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## BUILDING AGREEMENT

### 1. Builder

- 1.1 Full Name: Val de Vie Construction (Pty) Ltd  
\_\_\_\_\_
- 1.2 Registration Number: 2015/048264/07  
\_\_\_\_\_
- 1.3 Physical Address: Polo Pavilion, Val de Vie Estate, Paarl, 7620  
\_\_\_\_\_
- 1.4 Postal Address: Polo Pavilion, Val de Vie Estate, Paarl, 7620  
\_\_\_\_\_
- 1.5 Telephone: +27 21 863 6100  
\_\_\_\_\_
- 1.6 Telefax: +27 21 863 2741  
\_\_\_\_\_
- 1.7 Contact Person:  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_
- 1.8 VAT Registration Number: 4650259601  
\_\_\_\_\_

### 2. Owner

- 2.1 Full Name: \_\_\_\_\_
- 2.2 Identity/Registration Number: \_\_\_\_\_
- 2.3 Physical Address: \_\_\_\_\_
- 2.4 Postal Address: \_\_\_\_\_
- 2.5 Telephone: \_\_\_\_\_
- 2.6 Telefax: \_\_\_\_\_

2.7 Email:

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**3. Owner**

3.1 Full name:

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3.2 Identity/  
Registration  
Number:

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3.3 Physical  
Address:

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3.4 Postal  
Address:

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3.5 Telephone:

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3.6 Telefax:

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3.7 Email:

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**4. Property:**

4.1 Stand number:

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4.2 Extent:

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**5. Estate Agency:**

5.1 Full Name :

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5.2 VAT Number:

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5.3 Estate Agent's  
Name:

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5.4 Estate Agent's  
Income Tax  
Number:

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5.5 Commission R plus VAT

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6. **Contract Sum:** R including VAT

*(Package Price less erf's Purchase Price)*

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7. **Principal Agent:** Cherie Smith

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PRN No:

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8. **Appendices:** Appendix 1: Unit Floor Plan

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Appendix 2: Specification and Schedule of Finishes

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Appendix 3: Draft Guarantee

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Appendix 4: Schedule of Charges

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Appendix 5: CPA Acknowledgements

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## **9. Applicability of Terms and Conditions**

This Schedule, the Standard Terms and Conditions and Appendices attached hereto shall form the agreement between the Builder and the Owner.

## **10. Important Note**

Although we have taken every effort in making this Agreement understandable in plain language we also understand that concepts and phrases may be difficult and intimidating to you.

You are invited to discuss every aspect, item, phrase, word, concept, definition or any other aspect of this Agreement with our Vines consultant or our legal advisors who will explain them to you. You are also encouraged to obtain independent legal advice.

Please read and consider this Agreement and its Appendices carefully as it shall constitute a binding agreement. You will be requested to declare that you understand the content of this entire Agreement and more specifically the fact, nature and effect of clauses next to which you are requested to specifically initial. Please note that initialing next to any clause will not affect the enforceability of any of the other clauses of this Agreement. Please do not disregard any clauses not so emphasised as such clauses will be binding and enforceable.

The Parties are required to sign in full below and initial all other pages of this Agreement and Appendices.

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**VAL DE VIE CONSTRUCTION (PTY)  
LTD**

herein represented by

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*(Print Name)*

*(who warrants that he/she is duly  
authorised)*

**DATE:**

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**PLACE:**

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**OWNER**

herein represented by

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*(Print Name)*

*(who warrants that he/she is duly  
authorised)*

**DATE:**

---

**PLACE:**

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**ESTATE AGENT**

herein represented by

---

*(Print Name)*

*who warrants that he/she is duly  
authorised*

**DATE:**

---

**PLACE:**

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**OWNER**

herein represented by

---

*(Print Name)*

*(who warrants that he/she is duly  
authorised)*

**DATE:**

---

**PLACE:**

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# TERMS AND CONDITIONS IN RESPECT OF THE BUILDING AGREEMENT

## 1 INTERPRETATION

- 1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 “**Agent**” means the estate agency described at paragraph 5 of the Schedule;
- 1.1.2 “**Architect**” means the architect appointed by the Builder from time to time;
- 1.1.3 “**the/this Agreement**” means the agreement as set out in this document and the Appendices hereto;
- 1.1.4 “**Appendices**” means the documents specified at paragraph 10 of the Schedule;
- 1.1.5 “**Builder**” 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, the amount of which is stipulated at paragraph 5.5 of the Schedule and which commission is calculated on the Contract Sum excluding VAT;
- 1.1.9 “**Conditions Precedent**” means the conditions precedent set out in clause 3 below;
- 1.1.10 “**Constitution**” means the constitution of the Val de Vie Winelands Lifestyle Estate Home Owners’ Association from time to time and it

includes without limitation all annexures thereto and rules promulgated thereunder from time to time;

- 1.1.11 “**Contract Sum**” means the sum referred to in paragraph 6 of the Schedule, which includes the amounts for which the Builder is liable in terms of the Schedule of Charges;
- 1.1.12 “**CPA**” means the Consumer Protection Act 68 of 2008, as amended;
- 1.1.13 “**Defects**” means any aspect of the materials and workmanship forming part of the Works that is due to the failure of the Builder to comply with its obligations in terms of this Agreement;
- 1.1.14 “**Defects List**” means the list of Defects, as agreed upon by the Parties at the Handover Inspection;
- 1.1.15 “**Delivery Date**” means the date on which the Builder delivers the Works to the Owner, determined in accordance with the provisions of clauses 7.11;
- 1.1.16 “**Developer**” means Golden Ribbon 416 Trading Proprietary Limited, registration number 2009/010621/07, a private company with limited liability duly incorporated according to the laws of the Republic of South Africa;
- 1.1.17 “**Event of Default**” means an event as envisaged in clause 11 of this Agreement;
- 1.1.18 “**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;
- 1.1.19 “**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 –

- 1.1.19.1 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;
- 1.1.19.2 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
- 1.1.19.3 strikes, lock-outs 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 contractor or service provider of such Party, delays by sub- contractors, 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 clauses 0 below or any other delay however caused;
- 1.1.20 “**Guarantee**” means the draft bank guarantee to be issued by a financial institution acceptable to the Builder, substantially in accordance with the guarantee attached hereto marked **Appendix 3**;
- 1.1.21 “**Handover Inspection**” means an inspection of the Works by the Builder, or it’s representative, and the Owner, or it’s representative, after the Practical Completion Date but before the Delivery Date, at which inspection the Parties will agree to the Defects List;
- 1.1.22 “**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;
- 1.1.23 “**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;

- 1.1.24        “**Optional Extras**” means any addition to the Specification and Schedule of Finishes agreed to in terms of clause 6.2 below, the cost of which is not included in the Contract Sum and which extras will be restricted to those items listed in the Specification and Schedule of Finishes;
- 1.1.25        “**Owner**” means the person or persons / entity or entities, as the case may be, described more fully in paragraph 2 and 3 of the Schedule;
- 1.1.26        “**the Parties**” or “**Party**” means the Party or Parties to this Agreement;
- 1.1.27        “**Practical Completion Certificate**” means the certificate issued by the Principal Agent on the Practical Completion Date;
- 1.1.28        “**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 and the Specifications and Schedule of Finishes, the Property can effectively be used for its intended purpose and a municipal occupancy certificate has been issued in respect thereof;
- 1.1.29        “**Principal Agent**” means the principal agent described at paragraph 7 of the Schedule or such other person or entity nominated by the Builder from time to time;
- 1.1.30        “**Property**” means the property described at paragraph 4 of the Schedule, which property forms part of the Vines Development;
- 1.1.31        “**Retention Sum**” means an amount equal to R20 000 (twenty thousand Rand), which amount forms part of the Contract Sum;
- 1.1.32        “**Sale Agreement**” means the sale agreement to be entered into between the Owner and the Developer in terms whereof the Owner agrees to purchase the Property from the Developer;
- 1.1.33        “**Schedule**” means the schedule to which these standard terms and conditions are attached;

- 1.1.34 “**Schedule of Charges**” means the Schedule of Charges attached hereto as **Appendix 4**;
- 1.1.35 “**the Signature Date**” means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.36 “**Specification and Schedule of Finishes**” means the Specification and Schedule of Finishes attached to this Agreement as **Appendix 2**;
- 1.1.37 “**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;
- 1.1.38 “**Unit Floor Plan**” means the unit floor plan attached to this Agreement as **Appendix 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 relevant 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;
- 1.1.39 “**VAT**” means value-added tax payable in terms of the VAT Act;
- 1.1.40 “**VAT Act**” means the Value Added Tax Act, 1991 as amended from time to time;
- 1.1.41 “**Vines Development**” means the own title residential units to be constructed on erf 796 Val de Vie, as indicated on the site development plan attached to the Sale Agreement as **Appendix 2**, which erf shall be subdivided and developed substantially in accordance with the said site development plan;
- 1.1.42 “**Works**” means the construction of a dwelling house on the Property;
- 1.1.43 words importing the singular shall include the plural and vice versa;

- 1.1.44 words importing natural persons includes legal persons and partnerships and vice versa;
- 1.1.45 words importing one gender includes the other genders;
- 1.1.46 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.1.47 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.1.48 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.
- 1.1.49 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.
- 1.1.50 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.
- 1.1.51 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.
- 1.1.52 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.1.53 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.
- 2.2 The Owner is obliged in terms of the Constitution to erect a dwelling on the Property within the time periods set out in the Constitution.
- 2.3 The Builder has accordingly agreed to perform the Works in accordance with the terms and conditions of this Agreement.

## 3 CONDITIONS PRECEDENT

- 3.1 Save for clauses 1, 3, 4.1.1, 4.3.4, 6.2.3, 6.2.4, 11.4, 13 and 16 to 20 below this Agreement is subject to the condition precedent that the Sale Agreement is entered into **on the Signature Date** 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 The Condition Precedent contained in clause 3.1 is not capable of being waived.
- 3.3 If the Builder is of the opinion that the Condition Precedent will not be fulfilled at all, the Builder shall be entitled to, at its election, give the Owner written notice of the fact that the Condition Precedent has not or will not be fulfilled in its opinion and this Agreement will automatically fail and be of no further force and effect and the provisions of clause 3.4 will apply.
- 3.4 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 (save for clauses 1, 3, 4.1.1, 4.3.4, 6.2.3, 6.2.4, 11.4, 13 and 16 to 20 which shall be of full force and effect from the Signature Date) 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, have any claim against the other Party arising from this Agreement.

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

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#### 4 CONTRACT SUM AND PAYMENT

##### 4.1 Contract Sum: No Building Loan

4.1.1 In the event that the entire balance of the Contract Sum or a portion thereof shall not be paid from the proceeds of a Building Loan (hereinafter to as the “**Cash Portion**”), payment of the Cash Portion to the Builder shall be secured by the Owner either by –

4.1.1.1 delivery to the Builder of a Guarantee/s approved by the Builder for payment of the Cash Portion; or

4.1.1.2 payment of the Cash Portion to Jooste Marais Incorporated, within 30 (thirty) days after being requested to do so by Jooste Marais Incorporated, provided that the condition precedent set out in clause 4.1.1 of the Sale Agreement, if applicable, has been fulfilled or waived, as the case may be.

4.1.2 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 4.2.1 hereof.

4.1.3 Should the Owner elect to deliver a Guarantee for payment of the Cash Portion in accordance with the provisions of clause 4.1.1.1 above, the Owner hereby authorises and instructs the Builder to request monthly progress payments from the registered credit provider who issued the Guarantee, in accordance with the provisions of the said Guarantee and this Agreement.

4.1.4 Should the Owner elect not to issue a Guarantee but to pay the Cash Portion to Jooste Marais Incorporated when requested to do

so as contemplated in clause 4.1.1.2 above, the Owner hereby in terms of Section 78 (2.A) of the Attorneys Act 1979 gives consent to Jooste Marais Incorporated to invest the Cash Portion in an interest-bearing account with a bank or other accredited financial institution for the benefit of the Builder or the Owner, depending upon whom becomes entitled thereto, as soon as the Owner has furnished Jooste Marais Incorporated with all such documents and information required by Jooste Marais Incorporated to meet their obligations in terms of the Financial Intelligence Centres Act, which Cash Portion and the interest accrued thereon shall be paid by Jooste Marais Incorporated as follows –

- 4.1.4.1 to the Builder, the Cash Portion by way of monthly progress payments determined in accordance with the provisions of clause 4.1.7 below; and
- 4.1.4.2 to the Builder, the Retention Sum on the date on which the Builder has rectified the defects listed in the Defects List; and
- 4.1.4.3 to the Owner, the interest, less an administration fee in respect of management and/or administration fees payable to Jooste Marais Incorporated; or
- 4.1.4.4 if this Agreement is cancelled by the Builder as the result of any event stipulated in clauses 11.1.1 to 11.1.8 –
  - 4.1.4.4.1 to the Builder, such portion of the Cash Portion as is due to the Builder based on the level of completion of the Works at that stage as certified by the Principal Agent plus any other amounts due by the Owner to the Builder in terms of this Agreement less any payments made to the Builder at that stage in terms of this Agreement; and
  - 4.1.4.4.2 to the Owner, the balance, if any, and the interest, less an administration fee in respect of management and/or administration fees payable to Jooste Marais Incorporated; or

- 4.1.4.5 if this Agreement is cancelled by the Owner as a result of any event stipulated in clauses 11.1.8, 11.1.9 and 11.1.10 below, to the Owner, the amount standing to the credit of the account less an administration fee in respect of management and/or administration fees payable to Jooste Marais Incorporated.
- 4.1.5 Payments from the Cash Portion shall be made in accordance with the provisions of clauses 4.1.3 and 4.1.4 above, whichever is applicable.
- 4.1.6 In the event of the Owner prohibiting any interim or final draws in contravention of clauses 4.1.3 or 4.1.4 above, whichever may be applicable, the Builder 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 Builder shall, however, not be entitled to discontinue the Works if payment is prohibited by the Owner or withheld by the registered credit provider who issued the Guarantee as result of –
- 4.1.6.1 non-delivery by the Builder of the Builder's NHBRC Registration Certificate and NHBRC Enrolment Certificate; or
- 4.1.6.2 outstanding defects, deviations or notes on the Property from the NHBRC or the relevant local authority; or
- 4.1.6.3 failure to comply with a certificate of non-compliance issued by the NHBRC.
- 4.1.7 The Builder shall submit a monthly payment request to the Principal Agent and if the Principal Agent issues a payment certificate certifying that –
- 4.1.7.1 the amount requested by the Builder, 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

4.1.7.2 in the case of a request for payment other than a final payment, in the opinion of the Principal Agent, the balance of the Contract Sum not yet advanced will be sufficient to complete the Works; and

4.1.7.3 that part of the Works in respect of which payment is being claimed by the Builder has been completed,

then the Owner shall pay to the Builder such portion of the Contract Sum confirmed by the Principal Agent, within 5 (five) days of being furnished with the Principal Agent's certificate referred to in clause 4.1.7 or, confirmed by the Architect, within 5 (five) days of the Architect's decision, as the case may be.

#### **4.2 Contract Sum: Building Loan**

4.2.1 In the event that the entire balance of the Contract Sum or a portion of the Contract Sum being payable from the proceeds of a Building Loan then -

4.2.1.1 payment of the proceeds of the Building Loan 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

4.2.1.2 the Builder is hereby authorised and empowered to 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 the Builder to do so. In so far as it may be necessary, the Owner hereby irrevocably and unconditionally authorises the Builder or its nominee to request payments of interim and final draws.

4.2.2 In the event of the Mortgagee through error or otherwise paying to the Owner or his agents any of the proceeds of the Building Loan

prior to the Builder having been paid the full Contract Sum plus any additional amounts herein contained, the Builder may require the Owner to forthwith pay such amounts plus interest at the rate prescribed in clause 13.1, from the date of such payment to the Owner until the date of payment thereof to the Builder. In the event of the Owner failing or refusing to authorise payment of any interim or final draws in contravention of clauses 4.2.1.1 and 4.2.1.2 or failing or refusing to make payment to the Builder in contravention of this clause 4.2.2, the Builder 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 Builder shall, however, not be entitled to discontinue the Works if payment is withheld by either the Mortgagee or the Owner as result of –

4.2.2.1 non-delivery by the Builder of the Builder's NHBRC Registration Certificate and NHBRC Enrolment Certificate; or

4.2.2.2 outstanding defects, deviations or notes on the Property from the NHBRC or the relevant local authority; or

4.2.2.3 failure to comply with a certificate of non-compliance issued by the NHBRC.

4.2.3 The Owner shall be liable for the payment of all and any interest levied by the Mortgagee under the Building Loan and the Owner undertakes and warrants to and in favour of the Builder that he shall make payment of such interest timeously in accordance with the provisions of the Building Loan.

### **4.3 General**

4.3.1 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.

4.3.2 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 Builder shall not be obliged to give the Owner possession of the Property or the Works until such time as all amounts due to the Builder by the Owner, save for the Retention Sum, have been settled in full.

4.3.3 All payments to be made to the Builder in terms of this Agreement shall be made to the Builder 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 Builder 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.

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4.3.4 In the event that the Owner fails to –

4.3.4.1 deliver the Guarantee/s referred to in clause 4.1.1.1; or

4.3.4.2 make the payment referred to in clause 4.1.1.2 above,

within 4 (four) months of the date on which Jooste Marais Inc requests payment or delivery, as the case may be, then without prejudice to any other rights that the Builder may have, the Contract Sum shall be increased by 12% (twelve percent) per annum, calculated daily and compounded monthly in arrears, from the expiry of the aforesaid 4 (four) month period until such time as the Owner has complied with his aforesaid obligation.

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## 5 EXECUTION OF WORKS

- 5.1 The Builder agrees to execute and complete the Works in accordance with the Unit Floor Plans, Specification and Schedule of Finishes and in accordance with industry norms.
- 5.2 The Builder 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 Builder, its' employees, agents or subcontractors or with the completion of the Works, including but not limited to the giving of instructions or directions.
- 5.4 Notwithstanding any provision to the contrary herein, the Builder 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 Builder qualified to execute the Works in a good, proper and workmanlike manner, but shall notwithstanding such appointment remain liable to the Owner as the Builder in terms of this Agreement.
- 5.5 All specialists, merchants, tradesmen and sub-contractors who are to execute any work or supply any goods shall be contractors normally used by the main contractor appointed by the Builder. The main contractor shall be under no obligation to utilise the services of any other contractor or sub-contractor.
- 5.6 The Owner, its officers, employees, agents and contractors shall not have any claim of any nature against the Builder or any of its officers, employees, agents and contractors 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 Builder's gross negligence).

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- 5.7 In the event of any circumstances arising, caused by or attributable to the Owner, which delays or which could have the effect of delaying the

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completion of the Works, or of increasing the cost of the Works, the Builder 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 Builder on demand. The Builder 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 Builder on the Owner's behalf as contemplated in clause 5.7 above; or
  - 5.8.2 whether the Works have been constructed substantially in accordance with the Unit Layout Plan, Specifications and Schedule of Finishes 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 Builder. If the Builder so consents, the new purchaser and/or transferee of the Property must agree in writing to observe the terms and conditions of this Agreement. 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.

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## 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 Builder 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 Builder consider it reasonably necessary for technical reasons as 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 Specification and Schedule of Finishes reflect the finishes that are included in the Contract Sum.
- 6.1.4 The Owner may choose from a range of options contained in the Specification and Schedule of Finishes pertaining to a particular class of finishes at no extra cost.
- 6.1.5 Optional Extras may be chosen as set out in the Specification and Schedule of Finishes at an extra cost and all the various choices and permissible options will be available from the Builder.
- 6.1.6 All Optional Extras must be implemented and paid for in accordance with the provisions set out in this clause 0 .
- 6.1.7 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 Builder, then in such event the Principal Agent shall in his sole and unfettered discretion select the finishes from **Appendix 2** hereto. The Owner

shall accept the Principal Agent's selection and shall have no claim against the Builder pursuant to such selection.

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6.1.8 Neither the Owner nor any person or firm employed by the Owner shall carry out any work on the Property.

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

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6.1.10 The Owner shall not be entitled to make an alteration to the Unit Floor Plan.

**6.2 Variations: 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.

6.2.3 The Owner may make a single request in writing, incorporating all Optional Extras desired, complete with sufficient detail to enable the Builder to quote thereon, provided such request is received by the Builder within 30 (thirty) days of the Signature Date or such later date that the Builder in its sole discretion may allow.

6.2.4 The Builder shall inform the Owner by written quotation of the additional amount to be charged for the Optional Extras (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 Builder of the amount required for the extras within 7 (seven) days of receipt of the Builder's invoice and send proof of payment of such additional amount to Jooste Marais Incorporated. In the event of there being more than 1 (one) Owner, the signature of either of the Owners shall be binding on all of the Owners in respect of any Optional Extras.

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6.2.5 In the event of the Owner not accepting in writing and making payment of the amount on receipt of the Builder's invoice, then the Works shall be completed in accordance with the Unit Floor Plan and Specification and Schedule of Finishes and the Owner shall be obliged to take occupation thereof in terms of the provisions of this Agreement.

6.2.6 The Owner shall be liable for payment of all additional costs that may be incurred for purposes of the finalisation and installation of the Optional Extras 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 Optional Extras.

## **7 COMMENCEMENT AND COMPLETION**

7.1 The Owner shall give the Builder undisturbed possession of the Property from the date of Transfer and shall not require the Builder to give up possession of the Property for so long as any amounts are due to the Builder in terms of this Agreement. It is recorded that any waiver of builder's lien which may have been signed or will be signed by the Builder or any person to whom the Builder 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.

- 7.2 The Builder shall commence the construction of the Works 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 all bank guarantees and/or payments in respect of the Contract Sum due in terms of this Agreement having been delivered to Jooste Marais Inc; and
  - 7.2.4 receipt by the Builder of the enrolment certificate in respect of the Works to be carried out on the Property with the National Home Builders Registration Council.
- 7.3 The Builder shall complete the construction of the Works, to a state where a Practical Completion Certificate may be issued, within 12 (twelve) months from the date on which construction commences. Should any dispute arise as to the actual date on which the construction is commenced, a certificate signed by the Principal Agent shall be final and conclusive proof of such date.
- 7.4 The Builder 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 -
- 7.4.1 this date has not been extended by the Principal Agent in accordance with clauses 7.5, 7.6 and/or 11.3.3;
  - 7.4.2 that the Builder has taken all reasonable steps to prevent and/or minimise the delay; and
  - 7.4.3 that the delay is not due to intent or negligence on the part of the Builder.

7.5 If the period during which the construction of the Works is being carried out coincides with any statutory or customary builders' 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.

7.6 The Builder 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.

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7.7 The Builder shall notify the Owner by e-mail at the chosen e-mail address herein of the contemplated Practical Completion Date and the Builder shall, on request, allow the Owner a reasonable opportunity, from date of the aforesaid notification until the date of the Handover 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 **Appendix 1**, **Appendix 2** and, if applicable, any Optional Extras agreed upon in accordance with the provisions of this Agreement.

7.8 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.

7.9 On the Practical Completion Date all risk in and to the Works shall pass to the Owner.

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7.10 Within 7 (seven) days of the Practical Completion Date, the Parties will meet for the Handover Inspection, at which inspection the Owner and the Builder shall agree on the Defects List.

- 7.11 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 -
- 7.11.1 in so far as the CPA applies to this Agreement and to the extent that the Owner and Builder have in writing confirmed that delivery of the Works has been given and taken, the date of such written confirmation; or
- 7.11.2 the 4th working day after the Handover Inspection; and
- 7.11.3 the date on which the Owner and the Builder agree on the Defects List; and
- 7.11.4 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
- 7.11.5 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
- 7.11.6 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 and instructs Jooste Marais Inc to effect payment of the Retention Sum to the Builder.
- 7.12 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 Builder shall be entitled, but not obliged, to sublease the Property and the Works to a third party on such terms acceptable to the Builder until the later of the following dates –
- 7.12.1 the Delivery Date; or

7.12.2 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. The Builder 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 Builder 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 Builder 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 6 (six) months from the Practical Completion Date, provided that the Owner notifies the Builder in writing within the said 6 (six) month period of any such defects and provided further that the Owner grants the Builder 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 Builder in writing within the said 12 (twelve) month period of any such leakage or damage and provided further that the Owner grants the Builder 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 Major Structural Defects which may manifest itself within 5 (five) years from the Practical Completion Date, provided that the Owner notifies the Builder in writing within the said 5 (five) year period of any such Major Structural Defect and provided further that the Owner grants the Builder 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 Builder 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;

8.4.2 any faults or defects resulting from surface or storm water, ground containing clay or other shifting soil, settlement cracking, geological disturbances, subsidence and/or adverse subsoil conditions; and

8.4.3 the Builder shall under no circumstances be liable for any consequential loss or damage howsoever arising.

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- 8.5 Any dispute arising between the Parties with respect to the Builder'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 Builder 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 Builder. 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 Builder 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 of their obligations in terms of this Agreement, the Builder agrees to cede to the Owner, as an outright cession and *in anticipando*, all of its rights under the guarantees and/or warranties, as the case maybe, given by the subcontractors and suppliers in relation to the Works or any parts thereof.
- 8.8 On Final Completion, the Builder 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 Builder 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 4.1.4.4.1, , 5.8.2, 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.

9.3 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 Builder.

## **10 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 Architect.

10.2 The Parties agree that the referral of a matter to the Architect in accordance with the provisions of this Agreement shall be subject to the following provisions –

10.2.1 the Architect shall act as an expert and not as an arbitrator;

10.2.2 each Party shall be entitled to make representations to the Architect in such manner and form as the 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 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 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 Architect and any costs incurred by the Architect shall be borne and paid for by the Party determined by the 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 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 Builder 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 Builder 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 Builder, without cause, 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 Builder 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 Builder 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.
- 11.3 In the event that 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 Builder'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 below, shall be extended by a period equal to the number of days between the date of the Event of

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Default and the date of rectification thereof as certified by the Principal Agent.

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11.4 Notwithstanding anything to the contrary herein contained, if for any reason whatsoever the start of the building operations is delayed for a period of 12 (twelve) months or longer, reckoned from the Signature Date, for reasons beyond the control of the Builder, then at the option of the Builder, this Agreement may be cancelled by the Builder on written notice to the Owner and thereafter neither Party shall have any claim against the other howsoever arising, save to the extent that such delay is attributable to the Owner, in which event the Owner shall be liable for all of the costs incurred by the Builder pursuant to this Agreement.

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11.5 If in any legal proceedings or arbitration relating to the enforcement by the Builder of its rights in terms of this Agreement, a Court or arbitrator awards costs to the Builder, 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 Builder 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 Builder in relation to its rights in terms of or arising out of this Agreement.

## **12 AGENT'S COMMISSION**

12.1 The Builder shall pay the Commission to the Agent within 3 (three) days of the Delivery Date.

12.2 In the event that this Agreement is cancelled by the Builder as a result of the Owner's breach thereof or if this Agreement is rescinded by the Owner as contemplated in clause 21.2, the Agent shall have no claim against the Builder for the payment of the Commission and the Owner agrees to pay the Agent the Commission immediately on demand by the Agent.

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- 12.3 If no Agent is reflected in paragraph 5 of the Schedule, the Owner warrants that he was not introduced to the Builder by any agent and hereby agrees to indemnify the Builder against any claim (including all legal costs on attorney and own client scale incurred by the Builder in connection therewith) made by an agent for commission as a result of the transaction contemplated in this Agreement.

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### **13 INTEREST & MORA**

- 13.1 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.

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- 13.2 Should there be a delay in obtaining the Practical Completion Certificate for which the Owner is solely responsible then, in addition to the Builder's rights in terms of clause 11.3.2 above and without prejudice to any other rights that the Builder may have in terms of this Agreement or in law, the Owner shall pay to the Builder, 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 Builder as being in mora to the date upon which the Owner has ceased to be in mora.

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### **14 CERTIFICATE OF INDEBTEDNESS**

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

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- 14.1.1 *prima facie* proof of the quantum of the amount due to the Builder in terms of this Agreement; and
- 14.1.2 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.

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## **15 INSURANCE**

- 15.1 The Builder 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.
- 15.2 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, be responsible for keeping the Works insured to the full value thereof against loss or damage by fire or other appropriate risks.

## **16 ACCESS AND INCONVENIENCE**

16.1 The Owner acknowledges that the Vines Development will be an ongoing process and that certain inconvenience may be caused thereby. The Builder 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 Vines Development.

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16.2 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 Vines 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 Builder be responsible for any loss, damage or inconvenience suffered by the Owner by reason of such building or development operations.

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

16.3.1 such right of inspection shall be limited to 1(one) inspection per week;

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

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

16.3.4 the Owner shall not personally or through his agent be entitled to issue instructions to any of the Builder's employees, contractors or

subcontractors or any other person employed or acting on their behalf.

## **17 COMPANY, CLOSE CORPORATION, TRUST AS OWNER**

- 17.1 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 Builder on the Signature Date and/or the Builder 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.
- 17.2 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 -
- 17.2.1 such company shall be duly incorporated within 30 (thirty) days of signature hereof by the Owner;
- 17.2.2 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;
- 17.2.3 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
- 17.2.4 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.
- 17.3 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 Builder as surety and

co-principal debtor for all the obligations of the Owner to the Builder arising out of or in connection with this Agreement and, provided that the CPA does not apply to this Agreement, renounces the benefits of excussion and division.

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## **18 ADDRESSES FOR RECEIVING NOTICES**

- 18.1 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.
- 18.2 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.
- 18.3 Any notice given in terms of this Agreement shall be in writing and shall –
- 18.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 18.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;
- 18.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of despatch;

- 18.3.4 if transmitted by electronic mail message be deemed to have been delivered to and received by the addressee upon receipt of an automated acknowledgement of receipt by the addressee 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.
- 18.4 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.

## **19 DISPUTE RESOLUTION**

- 19.1 Subject to clause 19.2 below, any Party may demand that a dispute be determined in terms of this clause 19 by written notice given to the other Parties in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 19.2 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 in terms of clause 19.1.
- 19.3 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.
- 19.4 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 19.5 The arbitration shall be held –
- 19.5.1 at Cape Town ;
- 19.5.2 with only the legal and other representatives of the Parties to the dispute present thereat; and

- 19.5.3 otherwise in terms of the Arbitration Act, No 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 19.6 The arbitrator shall be a practising advocate of the Cape Bar of at least ten years’ standing, appointed by agreement between the parties to the dispute, subject to clause 19.7.
- 19.7 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 19.1, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either Party to the dispute.
- 19.8 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 19.9.
- 19.9 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 19.8, at the instance of any of the parties to the dispute.
- 19.10 In the event that a party to a dispute wishes to appeal the decision of the arbitrator, such party shall apply to the arbitrator for leave to appeal within 14 (fourteen) days from the date of the decision of the arbitrator.
- 19.11 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held before 3 (three) arbitrators appointed in accordance with clauses 19.6 and 19.7, it being agreed that for the purposes of appeal the appointed arbitrators may include a retired judge otherwise appointed in accordance with clauses 19.6 and 19.7.
- 19.12 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator such party shall furnish security for the costs of the appeal in an amount of R150 000 (one hundred and fifty thousand Rand) within 30(thirty) days from the date on which leave to appeal is granted. Should the relevant party fail to furnish security to this effect the leave to appeal shall lapse and the prospective appellant will no

longer be entitled to proceed with an appeal and the arbitrator's decision shall be final and binding upon the Parties.

19.13 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

19.14 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 19.1 shall be resolved strictly in accordance with the provisions of this clause 19. The Parties accordingly agree and undertake as follows -

19.14.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;

19.14.2 that it shall not make any application to the arbitration tribunal as contemplated in terms of section 20(1); and

19.14.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

## **20 GENERAL**

20.1 In the event of there being more than 1 (one) Owner, the Owners shall be jointly and severally liable for all of the Owners obligations in terms of this Agreement.

20.2 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.

20.3 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.

- 20.4 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.
- 20.5 Provided that the CPA does not apply to this Agreement, 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.
- 20.6 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 an enforcing the obligations of the other Party in terms of this Agreement.
- 20.7 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.
- 20.8 The Builder 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.
- 20.9 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 Builder.

INITIAL\_\_\_\_\_

- 20.10 All the costs of Themis Commercial Legal Advisors (Pty) Ltd of and incidental to the 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) in favour of Themis Commercial Legal Advisors (Pty) Ltd capable of acceptance and implementation at any time without notice.

## 21 CONSUMER PROTECTION ACT

- 21.1 The Builder confirms that it has considered all of the clauses in terms whereof he, amongst other things, limit the liability of the Builder 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.

INITIAL\_\_\_\_\_

- 21.2 In so far as section 16 of the CPA applies to the provisions of this Agreement and in so far as this transaction has resulted from direct marketing by the Builder or its agents, the Owner has the right to cancel this Agreement without reason or penalty by written notice within 5 (five) Business Days after the Signature Date, or within 5 (five) Business Days after the Delivery Date. If the Purchaser exercises its rights in terms of section 16 of the CPA –

- 21.2.1 the Owner shall return the Works to the Builder within 10 (ten) Business Days of the Delivery Date in the same condition in which it was given to the Owner. The return of the Works shall be at the Owner's risk and expense;
- 21.2.2 the Owner shall be liable to the Builder for any expenses necessary to restore and repair any damage to the Works; and
- 21.2.3 the Builder shall return all payments made by the Owner on account of the Contract Sum within 15 (fifteen) Business Days from the date

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on which the Owner returns the Works as contemplated in clause 21.2.1, provided that the Builder may deduct from the aforesaid payments such amounts as the Builder deems necessary for the restoration and repair referred to in clause 21.2.2.

**INITIAL\_\_\_\_\_**

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

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

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

21.3.3 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.

**INITIAL\_\_\_\_\_**

21.4 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 -

21.4.1 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 Builder agreeing to such terms and conditions as are contained herein;

**INITIAL\_\_\_\_\_**

- 21.4.2 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 Builder;
- 21.4.3 he has inspected the Unit Floor Plan, Specification and Schedule of Finishes, draft Guarantee and Schedule of Charges attached hereto as Appendix 1, 2, 3, 4, and 5 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;
- 21.4.4 he understands the content, significance and import of this Agreement without undue effort, having regard to –
- 21.4.4.1 the context, comprehensiveness and consistency of the Agreement;
- 21.4.4.2 the organisation, form and style of the Agreement;
- 21.4.4.3 the vocabulary, usage and sentence structure of the Agreement; and
- 21.4.4.4 the use of any illustrations, examples, headings or other aids to reading and understanding.

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Unit Floor Plan

**Specification and Schedule of Finishes**

**Draft Guarantee**

**Letter of guarantee**

Dear Sirs

**LETTER OF GUARANTEE NO. ....**

We confirm that you have entered into an agreement (“the Agreement”) with our client, ..... (“the client”) in terms of which you are to erect a dwelling on ..... (“the Property”).

At the request of and on behalf of our client, we advise that we hold at your disposal, subject to the terms & conditions of this undertaking, a sum which in aggregate shall not exceed R\_\_\_\_\_ which shall be paid to you by ourselves in instalments from time to time as set out below provided that such instalments are certified as being due and payable to you by \_\_\_\_\_ (“the Principal Agent”), in accordance with the provisions of the Agreement and duly authorised by our client.

The instalments shall be paid to you once the following conditions have been complied with:

1. The provision to ourselves of the Principal Agent’s certificate confirming that the Works on the Property to which the request for the payment of an instalment relates have been completed to their satisfaction and that the total value of the works completed on the Property on the date that any request for the payment of the instalment is made is not less than:
  - a. the amount of the instalment being claimed; plus
  - b. the total amount of instalments previously advanced by ourselves to you in terms of this undertaking; and provided that the undrawn balance of this facility to be advanced in terms of this undertaking shall at all times be sufficient to cover the cost of the entire installation of the Works in terms of

the specifications attached to the Agreement; failing which the amount of the instalment shall be reduced by ourselves in our sole discretion.

No material amendments, variations or substitution of the Agreement shall be effective for the purposes of this undertaking unless approved in writing by ourselves.

It is recorded that the capital value of this guarantee will be reduced by the amount/s paid out in terms hereof. A certificate issued by any manager for the time being of \_\_\_\_\_ Bank, whose appointment it shall not be necessary to prove, shall be prima facie proof for all purposes of the amount paid out under this guarantee.

This guarantee is restricted to the payment of monies only. We reserve the right to withdraw from this guarantee by giving written notice thereof should any new or previously undisclosed fact emerge, or should any circumstances prevent or unduly delay the registration of any of the abovementioned matters, whereupon the said sum will no longer be held at your disposal.

This instrument is neither negotiable nor transferable and expires on \_\_\_\_\_ or against issue of the final completion certificate by the Principal Agent or in the event that this undertaking is withdrawn for whatever reason, whichever is earlier, upon which this original guarantee will be returned to ourselves.

Yours faithfully

\_\_\_\_\_ **BANK LIMITED**

**FOR AND ON BEHALF OF**  
\_\_\_\_\_ **BANK LIMITED**

**FOR AND ON BEHALF OF**  
\_\_\_\_\_ **BANK LIMITED**

**Schedule Of Charges**

The undermentioned charges are for the account of and payable by the Builder or the Owner as indicated below:

Where payable by the Builder the relevant charge is included in the Contract Sum.

Where payable by the Owner and,

- no provision has been made therefore, the Owner undertakes to pay all such costs on demand.
- provision has been made therefore, such provisions shall be dealt with in accordance with clause 13.

<b><u>ITEM</u></b>	<b><u>PAYABLE BY</u></b>
1. Architectural fees, Plan Drawing and Printing Cost	BUILDER
2. Plan Approval Fees	BUILDER
3. Electrical Connection Fees	BUILDER
4. Water & Sewer Connection Fees	BUILDER
5. Water Consumption during construction	BUILDER
6. Interim Interest in relation to Building Loan	OWNER
7. NHBC	BUILDER

**CPA Acknowledgements**

1. The Owner confirms that:

(a) he has read this Agreement and understands the contents thereof

YES/NO

(b) that neither the Property nor the Builder was introduced to him by means of direct marketing

YES/NO

(c) that he is aware and understands his rights to the cooling-off period after direct marketing

YES/NO

(d) the Owner is a juristic person (Company, Close Corporation, Trust, Partnership, etc.)

YES/NO

(e) if the Owners answer to clause (d)above is YES, on date hereof it's annual turnover or asset value is more than R2 000 000,00 (Two Million Rand)

YES/NO

*(the above clause (e) is not applicable if the Owner is a natural person)*

(f) he has purchased and will use the Property and Works only for residential purposes

YES/NO