



**BUILDING AGREEMENT**

(ADDENDUM TO DEED OF SALE)

BETWEEN

**THE PURCHASER/S**

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(As described in Clause 1 of the Agreement)

AND

**THE BUILDER**

**OWN YOUR HOME (Pty) Ltd.**

(As described in Clause 2 of the Agreement)

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**Schedule of Particulars:**

**1. THE PURCHASER(1)**

**Full names:** \_\_\_\_\_

**Identity number:** \_\_\_\_\_

**Matrimonial status: ANC / ICP / NOT MARRIED / TRADITIONAL** \_\_\_\_\_

**Spouse’s full names:** \_\_\_\_\_

**Spouse’s identity number:** \_\_\_\_\_

**or in case of a legal entity**

**Name:** \_\_\_\_\_

**Registration number:** \_\_\_\_\_

herein represented by \_\_\_\_\_

Identity Number: \_\_\_\_\_, who by the signing of this agreement guarantees his/her authority to do so, and in the case of a trustee signing in his/her capacity as trustee, is authorised by a resolution signed by all the trustees prior to the signature of this agreement, a copy of which resolution is attached hereto as Annexure “A”.

Registered / Residential address of Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Postal address of Purchaser: \_\_\_\_\_  
\_\_\_\_\_

Contact details:           Tel (b)           \_\_\_\_\_

Tel (h) \_\_\_\_\_

Mobile: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

SARS Income Tax Registration No: \_\_\_\_\_

(hereinafter referred to as the "**Purchaser(s)**")

**THE PURCHASER(2)**

**Full names:** \_\_\_\_\_

**Identity number:** \_\_\_\_\_

**Matrimonial status: ANC / ICP / NOT MARRIED / TRADITIONAL** \_\_\_\_\_

**Spouse’s full names:** \_\_\_\_\_



**Spouse's identity number:** \_\_\_\_\_

**or in case of a legal entity**

**Name:** \_\_\_\_\_

**Registration number:** \_\_\_\_\_

herein represented by \_\_\_\_\_

**Identity Number:** \_\_\_\_\_, who by the signing of this agreement guarantees his/her authority to do so, and in the case of a trustee signing in his/her capacity as trustee, is authorised by a resolution signed by all the trustees prior to the signature of this agreement, a copy of which resolution is attached hereto as Annexure "A".

Registered / Residential address of Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Postal address of Purchaser: \_\_\_\_\_  
\_\_\_\_\_

Contact details:            Tel (b) \_\_\_\_\_

Tel (h) \_\_\_\_\_

Mobile: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

SARS Income Tax Registration No: \_\_\_\_\_

(hereinafter referred to as the "**Purchaser(s)**")

**2. THE BUILDER**

OWN YOUR HOME (Pty) LTD

**Registration number:** 2020/530834/07

Herein represented by **Charl Cornelissen** being duly authorised thereto.

**Address:**            OWN YOUR HOME  
                          C/O OLD TANNERY OFFICE PARK  
                          HERMON ROAD  
                          WELLINGTON  
                          7654

**Tel:** 082 902 4833

**E-mail:** admin@oyh.co.za

(hereinafter referred to as "**the Builder**")



**3. THE ERF ON WHICH THE RESIDENTIAL HOUSE IS TO BE ERECTED**

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

Extent (m<sup>2</sup>): \_\_\_\_\_

**4. CONSTRUCTION COST OF RESIDENTIAL HOUSE**

The Construction cost for the construction of the Residential House which will form the subject matter of the Works shall be as is set out hereunder:

Type of Building / Plan Type: \_\_\_\_\_

Size of Building (m<sup>2</sup>): \_\_\_\_\_

Basic price of building: R \_\_\_\_\_

Cost of Optional Extras: R \_\_\_\_\_

Total Cost of Building (Incl.VAT) R \_\_\_\_\_

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**5. ESTIMATED DATE OF OCCUPATION**


Date of Transfer or soonest thereafter subject to the issuing of a Certificate of Occupation issued by the applicable local authority and receipt of all monies by the Builder.

**TERMS AND CONDITIONS:**

**1. INTERPRETATION**

In this Agreement, unless inconsistent with the context –

- 1.1. **“the Architect”** means the architect appointed for the Development by the Builder;
- 1.2. **“Agreement”** means this agreement signed by the Parties hereto together with all annexures hereto, including any addendum and/or amendment recorded in writing and signed by the Parties or their duly authorised representatives;
- 1.3. **“Agreement of Sale”** means the agreement of sale entered into in respect to the purchase of the Erf by the Purchaser(s);
- 1.4. **“Consideration Payable”** means the consideration payable in respect of the Purchase Price and the Construction cost;
- 1.5. **“Construction cost”** means the full amount payable *inter alia* in respect of the Residential House set out in clause 4 of the Schedule of Particulars;
- 1.6. **“Conveyancer”** means the Conveyancer instructed by the financial institutions to attend on registration of the Mortgage Bond;
- 1.7. **“Date of Occupation”** means the date of Transfer;
- 1.8. **“Date of Possession”** means the date as is set out and provided for in clause 6.2;
- 1.9. **“Date of Signature”** means the date of signature by the Party doing so last in time;
- 1.10. **“Date of Transfer”** means the date of registration of transfer of the Property in name of the Purchaser(s) which will be as soon as is possible after issue of the Occupation Certificate;

  
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- 1.11. “**day**” means any day which shall include Saturdays, Sundays and Public Holidays;
- 1.12. “**Development**” means the development to be established on the Land;
- 1.13. “**Development Period**” means the period from the commencement of construction to the transfer of the last saleable unit in the Development;
- 1.14. “**domicilium citandi et executandi**” means the physical address chosen by a Party for purposes of the serving of summonses, legal documents and notices on such Party;
- 1.15. “**Erf**” means the erf as more fully described in clause 3 of the Schedule of Particulars;
- 1.16. “**Estimated Possession Date**” means the date as set out in clause 5 of the Schedule of Particulars;
- 1.17. “**Facilitation Fees**” means the fees payable by the Builder to the responsible agents for the facilitation process culminating in the conclusion of both this Agreement and the Agreement of Sale;
- 1.18. “**Land**” means certain immovable property being Erf 16161 Paarl, on which the Development will be constructed;
- 1.19. “**Mortgage Bond**” means the mortgage bond registered over the Property securing the Consideration payable;
- 1.20. “**Occupation Certificate**” means such certificate issued by the Local Authority confirming that the Residential House is fit for occupancy;
- 1.21. “**Parties**” means the Builder and the Purchaser(s) and “**Party**” means either of them;
- 1.22. “**Prime Rate**” means a rate of interest per annum which is equal to Nedbank Ltd’s published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time. In the case of a dispute as the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, who shall not have to prove his/her appointment, same to be final and binding on the Parties;
- 1.23. “**Property**” means the Erf and the Residential House;
- 1.24. “**Purchase Consideration**” means the total of the Purchase Price and the Construction cost;
- 1.25. “**Purchase Price**” means the purchase price as set out in the Agreement of Sale;
- 1.26. “**NHBRC**” means the National Home Builder Regulation Council;
- 1.27. “**Residential House**” means the house constructed on the Erf in terms of this Building Agreement;
- 1.28. “**Schedule of Particulars**” means the schedule of particulars prefixed to this Agreement setting out the particulars of the Parties, the Property and additional information, which forms part of this Agreement;
- 1.29. “**Transfer**” means the registration of transfer of ownership of the Erf in name of the Purchaser(s);
- 1.30. “**VAT**” means value-added tax at the applicable rate in terms of the **Value Added Tax Act, No. 89 of 1991** (or any statutory modification or re-enactment thereof) and includes any regulations made thereunder from time to time;
- 1.31. “**Works**” means the works executed in terms of this Agreement.



- 1.32. Words and expressions defined in this Agreement shall have the meanings therein defined. Words importing the singular shall include the plural and *vice versa* and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and *vice versa*.
- 1.33. The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.34. Reference to this Agreement shall mean this building agreement and shall include the Schedule of Particulars prefixed to this Agreement, the heads of agreement, the terms and conditions of sale and all annexures thereto.
- 1.35. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.36. If any provision in a definition is a substantive provision imposing rights or obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.37. The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.38. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.39. Where this Agreement requires a Party to use “**best endeavours**” in relation to an action or omission, that Party shall do all such things as are reasonably necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, the Parties shall, to the extent that it is commercially reasonable to do so, consult and co-operate with each other and continue to take action so as to achieve that action or omission, provided that any actions or omissions required to be undertaken shall not be such as to result in a breach of fiduciary duty or contravention of any law.
- 1.40. The word “**material**” and “**materially**” means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in this Agreement.
- 1.41. The use of the word “**including**” followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule (which is a rule of interpretation that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of the general descriptors must be restricted) shall not be applied in the interpretation of such general wording and/or such specific example or examples.
- 1.42. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 1.43. The Purchaser, by initialing next to the indicated clauses contained in this Agreement confirms that, by doing to, his/her/its attention has been drawn to such clause.

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1.44. Any reference to a definition in the Agreement of Sale will mean a reference to the Agreement of Sale entered into and between the parties as provided for herein.

**2. RISK, INSURANCE, LIABILITY, AND INDEMNITY**

2.1 The Purchaser(s) is/are hereby notified that this Agreement contains terms and conditions that:

- 2.1.1. requires the Purchaser(s) to waive or to accept risk or liability or to waive the liability of the Builder or others; and
- 2.1.2. limits the Builder's or others' liability; and
- 2.1.3. requires the Purchaser(s) to indemnify the Builder or others; and
- 2.1.4. amounts to an acknowledgment of fact by the Purchaser(s).

2.2 The Purchaser(s) attention are drawn to the fact that the Consumer Protection Act, Act, 68 of 2008 requires that abovementioned be brought expressly under the attention of the Purchaser(s) in plain language and that the Purchaser(s) be given enough time to receive and understand same.

2.3 The type of clauses referred to above is printed in **bold and italics** and the Purchaser(s) is/are required to initial next to same to indicate compliance with the Consumer Protection Act, Act, 68 of 2008.

**2.4 The Purchaser(s) confirm that these clauses referred to above has been brought under the attention of the Purchaser(s) before signing this Agreement and that the Purchaser(s) has read the relevant clauses and understands same and has had enough time to consider same.**

**2.5 The Purchaser(s) hereby also gives authority to the representing agency of this contract to do a full credit check on all the Purchaser(s).**

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**3. THE WORKS**

3.1 The Builder undertakes to execute the Works which will on finalization constitute the Residential House, in a proper and workmanlike manner against payment of the Construction cost as defined and referred to in Clause 4 of the Schedule of Particulars.

3.2 The Works shall be substantially in accordance with the House Plan and the Standard Specifications attached hereto, respectively marked, **Annexure B** and **Annexure C**, provided that the Builder shall be entitled in his discretion to deviate from the House Plan and Standard Specifications if, during the planning, building and construction of the Works if such deviation will result in the most practical and economical completion of the Works without materially deviating from the House Plan or Standard Specifications or having a negative effect on the quality and finishing of the Works. The Builder may do so without the consent of the Purchaser(s).

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3.3 In the event of any discrepancy arising from the House Plan and the Standard Specifications, the provisions of the House Plan shall prevail.

3.4 The placement of the building on the erf shall be as per the recommendation of the Architect, whose decision will be final and binding on all Parties.

3.5 Any alterations to the House Plan or Standard Specifications by the Purchaser(s) will be at the discretion of the Builder. Any amendments or alterations which are accepted by the Builder will be for the account of the Purchaser(s).

**4. CONSTRUCTION COST**

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- 4.1 The Construction cost shall be as is set out in clause 4 of the Schedule of Particulars payable by the Purchaser(s) to the Builder as set out in clause 5 below.
- 4.2 Any/all additional work effected will be subject to the conditions set out in clause 9 below.

## 5. PAYMENT OF THE CONSTRUCTION COST

5.1. Payment of the construction cost shall be made by the Purchaser to the Builder in progress payment instalments according to the standard procedure of the financial institution concerned,

5.1.1 Where a building mortgage bond is applicable:

In a case where a part of the construction cost is financed by a building mortgage bond the Purchaser undertakes to pay the first part of the construction cost as indicate on the Pricing Structure into the conveyancer nominated trust account to make the progress payment instalment to the Builder when applied for and the bond be utilized for the later payments to pay to the Builder in progress payment instalments according to the standard procedure of the financial institution concerned

Where the full construction cost is financed by a building mortgage bond the Purchaser undertakes to pay to the Builder in progress payment instalments according to the standard procedure of the financial institution concerned

5.1.2 Where a turnkey bond is applicable:

Where the full balance of the Construction cost be financed by a turnkey mortgage bond the construction cost will be paid to the Builder on registration of the turnkey mortgage bond against Transfer

In a case where a part of the construction cost is financed by a turnkey mortgage bond the Purchaser undertakes to pay the first part of the construction cost as indicate on the Pricing Structure into the conveyancer nominated trust account to be release together with the portion of the Construction cost financed by a turnkey mortgage bond against Transfer

5.1.3 Where the total Construction cost is paid by the purchaser:

In a case where the total construction cost is paid by the Purchaser the Purchaser undertakes to pay the total amount of construction cost as indicated on the Pricing Structure into the conveyancer nominated trust account to make the progress payment instalments to the Builder when applied for, in progress payment instalments according to the completion percentage of the house as verified by the Builder's Quality controller.

5.2. Should there be any dispute between the Parties, then the matter will be referred to the Architect whose determination will be final and binding on the Parties.

5.3. Any agreed payments not paid on due date will bear interest in accordance with the provisions of Clause 18 below from due date to date of final payment.

5.4. In the event of any part of the building cost being payable from the proceeds of a building loan secured by a mortgage bond obtained from a financial institution then the Purchaser irrevocably cedes the Contractual sum equal to the outstanding balance of the building cost or the total proceeds of the building loan, whichever is the lesser.

5.5. In the event of a Purchaser failing or refusing to authorize payment of any interim or final draws, the Builder shall be entitled without prejudice to any other rights which he may have in terms of this contract in law to discontinue the Works forthwith and all damages arising, costs include and additional interest accrued shall be for the account of the Purchaser.





**6. POSSESSION AND OCCUPATION**

6.1 The Builder is entitled to full and unfettered possession of the Erf from date of commencement of the Works and shall retain such possession until Date of Transfer.

6.2 The Builder shall provide possession and occupation of the Residential House to the Purchaser on the Date of Transfer.

**6.3 It is recorded that, subject to the provision referred to in Clause 10.1, the Erf on which the Works is constructed will throughout the construction period be under the control of the Builder and that the Purchaser(s) shall not be entitled to have any access to the Erf prior to the Date of Occupation, otherwise than as approved by the Builder or its agent, and if approval is granted, subject to the terms of such approval.**

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**7. COMMENCEMENT AND COMPLETION OF THE WORKS**

7.1 To the extent that the Builder has not already done so the Builder shall commence with the Works before registration of the Property in favour of the Purchaser(s) as envisaged in terms of the Agreement of Sale, but he shall however not be obliged to commence the Works until:

7.1.1 the Purchaser(s) has furnished adequate security to the Builder's satisfaction for the whole of the Consideration which would inter alia be deemed to be the case either:

7.1.1.1 on receipt of confirmation from the Conveyancer that the Purchaser(s) attended on signature of all the documentation required by the relevant financial institution so as to, simultaneously with Date of Transfer, in due course attend to registration of the Mortgage Bond;

7.1.1.2 that the Purchaser(s) attended on the payment to the Conveyancer of funds securing the Consideration;

7.1.2 and 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 a period of 180 (one hundred and eighty) Business Days as from date of signature hereof for any reason other than a reason attributable to the fault and/or omission of the Builder, then the Builder shall be entitled in his sole discretion to resile from this Agreement, with neither party having any further claim against one another or alternatively the Builder, in his sole discretion, claim an adjustment to the Construction cost in accordance with any increases in the cost of material and/or labour which might in the interim have occurred. In the event of the Parties being incapable of agreeing as to the adjustment to the Construction cost, then a Quantity Surveyor appointed by the Builder shall determine the dispute and the Quantity Surveyor's determination shall be final and binding on the Parties.**

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7.3 Subject to any extensions permitted in terms of Clause 7.4, the Builder shall complete the Works within 150 (one hundred and fifty) Business Days after commencement.

**7.4 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Builder's control or if any building industry holidays, whether statutory or recognized generally as customary in the industry, fall within the contract period, then the Builder shall be entitled to a fair and reasonable extension of time for the completion of the Works and the Purchaser(s) shall not for that reason have any claim against the Builder for damages or otherwise.**

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**7.5 The issue by a competent person of a Completion Certificate shall constitute complete proof of the satisfactory completion of the Works by the Builder and the Builder shall, apart from the specific obligation placed on the Builder in terms of the NHBRC and such additional and**

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**specific undertakings set out hereinunder be discharged completely from all obligations expressed or implied in terms of this Agreement and any variation thereof or addition thereto and the Purchaser(s) shall have no further claim on the Builder, save as specifically otherwise provided herein.**

**7.6 In addition to the defects list referred to in Clause 8.2 of this Agreement, the Purchaser(s) must within 30 (Thirty) Days after the Date of Possession, notify the Builder in writing of any visible defects, which will be rectified within one month, access permitting. This list shall be regarded as a final and complete defect list, but shall not constitute the right to withhold final payment.**

**7.7 The risk in the works shall pass wholly and entirely to the Purchaser(s) as from the Date of Transfer.**

**8. GUARANTEES AND HANDOVER OF THE WORKS**

**8.1 The Purchaser(s) or his representative shall be obliged to attend an inspection of the Works together with the Architect or a representative of the Builder at any pre-arranged time (as close as possible to the final completion of the Works by the Builder) before the Date of Occupation, in order to inspect the Works and to be advised of the defects listed by the Architect or the representative of the Builder which are to be remedied by the Builder in terms of clause 8.3 (the “hand-over inspection”). During the hand-over inspection the Architect or the representative of the Builder may in his sole discretion add further items to the defects list, which will be remedied by the Builder in terms of clause 8.3 of this Agreement. In the event however, that the Purchaser(s) or his representative fails to attend the hand-over inspection, despite having been duly notified thereof, the Architect or the representative of the Builder shall conduct such inspection and hand-over in the Purchaser(s) absence.**

**8.2 The defects list issued by the Architect or the representative of the Builder on the Date of Occupation with such further items, if any, added during the hand-over inspection, shall be final and binding between the Parties and the Purchaser(s) shall be obliged to accept the Works after such defects have been remedied. Subject to clause 7.6, the Purchaser(s) shall be precluded from raising at any later time any defect which is alleged to have been a patent defect on the day of the inspection, but does not appear on such list and shall not have any claim against the Builder arising thereof, nor shall the Purchaser(s) be entitled to allege that any such defect or any of the defects listed by the Architect or the representative of the Builder renders the works unfit for beneficial occupation.**

**8.3 In addition to the obligation of the Builder to remedy patent and latent defects, the Builder shall in terms of the NHBC requirements be obliged to:-**

**8.3.1 at its own expense repair any roof leaks that occur in respect of the Works within the first 12 (twelve) months of the Date of Occupation, provided that the Purchaser(s) notifies the Builder thereof in writing within the said period of 12 (twelve) months;**

**8.3.2 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 Date of Occupation, provided the Purchaser(s) notifies the Builder in writing thereof within the said 5 (five) year period;**

**8.4 In the absence of notice as referred to in clause 8.3 above the Purchaser(s) shall be deemed to have accepted the works in a fit and proper condition and be deemed to have acknowledged that the Builder has fully complied with its obligations as set out in the aforesaid clause.**

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8.5 The Purchaser(s) shall be obliged to give the Builder all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 8.

**8.6 The Builder, shall be entitled at all reasonable times to have access to the Works for the purpose of inspecting it or to carry out any repairs which the Builder may in terms hereof be obliged or entitled to perform whether such repairs relate to the Works or not, and the Purchaser(s) shall have no claim against the Builder for any disturbance of his occupation arising out of the exercise by the Builder of the rights hereby conferred.**

8.7 After occupation of the Works by the Purchaser(s), any repairs will be done during working hours, Monday to Friday.

**8.8 The Architect's certificate stating that any defect for which the Builder is liable in terms of clause 7, has been made good shall be final and binding on both Parties and shall relieve the Builder from any obligations in respect of such defect.**

**8.9 The warranty specifically excludes the following repair items:**


- 8.9.1 general maintenance work;**
- 8.9.2 touch-up paint of any nature;**
- 8.9.3 hairline cracks in the plaster work;**
- 8.9.4 any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints;**
- 8.9.5 any mold growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damage caused thereby;**
- 8.9.6 wind and rain entering through the windows and doors and windows left open, and**
- 8.9.7 hot water cylinders which will be covered by the guarantee supplied by the manufacturers thereof.**


8.10 The Parties record that should the Builder be willing to paint any surface with an alternative paint as to the paint specified in the Standard Specifications, then and in that instance, the Purchaser(s) undertakes to supply the Builder with the necessary paint.

**9. VARIATIONS**


9.1 Should the Purchaser(s), after signature of this Agreement, require that any aspect of the Works be varied and/or any extra work be carried out by the Builder, then such request shall be made in writing whereupon the Builder may (but is not obliged to) submit a written quotation in respect of the cost of such variation/extra. On signature of the quotation by the Purchaser(s), which quotation must be accepted within 24 (twenty-four) hours of being dispatched by the Builder to the Purchaser(s), this Agreement will be deemed to be accordingly varied. All costs arising from such variation/extra shall be paid by the Purchaser(s) to the Builder prior to commencement of the Works. Should the Purchaser(s) not pay the costs regarding the agreed variations, on demand by the Builder, the variations will then be cancelled and the specifications will revert to the specifications applicable on the works.

9.2 Notwithstanding the above and in the event of the Parties inadvertently failing to follow the procedures prescribed should the Parties in fact have agreed to any extras/variations but have failed to agree on the cost thereof and/or should the Parties be unable to agree as to whether any Works do comprise an extra/variation, such dispute will be referred to the Architect, who will determine the dispute and whose determination will be final and binding on the Parties.

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**9.3** It is recorded that the dwelling may vary from the extent indicated on the approved municipal building plan. However, should the variation be less than 5% (five percent) of the indicated extent, the Parties should have no recourse one against the other. Should it exceed 5% (five percent) of the indicated extent, the Architect shall determine the monetary value of damages suffered by the party aggrieved.

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## **10. RIGHTS AND OBLIGATIONS OF THE BUILDER**

**10.1** The Builder shall reasonably insure against public liability on or around the Works from the commencement of building operations in terms of this Agreement until the risk in the Works has passed to the Purchaser(s).

**10.2** *The Builder shall not be deemed in default of this Agreement and shall be exempted from any liability for making good damages, nor shall it hold the other Party responsible for any cessation, interruption or delay in the performance of its obligations due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflicts, labour strike, lock out, boycott or other similar events beyond the reasonable control of either Party, provided that the Party relying upon this provision:*

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**10.2.1** *gives prompt written notice thereof; and*

**10.2.2** *takes all steps reasonably necessary to mitigate the effects of the force majeure event.*

**10.2.3** *The Builder reserves the rights to alter the position of any drain or drain pipe as shown on the working drawings to suit the level of the ground should it be necessary.*

**10.3** Notwithstanding anything to the contrary herein contained, ownership of all materials built onto the Erf shall remain vested in the Builder until such time as all amounts due in terms of this Agreement have been paid in full. The provisions of this Clause shall apply notwithstanding the fact that such materials may have otherwise ceded to the Erf or any building situated on the Erf.

**10.4** In the event of the contract period being extended due to any breach of contract by the Purchaser(s) or the Purchaser(s) not taking possession immediately when called upon to do so in terms of this Agreement or should there be any delay in completing finishes or items that are to be specified by the Purchaser(s) due to non-availability or failure by the Purchaser(s) to specify the said finishes or items promptly when called upon to do so in terms of this Agreement, then the Builder shall be entitled to engage a security guard and watchman the cost of which shall be immediately due owing and payable by the Purchaser(s). The decision as to whether there is a delay or any failure as contemplated herein and the decision to engage a guard shall be taken solely by the Builder. The Builder's decision in this regard shall be final.

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**10.5** Copies of the following documentation will be supplied by the Builder to the Purchaser(s) on Date of Occupation:

**10.5.1** Electrical Compliance Certificate;

**10.5.2** Roof Certificate (A19);

**10.5.3** Copy of approved Plan;

**10.5.4** Plumbing COC;

**10.5.5** Occupation Certificate issued by the Local Authority.

**10.6** The Builder is entitled to enter into contracts with any third party to sub-Contract any of the Works, provided that the rights of the Purchaser(s) in terms of this Agreement against the Builder shall not be affected in any way by such sub-contracting Agreement.

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**11. RIGHTS AND OBLIGATIONS OF THE PURCHASER(S)**

11.1 Such guarantees as may be received by the Builder in respect of any item incorporated in the Works shall, to the extent that the Builder is entitled to do so, be passed on to the Purchaser(s).

**11.2 The Purchaser(s) acknowledges that the project will be an ongoing process and that certain inconvenience may be caused thereby. The Builder shall not be held liable for such inconvenience or any damages that flow there from and shall be entitled, (where necessary) to enter upon the property for purposes of obtaining access to adjoining erven in the course of such development.**

**11.3 The Purchaser(s) will be liable for all rates and taxes charged by the local authority as from Date of Transfer in the Deeds Office.**

11.4 The Purchaser(s) shall not under any circumstances be entitled to withhold payment from the Builder for any amounts whatsoever by virtue of minor works still to be carried out by the Builder. Any amounts to be withheld, shall be certified by an Architect appointed by the Builder.

**11.5 The Builder will not accept liability for damages resulting from a failure by the Purchaser(s) to take reasonable and proper care of the House and maintain it regularly.**

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**12. SUSPENSIVE CONDITION**

12.1 This Agreement is subject to the fulfilment of the suspensive condition namely that, simultaneously with the signature of this Building Agreement, the Agreement of Sale is concluded and becomes unconditional to its terms except for the condition that this Building Agreement becomes unconditional to its terms.

12.2 If the aforesaid suspensive condition is not fulfilled within the time period contemplated above or any other date agreed to in and between the Parties to it in writing then this Agreement shall automatically lapse and be of no further force and effect and no Party shall have any claim against the other of them as a result of the failure of the suspensive condition.

**13. RESOLUTIVE CONDITION**

13.1 This Agreement is subject thereto that the Agreement of Sale, concluded simultaneously herewith, not be cancelled or terminated.

13.2 Should the Agreement of Sale therefore, at any time prior to Transfer, be cancelled or terminates for whatever reason then and in such event this Agreement will automatically dissolve and be of no further force or effect.

**14. BREACH**

14.1 If any one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the aggrieved Party shall be entitled to give the other Party 10 (ten) days' notice in writing by means of either registered post, telefax, e-mail, or by hand to remedy such breach, failing which the aggrieved Party shall have the right, but not be compelled to, and without prejudice of any of his rights or remedies, including his right to damages, either –

14.1.1 to cancel this Agreement; or

14.1.2 to claim immediate performance of all the defaulting Party's obligations in terms hereof.

14.2 Should the defaulting Party dispute the aggrieved Party's right to cancel this Agreement then, pending the determination of that dispute, the respective Parties shall be obliged to continue to payment

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of all amounts payable by them in terms of this Agreement on the due dates thereof and/or honour the further provisions of this Agreement and the other Party shall be entitled to recover and accept payments and/or delivery of any services without prejudice to such Party's claim for cancellation of this Agreement or any other rights of such Party whatsoever.

14.3 Should any one of the Parties take steps against the other pursuant to a breach by such Party of this Agreement, such Party shall, in addition to the rights aforementioned, be entitled to recover from the defaulting Party, who shall be liable to that Party for payment of all its legal costs incurred on the scale between attorney and own client, including tracing fees and collection commission.

## 15. MAGISTRATE'S COURT JURISDICTION

The Purchaser(s) hereby consents in terms of section 45 of the Magistrates Court Act 32 of 1944, as amended, to the Builder instituting any proceedings arising out of this contract in the Magistrates Court having jurisdiction in terms of section 28 of the Magistrates Court Act notwithstanding the fact that such proceedings are otherwise not within the jurisdiction of such court. The Builder however reserves the right in its sole discretion to institute any action arising from this Agreement in the High Court of South Africa.

## 16. NOTICE AND DOMICILIA

16.1 The Parties choose their addresses as set out on in preamble of this Agreement above to serve as *domicilium citandi et executandi* for all purposes of this 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 Builder's or Purchaser(s)'s *domicilium* address shall be deemed to have been received by the Builder or Purchaser(s) at the time of delivery;

16.2.2 posted by prepaid registered post to the Builder's or Purchaser(s)'s *domicilium* address shall be deemed to have been received by the Builder or Purchaser(s) on the 4th day after the day of its posting.

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. DISPUTE RESOLUTION

17.1 If any dispute or difference shall arise between all or any of the Parties, including the Purchaser's Bank on behalf of the Purchaser, out of or in relation to or in connection with this Agreement, or as to any draw to which the Builder may claim to be entitled or the interpretation of this Agreement, thereof, or any breach thereof, or its termination, both while in force and after its termination, and whether during or after completion of the Works, the Party claiming such dispute or difference, shall forthwith advise the other Parties in writing thereof. Within 10 (ten) Business Days of receipt of such notice, the Parties shall meet and negotiate in good faith in order to resolve such dispute or difference.

17.2 Should the Parties fail to resolve such dispute or difference within 5 (five) Business Days of their meeting or such longer period as the Parties may agree in writing, any Party may refer such dispute or difference to mediation to be undertaken by a single mediator.





17.3 The Party referring the dispute to mediation shall, within 5 (five) Business Days of the Parties having failed to resolve the dispute in terms of clause 17.2, submit to the other Party in writing the names and occupations of 3 (three) persons proposed by it to act as mediator and request the other Party to agree to the appointment of any one of them in writing within 5 (five) Business Days of receipt of such notice.

17.4 In the event of the Parties being unable to agree on the appointment of a mediator, the Parties shall, within 5 (five) Business Days after the date of receipt of the notice in terms of clause 17.3, submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) or its successors for AFSA administered mediation by one mediator, upon the terms set by the AFSA secretariat.

17.5 Failing such a resolution, the dispute if capable of arbitration in law, shall be finally resolved in accordance with the Rules of AFSA by an arbitrator appointed by AFSA.

17.6 The decision of the Arbitrator appointed by AFSA shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction, including its award in respect of the costs of arbitration. There shall be no appeal against such decision.

17.7 Nothing herein contained shall disallow any party to make application for an interdict or urgent relief in appropriate circumstances.

17.8 The Parties hereby irrevocably consent to the proceedings as set out in this clause 1.

## 18. INTEREST

Any amount due by the Purchaser(s) not paid on Due Date shall bear interest at the Prime Interest Rate charged by Nedbank Limited plus 2% from the Due Date until the date of payment thereof

## 19. SEVERABILITY

19.1 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.

19.2 Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect.

19.3 The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## 20. GENERAL

20.1 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, including this clause, may furthermore not be modified, varied or consensually cancelled other than in writing, duly signed by both Parties.

20.2 The Agreement shall not be binding upon the Parties until the Builder has confirmed acceptance thereof by virtue of a Director's signature or his nominee on these documents.

**20.3 Should the Agreement be signed by more than one Purchaser(s), the Purchaser(s) shall be jointly and severally liable to comply with all the obligations of the Purchaser(s) as set out in this Agreement. Should the Signatories to this Agreement as Purchaser(s) be married in community of property and file for divorce prior to the Date of Transfer, both Signatories hereby agree to be jointly and severally liable to comply with the obligations of the Purchaser(s) as set**




**out in this Agreement and irrevocably undertake to sign all documents and pay all amounts and fulfill all their obligations in terms if this Agreement punctually.**

**SIGNATURE OF PURCHASER(S)**

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

AS WITNESSES

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

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

**SIGNATURE OF BUILDER**

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

AS WITNESSES

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

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





**ANNEXURE C of BUILDING CONTRACT**  
**STANDARD SPECIFICATIONS & SCHEDULE OF FINISHES IN THE **LUXURY** SPECIFICATIONS**  
**SELECTION FOR FULL TITLE PROPERTIES**

**FOUNDATIONS**

- All external load-bearing walls will be founded on concrete strip footings as indicated on the working drawings or on raft foundations as per engineers design.
- All internal walls will be founded on thickening to surface bed as indicated on the working drawings.
- Conventional building methods, as for normal founding conditions, will be used unless otherwise instructed by the engineer.

**SUPERSTRUCTURE**

- Houses to be built with 390mm X 190mm X 90mm cement cavity Bricks.
- External walls will be double row with cavity in between and internal wall will be a single row, i.e. 90mm wide.
- Air bricks will be installed in all bathrooms and toilets/water closets.

**ROOF**

- Constructed with engineer designed prefabricated roof trusses.
- House roofs to be pitched 26 degrees and covered with cement tiles – PVC underlay to be provided.
- Barge boards to be provided.
- Pre-coloured, seamless, extruded aluminium type gutter and PVC downpipes to be fitted.
- Concrete gully drip blocks to be provided per down pipe outlet.

**DOORS & DOORFRAMES**

- All external doors to be FLB closed-back solid doors.
- Horizontal wood slatted front door to be fitted.
- All internal doors to be hollow core hardboard type.
- All internal doorframes to be 1.2mm galvanised steel frames as per developer.
- Weatherboards to be fitted to all external doors.
- Security gate to each front and rear/back entrance door.

**WINDOWS**

- Standard residential aluminium windows with handles and catches as indicated on the working drawings without burglar bars.
- Double curtain rails to each bedroom and lounge, single to kitchen and bathroom.

**GLAZING**

- Clear sheet glass generally in thickness as recommended by the glazier.
- Obscure glass to glazier's choice will be installed to bathroom/s and WC's.

**WINDOW SILLS**

- External windowsills are to be constructed, plastered and painted with one coat of primer and two coats acrylic paint.
- Internal windowsills to be plastered and painted.

**WALL FINISHES**

- External walls of the house to be plastered.
- Internal walls of the house to be plastered.
- Glazed wall tiling will be provided as follows:
  - Kitchen – splashback to 300mm above work surface area and basin.
  - Bathrooms – all walls tiled to a height of 1200mm as well as to sides and rear of bath, as well as above basin.

**FLOOR FINISHES**

- 250 uDPC damp course below surfaces bed.
- All surface beds to be power floated and screeded to accept tiling.
- Ceramic floor tiles to all floors with a 70mm skirting.
- External walls will receive a 700mm brick apron around the house.

**CEILINGS**

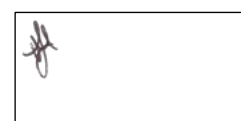
- Ceilings to be gypsum board, 6.4mm and plastered or similar, design as per developer.
- Profiled cornices to ceiling.
- Ceilings and cornices to be painted with two coats good quality PVA.

**PAINTING**

- All plastered surfaces to be painted with two coats good quality PVA.
- All exposed metalwork to be finished with one coat universal enamel paint.
- All external doors to be finished with two coats of wood sealer.
- All exposed structural timber to receive two coats carbolineum.
- All internal doors and doorframes to be painted with enamel paint.

**IRONMONGERY**

- External doors to be fitted with standard three lever mortise locksets with chromium plated furniture.
- Internal doors to be fitted with standard two lever mortise locksets with chromium plated furniture.



**ELECTRICAL**

- One plug and one light point per room, two plug points in the kitchen, two external lights, stove gas connection point as shown on the floor plan layout.
- External light fittings to be watertight, one to the front of house and one to the rear of house.
- Internal light fittings to be bowl type light fittings as per developer as per developer.

**PLUMBING**

- All sanitary fittings are to be standard type white vitreous china, and acrylic cisterns.
- Baths to be 1700mm long white acrylic type.
- Wash hand pedestal type basins will be installed.
- Mixer tap to bath, shower and basin as per developer.
- Fully installed solar cold and hot water reticulation system, including taps and one 150 litre cylinder (SABS approved) complete with pressure release valve and thermostat and connection to both bathroom/s and kitchen.
- 1 Outside tap included.
- 1 Washing machine water and electrical point in kitchen, complete with cold water inlet tap and outlet.

**CABINETRY: KITCHEN**

- Fitted kitchen with granite work surface, 300mm splashback tiling to wall above worksurface, single mixer tap bowl with drying plate, 3 melamine floor cabinets and 3 melamine wall cabinets.
- Stove & Oven.
  - 4 plate electrical stove and under counter oven with isolator point, as per developer.

**BEDROOMS**

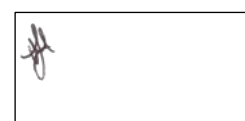
- 3 Door Melamine Wardrobe to main bedroom - White.
- 2 Door Melamine wardrobe to all 2<sup>nd</sup> and 3<sup>rd</sup> bedrooms - White.
- Double rail curtain railings fitted to each bedroom and lounge, single rail to bathroom and kitchen.

**BOUNDARIES**

- Boundaries will be fenced off with a 1.8m high pre-fabricated concrete wall to sides and the rear of the stand. All other walling will be an optional extra, to be costed for separately.

**EXTERNAL**

- External paving per house of 18m<sup>2</sup> as per developer.
- No lawn will be supplied.
- 1 X 50l tree planted as per developer per stand/sidewalk.
- One fold-down external wall mounted aluminium washing line will be installed as per below:
  - 2.3 meters x 80 cm (13.5 meters of line space)



**SITE WORKS**

- The property will be levelled to dispose the storm water to the extent as determined by the Contractor.
- No landscaping, other than general removal of building rubble.


**AVAILABILITY OF MATERIALS**

- All materials herein specified are subject to availability, where any materials are not readily available, the Contractor shall have the right to use the nearest similar material available.

**NOTES:**

- **Availability of materials - All materials herein specified are subject to availability, where any materials are not readily available, the Builder shall have the right to use the nearest similar material available.**
- **Consumer deposit payable to local authority to be paid by purchaser.**
- **All impressions used for marketing purposes are artist impressions and not necessarily representative of the exact colours or amount of paving used. For specific detail in this regard please refer to the specifications above.**
- **In the event of a contradiction this specification supersedes the plan.**

**SIGNATURES TO FOLLOW ON NEXT PAGE**



**SIGNATURE OF PURCHASER(S)**

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

AS WITNESSES

1.  \_\_\_\_\_  
**PURCHASER 1**

2. \_\_\_\_\_  
**PURCHASER 2**

**SIGNATURE OF BUILDER**

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

AS WITNESSES

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

3. \_\_\_\_\_  
**BUILDER**





**ANNEXURE D BUILDING CONTRACT, SPECIFICATIONS, STYLE & OPTIONAL EXTRAS SCHEDULE**

**PRICING SCHEDULE**

<u>HOUSE DESCRIPTION</u>	<u>COMMENTS</u>	<u>DETAIL &amp; PRICE</u>	
<u>House Size (m<sup>2</sup>)</u>	<i>Insert Size of House (Eg. 43)</i>		
<u>Plan Type of House</u>	<i>Insert Plan Letter Value (Eg. E)</i>		
<b>Basic House Price</b>		<b>R</b>	<b>A</b>
<u>House Style</u>			
Tuscan	Hip Roof & Corner Plaster Bands in Tuscan Style	<b>R</b>	
Semi Tuscan	Gable roof with Corner Plaster Bands in Tuscan Style	<b>R</b>	
Cape Contemporary	Gable roof, no plaster effects	<b>No Charge</b>	
<b>Basic Style Price</b>		<b>R</b>	<b>B</b>
<u>Stand Price</u>			
<b>Basic Stand Price</b>	Size _____ m <sup>2</sup>	<b>R</b>	<b>C</b>
<u>Optional Extras</u>	<i>Insert the price against the extra/s selected</i>		
Single Garage	<i>If stand size allows</i>	<b>R</b>	
Front wall without gate	<i>Vibracrete</i>	<b>R</b>	
Front wall incl. manual steel sliding gate	<i>Vibracrete non motorised slider = Galvanised steel</i>	<b>R</b>	
Sliding Door	<i>Aluminium / door 1500mmX2195mm</i>	<b>R</b>	
Sliding Door	<i>Aluminium / door 2400mmX2195mm</i>	<b>R</b>	
Trellis Security gate to sliding door	<i>Trellidor or Similar, fitted</i>	<b>R</b>	
Paving	<i>Rate per m<sup>2</sup> laid</i>	<b>R</b>	
Carport	<i>Single</i>	<b>R</b>	
Carport	<i>Tandem</i>	<b>R</b>	
Non-Standard Item	_____	<b>R</b>	
Non-Standard Item	_____	<b>R</b>	
<b>Optional Extras Total</b>		<b>R</b>	<b>D</b>
<b>Total Purchase Price ( A + B + C+D )</b>		<b>R</b>	<b>A+B+C+D</b>
<b>SIGNATURES</b>			
<b>BUYER 1</b>	<b>BUYER 2</b>	<b>BUILDER</b>	

  
 \_\_\_\_\_  
 INITIAL HERE