

MEMORANDUM OF BUILDING AGREEMENT

CONCLUDED BY AND BETWEEN

.....
(hereinafter referred to as "*the Employer*")

AND

DP DEV CC

(Registration No 2009/130878/23)

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

1. AGREEMENT

The Contractor undertakes in a proper and workmanlike manner to erect a dwelling house and outbuildings ("*the Works*") on the immovable property described on Schedule A hereto (hereinafter referred to as "*the property*") substantially in accordance with the draft plans and specifications and finishing schedules (as defined in Schedule B(1) annexed hereto), which have been signed simultaneously with this contract and comprise part and parcel thereof.

2. CONTRACT SUM

2.1 The contract sum shall, subject to any variations as referred to in Schedule B hereto, be the sum referred to on Schedule A hereto, which sum (which is exclusive of VAT) shall be payable by the Employer to the Contractor as specified in Schedule B hereto.

2.2 The undermentioned charges shall be deemed to be included in the contract sum mentioned in paragraph 2.1 above.

- 2.2.1 Architectural fees, Plan Drawing and Printing Cost YES
- 2.2.2 Plan Approval Fees YES
- 2.2.3 Electrical Connection Fees YES
(save for the cost of acquiring of Eskom pre-pay electric Meter which shall be for the cost of the Employer)
- 2.2.4 Sewer Connection Fees YES
- 2.2.5 Water deposit YES
- 2.2.6 Water Consumption until completion date YES
- 2.2.7 NHBC YES

3. **TERMS AND CONDITIONS**

This contract shall be subject to all the terms and conditions already referred to above and furthermore the terms and conditions of Schedule B hereto.

SIGNED at _____ on _____ 2013

AS WITNESSES

1. _____

EMPLOYER

2. _____

ASSISTED BY SPOUSE (AS FAR AS NEEDS

BE)

SIGNED at _____ on _____ 2013

AS WITNESSES

1. _____

**FOR AND ON BEHALF OF THE
CONTRACTOR**

2. _____

SCHEDULE A TO THE BUILDING CONTRACT

| | | |
|--|------------|--|
| Full Names of Purchaser | | |
| Residential address of Purchaser | | |
| Postal address of Purchaser | | |
| Date of Birth | | |
| Identity Number | | |
| Full Names of Spouse | | |
| Marital status Married in / out of community of property / Unmarried | | |
| Foreign Marriage | | |
| Date and Place of Marriage | | |
| Tel (work) | Tel (home) | |
| Fax | e-mail | |
| Property Number | | |
| Contract Sum | R | |
| | | |
| | | |

SCHEDULE B**1. DEFINITIONS**

- 1.1 "PLAN", a copy of which is annexed hereto as Annexure "B1", shall for the purposes of this contract mean the signed drawings of the Works, which shall form the basis for drawings to be submitted to the relevant 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 purposes of this contract and the execution of the Works in terms hereof.
- 1.2 "FINISHING SCHEDULE" 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 contract. In the event of any of the specific materials mentioned on Annexure "B2" proving to be unavailable, the Contractor reserves the right to use alternative materials of reasonably equal standard.
- 2.1 The Contractor shall erect the Works substantially in accordance with the Plan and Finishing Schedule as hereinbefore defined.
- 2.2 In the event of any discrepancy arising between the Plan and the Finishing Schedule, the provisions of the Finishing Schedule shall prevail.
- 2.3 The Employer irrevocably grants Power of Attorney to the Contractor to sign and submit the necessary drawings and specifications to the Local Authority for its approval.

3. PAYMENT OF THE CONTRACT SUM

- 3.1 Payment of the contract sum shall be made by the Employer to the Contractor in progress payment instalments as Works progress.

- 3.2 In the event of the contract sum being entirely financed by a building loan secured by a mortgage bond obtained from a bank or other approved financial institution then:
- 3.2.1 Payment of the contract sum shall be made in accordance with the standard procedure of the financial institution concerned;
 - 3.2.2 as security for due payment the Employer irrevocably cedes to the Contractor the total proceeds of the building loan;
 - 3.2.3 the Contractor is hereby irrevocably authorised and empowered to receive direct payment of the progress payments from the financial institution concerned and the Employer agrees, on demand, to sign the necessary Authorities for such payments as and when required so to do by the Contractor,
- 3.3 In the event of the whole or only part of the contract sum not being financed by a financial institution as provided for in the preceding paragraph then the progress payments will be made by the Employer directly until the portion of the contract sum which is being financed by the Employer's own funds are fully paid with the balance of the progress payments then to be made as prescribed in the preceding paragraph. Such payments by the Employer will be made in the following instalments:
- 3.3.1 25% of the contract sum on construction reaching ground floor slab;
 - 3.3.2 25% of the contract sum on construction reaching wall-plate height;
 - 3.3.3 25% of the contract sum once the roof has been built;
 - 3.3.4 The balance on completion.
- 3.4 Should there be any dispute between the parties as to the amount due in terms of any one of the progress payments then the matter will be referred

to an architect appointed by the Contractor, whose determination will be final and binding on the parties.

- 3.5 Any payments not paid on due date will bear interest in accordance with the provisions of Clause 6 below from due date to date of final payment.

4. **COMMENCEMENT AND COMPLETION**

- 4.1 The Contractor shall commence the Works after the transfer of the Plot but he shall not be obliged to commence the Works until:

4.1.1 The Employer has furnished adequate security to the Contractor's satisfaction for the whole of the Contract sum; and

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

4.1.3 The Plot is registered in the name of the Employer and the Employer's bond (if applicable) has been registered.

- 4.2 Subject to any extensions permitted in terms of Clause 4.3 the Contractor shall make its best endeavours to complete the Works within one hundred and eighty days (180) after commencement.

- 4.3 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control, including, without limiting the generality thereof, inclement weather, labour strikes, unavailability of building material or other building items, etc., 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.

- 4.4 The occurrence of one or more of the events detailed in Clause 4.5 below shall constitute complete proof of the satisfactory completion of the works by the Contractor and shall determine the completion date and the Contractor be discharged completely from all obligations expressed or implied under this contract and any variation thereof or addition thereto and the Employer shall have no further claim on the Contractor, save as specifically otherwise provided herein.
- 4.5 For purposes aforesaid, the occurrence of any one of the following shall constitute the completion date.
- 4.5.1 The date of formal handing over of the keys to the Works by the Contractor to the Employer and the signing by the Employer of a handing-over certificate in acknowledgment thereof; or
- 4.5.2 The date certified by an architect nominated by the Contractor as the date on which the Works were ready for beneficial occupation (whichever of these dates shall be the earliest).
- 4.6 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.
- 4.7 The risk in the Works shall pass wholly and entirely to the Employer as from the completion date.
- 4.8 The purchaser must within 7 (Seven) 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.

5. **UNDERTAKING BY THE EMPLOYER**

The Employer undertakes in terms of the Deed of Sale concluded between the Employer and DP DEV CC to become and remain the registered owner of the immovable property until the contract works have been completed and the full contract sum paid.

6. **INTEREST**

Any amount due by the Employer to the Contractor not paid on due date shall bear interest at the rate of 2% above the rate of interest payable by the Contractor to his financier or the minimum lending rate ruling of ABSA Bank Limited 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.

7. **POSSESSION'**

The Contractor shall be entitled to:

7.1 receive full possession of the Property when he is due to commence the Works;

7.2 retain possession of the Works until all amounts owed to him under this Contract and under any agreement or arrangement between the Contractor and the Employer in connection with the Works have been paid and all obligations of the Employer of this contract have been fulfilled.

8. **BREACH**

8.1 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.

8.2 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:

8.2.1 an architect 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;

8.2.2 as genuinely pre-estimated damages of the breach of the terms and conditions of this agreement by the Employer, the Employer shall furthermore 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%

8.3 If the Contractor shall make default in any of the following respects:

8.3.1 without reasonable cause wholly suspends the Works before completion;

8.3.2 without reasonable cause refuses to proceed with the Works with reasonable diligence;

8.3.3 refuse, after notice in writing from the Employee, 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.

9. **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.

10. **GUARANTEES**

10.1 The Contractor guarantees the Works in respect of all latent and patent defects for a period of three (3) months from the completion date.

10.2 The Contractor furthermore guarantees the roof of any portion of the Works in respect of leakage for a period of one (1) year from date of completion.

10.3 The Contractor furthermore guarantees all structural aspects of the Works in respect of defects therein (with the exception of hairline settlement cracks which are not guaranteed for a period of one (1) year from date of completion.

10.4 The Contractor undertakes to enrol the Works with the NHBRC and to issue the standard NHBRC Warrantee in respect of defects.

10.5 The Employer shall be obliged, within the time limits prescribed in the preceding paragraphs, to notify the Contractor in writing of any defects covered by the guarantee and the Contractor shall be afforded a reasonable

period of time within which to make good the defects. Notwithstanding anything previously provided, the Contractor shall under no circumstances be responsible for damage and/or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of any matter arising from or relating to a risk insured against in terms of Homeowners Insurance Policies normally issued by a South African Insurance Company in respect of residential properties. The Contractor shall furthermore under no circumstances be liable for any consequential loss or damages.

10.6 In the event of there being any dispute between the parties as regards the matter of whether any item complained of by the Employer constitutes a defect covered by the guarantee and/or any dispute relating to the repair of the defect, such dispute will be determined by the ruling of an architect appointed by the Contractor, whose determination shall be final and binding on the parties.

10.7 Save for the above guarantees no other guarantees / warranties of any nature are given in respect of the Works.

11. **PUBLIC LIABILITY INSURANCE**

The Contractor shall reasonably insure against public liability on or around the Works from the commencement of building operations until completion of the Works in terms of this agreement and until risk in the Works has passed to the Employer in terms of Clause 4.7.

12. **VARIATIONS**

12.1 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 relevant works.

12.2 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 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 who will determine the dispute and whose determination will be final and binding on the parties.

13. **SUSPENSIVE CONDITIONS**

This entire agreement is subject to the conclusion of a Deed of Sale relating to the sale of the property by DP DEV CC to the Employer and the fulfilment of all and any suspensive conditions which might be contained in such sale agreement within the periods therein prescribed.

14. **NOTICE**

Any notice given in terms of the Contract 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.

15. **DOMICILIUM CITANDI ET EXECUTANDI**

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

Employer: At the address specified on Schedule A hereto

Contractor: House no 23, Stanford Bridge

Or such other address either party may from time to time by written notice direct.

16. **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.

17. **SURETYSHIP**

In the event of the Employer being of a Close Corporation, Company or Trust then the signatory for and on behalf of the Employer by virtue of his/her signature to this agreement binds himself / herself as surety to and in favour of the Contractor for all the obligations of the Employer arising from or associated with this agreement waiving the benefit of excussion.

18. **REMOVAL OR ALTERATION OF DRAINS AND PIPES**

The Contractor reserves the right 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.

19. **EMPLOYER NOT TO GIVE ORDER TO CONTRACTOR SERVANTS**

Neither the Employer or any person acting on his behalf shall issue any instruction or order to any person in the employment of the Contractor or any sub-contractor upon the site.

20. **RETENTION OF OWNERSHIP**

Notwithstanding anything to the contrary herein contained, ownership of all materials brought 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 Plot or any building situated on the Plot.

21. **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 contract 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 contract, then the Contractor shall be entitled to engage a security guard and watchman at the expense of the Employer, which expense 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.