



DEVELOPMENT AGREEMENT

Between:

The Public entity Country Sint Maarten

&

General Pension Fund St. Maarten

for the development of affordable housing

THIS AGREEMENT, by and between:

1. The public entity **COUNTRY SINT MAARTEN**, Government Administration Building, Clem Labega Square, Philipsburg, represented by the Minister of Public Housing, Spatial Planning, Environment and Infrastructure (Dutch acronym: VROMI), Honorable Mr. Claret Connor, who is duly authorized to carry out legal acts under private law and sign this Agreement;
 - hereinafter referred to as "SXM";
2. THE GENERAL PENSION FUND SINT MAARTEN (Dutch: '*Algemeen Pensioenfonds Sint Maarten*') a self-governing entity possessing legal personality established in accordance with the National ordinance general pension fund of St. Maarten (Dutch: '*Landsverordening Algemeen Pensioenfonds*', AB 2013, GT no. 65), having its registered office at Yogesh Commercial Complex Unit 1A /1B A.J.C. Brouwersweg, Philipsburg, St. Maarten, herein duly represented Mr. Franklyn Richards, Chairman of the Board, and Mr. Michel Soons, Member of the Board, on the basis of Board Decision B1 made on December 7, 2012;
 - hereinafter referred to as "APS";

WHEREAS:

- A. SXM acknowledges that availability of adequate and affordable housing on Sint Maarten is the very foundation for sustainable and healthy development of the welfare of the community, and to that extent has assigned a high priority in enabling the realization of affordable housing projects in its Governing Program of July 2015;
- B. SXM has acquired a parcel of land in Welgelegen and considering that cost of land is the inhibiting factor towards affordability, intends to make this parcel of land available, at conditions enabling the realization of affordable housing projects to a Developer, with adequate resources;
- C. The first housing project qualifying as affordable housing will be an example for future similar developments which are identified in the future Sint Maarten National Housing Program;
- D. Affordable housing is direly needed in St. Maarten;
- E. The development and sale, as well as future assignment of the houses erected must be undertaken in a non-discriminatory, efficient, transparent and effective manner;
- F. APS wishes, in view of its foundation purposes and goals, to invest in projects in Sint Maarten which offer unwavering yields in accordance with the APS' Investment Policy and Plan. APS classifies the development of land, building and offering for sale affordable housing and necessary infrastructure, a potential investment. In this respect (within this framework) APS is prepared to accept the position of Developer, leading to the accomplishment of the set goal as envisaged by SXM and APS;
- G. SXM and APS are desirous in entering an agreement in which SXM will make the parcel of land available to APS and where APS will assume the responsibility of Developer for the purpose of developing set parcel of land and selling affordable houses, under conditions further specified in this agreement;

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- H. SXM thus has considered the application of APS for the issuance of a parcel of land in long lease for the development of affordable housing in Cay Hill, Sint Maarten as formulated in the Project;
- I. SXM is of the opinion that APS can execute such a Project in a non-discriminatory, transparent, efficient and effective manner, in line with the Law of SXM;
- J. SXM and APS have identified a parcel of land described in Schedule [1] (the 'Project Site'), as an appropriate location for the execution of the Project. The Schedules attached hereunto form an integral part of this Agreement;
- K. SXM is prepared to grant a right of long lease (Schedule [3]), as meant in Book 5 of the Civil Code of Sint Maarten, of the Project Site to APS, to facilitate the realization of the Project;

Now therefore, and taking into account the above mentioned considerations, Parties hereto wish to bind each other on those subjects by entering into this Agreement according to the following stipulations and conditions:

1. Objectives

- 1.1 The development, construction, and sales of affordable housing on the Project Site, in compliance with the terms and conditions of this Agreement.

2. General Agreement

- 2.1 This Agreement sets forth the terms and conditions for performance by SXM and APS regarding land use, site development and building construction for developing affordable housing including adequate road, surface water drainage and utilities infrastructure on (a parcel) parcels of land owned by SXM, consistent with this Agreement, the Proposal, consisting of the Proposal Letter and Project Development and Implementation Plan, the Long Lease Agreement, the Building Permit and the Pre-Sale and Sale and Purchase Agreement for the affordable houses. (the "Project"). To that extent APS assumes the position of Developer;
- 2.2 SXM shall transfer, by a Long Lease Agreement, the parcel of land described in Certificate of Admeasurements no. SXM LB 149/2009 to APS under conditions enabling and defining affordable housing. Such as but not limited to a low canon for the land and commitment to expedite required permits.

3. Definitions

- 3.1 **Developer:** The primary organization APS, Algemeen Pensioen Fonds Sint Maarten, or its Subsidiary, that is a party to this Agreement, and is responsible for the Proposal, as defined herein, and for fulfillment of the subject Project, including having financial responsibility for meeting the obligations of its Proposal and the ensuing contracts, as specified in this Agreement. The Developer shall be responsible for the activities of any contractor, sub-contractor, consultant, supervising agents, project management firms or other agent, firm, or organization working on the Project to the extent that their work relates to the provisions and requirements of this Agreement.
- 3.2 **Planning Permit:** That document which specifies the allowed development and restrictions applicable for the use of the parcel of land.
- 3.3 **Building Permit:** Permit for the construction of houses and other structures

3.4 **Land:** The Parcel of Land to be developed further described in Certificate of Admeasurements SXM LB 149/2009

3.5 **Long Lease Agreement:**

3.6 **Project Development and Implementation Plan:** The description of the activities which the Developer will initiate and execute within the framework for the development and the implementation amongst other the conceptual design of road and utilities infrastructure, the houses, architectural conceptual and final design, the structural calculations and design, specifications, drawings, application of permits, estimating cost and investments, planning of all activities, specification for tendering the works, contracting out, completion of works, handing over and all other activities leading to full completion of the project. All in accordance with this Agreement, the Proposal, The Planning Permit and the Building permit(s).

The Developer will draw up its Development Plan for execution of the Project, in consultation with the Ministry of VROMI, which will include the following aspects:

- a) Architectural design;
- b) Infrastructural designs and requirements;
- c) Accessibility and disability access requirements;
- d) Sustainable energy use;
- e) Safety/Security and maintenance measures for common areas;
- f) Common area development;
- g) Landscaping and beautification.

3.7 **Proposal:** The official Proposal from APS which includes a Proposal Letter, The Project Development and Implementation Plan, the final draft Pre Sale and Sale Agreements .

3.8 **Proposal Letter:** Cover letter from APS with additional conditions and restrictions;

4. Commencement and duration of Agreement

4.1 This Agreement shall take effect as of the date of signing hereof by Parties, and shall remain in effect until completion of the Project by APS. SXM and APS shall, in so far deemed necessary, establish due arrangements with regards to the development and sales oversight.

5. Conditions and obligations regarding the use of the Project Site

5.1 APS will see to it that the use of the Project Site will be exclusively for execution of the Project.

5.2 Parties agree that the Development Plan shall provide provision for the construction of a minimum of forty-five (45) homes.

5.3 APS will be responsible for the development of all the infrastructure requirements for the Project, which will be subject to prior approval of the minister of Public Housing, Spatial Planning, Environment and Infrastructure (VROMI), which approval(s) shall be sought in accordance with applicable laws and regulations, except for those areas in which development is solely the responsibility of SXM.



6. Conditions and obligations regarding the Project Site

- 6.1 APS will request in a timely manner all necessary licenses, permits, and other governmental approvals necessary to commence and complete the development of the Project.
- 6.2 SXM shall remain responsible for the maintenance of the public road, as mentioned in article 123 (1) of the General Police Ordinance (Dutch: 'Algemene Politiekeur', AB 2013, GT no. 42).

7. APS-DEVELOPER OBLIGATIONS

- 7.1 The Developer shall be responsible for complying with the provisions of the Developer's Proposal.
- 7.2 The Developer shall comply with all provisions of the Planning Permit and Building Permit which are incorporated herein by reference.
- 7.3 The Developer shall present the conceptual design and the site engineering and building architectural plans to SXM for review, comment, and approval for consistency with the Proposal at the following intervals:
 - h) Completion of the conceptual design;
 - i) 50 percent design completion; and
 - j) 100 percent design completion.
- 7.4 The Developer shall present design completion plans not less than thirty (30) work days prior to submittal for building permits. SXM shall provide comments and approval at each stage of the plans within ten (10) work days following their receipt by SXM. Plans are approved in the event SXM has not provided comments in the allotted time period.
- 7.5 The Developer agrees to comply with all SXM building and land use codes.
- 7.6 The Developer shall allow representatives from SXM, or its designated representative, to enter the Project site during work hours, Monday through Friday, for the purpose of inspecting and confirming progress of site development and construction.
- 7.7 The Developer shall be responsible for all costs associated with the development of the Land and construction of the Project, including, but not limited to project management fees, architect fees, design and engineering fees, other consulting fees, building permit fees and legal fees, construction cost, supervision fees as required to execute the Project Development and Implementation Plan.
- 7.8 The Developer warrants that it has the financial resources to fulfill the obligations the Proposal.

8. SXM Obligations

- 8.1 SXM shall Issue Land in Long Lease / sign Long Lease Agreement
- 8.2 SXM shall Issue Planning Permit (or replacement) within 20 work days / if not works continues
- 8.3 SXM shall Issue Building Permits within 15 work days / if not works continues
- 8.4 SXM shall Approve Pre Sale and Sale and Purchase Agreement (the criteria to qualify as buyer)
- 8.5 SXM shall Guarantee to pay any and all Development Cost if the Land is not transferred in long lease to APS (within six months)
- 8.6 Purchase Guarantee: SXM shall after 5 years SXM purchase all unsold houses from APS



9. Risk of the Project Site

- 9.1 As of the date of commencement of this Agreement all risks with regards to the Project Site will be for the account of APS.
- 9.2 APS will, prior to the commencement of the development and during the development phases, keep and maintain an adequate Construction All Risk insurance covering risks. Evidence of such insurance will be provided to SXM upon request, and APS will require its insurer(s) to notify SXM at least thirty (30) days in advance of any cancellation or expiration of any such coverage.

10. Default / Damages

- 10.1 There is a situation of default of one Party towards another Party if the defaulting Party, after having been issued a notice of default, is or remains delinquent in the observance of its obligations as per this Agreement. Unless stipulated otherwise in this Agreement, a notice of default will carry a term of twenty (20) working days, and must be issued in writing. Default will result in the liability of the defaulting Party for damages towards the non-defaulting Party, in addition to which the non-defaulting Party may pursue specific performance by the defaulting Party and any other specific action as set forth in this Agreement.

11. Notices

- 11.1 All notices, requests, demands and other communications which are required by article 10, paragraph 1 of the National ordinance on the Chamber of Commerce and Industry, or may be given under this Agreement, shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by courier, or sent by fax with fax confirmation, or sent by registered mail:

- a) if to SXM:

Minister of VROMI,
Government Administration Building, Clem Labega Square,
Philipsburg, St. Maarten

- b) if to APS:

The Chairman of the SVBD
Yogesh Commercial Complex Unit 1A-1B
Philipsburg, St. Maarten

or to such address as any Party shall have specified by notice in writing to the other.

12. Further conditions and obligations

- 12.1 APS may not transfer or assign its rights and obligations under this Agreement to any third party, unless stipulated in this Agreement.
- 12.2 It is known to parties that the houses will be sold to eligible candidates.



12.3 It is agreed upon that the to be developed property will be divided into House lots, Infrastructural areas, and Common Areas.

12.4 Upon purchase of a house the respective house lot as mentioned in article 12.3 will bear a symbolic long lease fee (erfpacht cannon) of no more than (one) 1 guilder for its duration.

13. Governing Law and Jurisdiction

13.1 This Agreement is governed by and construed in accordance with the laws of Sint Maarten.

13.2 All disputes between the parties hereto arising under or in connection with this Agreement shall be brought before the Court of First Instance on Sint Maarten.

14. Schedules

The following Schedules are attached hereto and make a part hereof as though fully set forth herein:

- a) Schedule 1: Description of the Project Site (Certificate of Admeasurement #);
- b) Schedule 2: Concept Development plan;
- c) Schedule 3: The right of long lease of the Project Site.

Signed in two fold on 2015, in Sint Maarten,

For the Public Entity of Country Sint Maarten (SXM):

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Minister of Public Housing, Spatial Planning, Environment and Infrastructure
Mr. C. Connor

For Algemeen Pensioenfonds Sint Maarten (APS):

.....
Chairman of the Board of APS
Mr. F. Richards

.....
Member of the Board of APS
Mr. Michel Soons

