



For Office Use: Erf \_\_\_\_\_

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**BUILDING AGREEMENT TO  
THE LAND SALE AGREEMENT:  
URBAN COUNTRY ESTATE**

Made and entered into by and between:

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

whose full particulars appear in the Information Schedule of the Land Sale Agreement, to which this Building Agreement is annexed

(hereinafter referred to as **the Employer**)

AND

**Dalmar Konstruksie (Pty) Ltd**

**Registration Number:**

**2007/010576/07**

Herein represented by **ANDRE LE ROUX** who warrants that he is duly authorised whose full particulars appear in the Information Schedule of the Land Sale Agreement, to which this Building Agreement is annexed

(hereinafter referred to as **"the Building Contractor"**)

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**SUMMARY OF ANNEXURES**

<b>Architectural Building Plan</b>	<b>Annexure "F1"</b>
<b>Specifications and Finishing Schedule</b>	<b>Annexure "F2"</b>
<b>Schedule of Variations</b>	<b>Annexure "F3"</b>
<b>Schedule of Draws</b>	<b>Annexure "F4"</b>

**INFORMATION SCHEDULE**

<b>A</b>	<b>EMPLOYER</b>	whose full particulars appear in the Information Schedule of the Land Sale Agreement, to which this Building Agreement is annexed
A1	Full names/Entity Name	
A2	ID/Registration No(s)	
A3	Marital status (if applicable)	Unmarried / In / Out of community / Other
A4	Name of Signatory for Entity (if applicable)	
A5	Address in full (registered/street and postal addresses)	Registered/Street Address:  Code:  Postal Address:  Code:

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A6	Telephone (W)	
A7	Telephone (H)	
A8	Cell Phone	
A9	E-mail	
<b>B</b>	<b>BUILDING CONTRACTOR / CONTRACTOR</b>	whose full particulars appear in the Information Schedule of the Land Sale Agreement, to which this Building Agreement is annexed
B1	Full name	<b>Dalmar Konstruksie (Pty) Ltd</b>
B2	Registration No.	<b>2007/010576/07</b>
B3	Name of Signatory for Entity	<b>Andre le Roux</b>
B4	Address in full (street and postal address)	Unit 1, K109 Business Park, 1 Thinus de Jongh Street, Van Eck Park Extension 2, Brakpan, 1541.
<b>C</b>	<b>SELLER / DEVELOPER</b>	whose full particulars appear in the Information Schedule of the Land Sale Agreement, to which this Building Agreement is annexed
C1	Entity Name	<b>Dalmar Beleggings (Pty) Ltd</b>
C2	Registration No	<b>1972/001237/07</b>
C3	Name of Signatory for Entity	
<b>D</b>	<b>THE PROPERTY</b>	
D1	Description  Street Address	Erf No. _____ George  SDP Erf No. _____
D2	Extent	+/- _____ square metres
As depicted on <b>Proposed Plan of Subdivision</b> annexed the <b>Land Sale Agreement</b> as <b>Annexure "A"</b>		

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<b>E</b>	<b>DWELLING</b>	
E1	<b>House Type</b>	
E2	Commencement Date	As stipulated in <b>Clause 4</b>
E3	Estimated Completion Date	As stipulated in <b>Clause 4</b>
<b>F</b>	<b>CONSIDERATION PAYABLE BY THE EMPLOYER &amp; LOAN AMOUNT</b>	
F1	<b>Building Contract Price</b> for construction of the <b>Dwelling</b> on the Property (inclusive of VAT)	R _____ ( _____ rand)
F2	<b>Amount of Bond required (Loan Amount)</b> (if any) (within 30 days of the Signature Date)	R _____ ( _____ rand)
<b>G</b>	<b>CONVEYANCER</b>	MILTONS MATSEMELA OOSTHUIZEN INC 71 MONTAGU STREET MOSEL BAY 6500 TEL: 044 601 8700 EMAIL: sonjab@mmolaw.co.za
	<b>TRUST ACCOUNT DETAILS</b>	Name of Accountholder: <b>MILTONS MATSEMELA OOSTHUIZEN INC</b> Name of Bank: ABSA Account Number: 4099 414 359 Branch Code: 632005 Branch: COMMERCIAL GEORGE Ref: Name /Erf No Urban

## 1. DEFINITIONS

In this Agreement, unless inconsistent with or otherwise indicated by the context, read with **Clause 2** of the Land Sale Agreement:

- 1.1. **"Agent"** means the party described as such in **H of the Information Schedule** in the Land Sale Agreement;
- 1.2. **"Agreement"** means the Agreement contained in this document, including the annexures hereto, read with the Land Sale Agreement;

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- 1.3. **"Architect"** means the Architect appointed by the Seller/Contractor to design and to obtain approval of the Building Plans for the residential dwellings in the Development and acting as principal agent of the Contractor;
- 1.4. **"Building Contract Price"** means the cost of the erection of a Dwelling on the Property as reflected in **F1 of the Information Schedule** above, plus any other amounts which may become payable by the Employer to the Contractor, in terms of the Agreement, including, but without limiting or derogating from the generality of the afore going:
- 1.4.1. Any amount/s payable by the Employer to the Contractor as a result of any variation order/s, as referred to in **Clauses 1.24, 8.3 and 12.2** of the Agreement;
- 1.4.2. All expenses and costs of whatsoever nature, not specifically provided for in the Agreement, which may arise in connection with the construction of the Dwelling, including but not limited to: interest on overdue amounts, bond registration costs, levies payable to the Urban Country Estate Homeowners Association, etcetera;
- 1.5. **"Building Plans"** means the Building Plans of the Dwelling, to be erected on the Property, as attached hereto as **Annexure "F1"**, which plans the Employer, by his signature hereto, warrants he has carefully scrutinized and approved, subject to the proviso as contained in **Clause 8**, below. For purposes of this Building Agreement, the attached drawings / plans, subject to any amendments, will be submitted to the George Municipality for final approval where after the said approved plans will replace the drawings / plans annexed hereto as the Building Plans for the execution of the Works as stipulated herein;
- 1.6. **"Contractor" / "Building Contractor"** means the party described as such in **B of the Information Schedule**;
- 1.7. **"Contractor's Address"** means the address set out as such in **B of the Information Schedule**;
- 1.8. **"Conveyancer"** means the Conveyancers referred to in **G of the Information Schedule**;
- 1.9. **"Contract Price Adjustment Provisions" (hereinafter "CPAP")** means the contract price adjustment provisions, as published by the South African Department of Statistics, from time to time, specifically for "work group 180 (Lump sum domestic buildings)", the base month of which is to correspond with the month of the Signature Date of this Agreement, which CPAP, shall apply to the increase of the Building Contract Price;
- 1.10. **"Development"** means the Development to be known as Urban Country Estate;
- 1.11. **"Engineer"** means the Engineer appointed by the Contractor from time to time;
- 1.12. **"Financier"** means the bank or other financial institution which grants the Loan Amount to the Employer;
- 1.13. **"Finishing Schedule"** means the detailed schedule of finishes and specifications attached hereto as **Annexure "F2"**, which schedule the Employer, by his signature hereto, warrants he has carefully inspected and scrutinized;

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- 1.14. **"Happy Letter"** means a completion form or letter signed by the Employer certifying his satisfaction that the Works have been satisfactorily and finally completed, and from date of signature of which the Employer shall have no claim against the Contractor and the Contractor shall have no further obligations towards the Employer in terms of this Agreement, save and except for the Contractor's obligation as contemplated below;;
- 1.15. **"Loan Amount"** means the amount of \_\_\_\_\_ ;
- 1.16. **"Occupation Date"** means 9 (nine) months from the commencement date. See **Clause 4** below;
- 1.17. **"Land Sale Agreement"** means the **Land Sale Agreement** concluded by the Seller and the Employer on \_\_\_\_\_, in respect of the purchase of the Property;
- 1.18. **"Parties"** means the Contractor and the Employer, and "Party" means one of them as the context determines;
- 1.19. **"Property"** means the Property sold by the Seller to the Employer as identified in **D of the Information Schedule**;
- 1.20. **"Purchase Price of Property"** means the amount as set in the **Land Sale Agreement**, which amount is excluded from the Building Contract Price;
- 1.21. **"Schedule of Draws"** means the schedule attached hereto as **Annexure "F4"** setting out the payments to be made by the Employer for the performance of the Works, which schedule the Employer, by his signature hereto, warrants he has carefully scrutinized and approved;
- 1.22. **"Signature Date"** means the date on which this Agreement is signed by the last of the Parties so signing;
- 1.23. **"Transfer" / "Transfer Date"** as defined in the **Land Sale Agreement**;
- 1.24. **"Variation Order"** means a written order agreed to and signed by both Parties specifying a variation to the Works and the cost thereof, substantially in the same form as **Annexure "F3"** attached hereto. Such variation shall only be carried out if the Employer has approved the variation in writing and if paid for by the Employer, or if arrangements for the payment therefore are made to the satisfaction of the Contractor and, if necessary, an appropriate extension of time is allowed for completion of the Works;
- 1.25. **"Works"** means the construction, completion and finishing off, of a residential dwelling and outbuildings (if any) (hereinafter referred to as **"the Dwelling"**), on the Property, substantially in accordance with the Building Plans, Specification, Finishing Schedule and any applicable Variation Orders;
- 1.26. Clause headings have been inserted for reference purposes only and shall not be taken into account in interpreting this Agreement;

- 1.27 Words signifying the singular shall include the plural and *vice versa*, and words importing one gender shall include the others.

## **2 THE BUILDING AGREEMENT:**

- 2.1 The Employer hereby employs the Contractor, who undertakes to perform the Works on the terms and conditions set out in the Agreement, substantially in accordance with the Building Plans (**Annexure "F1"**) and finishes and specifications, as contained in the Finishing Schedule (**Annexure "F2"**) and/or agreed and accepted Variation Order/s (**Annexure "F3"**).
- 2.2 The Parties record that the Works will commence within a reasonable time from the date on which the last of the following requirements have been complied with:
- 2.2.1 The Building Contract Price having been secured as provided for in **Clause 3** below;
- 2.2.2 The Building Plans having been approved and all approvals and/or authorities having been obtained from the Home Owners' Association and the local authority for the purposes of construction of the Dwelling on the Property; and
- 2.2.3 The Employer, on transfer, having given the Contractor undisturbed possession of the Property.

## **3. SECURING AND PAYMENT OF BUILDING CONTRACT PRICE**

### **3.1 Building Contract Price to be financed with a loan (mortgage bond)**

- 3.1.1 If the Employer requires a loan (mortgage bond) from a bank or financial institution, (herein after "the Financier") in order to finance payment of the whole, or part of the Building Contract Price, the Employer shall make application for such a loan (mortgage bond), within three (3) days of the Signature Date;
- 3.1.2 If the whole or the part of the Building Contract Price, which is subject to such a loan (mortgage bond), shall be secured by way of a guarantee, to be issued by the Financier granting such loan, on terms acceptable to the Contractor, and to be delivered to the Conveyancers, within 30 (thirty) days from the date of written request by the Conveyancer;
- 3.1.3 The Employer hereby cedes to the Contractor his/her right to receive payment/s from the Financier of an amount, or amounts equal to the Building Contract Price, or the balance thereof outstanding, from time to time, and undertakes to, on demand by the Contractor, sign whatever documents required or necessary, for such payments to be authorized, or made by the Financier, from time to time, in accordance with its standard procedure.
- 3.1.4 The Contractor is hereby irrevocably (*in rem suam*) authorized to, out of the proceeds of such loan (mortgage bond), receive the progress payments (draws)

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as detailed in the Schedule of Draws (**Annexure "F 4"**).

- 3.1.5 The Employer acknowledges that the arrangements between him-/her-self and the Financier, form no part to this Agreement, and that the Employer remains, first and foremost, fully liable and responsible for the payment of the Building Contract Price to the Contractor. If the Financier fail and/or refuse, for any reason whatsoever, to pay any amount to the Contractor, the Contractor may require the Employer to pay such amount, on demand.
- 3.1.6 The progress payments shall be in such amounts as are agreed to with the Financier and shall be due and payable within 7 (seven) days after the Contractor has requested such a progress payment, provided that nothing herein contained shall preclude the Contractor from arranging such payment terms with the Financier as it may deem fit.
- 3.1.7 Interest on any portion of the Loan Amount shall expressly be for the account of the Employer. Such interest shall, in the event of the Financier deducting same from the proceeds of the loan, be payable by the Employer, and payment shall be made on demand.
- 3.1.8 Since the Financier will be obliged to make interim payments to the Contractor as the Works progress, it will/may debit the Employer's bond account with interest on such payments made. The Employer shall be obliged to effect payment to the Financier immediately upon being advised of the interest debited to the bond account and shall on demand provide the Contractor with satisfactory proof of these payments having been made.
- 3.1.9 The Employer shall be obliged to pay the final draw according to the Schedule of Draws directly to the Contractor and thereafter to recover the said amount from the Financier.

**3.2 Building contract price or part thereof financed from own funds (no loan required)**

- 3.2.1 If the Employer elects not to finance the payment of the whole or any part of the Building Contract Price, by means of a loan (mortgage bond), as contemplated in clause 3.1 above, or if there is a shortfall on the loan (mortgage bond), granted by the Financier, compared to the Building Contract Price, the whole Building Contract Price, or that part of the Building Contract Price, not secured by the guarantee issued by the Financier, the Employer is required to secure the applicable amount of the Building Contract Price to the satisfaction of the Contractor, by payment of the said amount to the Conveyancers, within 30 (thirty) days from the date of written request by the Conveyancer.
- 3.2.2 The amount as envisaged in clause 3.2.1 above, shall be invested by the Conveyancers in terms of Section 86(4) of the Legal Practice Act, 2014 (Act No. 28 of 2014) in an interest bearing trust account with a recognized financial institution, with interest accruing to the Employer.

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- 3.2.3 The Conveyancers are irrevocably authorized by the Employer, to make payments in terms of the Schedule of Draws (**Annexure "F 4"**), from the said investment account, to the Contractor, in accordance with the certificate signed in terms of 3.2.4 below.
- 3.2.4 Payment of each progress draw shall be made by the Conveyancers to the Contractor within 7 (seven) days of delivery of a certificate signed by the Quantity Surveyor, certifying that the said draw is due.
- 3.2.5 The Employer, by his signature hereto, irrevocably undertakes to furnish to the Conveyancers such information in respect of the payment contemplated by clause 3.2.1 above, as may be required from time to time by the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
- 3.3 The costs of any alterations, variations or additions relating to the Building Plans finishes and specifications, shall be payable prior to the date of commencement of such alterations, variations or additions, unless other prior financial arrangements for payment thereof, have been made to by the Employer with and to the satisfaction of the Contractor.

#### **4. COMMENCEMENT AND COMPLETION OF THE WORKS**

- 4.1 The Contractor shall commence with the Works, within a reasonable time after compliance with the requirements as stipulated in **Clause 2.2**. above, and further subject to the provisions of **Clause 4.2** below;
- 4.2 Subject to any reasonable extensions as agreed to in writing, the Contractor shall generally complete the Works within **9 (nine) months** from the date of commencement of same. This excludes the normal Builders' shut-down period in December.
- 4.3 The Contractor shall in its sole discretion and at its option be entitled to postpone the date of commencement of the Works for any period of time if: -
- 4.3.1 transfer has not taken place within 4 (four) months from the date on which the Property becomes registerable, as a result of the Employer's negligence, or it has become apparent that the Property will not be transferred to the Employer within a reasonable period; and
- 4.3.2 at any time prior to or during the performance of the Works, circumstances arise which make it difficult or impossible for the Contractor to proceed with the Works, such as political upheaval, riots, squatting, invasion, boycotts, strike, lockouts or any other situation which may be dangerous for the general safety of the Contractor or any of its employees, agents and/or subcontractors (which circumstances the Contractor shall use it's best endeavours to remove), and also including, but not limited to delays occasioned by the Employer,

in which event the Employer shall have no claim whatsoever against the Contractor to commence or complete the Works, or for damages.

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- 4.4 The Contract Price will be fixed for a period of 6 (six) months, from the date of signature of this Agreement, by the Employer. In the event that the Contractor is not placed in the position to commence with the construction within the afore mentioned period of 6 (six) months, by the Employer, the price per square meter will increase by an amount equal to the CPAP, as defined in **Clause 1.9** above. Should the building work then still not have commenced, the provisions of **Clause 14** (Breach) shall be evoked.
- 4.5 If completion of the Works is delayed for any cause whatsoever, including but not limited to, *vis major*, which cause may fall within the time period contemplated by this Agreement for the completion of the Works, or in the event of any dispute, strike, lockout, squatting, invasion or other situation causing delay, then the Contractor shall be entitled to a fair and reasonable extension time for the completion of the Works and the Employer shall not for that reason have any claim against the Contractor, whether for damages or otherwise.
- 4.6. If there is any dispute to whether the Works are complete, such dispute shall be determined by the Architect, whose decision shall be final and binding.
- 4.7. The Employer shall be liable for payment of all water and electricity used in the execution of the Works and shall make monthly payments in respect thereof, when due to the local authority.

## 5. DISPUTES

- 5.1 Save as provided by **Clause 4.6** above, any dispute between the Parties regarding the interpretation and/or implementation of the provisions of this Agreement shall be determined by an expert in accordance with the provisions of this clause.
- 5.2 If the matter in dispute be principally: -
- 5.2.1 a legal matter, the expert shall be a practicing attorney or advocate; or
  - 5.2.2 a building construction matter, the expert shall be a practicing architect/Engineer or quantity surveyor;
  - 5.2.3 an accounting matter, the expert shall be a practicing accountant.
- 5.3 The expert in every instance must practice in the Western Cape and be of not less than 10 (ten) years standing agreed upon between the Parties and, failing Agreement within 7 (seven) days of the dispute having arisen, appointed by the President for the time being of the Western Cape Legal Practice Council.
- 5.4 In determining the matter in dispute, the following provisions shall apply:
- 5.4.1 in determining the matter in dispute, the adjudicator shall act as an expert in such manner and form as the expert shall determine in his sole discretion;
  - 5.4.2 each party shall be entitled to make representations to the expert in such manner and form as the expert shall determine at his sole discretion;
  - 5.4.3 if this Agreement is found to be vague or to be lacking in any material respect in

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relation to the matter concerned, the expert shall be entitled to interpret and give effect to what he perceives to be the general intent of the parties in the context of this Agreement and to make his determination accordingly;

5.4.4 the expert shall be entitled to obtain further advice in relation to the matter concerned:

5.4.4.1 the expert's determination shall be final and binding on the Parties;

5.4.4.2 the fees of the expert and any costs incurred by the expert in terms of **Clause 5.4.** above shall be borne and paid by the unsuccessful Party. Any other costs which the parties may incur shall be for their own account.

## 6. CONTRACTOR'S LIABILITY FOR DEFECTS AND DAMAGE

- 6.1 The Contractor shall be liable to make good at its cost any defects in the Works, which have been identified by the Employer during the opportunity granted to the Employer by the Contractor to list such defects, **in one singular "snag list"**, prior to the occupation of the dwelling/unit.
- 6.2 The Contractor shall within a reasonable time from the date of receiving the **"snag list"**, ensure that all items so listed by the Employer, are rectified.
- 6.3 An Employer shall not be entitled or allowed to take occupation of the Dwelling, until a written confirmation ("**Happy Letter**") is signed by the Employer, confirming that the aforementioned **"snag list"** have been attended to and that he is satisfied with the over-all appearance and standard of the Dwelling;
- 6.4 Should any latent defect/s occur, the Employer shall furnish the Contractor with a detailed report on such latent defect/s, by no later than during the last week of a period of 90 (ninety) calendar days from the date of the **"Happy Letter"**.
- 6.5 The Contractor will on receipt of the latent defect/s list from an Employer, make an appointment for the inspection and evaluation of the defect/s. The Contractor will after the inspection and evaluation, agree with the Employer on the items to be rectified by the Contractor and completion date for the rectification thereof;
- 6.6 The first revision list will be final, and no further revisions will be accepted/entertained by the Contractor.
- 6.7 Without derogating from the relevant provisions of the NHBC, pertaining to structural defects, the Employer shall have no claim against the Contractor for any defects in the Works, whether such defects are latent or patent, after the expiry of the time periods contemplated by **Clause 6.1** above.
- 6.8 The Contractor shall not be liable under any circumstances, or at any time prior to, during, or after, construction of the Works, for any indirect or consequential damages of any nature which the Employer may suffer, at any time and for whatever reason.

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- 6.9 The Contractor undertakes to cede to the Employer any warranties or guarantees from third Parties which are capable of being ceded in respect of the Works.

## 7. RESPONSIBILITY FOR DEALINGS WITH AUTHORITIES

- 7.1 The Employer hereby irrevocably appoints the Contractor as his agent to apply for and obtain such approval, consent or authority as may be required for approval of the Building Plans. The Employer undertakes to and shall sign any and all documents required by the Local Authority to give effect to this clause.
- 7.2 The Employer shall be responsible for entering timeously into any Agreement or any other arrangements that may be necessary for the supply of water and electricity to the property, and the parties hereby record that the installation of both electrical and water services shall be for the Employer's account.

## 8. AMENDMENTS TO PLANS AND SCHEDULES

- 8.1 Notwithstanding the meaning of "Building Plans" or "Specifications" as defined in **Clause 1** above, the Parties specifically agree that the Contractor shall be entitled to adapt or amend the Building Plans and/or the Specifications in any way which the Contractor, Engineer and Architect may deem necessary:
- 8.1.1 to meet any requirements of any competent authority;
  - 8.1.2 to give effect to any changes in materials, finishes or fittings which the Contractor considers to be appropriate or which may not be readily available at the time due to shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the Works; and
  - 8.1.3 to compensate for any structural changes which may be necessary and for the benefit of the Employer Provided that any such adaptation or amendment shall be deemed to be the Building Plans and/or Specifications agreed upon between both Parties, it being specifically agreed that under no circumstances will any adaptations or amendments be accepted by the Contractor, at the insistence or request of the Employer, once his application for the Loan Amount has been submitted.
- 8.2 Notwithstanding any diagram or sketch indicating the position of the Works in relation to the Property's boundaries which may have been attached hereto, the actual sitting or positions of the Works in relation to the Property's boundaries may be altered by the Contractor, with the written approval of the Employer.
- 8.3 The costs of alterations, variations or additions relating to the Building Plans, the Specifications and the Finishing Schedule shall be payable by the Employer, prior to the date of commencement of such alterations, variations or additions, unless other

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arrangements for payment thereof have been made to the satisfaction of the Contractor. A penalty of R5 000.00 (Five Thousand Rand) is payable by the Employer, should the Employer effect changes to the approved Building Plans. The Parties agree that the Contractor may at its sole discretion continue with or suspend the Works pending payment of any variation costs pursuant to this **clause 8.3**.

- 8.4 If the Works are delayed by the Employer for any reason whatsoever, the Employer shall be liable for the costs of such delay. The Architect in conjunction with the quantity surveyor shall certify the amount due as a result of such delay, and such amount shall be payable within 3 (three) days of delivery of the said certificate to the Employer, unless other arrangements for payment thereof have been made to the satisfaction of the Contractor.

#### CHOICE OF FINISHES

- 8.5 The Employer will be given the opportunity to exercise a choice of certain finishes from a selection to be made available by the Contractor. The Employer undertakes to finalise the Employer's choice of such finishes in collaboration with the Architect and/or the Contractor's project manager within 14 (fourteen) days of being requested to do so by the Contractor failing which the Employer shall be deemed to have appointed the Architect as its agent to make such Initial selection on its behalf. In the event of the latter the Architect's choice of selection shall be final and binding on the Employer.

#### VARIATIONS

- 8.6 Notwithstanding anything to the contrary, the Contractor will not be compelled to agree to any variations, extras and omissions or the execution thereof.
- 8.7 Should the Employer request the Contractor to accommodate variations and the Contractor is satisfied, entirely in its own discretion, that it will be able to accommodate such variations without causing any delay to the program of construction, then:-
- 8.7.1 the requested variations, extras and omissions must be reduced to writing;
  - 8.7.2 the Contractor will cost the variation request made by the Employer and present same to the Employer for acceptance;
  - 8.7.3 the Employer shall have 5 (five) days to accept the approved variations by signing the Schedule of Variations (**Annexure "F3"**) and effect payment thereof to the Contractor, failing, the Contractor shall be entitled to proceed with the standard specifications where the agreed variations, extras and omissions have not been reduced to writing, signed by the Employer and paid for within the aforementioned 5 (five) days.
- 8.8 No dispute with regard to variations, alterations, extras or omissions will deem the remaining provisions of this Building Agreement null and void.

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## 9. ACCESS TO PROPERTY

- 9.1 The Employer shall give the Contractor free and undisturbed occupation of the Property from the date on which the Contractor commences the Works in terms of **Clause 4** above.
- 9.2 During the time that the Contractor is in occupation of the Property, the Employer shall be entitled to access of the Property only with the permission of the Contractor, which permission shall not be unreasonably withheld. The Employer shall not give any instructions to the Contractor, its employees, agents and/or sub-contractors, and shall not interfere in any way with the Contractor's building schedule.
- 9.3 No employees, agents or contractors of the Employer shall, save with the written approval of the Contractor, which shall not unreasonably be withheld, be permitted access to the Property until the Final Completion Certificate has been signed off.
- 9.4 The Employer shall under no circumstances be entitled to occupy the Works, until the Building Contract Price is paid in full and the contractor shall exercise its builder's lien over the Property, until the contract price has so been paid in full.
- 9.5 The Employer shall be liable to pay the land surveyor's fee to locate the boundary pegs, prior to the start of construction.

## 10. VALUE ADDED TAX

The Building Contract Price is **inclusive** of value-added tax calculated at 15% (fifteen percent) of the value of the Works. If the rate at which value-added tax is chargeable in respect of the type of transaction contemplated by this Agreement is increased so as to effect the amount of VAT payable in respect of this transaction, the Employer shall be liable for the increased amount of VAT. The Contractor shall, on request and against payment, furnish the Employer with VAT invoice.

## 11. CAPACITY OF EMPLOYER

Should the Employer sign this Agreement as trustee or agent for a company or close corporation to be formed, the signatory shall be deemed to be personally liable in terms of this Agreement should the company of close corporation not be incorporated or not ratify and adopt this Agreement within 30 (thirty) days of the Signature Date. Upon incorporation and ratification as aforesaid, the signatory by his signature hereto, binds himself as surety for and co-principal debtor *in solidum* with the company or close corporation for the due and punctual performance by the company or close corporation of its obligations out of this Agreement.

## 12. BUILDING OPERATIONS AND BUILDING PLANS

12.1 The Employer acknowledges that the township in which the Property is situated is not fully developed, that the building operations will take place upon adjacent or neighboring subdivisions or erven and that the said building operations may cause the Employer certain inconvenience. The Employer acknowledges that he shall have no claim either as against the Contractor or against the Developer arising out of such building operations. The Contractor shall use its best endeavors to ensure that any disturbance is limited as far as is possible.

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12.2 The Employer shall finalize the Building Plans, the Specifications and the Finishing Schedule with the Contractor on the Signature Date and no further alterations thereto shall be allowed unless contained in a Variation Order. A penalty of R5 000.00 (Five Thousand Rand) is payable by the Employer, should the Employer effect changes to the approved Building Plans.

12.3 If there is any conflict between the Specifications and the Building Plans, the provisions of the Specifications shall prevail.

### 13. INSURANCE

The Contractor will take out appropriate insurance for the Works, at its cost, against risks for the respective interest of the Contractor and the Employer.

### 14. BREACH

If the Employer defaults in the payment of any sum whatsoever payable by him in terms hereof OR breaches any of his other obligations (all of which are agreed to be material) hereunder and fails to remedy such other default or breach **within 7 (seven) days** of the receipt of written notice requiring the remedy of such default or breach, the Contractor shall be entitled, without prejudice to any other rights available to it in terms of this Agreement or in law: -

14.1 claim and recover from the Employer forthwith the whole of the balance of the Building Contract Price then outstanding together with interest thereon reckoned as hereinafter provided up to the date of payment of such balance, as well as all other sums for which the Employer may then be liable in terms of this Agreement: Provided that if the Employer fails to make payment as provided for in terms of this sub-clause, the rights of the Contractor under this Agreement shall not be exhausted and the Contractor shall notwithstanding the election to claim immediate payment, be entitled to exercise any of the rights available to it in terms hereof or at law; or

14.2 cancel this Agreement, take possession of the Property and claim from the Employer such damages as it may have sustained by reason of cancellation; or

14.3 cancel this Agreement, take possession of the Property and retain all amounts which the Employer has paid in terms hereof as a genuine pre-estimate of the damages which the Contractor has sustained by reason of such cancellation, in which the Employer shall be deemed to have authorized the Agent and/or the Conveyancers to pay to the Contractor any amount paid by him in terms hereof and/or invested by the Agent and/or the Conveyancers on his behalf.

### 15. PENALTIES

If any amounts due and outstanding under this Agreement are not paid on due date in terms of this Agreement, the Employer shall be liable to pay to the Contractor interest on such outstanding amounts calculated at the rate of 5% (five percent) above the ruling prime commercial overdraft rate as charged by ABSA , from time to time, during the period in which the amounts are overdue.

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**16. DELEGATION OF OBLIGATIONS**

The Employer hereby consents to the Contractor delegating any or all of its obligations herein to a third Party if the Contractor deems it necessary to do so in order to discharge its obligations in terms of this Agreement. The Contractor shall bind itself as surety and co-principal debtor with the cessionary for its obligations in terms of this Agreement.

**17. NHBRC**

The Contractor will be responsible to pay the NHBRC registration and enrolment fee, within 7 (seven) days from demand by the Employer.

**18. GENERAL**

- 18.1 This Agreement represents the entire Agreement between the Parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect save as expressly included herein.
- 18.2 No variation of or addition to or consensual cancellation of this Agreement and no waiver by the Contractor of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by or on behalf of both Parties.
- 18.3 If this Agreement is signed by more than one person as Employer, the obligations of all the signatories shall be joint and several. If this Agreement is not signed by all the persons named as Employers, this Agreement shall nonetheless be and shall remain binding on the Employers who have signed this Agreement.
- 18.4 No latitude, extension of time or other indulgence which may be given or allowed by the Contractor to the Employer in respect of any of its obligations in terms of this Agreement shall constitute a waiver, abandonment or novation of the Contractor's rights in terms thereof.
- 18.5 The Employer shall not cede, transfer, alienate or otherwise dispose of any of his rights under this Agreement without the prior written consent of the Contractor, which consent shall not be unreasonably withheld.

**19. SPECIAL CONDITIONS**

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**20. ACKNOWLEDGEMENT**

**The Employer acknowledges that he/she has read through this Agreement, Building Agreement, Schedule of Conditions and all parts, annexures and addendums of this Agreement thoroughly, and declare that I/we fully understand the full Agreement and all the parts herein.**

In the event the Employer constituting one or more persons, then all such Employer shall be held liable jointly, severally and in *solidum* for all monies due to the Seller / Contractor in terms of this Building Agreement. The signature of any of the Employer will be deemed binding on all parties as Employer in relation to any Variations, extras and omissions or any other documentation including the Plan and Working Drawings.

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

**AS WITNESSES:**

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

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

\_\_\_\_\_

**For or on behalf of the Employer**

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

**AS WITNESSES:**

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

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

\_\_\_\_\_

**For or on behalf of the Contractor**

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

**AS WITNESSES:**

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

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

\_\_\_\_\_

**For or on behalf of the Seller/ Developer**

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**Annexure "F1"**

**ARCHITECTS BUILDING PLAN  
URBAN COUNTRY ESTATE**

**To be provided**

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**Annexure "F2"**

**SPECIFICATIONS AND FINISHING SCHEDULE  
URBAN COUNTRY ESTATE**

**To be provided**

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**SCHEDULE OF VARIATIONS  
URBAN COUNTRY ESTATE**

**To be provided**

**Draft: VARIATION ORDER (Refer clauses 1.27, 2.1 and 8.3)**

Date:			
Project Name:			
Variation Order No.:			
Contractor:			
<b>CHANGE SUMMARY REQUEST</b>			
What changes are needed?			
Why have these changes?			
Supporting Documents & Justification			
Specification			
Additional Information			
<b>CONTRACT PRICE CHANGES</b>		<b>CONTRACT TIMELINE CHANGES</b>	
Original Price:		Original Timeline:	
Net Changes of Previous Variation Orders:		Net Changes of Previous Variation Orders in Days:	
Net Increase/Decrease:		Net Increase/Decrease:	
Total Contract Price After Changes:		Total Contract Time After Changes:	

**Approved By:**

Employer	Contractor	Agent
Date:	Date:	Date:

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**SCHEDULE OF DRAWS  
URBAN COUNTRY ESTATE**

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**SCHEDULE OF DRAWS**

**(Kindly refer to Clause 3 of the Agreement)**

- (1) The Contractor shall be entitled to submit claims to the financier and/or the Conveyancer, on a monthly basis, for progress payments (draws during the construction period, which claims shall be based on the actual percentage of works completed during such month, as certified by the Quantity Surveyor**

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