



# STADSIG

private country estate

## BUILDING AGREEMENT

Between

**STADSIG DEVELOPMENT COMPANY (PTY) LTD**  
**Registration number 2007/019641/07**  
(“Contractor”)

And

---

(“Employer”)

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

## COVERING SCHEDULE

<b>1. PARTIES</b>	
1.1. <b>Contractor:</b>	STADSIG DEVELOPMENT COMPANY PROPRIETARY LIMITED Registration Number: 2007/019641/07
Address:	9 <sup>th</sup> Floor, Towers South The Towers 2 Heerengracht, cnr Hertzog Boulevard Foreshore, Cape Town 8001
1.2. <b>Employer (full names):</b>	
Identity No. / Registration No. / Date of Birth:	
Purchaser's Income Tax Reference No.:	
Representative's full names (if signing on behalf of a legal entity) :	
Residential Address (street address):	
Postal Address:	
Telephone No: (Home)	
(Work)	
(Cell)	
Fax:	
E-mail Address:	
Marital Status:	Single <input type="checkbox"/> Married <input type="checkbox"/>
(How married?)	in community of property <input type="checkbox"/>
	out of community of property <input type="checkbox"/>
	Married by Customary Law <input type="checkbox"/>
	Foreign marriage <input type="checkbox"/>
If foreign marriage, governed by the laws of:	(state country)
Names Full of Spouse:	
Identity No. / Date of Birth:	
Name of alternative contact person:	
Telephone No: (Home)	
(Work)	
(Cell)	
E-mail address:	

<b>2. PROPERTY</b>	
2.1. Erf number	
Extent	± m <sup>2</sup>
<b>3. CONTRACT PRICE</b>	
Price of the Works (Inclusive of VAT)	R
Optional Extras Costs (inclusive of VAT)	R
Total Contract Price (Contract Price) (inclusive of VAT)	R
<b>4. TRANSFERING ATTORNEY</b>	
Name of Attorney:	SMITH TABATA BUCHANAN BOYES, REF: MR H J MOUTON) 2 <sup>nd</sup> Floor, 5 High Street, Rosenpark 7550 021 943 3800

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**1. PARTIES**

**1.1. CONTRACTOR**

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

**1.2. EMPLOYER**

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

**2. INTERPRETATION**

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

- 2.1.1. Agreement: the Building Agreement in respect of the Works and as set out in this document between the Employer and the Contractor;
- 2.1.2. Agreement of Sale: the Agreement of Sale in respect of the Property entered into by and between STADSIG DEVELOPMENT COMPANY (PTY) LTD Registration Number: 2007/019641/07 and the Employer;
- 2.1.3. Attorneys: means the Attorneys stipulated in clause 4 of the Covering Schedule;
- 2.1.4. Specifications: shall mean the detailed specifications and finishing schedule annexed hereto as Annexure C and shall comprise the standard specifications and finishes which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- 2.1.5. Business Day: means any Day except a Saturday, Sunday or officially proclaimed public holiday;
- 2.1.6. Commencement Date: means within 10 business days of fulfillment of the conditions set out in clause 7.1 below
- 2.1.7. Completion Date: means the date of the Handover Inspection;
- 2.1.8. Contractor: means the Party as referred to in Clause 1.1 of the Covering Schedule;
- 2.1.9. Contract Price: the costs of the Works as referred in clause 3.1 of the Covering Schedule;
- 2.1.10. Day: any Day of the week, including Sundays and South African Public Holidays;
- 2.1.11. Defects List: means the list of defects as agreed upon by the Parties during the Hand-over Inspection;
- 2.1.12. Development: the proposed Development known as STADSIG ESTATE, of which the Property 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 Contractor from the Employer;

2.1.14.	Employer:	means the Party as stipulated in clause 1.2 of the Covering Schedule;
2.1.15	Finishing Schedule:	means the schedule annexed hereto as Annexure "D"
2.1.16.	Hand-over Inspection	means an inspection of the Works by the Contractor or its representative, and the Employer, after the completion of the Works, at which inspection the Parties will agree to the Defects List;
2.1.17.	Local Authority:	means the Local Authority having jurisdiction over the Property, being the Drakenstein Municipality;
2.1.18.	Normal Wear and Tear	means the Normal Wear and Tear ascribed to improvements to fixed property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work, any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints, any mould growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damages caused thereby, wind and rain entering through open windows and doors and hot water cylinders which is covered by the guarantee issued by the supplier thereof;
2.1.19	Occupation Date:	means the same date as the completion date
2.1.20.	Parties:	a collective reference to the Contractor and the Employer and "Party" means either one of them;
2.1.21.	Prime Overdraft Rate:	means the rate of interest per year, which is equal to Standard Bank Limited's publicly quoted Prime Overdraft Rate;
2.1.22.	Plan:	a copy of which is annexed hereto as Annexure A 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 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;
2.1.23.	Price Structure:	shall mean all costs as per clause 3 of the Covering Schedule which amount will become due and payable to the Contractor in the execution of the Works in terms of this Agreement;
2.1.24.	Property:	the Erf as described in clause 2 of the Covering Schedule;
2.1.25.	Principal Agent	means Atvantage Project Managers (Pty) Ltd;
2.1.26.	SDP:	means the Site Development Plan approved by the Local Authority;
2.1.27.	Signature Date:	means the date on which the Contractor signs the Agreement;
2.1.28.	Total Contract Price:	means the Contract Price plus the Optional Extras costs (all-inclusive of VAT at the prevailing rate);
2.1.29.	VAT:	means Value Added Tax payable in terms of the VAT Act;
2.1.30.	VAT Act:	means Act No 89 of 1991;

2.1.31. Works: the building works to be conducted on the Property by the Contractor in accordance with the plan, Specifications, finishes selections and, if applicable and optional extras.

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 of this Agreement.

3.2 The Works shall be substantially in accordance with the Plan and Specifications. The placement of the Works will be in accordance with the approved Building Plan.

3.3 In the event of any discrepancy arising from the Plan and the Specifications, the provisions of the 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.

**4. CONTRACT PRICE**

The Contract Price shall be the amount referred to in Clause 3.1 of the Covering Schedule. The Optional Extras Costs shall be the amounts stipulated in Clause 3.2 of the Covering Schedule.

**5. PAYMENT OF THE CONTRACT PRICE**

5.1 Payment of the Contract Price shall be made by the Employer to the Contractor in accordance with the standard building draw practice of the Employer's mortgage bank. In the event that the Employer is not drawing from a mortgage bond, the standard building draw practice of Standard Bank, will apply.

5.2 If the works are financed by a bank, or by any other financial institution acceptable to the Contractor, the Employer by executing this agreement, empowers and authorizes the Contractor to apply for and receive progress payments from the bank or financial institution. It is recorded that the financing institution will itself ensure that it does not pay more than the value of the work done by the Contractor as part of the bank's service offering to the Employer, and as such the Employer will not dispute the timing or amount of the progress draws submitted by the Contractor.

In cases where the works are financed, the progress instalments may differ from the breakdown provided. In the event of this agreement being subject to the Employer obtaining mortgage finance, then the Contractor will submit the necessary documents required by the financing institutions (called "Draw Documents") to effect payment of progress instalments for signature by the Employer. So as not to delay the completion of the works, the Employer will ensure that the Draw Documents are signed by it and returned to the Contractor within 3 (three) days. Should the Draw Documents not be delivered to the Contractor timeously, or the Contractor not receive the progress payment in terms of such Draw Documents within 10(ten) days of the delivery of the Draw Documents, the Employer shall be liable for and shall pay, without demand by the Contractor, penalty interest on the total outstanding

contract sum at prime rate per annum, calculated from the date that the Draw Documents are furnished to when the progress payment is received by the Contractor, and without prejudice to the Contractor's rights. In the event of the works not being financed, payment in accordance with clause 5.1 will be made within 3 (three) days of the Contractor's request. Should the Contractor not receive the progress payment within 3 (three) days of the Contractor's request, the Employer shall be liable for and shall pay, without demand by the Contractor, penalty interest on the total outstanding Contract Sum at prime rate per annum, calculated from the date that the progress payment was due up to and including the date on which the progress payment is received by the Contractor, and without prejudice to the Contractor's rights.

- 5.3 The Employer acknowledges that all water and electricity used during the construction period is a necessary part of the building process and that the costs of water and electricity usage, together with any sewerage surcharge, refuse collection fee, or services availability charged, are for the Employer's account. The Contractor is also not liable for any rates and taxes in respect of the property.
- 5.4 If part of the Contract Price is financed by a bond, the Employer undertakes to pay the cash portion of the Contract Price according to the progress payment instalments as referred to in clause 5.1 above and the bond will be utilized for the subsequent payments.
- 5.5 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.
- 5.6 In the event of the 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, to discontinue the Works forthwith and all damages arising, costs, including the additional interest accrued, shall be for the account of the Employer.
- 5.8 If there is any dispute between the Parties pertaining to this Clause 5, the dispute will be referred to the Principal Agent for determination. The Parties agree to be bound by his determination.
- 5.9 The Employer acknowledges that he is aware that the Employer's mortgage bank charges interest on all amounts paid out in terms of progress draws. It is the responsibility of the Employer to ensure that the monthly interest charges on such progress draws are paid monthly in order to ensure that sufficient funds are available in the mortgage loan account for payment of the final progress draw to the Contractor.

## **6. POSSESSION**

- 6.1 The Contractor shall be entitled to:
  - 6.1.1. Receive full possession and occupation of the Property when he is due to commence the Works, and
  - 6.1.2. Retain possession and occupation of the Property, including the Works, until all agreed amounts owed to him under this Agreement has been paid and all obligations of the Employer has been fulfilled.
  - 6.1.3 From the date of transfer until the completion date, the Seller shall retain possession of the property, that is, the right to undisturbed use of and access to the property, it being expressly recorded that any access by the Employer to the property prior to the completion date shall be subject to the prior written consent of the Contractor.
- 6.2 The Parties record that the earliest expected Completion Date, is the date to be determined in terms of Clause 7.2 of this Agreement.
- 6.3 Possession and occupation of the Property and the Works shall, upon completion of the Works, be given by the Contractor to the Employer on the Completion Date.
- 6.4 Where occupation of the Property and the Works is given by the Contractor to the Employer on the Completion Date, risk in the Property and the Works will pass to the Employer on the Completion Date. The Employer hereby irrevocably indemnifies the Contractor against any claims or damages relating to the Property or the Works or in respect of any contents held by the Employer on the Property or in the Works, after the Completion Date.



- 6.5 In the event that the Contractor anticipates that the actual Completion Date will be later than the date determined by Clause 7.2, he shall give notice to the Employer, at least 30 (Thirty) days prior to the Occupation Date, of the new expected Occupation Date. The Employer shall have no claim against the Contractor for damages or for compensation of any other nature by reason of the Occupation Date having been amended.
- 6.6 The Employer acknowledges that on the Occupation Date construction of parts of the Development and the Private Open Spaces may not yet have been completed. The Employer accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.
- 6.7 The Contractor will be entitled to refuse access to the Works and the Property to any person, including the Employer, until such time as the Works have been completed and are ready for handover to the Employer. The Employer acknowledges that this arrangement is to ensure that the Contractor complies with its obligations in terms of health and safety regulations.

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

- 7.1 The Contractor shall not be obliged to commence with the Works until:
- 7.1.1. The Employer has furnished adequate security to the Contractor's satisfaction for the Total Contract Price; and
- 7.1.2. All necessary consents, approvals and/or registrations from all relevant authorities have been obtained; and
- 7.1.3. The Property is registered in the name of the Employer and the Employer's bond (if applicable) has been registered.
- 7.2 The Contractor must complete the Works, subject to any extension of time as provided for in this Agreement, within a period of 150 (One Hundred & Fifty) Business Days after the Commencement Date. If commencement of the Works is delayed for longer than 150 (One Hundred and Fifty) Business Days' from transfer of the property to the Employer 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 resile from this Agreement with neither party having any further claim against one another. Alternatively the Parties may agree to an amended Total Contract Price.
- 7.3 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control then the Contractor shall be entitled to a fair and reasonable extension of time for the commencement or completion of the Works.
- 7.4 All amounts due and unpaid shall be payable by the Employer on the Completion Date.

## **8. COMPLETION AND HANDOVER INSPECTION**

- 8.1. The Parties or their representatives shall be obliged to attend the Hand-over Inspection at any pre-arranged time, during which inspection the Parties shall agree to the Defects List.
- 8.2. If the Employer fails to attend a Hand-over Inspection within a reasonable period after having received written notice thereof by the Contractor, then the Completion Date will be determined by the Principal Agent.
- 8.3. The Contractor shall remedy the defects on the Defects List as soon as reasonably possible.
- 8.4. Notwithstanding the provisions of this clause 8, the Contractor shall strictly enforce, for the benefit of the Employer, any guarantee or warranty which it may have up to the Completion Date. In as far as such guarantee or warranty relates to the Works, the Contractor hereby cedes all its rights in terms thereof to the Employer.
- 8.5. All undertakings and commitments given by the Contractor to the Employer in terms of this Agreement are personal to the Employer who shall not be entitled to cede, assign or make over its rights thereto.

- 8.6 The parties record that no employee or agent of the Contractor has the authority to agree to an earlier or later date of occupation, and any verbal communications from the employees or agents of the Contractor regarding occupation dates will not be binding on the Contractor. Only written communication regarding occupation dates on a letterhead of the Contractor will bind the Contractor.
- 8.7 Once the Contractor offers possession and occupation, the Employer will not be entitled to refuse or delay beyond the date offered by the Contractor. Should the Employer fail to take occupation on the date provided by the Contractor, then risk will nevertheless pass to the Employer from that date, and any damage caused thereafter will be for the account of the Employer.

## **9. DEFECTS AND VOETSTOOTS**

- 9.1. The Contractor shall remedy any material patent defect within 90 (ninety) days and latent defect within 5 (five years) of the Completion Date.
- 9.2. In the absence of notice as referred to in Clause 9.1 above, the Employer shall be deemed to have accepted the Works in a fit and proper condition and be deemed to have acknowledged that the Contractor has fully complied with its obligations as set out in this Agreement and the Works will become "voetstoets". The Contractor, other than as provided for herein, shall not be liable for any defects in the Works or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 9.1.
- 9.3. In addition to the obligation of the Contractor in Clause 9.1 to remedy patent and latent defects, the Contractor shall in terms of the NHBRC requirements be obliged to:-
- 9.3.1. remedy any material patent defect in the Works due to faulty workmanship or materials, manifesting itself within 90 (Ninety) days of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 90 (Ninety) Days;
- 9.3.2. at its own expense repair any roof leaks that occur in respect of the Works within the first 12 (Twelve) months of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 12 (Twelve) months;
- 9.3.3. rectify any defect of a latent nature in respect of the substructure, the superstructure and the roof structure of the Works for a period of 5 (Five) years of the Completion Date, provided the Employer notifies the Contractor in writing thereof within the said 5 (Five) year period.
- 9.3.4. Hairline settlement cracks are not guaranteed and are considered normal in newly built homes. Hairline settlement cracks for the purposes hereof are any cracks that are certified to be slight, very slight or negligible (Categories 2, 1 and 0) on the scales published in Tables 3, 3 and 4 of Part 1, Section 2 of the NHBRC Home Building Manual of 1999.
- 9.4. The Contractor shall not be liable for any defects in the Works in respect of Normal Wear and Tear or any defects or damages caused by the conduct of the Employer, whether willfully or by his negligence.
- 9.5. The Contractor shall under no circumstances be liable for any consequential loss or indirect damages as a result of any fault, defect, or deficiency existing or arising on the property or the works, whether patent or latent and its liability is specifically limited as provided for in this agreement
- 9.6. The Employer shall be obliged to give the Contractor, its Agents and sub-contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 9. Repairs will be done during working hours, Monday to Friday.
- 9.7. The final extent of the Works may vary from the extent indicated on the Plan. If the difference in the extent is less than 2% (Two percent) than the extent stipulated on the Plan, the Parties will have no recourse against each other. If the difference in the extent is more than 10 % (Ten percent) less than the extent stipulated on the Plan, the Contract Price will be amended pro rata and finally determined by the Principal Agent.

9.8. If any dispute or difference shall arise between the Employer or the Bank (being the bondholder over the Property), if applicable, on its behalf, and the Contractor, during the construction of the Works and before the Completion Date or after the termination of the employment of the Contractor under this Agreement, abandonment or breach of this Agreement, as to the construction of the Works, or as to any other matter or this arising thereunder, or as to the withholding by the Bank of any draw to which the Contractor claim to be entitled, that cannot be resolved by the Principal Agent, then an architect, civil engineer, quantity surveyor or any other professional person involved in the building industry (“the Arbitrator”), appointed by the Contractor shall determine such dispute or difference by written decision given to the Contractor.

## **10. VARIATIONS**

10.1 The Employer acknowledges that no amendments or changes to the construction drawings will be allowed after signature of this agreement by the Employer. The Employer must select his choice of finishes where the Finishing Schedule provides for choices, provided that such items will be supplied by the developer’s preferred supplier, within 10 (ten) days of being requested to do so by the Contractor. In the event that the Employer fails to select his choice of finishes within the aforesaid timeframe, the Contractor shall be entitled to proceed with the works in accordance with the standard specifications contained in the Finishing Schedule and make the selections from the available alternatives.

10.2 The works will in all aspects be carried out in accordance with the Building Regulations and Standards applicable from time to time, and in accordance with any other law or enactment that may apply, or any permitted deviation from these regulations and standards. In the unlikely event of these legal provisions conflicting with the Plan or the Finishing Schedule, then the legally binding norms and standards will prevail. The Plan and Finishing Schedule are also subject to changes for compliance with the approved site development plan and architectural guidelines of the township development of which the property forms part. The foundations and structure of the Works, which includes the roof, will be designed and overseen by a competent person, usually a structural or civil engineer or engineers, as required by and in accordance with the building regulations and standards. The construction of these elements of the works will be executed in accordance with such designs, and may as far as those details are concerned, differ from the Plan and Finishing Schedule.

10.3.1 If the Employer, after the Signature Date, requires that any aspect of the Works be varied and/or that any extra work be carried out by the Contractor, then such request shall be made in writing whereupon the Contractor may elect to entertain the request or not. Should the Contractor consider the request, he must submit a written quotation for acceptance by the Employer. All costs arising from such variation/extra shall be paid by the Employer to the Contractor within 24 (Twenty Four) hours after acceptance of the quotation, failing to do so, the Contractor will not be obliged to perform such extra work or variations.

10.3.2 If the Contractor agrees (in its sole and absolute discretion) to any additions or variations, the Contractor shall be entitled to a fair and reasonable extension of time in respect of the completion date

10.3.3 The Contractor shall be entitled to adapt or amend the plans in any way which the Contractor may consider necessary, after consultation with and on written notice to the Employer in order to:

10.3.3.1 meet any requirements of any relevant authority

10.3.3.2 meet any special features of the land or any other rock or soil conditions

10.3.3.3 meet any special impediments such as water, sewerage or electrical services (either above or underground)

10.3.3.4 give effect to any change in any materials, finishes or fittings, without however detracting from the quality of the works.

## **11. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR**

11.1. The Contractor shall maintain sufficient contract works, public liability and SASRIA insurance.

- 11.2. Notwithstanding anything to the contrary herein contained, ownership of all materials used in the execution of the Works shall remain vested in the Contractor until such time as all amounts due in terms of this Agreement have been paid in full.
- 11.3. Copies of the following documentation will be supplied by the Contractor to the Employer on Completion Date:
- 11.3.1. Electrical Compliance Certificate
  - 11.3.2. Roof Certificate (A19)
  - 11.3.3. Approved Plan
  - 11.3.4. Occupation Certificate issued by the Local Authority
  - 11.3.5. Plumbing Certificate
  - 11.3.6. Gas Certificate (if applicable)
  - 11.3.7. NHBRC Certificate
  - 11.3.8. Guarantees from third parties (if applicable)
- 11.4. The Contractor may appoint any third party to execute any of the Works provided that the rights of the Employer in terms of this Agreement against the Contractor shall not be affected in any way by such appointment.
- 11.5. The Contractor is exempted from liability for making good damage caused to the Property by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, earth tremors, geological disturbances and/or subsidence, the nature of the subsoil or terrain and the moisture content of the subsoil and shall under no circumstances be responsible for any consequential damage arising there from.

## **12. RIGHTS AND OBLIGATIONS OF THE EMPLOYER**

- 12.1. The Employer undertakes to become and remain the registered owner of the Property until the Completion Date.
- 12.2. The Employer acknowledges that there will be construction work in the vicinity of the Property 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 adjacent erven in the course of such construction work.
- 12.3. Where the Employer has registered a mortgage bond against the Title Deed of the Property and utilizes such mortgage bond to effect payment of the Contract Price or any part thereof, then and in that instance the Employer is liable for the payment of interim interest to the financial institution. All such interest must be paid in full before the Completion Date.

## **13. CONDITION PRECEDENT**

- 13.1. The Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.
- 13.2. In the event that the conditions precedent as referred to in clause 2.2 and clause 3 of the Agreement of Sale, are 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-fulfilment of this condition precedent.

## **14. BREACH**

- 14.1. If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 7 (seven) days after receipt of written notice from the other party calling upon it to remedy such breach, then the

innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law to:

- 14.1.1. Cancel this Agreement and claim such damages as it may have sustained from the defaulting party;
- 14.1.2. Claim immediate performance by the defaulting party of all its obligations in terms of this Agreement whether or not the due date for performance shall otherwise have arrived;
- 14.2. The Contractor may retain any cash payments made by the Employer prior to cancellation as liquidated damages, without prejudice to any other right that the Contractor may have.
- 14.3. Upon cancellation of this Agreement as a result of default by the Employer, the Contractor will be entitled to keep possession and occupation of the Property and the Works and to exercise its builder's lien.
- 14.4. The defaulting party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.
- 14.5. In the event of the Contractor being obligated and/or electing to cancel the agreement in accordance with the preceding clause, then the following will occur: A quantity surveyor appointed by the Contractor will assess the works and determine and certify the amounts due to the Contractor as a result of the portion of the works completed by the Contractor and any portion of the amount so determined and certified which has not already, by virtue of progress payments, been paid to the Contractor will forthwith be due and payable to the Contractor by the Employer; The Employer will in addition be liable for all damages suffered by the Contractor, including the fees of the quantity surveyor called upon to make the assessment.

#### **15. MAGISTRATE'S COURT JURISDICTION**

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

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

- 16.1. The Parties choose their addresses as set out on in Clause 1 of the Covering Schedule of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.
- 16.2. Any notice given in terms of the Agreement which is:
  - 16.2.1. Delivered by hand during normal business hours to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer at the time of delivery;
  - 16.2.2. Posted by prepaid registered post to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer on the 7th day after the day of its posting.
  - 16.2.3. 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.
- 16.3. 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.

#### **17. INTEREST**

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

**18. CAPACITY OF EMPLOYER**

- 18.1. If more than one Employer signs this Agreement, the Employers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.
- 18.2. The Signatory shall in his personal capacity be liable for the due fulfilment of all the terms and conditions of this Agreement.

**19. ARBITRATION**

- 19.1 If any dispute or difference shall arise between the Owner(s) or the Bank on its behalf, and the Contractor, during the progress and before completion of the building operations or after the termination of the contract, abandonment or breach of the contract, as to the construction of the contract, or as to any other matter or this arising thereunder, or as to the withholding by the Bank of any draw to which the Contractor claim to be entitled, then any architect, civil engineer, quantity surveyor or any other professional person (“the Arbitrator”) involved in the building industry appointed by mutual agreement between the parties shall determine such dispute or difference by written decision given to the Employer and Contractor.
- 19.2 Should the parties fail to agree on the appointment of the Arbitrator, such appointment shall be made by the Chairman of the professional body to which the proposed Arbitrator is affiliated with.

**20. GENERAL**

- 20.1 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.
- 20.2 The Agreement shall not be binding upon the Parties until the Contractor has confirmed acceptance thereof by his signature hereto.
  - 21.1.1 This entire agreement is subject to the registration of transfer of ownership of the property to the Employer. In the event that the property is not transferred within 12 (twelve) months from date of signing of this agreement by the Contractor, the Contractor reserves the right to: increase the Contract Sum based on the current prices for building materials, and the contract shall notify the Employer in writing of such increased costs and the Employer may then, at his/her option, cancel this agreement by providing writing notice of cancellation to the Contractor within 5 (five) days of receiving written notice from the Contractor in respect of the increased cost. Should written notice of cancellation not be forthcoming within the aforesaid period, the Contractor and the Employer shall proceed with the agreement at the increased Contract Sum and the Employer shall be obliged to pay the increased in the Contract Sum to the Contractor within 21 (twenty one) days of receiving written notice from the Contractor in respect of the increased cost; or to cancel this agreement and the parties shall have no claim of whatsoever nature against each other.
- 20.3 Notice of cancellation of this agreement as provided for in clause 21.1 shall have the effect of simultaneous cancellation of the Agreement of Sale referred to in clause 13.1 above.

**21. UNDERTAKINGS AND WARRANTIES**

If the estate agent or any other person has made any representations, warranties or undertakings to the Employer regarding the works, the Employer records these in Annexure F – RECORDAL OF ADDITIONAL REPRESENTATIONS so that the Contractor may be aware of those representations, warranties or undertakings. Should nothing be recorded on the version of the agreement signed by the Contractor, then the Employer has agreed that this document constitutes the entire agreement concluded between the parties in relation to the works and the other subject matter hereof, and no warranties, undertakings or representations other than those specifically recorded herein may be relied on by either of the parties.

**RECORDAL OF ADDITIONAL REPRESENTATIONS**

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

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

AS WITNESSES:

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

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

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

AS WITNESSES:

3. \_\_\_\_\_

4. \_\_\_\_\_

\_\_\_\_\_  
EMPLOYER