recipient and Developer (if applicable)
- A15.** Draft construction agreement between ODA and contractor or developer and the contractor as applicable
- A16.** Structural Integrity Report from the Engineer
- A17.** Heritage Impact Assessment (if applicable)
- A18.** Building Condition Audit Report
- A19.** History of the Building Maintenance
- A20.** Profile of Consultants and the Professional Team, draft Service Agreements and written proof of PI Cover (if applicable)
- A21.** Any other information and/or documentation required by the SHRA
- A22.** Any additional conditions imposed by the Resolution of the SHRA when approving the project

## **ANNEXURE B – List of conditions for Financial Closure**

- B1.** Signed Debt Funding Agreement\s
- B2.** Other Signed Funding Agreement\s
- B3.** Signed professional Service Agreements with professional fee schedules (if applicable)
- B4.** Approved Site Development Plan
- B5.** Approved Building Plans
- B6.** NHBC Enrolment or Exemption (guarantee \ enrolment certificates) (if applicable)
- B7.** Updated Project Development Cost budget inclusive of Construction Budget to reflect tender results, as well as cash-flow draw down from funders (updated Quick Scan C)
- B8.** Development Contract with Developer (if applicable)
- B9.** Construction Contract between ODA/Developer and Contractor (if applicable)
- B10.** Draft Deed of Notarial Restriction of Transfer in favour of the SHRA
- B11.** Construction Guarantee (if applicable)
- B12.** Proof of ownership of the land in the name of the Grant Recipient /written confirmation from the conveyancer that all is in order for the registration of the land into the Grant Recipients’ name
- B13.** Tenant Regularisation Plan
- B14.** Certificate of Compliance (COC) from the Municipality
- B15.** As-built drawings or new approved building plans (whichever is applicable)

- B16.** Practical and occupation Certificate
- B17.** Any other information and/or documentation required by the SHRA

### **ANNEXURE C – Reporting Requirements to the SHRA during implementation**

- C1.** Progress Report
- C2.** Financial Report and Project Bank Statement
- C3.** Notification of Milestone achievement
- C4.** Tenant Audit Schedule
- C5.** Draft Tenant Management Plan and Property Maintenance/Management Plan
- C6.** B-BBEE Stats of consultants, main and all sub-contractors
- C7.** Letters of appointment for staff must be provided with key result areas and performance standards;
- C8.** CV's of all directors must be provided;
- C9.** Evidence must be provided on implementation of the organisation performance management system;
- C10.** Financial management policy and procedures: making provision for financial misconduct, financial risk management, accounting processes related to segregation of duties and delegation of authority, comprehensive procedures around the accounts receivable, payable and bank and cash cycles, long term financial forecasting, financial reporting and financial indicators (KPI's and thresholds) and rent management policies and procedures;
- C11.** Any other information and/or documentation required by the SHRA

### **ANNEXURE D – Reporting Requirements to the SHRA and the Province**

- D1.** Copies of design, technical, site and/or project meetings minutes
- D2.** Copies of monthly progress reports from Professional Team members and Contractor, including Annexure C1 (Progress Report)
- D3.** Copy of monthly cost report (by Quantity Surveyor)
- D4.** Copy of Health & Safety audits
- D5.** Copy of Environmental audits
- D6.** Copies of quality reports by appointed Consultants
- D7.** Any other documentation or information that the SHRA and the Province may require

### **ANNEXURE E – Reporting Requirements to the Independent Review Consultant appointed by the SHRA**

- E1.** Copies of all Invoices to Grant Recipient to prove actual expenditure on the project and monthly bank statement of the Project Bank Account
- E2.** Tenant Audit Schedule (Annexure C4)
- E3.** Any other documentation or information that the SHRA may require

**DATA SHEET: THE SHRA-ODA CONTRACT SHIP NUMBER**

*This Contract Data Sheet contains the data applicable to this contract for the specific project. The data is entered at the time of signature of the contract but is subject to amendment at the time that Financial Closure is achieved to take account of variations to the Contract Data that may have occurred. All parties undertake to sign the Addendum to the contract to revise the Contract Data as applicable.*

**GRANT RECIPIENT****Official Registered Name****Company Registration No****VAT No****PROJECT DESCRIPTION****Name of Project****Legal Property Description/s (Erf Description) as per title deed****Property Address** (no, street name, suburb, municipality, province)**Current Land Owner****APPROVED DEVELOPER'S DETAILS****SOCIAL HOUSING UNITS APPROVED THE SHRA****Total no. of social housing units to be delivered****Percentage of Primary Beneficiaries****Number of Primary Beneficiaries****FUNDING****Quantum of CCG****Value of CCG****Value of Long-Term Debt****Value of Grant Recipient's Equity****Value of Other Funding & Source****Value of Total Project Cost****DEVELOPMENT PERIOD****Development Delivery Programme (Months)**

## 1. RECORDAL

- 1.1. This is a tripartite social housing Consolidated Capital Grant Agreement between the Social Housing Regulatory Authority (the "SHRA"), the Name of Provincial Department of Human Settlements (the "Province") and Name of Grant Recipient (the "Grant Recipient").
- 1.2. The Social Housing Act and its Regulations and the National Housing Code 2000 as amended, provides the legal framework for Social Housing in South Africa.
- 1.3. The Social Housing Act allows for the undertaking of approved Social Housing Projects with the benefit of public money through Social Housing Investment Programmes for the development of rental housing options for low to medium income households to be provided by Other Delivery Agents (ODA's) in designated Restructuring Zones.
- 1.4. The National Housing Code provides for the allocation of institutional subsidy to qualifying SHI's/ODA's and to qualifying beneficiaries in the form of social housing grants.
- 1.5. Social Housing Investment Programmes are geared towards the development of rental and co-operative housing options for low to medium income households to be provided by Social Housing Institutions in designated Restructuring Zones.
- 1.6. The National Treasury and National Department of Human Settlement in reprioritising the social housing strategic funding have consolidated the Restructuring Capital Grant ("RCG") managed and administered by the SHRA with the Provincial institutional subsidy ("institutional subsidy") into one social housing Consolidated Capital Grant under the administration of the SHRA.
- 1.7. In certain circumstances the institutional subsidy generally may attract geotechnical allowances, Southern Cape Coastal Condensation Allowance ("SCCCA") and other allowances which are calculated according to site specific conditions and the Provinces and will continue to be approved by the Province.
- 1.8. In terms of the Social Housing Act, the Province is mandated to monitor social housing projects to ascertain that relevant prescripts, norms and standards are being complied with and authorise drawdown requests.
- 1.9. The Other Delivery Agent, hereinafter, the "Grant Recipient", has lodged an Application for a Social Housing Consolidated Capital Grant for the Social Housing Project consisting of (number of Social Housing Units) Social housing units to be delivered and such Application has been approved by the Social Housing Regulatory Authority and the Province to the total value as detailed in the Contract Data Sheet.
- 1.10. The Parties therefore, wish to enter into this Agreement in order to regulate and monitor the utilisation of the Consolidated Capital Grant and the execution of the Project and generally, to govern their relationship for the duration of this Agreement.

## 2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

2.1.1 **“Agreement”** means this Agreement, including the Annexures and Schedules, and any written modification, variations, amendments or additions to this Agreement;

2.1.2 **“Annexure”** means the Annexures to this Agreement, as amended from time to time;

2.1.3 **“Applicable Legislation”** means the Social Housing Act 16 of 2008, the Housing Act 107 of 1997, the Rental Housing Act 50 of 1999, the Co-Operatives Act 14 of 2005, the Public Finance Management Act 11 of 1999, Local Government: Municipal Finance Management Act 56 of 2003 and the National Housing Code of 2000 as amended, all regulations, policies, directives, instructions, circulars and guidelines in terms of those Acts, as any of the foregoing may be amended from time to time, in particular, but without limiting the foregoing, the Social Housing Regulations and Rules, the Social Housing Policy, the Social Housing Programme Guidelines and the National Housing Code;

2.1.4 **“Application”** means the application submitted by the Grant Recipient for the award of a Consolidated Capital Grant, including all Annexures, schedules and documents supplied pursuant to such application;

2.1.5 **“Appropriate Authorities”** means all national, provincial, and local governmental, statutory authorities, other authorities and bodies having jurisdiction from time to time over the Project or any part or stage of the Development or Project, which authorities' approval or co-operation may be required for the successful completion of the Development or Project or any part or stage of it;

2.1.6 **“Approved Plans”** means the township layout, general plan, consolidation diagrams, subdivision plans, site development plans, building plans, service plans and other necessary or relevant plans pertaining to the Project as shall be approved by the Appropriate Authorities;

2.1.7 **“Authorisation”** means any written consent, registration, authorisation, certificate, licence, approval, permit, and/or exemption from, by, or with, the Appropriate Authorities;

2.1.8 **“Authorised Representative/s”** means the person/s authorised by each of the Parties in writing to represent that Party in any matter relating to this Agreement, and which shall include authorised persons to whom their roles have been delegated, and regarding which the relevant Party has advised the other Parties in writing;

- 2.1.9 **“Beneficiaries”** means the Primary Beneficiaries and the Secondary Beneficiaries, being persons or households who are entitled to receive the benefit of housing project as contemplated in the Social Housing Act, Social Housing Regulations, Social Housing Policy and National Housing Code;
- 2.1.10 **“Best Industry Practice”** means applying, in relation to the manner in which this Agreement is implemented, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 2.1.11 **“Bulk Services”** means provision of primary water, sewerage, electricity and storm-water services external to the Project, as well as the provision of main roads to the Project;
- 2.1.12 **“Business Day”** means any day other than a Saturday, Sunday or gazetted public holiday in South Africa;
- 2.1.13 **“Business Plan”** means the Business Plan to be produced by the Grant Recipient, forming part of the Application and being a Condition Precedent, a copy of which is annexed as Annexure "A2";
- 2.1.14 **“Companies Act”** means the Companies Act, 71 of 2008;
- 2.1.15 **“Conditions Precedent (CP)”** means the Conditions Precedent as set out in clause 4. The conditions stated in clause 4 below must come to pass before this contract can be considered to be in effect or any obligations are expected of either party. All Conditions Precedent to this Agreement should be met within (60) sixty days of the Signature Date of this Agreement;
- 2.1.16 **“Consolidated Capital Grant”** means the Social Housing Consolidated Capital Grant as approved by the National Treasury and the National Department of Human Settlements managed and administered by the SHRA;
- 2.1.17 **“Construction Agreement”** means the agreement between the Grant Recipient or the Developer and the Contractor in terms of which the Contractor has agreed to undertake and complete the construction of the whole or any part of the Development and which agreement shall provide for the Contractor’s obligation in relation to defect warranties and other guarantees of its performance as well as its exit from the project;
- 2.1.18 **“Consultants”** means the project managers, principal agents, architects, engineers, quantity surveyors, land surveyors, health and safety consultants, environmental control officers, legal advisors and any other specialists consultants appointed by the Grant Recipient or the Developer for the purposes of implementation of any aspect of the Project and matters ancillary to the Project;



- 2.1.19 “**Contractor**” means any person/s appointed by the Grant Recipient or the Developer to be responsible for construction of the whole or any part of the Development (including any parties contracted to such Contractor, such as Sub-contractors and Consultants) and as named in the data sheet;
- 2.1.20 “**Contractor procurement strategy**” means the strategy/method statement for procuring of the contractor;
- 2.1.21 “**Day**” means a calendar day, including Saturdays and Sundays and gazetted national public holidays in South Africa;
- 2.1.22 “**Date of Final Completion**” means the date on which the Final Completion Certificate is issued by the Principal Agent appointed by the Grant Recipient or Developer, to certify that the Units (or any agreed number of the Units) are completed, and that they comply with all designs and specifications in accordance with the Approved Plans and are fully occupied by the Beneficiaries (**in accordance with the Beneficiary mix as per the Approved Quick Scan C**);
- 2.1.23 “**Date of Works Completion**” means a Certificate of Completion issued by the Principal Agent appointed by the Grant Recipient or the Developer, when the contractor has completed all the work specified in the works completion list;
- 2.1.24 “**Date of Practical Completion**” means a Practical Completion Certificate issued by Principal Agent appointed by the Grant Recipient or the Developer, to the contractor when he has achieved practical completion;
- 2.1.25 “**Debt Funding**” means the loans acquired by the Grant Recipient towards the funding of the Project from a bank or other lending institution;
- 2.1.26 “**Debt Funding Agreement**” means any agreement between the Grant Recipient and a bank or other finance lending institution in respect of the Debt Funding;
- 2.1.27 “**Developer**” means any person/s appointed by the Grant Recipient to be responsible for the development phase of the project;
- 2.1.28 “**Development**” means the planning, design and construction of the residential housing Units for the purposes of the Project, including all related infrastructure services and amenities, as set out in the Application, in terms of the Applicable Legislation, the Social Housing Investment Programme and in terms of this Agreement;
- 2.1.29 “**Development Agreement**” means the agreement between the Grant Recipient and the Developer in terms of which the Developer has agreed to undertake and complete the construction of the whole or any part of the Development, and which agreement shall provide for the Developer's

obligations in relation to defect warranties and other guarantees of its performance as well as its exit from the Project;

- 2.1.30 **“Development Phase”** means the planning, design and construction stages of the Project until its final completion in fulfilment of the contract and approved plans to the satisfaction of SHRA and the Province upon such terms and conditions as applicable, the SHRA and the Province may impose from time to time, in accordance with Best Industry Practice and in accordance with such reasonable requirements that the SHRA and the Province may determine in the circumstances, including allocation and occupation of Units and for the duration of any defects liability period in terms of the Construction Agreement and/or under common law;
- 2.1.31 **“Development Schedule”** means a schedule which has been submitted by the Grant Recipient as part of the Application indicating completion dates of all critical activities necessary for the Development, which has been accepted by the SHRA as set out in Annexure “A7”;
- 2.1.32 **“Duration of this Agreement”** is indefinite in relation to the management phase and the monitoring and regulation of the Grant Recipient by the SHRA but definite in relation to the Development phase and in particular, the monitoring of the project by the Province as that responsibility terminates soon as the project is completed and delivered to the satisfaction of all parties;
- 2.1.33 **“Effective Date”** means the date within 60 business Days or such an extended date from the Signature Date, subject to all Conditions Precedent having been fulfilled;
- 2.1.34 **“Equity”** means the unencumbered contribution of the Grant Recipient to the total funding of the Project, in a form of value by way of Land, value of the building, and/or unencumbered liquid funds, existing buildings or any form of an unencumbered cash which is free from any claim by creditors, lien or any other claim that may hinder the transfer of the cash or funds guarantee provided by the Grant Recipient or a reputable financial institution to the satisfaction of the SHRA;
- 2.1.35 **“Event of Force Majeure”** means an Act of God or public enemy, fire, explosion, earthquake, perils of the sea, floods, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, blockade, embargo, strikes, lockouts or other labour disputes, sanctions, epidemics, any act of any government, compliance with new law or regulations not in existence at the Signature Date, or lawful demands of any government or governmental agency in terms of such law or regulations;
- 2.1.36 **“Final Completion”** means that the works comply with the requirements of the contract in all respects and that the contractor has discharged all his contractual obligations, save only that he remains liable for latent defects for a period of five years from date of Final Completion;

- 2.1.37 “**Financial Closure (FC)**” means the fulfilment of all conditions stipulated in Clause 6 of this contract and conclusion of all contracts to the satisfaction of the SHRA necessary for the Project to proceed to the Development Phase;
- 2.1.38 “**Financiers**” means the funders in terms of the Funding Agreements;
- 2.1.39 “**Funding Agreements**” means the funding agreements with financiers and all annexures to such agreements in terms of which the Financiers shall provide funding to the Grant Recipient for the Development, including this Agreement, Debt Funding Agreement/s, Other Funding Agreement/s and all agreements evidencing the Grant Recipient's equity to the Project;
- 2.1.40 “**Housing Act**” means the Housing Act 107 of 1997, as amended from time to time;
- 2.1.41 “**Independent Market Analysis**” means an independent study on the demand for social housing that relates to the project and that also informs the income bands, unit mix and unit typologies, to be produced by the Grant Recipient as “Annexure A4”, which forms part of the Application, and the approval of which by the SHRA is a Condition Precedent;
- 2.1.42 “**Interest**” means the prime lending rate as quoted by First National Bank from time to time, calculated daily and compounded monthly in arrears and calculated on a 365-day year, irrespective of whether the year is a leap year or not, as certified by the manager or director of such bank, whose appointment it shall not be necessary to prove and whose certificate shall be final and binding on the Parties;”
- 2.1.43 “**Invoice**” means a financial document detailing the costs / charges and presented for payment.
- 2.1.44 “**Land**” means the portions of land named in the Contract Data Sheet;
- 2.1.45 “**Maladministration**” means maladministration as defined in section 1 of the Social Housing Act;
- 2.1.46 “**Management Phase**” means the phase that comes after the completion of the Development Phase and includes the management and the regulation of the delivered Units;
- 2.1.47 “**Month**” means a calendar month;
- 2.1.48 “**National Housing Code**” means the guidelines and housing assistance measures published by the National Department of Human Settlement regarding the subsidisation of housing as amended from time to time;
- 2.1.49 “**NHFC**” means the National Housing Finance Corporation Limited, registration number 1996/005577/06, with its registered address at 11 Boundary Road, Old Trafford Three, Isle of Houghton, 2198;

- 2.1.50 “**NHBRC**” means the National Home Builders Registration Council, a regulatory body established in terms of Section 2 of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998);
- 2.1.51 “**ODA**” means “other delivery agent”
- 2.1.52 “**Other Delivery Agent**” means an entity other than a social housing institution which may undertake an approved project, but excludes a provincial government or a municipality;
- 2.1.53 “**Parties**” means the SHRA, the Province and the Grant Recipient;
- 2.1.54 “**Portfolio Manager**” means the representative of the SHRA, or such other nominee the SHRA may nominate from time to time, to whom the Grant Recipient reports to in connection with technical matters relating to the Project, in accordance with this Agreement and Annexures "D1" to "D7";
- 2.1.55 “**Practical Completion**” means the state of completion, in the opinion of the principal agent, of the works has **substantially** been reached and can effectively be used for the purpose intended. It is clearly not completion in all aspects;
- 2.1.56 “**Primary Beneficiaries**” means persons or households with a qualifying income between R1,500.00 and R5,500.00 per month or as amended from time to time;
- 2.1.57 “**Principal Agent**” means an entity or person appointed and authorised by the Grant Recipient or Developer as agent to manage and administer the construction contract(s);
- 2.1.58 “**Project**” means this project as defined in the data schedule which includes the Development Phase and the Management Phase, and which has been approved by the SHRA and the Province;
- 2.1.59 “**Project Budget**” means the total capital costs including land, construction, professional fees and all other ancillary fees and costs to deliver the Development submitted by the Grant Recipient as part of the Application, which budget forms part of the Project Financial Model, as contained in the final, approved Quick-Scan C to the Application, as amended from time to time in terms of required specifications, scope changes, escalations, interest etc;
- 2.1.60 “**Project Cost and Cash Flow Schedule**” means a detailed breakdown of the Project costs and cash flows to be produced by the Grant Recipient, as may be amended from time to time, in respect of the Development Phase, as set out in Annexure "A9";
- 2.1.61 “**Project Financial Model**” means the financial model to be submitted by Grant Recipient as part of the Application in accordance with Quick-Scan C, which forms part of the Conditions Precedent, as set out in Annexure "A8". The Project Financial Model shall be updated from time to time as

required by circumstances such as changes to specifications, scope changes, interest, in consultation with the SHRA;

- 2.1.62 **“Project Bank Account”** means the bank account of the Grant Recipient, into which the Consolidated Capital Grant from the SHRA will be paid, as authorised by the SHRA in writing, relating to funding for the Project and payments to creditors;
- 2.1.63 **“Project Review Consultant”** means an independent review consultant that has been appointed by the SHRA to review and verify claims for actual proven expenditure related to the Project and Milestones; as well as the performance and quality of the Development and Construction;
- 2.1.64 **“Province”** means the Provincial Department of Human Settlements where the Project is situated and it is a party to this Agreement;
- 2.1.65 **“Restructuring Zone”** means a geographic area designated and gazetted by the Minister of Human Settlements in terms of the Social Housing Act;
- 2.1.66 **“Schedule”** means any Schedule to this Agreement as amended from time to time;
- 2.1.67 **“Secondary Beneficiaries”** means persons or households with a qualifying income of between R5,500.01 and R15,000.00 per month or as amended from time to time;
- 2.1.68 **“Signature Date”** means the Date of Signature of this Agreement by the Party which signs it last;
- 2.1.69 **“Social Housing Act”** means the Social Housing Act 16 of 2008;
- 2.1.70 **“Social Housing”** means rental or co-operative housing options for low to medium income households at a level of scale and built form which requires institutionalised management and which is provided by Social Housing Institutions or is in approved projects in designated Restructuring Zones with the benefit of public funding as contemplated in the Social Housing Act;
- 2.1.71 **“Social Housing Investment Programme”** means the National Social Housing Programme for Social Housing, instituted by the Minister of Human Settlements in terms of the Act;
- 2.1.72 **“Social Housing Policy”** means the Social Housing Policy as determined from time to time by the Minister of Human Settlements in terms of the Housing Act;
- 2.1.73 **“Specifications”** means the specifications for the materials and dimensions for the construction of all the services, structures and finishes pertaining to the Development as specified by any of the Consultants and/or required by Appropriate Authorities, NHBRC, Province and/or by the SHRA;

- 2.1.74 **“Tenant Audit Schedule”** means the schedule of information in respect of tenants’ details which the Grant Recipient shall provide to the SHRA as part of its reporting requirements, as set out in annexure “C4”;
- 2.1.75 **“Unit/s”** means the various types of residential units to be constructed on the Land pursuant to this Agreement for the purposes of Social Housing;
- 2.1.76 **“Works Completion”** means the state of the works where the work is complete in all respects and there are no apparent defects.
- 2.2.** In this Agreement – Unless expressly stated to the contrary, where the Parties are required to "agree", "notify", "consent", "authorise" or "approve", they shall be required to do so in writing, and for this purpose, writing shall include telefax, or email and "agreement", "notification", "consent", "authorisation" and "approval" shall have similar meanings;
- 2.2.1. Unless expressly stated to the contrary, where a Party's decision or act is in the discretion of that Party, or to its satisfaction, it shall mean that Party's sole and unfettered discretion or satisfaction;
- 2.2.2. References to a statutory provision include any subordinate legislation made from time to time under that provision and includes that statutory provision (including subordinate legislation) as modified or re-enacted from time to time;
- 2.2.3. Words importing the masculine gender include the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and natural persons include artificial persons and vice versa, unless inconsistent with the context in which such words appear;
- 2.2.4. References to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.5. References to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act 71 of 2008;
- 2.2.6. If a definition imposes rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.7. Any definition, wherever it appears in this Agreement, (or an Annexure or Schedule) shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 2.2.8. If there is any conflict between any definitions in this Agreement then, for 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 conflicting definition appearing elsewhere in the Agreement;

- 2.2.9. Where any number of Days is prescribed, those Days shall be counted exclusively of the first and inclusively of the last Day, and where any number of Business Days is prescribed, those Business Days shall be counted exclusively of the first and inclusively of the last Business Day, unless the last Business Day falls on a Day which is not a Business Day, in which event the last Business Day shall be the next succeeding Business Day, unless inconsistent with the context in which it appears;
  - 2.2.10. Where the Day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day, unless inconsistent with the context in which it appears;
  - 2.2.11. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
  - 2.2.12. The use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
  - 2.2.13. References to any amount shall mean that amount inclusive of VAT at 15%, unless the amount expressly excludes VAT;
  - 2.2.14. The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" or "such as" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;
- 2.3.** Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the Agreement shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply only if comments of the Grant Recipient before signature of the contract have been incorporated.

### **3. AWARD OF THE CONSOLIDATED CAPITAL GRANT**

- 3.1.** The SHRA and the Province hereby award the Consolidated Capital Grant to the Grant Recipient, with effect from the Effective Date for the purposes of implementation of the Project as defined in section 2.1.33 of this Agreement.
- 3.2.** The Grant Recipient hereby accepts, with effect from the Effective Date, the Consolidated Capital Grant and agrees to implement the Project in accordance with the terms and conditions set out in this Agreement.
- 3.3.** The Grant Recipient hereby agrees, with effect from the Effective Date, to undertake and perform all its obligations, in accordance with the terms and conditions set out in this Agreement.

### **4. CONDITIONS PRECEDENT**

- 4.1.** The provisions of this Agreement are subject to the fulfilment, to the SHRA's satisfaction, by the Grant Recipient of the Conditions Precedent (CP) set out in section 4.7 below.
- 4.2.** The Grant Recipient shall use its best endeavours to procure the fulfilment of the Conditions Precedent.
- 4.3.** Should the Grant Recipient believe that it will not be in a position to attain the fulfilment of the Conditions Precedent within the sixty (60) Business Day period, the Grant Recipient shall submit a written application to the SHRA requesting an extension, stating the reasons for delay, motivating the reasons that the SHRA should grant such an extension, clearly stipulating the revised date for fulfilment of CP. Such application must be received by the SHRA fourteen (14) Business Days prior to the date for CP to be met and approval shall not be unreasonably withheld.
- 4.4.** The SHRA may, at its discretion or upon request from the Grant Recipient, extend the date by which the Conditions Precedent must be fulfilled.
- 4.5.** If the Conditions Precedent are not fulfilled, within sixty (60) Business days of the Signature Date, or the extended date(s) as contemplated in clause 4.3 and 4.4 above, the provisions of this Agreement shall not come into effect and the contract will become null and void. In such event, the Grant Recipient shall not have any claim against the SHRA.
- 4.6.** The approval for the fulfilment of a Condition Precedent is in the discretion of the SHRA, and it shall therefore be in the SHRA's sole discretion and upon such terms and conditions as may be determined by the SHRA. In this regard, the SHRA undertakes to act reasonably and to provide the Grant Recipient with such reasonable assistance as it may require to fulfil the Conditions Precedent.
- 4.7.** The following are Conditions Precedent to this Agreement –
  - 4.7.1.** the Grant Recipient is to submit its Certificate of Accreditation, together with a letter of good standing from the SHRA, copies of which shall be annexed as Annexure "A1" (if applicable);



- 4.7.2. the boards of directors (or equivalent) of the Grant Recipient pass all such resolutions as may be necessary for approval and implementation of this Agreement, copies of which shall be annexed as Annexure "A1";
- 4.7.3. the SHRA approves the Business Plan of the Grant Recipient, a copy of which Business Plan shall be annexed as Annexure "A2";
- 4.7.4. the Grant Recipient submits an independent Market Analysis for approval by the SHRA, a copy of which shall be annexed as Annexure "A3";
- 4.7.5. the Grant Recipient submits proof of its legal status, to the satisfaction of the SHRA, copies of which shall be annexed as Annexure "A4";
- 4.7.6. the Grant Recipient submits a Project Procurement Strategy and/or procurement report (CIDB compliance), to the satisfaction of the SHRA, annexed as Annexure "A5";
- 4.7.7. the Grant Recipient submits details of its Project Bank Accounts, as well as details of its staff authorised in respect of such bank accounts, which details shall be annexed as Annexure "A6";
- 4.7.8. the Grant Recipient submits a Development Schedule and obtains approval by the SHRA, a copy of which shall be annexed as Annexure "A7" (if applicable);
- 4.7.9. the Grant Recipient submits a Project Financial Model (using the Quick-Scan C), and obtain approval by the SHRA, a copy (inputs and outputs sheets) of which shall be annexed as Annexure "A8". In the event that the project cost and/or funding structure in respect of the Project has changed from that submitted in the Application, then a revised Financial Model must be submitted in fulfilment of this Condition Precedent to prove financial viability of the Project;
- 4.7.10. the Grant Recipient submits a Project Cost Schedule and Cash Flow Schedule, together with a Project Implementation Programme in a bar/chart format, copies of which shall be annexed as Annexure "A9";
- 4.7.11. the Grant Recipient submits "in principle" approvals from Financiers relating to funding arrangements for the Project, to the satisfaction of the SHRA, including but not limited to: -
  - 4.7.11.1. a full breakdown of all Project funding;
  - 4.7.11.2. long term loan/s from (an) approved financial service provider/s;
  - 4.7.11.3. details of the Grant Recipient's Equity Contribution; and/or
  - 4.7.11.4. any other subsidy or third-party donations or grants, copies of which shall be annexed as Annexures "A10";
- 4.7.12. the Grant Recipient submits proof of particulars of the land (e.g. current owner and title deed no), offer to purchase, land availability agreement, lease agreement or any other document evidencing a real right to the

Land, or unconditional and irrevocable right to develop the Land for the purposes of the Project to the satisfaction of the SHRA, copies of which shall be annexed as Annexures "A11";

- 4.7.13. the Grant Recipient submits proof of Land use and development rights by way of a zoning certificate and an extract from the applicable town planning scheme setting out the applicable use zone, copies of which shall be annexed as Annexure "A12";
- 4.7.14. the Grant Recipient submits proof that any link or connector services required will be provided by the municipality, or alternatively that adequate provision to the satisfaction of the SHRA has been made in the Project Budget for the installation of such services, a copy of which shall be annexed as Annexure "A13";
- 4.7.15. the Grant Recipient submits a draft Development Agreement and/or Construction Agreement to be entered into with the Developer, a copy of which shall be annexed as Annexures "A14" (if applicable);
- 4.7.16. the Grant Recipient submits a Draft Construction Agreement between the ODA and contractor or developer and the contractor, a copy of which shall be annexed as Annexure "A15";
- 4.7.17. The Grant Recipient submits a structural integrity report from the engineer, a copy of which shall be annexed as Annexure "A16";
- 4.7.18. The Grant Recipient shall ensure that a heritage impact assessment is done and a report is provided, a copy of which shall be annexed as Annexure "A17" (if applicable);
- 4.7.19. The Grant Recipient shall ensure that a building conditions audit report is done, a copy of which shall be annexed as Annexure "A18";
- 4.7.20. The Grant Recipient shall submit a report on the history of the building maintenance, a copy of which shall be annexed as Annexure "A19";
- 4.7.21. the Grant Recipient submits the Profile of the Consultants and the Professional Team, draft Service Agreements and written proof of PI Cover, a copy of which shall be annexed as Annexure "A20" (if applicable);
- 4.7.22. the Grant Recipient submits any other information and/or documentation reasonably required by the SHRA which are necessarily incidental to the fulfilment of any of the Conditions Precedent, copies of which shall be annexed as Annexure "A21";
- 4.7.23. Additionally, the Grant recipient must submit the following in terms of the Grant Approval Resolution of the SHRA referred to as Annexure "A22";

4.7.23.1. To include any additional CP as per the grant approval Resolution of the SHRA

## **5. DURATION OF AGREEMENT**

- 5.1.** This Agreement shall commence on the Effective Date and shall continue subject to the provisions of the Social Housing Act and this Agreement.
- 5.2.** Notwithstanding anything to the contrary stated or implied in 5.1 above, the SHRA and the Province shall have the right to terminate this Agreement and vice-versa in the event of breach of this Agreement by the Grant Recipient, as more fully provided in this Agreement.

## **6. FINANCIAL CLOSURE**

- 6.1.** Financial Closure should be achieved within a period of 120 Business Days after the Effective Date, or such longer period as may be agreed between the Parties.
- 6.2.** The Grant Recipient shall furnish copies of the following documents to the SHRA, for its approval, which copies shall be annexed to this Agreement numbered as set out below. Where a document is an agreement, it shall be signed by all the parties to that agreement, and where the document is an approval by an Appropriate Authority, or other relevant person, such approval shall be on an official letterhead and / or stamped with the relevant Authority/ person's official stamp.
- 6.3.** In order to achieve Financial Closure, the Grant Recipient shall be required to submit the documents listed below:
  - 6.3.1.** Debt Funding Agreement, signed by all Parties and all conditions precedent in terms of such agreement having been met (save for coming into effect of this Agreement), to be annexed as Annexure "B1";
  - 6.3.2.** Other Funding Agreements, signed by all Parties and all conditions precedent in terms of such agreement having been met (save for coming into effect of this Agreement), to be annexed as Annexure "B2";
  - 6.3.3.** Consultant and professional team service agreements signed by all parties and all conditions precedent having been met, and professional indemnity cover effected, to be annexed as Annexures "B3" (if applicable);
  - 6.3.4.** Approved site development plan/s, to be annexed as Annexure "B4";
  - 6.3.5.** Approved building plans, to be annexed as Annexure "B5";
  - 6.3.6.** NHBRC enrolment or exemption (enrolment certificates or letters), to be annexed as Annexure "B6" (if applicable);
  - 6.3.7.** Updated Project Development Costs (including costs to reflect tender results, as well as cash flow draw-downs from Financiers) together with updated Quick Scan C, to be annexed as Annexure "B7";

- 6.3.8. Development Agreement, signed by all Parties and all conditions precedent in terms of such agreement having been met (save for coming into effect of this Agreement), to be annexed as Annexure "B8" (if applicable);
- 6.3.9. Construction Agreement concluded between Grant Recipient or Developer and the Contractor and all other relevant documentation (like drawings, specifications, costs, bills of quantity and similar information) that the SHRA may request, to be annexed as Annexure "B9" (if applicable);
- 6.3.10. A draft copy of the Notarial Deed against the title deed restricting transfer of the land to any third party in favour of the SHRA together with a certificate from the Conveyancer stating the date by which such deed will be registered against the title deeds, to be annexed as Annexure "B10";
- 6.3.11. A copy of the Construction guarantee (if applicable) to be annexed as Annexure "B11"
- 6.3.12. Proof of ownership of the land in the name of the Grant Recipient/written confirmation from the conveyancer that all is in order for the registration of the land into the Grant Recipient's name, to be annexed as Annexure "B12"
- 6.3.13. The Grant Recipient shall submit the tenant regularisation plan, to be annexed as Annexure "B13"
- 6.3.14. The Grant Recipient shall submit the certificate of compliance (COC) from the municipality, to be annexed as Annexure "B14"
- 6.3.15. The Grant Recipient shall submit as-built drawings or new approved building plans (whichever is applicable), to be annexed as Annexure "B15"
- 6.3.16. The Grant Recipient shall submit a practical and occupation certificate, to be annexed as Annexure "B16"
- 6.3.17. Any other information and/or documentation reasonably required by the SHRA as evidence of the Grant Recipient 's financial standing and readiness in respect of any aspect of the Project, to be annexed as Annexure "B17"
- 6.3.18. Additionally, the Grant recipient must submit the following in terms of the Grant Approval Resolution of the SHRA referred to as Annexure "A22";

**6.3.18.1. To include any additional FC conditions as per the grant approval Resolution of the SHRA**

- 6.4.** Should the Grant Recipient believe that it will not be in a position to attain the fulfilment of Financial Closure within the 120 Business Days period, the Grant Recipient shall submit a written application to the SHRA requesting an extension, stating the reasons for delay, motivating the reasons that the SHRA should grant such an extension, clearly stipulating the revised date for meeting FC. Such application must be received by the SHRA not later than fourteen (14) Days prior to the date for FC to be met and approval shall not be unreasonably withheld.
- 6.5.** In the event that the SHRA in its discretion concludes that the Grant Recipient shall not reasonably be able to achieve Financial Closure within the stipulated period or such longer period as the SHRA may determine, then the SHRA in its discretion may terminate this Agreement and in this regard: -
- 6.5.1. The Grant Recipient shall not have any claim against the SHRA as a result of such termination;
- 6.5.2. The Grant Recipient shall be required to refund to the SHRA, with interest at the rate stipulated in clause 2.1.42, any monies already paid in terms of this Agreement within twenty-one (21) Business Days after receipt of a written notice from the SHRA terminating this Agreement; and
- 6.5.3. The Grant Recipient shall be entitled to submit a new Application for the Consolidated Capital Grant.

## **7. DISBURSEMENT OF THE CONSOLIDATED CAPITAL GRANT**

### **7.1. Calculation of Quantum**

- 7.1.1. It is recorded that the quantum of the Consolidated Capital Grant has been calculated by the SHRA based on the number of Units and on the apportionment of Units between Primary Beneficiaries and Secondary Beneficiaries that the Grant Recipient has undertaken to provide in respect of the Project for the purposes of Social Housing.
- 7.1.2. The total Consolidated Capital Grant approved and allocated to the project will be held by the SHRA in a specific ring-fenced interest-bearing account, where the SHRA will monitor spending and account for any unspent funds and interest.
- 7.1.3. The use of any accrued interest in the account will be at the sole discretion of the SHRA. In special instances, the SHRA may entertain application from the Grant Recipient for the use of the accrued interest for project enhancements or initiatives that may be deemed to be of a capital nature that adds value to the Project.
- 7.1.4. The Grant Recipient shall open and operate a Project Operational Bank Account with a registered financial institution within the Republic of South Africa.
- 7.1.5. The Consolidated Capital Grant shall be disbursed to the Grant Recipient by the SHRA in the following manner: -

- 7.1.5.1. The Grant Recipient will submit a written request for drawdown of funds based on its actual progress and milestone achievement on the development phase of the project to the Portfolio Manager for assessment. The Portfolio Manager will assess the written request for draw down in consultation with the Province and will within five (5) Business Days recommend for a payment authorisation by the Executive Manager responsible for Project Development and Funding.
- 7.1.5.2. The written request for drawdown shall have proof that the relevant milestone has been achieved and payment of the Consolidated Capital Grant shall only be made subject to the following conditions:
  - 7.1.5.2.1. Submission of an acceptable Invoice to the SHRA to an email address to be nominated by the SHRA, which Invoice shall be in the format as prescribed by the SHRA; and
  - 7.1.5.2.2. Certificate of Completion of Work done and prepared by the principal agent/project manager, Valuation Certificate issued and signed and dated as per the Performance Agreement, which shall specifically warrant that the works have been completed to the norms and standards of the NHBRC.
- 7.1.5.3. The SHRA commits to endeavour to pay the requested drawdown funds into the Project Bank Account of the Grant Recipient within thirty (30) Business Days of receipt of the drawdown request to the Portfolio Manager.
- 7.1.5.4. The availability of the Consolidated Capital Grant shall be limited according to the following milestones: -
  - 7.1.5.4.1. maximum of **20%** on fulfilment by the Grant Recipient of all the Conditions Precedent;
  - 7.1.5.4.2. a further maximum of **20%**, subject to fulfilment by the Grant Recipient of all the requirements necessary for Financial Closure;
  - 7.1.5.4.3. up to a further **50%** upon approval by the SHRA of the Draft Tenant Management Plan and Property Maintenance/ Management Plan (per annexure "C5") as well as material and documentations listed/described per annexures C7, C8, C9, C10, C11, and C12, which the Grant Recipient is required to submit to the Portfolio Manager (Executive Manager: Project Development and Funding) together with such further documents as the SHRA may request and subject further to the Project having

progressed to the satisfaction of the SHRA and the Province, and should the SHRA or the Province not be satisfied, then subject to such conditions as the SHRA or the Province may reasonably impose; Payments shall be up to a maximum of 90% of Contract Value (cumulatively) but against annual value substantiated by valuations certificates of measured value on site and Professional fee invoices not exceeding 10%; and

7.1.5.4.4. up to a further final **10%** on tenanting.

7.1.5.5. The payment of the final **10%** of the Capital Grant shall be subject to confirmation in writing to the SHRA that: -

7.1.5.5.1. Units have been occupied in accordance with the Act and generally in accordance with the percentage allocation of Units in the Project Financial Model (the approved Quick Scan C) to Primary Beneficiaries and Secondary Beneficiaries, which will be evidenced by the submission of the Tenant Audit Schedule, to be annexed as Annexure "C4"; and

7.1.5.5.2. the development has been completed, including tenanting of the units to the satisfaction of the Grant Recipient, Consultants, Appropriate Authorities and the SHRA which will be evidenced by the submission certificates of compliance, Final Completion Certificate of the Works as a Whole and unqualified Municipal occupation certificates in respect of all the Units, together with final proven costs for the completed project.

7.1.5.6. Should the SHRA so decide, the 10% may be paid out proportionately as occupation of the Units takes place up to a maximum of 5% of the grant for 100% occupation by primary beneficiaries and the remaining 5% of the grant shall be paid out on compliance with Clause 7.1.5.5.2 above.

7.1.5.7. Should the SHRA, in its discretion, determine that a payment and/or any other condition of this Agreement have not been met or that any obligation contained within this Agreement have not been fulfilled by the Grant Recipient and/or any of the Consultants and/or Contractors appointed by the Grant Recipient or Developer or only partially met or fulfilled, it shall be entitled to withhold all or a portion of the Consolidated Capital Grant, pending fulfilment of the relevant condition(s) and obligations. Notwithstanding the foregoing, the Grant Recipient shall continue to perform its obligations in terms of this Agreement and shall not be entitled to delay performance or fail to perform as a result of the SHRA exercising its discretion. The SHRA is also within its rights to withhold a

portion of Project payments that are legitimate or otherwise if any of contract conditions are not met to its satisfaction, after having consulted with the Grant Recipient.

7.1.5.8. The SHRA shall at all material times ensure that the necessary funding to release for any of the Drawdowns provided for above has been secured from the Department of Human Settlement and is available for drawdown. Should it transpire that there are any challenges with the flow of funds from the Department of Human Settlements the SHRA will immediately inform the Grant Recipient and Developer.

7.1.5.9. In the event that the SHRA is unable to make payment of the Consolidated Capital Grant or any portion thereof, as a result of the National Department of Human Settlements for any reason whatsoever not releasing the required funds, cancelling and/or delaying such release, the Grant Recipient shall not have any claim against the SHRA as a result nor the SHRA against the Grant Recipient.

## **7.2. Bank Account**

7.2.1. The Grant Recipient shall open a separate bank account to be known as the Project Bank Account into which it receives the Consolidated Capital Grant from the SHRA and from which payments may be made to creditors for the purposes of meeting proven Project expenses in accordance with the Project Budget and as authorised by the SHRA.

7.2.2. The Grant Recipient shall further maintain a separate ledger account for the Project and provide the SHRA with true copies of such ledger account upon request.

## **7.3. Utilisation of the Capital Grant**

7.3.1. The Grant Recipient shall utilise the Consolidated Capital Grant solely for the purposes of implementing the Project, and for no other purpose whatsoever, and only in accordance with the Project Budget.

7.3.2. All costs incidental to the implementation of the Project, but not provided for in the Project Budget, shall be borne by the Grant Recipient. Such costs and expenses include, but are not limited to, rates, taxes, assessments and/or any other expenses relating to the Land as well as the costs of evicting any person/s who unlawfully occupy the Land and/or any Units.

7.3.3. Should there be any unspent portion of the Capital Grant at the Date of Completion, such funds shall be retained by the SHRA, with accrued interest if any (subject to clause 7.1.1 and 7.1.2 in relation to the interest) or returned to the SHRA by the Grant Recipient.



- 7.3.4. The consolidated capital grant quantum is capped within the Consolidated Capital Grant as indicated in the Contract Data Sheet and there will be no further funds.
- 7.3.5. If the SHRA discovers that the Grant Recipient was paid a drawdown per clause 7.1.5.4 above for an expenditure that is not connected to this Project, the SHRA reserves the right to claim back that amount from the Grant Recipient with interest or offset it from any future drawdown(s) by the Grant Recipient.

## **8. DEVELOPMENT PHASE**

### **8.1. Scope of Development**

- 8.1.1. The Grant Recipient undertakes to implement and complete the Development in accordance with the approvals from the various Appropriate Authorities subject to the Project Budget, Development Schedule, Applicable Legislation, the provisions of this Agreement and the Development Agreement.

### **8.2. Commencement and Completion of Development**

- 8.2.1. The Grant Recipient shall commence the Development immediately in line with the approved Development Schedule or such amended Development schedule agreed to by the SHRA and shall attain the Date of Completion within the period stipulated in the Development Schedule but shall not commence Construction prior to Financial Closure.
- 8.2.2. However, if the Grant Recipient commence Construction of the Development prior to Financial Closure, it shall do so at its own risk and at its own cost unless the SHRA agrees in writing to reimburse any moneys spent by the Grant Recipient prior to the Financial Closure.
- 8.2.3. Should the Grant Recipient believe that it will not be in a position to attain the Date of Completion within the period stipulated in the Development Schedule, or such amended Development schedule agreed to by the SHRA, the Grant Recipient shall submit a written request to the SHRA for an extension of the Date of Completion, motivating the reasons for such extension, and such request must be received by the SHRA not later than 90 (ninety) Business days prior to the agreed Date of Completion. The SHRA shall respond to the recipient within 14 (fourteen) Business days from date of receipt of the request.
- 8.2.4. An extension granted by the SHRA in terms of clause 8.2.3 shall not be unreasonably withheld and shall be on such further terms and conditions as the SHRA may reasonably impose. In the absence of further terms and conditions, the terms and conditions of this Agreement shall apply. By granting any extension, the SHRA shall not be deemed to have waived any rights or limit any future existing rights as set out in this Agreement.
- 8.2.5. The SHRA's Authorised Representative shall at all reasonable times, and on not less than 24 hours' prior written notice to the Grant Recipient, be

given such access to the Development and/or the Project and/or any Component thereof and any documentation and/or information in the possession of the Grant Recipient.

### **8.3. Business Plan and Development Schedule**

- 8.3.1. The Grant Recipient undertakes that it will exercise due effort and diligence to complete every stage of the Development in accordance with the Business Plan and Development Schedule or such amended Development schedule agreed to by the SHRA.
- 8.3.2. The SHRA and the Province shall be entitled to request the Grant Recipient to amend the Development Schedule from time to time in order to achieve the objectives of the Social Housing Investment Programme, provided that such amendments are reasonable and achievable in the circumstances.
- 8.3.3. The Grant Recipient shall not deviate from the Business Plan, Development Schedule and/or Project Budget without the prior written consent of the SHRA.

### **8.4. Delivery of Units**

- 8.4.1. The Grant Recipient shall deliver the number of units as undertaken in the Business Plan, the Project Financial Model, and the Contract Data Sheet.
- 8.4.2. All Units shall be completed in accordance with the design and Specifications agreed between the Grant Recipient, the SHRA and the Province in accordance with the requirements of the Appropriate Authorities.
- 8.4.3. The Grant Recipient shall allocate the units only to qualifying beneficiaries, as provided in 8.4.4 below.
- 8.4.4. The Grant Recipient undertakes that it will not allocate units for occupation by any person who does not qualify as a Primary Beneficiary or a Secondary Beneficiary.
- 8.4.5. The Grant Recipient shall not be entitled in any circumstances to sell, sub-let, encumber or dispose of the units other than in accordance with this Agreement and the Applicable Legislation, nor shall it be entitled to utilise any units, or any part of the Land, for any purpose other than for the purpose for which the Consolidated Capital Grant was provided.

### **8.5. Close out of the Development phase**

- 8.5.1. Upon close out of the Development phase, the following documents must be submitted as proof to the SHRA:
  - 8.5.1.1. A completion certificate;
  - 8.5.1.2. Final account detailing the expenditure of the CCG;
  - 8.5.1.3. The occupation certificates.,

- 8.5.1.4. Tenant schedule detailing that the units have been fully tenanted;  
and
- 8.5.1.5. The close out report.

## **9. MANAGEMENT PHASE**

### **9.1. Introduction**

- 9.1.1. The management phase must be initiated 180 business days prior to the completion of the first completed units.
- 9.1.2. The Grant Recipient shall be allowed 90 Business Days' grace period to tenant the completed units (upon practical completion).
- 9.1.3. The Grant Recipient shall be obliged to comply with various obligations relating to reporting, record keeping and monitoring as provided for in the SH Act and Regulations.

### **9.2. Pre-occupation requirements**

- 9.2.1. Prior to permitting the occupation of any Units, the Grant Recipient shall be required to provide to the SHRA and the Province, for their approval, the following documents: -
  - 9.2.1.1. Practical completion certificates, occupation certificates and clearance certificates from the Appropriate Authorities;
  - 9.2.1.2. Compliance and/or works completion certificates issued by all the Consultants;
  - 9.2.1.3. Proof of insurance in respect of the Project and all components of the Project;
  - 9.2.1.4. The Grant Recipient's tenant allocation policy, which shall be based on the principles of fairness, transparency and consistency and shall be in accordance with the Business Plan, the Application and Applicable Legislation;
  - 9.2.1.5. The proforma lease agreement that will be provided to beneficiaries;
  - 9.2.1.6. Tenant vetting processes and procedures;
  - 9.2.1.7. Procedures for monitoring rental payments and escalations;
  - 9.2.1.8. Policies and procedures for management of the Units;
  - 9.2.1.9. Policies and procedures for maintenance of the Units;
  - 9.2.1.10. Tenant training material, processes and procedures;
  - 9.2.1.11. House rules and regulations;

9.2.1.12. Draft complaints management register;

9.2.1.13. Maintenance plan.

### **9.3. Allocations**

9.3.1. The Grant Recipient shall allocate the Units for occupation in line with the 30/70 split principle as set out in the Social Housing policy or as determined by any guideline provided by the SHRA.

9.3.2. In this regard the Grant Recipient acknowledges that the quantum of the Consolidated Capital Grant was based on the proposed percentage allocation to Primary Beneficiaries and to Secondary Beneficiaries and accordingly the Grant Recipient shall not be entitled to deviate from such percentage allocations, unless with the prior written consent of the SHRA and the Province, and in accordance with such terms and conditions as the SHRA and the Province may impose.

9.3.3. The Grant Recipient shall enter into lease agreements with each Beneficiary, after having explained to each Beneficiary his/her obligations in terms of the lease agreement, the process for rental payments, consequences of breach and all other material terms of such lease agreements.

9.3.4. The Grant recipient shall be obligated to schedule a tenant training workshop prior to a tenant taking occupation.

### **9.4. On-going Management**

9.4.1. In general, the Grant Recipient is required to comply with all Applicable Legislation, and without limiting the generality of the foregoing, with the provisions of the Social Housing Act, in its relationship with tenants/Beneficiaries.

9.4.2. The Grant Recipient shall ensure that the tenants establish a tenant committee, consisting of a fair representation from Primary Beneficiaries and Secondary Beneficiaries. The tenant committee shall have the purpose of formal communication between the Grant Recipient and tenants in general and shall also be a forum through which the Grant Recipient updates tenants on matters of interest to tenants relating to the Units and the Project in general and shall be the forum through which the Grant Recipient provides tenants with on-going education and training relating to their rights and obligations. The tenant's committee shall be required to have a formal constitution, with elected office bearers with fair, transparent and inclusive policies.

9.4.3. The Grant Recipient shall implement a tenant management plan, subject to the SHRA's approval, which shall be based on Best Industry Practice and which shall include amongst other things: -

9.4.3.1. Collecting rental due in terms of the lease agreements;

- 9.4.3.2. Monitoring tenant activities in accordance with the terms of the lease agreements and taking corrective or enforcement action, if needed, in the event of a breach of the terms of such lease agreements;
- 9.4.3.3. Calculating and notifying tenants of rent escalations under the lease agreements after such amendments to the lease agreement have been approved by the SHRA.
- 9.4.3.4. Responding to and addressing with tenants, concerns and complaints and instituting a dispute resolution process to resolve issues;
- 9.4.3.5. Maintaining updated files with relevant information of each tenant, including all correspondence, lease agreements and any amendments, as well as a register with a minimum of the following tenant details for each unit: -
  - 9.4.3.5.1. Names;
  - 9.4.3.5.2. Identity numbers;
  - 9.4.3.5.3. Birth certificates for children;
  - 9.4.3.5.4. Cell numbers;
  - 9.4.3.5.5. E-mail addresses;
  - 9.4.3.5.6. Number of occupants per Unit;
  - 9.4.3.5.7. Job titles;
  - 9.4.3.5.8. Name and contact details of employer/s;
  - 9.4.3.5.9. Combined salaries of occupants of the Unit;
  - 9.4.3.5.10. Monthly rental; and
  - 9.4.3.5.11. Deposit held by the Grant Recipient.
- 9.4.3.6. The Grant Recipient shall in addition to the foregoing details retain copies of the following documents in each tenant file: -
  - 9.4.3.6.1. Certified copies of identity books;
  - 9.4.3.6.2. Copies of salary slips;
  - 9.4.3.6.3. Bank statements;
  - 9.4.3.6.4. Security and credit checks;
  - 9.4.3.6.5. Deeds Office searches in respect of each occupant;
  - 9.4.3.6.6. HSS search for any previous subsidy received by an occupant of the Unit.
- 9.4.4. The Grant Recipient shall be obliged to update all tenant information in the event that a tenant leaves a unit or moves into a unit and all such information shall be available to the SHRA at any time for inspection and verification.
- 9.4.5. The Grant Recipient shall adopt and compile its own corporate governance policy, as contemplated in section 15 of the Social Housing Act, in its on-going management of the Project.

9.4.5.1. The Grant Recipient shall be required to implement a maintenance plan, subject to the SHRA's approval, for the undertaking of repairs, maintenance and upkeep as may be necessary to keep the units in a clean, safe and secure condition. In this regard the Grant Recipient shall be required to conduct physical inspections of all structures forming part of the Development on a regular basis and to record and note all defects that require attention. The maintenance plan shall include procedures for:

- 9.4.5.1.1. Emergency repairs;
- 9.4.5.1.2. Routine maintenance; and
- 9.4.5.1.3. Planned maintenance.

9.4.6. The implementation of the maintenance plan shall ensure that the buildings and Land are maintained and repaired to the same condition they were on the Date of Completion, fair wear and tear excepted.

9.4.7. The SHRA shall be entitled to require the Grant Recipient to update or amend its maintenance plan from time to time, to meet changing circumstances, tenant complaints and any other relevant considerations.

9.4.8. The Grant Recipient is to establish a Project maintenance reserve fund commencing on project completion. The maintenance commitment will be as per the approved Quick Scan C (Annexure "A9"). The funds of the maintenance reserve fund shall be ring fenced in an interest-bearing account and the SHRA shall monitor this account from time to time including the maintenance commitment as per the approved maintenance plan for the Project.

## **10. USE OF SUB-CONTRACTORS AND B-BBEE**

**10.1.** The Grant Recipient and/or Contractor and/or Developer shall not be permitted to appoint any sub-contractor/s to execute this agreement or any part thereof, without the prior written consent of the SHRA and the Province.

**10.2.** In the event the Grant Recipient engages subcontractors, and subject to the provisions of clause 10.1. above, the Grant Recipient shall include its obligations under this Agreement in its contracts with its subcontractors and/or agents and shall provide that such obligations shall be fulfilled in the same manner and to the same extent, as the Grant Recipient is obliged thereto.

**10.3.** The Grant Recipient shall not be released from its obligations under this agreement by any arrangement whatsoever with its subcontractors and/or agents in the event of the latter breaching any of the provisions of the agreement or conditions thereto.

**10.4.** In the furtherance of the objectives of the Preferential Procurement Policy Framework Act, 2000 read with Preferential Procurement Regulations and transformation in the social housing sector, the Grant Recipient must appoint a

contractor and/or developer which is at least 51% owned by black people, subject to clause 10.1. above.

**10.5.** Furthermore, the Grant Recipient and/or Contractor and/or Developer must appoint a subcontractor/s subject to clause 10.1 above that falls within the categories below: -

- 10.5.1. EME or QSE which is at least 51% owned by black people; or
- 10.5.2. EME or QSE which is at least 51% owned by black people who are youth; or
- 10.5.3. EME or QSE which is at least 51% owned by black people who are women; or
- 10.5.4. EME or QSE which is at least 51% owned by black people with disabilities; or
- 10.5.5. EME or QSE which is 51% owned by black people living in rural or underdeveloped areas of townships; or
- 10.5.6. A cooperative which is at least 51% owned by black people or women; or
- 10.5.7. An EME or QSE which is at least 51% owned by black people who are military veterans.

## **11. PERFORMANCE REQUIREMENTS**

### **11.1. Performance Standards**

11.1.1. All obligations to be performed by the Grant Recipient, Consultants, Contractor/s, the Developer and other agents appointed by the Grant Recipient shall be performed, in: -

- 11.1.1.1. Accordance with the terms of this Agreement,
- 11.1.1.2. Accordance with Best Industry Practice;
- 11.1.1.3. Using all reasonable care and skill and taking all reasonable steps to prevent injury, death and/or damage to any person, property and/or the environment;
- 11.1.1.4. In compliance with all Applicable Legislation and the consents of the Appropriate Authorities and all applicable procurement laws, that may be required to be complied with in the circumstances;
- 11.1.1.5. In a manner that does not conflict with the SHRA's obligations in discharging its statutory functions and duties; and
- 11.1.1.6. In a manner that is proactive, open, transparent, accountable, efficient and fair.

## **11.2. Communications**

- 11.2.1. In addition to its obligations in terms of section 15 of the Social Housing Act, the Grant Recipient shall comply with the obligations set out hereinunder;
- 11.2.2. The Grant Recipient shall appoint Authorised Representatives who shall represent it for the purposes of this Agreement. The Grant Recipient shall notify the SHRA and the Province by no later than 5 Business Days after the Signature Date, of the identify and contact details of their Authorised Representatives and shall advise the SHRA of changes to its Authorised Representatives and their up to date contact details from time to time.
- 11.2.3. The SHRA shall notify the Grant recipient and the Province by no later than 5 Business Days after the Signature Date, of the identify and contact details of their Authorised Representatives and shall advise Grant Recipient of changes to its Authorised Representatives and their up to date contact details from time to time.
- 11.2.4. The Grant Recipient shall nominate an Authorised Representative, who will be responsible for dealing with matters around the Consolidated Capital Grant and who will be required to report to the SHRA and another Authorised Representative who will be responsible for the matters around technical issues and who will be required to report to the SHRA and the Province.
- 11.2.5. Where practical, all correspondence between the Grant Recipient, the SHRA and the Province shall also be copied to the CEO of the Grant Recipient in order to ensure that management at the highest level of the Grant Recipient is informed at all times of events and progress.
- 11.2.6. The Authorised Representative of the Grant Recipient as well as the Consultants shall be required to be available: -
  - 11.2.6.1. During the Development Phase and Management Phase, mandatory site meetings with the SHRA and the Province as and when required;
  - 11.2.6.2. During monthly performance meetings at which issues of performance standards will be discussed and, where necessary, rectification measures will be discussed and agreed upon by the Authorised Representatives, the SHRA and the Province; and
  - 11.2.6.3. During emergency/ad hoc meetings to address unforeseen matters that require urgent attention.

## **11.3. Reports and Record Keeping**

- 11.3.1. In addition to its obligations of the grant recipient shall comply with section 16 of the Social Housing Act and the Regulations. The Grant Recipient shall comply with the obligations set out hereinunder:



- 11.3.2. The Grant Recipient shall provide the SHRA, by no later than the 5th Business Day of each month, with a written monthly performance report in relation to the preceding month which shall include: -
- 11.3.2.1. An updated progress report in the form set out in Annexure "C1";
  - 11.3.2.2. An updated financial report in the form set out in Annexure "C2", accompanied by the most recent copy of the Project Operational Bank Account Statement;
  - 11.3.2.3. Where required, a notification of achievement of a key milestone being Conditions Precedent, Financial Closure, and submission of draft Tenant and Maintenance Plans in the form of Annexure "C3";
  - 11.3.2.4. Where required and by agreement with the SHRA, an updated Project Cost and Cash Flow Schedule in the form contemplated in Annexure "A9";
  - 11.3.2.5. Where required and by agreement with the SHRA, an updated Project Budget, as contemplated in Annexure "B8", together with an updated Project Financial Model demonstrating the continued financial viability of the Project;
  - 11.3.2.6. The Tenant Audit Schedule setting the number of Units occupied in the Project at that date and any other information that the SHRA and the Province may reasonably request to form part of the monthly Tenant Audit Schedule, in the form contemplated in Annexure "C4";
  - 11.3.2.7. Updated Job Creation and B-BBEE Statistics relating to the Project, in the form contemplated in Annexure "C6".
- 11.3.3. The Grant Recipient shall provide the SHRA and the Province, by no later than the 30th of each Month, in relation to that Month, the copies of the following:
- 11.3.3.1. design, technical site and/or Project meetings minutes, as contemplated in Annexure "D1";
  - 11.3.3.2. monthly progress reports from the professional team members and Contractors, as contemplated in Annexure "D2" and a copy of the progress report as contemplated in Annexure "C1";
  - 11.3.3.3. monthly cost reports by the quantity surveyor, as contemplated in Annexure "D3";
  - 11.3.3.4. health and safety audits, as contemplated in Annexure "D4";
  - 11.3.3.5. environmental audits, as contemplated in Annexure "D5";

- 11.3.3.6. all quality reports by Consultants, as contemplated in Annexure "D6";
- 11.3.3.7. any information or documentation which the SHRA may request, as contemplated in Annexure "D7".
- 11.3.4. The Grant Recipient shall provide the Project Review Consultant with the following:
  - 11.3.4.1. Copies of all Invoices to the Grant Recipient to prove actual expenditure in respect of the Project, as contemplated in Annexure "E1", together with the monthly Project Operational Bank Statements;
  - 11.3.4.2. Tenant audit schedule, as contemplated in Annexure "E2";
  - 11.3.4.3. Copies of any documents and/or records which the SHRA may request, including financial records, maintenance records, supply invoices and similar documentation, which may reasonably be necessary for the SHRA to satisfy itself of the Grant Recipient's compliance with its obligations in terms of Applicable Legislation and this Agreement, as contemplated in Annexure "E3".
- 11.3.5. Where the documents referred to above are not required or are provided by the Grant Recipient on a monthly basis, and/or in respect of any other information requested by the SHRA, the Grant Recipient shall furnish such documents and such information within 5 Business Days of receipt of the relevant request.
- 11.3.6. The Grant Recipient shall keep at its head office originals of all document material to the implementation of the Project and all documents evidencing its expenditure in terms of this Agreement.
- 11.3.7. The Grant Recipient shall ensure that all licences, permits, registrations and approvals required in terms of all Applicable Legislation shall remain valid and in force for the duration of this Agreement.
- 11.3.8. The Grant Recipient shall advise the SHRA immediately of any change in key personnel involved in the implementation of the Project and shall further advise the SHRA as soon as it is reasonably known to the Grant Recipient that any one or more of the objectives of the Project may not be achieved timeously or at all.
- 11.3.9. In addition to any obligations in this Agreement with regard to the keeping of any records, where any communication amongst the Parties is required to be in writing, the Parties shall retain records of such communication for the duration of this Agreement and for 3 (three) years thereafter. Where communication is not in paper form, then Parties, exercising reasonable judgment as to the importance of the information contained in such communication, shall be required to convert such

information into paper form and retain it in terms of this clause 11.3.8. above.

#### **11.4. Monitoring and Evaluation**

- 11.4.1. The Grant Recipient shall be obliged to monitor and evaluate the progress of the Development and measure such progress against agreed milestones and the Development Schedule.
- 11.4.2. The Grant Recipient shall be obliged to advise the SHRA and the Province in writing within a reasonable period after becoming aware of any problem that has arisen and/or any matter which may negatively affect the Grant Recipient's ability to perform in terms of this Agreement, together with its undertaking to remedy the failure or shortfall and the time period within which it will be remedied.
- 11.4.3. The SHRA and the Province shall be entitled to monitor and evaluate the progress, quality and overall performance of the Project, and the performances of the Grant Recipient, Developer and/Contractor and Consultants, from time to time and in this regard the Grant Recipient and the Developer and/Contractor agree to co-operate with the SHRA and the Province and shall provide the SHRA and the Province upon request with: -
  - 11.4.3.1. Access to the Project on reasonable notice;
  - 11.4.3.2. Meetings with Consultants, Developer and/Contractor/s and any other person that the SHRA and the Province may reasonably wish to meet; and
  - 11.4.3.3. Access to documents, reports and other information on reasonable notice.
- 11.4.4. The SHRA may appoint agents to review the progress and performances in respect of the Project, any acts or omissions by the Grant Recipient any other person who is contracted or engaged by the Grant Recipient.
- 11.4.5. The SHRA, having conducted a review of the progress and/or performance in respect of the Development and Project and/or the individual performances of the Grant Recipient or any other person rendering services to the Development and/or the Project, is of the reasonable view that the progress or performance is unsatisfactory for any reason, the SHRA shall notify the Grant Recipient, setting out the aspects or elements which are unsatisfactory and providing the Grant Recipient with a reasonable opportunity to remedy the failures. If the Grant Recipient does not remedy the failures to the satisfaction of the SHRA and the Province within the time period provided, then the SHRA shall be entitled to exercise its rights in terms of clause 14 below.

## **11.5. Review Meetings**

- 11.5.1. The SHRA, the Province and the Grant Recipient shall conduct review meetings at least once every quarter or at other intervals as reasonably required by the SHRA and the Province.
- 11.5.2. Review meetings shall be conducted by the parties to facilitate the levels of communication between the parties and shall provide a platform from which to evaluate the performance levels of the Grant Recipient in compliance with the project and this agreement.
- 11.5.3. Minutes shall be kept during the review meeting and shall be retained for future reference.
- 11.5.4. The Review meetings shall: -
  - 11.5.4.1. Review the compliance with this agreement;
  - 11.5.4.2. Compare the actual project progress versus the required level of service performed by the Grant Recipient;
  - 11.5.4.3. Determine and agree on corrective actions and objectives required to rectify non-performance or under-performance in the required level of service; and
  - 11.5.4.4. Any other issues that may be pertinent and relevant to all the parties.

## **12. WARRANTIES**

**12.1.** The Grant Recipient hereby warrants that as at Signature Date and for the duration of the Development Phase and the duration of this Agreement that: -

- 12.1.1. It has all the necessary authority to conclude this Agreement;
- 12.1.2. It will exercise due effort and diligence to ensure that all contracts, sub-contracts, consultancies and other contracts necessary for the successful performance in terms of this Agreement will be executed in accordance with the required authority and will be in accordance with all Applicable Legislation;
- 12.1.3. At the Signature Date, there is no pending or current litigation, arbitration, investigation or administrative proceeding(s) in relation to it and to the best of its knowledge and belief having made all reasonable enquiries, no pending proceedings in relation to any of its shareholders or members as the case may be, which proceeding is likely to have a material adverse effect on its ability to perform in terms of this Agreement;
- 12.1.4. Neither it nor any of its shareholders or members, as the case may be, are subject to any obligation or non-compliance which is likely to have

a complete adverse effect on its/their ability to perform in terms of this Agreement;

- 12.1.5. No proceedings or any other steps have been taken, or to the best of its knowledge having made all reasonable enquiries, threatened, for the winding up or liquidation (whether voluntary or involuntary, professional or final), judicial management (whether provisional or final) or deregistration of it, its shareholders or members, as the case may be or for the appointment of a liquidator or similar officer over any of its/their assets;
- 12.1.6. Neither it, nor its shareholders or members as the case may be, is in default in respect of any judgment, order, award, interdict or any other similar ruling of any other court or administrative authority;
- 12.1.7. All information disclosed by it or on behalf of it to the SHRA at any time up to the Signature Date, and in particular during the Application process, is true, complete and accurate in all material respects to the best of its knowledge and it is not aware of any material facts or circumstances not disclosed to the SHRA which would, if disclosed, be likely to have an adverse effect on the SHRA's decision (acting reasonably) to have granted the Capital Grant;
- 12.1.8. Together with its service providers it has all the necessary skills, training and experience to perform its obligations in terms of this Agreement and in accordance with the standards required in terms of this agreement and it has selected and will select personnel, Contractors, sub-contractors and Consultants who similarly have the necessary skills, training and experience to perform obligations in terms of this Agreement in accordance with the standards required by this Agreement. In this regard it has assessed its personnel, Contractors, sub-contractors and Consultants prior conduct, competencies and service records and is satisfied that there is nothing which would prevent such persons from performing effectively in terms of this Agreement and/or which should have been brought to the attention of the SHRA;
- 12.1.9. Its own constitutional documents and records are up to date and true and correct in all respects;
- 12.1.10. It does not have any liabilities (whether actual or contingent) which may impact on its ability to perform in terms of this Agreement;
- 12.1.11. It is not liable, whether contingently or otherwise, for the liabilities of any third party, whether as surety, co-principal debtor, guarantor, indemnitor or otherwise;
- 12.1.12. Its total borrowings do not exceed any limitation on its borrowing powers contained in its constitutional documents nor have any limits been imposed on its borrowings by its bankers and it has not received formal or informal notification from any lenders of funds requiring

payment or all or part of any loans, nor has it received from such lenders any notice of default that is still current;

- 12.1.13. It has and/or will institute the necessary financial, monitoring and tracking internal systems necessary to keep records, monitor and evaluate performance and report to the SHRA as required in terms of this Agreement;
- 12.1.14. Any other agreements entered into by the Grant Recipient shall not conflict with any of the provisions of this Agreement and shall take into account its obligations in terms of this Agreement;
- 12.1.15. That between the Signature Date and the Effective Date it will not incur any liability other than in the normal course of business and will not enter any material agreements which may impact upon its ability to perform in terms of this Agreement;
- 12.1.16. It will retain the same corporate structure and will have the same shareholders or members as the case may be for the duration of this Agreement and if there is any change in the corporate structure or the holders of equity or decision makers after the date of the award of the Consolidated Capital Grant, a written approval of such a change shall be promptly sought from the SHRA;
- 12.1.17. It shall at all times comply with the latest applicable / approved Business Plan, Project Budget, Project Financial Model, and all other documents and representations whether as part of the Application or otherwise, which would reasonably have influenced the SHRA to grant the Consolidated Capital Grant and/or to pay any or all of a particular Draw Down;
- 12.1.18. It shall ensure that its procurement processes and practices take cognisance of applicable procurement legislation, regulations and policies, particularly with respect to Broad Based Black Economic Empowerment principles, particularly the Preferential Procurement Regulations 2017;
- 12.1.19. It shall at all times comply with all Applicable Legislation;
- 12.1.20. It has submitted and received in principle approval from the Appropriate Authorities for the Project and from Financiers as provided during the application process, so that at the Effective Date it is in a position to commence and complete the Development and the Project in its entirety subject to Financial Closure, it being recorded that the commencement of any construction prior to Financial Closure shall be at the risk of the Grant Recipient;
- 12.1.21. Shall not directly or indirectly jeopardise or prejudice the State's investment in Social Housing and in this regard shall not offer the Development, the Project, or any element or aspect of it as security for any loan, other than in terms of the Funding Agreements and this Agreement, and shall not be entitled to cede any of its rights in and to

the Development and/or the Project to any person or entity, other than the Financiers, and as fully disclosed to the SHRA and the Province, for the duration of this Agreement unless agreed between the Parties;

12.1.22. The representations and warranties given by the Grant Recipient shall be: -

12.1.22.1. Made as at the Signature Date and for the duration of this Agreement as the case may be and remain applicable;

12.1.22.2. A separate warranty and will in no way be limited or restricted by inference of the terms of any other warranty or by any other words in this Agreement; and

12.1.22.3. Deemed to be material and to be a material representation inducing the SHRA to award the Consolidated Capital Grant and enter into this Agreement;

12.1.23. The Grant Recipient indemnifies and agrees to hold the SHRA harmless against all damages, loss, costs, charges and expenses whatsoever incurred by the SHRA, arising directly or indirectly as a consequence of a breach of warranty by the Grant Recipient.

### **13. DISPOSAL OR TRANSFER OF THE DEVELOPMENT**

**13.1.** For the duration of this Agreement, the Grant Recipient is prohibited from transferring, selling, donating or in any other way disposing ("disposal") of any portion of the Development to a SHI, ODA, any legal entity or to any other person, without the prior written consent of the SHRA, and upon such terms and conditions as the SHRA may reasonably impose.

**13.2.** Any purported disposal of the Development or any portion of the Development or Project without the SHRA's prior approval shall be void.

**13.3.** The Grant Recipient shall prior to the registration of any township establishments and/or consolidations and /or any subdivisions of the Land at the Deeds Office, or in the event that the Grant Recipient is not the registered owner of the Land on the date of signature of this Agreement, then simultaneously with the registration of ownership of the Land into the name of the Grant Recipient then the Grant Recipient shall at its cost register a notarial deed of restriction of transfer in favour of the SHRA in terms of which the Grant Recipient is prohibited from transferring, selling, donating or in any way disposing of the Land or any portion thereof without the prior written consent of the SHRA and upon such reasonable terms and conditions as the SHRA may impose. Where the Grant Recipient has entered into a long lease on the property, a similar Notarial Deed of Restriction shall be registered over the property for the duration of the long lease."

**13.4.** Subject to clause 15 below, on termination of this Agreement, whether as a result of breach by the Grant Recipient or by agreement with the SHRA, the Project may be retained by the Grant Recipient on such terms and conditions as agreed with the SHRA or may be transferred to another Social Housing Institution,

another delivery agent or to the SHRA upon such terms and conditions as may be agreed and approved by the SHRA.

**13.5.** It is expressly agreed that on termination of this Agreement, for whatever reason, the Grant Recipient shall be entitled to realise a return on the Grant Recipient's Contribution and/or the Debt Funding but shall be expressly prohibited from realising any return from the Consolidated Capital Grant, which shall not be regarded as the property asset of the Grant Recipient for the purposes of valuing the Project in the event of its disposal, or retention by the Grant Recipient or otherwise.

## **14. DISPUTE RESOLUTION**

### **14.1. Separate, divisible Agreement**

14.1.1. This clause is a separate, divisible Agreement from the rest of this Agreement and shall: -

14.1.1.1. Not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause; and

14.1.1.2. Remain in effect even if the Agreement terminates or is cancelled.

### **14.2. Disputes**

14.2.1. For the purposes of this clause 14, the term "dispute" shall be interpreted in its widest sense and shall include any dispute or difference in connection with, pursuant to or in respect of the conclusion, existence or implementation of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties' respective rights and obligations in terms of and arising out of this Agreement or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.

14.2.2. Save as otherwise provided for in this Agreement, where a different procedure is specified, any dispute between the Parties arising in connection with this Agreement or its subject matter shall be resolved in accordance with the provisions of this clause 14.

14.2.3. The Parties shall use their best endeavours to resolve any dispute arising in terms of this Agreement, including considering the referral of same to mediation by agreement between the Parties, prior to resorting to the steps as set out below.



### **14.3. Resolution by Chief Executives**

- 14.3.1. A dispute not resolved in terms of clause 14.2.3 may be referred by either Party to the Chief Executive, or such other senior executive, of the Parties who shall attempt to resolve the matter within 5 Business Days of the dispute being so referred to them. If no resolution can be achieved within that period, the dispute or difference must be settled by way of arbitration as provided for below.

### **14.4. Arbitration**

- 14.4.1. Failing resolution of a dispute in terms of clause 14.3 either Party ("Referring Party") shall be entitled to refer a dispute to arbitration in terms of this clause 14.4 by notifying the other Party of its intention to do so ("Arbitration Notice").
- 14.4.2. The arbitration proceedings shall be conducted in accordance with the arbitration laws of the Republic of South Africa and, subject to clause 14.4.8, in English.
- 14.4.3. The arbitration proceedings must be conducted on an informal basis, it being the intention that a decision should be reached as expeditiously and inexpensively as possible, after the date of the Arbitration Notice, subject only to the due observance of the principles of justice.
- 14.4.4. In the event that the Parties have failed to agree on an arbitrator within 5 (five) Business Days of the Arbitration Notice, or if an arbitrator agreed upon by the Parties cannot or does not accept an invitation to arbitrate and the Parties fail to agree on an alternative arbitrator within 5 Business Days of the Parties being informed of this, the chairman of the Johannesburg Bar Council shall be asked to nominate an arbitrator on an urgent basis, who must be an advocate with at least 10 (ten) years' experience in practice at the bar, who will be appointed in writing by the SHRA.
- 14.4.5. Within 7 Business Days after appointment of the arbitrator, each Party must submit to the arbitrator a full written statement of its case, in which must be set out the evidence, facts, submissions and expert opinion as such Party deems necessary to support its contentions in regard to the matter(s) in dispute and simultaneously serve a copy thereof on the other Party. The arbitrator may, on good cause being shown, grant the Party an extension of not more than 7 (seven) Business Days to submit such statement of case. If a Party fails to submit a statement of case within such time limits, the arbitrator may proceed to make an award without it.
- 14.4.6. Within 5 (five) Business Days after receipt of the copy of the other Party's statement of case, either Party may submit a further supplementary statement to the arbitrator and must serve a copy thereof on the other Party.
- 14.4.7. If the arbitrator considers that the matter cannot be decided on the papers before it, the arbitrator may call for other evidence or for witnesses to

testify at a place determined by the arbitrator. Witnesses must testify in the presence of both Parties, who may question such witnesses. The arbitrator may appoint a commissioner to take evidence of any person within or outside South Africa and forward it to the arbitrator as if it were a commissioner appointed by the court.

14.4.8. Subject to this clause 14.4.8, the arbitrator shall have discretion and all powers allowed by law to ensure the just, expeditious, economical and final determination of the dispute, including the matter of costs, and without derogating from the generality of the foregoing, shall also have the power: -

14.4.8.1. Subject to clause 14.4.2 to determine the official language in which the proceedings shall be conducted and to order any Party to cover the cost of an interpreter;

14.4.8.2. To determine the time and venue of the hearing, and the hours during which it will take place, it being recorded that the arbitration shall take place in the Province in which the SHRA's head office is located;

14.4.8.3. To strike out or dismiss a claim or defence on grounds of failure by a Party to comply timeously with any ruling or interim award by the arbitrator, or on grounds of delaying conduct by a Party which is likely to cause substantial prejudice to the other Party;

14.4.8.4. To proceed with the arbitration in the absence of or without hearing a Party who is in default or fails to appear or to comply with any ruling or interim award of the arbitrator;

14.4.8.5. To make any ruling or give any direction necessary or advisable for the just, expeditious, economical and final determination of all disputed matters raised in the statements of case, including the matter of costs;

14.4.8.6. To determine the validity of this Agreement and order its rectification;

14.4.8.7. To permit the amendment of a Party's statement of case and require a Party to amend its statement of case so that it is not evasive and, on application of a Party, to strike out from the other Party's statement averments which are vague, scandalous, vexatious or irrelevant;

14.4.8.8. To make rulings or give interim awards on matters of onus, admissibility of evidence and procedure, including ones of an interlocutory or interim nature, and rulings or interim awards relating to costs and the implementation of interim or final awards;

- 14.4.8.9. To decide matters submitted for arbitration on principles based on what is equitable in the circumstances in his/her opinion;
- 14.4.8.10. To make such findings of fact and law as may be required for purposes of the proceedings and the award, including an order as to costs, and including an award whereby a Party is restrained from any conduct, either on an interim or final basis;
- 14.4.8.11. In determining the procedure for the arbitration, and after hearing the Parties, to direct: -
  - 14.4.8.11.1. That the dispute must be determined summarily at an informal hearing attended by both Parties;
  - 14.4.8.11.2. The summary trial of an issue to decide whether any issue or point has no reasonable prospect of success and should be dismissed or struck out, or as to whether an interim award should be made for a sum indisputably due (whether on account of a debt or damages or on any other basis);
  - 14.4.8.11.3. That a Party should furnish more particulars or details on any issue;
  - 14.4.8.11.4. That a Party must produce or make available for inspection to the other Party and to the arbitrator any document, property or thing under the control of the first Party;
  - 14.4.8.11.5. That there shall be one or more inspections in loco;
  - 14.4.8.11.6. That there should be discovery on oath or otherwise of documents and recordings (subject to valid legal objection), either in regard to all relevant matters or in regard to issues determined by the arbitrator;
  - 14.4.8.11.7. That Parties must provide each other with a list of names of witnesses to be called, with a summary of their evidence and that, save with the leave of the arbitrator, no witness shall be called in respect of whom such name and summary has not been provided; and
  - 14.4.8.11.8. That the hearing should proceed on documents (including written submissions), only, without the presentation of other evidence.
- 14.4.9. The arbitrator must at all times have regard to the intention of the Parties underlying this Agreement and must resolve the dispute in a summary

manner. The Parties must in any event procure that the arbitrator shall do everything in his/her power to make an award within 1 (one) Month after he/she was appointed, or as soon as possible thereafter.

14.4.10. Any award made by the arbitrator: -

14.4.10.1. Shall be final and binding on the Parties;

14.4.10.2. Shall be carried into effect forthwith by the Parties;

14.4.10.3. May be made an order of court by a Party only if the other Party fails to heed the terms of the award; and

14.4.10.4. May include an order directing the unsuccessful Party to pay the costs of the arbitrator and the expenditure incurred by the successful Party.

14.4.11. This clause 14.4 constitutes each Party's irrevocable consent to arbitration proceedings and neither Party shall be entitled to withdraw from such proceedings or to claim that it is not bound by this clause 14.4.

#### **14.5. Application to Court for Urgent Interim Relief**

14.5.1. Nothing contained in this clause 14 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

### **15. BREACH**

**15.1.** In the event that the Grant Recipient commits a breach of this Agreement or any of its clause(s), then the SHRA shall be entitled, in addition to and without prejudice to any other right it may have in law and/or in terms of this Agreement, to enforce specific performance in terms of this Agreement, or to cancel this Agreement forthwith on notice to the Grant Recipient. If the SHRA cancels this Agreement: -

15.1.1. The SHRA shall be entitled to a refund of the Consolidated Capital Grant or the value of the of the social housing portion of the project at the date of breach together with interest calculated at the interest rate stipulated in clause 2.1.43 from date of payment of the Consolidated Capital Grant to the Grant Recipient to date of repayment by Grant Recipient to the SHRA; or

15.1.2. Require transfer of the Land or the Project to the SHRA's nominee including SHI or another delivery agent, as provided in clause 13.4 above and for such consideration, if any, taking into account all losses suffered by the SHRA and/or reasonably likely to be incurred by the SHRA as a result of Grant Recipient's breach.

**15.2.** Additionally, the following acts or actions by the Grant Recipient shall constitute material breach of this Agreement and entitle the SHRA to remedies stated in 15.1 above: -

- 15.2.1. Committing or attempting to commit an act of insolvency (as defined in the Insolvency Act No. 24 of 1936);
- 15.2.2. Compromising with its creditors or an assignment in favour of its creditors;
- 15.2.3. Agreeing to carry out this Agreement under the supervision of a committee representing its creditors;
- 15.2.4. Being liquidated, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction to which the SHRA has given its prior written consent) or being placed under business rescue supervision or resolution is passed in respect of any of the foregoing;
- 15.2.5. Having a judgment of a material nature taken against it, which is likely to affect its status as a going concern, and failing to satisfy or applying to have such judgment set aside within 7 Days of becoming aware of it;
- 15.2.6. Delegating, ceding or sub-contracting this Agreement or part of this Agreement in contravention of the provisions of this Agreement, without having obtained the SHRA's prior written consent;
- 15.2.7. undergoing a change of control, without the prior written approval of the SHRA;
- 15.2.8. Ceasing to carry on business or provide all or a substantial part of the obligations undertaken in terms of this Agreement;
- 15.2.9. Offering, promising or giving a bribe or other gift or remuneration to any officer or employee in the service of the SHRA in connection with obtaining, executing or implementing this Agreement;
- 15.2.10. Acting in a fraudulent manner in obtaining or executing a contract with any government department, provincial administration, a municipality, public body, company or person;
- 15.2.11. Approaching any official or agent of the SHRA or any person in the service of the state, province or municipality in order to influence the award or continuation of this Agreement in its favour;
- 15.2.12. Abandoning or otherwise repudiating any of its obligations in terms of this Agreement and/or the Development Agreement and/or any Applicable Legislation;
- 15.2.13. Breaching any provision of any Funding Agreement, which breach will result in the Financiers calling up all or a portion of their loans, attaching

any assets of the Grant Recipient and/or in any way jeopardising the viability of the Project.

### **15.3. The SHRA's further rights on Termination**

- 15.3.1. In event of Termination of this Agreement in terms of this clause 15, the SHRA may immediately appoint auditors to check and verify all relevant books, records and other data of the Grant Recipient and/or the Developer, who undertake to give their full co-operation to the SHRA in this regard and to make all such information available to the SHRA on request.
- 15.3.2. The Grant Recipient undertakes, that for a period of 30 Days prior to the Termination Date, or such reasonably longer or shorter period as the SHRA may in its discretion determine, it shall co-operate fully with all service providers, including the SHRA, who may be rendering services after the Termination Date, and in this regard do all things reasonably necessary in order to ensure appropriate knowledge and skills transfer so that the Project can continue uninterrupted after the Termination Date.

### **15.4. Claims against Third Parties**

- 15.4.1. The Grant Recipient hereby grants to the SHRA a step-in right to take cession of any claim which the Grant Recipient may have against a third party directly or indirectly in respect of the utilisation of the Consolidated Capital Grant during the subsistence of this Agreement.
- 15.4.2. Should the SHRA wish to exercise its rights in terms of 15.4.1 above, it shall notify the Grant Recipient in writing, indicating its intention to do so. Such notice shall state the amount of the claim and the name of the third party. On receipt of such valid notice, the Grant Recipient shall be required to cede its right, title and interest in and to the claim referred to in the notice, and the SHRA shall be entitled to enforce such claim without further reference to the Grant Recipient.

## **16. CONFLICT IN INTERPRETATION**

- 16.1. This Agreement shall be subject to all Applicable Legislation, as all of the foregoing may be amended from time to time during this Agreement ("Laws").
- 16.2. In the event of any conflict between any of the provisions of any of the Laws and this Agreement, save where not permissible in law, the provisions of this Agreement shall prevail, unless the SHRA directs that this Agreement shall be deemed to be amended to give effect to the Laws. In such event the SHRA shall notify the Grant Recipient, of its direction in this regard.

## **17. CONFIDENTIALITY**

- 17.1. Each Party shall at all times keep in confidence the Confidential Information of the other Party which it may acquire for the purposes of or in connection with this Agreement (whether prior to or after the Effective Date), and shall not use or permit the use of such Confidential Information, and each Party shall procure that

its employees, subcontractors, agents or representatives ("staff") shall not use the Confidential Information, for any other purpose, and shall not disclose such Confidential Information to any third party.

**17.2.** Notwithstanding clause 17.1, a Party may disclose the Confidential Information of the other Party to such Party's staff and service providers to the extent that such staff and service providers need to know the Confidential Information and shall ensure that such staff are aware of and comply with, the confidentiality obligations contained in this clause 17.

**17.3.** Each Party shall take all such steps as may be reasonably necessary to prevent the Confidential Information of the other Party from falling into the hands of an unauthorised third party.

**17.4.** The Grant Recipient shall not make any comments to the media relating to this Agreement and any related matter nor shall it respond to any queries from the media without first consulting with the SHRA.

## **18. FORCE MAJEURE**

**18.1.** No Party shall be liable for any breach of its obligations in terms of this Agreement resulting from an Event of Force Majeure.

**18.2.** Each of the Parties agree to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice shall contain details of the circumstances giving rise to the Event of Force Majeure and an indication of the duration of the cessation/suspension of the services and the projected date of the resumption of the Project.

**18.3.** Should the Event of Force Majeure be of such a severe nature that, in the SHRA's discretion, it requires termination of this Agreement, the SHRA shall be entitled to terminate this Agreement on 60 Days' written notice and the Grant Recipient shall have no claim whatsoever against the SHRA arising from such termination.

## **19. JOINT AND SEVERAL LIABILITIES**

**19.1.** Where the Grant Recipient is an incorporated entity, the variations, waivers, warranties and indemnities given by either is given for and on behalf of the entity itself.

**19.2.** Where the Grant Recipient is an unincorporated entity consisting of several Parties, the variations, waivers, or indemnities are given for and on behalf of and in relation to it and each Party constituting the unincorporated entity.

**19.3.** The Grant Recipient shall be liable for all the obligations in terms of this Agreement.

## **20. ADDRESSES AND NOTICES**

**20.1.** The Parties choose for the purposes of this Agreement the following addresses:

20.1.1. **The SHRA: Address:**  
Third Floor, Building D, Sentinel House  
Sunnyside Office Park, 32 Princess of Wales Terrace,  
Parktown,  
Johannesburg;

20.1.2. **The Province: Address:**

20.1.3. **The Grant Recipient: Address:**

20.2. Any legal process to be served on any of the Parties may be served on it at the physical address specified for it in clause 20.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.

20.3. Any other notice required by this Agreement to be given in writing shall, if given by email, be regarded as having been given in writing for purposes of this Agreement.

20.4. A notice to any of the Parties which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 20.1 shall be deemed to have been received (unless the contrary is proved) within 14 days from the date it was posted, or which is delivered to the Party by hand at the physical address specified for it in clause 20.1 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

20.5. Any notice by email to a Party at the email addresses of its Authorised Representative shall be deemed to have been received (unless the contrary is proved) within 20 (twenty) minutes of transmission.

20.6. Notwithstanding anything to the contrary in this clause 20, a written notice or other communication actually received by any of the Parties (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

20.7. Any Party may by written notice to the other Parties change its physical or postal address, telefax number, email address or mobile number for the purposes of this clause 20 to any other physical or postal address, telefax number, email address or mobile number provided that the change shall become effective on the seventh day after the receipt of the notice.

## 21. GENERAL

### 21.1. Remedies

21.1.1. No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by



statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

## **21.2. Entire Contract**

21.2.1. This Agreement constitutes the entire agreement between the Parties in regard to its subject matter. None of the Parties shall have any claim or right of action arising from any undertaking, representation, warranty or provision not included in this Agreement.

## **21.3. Severance**

21.3.1. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties shall endeavour to negotiate and amend the applicable provision(s) to be correct and enforceable and record such in an addendum to this Agreement.

## **21.4. No Stipulation for the Benefit of a Third Person**

21.4.1. Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person which, if accepted by the person, would bind any Party in favour of that person.

## **21.5. No Agency**

21.5.1. Unless expressly provided otherwise in this Agreement: -

21.5.1.1. No provision of this Agreement shall be construed as constituting an agency, partnership, or joint venture between the Parties, and no Party shall have any express or implied authority to bind the other Party or in any way or to represent the other Party, save as provided in this Agreement;

21.5.1.2. The Grant Recipient operates as an independent entity and not as an employee or agent of the SHRA and do not have the authority to bind the SHRA contractually to any other party; and

21.5.1.3. The SHRA operates as an independent entity and not as an employee or agent of the Grant Recipient and does not have the authority to bind the Grant Recipient contractually to any other party;

21.5.1.4. The SHRA shall not be liable to pay any retrenchment or severance benefits to any of the employees of the Grant Recipient on dismissal or on termination of this Agreement or otherwise and the Grant Recipient hereby indemnify the SHRA against any claims which may arise in this regard.

## **21.6. Variation, Cancellation and Waiver**

21.6.1. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties, save as set out elsewhere in this Agreement.

## **21.7. Indulgences**

21.7.1. The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

## **21.8. Cession and Delegation**

21.8.1. The Grant Recipient and Developer may not cede all or any of its rights or delegate all or any of its obligations under this Agreement without the prior written consent of the SHRA.

## **21.9. Assignment**

21.9.1. Save as expressly provided otherwise in this Agreement, neither Party shall cede, assign, delegate or transfer its rights and/or obligations in terms of this Agreement, or any part thereof, to any third party or Entity (unless otherwise provided for in this Agreement) without the prior written consent of the SHRA.

## **21.10. Applicable Law**

21.10.1. This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

## **21.11. Jurisdiction of South African Courts**

21.11.1. The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, for any proceedings arising out of or in connection with this Agreement

## **21.12. Costs**

21.12.1. Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

21.12.2. Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

### **21.13. Independent Advice**

21.13.1. Each of the Parties hereby respectively agrees and acknowledges that: -

21.13.1.1. It has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

21.13.1.2. Each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

### **21.14. Good Faith**

21.14.1. The Parties shall, at all times, act in good faith towards each other and shall not bring the other Party into disrepute.

### **21.15. Co-operation**

21.15.1. The Parties shall co-operate with each other and shall each execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

21.15.2. Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

21.15.3. The Parties agree to provide to one another all information reasonably requested by the other, needed to assist the other in the exercise of their respective rights and performance of their obligations under this Agreement and further agree that all such information shall be subject to the confidentiality provisions of clause 17 of this Agreement.

### **21.16. Survival of Rights, Duties and Obligations**

21.16.1. Termination of this Agreement for any cause shall not release any Party from any liability which the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

**21.17. Signature in Counterparts**

21.17.1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

**THUS, DONE AND SIGNED AT ..... ON THIS.....DAY OF  
..... 20.....**

\_\_\_\_\_  
**SIGNATURE OF PRINCIPAL**  
(Duly authorised for and on behalf of  
the SHRA)

\_\_\_\_\_  
**NAME OF PRINCIPAL**

\_\_\_\_\_  
WITNESS 1

\_\_\_\_\_  
WITNESS 2

**THUS, DONE AND SIGNED AT ..... ON THIS.....DAY OF  
..... 20.....**

\_\_\_\_\_  
**SIGNATURE OF PRINCIPAL**  
(Duly authorised for and on behalf of  
the Province)

\_\_\_\_\_  
**NAME OF PRINCIPAL**

\_\_\_\_\_  
WITNESS 1

\_\_\_\_\_  
WITNESS 2

**THUS, DONE AND SIGNED AT ..... ON THIS.....DAY OF  
..... 20.....**

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**SIGNATURE OF PRINCIPAL**  
(Duly authorised for and on  
behalf of the Grant Recipient)

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**NAME OF PRINCIPAL**

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WITNESS 1

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WITNESS 2