

BUILDING AGREEMENT

between:

.....
("the Owner")

and

.....
("the Builder")

Of

INTRODUCTION

1. The Owner is desirous of making alterations and additions ("the Works") to the buildings situated on certain land being Erf ("the Land"), and has caused drawings and specifications to be drawn up setting forth the work to be done.
2. The Builder has agreed to carry out the said Works in accordance with the said drawings and specifications for the sum of R , upon the terms and subject to the conditions set out hereunder.

IT IS AGREED AS FOLLOWS:

- 1 The Builder:
 - 1.1 shall for the consideration of R carry out and complete the Works at its sole risk, cost and expense according to the plans, elevations and specifications annexed hereto and signed by both parties;
 - 1.2 shall complete the said Works so as to be fit for occupation and use, and remove all surplus material and rubble from the land on or before ;

- 1.3 shall conform to the provisions of any Acts of Parliament, Ordinance and By-Laws, for the time being in force, and affecting the Works;
- 1.4 warrants that upon completion of the Works, the Owner shall be the owner of the Plans, elevations and specifications referred to in clause 1.1 hereof.
- 2 The Builder shall provide at his sole cost and expense all labour, materials, scaffolding, plant, tools and other things necessary for the execution and completion of the Works, and warrants that such materials shall be of the best of their respective kinds.
- 3 The Builder shall not assign this contract or any part thereof, nor shall he make any sub-contract with any person or persons for the execution of any portion of the services to be rendered by him without the written consent of the Owner, which shall not be unreasonably withheld. In the event of the Builder being entitled to sub-contract, all work done and all materials supplied by the Builder's sub-contractors shall be deemed to be work done and materials supplied by the Builder.
- 4 If the Owner shall require any deviation from the said plans, drawings and/or specifications, or any additional work or other work to be done in or about the property, the Builder will carry out the work according to such requirements, and do the additional or other work in a substantial and workmanlike manner at the fair value thereof, and the Owner shall, on the final completion of the said Works, pay to the Builder the amount of such valuation. Should the Owner and the Builder, for the purposes of this clause, be unable to agree on the "fair value", then the matter will be referred to the Master's Building Association for a "fair value", whose decision shall be final and binding on both parties.
- 5 The Builder hereby indemnifies the Owner against:
- 5.1 all costs, losses and/or damages whether actual, contingent or prospective which may be incurred, sustained or suffered by the Owner by reason of any breach of any Act of Parliament, Ordinance and/or By-Laws on the part of the Builder, its servants, agent and/or sub-contractors;
- 5.2 all payments by way of compensation or otherwise which the Owner may be called upon to make as employer, within the meaning of the Workmen's Compensation Act No 30 of 1941, as amended, in respect of any accident to any workman arising out and in the course of his employment by the Builder, his assign/s or sub-contractor/s in the execution of the work in terms hereof and against all actions, claims and demands whatsoever by any third party arising out of or occasioned by the negligent, imperfect or improper performance of the work by the Builder, its assign/s or sub-contractors, their workmen and agents;
- 5.3 all costs, losses and/or damages, whether actual, contingent or prospective, which may be incurred, suffered and/or sustained as a result of personal injuries to, or the death of, any person whomsoever or any injury or damage of whatsoever nature to any property real or personal, caused by or in the course of the execution and/or completion of the Works relating thereto or arising therefrom.
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- 6.1 The consideration of R shall be paid by the Owner to the Builder free of exchange at by way of periodic payments each being for such amount as, in the opinion of the Department of Works, fairly represents the total value of the work executed and of the materials and goods used, which amounts shall be made at such intervals as the Works Department may determine;
- 6.2 the Owner shall be entitled to retain such sum of the purchase price as decided upon by the Works Department until such time as defective work and/or materials have been remedied by the Builder.

- 7 The Builder shall, at all times during the progress of the Works, keep the Works insured in the joint names of the Owner and the Builder for the full value thereof against all risk and loss and/or damages that may arise, and shall, when so requested, produce to the Owner all policies and receipts for premiums.
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- 8.1 Any defect, shrinkage or other fault which may appear within six (6) months from the completion of the Works due to materials and/or workmanship not being in accordance with the provisions of this agreement, or to wind, rain, hail, snow, excessive heat or cold or general inclement, whether occurring within the said period of six(6) months, shall within a reasonable time after receipt of the Owner's written instructions be made good by the Builder at his own cost and expense.
- 8.2 Any leakage in the roof/s of the Works, and any damage caused thereby occurring within a period of one (1) year of its completion or any extended periods as hereinafter referred to, shall be rectified and made good by the Builder at his own cost and expense within a reasonable time after receipt of the Owner's written instructions, and in the event of no heavy rain or general excessive or inclement weather being had during the said period of one (1) year, such period shall be extended until the lapse of thirty (30) days from the first date on which it is possible to perform a test of the aforesaid roof/s by such heavy rain or excessive or inclement weather.
- 9 If the Builder fails to complete and hand over to the Owner the Works in the condition and within the time limit provided for in clause 1.2, unless such failure be attributable to the default of the Owner, then without prejudice and in addition to an other remedy which the Owner may have under the circumstances, the Owner shall be entitled to claim and recover such damages as the Owner may, in the circumstances, have suffered.
- 10 If the Builder shall become insolvent, or enter into any arrangement with, or for the benefit of his creditors, or become unable, or refuse or neglect to carry out the Works, the Owner may, by notice in writing sent to the Builder by registered post or left on the site of the said Works, determine this contract. Upon the service of such notice, all claims of the Builder under this contract shall cease.
- 11 Until this contract shall be completed, the Builder shall be and remain responsible for, and shall replace and make good, all loss, injury or damage to the premises, land or buildings adjoining the site, or to the owners or occupiers of any such premises, land or building, which may be caused or done by it or its workmen, and shall indemnify the Owner against the same and all claims in respect thereof.
- 12 All plant and materials brought on to the site by the Builder shall be deemed to be the property of the Owner, who shall be under no liability for loss thereof or damage thereto arising from any cause whatsoever.
- 13 Should the Builder default with the due performance of any of its obligations in terms of this contract, and persist in such default for a period of fourteen (14) days after it will have received a notice calling upon it to remedy such default, then notwithstanding any prior waiver and without prejudice to any other claim which the Owner may have under the circumstances, the Owner shall be entitled to declare this contract cancelled, and to resume possession and occupation of the property and to recover from the Builder all damages he may have suffered or sustained by reason of such default.
- 14 In case any dispute or difference shall arise between the parties hereto touching or relating either to the said buildings or Works or to any other matters or thing arising out of this contract, the same shall be referred to an Architect to be nominated by the President of the Institute of South African Architects whose award shall be final and binding upon both the said parties. Such reference shall be deemed to be a reference to arbitration, pursuant to the Arbitration Act No 42 of 1965, or any amendment thereof.

- 15 This contract shall constitute the sole contract between the Owner and the Builder and no representation or statements made by or on behalf of any party during the negotiations, except insofar as the same may be repeated in this contract, shall in any way affect the respective rights of the parties in terms of this contract.
- 16 No alteration or variation of this contract shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.
- 17 No act of relaxation, indulgence or extension of time shall operate as a waiver of any of the parties' respective rights in terms of this contract.
- 18 Unless the context clearly indicates otherwise:
- 18.1 all words importing the singular shall include the plural and *vice versa*;
- 18.2 all words importing any one gender shall include each of the other genders, if applicable.
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- 19.1 The parties hereby choose *domicilium citandi et executandi* for all purposes in terms of this contract as follows:
- 19.1.1 the Owner at:
- 19.1.2 the Builder at:
- 19.2 All notices which are to be given in terms of or in connection with this contract shall be deemed to be received:
- 19.2.1 if posted by prepaid registered post, seven (7) days after date of posting;
- 19.2.2 if delivered by hand, on the date of delivery.

THUS DONE AND SIGNED BY THE RESPECTIVE PARTIES AS FOLLOWS:

For: OWNER
Date:
Place:

For: BUILDER
Date:
Place:

ANNEX "A"

[Plans, elevations and specifications to be attached and signed by both parties]