LAND AVAILABILITY AGREEMENT

Entered into between

GAMAGARA LOCAL MUNICIPALITY

Represented by Lebogang Seetile in his Capacity

as Municipal Manager

and

FACTES GAMAGARA PROPRIETARY LIMITED

Trading as Factes Gamagara

Represented by Sifiso Sibiya in his Capacity

as the Director

in respect of the

KATHU DEVELOPMENT PROJECT

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INTRODUCTION

(A) The Gamagara Local Municipality has embarked on the potential implementation of Housing Development Projects on well-located areas of the province, close to economic, employment and social justice opportunities, and located along strategic public transport corridors.

(B) It is anticipated that the settlements would be more than just provide shelter, but would provide infrastructure services, integrate various other land uses as well as different income groups and housing typologies. The intention is to partner with the private sector in delivering on this vision of Housing Development Projects.

(C) The Municipal Council of Gamagara Local Municipality (the **Municipality**) has expressed its support for and endorsed the Kathu Development Project, signalling the municipality's commitment to pursuing this initiative.

(D) As the Project could not be implemented for more than 3 years, Factes Gamagara (Pty) Ltd has approached Council with a proposal to implement the Project on behalf of the Gamagara Local Municipality. The proposal was presented to Council and is reflected in the Council resolution outlined in 0.

(E) The intention is to enter into a formal agreement between the Municipality and Factes Gamagara Proprietary Limited for the purpose of implementing the mixed-use development.

(F) The Project is one of the priorities of the Municipality and involves construction of a mixed-use development, as outlined in the Integrated Spatial Development Framework of the Municipality.

(G) It is envisaged that this agreement will define the framework in which the project will be implemented, including the roles and responsibilities of the parties.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall have the following meanings and similar expressions shall bear corresponding meanings, unless otherwise required and/or indicated by the particular context in which they are used:

1.1.1 **Agreement** means this agreement including all annexures and schedules attached hereto and any such modification, variations, amendments or additions as the Parties may agree in writing from time to time;

1.1.2 **Business Day** means a day, other than a Saturday, a Sunday or an official public holiday in the Republic of South Africa;

1.1.3 **Business Plan** means the document prepared by the Implementing Entity expressing the structure based on findings, facts and conclusions achieved, related to the Project, expressed *inter alia* in terms of the Development Framework and which relates to the execution of the Project, based on feasibility studies, examinations and research of relevant facts and circumstances found to be applicable to the Project, which studies will take into account the Municipality's development strategy, the Municipality's spatial development framework plan and/or the Municipality's own objectives and housing business plan, capable of being updated and/or amended by the Implementing Entity from time to time;

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1.1.4 **Development** means the development of the Land;

1.1.5 **Development Framework** means diagrams and/or maps expressing a framework which is intended to describe the various land uses, land restraints and the variation and land mixes of the various housing typologies and the areas within which those typologies are to be built, within the boundaries of the Land, in respect of the Project, to be signed off as an acknowledgement by the Municipal Manager, testifying to the Municipality's acceptance of that document and which will form part of the Business Plan attached hereto as Schedule 3;

1.1.6 **Effective Clauses** means those clauses described in Clause 19, which clauses will, as from Signature Date, come into force and effect between the Parties and prevail notwithstanding this Agreement having failed as a result of the non-fulfilment of any condition and/or having been cancelled, lapsed or terminated;

1.1.7 **Effective Date** means the date upon which the last of the suspensive conditions have been fulfilled;

1.1.8 **External Engineering Services** means the engineering services situated outside the boundaries of a land area necessary to serve the use and development of the land area as described under Spatial Planning and Land Use Management Act 16 of 2013;

1.1.9 **FLISP** means Finance Linked Individual Subsidy Programme made available to beneficiaries who have applied for housing subsidies and who have a joint household income from ZAR 3,501.00 per month to ZAR 22,000.00 per month, or such income levels being subject to increases from time to time, in terms of the relevant housing legislation or a national housing programme;

1.1.10 **General Plan(s)** means the general plan(s) of a Land Development Area(s)/Township(s), compiled and approved in terms of the Land Survey Act, 8 of 1997;

1.1.11 **Implementation Agreement(s)** means the Services Agreement and any other agreement(s) concluded or to be concluded between the Municipality and the Implementing Entity in their capacities as principal contracting parties for the execution of the Project;

1.1.12 **Implementing Entity** means Factes Gamagara Proprietary Limited registration number 2023/ 784249 /07, a private company duly incorporated in accordance with the laws of South Africa appointed by the Municipality to implement the Project on terms and conditions expressed in the Implementation Agreement(s);

1.1.13 **Internal Engineering Services** means the engineering services within the boundaries of a land area necessary to serve the use and development of the land area and which is to be owned and operated by the Municipality or service provider as described under Spatial Planning and Land Use Management Act 16 of 2013;

1.1.14 **Land** means the land in the Kathu Development described as:

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(a) Extension 6- Portion 1 and a Portion of Portion 2 of the Farm Kalahari Gholf En Jag Landgoed No 775, Division Kuruman as per Schedule 4 measuring approximately 128.5096 ha;

(b) Extension 7- Portion 1 and a Portion of Portion 2 of the Farm Kalahari Gholf En Jag Landgoed No 775, Division Kuruman as per Schedule 5 measuring approximately 77.6984 ha;

(c) Extension 8- a Portion of Portion 2 of the Farm Kalahari Gholf En Jag Landgoed No 775, Division Kuruman as per Schedule 6 measuring approximately 68.8836 ha;

(d) Extension 9- a Portion of Portion 2 of the Farm Kalahari Gholf En Jag Landgoed No 775, Division Kuruman as per Schedule 7 measuring approximately 44.2350 ha;

(e) Extension 10- a Portion of Portion 2 of the Farm Kalahari Gholf En Jag Landgoed No 775, Division Kuruman as per Schedule 8 measuring approximately 61.5334 ha; and

(f) Erf 4376 on the General Plan number 115/2006.

1.1.15 **Land Development Application(s)** means the application(s) for the intended Land Development Processes, lodged in terms of the relevant legislation by the Implementing Entity employed by virtue of the relevant powers of attorney having been granted by the Municipality;

1.1.16 **Land Development Process(es)** means that process(es) which is required and intended to be done to change the current use and zoning of the Land to that of being sub-divided, primarily to establish one or more residential townships thereon, creating registerable stands and the construction of residential and other structures;

1.1.17 **Housing Development Project** means human settlements development projects which have the following characteristics:

(a) mixed-use development inclusive of housing, social amenities, open spaces and economic, commercial and industrial opportunities;

(b) mixed-income housing inclusive of BNG housing, Gap market housing and bonded housing;

(c) mixed-tenure housing inclusive of ownership housing, rental stock and social housing; and

(d) mixed-typology housing inclusive of free-standing and mufti-story walk- ups, as well as the development of municipalities, including but not limited to the implementation and use of gas reticulation systems, renewable energy, solid waste and waste management and water recycling, along with broadband internet connectivity;

1.1.18 **Municipality** means the Gamagara Local Municipality or its successor-in-title from time to time;

1.1.19 **Municipal Stands** means stands zoned for municipal use, including parks and streets and such defined municipal use areas depicted on the General Plan and described in terms of the township establishment and land use conditions;

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1.1.20 **National Housing Code** means the National Housing Code published by the (National) Department of Housing or any substituted code and/or policies *inter alia* dealing with national and provincial housing subsidisation and programmes;

1.1.21 **Parties** means the Municipality and the Implementing Entity and **Party** means either one of them as the context requires;

1.1.22 **Project** means the development and construction of FLISP houses and any other Housing Development Project on the Land, comprising of township establishment, the provision, supply and installation of engineering services, the marketing, disposal, and the ultimate transfer to beneficiaries thereof;

1.1.23 **Purchaser(s)** means a person who has purchased a stand from the Implementing Entity in terms of a written Sales Agreement, which entitles that purchaser to take transfer of the stand direct from the registered owner, being the Municipality, and which includes individuals having purchased stands, juristic persons having purchased commercial stands, State entities having acquired stands zoned for educational, health or other community purposes as well as institutions having acquired stands for institutional purposes;

1.1.24 **Services Agreement** means agreement entered into or to be entered into between Municipality and the Implementing Entity in respect of the Development of External Engineering Services in accordance with Section 49(4) of the Spatial Planning and Land Use Management Act 16 of 2013 and the relevant Municipal By Laws;

1.1.25 **Signature Date** means the date of signature of this Agreement by whichever of the Parties signing last;

1.1.26 **Total Land Compensation** means the amount as determined by the Property Valuation Department of the Municipality; and

1.1.27 **Transfer** means the registration of transfer of a stand(s) ownership being passed direct from the Municipality as registered owner to a Purchaser as future owner.

1.2 **General Interpretation**

1.2.1 For purposes of this Agreement, the following rules of construction shall apply, unless otherwise provided and/or the context otherwise requires:

(a) any word or expression defined in, and for the purposes of this Agreement shall, if expressed in the singular, include the plural. and vice versa and a cognate word or expression shall have a corresponding meaning;

(b) any word or expression defined in, and for the purposes of this Agreement shall, if expressed in the singular, include the plural and vice versa and a cognate word or expression shall have a corresponding meaning;

(c) a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

(d) any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Agreement;

(e) if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement ;

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(f) references in this Agreement to "clauses" and/or "schedules" and/or "annexures" and/or "appendices", are to clauses and/or to schedules, and/or annexures and/or appendices (as the case may be) to, this Agreement;

(g) any reference in this Agreement to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;

(h) words and expressions defined in any law which is referred to In this Agreement and which are not defined in this Agreement shall, if and in the context of and/or in relation to that law, have the same meanings in this Agreement as those ascribed to them in that law;

(i) the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *ejusdem generis* rule shall not be applied in the interpretation *of* such general wording or such specific example(s);

(j) If any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the first day and Inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day;

(k) if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then the due date for performance of the relevant obligation shall be the immediately following business day;

(l) any term which refers to a South African legal concept or process (for example, without limiting the aforegoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a party may be or become subject;

1.2.2 All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

1.2.3 This Agreement comprises:

(a) **Part A** - being matters related to the granting of Development Rights and conditions of this Agreement;

(b) **Part B** - dealing with the implementation of the Project, including the building and construct ion of houses and the marketing aspects of the project; and

(c) **Part C** - comprising the general clauses of contract.

PART A - LAND AVAILABILITY AND CONDITIONS

2. GRANTING OF DEVELOPMENT RIGHTS

2.1 The Municipality hereby records its intention, subject to the terms of this Agreement and compliance with all applicable legislative requirements, to make the Land available to the Implementing Entity and to grant the Implementing Entity defined rights of use, access and development over the Land for the purposes of planning, servicing and implementing the Project.

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2.2 For the avoidance of doubt, ownership of the Land shall at all times remain vested in the Municipality. This Agreement does not itself constitute, and shall not be construed as, a disposal or alienation of the Land or any part thereof as contemplated in section 14 of the MFMA

2.3 The development rights referred to in this clause 2 are granted solely in terms of Regulation 34 of the Municipal Asset Transfer Regulations, 2008, and may be exercised only in accordance with this Agreement, the approved Business Plan, and the passed Council resolutions.

2.4 The Land, or portions thereof, will be made available to the Implementing Entity in phases, in accordance with the approved phasing plan and subject to completion of the applicable public participation processes

2.5 The Land is made available to the Implementing Entity uninvaded, unoccupied and free of invasion with the obligation of the Parties to keep the Land free of invasions.

2.6 The Parties expressly acknowledge that the Project contemplates that, upon completion of house construction and related processes, individual erven or portions of the Land will ultimately be transferred to qualifying beneficiaries and/or purchasers (including, where applicable, FLISP beneficiaries, bonded buyers, social-housing institutions and commercial purchasers)

2.7 The Parties record that any such transfer of ownership of erven or portions of the Land constitutes a disposal of municipal capital assets as contemplated in section 14 of the MFMA and the Municipal Asset Transfer Regulations, and not merely the granting of rights of use, control or management in terms of Regulation 34

2.8 Accordingly, no transfer of ownership in respect of any portion of the Land shall take place unless and until the Municipality has complied with the applicable provisions of the Municipal Asset Transfer Regulations dealing with disposal/alienation.

2.9 Nothing in this Agreement shall be construed as waiving or limiting the statutory discretion of the Council when considering any resolution under section 14 of the MFMA in relation to any portion of the Land

2.10 The Parties may record in the Business Plan and related schedules their intended approach to the disposal of erven (including direct transfer to beneficiaries), but such intention shall at all times be subject to the Municipality's compliance with the legislative framework

3. COMPENSATION

3.1 For the Land having been made available and the granting of the development rights by the Municipality, the Implementing Entity, will be responsible towards the Municipality for those proceeds of the Total Land Compensation calculated in accordance with the valuation of the Land and the compensation methodology agreed by the Parties

3.2 The compensation payable to the Municipality shall be paid against the event of the transfer and registration of the completed stands to the Purchasers. The Municipality agrees that it shall not be compensated for the portions of Land developed for the purpose of FLISP and fully subsidized housing.

3.3 The compensation payable to the Municipality in terms of this Agreement constitutes municipal revenue and shall be applied by the Municipality in accordance with the Municipal Finance Management Act, the Municipality may, at its sole discretion and

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subject to its budgetary processes and priorities, elect to reinvest a portion of such compensation in the Project or in related municipal infrastructure

3.4 The Municipality will cause external auditors to be appointed by the Implementing Entity to oversee the collection of all proceeds and income and the reinvestments thereof to show full accountability has been achieved.

3.5 The Implementing Entity will therefore be and remain responsible to do monthly accounting and reconciliation statements, commencing as from the first month following the month during which the first of the residential stands have been sold and registered.

4. PURPOSE

4.1 The purpose of the Land being made available is to enable the planning, servicing (where applicable), construction of residential units, and overall implementation of the Project, which shall be executed in one or more phases and which requires ongoing participation and cooperation between the Municipality and the Implementing Entity.

4.2 The Project shall be directed and guided by the principles of, and be substantially in accordance and compliant with the contents of the Business Plan, which *inter alia* includes:

4.2.1 an overall economic based strategy being applied, which is sustainable within a local and regional context; and

4.2.2 development implementation plans, all being done within the time periods agreed to achieve the fulfilment of the land development processes.

4.3 For so long as the Land (or any portion thereof) is made available to the Implementing Entity under this Agreement and is being utilised for purposes of the Project, the Municipality shall not make the same Land available to another organ of state or private entity, nor alienate or encumber such Land in a manner that is inconsistent with this Agreement, notwithstanding the above, this does not prevent the Municipality from allocating portions of the Land to other organs of state for schools, clinics or other public facilities, or from exercising its statutory duties on land yet to be issued to the entity. The Municipality will consult the Implementing Entity through the Joint Steering Committee to coordinate planning.

4.3.1 the External Engineering Services is payable by the Municipality in terms of the Services Agreement unless otherwise agreed in writing.

4.4 The areas representing the FLISP houses will be disposed to beneficiaries whose names appear on the Municipality's formal demand data base and who have been identified by the Municipality as qualifying for FLISP houses subject to applicable subsidy and lending criteria

4.5 In relation to the FLISP housing market, if insufficient purchasers having been identified by the Municipality who qualify for the granting of a bank loan and therefore, are unable to purchase a FLISP house after all reasonable efforts have been made and exhausted to sell FLISP houses to those identified persons, then the Implementing Entity will be entitled to sell FLISP houses to qualifying persons other than those identified on the Municipality's waiting list.

4.6 The Parties acknowledge that the Project includes a Social Housing component, to be delivered by an accredited Social Housing Institution (SHI) in accordance with the Social Housing Act, 2008, and the requirements of the Social Housing Regulatory Authority (SHRA). The Municipality shall retain ownership of the land allocated for Social Housing and shall make it available to the SHI through a legally compliant long-term lease or

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similar arrangement. Social Housing units shall remain rental stock and may not be disposed of as ownership units.

4.7 The Parties undertake and commit to the principles of *bona fide* cooperation with one another in all respects and in particular to their deliberations and working together with one another, in compliance with the relative legislative provisions applicable to the local authority and provincial spheres of government.

5. DURATION OF AGREEMENT AND RISK

5.1 The risk to the Land shall remain with the Municipality as landowner and will pass from Municipality to the Implementing Entity in phases on written request of the Implementing Entity, for purposes of phased development of the Project.

5.2 To give full effect to this Agreement the Municipality shall, within 6 (six) months from the Signature Date, cause and procure from the Northern Cape Department of Co-operative Governance, Human Settlements and Traditional Affairs:

5.2.1 subsidies to enable the execution of other aspects or typologies of the Project that qualify for funding from the Human Settlements Development Grant; and

5.2.2 funding from the municipal infrastructure grant or similar funding instruments

5.2.3 It is recorded, for the avoidance of doubt, that the Municipality cannot and does not guarantee the approval of any subsidies or grants, but undertakes to use reasonable efforts to support applications and engagements in line with its statutory powers and functions.

5.3 This Agreement shall remain in force and effect for the period until the land development processes and the overall Project have all been fully completed in all respects. The continuation of this Agreement is, however, subject to the satisfactory performance of the Implementing Entity in meeting its obligations, milestones and timelines. Either party shall be entitled to review, suspend or terminate the Agreement in accordance with the dispute resolution and termination provisions

6. WARRANTIES

6.1 The Municipality gives to the Implementing Entity the warranties set out in clause 6.2 below.

6.2 The Municipality warrants to the Implementing Entity that on the Signature Date:

6.2.1 It is the sole legal and beneficial owner of the Land and that it has full right, power, and authority to enter into and perform its obligations under this Agreement;

6.2.2 The Land is free from all encumbrances, liens, charges, mortgages, or third-party claims;

6.2.3 It has obtained all necessary consents, approvals, and authorizations to execute and perform this Agreement and that entering into this Agreement does not contravene any law, regulation, or other contractual obligation;

6.2.4 Professional services providers who produced all project plans, studies, detailed designs, site development plans and all other relevant documents required for the implementation of the project have been fully paid as at Signature Date and that there are no outstanding amounts;

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6.2.5 The Land is not contaminated by hazardous materials, substances, or waste in violation of any applicable environmental law and that no notice has been received from any governmental authority alleging such contamination;

6.2.6 the Land is zoned for residential development and that no rezoning or amendment is currently pending or contemplated that would adversely affect the proposed use of the Land;

6.2.7 There are no legal actions, claims, disputes, or proceedings pending or threatened in respect of the Land that may materially affect its availability, use, or development;

All essential infrastructure services, including access roads, water supply, sewerage, electricity, and stormwater drainage, are available to the boundary of the Land;

6.2.8 The Municipality confirms that, as at the Signature Date, the Civil internal services within the Land have been completely installed and the Municipality will compensate the Implementing Entity for any internal services costs, incurs. To the extent that the Municipality, in future, agrees in writing to reimburse the Implementing Entity for any internal services costs funded and installed by the Implementing Entity on behalf of the Municipality, such reimbursement:

(a) shall be subject to a prior written agreement, approved by Council, setting out the quantum, timing and funding source of such reimbursement; and

(b) may, where lawfully permissible and agreed in writing, be effected through a set-off or other mechanism that complies with the MFMA and the Municipality's policies.

No withholding or forfeiture of rates and taxes may occur under this Agreement, and nothing herein shall be construed as limiting the Municipality's statutory powers to levy and collect rates and service charges.

6.2.9 There are no leases, licenses, easements, or other third-party rights affecting the Land that have not been disclosed in writing to the Implementing Entity; and

6.2.10 All material information relating to the Land which is known to it and which could reasonably be expected to affect the Implementing Entity's decision to enter into this Agreement has been fully and accurately disclosed.

PART B - IMPLEMENTATION, BUILDING AND CONSTRUCTION AND MARKETING

7. TOWN PLANNING AND ASSOCIATED MATTERS

7.1 The Implementing Entity with the right of substitution will be the applicant in terms of the Land Development Application and in this regard -

7.1.1 the Municipality shall, within 30 days from Signature Date, handover to the Implementing Entity all relevant project plans, studies, drawings, layout, site development plans and any other documents relevant to the implementation of the project;

7.1.2 the Municipality shall, within 14 days from the Signature Date, issue Powers of Attorney in favor of the Implementing Entity, effectively authorizing the Implementing Entity to act on the Municipality's behalf throughout the duration of this agreement. Provided that, the Powers of Attorney shall not substitute the terms and conditions of this agreement. For avoidance of doubt, whenever there is conflict between the terms and conditions of this agreement and the Powers of Attorney,

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the terms and conditions of this agreement shall prevail; Powers of Attorney is revocable if the Agreement terminates.

7.1.3 the Municipality will grant and furnish the Implementing Entity, upon request, all municipal consents and authorities required by the Municipality to lodge an application and/or the authority to counter-act and/or to oppose any objection made or appeal lodged against any decision or ruling made; and

7.1.4 the Land Development Application will be at the discretion of the Land Development Applicant in terms of Relevant Legislation and the procedures which are required to implement in the Land Development Process.

7.2 If, for whatever reason, a Land Development Application fails then the respective component/portion, which is the subject matter of the relevant Land Development Application will automatically be excluded from the contents of this Agreement, and the terms and conditions of this Agreement shall therefore not apply to that Land component/portion.

7.3 The costs of the Land Development Application, including all tests, examinations and studies done for purposes of investigating the suitability of the Land for land development purposes, will be done by and at the sole expense and cost of the Land Development Applicant.

7.4 If the Land Development Application(s) succeeds and the conditions imposed by the relevant authorities are in accordance with the Business Plan, then the Implementing Entity will comply with the conditions imposed. However, the Municipality will grant the Implementing Entity any reasonable extensions of time, particularly where circumstances or events prevail or occur which are beyond the reasonable control of the Implementing Entity for purposes of complying with those conditions.

7.5 All costs and charges for the Land Development Process(es), including the appointment of professionals, consultants, agents and contractors, will be for the account and cost of the Implementing Entity excluding the costs related to the external services.

7.6 The outcome and ambit of the Land Development Process(es) is to finally create registerable stands at the conclusion of the Project.

8. PROVISION AND INSTALLING OF INTERNAL AND EXTERNAL ENGINEERING SERVICES

8.1 The Parties shall negotiate and conclude whichever services agreements for the Project as are necessary to be concluded with the Municipality or any other service provider in respect of the Internal and External Engineering Services.

8.2 **External services**

8.2.1 The Municipality shall be and remain responsible for the provision, supply, installation and cost of all external services required. In this regard:

(a) The Implementing Entity will support and assist the Municipality to apply for funding from various sources**;**

(b) the Parties will prioritise and agree upon the actual delivery of bulk and link services in the sequence required to achieve the progress as intended for the

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Land Development Process(es) to be in accordance with and to meet the milestones set out in the Business Plan**;**

8.2.2 The Municipality shall appoint the Implementing Entity subject to SCM, MIG/HSDG conditions and separate approvals to design, provide and supply the link services necessary as part and parcel of the execution of each the Project.

8.3 **Internal service**

8.3.1 With regards to the upgrading of internal services to the fully subsidised housing components and the FLISP housing components only, the Municipality will contribute towards the costs thereof in order to achieve a higher level of services in accordance with that level required by the Municipality and which costs are higher than the level of service as funded from the Human Settlements Development Grant.

8.3.2 Where a link service also serves the purpose of an internal service, then the extent to which that service is both a link and an internal service will be determined and calculated, and the costs will be apportioned accordingly for the account of the respective party responsible for the provision of the link and/or internal services.

9. **ROLE, FUNCTION AND COSTS INCURRED BY THE MUNICIPALITY**

9.1 The Municipality shall:

9.1.1 avail the Land to the Implementing Entity, in order to enable the Implementing Entity to provide FLISP housing within the Municipality; and

9.1.2 remain the registered owner of the Land, as described in this Agreement.

9.2 The Development will take place in accordance with the Municipality's Spatial Development Framework (**MSDF**) as well as the Growth and Development Strategy (**GDS**) and objectives of the Municipality's own housing plan, as amended from time to time.

9.3 The Municipality shall further have a special obligation to:

9.3.1 take whichever steps are required to be litigious or otherwise to protect the Land from being invaded or unlawfully occupied, at the sole cost and expense of the Municipality;

9.3.2 respond without delay, to any reasonable call or request from Implementing Entity pertaining to the protection and illegal use of any part of the Land;

9.3.3 this obligation to keep the Land free from invasion, as described above, will pass to the Implementing Entity as portions of the Land are made available to the Implementing Entity for development purposes;

9.3.4 be entitled to charge and collect rates and taxes as from the date of transfer and other municipal service charges from purchasers of the respective stands, as from date of occupation;

9.3.5 the Municipality shall in all other respects retain its obligations, duties and functions as required by law to be provided by it as a custodian of all State-owned land; and

9.3.6 the Municipality, commits to active engagement with provincial and national government departments for the timeous and concurrent provision and support of all public and social amenities and/or facilities, such as schools, clinics and

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community facilities and/or any other funding from External Engineering Services to provide community and/or social facilities, simultaneously and at the same time as the houses are being developed in the Projects.

10. MARKETING AND RESPONSIBILITIES OF DISPOSAL

10.1 The Implementing Entity shall be responsible for all marketing and sale of stands in the Project except for the fully subsidized stands and municipal stands.

10.2 The FLISP stands shall be marketed in terms of a joint effort embarked upon by the Municipality and the Implementing Entity.

10.3 The Municipality will grant the Implementing Entity all the necessary municipal consents and authorities, including consents to conclude written Sale Agreements, as principal contracting seller on terms and conditions and at prices guided by the parameters and amounts of sate prices described in the Business Plan, the income and proceeds (less land value or municipal equity) of which will be for the account and vest in ownership in the Implementing Entity

10.4 In respect of commercial and other non-residential zoned stands, excluding Municipal Stands, the Parties shall jointly determine the disposal strategy, pricing parameters, and selection criteria, subject to compliance with section 14 of the MFMA and the Municipal Asset Transfer Regulations. The Implementing Entity may undertake marketing activities and facilitate sales, but all disposals of commercial erven owned by the Municipality shall be approved by Council and the net proceeds shall be allocated in accordance with Council's resolutions and the MFMA. The Parties may agree in writing on a fair compensation or revenue-sharing mechanism for commercial stands, provided such mechanism is compliant with applicable laws.

10.5 The parties shall liaise and co-operate with one another regarding all mechanisms of marketing and/or sales and the identification of communities intended to benefit from the Project, which will be recorded from time to time.

11. BUILDING AND CONSTRUCTION

11.1 The Implementing Entity shall construct, or cause to be constructed, the residential units on the approved stands in accordance with the approved Business Plan, municipal by-laws, and all applicable human settlement and building control legislation

11.2 In undertaking the construction of the residential units, the Implementing Entity shall:

11.2.1 the Implementing Entity will dictate the price ranges of houses to be built and the requirements to maintain the principles of a FLISP housing development project and to that extent:

(a) propose price ranges and housing typologies for the Municipality's review and approval, ensuring alignment with FLISP, BNG and any applicable subsidy programme requirements;

(b) appoint qualified and registered professionals for the execution of studies, designs and the supervision and project management and In that respect, conclude separate agreements with such third parties;

(c) monitor and manage all construction activities to ensure that houses are built to the required quality and within approved timeframes

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(d) undertake all reasonable activities necessary to carry out the Development in accordance with the law, this Agreement and decisions of the Joint Project Steering Committee

(e) comply fully with all municipal by-laws, building control procedures, building plan approval requirements and any other statutory approvals required for the Project

11.2.2 Nothing in this clause shall limit the Municipality's statutory rights and obligations relating to land use management, building control, beneficiary administration, inspection, or compliance enforcement

PART C - GENERAL CLAUSES OF CONTRACT

12. **BREACH**

Should either Party commit a breach of this Agreement and fail to remedy that breach within 14 Business Days after receipt from the other Party of written notice calling upon it so to do, then the Party aggrieved by that breach shall be entitled, in addition to and without prejudice to any right he/it may have as a result of that breach, either to enforce the performance of the terms hereof or cancel this Agreement and recover such damages as it may have sustained. The Parties' remedies hereunder shall not be exhaustive and shall be in addition and without prejudice to any other remedies they may have whether for damages or otherwise.

13. **NOTICES AND DOMICILIA**

13.1 The Parties choose as their *domicilium citandi et executandi* the addresses set out in this clause for all purposes arising out of or in connection with the agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

13.2 The purpose of this Agreement the Parties' respective addresses shall be:

13.2.1 the Municipality at:

Address:	The Office of the Executive Mayor Cnr Frikkey Meyer & Hendrik Van Eck Roads, Civic Centre, Kathu
Contact No.:	053 723 6000
Email address:	seetilel@gamagara.gov.za
Marked for the attention of:	Lebogang Seetile

13.2.2 the Implementing Entity at:

Address:	345 Rivonia Boulevard Rivonia 2128
Contact No.:	011 050 0600
Email address:	sifiso@factesafrica.co.za
Marked for the attention of:	Sifiso Sibiya

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or at such other address of which the party concerned may notify the other(s) in wilting provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante.

13.3 Any notice given in terms of this Agreement shall be in writing and shall be delivered by hand and be deemed to have been duly received by the addressee on the date of delivery, unless the contrary is proved.

13.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

14. DISPUTE RESOLUTION AND ARBITRATION

14.1 separate, divisible agreement

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

14.1.1 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 all disputes, including the issues set forth above, be and remain subject to resolution in terms of this clause; and

14.1.2 remain in effect even if the Agreement expires or terminates for any reason whatsoever.

14.2 disputes subject to negotiation

14.2.1 Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

(a) the existence of the Agreement apart from this clause;

(b) the interpretation, application and effect of any provisions in the Agreement;

(c) the Parties' respective rights or obligations under the Agreement;

(d) the rectification of the Agreement;

(e) any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating to or in any way connected with the Agreement or any part or portion thereof;

(f) the breach, expiry, termination or cancellation of the Agreement or any matter arising out of the breach, expiry, termination or cancellation; and

(g) any claims in delict, compensation for unjust enrichment or any other claim,

whether or not the rest of the Agreement apart from this clause is valid and enforceable, shall be referred, in the first instance, to negotiation. If the dispute cannot be resolved by negotiation, the Parties agree to refer the dispute to mediation as set out in Clause 14.2.2, failing which to arbitration as set out in Clause14.4.

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14.2.2 A Party declaring a dispute, must notify the other Party in writing of the dispute and invite the other Party to a meeting to attempt to resolve the dispute within 14 Business Days from the date of written notification.

14.2.3 The meeting described in Clause 14.2.2must be attended by a representative of each Party to this Agreement, who has authority to enter into binding agreements on behalf of that Party as concerns this Agreement.

14.2.4 If the Parties fail to resolve the dispute within 14 Business Days from date of written notification, the Parties agree to refer the dispute to mediation as set out in Clause14.3.

14.3 **disputes subject to mediation**

14.3.1 Where a dispute cannot be resolved by negotiation as described in Clause14.2, any Party shall refer the dispute to mediation by written notice to the other Party.

14.3.2 A qualified mediator shall be appointed by agreement between the Parties.

14.3.3 If the Parties to the dispute are unable to agree on a mediator within five Business Days from receipt by either Party of the notice to mediate, the mediator shall be appointed by the chairperson of the Arbitration Foundation of South Africa (**AFSA**) for the time being.

14.3.4 Where the parties are unable to resolve any dispute by way of mediation within 20 Business Days of referral to mediation then the dispute shall be submitted, at the instance of any Party, to, and decided by, arbitration as set out in Clause14.4.

14.4 **disputes subject to arbitration**

A dispute that cannot be settled by mediation as described in Clause 14.3 shall be referred to and determined by arbitration in accordance with the Commercial Rules of the Arbitration Foundation of South Africa ("**AFSA**" and "**Rules**") without recourse to the ordinary courts of law, except as explicitly provided for in Clause 14.9.

14.5 **appointment of the arbitrator**

14.5.1 The Parties to a dispute agree to the appointment of a single member arbitral tribunal. The arbitrator is to be a senior advocate or retired Judge (with at least 10 years' experience in commercial legal practice).

14.5.2 Notwithstanding Clause 14.5.1, the Parties may, prior to referral to arbitration, agree in writing to the appointment of a three-member arbitral tribunal in accordance with the Rules.

14.5.3 The arbitrator(s) shall be selected by agreement between the Parties. If agreement is not reached within five Business Days after any Party calls, in writing, for such agreement, the arbitrator (s) shall be nominated by the Chairman of AFSA, for the time being, upon the written request of either Party and such nomination will be in accordance with the Rules of AFSA.

14.5.4 The costs of the arbitration, including, without limitation, fees of the arbitrator(s) and attorney fees, shall be awarded to the Party judged in the arbitration to have been the substantially successful Party.

14.6 **venue, language and period for completion of arbitration**

14.6.1 The seat of the arbitration shall be Johannesburg.

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14.6.2 The languages of the arbitration proceedings shall be English.

14.6.3 The Parties shall endeavour to conclude the arbitration within 60 Business Days from the filing of all statements referred to in the Rules.

14.7 **binding nature of arbitration**

14.7.1 The Parties irrevocably agree that, any decisions and awards of the arbitrator:

(a) shall be binding on them;

(b) shall be carried into effect; and

(c) may be made an order of any court of competent jurisdiction.

14.7.2 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, should either Party wishes to make the Arbitrator's decision an order of Court

14.8 **appeal**

The Parties agree that there shall be no appeal against the decision of the Arbitral Tribunal (however constituted) in accordance with the Rules.

14.9 **application to court for urgent interim relief**

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

15. **NON-VARIATION / WAIVER**

No latitude or extension of time or other indulgence which may be given or allowed by either' party to the other in respect of any payment or obligation or performance in terms of this Agreement, shall in any way or circumstance be an implied consent by any party or operate as a waiver or a novation or otherwise effect any of such party's rights in terms of or arising out of this Agreement or stop such party from enforcing at any time and without notice strict and punctual compliance with each and every provision or term hereof.

16. **ENTIRE AGREEMENT**

This Agreement reflects the entire agreement between the Parties and no variation, amendment or addendum shall be of any force and effect between the Parties unless contained in writing, signed and agreed by both parties.

17. **INDIVISIBILITY**

This Agreement and the transaction herein contemplated shalt be Indivisible, save that should it transpire that any part or parts thereof are invalid or unenforceable, such invalid or unenforceable parts shall be severable so that the remaining parts which are valid and enforceable shall remain valid and shall not also be tainted by such invalidity or unenforceability.

18. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and once each Party has signed a counterpart, each such counterpart shall be considered an original and all such counterparts together shall constitute one and the same instrument. Any such counterpart may be a facsimile or e-mail transmission copy thereof.

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19. **EFFECTIVE CLAUSES**

The provisions of Clause 1 in terms of the definitions and meanings, to give substance to the agreement and the operation thereof, as well as Clauses 14, 15, 16, 17, 18 and 19 are separate and severable from the remaining provisions of this Agreement and are of immediate force and effect between the Parties and will be given effect to whether or not the suspensive conditions are fulfilled or this Agreement has terminated.

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THUS DONE AND SIGNED at on this day of 2025 in the presence of the undersigned witnesses

AS WITNESSES:

1. _____

2. _____ _____

For and on behalf of:

GAMAGARA LOCAL MUNICIPALITY

THUS DONE AND SIGNED at on this day of 2025 in the presence of the undersigned witnesses

AS WITNESSES:

1. _____

2. _____ _____

For and on behalf of:

FACTES GAMAGARA PROPRIETARY LIMITED

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SCHEDULE 1- COUNCIL APPROVAL OF THE FACTES GAMAGARA PROPOSAL

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