

# BUILDING AGREEMENT

between

**KEVEL CONSTRUCTION PROPRIETARY LIMITED**

Registration Number **2005/017048/07**

(the "**Contractor**")

and

**THE PARTY WHOSE FULL PARTICULARS APPEAR IN THE ATTACHED SCHEDULE**

(the "**Employer**")

Whose full particulars appear in the Information Schedule

IN RESPECT OF BUILDING WORKS TO BE CONDUCTED ON

ERF: \_\_\_\_\_

FLOOR PLAN: \_\_\_\_\_

## **CAUTIONARY NOTICE: APPLICATION OF THE CONSUMER PROTECTION ACT**

*You should not sign this Agreement before having had adequate opportunity to consider and understand this clause and all the provisions of this Agreement, or before having them explained to you, as this Agreement contains provisions (that have been highlighted in bold in order to draw specific attention to them) that:*

- *Limit in some way the risk or liability of the Contractor or any other person;*
- *Constitute an assumption of risk or liability by you;*
- *Impose an obligation on you to indemnify the Contractor or any other person for some cause; or*
- *Is an acknowledgment of a fact by you.*

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*I acknowledge having read and understood the above Cautionary Notice before signing this Agreement.*

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*By initialling next to a provision that has been highlighted in bold I acknowledge that I have been given sufficient opportunity to receive and comprehend the relevant provisions.*

1. **PREAMBLE**

- 1.1 The Employer has entered into an agreement for the purchase of the Property described in the schedule.
- 1.2 It is a condition of the aforementioned agreement that the Employer enters into an agreement for the building of a residential house on the Property.
- 1.3 The Contractor has agreed to build the residential house on the Property on behalf of the Employer.

**NOW THEREFORE IT IS AGREED AS FOLLOWS:**

2. **DEFINITIONS AND INTERPRETATION**

- 2.1 In this Agreement, unless the context otherwise indicates:
- 2.1.1 **the Agreement** means this Agreement together with all the annexures hereto;
- 2.1.2 **Agreement of Sale** means the agreement of sale entered into between the Employer as purchaser and the Developer as seller of the Property;
- 2.1.3 **Architect** means any architect appointed by the Contractor, who shall also act as the "**Principal Agent**";
- 2.1.4 **Building Plan** means the signed drawings of the Works annexed hereto marked "**G**", which shall form the basis for drawings to be submitted to the local authority for approval. Upon approval, the approved Building Plan shall substitute the drawings and be deemed to be the Building Plan selected and approved by the Parties;
- 2.1.5 **Certificate of Practical Completion** means a certificate issued by the Principal Agent to the Contractor, with a copy to the Employer, stating the date on which completion of the works has substantially been reached and can effectively be used for the purposes intended and where the work on the practical completion list has been completed;
- 2.1.6 **Certificate of Final Completion** means a certificate issued by the Principal Agent to the Contractor, with a copy to the Employer, stating the date on which the Works are free of all defects or, where a defects list has been issued, the work on such a list has been satisfactorily completed;
- 2.1.7 **Conveyancers** means the conveyancers referred to in the Agreement of Sale;
- 2.1.8 **Contractor** means Kevel Construction Proprietary Limited (Registration Number 2005/017048/07), including his successors in title and assign.

- 2.1.9        **Developer**                    means Oude Chardonnay Retail Pty Ltd (Registration Number 2011/002148/07), including his successors in title and assign.
- 2.1.10       **defect**                            means any aspect of Works which, in the opinion of the Architect is not according to this Agreement and includes an imperfection that impairs the structure, composition or function of any aspect of the Works;
- 2.1.11       **Employer**                        means the party/ies contracting with the Contractor for the execution of the Works and named in the Schedule;
- 2.1.12       **NHBRC**                            means National Home Builders Regulatory Council;
- 2.1.13       **Payment Certificate**            means a document issued by the Architect certifying the amount due and payable by the Employer to the Contractor;
- 2.1.14       **Possession Date**                means the commencement date referred to in the Schedule, subject to clause 15 below;
- 2.1.15       **Prime rate**                        means a rate of interest as defined in the Agreement of Sale;
- 2.1.16       **Progress Draw Schedule**        means the schedule annexed hereto marked "H";
- 2.1.17       **Property**                         means the property as defined in the Agreement of Sale;
- 2.1.18       **Information Schedule**            means the Information Schedule annexed hereto;
- 2.1.19       **Schedule of Finishes**            means the Schedule of Finishes annexed hereto marked "F";
- 2.1.20       **Works**                              means the construction by the Contractor of the residential dwelling substantially in accordance with the Building Plan and Schedule of Finishes.
- 2.2            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.
- 2.3            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, trust and bodies corporate, and *vice versa*.
- 2.4            If any portion in the Information Schedule, the preamble and/or this clause 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the Information Schedule, the preamble and/or this clause 2 (as the case may be) effect shall be given thereto as if such provision was a substantive provision in the body of this Agreement.

### 3. APPOINTMENT OF THE CONTRACTOR

- 3.1 The Employer has appointed the Contractor to complete the Works.
- 3.2 The Contractor undertakes in a proper and workmanlike manner to construct the Works on the Property substantially in accordance with the Building Plan and Schedule of Finishes. The Contractor will supply all material and labour required for the Works.
- 3.3 In the event of any discrepancy arising between the Building Plans and the Schedule of Finishes, the provisions of the Schedule of Finishes shall prevail.
- 3.4 **The Employer irrevocably grants a power of attorney to the Contractor to sign and submit the Building Plan, duly drawn and Schedule of Finishes to the local authority for its approval.**

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### 4 CONTRACT SUM AND METHOD OF PAYMENT

- 4.1 The Employer will pay to the Contractor the amount referred to in the Information Schedule, (hereinafter referred to as "the Contract Price") for the construction of the Works, which amount will be payable as follows:
- 4.1.1 **in cash on registration of transfer of the Property to be paid to the Conveyancers and released to the Contractor in accordance with the Progress Draw Schedule;**
- 4.1.2 **in cash and building loan: in accordance with customary financial institution draws with the Conveyancer paying and securing in terms of clause 4.2 or in cash on registration of transfer of the Property to the Conveyancer, the initial difference between the Contract Sum and the building loan amount;**
- 4.1.3 **building loan: in accordance with the customary financial institution draws and procedures, which will be as close as possible to Progress Draw Schedule.**
- 4.2 **Should payment be made in accordance with clause 4.1.1 or 4.1.2 the Employer shall supply the Contractor with an irrevocable bank guarantee acceptable to the Contractor for the due payment of the cash amounts in accordance with the Progress Draw Schedule within 3 (three) days after being requested to supply same by the Conveyancer. Alternatively, the Employer shall be entitled to pay into the trust account of the Conveyancers all such amounts, to be held by the Conveyancers in an interest bearing trust account, interest to accrue to the Employer until date upon which payment of the relevant amount falls due to the Contractor. The Employer by his/her signature hereto irrevocably authorises and instructs the Conveyancers to release upon the receipt of a Payment Certificate, from the funds so received, the payments due to the Contractor in terms of the Progress Draw Schedule.**
- 4.3 Should payment be made in accordance with clause 4.1.2 or 4.1.3:-
- 4.3.1 the Employer irrevocably cedes his rights to obtain payments under the building loan to the Contractor;
- 4.3.2 the Contractor is hereby irrevocably authorised and empowered to receive direct payment of the balance of the Contract Sum from the financial institution concerned and the

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Employer agrees to sign the necessary authorities for such payments on signature of the building loan documents to be held by the principle agent who shall be authorised to present same to the financial institution;

4.3.3 the Employer undertakes not to instruct the financial institution to withhold any draw to the Contractor if the valuer of the financial institution is of opinion that the draw could be paid out. If the Employer refuses to sign the authority for such payments and/or final payment and remains in default for a period of 3 (three) days after receiving written notice by the Contractor to sign same, then the Contractor is hereby irrevocably instructed to sign the progress payments and/or final payments on behalf of the Employer;

4.3.4 the Employer undertakes if so required, to sign the necessary NHBRC forms to enable the Contractor to receive payments on building loan withdrawals within 3 (three) days of being called on to do so by the Contractor.

4.4 **In the event of the financial institution draws not being forthcoming for any reason whatsoever or in the event of clause 4.1.1 and 4.1.2 being applicable, payments will be made in terms of Payment Certificates, in accordance with the Progress Draw Schedule.**

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4.5 **In the event of payment in terms of clause 4.1.2 or 4.1.3 from a building loan the Employer hereby confirms that he is aware that interim interest is charged on all amounts advanced from date of registration of the bond and the Employer hereby undertakes to pay the monthly payments to the financial institution on due date to avoid a shortfall on the bond for payment of the full Contract Sum to the Contractor.**

4.6 Notwithstanding anything to the contrary herein contained:

4.6.1 **the Employer shall not be entitled to possession and/or occupation of the dwelling on the Property until such time as the full amount owed to the Contractor has been paid.**

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4.6.2 **in the event of the Contract Sum, any portion thereof, or any other amounts owed by the Employer to the Contractor not having been paid to the Contractor on due date, the balance outstanding shall bear interest from due date to date of payment at the Prime rate plus 3% (three percent).**

## 5 **REPOSSESSION OF PROPERTY BY THE CONTRACTOR FOR PURPOSES OF BUILDING WORK**

5.1 The Contractor will take possession of the Property for the purpose of constructing the Works on the date on which building work commences as described in clause 15 hereunder until date of completion as described in clause 15 hereunder.

5.2 **Notwithstanding anything to the contrary herein contained, ownership of all materials brought onto the Property shall remain vested in the Contractor until the full amount owed to the Contractor has been paid.**

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5.3 **The Contractor shall have the right at any stage prior to the completion date to exhibit the Property to a member of the general public.**

5.4 **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. The Employer shall not be allowed to enter on the Property once the Works have commenced, without prior arrangement with the Contractor.**

## 6 **VARIATIONS, EXTRAS AND OMISSIONS**

6.1 Extras shall mean work which cannot reasonably be inferred from the building work as agreed upon herein.

6.2 **No variations, extras or omissions shall vitiate this Agreement. The execution of such extras, variations or omissions will only be done if agreed so in writing by the Contractor and the Employer. The Employer will be liable for payment of all costs relating to such variations, omissions or extras over and above the Contract Sum including the costs of the architect and the Principal Agent. All costs of such variations or extras shall be paid in full before commencement thereof. Such variations, omissions or extras will be determined by the principle agent and based on the schedule of rates as submitted by the Contractor.**

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6.3 **It is hereby expressly agreed that the Contractor will under no circumstances be compelled to agree to such extras, variations or omissions.**

## 7 **STRUCTURAL GUARANTEE AND MINIMUM BUILDING STANDARDS**

7.1 It is confirmed that the Contractor is or will be registered with the NHBRC and accordingly the structural guarantees applicable will be as set out in the NHBRC warranty which will be issued to the Employer. The minimum building standards will be as contained in the specifications of the NHBRC.

7.2 The Contractor guarantees the Works:

7.2.1 **in respect of defects for a period of 3 (three) months from the practical completion date;**

7.2.2 **in respect of any structural defects of concrete foundations, brick and mortar structures for a period of 5 (five) years from the commencement of the construction period; and/or**

7.2.3 **in respect of the roof for leakage, a period of 1 (one) year from the practical completion date.**

7.3 **The Employer shall be notified in writing by the Principle Agent of a date before issue of the Certificate of Practical Completion, on which snagging of the Works will take place. The Principle Agent shall on behalf of the Employer, notify the Contractor in writing of outstanding work and defects and the Contractor shall be afforded a reasonable period of time within which to make good the outstanding work and defects before the Certificate of Practical Completion will be issued.**

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**Notwithstanding anything previously provided, the Contractor shall under no circumstances be liable for any defects caused by surface water or storms or by the conditions or subsidence or underlying or surrounding ground or be responsible for damage and/or loss caused by wear and tear, misuse, neglect, negligence, abuse or accident by the Employer 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.**

- 7.4 Notwithstanding the aforesaid guarantees, the Contractor shall under no circumstances be liable for any defects caused by surface water or storms or by the conditions or subsidence or underlying or surrounding ground or defects to fair wear and tear, misuse, negligence or abuse on the part of the Employer.
- 7.5 Save for the above guarantees and the standard NHBRC guarantees which will be provided by the Contractor or a company associated with the Contractor, no other guarantees/warranties of any nature are given in respect of the Works.
- 7.6 Such guarantees as may be received by the Contractor in respect of any item incorporated in the Works shall, to the extent that the Contractor is entitled to do so, be passed on to the Employer with effect from the completion date.

## 8 **SETTING OUT OF THE WORKS**

- 8.1 The Contractor shall establish the boundary pegs or beacons identifying the site and the correctness of the datum level.
- 8.2 The Contractor shall define the levels which are required for the execution of the Works.
- 8.3 The Contractor shall take all necessary precautions to preserve such pegs, beacons, datum levels and other aids used in setting out the Works.
- 8.4 The Contractor reserves the right to alter the position of any drain or drain pipe as shown on the Building Plan to suit the level of the ground, should it be necessary.

## 9 **LEVELS**

It is recorded that all levels on the final working drawings are diagrammatic and subject to alteration to confirm to actual site conditions, such alterations to be determined by the Contractor.

## 10 **MATERIALS AND SPECIFICATIONS**

- 10.1 The material and specifications thereof, which will be used by the Contractor, are set out in Annexure "F" hereto and will only constitute a guideline and the Contractor will be entitled to make amendments thereto if the availability is impossible and he will be entitled to replace it with similar material subject to clause 10.3 hereunder.

10.2 **All coloured sanitary ware, carpets, tiles and facebricks, where applicable shall be supplied at the risk of the Employer as the Contractor does not guarantee colour, colour match, texture, availability or quality thereof. Upon being advised by the Contractor that the aforementioned materials are not available, the Employer shall forthwith choose alternatives thereto.**

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10.3 **Any additional costs which might be incurred by the Contractor by the selection of the materials by either himself in terms of clause 10 and the Employer will be liable for payment of such extra costs over and above the Contract Sum.**

## 11 **SUB-CONTRACTORS**

11.1 The Contractor may, at his option cede or assign this Agreement in whole or in parts to another Contractor or sub-contractor by giving notice to such effect to the Employer whereafter the Contractor will be released from this Agreement and substituted by such other contractor or sub-contractor who shall assume full responsibility for the terms and conditions hereof and the Contractor will further be entitled to employ such sub-contractor to complete work to certain parts of the building work or to install certain equipment and/or materials.

11.2 **The Employer will not be entitled to appoint any sub-contractor, artist, craftsmen or other expert to do any work on the Property of whatsoever nature while the building is in progress without the written consent of the Contractor and if such consent would be given by the Contractor, it will be subject to the following:**

11.2.1 **the Employer or any of his employees will under no circumstances interfere with the work being effected on the Property by the employees of the Contractor and will also under no circumstances delay the building work of the Contractor;**

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11.2.2 **if such consent by the Contractor should cause any extra costs due to the actions of the Employer or due by the employment of the Employer of any third party, the extra costs will be for the account of the Employer over and above the Contract Sum.**

## 12 **WATER AND ELECTRICITY**

12.1 For the purpose of executing the building work, the Contractor will be entitled to use water and/or electricity and/or any other service on the Property and the Employer will be liable for the costs of such services.

12.2 The Employer shall pay the costs relating to the services referred to in clause 12.1 to the Conveyancer within 3 (three) days of being requested to do so by the Conveyancer.

12.3 Should the payment referred to in clause 12.2 be delayed for any reason, the Contractor shall be entitled to suspend the Works until such payment has been made by the Employer.

12.4 **Any deposits made by the Contractor for and on behalf of the Employer for the purpose of the supply of the electrical services mentioned in clause 12.1 will be**

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**refundable by the Employer immediately after the Contractor has effected payment thereof.**

- 12.5 The Employer, by his signature hereto, irrevocably appoints the Contractor or his agent to sign any documents necessary in respect of the supply of water, electricity or any other services to the property required to execute the building work.

### 13 **DAMAGE, DEFECTS AND RISK**

- 13.1 **Notwithstanding anything to the contrary herein contained, the Contractor will not be responsible for the repair of any damage or defects which might be caused by *vis major* (Act of God), civil unrest or negligence by the Employer.**

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- 13.2 **All risks relating to the work shall pass from the Contractor to the Employer on date of practical completion or on date of possession and/or occupation of the Property by the Employer, whichever event occurs first.**

### 14 **WORKS RISK**

- 14.1 **The Contractor shall take full responsibility for the Works from the date on which possession of the Property is given to the Contractor and up to the issue of the Certificate of Practical Completion. Thereafter, responsibility for the Works shall pass to the Employer.**

- 14.2 **The Contractor shall make good physical loss and repair damage to the Works, including clearing away and removing from the Property all debris resulting therefrom, which occurs after the date on which possession of the property is given and up to the issue or deemed issue of the Certificate of Final Completion and resulting from:**

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- 14.2.1.1 **any cause arising up to the date of issue of the Certificate of Practical Completion;**  
 14.2.1.2 **the Contractor or his subcontractors carrying out any operation complying with the Contractors obligations after the date of issue of the Certificate of Practical Completion.**

### 15 **COMMENCEMENT AND COMPLETION OF BUILDING WORK**

- 15.1 **The Contractor need only commence with building work within a reasonable time after:**

- 15.1.1 **registration of the Property in the name of the Employer; and/or**  
 15.1.2 **registration of the bond if the bond is not registered simultaneously with the registration of transfer of the Property; and/or**  
 15.1.3 **approval of the plans by the local authority having jurisdiction, and**  
 15.1.4 **issue of the guarantee referred to in clause 4.1 above**  
**whichever event is the later.**

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- 15.2 **In the event however, of the Works being delayed by *vis major*, inclement weather, non-availability of any materials or labour, or for any reason beyond control of the**

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**Contractor, the Employer shall have no claim against the Contractor howsoever arising. The Contractor however undertakes to complete the building work within 180 (one hundred and eighty) days after commencement thereof or as soon as possible thereafter. If the commencement or completion of the Works is delayed for any cause whatsoever the Employer shall not have any claim against the Contractor for damages or otherwise.**

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- 15.3 The Works will be deemed to be completed:
- 15.3.1 if payment of the Contract Sum is made in accordance with clause 4.1.2 or 4.1.3 on notification by the appropriate financial institution valuer that the building work is in his/her opinion completed; and
- 15.3.2 if payment of the Contract Sum is made in accordance with 4.1.1 and 4.1.2 on notification by the building inspector of the local authority that the building work is in his opinion complete.
- 15.3.3 **Upon completion of the Works the Contractor shall be entitled to retain possession of the Property until the full amount owed to the Contractor has been paid by the Employer.**

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## **16 BREACH OF CONTRACT**

- 16.1 Should the Employer's estate be finally sequestrated and/or liquidated (as the case may be) or placed under business rescue or should the Employer fail to fulfill any of the conditions or stipulations of this Agreement and still remains in breach after being requested by written notice delivered by hand or registered mail to restore such breach within 7 (seven) days of receipt thereof, the Contractor will be entitled to:
- 16.1.1 claim immediate payment of the full Contract Sum and the execution of all terms and conditions hereof; or
- 16.1.2 forthwith cancel this Agreement without prejudice to any rights which the Contractor may have in terms of this Agreement or in terms of the law in which event the Employer will forfeit all moneys already paid in terms hereof to the Contractor or his agent, without prejudice to any of the Contractor's rights to claim any further damage from the Employer.
- 16.2 In the event of the Contractor being obliged and/or electing to cancel this Agreement in accordance with the preceding paragraph, then the following shall occur:
- 16.2.1 a quantity surveyor appointed by the Contractor shall assess the amounts due to the Contractor in terms of Works completed to date and any portion thereof which has not already been paid, shall forthwith be payable;
- 16.2.2 as genuinely pre-estimated damages for 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 x 20%**
- 16.3 Should the Contractor default in any of the following respects:

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- 16.3.1 without reasonable cause wholly suspend the Works before completion;
- 16.3.2 without reasonable cause refuse to proceed with the Works with reasonable diligence;  
**then and in such event, if the default shall continue and not be remedied notwithstanding twenty one (21) days written notice to the Contractor by the Principle Agent or Employer specifying the nature of the specific default, then the Employer may without prejudice to any other right he may have in terms of this Agreement 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.**

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## 17 INDEMNITIES

- The Contractor indemnifies and holds the Employer harmless against any loss in respect of all claims, proceedings, damages, costs and expenses arising from:
- 17.1 **claims from other parties consequent upon death or bodily injury or illness of any person or physical loss or damage to any property, other than the Works, arising out of or due to the execution of the Works or occupation of the site by the Contractor;**
- 17.2 **a non-compliance by the Contractor with any law and regulation and by-law of any local or other authority arising out of or due to the execution of the Works or occupation of the site by the Contractor;**
- 17.3 **physical loss or damage to any plant, equipment or other property belonging to the Contractor or his sub-contractors.**

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## 18 WORKS INSURANCE

- 18.1 The Contractor shall from the Possession Date until Certificate of Practical Completion effect and keep in force:
- 18.1.1 Contract works insurance; and
- 18.1.2 Public liability insurance to cover the joint interest of both Parties. In addition, the Contractor shall effect any relevant workmen's compensation or similar insurances as are required by law.

## 19 SALE AND PURCHASE OF PROPERTY

- 19.1 It is recorded that the Developer and the Employer have entered into the Agreement of Sale in terms of which the Developer (as Seller) will sell to the Employer (as Purchaser) the Property.
- 19.2 **This Agreement is subject to the condition that should the aforementioned Agreement of Sale not be concluded between the Parties or should any of the conditions precedent or resolute conditions which may be recorded in the Agreement of Sale not be fulfilled or become of effect and the Agreement of Sale as**

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**a result thereof should lapse, this agreement shall also lapse and be of no further force or effect.**

- 19.3 Should the Employer commit a breach of its obligations under the Agreement of Sale and the Contractor as a result thereof elects to cancel the Agreement of Sale then:
- 19.3.1 the breach by the Employer of its obligations under the Agreement of Sale shall be deemed to be a breach of its obligations under this agreement; and
- 19.3.2 the Contractor shall be entitled to cancel this agreement on written notice to the Employer without first affording the Employer the opportunity to remedy the breach as is contemplated in clause 16.

## 20 **JURISDICTION OF THE MAGISTRATES COURT**

The parties hereby agree in terms of Section 45 of the Magistrates Court Act, No. 32 of 1944 (as amended) to the jurisdiction of the Magistrates Court should any claims arise from this Agreement.

## 21 **NOTICES AND ADDRESSES**

All notices by the one party to the other delivered by registered mail in terms of this agreement, will be deemed to be received by the receiving party within 4 (four) days after being posted by the sender, unless the receiving party can prove that he never received such notice. Any notice by telefax or e-mail to a party at its telefax or e-mail address will be deemed, unless the contrary is proved, to have been received within 12 (twelve) hours of transmission.

## 22 **ENTIRE AGREEMENT AND INTERPRETATION**

- 22.1 This document together with the annexures is the entire agreement between the Contractor and the Employer and any amendment, addition or alteration hereof will only be valid and binding upon the parties if done so in writing and signed by both parties and their witnesses.
- 22.2 No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorized representatives.
- 22.3 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this agreement, and no single or partial exercise of any right by any Party under this agreement, will in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or novation of or otherwise affect any of the Party's rights in terms of or arising from this agreement or estop or preclude any such Party from

enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

23 **SURETY**

The signatory as Employer hereby binds him/herself as surety and co-principal debtor under renunciation of the legal exceptions: i) that no just cause exists for the debt of the Employer; ii) that the money has not been paid to or on behalf of the Employer; iii) that there has been a wrong calculation of the debt of the Employer; iv) revision of accounts; v) that co-principal debtors shall first be excused and that there shall be a division of the debt between the co-principal debtors; and vi) the right of a co-principal debtor to claim that all the other co-principal debtors be joined in any action, the meaning of which the Employer acknowledges he is fully acquainted with, in favour of the Contractor for the due performance by it of all its obligations in terms hereof.

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24 **BUILDING LOAN**

24.1 If this Agreement is subject to the approval of a building loan in the amount of as referred to in the Information Schedule, such approval shall be obtained from a recognized financial institution within 30 (thirty) days of signature hereof by the Employer. The Employer will take all necessary steps to obtain approval thereof. The Contractor will be entitled to extend this period within his own discretion.

24.2 **The Employer hereby authorises the Developer or his agent to apply on behalf of the Employer for a building loan and hereby grants the Developer and or his Agent an irrevocable Power of Attorney *in rem suam* to make application on his behalf. The Employer hereby agrees and undertakes to sign all such documents and requisite loan applications with the Developer or its agent and to do all such things as may reasonably be necessary or required for purposes of obtaining the grant of the mortgage loan and, after the loan has been granted, registration of the mortgage bond. Should the Employer fail to sign all such documents and/or do all such things, any such failure shall be deemed to be a breach of a material term or condition of this agreement by the Employer.**

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24.3 It is a condition of this Agreement that in the event of the Employer's application for a loan being successful, the registration of the mortgage bond shall be effected and registered by the Conveyancers. The Employer undertakes to procure that the financial institution from which the Employer obtains the loan instructs the Conveyancers to attend to the registration such bond.

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24.4 The Employer shall be liable for payment of all costs of and incidental to the registration of the mortgage bond, including conveyancers' fees and necessary disbursements, stamp duty and the proposed mortgagee's inspection fees.

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25 **INTEREST**

Any amount due by the Employer to the Contractor not paid on due date shall bear interest at the Prime rate plus 3% (three percent) calculated from the date such amount becomes due by the Employer to the Contractor until the date of payment thereof.

26 **RESTRICTION ON ALIENATION OF PROPERTY**

**The Employer shall not alienate the Property to any third party until the Works to be carried out by the Contractor in terms of this agreement have been completed and the Contractor has received payment in full of all amounts due to it in terms of this agreement.**

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27 **DUTIES OF THE ARCHITECT AS PRINCIPAL AGENT:**

The Principal Agent will be authorised to attend to the following :

- 27.1 Establishing types of meetings, attendance and chairmanship and issuing of agendas and recording of minutes in case a dispute is later declared;
- 27.2 Settlement of contractual and financial disputes;
- 27.3 Deciding on any extension of the contract period;
- 27.4 Valuation of work done for inclusion in regular Payment Certificates;
- 27.5 Monitoring progress of construction;
- 27.6 Co-ordinating inspections and handovers;
- 27.7 Snagging of the Property with the Contractor prior to snagging inspection by the Employer;
- 27.8 Snagging of the Property with the Employer;
- 27.9 Issuing of practical completion certificate for the Property; and
- 27.10 Issuing of final completion certificate for the Property.

28 **DISPUTE RESOLUTION**

- 28.1 In the event of there being any dispute or difference between the Employer and the Contractor, during the progress and before completion of the Works or as to the withholding by the Bank of any draw to which the Contractor may claim to be entitled, then the parties will jointly instruct the Principal Agent to appoint within 10 (ten) days an architect, civil engineer, quantity surveyor or any other professional person involved in the Building Industry to determine such dispute or difference ("Arbitrator") by a written decision given to the Contractor. The said decision shall be final and binding on the parties, unless the Contractor or the Employer within 14 (fourteen) days of the receipt thereof by written notice to the Arbitrator disputes the same in which case or in case the Arbitrator for 14 (fourteen) days after a written request to him by the Employer or the Contractor fails to give a decision as aforesaid, such dispute or difference shall be referred to the arbitration and final decision of an Arbitrator selected by the President for the time being of the Institute of South Africa Architects, and the award of such Arbitrator shall be final and binding on the parties.

Initial

28.2 The Arbitrator shall have power to disclose, review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given, upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between attorney and client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid. The Employer and the Contractor may refer any dispute related to the structure of the Works to the NHBRC for mediation.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018

As witnesses:

1. \_\_\_\_\_

\_\_\_\_\_  
**Employer**

2. \_\_\_\_\_

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018

As witnesses:

1. \_\_\_\_\_

\_\_\_\_\_  
 for and on behalf of the **Contractor**,  
 duly authorised hereto

2. \_\_\_\_\_

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**SCHEDULE**

<b>A</b>	<b>CONTRACTOR</b>	KEVEL CONSTRUCTIONS PROPRIETARY LIMITED
	Registration Number	2005/017048/07
	Address in full	Suite 4
		136 Edward Street
		BELLVILLE
E-mail	admin@oudechardonnay.co.za	
Telephone number	021 910 2724	
<b>B</b>	<b>EMPLOYER</b>	
	Full name/s	
	ID/Registration number/s	
	Address in full (street address only)	
	Married in/out of community	
	Full names of spouse if in community	
	Id number of spouse if in community	
	Telephone	Work -                      Home -
	Cell phone number	
	Fax number	
E-mail		
<b>C</b>	<b>THE WORKS</b>	Erf no: _____ of the development OUDE
	Property description	CHARDONNAY ESTATE, THE VILLAS, PHASE 6 as shown on the layout plan annexed hereto marked "B"
	Scheduled commencement date	
	Estimated completion date	
<b>D</b>	<b>CONTRACT PRICE</b>	
	Total contract price (inclusive of VAT)	R
	Bond:	R
Balance of price:	R	