



BUILDING AGREEMENT

ENTERED INTO AND BETWEEN

PLI Nyimbane Investment Holdings (Pty) Ltd

Registration Number: 2019/208680/07

herein represented by JJ Scott

duly authorized thereto by Resolution

(hereinafter referred to as the “Building Contractor/Contractor”)

AND

Name Employer 1: _____

Identity Number Employer 1:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Name Employer 2: _____

Identity Number Employer 2:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Contact Number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(hereinafter referred to as the “Employer/s/Purchaser/s/Owners/s”)

PART A – COVERING SCHEDULE

1. PARTIES												
1.1 Contractor												
1.1.1 Name	PLI Nyimbane Investment Holdings (Pty) Ltd											
1.1.2 Domicilium	38 Ambar Downs											
	61 Uranium Street											
	Witkoppen											
	2068											
1.1.3 Contact Number												
1.2 Employer												
1.2.1 Full Names Employer 1												
1.2.1.1 Identity Number												
1.2.1.2 Income Tax Reference Number												
1.2.1.3 Domicilium												
1.2.1.4 Contact Information												
1.2.1.4.1 Home												
1.2.1.4.2 Work												
1.2.1.4.3 Cell												
1.2.1.4.4 Email												
1.2.1.5 Marital Status	Single	COP	ANC	Other								
1.2.2 Full Names Employer 2												
1.2.2.1 Identity Number												
1.2.2.2 Income Tax Reference Number												
1.2.2.3 Domicilium												
1.2.2.4 Contact Information												
1.2.2.4.1 Home												
1.2.2.4.2 Work												
1.2.2.4.3 Cell												
1.2.2.4.4 Email												
1.2.2.5 Marital Status	Single	COP	ANC	Other								
2. PROPERTY												
2.1 Erf Number												
2.2 Extent												
3. CONTRACT PRICE												
3.1 Price of the Works Inclusive of VAT (the "Base Price")	R											
3.2 Upgrade to Specifications and Additional Costs Inclusive of VAT	R											

3.3 TOTAL CONTRACT PRICE INCLUSIVE OF VAT (the “Contract Price”)	R		
4. TRANSFERRING ATTORNEY/CONVEYANCER			
4.1 Company Name	Du Plooy Inc		
4.2 Contact Number	011 431 3739		
5. THE WORKS			
5.1 Plan Type Selected			
5.2 Size of Plan Selected			
5.3 Configuration of House		Beds	Baths
5.4 Finishes Selected	Option A	Option B	Option C
6. COMMENCEMENT AND COMPLETION DATES			
6.1 Estimated Commencement			
6.2 Estimated Completion			

PART B – AGREEMENT

PREAMBLE:

The Employer/s/Purchaser/s/Owners/s has entered into an agreement with the Seller to purchase the erf from the Seller.

The Employer hereby instructs the Contractor, and the Contractor hereby agrees to build the house for the Employer upon the erf at the Contract Price as per the Annexures attached hereto, which amount shall be paid out of the bond/deposits/guarantees in accordance to the terms and conditions of the Agreement. The Contract price will be paid in progress payments to the Contractor.

The agreement is an indivisible agreement and may only be entered into with the Contractor after signature of the erf agreement.

1. DEFINITIONS AND INTERPRETATIONS

- a. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder.
 - i. The “Agreement” means the Building Agreement in respect to the Works and as set out in this document between the Employer and the Contractor.
 - ii. The “Agreement of Sale” means the Agreement of Sale in respect to the Property entered into and between **PLI Nyimbane Carnival Green Development (Pty) Ltd** and the Employer;
 - iii. The “Attorneys” means the Attorneys/Conveyancers stipulated in Clause 4 of Part A Above;
 - iv. The “Basic Specifications” means the detailed specifications and finishing schedule annexed hereto as Annexure B and shall comprise the standard

- specification and finishes which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
- v. The “Building Plan” means the Plan approved by the Local Authority;
 - vi. “Business Day” means any Day except a Saturday, Sunday or officially proclaimed public holiday;
 - vii. “Completion Date” means the date of the Handover Inspection;
 - viii. “Contractor” means the Party as referred to in clause 1.1 of Part A above;
 - ix. The “Contract Price” means the Price as reflected in clause 3.3 of Part A above;
 - x. “Day” means any Day of the week, including Saturdays, Sundays and officially proclaimed public holidays;
 - xi. “Defects List” means a list of defects as agreed upon by the Parties during the Handover Inspection;
 - xii. “Development” means the Development known as Salfin Extension 6 and/or Carnival Green;
 - xiii. “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;
 - xiv. The “Employer/s” means the Party as referred to in clause 1.2 of Part A above;
 - xv. “Handover 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;
 - xvi. “Interim Interest” means the amount of interest which the financial institution will charge the Employer from the Transfer Date, as defined in the Agreement of Sale, until all amounts due by the Employer as provided for in this Agreement, has been paid in full;
 - xvii. “Local Authority” means the applicable Local Authority having jurisdiction over the Property;
 - xviii. “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 joints, any mold growth caused by a lack of ventilation and/or condensation, any door and window slamming in windy conditions or in any way and any damages caused thereby, wind and rain entering through open doors and windows and hot water cylinders which is covered by the guarantee issued by the supplier thereof;
 - xix. “Occupation Date” means the Completion Date or the date on which the Local Authority issues the Occupancy Certificate, whichever is the earlier;
 - xx. “Occupancy Certificate” means the Certificate that the Local Authority issues confirming that the Works have been completed according to the Plan;
 - xxi. “Occupational Interest” means an amount equal to the Prime Overdraft Rate, calculated pro rata per month on the Total Contract Price;
 - xxii. “Parties” means a collective reference to the Contractor and the Employer and “Party” means one of them;
 - xxiii. “Plan” means a copy of which is annexed hereto as A and shall for the purpose of this Agreement mean the signed drawings of the Works, which shall form the basis for the 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;
- xxiv. The “Principal Agent” means **LEADEN (PTY) LTD**;
 - xxv. The “Property” means the Erf as described in Clause 2 of Part A above;
 - xxvi. The “Seller” means **PLI Nyimbane Carnival Green Development (Pty) Ltd**;
 - xxvii. “Signature Date” means the date on which the Contractor signs the Agreement;
 - xxviii. “Total Contract Price” means the Contract Price plus the cost of the Upgrade to Specifications and Additional Costs;
 - xxix. “Transfer” means the registration of transfer of the Property into the name of the Purchaser in the appropriate Deeds Registry;
 - xxx. “Turnkey Loan” means a bond approval obtained by the Employer, in terms whereof the Property is sold to the Purchaser (Employer) on the understanding that the Purchaser (Employer) will take Transfer of the Erf, as defined in the Agreement of Sale, upon completion of the Works by the Contractor, and with the further understanding that the Contract Price will be paid by the Employer to the Contractor in 1 (One) progress draw on the Transfer Date;
 - xxxi. “VAT” means Value Added Tax
 - xxxii. “Upgrade to Specification and Additional Costs” means all costs associated with the upgrading from the Basic Specification attached hereto in Annexure B;
 - xxxiii. The “Works” means the construction work to be conducted on the Property by the Contractor in accordance with the Plan, the Building Plan, the Basic Specification and, if applicable, the Upgrade to Specifications.
- b. Words importing natural persons shall include a reference to body corporates and other legal persons and *vice versa*;
 - c. Words importing the masculine shall include a reference to the feminine and other genders;
 - d. Words importing the singular shall include a reference to plural and vice versa;
 - e. Annexures to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
 - f. A reference to a party in a document includes the party’s successors and permitted assigns;
 - g. Any reference to an Enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
 - h. Where the day on or by which anything is to be done is not a business day, it shall be done one or by the first business day thereafter;
 - i. Where any number of days is prescribed in this Agreement, same shall be reckoned exclusive of the first and inclusive of the last day, unless the last day falls

on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;

- j. A reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- k. The captions and heading appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- l. If any provision is a definition (or under this heading "Interpretation" and/or any other heading in this Agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- m. Where figures are referred to in numerals and words, if there is an conflict between the two, the words shall prevail.

2. THE WORKS

- a. The Contractor undertakes to execute the Works in a proper and workmanlike manner against payment of the Contract Price referred to in Clause 3.3 Part A of this Agreement.
- b. The Works shall be substantially in accordance with the Plan, the Building Plan and the Specifications.
- c. The placement of the Works will be in accordance with the Building Plan.
- d. In the event of any discrepancy arising from the Plan, the Building Plan and the Specifications, the provision of the Specifications shall prevail.
- e. 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, as more fully provided for in the Power of Attorney attached to this Agreement as Annexure C.

3. CONTRACT PRICE

- a. The Contract Price shall be the amount referred to in Clause 3.1 of Part A of this Agreement.
- b. The Upgrade to Specifications and Additional Costs shall be the amounts stipulated in Clause 3.2 of Part A of this Agreement.
- c. The Total Contract Price shall be the amount referred to in Clause 3.3 of Part A of this Agreement which amount is inclusive of the Contract Price, Upgrade to Specification, Additional Costs and VAT.

4. PAYMENT OF THE CONTRACT PRICE

- a. Payment of the Contract Price shall be made by the Employer to the Contractor in the following progress payment instalments or a combination thereof:
 - i. The first installment being 25% of the Contract Price shall be paid on completion of the first section of the Works namely:
 1. All foundations completed; and
 2. Brickwork to plinth height, backfilling and floors cast;
 - ii. The second installment being 30% of the Contract Price shall be paid on completion of the first section of the Works namely:
 1. Brickwork internal and external walls completed; and
 2. Roof trusses and Roof covering; and
 3. Electrical tubing fitted; and
 4. Plumbing pipes and drainage fitted; and
 5. Glazing completed; and
 6. Internal and external walls plastered
 - iii. The third installment being 25% of the Contract Price shall be paid on completion of the first section of the Works namely:
 1. Ceilings and cornices fixed; and
 2. Cupboard Carcasses fitted (If applicable); and
 3. Doors hung and Locks fitted;
 - iv. The fourth installment being 15% of the Contract Price shall be paid on completion of the first section of the Works namely:
 1. Painting and tiling complete; and
 2. Electrical and plumbing work completed; and
 3. All remaining work done as per the specifications; and
 4. All Contractor's rubble removed and site left clean.
 - v. The fifth and final instalment being 5% (Five) of the Contract Price shall be paid on completion of the Works prior to the Employer taking occupation of the Works.
- b. Any agreed payment not paid on the Due Date will bear interest in accordance with the provisions of Clause 16 below from the Due Date to the date of payment.
- c. If the Works are financed by a financial Institution, the Employer hereby empowers and authorizes the Contractor to receive progress payments from the financial institution as determined by it.
- d. The Employer hereby irrevocably authorizes the Transferring Attorney and/or the financial institution approving the loan, to pay the amounts of the progress draws as referred to in Clause 4 a. of this Agreement, including the final draw and all amounts due by the Employer to the Contractor of the Completion Date, to the Contractor, immediately and on demand.

- e. In the event of any payment, amount, progress draw or the final draw not being made on the Due Date, then and in that instance 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.
- f. If there is any dispute between the Parties pertaining to Clause 4, the dispute will be referred to the Principle Agent. The Parties agree to be bound by his determination.
- g. It is recorded that this Agreement is concluded on the basis of the Employer obtaining a Building Loan. In the event that the Financial Institution approved the Loan as a Turnkey Loan, then and in that instance Clause 4.1 of this Agreement will be deemed to be amended to the effect that the Total Contract Price must be paid by the Employer to the Contractor in 1 (One) progress draw on the Transfer Date as defined in the Agreement.

5. POSSESSION

- a. The Contractor shall be entitled to:
 - i. Receive full possession and occupation of the Property when it is due to commence the Works, and
 - ii. 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 to the payment of the Total Contract Price.
- b. The Parties record that the earliest expected Completion Date is the date determined in terms of Clause 7 of this Agreement.
- c. 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.
- d. 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 Occupation Date, whichever is the earlier, whether or not occupation has actually been given to and taken by the Employer.
 - i. The Employer shall pay the Occupational Interest to the Contractor monthly in Advance thereafter on the first day of each subsequent month.
 - ii. 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.

- e. Risk in the Works will pass to the Employer on the Completion Date or the Occupation Date, whichever is the earliest. The Employer hereby irrevocably indemnifies the Contractor against any claim 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 or the Occupation Date, whichever is the earlier.
- f. In the event that the Contractor anticipates the actual Occupation Date will be later than the date referred to in Clause 6.2 of Part A above, 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.
- g. 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.
- h. 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.

6. COMMENCEMENT AND COMPLETION OF THE WORKS

- a. The Contractor shall not be obliged to commence with the Works until:
 - i. The Employer has furnished adequate security to the Contractor's satisfaction for the Total Contract Amount; and
 - ii. All necessary consents, approvals and/or registrations from all relevant authorities have been obtained.
- b. 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 6 a. above for any 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.
- c. Subject to any extensions permitted in terms of Clause 6 d. the Contractor shall complete the Works within 180 (One Hundred and Eighty) days after the Transfer Date, as defined.
- d. 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

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.

- e. All amounts due and unpaid shall be payable by the Employer on the Completion Date.

7. COMPLETION AND HANDOVER INSPECTION

- a. The Parties or their representatives shall be obliged to attend the Handover Inspection at any pre-arranged time, during which inspection the Parties shall agree to the Defects List.
- b. If the Employer fails to attend a Handover Inspection within a reasonable period after having received written notice thereof from the Contractor, then the Completion Date will be determined by the appointed Principal Agent.
- c. The Contractor shall remedy the defects on the Defects List as soon as reasonably possible.
- d. Notwithstanding the provisions of this Clause 7, 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.
- e. 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.

8. DEFECTS AND VOETSTOOTS

- a. The Contractor shall remedy any material patent and latent defect in the Works due to faulty workmanship or materials, manifesting itself within 90 (Ninety) days of the Occupation Date, provided the Employer notifies the Contractor thereof in writing within the said period. The Employer agrees to strictly adhere to the correct reporting and retention procedures that will be given to him/her at the Handover Inspection, when reporting any material patent or latent defect in the property during the 90 (Ninety) Day defect period (As per the NHBRC Requirements). The Parties agree that the reporting and retention procedure will be binding and that no amendments to the procedure will be allowed, except by mutual agreement between the Parties.
- b. If the Contractor must remedy any patent or latent defect as referred to in Clause 8 a. above, the material used and/or specifications specified in Annexure B to this Agreement, 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, discontinuation or any other reason whatsoever.

Any deviation in specification or material will be of similar quality and appearance.

- c. In the absence of notice as referred to in Clause 8 a. 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.
- d. 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 willfully or by negligence.
- e. 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 8.
- f. 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) than the extent stipulated on the Plan, the Contract Price will be amended pro rata and finally be determined by the Principal Agent.
- g. If a dispute or difference shall arise between the Employer or the Bank (being the bondholder over the Property), if applicable, on its behalf, 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 as to the withholding by the Bank of any draw to which the Contractor claims to be entitled, that cannot be resolved by the Principal Agent and is not provided for in this Agreement, then an Architect, Structural 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. This Clause 8 g. does not prejudice the rights of any party which it may have under law.

9. 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 which, the Contractor will not be obliged to perform such extra work or variations

10. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

- a. The Contractor shall maintain sufficient public liability insurance.
- b. 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.
- c. Copies of the following documentation will be supplied by the Contractor to the Employer on the Completion Date:
 - i. Electrical Compliance Certificate;
 - ii. Engineers Certificate;
 - iii. Building Plan;
 - iv. Occupation Certificate issued by the Local Authority;
 - v. NHBRC Certificate
- d. 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.
- e. 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.

11. RIGHTS OF THE EMPLOYER

- a. The Employer undertakes to become and remain the registered owner of the Property until the Completion Date.
- b. The Employer acknowledges that there will be construction work in the vicinity of the Property and that certain inconveniences may be caused thereby. The Contractor shall not be held liable for such inconvenience or any damages that result therefrom 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.
- c. 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 Occupation Date, from which date it will be for the account of the Employer.

12. CONDITIONS PRECEDENT

- a. The Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.
- b. In the event that the conditions precedent as referred to in Clause 2 of the Agreement of Sale, is not fulfilled, the 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 the condition precedent.

13. BREACH

- a. If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) Days after receipt of written notice from the other party calling upon it to remedy such breach, or in the instance of a breach of the obligations referred to in Clause 7 b. of this Agreement or any financial obligation, then the innocent party shall be entitled, without prejudice to any other rights it may have in terms of this Agreement and or at Law to :
 - i. Cancel this Agreement and claim such damages as it may have sustained from the defaulting party;
 - ii. 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.
- b. 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.
- c. 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 Works forthwith, and to procure that the Property and/or 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 the costs on the attorney and clients scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.
- d. In the event of the Contractor being obliged and/or electing to cancel the Agreement in accordance with this Clause 13, then the Employer shall, in addition to the right of the Contractor as referred to in Clause 13 a. 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 the 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.

- e. 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 drawings 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 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:

- i. The amount of R 10 000 (Ten Thousand Rand) if cancellation is effective prior to the granting of loan finance (if any);
- ii. The amount of R 30 000 (Thirty Thousand Rand) if cancellation is effective after the granting of the required loan/Mortgage Bond (If any) but prior to commencement of the Works; or
- iii. 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.

- f. The Seller's remedies in terms of this clause are without prejudice to any other remedies, which the Seller may be entitled to in law.

14. ADDRESSES AND NOTICES

- a. For the purpose of this Agreement, including the giving of notices in terms hereof and the serving of legal process, the parties *choose domicilium citandi et executandi* ("domicilium") as follows: -

The Contractor as per Clause 1.1.2 of Part A above.

The Employer as per Clause 1.2.1.3 of Part A above.

A Party may at any time change its *domicillium* by notice in writing, provided that the new *domicillium* is in the Republic of South Africa and consist of, or includes, a physical address at which process can be served.

- b. Any notice given in connection with this Agreement must be delivered by hand to the *domicillium* chosen by the party. Any notice or process delivered on any party by hand in connection with ant matter or subject arising out of this Agreement, shall be deemed to have been duly delivered of handed to ant

responsible person at the *domicillium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

15. INTEREST

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

16. CAPACITY OF EMPLOYER

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

17. GENERAL

- a. This document constitutes the entire agreement concluded between the Employer and the Contractor and no other warranties or undertakings or representations other than those specifically recorder 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.
- b. The Agreement shall not be binding upon the Parties until the Contractor has confirmed acceptance thereof by his signature hereto.

18. 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 Employer warrants that:

- a. Once the bond as referred to in Clause 5.5 of Part A of the Agreement of Sale is approved and the pre-agreement and quotation is accepted, the Employer shall not do anything that may cause the Employer to become over-indebted in terms of the National Credit Act or cause the bank to withdraw the bond.
- b. The Employer shall not do anything between the date of acceptance of the pre-agreement and quotation, and registration of the bond, which may cause the Employer's financial position to deteriorate.
- c. At the time of Signature Date, the Employer is not:
 - i. Over-indebted; and/or
 - ii. Subject to debt review; and/or

iii. Subject to an administrative order.

19. JURISDICTION

For the purpose of resolving any dispute, which may exist or occur between the parties hereto, the parties consent to the jurisdiction of the Magistrate's Court.

20. SIGNATURE

The Contractor:

Thus done and signed at _____ on this the _____ day of _____ 20_____, in the presence of the undersigned witnesses.

Contractor

Witness 1 Signature

Witness 2 Signature

The Employer/s:

Thus done and signed at _____ on this the _____ day of _____ 20_____, in the presence of the undersigned witnesses.

Employer 1 Signature

Employer 2 Signature

Witness 1 Signature

Witness 2 Signature

ANNEXURE A – PLAN

ANNEXURE B – SPECIFICATIONS

ANNEXURE C – POWER OF ATTORNEY