



BUILDING AGREEMENT

Made and entered into between:

GM PROJECTS (Pty) Ltd

2024/710307/07

27 Fraser Street

Sedgefield

("the Contractor")

AND

whose particulars are stated in Section B of the Information Schedule of the Land Sale Agreement
to which this Building Agreement attaches

("the Employer")

1. THE AGREEMENT

The Contractor undertakes in a proper and workmanlike manner to erect a dwelling house and outbuildings ("the Works") on the Property in accordance with the agreed Sketch Plan / Working Drawings, Specifications and Finishing Schedule, which was signed together with this Agreement. The Contract Price shall be payable by the Employer to the Contractor as specified in this Agreement.

2. DEFINITIONS AND INTERPRETATION

- 2.1 "Architect" means CMAI Architects or any such other Architects as appointed by the Contractor;
- 2.2 "Contract Price" means the Contract Price set out herein;
- 2.3 "Contractor" means GM Projects (Pty) Ltd;
- 2.4 "Employer" means the Purchaser whose particulars are contained in Section B of the Information Schedule of the Land Sale Agreement;
- 2.5 "Works" means the Works to be undertaken in terms of this Agreement;
- 2.6 The clause headings in this Agreement have been inserted for convenience of reference only and shall not be taken into account in its interpretation.
- 2.7 This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.

3. FLOOR PLAN AND FINISHING SCHEDULE

- 3.1 In case of any discrepancy between the Sketch Plan and Finishing Schedule, the terms of the Finishing Schedule will prevail.
- 3.2 In the case where the Bond Holder or the Local Authority requires any changes, amendments or additions to the Sketch Plan (as may be amended by the parties) and the Finishing Schedule, these changes will be made in conjunction with the Employer and must be countersigned by both parties with clear stipulations of the changes / procedures and relevant changes in cost.
- 3.3 The Employer hereby irrevocably gives Power of Attorney to the Contractor to submit all necessary documentation to the Local Authorities for approval.

4. CONTRACT PRICE AND LOCATION OF DWELLING

- 4.1 The Contract Price shall be R_____ (_____) for the erection of a Dwelling on:

Stand No: _____

Township: _____

In accordance with the agreed Sketch Plan / Working Drawings, Specifications and Finishing Schedule.

- 4.2 The Contract Price, as established on the date of execution of this Agreement, is subject to adjustment. The Employer acknowledges and agrees that, due to the lapse of time between the execution of this Agreement and the completion of the Works, the costs of materials and/or services required for the construction of the Works may increase significantly as a result of external factors beyond the reasonable control of the Contractor. Accordingly, upon execution of this Agreement, the Employer expressly recognizes and consents to the Contractor's right to adjust the Contract Price in the event of substantial cost variations occurring subsequent to the execution of this Agreement, provided such variations are attributable to unforeseen circumstances outside the Contractor's control.
- 4.3 The Contract Price does not include Transfer Cost on the Erf, Bond Registration Costs, inspection and evaluation fees by the Mortgagee. These amounts shall be paid in cash by the Employer as and when required by the relevant authorities, and/or institutions.
- 4.4 The Contract Price is inclusive of VAT at the prescribed rate. In the event of there being any variation in the rate of VAT payable by the Employer, the Contract Price shall increase or decrease accordingly.

5. PAYMENT OF THE CONTRACT PRICE

Payment of the Contract Price shall be made by the Employer to the Contractor by way of advance payments as determined below.

- 5.1 In the event of the Contract Price being entirely financed by a building loan secured by a mortgage bond obtained from the bank or other approval financial institution then:
- 5.1.1 payment of the Contract Price shall be made in accordance with the standard payment procedures of the relevant financial institution. It is recorded that the Contractor must receive progress payments as set out in Clause 5.3. The Employer shall therefore be required to arrange progress payments with his financial institution, and should the Employer fail to do so the Contractor cannot be compelled to continue with the building project until he is satisfied with the manner in which progress payments will be made by the financial institution.
- 5.1.2 as security for due payment as aforementioned, the Employer herewith irrevocably cedes to the Contractor the total proceeds of the building loan, which cession the Contractor hereby accepts;
- 5.1.3 the Contractor is hereby irrevocably authorised to receive direct payment of the progress payments and the final progress payment from the financial institution

concerned and the Employer agrees, on demand, to sign the necessary authorities for such payments as and when required by the Contractor. Should the Employer neglect and/or refuse to sign the authority for such payments and/or final payment and remain in default for a period of 3 (three) days after receiving written notification by the Contractor to sign same, then the Contractor is in such event irrevocably authorised by the Employer to sign the progress payments and/or the final payment on behalf of the Employer. The Employer herewith irrevocably agrees to sign all progress payments on signature of the Bond.

- 5.2 Should only a portion of the Contract Price be financed by the financial institution as aforementioned, then the progress payments shall at the request of the Contractor be made directly to the Contractor until that portion of the Contract Price, which is financed by the Employer, has been paid in full and the balance of the progress payment shall be made as set out in the previous clause.
- 5.3 It is hereby recorded that the whole of the Contract Price will be payable in cash by the Employer by means of the advance payments as follows:
 - 5.3.1 20% of the Contract Price on date of signature hereof;
 - 5.3.2 40% of the Contract Price when the Works have reached window-sill height;
 - 5.3.3 35% of the Contract Price on completion of the built-in closets, sanitary ware and tiles.
 - 5.3.4 5% of the Contract Price on completion of the Works.
- 5.4 All payments referred to in 5.3.1 to 5.3.4 shall become due and payable after certification by the Architects that the respective phases of the works have been completed.
- 5.5 Should any disputes arise between the parties with regards to the amount due and payable for any progress payments, the dispute will be referred to the Architects, whose findings will be final and binding on the parties.
- 5.6 Should the Employer fail to pay any amount owing to the Contractor on the due date thereof, such amount shall bear interest at the prime rate plus 2% (two percent), calculated from the due date to the date of payment, both dates included.
- 5.7 It is hereby recorded that the keys to and occupation of the completed Dwelling will only be handed to the Employer once any and all outstanding amounts due and payable in terms of this agreement shall have been paid in full and any and all outstanding obligations in terms of this agreement have been fully complied with by the Employer.

6. COMMENCEMENT AND COMPLETION OF BUILDING WORK

- 6.1 Should the commencement or completion date of the Works be delayed by *vis mayor*, exceptionally inclement weather, non-availability of any materials or labour, or for any reason

beyond control of the Contractor, the Employer/Owner shall have no claim against the Contractor however arising. In case of such event, the Contractor will be entitled to an extension of the time allocated for the commencement or completion of the Works and the Employer will have no right to any claims against the Contractor in such instance.

- 6.2 After signing of this Agreement the Contractor will commence as soon as possible on condition that the Contractor will not be obliged to start with the Works until:
- 6.2.1 The Employer has provided security to the Contractor for full payment of the Contract Price; and
 - 6.2.2 All permissions, approvals, registrations or other powers has been received by the Contractor;
 - 6.2.3 All terms and conditions in any of the Agreements between the parties have been met in full.
- 6.3 Should the commencement date of construction be delayed for more than 90 (Ninety) days, from date on which the Property was registerable as per the Agreement of Sale, as a result of Clause 6.2.1 and 6.2.2 not being met, but to no fault on the part of the Contractor, the Contractor will be entitled to cancel this Agreement. Should any delay be ascribed to any conduct of the Employer, the Employer shall for such period of delay be liable for interest on the full Contract Price.
- 6.4 The Contractor will complete the Works within 12 months after date of transfer or approval of the building plans, whichever date occurs last, but not later than 18 months from date of signature of this Agreement.
- 6.5 The Employer shall have the right to inspect the premises on 2 (two) separate occasions, but shall not be entitled to interfere with the building work.
- 6.6 6 (six) weeks prior to completion of the building work the Employer will be notified of a date of occupation and/or handover.
- 6.7 After notice of handover as per Clause 6.7, the Contractor will make an appointment with the Employer for the physical handover of the dwelling upon completion of the building work. The Employer shall then attend to the arranged appointment for physical handover within a period of 7 (seven) days.
- 6.8 Upon handover, the Contractor and Employer will hold a mutual inspection and draw up a collective snag list. The Employer must then report all defects in the Dwelling to the Contractor immediately. The Employer will not be allowed to report defects on any other occasion.
- 6.9 If any defects exist the Contractor will rectify or repair such defects and upon completion thereof a follow-up inspection will be arranged again within 7 (seven) days as per Clause 6.8. The Employer shall sign off the following documents at the final inspection:

6.9.1 Snag List

6.9.2 Handover Document

6.9.3 Authorisation form for final payment (if necessary)

6.10 Upon the Employer's refusal / neglect to attend to the handover of the Dwelling within the 7 (seven) days, the Contractor may instruct an architect to draw up a snag list and sign the handover. The Employer will be liable for the architect's fee pertaining thereto and handover will be deemed to have taken place properly and timeously.

6.11 The Seller grants to the Employer a 60 (sixty) day period to report any latent defects in the Dwelling that he might become aware of whilst in occupation of the Dwelling, but which defects the Employer could not reasonably have been aware of at the time of handover or inspection. If the 60 (sixty) day period will commence on the day of occupation of the Dwelling by the Employer and should the Employer not report any latent defects within this period or at least 7 (seven) days thereafter, the Contractor will not be liable or obliged to repair any existing or future latent defects. A 12 (twelve) month guarantee in respect of the roof structure is applicable, as well as a 5 (five) year NHBRC guarantee in respect of structural defects to the Dwelling.

6.12 All risk and responsibility will be transferred to the Employer on the date of occupation.

7. ACCESS BY CONTRACTOR

Access to the property shall be given to the Contractor on registration of transfer of the Property into the name of the Employer. The Contractor shall thereupon within a reasonable time begin the works provided the necessary plans and other approvals, consent to other authority required under any law (including any statute, ordinance, by-law and/or regulation) has been obtained by the Contractor.

8. PUBLIC LIABILITY INSURANCE

The Contractor will make sure his Public Liability Insurance is in place for the Public in and around the Works, which Public Liability Insurance will be in place from the date on which the Works commence until the completion date of the Works and occupation has been given to the Employer.

9. JOINT PURCHASERS

In the event of the Works to be executed for joint Purchasers, all Purchasers will be held liable jointly, individually and in solidum for all monies due to the Contractor in terms of this Agreement. The signature of any of the Purchasers will be deemed binding to all parties as Purchasers in relation to any variations, extras and omissions or any other documentation.

10. INDULGENCE

Notwithstanding any stipulation in this Agreement, any indulgences or extension of time which are granted by the Contractor, will not constitute the waiver of any of the rights of the Contractor to claim the fulfilment of the terms and conditions of this Agreement.

11. WITHHOLDING OF PAYMENTS

If any work of whatsoever nature is still required to be done to the Dwelling or any part of the Works on the date that transfer thereof is tendered to the Employer, the Employer shall not be entitled to withhold, set off or retain any amounts owing by the Employer to the Contractor nor shall the Employer be entitled to withhold or rebate payment of any amount due to the Seller in terms of this Agreement by reason of any breach or alleged breach of the Seller's obligations hereunder. Should any discrepancy occur, an Architect as appointed by the Contractor must certify the fairness of the claim for withholding of payment and the cost of Architect to certify, will be for the account of the Employer.

12. LIQUIDATION/SEQUESTRATION OF EMPLOYER/OWNER

12.1 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 SEVEN (7) days of date of despatch 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.

12.2 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:

12.2.1 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, by virtue of progress payments being paid, shall forthwith be payable.

12.2.2 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 the Contractor an amount calculated as follows: (Total Contract Price) less (Amount paid and/or Payable in respect of Works already completed) x 20%.

13. LIABILITY FOR COSTS

The liability for the costs incidental to the construction of the Dwelling of the Employer and the Contractor shall be as follows:

13.1 *The Employer's Costs:*

- 13.1.1 The architectural fees for any deviation from the standard plan
- 13.1.2 Contract Price (as contained in this Agreement)
- 13.1.3 Bond Registration Costs, valuation costs and costs to the Bond Holder
- 13.1.4 All costs for variations and extras as signed off by the Employer and as invoiced by the Contractor.
- 13.1.5 All electricity and water connections, including any deposits required.

13.2 *The Contractor's Costs: (included in the Contract Price)*

- 13.2.1 Architectural Fees (standard plan only)
- 13.2.2 Plans, Drawings and Printing Costs
- 13.2.3 Costs pertaining to the Approval of Plans at the Local Authority
- 13.2.4 Plan submission Fee
- 13.2.5 Sewerage Connections for the House
- 13.2.6 NHBRC Registration Fee

14. GUARANTEES BY CONTRACTOR

The Contractor warrants as follows:

- 14.1 The dwelling is being erected with quality building materials by competent experts, in their various fields.
- 14.2 Although the Contractor strives to erect a building of outstanding quality, the guarantee cannot cover any loss or damage as a result of misuse, neglect, carelessness, accident or any risks, which are normally insured against in an insurance policy, as required by Financial Institutions with registration of mortgage Bonds over Residential Properties.

15. INSURANCE

The Contractor's All Risk Policy will cover the Dwelling, while being erected, up and until the date of occupancy by the Employer after which date the Employer will be liable for the Insurance.

16. OBLIGATIONS OF THE PARTIES

- 16.1 The Contractor is responsible for the preparation of the Building Plans.
- 16.2 The Employer shall not have the right, either personally, or through his Agent, to issue instructions to any workman, sub-contractor or other person or persons employed by or acting on behalf of the Contractor.
- 16.3 The Contractor shall not be obliged to repair and make good any defects (excluding roof leaks and structural defects) at his cost which are not reported to him in writing as per Clause 6 above.

- 16.4 The Contractor shall be responsible only for damages sustained by the Employer under conditions of normal use and service and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident, or consequential damage resulting from surface and storm water or flooding, ground containing clay and geological disturbances, or in respect of or arising from any risk insured against in terms of Home Owners Association insurance policies normally issued by a leading South African insurance company in respect of residential properties; and the Contractor shall under no circumstances be liable for any consequential loss or damage.
- 16.5 In the event of any soil tests, analyses or reports revealing a situation where additional Foundation or other building costs are necessary, the Contractor shall notify the Employer of these additional costs, which are payable by the Employer, two weeks before occupation or completion, whichever is the earlier. The Contractor, shall give the Employer the option to cancel the land agreement and building contract within 7 days of being notified in the case the Employer is not in agreement with such costs.

17. VARIATION

- 17.1 Any additions or variations to the dwelling, Sketch Plan/ Working drawings, Building Contract specification or the Finishing Schedule, must be agreed to in writing by the Contractor and Employer.
- 17.2 In the event that stairs or any other structures are required to be built due to levels on site, the Contractor shall in its sole discretion and at its cost attend to the construction of such stairs / structures and advise the Employer accordingly.
- 17.3 This Contract represents the whole Agreement between the parties and no conditions, representations, or warranties of any nature shall be of any force or effect unless specifically included herein in writing. The Owner specifically acknowledges that no representations, warranties, inducements or other conditions of any nature whatsoever, including conditions precedent in this Contract, have been made or agreed to by the Contract, and only the terms hereof, are operative and binding on the Contractor and the Employer.

18. CANCELLATION

In the event of the parties mutually agreeing to cancel this contract or the Employer not obtaining the required loan from a financial institution to finance in whole or in part the Contract Price, the Employer shall be liable for payment of all costs incurred by the Contractor to date of cancellation / lapsing of the agreement in respect of plan approval or variations to plans at the Employer's request and the Contractor shall be entitled to retain all or part of any deposits paid by the Employer in respect of such costs, with a minimum administration fee of R1 000.00 (One Thousand Rand) being payable.

19. DISPUTE

In the event that any dispute shall arise between the Contractor and the Employer, in regard to any matter relating to, or arising from this matter, then such dispute shall be referred to the summary and

informal arbitration, either of the representative of the Architects or by an independent arbitrator recognised in the building industry whose decision, in regard to such dispute, shall be final and binding on the parties, the appointment of whom will be mutually agreed by both parties.

20. WORKS RISK, INDEMNITIES AND INSURANCE

20.1 The Contractor shall not be liable for damage to or physical loss of the works where this results from any of the following circumstances and the employer indemnifies the contractor in such circumstances:

- 20.1.1 War, whether declared or not, invasion and hostile acts of foreign enemies;
- 20.1.2 Rebellion, insurrection, revolution, terrorism, military or usurped power or civil war;
- 20.1.3 Civil commotion, riot, strike, lockout or disorder by persons other than the contractor's employees or his subcontractors;
- 20.1.4 Confiscation, nationalisation or requisition by any public or local authority;
- 20.1.5 Sonic shock waves caused by aircraft or other aerial devices and ionising radiation or contamination;
- 20.1.6 The use or occupation of any part of the works by the employer or the employer's servants and agents, or those for whose acts or omission they are responsible;
- 20.1.7 An act or omission of the employer, the employer's servants or agents and those for whose acts or omissions they are responsible;
- 20.1.8 An act or omission by others engaged by the Employer, the Employer's servants or agents and those for whose acts or omissions they are responsible;
- 20.1.9 An act or omission by others engaged by the Employer and those whose for acts or omissions they are responsible;
- 20.1.10 Latent defect in materials specified by the trade name where the contractor has no right of substitution. The contractor hereby cedes to the employer any claim that may exist against the supplier or manufacturer of such materials;
- 20.1.11 Design of the works by the seller or any agent of the seller;

THUS DONE AND SIGNED ON THIS _____ DAY OF _____ 20 _____

CONTRACTOR

WITNESS

THUS DONE AND SIGNED ON THIS _____ DAY OF _____ 20 _____

EMPLOYER

WITNESS

EMPLOYER

WITNESS