

(as on 010/11/2025)

Erf No. / Ptn No. \_\_\_\_\_  
Agent: \_\_\_\_\_

# Building Agreement

## (PART A)

Made and entered into by and between:

**Rabe Dev Investments (Pty) Ltd**  
Registration number: 2020/836918/07

4 Handel Road, Arauna, Brackenfell, 7551

Email: pieter@goldstonepd.co.za

("the Contractor")

AND

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whose particulars are stated in **A** of the Schedule hereunder.

("the Client")

For the erection of a building or building/s on the Property as described in clause **B** of the Schedule hereunder.

## INFORMATION SCHEDULE

<b>A. CLIENT</b>	
Full names	<hr/> <hr/>
ID/Registration No	<hr/> <hr/>
Spouse Full names	<hr/> <hr/>
Spouse ID/Registration No	<hr/> <hr/>
Address	<hr/> <hr/>

<b>B. PROPERTY</b>	
Erf / Portion number	<hr/>
Township name	<hr/>

<b>C. CONSTRUCTION PRICE / CONTRACT SUM</b>	<b>R</b>
	Inclusive of VAT at 15%
Amount in words	<hr/> <hr/>

<b>D. COMMENCEMENT DATE</b>	Within 30 (thirty) days of receipt of the Municipal approved building plans and registration of transfer of the Property in the name of the Client, if applicable, and subject to the terms and conditions in clause 5 of Part B.
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<p><b>E. OWNERS ASSOCIATION</b></p> <p>*Does an Owners Association govern the Property? If yes, complete the name of the association.</p> <p>Contact name and number</p> <p><i>(*Delete if not applicable)</i></p>	<p><u>Zevenbosch Homeowners Association</u></p> <p>Ruben von Molendorff / HJ MANAGEMENT SERVICES Tel 021 202 2191</p>
<p><b>F. *MORTGAGE LOAN AMOUNT. (IF ANY)</b></p> <p>(Which may include the purchase price of the erf or apportion thereof)</p> <p><i>(*Delete if not applicable)</i></p>	<p><u>R</u></p>
<p>Amount in words</p>	<p>_____</p>
<p><b>G. ARCHITECT</b></p>	<p><u>Johan van Zyl</u></p>
<p><b>H. AGENCY</b></p>	<p>_____</p>
<p><b>I. DEVELOPMENT</b></p> <p>*If the Property is part of a Development, the complete name of the Development.</p> <p><i>(*Delete if not applicable)</i></p>	<p><u>Zevenbosch Estate</u></p>
<p><b>J. *DEVELOPER</b></p> <p>If clause I above is applicable, complete the name of the Developer.</p> <p><i>(*Delete if not applicable)</i></p>	<p><u>Rabe Dev Investments (Pty) Ltd</u></p>
<p><b>K. SCHEDULE OF COSTS</b></p>	<p>All the Costs as set out in the Contractor's quotation in Addendum C1 hereto are inclusive of the Contract Price.</p>

Costs for which the Client is responsible, which are therefore excluded from the Contract sum.	Yes		Mortgage Bond Registration Costs
	Yes		Financial institution's initiation, valuation, and other costs.
		No	Architect's payment certificates, where necessary as provided for in this agreement.
		No	Owners Association levy and Architectural scrutiny fees, if applicable.
		No	Architectural Fees
		No	Municipal service connection fees.
		No	Municipal submission fee
		No	NHBRC registration fees

## 1. PREAMBLE

### WHEREAS:

- 1.1 The Client has either agreed on the purchase of the Property or is already the registered owner of the Property described in clause **B** of the Schedule;
- 1.2 It is a condition of the aforementioned purchase agreement that the Client agrees to the building on the Property.
- 1.3 The Contractor has agreed to build the building/s on the Property on behalf of the Client.

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

## 2. INTERPRETATION:

- 2.1 In this agreement, unless the context otherwise indicates:
  - 2.1.1 "**Architect**" means the Architect referred to in clause **G** of the Schedule or any other architect which may be nominated by the Contractor from time to time;
  - 2.1.2 "**Attorneys**" means Bellingan Muller Hanekom Inc. Ref. L van Schalkwyk, Tel 021 9197599;
  - 2.1.3 "**Contractor**" means Rabe Dev Investments (Pty) Ltd, Registration number 2020/836918/07 ;
  - 2.1.4 "**Completion Date**" means any of the occurrences referred to in clause 5.5.1 – 5.5.4 in **Part B**;
  - 2.1.5 "**Client**" means the party/ies described in clause **A** in the Schedule;
  - 2.1.6 "**Interim Interest**" means the interest charged by the Purchaser's Financial Institution on a loan to fund the purchase of the Property and construction of the Works or any part thereof, secured by a mortgage bond registered against the Property, for all withdrawals from the mortgage loan, levied from the date of registration of the mortgage bond until the Completion Date.

- 2.1.7 “**Plans**” means the Architect’s drawings attached as Addendum **A1**.
- 2.1.8 “**Possession Date**” means the date advised by the Contractor when it intends to commence with the construction of the Works, but subject to clause **D** of the Schedule and clause 5.1 of Part B below;
- 2.1.9 “**Prime Rate**” means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum, compounded monthly in arrear, charged by ABSA Bank Limited on the unsecured overdrawn current accounts;
- 2.1.10 “**Property**” means the property referred to in clause **B** of the Schedule on which the Contractor is to erect a building, which property is identified on the Architect’s layout plan annexed hereto as Addendum **A1**.
- 2.1.11 “**Schedule**” means the Information Schedule above, which shall be deemed to be incorporated in this agreement and shall be an integral part thereof;
- 2.1.12 “**VAT**” means value-added tax at the applicable rate in terms of the Value Added Tax Act No 89 of 1991 or any statutory re-enactment or amendment thereof.
- 2.1.13 “**the Works**” means all the activities which are required to be undertaken by the Contractor to erect the building in terms of this agreement.
- 2.2 The head notes to the paragraphs in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.3 Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts, and bodies corporate, and vice versa.
- 2.4 If any portion in the Schedule, the preamble and/or this clause 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the Schedule, the preamble and/or this clause 2 (as the case may be) effect shall be given thereto as if such provision was a substantive provision in the body of this agreement.

### 3. THE BUILDING AGREEMENT:

- 3.1 The Contractor undertakes in a proper and workmanlike manner to erect a building or buildings (“the Works”) on the Property in accordance with the Architectural Building Plan and the Specifications and Finishing Schedule (Addenda “A1” and “B1”), as recorded in Part B of this Building Agreement.
- 3.2 The Client shall pay the Contract Sum to the Contractor for the erection of the building/s in terms of this agreement, which sum (inclusive of VAT) as specified in clause 4 of **Part B**.

### 4. TERMS AND CONDITIONS

If this Building Agreement is attached to the purchase agreement of the Property then this agreement shall also be subject to all the Terms and Conditions already referred to in the Land Sale Agreement for the Property, insofar it may be applicable and relevant to this agreement. The Works are to be erected on the Property subject to the Terms and Conditions referred to in all Parts hereof, namely;

Building Agreement	(Part <b>A</b> )
Schedule of Terms to Building Agreement	(Part <b>B</b> )
Architectural Building Plan	(Addendum <b>A1</b> )

Specifications and Finishing Schedule (Addendum **B1**)  
Contractor's quotation (Addendum **C1**)

(Which documents constitute the entire agreement concluded between the parties.)

## **5. CONSTRUCTION PRICE**

- 5.1 The Construction Price is the amount as set out in clause **C** of the Schedule, which includes VAT.
- 5.2 Inclusive of the Construction Price are the costs payable by the Contractor as stipulated in Addendum **C1**.
- 5.3 The Client shall pay the Contract Sum to the Contractor as specified in clause 4 of **Part B**.

## **6. COMMISSIONS**

If Agent's Commission is payable by the Contractor to the Agency referred to in clause **G** of the Schedule, then payment will be done in accordance with the Mandate Agreement concluded between the Contractor and the Agency and on production of the required Fidelity Fund certificates prescribed by the Property Practitioners Act.

## **7. ACKNOWLEDGEMENT**

The Client acknowledges that he/she thoroughly perused this Agreement, including its Schedule of Conditions and all parts, annexures, and addenda, and declares that he fully understands each and every term and condition contained herein.

## **8. POPI COMPLIANCE**

The parties to this agreement agree to provide their personal information to the Attorneys, the Agency, NHBRC, Developer, Contractor's insurers as well as the Mortgage Originator for the Client, if required (The "Institutions"), on the express understanding that:

- 8.1 This constitutes a consent, as required under Section 11(1)(a) of the Protection of Personal Information Act 4 of 2013 ("POPI").
- 8.2 The Institutions will have access to our personal details, which have been furnished to them for the purposes of their mandates and matters ancillary thereto.
- 8.3 The Institutions are authorised to release personal information not only between them, but also to the South African Revenue Services, the bond cancellation- and bond registration attorneys, the financial institution investing funds or to consider a mortgage loan application, involved in this transaction, relevant local authority, any Owners Association governing the Property, The Developer's financial institution granting development finance, if any, as well as any litigation attorney tasked with the mandate to assist with the enforcement or cancellation of the transaction, or a claim for damages, or action or application proceedings pertaining to the transaction (if necessary), solely for the purposes of this transaction.
- 8.4 The personal data will be used only for the purposes as set out above.
- 8.5 The Institutions will, in addition to their POPI compliance, store our details, as provided for and specified by their governing body, from time to time.

**9. OWNERS ASSOCIATION**

19.1 If it is indicated in clause **E** of the Schedule that an Owners Association governs the Property, then it is agreed that:

19.1.1 The Works shall comply with the requirements of the Owners Association with specific reference to the Architectural guidelines that may be applicable and enforceable by the association.

19.1.2 Should the Property not be part of a Development as envisaged in clause **I** of the Schedule, then the onus is on the Client to advise the Contractor of the existence of Architectural and any other guidelines, and also arrange access to the Property if it is situated within a security complex.

19.1.3 The Client is liable for any Contractor's levy imposed by the Owners Association to commence and complete the Works, as well as Architect's scrutiny fees for building plan approval.

**10. PAYMENTS**

It is agreed that it is the Client's responsibility to verify the banking details of any recipient of funds payable in terms of this agreement in an effort to prevent Fraudulent Cyber Intervention to divert funds into a Third-Party Banking Account. It is agreed that payment to a fraudulent account for whatsoever reason will not constitute payment of any amount in terms of this agreement.

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 202\_.

**AS WITNESSES:**

for and on behalf of:  
**the Contractor**

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

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

\_\_\_\_\_  
Authorised signatory, who warrants that he is  
duly authorised hereto

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 202\_.

**AS WITNESSES:**

For and on behalf of:  
**the Client and Client's Spouse**

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

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

\_\_\_\_\_  
Client or his/her/its duly authorised agent who  
warrants that he/she is duly authorised hereto

## SCHEDULE OF TERMS TO THE BUILDING AGREEMENT (PART B)

### 1. DEFINITIONS

#### 1.1 ARCHITECT'S BUILDING PLAN (Addendum "A1")

For the purposes of this Building Agreement, the attached Drawings of the Works and Plans, subject to any amendments by the parties, will be submitted to the approval of the Owners Association, if applicable, as well as the Local Municipality. Upon approval of such Plans by both the Owners Association (if applicable) and the Local Municipality, the approved building plans will supersede the existing Plans, and the approved building plan will serve as the Architect's Building Plan for the execution of the Works as stipulated herein.

#### 1.2 SPECIFICATIONS AND FINISHES SCHEDULE (Addendum "B1")

The Specification and Finishing schedule annexed to this agreement as Addendum B1, constitutes the specifications for the Works in terms of this Building Agreement.

### 2. SUSPENSIVE CONDITION – BOND

2.1 If clause **F** of the Schedule is completed with an amount and not deleted, then this agreement is subject to the Client obtaining a written quotation from a recognized financial institution for the amount (if any) stated in clause **F** of the Schedule within 30 (Thirty) days of the date of signature hereof or such extended period as the Contractor may determine;

2.2 The Client hereby authorises the Contractor or its agent to apply on behalf of the Client for a loan and hereby grants the Contractor and/or its Agent an irrevocable Power of Attorney *in rem suam* to make application on his behalf. The Client hereby undertakes to sign all such documents and to do all such things as may reasonably be necessary or required for purposes of obtaining the grant of a mortgage loan, as well as any mortgage registration documents. Should the Client fail to sign all such documents and/or do all such things, any such failure shall be deemed to be a breach of a material term or condition of this agreement by the Client.

2.3 It is a condition of this Agreement that in the event of the Client's application for a loan being successful, the registration of the mortgage bond shall be affected and registered by the Attorneys. The Client undertakes to procure that the financial institution from which the Client obtains the loan instructs the Attorneys to attend to the registration of such a bond.

2.4 The Client shall be liable for payment of all costs of and incidental to the registration of the mortgage bond, including conveyancers' fees and necessary disbursements, and any mortgagee's fees.

### 3. APPROVED BUILDING PLAN AND SPECIFICATIONS

3.1 In case of any discrepancy between the Plans and the Specification and Finishing Schedule (Addendum **B1**), the terms of the Specifications will have precedence over the Plans.

3.2 If any changes, amendments or additions to the Plans and/or the Specification and Finishing Schedule are required, then these changes will be made in consultation with the Client and any amendment deemed necessary, with clear stipulations of the changes/procedures and the relevant changes in cost.

- 3.3 The Client hereby irrevocably gives Power of Attorney to the Contractor to submit all necessary documentation to the Local Authorities for approval, should the same be required.
- 3.4 If clause I of the Schedule is completed, then the Client confirms that the Property forms part of a township development conducted by the Developer, and as such, the Contractor is relying on obtaining municipal building plan approval before the Contractor will be in a position to commence with construction, which approvals will be obtained within a reasonable time.

#### **4. PAYMENT OF THE CONSTRUCTION PRICE**

- 4.1 If a financial institution does not finance the Works in terms of a mortgage loan, then payment of the Construction Price shall be made by the Client to the Contractor as follows;
  - 4.1.1 25% on completion of floor slab;
  - 4.1.2 25% on wall plate height;
  - 4.1.3 25% on completion of ceilings, plaster works, windows, and external walls;
  - 4.1.4 20% on completion of cupboards and sanitary ware;
  - 4.1.5 Balance on date of completion and receipt of occupation certificate for the Works;
- 4.2. Should any amount not be paid by the Client on the due date, interest will be charged at the Prime Rate.
- 4.3 The Contractor assumes responsibility for the Interim Interest. He will credit the Client with the Interim interest when calculating the final payment in terms of clause 4.1.5.
  - 4.3.1 The onus is on the Client to prove the Interim Interest; the Contractor will accept a complete set of mortgage loan statements covering the inception period of the mortgage loan until the Completion Date.
- 4.4 If a Financial Institution finances the Building Works, the Client hereby empowers and authorises the Contractor to receive progress payments from the Financial Institution as determined by the Financial Institution.
  - 4.4.1 The Client hereby undertakes to sign 5 (Five) Standard Progress Payment Documents when signing the Transfer- or Mortgage registration Documents. The Attorneys will hand these signed Progress Payment Documents to the Contractor, who shall be entitled to receive the progress payments per 4.1 above, which amounts may be verified and approved by the property evaluator appointed by the Financial Institution.
- 4.5 Should the Building Works not be financed by a Financial Institution, the Client will pay into the trust account of the Attorneys, the full Construction Price for the Works, to be held by such Attorneys in an interest-bearing trust account, interest to accrue for the benefit of the Client until the date upon which payment of the relevant amount falls due to the Contractor. The Client is liable for the reasonable fees of the Attorneys to invest and release the funds in terms of this agreement. The Client irrevocably authorises the Attorneys to release from the funds so received the payments due to the Contractor in terms of the provisions of this Building Agreement.

#### **5. COMMENCEMENT AND COMPLETION OF BUILDING WORK**

- 5.1 The Works will commence on the Commencement Date in clause D of the Schedule on condition that the Contractor will not be obliged to start with the construction of the Works until:
  - 5.1.1 The Client provided security to the Contractor for payment of the full Construction Price;

- 5.1.2 Receipt of the enrolment certificate for the Property from the National Home Builders Registration Council (“NHBRC”);
- 5.1.3 All permissions, approvals, registrations, or other powers have been received by the Contractor;
- 5.1.4 All Terms and Conditions in any of the Agreements between the parties have been met in full;
- 5.1.5 The Client is the registered owner of the Property, unless the Contractor assumes the responsibility to commence with the Works prior to the Client becoming the registered Owner of the Property as provided for in clause 5.7 hereunder.
- 5.2 Should the Commencement- or Completion Date of the Works be delayed by *vis major*, exceptionally inclement weather, non-availability of any materials or labour, or for any reason beyond the control of the Contractor, the Client shall have no claim against the Contractor, however arising. In case of such an event the Contractor will be entitled to:
  - 5.2.1 A reasonable extension of the time allocated for the commencement or completion of the Works. Should the Client dispute the allocation of the extension, then the Architect’s certification whether the extension is reasonable or not shall be final and binding on both parties.
  - 5.2.2 If there is a delay of 9 (nine) or more calendar months, which prevents the Contractor from commencing with the construction of the Works then the Contractor is entitled to recover from the Client any increase in material, labour, fees, or any other item or alternatively, the Contractor may cancel this agreement if in its sole discretion, it is not economically viable to continue with this agreement as a result of such increases.
- 5.3 The Contractor will complete the Works within 220 (two hundred and twenty days after Approved Building Plans have been received from the Authorities, subject to the terms in clause 4 and 5.1.1 – 5.1.4 of **Part B**.
- 5.4 The Works will be deemed to be completed on submittal of proof as referred to in clause 5.5 hereunder, in which event all responsibilities of the Contractor to the Works are released. The Client will have no further claims against the Contractor regarding the Works.
- 5.5 Any of the following will be seen as proof of the Completion Date, as per clause 5.4 of this Building Agreement, but on condition that an occupancy- or completion certificate for the building has been issued by the Local Authority:
  - 5.5.1. the date on which the keys of the Works were formally handed over to the Client (“Hand Over”); or
  - 5.5.2. the handover of the Works to the Client or his representative; or
  - 5.5.3. notice by the Contractor that the Works have been finalized and that the Works are ready for possession and occupation by the Client; or
  - 5.5.4. A signed certificate from the Architect, to certify the Works as being satisfactorily completed, which Certificate shall in any event be presented by the Contractor to the Client in the instances referred to in clauses 5.5.1 to 5.5.3 above.
  - 5.5.5

- 5.6 The Full Construction Price, as well as all variations and extras, will be payable before handover of possession and occupation of the Property. Failure to pay the full Construction Price shall also result in keys for the Property not being handed over to the Client or his Agent.
- 5.7 Notwithstanding any other provision in this agreement, the Contractor may, at its own discretion, commence with the construction of the dwelling before the registration of the transfer of the Property in the Client's name.
- 5.8 The Client will only be allowed to access the Property during the construction period, with prior arrangement with the Contractor confirming a suitable time and date, and to comply with health and safety regulations
- 5.9 It is agreed that the Contractor may use the Works as a show house during the construction period, but may not delay the Hand Over for this reason without the consent of the Client.
- 5.10 All risk and responsibility pass to the Client on the Completion Date.

## **6. VARIATIONS, EXTRAS AND OMISSIONS**

- 6.1 Extras shall mean work which cannot reasonably be inferred from the Works as agreed upon herein;
- 6.2 No variations, extras, or omissions shall vitiate this agreement, and no dispute concerning variations or extras will render the remaining provisions of this agreement null and void.
- 6.3 The execution of such extras, variations, or omissions will only be done if agreed so in writing between the parties. The Client will be liable for payment of all costs for such variations or extras over and above the Contract Sum as are payable before the construction of the agreed variations and extras, and within 7 (Seven) days from the Contractor's request for payment.
- 6.4 It is hereby expressly agreed that the Contractor will under no circumstances be compelled to agree to such extras, variations or omissions.

## **7. POSSESSION**

The Contractor will be given possession of the Property on the Possession Date, from which date the Contractor shall have a right of retention of the Property until all monies owed to the Contractor have been paid in full according to the terms and conditions of this agreement.

## **8. INSURANCE:**

The Contractor shall take out an All-Risk Insurance Policy which must cover the Works, during the construction period, until the Completion Date, whereafter the risk passes to the Client as provided for in clause 5.9 and 22.2 of **Part B**.

## **9. CESSION OF GUARANTEES**

The Contractor shall cede all guarantees which it received for any item or material, being part of the Works, to the Client on condition that it is entitled to do so.

## **10. JOINT CLIENTS**

In the event the Client constitutes one or more persons ("Joint Clients"), then all such Clients shall be held liable jointly, severally, and in *solidum* for all monies due to the Contractor in terms of this Building Agreement. The signature of any of the Clients will be deemed binding on all parties as

Clients in relation to any Variations, extras, and omissions or any other documentation, including the Plan and Working Drawings.

#### **11. INDULGENCE**

Notwithstanding any stipulation in this Building Agreement, any indulgences or extensions of time granted by the Contractor will not constitute the waiver of any of the rights of the Contractor to claim the fulfilment of the terms and conditions of this Building Agreement.

#### **12. WITHHOLDING OF PAYMENTS**

If any work of whatsoever nature is still required to be done as part of Works on the date that Possession thereof is tendered to the Client, then Client shall not be entitled to withhold, set off or retain any amounts owing by the Client to the Contractor nor shall the Client be entitled to withhold or rebate payment of any amount due to the Contractor in terms of this Building Agreement by reason of any breach or alleged breach of the Contractors' obligations hereunder. Should any dispute arise regarding whether the Client is entitled to withhold any payment or amount due, the Architect shall make a ruling on the Client's entitlement to withhold such sum. The ruling of the Architect shall be final and binding on both parties, and the Architect's costs incurred in making such ruling shall be borne by the Party against whom the ruling was made.

#### **13. ENTIRE AGREEMENT**

This Building Agreement, in all its parts and with its addenda, shall constitute the full and final Building Agreement between the parties. No other terms, conditions or proposals whatsoever, which the parties or their Agents may have made, shall be binding save where such amended terms, conditions or proposals have been reduced to writing and signed by both the Contractor and the Client.

#### **14. DEFAULT AND ARBITRATION OF DISPUTES**

14.1 In the event of Client failing to pay the Contractor such amounts as are provided for in this Agreement or defaulting in his obligations howsoever arising and remains in default for seven (7) days after dispatch of written notice sent by registered post or delivered by hand or email by the Contractor to the Client or in the event of the Client's estate being sequestrated or liquidated (as the case may be) voluntarily or compulsory or should any Judgment by competent Court remain unsatisfied for more than seven (7) days from date of Judgment, then the Contractor shall have the right and option notwithstanding any previous waiver or anything to the contrary herein contained and allow prejudice to any other right forthwith to terminate this agreement, in which event:-

14.1.1 The Contractor shall remove from the site its goods, machinery and plant and give the same facility to its sub-contractors to do likewise;

14.1.2 The Client shall pay the Contractor within seven (7) days of cancellation for: -

14.1.2.1 The value of the Works executed at the date of such cancellation, which shall *inter alia* include but not be limited to Architect's fees, municipal fees, agents' commission, administration costs, and any other costs howsoever arising;

14.1.2.2 the costs of materials and goods or the hiring of any equipment ordered adequately for and/or delivered to the Property and actually paid for by the Contractor or charged to the Contractor's account to which the Contractor is bound to accept deliveries;

14.1.2.3 any loss or damage howsoever arising suffered by the Contractor by virtue of such cancellation;

14.1.2.4 The costs of removal as provided for in sub-paragraph

- 14.2 In addition to all other remedies which the Contractor may have against the Client, the Client upon the said cancellation may take possession of and shall have a *lien* upon all materials and/or goods intended for the works which may have become the property of the Client under this agreement until payment of all monies due to the Contractor by the Client howsoever arising shall have been made.
- 14.3 In the event of the Client failing to fulfil any obligations under this Agreement and the Contractor cancelling the agreement then all payments made by the Client to the Contractor in terms of his Agreement shall be retained by the Contractor as liquidated damages but shall be without prejudice to any other claims which the Contractor may have against the Client by reason of the latter's breach of this Agreement.
- 14.4 Should the Contractor breach any material term of this agreement and remain in breach for a period of 14 (fourteen) days after receiving written notice by the Client sent by prepaid registered post and electronic mail, then the Client may without prejudice to any other rights contained herein, forthwith terminate the contract subject to such notice being void in the event of the Client being in breach of this contract at the time such notice is given by the Client to the Contractor
- 14.5 Should any dispute arise between the parties to this agreement regarding: -
- 14.5.1 the interpretation of; or the carrying into effect of; or
  - 14.5.2 any of the party's rights and obligations in terms of this agreement; or
  - 14.5.3 the termination of or arising from the termination of; or
  - 14.5.4 the rectification of this agreement
- then the dispute shall be submitted to and decided by arbitration.
- 14.6 The arbitration shall be held: -
- 14.6.1 within the jurisdiction of the City of Cape Town;
  - 14.6.2 with only the parties and their representatives present thereat;
  - 14.6.3 otherwise in terms of the Arbitration Act No 42 of 1965, it being the intention of that the arbitration shall, where possible, be held and concluded within 21 (Twenty-one) working days after it has been demanded.
- 14.7 The arbitrator shall be, if the matter in dispute is principally: -
- 14.7.1 a legal matter, a practicing attorney of not less than 15 (Fifteen) years standing or a practicing advocate of not less than 10 (Ten) years standing;
  - 14.7.2 an accounting matter, a practicing chartered accountant of not less than 10 (ten) years standing;
  - 14.7.3 a building matter, any architect appointed by the Institute of Architects, Cape Town;
  - 14.7.4 any other matter, any independent person agreed to between the parties.
- 14.8 Should the parties disagree on an arbitrator within 14 (Fourteen) days after the arbitration has been demanded then the arbitrator shall be nominated by the head of the time being of the Legal Practice Council: Western Cape.

14.9 Should the parties disagree whether dispute is of a legal, accounting, building or other nature within 7 (seven) days after the arbitration has been demanded then it shall be considered a matter as referred to in clause 14.8 hereof.

14.10 The arbitrator shall have the fullest and freest discretion about the proceedings, and his award shall be final and binding on the parties to the dispute. Furthermore, the arbitrator: -

14.10.1 may dispense wholly, or in part, with formal submissions or pleadings;

14.10.2 shall determine the applicable procedure;

14.10.3 shall not be bound by strict rules or evidence;

## **15. WATER AND ELECTRICITY:**

15.1 For the purpose of executing the building work, the Contractor will be entitled to use water and/or electricity and/or any other service on the Property. The Client shall be liable for the costs of such services to the maximum amount of R6 000.00 (Six Thousand Rand).

15.2 If the Contractor requires the use of water and/or electricity and/or any other service on another Property for the purpose of executing building work on other properties other than on the Property, the Contractor will be entitled to such aforementioned services and the Contractor will be liable for the costs of such services.

## **16. RESTRICTION ON ALIENATION OF PROPERTY**

The Client shall not alienate the Property to any third party until the Works to be carried out by the Contractor in terms of this Agreement have been completed and the Contractor has received payment in full of all amounts due to it in terms of this Agreement.

## **17. STRUCTURAL GUARANTEE AND MINIMUM BUILDING STANDARDS**

17.1. The Client shall, within 7 (seven) days after the Completion Date, notify the Contractor in writing of all or any defects in the Works, failing which the Client shall be deemed to have accepted the Works in good order and condition. The Client shall not be precluded from exercising his/her rights in terms of Section 56 read with Section 55 of the Consumer Protection Act in so far as it may be applicable.

17.2 The Contractor shall only be responsible in terms of clause 17.1 for defects caused by faulty materials and/or workmanship, and the Contractor shall under no circumstances be liable for any consequential loss or damage. The Client hereby waives any such claim.

17.3 The Contractor shall remedy any deviation from the terms, Plans and specifications of this agreement or any deficiency related to design, workmanship or material, manifesting itself within 180 (One Hundred and Eighty) days of the Completion Date, provided that the Client notifies the Contractor thereof in writing within the said period, failing which the Client shall be deemed to have accepted the Works in good order and condition.

17.4 The Contractor shall remedy any roof leak of which it was notified within 1 (one) year of the completion date.

17.5 The Client benefits from the National Home Builders Registration Council's (NHBR's) structural guarantee of 5 (Five) years for major structural defects.

17.5 The Contractor shall cause all such reasonable repairs as notified by the Client within such period to be effected as soon as reasonably possible thereafter at the Contractor's cost.

17.6 Clauses 17.1, 17.3, and 17.4 are the Contractor's guarantee. Although the Contractor strives to erect a building of outstanding quality and the highest standards, the guarantee

cannot cover any loss or damage as a result of misuse, neglect, carelessness, accident, or any risks, which are generally insured against in an insurance policy, as required by Financial Institutions with mortgage loans. This guarantee also excludes the following types of repair work:

- 17.6.1 Any touch-up paintwork whatsoever;
- 17.6.2 Hairline cracks on any plasterwork. These types of cracks are unavoidable and are caused by the natural shrinkage of materials during the first 6 (six) months after completion. When walls are repainted, the hairline cracks will disappear. The Contractor is not responsible for repairing or repainting cracks of this nature.
- 17.6.3 Water may be blown through the garage door into the garage up to a distance of 1.5m inside the garage. There is no guarantee that the rubber on the garage door will keep this water out if blown in by the wind.
- 17.7 The Contractor has made every effort to incorporate the Client's consumer rights, as provided for in the Consumer Protection Act ("CPA"), into this agreement. If any provision in this agreement is found to contravene the CPA, the parties agree that such provision shall be severed from this agreement and be treated as if it were not part of this agreement.
- 17.8 In the event of a dispute between the parties as to whether the Contractor is liable to make good a defect or whether the defect has been adequately repaired and not resolved between the parties within 60 (Sixty) days of receipt of a notice referred in paragraph 17.1, 17.3 or 17.4 above, then a certificate issued by the Architect to the effect whether the Contractor is liable or that any defect has been made good shall be final and binding on both parties and shall relieve the Contractor from any further obligation in respect of such defect.
- 17.9 In the event of any defect manifesting itself after the period referred to in clause 17.1, 17.3 or 17.4 above for which the Client agrees the Contractor shall not be liable, the Contractor does hereby cede and make over to the Client its rights to claim from the contract or nominated sub-contractor/supplier to the extent that the Contractor is not precluded therefrom.
- 17.10 The final extent of the Works may vary from the extent indicated on the Plans. If the difference in extent is less than 10% (Ten Percent) of the extent stipulated on the Plans, the parties will have no recourse against each other.
- 17.11 All undertakings hereby given to the Client are personal to the Client and cannot be alienated and disposed of by him in any way.
- 17.12 The Client shall not be entitled for whatever reason to withhold, set off, or retain any amounts owing by the Client to the Contractor, nor shall the Client be entitled to withhold or abate payment of any amount due to the Contractor in terms of this Agreement by reason of any breach of the Contractor's obligations hereunder.

## **18. PLACING OF BUILDINGS**

- 18.1 The Works will be erected and positioned as per the Plans.
- 18.2 In the event of an error in the position of the Works by the Contractor such error shall not be deemed to constitute a breach of this agreement by the Contractor and the Contractor shall have the right and the Client hereby automatically authorizes the Contractor to make such amendments, alterations or modifications to the Plans and/or Specification and Finishing Schedule as may be necessary to legitimise the erroneous position of the Works or if necessary to reposition the same to comply with any law, bylaw, regulation, condition of title or the like, which would otherwise have been breached by such erroneous positioning of the Works.

18.3 The Client shall have no claim of whatsoever nature or howsoever arising against the Contractor for damages as a result of a change of or an error in the positioning of the Works.

## **19 LEVELS**

It is recorded that all levels on the final working drawings and/or Plans are diagrammatic and subject to alteration to conform to actual site conditions, such alterations to be determined by the Contractor.

## **20 MATERIALS AND SPECIFICATIONS**

20.1 The material and specifications, which the Contractor will use, is set out in the Specification and Finishes Schedule in Addendum **B1**. The Contractor will be entitled to make amendments thereto if these materials are reasonably not available and he will be entitled to replace it with similar materials.

20.2 All colour sanitary ware, carpets, tiles, and face bricks, where applicable, shall be supplied at the risk of the Client as the Contractor does not guarantee colour, colour match, texture, availability, or quality thereof. Upon being advised by the Contractor that the materials mentioned above are not available, the Client shall forthwith choose alternatives thereto.

20.3 Any additional costs which might be incurred with the selection of the materials in terms of clause 20.1 by the Contractor or by the Client in terms of clause 20.2 shall be borne by the Client in addition to the Contract Sum.

## **21 SUB-CONTRACTORS**

21.1 The Contractor may, at its election, cede or assign this building contract in whole or in parts to another Contractor or sub-contractor and will further be entitled to employ such sub-contractor to complete work to certain parts of the Works or to install certain equipment and/or materials.

21.2 The Client will not be entitled to appoint any sub-contractor, artist, craftsman, or other expert to do any work on the property of whatsoever nature while the building is in progress without the written consent of the Contractor.

21.3 The Client or any of his employees will under no circumstances interfere with the building work being effected on the property by the employees of the Contractor and will also under no circumstances delay the building work of the Contractor.

21.4 If such consent by the Contractor should cause any extra costs due to the actions of the Client or due to the employment of the Client of any third party, the extra costs will be for the account of the Client over and above the Contract Sum.

## **22. DAMAGE, DEFECTS AND RISK**

22.1 Notwithstanding anything to the contrary herein contained, the Contractor will not be responsible for the repair of any damage or defects which might be caused by *vis major*, civil unrest, or negligence by the Client.

22.2 All risk relating to the Works shall pass to the Client on the Completion Date, excluding such reasonable defects reported in writing to the Contractor referred to in clause 17 above, in respect of which the risk will pass to the Client from the date of repair thereof by the Contractor.

**23 JURISDICTION OF THE MAGISTRATES' COURT**

The parties hereby agree in terms of Section 45 of the Magistrates Court Act (Act 32 of 1944) that the jurisdiction of the Magistrates Court should apply should any claims arise from this Agreement.

**24 NOTICES**

24.1 It is agreed by the parties that their respective addresses, inclusive of the email address, as set out on the first page for the Contractor and in clause **A** of the Schedule for the Client, hereof, shall be the addresses to which all notices or other documents may be sent in relation to this agreement.

24.2 In the event of either party to this agreement changing its abovementioned *domicilium* addresses, it shall give notice to the other party by prepaid registered post advising the other party of its new *domicilium*.

24.3 All notices by one party to the other delivered by electronic mail in terms of this agreement will be deemed to be received by the receiving party within 2 (two) days after being dispatched by the sender.

**25 SURETY**

In the event of a registered Company/Close Corporation or the Trustees of a Trust being the Client, then the signatory on behalf of such Company/Close Corporation or the Trust, by virtue of his signature hereto, binds himself as surety and co-principal debtor jointly and severally with the Company/Close Corporation or Trust for the fulfillment of all the terms and conditions of this Agreement.

**ADDENDUM A1**

ARCHITECT'S BUILDING PLAN

**ADDENDUM B1**

**SPECIFICATION AND FINISHING SCHEDULE**

Erf No: \_\_\_\_\_

Client: \_\_\_\_\_

**ADDENDUM C1**

Contractor's Quotation