

# **A G R E E M E N T**

entered into between **Palm City Limited** (Company) And \_\_\_\_\_ (Shareholder),(ID: \_\_\_\_\_)

## **WHEREBY IT IS AGREED AS FOLLOWS:**

### 1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause. In this agreement, unless a contrary intention clearly appears -

1.1. words importing -

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and vice versa; and

1.1.3. natural persons include created entities (corporate or unincorporate) and vice versa;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1 "company" means **Palm City Limited**

1.2.2 "shareholders" means the shareholders in the company from time to time;

1.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

### 2. **CONFLICTS WITH MEMORANDUM AND/OR ARTICLES OF ASSOCIATION**

2.1 If there is any conflict between the provisions of this agreement and the memorandum and articles of association of the company at any time, the provisions of this agreement shall prevail.

2.2 The shareholders undertake to take all such steps and do all such things as may be necessary to alter the memorandum and articles of association of the company so as to reflect, insofar as may be appropriate, the provisions of this agreement.

### 3. DIRECTORS

Owners of Class A shares will appoint the Directors of the company.

### 4. **AUTHORIZED SHARES**

#### 4.1. Classes of Shares

##### 4.1.1. Ordinary no Par Value Share Class A

Ordinary No Par Value shares Class A – Management Shares.

Shareholders of these share class will be responsible for the Management of the company.

Class A shareholders will have right to performance Profit of the company according to the benchmark as set out in par 5. **Benchmark growth.**

##### 4.1.2. Ordinary no Par Value Share Class B

Ordinary No Par Value shares Class B – Profit Shares.

Shareholders of these share class will have no Management rights in the company.

Class B shareholders will have rights to Profit share of the company.

### 5. **BENCHMARK FOR PROFIT SHARE**

5.1. Benchmark for profit sharing to Class A shareholder will be set at 12% average ROI over the period of the project:

5.1.1. 4 Years in a worst-case scenario where the property can not be rezoned and developed.

5.1.2. 7 Years with the rezoning of the property and the development of the property

5.2. The company auditors will be responsible for the calculation of the ROI over the period.

5.3. The profit split between the Class A and Class B shareholders for ROI above the benchmark will be split on a 50/50 basis.

### 6. PRE-EMPTIONS AND TRANSFERS OF SHARES

6.1. For the purposes of this clause unless otherwise agreed in writing by all the shareholders of the company, a shareholder may sell or otherwise dispose of the Profit share shares Class B held by him in the company.

#### 6.2.

6.2.1. The remaining shareholders of the company, by notice in writing, compel the exiting shareholder to offer his shares in the company to the remaining shareholders at a price stated in **South African Rand** being the pro rata net asset value of the company to be agreed between all the shareholders (including the exiting shareholder) or, failing agreement, to be determined by the **auditors of the company**, who shall act as experts and not as arbitrators.

The auditors' decision shall be final and binding on the parties. The auditors' charges shall be paid by all the exiting shareholder(s).

- 6.2.2. As soon as the price has been agreed or determined as aforesaid, the exiting shareholder shall be deemed to have offered the shares to the remaining shareholders (if more than one in proportions agreed among them or if not so agreed proportionately to their shareholding) at the price as agreed or determined. Such offer shall be open for acceptance thereafter for a period of 10 days and failing acceptance thereof in respect of all such shares within such period shall lapse.
- 6.2.3. The proportionate share of the purchase price so agreed or determined of each shareholder who accepts the offer shall be payable in cash.
- 6.2.4. The purchasing shareholders shall use their best endeavours to procure the release of the offering shareholder from any liability which he may have under any guarantees, suretyships and indemnities which may have been given by him for the company's obligations. Until the release as aforesaid is procured, the purchasing shareholders hereby indemnify the offering shareholder against any such liability.
- 6.2.5. The shares shall be delivered in transferable form to the shareholders in question against payment of the purchase price.
- 6.3.
  - 6.3.1. If the exiting shareholder intends to dispose of his shares in the company, he shall offer the shares in writing to the other shareholders, stating the price (which shall be stated in South African Rand) and the terms of payment required by him and no other terms shall be stipulated save for that contemplated in clause 6.7 and if he intends selling to a particular third party if the offer is not accepted, the name of such third party.
  - 6.3.2. If, within 30 days after the making of the offer (during which period the offer shall be irrevocable), it is not accepted in writing in respect of all the shares offered, by any of the other shareholders, if more than one, proportionately to their shareholding, or in proportions agreed amongst them, the designated person may, within a further 30 days, but not thereafter, dispose of the shares offered (but not fewer) to the named third party only, at a price not lower and on terms not more favorable to such person than the price and terms at and on which the shareholders were entitled to purchase them, subject to the terms and conditions set out in this agreement.
- 6.4. Subject to clause 6.6, transfer of any shares acquired in terms of the clause shall be given to the person so acquiring them.
- 6.5. Except as provided in clause 6.2 and 6.3, or in any written agreement in force between all the shareholders, no share may be disposed of, pledged or

transferred by a exiting shareholder without the written consent of management shareholders.

6.6. Notwithstanding anything to the contrary herein contained, no share shall be transferred to a non-shareholder unless he agrees to be bound by any written agreement in force between the company and its shareholders and/or between the shareholders governing their relationship as shareholders in the company.

6.7. Any shareholder who disposes of his shares as contemplated in this clause 6 shall be entitled to stipulate as a condition of such sale (and shall be deemed to have so stipulated as a condition of the sale contemplated in clause 6.3.2) that

6.7.1. the disposing shareholder shall be released pro rata to the number of shares sold, as a surety or guarantor or indemnitor on behalf of the company, subject to the purchaser(s) of the shares in question binding himself as surety or guarantor or indemnitor in his stead; or

6.7.2. if the release contemplated in clause 6.7.1 cannot be achieved, or pending such release being implemented, the disposing shareholder shall be indemnified by the purchaser of the shares pro rata to the number of shares sold against any claims made against the disposing shareholder by reason of such suretyship, guarantee or indemnity.

## 7. COME-ALONG CLAUSE

If a third party offers to purchase the shares of all the shareholders in the company on identical pro rata terms, and provided that shareholders holding more than 50% of the issued share capital Class B of the company accept such offer in respect of their shares, then the remaining shareholders in the company shall be obliged to and shall be deemed to have accepted the offer of the third party in respect of all their shares in the company. **The Class A shareholder will have Veto voting right to accept the offer.** Each of the shareholders irrevocably and in rem suam hereby appoints any of the other shareholders at the time as his attorney and agent to do all such things as may be necessary to comply with the provisions of this clause.

## 8. WHOLE AGREEMENT, NO AMENDMENT

8.1. This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

8.2. No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension,

waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 8.3. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 8.4. No party shall be bound by an express or implied term, representation, warranty, promise or the like not recorded herein.

## 9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1. The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

### 9.1.1 Palm City Limited

*correspondent address:*

Foyer 3, 1st Floor, The Colosseum, Century Way, Century City, Cape Town, 7560, SOUTH AFRICA

*Nigerian Address:*

No 5 I Inim Etok Akpan Lane, Uyo, Akwa Ibom State, NIGERIA

### 9.1.2. \_\_\_\_\_ (shareholder)

- 9.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by Email .
- 9.3. Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-a-vis that party to another physical address, provided that the change shall become effective vis-a-vis that addressee on the 7th business day from the deemed receipt of the notice by the addressee.
- 9.4. Any notice to a party
  - 9.4.1. delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

9.4.2. send to email to its chosen email stipulated in clause 9.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

9.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

10. **COSTS**

The costs of and incidental to the drawing and preparation of this agreement and the stamp duty hereon shall be borne and paid by the company.

SIGNED and WITNESSED by the parties on the following dates and at the following places respectively:

**DATE**            **PLACE**            **WITNESS**            **SIGNATURE**

SIGNED and WITNESSED by the parties on the following dates and at the following places respectively:

**DATE**            **PLACE**            **WITNESS**            **SIGNATURE**

Ref: Agree