

HAMILTON ESTATE BUILDING AGREEMENT

1. PARTIES

The parties to this agreement are:

1.1

And

1.2 The party referred to the Schedule B.

2. GENERAL

2.1 Interpretation

In this agreement the following terms and expression shall have the meanings ascribed to them hereunder unless the context specifically required otherwise-

2.1.1 **CONTRACTOR** the party referred to in 1.1;

2.1.2 **EMPLOYER** the **PARTY** referred to in Schedule B;

2.1.3 **PRICE STRUCTURE** shall mean all costs as per Schedule A hereto, which will be supplied by the contractor as part of the execution of the works in terms of this agreement;

2.1.4 **PLAN** a copy of which is annexed hereto as Annexure B1 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 relevant Local Authorities 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;

2.1.5 **BASIC SPECIFICATIONS** shall mean the detailed specifications and finishing schedule annexed hereto as Annexure B2 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.

2.1.6 **UPGRADE SPECIFICATIONS** shall mean the upgrading from the basic specifications to the specifications describe as per Annexure B3 hereto, which would be supplied by the contractor as part of the execution of the works in terms of this agreement.

2.1.7 **ADDITIONAL COSTS** shall mean all costs as per Annexure B4 hereto, which will be supplied by the contractor as part of the execution of the works in terms of this agreement.

2.1.8 **DEVELOPMENT** the proposed housing development known as **HAMILTON ESTATE** of which the erf forms part.

2.1.9 **ERF** the property to be registered in the name of the employer as indicated in Schedule B and the Site Development Plan (Annexure A1) to the Deed of the Sale.

2.1.10 **PARTIES** a collective reference to the contractor and the employer and the "party" means one of them;

2.1.11 **DAY** any **DAY** of the week, including Sundays and South African Public Holidays;

2.1.12 **CONVEYANCERS** Marais Muller Yekiso, Kuils River, (Ref: Theunis Hofmeyr /Sandra)

2.1.13 **AGREEMENT** the building agreement in respect of the works and as set out in these documents between the employer and the contractor;

2.1.14 **WORKS** the building works to be conducted on the erf by contractor in accordance with the plan, basic specifications and, if the specifications;

2.1.15 **ARCHITECT** the architect appointed by the contractor from time for the purpose of the execution of the works;

2.1.16 **WARRANTEE** shall mean the warrantee by the contractor as set out in annexure a hereto

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 effect any right of whatsoever party;

2.3 **Exclusion of other agreements**

The agreement cancels and supercedes 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 or 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. **SUBJECT MATTER**

3.1 The contractor undertakes in a proper and workmanlike manner to execute the works against payment of the contract sum referred to in clause 4.

3.2 The works shall be substantially in accordance with the plan and specifications provided that the contractor shall be entitled in his discretion to deviate from the plan and basic specifications if, during the building and construction of the works it appears that such deviation will result in the most significant,, practical and economical completion of the works without essentially deviating from the plan or having negative effect on the quality and finishing of the works.

3.3 In the event of any discrepancy arising from the plan and the basic specifications the provisions of the basic specifications shall prevails.

3.4 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 SUM**

The contract sum referred to in the price structure shall be subject to any variations referred to in the upgrade to specifications. The additional costs be the sum referred to in annexure b4 hereto, which sum is inclusive of vat and shall be payable by the employer to the contractor as specified in Annexure B hereto.

5. **PAYMENT OF THE CONTRACT SUM**

5.1 Payment of the contract sum shall be made by the employer to the contractor in progress payment installments as per annexure b and according to the standard procedure of the financial institution concerned, where a bond is applicable. in a case where a part of the contract price is financed by a bond the employer undertakes to pay the first part of the contract price as indicated on annexure b and the bond be utilized for the later payments.

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 the due date will bear interest in accordance with the Provisions of Clause 6 below from due date to date of final payment.

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

5.5 In the event of an employer failing or refusing to authorize payment of any interim or final draws, the contractor 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 that additional interest accrued shall be for the account of the employer.

6. COMMENCEMENT AND COMPLETION OF BUILDING

6.1 The contractor shall commence the works after the transfer of the plot but he shall not be obligated to commence the works until:

6.1.1 The employer has furnished adequate security to the contractor's satisfaction for the whole of the contract sum; and

6.1.2 All necessary consents, approvals, registrations or other authorities have been obtained; and

6.1.3 The plot is registered in the name of the employer and the employer's bond (if applicable) has been registered

6.2 If commencement of the works is delayed for longer than a period of one hundred and eighty (180) days as from registration signature hereof 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 or alternatively claim an adjustment to the contract sum 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 contract sum, then a quantity surveyor appointed by the contractor shall determine the dispute and the quantity surveyor's determination shall be final and binding on the parties

6.3 Subject to any extensions permitted in terms of clause 4, the contractor shall complete the works within nine (9) months after commencement,

6.4 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 recognized generally as customary in the industry fall with 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.

6.5 The occurrence of one or more of the events detailed in clause 6.6 below shall constitute complete proof of the satisfactory completion of the works by the contractor and shall determine the completion date and the contractor shall be discharged completely from all obligations expressed or implied under this contract and any variation thereof or addition thereto and the employer shall have not further claim on the contractor, save as specifically otherwise provided herein.

6.6 For purposes aforesaid, the occurrence of any one of the following shall constitute the completion date.

6.6.1 The date of formal handing over the keys to the works by the contractor to the employer and the signing by the employer of a handing-over certificate in acknowledgement thereof; or

6.6.2 The date which occupation of the works is taken by the employer or his agent.

6.6.3 After notice by the contractor to the employer that the final section of the works has been completed and all inspection have been done and tests passed by the mortgagee or relevant authority and the works are available for occupation by the employer.

6.6.4 The date of issue of a certificate signed by a practicing architect nominated by the contractor stating that the works have been satisfactorily completed, which ever of these dates shall be the earliest.

whichever of these dates shall be earliest.

6.7 Notwithstanding anything elsewhere provided for in this agreement, all amounts owing in terms of this agreement which have not already been paid in terms of the provisions of this agreement shall be forthwith payable on the completion date.

6.8 The purchaser must within 21 (twenty one) days after the completion date notify the contractor in writing of any visible defects, which will be rectified within the one month permitting access. This list shall be regarded as a final and complete defect list but shall not constitute the right to withhold final payment.

6.9 The risk in the works shall pass wholly and entirely to the employer as from the completion date.

7. UNDERTAKING BY THE EMPLOYER

The employer undertakes in terms of the deed of sale concluded between the employer and **SHINING OAKS INVESTMENTS 7 (PTY) LTD**, to become and remain the registered owner of the erf pending payment of the full contract sum to the contractor and the passing of risk to the employer.

8. INTEREST

Any agreed amount due by the employer to the contractor not paid on due date shall bear interest at the rates of 2% above the rate of interest payable by the contractor to his financier or the minimum lending rate ruling of ABSA from time to time, whichever is the higher, from the date such amount becomes due by the employer to the contractor until the date of payment thereof.

9. POSSESSION

9.1 The contractor shall be entitled to:

9.1.1 Receive full possession of the erf when he is due to commence the works

9.1.2 Retain possession of the works until all agreed amounts owed to him under this agreement and the employer in connection with the works have been paid and all obligations of the employer of this contract have been fulfilled.

10. BREACH

10.1 Should the employer's estate be finally sequestrated and-or liquidated (as the case may be), placed under judicial management or should the employer commit a breach of any of the terms of this contract (including failing to make any payments on due date) and fail to remedy such breach within fourteen (14) days of date of dispatch by the contractor of written notice calling upon the employer to remedy such breach, the contractor shall in such circumstances forthwith be entitled to terminate this contract without prejudice to any rights which the contractor may have in terms of this contract or in terms of law.

10.2 In the event of the contractor being obliged and/or electing to cancel the agreement in accordance with the preceding paragraph, then the following shall occur:

10.2.1 A quantity surveyor appointed by the contractor shall assess the amounts due to the contractor in terms of works completed to date and any portion thereof which has not already, by virtue of progress payments being paid, shall forthwith be payable.

10.2.2 As genuinely pre-estimated damages for the breach of the terms and conditions of this agreement by the employer, the employer shall be liable to pay to the contractor an amount calculated as follows:

(Total Contract Sum) less (Amounts Paid and/or Payable in respect of works already completed) times 20%.

10.3 If the contractor shall make default in any of the following respects:

10.3.1 Without reasonable cause wholly suspends the works before completion;

10.3.2 Without reasonable cause refuses to proceed with the works with reasonable diligence;

10.3.3 Refuse, after notice in writing from the employer, to remove defective work or improper materials within a reasonable period of time then, and in such an event, if the default shall continue and not be remedied notwithstanding fourteen (14) days written notice to the contractor by the employer specifying the nature of the specific default, the employer may without prejudice to any other right he may have in terms of this contract or in law, by written notice cancel the agreement and look to the contractor for damages suffered by the employer by reason of such default and cancellation.

11. MAGISTRATE'S COURT JURISDICTION

For the purposes of all or any Court proceedings herein, the employer and contractor hereby consent to the jurisdiction of any magistrate's court having jurisdiction over the intended defendant.

12. GUARANTEES

At the date of completion and providing that the employer has paid the full amount to the contractor in terms of the agreement then the contractor shall:

- 12.1 Make good any latent defects due to material and/or workmanship, which manifest itself within a period of three (3) months from the completion date.
- 12.2 After occupation, any repairs will be done during working hours, Monday to Friday. No exception will be made.
- 12.3 During a period of five years make good any structural defects of the building, which manifests themselves with the aforesaid period, in accordance with the Housing Consumers Protection Measures Act, 95/1998 and the Regulations promulgated in terms of the said act (NHBRC).

13. PUBLIC LIABILITY INSURANCE

The contractor shall reasonably insure against public liability on or around the works from the commencement of building operations on completion of the works in terms of this contract and until the risk in the works has passed to the employer.

14. EXEMPTION FROM LIABILITY

Where the erf supplied to the employer the contractor shall be exempted from liability for making good damage caused by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, erf 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.

15. CESSION OF GUARANTEES

Such guarantees as may be received by the contractor in respect of any item incorporated in the works shall, to the extent that the contractor is entitled to do so, be passed on to the employer.

16. VARIATIONS

- 16.1 Should the employer, after signature of this agreement, require that any aspect of the works be varied and/or any extra work be carried out by the contractor, then such request shall be made in writing whereupon the contractor 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 employer this agreement will be deemed to be accordingly varied. All costs arising from such variation/extra shall be paid by the employer to the contractor prior to commencement of the works.
- 16.2 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 an architect appointed by the contractor and employer, who will determine the dispute and whose determination will be final and binding on the parties.

17. SUSPENSIVE CONDITIONS

- 17.1 This entire agreement is subject to the conclusion of a deed of sale relating to the sale of the erf by **SHINING OAK INVESTMENTS 7 (PTY) LTD** to the employer and the fulfillment of all and any suspensive conditions which might be contained in such sale agreement within the periods therein prescribed.
- 17.2 The provisions of the agreement shall only become enforceable upon:

- 17.2.1 The granting by the financial institution of a long term loan in favour of the employer against security of a first mortgage bond to be registered in respect of the property and,
- 17.2.2 The conclusion of a deed of sale between the employer and **SHINING OAK INVESTMENTS 7 (PTY) LTD.**
- 17.3 In the event that the suspensive conditions mentioned in par. 17.2 are not fulfilled within 21 (twenty one) days after signature hereof by the contractor, this agreement shall lapse in entirety and neither party shall be liable to the other for any loss or damage suffered as a result of non-fulfillment.

18. NOTICE

Any notice given in terms of the agreement shall be delivered by hand, sent by fax or sent by registered post, in which event it shall be deemed to have been received if faxed or hand-delivered within one (1) day of faxing and/or delivery and if posted within three (3) days of posting.

19. DOMICILIUM CITANDI ET EXECUTANDI

The parties hereby choose their respective *domicilia citandi et executandi* for all purposes of contract at:

EMPLOYER: At the address specified on Schedule B hereto.

CONTRACTOR: SHINING OAK INVESTMENTS 7 (PTY) LTD: Or at such other address either party may from time to time by written notice direct.

20. WHOLE CONTRACT

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.

21. AGREEMENT NOT BINDING UNTIL SIGNED

The agreement shall not be binding upon the parties until the contractor has confirmed acceptance thereof by virtue of a director signature or his nominee on these documents. In the event of the contractor being a principal or a partnership the signature of such principal or partner shall be binding on the parties hereto.

This agreement is undividable from an agreement entered into between the parties in respect of the purchasing of the plot.
fulfillment of the suspensive conditions of the deed of sale in respect of the plot as well as the suspensive conditions in this agreement is required before any of the two agreements can be made and become effective.

22. REMOVAL OF ALTERATION OF DRAINS AND PIPES

The contractor 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.

23. EMPLOYER NOT TO GIVE INSTRUCTION TO CONTRACTOR SERVANTS

The employer shall have the right of inspection of the works carried out by the contractor, provided that the employer shall at all times be accompanied by either the contractor or one of its duly appointed agents, but he shall not personally or through his agent be entitled to issue instructions to any of the contractors workmen or subcontractors or any other person employed or acting on their behalf.

24. RETENTION OF OWNERSHIP

Notwithstanding anything to the contrary herein contained, ownership of all materials build onto the site shall remain vested in the contractor until such time as all amounts due in terms of this agreement has been paid in

full. The provisions of this paragraph shall apply notwithstanding the fact that such materials may have otherwise exceeded to the erf or any building situated on the erf.

25. SECURITY ARRANGEMENTS AND COSTS THEREOF

In the event of the contract period being extended due to any breach of contract by the employer or the employer 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 employer due to non availability or failure by the employer to specify the said finishes or items promptly when called upon to do so in terms of this agreement, then the contractor shall, be entitled to engaged a security guard and watchman shall be immediately due owing and payable by the employer. 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 contractor. The contractor's decision in this regard shall be final.

26. ACCESS AND INCONVENIENCE

The employer acknowledges that the development will be an ongoing process and that certain inconvenience may be caused thereby. The contractor shall not beheld 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.

27. DOCUMENTATION TO BE SUPPLIED BY CONTRACTOR

The following documentation will be supplied by the contractor to the employer on completion date:

- 27.1 Electrical Compliance Certificate
- 27.2 Roof Certificate (A 19)
- 27.3 Engineers Certificate
- 27.4 Compaction Certificate
- 27.5 Copy of approved PLAN
- 27.6 Occupation Certificate issued by the Local Authority.

28. THE RIGHT TO SUBCONTRACT

The contractor is entitled to enter into contracts with any third; party to subcontract any of the works, provided that the rights of the client in terms of this agreement as against the contractor shall not be affected in any way by such subcontracting agreement.

29. CANCELLATION BY EMPLOYER

The employer acknowledges that, by reason of his signature hereto, the contractor will incur certain necessary costs or charges relating inter alia to the processing of the agreement document, 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 suspensive conditions (if any) relating to loan/mortgage bond finance contained in the deed of sale in respect of the employer of the property, the employer assumes liability, without recourse, for payment to the contractor of cancellation costs, as follows:

The sum of R5 000.00 (Five Thousand Rand) if cancellation is effective prior to the granting of loan finance (if any);

The sum of R8 500.00 (Eight Thousand Five Hundred Rand) if cancellation is effective after granting of required loan/Mortgage Bond (if any) but prior to commencement of the works; or

Should the employer cancel after commencement of 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 his liabilities and cancel this agreement for whatever reason.

30. INTERIM INTEREST

The contractor will pay all interim interest that the Bank may charge from time to time. All said interest to be paid in full before date of occupation.

31. WITHHOLDING MINOR PAYMENTS

The employer shall not under any circumstances be entitled to withhold payment from the contractor for any amounts whatsoever by virtue of minor works still to be carried out by the contractor. Any amounts to be withheld, shall be certified by an architect appointed by the contractor.

SIGNED at _____ on this _____ day of _____ 2010.

AS WITNESSES:

- 1.
CONTRACTOR
- 2.

SIGNED at _____ on this _____ day of _____ 2010.

AS WITNESSES:

- 1.
EMPLOYER
- 2.

SIGNED at _____ on this _____ day of _____ 2010.

AS WITNESSES:

- 1.
- 2.
SPOUSE

WARRANTY

The **CONTRACTOR** undertakes to:

1. Make good any material latent faults or defects, which become apparent within 3 (three) months of the Completion Date as hereinbefore defined.
2. The contractor shall be relieved of the above undertaking if the employer fails to give the contractor written notice within 7 (seven) days of the expiry of the said period of 3 (three) months to the effect that the contractor is required to carry out the relevant undertakings.
3. The contractor shall only be responsible in terms of clause 1 for defects arising as a result faulty workmanship and/or materials and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of or arising from any risk insured against in terms of homeowner's insurance policies normally issued by the south african insurance companies in respect of residential properties and the contractor shall under no circumstances be liable for any consequential loss or damage.
4. An architect certificate or the chairman of the national association for home builders or his nominee(s) stating that any defect for which the contractor is liable in terms of clause 1 has been made good shall be final and binding on both parties and shall relieve the contractor from any obligations in respect of such defect.
5. Notwithstanding anything to the contrary contained in this agreement, the contractor shall also carry on such repairs or make such replacement to the roof of the dwelling that may be necessary to eliminate any roof leakages that become apparent during the first rainy season after occupation, whereafter there shall be no further obligation on the contractor in this regard. Notice of any roof leaks shall be reported by the employer to the contractor in writing. the contractor further undertakes to attend to the rectification of any material defects with regard to the roof and its construction provided such defects become apparent within a period of 12 (twelve) months of the completion date.
6. The warrantee also specifically excludes two repair items:
 - 6.1 touch up painting of any nature whatsoever;
 - 6.2 hairline cracks in the plasterwork. these cracks are inevitable and are caused by the natural shrinkage of materials during the first six (6) months after completion. When you next paint the affected walls, the hairline cracks should disappear and not return. Please note that the contractor cannot be held responsible for repairing cracks of this nature.
7. If the contractor installs any appliances with a manufacturer's guarantee during the construction, such guarantee will be transferred to the employer.
8. This warrantee may only be enforced by the original employer and is not transferable.
9. The contractor will be responsible to register the project with the NHBRC.

EMPLOYER

CONTRACTOR

SPOUSE

PAYMENT OF CONTRACT SUM

1. Subject to the provisions of Clause 3 Schedule B, payment of the Contract Sum shall be made to the contractor upon the following basis:

The first instalment of R _____ (_____)

being 40% of the contract price as referred to on schedule b shall be paid within 7 (seven) days of written notification to the employer of the completion of the first section of the works namely:

- (a) all foundations completed
- (b) brickwork to plinth height, backfilling and floors cast
- (c) brickwork internal and external walls completed except beam filing.

The second instalment of R _____ (_____)

being 40% of the contract price shall be paid within 7 (seven) days of written notification to the employer of the completion of the second section of the works as follows:

- (a) roof trusses and roof covering;
- (b) beam filling completed
- (c) internal and external walls plastered
- (d) ceilings and cornices fixed
- (e) cupboard carcasses fitted
- (f) doors hung with locks fitted
- (g) electrical tubing fitted
- (h) plumbing pipes and drainage fitted
- (i) glazing completed

The third instalment of R _____ (_____)

being 10% of the contract price shall be paid within 7 (seven) days of written notification to the employer of the completion of the third section of the works as follows:

- (a) painting and tiling complete
- (b) electrical and plumbing work complete
- (c) all remaining work done as per specifications annexure b2
- (d) all contractors rubble removed and site left clean

The fourth and final instalment of R _____ (_____)

being 10% of the contract price shall be paid within 7 (seven) days of written notification to the employer of the completion of the forth and final section of the works as follows:

- (a) Prior to employer taking occupation of the works.

