

2/2/92

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**DEPARTMENT OF LAND AFFAIRS**

(the STATE)

Represented by Regional Land Claims Commissioner, Beverley Jansen, as duly authorised

**AND**

***PROTEA VILLAGE ACTION COMMITTEE***

(duly authorised representative of the Protea Village Community)

Represented by \_\_\_\_\_, as duly authorised.

**AND**

***NATIONAL BOTANICAL INSTITUTE***

Represented \_\_\_\_\_, as duly authorised.

**AND**

***THE CAPE TOWN CITY COUNCIL***

Represented by \_\_\_\_\_, as duly authorised.

**AND**

**THE DEPARTMENT OF PUBLIC WORKS**

Represented by \_\_\_\_\_, as duly authorised.

**(Together hereinafter referred to as the PARTIES)**

## AGREEMENT

### **Whereas**

The Protea Village Community in the Western Cape lost rights in land after 19 June 1913 as a result of racially discriminatory laws or practices; and

The Protea Village Community has lodged a land claim on its own behalf, or on behalf of direct descendants of dispossessed members of the Protea Village Community and qualifies for restitution in terms of the Restitution of Land Rights Act of 1994, as amended (the Act), and

The Protea Village Community has formed and elected the Protea Village Action Committee (PROVAC) to represent the dispossessed community; and PROVAC and the Department of Land Affairs have finalised the financial component of the claim (*the financial claimants*), and

The parties are now desirous of settling the claim of those members of the community who opted for restoration and development of the dispossessed land in settlement of the claim (*the development claimants*);

### **And whereas**

The parties have reached an agreement as to the manner in which the claim should be finalised,

**Now therefore it is hereby agreed as follows:**

## **DEFINITIONS:**

<b>Act</b>	means the Restitution of Land Rights Act 22 of 1994 as amended;
<b>Commission</b>	means the Commission on Restitution of Land Rights: Western Cape;
<b>Protea Village Community</b>	means the members of the community which lodged a claim for restitution with the Commission who have been verified by the Commission;
<b>development claimants</b>	means the members of the Protea Village Community who opted for restoration in settlement of the land claim;
<b>financial claimants</b>	means the members of the Protea Village Community who accepted financial compensation in settlement of the land claim;
<b>dispossessed land</b>	means Erf 212 and Erf 242, Bishopscourt and Farm 875, Bishopscourt.
<b>Subject land</b>	means Erf 212 and Erf 242 Bishopscourt and portion or portions of Erf 212, Bishopscourt.
<b>Minister</b>	means the Minister of Agricultural and Land Affairs

## **OBJECTIVE OF THIS AGREEMENT**

- 1.1 The objectives of this Agreement are to:
  - 1.1.1 settle the Protea Village Community's restitution claim in respect of the *development claimants* that have opted for restoration of the dispossessed land for redevelopment purposes;
  - 1.1.2 provide a framework for the acquisition of the subject land;
  - 1.1.3 provide for the preparation of a community development and asset management plan to ensure the feasible, sustainable and integrated redevelopment of the subject land and use of portion of the dispossessed land.

## **ALLOCATION OF RESTITUTION AWARD**

### **2.1 ACCEPTANCE OF AWARD**

PROVAC accepts the restitution award as represented below on behalf of the *development claimants* above the other options provided for in the Act.

### **2.2 RESTORATION**

- 2.2.1 The Department of Public of Works hereby agrees to make Erf 242, Bishopscourt available for restitution purposes at no cost, subject to the formation and registration of the appropriate legal entity (including a Trust) by the *development claimants*.

- 2.2.1.1 The Department of Public Works will carry the costs of resurveying the subject land, if required.
- 2.2.2 The National Botanical Institute, which currently administers Farm 875, Bishopscourt, agrees that PROVAC establish a museum in the Stone Cottages situated on Farm 875 and that PROVAC make use of the area immediately surrounding the Stone Cottages, subject to the following conditions:
- 2.2.2.1 That a joint working group be established between NBI and PROVAC which will be accountable to the Implementation Steering Committee;
- 2.2.2.2 That a proper management plan or business plan be drawn up ( to be done as part of the community development and asset management plan provided for in paragraph 2.2.5 hereof);
- 2.2.2.3 That an amicable solution be found for existing tenants of the Stone Cottages, in particular the Botanical Society;
- 2.2.2.4 That the Botanical Society be included as part of the working group.
- 2.2.3 The Cape Town City Council hereby agrees to make portion or portions of Erf 212, Bishopscourt available for restitution purposes subject to the following conditions:
- 2.2.3.1 In terms of its Policy on restitution on the same basis as the Department of Public Works, ie at no cost to the Commission and/or claimants,
- 2.2.3.2 Planning and development of [the site (Erf 212)] the subject land for redevelopment will be based on the document: "Protea Village: Environmental and Technical Feasibility Study: Contextual Analysis and Design Guidelines", prepared by NM and Associates, dated January 2004;
- 2.2.3.3 that a community development study, asset management plan and business plan be completed for the subject land and the undeveloped portion of Farm 875 adjacent to Erf 242 to establish feasibility and affordability of restoration and development as described in 2.2.6. Once agreed on by the Parties, the business plan will be appended to this Agreement and form part of it. It will form the basis on which the City assesses what portion(s) of Erf 212 should be made available.
- 2.2.3.4 Due consideration will be given to preserving and enhancing the environmental assets on the sites.
- 2.2.4 The City of Cape Town undertakes to assist in all planning and procedural tasks related to resettlement, as per its Policy on Land Restitution dated October 2001.

- 2.2.5 The Cape Town City Council will provide the external link / bulk services to erven 212 and 242 subject to budgetary restraints and the claimants at their cost will provide the internal for the development of Erf 212 and 242. The City of Cape Town will be responsible for the maintenance of the internal and external services subject to the internal services being constructed in accordance with drawings and specifications approved by the City and the said services being located in public road reserve or public open space.
- 2.2.6 The Department of Land Affairs shall appoint an appropriate service provider with relevant development and facilitation experience to work with the development claimants and stakeholders to prepare a community development and asset management plan which investigates and considers the following issues and makes appropriate recommendations on the development of the subject land, and the use of the Stone cottages in an affordable and integrated manner for the benefit of the *development claimants*:
- 2.2.6.1 the socio-economic profile of the claimants including a determination of who is able to, and would like to, resettle and under what conditions.
  - 2.2.6.2 the available funding for development including relevant State grants and subsidies as well as private funding and black empowerment partnerships, local economic development possibilities and local commercial opportunities.
  - 2.2.6.3 the feasibility of using a portion or portions of Erf 212, Bishopscourt and the undeveloped portion of Farm 875 adjacent to Erf 242, Bishopscourt to supplement the development on Erf 242 Bishopscourt.
  - 2.2.6.4 a business plan as set out in clause 2.2.2 above in respect of the Stone cottages and immediate surrounds.
  - 2.2.6.5 Tenure rights and conditions as pertinent to management and administration of the subject land (a tenure management plan).
  - 2.2.6.6 Identification of all other stakeholders in the planning and physical development of the subject land.]
  - 2.2.6.7 strategies to promote integration with the broader community and socio-economic development.
  - 2.2.6.8 The appropriate vehicle to manage the holistic development of the subject land and the community and the financial and legal implications of the different vehicles.
  - 2.2.6.9 Availability of other state programmes.

- 2.2.6.10 Roles and responsibilities and entry and exit strategies for all the role players and stakeholders.
  - 2.2.6.11 The appropriate manner and timing of land transfers.
  - 2.2.6.12 Any other matter recommended by the Implementation Steering Committee (see Section 3 below).
  - 2.2.6.13 the different options for development which are feasible, taking into account all the above factors
  - 2.2.6.14 a draft terms of reference for a business plan for the preferred option, as chosen by the Implementation Steering Committee .
- 2.2.7 Transfer of Erf 242 will take place after the claimants have formed and registered the appropriate legal entity (including a Trust) to hold the land. The date of transfer of portion or portions of Erf 212 will be subject to the recommendations contained in the community development and asset management plan.
- 2.2.8 Development of the subject land will take place in terms of the community development and asset management plan and the business plan, which is to be obtained on completion of the community development and asset management plan, and shall comply with normal township establishment approval procedures, and environmental and heritage procedures, subject to Section 42B of the Act.
- 2.2.9 The legal entity formed by the claimants shall make provision for the appropriate inclusion and verification of community members who come forward after the signing of this agreement and the Commission is hereby absolved of this responsibility.
- 2.2.10 No person may, in respect of the subject property, without the written approval of the Minister, enter into a contract, including a contract subject to a suspensive or other condition -
- (i) for the sale, exchange, alienation or disposal in any other manner of that land or any portion thereof;
  - (ii) granting an option to purchase or sell such land or portion or granting a right of first refusal in respect thereof.
- 2.2.11 Before such land is disposed of or any right is granted in terms of paragraph 2.2.10, the Minister must, at the expense of the person to whom the land is

disposed of or the right is granted, cause a notice to be published in the Gazette and in not less than one newspaper circulating in the neighbourhood where the land is situated, wherein -

- (i) the proposal to dispose of the land or to grant the right is made known;
- (ii) the place where and times at which full particulars of the proposed disposal or right will be open for inspection are specified; and
- (iii) it is specified that objection to the proposed disposal or right may be lodged with a person specified in the notice, before a date so specified, which must not be less than 30 days after the date on which the notice is published.

2.2.12 Any objection in terms of paragraph 2.2.11 (iii) must be considered by the Minister before she or he disposes of the land or grants the right in terms of paragraph 2.2.10.

2.2.13 Any disposal or granting of a right in terms of paragraph 2.2.10 will take place on condition that the Minister may at any time acquire the land in question or a portion thereof subject to the payment of compensation determined either by agreement or by the Court in accordance with section 25(3) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

2.2.14 The provisions contained in paragraphs 2.2.9 to 2.2.12 will not apply to transactions between members of the Protea Village Community and will not be binding on the direct descendants of the beneficiaries [o]in terms of this agreement.

2.2.15 Transfer duty will be waived in terms of Section 42(2) of the Act by the Minister, on transfer of the subject land to the legal entity.

2.2.16 The Commission will pay for the transfer costs and other expenses incidental to the transfer of the subject land.

## 2.3 MONETARY AWARD

2.3.1 The *development claimants* are awarded an amount of R2 101 954. 92 (two million one

hundred and one thousand nine hundred and fifty four Rand and ninety two cents) to be transferred to the legal entity to be established and to be utilised for the purposes of redeveloping the dispossessed land.

2.3.2 The Commission shall make the following grants available, namely:

2.3.2.1 A Restitution Discretionary Grant (RDG) of R3000.00 per dispossessed household;

2.3.2.2 A Settlement Planning Grant (SPG) of R1440 in respect of each dispossessed household, to provide for planning and development assistance;

Subject to claimants applying via the Commission in the prescribed format and the claimants complying with applicable criteria, conditions and rules.

2.3.3 The SPG will be paid directly to the service providers appointed on behalf of the claimants.

2.3.4 The appointment of service providers will be done in terms of State Tender Board policies and procedures.

2.3.1 The RDG will be held and distributed in accordance with the provisions of a Funds Transfer Agreement to be concluded between the Commission and the legal entity formed by the claimant.

### 3. IMPLEMENTATION STEERING COMMITTEE

3.1 The parties to this agreement will constitute an Implementation Steering Committee, which will be tasked with the implementation of this agreement within the timeframes and subject to the conditions set out in this agreement.

3.2 The Implementation Steering Committee shall consist of one (1) representative from each signatory to this agreement who has a mandate to make decisions on behalf of the signatory and four (4) members of the PROVAC committee. The first three meetings of the Implementation Steering Committee shall be chaired by the Department of Land Affairs or its nominee. Thereafter the Implementation Steering Committee will appoint a chairperson from its members on a rotating basis.

3.3 The function of the Implementation Steering Committee is to ensure the co-ordination of the activities of the parties for the purpose of achieving the objectives of this agreement and to receive formal written reports on the progress of the implementation of this agreement, or lack thereof and reasons for delays and non-performance, to review work, adjust work plans and ensure the speedy implementation of this agreement including to



oversee the community development plan, funds transfer agreement, business and/or development plan, and the appointment of service providers.

- 3.4 The Implementation Steering Committee will set the timeframes for the implementation of this agreement.
- 3.5 A variation of the time frames may be effected by the Implementation Steering Committee, on good cause shown, provided that the representatives of PROVAC, the City and the Commission are present at a meeting when the decision to vary the timeframes is considered and they support such a proposal.
- 3.6 On formation of the legal entity, PROVAC shall be substituted by the legal entity for purposes of this agreement.
- 3.7 The Implementation Steering Committee may oversee the appointment of a project manager to implement and manage the development and/or co-opt people with the requisite skills, experience and ability onto the Committee for the purpose of achieving the objectives of this agreement. Any such appointment shall be done in accordance with the State Tender Board policies and procedures, if using State funds to remunerate them.

#### 4. **TIMEFRAMES, PERFORMANCE MEASUREMENT AND ENFORCEMENT MECHANISMS**

- 4.1 The parties undertake to do all things possible and to use their best endeavours, in a spirit of co-operation and good faith, to ensure the implementation of this agreement within the timeframes specified.
- 4.2 The Legal Entity representing the *development claimants* shall be in place within two (2) months of the signature of this agreement.
- 4.3 The Implementation Steering Committee is constituted on signature of this agreement and shall meet as regularly as is necessary to carry out its function, but at least on a monthly basis. The persons appointed will be nominated by the respective parties within two (2) weeks of the signing of this agreement.
- 4.4 A duly convened meeting will be a quorum if four members of the Implementation Steering Committee are present and at least one member of PROVAC, City and the

representative of the Commission are present.

4.5 The Implementation Steering Committee will furnish quarterly reports to the parties and circulate the minutes of all its meetings to all the parties (at least once a month).

4.6 Any party will be entitled to call another party formally and in writing to account on the extent to which it has made progress in terms of this agreement or in the event of a lack of progress, the reasons for delay or non-performance.

4.7 The Implementation Steering Committee shall strive to make decisions by consensus, however, should a deadlock be reached or a dispute arise during the implementation of this agreement, a mediator shall be appointed by the Implementation Steering Committee, the costs of which will be borne by the parties in equal shares.

## 5. INDEMNIFICATION

5.1 PROVAC and the *development claimants* jointly and severally indemnify the STATE against any loss, liability, damage, or expense which may be suffered by the STATE:

5.1.1 pursuant to any claim made in respect of the right in land by any person who proves to be an heir and/or direct descendant of a claimant or member of the original dispossessed community;

5.1.2 arising from the allocation or distribution of the restitution award to the claimants and co-claimants;

5.1.3 as a result of the claimant's failure to disclose any other direct descendant(s) who is(are) entitled to benefit from the claim.

5.2 PROVAC warrants that it is duly authorised to act on behalf of the *development claimants*. A copy of said mandate is attached to this agreement as Annexure "A".

5.3 The parties to this agreement record that they are satisfied that:

5.3.1 the Regional Land Claims Commissioner: Western Cape has fulfilled all her statutory duties adequately for them to reach settlement;

5.3.2 the Regional Land Claims Commissioner: Western Cape is satisfied with this agreement and that the agreement ought not to be referred to Court.

**6. ALTERATIONS AND ADDITIONS**

- 6.1 The agreement as well as the annexures attached are the sole and only agreement between the PARTIES and no variation shall be of any force unless in writing and endorsed hereon and signed by all the PARTIES hereto, providing that the consent of PROVAC and the Commission shall be obtained for any amendment to be of force and effect.
- 6.2 The PARTIES hereby confirm that this agreement constitutes the entire agreement and settles all disputes between them and that, except for the terms hereof, they will have no further claim against each other.
- 6.3 No relaxation which any party may give in regard to the performance of the other parties' obligation in terms of this agreement, shall constitute a waiver of rights except in terms of clause 6.1 above.

**7. SUSPENSIVE CONDITION**

- 7.1 The agreement is subject to the suspensive conditions that -
  - 7.1.1 the Minister of Land Affairs approve this agreement and any other agreement related to the settlement of this matter and
  - 7.1.2 approve the making of an award in accordance with this agreement and any such other agreement in terms of section 42D of the Restitution of Land Rights, Act 22 of 1994; or
  - 7.1.3 the Land Claims Court ratify this agreement and any other agreement related to the settlement of this matter.
- 7.2 This agreement shall be effective from the date as agreed upon subject to the Minister's approval as per paragraph 7.1
- 7.3 Implementation of the agreement and effecting the award approved by the Minister shall be subject to the availability of funds as ascertained and in line with Departmental

budget.

**8. ANNEXURE(S)**

*Mandate of PROVAC.*

THUS DONE AND SIGNED AT ..... (name of location) ON THIS ..... DAY OF  
..... 2004  
*Full names and surname of representative*  
For and on behalf of the DEPARTMENT OF LAND AFFAIRS

THUS DONE AND SIGNED AT ..... (name of location) ON THIS ..... DAY OF  
..... 2004  
*Full names and surname of representative*  
For and on behalf of the NATIONAL BOTANICAL INSTITUTE

THUS DONE AND SIGNED AT ..... (name of location) ON THIS ..... DAY OF  
..... 2004  
*Full names and surname of representative*  
For and on behalf of the CAPE TOWN CITY COUNCIL

THUS DONE AND SIGNED AT ..... (name of location) ON THIS ..... DAY OF  
..... 2004  
*Full names and surname of representative*  
For and on behalf of the DEPARTMENT OF PUBLIC WORKS

THUS DONE AND SIGNED AT ..... (name of location) ON THIS ..... DAY OF  
..... 2004  
*Full names and surname of representative*  
PROVAC

WITNESSED BY:

1. \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_