

**BUILDING CONTRACT**

Concluded by and between:

**T G P CONSTRUCTION CAPE TOWN (PTY) LTD (REG NO: 2017/506093/07)**  
(hereinafter referred to as "the CONTRACTOR")

**AND**

.....  
(hereinafter referred to as the "the EMPLOYER")

in respect of works to be carried out on:

..... (erf number)

1. AGREEMENT

The CONTRACTOR is hereby appointed by the EMPLOYER to erect in a proper and workmanlike manner a dwelling house and outbuildings ("the WORKS") on the erf described in Schedule B hereto (hereinafter referred as "the PROPERTY") substantially in accordance with the PLANS and the FINISHING SCHEDULE. This AGREEMENT may, depending on the status and nature of the EMPLOYER, be subject to the Consumer Protection Act 68 of 2008, as provided for in that statute.

2. CONTRACT SUM

The CONTRACT SUM will be the amount of money referred to on Schedule B hereto, which sum will be payable by the EMPLOYER to the CONTRACTOR as specified in Schedule A hereto.

3. TERMS AND CONDITIONS

This AGREEMENT will further be subject to the terms and conditions contained in Schedule A hereto.

4. SCHEDULES AND ANNEXURES FORM PART OF AGREEMENT

The schedules and annexures attached to this AGREEMENT form an integral part thereof:

- Schedule A:** Terms and conditions of AGREEMENT
- Schedule B:** Information Sheet
- Annexure B1:** Concept Drawings
- Annexure B2:** Finishing Schedule
- Annexure C:** Handover Procedure

SIGNED AT ..... ON THIS ..... DAY OF ..... 20.....

AS WITNESSES:

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

2. \_\_\_\_\_  
\_\_\_\_\_ Assisted by SPOUSE  
to the extent needed

SIGNED AT ..... ON THIS ..... DAY OF ..... 20.....

AS WITNESSES:

1. \_\_\_\_\_  
\_\_\_\_\_ for and behalf of the  
CONTRACTOR

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

**1. DEFINITIONS**

- 1.1 In this AGREEMENT the following words and phrases will have the meanings ascribed to them below, and cognates will have corresponding meanings:
- 1.1.1 "AGREEMENT" means the contract constituted by this document, its schedules, annexures and appendices, which includes the PLANS and the FINISHING SCHEDULE.
- 1.1.2 "BUILDING REGULATIONS AND STANDARDS" means the building regulations and standards promulgated in terms of the National Housing Consumers Protection Measures Act 95 of 1998 or the National Building Regulations and Building Standards Act 103 of 1997, or any other enactments regulating the WORKS.
- 1.1.3 "BUSINESS DAY" means a day which is not a Saturday, a Sunday, or a public holiday in the Republic of South Africa.
- 1.1.4 "CONTRACT SUM" means the total of the remuneration due to the CONTRACTOR in terms of this AGREEMENT for the execution of the WORKS on the PROPERTY, which is referred to in Schedule "B".
- 1.1.5 "CHANGES" means any works or items in addition to or in substitution for the specifications listed in the FINISHING SCHEDULE, or any amendment or variation of the PLAN. "CHANGES" does not refer to the exercise of choices where choices are provided in the FINISHING SCHEDULE.
- 1.1.6 "DATE OF COMPLETION" means the date on which the local authority or other competent body issues an occupation certificate in respect of the WORKS.
- 1.1.7 "DAY" means a calendar day.
- 1.1.8 "FINISHING SCHEDULE" means the detailed schedule of specifications and finishes annexed hereto as Annexure "B2", which details the fittings and finishes forming part of the WORKS.
- 1.1.9 "PLAN" means the signed drawings of the Works annexed hereto (Annexure B1) and initialled for identification purposes, or as substituted by the final plan of the WORKS agreed to in terms of clause 6 below.
- 1.1.10 "PROPERTY" means the erf listed hereinabove, which is the parcel of land on which the WORKS must be executed by the CONTRACTOR.
- 1.2 Any word or phrase defined or assigned a meaning in this AGREEMENT, whether in this clause or elsewhere in this AGREEMENT, will bear such defined or assigned meaning throughout the entire AGREEMENT.
- 1.3 No provision or clause forming part of this AGREEMENT will be interpreted against the party deemed responsible for its introduction or drafting.
- 1.4 Where this AGREEMENT requires the calculation of any period, it will be calculated by excluding the first DAY and including the last, provided that where the last DAY falls on a DAY which is not a BUSINESS DAY, then the last DAY of the period will be the next occurring BUSINESS DAY.

- 1.5 Clause headings are inserted in this AGREEMENT for reference purposes only and will not be taken into account in the interpretation of this AGREEMENT.
- 1.6 Where this AGREEMENT refers to any one gender, such a reference includes the other genders, and where this AGREEMENT refers to a person, such a reference includes incorporated and unincorporated entities in addition to natural persons.
- 1.7 The provisions of this AGREEMENT will be subject to and interpreted in accordance with the laws of the Republic of South Africa in force from time to time, and if the EMPLOYER is a citizen of a foreign country or domiciled in a foreign country at any relevant time, then the EMPLOYER by signature of this AGREEMENT consents and submits to the jurisdiction of the Western Cape High Court, Cape Town.

## 2. SUSPENSIVE CONDITIONS

- 2.1 This entire AGREEMENT is subject to the registration of transfer of ownership of the PROPERTY to the EMPLOYER. In the event that the PROPERTY is not transferred within 6 (six) months from date of signing of this Agreement by the CONTRACTOR, the CONTRACTOR reserves the right to:
  - 2.1.1 increase the CONTRACT SUM, based on the current prices for the building materials, and the CONTRACTOR shall notify the EMPLOYER in writing of such increased cost and the EMPLOYER may then, at his/her option, cancel this agreement by providing written notice of cancellation to the CONTRACTOR within 5 (five) DAYS of receiving written notice from the CONTRACTOR in respect of the increased cost. Should written notice of cancellation not be forthcoming within the aforesaid period, the CONTRACTOR and the EMPLOYER shall proceed with the AGREEMENT at the increased CONTRACT SUM and the EMPLOYER shall be obliged to pay the increase in the CONTRACT SUM to the CONTRACTOR within 21 (twenty one) DAYS of receiving written notice from the CONTRACTOR in respect of the increased cost; or
  - 2.1.2 cancel this AGREEMENT and the parties shall have no claim of whatsoever nature against each other.
- 2.2 This AGREEMENT is subject further to the EMPLOYER being offered a loan to be secured by a mortgage bond over the PROPERTY and improvements in the amount reflected in Schedule B or such lesser amount as the EMPLOYER may accept, within 30 (thirty) DAYS of the date of the CONTRACTOR's signature of this AGREEMENT, which period may be extended in the CONTRACTOR's sole discretion. Should no amount be inserted in the relevant field in the Schedule B, then the suspensive condition contained in this clause will not apply. In the event that the suspensive condition contained in this clause is not fulfilled, this AGREEMENT will lapse and the parties shall have no claim of whatsoever nature against each other.

## 3. BUILDING PLAN APPROVAL

The EMPLOYER is aware that the Property forms part of a new township development and as such the CONTRACTOR is relying on obtaining final municipal building plan approval before it will be in a position to commence with the WORKS. Should the required approvals not be obtained within a reasonable time, then the CONTRACTOR will be entitled to cancel this Agreement on notice to the EMPLOYER.

#### 4. PAYMENT OF THE CONTRACT SUM

- 4.1 Where this AGREEMENT is not subject to mortgage finance being obtained by the EMPLOYER, payment of the CONTRACT SUM will be made by the EMPLOYER to the CONTRACTOR in progress payment instalments as the WORKS progress, and the amount of the payments will be calculated as the following percentages of the CONTRACT SUM:
- 4.1.1 25% on completion of the floor slab;
  - 4.1.2 25% on completion of the roof construction;
  - 4.1.3 25% on completion of ceilings, plaster work, windows and external doors;
  - 4.1.4 20% on completion of cupboards and sanitary ware;
  - 4.1.5 The balance on the DATE OF COMPLETION.
- 4.2 If the WORKS are financed by a bank, or by any other financial institution acceptable to the CONTRACTOR, the EMPLOYER by executing this AGREEMENT empowers and authorises the CONTRACTOR to apply for and receive progress payments from the bank or financial institution. It is recorded that the financing institution will itself ensure that it does not pay more than the value of the work done by the CONTRACTOR as part of the bank's service offering to the EMPLOYER, and as such the EMPLOYER will not dispute the timing or the amount of the progress draw submitted by the CONTRACTOR. In cases where the WORKS are financed, the progress instalments may differ from the breakdown provided in clause 4.1.
- 4.3 The CONTRACTOR shall be entitled, on written notice to the EMPLOYER, to amend and/or vary the terms and conditions of this AGREEMENT as a result of any application of existing, new and/or amended law(s), rule(s), ordinance(s), tax(es), statute(s), requirement(s), code(s) and regulation(s) by governmental authorities, applicable to this AGREEMENT.
- 4.4 The WORKS will be deemed to be completed for the purposes of this AGREEMENT on the DATE OF COMPLETION.
- 4.5 **The EMPLOYER will be liable for any interim interest or fees charged by the bank or financial institution financing the WORKS, if any, in accordance with the EMPLOYER's prevailing arrangement with the bank or financial institution.** The EMPLOYER shall send to the CONTRACTOR proof (to the CONTRACTOR's satisfaction) that interim interest and fees have been serviced on a monthly basis. The CONTRACTOR may request same on reasonable notice to the EMPLOYER, who shall be obliged to provide the CONTRACTOR with such satisfactory proof within 7 (seven) days of request.
- 4.6 **If this AGREEMENT is not subject to any suspensive conditions, the EMPLOYER will provide guarantees for the full contract sum within 14 (fourteen) DAYS after signing of this AGREEMENT to the offices of the CONTRACTOR; the form and terms of which guarantees will be acceptable to the CONTRACTOR.**
- 4.7 **If this AGREEMENT is subject to the fulfilment of any suspensive conditions, the EMPLOYER will provide guarantees for the full contract sum within 14 (fourteen) DAYS after fulfilment of such condition(s); the form and terms of which guarantees will be acceptable to the CONTRACTOR.**

- 4.8 The EMPLOYER acknowledges that all water used during the construction period is a necessary part of the building process and that the costs of water usage, together with any sewerage surcharge, refuse collection fee, or services availability charge, are for the EMPLOYER's account. The CONTRACTOR is also not liable for any property rates and taxes in respect of the PROPERTY.
- 4.9 The PARTIES record herein that the CONTRACT SUM is based on the assumption that the ground conditions of the PROPERTY is favourable or normal for purposes of construction. In the event that ground conditions result in unforeseen additional costs being incurred by the CONTRACTOR in the execution of the WORKS, the EMPLOYER acknowledges that it shall be liable for such additional expenses. The CONTRACTOR shall notify the EMPLOYER in writing of such additional costs, which the EMPLOYER shall pay within 14 (fourteen) days of receiving the written notice. In the event that the EMPLOYER is unable to pay these costs, the EMPLOYER may then, at his/her option, make a written request to cancel the AGREEMENT. The CONTRACTOR shall not unreasonably withhold its consent for cancellation of the AGREEMENT.
- 4.10 All progress payment instalments due to the CONTRACTOR will be paid in South African currency without set-off, deduction or exchange and at Cape Town. In the event that the WORKS are financed by a bank or financial institution, then the EMPLOYER will do all such things and sign all such documents as may be necessary to ensure that progress payment instalments are received without delay.

## 5. TIMING OF PAYMENT

- 5.1 In the event of this AGREEMENT being subject to the EMPLOYER obtaining mortgage finance, then CONTRACTOR will submit the necessary documents required by the financing institutions (called "DRAW DOCUMENTS") to effect payment of progress instalments for signature by the EMPLOYER. So as not to delay the completion of the WORKS, the EMPLOYER will ensure that the DRAW DOCUMENTS are signed by it and returned to the CONTRACTOR within 3 (three) DAYS. **Should the DRAW DOCUMENTS not be delivered to the CONTRACTOR timeously, or the CONTRACTOR not receive the progress payment in terms of such DRAW DOCUMENTS within 10 (ten) DAYS of the delivery of the DRAW DOCUMENTS, the EMPLOYER shall be liable for and shall pay, without demand by the CONTRACTOR, penalty interest on the total outstanding CONTRACT SUM at prime rate per annum, calculated from the date that the DRAW DOCUMENTS or progress payment were due up to and including the date on which the DRAW DOCUMENTS are furnished or the progress payment is received by the CONTRACTOR, and without prejudice to the CONTRACTOR's rights in terms of Clause 14 below.**
- 5.2 Should the EMPLOYER at any time prior to the DATE OF COMPLETION leave the Republic of South Africa, then it will in good time prior to departure contact the CONTRACTOR and make suitable alternative arrangements for the signature of DRAW DOCUMENTS.
- 5.3 In the event of the WORKS not being financed, payment in accordance with clause 4.2 will be made within 3 (three) DAYS of the CONTRACTOR's request. **Should the CONTRACTOR not receive the progress payment within 3 (three) DAYS of the CONTRACTOR's request, the EMPLOYER shall be liable for and shall pay, without demand by the CONTRACTOR, penalty interest on the total outstanding CONTRACT SUM at prime rate per annum, calculated from the date that the progress payment was due up to and including the date on which the progress payment is received by the CONTRACTOR, and without prejudice to the CONTRACTOR's rights in terms of Clause 14 below.**

6. FINAL PLAN

- 6.1 In the event of any amendments and/or CHANGES made by the EMPLOYER to the construction drawings at the time of signature of this AGREEMENT, the CONTRACTOR will prior to the submission thereof for municipal approval, notify the EMPLOYER so that the EMPLOYER may sign off the construction drawings as being accurate reflections of the WORKS. **The EMPLOYER is obliged to sign off the said construction drawings within 3 (three) BUSINESS DAYS of being called upon by the CONTRACTOR to do so, failing which the construction drawings will be deemed to have been accepted by the EMPLOYER and the CONTRACTOR shall proceed with the submission thereof to the municipality.** Upon signature of the construction drawings by the EMPLOYER, such drawings will constitute the PLAN for the purposes of this AGREEMENT in substitution for the drawing contained in the annexures, and in the unlikely event of any differences between any of the annexures and the substituted PLAN, the substituted PLAN will prevail.
- 6.2 If necessary, the CONTRACTOR shall be entitled to amend or substitute materials or equipment as per Annexure B2, without reference to the EMPLOYER, with replacement materials and the EMPLOYER shall have no claim against the CONTRACTOR for this.
- 6.3 Notwithstanding clause 6.1 above, in the event that there is a discrepancy between the FINISHING SCHEDULE and the specifications of the substituted PLAN and/or drawings contained in the annexures, the FINISHING SCHEDULE specifications will prevail, subject to substitution and/or amendment of such specifications by the CONTRACTOR, as envisioned in clause 6.2 above (please also refer to Annexure B2).
- 6.4 **The EMPLOYER acknowledges that no amendments or CHANGES to the construction drawings will be allowed after signature of this AGREEMENT by the EMPLOYER. The EMPLOYER must select his choice of finishes where the FINISHING SCHEDULE provides for choices, provided that such items will be supplied by the developer's preferred supplier, within 10 (ten) DAYS of being requested to do so by the CONTRACTOR. In the event that the EMPLOYER fails to select his choice of finishes within the aforesaid timeframe, the CONTRACTOR shall be entitled to proceed with the WORKS in accordance with the standard specifications contained in the FINISHING SCHEDULE.** Where choices are allowed in terms of the FINISHING SCHEDULE, the CONTRACTOR may in its discretion refuse any request to choose finishes to a value greater than those values allowed for in the FINISHING SCHEDULE.

***The EMPLOYER hereby acknowledges that the aforesaid clause 6.4 has been explained to his/her satisfaction, that he understands the terms and conditions thereof, and that he/she accepts to be bound thereto.***

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**EMPLOYER**

- 6.5 It is the intention of the CONTRACTOR to construct the WORKS materially in accordance with the PLAN and FINISHING SCHEDULE. However, in the event of the CONTRACTOR having to make changes to the PLAN as a result of an engineering, architectural, statutory, regulatory or other requirement imposed by the local authority or any other governing or regulatory bodies, the CONTRACTOR reserves the right and will be entitled, in its discretion, to redesign the PLAN and or layout thereof pursuant to which event the EMPLOYER shall have no recourse to and/or against the CONTRACTOR.

- 6.6 The CONTRACTOR shall specifically be entitled to vary the levels of elevation as indicated in the PLAN, if in the CONTRACTOR's discretion, such variance or change is necessary and/or pursuant to any requirement by the CONTRACTOR, in order to address and/or meet any technical, practical and/or legal issues pertaining to the WORKS, to which event the EMPLOYER shall have no recourse to and/or against the CONTRACTOR.

## 7. STRUCTURE AND DESIGN ELEMENTS

- 7.1 The WORKS will in all aspects be carried out in accordance with the BUILDING REGULATIONS AND STANDARDS applicable from time to time, and in accordance with any other law or enactment that may apply, or any permitted deviation from these regulations and standards. In the unlikely event of these legal provisions conflicting with the PLAN or the FINISHING SCHEDULE, then the legally binding norms and standards will prevail. The PLAN and the FINISHING SCHEDULE are also subject to changes for compliance with the approved site development plan and architectural guidelines of the township development of which the PROPERTY forms part.
- 7.2 The foundations and structure of the WORKS, which includes the roof, will be designed and overseen by a competent person, usually a structural or civil engineer or engineers, as required by and in accordance with the BUILDING REGULATIONS AND STANDARDS. The construction of these elements of the WORKS will be executed in accordance with such designs, and may as far as those details are concerned differ from the PLAN and the FINISHING SCHEDULE.

## 8. COMPLETION AND OCCUPATION

- 8.1 The EMPLOYER will take possession and occupation of the completed WORKS on a date 7 (seven) months after commencement of the WORKS, or an alternative date as notified by the CONTRACTOR in writing. The construction industry holiday during December/January period is excluded from the 7 (seven) month period for the completion of the WORKS.
- 8.2 The risk and benefit of ownership of the completed WORKS will vest in the EMPLOYER from the DAY on which the EMPLOYER takes possession and occupation of the PROPERTY and the completed WORKS. On the DAY that the EMPLOYER receives the house keys and take occupation of the PROPERTY and the completed WORKS, the handover procedure as specified in Schedule C hereto, will be followed.
- 8.3 The parties record that no employee of the CONTRACTOR has the authority to agree to an earlier or later date of occupation, and any verbal communications from the employees of the CONTRACTOR regarding occupation dates will not be binding on the CONTRACTOR. Only written communications regarding occupation dates on a letterhead of the CONTRACTOR will bind the CONTRACTOR.
- 8.4 The CONTRACTOR will not be obligated to give occupation and possession of the WORKS until the DATE OF COMPLETION, and then only once any and all amounts due to the CONTRACTOR in terms of this AGREEMENT have been received by the CONTRACTOR.
- 8.5 **Once the CONTRACTOR offers possession and occupation, the EMPLOYER will not be entitled to refuse or delay beyond the date offered by the CONTRACTOR. Should the EMPLOYER fail to take occupation on the date provided by the CONTRACTOR, then risk will nevertheless pass to the EMPLOYER from that date, and any damage caused thereafter will be for the account of the EMPLOYER.**



9. GUARANTEES

- 9.1 The CONTRACTOR guarantees the WORKS in respect of all latent defects for a period of 3 (three) months from the DATE OF COMPLETION, provided such a defect is resultant from the defective material or workmanship which has been employed by the CONTRACTOR.
- 9.2 The CONTRACTOR furthermore guarantees the roof in respect of leakage for a period of 1 (one) year from the DATE OF COMPLETION.
- 9.3 The CONTRACTOR furthermore guarantees all structural aspects of the WORKS in respect of defects therein for a period of 5 (five) years from DATE OF COMPLETION, with the exception of hairline settlement cracks which are not guaranteed and are considered normal in newly built homes. Hairline settlement cracks for the purposes hereof are any cracks that are certified to be Slight, Very slight or Negligible (Categories 2, 1, and 0) on the scales published in Tables 2, 3 and 4 of Part 1 Section 2 of the NHBRC Home Building Manual of 1999.
- 9.4 **The EMPLOYER will be obligated within the time limits prescribed in the preceding paragraphs to notify the CONTRACTOR in writing of any defects covered by the guarantee and the CONTRACTOR will thereafter be afforded a reasonable period of time, and reasonable access to the WORKS and the PROPERTY, to make good the defects. Should the EMPLOYER fail to notify the CONTRACTOR in writing, within the periods listed in clauses 9.1 – 9.3, the CONTRACTOR will not accept liability or responsibility for any complaints lodged.**
- 9.5 **Notwithstanding anything to the contrary recorded elsewhere, the CONTRACTOR will under no circumstances be responsible for any damage and or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of any matter arising from or relating to risk insured against in terms of Homeowners Insurance Policies normally issued by a South African Insurance Company in respect of residential properties. The CONTRACTOR will furthermore under no circumstances be liable for any consequential loss or damages.**

10. JOINT EMPLOYERS

**Insofar as there may be more than one EMPLOYER in terms of this AGREEMENT, the liability of each of the EMPLOYERS will be joint and several. This means that any one of the EMPLOYERS could be held liable for all of the obligations of the EMPLOYER in terms hereof.** Any one of the joint EMPLOYERS may represent the EMPLOYERS and sign the final construction drawings as contemplated in clause 6.

11. COMPANY/CLOSE CORPORATION/TRUST

- 11.1 In the event of the EMPLOYER being a company or a close corporation to be formed, the signatory of the EMPLOYER will be personally liable for all the obligations of the EMPLOYER as though he contracted in his personal capacity if the following conditions are not met:-
- 11.1.1 the company or close corporation (as the case may be) in respect whereof he acts as trustee is not incorporated within 20 (twenty) DAYS of SIGNATURE DATE; and

11.1.2 the company or close corporation, having been incorporated, fails to adopt and ratify unconditionally this transaction without modification within 5 (five) DAYS of date of incorporation, and gives notice of such adoption and ratification to the CONTRACTOR within a further 10 (ten) DAYS.

11.2 Upon timeous fulfilment of the conditions in clause 11.1 the signatory of the EMPLOYER will nevertheless become and be liable to the CONTRACTOR as surety for and co-principal debtor of the company or close corporation for which it acted as trustee, under renunciation of the benefits of excussion and division.

11.3 In the event of the EMPLOYER being a Company/Close Corporation or the Trustee(s) for the time being of a Trust, or any other form of person other than a natural person, the signatory for the EMPLOYER by his signature hereto binds himself as surety for and co-principal debtor *in solidum* with the EMPLOYER.

11.4 **This clause means that if the EMPLOYER cannot perform his obligations herein the person who signs this AGREEMENT on behalf of the EMPLOYER will be liable in his personal capacity to fulfil the obligations of the EMPLOYER.**

12. UNDERTAKING BY THE EMPLOYER

**The EMPLOYER undertakes to become and remain the registered owner of the PROPERTY until the WORKS have been completed and the full CONTRACT SUM paid to the CONTRACTOR.** The EMPLOYER undertakes not to re-sell the PROPERTY prior to completion of the WORKS and full payment of the CONTRACT SUM. All materials and fittings remain the property of the CONTRACTOR until the full CONTRACT SUM has been paid to CONTRACTOR by the EMPLOYER.

13. POSSESSION

The CONTRACTOR will be entitled to:

13.1 Take possession of the PROPERTY on the DAY when the EMPLOYER becomes the registered owner thereof, and the EMPLOYER will ensure that no person will interfere with the CONTRACTOR taking possession of the PROPERTY on that DAY.

13.2 The CONTRACTOR will be entitled to commence WORKS before the EMPLOYER becomes the registered owner of the PROPERTY (if agreed by the person selling the PROPERTY to the EMPLOYER).

13.3 retain possession of the WORKS and the PROPERTY until all amounts owed to the CONTRACTOR under or as a result of this AGREEMENT, and under any other agreement or arrangement between the CONTRACTOR and the EMPLOYER in connection with the WORKS, have been paid in full and all obligations of the EMPLOYER in terms of this AGREEMENT have been fulfilled.

13.4 refuse access to the WORKS and the PROPERTY to any person, including the EMPLOYER, until such time as the WORKS have been completed and are ready for handover to the EMPLOYER. Should the EMPLOYER however wish to view the WORKS or the PROPERTY prior to the DATE OF COMPLETION, then the EMPLOYER may arrange with the CONTRACTOR for a suitable date and time, and the CONTRACTOR will not refuse any reasonable requests for a viewing by the EMPLOYER. The EMPLOYER acknowledges that this arrangement is to ensure that the CONTRACTOR complies with its obligations in terms of health and safety regulations.

14. BREACH

14.1 Should the EMPLOYER's estate be finally sequestrated and/or liquidated (as the case may be), placed under business rescue or in debt review (as the case may be) or should the EMPLOYER commit a breach of any of the terms of this AGREEMENT (including failing to make any payments on due date) and fail to remedy such breach within 7 (seven) DAYS of date of despatch by the CONTRACTOR of written notice calling upon the EMPLOYER to remedy such breach, the CONTRACTOR shall be entitled (but not obliged) without prejudice to any other rights or remedies which it may have in law, including the right to claim damages:

14.1.1 to terminate this AGREEMENT and claim damages; or

14.1.2 to claim immediate performance and/or payment of all the EMPLOYER'S outstanding obligations in terms hereof and claim damages.

14.2 In the event of the CONTRACTOR being obligated and/or electing to cancel the AGREEMENT in accordance with the preceding clause, then the following will occur:

14.2.1 A quantity surveyor appointed by the CONTRACTOR will assess the WORKS and determine and certify the amounts due to the CONTRACTOR as a result of the portion of the WORKS completed by the CONTRACTOR and any portion of the amount so determined and certified which has not already, by virtue of progress payments, been paid to the CONTRACTOR will forthwith be due and payable to the CONTRACTOR by the EMPLOYER;

14.2.2 THE EMPLOYER will in addition be liable for all damages suffered by the CONTRACTOR, including the fees of the quantity surveyor called upon to make the assessment.

14.3 If any party ("the innocent party") becomes entitled to enforce a remedy in terms of this AGREEMENT, it will, notwithstanding having chosen a particular remedy, continue to enjoy the right to enforce any other remedy open to it as a result of the same instance of breach.

15. DISPUTE RESOLUTION

15.1 **Any dispute arising between the CONTRACTOR and the EMPLOYER as a result of or in connection with the WORKS, or this AGREEMENT, or the actual or purported cancellation of this AGREEMENT will be referred to arbitration in terms of the Expedited Rules for Arbitration of the Arbitration Foundation of Southern Africa. The EMPLOYER acknowledges that this is done for cost and time saving purposes due to the fact that costs are usually higher and the time frame longer for dispute resolution through the courts.**

15.2 Any arbitration conducted in terms of this AGREEMENT will be subject to the following:

15.2.1 The arbitrator will be an advocate and member of the Cape Bar with not less than 7 (seven) years standing as such, who will have the fullest powers to determine and regulate the procedure of the arbitration subject only to the Expedited Rules of Arbitration and the laws of natural justice;

15.2.2 Arbitration will be held at Cape Town and in English;

15.2.3 The decision of the arbitrator will be capable of being made an order of court on the application of either party, and will be subject to review but not appeal;

15.2.4 The arbitrator will be entitled to award costs of suit, including the costs of arbitration, on a scale which he finds to be acceptable;

15.2.5 Nothing in this clause will prohibit either party from seeking urgent or interlocutory relief from a competent court.

16. NOTICE

16.1 Any notice to any party will be addressed to it at its chosen address for the giving of notice in terms of this AGREEMENT. The parties choose their respective addresses for the giving of notice and the delivery of pleadings the following addresses (their *domicilia citandi et executandi*):

16.1.1 THE EMPLOYER: The addresses and telefax numbers appointed in Schedule B;

16.1.2 THE CONTRACTOR:

Physical address (*domicilium citandi et executandi*):

3<sup>rd</sup> Floor, Combined HQ, 4 Bridal Close, Tyger Falls, Bellville, 7530

Postal address:

PO Box 3667, Tygervalley, 7536

E-mail address:

[lynette@tgpconstruction.com](mailto:lynette@tgpconstruction.com)

Telefax number:

021 914 9748

16.2 Any notice sent

16.2.1 by prepaid registered post to a party's appointed postal address, will be deemed to have been received on the 4<sup>th</sup> (fourth) BUSINESS DAY after posting; or

16.2.2 delivered by hand to the addressee's physical address between the hours of 9:00 am and 16:00 pm on any BUSINESS DAY, will be deemed received on the DAY of delivery; or

16.2.3 sent by telefax to the addressee's chosen telefax number or sent by e-mail to the addressee's appointed e-mail address, will be deemed to have been received on the DAY of transmission, provided that proof of transmission will be retained by the transmitting party.

16.3 Nothing in this clause precludes any notice actually coming to the notice of the addressee from being effective notice for the purposes of the AGREEMENT.

17. WHOLE CONTRACT

This document may not be modified, varied or consensually cancelled other than in writing, duly signed by both parties.

If the estate agent or any other person has made any representations, warranties or undertakings to the EMPLOYER regarding the WORKS, then EMPLOYER records these in the space provided below so that the CONTRACTOR may be aware of those representations, warranties or undertakings. Should nothing be recorded on the version of this AGREEMENT signed by the CONTRACTOR, then the EMPLOYER has agreed that this document constitutes the entire agreement concluded between the parties in relation to the WORKS and the other subject matter hereof, and no warranties, undertakings or representations other than those specifically recorded herein may be relied on by either of the parties.

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DATED AT THIS DAY OF 20\_\_

AS WITNESSES:

1. \_\_\_\_\_ **EMPLOYER**  
2. \_\_\_\_\_  
Assisted by EMPLOYER'S SPOUSE  
to the extent needed

DATED AT THIS DAY OF 20\_\_

AS WITNESSES:

1. \_\_\_\_\_ **CONTRACTOR**  
2. \_\_\_\_\_

**SCHEDULE B**

**EMPLOYER:**

\_\_\_\_\_

Identity/Registration Number:  
*(Kindly attach copy of ID)*

\_\_\_\_\_

Marital Status:

\_\_\_\_\_

Date and place of marriage:

\_\_\_\_\_

Name of Spouse:

\_\_\_\_\_

Identity Number:  
*(Kindly attach copy of ID)*

\_\_\_\_\_

Physical Address:  
*(domicilium citandi et executandi)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postal Address:

\_\_\_\_\_

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Cell Number:

\_\_\_\_\_

Fax Number:

\_\_\_\_\_

**DETAILS OF WORKS**

Unit Type:

\_\_\_\_\_

Erf No:

\_\_\_\_\_

Square Metres±:

\_\_\_\_\_

(this is a rough indication, the PLAN provides binding measurements)

**PRICE DETAILS:**

Building Works: R \_\_\_\_\_

VAT portion included therein R \_\_\_\_\_

TOTAL CHANGES (as defined): R \_\_\_\_\_

VAT portion included therein R \_\_\_\_\_

**CONTRACT SUM (as defined):** R \_\_\_\_\_

Erf Price (including VAT): R \_\_\_\_\_

(the erf price is not payable to or by the CONTRACTOR)

**GRAND TOTAL PAYABLE BY THE EMPLOYER:** R \_\_\_\_\_

BOND AMOUNT: R \_\_\_\_\_

(refer to clause 2.2)

**COMPLETION & OCCUPATION:** AS PER CLAUSE 8 OF THE AGREEMENT.