



**BUILDING AGREEMENT**

between

**MSP DEVELOPMENTS (PROPRIETARY) LIMITED**  
Registration Number. 2001/019488/07  
("the Contractor")

and

-----  
("the Employer")

Phase	:	_____
Erf No.	:	_____
House Type	:	_____
Agent	:	_____
Agent's Contact No.	:	_____

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1. **PARTIES**

1.1 The Parties to this Agreement are:

1.1.1 Name: MSP Developments (Pty) Ltd  
Registration Number: 2001/019488/07

1.1.2 Business: MSP Chambers  
4 Howick Slot  
Tyger Falls  
Bellville  
7530

1.1.3 Postal address: PO Box 1879  
Bellville  
7535

(the "Contractor")

and

1.2. The Employer means the Party as more fully described in Annexure A.

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 Additional Costs: shall mean all costs as per Annexure F hereto, which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;

2.1.2 Agreement: the Building Agreement in respect of the Works and as set out in this document between the Employer and the Contractor;

2.1.3 Agreement of Sale: the Agreement of Sale in respect of the Erf entered into by and between Corporate Aone Trade and Invest 8 (Pty) Ltd  
Registration Number: 2008/005234/07;

2.1.4 Architect / Project Manager: the Architect or Project Manager appointed by the Contractor from time to time for the purpose of the execution of the Works.

2.1.5 Attorneys: Messrs Mostert & Bosman  
MSP Chambers, 4 Howick Slot, Tyger Waterfront,  
Bellville  
7530  
Ref: Pieter Goosen  
Tel No: (021) 914 3322

- 2.1.6 Basic Specifications: shall mean the detailed specifications and finishing schedule annexed hereto as Annexure E 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;
- 2.1.7 Business Day: means any Day except a Saturday, Sunday or officially proclaimed public holiday;
- 2.1.8 Completion Date: means the date determined in terms of Clause 7.6 of this Agreement.
- 2.1.9 Contractor: means the Party as referred to in Clause 1.1 of this Agreement
- 2.1.10 Contract Price: the total costs of the Works as referred to in Annexure B
- 2.1.11 Day: any Day of the week, including Sundays and South African Public Holidays;
- 2.1.12 Development: the proposed Development known as Belladonna Estate of which the Erf forms part;
- 2.1.13 Due Date: means, for all purposes of this Agreement, 3 (Three) Business Days after demand for payment was made by the Employer to the Contractor.
- 2.1.14 Employer: means the Party as referred to in Annexure A;
- 2.1.15 Erf: the property to be registered in the name of the Employer as indicated on Annexure C being the provisional Sub-Divisional Plan pertaining to the Development;
- 2.1.16 Local Authority: means the Local Authority having jurisdiction over the Erf, being at present the City of Cape Town, and shall include any body that may be its successor in such capacity;
- 2.1.17 Parties: a collective reference to the Contractor and the Employer and "Party" means one of them;
- 2.1.18 Prime Overdraft Rate: means the rate of Interest per annum which is equal to ABSA Bank Limited publicly quoted prime overdraft rate of Interest per annum charged by the said bank on overdrawn current account of its most favourite clients from time to time (in the event of a dispute as to the prime overdraft rate, the rate shall be certified by any manager of any branch of the said bank, who's certificate will act as prima facie proof of the overdraft rate);

- 2.1.19 Plan: a copy of which is annexed hereto as Annexure C and shall for the purpose of this Agreement means the signed drawings of the Works, which shall form the basis for drawings to be submitted to the relevant Local Authority for approval. Upon approval thereof, the approved Plan shall substitute the drawings and be deemed to be the Plan selected and approved by the Parties for the purpose of this Agreement and the execution of the Works in terms hereof;
- 2.1.20 Price Structure: shall mean all costs as per Annexure B hereto, which amount will become due and payable to the Contractor in the execution of the Works in terms of this Agreement;
- 2.1.21 SDP: means the provisional Sub-Divisional Plan to be approved by the Local Authority, a copy of the draft SDP attached hereto as Annexure D;
- 2.1.22 VAT: means Value Added Tax payable in terms of the VAT Act;
- 2.1.23 VAT Act: means Act No 89 of 1991;
- 2.1.24 Upgrade to Specifications: shall mean the upgrading from the Basic Specifications to the specifications described as per Annexure F hereto. If any additions are made to Annexure F a quote will be sent and has to be approved and paid for within a 24 hour period, which quote will be supplied by the Contractor. This will then form part of the execution of the Works in terms of this Agreement;
- 2.1.25 Works: the building works to be conducted on the Erf by the Contractor in accordance with the 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 purpose of reference and shall in no way effect or govern the construction or interpretation of this Agreement.

### 3. **THE WORKS**

- 3.1 The Contractor undertakes to execute the Works in a proper and workmanlike manner against payment of the Contract Price referred to in Clause 4.
- 3.2 The Works shall be substantially in accordance with the Plan and Basic Specifications provided that the Contractor shall be entitled in his discretion to deviate from the Plan and Basic Specifications if, during the building and construction of the Works it appears that such deviation will result in the most significant, practical and economical completion of the Works without essentially deviating from the Plan or having a negative effect on the quality and finishing of the Works.
- 3.3 In the event of any discrepancy arising from the Plan and the Basic Specifications, the provisions of the Basic Specifications shall prevail.
- 3.4 The Employer irrevocably grants a power of attorney to the Contractor to sign and submit the necessary drawings and specifications to the Local Authority for its approval.
- 3.5 No alterations or deviations of the Plan will be allowed. The placement of the Works on the Erf will be in the sole discretion of the Contractor.

### 4. **CONTRACT PRICE**

- 4.1 The Contract Price shall be the amount referred to in the Price Structure as per Annexure B, subject to any variations referred to in the Upgrade to Specifications and/or Additional Costs. The Additional Costs shall be the sum referred to in Annexure F hereto, which sum is inclusive of VAT and shall be payable by the Employer to the Contractor in cash within 24 (Twenty Four) hours after signature of Annexure F by the Contractor, failing to do so, the Contractor will not be liable for any Upgrade to the Specifications and Additional Costs.

### 5. **PAYMENT OF THE CONTRACT PRICE**

- 5.1 Payment of the Contract Price shall be made by the Employer to the Contractor:
- 5.1.1 in 1 (One) instalment on the Completion Date, or
- 5.1.2 according to the standard procedure of the financial institution concerned, in the instance where a bond has been registered by the Employer as provided for in terms of Clause 8 of the Agreement of Sale. In a case where a part of the Contract Price is financed by a bond the Employer undertakes to pay the first part of the Contract Price as indicate in Clause 5.1.1 of this Agreement and the bond be utilized for the later payments.
- 5.2 Should there be any dispute between the Parties, then the matter will be referred to the Architect whose decision will be final and binding on the Parties.
- 5.3 Any agreed payments not paid on Due Date will bear interest in accordance with the provisions of Clause 17 below from the Due Date to date of final payment.
- 5.4 In the event of any part of the Contract Price being payable from the proceeds of a building loan secured by a mortgage bond obtained from a financial institution then the Employer irrevocably cedes the Contract Price equal to the outstanding balance of the Contract Price or the total proceeds of the building loan, whichever is the lesser.

- 5.5 In the event of an Employer failing or refusing to authorize payment of any interim or final draws, the Contractor shall be entitled without prejudice to any other rights which he may have in terms of this contract in law to discontinue the Works forthwith and all damages arising, costs, including the additional interest accrued, shall be for the account of the Employer.

6. **POSSESSION**

- 6.1 The Contractor shall be entitled to:

6.1.1 receive full possession and occupation of the Erf when he is due to commence the Works.

6.1.2 retain possession of the Works until all agreed amounts owed to him under this Agreement and under any other Agreement or arrangement between the Contractor and the Employer in connection with the Works have been paid and all obligations of the Employer of this Contract have been fulfilled.

- 6.2 The Parties record that the earliest date of possession and occupation of the Works, i.e. the earliest expected Completion Date, is the date referred to in Clause 7.6 of this Agreement.

- 6.3 Provided the Employer has complied with all his obligations in terms of this Agreement, possession and vacant occupation of the Works shall be given by the Contractor and taken by the Employer on the Completion Date.

- 6.4 The right to use the Works passes to the Employer on the Transfer Date as provided for in the Agreement of Sale.

- 6.5 It is recorded that, subject to the provision referred to in Clause 11.2, the Erf on which the Works is constructed will throughout the construction period be under the control of the Contractor and that the Employer shall not be entitled to have any access to the Erf prior to the Completion Date, otherwise than as approved by the Contractor or its agent, and if approval is granted, subject to the terms of such approval.

7. **COMMENCEMENT AND COMPLETION OF THE WORKS**

- 7.1 The Contractor shall commence with the Works on or before registration of the Erf in favour of the Employer in terms of the Agreement of Sale, but he shall not be obliged to commence the Works until:

7.1.1 the Employer has furnished adequate security to the Contractor's satisfaction for the whole of the Contract Price; and

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

- 7.2 If commencement of the Works is delayed for longer than a period of 180 (One Hundred and Eighty) Business Days as from date of signature hereof for any reason other than a reason attributable to the fault and/or omission of the Contractor, then the Contractor shall be entitled in its sole discretion to resign from this Agreement, with neither party having any further claim against one another or alternatively claim an adjustment to the Contract Price in accordance with any increases in the cost of material and/or labour which might in the interim have occurred. In the event of the Parties being incapable of agreeing as to the adjustment to the Contract Price, then a Quantity Surveyor appointed by the Contractor shall determine the dispute and the Quantity Surveyor's determination shall be final and binding on the Parties.
- 7.3 Subject to any extensions permitted in terms of Clause 7.4, the Contractor shall complete the Works within 150 (One Hundred and Fifty) Business Days after commencement.
- 7.4 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control or if any building industry holidays, whether statutory or recognised generally as customary in the industry fall within the contract 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 Contractor for damages or otherwise.
- 7.5 The occurrence of one or more of the events detailed in Clause 7.6 below shall constitute complete proof of the satisfactory completion of the Works by the Contractor and shall determine the Completion Date and the Contractor shall be discharged completely from all obligations expressed or implied under this contract and any variation thereof or addition thereto and the Employer shall have no further claim on the Contractor, save as specifically otherwise provided herein.
- 7.6 For purposes aforesaid, the occurrence of any one of the following shall constitute the Completion Date:
- 7.6.1 The date of formal handing over of the keys to the Works by the Contractor to the Employer and the signing by the Employer of a handing-over certificate in acknowledgment thereof; or
- 7.6.2 The date which occupation of the Works is taken by the Employer or his Agent, or
- 7.6.3 After notice by the Contractor to the Employer that the final section of the Works has been completed and all inspections have been done and tests passed by the Mortgagee or relevant authority and the Works are available for occupation by the Employer, or
- 7.6.4 The date of issue of a certificate signed by the Architect stating that the Works have been satisfactorily completed, or
- 7.6.5 An Occupation Certificate issued by the Local Authority;
- whichever of these dates shall be the earliest.
- 7.7 Notwithstanding anything elsewhere provided for in this Agreement, all amounts owing in terms of this Agreement which have not already been paid in terms of the provisions of this Agreement, shall be forthwith payable on the Completion Date.

- 7.8 In addition to the defects list referred to in Clause 8.2 of this Agreement, the Employer, must within 7 (Seven) Days after the Completion Date, notify the Contractor in writing of any visible defects, which will be rectified within one month, permitting access. This list shall be regarded as a final and complete defect list, but shall not constitute the right to withhold final payment.
- 7.9 The risk in the Works shall pass wholly and entirely to the Employer as from the Completion Date.

## 8. **GUARANTEES AND HANDOVER OF THE WORKS**

- 8.1 The Employer or his representative shall be obliged to attend a hand-over inspection of the Works together with the Architect or a representative of the Contractor at any pre-arranged time (as close as possible to the final completion of the Works by the Contractor) before or after the Completion Date, pursuant to Clause 7.6.1 of this Agreement, in order to inspect the Works and to be advised of the defects listed by the Architect or the representative of the Contractor which are to be remedied by the Contractor in terms of Clause 8.3. During the hand-over inspection the Architect or the representative of the Contractor may in his sole discretion add further items to the defects list, which will be remedied by the Contractor in terms of Clause 8.3 of this Agreement. In the event however, that the Employer or his representative fails to attend the hand-over inspection within a period of 7 (Seven) days after he was invited to attend to an appointment regarding the handover inspection, despite having been duly notified thereof, the Architect or the representative of the Contractor, shall conduct such inspection and hand-over. The Parties record that the Employer may appoint the Agent as referred to in Clause 4.7 of the Agreement of Sale to attend the abovementioned inspection and to accept the handover of the keys of the works.
- 8.2 The defects list issued by the Architect or the representative of the Contractor on the Completion Date with such further items, if any, added during the hand over inspection shall be final and binding between the Parties and the Employer shall be obliged to accept the Works with such defects. Subject to Clause 7.8, the Employer shall be precluded from raising at any later time any defect which is alleged to have been a patent defect on the day of the inspection, but does not appear on such list and shall not have any claim against the Contractor arising therefrom nor shall the Employer be entitled to allege that any such defect or any of the defects listed by the Architect or the representative of the Contractor, renders the Works unfit for beneficial occupation.
- 8.3 The Contractor shall remedy any defects that have been listed by the Architect or the representative of the Contractor on the said defects list pursuant to Clause 8.1, as soon as reasonably possible after the Completion Date. The Contractor shall remedy any material latent defect in the Works due to faulty workmanship or materials, manifesting itself within 90 Days of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 90 (Ninety) Days. Any dispute between the Contractor and the Employer as to whether the defect constitutes a material defect, shall be referred to the Architect or the representative of the Contractor for determination, whose decision shall be final and binding on the Parties.
- 8.4 In addition to the obligation of the Contractor in Clause 8.3 to remedy patent and latent defects, the Contractor shall in terms of the NHBC requirements be obliged to:-
- 8.4.1 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;

- 8.4.2 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;
- 8.5 In the absence of notice as referred to in Clause 8.4 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 the aforesaid Clause.
- 8.6 The Employer shall be obliged to give the Contractor all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 8 above.
- 8.7 The Contractor personally, or through its servants or agents, shall be entitled at all reasonable times to have access to the Works for the purpose of inspecting it or to carry out any repairs which the Contractor may in terms hereof be obliged or entitled to perform whether such repairs relate to the Works or not, and the Employer shall have no claim against the Contractor for any disturbance in his occupation arising out of the exercise by the Contractor of the rights hereby conferred.
- 8.8 After occupation of the Works by the Employer, any repairs will be done during working hours, Monday to Friday.
- 8.9 The Architect's certificate stating that any defect for which the Contractor is liable in terms of Clause 8 has been made good shall be final and binding on both Parties and shall relieve the Contractor from any obligations in respect of such defect.
- 8.10 The Warranty specifically excludes the following repair items:
- 8.10.1 touch-up paint of any nature,
  - 8.10.2 hairline cracks in the plaster work,
  - 8.10.3 any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints,
  - 8.10.4 any mould growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damage caused thereby,
  - 8.10.5 wind and rain entering through the windows and doors and windows left open, and
  - 8.10.6 hot water cylinders which will be covered by the guarantee supplied by the manufacturers thereof.
- 8.11 The Parties record that should the Contractor be willing to repaint any surface an alternative paint as to the paint specified in the Basic Specifications, then and in that instance, the Employer undertakes to supply the Contractor with the necessary paint.

9. **VARIATIONS**

- 9.1 Should the Employer, after signature of this Agreement, require that any aspect of the Works be varied and/or any extra work be carried out by the Contractor, then such request shall be made in writing whereupon the Contractor may (but is not obliged to) submit a written quotation in respect of the cost of such variation/extra. On signature of the quotation by the Employer, which quotation must be accepted within 24 (Twenty Four) hours after it was dispatched by the Contractor to the Employer, this Agreement will be deemed to be accordingly varied. All costs arising from such variation/extra shall be paid by the Employer to the Contractor prior to commencement of the Works. Should the Employer not pay the costs regarding the agreed variations, on demand by the Contractor, the variations will then to be cancelled and the specifications will revert back to the standard specifications applicable on the works.
- 9.2 Notwithstanding the above and in the event of the Parties inadvertently failing to follow the procedures prescribed should the Parties in fact have agreed to any extras/variations but have failed to agree on the cost thereof and/or should the Parties be unable to agree as to whether any Works do comprise an extra/variation, such dispute will be referred to the Architect, who will determine the dispute and whose determination will be final and binding on the Parties.
- 9.3 It is recorded that the Works may not have been completed and, accordingly, the final extent of the Works may vary from the extent indicated on the Plan. However, should the final extent of the Works be less than 10% (Ten) than the extent indicated on the Plan, the Parties will have no recourse against each other. Should the variance be more than 10% (Ten), the Seller's Architect shall determine the monetary value of the damages suffered by the aggrieved Party.

10. **RIGHTS AND OBLIGATIONS OF THE CONTRACTOR**

- 10.1 The Employer undertakes to become and remain the registered owner of the Erf pending payment of the full Contract Price to the Contractor and the passing of risk to the Employer.
- 10.2 The Contractor shall reasonably insure against public liability on or around the Works from the commencement of building operations on completions of the Works in terms of this contract and until the risk in the Works has passed to the Employer.
- 10.3 Where the Erf supplied to the Employer the Contractor shall be exempted from liability for making good damage caused by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, erf 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 there from.
- 10.4 The Contractor reserves the rights to alter the position of any drain or drain pipe as shown on the working drawings to suit the level of the ground should it be necessary
- 10.5 Notwithstanding anything to the contrary herein contained, ownership of all materials build onto the Erf shall remain vested in the Contractor until such time as all amounts due in terms of this Agreement have been paid in full. The provisions of this Clause shall apply notwithstanding the fact that such materials may have otherwise exceeded to the Erf or any building situated on the Erf.

- 10.6 In the event of the contract period being extended due to any breach of contract by the Employer or the Employer not taking possession immediately when called upon to do so in terms of this Agreement or should there be any delay in completing finishes or items that are to be specified by the Employer due to non availability or failure by the Employer to specify the said finishes or items promptly when called upon to do so in terms of this Agreement, then the Contractor shall, be entitled to engaged a security guard and watchman shall be immediately due owing and payable by the Employer. The decision as to whether there is a delay or any failure as contemplated herein and the decision to engage a guard shall be taken solely by the Contractor. The Contractor decision in this regard shall be final.
- 10.7 The following documentation will be supplied by the Contractor to the Employer on Completion Date:
- 10.7.1 Electrical Compliance Certificate
  - 10.7.2 Roof Certificate (A19)
  - 10.7.3 Copy of approved Plan
  - 10.7.4 Occupation Certificate issued by the Local Authority
- 10.8 The Contractor is entitled to enter into contracts with any third party to sub-Contract 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 sub-contracting Agreement.
11. **RIGHTS AND OBLIGATIONS OF THE EMPLOYER**
- 11.1 Such guarantees as may be received by the Contractor in respect of any item incorporated in the Works shall, to the extent that the Contractor is entitled to do so, be passed on to the Employer
- 11.2 The Employer shall have the right of inspection of the Works carried out by the Contractor, provided that the Employer shall at all times be accompanied by either the Contractor or one of its duly appointed agents, but he shall not personally or through his Agent be entitled to issue instructions to any of the Contractor's workmen or subcontractors or any other person employed or acting on their behalf.
- 11.3 The Employer acknowledges that the Development will be an ongoing process and that certain inconvenience may be caused thereby. The Contractor shall not be held liable for such inconvenience or any damages that flow there from and shall be entitled, (where necessary) to enter upon the property for purposes of obtaining access to adjoining erven in the course of such Development.
- 11.4 The Employer will be liable for the payment of all water consumption accounts received from the Local Authority as well as rates and taxes payable to the Local Authority as from the earlier date of the approval of the Plan by the Local Authority or the Transfer Date of the Erf in terms of the Agreement of Sale. The Contractor does not accept any responsibility towards the payment of such accounts nor for any damages that the Employer may suffer or any delays that might occur as a result of non payment of the accounts by the Employer.
- 11.5 The Employer shall not under any circumstances be entitled to withhold payment from the Contractor for any amounts whatsoever by virtue of minor works still to be carried out by the Contractor. Any amounts to be withheld, shall be certified by an Architect appointed by the Contractor.

12. **CONDITIONS PRECEDENT**

- 12.1 This entire Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.
- 12.2 In the event that the conditions precedent as referred to in Clause 8 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 as a result of non-fulfillment of this condition precedent.

13. **BREACH**

- 13.1 Should the Employer's estate be finally sequestrated and/or liquidated (as the case may be), placed under judicial management, or should the Employer commit a breach of any of the terms of this contract (including failing to make any payments on Due Date) and fail to remedy such breach within 14 (Fourteen) days of date of despatch by the Contractor of written notice calling upon the Employer to remedy such breach, the Contractor shall in such circumstances forthwith be entitled to terminate this contract without prejudice to any rights which the Contractor may have in terms of this contract or in terms of law.

- 13.2 In the event of the Contractor being obliged and/or electing to cancel the Agreement in accordance with the preceding Clause, then the following shall occur:

13.2.1 A Quantity Surveyor appointed by the Contractor shall assess the amounts due to the Contractor in terms of Works completed to date and any portion thereof which has not already, by virtue of progress payments being paid, shall forthwith be payable.

13.2.2 As genuinely pre-estimated damages for the breach of the terms and conditions of this Agreement by the Employer, the Employer shall be liable to pay to the Contractor an amount calculated as follows:

(Total Contract Price) less (Amounts Paid and/or Payable in respect of Works already completed) times 20 (Twenty)%.

- 13.3 If the Contractor defaults in any of the following respects:

13.3.1 without reasonable cause wholly suspends the Works before completion;

13.3.2 without reasonable cause refuses to proceed with the Works with reasonable diligence;

13.3.3 refuse, after notice in writing from the Employer, to remove defective work or improper materials within a reasonable period of time;

then, and in such an event, if the default shall continue and not be remedied notwithstanding 14 (Fourteen) days written notice to the Contractor by the Employer specifying the nature of the specific default, the Employer may without prejudice to any other right he may have in terms of this Agreement or in law, by written notice cancel the Agreement and the Contractor shall be liable for damages suffered by the Employer by reason of such default and cancellation.

14. **MAGISTRATE'S COURT JURISDICTION**

- 14.1 For the purposes of all or any Court proceedings herein, the Employer and Contractor hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over the intended Defendant.

15. **NOTICE AND DOMICILIA**

- 15.1 The Parties choose their addresses as set out on in Clause 1 and Annexure A of this Agreement above to serve as domicilium citandi et executandi for all purposes of this Agreement, which includes the giving of notice and the serving of documents or process.

- 15.2 Any notice given in terms of the Agreement which is:

15.2.1 delivered by hand during normal business hours to the Contractor's or Employer's domicilium address shall be deemed to have been received by the Contractor or Employer at the time of delivery;

15.2.2 posted by prepaid registered post to the Contractor's or Employer's domicilium address shall be deemed to have been received by the Contractor or Employer on the 7<sup>th</sup> day after the day of its posting.

15.2.3 Communicated by facsimile or e-mail, shall be deemed to have been received by the Contractor or Employer on received confirmation of the successful transmission thereof.

- 15.3 Where, in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or 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.

16. **CANCELLATION BY EMPLOYER**

- 16.1 The Employer acknowledges that, by reason of his signature hereto, the Contractor will incur certain necessary costs or charges relating inter alia to the processing of the Agreement, the preparation of Plan and drawing relative to any loan/Mortgage Bond application and services rendered.

In the event therefore, of the Employer electing to cancel this Agreement for whatever reason, and notwithstanding the fulfillment of the conditions precedent (if any) relating to loan/Mortgage Bond finance contained in the Agreement of Sale, the Employer assumes liability, without recourse, for payment to the Contractor of cancellation costs, calculated as follows:

16.1.1 The amount of R10 000-00 (Ten Thousand Rand) if cancellation is effective prior to the granting of loan finance (if any);

16.1.2 The sum of R30 000-00 (Thirty Thousand Rand) if cancellation is effective after granting of required loan/Mortgage Bond (if any) but prior to commencement of the Works; or

16.1.3 Should the Employer cancel this Agreement after commencement of the Works, the Employer shall be liable for the payment to the Contractor of all costs incurred to the time of cancellation.

The Employer acknowledges that the foregoing and the costs stipulated are fair and reasonable and that until such time as the provisions contained in this Clause have been complied with, the Employer shall be unable to discharge its liabilities and cancel this Agreement for whatever reason.

17. **INTEREST**

17.1 Any agreed amount due by the Employer to the Contractor not paid on Due Date shall bear interest at the Prime Interest Rate plus 2% from the Due Date until the date of payment thereof.

18. **GENERAL**

18.1 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.

18.2 The Agreement shall not be binding upon the Parties until the Contractor has confirmed acceptance thereof by virtue of a Director's signature or his nominee on these documents. In the event of the Contractor being a Principal or a partnership the signature of such principal or partner shall be binding on the Parties hereto.

18.3 This Agreement is indivisible from the Agreement of Sale. Fulfilment of the conditions precedent of the Agreement of Sale in respect of the Erf as well as the conditions precedent to this Agreement is required before any of the two Agreements can become effective.

18.4 This Agreement is, in regard to the capacity of the Employer, further subject to the provisions of Annexure G annexed hereto.



SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

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

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

\_\_\_\_\_  
CONTRACTOR

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

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

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

\_\_\_\_\_  
EMPLOYER (1)

\_\_\_\_\_  
EMPLOYER (2)

ANNEXURE A

**INFORMATION OF THE EMPLOYER**

Name: \_\_\_\_\_

Identity/Registration no:  
(or passport number) \_\_\_\_\_

Date of birth: \_\_\_\_\_

Postal address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Residential address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone/Fax No: (home) \_\_\_\_\_

(business) \_\_\_\_\_

(fax) \_\_\_\_\_

(cell) \_\_\_\_\_

(e-mail) \_\_\_\_\_

Marital Status of Purchaser: MARRIED / NOT MARRIED  
(if natural person)

If married:  
State community of Property: OUT / IN / MUSLIM RIGHTS/CUSTOMARY LAW

Name of Spouse: \_\_\_\_\_

Identity/Passport no: \_\_\_\_\_

Marriage governed by  
the Laws of: \_\_\_\_\_

If Purchaser is a Company,  
Close Corporation or Trust,  
Specify details of:

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Resolution attached: YES / NO

FICA documents attached: YES/NO



ANNEXURE B

**CONTRACT PRICE AND PRICE STRUCTURE**



ANNEXURE C

**HOUSE PLAN**



ANNEXURE D

**SUB-DIVISIONAL PLAN**

ANNEXURE E

**BASIC SPECIFICATIONS**

**1. BRICKWORK**

- 1.1 Exterior Walls: All exterior walls will be of SABS approved cement Maxi stock bricks – 222mm x 115mm x 90mm, plastered and painted.
- 1.2 Interior Walls: Will be of SABS approved cement Maxi stock bricks – 222mm x 115mm x 90mm – and finished in one coat smooth plaster, with one (1) coat undercoat and two (2) coats interior acrylic in broken white/cream.

**2. WINDOW SILLS**

- 2.1 Exterior: Plastered and painted.
- 2.2 Interior: Will be finished in plaster and painted.

**3. WINDOWS**

- 3.1 All windows will be as per PLAN (White Epoxy Aluminium).

**4. DOORS AND DOOR FRAMES**

- 4.1 Front door: Standard Meranti door in standard Meranti frame, painted with one (1) coat primer- and two (2) coats white gloss enamel paint.
- 4.2 Back door: Standard Meranti door in standard Meranti frame, painted with one (1) coat primer- and two (2) coats white gloss enamel paint.
- 4.3 Internal doors: hollow core type in 1,2mm pressed steel frame, painted with one (1) coat primer- and two (2) coats white gloss enamel paint.

**5. ROOF TRUSSES AND COVERING**

- 5.1 Roof trusses will be manufactured and erected with pre-fabricated roof trusses.
- 5.2 Roof covering will be of cement tiles of recognized manufacturer and approved PVC underlay.
- 5.3 Colour of roof tiles as per developer's choice.

**6. FLOOR COVERING**

- 6.1 Kitchen and bathrooms: Will be ceramic tile of the DEVELOPERS choice.
- 6.2 Bedrooms, entrance hall and lounge: Will be of Belgotex Colour Rib carpeting selected by the DEVELOPER (With no underlay)

## 7. BUILT-IN-CUPBOARDS

One bottom kitchen cupboard with fit on single sink only. (No top cupboards are allowed for, only one bottom cupboard).

Bedroom & Kitchen Cupboards are an optional extra.

## 8. SANITARY WARE

Will be of a type and colour selected by the DEVELOPER.

- 8.1 Bath and basin: Will be manufactured of white acrylic material
- 8.2 Toilet: Will be manufactured of white glazed porcelain.
- 8.3 Cistern: Will be ELF Plastic or equivalent.
- 8.4 Kitchen sink: Will be standard fit on single bowl stainless steel with extended BIP taps.
- 8.5 Taps: Will be as per DEVELOPERS choice.
- 8.6 Shower: Chrome plated rod only. (If Applicable)
- 8.7 Hot water cylinder: Will be 100 litres semi-pressure type.
- 8.8 Water connection and supply: Will be 15mm diameter apex pipe internally and 22mm polycop piping from the water meter to the building.
- 8.9 Rain water goods: Will be of PVC and will be the DEVELOPER's choice.
- 8.10 Garden taps: One garden tap to be provided on final hand-over.

## 9. ELECTRICAL INSTALLATION:

Positions of the distribution board and econometer, electrical outlets and switches, T.V. and phone points indicated on the PLAN, may for practical reasons, need to be altered/omitted and such alteration will be at the DEVELOPER's discretion. The following installations have been included:

### PLUG POINTS:

- |  |                                |
|--|--------------------------------|
| Lounge                                   | - 1 Double plug point          |
| Above working surface height in kitchens | - 1 single plug point          |
| Refrigerator/freezer                     | - 1 single plug point          |
| Stove                                    | - Only conduit and draw box    |
| Main bedroom                             | - 1 single plug point          |
| 2 <sup>nd</sup> /3 <sup>rd</sup> bedroom | - 1 single plug point per room |
| Telephone                                | - 1 telephone point in lounge  |
| TV Point                                 | - 1 TV point in lounge         |

## 10. TV ANTENNAE

No TV antennae will be supplied. Only conduit and draw boxes will be fitted.

## 11. LIGHT FITTINGS

- 1 x Single bowl head type per room.
- 1 x Single bowl head type per bathroom
- 1 x Single bowl head type in lounge
- 1 x Single bowl head type in kitchen
- 1 x Exterior light at back door
- 1 x Exterior light at front door

## 12. CEILINGS

Generally, will be a height of 2400, above floor level.

- 12.1 Internal: Will be H-Strip joint Rhino board with cove corners, painted with 2 (two) coats acrylic PVA.
- 12.2 Garage: There will be no ceiling to the garage (If Applicable).

## 13. WALL TILING

Will be selected for colour and/or design and/or shape by the EMPLOYER from the DEVELOPER's preferred range.

- 13.1 All tiling will be fixed by a specialist tiler appointed by the DEVELOPER.
- 13.2 All tiling will be from sink level 0.3m high in kitchen and bathrooms 0.3m splash back above basin and bath only, but will not be applied behind cupboards, bath or any other fixture or fitting.
- 13.3 Shower will be tiled from floor to 2.0m height. (if Applicable).

## 14. GLAZING

Clear sheet glass generally. Obscure glass to bathrooms to glazier's choice and all glass to conform to National Building Regulations in respect of thickness and type in relation to size and position.

## 15. IRONMONGERY

- 15.1 Internal doors are to be fitted with standard two lever mortice locksets and chrome plated furniture.
- 15.2 External doors are to be fitted with three lever mortice lockset with chrome plated furniture to front door and chrome plated furniture to kitchen door.



**16. GARAGE (ON REQUEST)**

Please ask for quote and it will be provided.

**17. HOUSE NUMBER**

Will be of a suitable type and will be of the DEVELOPER's choice.

**18. SITE CLEARING**

The property will be cleared of visible rubble. The existing natural contours of the site will generally be retained and only undue hillocks and mounds will be removed.

**19. LANDSCAPING AND GARDENING**

No landscaping will be done by the DEVELOPER.

**20. FINISHES**

The EMPLOYER hereby acknowledges and agrees that the choice of finishes will be limited to the range offered by the DEVELOPER as per these STANDARD SPECIFICATIONS and shall be subject to availability thereof.

**21. BUILDING STANDARDS**

All construction procedures and standards will be in accordance with the requirements of the NHBC.

**22. GENERAL**

Barge/Fascia boards: Cement Fiber or Treated pine painted with one (1) coat primer- and two (2) coats white gloss enamel paint.

Skirtings: SA-Pine painted with one (1) coat primer- and two (2) coats white gloss enamel paint.

ANNEXURE F

**UPGRADE TO SPECIFICATIONS AND ADDITIONAL COSTS**

			Amount	Initial if required
Tiles instead of carpets per sqm - R60				
	Quantity			
Bedroom Cupboards 900mm (R2,200 per room)	R2,200 X			
Bedroom Cupboards 1350mm (R3,375 per room)	R3,375 X			
<b>Delete whichever is not applicable</b>	White	Colour		
<i>Bottom Kitchen Cupboards Type 1</i>	<i>R 3,500.00</i>	<i>R 4,100.00</i>		
<i>Bottom Kitchen Cupboards Type 2</i>	<i>R 4,950.00</i>	<i>R 5,550.00</i>		
<i>Bottom Kitchen Cupboards Type 3</i>	<i>R 4,950.00</i>	<i>R 5,550.00</i>		
<i>Bottom Kitchen Cupboards Type 4</i>	<i>R 5,200.00</i>	<i>R 5,800.00</i>		
<i>Bottom Kitchen Cupboards Type 5</i>	<i>R 6,000.00</i>	<i>R 6,680.00</i>		
<b>Delete whichever is not applicable</b>	White	Colour		
<i>Top Kitchen Cupboards Type 1</i>	<i>R 1,350.00</i>	<i>R 1,700.00</i>		
<i>Top Kitchen Cupboards Type 2</i>	<i>R 1,600.00</i>	<i>R 1,950.00</i>		
<i>Top Kitchen Cupboards Type 3</i>	<i>R 1,600.00</i>	<i>R 1,950.00</i>		
<i>Top Kitchen Cupboards Type 4</i>	<i>R 1,600.00</i>	<i>R 1,950.00</i>		
<i>Top Kitchen Cupboards Type 5</i>	<i>R 2,125.00</i>	<i>R 2,600.00</i>		
Garage Façade without a Garage Door			R10,000.00	
Garage Façade with Garage door			R13,000.00	
Garage			R50,000.00	
Oven, Hob and Extractor			R3,700.00	
Paving per sqm – R180				
Admin Fee			R1,000.00	
Total to be added to the Purchase Price				

Employer(s)

Contractor

ANNEXURE G

**CAPACITY OF EMPLOYER**

- 1.1 Should the Signatory sign this Agreement for the benefit of a Company or Close Corporation or other legal person to be incorporated or formed, he shall be personally liable as Employer for the proper performance of all the terms and conditions of the Agreement, if the said Company or Close Corporation or Trust or other legal person is not incorporated or formed and does not adopt and ratify unconditionally the terms and conditions of the Agreement within 90 (ninety) Days after the date of which the Contractor has signed this Agreement.
- 1.2 Should the Signatory sign this Agreement as Trustee for a Company not yet incorporated or as Trustee for a Close Corporation not yet formed, he shall be personally liable as Employer for the proper performance of all the terms and conditions of the Agreement if the said Company or Close Corporation is not incorporated or formed and does not in terms of the provisions of the Companies Act No 61 of 1973 or in terms of the Close Corporations Act No 69 of 1984 adopt and ratify unconditionally the terms and conditions of the Agreement within 90 (ninety) Days after the date on which the Contractor signs this Agreement.
- 1.3 In the event of the said Company or Close Corporation or Trust or other legal person being duly incorporated or formed and adopting and ratifying the Agreement in terms of 1.1 and 1.2 above, then the Signatory by his signature hereto, hereby interposes and binds himself in favour of the Contractor as surety for and co-principal debtor in solidum with such Company or Close Corporation or Trustees of the Trust or other legal Person for the due and timeous performance by it of all its obligations as Employer in terms of the Agreement. The Signatory furthermore guarantees that such Company or Close Corporation or Trustees of the Trusts or other legal person will comply with all its obligations as Employer in terms of this Agreement and furthermore indemnifies the Contractor against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such Company or Close Corporation or Trustees of a Trust or other legal person. The Signatory hereby renounces all benefits arising from the following legal exceptions and privileges:

non causa debiti – the right of the surety to require that the creditor must prove that there was a legal cause underlying the debt;

de errore calculi – the right of the surety to require that the creditor must prove that there was no error in calculation of the debt owed to him by the debtor;

revision of accounts – the right of the surety to require that the creditor must prove that the accounts need not be debated;

no value received – the right of the surety to require that the creditor must prove that the debtor had received value from the creditor;

beneficium de duobus vel pluribus reis debendi – the right of the surety to require that the creditor should have recourse against one or more other persons liable for the same debt jointly with the surety and not to proceed against the surety alone;

beneficium divisionis – the right of the surety, where there is more than one surety for the debtor's obligations, to require that the creditor must not sue the surety for the full amount owing under the suretyship but only for a pro rata share of the debt;

beneficium cedendarum actionum – the right of the surety to require that before the creditor sues him, the creditor must first cede his right of action against the debtor to the surety;

or any other exceptions which might legally be taken by him against any claims made against him in his capacity as a surety as aforesaid, with the force and meaning whereof the said Signatory declares himself to be fully acquainted.

- 2.1 In the event that a Company or Close Corporation or Trust or other legal person is the Employer, the person who signs this Agreement on behalf of such Company or Close Corporation or Trust or other legal person by his signature thereto interposes and binds himself in favour of the Contractor as surety for and co-principal debtor in solidum with such Company or Close Corporation or Trustees of a Trust or other legal person for the due and timeous performance by it of all its obligations as Employer in terms of the Agreement and furthermore by his signature hereto guarantees that the Employer exists, and that it has the power and capacity to enter into this Agreement and that the Employer will comply with all the terms of this Agreement and furthermore indemnifies the Contractor against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such a Company or Close Corporation or Trustees of a Trust or other legal person.
- 2.2 The person referred to in Clause 2.1 who signs this Agreement also hereby renounces all benefits arising from the legal exceptions and privileges referred to in 1.3 above which might legally be taken by him against any claims made against him in his capacity as a surety and co-principal debtor as aforesaid, with the force and meaning whereof the said person declares himself to be fully acquainted.
3. In the event that a Company or Close Corporation or Trust or other legal person is the Employer, the person who signs this Agreement guarantees that he is duly authorized to sign this Agreement on behalf of such a Company or Close Corporation or Trust or other legal person and by his signature hereto indemnifies the Contractor against any damages that it may suffer in the event that the Agreement may become unenforceable in view of the fact that he was not authorized to sign the Agreement on behalf of such a Company or Close Corporation or Trust or other legal person.
- 4.1 In the event that the Employer is described as "X or nominee", (X being the name and surname of a person) (X is hereafter in Clause 4 referred to as "the Principal Employer"), the Principal Employer will be personally liable for all the obligations of the Employer in terms of this Agreement if he does not in writing nominate a nominee to be the Employer and such nominee does not accept such nomination within 24 (twenty four) hours of the date that the Contractor has signed the Agreement.
- 4.2 Should the Principal Employer validly nominate a nominee in terms of the provisions of this Clause 4, then:
- 4.2.1 all references to the Employer in this Agreement shall be deemed to be a reference to such nominee, provided that there shall be no further right of nomination;
- 4.2.2 the Principal Employer by his signature hereto interposes and binds himself in favour of the Contractor as surety for and co-principal debtor in solidum with such nominee for the due and timeous performance by it of all its obligations as Employer in terms of this Agreement and the Principal Employer by his signature hereto guarantees that such a nominee will comply with all its obligations as set out in this Agreement and furthermore the Principal Employer indemnifies the Contractor against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such a nominee;
- 4.2.3 the Principal Employer also hereby renounces all benefits arising from the legal exceptions referred to in 1.3 above which might legally be taken by him against any claims made against him in his capacity as surety as aforesaid, with the force and meaning whereof the said Principal Employer declares himself to be fully acquainted.
- 4.3 The Principal Employer hereby acknowledges that upon such nomination, transfer duty or additional VAT or legal fees plus VAT on legal fees may become payable on the transfer of the Property into the name of the nominee and undertakes, immediately on demand from the Transferring Attorneys to make payment of such additional fees plus VAT thereon and transfer duty or VAT to the Transferring Attorneys.