



**PLOT AND PLAN BUILDING CONTRACT  
"RENT TO BUY OPTION"**

**ERF NUMBER** : \_\_\_\_\_

**OWNER** : \_\_\_\_\_

**ANNEXURE B/1** : **BUILDING PLAN**  
**ANNEXURE B/2** : **SCHEDULE OF FINISHES**  
**ANNEXURE B/3** : **SCHEDULE OF OPTIONAL EXTRAS**  
**ANNEXURE B/4** : **VARIANCE ORDER**

**1. PARTIES**

1.1. Owner(s):

Attach the following documentation: For Companies: CM1, CM22, CM27, CM29 and Resolution

|      |   |                |
|------|---|----------------|
| Name | Physical Address (domicilium citandi et executandi) | Postal Address |
|      | Code  | Code           |

|              |  |    |  |                 |
|--------------|--|----|--|-----------------|
| (Pty)<br>Ltd |  | CC |  | Other (Specify) |
|--------------|--|----|--|-----------------|

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|----------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Registration # |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

|                    |  |
|--------------------|--|
| Office Telephone # |  |
| Office Facsimile # |  |
| E-Mail Address     |  |

**(hereinafter referred to as "the Owner")**

**And**

- 1.2. Contractor: Moonland Trading 33 (Pty) Ltd  
Reg. No: 2003/031295/07  
Registered Address: Zwartenbosch Development Office, Zwartenbosch Golf Estate,  
On R330 route off N2 towards Hankey, Humansdorp District  
P O Box 3343, Jeffrey's Bay, 6330  
Email address: admin@zwartenbosch.co.za  
Fax number: 0866 882 988  
**(hereinafter referred to as "the Contractor")**

2. **PREAMBLE**

**WHEREAS:**

- 2.1. The Owner has bought the Land defined in clause 3.1.17.
- 2.2. It is a condition precedent of the Agreement of Sale that the Contractor shall erect and construct certain building works for and on behalf of the Owner.
- 2.3. The Owner and the Contractor desire to enter into this building contract for the erection and completion of a dwelling house and outbuildings (if any) by the Contractor for and on behalf of the Owner on the land.
- 2.4. The Contractor is a registered builder with the National Home Builder's Registration Council under certificate number 1-35531391.

**NOW THEREFORE IT IS AGREED AS FOLLOWS:**

3. **DEFINITIONS**

- 3.1. In this agreement, unless inconsistent with or otherwise indicated by the context, the following words or expressions shall have the following meanings:
- 3.1.1. **"agreement"** and/or **"building contract"**: this document and all annexures thereto.
- 3.1.2. **"agreement of sale"**: the agreement in terms whereof the Owner has purchased the land.
- 3.1.3. **"architect"**: will mean an Architect or Architect Technician as approved by the **Zwartenbosch Architectural and Aesthetic Committee (ZAAC)**
- 3.1.4. **"building contract price"**: the amount payable to the Contractor by the Owner for the works as set out in clause 7.4.1
- 3.1.5. **"Building plan"**: the plan identified in terms of clause 7.1 and subject to clause 7.18.
- 3.1.6. **"contract price adjustment provisions"**: the building contract price adjustment procedure provided for in clause 7.5.
- 3.1.7. **"date of commencement"**: the date on which the Contractor will be given access to the land to commence the works, being date of transfer unless otherwise agreed to in writing, and subject to clauses 7.21 and 7.22.
- 3.1.8. **"date of transfer"** means the date on which the land is transferred into the name of the Owner at the relevant deeds office.

- 3.1.9           **"days"**: Monday through to Friday, except for national public holidays.
- 3.1.10          **"development"**: the secure housing development known as Zwartebosch Golf & Lifestyle Estate, situated on portion 24 of the farm Zwartebosch 347, Kouga Municipality, Humansdorp District, Eastern Cape.
- 3.1.11          **"development plan"**: the site plan for the whole development which includes the perimeter fence, the roads and the security gate.
- 3.1.12          **"default specifications"**: Schedule of Finishes as per Annexure B/2.
- 3.1.13          **"effective date"**: the date on which the suspensive conditions as set out in clause 5 are fulfilled.
- 3.1.14          **"estate"** means the Zwartebosch Golf & Lifestyle Estate of which the land will form a part after proclamation thereof.
- 3.1.15          **"final completion form"**: a completion form signed by the Owner certifying his satisfaction that the works have been completed in a professional and satisfactory manner and as from which date of signature the Owner shall have no claim against, and the Contractor shall have no further obligation towards the Owner in terms of this building contract, save and except for the Contractor's obligations as set out in clause 7.26.3.
- 3.1.16          **"Financial Institution"** means the financial institution which has approved building finance for the Owner
- 3.1.17          **"land"**: Erf \_\_\_\_\_; on the development of Zwartebosch Golf & Lifestyle Estate, Portion 24 of the Farm Zwartebosch 347, Kouga Municipality, Humansdorp District, Eastern Cape, measuring \_\_\_\_\_ square metres approximately, purchased in terms of an agreement of sale subject to the provisions of clause 5.
- 3.1.18          **"specification"**: the specification including a Schedule of Finishes allowed for finishes annexed hereto as Annexure B/2 and subject to clause 7.18.
- 3.1.19          **"optional extras"**: schedule of allowed non-standard specifications, annexed hereto as Annexure B/3 subject to clause 7.18.
- 3.1.20          **"variance order"**: a written agreement (Annexure B/4), as envisaged in clause 14.1 concluded by the parties to amend the building plan and/or specifications.
- 3.1.21          **"works"**: the construction, completion and finishing-off of a private domestic dwelling house and outbuildings (if any) substantially in accordance with the building plan, Annexure B/1, and specifications as per Annexure B/2 respectively.
- 3.2             Clause headings have been inserted for reference purposes only and shall be disregarded in the interpretation hereof.
- 3.3             Words signifying singular include plural and vice versa and words importing one gender shall include the others.

#### 4               **BUILDING CONTRACT**

- 4.1             The parties herewith enter into a building contract at an agreed price for the completion of the works on the land by the Contractor for and on behalf of the Owner on the terms and conditions set out hereinafter.
- 4.2             Notwithstanding anything else contained in this Agreement the Contractor undertakes

to at all times adhere to the conduct rules of the Estate in the execution of the works and the Contractor indemnifies the Owner against any claims which may be instituted against it and/or any damages which it may suffer and/or any penalties levied against it by the Estate as a result of any contravention of the conduct rules by the Contractor.

## **5. SUSPENSIVE AND SPECIAL CONDITIONS**

- 5.1 This Agreement is made subject to the fulfilment or waiver, as the case may be, of the following suspensive conditions:
- 5.1.1 That the suspensive conditions agreed to between the Owner and the Seller in the agreement of sale, are fulfilled or waived within the agreed time periods; and
- 5.1.2 That the Agreement of Sale does not terminate for any reason before date of transfer. Until date of transfer, this building contract is irrevocably linked to the Agreement of Sale in respect of the land as described in clause 3.1.17 and in the event of the Agreement of Sale terminating during this period, for whatever reason, then this agreement will automatically terminate as a result thereof.
- 5.1.3 That, in the event of the increase of the building contract price for any reason and should the building finance which the Owner obtained to finance the works not be sufficient to cover the increased building contract price, the Owner is able to, within a period of 45 (Forty Five) days after receipt of the adjusted quote provided for in clause 7.5.3, either obtain confirmation from the financial institution that it has approved additional finance for the increased building contract price or, if such confirmation is not received, the Owner confirms to the Contractor in writing that it is proceeding with this agreement and will make payment of the difference between the original building contract price and the increased building contract price in cash.
- 5.2 In the event of the termination of this agreement due to the non-fulfillment of any of the suspensive conditions, the Parties agree that they will have no claims against each other pertaining to this agreement.

## **6 POSSESSION AND OCCUPATION**

- 6.1 The Contractor, his agents, servants and sub-contractors shall at all times until the works have been completed and the Owner has signed and handed to the Contractor the final completion form, be entitled to enter and be present on the land for construction purposes. At no time whatsoever shall the Owner be entitled to make claim, attach or in any way claim possession or retention of any of the Contractor's (including his agents', sub-agents' and/or employees') tools, equipment or building material and by signature hereof the Owner waives all or any right which he may have acquired in this regard.
- 6.2 Subject to clause 6.3, the Owner shall be obliged to take occupation of the land by no later than the last business day of the month in which the works have been completed once he has adhered to clauses 6.2.1 and 6.2.2 below, and it shall be incumbent on the Owner to monitor progress of the works in order to enable him to make whatever arrangements may be necessary or required by him to:
- 6.2.1 Sign and hand to the Contractor the final completion form prior to taking possession and occupation of the land and works;
- 6.2.2 Make payment of all or any amounts which may then still be due by him to the Contractor.
- 6.3 The Owner will not be required to sign the final completion form until such time as the local authority has issued an Occupation Certificate, certifying that the erected dwelling

is fit for occupation.

- 6.4 Should the Owner fail to sign and hand to the Contractor the final completion form and fail to take occupation or possession of the land within thirty (30) days after notice to him, unless the Contractor is in breach of this Agreement, it shall irrevocably be deemed for all purposes hereunder, that the Owner has effectively signed the final completion form and has effectively and fully taken occupation and possession of the land upon the expiry of the thirtieth (30<sup>th</sup>) day after the date of such notice.

## 7 **BUILDING PLAN AND CONTRACT PRICE**

- 7.1 The Owner herewith elects Building Plan No \_\_\_\_\_, annexed hereto as Annexure B/1, which will form the subject matter of the works.

- 7.2 The building contract price per square meter shall be R6500 (six thousand five hundred rand) inclusive of Value Added Tax, subject to contract price adjustment provisions as per clauses 7.5

- 7.3 The Contractor will register the building project with the NHBRC before commencing with any building activities in terms of this Agreement, the costs thereof to be for the Contractor's account.

- 7.4 The total building contract price shall be:

- 7.4.1 Building price (excluding extras): R \_\_\_\_\_

Optional extras (Annexure B/3): R \_\_\_\_\_

Variance Order (Annexure B/4): R \_\_\_\_\_

**TOTAL building contract price:** R \_\_\_\_\_

( \_\_\_\_\_ rand)

inclusive of VAT (Value Added Tax) at fourteen percent (14%), payable to the Contractor in one of the following instances:

- 7.4.1.1 **Bond or Loan is obtained as per clause 8**  
Paid to the contractor by way of progress payments as provided for in this agreement.

**OR**

- 7.4.1.2 **If no Bond is needed and the Owner will fund the building contract price on a cash basis:**

Paid to the contractor by way of:

- 7.4.1.2.1 An irrevocable bank guarantee to the Contractor's Attorney for the full building contract price within twenty (20) days from signature of this contract by the Contractor.

- 7.4.1.2.2 Progress payments

## 7.5 **Contract Price Adjustment Provisions**

- 7.5.1 The Contractor retains the right to re-determine and adjust the total building contract price to fair market rates, on a bi-annual basis, subject thereto that no upward adjustments will be allowed after Date of Transfer. The first re-determination may be done not earlier than 6 months from Signature Date.

7.5.2 The contract sum will be adjusted in accordance with the Contract Price Adjustment Provisions (CPAP) as set out in the latest CPAP Manual and Reference guide as prepared by the Joint Building Contracts Committee (JBCC) latest series, and any amendments thereto.

The Joint Building Contracts Committee latest series, Contract Price Adjustment Provisions (JBCC CPAP) formula provides for 85% of the contract amount to be subject to escalation, the remaining 15% to stay fixed. Furthermore, a factor must be introduced to take account of the cash flow of payments, usually 0,6 is acceptable if a short method of calculation is employed.

Unless the Joint Building Contracts Committee issues a new formula after Signature Date, the total escalation during the contract period is therefore calculated by multiplying the anticipated tender amount by 0,85 and 0,6 then by the estimated monthly percentage increase in the JBCC CPAP formula and by the contract period expressed in months.

7.5.3 Should the building contract price be adjusted as provided for in clause 7.5.1, the Contractor will furnish the Owner with a new written quotation, reflecting the adjusted amount.

7.6 Subject to the provision of clause 7.13, progress payments shall be made at the request of the Contractor in such amounts as may be authorised by the inspection committee of the financial institution

7.7 **"First progress payment"** means the amount payable amounting to ten and a half percent (10.5%) of total building contract price to the Contractor on completion of the first section of the works if so required namely:

Foundation

7.8 **"Second progress payment"** means the amount payable amounting to:

- twenty five percent (25%) of total building contract price for a double storey house
- thirty three percent (33%) of total building contract price for a single storey house to the Contractor on completion of the second section of the works if so required namely:

7.8.1 Brickwork to plinth

7.8.2 Filling

7.8.3 Surface bed

7.8.4 Door Frames

7.8.5 Brickwork to sill

7.8.6 Windows

7.8.7 Brickwork to head

7.8.8 Brickwork to plate / slab

7.9 **"Third progress payment"** means the amount payable amounting to eight percent (8%) of total building contract price to the Contractor on completion of the third section of the works for a double storey house. The third progress payment in the case of a single storey house will be null percent (0%) as it has already been claimed as part of the second progress payment.

- 7.9.1 Door Frames
- 7.9.2 Brickwork to sill
- 7.9.3 Windows
- 7.9.4 Brickwork to head
- 7.9.5 Brickwork to plate/slab
  
- 7.10 **"Fourth progress payment"** means the amount payable amounting to twenty nine percent (29%) of total building contract price to the Contractor on completion of the fourth section of the works if so required namely:
  - 7.10.1 Trusses
  - 7.10.2 Branderling
  - 7.10.3 Sills
  - 7.10.4 Plastering
  - 7.10.5 Ceilings
  - 7.10.6 Hot and cold water
  - 7.10.7 Geysers
  - 7.10.8 Sanitary plumbing
  - 7.10.9 Sanitary fittings
  - 7.10.10 Conduits
  - 7.10.11 Wiring
  - 7.10.12 Electrical board / main connections
  - 7.10.13 Light fittings
  
- 7.11 **"Fifth progress payment"** means the amount payable amounting to nineteen and a half percent (19.5%) of total building contract price to the Contractor on completion of the fifth section of the works if so required namely:
  - 7.11.1 Stove
  - 7.11.2 Glazing
  - 7.11.3 Wall tiling
  - 7.11.4 Floor covering
  - 7.11.5 Skirting
  - 7.11.6 Doors (house and garage)
  - 7.11.7 Painting
  
- 7.12 **"Sixth and Final progress payment"** means the amount payable to the Contractor on the completion of the works, upon which payment (amounting to eight percent (8%) of total building contract price) together with the signature of the Final Completion Form by the Owner but subject to clause 7.26 the Contractor shall be completely discharged from its entire obligation in terms of this agreement. The sixth section of the works if so required namely:
  - 7.12.1 Cupboards
  - 7.12.2 Kitchen units
  - 7.12.3 Cleaning of site
  - 7.12.4 Grass laid
  - 7.12.5 Paving
  
- 7.13 The parties agree that;**
  - 7.13.1 Notwithstanding anything else in this Agreement, the progress payments specified in clauses 7.7 to 7.12 will be adjusted to the requirements of the financial institution, should it determine different percentages and/or stages of works for purposes of progress payments.

- 7.13.2 Should a cash purchaser fail to make any progress payment or the final payment as contemplated in clauses 7.7 to 7.12 within four (4) days of a written request by the Contractor for the Owner to do so, the Owner shall immediately become liable for such payment and the provisions of clause 17 shall *mutatis mutandis* apply upon expiry of the fourth (4<sup>th</sup>) day after the date of such request. The Contractor may in such circumstances, without prejudice to any legal rights it may have, withhold occupation from the Owner.
- 7.14 Should there be any dispute relating to the completion of any section of the works, in particular the sixth and final progress payment, then and in such event, the decision of the inspector of the financial institution shall be conclusive of the state of completion of such works.
- 7.15 Notwithstanding amounts having become payable to the Contractor as contemplated in clauses 7.6 to 7.12, the Contractor may in its sole discretion and at any time claim one or more progress payments or any part thereof after the date upon which any portion or section of the works have been completed and such amounts have accrued in favour of the Contractor and in so doing the Contractor shall not be deemed to have waived any of its rights.
- 7.16 Notwithstanding the above and the actual state of completion of any particular section or portion of the works, the parties may at any time agree that any amounts have accrued in favour of the Contractor whereupon the Contractor shall be entitled to make claim for the payment of such amounts agreed upon.
- 7.17 The Owner acknowledges that he has inspected the building plan and the specification attached hereto (which shall both form part of this agreement), for the type of house and outbuildings, (if any), to be constructed as the works.
- 7.18 Notwithstanding the meaning of 'building plan' or 'specification' or 'optional extras' as defined in clause 3, or any diagram, sketch or plan which may have been annexed hereto and which indicate the position of the works in relation to the erf boundaries, the parties specifically agree that the contractor shall be entitled to adapt or amend the building plan and/or specification, sitting and/or orientation after giving notice to the Architect and ZAAC and obtaining the Owner's and ZAAC's approval, if it deems it necessary:
- 7.18.1 to meet any or all the requirements of any competent authority;
- 7.18.2 to meet any special features of the land not taken into account by the architect;
- 7.18.3 to meet any special impediments such as water, sewer or electrical lines either above or underground, or any rock, geological or other soil condition which were not known or apparent at the design stage of the works;
- 7.18.4 to give effect to any changes in materials, finishes or fittings which may not be readily available at the time due to a shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the works.
- 7.19 Any such adaptation in terms of clause 7.18 shall be deemed to be the building plan and/or specification agreed upon between the parties it being specifically agreed that under no circumstances will any alterations or additions be acceptable by the Contractor at the insistence or request of the Owner once the bond application has been approved except when a written variation order which includes prices have been agreed to and signed by the parties.
- The extra costs, if any, to meet conditions as set out in clause 7.18 need to be certified by a civil or electrical engineer and such costs need to be included as part of



the first progress payment.

- 7.20 The Owner hereby irrevocably appoints the Contractor as his agent to apply for and obtain such approvals, consents or authorisations as may be required for approval of the building plan.
- 7.21 The Contractor shall commence with the works within a reasonable time after the date of commencement, having regard to its other building commitments, provided that it shall not be obliged to begin the works unless and until:
- 7.21.1 the Owner has furnished adequate proof to the satisfaction of the Contractor that a building loan has been raised or that the Owner is financially able to meet his commitments in terms of this contract;
- 7.21.2 all the required consents, approvals or authorisations have been obtained; and
- 7.21.3 final sketch plan and associated cost variations have been approved.
- 7.22 Notwithstanding the above, should the Contractor not commence with building works within 45 (Forty Five) calendar days after date of transfer, alternatively the date on which the requirements set out in clauses 7.21.1 to 7.21.3 have been fulfilled, the Owner will have the option of cancelling this agreement and contracting with a different building contractor.
- 7.23 Subject to any reasonable extension/s permitted, the Contractor shall generally complete the works within six (6) months from the date of commencement.
- 7.24 Should the completion of the works be delayed by *force majeure* or building industry holidays, whether statutory or generally recognised as customary in the industry, which may fall within the contract period, or in the event of any dispute, strike, lockout, squatting, invasion or any other situation causing delay and subject thereto that such delay is not within the reasonable control of the Contractor, then the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the works and the Owner shall not for that reason have any claim against the Contractor, whether for damages or otherwise.
- 7.25 Any unfixed materials required for the works and delivered to the land shall not become the property of the Owner until they have been paid for. Excess material delivered to the land shall remain the property of the Contractor.
- 7.26 **Defects**
- 7.26.1 The Owner shall before the date of completion, when requested by the Contractor to do so, attend an inspection of the works and compile a list (hereinafter referred to as the "first list") signed by both the Contractor and the Owner setting out any items relating to the works requiring repair by the Contractor. The Owner shall upon date of completion but prior to occupation deliver to the Contractor a list (hereinafter referred to as the "second list") signed by himself setting out items relating to the works requiring repair by the Contractor constituting latent defects which did not exist at the time when the first list was jointly compiled by the Contractor and Owner or reflecting defects included in the first list but not repaired to its satisfaction.
- 7.26.2 Upon repair of such items as reasonably require repair in the second list, the Owner shall sign the contractor's final Completion Form and shall thereafter be irrevocably deemed to have accepted that the works is in a fit, proper and workmanlike and the owner may then take occupation.

- 7.26.3 Notwithstanding the above, The Contractor shall, however, be bound to the guarantee periods as determined by the NHBRC and undertakes to repair such guaranteed defects should it become necessary and subject thereto that it falls within the time periods determined by the NHBRC. The Owner agrees that it may not hold the Contractor liable for repair of such defects after expiry of the relevant NHBRC guarantee periods.
- 7.26.4 Any dispute as to whether the said repairs in terms of this clause have been satisfactorily carried out shall be referred to ZAAC who will appoint a suitably qualified representative acting as an expert and not as an arbitrator and his decision thereon shall be final and binding on the parties.
- 7.26.5 Should the Owner fail to submit the second list within the aforesaid period, or fail to sign the final Completion Form within 7 (seven) days after receipt, and unless the Owner has placed its reasons for not signing such form on record, it shall be deemed that he has accepted the works in a fit, proper and workmanlike state and condition in all respects and the Contractor shall have no further obligation, other than as provided for in this Agreement, towards the Owner in terms hereof.
- 7.27 The Owner shall on demand be responsible for entering into any agreement or into any other arrangement that may be required for the supply of water and electricity to the land.
- 7.28 The Owner agrees and undertakes to cede to the Contractor a sum equal to the building contract price or the balance thereof outstanding from time to time from the proceeds of the loan and to sign any authority for payment thereof direct to the Contractor or his nominee by the financial institution in the form of building draws or periodic payments, subject thereto that it is satisfied that the Contractor has adhered to the requirement of delivering professional building services.
- 7.29 Where any section of the works has been partially completed, the value of the completed part shall be a fair and reasonable proportion of any progress payment and a certificate signed by any director or manager of the Contractor specifying 'the value of the works' shall be sufficient and conclusive evidence of that value.
- 7.30 The Owner undertakes to approve the Schedule of Finishes with the Contractor within fourteen days from date of signature hereof.

## **8. BOND FINANCE**

It is a specific term of this Agreement that the Owner will finance the works for which the Contractor is being appointed, with a building loan and that the works will at all times be subject to the requirements of the Commercial Bank which approves the loan for this purpose. The building loan will be in the form of an irrevocable guarantee for the contract price, which is acceptable to the contractor, delivered within 45 (forty five) days from signature of this contract by the contractor.

## **9. BREACH**

- 9.1 Should the Owner commit any breach of this agreement and remain or persist in such breach after the expiry of a period of **seven (7) days** after despatch of a written notice to him requiring him to rectify or remedy such breach, then the Contractor shall be entitled, without prejudice to any other remedies that it may have in law, to:
- 9.1.1 Immediately issue summons against the Owner for specific performance and payment of the full balance of the Building Contract price plus interest and all other amounts still due in terms hereof; or

- 9.1.2 Cancel this agreement and to recover all damages suffered by the Contractor as a result of such cancellation ; or
- 9.2 Should the Contractor breach the terms of this agreement and remain in breach for a period of 7 (Seven) days after the despatch of a written notice to it to rectify the breach, the Owner may, without prejudice to any other rights which it may have at law or in terms of this agreement:
- 9.2.1 Cancel this agreement and claim damages from the Contractor which it may have suffered as a result of the breach. Should the validity of this cancellation be placed in dispute by the Contractor, the Owner, in an attempt to limit its damages, may appoint another building contractor to proceed with the building works. All amounts paid to such new contractor will be deducted from the Building Contract price
- 9.2.2 Claim specific performance from the Contractor and hold it liable for damages which it may have sustained as result of the breach. In this event, and for the duration of any arbitration or court procedures, and in an attempt to limit its damages, may appoint another building contractor to proceed with the building works. All amounts paid to such new contractor will be deducted from the building contract price.
- 9.3 The following will also be deemed to be breach for purposes of this clause:
- 9.3.1 If a party is liquidated, either provisionally or finally;
- 9.3.2 If a judgment for payment of monies is granted against a party and such party fails to apply for a rescission or appeal against the judgement within the time periods prescribed by the relevant court rules;
- 9.3.3 If the Contractor is removed from the Estate's panel of approved building contractors;
- 9.4 It is hereby agreed that the Contractor will have a builder's lien over the property until the Owner has, according to this contract, paid all outstanding amounts, unless the Contractor is in breach of the Agreement or if the Agreement has been cancelled due to the Contractor's breach.

## 10 **DOMICILIA**

- 10.1 All or any notices given by a party to the other party shall be deemed to have been received by and communicated to the Addressee on the date on which the same is delivered to the receiving party's *domicilium citandi et executandi* by hand or courier service and the seventh (7th) day after posting thereof if sent by prepaid registered post or on the date of transmission if sent via email or fax, to the party's *domicilium*.
- 10.2 The Owner chooses *domicilium citandi et executandi* at the address contained in clause 1.1.
- 10.3 The Contractor chooses *domicilium citandi et executandi* at its address as contained in clause 1.2.

## 11 **JURISDICTION AND LEGAL COSTS**

- 11.1 This agreement is governed in terms of the laws of the Republic of South Africa.
- 11.2 The parties hereby consent to the jurisdiction of the Magistrate's Court pursuant to section 45 of the Magistrates' Courts Act, No 32 of 1944, or any amendment thereof. The Contractor shall, however, have the right at its sole option and discretion to institute proceedings in any other competent court.

11.3 The Parties agree to legal costs plus VAT thereon on the scale between attorney and own client, in the event of any legal services being contracted or legal action instituted in terms of or resulting from this Agreement.

## 12 **AMENDMENTS AND CESSIONS**

12.1 This Agreement constitutes the whole and entire building contract between the parties and no stipulation, promise, warranty, representation or condition which is not recorded herein shall be binding on the Contractor unless same is reduced to writing and signed by or on behalf of both parties.

12.2 No alteration or variation of whatever nature of this agreement, including this clause, shall be of any force and effect unless same is reduced to writing and signed by both the Owner and the Contractor.

12.3 The Owner shall not cede, assign, make over, alienate, pledge, burden or otherwise encumber any of his rights in terms of this agreement without the prior written consent of the Contractor first being had and obtained.

## 13 **INDULGENCES AND WAIVERS**

Any latitude, grace or extension of time which may be allowed or permitted by a Party to the other Party, in respect of any payment provided for herein, or any matter or thing which the Parties are bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of any of that Party's rights hereunder at any time to require strict and punctual compliance with each and every provision or term hereof or as a waiver of any of that Party's other rights hereunder.

## 14 **BUILDING PLANS, BUILDING OPERATIONS AND DEVELOPMENT**

14.1 The Owner hereby irrevocably undertakes and binds himself to finalise the building plans with the Contractor and Architect/Architect Technician within fourteen (14) days from signature of this agreement by the parties.

14.2 The Owner acknowledges that the property is not fully developed, that building operations will take place upon adjacent or neighbouring sub-divisions or erven and that the said building operations may cause him inconvenience. The Owner acknowledges and agrees that he shall have no claim of whatever nature against the Contractor, its builders or any sub-contractor arising from any such building operations. The Contractor undertakes to use its best endeavours to minimise all discomfort to or any infringement of the privacy of the Owner.

14.3 The Contractor will insure all its equipment and building material which may be kept or left on the building site, it being specifically agreed that the building material will only be deemed to become the responsibility of the Owner once it has been incorporated into the built structure.

## 15 **ANNEXURES TO THIS AGREEMENT**

15.1 Annexure B/1: Building plan in terms of clause 7.1 and 14.1.

15.2 Annexure B/2: Schedule of finishes allowed for in terms of clause 7.17 and 7.18.

15.3 Annexure B/3: Optional Extras allowed for in terms of clause 7.17 and 7.18.

15.4 Annexure B/4: Variance Order

15.5 In the event of a dispute in fact or a different interpretation of any meaning contained in this agreement, specification and building plan, the facts or interpretation contained in this agreement shall supersede that of the specification and/or building plan, whilst the same provision shall apply *inter alia* with regard to differences between specification and building plan in which event the facts or interpretation contained in the specification shall supersede that which is contained in the building plan.

**16 AGENTS' COMMISSION**

No agents commission is payable on this agreement.

**17 MORA INTEREST**

If any amounts due under this agreement are not paid or secured by acceptable guarantees on due date in terms of this agreement, save where such delay is due to the Owner's bond financial institution's delay, the Owner shall be liable to pay the Contractor interest on such outstanding amounts calculated at the effective interest rate as quoted by First National Bank at their prime overdraft rate at the time from the due date to actual date of payment or furnishing of the guarantee, as the case may be.

**18 CAPACITY OF PARTIES**

Should the Owner sign this agreement as Trustee or Agent for a Company, Close Corporation to be formed, the signatory shall be deemed to be personally, jointly and/or severally liable in terms of this agreement, should the Company, Close Corporation or Trust not be incorporated or not ratify and adopt this agreement within 30 (thirty) days of the date of signature hereof.

**SIGNED** by the Owner in the presence of the witnesses at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:

- 1. \_\_\_\_\_ **Owner**
- 2. \_\_\_\_\_

**SIGNED** by the Contractor in the presence of the witnesses at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

AS WITNESSES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_ **Contractor**