



2019 Social Housing Municipal - Smart Partnership Template

'SMART PARTNERSHIP' ARRANGEMENTS

INTRODUCTION TO TEMPLATES

Background

The **Social Housing Smart Partnership** contracting arrangement is a systems approach to establish strong mutually beneficial contractual arrangements between a municipality and an accredited non-profit Social Housing Institution (SHI). The intention is to establish a solid basis on which a municipality can work with a SH Partner to use Social Housing delivery to achieve important municipal urban restructuring and socio-economic development objectives.

It helps a municipality to structure these partnerships so that it can release assets and resources to be properly used for its intended socio-economic objectives. At the same time, it provides the basis for the SH Partner to run a more viable and sustainable SH business ensuring its longer-term ability to deliver on the municipality's intent.

The approach and related templates and tools are prepared in accordance with the national social housing policy and regulations and within the framework of the MFMA. It also recognises that there is a strong national regulatory framework for monitoring performance of SHIs through the Social Housing Regulatory Authority (SHRA).

The approach structures a strong linkage between social housing pipeline management by the municipality, the release of land, buildings and other resources while protecting against misuse, and meeting the conditions of the partnership.

This introduction and related templates and tools for the 'Smart Partnership Approach' are the intellectual property of the National Association of Social Housing Organisations (NASHO) in South Africa and Rooftops Canada. The documents were developed as part of the *Equal Spaces: Social Housing to End Spatial Apartheid Project 2016-2020* funded in part by the Government of Canada through Global Affairs Canada. Please see the "LEGAL NOTICE" on the next page for further details on the allowable use of these documents.



LEGAL NOTICE

This introduction and related templates and tools, referred to as “the document(s)”, for the ‘Smart Partnership Approach’ are the intellectual property of the National Association of Social Housing Organisations in South Africa (NASHO) and Rooftops Canada Foundation Inc. The documents were developed as part of the *Equal Spaces: Social Housing to End Spatial Apartheid Project 2016-2020* funded in part by the Government of Canada through Global Affairs Canada. NASHO and Rooftops Canada are solely responsible for the contents of the documents.

The ‘Smart Partnership Approach’ was developed to help South African municipalities structure their social housing programmes for effective and efficient delivery in line with their socioeconomic and spatial development mandates. The documents are intended for use by South African municipalities, and as appropriate by accredited South Africa SHIs, to guide the preparation of their own smart partnership arrangements.

Any municipality or SHI using the documents, or any one of them, is solely responsible for ensuring that each of the documents that it uses meets its own requirements related to the use of the document, and any policy and/or regulatory requirements within the jurisdiction in which the municipality and /or SHI is operating that would apply to the use of the document. By using one of the documents, municipalities and SHIs will be acknowledging that it is their sole responsibility to ensure that the document has received the appropriate legal and other reviews by relevant professionals so that use of the document by the municipalities and SHIs is suitable for their intended purpose.

Neither NASHO, Rooftops Canada or the Government of Canada makes any warranties, whether express or implied, and each disclaims all warranties of any kind, including implied and statutory, to the extent permitted by law, with respect to the documents, including any warranty of fitness of any of the documents for a particular purpose or use by a municipality or SHI or any other person. NASHO, Rooftops Canada and the Government of Canada shall have no liability for any losses or damages, including, without limitation, loss of profit or other surplus, whatsoever arising out of or relating to the use of the documents or any one of them, even if NASHO, Rooftops Canada and the Government of Canada, or any one of them, have been advised of the possibility of such losses or damages.

When using any one or more of the documents in circumstances where the documents are being shared with third parties, a municipality or SHI, as applicable, must identify NASHO and Rooftops Canada as the creators of the documents, in any manner that NASHO or Rooftops Canada may reasonably request; and include a notice that refers to the disclaimer of warranties and liability referred to above.

The documents are not intended for the use by persons, whether corporations, individuals or joint ventures or through any other entity (collectively referred to as “consultants”), charging municipalities or SHIs for their services. They can only be used by consultants with the prior written permission of either NASHO or Rooftops Canada.

PROJECT AGREEMENT

Project Name or Address

All sections highlighted (yellow) need to be filled and/or modified

Insert logo of the Municipality

Insert name of the Municipality

and

Insert logo of the Social Housing Institution

Insert name of the Social Housing Institution

Insert name and company registration no

This Agreement Includes:

- APPENDIX 1:** PROJECT BRIEF
- APPENDIX 2:** LAND SURVEY – CADASTRAL DETAILS
- APPENDIX 3:** PROPERTY DEVELOPMENT PLAN
- APPENDIX 4:** ANCHOR BUSINESS PLAN
- APPENDIX 5:** PHASING PLAN, TIME SCHEDULE
- APPENDIX 6:** PERFORMANCE MANAGEMENT COMPLETIONS

Contents

1. Interpretation and Definitions	3
2. Recordals	5
3. Suspensive Condition (if/as Applicable)	6
4. Development	6
5. Transfer of Land and/or Buildings	7
6. Financing of the Development	8
7. Municipality's Allocation Priority Target.....	8
8. Phasing of the Development	9
9. Management Responsibilities for the Completion of Social Housing Units	9
10. Responsibility for the Management of other Structures Developed on the Site	10
11. Responsibility for the Sale of any of the other Structures Developed on the Site	11
12. Variations	11
13. Force Majeure	11
14. Breach.....	12
15. Disputes	13
16. Co-Operation.....	13
17. Domicilia	14
18. General.....	15
19. Applicable Law and Jurisdiction.....	16
20. Commission.....	16
21. Costs.....	17
APPENDICES	18
APPENDIX 1 - PROJECT BRIEF	18
APPENDIX 2 – LAND SURVEY – CADASTRAL DETAILS	18
APPENDIX 3 – PROPERTY DEVELOPMENT PLAN.....	18
APPENDIX 4 – ANCHOR BUSINESS PLAN.....	19
APPENDIX 5 – PHASING PLAN OF THE DEVELOPMENT – TIME SCHEDULE	19
APPENDIX 6 – PERFORMANCE MANAGEMENT COMPLETIONS.....	19

1. Interpretation and Definitions

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

- 1.1. **Agreement** means this Agreement contained herein including all annexures thereto;
- 1.2. **Anchor Business Plan** is the contractually agreed project's financial business plan. It includes a working financial model in Excel electronic format. It is based on approved density and buildable gross floor area (GFA) for the entire site and individual buildings as applicable, is consistent with the Project Brief, and financial plan for the development;
- 1.3. **Business Day** means a day other than a Saturday or a Sunday or a day which from time to time is a proclaimed public holiday in the Republic of South Africa;
- 1.4. The **Development** means the refurbishment and/or conversion, and/or demolition of all or some of the existing structures on the Property, if any, and the construction of agreed physical structures thereon as required in terms hereof, together with all necessary earthworks, the installation of all necessary services, all landscaping and all other matters incidental thereto as more fully described in this Agreement and/or in the Project Brief, the Anchor Business Plan, the Site Plan, the Property Development Plan and/or any conditions of approval stipulated by the Local Authority;
- 1.5. The **Developer** means a private company in the market with experience in mixed-development, residential developments and affordable housing, that has partnered with a SHRA accredited SHI in a joint venture to implement precinct-based mixed market development.
- 1.6. The terms **Holding Company** and **Subsidiary** shall bear the meanings assigned to them in the Companies Act.
- 1.7. **Land Availability Agreement (LAA)** means an agreement entered into

between the Municipality and the Social Housing Partner as it relates to the specific terms and conditions governing the release of municipal land on a long-term lease, freehold or other agreed basis;

- 1.8. **Municipality** means the Municipality listed on the cover page of this Agreement;
- 1.9. **Municipality Allocation Priority Target** means targeted population beneficiary groups which might come from a geographical area with a corresponding income band that the Municipality desires to prioritise for Housing;
- 1.10. **Parties** means the Municipality and the Social Housing (SH) Partner;
- 1.11. **Partnership Agreement** means the Agreement referred to in the Preamble hereto, entered into between the Parties on (date) recording the terms of the public/private partnership constituted by them for the provision of social and affordable rental housing in the Municipality described on the cover page;
- 1.12. **Performance Management Completions** means the conditions requested by the Municipality that create completion of a phase and/or the overall development hereafter annexed in Appendix 6;
- 1.13. **Phasing Plan of Development** means a description of the site build out in phases with a time frame schedule of completion per phase with milestones for each of the residential components and linked performance management completions hereafter annexed in Appendix 5;
- 1.14. **Project** means the development and management of immovable property for a specific affordable housing development taken on by the Social Housing Partner in accordance with the Project Agreements concluded between the Parties;
- 1.15. **Project Brief**, hereafter annexed as Appendix 1, includes a description of the anticipated type and number of housing units with the beneficiaries' income band and proposed rentals to be constructed as part of the Project, plus other relevant information as per the Project Brief Template, Appendix 1;
- 1.16. **Project Manager** means an employee of the Municipality, or such other person as may be nominated in writing by the Municipality to be its representative for purposes of this Agreement;
- 1.17. **Property** means Erf _____ as shown on and more fully described in the Site Plan;
- 1.18. **Property Development Plan** means the Project Site Plan and a detailed physical design of the sites and proposed structures, buildings and landscaped areas on it, hereafter annexed as Appendix 3. The building plan

must be consistent with the mentioned appendix;

- 1.19. **Signature Date** means the date on which this Agreement is signed by the last signing of the Parties hereto;
- 1.20. **Site Plan** means the site plan layout as approved through the Municipality's planning process. It is based on the **Land Surveyor's diagram** showing and describing the Property and the **cadastral boundaries** thereof which is annexed hereto as **Appendix 2**;
- 1.21. **Social Housing (SH) Partner** means the Social Housing Institution listed on the cover page of this Agreement duly represented;
- 1.22. **Social Housing Regulatory Authority (SHRA)** is the Authority established by the Social Housing Act 16 of 2008;
- 1.23. **Social Housing Unit** means a rental unit built under a contractual delivery agreement with the SHRA, partially financed through national grant funding disbursed by the SHRA, built in compliance with SHRA specifications and operated within the Social Housing regulations as directed and monitored by the SHRA;
- 1.24. **Suspensive Condition** means the suspensive condition set out in clause 3;
- 1.25. **VAT** means Value-Added Tax charged in terms of the provisions of the Value-Added Tax Act No 89 of 1991;

2. Recordals

- 2.1. The Parties have entered into the Partnership Agreement in terms of which:
 - 2.1.1. They have agreed upon the basis on which the Municipality will make land available to the SH Partner; and
 - 2.1.2. The SH Partner has agreed, in respect of such land, to develop and manage social and affordable rental housing units from time to time.
- 2.2. Such a Project Agreement is developed as part of a process involving both the SH Partner and the Municipality.
- 2.3. The Parties have agreed to proceed with the development of the allocated sites, **(insert land or building addresses and Erf or Erven numbers)**, in accordance with this Agreement.
- 2.4. The Parties wish to set out the terms of their Agreement in writing.

3. Suspensive Condition (if/as Applicable)

- 3.1. Save for the provisions of this clause 3 which will become effective immediately, this Agreement is subject to the fulfilment of the Suspensive Condition that the land transfer as described in the linked Land Availability Agreement (LAA), is executed by the Parties thereto and becomes unconditional (save for any condition therein requiring this condition to become unconditional) and is registered against the title deed of the Property.
- 3.2. Each of the Parties will use its best endeavours and the Parties will cooperate in good faith to procure the fulfilment of the Suspensive Condition as soon as reasonably possible after the Signature Date.
- 3.3. Notwithstanding anything to the contrary herein contained, the provisions of clauses 1 and 14 to 21 will survive the failure of this Agreement to become unconditional.

4. Development

- 4.1. The SH Partner hereby undertakes the development of all physical developments and improvements on and undertakes the management and/or disposal on the basis of this Project Agreement.
- 4.2. The Development shall comprise the following physical products on the basis of the Project Brief Appendix 1 and Property Development Plan in Appendix 3:
 - 4.2.1. A total of (insert number) Social Housing Units, with details of the bedroom types, sizes (area in m²) and physical layout as contained in the Property Development Plan.
 - 4.2.2. A total of (insert corresponding numbers) GAP Rental Units, GAP ownership units, and Sectional Title residential units for sale as specified on the Property Development Plan. Including details by bedroom type, size - area in m² and layout.
 - 4.2.3. A total of (insert corresponding numbers), as specified in the Property Development Plan including a detailed description and area m² of retail, office space, and any other commercial use within the Development.
 - 4.2.4. Any other physical components of the Development to be listed and referenced back to the Property Development Plan.

- 4.3. The SH Partner warrants to the Municipality that, notwithstanding anything contained in the Project Brief to the contrary, the standard of construction and finishes in respect of the Social Housing Units will be in compliance with any conditions of approval determined by the SHRA and the Municipality and any other standards required by the scheme under which they are constructed.
- 4.4. The SH Partner shall be at liberty to appoint all such professionals (including, but not limited to, town planners, environmental assessment practitioners, architects and urban designers, engineers, building contractors, quantity surveyors, land surveyors and project managers) as it in its discretion considers appropriate in respect of the Development.
- 4.5. The Municipality shall, at its own cost, appoint its own Project Manager to manage its interest in the Development.
- 4.6. The SH Partner shall ensure during the period up to completion of the last of the buildings with social and affordable rental housing units to be constructed on the Property, that project meetings are held not less than once every month and that the Project Manager appointed by the Municipality is invited to attend all such meetings as well as all further site meetings and ad hoc meetings called from time to time.
- 4.7. Notwithstanding the above, the Municipality shall further be entitled to call such further meetings as it may consider necessary from time to time in order to assess compliance by the SH Partner with its obligations in terms of this Agreement and the SH Partner shall, provided that it is furnished with reasonable notice thereof, procure that it is represented at all such meetings so called by the Municipality.

5. Transfer of Land and/or Buildings

- 5.1. The Municipality agrees to the transfer of the land for development on the terms already agreed to in the linked Land Availability Agreement (LAA) to the SH Partner.
- 5.2. The transfer will take place on the following basis linked to Performance Management Completions as outlined in the Phasing of the Development Project in Appendix 5.
- 5.3. The SH Partner will pay the Municipality for the land on the basis set out in the Deed of Sale concluded between the Parties.

6. Financing of the Development

- 6.1. The Anchor Business Plan is the contractually agreed project's Financial Plan and the contractual update of the LAA Pre-Feasibility and Financial Project Proposal of the initial project Development Concept. It includes and is consistent with the updated Project Brief with specificity of all development components with their respective financing and funding details as agreed with the Municipality.
- 6.2. A copy of the Anchor Business Plan will, once it has been agreed, be initialled by the Parties and thereafter be annexed to this Agreement as Appendix 4.
- 6.3. The Financial Plan for the development of the site must include: operations, 20-year cash flow for long term management of social and affordable rental housing; proceeds from either sale or rental of any other components or structures that form part of the development and are part of this Agreement. The operational model must include an appropriate contribution to the long-term building capital maintenance reserve. The Financial Plan must include a working financial model in Excel electronic format submitted on a USB as part of this submission.
- 6.4. The SH Partner will bear full responsibility for the financing of the project on the basis presented on the Anchor Business Plan in Appendix 4.
- 6.5. Any variations to this financing plan for the site development must be agreed by the Municipality.
- 6.6. The Municipality has no responsibility for financing the Development save for any signed agreement it has for providing incentives or financing as part of the Anchor Business Plan in Appendix 4.
- 6.7. The Municipality will support the SH Partner in its application for the available government subsidies to undertake the project.
- 6.8. The SH Partner acknowledges that it is aware that, whilst the Municipality will provide its support for any subsidy application, such application will need to be made and followed up by the SH Partner.

7. Municipality's Allocation Priority Target

- 7.1. The Municipality will identify its priority population groups based on the

Municipality's own pressures, this identified group might come from a geographical area with households with a social housing corresponding income band that the Municipality desires to prioritise for housing or, it might be a population group from other parts of the Municipality.

- 7.2. The Municipality will provide a defined list of potential applicants to the SH Partner well in advance of tenant qualification process starting.
- 7.3. This provision does not preclude the SH Partner's right and responsibility to conduct its own qualification and means testing processes during the tenanting phase to get the right tenants.

8. Phasing of the Development

- 8.1. The SH Partner will undertake the phasing of the Development on the basis of the Property Development Plan and the Anchor Business Plan as outlined in Appendices 3 and 4 respectively.
- 8.2. Any substantial variation to the phasing of the Property Development Plan requires the written agreement of the Municipality.
- 8.3. Failure by the SH Partner to fulfil its responsibility in accordance with the agreed phased delivery plan gives the Municipality the right to cancel the Agreement.
- 8.4. In the event that the Municipality ends the Agreement on the basis of 8.3 above, the land remains or reverts to the ownership rights of the Municipality along with any top structure for which the Municipality or agent will only pay for the calculated construction value of the structures so completed as part of this contract and in line with the agreed Anchor Business Plan Appendix 4. This process will proceed in cooperation with the SHRA and following its operating guidelines and SH Partner/SHRA-executing Agreements.

9. Management Responsibilities for the Completion of Social Housing Units

- 9.1. The SHI is agreeing to be compliant with the Performance Management Completions as set by the Municipality in Appendix 6.
- 9.2. The management of the completed Social Housing Units and linked tenancies will become the responsibility of the SH Partner to be undertaken in

accordance with the social housing regulations administered through the regulatory function of the SHRA.

- 9.3. The SH Partner will set rental charges and tenant the Social Housing units with due consideration of the agreed Municipality's allocation priority targets on the basis of the policy and procedures of the Social Housing programmes regulated through the SHRA.
- 9.4. The Municipality proposes the targeting of letting on the basis of the Development Anchor Business Plan. However, the SH Partner reserves the right to screen, interview and train all applicants and, make decisions about housing allocation following its tenanting risk management procedures all in accordance with the rules and regulations of the Social Housing programme.
- 9.5. The Municipality will carry out its monitoring function on the management of the Social Housing assets on the site through the regulatory monitoring process of the SHRA of the site and will give the SHRA the authority to carry out the remedial action as a consequence of non-compliance by the SH Partner.
- 9.6. The Municipality will retain its right to revert ownership of the Site in the event of an Agreement cancellation as per clause 8.3 and 8.4.

10. Responsibility for the Management of other Structures Developed on the Site

- 10.1 The management of any non-social housing structures/spaces on the site that are not designated for sale, as in clause 11, will remain in the ownership of the SH Partner. These may include small business spaces for lease, recreational spaces or other uses that are part of the Anchor Business Plan. The SH Partner will assure the efficient management of such assets in accordance with the Development's Anchor Business Plan.
- 10.2 The financial returns on the management of such stock will be included in the financial reporting to the SHRA, and the Municipality will have access to this information through the SHRA to ensure that the assets are used as designated in the Development's Anchor Business Plan.

11. Responsibility for the Sale of any of the other Structures Developed on the Site

- 11.1. Where the agreed Development's Anchor Business Plan reports sale of ownership units or structures developed on site to cross-subsidise the social and affordable rental housing units' capital costs, the Developer will have the authority to undertake such sales.
- 11.2. The SH Partner is required to provide the Municipality with fully audited statements of the financial returns from these sales and the use of such financial returns within the terms and conditions of the Development's Anchor Business Plan.

12. Variations

- 12.1. The Parties shall be entitled from time to time to agree upon such variations to this Agreement, the Property Development Plan, the Anchor Business Plan or any other matter referred to herein, provided that any such agreement is recorded in writing in a document signed by them or their authorised representative.
- 12.2. Save as recorded above, the Development shall be constructed and managed post construction in accordance with the Property Development Plan and Anchor Business Plan and the Municipality shall not be entitled to require any amendment to the Project Brief after approval thereof.

13. Force Majeure

- 13.1. The term *force majeure* shall, for the purposes of this Agreement, mean all unforeseen events which are beyond the control of the SH Partner and:
 - 13.1.1. Which prevent or delay the execution by the SH Partner of any of its obligations without the SH Partner being able to remedy or remove such event;
 - 13.1.2. Which could not reasonably have been foreseen at the Signature Date;
 - 13.1.3. The SH Partner is unable, despite the exercise of diligent efforts, to

prevent, limit or minimise, including but not limited to war, whether declared or not, revolution, riot, strikes, insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, act of God, plague, serious epidemic, officially declared State of Emergency, embargoes, restrictions or sanctions imposed by any government or governmental authority or by force majeure of any description whether or not of the specific nature indicated above.

- 13.2. The SH Partner shall not be responsible for or liable for any delay or non-performance of its obligations in terms hereof directly caused or resulting from force majeure.
- 13.3. Upon the SH Partner becoming affected by force majeure, it shall furnish the Municipality with notice thereof, whereupon:
- 13.3.1. Any performance time limits agreed with the Municipality for compliance by the SH Partner with its obligations hereunder shall be extended for such period as such *force majeure* continues to apply; and
- 13.3.2. The SH Partner shall use all reasonable endeavors to obviate and remove such *force majeure* in the shortest practical time if it is within the SH Partner's power to do so.

14. Breach

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

In any case, prior to the expiry of the notice period, the Parties to this Agreement can agree in writing to extend the period to remedy any such breach, particularly, but not exclusively, in the case that more time is needed due to the nature of the breach, or because the breach is

not completely under the control of the Party.

15. Disputes

- 15.1. Save where otherwise provided in this Agreement, in the event of any dispute or difference arising between any of the Parties hereto relating to or arising out of this Agreement, including the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, such Parties shall forthwith meet to attempt to settle such dispute or difference through meditation followed by adjudication and failing such settlement within a period of 15 (fifteen) Business Days, the said dispute or difference shall on written demand by any Party to the dispute be submitted to arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (the Foundation) by an arbitrator or arbitrators agreed to by the Parties.
- 15.2. Should the Parties to the dispute fail to agree an arbitrator within 10 (ten) Business Days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party to the dispute by the Chairman of the Foundation.
- 15.3. The decision of the arbitrator shall be final and binding on the Parties to the arbitration. A decision which becomes final and binding in terms of this clause may be made an order of court at the instance of any Party to the arbitration.
- 15.4. Nothing herein contained shall be deemed to prevent or prohibit either Party from applying to the appropriate Court for urgent relief.
- 15.5. The provisions of this clause shall continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

16. Co-Operation

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such steps as may be open to them and necessary for or incidental to the fulfilment of the Suspensive Conditions and the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

17. Domicilia

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

The Municipality

The City Manager

City Hall/Civic centre

Insert Address

Insert City

Insert code

Facsimile No. _____

Electronic Mail Address. **Insert**

The SH Full Partner **Insert details**

Facsimile No. _____

©NASHO – Rooftops Canada
For MSWord version, contact info@nasho.org.za

Electronic Mail Address.

- 17.2. Any Party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a street address and any such change shall only be effective upon receipt of notice in writing by the other Parties of such change.
- 17.3. Any notice given by or to either Party in terms of this Agreement shall be given in writing and shall be delivered by hand to a responsible person present at or sent by prepaid registered post or facsimile transmission to the *domicilium* chosen by the addressee in terms of this Agreement.
- 17.4. A notice sent by one Party to another Party shall be deemed to be received:
 - 17.4.1. On the date of delivery, if delivered by hand;
 - 17.4.2. On the fourth day after posting, if sent by pre-paid registered mail;
 - 17.4.3. On the date sent, if forwarded by facsimile transmission.
- 17.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. General

- 18.1. This Agreement constitutes the whole of the Agreement between the Parties hereto relating to the matters dealt with in this Agreement and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement, shall be binding on any of the Parties.
- 18.2. No variation, addition, deletion, or agreed cancellation shall be of any force or effect unless in writing and signed by or on behalf of the Parties hereto.
- 18.3. No waiver of any of the terms and conditions of this Agreement shall be binding or effectual for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder shall constitute or be deemed to be a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further

exercise thereof or the exercise of any other right, power or privilege.

- 18.4. Save as otherwise herein provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other Party.
- 18.5. Any consent or approval required to be given by any Party in terms of this Agreement shall, unless specifically otherwise stated, not be unreasonably withheld.
- 18.6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that both counterparts are duly signed by each of them without delay.

19. Applicable Law and Jurisdiction

- 19.1. This Agreement shall in all respects be governed by and construed under the laws of the Republic of South Africa.
- 19.2. Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the [REDACTED] Provincial Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement. The Parties agree that any costs awarded shall be recoverable in accordance with the High Court tariff, determined on an attorney-and-own-client scale.

20. Commission

Each of the Parties hereto hereby warrants that the transaction recorded in this Agreement was not directly or indirectly introduced by or concluded through the agency of any third party and that no finder's fee, brokerage, commission or similar compensation is payable in respect of this transaction or any part thereof.

21. Costs

Save as may be otherwise provided herein, each Party shall bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

SIGNED on behalf of the _____ **Municipality** at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ for: **INSERT MUNICIPALITY NAME**

2. _____
Director, who warrants that he is duly authorised

SIGNED on behalf of the **SH PARTNER** at _____ on the _____ day _____ of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ for: **INSERT COMPANY NAME**

2. _____

Director, who warrants that he is duly authorised

APPENDICES

(It is recommended the Municipality request the SH Partner to fill in each Appendix according to the suggested content)

APPENDIX 1 - PROJECT BRIEF

1. Urban context – locality municipality /neighbourhood description.
2. Detailed description of number of Social Housing units, bedroom type, income band, inception average rents and size of each unit type (m²).
3. Density dwelling units per hectare (du/Ha) and coverage ratios.
4. Building typology low-rise, mid-rise, construction materials specification (walls, envelope, roof, interior finishes and metering system).
5. Safety and security system.
6. Brief description of parking provision, parking ratio, structure, number of bays and chargeable parking fee per month.
7. Briefly describe Alignment with Municipality's Local Area Plans LAP and neighbourhood level Precinct Plans and Restructuring zone.

APPENDIX 2 – LAND SURVEY – CADASTRAL DETAILS

1. Subject Erf/ Erven.
2. Dimensions (m²) among beacons.
3. Area of subject Property m².

APPENDIX 3 – PROPERTY DEVELOPMENT PLAN

1. Detailed narrative of the Development Concept based on
 - 1.1 Town planning application over view.
 - 1.2 Background.
 - 1.3 Physical characteristics of the Property.
 - 1.4 Development proposal.
 - 1.5 Project Motivation and Desirability.
 - 1.6 Alignment with Frameworks, Policies, Strategies and Spatial Planning Principles.
2. Building Plans

- 2.1 Location Map.
- 2.2 Landscaped area.
- 2.3 Building plan.
- 2.4 Floor plan of each floor.
- 2.5 Sections of buildings.
- 2.6 Cross Sections showing roads and overhanging balconies.
- 2.7 Elevations.
- 2.8 Unit types.
- 2.9 3D Illustrations.

APPENDIX 4 – ANCHOR BUSINESS PLAN

1. Development Concept.
2. Financial Executive Summary – **Fill in attached table.**
3. Financial Plan - **include a USB with a live Excel working financial model.**

APPENDIX 5 – PHASING PLAN OF THE DEVELOPMENT – TIME SCHEDULE

1. Construction phasing, Phased hand over.
2. Time Schedule.
3. Marketing Plan.
4. Tenanting Plan.

APPENDIX 6 – PERFORMANCE MANAGEMENT COMPLETIONS

This Appendix should be prepared by the Municipality and include the Municipality's key performance completion requirements to proceed with the land transfer to the SHI. The Municipality should think about what these conditions should be.

Suggestions:

1. **Project construction must be in accordance with the Project Brief and it is expected that construction will start no later than ___ months after the SH Partner receives building plan approvals.**
2. **It is expected that construction of the project will happen in accordance with the Development Phasing Plan – Time Schedule, Appendix 5.**
3. **It is required that the SH Partner completes conducting its tenanting vetting process of the Municipality's Allocation Priority Target list at least ___ months before the first hand over of completed buildings.**
4. **Other(s) as per the Municipality's requirement.**

APPENDIX 4 - ANCHOR BUSINESS PLAN – 2. FINANCIAL EXECUTIVE SUMMARY					
1. GENERAL			No of SH units	Total m²	
Residential					
Retail space					
2. CAPITAL DEVELOPMENT COSTS/EXPENSE (CAPEX)					
Land cost					
External bulk infrastructure					
Internal servicing/reticulation					
Professional fees					
Municipality fees and charges					
Financing costs					
VAT					
Total Development costs					
Total escalated construction costs, incl contingency, Municipality plan approval fees and charges excl VAT					
3. FUNDING SOURCES					
Equity Contribution					
Bridge Finance Loan	Rate	%	Term	mnths	
Long term Bond					
Grant funding CCG 1					
Grant funding CCG 2 – Province					
USDG funding					
Total Funds					
4. OPERATIONAL COST/EXPENSES (OPEX)					
Property management cost					
Administrative costs (overheads)					
Total operational costs					
- Long term Capital Reserve Contribution					
- Vacancy					
- Bad debt					
Net Operating Income					

APPENDIX 4 - ANCHOR BUSINESS PLAN – 2. FINANCIAL EXECUTIVE SUMMARY (continued)

5. REVENUE

Residential		
Retail Income (annual)		
Parking income (annual)		
Total Revenue		

6. FINANCIAL INDICATORS

Yield	
Debt Service Cover Ratio (DSCR)	
Internal Rate of Return (IRR)	

©NASHO – Rooftops Canada
For MSWord version, contact info@nasho.org.za