

SaltRock!

CITY



PROPERTY NUMBER

Plot and Plan Building Agreement

THE SCHEDULE

1. DEVELOPER

1.1 Full Name : NEW SALT ROCK CITY (PTY) LTD
1.2 Registration Number : 2007/005000/07
1.3 Physical Address : 1 NEW SALT ROCK ROAD
SALT ROCK
1.4 Postal Address : POSTNET SUITE 257
PRIVATE BAG X0001
BALLITO
4420

2. OWNER

2.1 Name :
2.2 Identity/Registration Number :
2.3 VAT Registration Number (if applicable) :
2.4 Marital Status (for individual) :
2.5 Physical Address :
2.6 Postal Address :
2.7 Contact Number :
2.8 Email :

3. PROPERTY

3.1 Erf Number :
3.2 Extent :
3.3 Purchase Price :
3.4 House Type Selected :

4 CONTRACT SUM

4.1	Total Contract Sum (Including VAT)	:	<input type="text"/>
4.1.1	Cash Deposit (See Clause 4.1)	:	<input type="text"/>
4.1.2	Cash Portion (See Clause 4.2)	:	<input type="text"/>
4.2	Mortgage Bond	:	<input type="text"/>

5 CONTRACTOR

To be appointed by the Developer from the schedule of Accredited Contractors.

6 ANNEXURES

- 6.1 ANNEXURE 1: Unit Floor Plan
- 6.2 ANNEXURE 2: Specification and Schedule of Finishes
- 6.3 ANNEXURE 3: Draft Guarantee
- 6.4 ANNEXURE 4: Client Investment Mandate
- 6.5 ANNEXURE 5: Change Management Process
- 6.6 ANNEXURE 6: Consumer Index Form & Builders Letter of Appointment
- 6.7 ANNEXURE 8: Contractors Protocol

7 RECORDAL

- 7.1 This Schedule, the Standard Terms and Conditions and Annexures attached hereto shall form the agreement between the Developer and the Owner.

SIGNED by the DEVELOPER at on this day of 20

WITNESS

DEVELOPER

herein represented by:

who hereby warrants that (s)he is duly authorised to sign this Agreement

SIGNED by the OWNER at on this day of 20

WITNESS

OWNER(S)

*On behalf of

(insert name of OWNER here)

duly authorized by virtue of a Resolution of Directors/Members/Trustees

* Delete if not applicable

TERMS AND CONDITIONS IN RESPECT OF THE BUILDING AGREEMENT

1 INTERPRETATION

In this Agreement, unless inconsistent with or otherwise indicated by the context –

- 1.1.1 “**Agent**” means the estate agency who was the effective cause of the parties entering into this Agreement;
- 1.1.2 “**Architect**” means the architect appointed by the Developer from time to time;
- 1.1.3 “**the/this Agreement**” means the agreement as set out in this document and the Annexures hereto;
- 1.1.4 “**Annexures**” means the documents specified at Paragraph 8 of the Schedule;
- 1.1.5 “**Developer**” means the entity described at Paragraph 1 of the Schedule;
- 1.1.6 “**Building Loan**” means the building loan procured by the Owner, if applicable, for purposes of financing the payment of the Works and which loan is secured by a Mortgage Bond;
- 1.1.7 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;
- 1.1.8 “**Commission**” means the commission due to the Agent;
- 1.1.9 “**Contractor**” means the party who will be executing the construction works, including all sub-contractors;
- 1.1.10 “**Conditions Precedent**” means the conditions precedent set out in Clause 3 below;
- 1.1.11 “**MOI**” means the Memorandum of Incorporation of the ASSOCIATION as defined in the Sale Agreement, from time to time and it includes without limitation all annexures thereto and rules promulgated thereunder from time to time;
- 1.1.12 “**Contract Sum**” means the sum referred to in Paragraph 5 of the Schedule;
- 1.1.13 “**CPA**” means the Consumer Protection Act 68 of 2008, as amended;
- 1.1.14 “**Defects**” means any aspect of the materials and workmanship forming part of the Works that, in the opinion of the principal agent, is due to the failure of the Contractor to comply with its obligations in terms of this Agreement;
- 1.1.15 “**Defects List**” means a single list of Defects, as agreed upon by the Parties at the Handover Inspection;
- 1.1.16 “**Delivery Date**” means the date on which the Developer delivers the works to the Owner, determined in accordance with the provisions of Clauses 7.12;
- 1.1.17 “**Event of Default**” means an event as envisaged in clause 11 of this Agreement;
- 1.1.18 “**Development**” means –
 - 1.1.18.1 the development to be constructed on the following property by the Developer and known as the “*Salt Rock City – Lifestyle Village*” –

ERF 987 SALT ROCK,
REGISTRATION DIVISION FU
PROVINCE OF KWAZULU-NATAL

A SUBDIVIDED PORTION OF ERF 989 SALT ROCK
REGISTRATION DIVISION FU
PROVINCE OF KWAZULU-NATAL

- 1.1.19 **“Final Completion”** mean the stage of completion where the Works are certified by the Principal Agent to be free of all defects, as contemplated in Clause 8.6 below;
- 1.1.20 **“Force Majeure”** means an event beyond the control of the Party concerned, that is not caused by the fault of such Party and could not reasonably have been foreseen by it, that renders such Party unable to perform its obligations in terms of this Agreement and such events shall include, but not be limited to –
- 1.1.21 fire, flood, storm, rain, hail, lightning or any other inclement weather or natural disaster, civil disturbance, explosion, power failure or reduction of power supply, acts, orders or regulations of any governmental or regulatory authority, agency or department, lack or shortage of materials or inability to procure equipment and material;
- 1.1.21.1 war, invasion, act of a foreign enemy, hostilities (whether war be declared or not), terrorism, civil war, rebellion, revolution, criminal action, theft or vandalism; and
- 1.1.21.2 strikes, lock-outs, business forums and labour disputes causing cessation (whether complete or partial) of work or affecting any of the trades employed upon or in connection with the Works, interruption or slow down of work, whether of the Party concerned or any Developer or service provider of such Party, delays by sub-Developers, or in the supply of materials or any delay occasioned by the Owner or third parties or arising from any additional work carried out in terms of clause 6 below or any other delay however caused;
- 1.1.22 **“Guarantee”** means the draft bank guarantee to be issued by a financial institution acceptable to the Developer, substantially in accordance with the guarantee attached hereto marked **Annexure 3**;
- 1.1.23 **“Handover”** – means site handover of the Property to the Developer by the Owner in order to commence the construction works
- 1.1.24 **“Completion Inspection”** means an inspection of the Works by the Developer, or its representative, and the Owner, or its representative, within 7 days of Practical Completion Date at which inspection the Parties will agree to the Defects List;
- 1.1.25 **“Independent Architect”** means an architect to be appointed by the Developer;
- 1.1.26 **“Latent Defect”** means a defect that, on a reasonable inspection of the Works by the Owner, would not have been revealed before agreement was reached in respect of the Defects List;
- 1.1.27 **“Local Authority”** means the KwaDukuza Municipality and its successor in title;
- 1.1.28 **“Major Structural Defect”** means a defect in the Works that compromises the structural integrity of a home, causing potential risk to the safety and wellbeing of the occupant;
- 1.1.29 **“Owner”** means the person or persons / entity or entities, as the case may be, described more fully in Paragraph 2 of the Schedule;

- 1.1.30 “**the Parties**” or “**Party**” means the Party or Parties to this Agreement;
- 1.1.31 “**Plot and Plan Project**” means the projects undertaken by the Seller in terms where of it sells certain erven (including the Property) in the Development, on a plot and plan basis, as contemplated in this Agreement read with the Sale Agreement;
- 1.1.32 “**Practical Completion Certificate**” means the certificate issued by the Principal Agent on the Practical Completion Date;
- 1.1.33 “**Practical Completion Date**” means the date on which the Principal Agent issues a certificate certifying that the Works have been substantially completed in accordance with the Unit Floor Plan, the Specifications and Schedule of Finishes and, if applicable, the Optional Extras, the Property can effectively be used for its intended purpose;
- 1.1.34 “**Principal Agent**” means the person or entity nominated as principal agent by the Developer from time to time;
- 1.1.35 “**Property**” means the property described at Paragraph 3 of the Schedule, which property forms part of the Plot and Plan Project;
- 1.1.36 “**Retention Sum**” means an amount equal to 5% (Five Per Cent) of the contract value, reducing 1% on practical completion, and 0% on final completion
- 1.1.37 “**Sale Agreement**” means the sale agreement to be entered into between the Owner and the Seller in terms whereof the Owner agrees to purchase the Property from the Seller;
- 1.1.38 “**Schedule**” means the schedule to which these standard terms and conditions are attached;
- 1.1.39 “**Schedule of Rates**” means the Schedule of Rates attached hereto as **Annexure 4**;
- 1.1.40 “**Seller**” means the entity described more fully at Paragraph 1 of the Sale Agreement;
- 1.1.41 “**the Signature Date**” means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.42 “**Specification and Schedule of Finishes**” means the Specification and Schedule of Finishes attached to this Agreement as **Annexure 2**;
- 1.1.43 “**Transfer**” means the registration by the Registrar of Deeds in the relevant Deeds Office, of the transfer of the Property into the name of the Owner;
- 1.1.44 “**Unit Floor Plan**” means the unit floor plan attached to this Agreement as **Annexure 1**, which shall for the purposes of this Agreement mean the signed drawings of the Works and shall form the basis for drawings to be submitted to the Local Authority for approval and upon approval thereof, the approved Unit Floor Plan shall substitute the Unit Floor Plan and drawings and be deemed to be the Unit Floor Plan selected and approved by the Parties for the purposes of this Agreement and the execution of the Works in terms hereof;
- 1.1.45 “**Cash Deposit**” means the amount set out in Clause 4.1.1 of the Schedule;
- 1.1.46 “**VAT**” means value-added tax payable in terms of the VAT Act;
- 1.1.47 “**VAT Act**” means the Value Added Tax Act, 1991 as amended from time to time;
- 1.1.48 “**Variations**” means any addition to the Specification and Schedule of Finishes agreed to in terms

of Clause 6.3 below, the cost of which is not included in the Contract Sum;

- 1.1.49 “Works” means the construction of a dwelling house and outbuildings on the Property;
- 1.1.50 words importing the singular shall include the plural and vice versa;
- 1.1.51 words importing natural persons includes legal persons and partnerships and vice versa;
- 1.1.52 words importing one gender includes the other genders;
- 1.1.53 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.1.54 The clause headings in this Agreement have been inserted for reference purposes only and shall not affect the interpretation of any provision of this Agreement.
- 1.1.55 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.1.56 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.1.57 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 1.1.58 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.1.59 Expressions defined in this Agreement shall bear the same meanings in any annexure hereto which does not contain its own definitions.

2 INTRODUCTION

- 2.1 The Owner has purchased the Property from the Developer in terms of the Contract of Sale.
- 2.2 The Owner is obliged in terms of the MOI and the Contract of Sale to erect a Dwelling Unit on the Property within the time periods provided for in the MOI and Contract of Sale.
- 2.3 The Owner has agreed to appoint the Developer to perform the Works in accordance with the Standard Terms and Conditions of this Agreement.

3 CONDITIONS PRECEDENT

- 3.1 This Agreement is subject to the Condition Precedent that the Sale Agreement for the Property is entered into and that the Sale Agreement becomes valid and enforceable on or before the dates stipulated for the fulfilment or waiver, as the case may be, of the conditions precedent contained therein.
- 3.2 If the Condition Precedent has not been fulfilled or waived, as the case may be, by the due date for fulfilment thereof then this Agreement will automatically fail and be of no further force and effect and the Parties will use their respective best endeavours to restore the *status quo ante* and no Party shall, save as otherwise provided in this Agreement and excluding however any non-

refundable price paid to the SELLER in respect of any agreement which the Owner acquired a right of Pre-Emption in respect of the property, have any claim against the other Party arising from this Agreement.

3.3 The Owner shall use its best endeavours to procure the timeous fulfilment of the Conditions Precedent.

4 CONTRACT SUM AND PAYMENT

4.1 Contract Sum: Cash Deposit

4.1.1 The Cash Deposit as set out in Clause 4.1.1 of the SCHEDULE shall be paid to the Developer (or nominee) by no later than **7 Days from Date of Signature of this Agreement**.

4.1.1.1 The Owner irrevocably and unconditionally authorises any persons holding the Cash Deposit to pay such amount to the Developer by way of progress payments determined in accordance with Clause 4.5 below.

4.2 Contract Sum: Cash Portion

4.2.1 In the event that the Contract Sum or a portion thereof shall not be paid from the proceeds of a Mortgage Bond (hereinafter referred to as the "**Cash Portion**"), payment of the Cash Portion, less the deposit as per Clause 4.1.1 of the Schedule, to the Developer shall be secured by the Owner either by –

4.2.1.1 delivery to the Developer of a Guarantee/s payable to and approved by the Developer for payment of the Cash Portion; or

4.2.1.2 payment of the Cash Portion to the Developer,
by no later than **30 Days from Date of Signature of this Agreement**.

4.3 Contract Sum: Mortgage Bond

4.3.1 In the event that the Contract Sum or portion thereof being payable from the proceeds of a Mortgage Bond, then:

4.3.1.1 the Mortgage Bond is to be secure by the Owner by no later than **30 Days from Date of Signature of this Agreement** and –

4.3.1.2 payment of the proceeds of the Mortgage Bond shall be made in accordance with the standard procedure of the registered credit provider (herein called the "**Mortgagee**") concerned, provided that payments may only be made according to instructions of the valuer of the Mortgagee; and

4.3.1.3 the Owner hereby authorises, instructs and empowers the Developer to request and receive direct payments of interim and final draws in respect of the Contract Sum from the Mortgagee and the Owner agrees to sign all documents required by the Mortgagee in order to process any progress payment due in terms of this Agreement as and when required by Developer to do so. Insofar as it may be necessary, the Owner hereby irrevocably and unconditionally authorises the Developer or its nominee to request payments of interim and final draws; and

4.3.2 In the event of the Mortgagee through error or otherwise paying to the Owner or his agents any of the proceeds of the Mortgage Bond prior to the Developer having been paid the full Contract Sum plus any additional amounts herein contained, the Developer may require the Owner to forthwith pay such amounts plus interest at the rate prescribed in Clause 12.1, from the date of such payment to the Owner until the date of payment thereof to the Developer.

- 4.3.3 In the event of the Owner failing or refusing to authorise payment of any interim or final draws in contravention of Clauses 4.3.1.2 or failing or refusing to make payment to the Developer in contravention of this Clause 4.3.2, the Developer shall be entitled without prejudice to any other rights which he may have in terms of this Agreement or in law, to discontinue the Works forthwith and all damages arising, costs incurred and additional interest accruing shall be for the account of the Owner. The Developer shall, however, not be entitled to discontinue the Works if payment is withheld by either the Mortgagee or the Owner as result of –
- 4.3.3.1 non-delivery by the Contractor of the Contractor's NHBRC Registration Certificate and NHBRC Enrolment Certificate; or
- 4.3.3.2 outstanding defects, deviations or notes on the Property from the NHBRC or the relevant local authority; or
- 4.3.3.3 failure to comply with a certificate of non-compliance issued by the NHBRC.
- 4.3.4 The Owner shall be liable for the payment of all, and any interest levied by the Mortgagee under the Mortgage Bond and the Owner undertakes and warrants to and in favour of the Developer that he shall make payment of such interest timeously in accordance with the provisions of the Building Loan.
- 4.3.5 In the event that only a portion of the Contract Sum shall not be payable from the proceeds of a Building Loan, the progress payments shall first be made against the Cash Portion and thereafter from the proceeds of the Building Loan in accordance with the provisions as set out in Clause 4.3 hereof.
- 4.4 Should the Owner elect to deliver a Guarantee for payment of the Cash Portion in accordance with the provisions of Clause 4.2.1.1 above, the Owner hereby irrevocably authorises and instructs the Developer to request and receive monthly progress payments from the registered credit provider who issued the Guarantee, in accordance with the provisions of the said Guarantee and this Agreement.
- 4.5 **Progress Payments**
- 4.5.1 The Contractor shall submit a monthly payment request to the Developer and if the Principal Agent issues a payment certificate certifying that –
- 4.5.1.1 the amount requested by the Contractor, in its opinion does not exceed the aggregate value of workmanship and materials employed in respect of the Works during the period for which the request for payment relates; and
- 4.5.1.2 in the case of a request for payment other than a final payment, in the opinion of the Principal Agent, whichever may be applicable, the balance of the Contract Sum not yet advanced will be sufficient to complete the Works; and
- 4.5.1.3 that the part of the Works in respect of which payment is being claimed by the Contractor has been completed,
- then the Owner shall pay to the Developer such portion of the Contract Sum confirmed by the Principal Agent, whichever may be applicable, within 5 (FIVE) days of being furnished with the Principal Agent's, certificate or, confirmed by the Independent Architect, within 5 (FIVE) days of the Independent Architect's decision, as the case may be. Should payment of the Payment Certificate be paid from the Cash Portion, the Developer or any person holding such Cash Portion shall furnish the Owner with the Payment Certificate via email. Unless the Owner instructs such person holding the Cash Portion to the contrary within 3 (three) business days of the said email,

the persons holding the Cash Portion shall be irrevocably and unconditionally authorized to pay the Developer such portion of the Contract Sum as set out in the Payment Certificate.

4.5.2 In the event of any dispute between the Parties as to the amount certified by the Principal Agent, whichever may be applicable, as being payable, a certificate by the Independent Architect certifying the amount due shall be final and binding upon the Parties, this process may not delay the payment process, the amounts can be recovered from either party following the Independent Architect's ruling.

4.6 **General**

4.6.1 The Owner undertakes not to directly or indirectly interfere and/or refuse to co-operate with the payment processes set out in this Clause 4.

4.6.2 Save for the Retention Sum, the full balance of the Contract Sum shall be due and payable on the Practical Completion Date and it is specifically agreed that the Developer shall not be obliged to give the Owner possession of the Property or the Works until such time as all amounts due to the Developer by the Owner, save for the Retention Sum, have been settled in full.

4.6.3 All payments to be made to the Developer in terms of this Agreement shall be made to the Developer without any deduction or set-off of any nature whatsoever and the Owner shall not be entitled to withhold or defer payment of the Contract Sum, or portion thereof, for any reason whatsoever. In amplification hereof, the Owner agrees to not under any circumstances withhold payment from the Developer of any amounts whatsoever in respect of minor work still to be completed or withhold its own payment or any payment from a Mortgagee as a result of any of the Optional Extras being incomplete.

4.6.4 In the event that the Owner fails to –

4.6.4.1 make the payment referred to in Clause 4.2.1.2; or

4.6.4.2 deliver the Guarantee/s referred to in Clause 4.2.1.1; or

4.6.4.3 secure the Mortgage Bond referred to in Clause 4.3;

within the specified time periods, then without prejudice to any other rights that the Developer may have, the Developer reserves the right to either re-cost the Works and issue an updated Contract Sum, alternatively cancel this Agreement in terms of Clause 11 below.

4.6.5 The Owner acknowledges that the deposit reflected in clause 4.1 above shall be utilized for fees relating to Stages 1 to 4 of the Construction Process and the Developer is hereby irrevocably authorised and instructed to utilise the Deposit or any portion thereof upon presentation of an invoice by the Developer. The Owner further acknowledges that should this Agreement be cancelled due to breach or non-performance by the Owner, the said Deposit or portion thereof which has been utilized will not be refunded to the Owner.

5 **EXECUTION OF WORKS**

5.1 The Developer agrees to execute and complete the Works in accordance with the Unit Floor Plans, Specification and Schedule of Finishes, the Optional Extras, if applicable, and in accordance with industry norms.

5.2 The Developer shall ensure that the Unit Floor Plans and Specification and Schedule of Finishes complies with the provisions of the Constitution.

- 5.3 The Owner shall in no manner whatsoever be entitled to interfere with, or allow any interference with the Developer, its' employees, agents or sub-Developers or with the completion of the Works, including but not limited to the giving of instructions or directions or any variations.
- 5.4 Notwithstanding any provision to the contrary herein, the Developer shall be entitled to, without reference to the Owner, subcontract the whole or any part of its obligations in terms of this Agreement to any other person that it is in the opinion of the Developer qualified to execute the Works in a good, proper and workmanlike manner, but shall notwithstanding such appointment remain liable to the Owner as the Developer in terms of this Agreement.
- 5.5 All specialists, merchants, tradesmen and sub-Contractors who are appointed by the Developer to execute any work or supply any goods shall be the suppliers that are normally used by the Developer. The Developer shall be under no obligation to utilise the services of any particular party and shall appoint such specialists, merchants, contractors, tradesmen and sub-Contractors at its sole discretion.
- 5.6 The Owner, its officers, employees, agents and Managers shall not have any claim of any nature against the Developer or any of its officers, employees, agents and Managers for any loss, damage or injury which any of them may directly or indirectly suffer as a result of the execution of the Works (save in so far as such loss, damage or injury is caused through the Developer's gross negligence).
- 5.7 In the event of any circumstances arising, caused by or attributable to the Owner, which delays have or which could have the effect of delaying the completion of the Works, or of increasing the cost of the Works, the Developer shall have the right, without prejudice to any other rights which it may have in terms of this Agreement, to disburse monies due and owing and incur expenses on behalf of the Owner in order to facilitate the completion of the Works without first obtaining the consent of the Owner. All such monies disbursed, or expenses incurred shall be payable by the Owner to the Developer on demand. The Developer shall within a reasonable time of disbursing such funds or incurring such expenses, notify the Owner of the nature and extent thereof.
- 5.8 Should any dispute arise between the Parties as to –
- 5.8.1 the amount of monies due and disbursed by the Developer on the Owner's behalf as contemplated in Clause 5.6 above; or
- 5.8.2 whether the Works have been constructed substantially in accordance with the Unit Layout Plan, Specifications and Schedule of Finishes, Optional Extras, if applicable, and/or has been erected in substantially the position as reflected on the Unit Layout Plan,
- such dispute shall be referred to the Principal Agent by either Party for determination in accordance with Clause 9 below.
- 5.9 The Owner shall not be entitled to sell and/or transfer the Property until the Delivery Date, except with the prior written consent of the Developer. If the Developer so consents, the new purchaser and/or transferee of the Property must agree in writing to observe the terms and conditions of this Agreement as well as the Constitution. Where the Owner is a Close Corporation or a Company, the sale of the Property referred to in this clause includes the sale of a member's interest in a Close Corporation or the sale of shares in a company and where the Owner is a trust, the sale of the Property referred to in this clause includes a change of beneficiaries and trustees.

6 **VARIATIONS**

6.1 **General**

6.1.1 The Property shall be built substantially in accordance with the Unit Floor Plan and the Specification and Schedule of Finishes, provided that the Developer shall be entitled to –

6.1.1.1 substitute items of similar standard and quality for any specified item referred to in the Specification and Schedule of Finishes; and

6.1.1.2 vary the Unit Floor Plans on notice to the Owner should the Developer consider it reasonably necessary for technical reasons as a result of site conditions or to meet local authority or other statutory requirements.

6.1.2 In the event of any dispute between the Parties as to the nature of the variations referred to in Clause 6.1.1, the dispute shall be referred for determination to the Principal Agent.

6.1.3 The Architectural Guidelines, Specification and Schedule of Finishes reflect the finishes that are included in the Contract Sum.

6.1.4 Optional Extras may be chosen as at an extra cost and all the various choices and permissible options will be available from the Developer.

6.1.5 All Optional Extras must be implemented and paid for in accordance with the provisions set out in Clause 6.2 below and all Variations must be implemented and paid for in accordance with the provisions set out in Clause 6.3 below.

6.1.6 Should the Owner fail to select any finish in the Specification and Schedule of Finishes on the Signature Date and fail to do so within 7 (SEVEN) days from being requested to do so by the Developer, then in such event the Principal Agent shall in his sole and unfettered discretion select the finishes from **Annexure 2** hereto. The Owner shall accept the Principal Agent's selection and shall have no claim against the Developer pursuant to such selection. Furthermore should any variations be requested after the signature date to the works and should the owner fail to select any finish in the Specification and Schedule of Finishes relating to such variation and fail to do so within 7 (SEVEN) days from being requested to do so by the Developer, then in such event the Principal Agent shall in his sole and unfettered discretion select such finishes from **Annexure 2** hereto. Again, the Owner shall accept the Principal Agent's selection and shall have no claim against the Developer pursuant to such selection.

6.1.6.1 Provided however that all variations and amendments to the works requested after the start of the works will be agreed to and executed at the sole discretion of the Developer who may reject such variations and/or amendments and proceed with the original specification and finishes. The Owner shall have no claim against the Developer should the Developer reject such variations and/or amendments.

6.1.7 Neither the Owner nor any person or firm employed by the Owner shall carry out any work on the Property until such time the Dwelling Unit is handed over and received as complete.

6.1.8 In the event of any of the materials set out in the Specification and Schedule of Finishes being in short supply or unavailable, the Developer shall be entitled to, on notice to the Owner, select substitute material of a similar quality from amongst like material readily procurable by the Developer. Any difference in costs shall be for the account of the Owner and payable by the Owner to the Developer on demand.

6.1.9 The Owner shall not be entitled to make an alteration to the Unit Floor Plan, without following the change management process as per **Annexure 8** and will be obliged to pay all professional fees,

legal fees, expenses and charges incurred by reason of such alterations

6.2 Optional Extras

6.2.1 The Owner shall be entitled at its own expense, in addition to the Contract Sum, to request that the Property be completed with Optional Extras.

6.2.2 The Owner will not be entitled to any omissions or to downgrade the quality of the finishes recorded in the Specification and Schedule of Finishes as set out Annexure 2.

6.2.3 Should the Owner fail to select any Optional Extras on the Signature Date and fail to do so within 7 (SEVEN) days from being requested to do so by the Developer and make payment in cash to the Developer of the amount required for the extras and send proof of payment of such additional amount to the Developer within 7 (SEVEN) days of receipt of the Developer's invoice, then the Works shall be completed in accordance with the Unit Floor Plan and Schedule of Finishes and the Owner shall be obliged to take occupation thereof in terms of the provisions of this Agreement. In the event of there being more than 1 (ONE) Owner, the signature of either of the Owners shall be binding on all the Owners in respect of any Optional Extras.

6.3 Variations

6.3.1 The Owner shall be entitled at its own expense, in addition to the Contract Sum, to request that the Property be completed with Variations in accordance with the provisions of Annexure 8.

6.3.2 The Owner may make a single request in writing, incorporating all Variations desired, complete with sufficient detail to enable the Developer to quote thereon, provided such request is received before the Signature Date or such later date that the Developer in its sole discretion may allow.

6.3.3 The Developer shall inform the Owner by written quotation of the additional amount to be charged for the Variations (in addition to the Contract Sum). The Owner shall be required to accept the quote in writing and make payment in cash directly to the Developer of the amount required for the extras within 7 (SEVEN) days of receipt of the Developer's invoice and send proof of payment of such additional amount to the Developer.

6.3.4 In the event of the Owner not accepting in writing and/or not making payment of the amount on receipt of the Developer's invoice, then the Works shall be completed in accordance with the Unit Floor Plan, the Schedule of Finishes and Optional Extras, if applicable, and the Owner shall be obliged to take occupation thereof in terms of the provisions of this Agreement.

6.3.5 The Owner shall be liable for payment of all additional costs that may be incurred for purposes of the finalisation and installation of the Variations which shall include but shall not be limited to the fees of an architect, a quantity surveyor, a structural/mechanical engineer, a land surveyor, attorneys, the Agent and any other professional fees of whatsoever nature that may be required, such fees which shall be payable on request whether or not the Owner proceeds with the Variations.

7 COMMENCEMENT AND COMPLETION

7.1 The Owner shall give the Developer undisturbed possession of the Property from the Date of Transfer and shall not require the Developer to give up possession of the Property for so long as any amounts are due to the Developer in terms of this Agreement. It is recorded that any waiver of Developer's *lien* which may have been signed or will be signed by the Developer or any person to whom the Developer has ceded or will cede its rights, shall be exclusively for the benefit of that party and shall under no circumstances confer any rights or benefits on the Owner.

- 7.1.1 It is recorded that the Owner will comply with the Handover process that has imposed and/or implemented by the Developer and the Owner undertakes to do all things necessary to place the Developer in a position to commence with the construction of the Works within the time periods stipulated in this Agreement.
- 7.2 The Developer shall commence the construction of the Works provided the Contract Sum has been secured in full by the Owner and the construction of the Works shall commence within 30 (THIRTY) days after the later of the following events or dates, as the case may be –
- 7.2.1 date of registration of transfer of the Property into the Owner’s name;
- 7.2.2 the Unit Floor Plans having been approved and any other consents or approvals obtained from the local authority;
- 7.2.3 receipt by the Developer of the enrolment certificate in respect of the Works to be carried out on the Property with the National Home Developers Registration Council; and
- 7.2.4 the Developer who installed the engineering services to the Property has completed such installation and handed over the Property.
- 7.3 Subject to the obligations imposed on the Owner, The Developer shall complete the construction of the Works, to a state where a Practical Completion Certificate may be issued, within _____ months from the date on which construction commences. Should any dispute arise as to the actual date on which the construction is commenced, a completion certificate signed by the Principal Agent shall be final and conclusive proof of such date.
- 7.4 Notwithstanding the time period stipulated in 7.3 above, should the Developer complete the construction of the Works and receive a Practical Completion Certificate prior to such date, the Owner shall be obliged to take occupation of the Property on the date the Practical Completion Certificate is issued.
- 7.5 The Developer shall complete the Works in accordance with the Unit Floor Plan and the Specifications and Schedule of Finishes within the period provided for in Clause 7.3 above, provided that –
- 7.5.1 this date has not been extended by the Principal Agent in accordance with Clauses 7.5, 7.6 and/or 11.3.3;
- 7.5.2 that the Developer has taken all reasonable steps to prevent and/or minimise the delay; and
- 7.5.3 that the delay is not due to intent or negligence on the part of the Developer.
- 7.6 If the period during which the construction of the Works is being carried out coincides with any statutory or customary Developers’ holiday, then the period for the completion of the Works shall be extended by the duration of such holiday, as certified by the Principal Agent.
- 7.7 The Developer shall not be liable to the Owner for any damages or penalty of whatever nature, whether consequential or otherwise, which may be sustained by the Owner as the result of an event of Force Majeure or other event which it could not reasonably have foreseen, and the period for the completion of the Works shall be extended by the duration of any such event, as certified by the Principal Agent.
- 7.8 The Developer shall notify the Owner by e-mail at the chosen e-mail address herein of the contemplated Practical Completion Date and the Developer shall, on request, allow the Owner a reasonable opportunity, from date of the aforesaid notification until the date of the Completion

Inspection, to examine the Works for the purpose of ascertaining whether the Owner is satisfied that the Works reasonably conform to the material specifications of the Works as set out in **Annexure 1, Annexure 2** and, if applicable, any Optional Extras agreed upon in accordance with the provisions of this Agreement.

- 7.9 In the event of any dispute between the Parties as to when or whether the Works have reached a stage of practical completion, a certificate by the Independent Architect certifying that the Works have reached the aforesaid stage of completion shall be final and binding upon the Parties.
- 7.10 On the Practical Completion Date all risk in and to the Works shall pass to the Owner.
- 7.11 Within 7 (SEVEN) days of the Practical Completion Date, the Parties will meet for the Completion Inspection, at which inspection the Owner and the Developer shall agree on the Defects List. The owner will have one opportunity to agree the defects list with the Developer and once such defects list has been made good to the satisfaction of the Architect, the Owner shall have no further claim against the Developer and Contractor.
- 7.12 Notwithstanding anything to the contrary contained in this Agreement, delivery and possession of the Works shall only be given to the Owner on the later of the following dates, upon which date the Owner agrees to accept delivery of the Works –
- 7.12.1 in so far as the CPA applies to this Agreement and to the extent that the Owner and Developer have in writing confirmed that delivery of the Works has been given and taken, the date of such written confirmation; or
- 7.12.2 the date on which the Owner and the Developer agree on the Defects List; and the date on which the Owner signs a letter confirming the completion of the Works in accordance with the Specification and Schedule of Finishes, Unit Floor Plan and, if applicable, the Optional Extras, and that the Works is fit for the purpose for which it was intended; and
- 7.12.3 in the event that the Contract Sum or any portion thereof is paid from the proceeds of a Building Loan, the date on which all documents required by the Mortgagee to make the final payment in terms of the Building Loan are signed by the Owner and, if required by the applicable Mortgagee before the final payment is made, telephonic authorisation by the Owner to the Mortgagee to make the final payment; and
- 7.13 In the event that the Contract Sum or any portion thereof is paid in cash, the date on which the Owner confirms in writing that the Works have been completed satisfactorily and irrevocably authorises the Developer to effect payment of the Retention Sum.
- 7.14 If the Delivery Date is delayed for more than 21 (TWENTY-ONE) days after the Practical Completion Date and such delay is attributable to the Owner, the Developer shall be entitled, but not obliged, to sublease the Property and the Works to a third party on such terms acceptable to the Developer until the later of the following dates –
- 7.14.1 the Delivery Date; or
- 7.14.2 6 (SIX) months from the expiry of the aforesaid 21 (TWENTY-ONE) day period.

8 DEFECTS

- 8.1 A defects liability period of 30 (THIRTY) days shall commence on the date that the Defects List is agreed upon, which date shall be within 14 (FOURTEEN) days from the Practical Completion Date failing which the Architect's list shall be deemed final. The Developer shall rectify the defects listed

in the Defects List within the said 30 (THIRTY) day period, provided that this date may be extended in accordance with Clauses 7.5, 7.6 and/or 11.3.3 by the Principal Agent and provided further that the Owner grants the Developer and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this Clause 8.1, failing which the Owner shall be deemed, subject to the provisions of Clause 8.3, to have accepted the Works in the condition in which same was as at the Practical Completion Date.

- 8.2 Should the Owner and/or the Principal Agent not issue a Defects List within the period prescribed in this Agreement, subject to the provisions of Clause 8.3, the Works shall be deemed to have been completed satisfactorily.
- 8.3 The Contractor shall within a reasonable time repair –
 - 8.3.1 any Latent Defects and defects due to faulty workmanship, faulty material and defective components in the Works which may manifest themselves within 1 (ONE) Year from the Practical Completion Date, provided that the Owner notifies the Contractor in writing within the said 1 Year period of any such defects and provided further that the Owner grants the Contractor and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this Clause 8.3.1, failing which the Owner shall be deemed, subject to the defects contained in the Defects List, to have accepted the Works in the condition in which same was as at the Practical Completion Date;
 - 8.3.2 any roof leakage that results from defective material or workmanship or damage to the Works caused thereby which may manifest itself within a period of 12 (TWELVE) months from the Practical Completion Date, provided that the Owner notifies the Contractor in writing within the said 12 (TWELVE) month period of any such leakage or damage and provided further that the Owner grants the Contractor and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this Clause 8.3.2, failing which the Owner shall be deemed to have accepted the Works in the condition in which same was as at the Practical Completion Date; and
 - 8.3.3 any Structural Latent Defects which may manifest itself within 5 (FIVE) years from the Practical Completion Date, provided that the Owner notifies the Contractor in writing within the said 5 (FIVE) year period of any such Major Structural Defect and provided further that the Owner grants the Contractor and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this Clause 8.3.3, failing which the Owner shall be deemed to have accepted the Works in the condition in which same was as at the Practical Completion Date.
- 8.4 The Contractor shall only be responsible in terms of this Clause 8 for defects arising as a result of faulty workmanship and/or materials and shall under no circumstances be responsible for –
 - 8.4.1 damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of or arising from any risk insured against in terms of Homeowner's Insurance Policies normally issued by the South African Insurance companies in respect of residential purposes; and
 - 8.4.2 the Developer and Contractor shall under no circumstances be liable for any consequential loss or damage howsoever arising.
- 8.5 Any dispute arising between the Parties with respect to the Contractor's liability to repair a defect or whether a defect has been rectified according to accepted standards in the building industry, shall be referred by either Party to the Principal Agent for determination in accordance with Clause 9.
- 8.6 Upon fulfilment of its obligations as contained in Clause 8.3.1 and/or in the absence of a notice by the Owner as referred to in Clause 8.3.1 above, the Owner 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 Clause 8.3.1 and the Principal Agent shall forthwith issue a certificate of Final Completion to the Contractor. The achievement of Final Completion shall be conclusive proof as to the sufficiency of the completion of the Works in accordance with the provisions of this Agreement, that, subject to the conditions contained in Clauses 8.3.2 and 8.3.3 above, all defects have been made good and that the dwelling is fit for the purpose it was intended for. Subject to the conditions contained in Clauses 8.3.2 and 8.3.3 above, the Contractor shall, after expiry of the period referred to in Clause 8.3.1, no longer be liable for any defects in the Works or in respect of anything relating thereto.

- 8.7 With effect from the date on which both Parties have complied with all their obligations in terms of this Agreement, the Developer agrees to cede to the Owner, as an outright cession and *in anticipando*, all its rights under the guarantees and/or warranties, as the case maybe, given by the Contractor and suppliers in relation to the Works or any parts thereof. On Final Completion, the Developer will furnish the Owner with all such certificates as are legally required at the time of Final Completion in accordance with the National Building Regulations.

9 **PRINCIPAL AGENT**

- 9.1 The Parties agree that the referral of a matter to the Principal Agent in accordance with the provisions of this Agreement shall be subject to the following provisions –

9.1.1 the Principal Agent shall act as an expert and not as an arbitrator;

9.1.2 it is the intention that determination shall be made as quickly and in the most effective manner reasonably possible in the circumstances;

9.1.3 the fees of the Principal Agent, if any, and any costs incurred by the Principal Agent, if any, shall be borne and paid for by the Party determined by the Principal Agent. Any other costs which the Parties may incur in relation to the determination shall be for their own account; and

9.1.4 the determination of the Principal Agent shall, in the absence of manifest error and subject to Clause 10 below, be final and binding on the Parties and shall not be subject to appeal or review.

- 9.2 The Parties agree that in the event of the Developer and/or the Owner (in this clause referred to as the “disputing party”) disputing –

9.2.1 whether the Works have reached a stage where a Practical Completion Certificate may be issued by the Principal Agent; or

9.2.2 any determination or instruction given by the Principal Agent pursuant to the provisions of Clauses 4.5, 5.8, 6.1.2 and/or 8.5, then the Principal Agent and the disputing party shall meet within 3 (THREE) days after being requested by any one of the Parties to do so with the view to resolve the dispute raised by the disputing party in respect of the aforesaid matters.

9.2.3 In the event of the Principal Agent and the disputing party reaching an agreement in respect of the matter in dispute, such agreement shall be the Principal Agent’s determination in respect that matter and same shall be binding on the Owner and the Developer.

- 9.3 The Owner warrants that the Principal Agent has full authority and obligation to act in terms of this Agreement.

10 **INDEPENDENT ARCHITECT**

- 10.1 In the event of the Principal Agent and the disputing party not being able to reach an agreement in respect of those matters referred to in clause 9.2 within the 3 (THREE) day period, then any one of the Parties shall be entitled to refer the matter to the Independent Architect.
- 10.2 The Parties agree that the referral of a matter to the Independent Architect in accordance with the provisions of this Agreement shall be subject to the following provisions –
- 10.2.1 the Independent Architect shall act as an expert and not as an arbitrator;
- 10.2.2 each Party shall be entitled to make representations to the Independent Architect in such manner and form as the Independent Architect shall determine in his sole discretion;
- 10.2.3 if this Agreement is found to be lacking in any material respect in relation to the matter concerned, the Independent Architect shall be entitled to interpret and give effect to what he perceives to be the general intent of the Parties in the context of this Agreement and to make the determination accordingly;
- 10.2.4 the Independent Architect shall be entitled to obtain further advice in relation to the matter concerned;
- 10.2.5 it is the intention that determination shall be made as quickly and in the most effective manner reasonably possible in the circumstances;
- 10.2.6 the fees of the Independent Architect and any costs incurred by the Independent Architect shall be borne and paid for by the Party determined by the Independent Architect. Any other costs which the Parties may incur in relation to the determination shall be for their own account; and
- 10.2.7 the determination of the Independent Architect shall, in the absence of manifest error, be final and binding on the Parties and shall not be subject to appeal or review.

11 **EVENT OF DEFAULT & TERMINATION**

- 11.1 Each and every of the following events shall constitute an Event of Default –
- 11.1.1 if the Owner fails to pay the Developer any amount which becomes payable by it pursuant to this Agreement on the due date for such payment; and/or
- 11.1.2 if the Owner commits a breach of a term of this Agreement, the Sale Agreement and/or the Building Loan; and/or
- 11.1.3 if the Owner repudiates this Agreement, the Sale Agreement and/or the Building Loan; and/or
- 11.1.4 if the Owner commits an act of insolvency, as contemplated in the Insolvency Act No. 24 of 1936, as amended; and/or
- 11.1.5 if the Owner's shareholder/s and/or directors propose or pass a resolution for its liquidation or winding-up or to place it under business rescue proceedings; and/or
- 11.1.6 if any circumstances exist which may result in the Owner being placed under business rescue proceedings, whether voluntarily or on application by a third party; and/or
- 11.1.7 if a third party launches an application in terms whereof such third party seeks to place the Owner under business rescue proceedings; and/or
- 11.1.8 if the Owner or Developer has an order granted against or in respect of it, in terms of which that Party is sought to be provisionally or finally wound up, liquidated, dissolved, sequestrated or has

any equivalent application or proceedings brought against it in terms of any equivalent applicable legislation; and/or

- 11.1.9 if the Developer, without just cause and with no fault on the part of the Owner, wholly suspends the Works before the completion thereof and fails to re-commence with the Works within a period of 30 (THIRTY) days of being called upon to do so by the Owner in writing; and/or
- 11.1.10 if the Developer refuses to execute the Works in accordance with industry norms and persists in its refusal for a period of 30 (THIRTY) days after being called upon by the Owner in writing to rectify its breach.
- 11.2 If an Event of Default occurs, then, notwithstanding, without detracting from and in addition to any other right which the Parties may have, in terms of or arising from this Agreement or at law, the Developer or the Owner, as the case may be shall be entitled –
 - 11.2.1 to immediately cease to perform any further Works in so far as such Works are not complete, pending rectification of the breach;
 - 11.2.2 to cancel this Agreement on written notice to the other Party or to claim specific performance of this Agreement by the other Party; and
 - 11.2.3 to claim damages from the other Party.
 - 11.2.4 Provided however that notwithstanding anything to the contrary contained in this Agreement, the aggrieved party shall not be entitled to cancel the Agreement for any breach by the defaulting party, unless such breach is a material breach going to the root of the Agreement and incapable of being remedied by payment in money, or if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount within 7 days after such amount has been determined.
- 11.3 If the Works are suspended as contemplated in Clause 11.2.1 above, the Parties agree that –
 - 11.3.1 the Owner shall bear the risk in and to the completed Works and for all stock and material on the Property;
 - 11.3.2 the Owner shall be liable for all escalations in the Contract Sum and shall make payment of such amounts forthwith against the Developer’s demand for such payment; and
 - 11.3.3 the date before which the Works are to be completed, as determined in terms of Clause 7.3 above, shall be extended by a period equal to the number of days between the date of the Event of Default and the date of rectification thereof as certified by the Principal Agent.
- 11.4 it is recorded that should the Owner not secure the total Contract Sum and/or meet any obligations in terms of this Agreement as per Clause 5.1 of the Schedule within the specific time period, the Developer reserves the right to re-cos the Contract Sum.
- 11.5 If –
 - 11.5.1 the PURCHASER fails to secure the total Contract Sum amount referred to in Clause 4.1 of the Schedule by Date of Transfer of the Property; or
 - 11.5.2 this Agreement is lawfully terminated by the Developer or Seller to a breach on the part of the Owner;

the Developer and/or Seller shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to cancel this Agreement and claim damages and/or costs incurred.

11.6 If in any legal proceedings or arbitration relating to the enforcement by the Developer of its rights in terms of this Agreement, a Court or arbitrator awards costs to the Developer, such costs shall be determined and recoverable on the scale as between an attorney and own client and shall include collection charges, the costs incurred by the Developer in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any award or judgment awarded in favour of the Developer in relation to its rights in terms of or arising out of this Agreement.

12 **INTEREST & MORA**

12.1 The Owner shall pay interest at the rate of 2% (TWO PERCENT) per month or part thereof on all amounts falling due for payment in terms of this Agreement and which are not paid on the due date for payment thereof. Interest shall be calculated on the amount due from the due date for payment thereof to the date of actual payment thereof.

12.2 Should there be a delay in obtaining the Practical Completion Certificate for which the Owner is solely responsible then, in addition to the Developer's rights in terms of Clause 11.3.2 above and without prejudice to any other rights that the Developer may have in terms of this Agreement or in law, the Owner shall pay to the Developer, upon demand, interest calculated at a rate of 2% (TWO PERCENT) of the Contract Sum per month, and calculated from the date on which the Owner is notified in writing by the Developer as being in *mora* to the date upon which the Owner has ceased to be in *mora*. This is without prejudice to the rights of the Developer and/or the Association in respect of any penalties/additional levies payable by the Owner due to the said delay.

13 **CERTIFICATE OF INDEBTEDNESS**

13.1 A certificate signed by any director or manager of the Developer (whose appointment, authority or qualification need not be proved) shall be –

13.1.1 *prima facie* proof of the quantum of the amount due to the Developer in terms of this Agreement; and

13.1.2 valid, together herewith, for any purpose and as a liquid document (alternatively, as proof of a liquidated amount) in any Court of competent jurisdiction or arbitration for the purpose of obtaining an arbitration award, provisional sentence, summary judgement or any other judgement against the Owner, and the Owner acknowledges its indebtedness in respect of any amount so certified.

14 **INSURANCE**

14.1 The Developer shall effect public liability insurance generally covering accidental injury or death of a person and accidental loss or damage to material property on the Property until the Practical Completion Date and shall at all times during the progress of the Works keep the buildings in the course of erection insured to the full value thereof against loss or damage by fire or other appropriate risks.

14.2 The Owner shall ensure that the Property is insured to the full value thereof against loss or damage by fire and any other appropriate risks and shall further, from the Practical Completion Date, and be responsible for keeping the Works insured to the full value thereof against loss or damage by fire

or other appropriate risks.

- 14.3 The Developer shall be responsible for all remaining works insurances until the Practical Completion Date

15 ACCESS AND INCONVENIENCE

15.1 The Owner acknowledges that the Development will be an ongoing process and that certain inconvenience may be caused thereby. The Developer shall not be held liable for such inconvenience or any damages that flows therefrom and shall be entitled, (where necessary) to enter upon the Property for purposes of obtaining access to adjoining erven in the course of the Development.

15.2 The Owner further acknowledges that the possibility exists that the building/s and the other structures and/or improvements, including infrastructure and roads in the Development may be incomplete and that the Owner may suffer inconvenience from building operations, noise, dust and other nuisance factors on all days of the week and on public holidays but not on Sundays. The Owner shall not be entitled by reason of any of the foregoing to cancel or withdraw from this Agreement or to claim damages from any person or institute interdict proceedings nor shall the Developer be responsible for any loss, damage or inconvenience suffered by the Owner by reason of such building or development operations.

15.3 The Owner shall have the right of inspection of the Works, provided that –

15.3.1 such right of inspection shall be limited to 1(ONE) inspection every two months;

15.3.2 the Owner must pre-arrange any such inspection with the Developer on a date and time suitable to the Developer;

15.3.3 the Owner shall at all times be accompanied by either the Developer or one of its duly appointed agents; and

15.3.4 the Owner shall not personally or through his agent be entitled to issue instructions to any of the Developer's employees sub-Developers or Contractors or any other person employed or acting on their behalf. Requests can only be directed to the Principal Agent in writing.

16 COMPANY, CLOSE CORPORATION, TRUST AS OWNER

16.1 If the Owner enters into this Agreement as representative of a third party and fails to disclose the name of his principal and furnish written proof of his mandate to the Developer on the Signature Date and/or the Developer is not supplied with proof to its satisfaction that the representative's principal has ratified this Agreement on the Signature Date, the representative will be personally liable for all the obligations of the Owner in terms of this Agreement, and the Agreement will be regarded as having been entered into in the personal capacity of the person who signed this Agreement as Owner or on behalf of the Owner.

16.1.1 Should this Agreement be signed by a person entering into this Agreement as trustee or agent for a company to be incorporated as the Owner in terms hereof –

16.1.2 such company shall be duly incorporated within 30 (THIRTY) days of signature hereof by the Owner;

16.1.3 such company shall duly adopt, ratify and render itself bound by this Agreement within 5 (FIVE)

days after the date of incorporation of the company;

- 16.1.4 the provisions of the Companies Act No. 71 of 2008, as amended, applicable to pre-incorporation contracts, must be duly and properly complied with; and
- 16.1.5 the person so signing this agreement shall be deemed to have entered into this agreement as Owner in his personal capacity should the provisions of Clause 17.2.1 to 17.2.3 above not be complied with strictly in accordance with applicable legislative provisions concerning incorporation and pre-incorporation contracts.
- 16.2 The person signing this Agreement on behalf of any company or company to be formed, close corporation or trust, as aforesaid, shall be liable, jointly and severally, with the Owner to the Developer as surety and co-principal debtor for all the obligations of the Owner to the Developer arising out of or in connection with this Agreement.

17 ADDRESSES FOR RECEIVING NOTICES

- 17.1 The Parties choose as the address for receiving any notices or legal process in terms of this Agreement, their respective addresses set out in Paragraphs 1, 2 and 3 of the Schedule for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 17.2 Should any party at any time wish to change its/his abovementioned business/residential address and/or postal address, written notice of such change shall be delivered to or sent by registered post to the other party provided that such changed business/residential address or postal address shall be a business/residential address or postal address within the Republic of South Africa and provided further that

such change shall only be effective as from the date of receipt of such notice or such later date as may be stipulated in such notice.
- 17.3 Any notice given in terms of this Agreement shall be in writing and shall–
 - 17.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 17.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (EIGHT) day following the date of such posting;
 - 17.3.3 if transmitted by electronic mail message be deemed to have been delivered to and received by the addressee upon date of dispatch or any conduct of the addressee sufficient to indicate to the sender that the electronic mail message has been received,

unless the contrary is proved.
- 17.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

18 DISPUTE RESOLUTION

- 18.1 No dispute regarding any matter that must first be determined by the Principal Agent and/or Independent Architect in terms of this Agreement may be referred to arbitration, adjudication or

mediation.

- 18.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 18.3 Subject to Clause 18.1 and 18.2 above, should any disagreement arise between the Owner and the Developer arising out of or concerning this Agreement or its termination, any Party may give notice to the other to resolve such disagreement.
- 18.4 Where such disagreement is not resolved within ten (10) working days of receipt of such notice it shall be deemed to be a dispute and shall be referred by the party which gave such notice to either:
 - 18.4.1 Adjudication where the adjudication shall be conducted in terms of the edition of the JBCC Rules for Adjudication current at the time when the dispute was declared, or
 - 18.4.2 Arbitration where the arbitrator is to be appointed by the body selected by the parties whose rules shall apply. Where nobody is stated or where the stated body is unable or unwilling to act, the appointment shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The appropriate rules current at the time when the dispute is declared shall apply
- 18.5 Where a dispute is referred to adjudication the following shall apply:
 - 18.5.1 The adjudicator shall be appointed in terms of the Rules
 - 18.5.2 The adjudicator shall not be eligible for subsequent appointment as the arbitrator
 - 18.5.3 The adjudicator's decision shall be binding on the parties who shall give effect to it without delay unless and until it is subsequently revised by an arbitrator
 - 18.5.4 Should either party be dissatisfied with the decision given by the adjudicator, or should no decision be given within the period set in the Rules, such party may give notice of dissatisfaction to the other party and to the adjudicator within ten (10) working days of receipt of the decision or, should no decision be given, within ten (10) working days of expiry of the date by which the decision was required to be given the dissatisfied party shall refer the dispute to arbitration
- 18.6 Where a dispute is referred to arbitration the following shall apply:
 - 18.6.1 The arbitrator shall be appointed at the request of either party by the body stated in 18.4.2
 - 18.6.2 The arbitration shall be conducted by the arbitrator in accordance with the rules of the body stated in the contract data
 - 18.6.3 The arbitrator shall have the power to open or revise any certificate, opinion, decision, requisition, or notice relating to the dispute as if no such certificate, opinion, decision, requisition or notice had been issued or given
 - 18.6.4 The arbitrator's decision shall be binding on the parties who shall give effect to it without delay
- 18.7 The above provisions] shall not be construed as a waiver of the parties' entitlement to resolve a dispute by mediation at any time
- 18.8 Where a dispute is submitted to mediation the following shall apply:
 - 18.8.1 The parties shall agree on and appoint the mediator within ten (10) working days of the date on which the dispute was declared. Whether or not the mediation resolves the dispute, the parties shall bear their own costs concerning the mediation and share the costs of the mediator and related costs equally

- 18.8.2 The mediator shall agree the procedures, representation and dates for the mediation process with the parties. The mediator may meet the parties together or individually to help reach a settlement
- 18.8.3 Where the parties reach settlement of the dispute or any part thereof, the mediator shall record such agreement and on signing thereof by the parties the agreement shall be final and binding
- 18.9 Recording of a dispute shall not relieve the parties from liability for the due and timeous performance of their obligations.
- 18.10 The Owner consents to the joining of any subcontractor with the Developer as a party to any of the proceedings contemplated in terms of this clause 18.
- 18.11 The termination of this agreement shall not affect the validity of this clause 18.

19 GENERAL

- 19.1 In the event of there being more than 1 (ONE) Owner, the Owners shall be jointly and severally liable for all the Owners obligations in terms of this Agreement.
- 19.2 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement.
- 19.3 The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant Clause may not expressly provide for such continuation.
- 19.4 If the operation of this Agreement is suspended or conditional upon the happening of any event and if any obligation or restriction imposed on the parties or any of them is clearly intended to be implemented and given effect to notwithstanding the fact that this Agreement in its entirety may at that time not yet be unconditional, then the relevant obligation or restriction shall nevertheless apply and be given effect to, and the relevant provisions shall create binding obligations on the parties.
- 19.5 The Parties agree that this Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 19.6 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights in enforcing the obligations of the other Party in terms of this Agreement.
- 19.7 No addition to, alteration, cancellation, variation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.
- 19.8 The Developer shall be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the Owner.

19.9 The Owner shall not be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the Developer.

19.10 All the costs incidental to the drafting and amendment of this Agreement (including consultations) shall be borne by the Owner. The provisions hereof amount to a *stipulatio alteri* (contract for the benefit of a third party).

20 CONSUMER PROTECTION ACT

20.1 The Owner confirms that it has considered all the clauses in terms whereof he, amongst other things, limit the liability of the Developer or any other person and acknowledges any fact, in detail. The Parties further acknowledge that none of the terms of this Agreement should be construed as an acknowledgement that the CPA applies to this transaction in circumstances where the CPA would not have been applicable to the transaction.

20.2 The Owner acknowledges that in terms of the CPA he has the right to receive goods, in this case the Works, that:

20.2.1 are reasonably suitable for the purposes for which the goods are generally intended;

20.2.2 are of good quality, in good working order and free of defects; and

20.2.3 comply in general with the requirements and standards contemplated in Section 55 of the CPA, and accordingly, the Owner declares and acknowledges that when requested to do so, the Owner will satisfy himself that taking into account the usage of the Works for residential purposes, the provisions of the CPA are complied with to the extent applicable.

20.3 If and to the extent applicable, for the purposes of the CPA, the Owner and the signatory on its behalf (where applicable), after due consideration, by his signature of this Agreement acknowledge and agree that

20.3.1 he has entered into this Agreement freely and voluntarily and that no circumstances exist for his alleging either now or at any future time that he was at a disadvantage in agreeing to the terms and conditions contained herein or was in anything other than an equal bargaining position with the Developer agreeing to such terms and conditions as are contained herein;

20.3.2 he has done his own investigations whether to enter into this Agreement or not without any undue influence, pressure, duress, harassment or unfair tactics from the Developer;

20.3.3 he has inspected the Unit Floor Plan, Specification and Schedule of Finishes, draft Guarantee and Schedule of Charges attached hereto as **Annexures 1, 2, 3 and 4** respectively and declares himself to be fully acquainted with all relevant particulars relating to the dwelling to be erected on the Property, including the layout thereof and finishes thereof;

20.3.4 he understands the content, significance and import of this Agreement without undue effort, having regard to –

20.3.4.1 the context, comprehensiveness and consistency of the Agreement;

20.3.4.2 the organisation, form and style of the Agreement;

20.3.4.3 the vocabulary, usage and sentence structure of the Agreement; and

20.3.4.4 the use of any illustrations, examples, headings or other aids to reading and understanding.

21 COMPLIANCE WITH LAWS AND REGULATIONS

21.1 The Parties shall comply with all laws, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the works. The parties shall give all notices and pay all charges required by such authorities. The principal agents shall deal with the amounts thus paid.

22 DEVELOPERS SUBDEVELOPERS

22.1 The Developer shall appoint all Contractors and Sub-Contractors in terms of an agreement that provides for fair and equitable conditions of contract compatible with this Agreement.

23 SPECIAL CONDITIONS

SAMPLE
