

BUILDING CONTRACT

PORT ZIMBALI ESTATE

Viking Pony Properties 37 (Pty) Ltd

*PORT ZIMBALI ESTATE
HOME OWNERS' ASSOCIATION (NPC)*

BUILDING CONTRACT

PORT ZIMBALI ESTATE

I/We, _____

(Identity number(s): _____)
(hereinafter referred to as the 'EMPLOYER'),

of: _____

Telephone No: _____ Fax No: _____

Cell No: _____ E-mail: _____

which addresses and contact information I/we hereby select as my/our domicilium citandi et executandi for all purposes including notices hereunder,

and

Viking Pony Properties 37 (Pty) Ltd

Reg. No.: 2000/010934/07

(hereinafter referred to as the 'CONTRACTOR')

of: 217 Emerald Avenue, Lyttelton Manor X3, Centurion.
P.O. Box 8307, Centurion, 0046

Tel No.: 012 644 1411
E-mail: allan@pze.co.za

which address is hereby selected as the CONTRACTOR'S domicilium citandi et executandi for all purposes including notices hereunder,

hereby agree to conclude the construction of improvements on the property (hereinafter referred to as "the WORKS"), as described hereunder and defined in the Terms and conditions of the building contract in accordance with the following annexures (collectively with the annexures to be regarded as the BUILDING CONTRACT):

- a. Schedule of Terms and conditions
- b. Summary of building contract figures
- c. Detail - Selected Building Contract Figures
- d. List of Prime Cost items (PC's)
- e. Schedule of Non-selectable Finishes
- f. Floorplan of dwelling/building

The WORKS is situated on erf _____, Port Zimbali, Registration Division FU, Province of KwaZulu Natal,

with street address: _____
Port Zimbali Estate; Old M4 Main Road; Ballito



1. **PROPERTY DESCRIPTION, PRICING AND WORKS DETAILS**

1.1	Property description Approximate extent	Erf _____; Port Zimbali Regsitration Division FU Province of Kwazulu-Natal Erf size: _____ m ²
1.2	Building description ("the WORKS")	Dwelling - size: _____ m ²
1.3	Total Building Contract Price <i>(Inclusive of Value Added Tax)</i> <i>(Inclusive of PC's)</i>	R _____ (Words: _____ _____ _____ _____ _____)
1.4	Total PC amount <i>(Inclusive of Value Added Tax)</i>	R _____ (Words: _____ _____ _____ _____)

(For further details relating to the pricing of the building contract see the SUMMARY OF BUILDING CONTRACT FIGURES)

1.5 In the event of the EMPLOYER requiring a loan from a financial institution: -

- a. The amount of the aforesaid loan is: R _____.
(Words: _____

_____)
- (Include the amount required for the purchase of the stand/erf, if applicable)*

- b. The date by which the aforesaid loan is to be granted is 45 (FORTY FIVE) DAYS from SIGNATURE DATE. The EMPLOYER agrees to provide the CONTRACTOR with written evidence from a financial institution by this date, failing which, in the discession of the CONTRACTOR, this item of this CONTRACT may be regarded by the CONTRACTOR as not being fulfilled.



- 1.6 The CONTRACTOR will require _____ (_____) months to complete the construction of the dwelling (the "BUILDING PERIOD").
- 1.7 The estate agent (if applicable): _____.
- 1.8 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall be taken together and deemed to be one instrument.
- 1.9 The person(s) signing this Agreement in a representative capacity warrants their authority to do so.

Signed by the EMPLOYER at _____ on this ____ day of _____.

EMPLOYER

Witness

EMPLOYER

EMPLOYER

Signed by the CONTRACTOR at _____ on this ____ day of _____.

CONTRACTOR

Witness



BUILDING CONTRACT

SCHEDULE OF TERMS AND CONDITIONS

1. DEFINITIONS, INTERPRETATIONS and OTHER CONDITIONS

It is recorded and agreed to by the PARTIES that the definitions, interpretations and other conditions contained in this paragraph 1 not only aims to define words and terminology used in the BUILDING CONTRACT, but also serves to have legal consequence in the application thereof, as and where the case might be.

1.1 ADEQUATE SECURITY – Shall mean one of the following ADEQUATE SECURITY types described in this paragraph 1.1 for an amount equal to the TOTAL BUILDING CONTRACT PRICE, or in the event of more than one ADEQUATE SECURITY type being provided, the total amount of the ADEQUATE SECURITY types must be equal to the TOTAL BUILDING CONTRACT PRICE plus, if applicable, and in all three instances, any additional amounts payable as a result of VARIATION ORDERS, namely:

1.1.1 Guarantees for payment of monies, issued by a South African registered bank, that are specifically payable as provided for in terms of paragraph 3 of this SCHEDULE OF TERMS AND CONDITIONS,

1.1.2 Written confirmation from a South African registered bank that a building loan has been granted to the EMPLOYER for the financing of the WORKS and, in addition, confirming that the EMPLOYER has met the conditions of such granted loan, including the registration of a covering bond and finally confirming that payment will be made to the CONTRACTOR as provided for in terms of paragraph 3 of this SCHEDULE OF TERMS AND CONDITIONS,

1.1.3 Confirmation from the CONTRACTOR'S ATTORNEYS that money is deposited with them for purposes of this BUILDING CONTRACT, which money is to be held by the CONTRACTOR'S ATTORNEY pending the completion of the WORKS as contained in this BUILDING CONTRACT. This amount is to be invested in an interest bearing account in terms of Section 78 of the Attorneys Act, the interest being for the benefit of the EMPLOYER. The confirmation must include the understanding that payment must be made by the CONTRACTOR'S ATTORNEY to the CONTRACTOR as provided for in terms of paragraph 3 of this SCHEDULE OF TERMS AND CONDITIONS,

1.1.4 Payment of the TOTAL BUILDING CONTRACT PRICE plus, if applicable, amounts for VARIATION ORDERS, via electronic funds transfer into the banking account of the CONTRACTOR.

1.2 AGREEMENT – Shall mean the BUILDING CONTRACT.

1.3 ARCHITECT – Shall be the consultant and principal agent appointed by the CONTRACTOR and representing the EMPLOYER in his professional capacity. All communications will be conducted directly between the EMPLOYER and the ARCHITECT.



- 1.4 APPROVED PLAN - Shall mean the PLAN of the WORKS as designed and finalised by the ARCHITECT, signed by the EMPLOYER and the ARCHITECT and submitted by the ARCHITECT to the LOCAL AUTHORITY and approved by the LOCAL AUTHORITY.
- 1.5 BUILDING CONTRACT – Shall mean the BUILDING CONTRACT and any relevant document that may be attached to it as appendix, but which includes the following documents as minimum:
- 1.5.1 SCHEDULE OF TERMS AND CONDITIONS
 - 1.5.2 SUMMARY OF BUILDING CONTRACT FIGURES
 - 1.5.3 Detail - Selected Building Contract Figures
 - 1.5.4 LIST OF PRIME COST ITEMS (PC's)
 - 1.5.5 SCHEDULE OF FINISHES
 - 1.5.6 FLOOR PLAN or PLAN or APPROVED PLAN
- 1.6 BUILDING PERIOD – Shall mean the number of months the CONTRACTOR requires to complete the WORKS as specified in paragraph 1.6 of the BUILDING CONTRACT. It is recorded that the BUILDING PERIOD may be amended from time to time as a result of COMMENCEMENT DELAYS, DELAYS and EXTENTIONS in accordance with the BUILDING CONTRACT. The BUILDING PERIOD starts on COMMENCEMENT DATE and ends on CONTRACTUAL COMPLETION DATE, it being recorded and agreed to by the PARTIES that the EMPLOYER shall have no CLAIM against the CONTRACTOR should the COMPLETION DATE be achieved before the expiry of the BUILDING PERIOD, whether amended or not.
- 1.7 CERTIFICATE OF OCCUPATION - Shall mean a CERTIFICATE OF OCCUPATION issued by the LOCAL AUTHORITY after successful inspection of the WORKS by the LOCAL AUTHORITY. The following has relevance to the CERTIFICATE OF OCCUPATION:
- 1.7.1 The ARCHITECT and the CONTRACTOR requests the LOCAL AUTHORITY to do such inspection and to issue the subject CERTIFICATE OF OCCUPATION, it being recorded that the CONTRACTOR has no obligation to ensure that the LOCAL AUTHORITY issues such CERTIFICATE OF OCCUPATION.
 - 1.7.2 The ARCHITECT and the CONTRACTOR however accepts the responsibility to initiate the request to the LOCAL AUTHORITY to perform an inspection of the WORKS and to provide all the relevant documents and certificates in terms of the scope of this BUILDING CONTRACT as required by the LOCAL AUTHORITY enabling such LOCAL AUTHORITY to issue the CERTIFICATE OF OCCUPATION.
 - 1.7.3 The ARCHITECT and the CONTRACTOR are relieved of their responsibility in this regard should the EMPLOYER fail to authorise and pay for work and/or actions, not included in this BUILDING CONTRACT, but that is required by the LOCAL AUTHORITY before they will agree to issue the relevant CERTIFICATE OF OCCUPATION, as well as instances where the EMPLOYER undertakes/undertook any work on the WORKS, directly or via SUB-CONTRACTOR, and as a result of this work undertaken the LOCAL AUTHORITY refuses to issue a CERTIFICATE OF OCCUPATION. In these instances/circumstances the ARCHITECT and the CONTRACTOR undertake to



provide the EMPLOYER with the relevant documents and certificates in terms of the scope of this CONTRACT, where after it will become the obligation of the EMPLOYER to ensure the CERTIFICATE OF OCCUPATION is issued.

- 1.8 CERTIFICATE OF OCCUPATION INSPECTION REQUEST CERTIFICATE – Shall mean a certificate issued by the ARCHITECT in which the ARCHITECT certifies the CERTIFICATE OF OCCUPATION INSPECTION REQUEST DATE.
- 1.9 CERTIFICATE OF OCCUPATION INSPECTION REQUEST DATE – Shall mean the date on which the CONTRACTOR requests the LOCAL AUTHORITY to do an inspection of the WORKS which will enable the LOCAL AUTHORITY to issue a CERTIFICATE OF OCCUPATION.
- 1.10 COMMENCEMENT DATE – Shall mean the date on which the construction of the WORKS is to commence in terms of this BUILDING CONTRACT, irrespective of whether the CONTRACTOR commenced with the construction of the WORKS prior to this date, but not later than, 7 (SEVEN) DAYS from the date on which the last of the following conditions are met:
- 1.10.1 The ARCHITECT or EMPLOYER to provide the CONTRACTOR with the APPROVED PLAN.
- 1.10.2 The EMPLOYER to satisfy the CONTRACTOR that the conditions depicted in paragraph 5.1 of the SCHEDULE OF TERMS AND CONDITIONS are met.
- 1.10.3 It is recorded that COMMENCEMENT DATE, as defined herein, may take place before the START DATE in time.
- 1.11 COMMENCEMENT DATE CERTIFICATE – Shall mean a certificate that must be issued by the ARCHITECT in which the COMMENCEMENT DATE is specified and which CERTIFICATE must be provided to the PARTIES by the ARCHITECT no later than 2 (TWO) days after COMMENCEMENT DATE.
- 1.12 COMMENCEMENT DELAY – Shall mean that, as a result of the contractual conditions not being met by the EMPLOYER, the CONTRACTOR was unable to commence with the construction of the WORKS, resulting in the CONTRACTOR being entitled to register a COMMENCEMENT DELAY CLAIM.
- 1.13 COMMENCEMENT DELAY CLAIM – Shall mean a monetary amount and a number of DAYS that the CONTRACTOR may claim as a result of the COMMENCEMENT DATE extending beyond the START DATE. A COMMENCEMENT DELAY will be registered via the VARIATION ORDER process, which caters for the PARTIES and the ARCHITECT agreeing to the COMMENCEMENT DELAY in writing. The monetary amount of a COMMENCEMENT DELAY will be calculated as follows:
- 1.13.1 For purposes of this calculation the number of DAYS applicable to the COMMENCEMENT DELAY is noted as "A".
- 1.13.2 For purposes of this calculation the Building Plan Price (excluding PC's) as depicted in the SUMMARY OF BUILDING CONTRACT FIGURES is noted a "B".
- 1.13.3 For purposes of this calculation the percentage used to calculate the monetary amount of the COMMENCEMENT DELAY CLAIM is 10% (TEN PERCENT) per annum and is noted as "C".



- 1.13.4 The monetary amount of the COMMENCEMENT DELAY CLAIM is calculated by multiplying "A" with "B", multiplying the latter with "C" and then dividing the answer arrived at with 365.
- 1.13.5 "A" times "B" times "C" divided by 365.
- 1.14 COMPLETION CERTIFICATE – Shall mean a certificate issued by the ARCHITECT, which must be issued within 3 (THREE) DAYS after COMPLETION DATE, stating that the WORKS have been satisfactorily completed, save for the items contained in a PUNCH-LIST.
- 1.15 COMPLETION DATE – Shall mean the occurrence of any of the following occurring first in time, irrespective of whether the EMPLOYER occupies the building or not, namely:
- 1.15.1 The date of formal handing over of the keys of the WORKS to the EMPLOYER; or
- 1.15.2 The date on which OCCUPATION of the WORKS is taken by the EMPLOYER or his agent; or
- 1.15.3 After notice by the CONTRACTOR to the EMPLOYER that the WORKS has been completed; or
- 1.15.4 The date of issue of a COMPLETION CERTIFICATE.
- 1.16 CONSTRUCTION PROGRAM – Shall mean the various stages of construction activities, encompassing the dates and times at which such activities need to commence and the dates on which PC ITEMS need to be provided to the CONTRACTOR, to enable the CONTRACTOR to complete the works by the COMPLETION DATE. The determination of the CONSTRUCTION PROGRAM is entirely at the discretion of the CONTRACTOR and the CONSTRUCTION PROGRAM will be provided to the EMPLOYER or the ARCHITECT by the CONTRACTOR within 30 (THIRTY) DAYS from COMMENCEMENT DATE.
- 1.17 CONTRACTOR – Shall be the party contracting with the EMPLOYER as set out in the BUILDING CONTRACT.
- 1.18 CONTRACTOR'S ATTORNEYS - Shall be Haasbroek and Boezaart Inc. HB Forum, 13 Stamvrug Street; Val de Grace; Pretoria. PO Box 74224; Lynnwood Ridge; 0040. Telephone (012) 481-3555, Fax (086) 673-2395, E-mail: ellisr@hblaw.co.za Contact: Ms R. Ellis.
- 1.19 CONTRACTOR'S ATTORNEY'S TRUST BANKING ACCOUNT - Shall be Haasbroek and Boezaart Inc. Trust Account; Standard Bank; van der Walt Street, Pretoria branch; branch code 010145; account number 011851252.
- 1.20 CONTRACTUAL COMPLETION DATE – Shall mean the date determined by adding the number of months the CONTRACTOR requires to complete the WORKS as specified in paragraph 1.6 of the BUILDING CONTRACT to the COMMENCEMENT DATE.
- 1.21 DAYS – Shall mean calendar days, which will include Saturdays, Sundays and Public Holidays, as and when applicable.



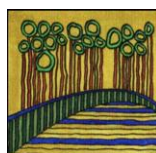
- 1.22 DEFECT – Shall mean an item that, when applicable and/or when it becomes evident to the ARCHITECT and EMPLOYER, is addressed in the BUILDING CONTRACT under paragraph 9.1 of the SCHEDULE OF TERMS AND CONDITIONS.
- 1.23 DEFECT CERTIFICATE – Shall mean a certificate issued by the ARCHITECT stating that any DEFECT for which the CONTRACTOR is liable in terms of paragraph 9.1 of the SCHEDULE OF TERMS AND CONDITIONS has been made good. The DEFECT CERTIFICATE shall be final and binding on both PARTIES and shall relieve the CONTRACTOR from any obligations in respect of such DEFECT.
- 1.24 DELAY – Shall mean every instance that the CONTRACTOR is entitled to claim additional time to complete the WORKS and for which the CONTRACTOR may have a DELAY CLAIM. A DELAY can be caused by –
- 1.24.1 relevant instructions contained in VARIATION ORDERS;
- 1.24.2 default by the EMPLOYER; and
- 1.24.3 SUB-CONTACTORS appointed by the EMPLOYER.
- 1.25 DELAY CLAIM – Shall mean the DELAY CLAIM AMOUNT and/or the DELAY CLAIM DAYS that the CONTRACTOR may claim as a result of every registered DELAY. A DELAY will be registered via the VARIATION ORDER process, which caters for the PARTIES and the ARCHITECT agreeing to the DELAY in writing.
- 1.26 DELAY CLAIM AMOUNT – shall mean the monetary amount claimable as a result of a DELAY. The DELAY CLAIM AMOUNT will only become due if the DELAY causes the COMPLETION DATE to extend beyond the CONTRACTUAL COMPLETION DATE. The DELAY CLAIM AMOUNT will be calculated as follows:
- 1.26.1 For purposes of this calculation the DELAY CLAIM DAYS is noted as "D".
- 1.26.2 For purposes of this calculation the "Preliminary and General" amount as depicted in the document styled "Detail - Selected Building Contract Figures" attached to the BUILDING CONTRACT is noted a "E".
- 1.26.3 For purposes of this calculation the BUILDING PERIOD (total number of months) is noted as "F".
- 1.26.4 For purposes of this calculation the DELAY CLAIM AMOUNT per month is arrived at by dividing "E" with "F" and is noted as "G".
- 1.26.5 For purposes of this calculation the DELAY CLAIM AMOUNT per DAY is arrived at by dividing "G" with "30" (THIRTY DAYS) and is noted as "H".
- 1.26.6 The DELAY CLAIM AMOUNT of the DELAY CLAIM is calculated by "multiplying "D" with "G".
- 1.27 DELAY CLAIM DAYS – Shall mean the number of DAYS applicable to a DELAY.
- 1.28 DISBURSEMENT AMOUNTS – Shall mean the amounts payable for DISBURSEMENTS as depicted in the SUMMARY OF BUILDING CONTRACT FIGURES.



- 1.29 DISBURSEMENTS – Shall mean the DISBURSEMENT AMOUNTS due and payable when requested to do so by the CONTRACTOR or the ARCHITECT, as the case might be, namely:
- 1.29.1 Administration fee;
 - 1.29.2 Agent’s commission;
 - 1.29.3 Architect’s fee;
 - 1.29.4 Electrical connection fee;
 - 1.29.5 Engineer’s fee.
- 1.30 EMPLOYER - Shall be the party contracting with the CONTRACTOR as set out in the BUILDING CONTRACT.
- 1.31 ENGINEER - Shall be the engineer appointed by the CONTRACTOR.
- 1.32 ESTATE - Shall mean PORT ZIMBALI ESTATE.
- 1.33 EXTENTIONS – Shall mean the additional time the CONTRACTOR may require to complete the WORKS and will include, but not be limited to, any additional amount of time agreed to by the EMPLOYER or the ARCHITECT via the VARIATION ORDER process with the CONTRACTOR, it being recorded that such extentions will have no contractual financial obligation - neither on the CONTRACTOR nor on the EMPLOYER. The following cases automatically qualify as EXTENSIONS and do not need to be reduced to writing to have cause and effect:
- 1.33.1 Should the BUILDING PERIOD include either both or one of the months of DECEMBER and JANUARY, the period of four weeks commencing on 15 December.
 - 1.33.2 Any condition beyond the control of the CONTRACTOR such as:
 - 1.33.2.1 Inclement weather conditions of longer than 24 (TWENTY FOUR) hours not conducive for building activities;
 - 1.33.2.2 Acts of GOD; and
 - 1.33.2.3 Labour relations conditions, such as strikes and labour unrest, causing the CONTRACTOR to be without a labour force – the period of not having a labour force.
- 1.34 FINAL COMPLETION CERTIFICATE – Shall mean a certificate issued by the ARCHITECT stating that the WORKS have been satisfactorily completed, which certificate must be issued within 3 (THREE) DAYS after FINAL COMPLETION DATE.
- 1.35 FINAL COMPLETION DATE - Shall mean the date of satisfactory completion of the WORKS by the CONTRACTOR from which date the CONTRACTOR shall be discharged completely of all obligations, expressly or implied, save for any defects liability under this BUILDING CONTRACT, and the EMPLOYER shall have no further claim on the CONTRACTOR whatsoever.



- 1.36 FLOOR PLAN – Shall be the FLOOR PLAN annexed to this BUILDING CONTRACT, which will be the sole indication of the design the EMPLOYER has chosen for purposes of this BUILDING CONTRACT, until such time as the EMPLOYER and the ARCHITECT has signed the PLAN, the ARCHITECT has submitted the PLAN to the LOCAL AUTHORITY for approval and the LOCAL AUTHORITY has approved the PLAN.
- 1.37 HAPPY LETTER – Shall mean a document that a financial institution normally requires in terms of a building loan provided by a financial institution for the funding of the construction of the WORKS. The HAPPY LETTER is issued by the EMPLOYER. It advises the financial institution that the EMPLOYER is satisfied with the completion of the WORKS. If the HAPPY LETTER is not signed by the EMPLOYER and provided to the financial institution, the financial institution normally withholds the final payment to the CONTRACTOR. It is recorded and agreed to by the EMPLOYER that the CONTRACTOR will not be prejudiced in any manner by the non-issuance of the HAPPY LETTER by the EMPLOYER.
- 1.38 HOME OWNERS' ASSOCIATION – Shall mean PORT ZIMBALI ESTATE HOME OWNERS' ASSOCIATION (NPC) with Registration Number: 2006/008435/08.
- 1.39 LANDSCAPING PLAN – Shall mean the plan for the landscaping of the PROPERTY, designed and drafted by the agent of the HOME OWNERS' ASSOCIATION. The cost of the designing and drafting of the LANDSCAPING PLAN is not included in the cost of the LANDSCAPING. The cost of the LANDSCAPING PLAN is R5,000.00 (exclusive of VALUE ADDED TAX) and is for the account of the EMPLOYER, which amount is payable to the CONTRACTOR when requested to do so.
- 1.40 LANDSCAPING – Shall mean the landscaping of the entire remaining area after deducting the area of the WORKS of the PROPERTY on which the WORKS are to be erected, inclusive of the sidewalk verges of the PROPERTY on road frontages according to the LANDSCAPING PLAN. The EMPLOYER acknowledges and accepts the following conditions regarding LANDSCAPING:
- 1.40.1 Such LANDSCAPING shall be done in terms of the MOI of the HOME OWNERS' ASSOCIATION, at the cost of the EMPLOYER and within the last month of the CONSTRUCTION PROGRAM.
- 1.40.2 Such LANDSCAPING shall be done and installed by the service provider appointed by the HOME OWNERS' ASSOCIATION so as to ensure landscape continuity on the ESTATE.
- 1.40.3 The amount of lawn to be included in the LANDSCAPING will be limited in terms of the MOI of the HOME OWNERS' ASSOCIATION and the LANDSCAPING PLAN. It is recorded, understood and agreed that a perimeter area of a minimum of 2 (TWO) meters along all borders/boundaries of the PROPERTY will not be allowed to be lawned and this perimeter area must include relevant plant material so as to create privacy for the EMPLOYER and the EMPLOYER'S neighbours.
- 1.40.4 Such LANDSCAPING shall encompass and include storm water controls to the satisfaction of the HOME OWNERS' ASSOCIATION, the cost of which, if applicable, will be for the account of the EMPLOYER.



- 1.40.5 In the event that the LANDSCAPING installation is completed prior to the COMPLETION DATE, the EMPLOYER agrees that he/she will become liable for the monthly maintenance cost charged by the HOME OWNERS' ASSOCIATION for the maintenance of the LANDSCAPING as from the 1st day of the month following the month in which the LANDSCAPING installation was completed. The EMPLOYER hereby also agrees that he/she will become liable for the monthly usage and availability of Water and Sewer charged by the HOME OWNERS' ASSOCIATION as from the date on which LANDSCAPING installation was completed.
- 1.40.6 In the event that this BUILDING CONTRACT provides for the construction of a Swimming Pool and/or Water Feature(s), whether originally directly catered for in this BUILDING CONTRACT or whether catered for after the fact via VARIATION ORDER, the EMPLOYER hereby agrees to the following:
- 1.40.6.1 The cost of the water to fill the Swimming Pool and/or Water Feature(s) will be for the account of the EMPLOYER;
- 1.40.6.2 The CONTRACTOR will not be held accountable in circumstances where water is not available to fill or top up the pool as a result of the imposition of water restrictions by the relevant authorities of the municipal area within which the ESTATE is situated.
- 1.40.6.3 In the event that the Swimming Pool and/or Water Feature(s) is/are completed prior to the COMPLETION DATE, the EMPLOYER agrees that he/she will become liable for the monthly maintenance cost of the Swimming Pool and/or Water Feature(s), which will include the chemicals required, top up water required and the electricity required for operation of the pool pump as from the date on which the Swimming Pool and/or Water Feature(s) was/were filled.
- 1.41 LOCAL AUTHORITY – Shall mean generally Kwa-Dukuza Municipality, however when water/sewerage usage and provision is applicable, it shall mean Sembcorp Siza Water (Pty) Ltd.
- 1.42 LIST OF PRIME COST ITEMS (PC's) – Shall mean the LIST OF PRIME COST ITEMS (PC's) attached to the BUILDING CONTRACT.
- 1.43 MOI – Shall mean the Memorandum of Incorporation of the HOME OWNERS' ASSOCIATION, which includes the RULES.
- 1.44 NHBRC – Shall mean the NATIONAL HOME BUILDERS REGISTRATION COUNCIL.
- 1.45 NHBRC ENROLMENT – Shall mean a certificate issued by the NHBRC indicating that the WORKS has been formally enrolled by the NHBRC, it being recorded that the CONTRACTOR submits the enrolment application to the NHBRC, but can only do so once it is possession of:
- 1.45.1 Proof of payment of the NHBRC ENROLMENT FEE.
- 1.45.2 The registered title deed, which the EMPLOYER must provide, or a draft title deed of the PROPERTY.
- 1.45.3 The signed BUILDING CONTRACT.



1.45.4 The APPROVED PLAN of the dwelling.

1.46 NHBRC ENROLMENT FEE – Shall mean the amount payable to enrol the WORKS at the NHBRC.

1.47 NOMINATED SUB-CONTRACTOR – Shall mean any contractor privately appointed and employed by the EMPLOYER to execute work which is provided for and/or required by a PRIME COST ITEM or additional instructions issued by the EMPLOYER on the WORKS, whether during the construction phase or thereafter, but prior to COMPLETION DATE and the date the ARCHITECT issues a FINAL COMPLETION CERTIFICATE and the RISK associated with the WORKS is handed over to the EMPLOYER.

1.47.1 Such appointment of NOMINATED SUB-CONTRACTORS will be dealt with on the following basis:

1.47.1.1 Access to the WORKS may only be granted to a NOMINATED SUB-CONTRACTOR by both the CONTRACTOR and the ARCHITECT and only on receipt of a written request to this effect from the EMPLOYER and only once the ARCHITECT has issued the CONTRACTOR with a SUBSTANTIAL COMPLETION CERTIFICATE, unless the CONTRACTOR, in writing, agrees to provide access to the WORKS in instances where a SUBSTANTIAL COMPLETION CERTIFICATE cannot yet be issued.

1.47.1.2 Such written request will include the following information:

- The name and full contact details of the NOMINATED SUB-CONTRACTOR;
- The name and full contact details of the manager and/or supervisor of the NOMINATED SUB-CONTRACTOR;
- The scope of the work to be done and instructions issued by the EMPLOYER and the impact such work and instructions will have on the WORKS from a time (CONSTRUCTION PROGRAM) and cost perspective.
- An undertaking from the EMPLOYER to make good the abovementioned cost impact to the CONTRACTOR and to accept the extension of time such work and instructions may have on the CONSTRUCTION PROGRAM – both to be documented in a VARIATION ORDER.

1.47.1.3 NOMINATED SUB-CONTRACTORS are obliged to adhere to the security and other relevant policies and procedures of the HOME OWNERS' ASSOCIATION. In this regard the EMPLOYER is in addition specifically directed to the CONTRACTOR'S CODE OF CONDUCT found in the MOI of the HOME OWNERS' ASSOCIATION, as NOMINATED SUB-CONTRACTORS will be subject thereto. The cost related to the HOME OWNERS' ASSOCIATION issuing Security Access Cards, tags or biometric registration in the HOME OWNERS' ASSOCIATION'S access security system for the NOMINATED SUB-CONTRACTOR and their employees will be for the account of the EMPLOYER.



- 1.47.1.4 Whilst the CONTRACTOR will make an electrical point available to the NOMINATED SUB-CONTRACTOR, it will only do so if such a point is available on the PROPERTY, it being understood by the EMPLOYER and the NOMINATED SUB-CONTRACTOR that the CONTRACTOR is under no obligation to do so and, if provided, the usage thereof will be for the EMPLOYER'S account.
- 1.47.1.5 The CONTRACTOR shall have the right to impose reasonable controls on such NOMINATED SUB-CONTRACTOR, but is not responsible for the performance and payment of the NOMINATED SUB-CONTRACTOR, neither for the risks associated with the NOMINATED SUB-CONTRACTOR'S employment of workers.
- 1.47.1.6 The NOMINATED SUB-CONTRACTOR to provide a Certificate of Good Standing as provided by the Compensation Commissioner from within the Department of Labour.
- 1.47.1.7 The NOMINATED SUB-CONTRACTOR to provide a Tax Clearance Certificate in respect of PAYE, SDL and UIF from the South African Revenue Services.
- 1.47.1.8 The NOMINATED SUB-CONTRACTOR to provide a copy of its Contractor's All Risk policy displaying/depicting sufficient cover not only for the work for which the NOMINATED SUB-CONTRACTOR is employed, but also for the areas of the WORKS that will/may be effected by the scope of the work to be completed by the NOMINATED SUB-CONTRACTOR.
- 1.47.2 It is specifically herein recorded, understood and agreed that the EMPLOYER hereby accepts full and complete responsibility, in total, for the correct and complete service and/or installation provided by the NOMINATED SUB-CONTRACTORS employed by him, which includes any preparatory work of any nature whatsoever such service and/or installation may require.
- 1.47.3 The EMPLOYER hereby accepts full and complete responsibility for any loss caused by a NOMINATED SUB-CONTRACTOR appointed by the EMPLOYER, whether through negligence or in the fulfilment of their duties to the WORKS and/or the PROPERTY of the HOME OWNERS' ASSOCIATION and undertakes to make good to the CONTRACTOR or the HOME OWNERS' ASSOCIATION, as the case may be, any claim that may arise as a result thereof.
- 1.47.4 Occupational Health and Safety
- 1.47.4.1 The EMPLOYER hereby accepts full and complete responsibility for ensuring that the NOMINATED SUB-CONTRACTOR appointed by the EMPLOYER meets all the requirements found in the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) as may be applicable to the WORKS. The PARTIES agree that the CONTRACTOR has no responsibility toward NOMINATED SUB-CONTRACTORS or the EMPLOYER in this regard.



- 1.47.4.2 The EMPLOYER hereby indemnifies the CONTRACTOR and the HOME OWNERS' ASSOCIATION against any loss, damage, injury or death that may arise from activities found at the WORKS, or by reason of any condition on the Estate, whether by way of human or mechanical error, default or failure or from any other cause whatsoever, irrespective whether such loss, damage, injury or death was occasioned by the negligence or wrongful act of the CONTRACTOR or the HOME OWNERS' ASSOCIATION.
- 1.47.4.3 The EMPLOYER will ensure that the NOMINATED SUB-CONTRACTOR provides the EMPLOYER and the CONTRACTOR with a copy of the letter of appointment, to be done in terms of Section 16(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), prior to the NOMINATED SUB-CONTRACTOR commencing with any form of work on the WORKS. For ease of reference the wording of the letter is as follows (areas in brackets to be replaced with relevant information):

NOMINATED SUB-CONTRACTOR NAME

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993
SECTION 16(2) – ASSISTANT TO THE CHIEF EXECUTIVE
OFFICER APPOINTMENT**

(Appointees Name)

I, (Appointer's Full Name), hereby appoint you (Appointee's Full Name) as the Section 16(2) (Assistant to the CEO) appointee responsible for the area known as (the WORKS).

In terms of this appointment, you are responsible for occupational health and safety matters at the aforementioned area. In order to ensure that you meet this responsibility you must familiarize yourself with the Occupational Health and Safety Act and its Regulations. You are also required to ensure that all statutory requirements are met at all times.

You may not further assign this duty.

Your appointment is valid from (Start Date) to (End Date).

You shall report (Time Period) directly to me on all occupational health and safety matters arising out of (the WORKS).

.....
(Appointer's Signature)

.....
Date



Kindly confirm your acceptance of this appointment by completing the following:

ACCEPTANCE: I, (Appointee's Full Name) understand the implications of the appointment as detailed above and confirm my acceptance.

.....
(Appointee's Signature)
Date

Contact number

- 1.48 NON-STANDARD ITEMS – Shall mean items that are not identified by displaying, not described or shown by the CONTRACTOR to the EMPLOYER, and specifically excluded by the CONTRACTOR and advised to the EMPLOYER, prior to or on SIGNATURE DATE, or are items that are not described in the SPECIFICATION AND FINISHING SCHEDULE. An item which may be construed as being a standard item, if not listed in the SPECIFICATION AND FINISHING SCHEDULE, is regarded as a NON-STANDARD ITEM and is excluded from this BUILDING CONTRACT and should such NON-STANDARD ITEMS be required via request from the EMPLOYER or via instruction from any AUTHORITY, the cost of provision thereof will be for the account of the EMPLOYER.
- 1.49 OCCUPATION – Shall mean the CONTRACTOR granting the EMPLOYER OCCUPATION on OCCUPATION DATE. It is recorded that OCCUPATION will only be granted by the CONTRACTOR once it is in possession of a duly signed and completed COMPLETION CERTIFICATE as provided for in this BUILDING CONTRACT. In the event of the EMPLOYER utilising finance from a financial institution to fund the construction of the WORKS and should such financial institution specify that it requires a HAPPY LETTER from the EMPLOYER to enable it to make final payment to the CONTRACTOR, then the CONTRACTOR is entitled to withhold OCCUPATION from the EMPLOYER until such time as the EMPLOYER provides the CONTRACTOR with written evidence from the financial institution that the EMPLOYER has provided the HAPPY LETTER to the financial institution and that such HAPPY LETTER meets the financial institution's requirements enabling it to make final payment to the CONTRACTOR.
- 1.50 OCCUPATION DATE – Shall mean -
 - 1.50.1 The date of formal handing over of the keys of the WORKS to the EMPLOYER; or
 - 1.50.2 The date on which OCCUPATION of the WORKS is taken by the EMPLOYER or his agent.
- 1.51 PARTIES – Shall mean the CONTRACTOR and the EMPLOYER.
- 1.52 PAYMENT GUARANTEE – Shall mean a PAYMENT GUARANTEE that the CONTRACTOR reserves the right to request from a financial institution should such financial institution request a WAIVER OF BUILDER'S LIEN agreement from the CONTRACTOR, for which the EMPLOYER takes full responsibility to arrange for and to provide to the CONTRACTOR.



- 1.53 PC AMOUNT – Shall mean the amount depicted under paragraph 1.4 of the BUILDING CONTRACT.
- 1.54 PC's and PC ITEMS – Shall mean PRIME COST ITEMS, defined as the items included in the TOTAL BUILDING CONTRACT PRICE for the delivered cost of PRIME COST ITEMS obtained from a supplier as instructed by the EMPLOYER as depicted on the LIST OF PRIME COST ITEMS (PC's) attached to the BUILDING CONTRACT. Further conditions pertaining to PC's are the following:
- 1.54.1 The EMPLOYER acknowledges and accepts that the LIST OF PRIME COST ITEMS (PC's) as displayed in the SPECIFICATIONS AND FINISHING SCHEDULE attached to this BUILDING CONTRACT by implication means that the EMPLOYER must provide these PC ITEMS to the CONTRACTOR by delivering it to the PROPERTY, free of charge and in the quantities requested, within 7 (SEVEN) DAYS of the CONTRACTOR requesting the EMPLOYER to do so. It is recorded that the EMPLOYER acknowledges and accepts that, should these subject PC ITEMS not be delivered on the date as contemplated in this BUILDING CONTRACT, the CONTRACTOR has the right to claim damages from the EMPLOYER if such delay in delivery of PC ITEMS negatively impacts on the CONSTRUCTION PROGRAM, the amount of such damages to be established by the CONTRACTOR subject to approval by the ARCHITECT.
- 1.54.2 The EMPLOYER acknowledges and accepts that the CONTRACTOR is not responsible for the condition of PC ITEMS when delivered by the EMPLOYER, directly or via an agent of the EMPLOYER (such as a supplier of such PC ITEMS), nor does the CONTRACTOR have any obligation toward the EMPLOYER to establish whether the PC ITEMS delivered are correct in terms of colour, quantity, model, series or any other attribute whatsoever. Should a PC ITEM therefore be installed by the CONTRACTOR after delivery of such PC ITEM and the EMPLOYER finds such PC ITEM to be of inferior condition or incorrect in terms of its attributes, the cost of replacement or damage to the incorrectly installed PC ITEM(s) will be for the EMPLOYER's account should the EMPLOYER request the replacement thereof, taking into account the cost of any delay such replacement may have on the CONTRACTOR.
- 1.54.3 The EMPLOYER acknowledges and accepts that the CONTRACTOR is not responsible for the storage and or warehousing of PC ITEMS when delivered by the EMPLOYER to SITE, neither is the CONTRACTOR obliged to provide such storage and warehouse facilities, save for the period starting on the date from which the CONTRACTOR requested the PC ITEMS to be available for installation on SITE. Should the EMPLOYER request the CONTRACTOR to store and warehouse PC ITEMS on SITE, it will be done on a basis that such request is reduced to writing, that such storage and warehousing will be done at the risk of the EMPLOYER and that agreeing to such storage and warehousing will be provided at the sole discretion of the CONTRACTOR.
- 1.54.4 The EMPLOYER may request the CONTRACTOR to provide and secure PC ITEMS on the EMPLOYER'S behalf, it being recorded, understood and agreed that such request will carry an additional service fee for the account of the EMPLOYER. This request must be reduced to writing and will be dealt with in terms of the provisions made for VARIATION ORDERS in this BUILDING CONTRACT. In the event that such a request is made verbally by the EMPLOYER and the CONTRACTOR acts on such verbal request, the EMPLOYER hereby agrees to and understands that the CONTRACTOR will not



be responsible for errors or misunderstandings occasioned by the EMPLOYER'S failure to make such request in writing. The price of such requested PC ITEMS may vary from the specified amounts depicted on the LIST OF PRIME COST ITEMS (PC's) attached to this BUILDING CONTRACT at the time of the request by the EMPLOYER and as a result thereof the CONTRACTOR is not obliged to provide PC ITEMS if the EMPLOYER requests the CONTRACTOR to do so.

1.54.5 The amounts allowed for the following PC ITEMS include the cost of installation (cost of installation is therefore not catered for in the Building Contract and is included in the relevant PC AMOUNT):

1.54.5.1 Braai.

1.54.5.2 Cupboards (Bathroom vanities, Braai cupboards, and built-in, linen, kitchen and pantry cupboards and any other applicable cabinetry).

1.54.5.3 Stone tops.

1.54.5.4 Shower doors.

1.54.6 The amounts allowed for Tiles excludes the cost of the installation thereof (cost of installation is therefore catered for in the Building Contract and not included in the PC AMOUNT for tiles), it being recorded, understood and agreed that the EMPLOYER is to provide sufficient tiles to complete the tiling works by catering for breakage, pattern matching and cutting – such additional tiles to be specified by the CONTRACTOR. It is furthermore recorded and agreed to by EMPLOYER that the tile sundries, such as cover strips, corner strips and non-standard expansion strips is allowed for in the amount allowed for Tiles.

1.54.7 The amount allowed for Air Conditioners includes the cost of the installation thereof and the mandatory housing or ducting for the Air Conditioner gas lines as well as the Air Conditioner installation preparatory work (the total cost of installation is therefore included in the PC AMOUNT for Air Conditioners). The following, which the EMPLOYER understands and agrees to, applies to Air Conditioner installation preparatory work:

1.54.7.1 Air Conditioner installation preparatory work consists of the provision of the following for each Air Conditioner unit:

- Dedicated circuit breaker in the electrical distribution box required for every unit;
- Power point, complete with waterproof isolator, at the point where the compressor unit of the Air Conditioner will be installed, together with the necessary electrical cabling housed in electrical conduit from the power point to the relevant circuit breaker;
- Water drainage pipes from the Air Conditioner evaporator from the interior of the dwelling to a suitable drain situated at the exterior of the dwelling; and



- All required chasing to house the conduits and water drainage pipes.
- 1.54.7.2 Similarly as is found with plumbing (such as water supply pipes and water drains) and electrical (such as conduits and electrical switch and plug/isolator boxes) preparatory work applicable to the WORKS in the normal way of business, Air Conditioner installation preparatory work must also be completed before the CONTRACTOR commences the plastering of the dwelling as such preparatory work must be concealed within the walls of the dwelling.
- 1.54.7.3 It is recorded that should the EMPLOYER elect to himself provide and have the Air Conditioners installed by a NOMINATED SUB-CONTRACTOR, and should the NOMINATED SUB-CONTRACTOR of the EMPLOYER not have completed the Air Conditioner installation preparatory work as and when required by the CONTRACTOR, the EMPLOYER will be liable for additional costs which will be contained in VARIATION ORDERS, which clearly set out the payment procedure for the additional costs incurred.
- 1.54.7.4 The CONTRACTOR need only allow access to the WORKS to the NOMINATED SUB-CONTRACTOR once the relevant VARIATION ORDER is signed by the EMPLOYER and any delay in the signing of the relevant VARIATION ORDER by the EMPLOYER will have no impact on the date on which the CONTRACTOR requires the Air Conditioner installation preparatory work to be done.
- 1.55 PENALTY COMPLETION DATE – Shall mean the CONTRACTUAL COMPLETION DATE, which date, for purposes of the calculation of the PENALTY FOR LATE COMPLETION, will be adjusted to such later date by adding the following number of DAYS to it, as and when applicable, namely:
- 1.55.1 Number of approved COMMENCEMENT DELAY DAYS.
- 1.55.2 DAYS as a result of approved EXTENTIONS.
- 1.55.3 DAYS as a result of approved DELAYS.
- 1.56 PENALTY FOR LATE COMPLETION – Shall mean an amount that can be claimed by the EMPLOYER from the CONTRACTOR should the CONTRACTOR fail to meet PENALTY COMPLETION DATE. If applicable, such claim will be reduced to writing and must be submitted to the CONTRACTOR by the ARCHITECT within 5 (FIVE) DAYS after COMPLETION DATE. Should COMPLETION DATE be achieved before PENALTY COMPLETION DATE in time, the EMPLOYER will not be entitled to claim a PENALTY FOR LATE COMPLETION.
- 1.57 PENALTY FOR LATE COMPLETION AMOUNT – Shall mean an amount of R1,000.00 (ONE THOUSAND RAND) per DAY for every DAY that the CONTRACTOR fails to meet the PENALTY COMPLETION DATE.



- 1.58 PLAN – Shall for the purposes of this BUILDING CONTRACT mean the signed drawings of the WORKS that shall form the basis for drawings to be submitted to the LOCAL AUTHORITY for approval. Upon approval thereof, the APPROVED PLAN shall substitute the FLOOR PLAN and be deemed to be the PLAN selected and approved by the PARTIES for the purposes of this BUILDING CONTRACT and the execution of the WORKS in terms hereof.
- 1.59 PLAN SUBMISSION FEES – Shall mean the fees payable to the LOCAL AUTHORITY and any other authority, if applicable, for obtaining APPROVED PLANS for the WORKS. The fees is for the account of the EMPLOYER, is not provided for in this BUILDING CONTRACT and is payable to the LOCAL AUTHORITY on the date the ARCHITECT requests the EMPLOYER to do so.
- 1.60 PLAN DISCREPANCIES – Shall mean discrepancies that have a cost implication, whether in favour of the CONTRACTOR or the EMPLOYER, arising from differences in the FLOOR PLAN and the APPROVED PLAN. It is recorded that the CONTRACTOR determined the TOTAL BUILDING CONTRACT PRICE from the FLOOR PLAN as the PLAN had not been finalised or approved on SIGNATURE DATE. Owing to the fact that the EMPLOYER signed the PLAN prior to the submission thereof to the LOCAL AUTHORITY for approval, it is acknowledged that the EMPLOYER approved and agreed to the PLAN submitted and hence, the APPROVED PLAN. PLAN DISCREPANCIES will directly imply the necessity of a VARIATION ORDER to be issued.
- 1.61 PRIME COST AMOUNT – Shall mean the amount included in the TOTAL BUILDING CONTRACT PRICE for the delivered cost of PRIME COST ITEMS obtained from a supplier as instructed by the EMPLOYER, further comprehensively defined and dealt with under the definition of PC ITEMS.
- 1.62 PRIME COST ITEMS – Shall mean delivered materials and goods obtained from a supplier as instructed by the EMPLOYER, further comprehensively defined and dealt with under the definition of PC ITEMS.
- 1.63 PROGRESS PAYMENT CERTIFICATE – Shall mean a certificate issued by the CONTRACTOR in which the monetary value of the work done and materials on site, inclusive of VARIATION ORDERS on the WORKS from COMMENCEMENT DATE to the date on which the PROGRESS PAYMENT CERTIFICATE is issued is reflected, it being recorded that the PROGRESS PAYMENT CERTIFICATE must be approved by the ARCHITECT. Any PROGRESS PAYMENT CERTIFICATE will, with the exception of the first PROGRESS PAYMENT CERTIFICATE issued, reflect the cumulative amount certified via previously approved PROGRESS PAYMENT CERTIFICATES, and by deduction depicts the amount currently due and owing to the CONTRACTOR as at date of issue of the subject PROGRESS PAYMENT CERTIFICATE. The CONTRACTOR will provide the EMPLOYER with a monthly statement depicting the full amount due and owing to the CONTRACTOR by the EMPLOYER.
- 1.64 PROPERTY – Shall mean SITE.



- 1.65 PROVISIONAL AMOUNTS AND ITEMS - Shall mean the amounts relating to specific items that are displayed in the SCHEDULE OF FINISHES attached to the BUILDING CONTRACT, the use and application of such amounts and items by the EMPLOYER being subject to the following:
- 1.65.1 The amounts relevant to the displayed items are included in the TOTAL BUILDING CONTRACT PRICE (excluding PC's) depicted in the BUILDING CONTRACT.
- 1.65.2 The amounts are net of the CONTRACTOR'S mark-up, labour and other installation costs, profit and attendance – in other words, the amounts cover the cost of supply of the items to the SITE, which includes the delivery and the storage costs thereof.
- 1.65.3 The EMPLOYER may request the CONTRACTOR during the construction period that he/she wishes to select an alternative or different item to the one described in the PROVISIONAL AMOUNT list on the basis that the CONTRACTOR can accommodate such alternative, which accommodation is subject to the following:
- 1.65.3.1 The point at which the request is made must be at a stage that it can be accommodated within the CONSTRUCTION PROGRAM by the CONTRACTOR, it being recorded that the request will have no additional cost impact on the CONTRACTOR and in the event that there is a cost impact on the CONTRACTOR that this cost will be for the account of the EMPLOYER.
- 1.65.3.2 Notwithstanding the above mentioned, it is agreed that it is entirely in the CONTRACTOR'S discretion to either accommodate or NOT accommodate the EMPLOYER'S request.
- 1.65.3.3 The request must be submitted via the VARIATION ORDER PROCESS as documented in the BUILDING CONTRACT, the impact of which will, amongst others, be the passing of a credit for the amount in question by the CONTRACTOR to the EMPLOYER, which amount will NOT be paid in cash to the EMPLOYER but will reduce the TOTAL BUILDING CONTRACT PRICE.
- 1.65.3.4 In the event that the CONTRACTOR agrees to the request, the CONTRACTOR will advise the EMPLOYER of a date and time that it will require the selected PROVISIONAL ITEMS to be available on SITE or installed at the WORKS, failing which the CONTRACTOR will have the right to claim for damages.
- 1.65.3.5 It is recorded that the EMPLOYER acknowledges and accepts that, should the PROVISIONAL ITEMS selected via the request not be delivered on the date as contemplated in this BUILDING CONTRACT, the CONTRACTOR has the right to claim for damages from the EMPLOYER if such delay in delivery of PROVISIONAL ITEMS selected negatively impacts on the CONSTRUCTION PROGRAM, the amount of such damages to be established by the CONTRACTOR subject to approval by the ARCHITECT.



- 1.66 PUNCH LIST – Shall mean a written list of PUNCH LIST ITEMS requiring remedial action by the CONTRACTOR, if any, to be addressed by the CONTRACTOR once COMPLETION DATE is achieved in terms of paragraph 8.1 of this SCHEDULE OF TERMS AND CONDITIONS. The PUNCH LIST will be signed by the EMPLOYER, the ARCHITECT and the CONTRACTOR and the CONTRACTOR may deem the list to be the final list of PUNCH LIST work required by the EMPLOYER.
- 1.67 PUNCH LIST COMPLETION CERTIFICATE – Shall mean a certificate issued by the ARCHITECT to the CONTRACTOR in which the ARCHITECT certifies that the CONTRACTOR has completed the work specified in the PUNCH LIST to the satisfaction of the ARCHITECT and the EMPLOYER. The PUNCH LIST COMPLETION CERTIFICATE must be issued no longer than 2 (TWO) DAYS after the CONTRACTOR has completed the work specified in the PUNCH LIST to the satisfaction of the ARCHITECT and the EMPLOYER.
- 1.68 PUNCH LIST COMPLETION DATE – Shall mean the date on which the ARCHITECT issues the PUNCH LIST COMPLETION CERTIFICATE.
- 1.69 PUNCH LIST DATE – Shall mean a date no longer than 10 (TEN) DAYS after COMPLETION DATE.
- 1.70 PUNCH LIST ITEM – Shall mean items included in the PUNCH LIST that are identified and recorded before or on the PUNCH LIST DATE. An item identified after the PUNCH LIST DATE will be regarded as a DEFECT and will accordingly be dealt with in terms of the relevant stipulations of this BUILDING CONTRACT and will NOT be regarded as a PUNCH LIST ITEM.
- 1.71 RETENTION – Shall mean the RETENTION of the RETENTION AMOUNT, such amount(s) being retained by the CONTRACTOR'S ATTORNEYS on behalf of the EMPLOYER, pending the CONTRACTOR satisfactorily completing the WORKS. It is recorded and accepted that in the event of a financial institution providing the funding or a portion of the funding for the WORKS that such financial institution may elect to retain the RETENTION AMOUNT; however, in the case of such latter event, the calculation of the RETENTION AMOUNT remains as provided for in the BUILDING CONTRACT and the EMPLOYER agrees to make good to the CONTRACTOR the difference in RETENTION AMOUNTS calculated should such RETENTION AMOUNT calculated by a financial institution be more than what is provided for in the BUILDING CONTRACT.
- 1.72 RETENTION AMOUNT - Shall mean the amounts calculated and accumulated, reduced or released on the following basis:
- 1.72.1 The period preceding the date on which the SUBSTANTIAL COMPLETION CERTIFICATE is issued by the ARCHITECT - 5% (five per cent) of the proportional amount of the BUILDING PLAN PRICE (which is exclusive of PC AMOUNTS and/or DISBURSEMENTS and/or amounts pertaining to VARIATION ORDERS) retained at every instance that a PROGRESS PAYMENT CERTIFICATE is approved by the ARCHITECT and presented to the EMPLOYER for payment;



- 1.72.2 The period from the date on which the SUBSTANTIAL COMPLETION CERTIFICATE is issued by the ARCHITECT, but preceding the date on which the COMPLETION CERTIFICATE is issued by the ARCHITECT – 2,5% (two comma five per cent) of the proportional amount of the BUILDING PLAN PRICE (which is exclusive of PC AMOUNTS and/or DISBURSEMENTS and/or amounts pertaining to VARIATION ORDERS) retained/claimed at every instance that a PROGRESS PAYMENT CERTIFICATE is approved by the ARCHITECT and presented to the EMPLOYER for payment;
- 1.72.3 7 (SEVEN) DAYS after FINAL COMPLETION DATE, the full RETENTION AMOUNT owing by the EMPLOYER will become due to the CONTRACTOR, irrespective of whether such amount is held by the financial institution of the EMPLOYER or the CONTRACTOR'S ATTORNEYS, as the case might be;
- 1.72.4 Should the cumulative RETENTION AMOUNT held on the date on which the ARCHITECT issues the SUBSTANTIAL COMPLETION CERTIFICATE exceed the amount to be retained as calculated in terms of paragraph 1.72.2 hereof, the excess RETENTION AMOUNT owing by the EMPLOYER will become due to the CONTRACTOR, irrespective of whether such amount is held by the financial institution of the EMPLOYER or the CONTRACTOR'S ATTORNEYS, as the case might be;
- 1.72.5 PROGRESS PAYMENT CERTIFICATES approved by the ARCHITECT and the SUBSTANTIAL COMPLETION CERTIFICATE, the COMPLETION CERTIFICATE and the FINAL COMPLETION CERTIFICATE issued by the ARCHITECT, as and where applicable in this paragraph 1.72, will be sufficient instruction for the CONTRACTOR'S ATTORNEYS, or the financial institution as the case might be, to make payment of the RETENTION AMOUNT to the CONTRACTOR.
- 1.73 SCHEDULE OF FINISHES – Shall mean the SCHEDULE OF FINISHES as attached to the BUILDING CONTRACT.
- 1.74 SCHEDULE OF TERMS AND CONDITIONS – Shall be this document styled SCHEDULE OF TERMS AND CONDITIONS, which is attached to and forms an integral part of the BUILDING CONTRACT.
- 1.75 SELECTED SUB-CONTRACTOR – Shall mean any sub-contractor identified from the list of SELECTED SUB-CONTRACTORS, such list being compiled by the CONTRACTOR and such compilation being in the sole discretion of the CONTRACTOR. SELECTED SUB-CONTRACTORS are selected for employment by the EMPLOYER to execute work which is provided for and/or required by a PRIME COST ITEM on the WORKS, whether during the construction phase or thereafter. The EMPLOYER retains the responsibility to pay a SELECTED SUB-CONTRACTOR for work executed and/or goods provided as and when the CONTRACTOR requests the EMPLOYER to do so. The CONTRACTOR accepts the duty to ensure that the SELECTED SUB-CONTRACTOR completes the work and/or provides the goods to the satisfaction of the CONTRACTOR and the EMPLOYER. The CONTRACTOR accepts and carries the risk on behalf of the EMPLOYER in respect of the SELECTED SUB-CONTRACTOR performing his work satisfactorily and within the RULES and POLICIES of the HOME OWNERS' ASSOCIATION. The List of SELECTED SUB-CONTRACTORS only relates to the following PRIME COST ITEMS:
- 1.75.1 Cabinetry;
- 1.75.2 Tops;



- 1.75.3 Gas Braai;
 - 1.75.4 Shower doors;
 - 1.75.5 Whirlpool kitchen appliances; and
 - 1.75.6 Air-conditioning.
- 1.76 SIGNATURE DATE – Shall mean the date upon which the BUILDING CONTRACT is signed by the party signing last in time.
- 1.77 SITE – Shall mean the property as described in paragraph 1.1 of the BUILDING CONTRACT.
- 1.78 SITE WORKS – Shall be limited to preparatory ground works to the footprint to enable the building of the dwelling by the CONTRACTOR, the installation of paving as described in the SPECIFICATION AND FINISHING SCHEDULE and the installation of soak-away pits and basic ground work for basic storm water controls as prescribed by the ENGINEER. The EMPLOYER acknowledges and accepts that if the PROPERTY has a fall/incline in excess of 1,5 (ONE COMMA FIVE) meters measured from any one boundary to any other boundary of the PROPERTY, additional mandatory SITE WORKS will be required from a storm water management perspective, the cost of which will be for the account of the EMPLOYER. Similarly, should the EMPLOYER install a swimming pool or any other infrastructure requiring protective fencing or similar work to be done, such fencing and/or work will be for the account of the EMPLOYER. Such additional mandatory SITE WORKS and protective fencing and works will conform to the nature, quality and architectural language prescribed by the HOME OWNERS' ASSOCIATION and may include the following:
- 1.78.1 Storm water valleys, grids, catchment pits and cut-off drains
 - 1.78.2 Retaining walls and balustrades
 - 1.78.3 Exterior steps and walk ways
 - 1.78.4 Swimming pool protective fencing and works
- 1.79 SPECIFICATIONS – Shall mean the regulations as contained in the National Building Regulations and Building Standards Act of 1977, as amended, and/or the LOCAL AUTHORITY by-laws applicable.
- 1.80 SPECIFICATION AND FINISHING SCHEDULE – Shall mean the LIST OF PRIME COST ITEMS (PC's) and the SCHEDULE OF FINISHES, collectively, initialled by the PARTIES hereto for the execution of the WORKS in terms of this BUILDING CONTRACT.
- 1.81 STANDARD ITEMS – Shall mean items that are either identified by displaying, describing or shown by the CONTRACTOR and/or the ARCHITECT to the EMPLOYER prior to or on SIGNATURE DATE or are items that are described in the SPECIFICATION AND FINISHING SCHEDULE. An item which may be construed as being a STANDARD ITEM, if not listed in the SPECIFICATION AND FINISHING SCHEDULE, is regarded as a NON-STANDARD ITEM and is excluded from this BUILDING CONTRACT and should such NON-STANDARD ITEM be required via request from the EMPLOYER or via instruction from any AUTHORITY, the cost of provision thereof will be for the account of the EMPLOYER.



- 1.82 START DATE – Shall mean the date that is 120 (ONE HUNDRED AND TWENTY) DAYS after SIGNATURE DATE. The START DATE is the latest date on which the CONTRACTOR must commence with the WORKS for COMMENCEMENT DELAY CLAIMS to be averted.
- 1.83 SUBSTANTIAL COMPLETION – Shall mean the stage at which the construction of the WORKS is considered to be substantially complete, which may exclude the following:
- 1.83.1 Work on the SITE that does not form part of the dwelling and that may still be required, such as retaining and screen walls, swimming pool, entertainment areas, fences, screens, gates, paving and landscaping.
- 1.83.2 Final painting of the dwelling.
- 1.83.3 Work to be performed by NOMINATED SUB-CONTRACTORS appointed by the EMPLOYER, if applicable, such as floor coverings, balustrades, handrails, cabinetry, tops, decks, services void coverings, pergolas, cladding, glass and aluminium work, interior doors, carpentry work, garage doors, water features, air-conditioning and any other special features or items not catered for in the BUILDING CONTRACT.
- 1.84 SUBSTANTIAL COMPLETION CERTIFICATE – Shall mean a certificate issued by the ARCHITECT in which the ARCHITECT certifies that the WORKS has reached SUBSTANTIAL COMPLETION. The SUBSTANTIAL COMPLETION CERTIFICATE must include a SUBSTANTIAL COMPLETION LIST, failing which the CONTRACTOR can accept that a SUBSTANTIAL COMPLETION LIST is not applicable.
- 1.85 SUBSTANTIAL COMPLETION DATE – Shall mean the date on which the ARCHITECT issues the SUBSTANTIAL COMPLETION CERTIFICATE. It is also the date on which the WORKS can effectively be used for the purposes of providing access for NOMINATED SUB-CONTRACTORS to the WORKS as certified by the ARCHITECT.
- 1.86 SUBSTANTIAL COMPLETION LIST – Shall mean a list of incomplete tasks/jobs that must still be completed by the CONTRACTOR on SUBSTANTIAL COMPLETION DATE. The SUBSTANTIAL COMPLETION LIST must be drawn up and must accompany the SUBSTANTIAL COMPLETION CERTIFICATE when such is provided to the CONTRACTOR by the EMPLOYER and/or ARCHITECT. This certificate and list must be issued before the CONTRACTOR will grant access to the WORKS to NOMINATED SUB-CONTRACTORS appointed by the EMPLOYER as it aims to identify damage caused to the WORKS by NOMINATED SUB-CONTRACTORS appointed by the EMPLOYER, for which the EMPLOYER accepts full responsibility.
- 1.87 SUMMARY OF BUILDING CONTRACT FIGURES – Shall mean the document attached to the BUILDING CONTRACT in which a summary of the TOTAL BUILDING CONTACT PRICE can be found.
- 1.88 TOTAL BUILDING CONTRACT PRICE – Shall mean the amount as depicted under paragraph 1.3 of the BUILDING CONTRACT and the SUMMARY OF BUILDING CONTRACT FIGURES.



- 1.89 VARIATION ORDER – Shall mean a written VARIATION ORDER signed by the EMPLOYER, issued by the ARCHITECT and priced by the CONTRACTOR specifying the variations to be effected and the costs thereof. The following applies to VARIATION ORDERS, as and where applicable:
- 1.89.1 VARIATION ORDERS may include an extension of time claim caused by the VARIATION ORDER, but may not include the relevant cost of a professional consultant, if the services of a professional consultant is required to give effect to the VARIATION ORDER, in which case the cost of the services of such professional consultant will be for the account of the EMPLOYER.
- 1.89.2 The cost of the professional consultant, if applicable, and the amount required by the CONTRACTOR to give effect to the VARIATION ORDER is payable via electronic funds transfer into the banking account of the CONTRACTOR by the EMPLOYER before the VARIATION ORDER will be effected, unless the EMPLOYER and the CONTRACTOR agree in writing to the standard payment methods and time periods as agreed to in terms of paragraph 3 of this SCHEDULE OF TERMS AND CONDITIONS.
- 1.89.3 In the event of the EMPLOYER and CONTRACTOR agreeing in writing to the standard payment methods and time periods as agreed to in terms of paragraph 3 of this SCHEDULE OF TERMS AND CONDITIONS, the EMPLOYER is obliged to give the necessary ADEQUATE SECURITY to the CONVEYANCER or the CONTRACTOR before the CONTRACTOR will give effect to the VARIATION ORDER. Should the EMPLOYER fail to give the required ADEQUATE SECURITY, the CONTRACTOR shall not be obliged to effect the said variation.
- 1.89.4 VARIATION ORDERS must be submitted at the stage that such variations can be accommodated within the CONSTRUCTION PROGRAM and should such VARIATION ORDER be submitted outside the CONSTRUCTION PROGRAM, the EMPLOYER hereby acknowledges and accepts that such VARIATION ORDER can either not be accommodated, or can have increased cost implications for the EMPLOYER. The CONTRACTOR is not obliged to give effect to a VARIATION ORDER if the implementation of such variation is, in the sole opinion of the CONTRACTOR, unfeasible or impractical.
- 1.89.5 VARIATION ORDERS also cater for the omission of items from the WORKS, the impact of which is the passing of a credit amount on the TOTAL BUILDING CONTRACT PRICE to the EMPLOYER the effect of which is the reduction of the TOTAL BUILDING CONTRACT PRICE. The EMPLOYER hereby acknowledges and agrees that should a VARIATION ORDER include an omission of an item, the credit amount so passed will be exclusive of the CONTRACTOR'S profit margin on such item omitted.
- 1.90 WAIVER OF BUILDER'S LIEN – Shall mean the WAIVER OF BUILDER'S LIEN agreement required from the CONTRACTOR by a financial institution from time to time when such financial institution provides the funding for the CONSTRUCTION COST of a residential unit on the PROPERTY described herein to the EMPLOYER. It is hereby specifically agreed to by the EMPLOYER that in the event of a financial institution requiring such WAIVER OF BUILDER'S LIEN from the CONTRACTOR, the EMPLOYER irrevocably and unconditionally indemnifies the CONTRACTOR and undertakes to hold the CONTRACTOR harmless against all losses that may arise from the construction of the WORKS and such financial institution not making good all substantiated payment requests made by the CONTRACTOR for work done. In light



hereof, the CONTRACTOR therefore reserves the right to request a PAYMENT GUARANTEE from such financial institution in lieu of the WAIVER OF BUILDER'S LIEN agreement it may require from the CONTRACTOR and the EMPLOYER undertakes to ensure such PAYMENT GUARANTEE is provided at the first request thereof by the CONTRACTOR.

1.91 WORKS – Shall mean the construction of a residential dwelling on the PROPERTY described herein substantially in accordance with the PLAN and SPECIFICATION AND FINISHING SCHEDULE that are referred to in this BUILDING CONTRACT. The following is agreed to by the PARTIES and hereby recorded in respect of the WORKS:

1.91.1 The total extent of the WORKS as well as the extent of the various areas of the dwelling are specified and depicted on the PLAN in square meters, detailed as the case might be, as may be applicable to the first floor and/or the ground floor and/or the lower ground floor:

- 1.91.1.1 House
- 1.91.1.2 Open patio(s)
- 1.91.1.3 Porch
- 1.91.1.4 Covered veranda(s)
- 1.91.1.5 Basement
- 1.91.1.6 Storeroom(s)
- 1.91.1.7 Staff quarters
- 1.91.1.8 Garage(s)
- 1.91.1.9 Other areas (which will be specified accordingly)

1.91.2 The areas so specified are measured and calculated by the ARCHITECT on the following basis:

- 1.91.2.1 to/from the exterior of the external walls and external load-bearing beams/lintols
- 1.91.2.2 to/from the centre of the internal walls and internal load-bearing beams/lintols that separate the various areas of the dwelling specified above in paragraph 1.91.1

1.91.3 Upon completion of the WORKS: neither the EMPLOYER nor the CONTRACTOR shall be liable for any deficiency in the final measured extent (area) of the WORKS, nor shall they benefit from any surplus thereof, subject to such deficiency not exceeding 5% (FIVE PERCENT) of the total extent (area) of the WORKS as specified on the PLAN, in which instance the total extent of the deficiency will be remunerated, CONTRACTOR to EMPLOYER or vice versa, as the case might be. The amount of such remuneration will be calculated by multiplying the total extent (area) of the deficiency (stated in square meters) with 50% (FIFTY PERCENT) of the "Building Plan Price" per square meter amount, depicted in the Summary of Building Contract Figures attached to this BUILDING CONTRACT;



1.91.4 The CONTRACTOR shall NOT be required to have the WORKS surveyed on completion of the WORKS. Should the EMPLOYER intend to claim for remuneration for a deficiency in extent, the claim must be dealt with on the following basis:

1.91.4.1 The EMPLOYER'S claim (the "CLAIM") must be reduced to writing and must be registered with the CONTRACTOR within 14 (FOURTEEN) DAYS after the bulk brickwork of the WORKS has been completed, failing which the EMPLOYER will forgo the right to institute a CLAIM against the CONTRACTOR;

1.91.4.2 The CONTRACTOR is under no obligation to advise the EMPLOYER that it has completed the bulk brickwork of the WORKS, it being recorded that bulk brickwork is defined as all of the external walls and external carrying beams/lintols of all the floors of the dwelling, as and where applicable;

1.91.4.3 The CLAIM must be accompanied by a Surveyor's Certificate, the cost of which will be for the EMPLOYER;

1.91.4.4 The Surveyor's Certificate must be issued by a Registered Member of the Institute of Professional Land Surveyors and must include the following:

- Drawings of the exterior of the total floor plan for each of the floors of the WORKS (inclusive of patios, verandas and porch's) – each such drawing to indicate the extent (area) of the floor so measured;
- Certification of the total extent measured (the WORKS in its entirety);
- Confirmation that the method employed to measure the extent matches the basis of measurement and calculation employed by the ARCHITECT as described in paragraph 1.91.2 hereof.

1.91.4.5 With the exception of the CONTRACTOR claiming for an increase in extent (area) which is governed by the VARIATION ORDER process described in this CONTRACT, the CONTRACTOR hereby declares that it will NOT initiate a deficiency claim as described in this paragraph 1.91. However, notwithstanding the latter, the CONTRACTOR retains the right to claim for a surplus in extent in the event that the EMPLOYER registers a deficiency claim with the CONTRACTOR. In these circumstances the PARTIES agree and hereby record that in the event of the Surveyor's Certificate specified in paragraph 1.91.4.3 above certifying a surplus in total extent (as referred to in paragraph 1.91.3 above), the CONTRACTOR is entitled to claim for such surplus.

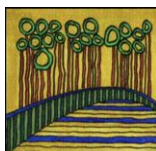


2. **PLAN AND SPECIFICATION AND FINISHING SCHEDULE**

- 2.1 The CONTRACTOR shall erect the WORKS substantially in accordance with the PLAN and SPECIFICATION AND FINISHING SCHEDULE as hereinbefore defined.
- 2.2 In the event of any discrepancy arising between the PLAN and SPECIFICATION AND FINISHING SCHEDULE the provisions of the SPECIFICATION AND FINISHING SCHEDULE shall prevail. It is agreed that the cost of any item or feature found on the PLAN but not found on the SPECIFICATION AND FINISHING SCHEDULE is not catered for nor allowed for in the TOTAL BUILDING CONTRACT PRICE and should the EMPLOYER wish that such item or feature be provided it shall be done through consultation between the EMPLOYER and CONTRACTOR, and contained in VARIATION ORDERS, which clearly set out the payment procedure for the additional costs incurred thereby.
- 2.3 In the event of any Mortgagee or relevant Authority requiring any alterations, variations, amendments or additions to the PLAN or SPECIFICATION AND FINISHING SCHEDULE, such alterations, variations, amendments or additions shall be made in consultation with the EMPLOYER and CONTRACTOR, and contained in VARIATION ORDERS, which clearly set out the payment procedure for any additional costs incurred thereby.

3. **PAYMENT**

- 3.1 The EMPLOYER shall furnish ADEQUATE SECURITY to the CONTRACTOR'S satisfaction for the TOTAL BUILDING CONTRACT PRICE within 21 (TWENTY ONE) DAYS after being requested to do so by the CONTRACTOR or the CONTRACTOR'S CONVEYANCERS, but by no later than the START DATE. The EMPLOYER shall pay the CONTRACTOR the amount due for the WORKS as referred to in paragraph 1.1 of this SCHEDULE OF TERMS AND CONDITIONS attached to the BUILDING CONTRACT, and such other sums as may become payable. It is recorded, understood and agreed that should a VARIATION ORDER be issued and should the amount applicable to such VARIATION ORDER not be paid upfront via electronic funds transfer into the banking account of the CONTRACTOR, the monetary value of such VARIATION ORDER will be added to the amount due to the CONTRACTOR once the CONTRACTOR has agreed to accommodate such VARIATION ORDER. For every one of such latter instances, the EMPLOYER shall furnish ADEQUATE SECURITY to the CONTRACTOR'S satisfaction on demand and when requested to do so.
- 3.2 The TOTAL BUILDING CONTRACT PRICE is payable in stages in accordance with the amounts certified by the ARCHITECT via periodic PROGRESS PAYMENT CERTIFICATE.
- 3.3 The DISBURSEMENT AMOUNTS (inclusive of VAT) and NHBRC ENROLMENT FEE (inclusive of VAT) will be payable by the EMPLOYER on demand to the CONTRACTOR.
- 3.4 The CONTRACTOR shall be entitled to receive payment from the EMPLOYER in accordance with PROGRESS PAYMENT CERTIFICATES, on a monthly basis within 10 (TEN) DAYS of each PROGRESS PAYMENT CERTIFICATE being issued as contemplated in the BUILDING CONTRACT under paragraph 5.5 of the SCHEDULE OF TERMS AND CONDITIONS.



- 3.5 The final payment, including any remaining RETENTION AMOUNT together with, if applicable, any other amount due as certified by the ARCHITECT, will become due once the ARCHITECT issues the FINAL COMPLETION CERTIFICATE as contemplated in the BUILDING CONTRACT under paragraphs 1.72 and 5.5 of the SCHEDULE OF TERMS AND CONDITIONS.

4. **SUSPENSIVE CONDITIONS and BUILDING LOAN CONDITIONS**

- 4.1 If applicable, the EMPLOYER must secure a loan for the payment of the WORKS within 45 (FORTY FIVE) DAYS from SIGNATURE DATE.

- 4.2 In the event of any part of the TOTAL BUILDING CONTRACT PRICE being payable from the proceeds of a building loan/s secured by a mortgage bond obtained from a financial institution (the "Mortgagee"), then:

4.2.1 The EMPLOYER irrevocably cedes to the CONTRACTOR his/her right, title and interest in and to any funds to be received from the Mortgagee, being the outstanding balance of the TOTAL BUILDING CONTRACT PRICE or the total proceeds of the building loan, whichever is lesser. The EMPLOYER undertakes to use his best endeavours to procure the fulfilment of this condition, but as a minimum, the EMPLOYER must ensure that the Mortgagee provides the CONTRACTOR with written confirmation of the Mortgagee's acceptance of this cession.

4.2.2 The CONTRACTOR is hereby authorised to receive interim and final draws from the Mortgagee in terms of the schedule of draws, via PROGRESS PAYMENT CERTIFICATE, and the EMPLOYER agrees to sign the authority for such payments when required by the CONTRACTOR. The EMPLOYER agrees to exercise all reasonable endeavours to have such payments promptly expedited in favour of the CONTRACTOR. Notwithstanding the aforesaid, such payment shall be made in full within 10 (TEN) DAYS of the application for payment. Any amount not paid or not paid within this period shall accrue interest in terms of paragraph 6 hereof, and shall be calculated from the due date until date of payment, both DAYS inclusive.

4.2.3 In the event of the Mortgagee through error or otherwise paying to the EMPLOYER or his agents any of the proceeds of the building loan, prior to the CONTRACTOR having been paid the full TOTAL BUILDING CONTACT PRICE plus any additional sums herein contained, the CONTRACTOR may require the EMPLOYER forthwith to pay such amounts plus interest thereon at the rate prescribed in paragraph 6, from the date of such payments to the EMPLOYER until the date of payment thereof to the CONTRACTOR.

4.2.4 In the event of the EMPLOYER failing or refusing to authorise payment of any interim or final draws in contravention of paragraph 4.2.2, the CONTRACTOR shall be entitled, without prejudice to any other rights which he may have in terms of this BUILDING CONTRACT or in law, to discontinue the WORKS forthwith and all damages arising, costs incurred and additional interest accruing, at the rate prescribed in terms of paragraph 6, shall be for the account of the EMPLOYER.

4.2.5 In the event of the WORKS proceeding prior to registration of the mortgage bond, the EMPLOYER agrees to pay the CONTRACTOR interest at the rate of 4% (FOUR PERCENT) above the prime rate of interest charged by ABSA



BANK from time to time, on all monies which become due for payment in terms of this BUILDING CONTRACT, such interest to be calculated from due date until date of payment by the Mortgagee.

- 4.3 The DISBURSEMENTS and NHBRC ENROLMENT FEE (inclusive of VAT) will be payable by the EMPLOYER on demand to the CONTRACTOR.
- 4.4 Plan approval fees will be payable to the LOCAL AUTHORITY and any other authority, if applicable, by the EMPLOYER on request to do so by the ARCHITECT, it being recorded that this amount is excluded from the TOTAL BUILDING CONTRACT PRICE.
- 4.5 It is irrevocably recorded and agreed to by the EMPLOYER that the agreement entered into between the EMPLOYER and the Mortgagee has no relevance and/or impact on the CONTRACTOR insofar as the binding nature of the content of this BUILDING CONTRACT has on the relationship between the EMPLOYER and CONTRACTOR.

5. COMMENCEMENT AND COMPLETION

- 5.1 The CONTRACTOR shall cause the construction of the WORKS to commence on the COMMENCEMENT DATE, but shall not be obliged to commence with the construction of the WORKS until: -
 - 5.1.1 the EMPLOYER has furnished ADEQUATE SECURITY to the CONTRACTOR'S satisfaction for the TOTAL BUILDING CONTRACT PRICE.
 - 5.1.2 the EMPLOYER has paid the DISBURSEMENTS, NHBRC ENROLMENT FEE and fees payable to the LOCAL AUTHORITY and any other authorities.
- 5.2 Should: -
 - 5.2.1 all necessary consents, approvals and the APPROVED PLAN not be obtained through no fault of the CONTRACTOR, or
 - 5.2.2 the EMPLOYER fail to comply with the provisions of paragraphs 5.1.1 and 5.1.2;by the START DATE, then the CONTRACTOR shall be entitled at its option to cancel the BUILDING CONTRACT or institute a COMMENCEMENT DELAY CLAIM.
- 5.3 Subject to any COMMENCEMENT DELAY, DELAY and/or EXTENSION permitted in terms of this BUILDING CONTRACT, the CONTRACTOR shall complete the WORKS by the end of the BUILDING PERIOD.
- 5.4 If the commencement or the completion of the WORKS is delayed for any cause whatsoever beyond the CONTRACTOR'S control, whether by strike or otherwise, or if any building industry holidays, whether statutory or recognised generally as customary in the industry fall within the BUILDING PERIOD, then the CONTRACTOR shall be entitled to a fair and reasonable extension of time for the completion of the WORKS and the EMPLOYER shall not for that reason have any claim against the CONTRACTOR for damages or otherwise.



5.5 Any amount or balance owing in terms of this BUILDING CONTRACT by the EMPLOYER to the CONTRACTOR shall become due and payable on the dates and as contemplated in this CONTRACT, failing which the EMPLOYER shall be liable for the interest on such amounts outstanding at the rate specified in paragraph 6.

5.6 The risk in the WORKS shall pass wholly and entirely to the EMPLOYER as from the COMPLETION DATE.

6. **INTEREST**

Any amount due by the EMPLOYER to the CONTRACTOR not paid on due date shall bear interest at the rate of 6% (SIX PERCENT) above the prime rate of interest charged by ABSA BANK from time to time, calculated and capitalised monthly in arrears on the first day of each month following the month on which such due amount was not paid.

7. **DISPUTES**

7.1 In the event of any dispute between the PARTIES in respect of this BUILDING CONTRACT including the validity thereof, the interpretation thereof, the non-compliance of the conditions thereof or the termination thereof, the PARTIES shall be obliged, without prejudice to any other rights they may have, to investigate whether the dispute may be solved by way of negotiation and discussion between themselves, by implementing the techniques of negotiation, mediation or other form of alternative dispute resolution.

7.2 In the event of the PARTIES not being able to solve the dispute in the way set out herein before within a period of 14 (FOURTEEN) DAYS or such further period that may be agreed upon by the PARTIES in writing, calculated from the date on which a party declares a dispute, such party may refer the dispute to arbitration.

7.3 In the event of arbitration, same shall take place through the Arbitration Foundation of Southern Africa in accordance with its rules.

7.4 Nothing contained in this paragraph 7 shall prevent the party who declares a dispute as contemplated in paragraph 7.2 to institute proceedings in any court of law which may have jurisdiction to adjudicate on the matter.

8. **RETENTION**

8.1 On COMPLETION DATE, the ARCHITECT and the EMPLOYER shall inspect the WORKS together with the CONTRACTOR and provide the CONTRACTOR with a PUNCH LIST before or on PUNCH LIST DATE, which list shall then be remedied by the CONTRACTOR within a reasonable period. The EMPLOYER agrees and understands that should the EMPLOYER not complete the subject inspection and not provide the PUNCH LIST by the PUNCH LIST DATE, the ARCHITECT'S and CONTRACTOR'S signatures on a PUNCH LIST compiled by the ARCHITECT will suffice and be deemed to be a PUNCH LIST as provided for in this BUILDING CONTRACT.



- 8.2 A FINAL COMPLETION CERTIFICATE, signed by the ARCHITECT and the EMPLOYER in which the ARCHITECT certifies that he and the EMPLOYER are satisfied with the completion of the WORKS, will be issued to the CONTRACTOR within 3 (THREE) DAYS after PUNCH LIST COMPLETION DATE and as described in paragraph 8.1 above.
- 8.3 Any remaining RETENTION AMOUNT together with, if applicable, any other amount due as certified by the ARCHITECT, will become due once the ARCHITECT issues the FINAL COMPLETION CERTIFICATE as contemplated in the BUILDING CONTRACT under paragraphs 1.72 and 5.5 of the SCHEDULE OF TERMS AND CONDITIONS.
- 8.4 Upon completion of the WORKS a CERTIFICATE OF OCCUPATION is issued by the LOCAL AUTHORITY after successful inspection of the WORKS. The ARCHITECT and the CONTRACTOR requests the LOCAL AUTHORITY to do such inspection and to issue the subject certificate. The EMPLOYER hereby acknowledges and agrees that no payment of any monies claimed by the CONTRACTOR may be withheld by the EMPLOYER as a result of the certificate not being issued within 14 (FOURTEEN) DAYS after the CERTIFICATE OF OCCUPATION INSPECTION REQUEST DATE.

9. DEFECTS LIABILITY

- 9.1 The CONTRACTOR hereby undertakes to the EMPLOYER that it shall, provided the EMPLOYER has duly complied with all conditions of this BUILDING CONTRACT:
- 9.1.1 Make good any latent defect that becomes apparent within 3 (THREE) months of the COMPLETION DATE as herein defined.
- 9.1.2 Make good any roof leakages or damage caused only to the WORKS by such leaks, the occurrence of such leaks occurring within a period of 12 (TWELVE) months from the COMPLETION DATE as herein defined.
- 9.1.3 Make good any major structural defect occurring within a period of 24 (TWENTY FOUR) months from the COMPLETION DATE as herein defined.
- 9.1.4 The CONTRACTOR shall be released of the above obligations if the EMPLOYER fails to give the CONTRACTOR written notice of such defects within 7 (SEVEN) DAYS of expiry of the said periods contained in this paragraph 9.1.
- 9.2 The CONTRACTOR shall only be responsible in terms of paragraph 9.1 for defects arising as a result of faulty workmanship and/or materials and shall under no circumstances be responsible for damage, or loss caused by wear and tear, misuse, neglect, negligence, lightning, abuse, accident. The CONTRACTOR shall under no circumstances be liable for any consequential loss or damage.
- 9.3 The EMPLOYER understands and agrees that any guarantee provided by the CONTRACTOR on items installed or provided, whether directly or via sub-contractor, will not surpass any guarantee condition as granted or allowed by the supplier of such installed or provided item. Should an instance such as this become applicable, the CONTRACTOR will provide the EMPLOYER with relevant information as it is agreed that the EMPLOYER is responsible for arranging guarantee follow-up service with the supplier of the relevant installed item. It is recorded that the rights and benefits resulting from the guarantees as discussed in this paragraph 9.3 is not transferable to a third party by the EMPLOYER.



10. **GENERAL**

- 10.1 This BUILDING CONTRACT correctly refers the intention of the PARTIES and constitutes the entire AGREEMENT between them. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect, save as is expressly included herein.
- 10.2 No variation of, addition or consensual cancellation or novation of this BUILDING CONTRACT 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 both the CONTRACTOR and the EMPLOYER or their duly authorised agents.
- 10.3 The PARTIES hereto undertake to do all such things, sign all documents and take all such steps as may be necessary, incidental or conducive to the implementation of the terms, conditions and import of this BUILDING CONTRACT.
- 10.4 If more than one person signs this BUILDING CONTRACT as the EMPLOYER, the obligations of all the signatories shall be joint and several. If this BUILDING CONTRACT is not signed by all the persons named as the EMPLOYER, this BUILDING CONTRACT nonetheless shall at the sole option of the CONTRACTOR be and remain binding on the person(s) who has/have signed this BUILDING CONTRACT as EMPLOYER.
- 10.5 No latitude, extension of time or other indulgence which may be given or allowed by the CONTRACTOR to the EMPLOYER in respect of any payment provided for in this BUILDING CONTRACT or the performance of any other obligation hereunder shall under any circumstances be considered to be implied consent of the CONTRACTOR or operate as a waiver or novation of, or otherwise affect any of the CONTRACTOR'S rights in terms of or arising from this BUILDING CONTRACT, or stop the CONTRACTOR from enforcing, at any time without notice, strict and punctual performance with each and every provision or term hereof.
- 10.6 The EMPLOYER hereby acknowledges and accepts the responsibility for payment of any monies and/or commissions, as displayed in the SPECIFICATIONS AND FINISHING SCHEDULE attached to this contract, payable to the estate agent depicted in the CONTRACT, and unconditionally indemnifies the CONTRACTOR against all claims that any other party may make for monies and/or commissions as a result of such other party introducing the EMPLOYER to the CONTRACTOR.
- 10.7 The entire estate has been subject to a geo-technical survey and the CONTRACTOR hereby confirms that care has been taken to accommodate the survey recommendations in the design of the WORKS from a foundation and earthworks perspective. Notwithstanding the aforementioned, the EMPLOYER acknowledges the CONTRACTOR'S right to claim an additional amount to cover costs in the event that the Engineer, LOCAL AUTHORITY, relevant authority and/or NHBRC stipulate abnormal additional earthwork and/or additional foundation work for the WORKS.
- 10.8 Words importing the one gender includes the other gender, the singular includes the plural and *vice versa*, unnatural persons include created entities (incorporated or not incorporated) and *vice versa*.
- 10.9 It is recorded that the CONTRACTOR recommended that the EMPLOYER installs three-phase power supply to the dwelling. The EMPLOYER acknowledges receiving this recommendation.



11. **BREACH**

- 11.1 Should the EMPLOYER'S estate be sequestered, provisionally or finally, or liquidated or placed under judicial management or should the EMPLOYER commit a breach of any of the terms of this BUILDING CONTRACT, all of which terms shall be regarded as material, and fail to remedy such breach within 14 (FOURTEEN) DAYS of dispatch by the CONTRACTOR of a written notice calling upon the EMPLOYER to do so, the CONTRACTOR shall be entitled forthwith to give the EMPLOYER or his trustee notice of the termination of this BUILDING CONTRACT without prejudice to any other rights which the CONTRACTOR may have in terms of this BUILDING CONTRACT or in law.
- 11.2 A certificate signed by an auditor appointed by the CONTRACTOR specifying the amount due by the EMPLOYER to the CONTRACTOR shall be *prima facie* proof of any amount due to the CONTRACTOR in terms of this BUILDING CONTRACT and may be used by the CONTRACTOR for the purposes of obtaining judgement whether by default or otherwise, summary judgement or provisional sentence against the EMPLOYER.

12. **PURCHASE OF PROPERTY**

Notwithstanding anything else to the contrary contained in this BUILDING CONTRACT, it is recorded, understood and agreed that this BUILDING CONTRACT is inextricably linked to the purchase of the PROPERTY described in paragraph 1.1 of the BUILDING CONTRACT. The validity of this BUILDING CONTRACT is however NOT dependent upon the proper execution and subsequent registration of transfer of the said PROPERTY in circumstances where the EMPLOYER instructed the CONTRACTOR to commence with the construction of the WORKS, notwithstanding that the registration of transfer of the PROPERTY had not been executed.

13. **DOMICILIA**

The PARTIES choose as their respective *domicilium citandi et executandi* for the delivery of all notices and processes arising out of this BUILDING CONTRACT the addresses as indicated in the BUILDING CONTRACT.

14. **POSSESSION**

The CONTRACTOR shall be entitled to:

- 14.1 Receive full possession of the PROPERTY when he is due to commence the WORKS.
- 14.2 Retain possession of the WORKS until all amounts owed to him under this BUILDING CONTRACT and under any other agreement or arrangement between the CONTRACTOR and the EMPLOYER in connection with the WORKS have been paid and all obligations of the EMPLOYER in terms of this BUILDING CONTRACT have been fulfilled.



15. **SOUTH AFRICAN NATIONAL STANDARD (SANS)**

- 15.1 SANS 10400-XA and the SANS 204 regulations (the "SANS documents") aim to regulate energy use and to encourage energy efficiency in the design and construction of dwellings.
- 15.2 It is recorded that the ARCHITECT has designed the WORKS to comply with the relevant stipulations of the SANS documents.
- 15.3 It is furthermore recorded that any deviation from the stipulations of the SANS documents by the CONTRACTOR is done so at the instruction of the EMPLOYER and at the EMPLOYER's sole risk and liability.
- 15.4 The EMPLOYER hereby agrees that once this BUILDING CONTRACT is duly signed by the PARTIES that an instruction by the EMPLOYER to the CONTRACTOR to deviate from applicable SANS document stipulations shall be done via the VARIATION ORDER process.

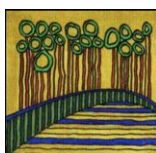
16. **PENALTY FOR LATE COMPLETION**

Where the CONTRACTOR fails to meet the PENALTY COMPLETION DATE, the EMPLOYER will have the right to claim a PENALTY FOR LATE COMPLETION from the CONTRACTOR on a basis as provided for herein.

17. **INDEPENDENT ADVICE**

Each of the Parties to this AGREEMENT hereby acknowledges and agrees that:

- 17.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all the provisions of this AGREEMENT and that it has either taken such independent advice, or has dispensed with the necessity of doing so; and
- 17.2 all of the provisions of this AGREEMENT and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Parties' intentions.



**ITEMS/ISSUES LISTED TO ASSIST WITH THE UNDERSTANDING OF THE ITEMS/ISSUES
CONTAINED IN THE BUILDING CONTRACT**

This list does not form part of the BUILDING CONTRACT – only for illustrative purposes

<u>ITEMS AND ISSUES</u>	<u>PARAGRAPH</u>	<u>DESCRIPTION</u>
SIGNATURE DATE	1.76 1.82 4.1	Definition 120 DAYS to START DATE Bank loan to be obtained – 45 DAYS
START DATE	1.10.3 1.13 1.82 3.1 5.2	COMMENCEMENT DATE BEFORE START DATE COMMENCEMENT DELAY CLAIM Definition Provide ADEQUATE SECURITY Option to cancel BUILDING CONTRACT
COMMENCEMENT DATE	1.6 1.10 1.11 1.13 1.16	BUILDING PERIOD starts Definition 2 DAYS to issue COMMENCEMENT DATE CERTIFICATE After START DATE? COMMENCEMENT DELAY CLAIM 30 DAYS to issue CONSTRUCTION PROGRAM
CONSTRUCTION PROGRAM	1.16 1.16	Definition 30 DAYS after COMMENCEMENT DATE
SUBSTANTIAL COMPLETION DATE	1.85	Definition
SUBSTANTIAL COMPLETION CERTIFICATE	1.47.1 1.72.1 1.72.2 1.72.5 1.84	NOMINATED SUB-CONTRACTORS have access RETENTION AMOUNT – 5% Before issue RETENTION AMOUNT – 2,5% After issue CERTIFICATE sufficient for payment to be made Definition
COMPLETION DATE	1.15 8.1	Definition PUNCH LIST required
COMPLETION CERTIFICATE	1.14 1.14 1.49 1.72.5	Definition 3 DAYS after COMPLETION DATE OCCUPATION only if COMPLETION CERTIFICATE issued CERTIFICATE sufficient for payment to be made
OCCUPATION	1.49 1.49 1.15	Definition HAPPY LETTER required Taking OCCUPATION means COMPLETION
OCCUPATION DATE	1.50	Definition
PUNCH LIST	1.66 1.69	Definition PUNCH LIST completed 10 DAYS after COMPLETION DATE
PUNCH LIST DATE	1.69 1.69	Definition PUNCH LIST completed 10 DAYS after COMPLETION DATE
PUNCH LIST COMPLETION CERTIFICATE	1.67 1.67	Definition PUNCH LIST work completed – 2 DAYS later
PUNCH LIST COMPLETION DATE	1.68	Date of PUNCH LIST COMPLETION CERTIFICATE
FINAL COMPLETION CERTIFICATE	1.34 1.72.5 8.2	3 DAYS after FINAL COMPLETION DATE CERTIFICATE sufficient for payment to be made PUNCH LIST COMPLETION CERTIFICATE
FINAL COMPLETION DATE	1.35 1.72.3	Definition 7 DAYS after full RETENTION and balance is PAYABLE
RETENTION	1.71	Definition
RETENTION AMOUNT	1.72 1.72.3 1.72.5 8.3	Definition 7 DAYS after FINAL COMPLETION DATE – RETENTION due EMPLOYER'S Bank retention not binding on CONTRACTOR RETENTION AMOUNT due

