

BUILDING AGREEMENT

Between

.....
.....
.....
Address:

(Hereinafter referred to as “the CONTRACTOR”)

and

.....
.....
.....
Address:

(Hereinafter referred to as “the CLIENT”)

WHEREAS the CLIENT entered into an Agreement of Sale for an erf in the development known AS STONECREST;

AND WHEREAS the Agreement of Sale is subject to the client signing a Building Agreement with the CONTRACTOR;

NOW THEREFORE the CONTRACTOR will erect a structure (hereinafter referred to as “the WORK”) on Erf as specified in *Annexure “A”* in the development known as STONECREST ESTATE (hereinafter referred to as “the PROPERTY”) in all aspects and in conjunction with:

- 1.1 The Schedule of specifications as set out in *Annexure “B”*;
- 1.2 The work drawings set out in *Annexure “C”* and the building plans to be approved by the local council (hereinafter referred to as “the Plans”)

The documents as set out in *clause 1.1* and *1.2* above form part of the whole agreement. In the event of discrepancies in these documents, then the schedule and financial plan will have preference over the building agreement.

2. The Agreement is for the amount of R.....(.....)
(VAT inclusive) (hereinafter referred to as the “PRICE”) which amount must be paid by the CLIENT to the CONTRACTOR as set out in the Financial Plan contained in *Annexure “A”*.

In the event that the construction of the building starts later than 6 (SIX) months after signature hereof, the Haylett Index may be used to adjust the building price. If the Haylett formula is used, the CLIENT will be notified in writing.

3. **PRELIMINARY**

- 3.1 Previous Agreements:

The parties agree that this agreement cancel all previous agreements between the parties for the erection of any structures on the PROPERTY (if applicable);

- 3.2 Whole of the Agreement:

This agreement represents the whole of the agreement between the parties and no waiver or change in the conditions set out herein will have any effect unless it is in writing and signed by both parties. The CLIENT acknowledges that no guarantees and undertakings of whatsoever nature, except as set out in the agreement, is made by the CONTRACTOR.

4. **PLANS, SPECIFICATIONS AND SCHEDULE OF PROCEDURES**

- 4.1 The CLIENT shall appoint AFRICA CONSULTING ARCHITECTS to draw the building plans and to be paid by the CLIENT;
- 4.2 The CLIENT gives herewith unconditional and in *rem suam* power of attorney to the CONTRACTOR to sign all plans, work sketches, specifications and schedules and to lodge at the local authority for its approval;
- 4.3 The CONTRACTOR shall have the power to make alterations to the plans, work sheets, specifications and schedules if required by the local authority. In the event of the cost of the work increasing, the CONTRACTOR must obtain the consent of the CLIENT;
- 4.4 Where the specifications and schedule do not correlate with the plans, the specifications and schedules will be accepted as correct.

5. **WORKS**

- 5.1 The CONTRACTOR will begin with the work, subject to the required amount of sales concluded, as set out in the Sale Agreement, or as soon as reasonably possible and after the local authority approved the plans, the client obtained a bond (if applicable) and transfer having taken place in the name of the CLIENT. The CONTRACTOR will complete the work within 4 (FOUR) months, but subject to reasonable extensions due to matters beyond the control of the CONTRACTOR.
- 5.2 The CLIENT will have no claim against the CONTRACTOR due to a delay in the beginning of the work or the completion thereof and the CLIENT will not have the right to cancel the agreement;
- 5.3 The CONTRACTOR will have the right, in his own discretion, but with the permission of the previous owner to commence with the work prior to registration of the property in the name of the CLIENT or before registration of the bond referred to in *clause 6*.
- 5.4 The CONTRACTOR will have the right, in his absolute discretion, to sub-contract any of the work;
- 5.5 The CLIENT may not in his personal capacity or with his employees instruct the CONTRACTOR or his employees or any sub-contractor or their employees to alter the works;
- 5.6 In the event that the client or his representative is in breach of *clause 5.5* or give instructions which have the effect of changing the plans or specifications, then the CONTRACTOR will not be held responsible for any defects in the work as a result of the changes;

- 5.7 The client will, however, be held liable and pay on demand, all amounts or additional expenses, directly or indirectly, for the completion of the alterations;
- 5.8 All material and movables delivered on the site shall at all times remain the absolute property of the CONTRACTOR;
- 5.9 In the event that the client wishes to install any item at his own cost, such item will only be installed after completion of the work and after occupation is given to the CLIENT;
- 5.10 The CONTRACTOR may invite the public by advertisement or whatever means, to inspect the work or to use the work as a showhouse at any time before the work is completed and at any time before occupation is given to the CLIENT.

6. FINANCES

- 6.1 In the event that the CLIENT requires a bond for completion of the works, such application for the bond will be done simultaneously with the application as set out in *clause 4* of the Sale Agreement of the erf;
- 6.2 Where the “*total amount owed by the client*” in the Financial Plan is not covered by a bond, the CLIENT will provide the CONTRACTOR with a bank or building society guarantee which will be sufficient to cover the amount owed within 14 (FOURTEEN) days of request by the CONTRACTOR or his attorneys. This amount will be paid into trust at the commencement of construction into the trust account of DU PLESSIS & HOFMEYR INC attorneys and released to the CONTRACTOR in terms of the conditions of *clause 6.7.2* hereunder;
- 6.3 If a bond or other finances are obtained to give effect to this agreement and is later withdrawn due to a false declaration made by the CLIENT or the CLIENT delays any transaction, then the CONTRACTOR, without renouncing any other right, shall have the right to cancel the agreement without any notice;
- 6.4 The CLIENT cedes herewith his rights to obtain payment from the proceeds of the bond as set out in *clause 6.1* above to the CONTRACTOR irrevocable and in *rem suam*. The CLIENT appoints herewith the CONTRACTOR as his rightful agent to accept any payments on behalf of him from the bank or building society and agree to sign all the necessary documentation to give effect to the payment by the bank or building society;
- 6.5 In the event that the CLIENT prohibits the CONTRACTOR from accepting a drawing from the bank or building society, the CONTRACTOR will have the right, without prejudice to his rights in terms of this agreement, to immediately claim the amount from the CLIENT (referred to in *6.6* hereunder) together with interest calculated thereon at the maximum rate legally claimable on the date of payment to the date when the CONTRACTOR receives the payment. The CONTRACTOR will further be able to stop all building work and the client will be responsible for all costs and damages, whether directly or indirectly without any prejudice of any rights of the CONTRACTOR in terms of this agreement;

- 6.6 Payments due by the CLIENT to the CONTRACTOR will be made without any deductions and the CLIENT waives any right he may have against the CONTRACTOR and the CLIENT may not withhold any payment as a result of any debt with the CONTRACTOR;
- 6.7 Except for payments made to the CLIENT prior to the commencement of construction, all payments are made in terms of the Financial Plan of the agreement;
- 6.7.1 When it is made from a bank or building society bond, is made on the bank's standard withdrawal program;
- 6.7.2 When it is not made from a bank or building society bond, or where a bank or building society bond has been obtained, but drawing can not take place for whatever reason, payment will take place in terms of the following table:
- (a) at completion of the building work up to window sill height – 20% (TWENTY PERCENT) of the agreed price minus previous payments;
 - (b) at completion of the roof – 50% (FIFTY PERCENT) of the agreed price minus previous payments;
 - (c) at completion of the carpentry and plumbing – 75% (SEVENTY FIVE PERCENT) of the agreed price minus previous payments;
 - (d) At completion of painting, tiling and flooring – 100% (ONE HUNDRED PERCENT) of the agreed price minus previous payments.
- 6.7.3 In the event that payments in terms of the Financial Plan have been made by a bond in combination with a client's own payment, it is agreed that the non-bond portion must be paid first and that such payment will be made in terms of *clause 6.7.2* above. The bank or building society in terms of their standard withdrawal program will pay the remainder;
- 6.7.4 The CLIENT is liable for and pays interest levied by the bank or building society in payments made to the CONTRACTOR in periods of construction and premiums for payments in fire, storm or flood insurance during building work. Any interest or fee billed by the bank or building society on any amount that exceeds the building amount in terms of the agreed price which is payable to the client, but which as not been paid to the CONTRACTOR, shall be payable by the CLIENT.
7. **INTEREST**
- 7.1 All amounts payable by the CLIENT to the CONTRACTOR where interest is not explicitly provided for, shall bear an interest rate of 4% (FOUR PERCENT) above the prime overdraft rates as stipulated by ABSA bank from payment date until date of last payment of the owed amount;
- 7.2 All interest will be calculated monthly on outstanding amounts whereafter it will be capitalized;

7.3 CLIENT undertakes to pay all outstanding amounts and interest in terms of this Agreement or any changes of this Agreement or completion of the work as specified in *clause 8* hereunder to the CONTRACTOR;

7.4 The CLIENT agree that as long as the CLIENT owes money to the CONTRACTOR in terms of this Agreement, he shall not be allowed to take occupation of the property until the full outstanding amount has been paid.

8. **COMPLETION**

The date of completion of the work shall be the date on which a certificate is issued that the work is acceptable for occupation by the architects.

9. **GUARANTEES**

9.1 The CONTRACTOR guarantees that he, except when indicated differently in terms of this Agreement:

9.1.1 shall after a period of 3 (THREE) months after the completion date as defined in *clause 8* repair or complete any latent defects which became evident in this period and which was a direct result of defective material or workmanship;

9.1.2 for a period of 12 (TWELVE) months after the completion date, to eliminate any defects in respect of leakage in the roof and to make sure that the rain water is properly drained off from the roof;

9.1.3 for a period of 5 (FIVE) years after the completion date, any work that is necessary for any structural faults in the concrete, woodwork or brickwork and this undertaking may not be ceded.

9.2 The undertakings given in *clause 9.1* will not be applicable in respect of hot water cylinders, which is subject to a guarantee given by the manufacturers thereof;

9.3 The CONTRACTOR would be released of the undertakings given by him in terms of *clause 9.1* in the event that the CLIENT declines to give the CONTRACTOR notice by pre-paid registered mail within 7 (SEVEN) days after the completion of the three month period, twelve month period or five year period whichever is applicable, or if the client sells the property;

9.4 The CONTRACTOR'S liability in terms of *clause 9.1* is not in respect of the normal use or misuse, negligence, failure or accidents of any losses of any risk which is insured by a Homeowner's insurance policy which is normally given to the Insurance Board of South Africa in respect of residential properties;

9.5 A certificate by the architect appointed by the CONTRACTOR to the effect that the CONTRACTOR has complied with conditions of his guarantees, as set out in *clause 9.1* shall be final and binding upon the parties;

- 9.6 Except as set out in *clause 9.1* the CONTRACTOR makes no guarantees of any kind;
- 9.7 Guarantees set out in *clause 9.1* will not be applicable where the client is in breach for whatever reason.

10. **INSURANCE**

The CLIENT shall insure the work during progress and thereafter, in the event that any monies are owed to the CONTRACTOR, the interest as well as the amount will be covered by the CLIENT'S insurance policy.

11. **DEFAULT**

- 11.1 If the CLIENT commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the CONTRACTOR shall be entitled to give the CLIENT 7 (SEVEN) days notice in writing to remedy such breach or failure, and if the CLIENT fails to comply with such notice, then the CONTRACTOR shall forthwith 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:

11.1.1 to cancel this Agreement, in which event the client shall forfeit all monies paid to the CONTRACTOR or the Attorneys in terms hereof; or

11.1.2 to claim immediate performance and/or payment of all the CLIENT'S obligations in terms hereof.

- 11.2 Should the CLIENT dispute the CONTRACTOR'S right to cancel this Agreement, then pending the determination of that dispute, the CLIENT shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the CONTRACTOR shall be entitled to recover and accept those payments without prejudice to the CONTRACTOR'S claim for cancellation of this Agreement or any other rights of the CONTRACTOR whatsoever;

- 11.3 Upon cancellation of this Agreement for any reason whatsoever, the CLIENT hereby undertakes to vacate forthwith the property and to procure that the property shall be vacated by any persons who occupy it through the CLIENT'S title or by his permission.

12. **GENERAL**

- 12.1 The terms of this Agreement form the sole contractual relationship between the parties hereto and no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the parties hereto;

- 12.2 No extension of time or indulgence granted by either party to the other shall be deemed in any way to effect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement;

- 12.3 Each of the parties hereby undertakes to sign and/or execute all such documents (and without limiting the generality of the foregoing) it includes the execution of the necessary Power of Attorney, Transfer Duty Declarations and bond documents;
- 12.4 The CONTRACTOR has the right to cede all his rights and obligations to another party by giving written notice to the CLIENT.

Thereafter all rights and obligations shall rest upon the cessionary and the CLIENT'S rights and obligations in terms of the contract against the CONTRACTOR shall rest upon the cessionary. In the event that the cession takes place, the CLIENT waive all claims that they might have against the CONTRACTOR.

13. **NOTICES AND DOMICILIA**

- 13.1 Each of the parties chooses *domicilium citandi et executandi* ("*domicilium*") for the purpose of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in the Schedule of the Sale Agreement in respect of the Erf;
- 13.2 Each of the parties shall be entitled from time to time, by written notice to the others to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante;
- 13.3 Any notice given should be posted by prepaid registered post from any address within the Republic of South Africa to the addressee at the addressee's *domicilium* for the time being shall be presumed until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.

14 **MAGISTRATE'S COURT JURISDICTION**

The parties hereby consent in terms of *Section 45* of the *Magistrate's Court Act 1944* to the jurisdiction of any Magistrate's Court having jurisdiction over their respective person under *Section 28* of the *Magistrate's Court Act*, notwithstanding that any action or proceeding arising out of this Agreement would otherwise be beyond the jurisdiction of such Court, provided that the seller shall have the right to institute proceedings in any other court of competent jurisdiction.

15. **ARBITRATION**

- 15.1 Any dispute or difference which may arise between the parties at any time in connection with this Agreement or in terms of a matter arising therefrom or in connection with the rights of any of the parties or interpretation thereof, or in connection with the cancellation thereof, or in connection with the rectification of this Agreement, will be forwarded to and finalized by arbitration after notice by one party to the other in terms of this condition;
- 15.2 Such arbitration will be held at Cape Town in conjunction with the conditions of the *Arbitration Act 42 of 1995 (as amended)* except that the arbitration will be informal and

the Arbitrator will have absolute discretion to finalize the arbitration within 21 (TWENTY ONE) days of initiating such arbitration;

- 15.3 There will be one Arbitrator, unless:
- 15.3.1 it is primarily an accounting action, the Arbitrator is to be an independent qualified Auditor;
 - 15.3.2 it is primarily a legal action, then a practicing member of the Cape Bar Council or an attorney with not less than 5 (FIVE) years experience;
 - 15.3.3 it is primarily a technical action, a civil engineer or an architect depending on the nature of the difference;
 - 15.3.4 any other matter, a competent person.
- 15.4 The parties will agree to the appointment of an Arbitrator, but should they disagree within 14 (FOURTEEN) days or arbitration being initiated by any one party, then any one party may request the Cape Bar Council to make an appointment;
- 15.5 The Arbitrator will perform as a professional and will have the right to accept the procedures, as he deems fit and to finalize the dispute as soon as possible;
- 15.6 The decision of the Arbitrator, including any order for costs, will be final and binding on the parties and a court order may be ordered;
- 15.7 Notwithstanding abovementioned, the CONTRACTOR will have the right to choose not to use arbitration but to choose litigation.

16. **GENERAL**

- 16.1 Should the CLIENT not be the owner of the property on which the house is being erected, then –
- 16.1.1 immediately on signature, the client will ensure that the CONTRACTOR have full and unlimited entry to the property;
 - 16.1.2 the CLIENT authorizes the CONTRACTOR or should the CONTRACTOR deem it necessary or should it be a condition of the local authority or the financial institution to attend to any soil tests, chemical tests or any other tests, or to obtain an engineer's report on other reports in connection with the ground of the property and to obtain recommendations as to the materials required for any irregularities in the ground tests. Should the tests be unfavorable, then the CLIENT and the CONTRACTOR are to take steps to rectify the problem;
- 16.2 The parties agree that in the execution of their rights, the CONTRACTOR, under no circumstances, will be responsible for any damages that the CLIENT may suffer as a result of any delays in the approval of the plans and specifications;

- 16.3 It is expressly agreed that the client may appoint no sub-contractor and no material or labour may be supplied by the client;
- 16.4 Should the CONTRACTOR decide in terms of his rights, to cede his duties under this agreement, in full or in part, in favor of a third party, then the CONTRACTOR shall notify the CLIENT in writing and he shall, at the request of the CONTRACTOR, sign all necessary documentation;
- 16.5 All guarantees and undertakings, given by the CONTRACTOR to the CLIENT in terms of this Agreement, is personally made to the CLIENT, and such rights may not be ceded to a third party;
- 16.6 The CLIENT undertakes to sign all documents at the CONTRACTORS attorneys as soon as requested to do so, and to take all necessary steps to fulfill the conditions of this Agreement.

THUS DONE and SIGNED at on this day of

AS WITNESSES

- 1. _____
- CLIENT**
- 2.

THUS DONE and SIGNED at on this day of

AS WITNESSES

- 1. _____
- CONTRACTOR**
- 2.

ANNEXURE B
SCHEDULE OF SPECIFICATIONS

**ANNEXURE C
PLANS**