



BUILDING AGREEMENT

between

(Registration No _____)
("the Contractor")

and

(Registration/Identity No _____)
("the Client")

Erf No: -----
Address: -----



CONTRACT DETAILS

1. PARTIES	
1.1 Contractor:	
Physical Address:	
Postal Address:	
Contact Person:	
Telephone No:	
Telefax No:	
E-mail Address:	
1.2 Client <i>[Full Names]</i>:	
Registration/Identity No:	
Marital Status:	
Full Name of Spouse:	
Identity No of Spouse:	
Physical Address: <i>[Street address]</i>	Postal Code: _____
Postal Address: <i>[If different from above]</i>	Postal Code: _____
Telephone No:	
Cell No:	
Telefax No:	
E-mail Address:	



2. PROPERTY	
2.1 Erf No:	
2.2 Extent (size):	square metres
2.3 Street Address:	
2.4 Transfer Date <i>[if applicable]</i> :	
2.5 Site Handover Date:	
3. DWELLING TYPE	
Type <i>[Tick appropriate place]</i> :	Double Storey _____ Single Storey _____
4. CONTRACT DRAWINGS	
Architects' Drawing Nos:	
5. CONTRACT SUM AND PAYMENT	
5.1 Contract Sum (Incl VAT):	R
5.2 Deposit:	R
5.3 Balance:	R
5.4 Guarantee/Payment Date:	
6. CONTRACT PRICE ADJUSTMENT	
Base Month:	
7. REQUIRED LOAN (IF APPLICABLE)	
7.1 Amount of the Loan:	R
7.2 Approval Date:	
8. COMMENCEMENT DATE	
Commencement Date of Works:	See clause 5.3 of the general conditions
9. CONSTRUCTION PERIOD	
Period from Commencement Date:	months



10. ARCHITECT	
Full Names:	
Physical Address:	
Contact Person:	
Telephone No:	
Cell No:	
Telefax No:	
E-mail Address:	

LIST OF ANNEXURES

Annexure "A" - Contract Drawings

Annexure "B" - Standard Specifications for Construction

Annexure "C" - Finishing Schedule



PREAMBLE:

WHEREAS -

- (a) The Client is the registered owner or is about to become the registered owner of the property.
- (b) The Contractor has agreed to construct a dwelling house for the Client on the property subject to and upon the terms and conditions contained in this agreement.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. In consideration for the contract sum, the Contractor will execute and complete the works shown on the contract drawings and described in the specifications.
- 2. The Client will pay the Contractor the contract sum or such other amounts as may become payable in terms of this agreement at the times and in the manner specified in the general terms and conditions annexed hereto.
- 3. This agreement is subject to the general terms and conditions annexed hereto which constitute a material and integral part of this agreement.

SIGNED at _____ on this _____ day of _____ 20

AS WITNESSES: _____ for and on behalf of:
THE CONTRACTOR

1. _____

2. _____

Contract Manager, duly authorised hereto

SIGNED at _____ on this _____ day of _____ 20

AS WITNESSES: _____ for and on behalf of:
THE CLIENT

1. _____

2. _____

Authorised signatory who warrants that
he/she is duly authorised hereto



GENERAL TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In this agreement, unless the context otherwise indicates:

- 1.1.1 "this agreement" means this building agreement, the contract details, these general terms and conditions and all annexures to this agreement;
- 1.1.2 "the architect" means the architect named in paragraph 10 of the contract details or such other architect as the Developer may appoint from time to time for the purposes of this agreement;
- 1.1.3 "budgetary allowance" means a provisional amount included in the contact sum for goods and/or materials to be supplied and fixed, or work to be performed, either by the Contractor, a subcontractor or the supplier, cost or extent of which has not been detailed and/or determined;
- 1.1.4 "the certificate of final completion" means the certificate of final completion issued by the architect in terms of clause 12.4 below;
- 1.1.5 "the certificate of practical completion" means the certificate issued by the architect to the Contractor stating the date on which practical completion of the works was achieved;
- 1.1.6 "the Client" means the party stated in paragraph 1.2 of the contract details;
- 1.1.7 "the commencement date" means the date by which the Contractor is required to commence the works in terms of clause 5.3 below;
- 1.1.8 "the contract details" mean the contract details set out on pages 2 to 4 of this agreement which shall constitute an integral part of this agreement;
- 1.1.9 "the contract drawings" mean the drawings stated in paragraph 4 of the contract details and annexed hereto on which the contract sum is based;
- 1.1.10 "the Contractor" means the party stated in paragraph 1.1 of the contract details;
- 1.1.11 "the CPAP" means the Contract Price Adjustment Provisions being the method of calculating fluctuations in costs for building



contracts based on a formula using indices published by the JBCC from time to time;

- 1.1.12 "the contract sum" means the contract sum stated in paragraph 5.1 of the contract details;
- 1.1.13 "the deposit" means the deposit payable by the Client referred to in paragraph 5.2 of the contract details;
- 1.1.14 "the Developer" means Langebaan Country Estate Joint Venture, being a joint venture between Owen Wiggins Langebaan (Pty) Limited and Basfour 3632 (Pty) Limited;
- 1.1.15 "the finishing schedule" means the finishing schedule annexed hereto relating to the works;
- 1.1.16 "the HCPM Act" means the Housing Consumers Protection Measures Act No 95 of 1998 and includes any amendments thereto and the regulations promulgated thereunder from time to time;
- 1.1.17 "the JBCC" means the Joint Building Contracts Committee or its successor/s from time to time;
- 1.1.18 "NHBRC" means the National Home Builders Registration Council;
- 1.1.19 "practical completion" means the stage of completion where, in the opinion of the architect, completion of the works has substantially been reached and can effectively be used for the purposes intended (excluding the supply of consumption services such as water and electricity, application for which is the responsibility of the Client) and in respect of which a certificate of practical completion has been issued by the architect;
- 1.1.20 "the prime rate" means publicly quoted prime rate of interest from time to time (nominal annual compounded monthly) published from time to time by The Standard Bank of South Africa Limited or its successor/s and more commonly known as its prime rate (in the event of a dispute, the certificate of any manager or sub-manager of any branch of such bank, whose appointment or authority need not be proved, as to such rate, shall be final and binding on the parties);
- 1.1.21 "the property" means the property described in paragraph 2 of the contract details;



- 1.1.22 "the signature date" means the date on which the Client signs this agreement;
- 1.1.23 "the specifications" mean the standard specifications for construction of the works annexed hereto and includes the specifications (if any) contained on the contract drawings;
- 1.1.24 "Herold Gie" means Herold Gie Attorneys of 7 Mispel Road, Bellville, 7530;
- 1.1.25 "VAT" means value-added tax levied in terms of the VAT Act;
- 1.1.26 "VAT Act" means the Value-Added Tax Act No 89 of 1991, as amended;
- 1.1.27 "the works" mean the works described in the contract drawings and the specifications, and includes variations (if any) to the works from time to time;
- 1.1.28 "the works completion certificate" means the works completion certificate issued by the architect in terms of clause 12.4 below.
- 1.2 Reference in this agreement to a clause number means a clause numbered as such in these general terms and conditions.
- 1.3 The head notes to the paragraphs in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*.
- 1.5 Whenever the architect acts in terms of this agreement, the architect shall act as an expert (and not as an arbitrator) and his certificate shall be final and binding on the parties.
- 1.6 The provisions of this agreement be deemed in respect of each part thereof to be separate and separately enforceable in the widest sense from the other parts thereof and the invalidity or unenforceability of any clause or part thereof shall not in any way affect the validity or enforceability of any other part of the clause or the agreement.
- 1.7 In the interpretation of this agreement, the *contra preferentum* rule of construction shall not apply nor shall this agreement be construed in favour



of or against any party by reason of the extent to which any party or its professional advisers participated in the preparation of this agreement.

1.8 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

2. SUSPENSIVE CONDITION/S (IF APPLICABLE)

2.1 Save for the provisions of clause 1, this clause 2, clause 14 and clauses 17 to 28 both inclusive, this agreement is subject to the fulfillment of the following suspensive condition/s:

2.1.1 the registration of transfer of the property into the name of the Client in the deeds office by the transfer date stated in paragraph 2.4 of the contract details (if applicable);

2.1.2 the Client obtaining an approval in writing of a loan from a financial institution in an amount not less than the amount stated in paragraph 7 of the contract details by the date stated in that paragraph (if applicable).

2.2 The Client shall use its best endeavours to procure the due and timeous fulfilment of the suspensive condition/s.

2.3 Should the suspensive condition/s (if applicable) not be fulfilled by the respective date/s referred to in clause 2.1 above or such extended period/s (not exceeding 90 days in aggregate) as the Contractor may determine by notice in writing to the Client, then this agreement shall become of no force or effect.

2.4 In the event of this agreement becoming of no force or effect pursuant to clause 2.3 above, neither party shall have any claim against the other as a result thereof, save and except for the following:

2.4.1 damages (if any) arising from any breach of this clause 2.

3. CONSTRUCTION OF THE WORKS

3.1 The Contractor shall carry out and complete the works in all material respects in accordance with the contract drawings, the specifications and the finishing schedule signed by the Client.

3.2 The Contractor shall provide all labour, plant and materials necessary for the proper execution of the works according to the contract drawings and the specifications.



- 3.3 All materials and workmanship shall, as far as procurable, be of the respective kinds described in the specifications.
- 3.4 The Contractor shall comply with all laws and regulations relating to the works, including the building regulations of the local authority and all rules and regulations relating to Langebaan Country Estate.
- 3.5 The Client shall be liable for any fees or charges payable to any competent authority or body relating to the works, including the local authority plan scrutiny fees, all of which shall be payable by the Client upon presentation of an invoice by the Contractor.

4. NHBRC ENROLMENT

- 4.1 The Client shall be liable for payment of the prescribed fee to the NHBRC in respect of the works in terms of the HCPM Act.
- 4.2 The Client shall pay the prescribed fee and furnish the Contractor with the prescribed documents and information to be submitted to the NHBRC for the issue of a certificate of enrolment in terms of the HCPM Act, within 7 days after signature date.

5. POSSESSION AND COMPLETION

- 5.1 The Client shall give the Contractor possession and vacant occupation of the property on the date stated in paragraph 2.5 of the contract details.
- 5.2 The Client warrants and undertakes to the Contractor that as at the date stated in paragraph 2.5 of the contract details, the property will be vacant and will be free of any liens, charges or encumbrances, except for the mortgage bond securing the loan referred to in clause 2.1.2 above, if applicable.
- 5.3 The Contractor shall commence the works within 14 days after the later of the following dates:
 - 5.3.1 the date of payment of the deposit referred to in paragraph 5.2 of the contract details; or
 - 5.3.2 the date of furnishing the guarantee and/or the payment of the balance of the contract sum (as the case may be) in terms of clause 14.2 below; or
 - 5.3.3 the date of possession and vacant occupation of the property; or



- 5.3.4 the date of the receipt of the required approvals of the plans by the local authority and any other authority or body; or
 - 5.3.5 the date that the NHBRC issues a certificate of proof of enrolment of the project in terms of the HCPM Act; or
 - 5.3.6 the date of registration of transfer of the property into the name of the Client in the deeds office in the event of the Client not being the registered owner.
- 5.4 The Contractor shall regularly proceed with the works and bring the works to practical completion within the period stated in paragraph 9 of the contract details calculated from the commencement date, subject to the provisions for extension of time contained in clause 6 below.
- 5.5 Without prejudice to any other rights or remedies in terms of this agreement, the Client shall have no claim for damages or otherwise against the Contractor should the works not be completed within the prescribed period for whatever reason.

6. DELAY AND EXTENSION OF TIME

- 6.1 If the works are delayed by all or any of the following causes:
- 6.1.1 act of God or *vis major*; or
 - 6.1.2 by reason of inclement weather; or
 - 6.1.3 any variations, extras or omissions to the works; or
 - 6.1.4 by reason of civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed upon the works; or
 - 6.1.5 by delay on the part of any nominated subcontractor or of the Client's suppliers, if any; or
 - 6.1.6 by reason of any other causes outside the control of the Contractor or which could not have reasonably been foreseen by the Contractor;

then and in any one of such events, the Contractor shall be granted a fair and reasonable extension of time for the completion of the works as determined and certified by the architect.

- 6.2 In extending the time for the completion of the works, the architect shall, in addition to all other factors, make reasonable allowances for public



holidays and any building industry holidays whether statutory or recognised generally as customary in the industry.

7. ADVERSE PHYSICAL CONDITIONS

- 7.1 The contract sum does not include any additional work arising from any adverse physical conditions or artificial obstructions encountered during the execution of the works, including (but not limited to) subterranean obstructions, rock or calcrete.
- 7.2 The Client shall pay to the Contractor the actual costs and expenses incurred by the Contractor (as certified by the architect) plus 10% of such costs and VAT, in respect of all additional work which would not have been necessary if the physical conditions or artificial obstructions had not been encountered on the property.

8. BUDGETARY ALLOWANCES

- 8.1 Where the finishing schedule contains any budgetary allowances included in the contract sum for any item, the contract sum shall be adjusted by the omission of all such budgetary allowances, and the addition of the following:
- 8.1.1 the normal retail price of such item at the date of the installation in the works; plus
 - 8.1.2 the cost of fixing or installation of such item where the extent of such item is not specified or detailed in the specification; plus;
 - 8.1.3 an amount equal to 10% of the amount by which the normal retail price of such item exceeds the budgetary allowance for such item.
- 8.2 Where the finishing schedule contains any items or finishes to be selected by the Client including those in respect of which the finishing schedule provides for budgetary allowance, and the Client fails to make such selection and sign the finishing schedule in respect thereof within 7 days after receipt of written notice from the Contractor to do so, then the Contractor shall make such selection and sign the finishing schedule which shall be final and binding on the Client.
- 8.3 If the retail prices of the selected items or finishes result in an increase in the contract sum, the Client shall pay the additional amount to the Contractor within 7 days after receipt of an invoice from the Contractor in respect thereof.



9. VARIATIONS TO THE WORKS

9.1 The Contractor shall be entitled to:

9.1.1 substitute items of a similar standard or quality for any item specified in the contract drawings and specifications, where the items specified are not immediately procurable;

9.1.2 deviate from the contract drawings and the specifications should the Contractor consider the same reasonably necessary for technical or any other reason;

9.1.3 deviate from the contract drawings and the specifications in such manner as may be required by the local authority or any other competent authority or body.

9.2 The Contractor shall not be obliged at any stage to agree to any variations, extras, omissions or changes of any nature whatsoever to the works.

9.3 In the event of the Contractor agreeing to any variations, extras, omissions or change of any nature whatsoever to the works, then and in such event, the Contractor shall not be obliged to proceed therewith until such time as that:

9.3.1 the costs of such variations, extras, omissions or changes have been agreed in writing; and

9.3.2 the Client has paid to the Contractor the cost of such variations, extras, omissions or changes to the works.

9.4 In the event of payment of such costs not having been made and the Contractor electing to proceed therewith, then the Client shall pay to the Contractor such costs on the date of commencement thereof.

9.5 In the event of the Contractor proceeding with any variation, extra, omission or change of any nature whatsoever to the works at the instance of the Client without the costs thereof having been agreed in writing, then the Client shall pay to the Contractor the costs of all materials used at the then current market value and all labour costs involved, plus 20% thereof, exclusive of VAT.

10. WORKS RISK

10.1 The Contractor shall be responsible for the works from the date on which possession and vacant occupation of the property is given to the Contractor



and up to the date of issue of the certificate of practical completion, and thereafter all risk in the works shall pass to the Client.

- 10.2 The Contractor shall make good physical loss and repair damage to the works which occurs after the date on which possession of the property is given to the Contractor and up to the date of issue of the certificate of practical completion.
- 10.3 The liability of the Contractor for the works shall, however, be limited to the amount of the contract sum.
- 10.4 The Contractor shall not be liable for the cost of making good physical loss and repairing damage to the works where this results from any of the following circumstances:
 - 10.4.1 civil commotion, riot, strike, lock-out or disorder by persons other than the Contractor's employees; or
 - 10.4.2 the use or occupation of any part of the works by the Client, its employees or agents and those for whose acts or omissions they are responsible; or
 - 10.4.3 any act or omission of the Client, its employees, contractors or suppliers, and those for whose acts or omissions they are responsible; or
 - 10.4.4 any defect in materials and goods specifically required by the Client.
- 10.5 In addition, the Contractor shall not be liable for any loss, damage, destruction or threat of collapse arising from any of the circumstances contemplated in the limitations and exclusions prescribed under the HCPM Act from time to time.

11. WORK ACCESS AND INSTRUCTIONS

- 11.1 The Client shall not be entitled to access to the works during the course of construction without the prior written consent of the Contractor.
- 11.2 The Client enters upon the property or the works at his/her risk prior to the date of practical completion of the works.
- 11.3 The Client shall not have any claim of any nature against the Contractor for any loss, damage or injury which the Client may directly or indirectly suffer whilst on the property prior to the date of the practical completion of the



works even if such loss, damage or injury is caused through the negligence of the Contractor or its employees, contractors or agents.

- 11.4 The Client hereby indemnifies the Contractor against any claims, proceedings, loss or damage arising from any loss, damage or injury sustained by any person accompanying the Client or invited by the Client who enters upon the property or the works prior to date of practical completion of the works.
- 11.5 The Client shall not issue any instructions to, or in any way interfere with, hinder or obstruct, any of the employees of the Contractor or any other person employed in connection with the works or acting on behalf of the Contractor.

12. COMPLETION OF THE WORKS AND OCCUPATION

- 12.1 The Contractor shall procure that the architect issues a certificate of practical completion with a copy to the Client upon the practical completion of the works or as soon thereafter as is reasonably possible.
- 12.2 Within 7 days after the date of issue of the certificate of practical completion, the architect shall issue to the Contractor a works completion list reflecting the outstanding work to be completed and the defects apparent at the date of practical completion.
- 12.3 The Contractor shall complete the outstanding work and rectify the defects as reflected in the works completion list within 14 days after the date of receipt thereof.
- 12.4 Where the works completion list has been satisfactorily complied with, the architect shall issue a works completion certificate to the Contractor with a copy to the Client.
- 12.5 The Client shall be entitled to possession and occupation of the works upon the date of issue of the works completion certificate provided that the Client has paid the contract sum and all other amounts payable to the Contractor in respect of the works.

13. DEFECTS AFTER WORKS COMPLETION

- 13.1 The Contractor shall:
- 13.1.1 subject to the limitations and exclusions that may be prescribed in terms of the HCPM Act from time to time, at its cost rectify major structural defects in the works caused by the non-compliance with the NHBRC Technical Requirements (as defined in the HCPM Act) and



occurring within a period of 5 years as from the occupation date and notified in writing to the Contractor by the Client within that period;

- 13.1.2 rectify non-compliance with or deviation from the terms, plans and specifications or any deficiency related to design, workmanship or material notified in writing to the Contractor by the Client within a period of 3 months as from the occupation date;
 - 13.1.3 repair roof leaks attributable to workmanship, design or materials occurring and notified in writing to the Contractor by the Client within a period of 12 months as from the occupation date.
- 13.2 For the purposes of clause 13.1 above, the "occupation date" shall mean the date on which the Client accepts the works as reflected in a document confirming such acceptance and, in the event of such document not having been received by the NHBRC or the NHBRC for any reason not being able to determine such date, the date reflected in the certificate of occupancy issued by the relevant local government body contemplated in section 14 of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);
- 13.3 The Contractor shall not, however, be liable for any defects in the works relating to the following:
- 13.3.1 touch up paint of any nature; or
 - 13.3.2 hairline cracks in the plaster work; or
 - 13.3.3 any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in controlled movement joints; or
 - 13.3.4 any doors and windows slamming in windy conditions or any damage caused thereby.
- 13.4 Where, in the opinion of the architect, the Contractor has rectified any non-compliance, deviation or deficiency contemplated in clause 13.1.2 above, the architect shall issue a certificate of final completion to the Contractor with a copy to the Client.
- 13.5 Upon the issue of a certificate of final completion by the architect in respect of the works, the Client shall have no claim whatever against the Contractor in respect of the works or defects therein (whether patent or latent) other than in terms of clauses 13.1.1 and 13.1.3 above.



13.6 Any dispute, question or difference arising at any time between the parties in regard to any matters contemplated in clause 13.1 above shall be determined by the architect (whose determination shall be final and binding on the parties).

14. PAYMENT OF THE CONTRACT SUM

14.1 The Client shall pay to HEROLD GIE a deposit in the amount stated in paragraph 5.2 of the contract details upon the signature date which amount shall be:

14.1.1 held in trust and invested in an interest bearing account;

14.1.2 released to the Contractor as follows:

14.1.2.1 50% of the deposit upon the issue of the works completion certificate, together with the accrued interest on the deposit until the date of the issue thereof; and

14.1.2.2 50% of the deposit upon the issue of the certificate of final completion, together with the accrued interest thereon.

14.2 By no later than the date stipulated in paragraph 5.4 of the contract details:

14.2.1 the Client shall furnish the Contractor with a bank guarantee acceptable to the Contractor for payment of the balance of the contract sum; or

14.2.2 the Client shall pay the balance of the contract sum to HEROLD GIE which shall be:

14.2.2.1 held in trust and invested in an interest bearing account;

14.2.2.2 released to the Contractor in payment of the interim payment certificates referred to in clause 14.4 below;

14.2.2.3 the balance held in trust as at the date of issue of the works completion certificate shall be released to the Contractor and the accrued interest shall be paid to the Client.

14.3 Where the Client furnishes a guarantee for less than the balance of the contract sum, the Client shall pay the shortfall to HEROLD GIE by no later



than the date stipulated in clause 14.2 above *mutatis mutandis* in accordance with the provisions of clause 14.2.2 above.

14.4 The Contractor shall procure that the architect certifies the Contractor's interim payment certificates each month with a copy to the Client.

14.5 The amount certified in terms of each interim payment certificate shall be a reasonable estimate of the following:

14.5.1 the total value of the work executed; and

14.5.2 the total value of the materials and goods delivered upon the property for use in the works;

less the total of amounts previously certified in terms of interim payment certificates issued to the Client.

14.6 The Client shall pay to the Contractor the amount certified in terms of an interim payment certificate within 7 days of the date of issue of the payment certificate.

14.7 Upon the issue of a certificate of practical completion, the architect shall issue a final payment certificate to the Contractor with a copy to the Client in respect of the balance of the contract sum and all other amounts payable by the Client to the Contractor.

14.8 The Client shall pay to the Contractor the amount certified in terms of the final payment certificate within 7 days after the date of issue of the final payment certificate.

15. ADJUSTMENT OF THE CONTRACT SUM

15.1 The contract sum shall be adjusted according to CPAP using the Base month stated in paragraph 6 of the contract details.

15.2 Any adjustment of the contract sum in terms of clause 15.1 above shall be certified by the Architect whose certificate shall be final and binding on the parties and such adjustment shall be payable by the Client to the Contractor prior to hand over of the works to the Client.

16. CONTRACTOR'S LIEN AND UNFIXED MATERIALS

16.1 The Contractor shall have a lien in respect of the works and all unfixed materials and/or goods on the property until the contract sum and all other amounts payable by the Client to the Contractor have been paid in full, including interest thereon, if any.



- 16.2 The Contractor shall not be required to waive its lien in favour of the financial institution granting the Client the loan contemplated in paragraph 7 of the contract details (if applicable) unless the Contractor receives a guarantee acceptable to it from such financial institution for the capital amount of the loan payable in accordance with the provisions of this agreement.
- 16.3 All unfixed materials and/or goods intended for and placed on or adjacent to the works shall remain the property of the Contractor until the contract sum has been paid in full, notwithstanding that the value of such materials or goods may have been included in the interim certificates.

17. BREACH BY THE CONTRACTOR

Should the Contractor be in default in any of the following respects:

- 17.1 fail to proceed with the works with reasonable diligence; or
- 17.2 without reasonable cause wholly suspend the works before completion;

then and in either such event, should such default continue for 30 days after a written and registered notice to the Contractor from the Client specifying the same, the Client shall be entitled, without prejudice to any of its other rights or remedies in terms of this agreement, to cancel this agreement by notice in writing to the Contractor; provided that notice in terms of this clause shall not be given unreasonably or vexatiously, and such notice shall be void, if the Client is at the time of the notice in breach of this agreement.

18. BREACH BY THE CLIENT

18.1 Should the Client:

- 18.1.1 fail to pay any amount due by the Client in terms of this agreement within 7 days after the due date for payment of such amount; or
- 18.1.2 commit any other breach of any of the provisions of this agreement and fail to remedy such breach within 7 days after receipt of written notice from the Contractor to do so;

then and in either such event, the Contractor shall forthwith be entitled (but not obliged) without any prejudice to any of its other rights or remedies, including damages:

- 18.1.3 to cancel this agreement in which event the Contractor shall be entitled to retain all amounts paid by the Client and to recover



from the Client all amounts unpaid by the Client as at the date of cancellation of this agreement; or

- 18.1.4 to claim immediate payment and/or performance of all the obligations of the Client in terms of this agreement, including immediate payment of the whole of the contract sum or the balance of the contract sum, as the case may be; and/or
 - 18.1.5 to suspend the whole or any part/s of the works.
- 18.2 In the event that the Contractor suspends the works in terms of clause 18.1.5 above, and without prejudice to any of its other rights or remedies, the Client shall pay to the Contractor an amount of R25 000,00 or an amount equal to 5% of the balance owing in respect of the contract sum as at the date of such suspension as adjusted according to CPAP (whichever is the greater amount) as a re-commencement fee which amount shall be paid to the Contractor prior to the re-commencement of the works.
- 18.3 Should the Client fail to pay any amount due in terms of this agreement on due date, the Contractor shall be entitled (but not obliged) without prejudice to any of its other rights or remedies, to deduct such amount from the deposit and to the release of such amount from trust to the Contractor.
- 18.4 Should the Contractor cancel this agreement and the Client dispute the Contractor's right to do, then pending the determination of such dispute:
- 18.4.1 the Client shall continue to pay on due date all amounts payable by the Client in terms of this agreement;
 - 18.4.2 the Contractor shall be entitled to recover and accept such payments;
 - 18.4.3 the acceptance by the Contractor of such payments shall be without prejudice to and shall not in any manner whatever affect the Contractor's claim to cancellation of this agreement or of any other nature whatever.
- 18.5 The Contractor shall be entitled at its option to institute any legal proceedings which may arise out of or in connection with this agreement in any magistrate's court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such magistrate's court in respect of the course of action.
- 18.6 Without prejudice to all or any of the Contractor's rights or remedies in terms of this agreement, should the Client fail to pay any amount which may become due by the Client to the Contractor on due date, then the Client



shall pay to the Contractor interest thereon at the prime rate, plus 5 percentage points per annum, calculated from the due date of payment to the actual date of payment, both dates inclusive.

- 18.7 Should the Contractor institute legal proceedings against the Client pursuant to a breach by the Client of this agreement, then without prejudice to any other rights which the Contractor may have in terms of this contract or in law, the Contractor shall be entitled to recover from the Client all legal costs incurred by the Contractor, including attorney and own client charges, tracing fees and such collection commission as the Contractor is obliged to pay its attorneys.

19. PAYMENTS TO THE CONTRACTOR

- 19.1 All amounts payable by the Client in terms of this agreement shall be paid to HEROLD GIE free of bank charges and without deduction or set off or to such other person/s or at such other place as the Contractor may from time to time nominate in writing.
- 19.2 The Client shall not be entitled to withhold, delay or abate payment of any amounts due by the Client in terms of this agreement by reason of any breach or alleged breach by the Contractor or its obligations in terms of this agreement.

20. JOINT AND SEVERAL LIABILITY

- 20.1 Should the Client be a company, close corporation, trust, partnership or other entity, then the person/s signing this agreement on behalf of the Client (by his/her/their signature/s hereto) hereby bind himself/herself or themselves as surety/ies and co-principal debtor/s jointly and severally to the Contractor for the due and proper fulfilment of all the obligations of, and for the punctual payment of all amounts which are or may become due by the Client in terms of, or in connection with, or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof, under renunciation of the benefits of excussion, division and cession of action.
- 20.2 Should the Client be more than one person, then the persons comprising the Client shall be jointly and severally liable to the Contractor for the due and proper fulfilment of all the obligations of, and the punctual payment of all amounts which are or may become due by the Client in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof.



21. CONTRACTING PARTY

- 21.1 If the signatory on behalf of the Client is acting as a trustee for a company, close corporation or other entity to be formed (hereinafter referred to as "the legal persona"), then in the event of the legal persona not being formed and ratifying and adopting this agreement within 30 days after the date of signature hereof, then the signatory shall be deemed to be the Client in his/her personal capacity and shall be bound by all the provisions of this agreement.
- 21.2 If the legal persona is formed and duly adopts and ratifies this agreement as aforesaid, then the signatory hereby binds himself/herself as surety and co-principal debtor jointly and severally to the Contractor for the due and proper fulfilment of the obligations of, and for the punctual payment of all amounts which are or may become due by the Client in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereon, under renunciation of the benefits of excussion, division and cession of action.

22. DUTY TO DISCLOSE

The Client acknowledges and agrees that:

- 22.1 he/she has perused this agreement and all the annexures hereto, and has acquainted himself/herself with the provisions thereof;
- 22.2 he/she understands all the facts pertaining to the works and the property of which he/she is aware or which may affect him/her;
- 22.3 he/she has examined this agreement and all other relevant documents and does not require any additional time to do so;
- 22.4 he/she is satisfied that this agreement contains all representations and promises made by the Contractor.

23. CESSION AND SUB-CONTRACTING

- 23.1 The Client shall not cede this agreement or any of its rights under this agreement without the Contractor's prior written consent.
- 23.2 The Contractor shall be entitled to cede any of its rights or to delegate any of its obligations, or mortgage, pledge or encumber any of its rights under this agreement without the Client's consent.
- 23.3 The Contractor shall be entitled at any time to sub-contract or sub-let the whole or any portion of the works to any third party or parties.



24. CO-OPERATION

Each of the parties hereby undertakes to:

- 24.1 sign and/or execute all such documents as may be necessary or requisite for the purposes of this agreement; or
- 24.2 do, and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; or
- 24.3 pass, and to procure the passing of all such resolutions of directors or shareholders of any company, members of any close corporation, trustees of any trust and partners of any partnership;

to the extent that the same may lie within the power of such party and may be required to give effect to the import or intent of this agreement, or any contract concluded pursuant to the provisions of this agreement.

25. ARBITRATION

- 25.1 Save as otherwise provided in this agreement, any dispute, question or difference arising at any time between the Parties to this agreement out of or in regard to any matters arising out of, or the rights and duties of any of the Parties hereto, or the interpretation of, or the termination of, or any matter arising out of the termination of, or the rectification of this agreement, shall be submitted to and decided by arbitration on notice given by either Party to the other of them in terms of this clause.
- 25.2 Such arbitration shall be held in Cape Town in accordance with the provisions of the Arbitration Act, No 42 of 1965 (as amended or replaced from time to time) save that the arbitrator shall have the absolute discretion to determine the procedure to be adopted, it being the intention that, if possible, the arbitration shall be held and concluded within 30 days after it has been demanded.
- 25.3 Save as otherwise specifically provided in this agreement, the arbitrator shall be, if the question in dispute is:
 - 25.3.1 primarily a building or construction matter - an independent architect of not less than 15 years' standing;
 - 25.3.2 primarily an accounting matter - an independent chartered accountant of not less than 15 years' standing;
 - 25.3.3 primarily a legal matter - a practicing advocate or attorney of not less than 15 years' standing;



25.3.4 any other matter - an independent and suitably qualified person;
as may be agreed upon in writing between the Parties.

25.4 If agreement cannot be reached on whether the question in dispute falls under clause 25.3.1, 25.3.2, 25.3.3 or 25.3.4 above or upon a particular arbitrator in terms of clause 25.3 within 7 days after the arbitration has been demanded, then the President for the time being of the Cape Law Society or its successor/s shall:

25.4.1 determine whether the question in dispute falls under clause 25.3.1, 25.3.2, 25.3.3 or 25.3.4 above;

25.4.2 nominate the arbitrator in terms of the relevant sub-clause;

within 14 days after the Parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 30 days referred to in clause 25.2 above.

25.5 This clause 25 shall constitute each Party's irrevocable consent to the arbitration proceedings, and no Party shall be entitled to withdraw herefrom or to claim at such arbitration proceedings that it is not bound by this clause 25.

25.6 Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:

25.6.1 shall be final and binding on each of them; and

25.6.2 will be carried into effect; and

25.6.3 can be made an order of any court to whose jurisdiction the Parties are subject.

25.7 The provisions of this clause 25 shall not preclude any party from instituting legal proceedings in any court having jurisdiction for any urgent or interlocutory relief.

26. NOTICES AND DOMICILIA

26.1 Each of the parties chooses domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this agreement at their respective addresses, fax numbers and e-mail addresses as set forth in paragraph 1 of the contract details.



- 26.2 Each of the parties shall be entitled from time to time, by written notice to the others to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 26.3 Any notice given and any payment made by a party to any of the others ("the addressee") which:
- 26.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 26.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting;
 - 26.3.3 is transmitted by telefax during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within one hour after the time of transmission;
 - 26.3.4 is transmitted by e-mail during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within one hour after the time of transmission.
- 26.4 Notwithstanding the provisions of clause 26.3, in the event that a written notice or any process is actually received by a party, such receipt shall be valid for all purposes under this agreement notwithstanding that it was not received at a party's chosen domicilium.

27. GENERAL PROVISIONS

- 27.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.
- 27.2 This document contains the entire agreement between the parties and no party shall be bound by any undertakings representations, warranties, promises or the like not recorded in this agreement.
- 27.3 No indulgence, leniency or extension of time which any party may grant or show to any other party, shall in any way prejudice or preclude the party



granting any such indulgence, leniency or extension of time from exercising any of its rights in the future.

- 27.4 If any exclusion or exemption from any liability or obligation granted to the Contactor in terms of this agreement contains provisions conflicting with or contravening any law for the time being in force, such exclusion or exemption shall be construed as not containing such provisions but in such event, this agreement shall be construed as providing for the maximum exclusion or exemption which such law permits.

28. VALUE-ADDED TAX

- 28.1 Unless the context indicates that the amount concerned is inclusive of VAT, all amounts payable by the Client to the Contractor shall be exclusive of VAT.
- 28.2 All or any VAT arising from the supply or deemed supply of any goods and/or services by the Contractor to the Client shall become due for payment and shall be paid by the Client upon presentation of a VAT invoice.