

LE COSTE

ESTATE

BUILDING AGREEMENT

Between

SONSTRAAL INVESTMENTS PROPRIETARY LIMITED

Registration Number: 2021/764895/07

(the "Developer")

And

_____ **PROPRIETARY LIMITED**

Registration Number: _____/07

(the "Contractor")

And

(the "Employer")

Erf No. _____

House Type _____

Phase _____

Development **Le Coste Lifestyle Estate**

INITIAL

COVERING SCHEDULE

1. PARTIES	
1.1. Developer:	Sonstraal Investments Proprietary Limited Registration Number: 2021/764895/07, or its nominated entity of successors in title or assigns
Address:	1 st Floor Verdi House Klein D'Aria Estate 97 Jip de Jager Drive Bellville
1.2. Contractor:	Registration Number:
Address:	
1.3. Employer 1 (full names):	
Identity No. / Registration No. / Date of Birth:	
Purchaser's 1 Income Tax Reference No.:	
Representative's full names (if signing on behalf of a legal entity):	
Employer 2 (full names):	
Identity No. / Registration No. / Date of Birth:	
Purchaser's 2 Income Tax Reference No.:	
Residential Address (street address):	
Postal Address:	
Telephone No: (Home)	
(Work)	
(Mobile)	
E-mail Address:	
Marital Status of Purchaser/s or Signatory:	Single <input type="checkbox"/> Married <input type="checkbox"/>
(How married?)	in community of property <input type="checkbox"/>
	out of community of property without accrual <input type="checkbox"/>
	out of community of property with accrual <input type="checkbox"/>
	Married by Customary Law <input type="checkbox"/>
	Foreign marriage <input type="checkbox"/>
If foreign marriage, governed by the laws of:	(state country)
Full Names of Spouse:	
Identity No. / Date of Birth:	

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2. PROPERTY	
2.1. Erf number	
Extent of the Property (Erf) (Approximate)	m ²
Extent of the Works (Approximate)	m ²
3. TOTAL CONTRACT PRICE	
3.1. Price of the Works (Inclusive of VAT) (Contract Price)	R
3.2. Upgrade to Specifications & Additional Costs (Inclusive of VAT)	R
3.3. Interim Interest	R
3.4. Total Contract Price (Inclusive of VAT)	R
3.5. Brokerage Amount (4% of the amount referred to in Clause 3.4 of the Covering Schedule, VAT Included)	R
4. TRANSFERRING ATTORNEY	
Name of Attorney:	Bill Tolken Hendrikse Ref: Iwan Tolken Tell No.: 021 944 3000 E-Mail: iwan@billtolken.co.za Bank account: to be advised, listed as a predefined beneficiary Reference: File reference to be advised

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1. PARTIES

1.1. DEVELOPER

The Developer means the Party as more fully described in Clause 1.1 of the Covering Schedule.

1.2. CONTRACTOR

The Contractor means the Party as more fully described in Clause 1.2 of the Covering Schedule.

1.3. EMPLOYER

The Employer means the Party as more fully described in Clause 1.3 of the Covering Schedule.

2. INTERPRETATION

2.1. In this Agreement, the following terms and expressions shall have the meanings ascribed to them hereunder unless the context specifically required otherwise:

- 2.1.1. Agreement: means the Building Agreement in respect of the Works and as set out in this document between the Developer, the Contractor and the Employer;
- 2.1.2. Agreement of Sale: means the Agreement of Sale in respect of the Property entered into by and between the Developer and the Employer;
- 2.1.3. Architect means an Architect appointed by the Developer;
- 2.1.4. Attorneys: means the Attorneys stipulated in Clause 4 of the Covering Schedule;
- 2.1.5. Basic Specifications: means the detailed specifications and finishing schedule annexed hereto as Annexure C and shall comprise the standard specifications and finishes which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- 2.1.6. Bond Broker: means the Bond Broker referred to in Clause 6 of the Covering Schedule to the Agreement of Sale;
- 2.1.7. Building Plan means the Building Plan to be approved by the Local Authority, more or less in accordance with the House Plan attached hereto as Annexure A;
- 2.1.8. Business Day: means any Day except a Saturday, Sunday or officially proclaimed Public Holiday in the RSA;
- 2.1.9. Commencement Date means the date that the Contractor commences with the Works, after the fulfilment of the conditions referred to in Clause 7.1 of this Agreement;
- 2.1.10. Completion Date: means the earliest of any of events referred to in Clause 7.6 of this Agreement;
- 2.1.11. Construction Period means the period between the Commencement Date and the Completion Date;
- 2.1.12. Contractor: means the Party as referred to in Clause 1.2 of the Covering Schedule;
- 2.1.13. Contract Price: means the costs of the Works as referred in Clause 3.1 of the Covering Schedule;
- 2.1.14. CPA means the Consumer Protection Act, Number 68/2008

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- as amended;
- 2.1.15. Day: means any day of the week, including Sundays and South African Public Holidays in the RSA in accordance with the Gregorian Calendar;
- 2.1.16. Defects List: means the list of defects as agreed upon by the Parties during the Hand-Over Inspection;
- 2.1.17. Developer means means the Party as referred to in Clause 1.1 of the Covering Schedule;
- 2.1.18. Development: means the proposed Development known as **Le Coste Estate** of which the Property forms part;
- 2.1.19. Due Date: means, for all purposes of this Agreement, 3 (Three) Business Days after demand for payment was made by the Developer or the Contractor to the Employer;
- 2.1.20. Dwelling means the completed building/s on the Property constructed in execution of the Works;
- 2.1.21. Employer: means the Party as stipulated in Clause 1.3 of the Covering Schedule;
- 2.1.22. Estate Agency: means the Estate Agency referred to in Clause 7 of the Covering Schedule to the Agreement of Sale;
- 2.1.23. Hand-Over Inspection: means an inspection of the Works by the Contractor or its representative, and the Employer, after Practical Completion, at which inspection the Parties will agree to the Defects List;
- 2.1.24. House Plan: means the signed drawings of the Works, which shall form the basis for drawings to be submitted to the Local Authority for approval. Upon approval of the Building Plan, the Building Plan shall substitute the drawings and be deemed to be the Building Plan selected and approved by the Parties for the purposes of this Agreement and the execution of the Works in terms hereof;
- 2.1.25. Interest means the Interest payable on any amount due and not paid in terms of this Agreement, calculated at the Prime Overdraft Rate plus 2% (Two Percent) from the Due Date until full payment thereof by the Employer to the Contractor;
- 2.1.26. Interim Interest: means the Interim Interest payable by the Employer to the financial institution granting the requisite finance/bond to the Employer, calculated from the Transfer Date, as per the Agreement of Sale, until the Completion Date, a portion of such amount of Interim Interest being included in the Total Contract Price as per Clause 3.3 of the Covering Schedule, if applicable in terms of Clause 4.3 of this Agreement, subject to the applicable provisions contained in Clause 5 of this Agreement;
- 2.1.27. Local Authority: means the Local Authority having jurisdiction over the Property, being the City of Cape Town;
- 2.1.28. NHBRC means the National Home Builders Registration Council, functioning under the Housing Consumers Protection Measures Act, Act Number 95/1998;
- 2.1.29. Normal Wear and Tear: means the Normal Wear and Tear ascribed to

improvements to fixed property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work (which cracks are unavoidable and caused by natural shrinkage of materials, which cracks may be repainted and in which event the Contractor will not be responsible to repair or repaint these cracks), any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints, any mold growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damages caused thereby, wind and rain entering through open windows and doors, hot water cylinders which is covered by the guarantee issued by the supplier thereof and any water being blown into the garage entering underneath the garage door, irrespective of any rubber being fitted at the bottom of the garage door, which may easily enter up to 1,5 meters inside the garage door;

- 2.1.30. Occupation Certificate: means the Certificate that the Local Authority issues confirming that the Works have been completed according to the Building Plan;
- 2.1.31. Parties: means a collective reference to the Developer, the Contractor and the Employer and "Party" means any one of them as the context may require;
- 2.1.32. POPIA means the Protection of Personal Information Act, No. 4 of 2013;
- 2.1.33. Practical Completion means the practical completion of the Works as certified by the Architect or the Principal Agent, which date will trigger the Hand-Over Inspection;
- 2.1.34. Prime Overdraft Rate: means the rate of interest per year, which is equal to the publicly quoted Prime Overdraft Rate of Investec Bank Limited;
- 2.1.35. Principal Agent means the Principal Agent appointed by the Developer to manage and oversee the execution of the Works;
- 2.1.36. Property: means the Erf as described in Clause 2 of the Covering Schedule;
- 2.1.37. Property Practitioner: means the qualified and registered Estate Agent and/or the Candidate Property Practitioner responsible for completing this Agreement, as detailed in Clause 7 of the Covering Schedule to the Agreement of Sale;
- 2.1.38. SDP: means the Site Development Plan, approved by the Local Authority, or any amendments to the SDP, to be approved by the Local Authority on application and in the sole discretion of the Developer
- 2.1.39. Signature Date: means the date on which the Developer and the Contractor signs the Agreement;
- 2.1.40. Total Contract Price: means the Contract Price plus the costs of the Upgrade to Specifications and Additional Costs plus the Interim Interest, in the amount as referred to in Clause 3.3 of the Covering Schedule;
- 2.1.41. Transfer Date means the date of registration of transfer of the Property in favour of the Employer in the Cape Town Deeds Registry;

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- 2.1.42. Upgrade to Specifications & Additional Costs: means all costs and the upgrading from the Basic Specifications to the specifications described as per Annexure D hereto, which would be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- 2.1.43. Variation Order means a written agreement between the Developer, the Contractor and the Employer to modify, add to or otherwise alter the Works and/or the Basic Specifications as per this Agreement, providing for a change in scope, time and material for additional work and/or extra costs for additional working hours;
- 2.1.44. VAT: means Value Added Tax payable in terms of the VAT Act;
- 2.1.45. VAT Act: means the Value Added Tax Act No 89 of 1991;
- 2.1.46. Works: means the building works to be conducted on the Property by the Contractor in accordance with the Building Plan, Basic Specifications and, if applicable, the Upgrade to Specifications.

2.2. Indulgence

Any indulgence in respect of time or anything else granted by a Party to the other will not be considered to impair any of the rights of such Party in terms of the Agreement, or affect any right of whatsoever Party.

2.3. Exclusion of other Agreements

This Agreement cancels and supersedes all other contracts entered into by the Parties before the date of this Agreement and any amendment, addition hereto or consensual cancellation thereof will be of no force of effect unless it appears in writing and is signed by the Parties hereto.

2.4. Clause Headings

The head notes in this Agreement are used only for the purposes of reference and shall in no way effect or govern the construction or interpretation of this Agreement.

3. **THE WORKS**

- 3.1 **The Employer shall elect a finishing option contained in the Basic Specifications within 30 days after Signature Date, failing which the Developer reserves the right to elect a finishing option in the Basic Specifications on the Employer's behalf, which election the Employer will be bound to.**
- 3.2 The Contractor undertakes to execute the Works in a proper and workmanlike manner against payment of the Total Contract Price referred to in Clause 4 and 5 of this Agreement.
- 3.3 The Works shall be substantially in accordance with the Building Plan and Basic Specifications. The placement of the Works will be in accordance with the Building Plan.
- 3.4 Any material and/or Basic Specifications and/or Upgrade to Specifications will only serve as a guideline and the Contractor reserves the right to amend the Basic Specification and/or Upgrade to Specifications and/or material specified at his sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in specification or material will be of similar quality, color and appearance.
- 3.5 All colour sanitary ware, carpets, tiles and face bricks, where applicable, shall be supplied at the risk of the Employer as the Contractor does not guarantee the colour, colour-match, texture, availability or quality thereof.
- 3.6 In the event of any discrepancy arising from the Building Plan and the Basic Specifications, the provisions of the Basic Specifications shall prevail.

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3.7 **The Employer irrevocably grants a power of attorney to the Contractor and/or Developer to sign and submit the necessary drawings and specifications to the Local Authority for its approval.**

4. CONTRACT PRICE

4.1 The Contract Price shall be the amount referred to in Clause 3.1 of the Covering Schedule.

4.2 The Upgrade to Specifications and Additional Costs shall be the amounts stipulated in Clause 3.2 of the Covering Schedule.

4.3 The Interim Interest shall be the amount stipulated in Clause 3.3 of the Covering Schedule, if applicable. No provision (R 0.00) for Interim Interest shall be made in the instances of the Contract Price/Total Contract Price being paid in cash by the Employer to the Developer or in the instance of the Employer not utilizing the services of the Bond Broker to obtain finance to pay the Total Contract Price/Contract Price to the Developer.

4.4 The Total Contract Price shall be the amount referred to in Clause 3.4 of the Covering Schedule.

4.5 The Total Contract Price may be increased by the Developer in the instance that any unforeseen circumstances beyond the control of the Developer and/or the Contractor occurs and/or the Completion Date is delayed due to the conduct of the Employer, by giving written notice to the Employer to that effect, providing detailed reasons for the increase, the calculation and amount of the increase and providing for the time and method of payment of the increase in the Total Contract Price.

5. PAYMENT OF THE TOTAL/CONTRACT PRICE

5.1 Payment of the Total Contract Price shall be made by the Employer to the Developer in the following progress payment instalments:

5.1.1. The first instalment, being 25% (Twenty Five Percent) of the Contract Price/Total Contract Price, shall be paid on completion of the floor slab;

5.1.2. The second instalment, being 25% (Twenty Five Percent) of the Contract Price/Total Contract Price, shall be paid on wall plate height;

5.1.3. The third instalment, being 25% (Twenty Five Percent) of the Contract Price/Total Contract Price, shall be paid on completion of the ceilings, plaster works, windows and external walls;

5.1.4. The fourth instalment, being 20% (Twenty Percent) of the Contract Price/Total Contract Price, shall be paid on completion of the cupboard and sanitary ware;

5.1.5. The fifth and final instalment, being 5% (Five Percent) of the Contract Price/Total Contract Price, shall be paid on the date that the Occupation Certificate is issued by the Local Authority.

5.2 **Any payments due and payable in terms of this Agreement not paid on the Due Date, will bear Interest in accordance with the provisions of Clause 17 below from the Due Date to date of full payment of the amount due.**

5.3 **If the Works are financed by a financial institution, the Employer hereby empowers and authorises the Developer to receive progress payments from the financial institution as determined by it.**

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5.4 **All payments to be made by the Employer, in terms of this Agreement, including, but not limited to, the progress draws as referred to in Clauses 5.1 and 5.3 of this Agreement must always be paid into the bank account of the Developer at Investec Bank Limited, Predefined Beneficiary, Reference: Erf Number _____, Le Coste.**

5.5 **The Employer will be liable for the payment of any interim interest charged by the financial institution, calculated as from the Transfer Date, as defined in the Agreement of Sale, until the Completion Date.**

5.6 **Notwithstanding Clause 5.5 of this Agreement, if any amount has been stipulated in Clause 3.3 of the Covering Schedule and Clause 4.3 finds application, the amount of the Interim Interest in Clause 3.3 of the Covering Schedule, is included in the Total Contract Price.**

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- 5.7 If the final amount of the real Interim Interest is less than the amount stipulated in Clause 3.3 of the Covering Schedule, the surplus amount will be for the credit of the Developer.
- 5.8 If the final amount of the real Interim Interest is more than the amount stipulated in Clause 3.3 of the Covering Schedule, the shortfall amount must be paid by the Employer to the Developer on the Completion Date, in such instance where the bank release an amount less than the final draw amount as per Clause 5.1.5 above, due to outstanding accrued interest on the Employer's bond.
- 5.9 The Developer will not be obliged to pay the Interim Interest monthly to the Employer's financial institution, and accordingly the exact amount of the Interim Interest will only be calculated after the final payment and statements have been received from the Employer's financial institution.
- 5.10 In the event of the Employer failing or refusing to authorize payment of any draws or the final draw, the Contractor shall be entitled, without prejudice to any other rights which it may have, to discontinue the Works forthwith and all damages arising, costs, including the additional Interest accrued, shall be for the account of the Employer.
- 5.11 If there is any dispute between the Parties pertaining to this Clause 5, the dispute will be referred to the Architect or the Principal Agent for determination. The Parties agree to be bound by his determination.
- 5.12 If any work of whatsoever nature is still required to be done as part of Works on the Completion Date, then Employer shall not be entitled to withhold, set off or retain any amounts owing by the Employer to the Developer nor shall the Employer be entitled to withhold or rebate payment of any amount due to the Developer in terms of this Agreement consequential to any breach or alleged breach of the Contractors' obligations hereunder. Should any dispute occur as to whether the Employer is entitled to withhold any payment or amount due then the Architect or the Principal Agent shall make a ruling whether the Employer is entitled to withhold such sum. The ruling of the Architect or the Principal Agent shall be final and binding on the parties and the Architect's or the Principal Agent's costs incurred in making such ruling shall be borne by the Party against whom the ruling was made.

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6. **POSSESSION**

- 6.1 The Contractor shall be entitled to:
- 6.1.1 receive full possession and occupation of the Property from the Commencement Date, and
- 6.1.2 retain possession and undisturbed occupation of the Property, including the Works, until all agreed amounts owed to the Developer under this Agreement have been paid and all obligations of the Employer have been fulfilled, which obligations include, but are not limited to, the payment of the Total Contract Price, the payment of any Interest and the payment of the Interim Interest to the relevant financial institution, as referred to in Clause 5.4 of this Agreement.
- 6.2 The Parties record that the earliest expected Completion Date is the date to be determined in terms of Clause 7.6 of this Agreement.
- 6.3 Occupation of the Property and the possession and occupation of the Dwelling shall be given by the Contractor to the Employer on the Completion Date, provided all amounts due by the Employer to the Developer has been paid in full, at the sole and absolute discretion of the Developer.
- 6.4 **Risk in the Works, and as such the Dwelling, will pass to the Employer on the Completion Date.**
- 6.5 **The Employer hereby irrevocably indemnifies the Developer and the Contractor against any claims or damages relating to the Property or the Works or in respect of any contents held by the Employer on the Property or in the Dwelling, after the Completion Date.**
- 6.6 **The Employer acknowledges that on the Completion Date construction of parts of the Development may not yet have been completed. The Employer accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.**

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6.7 The Property and the Works will during the Construction Period be under the control of the Contractor and the Employer will only be entitled to access the Property and the Works, prior to the Completion Date, if accompanied by the Contractor, on a pre-arranged time.

7. COMMENCEMENT AND COMPLETION OF THE WORKS

7.1 The Contractor shall not be obliged to commence with the Works until:

7.1.1 the Employer has furnished adequate security to the Developer's satisfaction for the Total Contract Price; and

7.1.2 all necessary consents, approvals and/or registrations from all relevant authorities have been obtained; and

7.1.3 The Employer has become the registered owner of the Property by registration of transfer of the Property in favour of the Employer in the Cape Town Deeds Registry, as more fully provided for in the Agreement of Sale; and

7.1.4 The Property has been successfully enrolled by the Contractor in terms of the NHBC legislation;

7.1.5 The Employer and the Contractor have signed a Waiver of Builder's Lien, in favour of the financial institution granting any finance/bond to the Employer as provided for in Clause 6 of the Agreement of Sale, as well as in favour of the Developer.

7.2 If the Commencement Date is delayed for longer than 180 (One Hundred and Eighty) Business Days from the fulfilment of the conditions referred to in Clause 7.1 above for any reason other than a reason attributable to the fault and/or omission of the Contractor, then the Developer and the Contractor shall be entitled, in its sole discretion, to resile from this Agreement with neither party having any further claim against one another. Alternatively, the Parties may agree to an amended Total Contract Price.

7.3 If the Commencement Date or the Completion Date is delayed for any cause whatsoever beyond the Developer's and/or the Contractor's control, then the Contractor shall be entitled to a fair and reasonable extension of time for the commencement or completion of the Works.

7.4 Subject to any extensions permitted in terms of Clause 7.3, the Contractor shall complete the Works within 240 (Two Hundred and Forty) Days after the later of the Transfer Date or the Commencement Date.

7.5 If the Commencement Date or the Completion Date is delayed for any cause whatsoever beyond the Developer and/or the Contractor's control or if any building industry holidays, whether statutory or recognised generally as customary in the industry fall within the Construction Period, then the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Works and the Employer shall not for that reason have any claim against the Developer and/or the Contractor for damages or otherwise.

7.6 Any of the following events, at the election of the Contractor, will be considered as the Completion Date of the Works, and as such, the Dwelling, provided that local Authority has issued the requisite Occupation Certificate:

7.6.1 the date on which the keys of the Works/Dwelling are formally handed over by the Contractor to the Employer; or

7.6.2 the handover of the Works/Dwelling by the Contractor to the Employer or his Agent; or

7.6.3 notice by the Contractor to the Employer that the Works/Dwelling has been finalized and that the Works, and as such, the Dwelling, are ready for possession and vacant occupation by the Employer; or

7.6.4 a signed certificate from the Architect or the Principal Agent, to certify the Works/Dwelling as being satisfactory completed, which Certificate shall in any event be presented by the Contractor to the Employer in the instances referred to in clauses 7.6.1 to 7.6.3 above.

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7.7 The Works will be deemed to be completed on the Completion Date, from which date all responsibilities of the Contractor to the Works are released. The Employer will have no further claims against the Contractor regarding the Works.

7.8 All amounts due and unpaid shall be due and payable by the Employer on the Completion Date.

8. COMPLETION AND HANDOVER INSPECTION

8.1 The Parties or their representatives shall be obliged to attend the Hand-Over Inspection at any pre-arranged time, during which inspection the Parties shall agree to the Defects List.

8.2 If the Employer fails to attend a Hand-Over Inspection within a reasonable period after having received written notice thereof by the Contractor, then the Completion Date will be determined by the Architect or the Principal Agent.

8.3 The Contractor shall remedy the defects on the Defects List as soon as reasonably possible.

8.4 Notwithstanding the provisions of this Clause 8, the Contractor shall strictly enforce, for the benefit of the Employer, any guarantee or warranty which it may have. In as far as such guarantee or warranty relates to the Works, the Contractor hereby cedes all its rights in terms thereof to the Employer.

8.5 All undertakings and commitments given by the Developer and/or the Contractor to the Employer in terms of this Agreement are personal to the Employer who shall not be entitled to cede, assign or make over its rights thereto.

9. DEFECTS AND VOETSTOOTS

9.1 The Contractor shall remedy any material patent and latent defect in the Works due to faulty workmanship or materials, manifesting itself within 6 (Six) months of the Completion Date, as required in terms of the CPA, provided that the Employer notifies the Contractor thereof in writing within the said period of 6 (Six) months.

9.2 The Employer agrees to strictly adhere to the correct retention procedures that will be given to him/her at the Hand-Over Inspection, when reporting any material patent and latent defect in the Works during the 6 (Six) months retention period. The Parties agree that the retention procedure will be binding and that no amendments to the retention procedures will be allowed, except by agreement between the Contractor and the Employer.

9.3 If the Contractor must remedy any patent and latent defect as referred to in Clause 9.1 above, the material used and/or specifications specified in Annexure C known as the Basic Specifications, will only serve as a guideline and the Contractor reserve the right to amend the specification and/or material at its sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in specification or material will be of similar quality, color and appearance.

9.4 In the absence of notice as referred to in Clause 9.1 above, the Employer shall be deemed to have accepted the Works in a fit and proper condition and be deemed to have acknowledged that the Contractor has fully complied with its obligations as set out in this Agreement and the Works, and as such the Dwelling, will become "voetstoots". The Contractor, other than as provided for herein, shall not be liable for any defects in the Works or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 9.1.

9.5 The Contractor is registered as a Home Builder in terms of the Housing Consumers Protection Measures Act, 1998, and as such the Employer will enjoy the benefit of and the protection afforded to him/her by the NHBRC. In addition to the obligation of the Contractor in Clause 9.1 to remedy patent and latent defects in terms of the CPA, the Contractor shall in terms of the NHBRC requirements be obliged to:

9.5.1 remedy any material latent defect in the Works due to faulty workmanship or materials, manifesting itself within 90 (Ninety) Days of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 90 (Ninety) Days;

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- 9.5.2 at its own expense repair any roof leaks that occur in respect of the Works within the first 12 (Twelve) months of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 12 (Twelve) months;
- 9.5.3 rectify any defect of a patent or latent nature in respect of the substructure, the superstructure and the roof structure of the Works for a period of 5 (Five) years of the Completion Date, provided the Employer notifies the Contractor in writing thereof within the said 5 (Five) year period.
- 9.6 **The Developer and/or the Contractor shall not be liable for any defects in the Works in respect of Normal Wear and Tear or any defects or damages caused by the conduct of the Employer, whether wilfully or by his negligence.**
- 9.7 **The Employer shall be obliged to give the Contractor, its agents and sub-contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 9. Repairs will be done during working hours, Monday to Friday.**
- 9.8 **The final extent of the Works, as indicated on the Building Plan, may vary from the extent indicated on the House Plan (Annexure A). If the difference in the extent is less than 10 % (Ten Percent) than the extent stipulated on the House Plan, the Parties will have no recourse against each other. If the difference in the extent is more than 10 % (Ten Percent) less than the extent stipulated on the House Plan, the Contract Price will be amended pro rata and finally determined by the Architect or the Principal Agent.**
- 9.9 If any dispute or difference arises between the Employer and/or the Bank (being the bondholder over the Property), and the Contractor, during the construction of the Works and before the Completion Date, or after the termination of the employment of the Contractor under this Agreement, which dispute or difference pertains to the abandonment of the Works or breach of this Agreement, or as to any other matter arising hereunder, or as to the withholding by the Bank of any draw to which the Contractor claims to be entitled, which dispute or difference cannot be resolved by the Architect or the Principal Agent, then an architect, civil engineer, quantity surveyor or any other professional person involved in the building industry appointed by the Bank (the "Arbitrator") shall determine such dispute or difference by written decision given to the Contractor.
- 9.10 Notwithstanding anything to the contrary herein contained, the Developer and/or the Contractor will not be responsible for the repair of any damage or defects which might be caused by *vis major*, civil unrest or negligence by the Employer.

10. VARIATION ORDERS

If the Contractor or the Employer requests a Variation Order, then and in that instance:

- 10.1 The Contractor or the Employer must prepare a Variation Order request form and submit same to the other party;
- 10.2 The Variation Order request form must be reviewed and evaluated by the other party for approval;
- 10.3 After approval of the Variation Order request, the Variation Order must be drafted, discussed and signed by the Developer, the Contractor and the Employer prior to the Variation Order becoming effective, valid and binding on the parties;
- 10.4 The Variation Order must be in writing, signed by the Developer, the Contractor and the Employer and provide for scheduling, cost breakdown and the time and method of payment of any additional costs;
- 10.5 The Contractor will only be obliged to commence with the works provided for in the Variation Order once the Variation Order has been signed by all the parties thereto and any additional costs, fees and/or expenses have been paid or secured by the Employer to the satisfaction of the Developer;
- 10.6 The Variation Order may not substantially change the scope of the Works.

11. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR AND THE DEVELOPER

- 11.1 The Contractor shall maintain an All-Risk Insurance Policy which must insure the Works, as well as and sufficient Public Liability Insurance, from the Commencement Date until the Completion Date.

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- 11.2 Notwithstanding anything to the contrary herein contained, ownership of all materials used in the execution of the Works shall remain vested in the Contractor until all amounts due and payable in terms of this Agreement have been paid in full.
- 11.3 Copies of the following documentation will be supplied by the Contractor to the Employer on Completion Date:
- 11.3.1 Electrical Compliance Certificate
 - 11.3.2 Roof Certificate (A19)
 - 11.3.3 Building Plan
 - 11.3.4 Occupancy Certificate
 - 11.3.5 Plumbing Certificate
 - 11.3.6 Gas Certificate (if applicable)
 - 11.3.7 NHBRC Certificate to be issued by the Sub-Contractor
 - 11.3.8 Guarantees from third parties (if applicable)
- 11.4 The Contractor may appoint any third party to execute any of the Works provided that the rights of the Employer in terms of this Agreement against the Contractor shall not be affected in any way by such appointment.
- 11.5 **The Contractor is exempted from liability for making good damage caused to the Property, the Works and/or the Dwelling by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, earth tremors, geological disturbances and/or subsidence, the nature of the subsoil or terrain and the moisture content of the subsoil and shall under no circumstances be responsible for any consequential damage arising therefrom.**
- 11.6 **If the Contractor, after the Commencement Date, discovers any adverse geotechnical conditions, the Developer will be entitled, but not obliged, to either cancel this Agreement and to repurchase the Erf from the Employer at the Purchase Price thereof, plus interest on the Purchase Price calculated at the Prime Rate as from the Transfer Date until date of registration of the Erf in favour of the Developer in the Cape Town Deeds Registry, at the cost and expense of the Developer, or come to an agreement with the Employer on the increased cost due to the adverse conditions.**
12. **RIGHTS AND OBLIGATIONS OF THE EMPLOYER**
- 12.1 The Employer undertakes to become and remain the registered owner of the Property until the Completion Date.
- 12.2 **The Employer acknowledges that there will be construction work in the Development and that certain inconvenience may be caused thereby. The Developer and/or the Contractor shall not be held liable for such inconvenience or any damages that flow therefrom and shall be entitled, (where necessary) to enter upon the Property for purposes of obtaining access to adjacent erven during such construction work.**
- 12.3 The Contractor will be liable for the payment of all water consumption and electricity accounts received from the Local Authority or the supplier thereof during the Construction Period.
- 12.4 **The Contractor and the Employer must take photos of the water meter, measuring the water usage on the Erf, on the Commencement Date and provide same to the Developer on the said date. The Contractor and the Employer must take further photos of the water meter on the Completion Date and provide same to the Developer on the said date. These photographs must be utilized to determine the water consumption on the Erf during the Construction Period and will be for the account of the Contractor.**

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- 12.5 The Employer shall not alienate the Property to any third party until the Works to be carried out by the Contractor in terms of this Agreement have been completed and the Developer has received payment in full of all amounts due to it in terms of this Agreement.
- 12.6 The Employer shall conform to all conservation and/or rationing programmes or schemes introduced, adopted or implemented by a sphere of government or relevant regulating body by reducing his/her/its electricity consumption as required in terms of such programme or scheme.

13. **CONDITION PRECEDENT**

- 13.1 This Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.
- 13.2 If the conditions precedent as referred to in Clause 6 and 26 of the Agreement of Sale, is not fulfilled, then this Agreement shall lapse in its entirety and neither party shall be liable for any loss or damage suffered consequential to the non-fulfilment of this condition precedent.

14. **BREACH**

- 14.1 If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) Days, or in the instance of a breach of the obligation as referred to in Clause 8.2 of this Agreement or any financial obligation, within 7 (Seven) Days after receipt of written notice from the other party calling upon it to remedy such breach, then the innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law, including the right to claim damages from the defaulting party, to:

14.1.1 cancel this Agreement; or

14.1.2 claim immediate performance by the defaulting party of all its obligations in terms of this Agreement irrespective whether the due date for performance shall otherwise have arrived.

- 14.2 The Developer may, in the event of a cancellation of the Agreement following breach by the Employer, retain any cash payments made by the Employer prior to cancellation, whether in respect of Interest or concerning the Total Contract Price, as liquidated damages, without prejudice to any other right that the Developer may have.

- 14.3 Upon cancellation of this Agreement for any reason whatsoever, the Employer, if he took occupation of the Property and/or the Works and/or the Dwelling, hereby undertakes to vacate the Property and/or the Works and/or the Dwelling forthwith, and to procure that the Property and/or the Works and/or the Dwelling shall be vacated by any persons who occupy it through the Employer's title or by his permission. The Property, the Works and the Dwelling shall be redelivered to the Developer in the same good order and condition as at the Completion Date. The defaulting party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.

- 14.4 If the Developer is obliged and/or elects to cancel the Agreement in accordance with this Clause 14, then the Employer shall, in addition to the right of the Developer as referred to in Clause 14.1 above, be liable to pay to the Developer, on demand, an amount calculated as follows:

(Total Contract Price) less (Amounts Paid in respect of Works already completed) times 35% (Thirty Five percent) as genuinely pre-estimated liquidated damages for the breach of the terms and conditions of this Agreement by the Employer.

- 14.5 The Employer acknowledges that, following his signature hereto, the Developer will incur certain necessary costs or charges relating to, amongst others, the processing of the Agreement, the preparation of the Building Plan and drawings relative to any Loan/Mortgage Bond application and services rendered.

In the event, therefore, of the Agreement being cancelled due to a repudiation or breach by the Employer and notwithstanding the fulfilment of the conditions precedent (if any) relating to Loan/Mortgage Bond finance contained in the Agreement of Sale, the Employer assumes liability for payment to the Developer of cancellation costs, calculated as follows:

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- 14.5.1 The amount of R10 000-00 (Ten Thousand Rand) if cancellation is effective prior to the granting of Loan finance (if any);
- 14.5.2 The amount of R 30 000-00 (Thirty Thousand Rand) if cancellation is effective after granting of the Loan finance, as referred to in Clause 6 of the Agreement of Sale, (if applicable) but prior to Commencement Date; or
- 14.5.3 If cancellation of this Agreement becomes effective after the Commencement Date, the Employer shall be liable for payment to the Developer of all costs incurred by the Developer and/or the Contractor, up to the time of cancellation.

The Employer acknowledges that the foregoing and the costs stipulated are fair and reasonable and that until the provisions contained in this Clause have been complied with, the Employer shall not be entitled to discharge its obligations and cancel this Agreement for whatever reason.

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15. **MAGISTRATE'S COURT JURISDICTION**

For the purposes of all or any Court proceedings herein, the Parties hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over the intended Defendant.

16. **ADDRESSES FOR SERVICE AND DELIVERY OF LEGAL DOCUMENTS**

- 16.1 The Parties choose their addresses as set out on in Clause 1 of the Covering Schedule of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.
- 16.2 Any notice given in terms of the Agreement which is:
- 16.2.1 delivered by hand during normal business hours to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer at the time of delivery;
- 16.2.2 posted by prepaid registered post to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer on the 7th (seventh) day after the day of its posting.
- 16.2.3 communicated by e-mail, shall be deemed to have been received by the Contractor or Employer on received confirmation of the successful transmission thereof.
- 16.3 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by e-mail. Communications by e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided, that transmission occurred during business hours.

17. **INTEREST**

Any amount due by the Employer to the Developer not paid on the Due Date, shall bear Interest at the Prime Overdraft Rate plus 2% (Two Percent) from the Due Date until the date of full payment thereof.

18. **BROKERAGE**

- 18.1 Commission in an amount equal to 4% (Four Percent), VAT Included, of the amount as per Clause 3.4 of the Covering Schedule and specified in Clause 3.5 of the Covering Schedule, shall be payable by the Developer to the Estate Agency, as defined in the Agreement of Sale, on the date that the Employer pays and the Developer receives payment of the second draw as referred to in Clause 5.1.2 of this Agreement.
- 18.2 The said Commission will be earned by the Estate Agency on the Transfer Date, as defined in the Agreement of Sale.

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- 18.3 If this Agreement is cancelled consequential to a breach by either one of the Parties, the defaulting party will be liable for the payment of the Estate Agency's Commission.
- 18.4 **The Employer warrants that it was not introduced to the Property, or this Agreement, by any Property Practitioner other than the Estate Agency or the Property Practitioner stipulated in Clause 7 of the Covering Schedule to the Agreement of Sale. The Employer accordingly indemnifies the Developer and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Developer arising out of a breach of this warranty.**
- 18.5 The Property Practitioner responsible for completing this Agreement, as well as the Estate Agency, are registered with the PPRA and holds the FFC's as detailed in Clause 7 of the Covering Schedule to the Agreement of Sale.

19. CAPACITY OF EMPLOYER

- 19.1 If more than one Employer signs this Agreement, the Employers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.
- 19.2 **In the event of the Employer being a juristic person or a trustee for the time being of a Trust, the Signatory and his/her Spouse, if applicable, by his/their signature hereto, binds himself/themselves, as surety/ies and co-principal debtor/s *in solidum* with the Employer, under renunciation of the benefits of excussion and division, for the performance by the Purchaser of all the Employer's obligations in terms of this Agreement.**
- 19.3 **In the event of the Employer being a company to be formed, the Signatory and his/her Spouse, if applicable, shall be personally liable for all the obligations of the Employer as though he/they contracted in his/their personal capacity, if the company in respect of which he/they act/s as agent, is not incorporated within 30 (thirty) days of the Signature Date and/or if the company, having been duly incorporated, fails to adopt and ratify this transaction without modification within 7 (seven) days of the date of such incorporation.**
- 19.4 **Upon timeous formation of the company and due and timeous ratification and adoption of this transaction, the Signatory/ies shall become and be liable as surety/ies for and co-principal debtor/s *in solidum* with the company for its obligations as Employer in terms of this Agreement, under renunciation of the benefits of excussion and division.**

20. CONSENT IN TERMS OF POPIA

The Employer hereby give consent to the Estate Agency, the Property Practitioner, the Developer, the Transferring Attorneys, the Contractor and the Bond Broker to process their personal information for all purposes related to this Agreement, in accordance with the provisions of POPIA.

Initial

21. SUB-CONTRACTORS

- 21.1 The Contractor may, at its election cede or assign this Agreement in parts to a Sub-Contractor and will further be entitled to employ such Sub-Contractor to complete work to certain parts of the Works or to install certain equipment and/or materials.
- 21.2 The Employer will not be entitled to appoint any sub-contractor, artist, craftsmen or other expert to do any work on the Property or in connection with the Works of whatsoever nature while the Works is in progress, without the written prior consent of the Contractor and the Developer.
- 21.3 The Employer or any of his employees will under no circumstances interfere with the Works being by the employees of the Contractor and will also under no circumstances delay the completion of the Works.
- 21.4 If the consent granted by the Contractor and the Developer cause any extra costs due to the actions of the Employer or due by the employment of the Employer of any third party, the extra costs will be for the account of the Employer over and above the Total Contract Price.

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22. GENERAL

22.1. This document constitutes the entire agreement concluded between the Parties and no warranties or undertakings or representations other than those specifically recorded herein may be relied on by either of the Parties. This document may furthermore not be modified, varied or consensually cancelled other than in writing, duly signed by both Parties.

22.2. The Agreement shall not be binding upon the Parties until the Developer and the Contractor has confirmed acceptance thereof by his signature hereto.

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

DEVELOPER

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

CONTRACTOR

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

EMPLOYER

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

EMPLOYER

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

INITIAL

2. _____

SPOUSE OF THE SIGNATORY

SIGNED at _____ on this _____ day of _____ 20____

AS WITNESSES:

1. _____

2. _____

PROPERTY PRACTITIONER

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