



AGREEMENT OF SALE

IN RESPECT OF AN ERF

(Plot and Plan)

Between

SEVEN DAYS TRADING 49 PROPRIETARY LIMITED

Registration Number 2007/007918/07

("Seller")

And

("Purchaser")

Erf number: _____
House Type: _____
Phase: _____

V05.07.20201



COVERING SCHEDULE

1. PARTIES	
1.1. Seller:	Seven Days Trading 49 (Pty) Ltd Registration Number: 2007/007918/07
Address:	Tygervalley Chambers 4, 2 nd Floor, 27 Willie Van Schoor Drive, Bellville, 7530
1.2. Purchaser/s (full names):	
Identity No. / Registration No. / Date of Birth:	
Purchaser's Income Tax Reference No.:	
Representative's full names (if signing on behalf of a legal entity) :	
Residential Address (street address):	
Postal Address:	
Telephone No: (Home)	
(Work)	
(Mobile)	
E-mail Address:	
Marital Status:	Singe <input type="checkbox"/> Married <input type="checkbox"/>
(How married?)	in community of property <input type="checkbox"/> out of community of property <input type="checkbox"/> Married by Customary Law <input type="checkbox"/> Foreign marriage <input type="checkbox"/>
If foreign marriage, governed by the laws of:	
Names Full of Spouse:	
Identity No. / Date of Birth:	
2. SUBJECT MATTER	
2.1. Erf number	
2.2. Extent of Erf	m ²



3. PURCHASE PRICE	
3.1. Purchase Price of the Erf only (Inclusive of VAT)	R
3.2. Total Contract Price in terms of the Building Agreement (Inclusive of VAT)	R
3.3. Total Purchase Price (Inclusive of VAT)	R
3.4. Deposit	R25 000.00
3.5. Balance of the Total Purchase Price	R
3.5.1. Cash	R
3.5.2. Loan Amount	R
3.6. Date for payment of the Deposit	7 (Seven) days after the signature by the Purchaser
3.7. Date Loan must be granted by	Within 60 (Sixty) days after the Signature Date
3.8. Date for the issuing of the guarantee/s	Within 14 (Fourteen) days after the fulfilment of the condition precedent in Clause 6 of the Agreement; or, if cash, within 30 (Thirty) days after the Signature Date
4. DATES	
Estimated Transfer Date	
5. TRANSFERRING ATTORNEY	
Name of Attorney:	C & A Friedlander Inc. Att: JJF, Tel no: 021 914 5511 Bank Account details: Account Name: C & A Friedlander Bank: Nedbank Branch: St George's Mall Account Number: 1009000225 Branch Code: 100909 Reference: JJF/Erf__ & client's surname
6. BOND BROKER	
Name of Bond Broker:	IMortgage (Pty) Ltd via IGrow Homeloans Reference: Madelein Kottnitz Tel: 021 979 2501 Email: madelein@igrow.co.za
7. ESTATE AGENT	
Principal Agent	Rank Real Estate
Telephone Number	087 802 9003
Sub-Agent	
Telephone Number:	
E-Mail:	
Agent:	
Cell number:	
E-Mail:	



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ANNEXURE D: LEVY BUDGET



1. PARTIES

1.1. SELLER

The Seller means the Party as more fully described in Clause 1.1 of the Covering Schedule.

1.2. PURCHASER

The Purchaser means the Party as more fully described in Clause 1.2 of the Covering Schedule.

2. INTERPRETATION

In this Agreement:

- 2.1.** unless the context clearly indicates otherwise, words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others or such genders, and words importing persons shall include bodies corporate, and vice versa in each instance;
- 2.2.** expressions with reference to writing shall be construed as including reference to printing, lithography, photography and other modes of representing or reproducing words in visible form;
- 2.3.** when any number of days is prescribed, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.4.** where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
- 2.5.** if any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, then, notwithstanding that it is only in the definition Clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.6.** the Annexures to this Agreement are deemed to be incorporated in and form part of the Agreement.
- 2.7.** In this Agreement the following terms and conditions shall, unless inconsistent with the context, bear the meanings stated hereunder and cognate terms and expressions shall bear corresponding meanings:
 - 2.7.1.** Agreement: means this Agreement together with all the Annexures thereto;
 - 2.7.2.** Architectural Guidelines: means the Architectural Guidelines approved by the Local Authority and the POA;
 - 2.7.3.** Balance of the Purchase Price: means the balance of the Total Purchase Price described in Clause 3.5 of the Covering Schedule;
 - 2.7.4.** Bond Broker: means the Bond Broker referred to in Clause 6 of the Covering Schedule;
 - 2.7.5.** Building Agreement: means the Building Agreement to be concluded between the Contractor and the Purchaser, on the Signature Date, providing for the construction of a dwelling on the Erf by the Contractor;
 - 2.7.6.** Business Day: means any Day except a Saturday, Sunday or officially proclaimed public holiday;
 - 2.7.7.** Completion Date: means the Completion Date of the "Works" as defined in the Building Agreement.



- 2.7.8. Constitution:** means the Constitution/s of the POA, and the Sub-Home Owners Association (if applicable) approved or to be by the Local Authority, and available on the Website, including any rules that might be approved by the Trustees of the POA or the Sub-Home Owners Association, as the case may be;
- 2.7.9. Contractor:** means Seven Days Trading 49 (Pty) Ltd, Registration Number: 2007/007918/07, or its nominated entity, successors in title or assigns;
- 2.7.10. Covering Schedule:** means the Covering Schedule contained in the first part of this Agreement;
- 2.7.11. CPA:** means the Consumer Protection Act, Number 68/2008 as amended;
- 2.7.12. Deposit:** means the amount referred to in Clause 3.4 of the Covering Schedule;
- 2.7.13. Development:** means the residential development known as **Bonsai Estate**, established on the Parent Property and of which the Property forms part;
- 2.7.14. Direct Marketing:** means to approach a person, either in person or by mail or electronic communication for the direct or indirect purpose of promoting or offering to supply, the Property to that person;
- 2.7.15. Due Date:** means the date for the fulfilment of any condition referred to in this Agreement or the date for the payments of any amounts due in terms of this Agreement, as the case may be;
- 2.7.16. Erf:** means the Property, excluding the "Works", as defined in the Building Agreement;
- 2.7.17. FICA:** means the Financial Intelligence Centre Act No. 38 of 2001, as amended;
- 2.7.18. General Plan:** means the General Plan, approved or to be approved by the Surveyor General;
- 2.7.19. Initiation Fee:** means the Initiation Fee due and payable by the Purchaser to the bank or other financial institution approving the loan referred to in Clause 9 of this Agreement;
- 2.7.20. Levies:** means the Levies payable by the Purchaser to the POA and/or the Sub-Home Owners Association, as the case may be;
- 2.7.21. Loan Amount:** means the amount as referred to in Clause 3.5.2 of the Covering Schedule;
- 2.7.22. Local Authority:** means the Local Authority having jurisdiction over the Parent Property, being at present the City of Cape Town, and shall include its successor in title;
- 2.7.23. NCA:** means the National Credit Act, No 34/2005, as amended;



2.7.24. Occupation Date:	means the Completion Date;
2.7.25. Occupational Interest:	means an amount equal to the Prime Overdraft Rate, calculated pro rata per month on the Total Purchase Price;
2.7.26. Parent Property:	means Erf 38286 Kraaifontein, City of Cape Town, Western Cape Province;
2.7.27. Parties:	means the Seller and the Purchaser;
2.7.28. Phasing Plan:	means the phases comprising the Development as indicated on Annexure C;
2.7.29. POA:	means the Master Property Owners Association known as Bonsai Estate, established in respect of the Parent Property, which Association has a Constitution to be approved by the Local Authority;
2.7.30. POPIA:	means the Protection of Personal Information Act, No. 4 of 2013;
2.7.31. Prime Overdraft Rate:	means the rate of interest per year, which is equal to Investec Bank's Limited publicly quoted Prime Overdraft Rate;
2.7.32. Principal Agent:	means the Principal Agent referred to in Clause 7 of the Covering Schedule;
2.7.33. Property:	means the Erf as described in Clause 2 of the Covering Schedule, including the Works;
2.7.34. Purchase Price:	means the Purchase Price described in Clause 3.1 of the Covering Schedule;
2.7.35. Purchaser:	means the Purchaser referred to in Clause 1.2 of the Covering Schedule;
2.7.36. SARS:	means the South African Revenue Services;
2.7.37. SDP:	means the Site Development Plan, approved by the Local Authority, attached to this Agreement as Annexure A;
2.7.38. Seller:	means the Seller as described in Clause 1.1 of the Covering Schedule;
2.7.39. Signatory:	means the person who signs this Agreement for the benefit of a Company, Trust or other legal person formed or as Trustee for a Company not yet incorporated;
2.7.40. Signature Date:	means the date on which the Seller signs the Agreement;
2.7.41. Sub-Agent:	means the Sub-Agent referred to in Clause 7 of the Covering Schedule;



- 2.7.42. Sub-Home Owners Association:** means the Sub-Home Owners Associations established, or to be established by the Seller in respect of a portion of the Parent Property, which Association will be subject to the Constitution, its own constitution (if applicable) as well as any of the rules applicable to the Development;
- 2.7.43. Total Purchase Price:** means the Purchase Price plus the Total Contract Price as determined in the Building Agreement;
- 2.7.44. Township Register:** means the Township Register opened or to be opened in terms of Section 46 of the Deeds Registries Act in respect of the Parent Property, or a portion thereof;
- 2.7.45. Transferring Attorneys:** means the Transferring Attorneys as referred to in Clause 5 of the Covering Schedule;
- 2.7.46. Transfer Date:** means the date of registration of the transfer of the Erf into the name of the Purchaser;
- 2.7.47. Trigger Date:** means the date on which the last of the following conditions are fulfilled-
- 2.7.47.1.** the conditions precedent as referred to in Clause 6 and 7 of this Agreement;
- 2.7.47.2.** the date of the delivery of the guarantees as required in terms of Clause 5.2 of this Agreement, thereby securing the payment of the Total Purchase Price.
- 2.7.48. VAT:** means Value Added Tax payable in terms of the VAT Act;
- 2.7.49. VAT Act:** means the Value Added Tax Act No 89 of 1991;
- 2.7.50. Website:** means the Website of the Development available on the internet at the following website address: **www.bonsaiestate.co.za**

3. RECORDAL

- 3.1.** The Seller is in the process to develop the Parent Property, or a portion thereof, as the case may be, and has procured or will procure the approval of the SDP.
- 3.2.** The Seller is in the process of selling erven and constructing houses in the Development.
- 3.3.** The Erf will be transferred to the Purchaser on the terms and conditions as set out in this Agreement. The Contractor wishes to develop the Erf after the Transfer Date by the construction of the Works (as defined in the Building Agreement) and on the terms and conditions as set out in the Building Agreement.
- 3.4.** In the instance of the Property being part of a Group Housing Development being constructed by the Seller on a portion of the Parent Property, Clause 2.7.41 will become applicable and Clauses 16 and 17 of this Agreement will be deemed to include the Sub-Home Owners Association.



4. SALE

- 4.1. The Seller sells to the Purchaser who hereby purchases the Property, as fully described on the General Plan or the SDP, as the case may be, subject to the terms and conditions contained in this Agreement and the Annexures.
- 4.2. **The Purchaser hereby confirms that he has inspected the Erf and/or the Principal Agent or the Sub-Agent has supplied him with sufficient documentation that enabled him to positively identify the Erf.**
- 4.3. **The Purchaser agrees and undertakes to supply the FICA documentation and information required by the Seller as per Annexure B, to the Seller within 24 (Twenty Four) hours after the Signature Date.**

5. PURCHASE PRICE

- 5.1. The Total Purchase Price payable by the Purchaser to the Seller for the Property shall be the amount described in Clause 3 of the Covering Schedule, which amount is inclusive of Value Added Tax and which amount is payable as follows:
 - 5.1.1. the Purchaser shall pay the Deposit in cash, on the date set in Clause 3.6 of the Covering Schedule, to the Transferring Attorneys, which Deposit will be held in trust by the Transferring Attorneys to be invested by them in terms of Section 86(4) of the Legal Practice Act 28 of 2018, until the Transfer Date. The interest of the above, less an administration fee of 1 (One) % per year in respect of management and/or administration fees payable by the bank to the Transferring Attorneys, will accrue to the Purchaser. The Transferring Attorneys will not be able to invest the Deposit unless the Purchaser has furnished the Transferring Attorneys with:
 - 5.1.1.1. all the FICA documentation and information required by the Transferring Attorneys to open an investment account, as may be applicable on the Purchaser as per Annexure B and the Purchaser agrees to grant the Transferring Attorneys full co-operation and disclosure to comply with the FICA requirements and the Attorneys Act, which documentation must be supplied by the Purchaser to the Transferring Attorneys or before the Signature Date, and
 - 5.1.1.2. payment confirmation which must clearly state the reference number, Section Number and contact details of the Purchaser concerned. The Purchaser shall not be entitled to any interest on the Deposit until the documentation has been provided to the Transferring Attorneys and proof of receipt thereof was acknowledged by the Transferring Attorneys, and
 - 5.1.2. the Purchaser shall on or before the date in Clause 3.8 of the Covering Schedule furnish the Transferring Attorneys with a guarantee issued in favour of the Transferring Attorneys for the Balance of the Total Purchase Price, in favour of the Seller or a payee nominated by the Transferring Attorneys. The guarantee is to be issued by a bank and must be payable against registration of transfer of the Erf into the name of the Purchaser, or the Purchaser may elect to pay such amount in cash in which instance the amount must be paid to the Transferring Attorneys, which amount must be invested by them, subject to the terms and conditions provided for in Clause 5.1.1 above.
- 5.2. **All monies due by the Purchaser in terms of this Agreement, and unpaid on the Due Date, shall bear interest at Prime Overdraft Rate plus 2 (Two) percent calculated from the Due Date to the actual date of payment thereof.**
- 5.3. All or any payments to be effected hereunder shall be effected by the Purchaser to the Transferring Attorneys free of exchange at Cape Town and without deduction or set off.



- 5.4. In the event that the VAT rate in effect on the Signature Date is at any time after the Signature Date increased or reduced in such a manner that the VAT payable on the supply of the Property is increased or reduced, the Seller may give the Purchaser notice of its intention to increase or decrease the Purchase Price according to the amendment in the VAT rate. If the Purchaser does not accept such amendment, the Seller may withdraw the above notice and notify the Purchaser of its intention to revert to the original Purchase Price, failing to do so this Agreement will lapse and be of no further force of effect.

6. **CONDITION PRECEDENT - LOAN**

- 6.1. In the event of an amount having been inserted in Clause 3.5.2 of the Covering Schedule, this Agreement is subject to the condition precedent that the Purchaser is granted a loan within the period specified in Clause 3.7 of the Covering Schedule from a bank or financial institution in the amount specified in Clause 3.5.2 of the Covering Schedule on the terms that the aforesaid bank or financial institution normally approves mortgage loans.
- 6.2. The condition set out in Clause 6.1 above will be deemed fulfilled once the aforesaid bank or financial institution to which application has been made for the loan has issued a quotation in terms of Section 92(2) of the National Credit Act to the effect that the application has been approved notwithstanding the fact that such an approval is granted subject to the fulfilment of a condition or conditions or subject to the reservation of the right by such a bank or other financial institution to, at any time prior to payment of the proceeds of the loan to the Purchaser, withdraw such approval.
- 6.3. If the loan is approved for an amount less than the amount stipulated in Clause 3.5.2 of the Covering Schedule and the Purchaser accepts such lower amount in writing by his signature to the quotation as referred to in Clause 6.2 above, this condition will be deemed to be fulfilled.
- 6.4. The Purchaser expressly authorizes the Bond Broker as its agent to submit a mortgage bond application on the Purchaser's behalf to any financial institution, based on the economic benefit and convenience to the Purchaser. The Purchaser agrees and undertakes to sign all necessary documents and to supply the Bond Broker with any information and/or document/s which is/are required for this purpose, within 7 (Seven) days after having being requested to do so. The Purchaser hereby warrants that the information so provided shall be true, accurate and correct. The Purchaser acknowledges that it is in the best interest of the Parties to utilize the services of the Bond Broker since the Bond Broker have obtained pre-approved development packages with all relevant financial institutions, ensuring competitive interest rates and effective service levels.
- 6.5. In the instance of the Purchaser electing not to make use of the services of the Bond Broker as provided for in this Agreement, then and in that instance the Purchaser shall pay a penalty fee of 1% (One) of the Purchase Price. This penalty fee must be paid in cash to the Seller on or before the Transfer Date or the Occupation Date, whichever is the earlier. The Purchaser hereby confirms that he will be liable for the payment of the penalty fee over and above the payment of the bond registration costs as referred to in Clause 9.2 of this Agreement.
- 6.6. It is recorded that the abovementioned condition precedent is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this condition by communicating such waiver to the Seller in writing at any time before the expiry of the abovementioned time limit, in which event this Agreement will not lapse despite the fact that the Purchaser was not successful in the fulfilment of the abovementioned condition.
- 6.7. The Parties agree that should the abovementioned condition precedent not be fulfilled or waived timeously, then in that instance this Agreement will lapse, be of no further force or effect and the Parties will be restored in the position that they were in when they entered into this Agreement.

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7. CONDITION PRECEDENT IN FAVOUR OF THE SELLER

7.1. BUILDING AGREEMENT

- 7.1.1.** This Agreement is subject to the condition precedent that the Contractor and the Purchaser must enter into a Building Agreement in respect of the construction of a dwelling on the Erf on the Signature Date, which Building Agreement must in writing and signed by the abovementioned Parties.
- 7.1.2.** In the event of this condition not being fulfilled, this Agreement will be automatically cancelled and the Parties will have no claim against each other.

7.2. MINIMUM SALES

- 7.2.1.** It is recorded that the Development will be a phased development and comprises residential properties. This Agreement is made subject to the Seller selling residential properties in the Development to a value of at least 80% (Eighty) percent of the aggregate value of all residential properties in the Development within 12 (Twelve) months after the date that marketing commenced. For purposes of this Clause "sell" will mean the coming into existence of a deed of sale between the Seller and the Purchaser, which is not subject to the condition precedent referred to in Clause 6, or in respect of which such condition precedent, if imposed, has been fulfilled.
- 7.2.2.** It is recorded that the condition referred to in clause 7.2.1 above is inserted solely for the benefit of the Seller and may be waived by the Seller, by communicating such waiver in writing to the Transferring Attorneys.
- 7.2.3.** In the absence of the waiver referred to above and despite the Seller's failure to sell residential properties to the required value by the aforesaid date, this Agreement will not lapse, and will remain in full force and effect. The Agreement will only lapse if the Seller informs the Purchaser thereof in writing within 7 (Seven) days after the expiry of the 12 (Twelve) month period referred to in Clause 7.2.1 above.
- 7.2.4.** In the event of this Agreement lapsing by reason of the condition in Clause 7.2.1 above not being fulfilled and the Seller giving the Purchaser written notice thereof as provided in clause 7.2.3 the Seller will:
- 7.2.4.1.** immediately instruct the Transferring Attorneys to repay the Deposit, plus interest earned thereon and any other cash amounts received from the Purchaser, to the Purchaser; and
- 7.2.4.2.** neither the Seller nor the Purchaser will have any claim for damages or for any other amount or any other claim whatsoever against the other Party arising from this contract.

7.3. GENERAL PLAN AND TOWNSHIP REGISTER

This Agreement is subject to the condition precedent in that the Seller must be able to obtain approval of the General Plan by the Surveyor-General as well as the opening of Township Register in the Cape Town Deeds Registry on or before the Transfer Date, failing to do so, this Agreement will become null and void and be of no further force or effect.

8. VAT

Except for the Purchase Price, or where expressly set out to the contrary, all other amounts payable by the Purchaser are described as excluding VAT and the Purchaser shall where applicable pay such amounts plus VAT calculated at the rate then applicable, to the Seller or any other party to whom such payment is due.



9. TRANSFER AND TRANSFER COSTS

- 9.1 Provided the Purchaser has complied with all his obligations as set out in this Agreement and in particular has paid the Deposit, delivered the guarantee referred to in Clause 5 above and paid any other amounts owing in terms of this Agreement, registration of transfer of the Erf shall be given by the Seller and taken by the Purchaser as close as possible to the Transfer Date.
- 9.2 **The Seller shall be liable for and shall on demand pay to the Transferring Attorneys any transfer fees plus VAT that may be payable by reason of this Agreement. If the Purchaser has to register a mortgage bond over the Erf, the bond will be registered by the Transferring Attorneys and the Seller shall pay all costs in respect of the registration of such a mortgage bond, excluding the Initiation Fee which fee will be for the account of the Purchaser, subject to the following conditions:**
- 9.2.1 **the mortgage bond is granted by ABSA Bank Ltd, Firststrand Bank Ltd, Nedcor Bank Ltd or Standard Bank Ltd as the Purchaser's financial institution of choice, and**
- 9.2.2 **the registration of the mortgage bond is effected by the Transferring Attorneys, and**
- 9.2.3 **the mortgage bond was procured by the Bond Broker.**
- 9.3 **If Clauses 9.2.1 to 9.2.3 are not complied with, all transfer and bond registration fees will be for the account of the Purchaser.**
- 9.4 The Purchaser shall not be entitled to delay transfer or withhold any monies by virtue of the fact that any improvements of any of the erven comprising the Development, is not fully completed on the date that transfer is tendered to him.
- 9.5 The Parties irrevocably authorizes the Transferring Attorneys to sign all necessary declarations and applications on their behalf to enable them to obtain the necessary transfer duty exemptions.

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10. CO-OPERATION TO EXPEDITE TRANSFER

The Purchaser will sign all documents necessary to effect transfer of the Erf and return same and all other documents, resolutions, certificates and payment of the transfer costs and fees as determined by the Transferring Attorneys, to the Transferring Attorneys within 5 (Five) Business Days after having been requested to do so.

11. EXTENT, ONEROUS CONDITIONS AND WARRANTIES

- 11.1 The Property is sold on the basis that the extent of the Erf is as set out in Clause 2 of the Covering Schedule. This extent is a provisional one. The aforesaid extent might change when the Erf is finally measured and depicted on the General Plan. The Seller shall have no claim for any additional consideration should the extent of the Erf, as finally surveyed, be more than the aforesaid extent.
- 11.2 **The Purchaser will have no claim if the final extent, determined as aforesaid, is less than the extent described in Clause 2 of the Covering Schedule. If the extent of the Erf as depicted on the General Plan is more than 10% (Ten) less than the extent described in Clause 2 of the Covering Schedule, the Parties will endeavor to agree on an amendment to the Purchase Price, failing do so, either Party will have the right to cancel this Agreement by written notice to the other Party.**
- 11.3 The Property is sold subject to all conditions and servitudes pertaining thereto, imposed or to be imposed by any competent authority and/or the Seller, whether registered or to be registered against the Title Deed of the Property, including, but not limited to, telecommunication servitudes, CCTV servitudes, storm-water servitudes with ancillary rights pertaining to access, etc.
- 11.4 The various budgets presented to the Purchaser are estimates of income and expenditure as at the time of conclusion of this Agreement.



- 11.5 The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of the Seller, and that fixtures, fittings or extras displayed by the Seller in the Show Village/House, does not form part of the improvements on or to the Property, unless same is expressly and specifically recorded in this Agreement. The Purchaser hereby waives in favour of the Seller any rights whatsoever which he otherwise may have obtained against the Seller as result of any such information, statement or representation given or made by on behalf of the Seller which is not so expressly and specifically recorded. It is recorded that all artistic, architectural, photographic and in any way visual presentation material including but not limited to models, brochures and pamphlets and the show unit used by the Seller or its Principal Agent or the Sub-Agent in the marketing and selling of the erven hereby purchased and sold, have been prepared and distributed as advertising material only; and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby; and that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only.
- 11.6 Portions of the Development may be utilized by the Seller as a Show Village.
- 11.7 The Purchaser acknowledges that he is aware that the view currently enjoyed and/or the projected view from the Property hereby sold, may be affected by the development of the Parent Property and/or the construction of any further buildings on the Land or any adjacent plot/development in the vicinity of the Property. The Purchaser accordingly acknowledges and agrees that the Purchaser shall have no claim or right of action whatsoever against the Seller arising from such impact on or impairment of the view from the Property, or any derogation from the value thereof, as a result of any such ongoing development or further buildings.
- 11.8 All undertakings and commitments given by the Seller to the Purchaser in terms of this Agreement are personal to the Purchaser who shall not be entitled to cede, assign or make over its rights thereto.
- 11.9 The Seller may do reasonable earthworks or land-filling on the Erf.
- 11.10 The Purchaser acknowledges that transfer may be subject to the registration of the servitudes which may affect the Property. Upon final determination of the servitudes the Purchaser shall consent to the registration of such specific servitudes. The whole of this clause is contingent on any such servitude not affecting the building constructed or to be constructed on the Erf and falling within the building lines, as per the SDP.

12. POSSESSION AND OCCUPATION

- 12.1 The Purchaser shall be placed in possession of the Property on the Occupation Date, from which date the Purchaser will be entitled to all income and be liable for all expenses pertaining to the Property.
- 12.2 **The Purchaser acknowledges that on the Transfer Date construction of parts of the Development may not yet have been completed. The Purchaser accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.**
- 12.3 **Risk in the Property will pass to the Purchaser on the Completion Date. The Purchaser hereby irrevocably indemnifies the Seller against any claims or damages relating to the Property after the Completion Date, in respect of the "Works", as defined in the Building Agreement, and in respect of any contents held on the Property or inside the building constructed as part of the "Works". The Purchaser acknowledges his responsibility to insure the Property, all improvements thereon and the contents thereof.**
- 12.4 **The Purchaser shall be liable for all levies, water and electricity consumed in respect of the Property from the Occupation Date. The Purchaser shall be liable for the rates and taxes in respect of the Property from the Transfer Date.**
- 12.5 The Occupational Interest is payable by the Purchaser to the Seller if the Transfer Date is after the Occupation Date, whether or not occupation has actually been given to and taken by the Purchaser.



12.5.1 The Purchaser shall pay the Occupational Interest to the Seller monthly in advance and thereafter on the first day each subsequent month.

12.5.2 The Purchaser shall, on the Transfer Date, be refunded a pro rata share of any Occupational Interest that has been paid in advance in respect of the period after the Transfer Date.

13. DEFECTS AND VOETSTOOTS

13.1 The Seller shall remedy any material patent and latent defect in the Erf manifesting itself within 6 (Six) months of the Transfer Date, provided that the Purchaser notifies the Seller thereof in writing within the said period of 6 (Six) months.

13.2 In the absence of notice as referred to in Clause 13.1 above, the Purchaser shall be deemed to have accepted the Erf in a fit and proper condition and be deemed to have acknowledged that the Seller has fully complied with its obligations as set out in the aforesaid Clause and the purchase of the Erf will become "voetstoots". The Seller, other than as provided for herein, shall not be liable for any defects in the Erf or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 13.1.

13.3 The Seller shall not be liable for any defects in the Erf in respect of normal wear and tear or any defects or damages caused by the conduct of the Purchaser, whether wilfully or by his negligence.

13.4 The Purchaser shall be obliged to give the Seller, its Agents and contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 13.1.

14. NATIONAL CREDIT ACT AND OUTSTANDING TAXES

In the event that this Agreement is subject to the National Credit Act, Act 34 of 2005, then the Purchaser warrants that:

14.1 Once the bond as referred to in Clause 6 is approved and the pre-agreement and quotation is accepted, the Purchaser shall not do anything that may cause the Purchaser to become over-indebted in terms of the National Credit Act or cause the bank to withdraw the bond.

14.2 The Purchaser shall not do anything between the date of acceptance of the pre-agreement and quotation, and registration of the bond, which may cause the Purchaser's financial position to deteriorate.

14.3 At the time of the Signature Date, the Purchaser is not:

14.3.1 over-indebted; and/or

14.3.2 subject to debt review; and/or

14.3.3 subject to an administration order.

14.4 The Purchaser does not and will not be, on the Signature Date and until the Transfer Date, in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of transfer duty receipts or exemption certificates from the South African Revenue Services or not do anything or omit to do anything that will or can cause such a delay.

15. CAPACITY OF PURCHASER

15.1 If more than one Purchaser signs this Agreement, the Purchasers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.



15.2 The Signatory shall in his personal capacity be liable for the due fulfilment of all the terms and conditions of this Agreement.

16. HOMEOWNERS ASSOCIATION

16.1 **The Purchaser will become a member of the POA and the Sub-Home Owners Association (if applicable), as from the Transfer Date and become obliged to comply with all the obligations imposed upon him by the Constitution and the Conduct Rules, including the payment of Levies (where applicable).**

16.2 The Seller shall, on the Transfer Date, register a title deed condition against the Property, in terms of which the Property shall not be transferred without the written consent of the POA and the Sub-Home Owners Association (if applicable). The Purchaser and his/her/its successors in title will be bound by the Architectural Guidelines. Any buildings erected on the Erf (including any improvements thereto) shall conform to the Architectural Guidelines and shall be subject to the approval thereof by the Association.

17. LEVIES

17.1 From the Completion Date or the Occupation Date, whichever is the earlier, the Purchaser shall be liable to pay the Levies to the POA and the Sub-Home Owners Association (if applicable). It is estimated that the Levy payable in terms of this clause will approximately be equal to the amount described in Annexure D attached to this Agreement.

17.2 **The Levies will be payable monthly in advance on the 1st first day of the month, save for the first month after the Completion Date or the Occupation Date, whichever is the earlier, in which instance the Purchaser will pay for 2 (Two) months in advance.**

18. BROKERAGE

18.1 Commission in the amount agreed to between the Seller and the Principal Agent shall be payable by the Seller to the Principal Agent on the Trigger Date.

18.2 The said commission will be earned by the Principal Agent on the Trigger Date.

18.3 If this Agreement is cancelled as a result of a breach by either one of the Parties, the defaulting party will be liable for the payment of the Principal Agent's commission.

18.4 **The Purchaser warrants that it was not introduced to the Property, or this Agreement, by any Estate Agent other than the Principal Agent or the Sub-Agent stipulated in Clause 7 of the Covering Schedule. The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Seller arising out of a breach of this warranty.**

19. BREACH

19.1 **If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) days, or in the instance of any financial obligation or a breach in terms of Clause 10 of this Agreement, within 7 (Seven) days, or in the instance a breach in terms of Clause 6.4 of this Agreement, within 3 (Three) days, or in the instance a breach in terms of Clause 4.3, within 1 (One) day after receipt of written notice from the other party calling upon it to remedy such breach, then the innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law to:**

19.1.1 **cancel this Agreement and claim such damages as it may have sustained from the defaulting party;**



19.1.2 claim immediate performance by the defaulting party of all its obligations in terms of this Agreement whether or not the due date for performance shall otherwise have arrived;

- 19.2 The Seller may retain any cash payments made by the Purchaser prior to cancellation as liquidated damages, without prejudice to any other right that the Seller may have.
- 19.3 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate the Property forthwith, and to procure that the Property shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the Occupation Date.
- 19.4 The defaulting party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.
- 19.5 It is specifically recorded that should any breach by the Purchaser occur at a time critical to the registration procedure, the Seller shall be entitled to require the Purchaser to remedy such breach within a period of 24 (Twenty Four) hours, and not within the 3 (Three), 7 (Seven) days or 14 (Fourteen) days period provided for in Clause 19.1.
- 19.6 Where the Seller is entitled to retain any cash payments in terms of Clause 19.2, the Transferring Attorneys is hereby authorized to pay such amounts to the Seller on its request.
- 19.7 Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement which will include Levies and Occupational Interest on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever. Failure to pay any of the aforesaid amounts will constitute a material breach of this Agreement.
- 19.8 In the event of the cancellation of this Agreement as a result of the conduct of the Purchaser, the Purchaser hereby agrees to pay the following amounts, amongst others, but not limited to, to the Seller: the amount due to the Principal Agent and referred to in Clause 18 of this Agreement plus the wasted fees and costs of the Transferring Attorneys plus an amount equal to 20% (Twenty) of the Total Purchase Price. These amounts must be paid by the Purchaser to the Seller within a period of 3 (Three) days after written demand thereto by the Seller or the Transferring Attorneys.**

20. NOTICE AND ADDRESS FOR SERVICE OF LEGAL DOCUMENTS

- 20.1 The Parties choose their addresses as set out on in Clause 1 of the Covering Schedule of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.
- 20.2 Any notice given in terms of the Agreement which is:
- 20.2.1 delivered by hand during normal business hours to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser at the time of delivery;
- 20.2.2 posted by prepaid registered post to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser on the 7th day after the day of its posting.
- 20.2.3 communicated by facsimile or e-mail, shall be deemed to have been received by the Seller or Purchaser on received confirmation of the successful transmission thereof.



20.3 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

21. GENERAL

21.1 The Parties undertake to do all such things that may be necessary, incidental or conducive to the implementation of the terms, conditions and import of the Agreement.

21.2 The Agreement constitutes the sole and entire Agreement between the Parties and no other terms and conditions of whatsoever nature not contained or recorded herein, shall be of any force or effect.

21.3 No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representative.

21.4 No indulgence which either party may grant to the other shall constitute a waiver of any of his rights and shall not thereby be precluded from exercising any of his rights which may have arisen in the past or which might arise in the future.

21.5 Each and any provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of the Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) is found by any Court of competent jurisdiction to be invalid and or unenforceable then, notwithstanding such invalidity and or unenforceability, the remaining provisions of this Agreement shall be and remain of full force effect.

22. COOLING-OFF IN TERMS OF THE CPA

If the Property was introduced to the Purchaser by means of Direct Marketing, then and in that instance the Purchaser may rescind this Agreement without reason or penalty, by giving written notice, or another recorded manner and form, to the Seller, within 5 (Five) Business Days after the Signature Date.

23. CONFIRMATION BY THE PURCHASER IN TERMS OF THE CPA

23.1 The Purchaser confirms that:

23.1.1 he has read this Agreement and understands the contents thereof;

23.1.2 that the Property was not introduced to him by means of Direct Marketing;

23.1.3 that he is aware and understands his right to the cooling-off period after Direct Marketing;

23.1.4 he has purchased and will use the Property only for residential purposes.

23.2 In the instance of the Purchaser being a juristic person, the signatory hereby declares its' annual turnover or asset value is more than R2 000 000.00 (Two Million Rand) per year, as on the Signature Date.



24. CANCELLATION

24.1 Should the Seller prior to the fulfilment of the condition precedent as referred to in Clause 6 of this Agreement, receive another offer which it, in its sole discretion, wishes to accept, then the Seller shall be obliged to notify the Purchaser of its intention in writing. The Purchaser shall have 3 (Three) Business Days after the sending of such notification, to waive in writing the benefit of the conditions precedent as referred to in Clause 6 of this Agreement, thereby binding himself unconditionally and declaring himself financially able to fulfill all its obligations provided for in this Agreement, failing which this Agreement shall lapse, be of no further force or effect and whereafter the Parties will be restored in the position that they were in when they entered into this Agreement.

24.2 In the event of this Agreement lapsing by reason of the condition in Clause 24.1, the Seller will:

24.2.1 immediately instruct the Transferring Attorneys to repay all amounts paid to the Transferring Attorneys in terms of Clause 5 of this Agreement, plus interest earned thereon to the Purchaser; and

24.2.2 neither the Seller nor the Purchaser will have any claim for damages or for any other amount or any other claim whatsoever against the other party arising from this Agreement.

25. CONSENT IN TERMS OF POPIA

The Purchaser hereby give consent to the Principal Agent, the Sub-Agent, the Seller, the Transferring Attorneys, the Contractor and Sub-Contractor, the POA and the Bond Broker to process their personal information for all purposes related to this Agreement, in accordance with the provisions of POPIA.

Initial

26. OFFER

The offer to the Seller constituted by the Purchaser having signed this Agreement shall be irrevocable and may not be withdrawn except by written notice sent to the Seller by registered post, which, in any event, may not be given prior to the expiry of a period of 30 (Thirty) Business Days from the date of signature by the Purchaser.



SIGNED by the Parties hereto on the dates and places hereinafter set forth.

BY THE SELLER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____

SELLER

BY THE PURCHASER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____

PURCHASER (1)

PURCHASER (2)

If Purchaser is a Company, Close Corporation or Trust:

Name of Signatory: _____ Designation of Signatory: _____



BUILDING AGREEMENT

Between

SEVEN DAYS TRADING 49 PROPRIETARY LIMITED

Registration Number: 2007/007918/07

(the "Contractor")

And

(the "Employer")

Interim Interest by Contractor to R75 000

Erf No. : _____

House Type : _____

Phase : _____

V26.05.2021

info@igrow.co.za

CT: +27 (0)21 979 2501 PTA: +27 (0)12 943 0201

Pine Wood Crescent, Langeberg Ridge, 7569



COVERING SCHEDULE

1. PARTIES	
1.1. Contractor:	Seven Days Trading 49 Proprietary Limited Registration Number: 2007/007918/07, or its nominated entity of successors in title
Address:	Tygervalley Chambers 4, Second Floor, 27 Willie Van Schoor Drive, Tygervalley, Bellville, 7530
1.2. Employer (full names):	
Identity No. / Registration No. / Date of Birth:	
Purchaser's Income Tax Reference No.:	
Representative's full names (if signing on behalf of a legal entity) :	
Residential Address (street address):	
Postal Address:	
Telephone No: (Home)	
(Work)	
(Mobile)	
E-mail Address:	
Marital Status:	Single <input type="checkbox"/> Married <input type="checkbox"/>
(How married?)	in community of property <input type="checkbox"/> out of community of property without accrual <input type="checkbox"/> out of community of property with accrual <input type="checkbox"/> Married by Customary Law <input type="checkbox"/> Foreign marriage <input type="checkbox"/>
If foreign marriage, governed by the laws of:	(state country)
Names Full of Spouse:	
Identity No. / Date of Birth:	
Name of alternative contact person:	
Telephone No: (Home)	
(Work)	
(Cell)	
E-mail address:	



2. PROPERTY	
2.1. Erf number	
Extent of the Property (Erf)	m ²
Extent of the Works	m ²
3. TOTAL CONTRACT PRICE	
3.1. Price of the Works (Inclusive of VAT)(Contract Price)	R
3.2. Upgrade to Specifications & Additional Costs (Inclusive of Vat)	R
3.3. Total Contract Price (Inclusive of VAT)	R
4. TRANSFERRING ATTORNEY	
Name of Attorney:	C & A Friedlander Inc. Att: JJF, Tel no: 021 914 5511 Bank Account details: Account Name: C & A Friedlander Bank: Nedbank Branch: St George's Mall Account Number: 1009000225 Branch Code: 100909 Reference: JJF/Erf ___ & client's surname



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1. PARTIES

1.1. **CONTRACTOR**

The Contractor means the Party as more fully described in Clause 1.1 of the Covering Schedule.

1.2. **EMPLOYER**

The Employer means the Party as more fully described in Clause 1.2 of the Covering Schedule.

2. INTERPRETATION

2.1. In this Agreement the following terms and expressions shall have the meanings ascribed to them hereunder unless the context specifically required otherwise –

- 2.1.1. Agreement: means the Building Agreement in respect of the Works and as set out in this document between the Employer and the Contractor;
- 2.1.2. Agreement of Sale: means the Agreement of Sale in respect of the Property entered into by and between Seven Days Trading 49 (Pty) Ltd Registration Number: 2007/007918/07 and the Employer;
- 2.1.3. Attorneys: means the Attorneys stipulated in Clause 4 of the Covering Schedule;
- 2.1.4. Basic Specifications: means the detailed specifications and finishing schedule annexed hereto as Annexure C and shall comprise the standard specifications and finishes which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- 2.1.5. Business Day: means any Day except a Saturday, Sunday or officially proclaimed public holiday;
- 2.1.6. Completion Date: means the date of the Handover Inspection;
- 2.1.7. Contractor: means the Party as referred to in Clause 1.1 of the Covering Schedule;
- 2.1.8. Contract Price: means the costs of the Works as referred in Clause 3.1 of the Covering Schedule;
- 2.1.9. Day: means any Day of the week, including Sundays and South African Public Holidays;
- 2.1.10. Defects List: means the list of defects as agreed upon by the Parties during the Hand-over Inspection;
- 2.1.11. Development: means the proposed Development known as **Bonsai Estate** of which the Property forms part;
- 2.1.12. Due Date: means, for all purposes of this Agreement, 3 (Three) Business Days after demand for payment was made by the Contractor from the Employer;
- 2.1.13. Employer: means the Party as stipulated in Clause 1.2 of the Covering Schedule;



- 2.1.14. Hand-over Inspection: means an inspection of the Works by the Contractor or its representative, and the Employer, after the completion of the Works, at which inspection the Parties will agree to the Defects List;
- 2.1.15. Interim Interest: means interest payable by the Employer to the financial institution holding the mortgage bond over the property (if and where applicable), from the Transfer Date, as defined in the Agreement of Sale, until the Occupation Date;
- 2.1.16. JBCC: means the Principal Building Agreement utilized by the Joint Building Contracts Committee Edition 4.1 Code 2101 March 2005 concluded between the Seller, the Contractor and the Sub-Contractor;
- 2.1.17. Local Authority: means the Local Authority having jurisdiction over the Property, being the City of Cape Town;
- 2.1.18. Normal Wear and Tear: means the Normal Wear and Tear ascribed to improvements to fixed property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work, any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints, any mould growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damages caused thereby, wind and rain entering through open windows and doors and hot water cylinders which is covered by the guarantee issued by the supplier thereof;
- 2.1.19. Occupation Date: means the Completion Date or the date on which the Local Authority issues the Occupancy Certificate or the date that the Employer attends the Hand-over Inspection, whichever is the earlier;
- 2.1.20. Occupancy Certificate: means the Certificate that the Local Authority issues confirming that the Works have been completed according to the Plan;
- 2.1.21. Occupational Interest: means an amount equal to the Prime Overdraft Rate, calculated pro rata per month on the Total Purchase Price as defined in the Agreement of Sale;
- 2.1.22. Parties: means a collective reference to the Contractor and the Employer and "Party" means one of them;
- 2.1.23. Prime Overdraft Rate: means the rate of interest per year, which is equal to Investec Bank's Limited publicly quoted Prime Overdraft Rate;
- 2.1.24. Plan: means a copy of which is annexed hereto as Annexure A and shall for the purpose of this Agreement means the signed drawings of the Works, which shall form the basis for drawings to be submitted to the Local Authority for approval. Upon approval thereof, the approved Plan shall substitute the drawings and be deemed to be the Plan selected and approved by the Parties for the purpose of this Agreement and the execution of the Works in terms hereof;



- 2.1.25. Property: means the Erf as described in Clause 2 of the Covering Schedule;
- 2.1.26. SDP: means the Site Development Plan approved by the Local Authority;
- 2.1.27. Signature Date: means the date on which the Contractor signs the Agreement;
- 2.1.28. Sub-Contractor: means MSP Developments (Pty) Ltd, Registration Number: 2001/019488/07 appointed by the Contractor in terms of a JBCC;
- 2.1.29. Total Contract Price: means the Contract Price plus the costs of the Upgrade to Specifications and Additional Costs;
- 2.1.30. VAT: means Value Added Tax payable in terms of the VAT Act;
- 2.1.31. VAT Act: means Act No 89 of 1991;
- 2.1.32. Upgrade to Specifications & Additional Costs: means all costs and the upgrading from the Basic Specifications to the specifications described as per Annexure D hereto, which would be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- 2.1.33. Works: means the building works to be conducted on the Property by the Contractor in accordance with the Plan, Basic Specifications and, if applicable, the Upgrade to Specifications.
- 2.2. Indulgence
- Any indulgence in respect of time or anything else granted by a Party to the other will not be considered to impair any of the rights of such Party in terms of the Agreement, or affect any right of whatsoever Party.
- 2.3. Exclusion of other Agreements
- This Agreement cancels and supersedes all other contracts entered into by the Parties before the date of this Agreement and any amendment, addition hereto or consensual cancellation thereof will be of no force of effect unless it appears in writing and is signed by the Parties hereto.
- 2.4. Clause Headings
- The head notes in this Agreement are used only for the purpose of reference and shall in no way effect or govern the construction or interpretation of this Agreement.
- 3. THE WORKS**
- 3.1 The Contractor undertakes to execute the Works in a proper and workmanlike manner against payment of the Contract Price referred to in Clause 4 and 5 of this Agreement.
- 3.2 The Contractor will manage the Works, and will appoint the Sub-Contractor by means of the JBCC to construct the dwelling on the Property as provided for in this Agreement.
- 3.3 The Works shall be substantially in accordance with the Plan and Basic Specifications. The placement of the Works will be in accordance with the approved building plan.



- 3.4 Any material and/or Basic Specifications and/or Upgrade to Specifications will only serve as a guideline and the Contractor reserve the right to amend the Basic Specification and/or Upgrade to Specifications and/or material specified at his sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in specification or material will be of similar quality, colour and appearance.
- 3.5 In the event of any discrepancy arising from the Plan and the Basic Specifications, the provisions of the Basic Specifications shall prevail.
- 3.6 **The Employer irrevocably grants a power of attorney to the Contractor to sign and submit the necessary drawings and specifications to the Local Authority for its approval.**

4. CONTRACT PRICE

The Contract Price shall be the amount referred to in Clause 3.1 of the Covering Schedule. The Upgrade to Specifications and Additional Costs shall be the amounts stipulated in Clause 3.2 of the Covering Schedule.

5. PAYMENT OF THE CONTRACT PRICE

- 5.1 Payment of the Contract Price shall be made by the Employer to the Contractor in the following progress payment instalments:
- 5.1.1. The first instalment being 30% (Thirty) of the Contract Price shall be paid on completion of the first section of the Works namely:
- 5.1.1.1. All foundations completed, and
 - 5.1.1.2. Brickwork to plinth height, backfilling and floors cast, and
 - 5.1.1.3. Brickwork internal and external walls completed except gables and beam filling.
- 5.1.2. The second instalment being 30% (Thirty) of the Contract Price shall be paid on completion of the second section of the Works namely:
- 5.1.2.1. Roof trusses and roof covering, and
 - 5.1.2.2. Brickwork gables and beam filling completed, and
 - 5.1.2.3. Internal and external walls plastered, and
 - 5.1.2.4. Ceilings and cornices fixed, and
 - 5.1.2.5. Cupboard carcasses fitted, and
 - 5.1.2.6. Doors hung with locks fitted, and
 - 5.1.2.7. Electrical tubing fitted, and
 - 5.1.2.8. Plumbing pipes and drainage fitted, and
 - 5.1.2.9. Glazing completed.
- 5.1.3. The third instalment being 35% (Thirty Five) of the Contract Price shall be paid on completion of the third section of the Works namely:
- 5.1.3.1. Painting and tiling complete, and
 - 5.1.3.2. Electrical and plumbing work completed, and
 - 5.1.3.3. All remaining work done as per specifications, and
 - 5.1.3.4. All Contractor's rubble removed and site left clean.
- 5.1.4. The fourth and final instalment being 5% (Five) of the Contract Price shall be paid on completion of the Works and the Employer taking occupation of the Works.



- 5.2 The Upgrade to Specifications and Additional Costs shall be payable by the Employer to the Contractor in cash within 24 (Twenty Four) hours after determination of these amounts by the Parties, failing to do so, the Contractor will not be obliged to execute the work as specified under Upgrade to Specifications and Additional Costs, and the Basic Specifications as stipulated in Annexure C will prevail.
- 5.3 **Any agreed payments not paid on Due Date will bear interest in accordance with the provisions of Clause 17 below from the Due Date to date of final payment.**
- 5.4 **If the Building Works are financed by a financial institution, the Employer hereby empowers and authorises the Contractor to receive progress payments from the financial institution as determined by them. The Contractor will allow for Interim Interest charged by the financial institution, to a maximum amount of R75 000.00 (Seventy Five Thousand Rand). The Employer hereby accepts liability for the payment of the Interim Interest above this amount that is charged by the financial institution. And any such Interim Interest, payable by the Employer, must be paid in full before the Completion Date. The Parties agree that the Interim Interest will not be applicable in the instance where no bond has been utilized by the Employer and any balance left on the Interim Interest amount that the Contractor allowed, will be for the Contractor's benefit. The Contractor will not pay the Interim Interest that is allowed for, monthly to the Employer or into the financial institution but only after the final payment and calculations has been received from the financial institution.**
- 5.5 **In the event of the Employer failing or refusing to authorize payment of any or final draws, the Contractor shall be entitled, without prejudice to any other rights which he may have, to discontinue the Works forthwith and all damages arising, costs, including the additional interest accrued, shall be for the account of the Employer.**
- 5.6 **If there is any dispute between the Parties pertaining to this Clause 5, the dispute will be referred to the principal agent, appointed in terms of the JBCC, for determination. The Parties agree to be bound by his determination.**

INITIAL

INITIAL

6. POSSESSION

- 6.1 The Contractor shall be entitled to:
- 6.1.1 receive full possession and occupation of the Property when it is due to commence the Works, and
- 6.1.2 retain possession and undisturbed occupation of the Property, including the Works, until all agreed amounts owed to him under this Agreement has been paid and all obligations of the Employer has been fulfilled, which obligations includes, but is not limited, the payment of the Total Contract Price and the payment of the Interim Interest to the relevant financial institution, as referred to in Clause 5.4 of this Agreement.
- 6.2 The Parties record that the earliest expected Completion Date is the date to be determined in terms of Clause 8 of this Agreement.
- 6.3 Occupation of the Property and the possession and occupation of the Works shall, upon completion of the Works, be given by the Contractor to the Employer, on the Completion Date or the Occupation Date, whichever is the earlier.
- 6.4 Occupational Interest is payable by the Employer to the Contractor or it's nominated entity, if the Transfer Date is after the Completion Date or the Occupation Date, whichever is the earlier, whether or not occupation has actually been given to and taken by the Employer.
- 6.4.1 The Employer shall pay the Occupational Interest to the Contractor monthly in advance and thereafter on the first day each subsequent month.



- 6.4.2 The Employer shall, on the Transfer Date, be refunded a pro rata share of any Occupational Interest that has been paid in advance in respect of the period after the Transfer Date.
- 6.5 **Risk in the Works will pass to the Employer on the Completion Date. The Employer hereby irrevocably indemnifies the Contractor against any claims or damages relating to the Property or the Works or in respect of any contents held by the Employer on the Property or in the Works, after the Completion Date.**
- 6.6 **In the event that the Contractor anticipates that the actual Occupation Date will be later than the anticipated date, it shall give notice to the Employer, at least 30 (Thirty) days prior to the Occupation Date, of the new expected Occupation Date. The Employer shall have no claim against the Contractor for damages or for compensation of any other nature by reason of the Occupation Date having been amended.**
- 6.7 **The Employer acknowledges that on the Completion Date construction of parts of the Development may not yet have been completed. The Employer accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.**
- 6.8 The Property will during the construction period be under the control of the Contractor and the Employer will only be entitled to access the Property, prior to the Completion Date, if accompanied by the Contractor, on a pre-arranged time.
- 7. COMMENCEMENT AND COMPLETION OF THE WORKS**
- 7.1 The Contractor shall not be obliged to commence with the Works until:
- 7.1.1 the Employer has furnished adequate security to the Contractor's satisfaction for the Total Contract Price; and
- 7.1.2 all necessary consents, approvals and/or registrations from all relevant authorities have been obtained.
- 7.2 If commencement of the Works is delayed for longer than 180 (One Hundred and Eighty) Business Days from the fulfilment of the conditions referred to in Clause 7.1 above for any reason other than a reason attributable to the fault and/or omission of the Contractor, then the Contractor shall be entitled, in its sole discretion, to resign from this Agreement with neither party having any further claim against one another. Alternatively the Parties may agree to an amended Total Contract Price.
- 7.3 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control then the Contractor shall be entitled to a fair and reasonable extension of time for the commencement or completion of the Works.**
- 7.4 Subject to any extensions permitted in terms of Clause 7.2, the Contractor shall complete the Works within 240 (Two Hundred and Forty) Days after the Transfer Date, as defined the Agreement of Sale.**
- 7.5 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control or if any building industry holidays, whether statutory or recognised generally as customary in the industry fall within the contract period, then the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Works and the Employer shall not for that reason have any claim against the Contractor for damages or otherwise.**
- 7.6 All amounts due and unpaid shall be payable by the Employer on the Completion Date.



8. COMPLETION AND HANDOVER INSPECTION

- 8.1 The Parties or their representatives shall be obliged to attend the Hand-over Inspection at any pre-arranged time, during which inspection the Parties shall agree to the Defects List.
- 8.2 If the Employer fails to attend a Hand-over Inspection within a reasonable period after having received written notice thereof by the Contractor, then the Completion Date will be determined by the principal agent in terms of the JBCC.
- 8.3 The Contractor shall remedy the defects on the Defects List as soon as reasonably possible.
- 8.4 Notwithstanding the provisions of this Clause 8, the Contractor shall strictly enforce, for the benefit of the Employer, any guarantee or warranty which it may have. In as far as such guarantee or warranty relates to the Works, the Contractor hereby cedes all its rights in terms thereof to the Employer.
- 8.5 All undertakings and commitments given by the Contractor to the Employer in terms of this Agreement are personal to the Employer who shall not be entitled to cede, assign or make over its rights thereto.**

9. DEFECTS AND VOETSTOOTS

- 9.1 The Contractor shall remedy any material patent and latent defect in the Works due to faulty workmanship or materials, manifesting itself within 6 (Six) months of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 6 (Six) months. The Employer agrees to strictly adhere to the correct retention procedures that will be given to him/her at the Handover Inspection, when reporting any material patent and latent defect in the Works during the 6 (Six) months retention period. The Parties agree that the retention procedure will be binding and that no amendments to the retention procedures will be allowed, except by mutual agreement between the Contractor and the Employer.
- 9.2 If the Contractor must remedy any patent and latent defect as referred to in Clause 9.1 above, the material used and/or specifications specified in Annexure C known as the Basic Specifications, will only serve as a guideline and the Contractor reserve the right to amend the specification and/or material at his sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in specification or material will be of similar quality, colour and appearance.
- 9.3 In the absence of notice as referred to in Clause 9.1 above, the Employer shall be deemed to have accepted the Works in a fit and proper condition and be deemed to have acknowledged that the Contractor has fully complied with its obligations as set out in this Agreement and the Works will become "voetstoots". The Contractor, other than as provided for herein, shall not be liable for any defects in the Works or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 9.1.**
- 9.4 In addition to the obligation of the Contractor in Clause 9.1 to remedy patent and latent defects, the Contractor shall in terms of the NHBRC requirements be obliged to:-
- 9.4.1 remedy any material latent defect in the Works due to faulty workmanship or materials, manifesting itself within 90 (Ninety) days of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 90 (Ninety) Days;
- 9.4.2 at its own expense repair any roof leaks that occur in respect of the Works within the first 12 (Twelve) months of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said period of 12 (Twelve) months;
- 9.4.3 rectify any defect of a patent or latent nature in respect of the substructure, the superstructure and the roof structure of the Works for a period of 5 (Five) years of the Completion Date, provided the Employer notifies the Contractor in writing thereof within the said 5 (Five) year period.



- 9.5 **The Contractor shall not be liable for any defects in the Works in respect of Normal Wear and Tear or any defects or damages caused by the conduct of the Employer, whether wilfully or by his negligence.**
- 9.6 **The Employer shall be obliged to give the Contractor, its Agents and sub-contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 9. Repairs will be done during working hours, Monday to Friday.**
- 9.7 **The final extent of the Works may vary from the extent indicated on the Plan. If the difference in the extent is less than 10 % (Ten) than the extent stipulated on the Plan, the Parties will have no recourse against each other. If the difference in the extent is more than 10 % (Ten) less than the extent stipulated on the Plan, the Contract Price will be amended pro rata and finally determined by the principal agent in terms of the JBCC.**
- 9.8 If any dispute or difference shall arise between the Employer or the Bank (being the bondholder over the Property), if applicable, on its behalf, and the Contractor, during the construction of the Works and before the Completion Date or after the termination of the employment of the Contractor under this Agreement, abandonment or breach of this Agreement, as to the construction of the Works, or as to any other matter or this arising thereunder, or as to the withholding by the Bank of any draw to which the Contractor claim to be entitled, that cannot be resolved by the principal agent and is not provided for in the JBCC, then an architect, civil engineer, quantity surveyor or any other professional person involved in the building industry appointed by the Bank ("the Arbitrator") shall determine such dispute or difference by written decision given to the Contractor.

10. **VARIATIONS**

If the Employer, after the Signature Date, requires that any aspect of the Works be varied and/or that any extra work be carried out by the Contractor, then such request shall be made in writing whereupon the Contractor must submit a written quotation for acceptance by the Employer. All costs arising from such variation/extra shall be paid by the Employer to the Contractor within 24 (Twenty Four) hours after acceptance of the quotation, failing to do so, the Contractor will not be obliged to perform such extra work or variations.

11. **RIGHTS AND OBLIGATIONS OF THE CONTRACTOR**

- 11.1 The Contractor shall maintain sufficient public liability insurance.
- 11.2 Notwithstanding anything to the contrary herein contained, ownership of all materials used in the execution of the Works shall remain vested in the Contractor until such time as all amounts due in terms of this Agreement have been paid in full.
- 11.3 Copies of the following documentation will be supplied by the Contractor to the Employer on Completion Date:
- 11.3.1 Electrical Compliance Certificate
 - 11.3.2 Roof Certificate (A19)
 - 11.3.3 Approved Plan
 - 11.3.4 Occupation Certificate issued by the Local Authority
 - 11.3.5 Plumbing Certificate
 - 11.3.6 Gas Certificate (if applicable)
 - 11.3.7 NHBRC Certificate
 - 11.3.8 Guarantees from third parties (if applicable)



11.4 The Contractor may appoint any third party to execute any of the Works provided that the rights of the Employer in terms of this Agreement against the Contractor shall not be affected in any way by such appointment.

11.5 The Contractor is exempted from liability for making good damage caused to the Property by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, earth tremors, geological disturbances and/or subsidence, the nature of the subsoil or terrain and the moisture content of the subsoil and shall under no circumstances be responsible for any consequential damage arising there from.

12. RIGHTS AND OBLIGATIONS OF THE EMPLOYER

12.1 The Employer undertakes to become and remain the registered owner of the Property until the Completion Date.

12.2 The Employer acknowledges that there will be construction work in the vicinity of the Property and that certain inconvenience may be caused thereby. The Contractor shall not be held liable for such inconvenience or any damages that flow there from and shall be entitled, (where necessary) to enter upon the Property for purposes of obtaining access to adjacent erven in the course of such construction work.

12.3 The Contractor will be liable for the payment of all water consumption accounts received from the Local Authority as from the date of commencement of the Works by the Contractor until the Completion Date.

13. CONDITION PRECEDENT

13.1 The Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.

13.2 In the event that the conditions precedent as referred to in Clause 6 of the Agreement of Sale, is not fulfilled, then this Agreement shall lapse in its entirety and neither party shall be liable for any loss or damage suffered as a result of non-fulfilment of this condition precedent.

14. BREACH

14.1 If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) Days, or in the instance of a breach of the obligation as referred to in Clause 8.2 of this Agreement or any financial obligation, within 7 (Seven) Days after receipt of written notice from the other party calling upon it to remedy such breach, then the innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law to:

14.1.1 cancel this Agreement and claim such damages as it may have sustained from the defaulting party;

14.1.2 claim immediate performance by the defaulting party of all its obligations in terms of this Agreement whether or not the due date for performance shall otherwise have arrived;

14.2 The Contractor may retain any cash payments made by the Employer prior to cancellation as liquidated damages, without prejudice to any other right that the Contractor may have.

14.3 Upon cancellation of this Agreement for any reason whatsoever, the Employer, if he took occupation of the Property and/or the Works, hereby undertakes to vacate the Property and/or the Works forthwith, and to procure that the Property and/or the Works shall be vacated by any persons who occupy it through the Employer's title or by his permission. Occupation shall be redelivered to the Contractor in the same good order and condition as at the Completion Date. The defaulting party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.



- 14.4 In the event of the Contractor being obliged and/or electing to cancel the Agreement in accordance with this Clause 14, then the Employer shall, in addition to the right of the Contractor as referred to in Clause 14.1 above, be liable to pay to the Contractor an amount calculated as follows:

(Total Contract Price) less (Amounts Paid and/or Payable in respect of Works already completed) times 35% (Thirty Five) as genuinely pre-estimated damages for the breach of the terms and conditions of this Agreement by the Employer.

- 14.5 The Employer acknowledges that, by reason of his signature hereto, the Contractor will incur certain necessary costs or charges relating amongst other to the processing of the Agreement, the preparation of Plan and drawing relative to any loan/Mortgage Bond application and services rendered.

In the event therefore, of the Employer electing to cancel this Agreement for whatever reason, and notwithstanding the fulfilment of the conditions precedent (if any) relating to loan/Mortgage Bond finance contained in the Agreement of Sale, the Employer assumes liability, without recourse, for payment to the Contractor of cancellation costs, calculated as follows:

- 14.5.1 The amount of R10 000-00 (Ten Thousand Rand) if cancellation is effective prior to the granting of loan finance (if any);
- 14.5.2 The sum of R30 000-00 (Thirty Thousand Rand) if cancellation is effective after granting of required loan/Mortgage Bond (if any) but prior to commencement of the Works; or
- 14.5.3 Should the Employer cancel this Agreement after commencement of the Works, the Employer shall be liable for the payment to the Contractor of all costs incurred to the time of cancellation.

The Employer acknowledges that the foregoing and the costs stipulated are fair and reasonable and that until such time as the provisions contained in this Clause have been complied with, the Employer shall be unable to discharge its liabilities and cancel this Agreement for whatever reason.

INITIAL

15. **MAGISTRATE'S COURT JURISDICTION**

For the purposes of all or any Court proceedings herein, the Parties hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over the intended Defendant.

16. **ADDRESSES FOR SERVICE AND DELIVERY OF LEGAL DOCUMENTS**

- 16.1 The Parties choose their addresses as set out on in Clause 1 of the Covering Schedule of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.

- 16.2 Any notice given in terms of the Agreement which is:

- 16.2.1 delivered by hand during normal business hours to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer at the time of delivery;
- 16.2.2 posted by prepaid registered post to the Contractor's or Employer's address for service and delivery of legal documents shall be deemed to have been received by the Contractor or Employer on the 7th day after the day of its posting.
- 16.2.3 communicated by facsimile or e-mail, shall be deemed to have been received by the Contractor or Employer on received confirmation of the successful transmission thereof.

- 16.3 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail



shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

17. INTEREST

Any agreed amount due by the Contractor to the Contractor not paid on Due Date shall bear interest at the Prime Overdraft Rate plus 2% (Two) from the Due Date until the date of payment thereof.

18. CAPACITY OF EMPLOYER

18.1 If more than one Employer signs this Agreement, the Employers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.

18.2 The Signatory shall in his personal capacity be liable for the due fulfilment of all the terms and conditions of this Agreement.

19. GENERAL

19.1. This document constitutes the entire agreement concluded between the Parties and no warranties or undertakings or representations other than those specifically recorded herein may be relied on by either of the Parties. This document may furthermore not be modified, varied or consensually cancelled other than in writing, duly signed by both Parties.

19.2. The Agreement shall not be binding upon the Parties until the Contractor has confirmed acceptance thereof by his signature hereto.

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

- 1. _____
- 2. _____

CONTRACTOR

SIGNED at _____ on this _____ day of _____ 20__

AS WITNESSES:

- 1. _____
- 2. _____

EMPLOYER

