

" JL1 "

MEMORANDUM OF AGREEMENT TO PROVIDE FOR THE ESTABLISHMENT/CONTINUED ESTABLISHMENT OF A PUBLIC SCHOOL ON PRIVATE PROPERTY IN TERMS OF SECTION 14 OF THE SA SCHOOLS ACT, 1996

AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

The Member of the Executive Council responsible for Education in the Western Cape Province
(hereafter referred to as "the MEC") herein represented by

(Name and rank), duly authorized by the MEC

AND:

(Name of **OWNER** of the immovable property on which the public school is situated), hereafter referred to as "the **OWNER**".

Postal Address:

Residential Address:

Identification Number:

Telephone Number:

Fax Number:

Email Address:



PREAMBLE

WHEREAS

(name of public school), (hereafter referred to as "the school") is a public school situated on the private property of the OWNER.

Postal Address:

Physical Address:

Telephone Number:

Fax Number:

Email Address:

WHEREAS the school offers education from grade _____ to grade _____; and

WHEREAS the MEC and the OWNER have agreed to enter into this agreement pursuant to sections 14(1) of the South African Schools Act, 1996 (Act 84 of 1996) (hereafter referred to as "the Act") and section 14(1) of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997) (hereafter referred to as "the Provincial Act"), whereby the school is established/deemed to be established as a public school on private property.

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IT IS HEREBY AGREED THAT:

Definitions

1. In this agreement any word or expression to which a meaning has been assigned by the Act, the Provincial Act or the Regulations relating to the minimum requirements for an agreement between the MEC and the OWNER of private property on which the public school is situated, as was promulgated in Proclamation No. R. 1738 of 1997 (hereafter referred to as "the Regulations"), shall have the same meaning as that assigned to it in the Act, the Provincial Act or the Regulations, unless the context indicates otherwise.

The status and description of the school

2. The school is a public school on private property in terms of section 52(1) of the Act and 12(3)(a) of the Provincial Act.
3. A description of the site, buildings, and access roads to the school is set out in Annexure A.

Right of occupation and use

4. The OWNER declares himself/herself willing to give the right of use of the property referred to in Annexure A for the sole purpose of education and for the ordinary activities of a public school, and furthermore as shall be agreed upon from time to time by the OWNER and the governing body for wider educational, community or religious purposes.
5. The OWNER lets the property referred to in Annexure A to the MEC for the amount of

R

 per month which payment must be paid into the OWNER's bank account not later than the 5th day of each month.

BANK DETAILS:

Name of Bank:

Branch Name:

Branch Number:

Type of Account:

Account Number:



6. An agreement between the State and the OWNER which existed prior to the commencement of the Act, (existing agreement attached as Annexure C) remains in force to the extent that it is consistent with the Act, and is only amended to the extent that it is in conflict with this agreement, in which case this agreement prevails.
7. The school can only be closed in terms of section 33 of the Act if at least a three month period of notice has been given to the OWNER by the MEC. This lease agreement terminates on the date on which the school is closed in terms of section 33 of the Act. All the improvements erected to the immovable property by the State, unless otherwise agreed in accordance to clause 1.3 of Annexure B, will become the property of the OWNER after payment by the OWNER to the State of an agreed sum of money calculated on the day of the closure of the school.
8. The responsibility for
 - 8.1 the payment of all taxes, levies, valuations and other obligations, municipal or otherwise, which are levied or may be levied in respect of the property for the duration of this agreement including the payment of monies for water and electricity consumption, sanitation, refuse removal and daily cleaning of the buildings;
 - 8.2 insurance of the property against the risk of the fire, storm or similar damage, and the payment of premiums payable as a result of such insurance; and
 - 8.3 the proper maintenance of the property both internally and externally and the erection of improvements and additional structures, etc., will be determined as negotiated in **Annexure B**.



Recognition of the religious character

9. This clause is applicable only in respect of a OWNER who has exercised his/her rights as contemplated in section 57 of the Act.

9.1 The MEC recognizes the distinctive religious character of the school as

9.2 The recognized distinctive religious character of the school referred to in clause 9.1 will be maintained by the Governing Body in the following manner:

Dispute

10. Any dispute arising under this agreement must, as a first step, be resolved amicably through conciliation between the MEC and the OWNER, or in any other manner mutually agreed upon by them.
11. If any dispute arises (including a breach of contract), the aggrieved party must notify in writing the other party and any other party affected by the dispute, within 14 school days, stating the nature and extent of his/her complaint.
12. A conciliation meeting between the parties to the dispute must take place within 7 school days of the date on the notice referred to in clause 11.



Selling of Property

13. In the event of the OWNER deciding to sell his/her property on which the school is situated, he/she should give written notice to
 - 13.1 the potential buyer, of the existence of the school so that an agreement can be entered into with such buyer; and
 - 13.2 the school and the MEC (via the WCED) of the proposed sale, with a copy of the letter referred to in 13.1, within 7 days after the Deed of Sale has been signed.

Acceptance

14. The governing body confirmed in writing their acceptance of the contract and the conditions included in it. (See Annexure C).

15. Entire Agreement and Amendments

- 15.1 This agreement comprises the entire agreement between the parties and replace all previous oral or written agreements, undertakings or proposals by or between the parties and the parties will not be able to rely on any conditions, provisions or proposals which are not explicitly included in this agreement.
- 15.2 No amendments of or additions to this agreement shall be valid unless they are in writing and signed by or on behalf of both parties to the agreement.
- 15.3 The closing of this agreement is subject to the concurrence of the Provincial Minister responsible for Finance.

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Domicilium

16. The OWNER chooses the following address as his/her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

17. The MEC chooses the following address as his/her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

Physical Address

Grand Central Towers
Lower Parliament Street
CAPE TOWN
8001

Postal Address

Private Bag X9114
CAPE TOWN
8000



Thus done and signed at

on this day of 20_____.

.....

OWNER

As WITNESSES for the OWNER

1.

2.

Thus done and signed at

on this day of 20_____.

.....

DELEGATE OF THE MEC FOR EDUCATION

As WITNESSES for the MEC:

1.

2.

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ANNEXURE A

DESCRIPTION OF SITE, BUILDING AND ACCESS ROADS TO THE SCHOOL

NAME OF SCHOOL :

POSTAL ADDRESS :

PHYSICAL ADDRESS :

SUBURB :

TOWN/CITY :

FARM :

FARM/ERF NR. :

SIZE OF SCHOOL PROPERTY :

TYPE OF STRUCTURE :

SIZE OF PROPERTY (m²) :

SINGLE/DOUBLE-STOREY :

TYPE OF ACCESS ROAD :

STATE OF ACCESS ROAD :

MARKET VALUE OF LAND :

MARKET VALUE OF STRUCTURE:

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RIGHTS AND OBLIGATIONS OF CONTRACTING PARTIES

1. GENERAL

- 1.1 Any matter concerning an involved party, regarding the property rented by the MEC, must be taken up with the Western Cape Education Department (hereafter referred to as "the WCED") and not directly with the OWNER, the public school or the governing body. The same applies to the OWNER.
- 1.2 The curriculum offered at the school must be in accordance with the prescribed curriculum for public schools and the applicable administrative directives of the WCED.
- 1.3 The **OWNER, MEC and Governing Body** may erect new buildings or effect improvements to the existing buildings. Such new buildings or improvements may only be effected after a separate agreement is concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes.

2. THE MEC

- 2.1 This lease shall be in force for a period of _____ years from the **1st** day of _____ to the **31st** day of _____ subject to the rights reserved in favor of the MEC as contained in clause 2.4 hereof.
- 2.2 The MEC will have the option to renew this lease on the same terms and conditions for a further period of 5 years except for the rental, which shall be negotiable.
- 2.3 If, at the expiration of the period stated in Clause 2.1 above, this lease be not renewed for any definite period, but the MEC nevertheless remains in occupation thereafter, the lease shall continue on the existing terms and conditions until the expiration of three months following the date of written notice given by one party to the other.



- 2.4 Notwithstanding the provisions of Clauses 2.1, 2.2 and 2.3 hereof, the MEC shall have the right to terminate the lease at any time by giving 3 months written notice to the Owner.
- 2.5 The rental to be paid by the MEC shall be payable from the **date agreed in Clause 2.1** and this rent shall **escalate annually on this date**, as determined by the weighted average of the Consumer Price Index as published in the Government Gazette from time to time.
- 2.6 The MEC must see to it that, clear road signs giving directions to the public school on access roads to the school where access to the school is by way of private roads, are erected where needed.
- 2.7 The MEC indemnifies the Owner for any damage or loss claimed against such Owner as a result of damage or loss suffered by any person, provided that such claim is related to an educational activity conducted by the school and related to the ordinary activities of a public school.
- 2.8 The MEC shall be entitled to make and affix to the walls, ceilings and floors, such fittings and fixtures in the premises as may be considered necessary or suitable, which fittings and fixtures will remain the property of the MEC who will be entitled to remove and dispose thereof during the currency of this lease, or at the expiry thereof. The MEC shall, however, repair any damage caused to the premises by the removal of such fittings and fixtures.
- 2.9 The MEC must see to it that electricity is installed at the school, if it is not the case at the time when this contract is entered into.

3. THE OWNER

- 3.1 The Owner shall free and exempt the MEC from all taxes, assessments and impositions, municipal or otherwise which are or may become levy-able in respect of the premises during the currency of this lease.



- 3.2 The Owner shall keep the premises insured against the risk of loss by fire, storm and similar perils and shall be liable for the payment of all insurance premiums.
- 3.3 The premises or portion thereof may not be sublet without the consent of the Owner.
- 3.4 The Owner or his/her duly authorized representative shall have the right to inspect the premises at all reasonable times.
- 3.5 The OWNER shall, during the currency of the lease,
 - 3.5.1 maintain the **exterior** of the premises (which include the fixing of the roof, gutters, downpipes, painting of exterior walls, electricity and water points) in a good and proper condition and state of repair, and shall promptly repair all damage to and rectify all deterioration of the premises, with the exception to any damage or deterioration which cannot be attributed to normal wear and tear.
 - 3.5.2 Install fire extinguishers and have these serviced on a regular basis as needed.
- 3.6 If the OWNER fails to repair any such damage or deterioration within one month from the date of receipt by him/her of a written notice to the effect such repairs or rectification, the MEC shall be entitled either to effect such repairs or rectification and to deduct the cost thereof from rent accruing to the OWNER, or immediately to terminate this lease.
- 3.7 Rectification of deterioration shall include general renovation and all necessary painting.
- 3.8 The Owner must ensure that a fresh drinking water supply is available at all times at the school.
- 3.9 The OWNER must ensure that the supply of electricity to the school complies with the national safety standards.

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- 3.10 The OWNER must ensure that the property on which the school is situated and all access roads are safe for school purposes and that all dangerous areas on the property referred to in Annexure A, are safeguarded.
- 3.11 The OWNER guarantees access to the school by the public, school community and officials referred to in Regulation 5(3) in relation to educational purposes.
- 3.12 The OWNER shall indemnify the MEC against any actions and demands which may be instituted against the MEC by any authorized occupant of the premises, resulting from negligence on the part of the OWNER to repair or rectify all damage or deterioration or which may be caused by any latent structural defect.

4. THE SCHOOL GOVERNING BODY

- 5.1 The payment of charges in respect of water and electricity consumed, rubbish removals and daily cleaning of the buildings shall be the responsibility of the school governing body who shall
 - 5.1.1 share proportionately with the Owner the payment of charges in respect of water and electricity consumed, if both entities use the property and separate meters are not available,
 - 5.1.2 be liable and responsible for the full amount if the school is the only occupant of the property.
- 5.2 The governing body shall be liable and responsible for the daily maintenance of the interior and exterior of the building(s).
- 5.3 The governing body (WCED) shall maintain the interior of the premises in a good and proper condition and state of repair, and shall promptly repair all damage to and rectify all deterioration of the premises, with the exception to any damage or deterioration which cannot be attributed to normal wear and tear.



5.4 Rectification of deterioration shall include general renovation and all necessary painting.

ANNEXURE C

ACCEPTANCE BY THE GOVERNING BODY

I,, the undersigned, herewith give confirmation and acceptance, as requested in clause 14 of the rental agreement, of the contract and the conditions included therein.

CHAIRPERSON OF THE GOVERNING BODY OF

.....
(Name of the public school)



.....
(Date)

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