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public works

Department:
Public Works
PROVINCE OF KWAZULU-NATAL

Directorate: Real Estate
Private Bag X9041
PIETERMARITZBURG
3200
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Enquiries: Ms R Asaram/Mrs V Sahadew
Email: Vikashni.sahadew@kznworks.gov.za

The Municipal Manager
Ingwe Municipality
PO Box 62
CREIGHTON
3263

Attention: MR N. C VEZI

Dear Sir

APPROVAL FOR THE EARLY OCCUPATION AND DISPOSAL BY WAY OF DONATION OF THE REMAINDER OF ERF 181 BULWER AND PORTION 2 OF ERF 181 BULWER TO INGWE LOCAL MUNICIPALITY

The above matter refers.

Please be advised that the Honourable MEC: Human Settlements and Public Works has duly authorised the early occupation of the above subject properties to the Ingwe Municipality. The Ingwe Municipality consultants and appointed contractors may commence with planning and development.

All financial implications, responsibilities and/or liabilities associated with the early occupation of the subject properties and the planning and development will be the responsibility of the Ingwe Municipality with effect from date hereof, 20 July 2015. The KwaZulu-Natal Provincial Government will not be held liable for any claims arising from the injury or death to any of the Ingwe Municipality's staff, consultants and appointed contractors.

Please find enclosed herewith a copy of the Donation Agreement duly signed by the Head: Public Works and the Municipal Manager: Ingwe Municipality.

The Ingwe Municipality shall commence with the survey, transfer and registration of the above properties into their name.

Kindly provide this Department with a copy of the draft survey diagrams, once they become available.

Please note that the restrictive use conditions in the Deed of Donation must be reflected in the Certificate of Registered Title. A copy of the draft Certificate of Registered Title must be forwarded to this Department before the transfer is finalized.

Kindly acknowledge receipt of the contents of this letter.

Yours faithfully

for Head: Public Works

Date: 2015/07/27

DONATION AGREEMENT

Entered into by and between

THE PROVINCIAL GOVERNMENT OF THE PROVINCE OF KWAZULU-NATAL

Herein represented by **Arumugam Govender** in his capacity
as Head: Public Works (KwaZulu-Natal), duly authorized or his duly
authorized representative (hereinafter referred to as the "Donor")

and

INGWE MUNICIPALITY

Hereinafter represented by **N C Vezi** in his capacity as the
Municipal Manager and being duly authorized thereto
by resolution of the Ingwe Council dated 07th January 2013
(hereinafter referred to as the "Donee")

(hereinafter referred to as the "agreement")

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WHEREAS THE DONOR, has agreed to donate to the Donee the immovable properties described herein, for Ingwe Municipality purposes by the Donee;

AND WHEREAS THE DONEE has agreed to accept the said Donation from the Donor to develop the properties for the said purpose.

ACCORDINGLY it is agreed as follows:

1. The preamble hereof shall form part of this agreement.

2. **DONATION AND ACCEPTANCE**

the Donor does hereby donate to the Donee the Donor's full right, title and interest in and to the following properties (hereinafter referred to as the "properties"), which the Donee hereby accepts, on the terms and conditions set out herein:

REMAINDER OF ERF 181 BULWER
REGISTRATION DIVISION- FS
PROVINCE OF KWAZULU-NATAL
IN EXTENT APPROXIMATELY 175.2797 (ONE SEVEN FIVE COMMA TWO SEVEN NINE SEVEN) HECTARES
HELD UNDER DEED OF TRANSFER NO. T28130/2006

PORTION 2 OF ERF 181 BULWER
REGISTRATION DIVISION- FS
PROVINCE OF KWAZULU-NATAL
IN EXTENT APPROXIMATELY 20.8275 (TWENTY COMMA EIGHT TWO SEVEN FIVE) HECTARES
HELD UNDER DEED OF TRANSFER - UNREGISTERED

(hereinafter referred to as the "properties")

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3. REGISTRATION OF TRANSFER

- 3.1 The Donee shall be liable for all costs associated with any survey of the properties and the preparation and obtaining of all sub-divisional diagrams as well as any and all costs of registering transfer of the properties into the name of the Donee.
- 3.2 The Donor shall be liable for payment of rates (if any) up to the date of occupation of the properties by the Donee.
- 3.3 It is agreed that since the Donee is liable for all costs of transfer, it is the prerogative of the Donee to select the conveyancer to be appointed to attend to the transfer of the properties. In the absence of such selection of a conveyancer by the Donee, the State Attorney, (KwaZulu-Natal) will be instructed by the Donor to attend to the registration of transfer and the Donee shall be liable for all costs of the transfer.

4. POSSESSION AND EARLY OCCUPATION

The Donee shall be entitled to Early Occupation of the properties on the date of last signature of this Agreement from which date all risk, including current and/or future land claims against the properties, in and to the properties passes to the Donee and from which date the Donee becomes liable for payment of all rates, taxes, and other outgoings if applicable in respect thereof.


5. VOETSTOETS CLAUSE

- 5.1 It is recorded that the properties are sold voetstoets and subject to all conditions and servitudes mentioned or referred to in the current title deed and to all such other conditions and servitudes which may exist in regard thereto.
- 5.2 The Donor shall not be liable for any defects, latent or otherwise, in the properties nor for any damage occasioned or suffered by the Donee by reason of such defects. Furthermore, the Donor shall not be liable for any deficiency in the extent of the properties nor shall it benefit by any excess in extent thereof.

6. SPECIAL CONDITIONS

- 6.1 The said properties shall only be used for the Ingwe Municipality's development of residential sites, institutional and community purposes and for no other purposes unless prior written consent has been obtained from the Honourable MEC: Human Settlements and Public Works and the KwaZulu-Natal Provincial Treasury.

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- 6.2 Should the Donee, its successor-in-title or assigns,
- 6.2.1 fail to utilize the properties or any portion thereof for the purpose it was donated; or
 - 6.2.2 change the use of the properties to other than for the Ingwe Municipality, as determined at the sole discretion of the Donor, the relevant aforementioned parties will be obliged to pay to the Donor the full market value of the subject properties, as at the date that the Donee fails to utilize the properties for the development of residential sites, institutional and community purposes.
- 6.3 Ten (10) Hectare site will be reserved for the construction of a Hospital for the Department of Health
- 6.4 The Portion of the Remainder of Erf 181 Bulwer is to be retained by the Provincial Government which is currently being used as an Arts Centre by the Department of Arts and Culture.
- 6.5 The Donee will be responsible for all costs relating to the survey of the property for the Hospital Site, the Arts Centre and all transfer costs.
- 6.6 In the event that, in the future, the Donor requires a piece of land on the Remainder of Erf 181 Bulwer, the Donee shall ensure that the agreed piece of land is donated to the Province, on mutually agreed terms and conditions.

7. GENERAL

- 7.1 This donation agreement constitutes the entire contract between the parties and no warranties, representations or conditions not recorded herein shall be binding upon the Donor unless recorded in writing and signed by the parties hereto. Likewise any variation of the terms and conditions hereof shall be of no force and effect unless reduced to writing and signed by both parties hereto.
- 7.2 Any latitude or extension of time which may be allowed by the Donor including the granting of any concession or condonation of any breach of the conditions hereof shall not in any way constitute, operate as, or be deemed to be a waiver by the Donor of any of the Donor's rights hereunder nor shall it constitute a novation hereof.
- 7.3 All amounts payable to the Donor shall be paid without deduction or demand and free from bank exchange in the currency of the Republic of South Africa.

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8. **DOMICILIUM**

Any notice sent to the Donee by pre-paid registered mail addressed to it at its chosen domicilium citandi et executandi shall be deemed to be validly given three (3) days after the date of posting thereof.

The parties hereto choose their domicilia citandi et executandi as follows:

DONOR:

KwaZulu-Natal Department of Public Works
191 Prince Alfred Street
PIETERMARITZBURG
3201
(For Attention: Head: Public Works)

DONEE:

Ingwe Municipality
Main Street
CREIGHTON
3263
(For Attention: The Municipal Manager)

9. **BREACH**

- 9.1. In the event of the Donee breaching any of the terms and conditions of this Agreement, the Donor shall be entitled to give to the Donee notice to remedy its breach within 21 days.
- 9.2. Should the Donee fail to remedy its breach within the aforementioned period, the provisions of clause 10 shall come into effect.

10. **DISPUTE RESOLUTION**

- 10.1 Notwithstanding the provisions of any other law and in accordance with the principle of promoting intergovernmental relations, the parties hereto agree to resolve disputes in accordance with the Intergovernmental Relations Framework Act, Act No. 13 of 2005.
- 10.2 In the event of an issue in dispute arising and before declaring a formal dispute, the parties must, in good faith, make every effort to settle the dispute.
- 10.3 The parties hereto agree that any dispute arising between them shall be facilitated by the KZN Provincial Treasury ("Treasury").

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- 10.4 Either Party shall be entitled to declare a dispute and shall, within 10 (ten) days after failure by the parties to reach an agreement on certain issues, give written notice to the other Party and to Treasury that an intergovernmental dispute has been declared and shall be submitted for resolution.
- 10.5 The aggrieved party shall submit the said Notice together with its written claim and supporting documents.
- 10.6 Upon receipt of the said Claim, the other party shall within (seven) 7 days, prepare its written submissions in reply to the Claim. The submissions shall be delivered to Treasury and a copy submitted to the aggrieved party.
- 10.7 Each party shall submit a full statement of its case and shall set out all the evidence, sworn statements, facts, submissions and expert opinion, etc., supporting or proving such party's contention in regard to the matter in dispute and serve a copy thereof on the other party.
- 10.8 Either party maybe requested to submit a further supplementary statement or documents to Treasury and to serve a copy thereof on the other party. Treasury shall consider and decide the dispute on the Submissions before them, with or without appearance by the parties.
- 10.9 Treasury shall have the power to:
- 10.9.1 determine the facts conceded/ not in dispute
 - 10.9.2 determine the material issues that are in dispute;
 - 10.9.3 identify mechanisms to assist in the settlement of the dispute;
 - 10.9.4 settle the dispute summarily and in the best interest of both parties;
 - 10.9.5 pronounce on the outcome of the dispute;
- 10.10 The decision by Treasury shall be final and binding upon the parties and shall be carried into effect by the parties.
- 10.11 If a party fails to take part in these dispute resolution proceedings, such conduct shall constitute consent to a decision being made against such party and the said party shall be bound by the decision.

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THUS DONE AND SIGNED BY THE DONOR AT Pm. Bury ON

THIS 8 DAY OF July 2015.

AS WITNESSES:-

1. *Richard*
2. *[Signature]*

[Signature]
For the Donor, duly authorised

THUS DONE AND SIGNED BY THE DONEE AT Croighton ON

THIS 03rd DAY OF June 2015.

AS WITNESSES:-

1. *[Signature]*
2. *[Signature]*

[Signature]
For the Donee, duly authorised