

IMPORTANT ACKNOWLEDGEMENT BY PURCHASER/S

I/We, the Purchaser/s, confirm that :

- I/We understand the meaning and effect of all the clauses contained herein;
All blank spaces have been completed OR deleted
I/We understand my/our obligations, assumption of certain risks and indemnities I/we provide to the Seller herein.

Purchaser

Date: .....

Purchaser

AGREEMENT OF SALE : Kingfisher Estates

Concluded by and between -

GERVON IMPORTS AND EXPORTS PROPRIETARY LIMITED
Registration No. 1997/000725/07
253 MONUMENT ROAD, GLEN MARAIS X1, KEMPTON PARK, 1619

represented herein by its duly authorised representative
(hereinafter referred to as "the Seller")

and

1. ....
(Full names and Identity Number OR Registration number of Trust / Company / CC

2. ....
(Full names and Identity Number OR Registration number of Trust / Company / CC

(hereinafter referred to as "the Purchaser")

1. DEFINITIONS

1.1. In this agreement, unless inconsistent with or otherwise indicated by the context, the following words or expressions shall have the following meanings assigned to them:

- 1.1.1. "township" means Glen Marais x 73 Registration Division IR, Province of Gauteng; which township will be known as "Kingfisher Estate";
1.1.2. "property" means ERF ... in the township, as indicated on the General Plan and measuring approximately ... square metres, which consists of a vacant piece of land;
1.1.3. "General Plan" means plan SG No 3031/2017
1.1.4. "Contractor" means JTC CONSTRUCTION PROPRIETARY LIMITED;
1.1.5. "Conveyancers" means BARNARDS of Unit 3, Glen Eagle Office Park, 37 Koorsboom Avenue, Glen Marais, KEMPTON PARK : Tel No: (011) 975-2667;
1.1.6. "Agent" means the duly authorised Estate Agency or individual agent appointed by the Seller from time to time;
1.1.7. "Bond Originator" means the mortgage bond originator appointed by the Seller;
1.1.8. "date of occupation" shall mean the date of registration of transfer of the property into the name of the Purchaser, whether the Purchaser takes actual occupation of such property or not;

- 1.1.9. "Building Contract" shall mean the Building Contract concluded between the Purchaser and the Contractor;
1.1.10. "Municipality" means the EKURHULENI METROPOLITAN MUNICIPALITY;
1.1.11. "Home Owners Association" means the ..., registered as an association not for gain;
1.1.12. "development period" means the period from the establishment of the Home Owners Association until all of the erven or portions of erven in the township have been developed, alternatively until the Seller (being the developer) notifies the Home Owners Association that the development period has ceased, whichever is the earlier;
1.1.13. "Rules" means the management and conduct rules laid down by Home Owners Association;
1.1.14. "Levies" means the levies payable to the Home Owner's Association by each member thereof;
1.1.15. "this Agreement" means this Agreement of Sale in respect of the property;
1.1.16. "date of signature of this Agreement" shall mean the date upon which this Agreement is signed by the last party;
1.1.17. "days" means working days from Monday to Friday, but excludes Saturdays, Sundays and Public holidays.

- 1.2 Clause headings have been inserted for reference purposes only and shall not be taken into account in interpreting this agreement.
- 1.3 Words signifying the singular shall include the plural and vice versa, and words importing one gender shall include the others.

**2. AGREEMENT OF SALE**

The Seller hereby sells to the Purchaser who purchases the property on the terms and conditions set out in this Agreement.

**3. PURCHASE PRICE AND ADMINISTRATION FEE**

3.1. The purchase price for the property is the sum of  
 R ..... (.....  
 .....  
 .....  
 ..... RAND)  
 (inclusive of Value-Added Tax ("VAT")).

3.2. The purchase price shall be paid to the Seller in cash on registration of transfer of the property into the name of the Purchaser and payment thereof to the Seller shall be secured by the Purchaser as follows :

3.2.1. a deposit of R10 000,00 (TEN THOUSAND RAND) ("the reservation deposit" shall be paid to the conveyancer in cash within 7 (seven) days from date of signature of this Agreement, subject to clause 3.3 below;

3.2.2. a further deposit of R .....  
 (.....  
 .....  
 ..... RAND)  
 shall be paid in cash on or before

..... 202\_\_ to the Conveyancers and to be invested by them in accordance with clause 3.3 below;

3.2.3. For the balance of the purchase price amounting to  
 R..... (.....  
 .....  
 .....  
 .....RAND),  
 the Purchaser shall, within 15 (fifteen) days after fulfilment of the suspensive condition in clause 12 (if applicable), furnish the Conveyancers with a Bank guarantee acceptable to the Seller and payable to the Seller or his nominee on date of registration of transfer.

3.3. The amounts to be deposited at the Conveyancers in accordance with clauses 3.2.1 and 3.2.2 (if applicable) shall be invested by them in an interest-bearing account, such interest to accrue for the benefit of the Purchaser, which deposit will be refunded to the Purchaser should the suspensive condition in clause 12.1.2 not be fulfilled. The Purchaser will, simultaneously with signature of this Agreement, sign the instruction annexed hereto as Annexure "B"

- 3.4. Should the Purchaser fail to furnish the guarantee/s within the period set out in clause 3.2.3, then interest will be charged monthly in advance on the outstanding balance of the purchase price calculated mutatis mutandis in accordance with clause 24, from the expiry date of the period to the date upon which the guarantee is furnished.
- 3.5. All the amounts referred to in this clause 3 are inclusive of VAT at the rate applicable at date of signature hereof. The parties expressly agree that if rate at which VAT is charged on any amount payable in accordance with this agreement be increased after date of signature hereof, such amount shall be increased accordingly and the Purchaser shall pay such increase in VAT to the Seller immediately on demand.
- 3.6. The Seller shall advise the Purchaser in writing of the date upon which this Agreement is signed by the Seller.

**4. POSSESSION AND OCCUPATION**

- 4.1. Possession and occupation of the property will be given to the Purchaser on the date of occupation as defined in clause 1.1.7, from which date all risk, profit and loss therein shall pass to the Purchaser.
- 4.2. From the date of occupation the Purchaser shall be liable for the payment of all rates and taxes and other municipal imposts levied against the property, as well as for water and electricity connection and consumption, sanitation, sewerage and refuse removal, insurance premiums, levies charged by the Home Owners Association and any other contributions or imposts charged against the property and the Purchaser will make the necessary payments to the Municipality and the Home Owners Association as required.
- 4.3. Any amounts paid by the Seller in respect of the amounts for which the Purchaser is liable in accordance with clause 4.2 for purposes of obtaining a clearance certificate/s, shall be refunded to the Seller within 30 (thirty) days after the date of occupation.

**5. CONDITION OF PROPERTY AND TITLE CONDITIONS**

- 5.1. The Seller does not furnish any explicit or tacit guarantees in regard to the property. The Purchaser acknowledges that he was not persuaded into entering this Agreement by any presentations made to him by the Seller or his representative other than what is contained in this Agreement.
- 5.2. The Purchaser acknowledges that he has inspected the property and is fully acquainted with the siting and condition thereof.
- 5.3. The property is sold to the Purchaser in the specific condition in which it stands and the Purchaser shall have no claim against the Seller in respect of any defects. The Purchaser should take note that in addition to possible visible defects, there may be also non- visible defects in the property.
- 5.4. In the event that the Consumer Protection Act 68 of 2008 does not apply to the transaction, it is hereby recorded that the property is sold voetstoots to the Purchaser.
- 5.5. The Seller shall not be liable for any deficiency in the extent of the property nor shall the Seller benefit by any possible excess in the extent thereof and the Seller does not accept any liability if the boundaries of the property are incorrect.
- 5.6. The property is sold subject to all existing conditions and servitudes mentioned or referred to in the current title deed of the property and conditions of township establishment, which is available for inspection at the offices of the Seller and to all such other servitudes and conditions which may exist in regard thereto and or which may have been imposed by any competent authority in consequence of the approval of the township.

**6. TRANSFER AND BOND COSTS**

- 6.1. Registration of transfer of the property shall be effected by the Conveyancers as soon as reasonably possible after the payment of the purchase price of the property and/or guarantees have been issued as contemplated in clause 3.2.3 above.
- 6.2. The Seller shall pay -
  - 6.2.1. all costs to effect registration of transfer of the property into the name of the Purchaser; and
  - 6.2.2. all costs relating to the registration of any bond over the property, provided that the Conveyancers are instructed to attend to the registration of the mortgage bond and that the bond is applied for by the Bond Originator or Agent.
- 6.3. All costs payable by the Seller as provided in clause 6.2 shall be paid within 7 (seven) days after being requested to do so by the Conveyancers.
- 6.4. Should any other conveyancer attend to the registration of the mortgage bond or the application is not made on behalf of the Purchaser through the Bond Originator or Agent, the Purchaser shall be liable for all costs relating thereto.
- 6.5. The Purchaser shall be liable for –
  - 6.5.1. payment of a pro-rata refund to the Seller in respect of rates and taxes payable to the Municipality in advance in order to obtain a clearance certificate for transfer of the property, such pro-rata sum to be calculated from date of occupation;
  - 6.5.2. all administration fees such as financial institution initiation-, valuation- and administrative fees, raised by the Bank granting the bond finance referred to in clause 12.1.2.
- 6.6. The Purchaser shall, within 7 (seven) days of receiving a written request from the Conveyancers, sign all transfer and/or bond documents and pay any costs for which he may be liable.
- 6.7. In the event of the Purchaser failing or neglecting to sign the transfer and bond documents and pay all costs for which he may be liable as provided in clauses 6.5 and/or 6.6, he shall, without prejudice of the Seller's rights as set out in clause 16, be liable to pay to the Seller interest on the total purchase price, calculated as set out in clause 24.

**7. LEGAL PERSONS AND TRUSTS**

- 7.1. Should the Purchaser sign this agreement in his capacity as nominee of a company to be formed and such company is not formed and registered within 60 (sixty) days from date of signature of this Agreement, or if the company is indeed formed and registered and does not ratify and adopt this Agreement, then the Purchaser in his personal capacity shall be regarded as the Purchaser in terms of this Agreement.
- 7.2. The Purchaser hereby undertakes and agrees not to alienate, sell, transfer, cede, assign, burden, encumber or otherwise dispose of any of the shares in such company until such time as the property has been transferred to and registered in the name of the Company.
- 7.3. Should the company ratify and adopt this agreement or should the Purchaser be an existing company or trust, then the signatory to this Agreement binds himself jointly and severally with the company or trust, as surety and co-principal debtor unto and in favour of the Seller for the punctual performance by the company or trust of all or any of the Purchaser's obligations assumed in this Agreement.
- 7.4. Should there be more than one Purchaser in terms of this agreement, such Purchasers are bound jointly and severally and in their personal capacities to the Seller for the punctual, proper and due performance of all their obligations assumed in this Agreement.

**8. HOME OWNERS ASSOCIATION**

- 8.1. The Purchaser acknowledges that he is required, upon the date of occupation, to become a Member of the Home Owners Association and irrevocably agrees to conduct himself strictly in accordance with and to be bound by the Memorandum of Incorporation and Rules of the aforesaid association, copies of which are available for inspection at the offices of the Seller.
- 8.2. The Purchaser is hereby expressly informed and accordingly acknowledges that he is aware that he will be liable, from the date of occupation, for payment of all contributions (levies) to the fund to be established by the Home Owners Association.
- 8.3. The Purchaser shall become and remain a member of the Home Owners Association as long as he remains the owner of the property.
- 8.4. The Purchaser shall not cede, assign or transfer the property to any person who has not bound himself to become a member of the Home Owners Association with effect from date of transfer of the property in that person's name and the Purchaser is obliged to and undertakes to notice the prospective new owner regarding the compulsory membership of the Home Owners Association.
- 8.5. The Purchaser declares himself to be aware of the following provisions, in its current or any amended form, to be included in the founding documents of the Home Owners Association:
  - 8.5.1. the developer shall have 100 votes in addition to the votes conferred upon it below, provided however that this provision shall apply during the development period only;
  - 8.5.2. every member, including the developer, in person or by proxy and entitled to vote, shall have 1 (one) vote for each erf registered in his name or in that of a juristic persona that he controls, as the case may be.
- 8.6. The conditions in clauses 8.3 and 8.4 above, in its current or any amended form, shall be registered as conditions of title of the property and the Purchaser undertakes to sign any documents that may be required for that purpose.

**9. ESTABLISHMENT OF TOWNSHIP**

- 9.1. The Seller warrants that the General Plan has been approved and that the Purchaser will take transfer of the stand, allocated such number as the surveyor general may determine, coinciding with the stand indicated on the General Plan.
- 9.2. A copy of the SITE DEVELOPMENT PLAN for the applicable township mentioned in clause 1.1.1 above is annexed to this Agreement (Annexure "A") in order to identify and define the applicable property hereby sold.
- 9.3. The Purchaser hereby agrees to the relaxation of any building line of the property as may be required by a neighbouring property and shall sign a Special Power of Attorney as set out in Annexure "C", to enable a representative of the Seller to act on the Purchaser's behalf.

**10. SERVITUDES TO BE REGISTERED**

Should it be necessary to register reciprocal servitudes of common access over and in favour of the property and such other properties as may share the common access area adjacent to or near the property the Purchaser hereby consents to and guarantees and undertakes, upon request by the Seller to sign all documents and to do all such things necessary to give effect to this clause, subject to such terms and conditions as may be reasonably imposed to ensure the most beneficial rights of access to the owners of all the properties concerned.

11. BUILDING CONTRACT

- 11.1. The Purchaser has been expressly informed that the property hereby purchased forms part of the development of the township.
- 11.2. This Agreement is conditional upon the Purchaser concluding a Building Contract with the contractor as set out in clause 12.1.1 below.
- 11.3. This Agreement forms part of and is indivisibly linked to the Building Contract and should this Agreement be cancelled for any reason whatsoever, the Building Contract will also be cancelled with immediate effect, without any further notice to the Purchaser.
- 11.4. Should the Building Contract be concluded but thereafter cancelled for any reason whatsoever prior to transfer, this Agreement will also be cancelled with immediate effect, without any further notice to the Purchaser.
- 11.5. Should the Building Contract, after the property has been registered into the name of the Purchaser, be cancelled for any reason whatsoever, the Seller shall, in its sole and absolute discretion have the right, after giving the Purchaser 7 (seven) days written notice, to retransfer the property from the Purchaser into the name of the Seller -
  - 11.5.1. without prejudice to the Seller's rights as set out in this Agreement –
  - 11.5.2. at the purchase price set out in clause 3.1;
  - 11.5.3. without the Purchaser becoming entitled to a refund of any costs or interest which he may have paid.
- 11.6. The Purchaser hereby irrevocably authorises \_\_\_\_\_ as his attorney and agent, to sign all documents which may be required for such retransfer, on behalf of the Purchaser.

12. BOND FINANCE

- 12.1. This agreement is subject to the following suspensive conditions:
  - 12.1.1. that a Building Contract be concluded between the Contractor and the Purchaser, for the erection of a dwelling house on the property, within 7 (seven) days from date of signature of this Agreement;
  - 12.1.2. that the Purchaser obtain a loan upon the security of a first mortgage bond to be passed over the property from a Bank or other recognised financial institution at prevailing bank rates and terms in the amount of not less than R..... (.....  
.....  
.....  
..... RAND)  
within 21 (twenty-one) days from date of signature of this Agreement hereof, both days inclusive, or within any extended period granted to the Purchaser by the Seller in writing. The parties agree that the issue of a pre-agreement quotation by any financial institution will constitute fulfilment of this condition.
- 12.2. The Purchaser undertakes, within 7 (seven) days from date of signature of this Agreement, to sign all documents relating to such application and to do all such things as may be required to make application for a loan to a financial institution through the Bond Originator or Agent.
- 12.3. The Purchaser acknowledges that he is familiar with all the applicable requirements of financial institutions relating to the

granting of a bond based on the Purchaser's income and liabilities, ability to pay and the total exposure of the Purchaser towards other financial institutions.

- 12.4. The Purchaser warrants that he is solvent and that no existing judgments are recorded against his name.
- 12.5. The Purchaser hereby irrevocably and unconditionally authorises and appoints the Bond Originator or Agent to make application for the mortgage bond on his behalf.
- 12.6. It is specifically agreed between the parties that, should –
  - 12.6.1. the Building Contract not be concluded as set out in clause 12.1.1; OR
  - 12.6.2. loan finance not be granted to the Purchaser, for any reason whatsoever, within the period provided for in clause 12.1.2; OR
  - 12.6.3. The Seller or the Bond Originator or Agent, at any time in their sole discretion, become of the opinion that it will be impossible to obtain the required loan finance for the Purchaser and advise the Purchaser thereof in writing;
 it shall be regarded that the suspensive conditions have not been fulfilled and this Agreement shall lapse and become null and void.
- 12.7. Any failure by the Purchaser to immediately, punctually and comprehensively comply with the requirements of clause 12.2 shall irrevocably be deemed by the parties to constitute a vital and material breach of this agreement.

13. ESTATE AGENT'S COMMISSION

- 13.1. The Purchaser acknowledges that he was introduced to the property and to the Seller by the Agent and indemnifies the Seller against any claim for agent's commission by any other estate agent.
- 13.2. The Seller shall be responsible for payment of estate agents' commission resulting from the conclusion of this Agreement to the Agent.

14. INDULGENCES AND WAIVERS

- 14.1. Any latitude, grace or extension of time which may be allowed or permitted by the Seller to the Purchaser in respect of any payment provided for herein, or any matter or thing which the Purchaser is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of any of the Seller's rights hereunder at any time to require strict and punctual compliance with each and every provision or term hereof or as a waiver of any of the Seller's other rights hereunder.
- 14.2. The remission of any payment, grant or any extension of time or relaxation of any term or condition or condonation of any breach hereof or any other permission, relaxation or indulgence which may be afforded by the Seller to the Purchaser shall **not** be deemed to be a waiver or a novation of any of the Seller's rights in terms hereof.
- 14.3. Unless expressly otherwise confirmed in writing by the Seller, no receipt of any payment by the Seller or the Agent or the Conveyancer will in any manner whatsoever prejudice the Seller or be deemed to be a waiver, withdrawal or abandonment of any cancellation or right of cancellation which the Seller may have acquired prior to such receipt.

15. RIGHT TO TERMINATE

- 15.1. In terms of Sections 2A and 29A of the Alienation of Land Act, 68 of 1981, the Purchaser may within 5 (five) days (any Saturday, Sunday or public holiday excluded) after date of signature by him, unconditionally terminate this contract by written and signed notice to the Seller at his address for service; provided that -
  - 15.1.1. the purchase price does not exceed the amount of R250 000-00 (TWO HUNDRED AND FIFTY THOUSAND RAND); and
  - 15.1.2. the Purchaser is a natural person purchasing the property for residential purposes for the first time by a private treaty in his personal capacity.
- 15.2. Where this Agreement is terminated as contemplated in paragraph 15.1 above, every person who received any amount from the Purchaser shall refund the full amount of such payment to the Purchaser within 10 (ten) days of the date on which the notice referred to in clause 15.1 was delivered to the Seller.
- 15.3. In the event that this Agreement is entered into as a result of direct marketing, the Purchaser may in terms of Section 16 read with Section 32 and the Regulations of the Consumer Protection Act 68 of 2008, terminate this Agreement without reason or penalty by giving written notice to the Seller within 5 (five) business days after the date on which this Agreement was signed by the Purchaser.
- 15.4. The Purchaser will deliver the notice referred to in clause 15.3 by hand to the Seller's address for service within the aforesaid period.

16. BREACH

- 16.1. Should either party ("the defaulting party") commit any breach of this Agreement (including failing to make any payments on due date) and fail to remedy such breach within 7 (seven) days after date of delivery of a written notice to him requiring to remedy such breach, then the other party ("the aggrieved party") shall be entitled to -
  - 16.1.1. cancel this agreement without prejudice to any other remedies which he may have at law; OR
  - 16.1.2. to claim specific performance of the defaulting party's obligations in terms of this Agreement.
- 16.2. Should the Purchaser be the defaulting party in accordance with clause 16.1 and this Agreement is cancelled in accordance with clause 16.1.1, then the Seller shall be entitled to retain all amounts paid by the Purchaser -
  - 16.2.1. as his sole and exclusive property, as a genuine pre-estimate of the damages suffered by the Seller as a result of such cancellation;
  - 16.2.2. until the damages suffered by the Seller as a result of such cancellation has been determined, whereafter the Seller shall be entitled to set off the retained amount against such damages and to recover the balance from the Purchaser.
- 16.3. Any claim for specific performance by the Seller in accordance with clause 16.1.2 may include immediate payment of the full balance of the purchase price plus interest and all other amounts still due in terms hereof.
- 16.4. Should this agreement be cancelled as envisaged in clause 16.1.1 above, the Purchaser will immediately forfeit or abandon any rights which he may have acquired in and to the property to the Seller, and the Purchaser hereby irrevocably agrees and undertakes to immediately vacate the property.

- 16.5. Notwithstanding the provisions of clauses 16.1 and without prejudice to any of the Seller's rights, the parties agree that an amount of R10 000,00 (TEN THOUSAND RAND) of the purchase price will be forfeited to the Seller as a genuine pre-estimated damages should this agreement be cancelled as a result of the Purchaser's breach of contract and the Purchaser hereby irrevocably instructs the Conveyancers to pay such pre-estimated damages from any amount retained by them to the Seller on behalf of the Purchaser.
- 16.6. Should the estate of either party be finally sequestered or liquidated (as the case) may be or any party be placed under judicial management; then the other party shall be entitled to cancel this Agreement and to recover all damages suffered by the aggrieved party as a result of such cancellation.

17. ADDRESS FOR SERVICE (DOMICILIUM CITANDI ET EXECUTANDI)

- 17.1. The parties hereby choose their respective addresses for service of all documents, notices and processes, for all purposes of this Agreement at:

17.1.1. Seller : 253 Monument Road  
 GLEN MARAIS EXT 1  
 Kempton Park  
 e-mail: info@jtgroup.co.za

17.1.2. Purchaser : .....  
 .....  
 .....  
 E-mail .....

or at such other **physical** address either party may from time to time by written notice direct.

- 17.2. Any notice given in terms of this Agreement shall be sent by electronic mail or delivered by hand or sent by prepaid registered post.
- 17.3. All notices given by either party to the other shall be deemed to have been received by and communicated to the Addressee on the date on which the same is **delivered** to the addressee's address for service (domicilium citandi et executandi) by hand, or if e-mailed on the first business day following the proven date of sending and if posted, within four (4) days of posting.
- 17.4. Notice of change of an address stated above shall be given in writing and shall be delivered as provided for in clause 17.2.
- 17.5. Notwithstanding anything to the contrary contained herein, a written notice as communication actually received by one party from the other shall be an adequate notice, notwithstanding that it was not sent or delivered at such party's chosen domicilium citandi et executandi.

**18. INSTALLATION OF GENERATOR**

- 18.1. The Seller shall, upon completion and occupation of at least 64 (being approximately 80% (eighty percent)) of the dwellings erected in the Estate, install a generator to supply the Estate with emergency electricity in the event of an interruption in the main supply, at the location marked on plan "A".
- 18.2. The Purchaser acknowledges that, after installation of the generator in accordance with clause 19, the responsibility for the maintenance and use of fuel shall pass to the Home Owners Association, who shall make provision for the costs in the levy budget for the Estate.

**19. TELECOMMUNICATION AND/OR DATA NETWORK AND INFRASTRUCTURE**

- 19.1. The Seller records that it has entered into an agreement with LIBERTY LANE 779 (PTY) LTD (Registration Number 2014/005643/07) in accordance with which agreement LIBERTY will install and operate telecommunication and/or data network infrastructure ("the network") in the township.
- 19.2. The extent and standard of the network shall remain at the sole and absolute discretion of the Seller and/or LIBERTY.
- 19.3. The Purchaser acknowledges that the network shall remain the property of the Seller and/or LIBERTY.
- 19.4. The Seller and/or LIBERTY, in its sole and absolute discretion, shall –
- 19.4.1. remain responsible for the maintenance of the network;
- 19.4.2. have the right to lease the network to any third party on terms and conditions acceptable to the Seller and/or LIBERTY;
- 19.4.3. own the network in its entirety, including but not limited to ducts, joining pits, covers and conduit network installed in or on each erf and/or dwelling in the township for this purpose.
- 19.5. The Purchaser (and/or its successor in title) or any tenant –
- 19.5.1. shall –
- 19.5.1.1. allow access to the network at all times for maintenance, repair and/or for upgrades;
- 19.5.1.2. not interfere with any aspect of the network;
- 19.5.1.3. save for digital satellite equipment, not allow any other telecommunications infrastructure to be affixed to any part of the building internally or externally other than that owned by the Seller and/or LIBERTY;
- 19.5.1.4. be responsible for any damage to the network which maybe incurred by himself, his tenant/s and/or any other person directly affiliated to him;
- 19.5.2. agrees -
- 19.5.2.1. that the costs for any damage/s referred to in clause 19.5.1.4 above to be collected on behalf of the Seller and/or LIBERTY by the Home Owners Association or managing agent representing the Home Owners Association;
- 19.5.2.2. to the placement and/or relocation of the common antenna anywhere on the land best suitable for its use. This may include property owned by the Home Owners Association and or the outside of a dwelling on any individual erf.

- 19.5.3. notes that the placement of the antenna might include mountings, footings and/or such other structures that might be required for the erection of the common antenna.

19.6. It is specifically agreed between the parties that –

- 19.6.1. The Seller and/or LIBERTY shall be entitled to cede its rights and obligations in terms of the agreement referred to in clause 19.1 to any third party, on such terms and conditions as may be acceptable to the Seller and/or LIBERTY in its sole and absolute discretion;
- 19.6.2. The conditions set out in clause 19.4 and 19.5 above shall be incorporated into the founding documents or rules and regulations of the Home Owners Association.

**20. JURISDICTION**

The parties have the option to–

- 20.1. institute any action or proceeding arising out of this Agreement in a Magistrate's Court of competent jurisdiction, notwithstanding that the amount involved in such action or proceeding may be beyond the jurisdiction of said Court. The Purchaser hereby consents in terms of Section 45 of Act 32 of 1944 (as amended) to the said jurisdiction, such consent being regarded as an ad hoc consent with regard to any action or proceeding brought by the Seller in such Court; OR
- 20.2. institute action or proceeding in a High Court of competent jurisdiction.

**21. WHOLE CONTRACT**

- 21.1. This Agreement constitutes the whole agreement between the parties and neither of the parties shall be bound by any terms, conditions, representations, warranties, amendments or the like unless reduced to writing and signed by both parties.
- 21.2. No alteration, variation or addition to this Agreement shall be of any force or effect unless and until it shall have been reduced to writing and signed by both parties.
- 21.3. If any clause or terms of this Agreement should be invalid, unenforceable or illegal, then the remaining terms of this Agreement shall be deemed to be severable therefrom and shall continue to be in full force and effect, unless such invalidity, unenforceability or illegality goes to the root of this Agreement.
- 21.4. The Purchaser declares himself to be fully aware that the property forms part of land that has been made available to the Contractor for development. It is specifically recorded that the Seller is NOT a party to the agreement to be entered into between the Purchaser and the Contractor as set out in clause 11 above and the Seller shall not be held responsible for any obligations of the Contractor towards the Purchaser in terms of such Building Contract.

**22. THE CONSUMER PROTECTION ACT**

- 22.1. The Seller has, in the drafting of this Agreement, used its best endeavours to ensure compliance with all application laws and, without derogating from the generality hereof, more specifically the Consumer Protection Act ("the CPA"). Should this Agreement at any time require amendment in order to comply with the CPA, the Purchaser by virtue of his signature hereof, agrees to any such amendment which will be set out in a schedule to this Agreement.
- 22.2. The Purchaser agrees to sign any amendment in accordance with clause 22.1 within 7 (seven) days after receipt of a written request from the Seller, which amendment will be effective from the date of signature by both parties.



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SIGNED by the **PURCHASER** at ..... this ..... day of ..... 202\_\_.

AS WITNESSES:

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

\_\_\_\_\_  
**PURCHASER** (represented by its duly authorised representative/s if applicable)

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

\_\_\_\_\_  
**PURCHASER** (represented by its duly authorised representative/s if applicable)

SIGNED for and on behalf of the **SELLER** at KEMPTON PARK this..... day of.....202\_\_.

AS WITNESSES:

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

\_\_\_\_\_  
**SELLER** (represented by its duly authorised representative)

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

Print name and designation: \_\_\_\_\_

\_\_\_\_\_  
**SELLER** (represented by its duly authorised representative)

Print name and designation: \_\_\_\_\_

**INFORMATION TO BE OBTAINED FOR PURPOSES OF FICA COMPLIANCE**

**The Purchaser/s hereby warrant/s that all the information provided to the Seller and/or Agent as set out above and herein below, are to the best of his belief both true and correct to enable compliance by the Seller and/or Agent, with the provisions of the Financial Intelligence Centre Act 38 of 2001.**

**A) DETAILS OF INDIVIDUAL PURCHASER/S IF NATURAL PERSON/S:**

1. Full names : .....

Identity No. : .....

Tax number : .....

Residential Address : .....

Postal address : .....

Telephone number : (.....)(W)  
 (.....)(H)  
 (.....)(C)

Fax number : (.....)

E-mail address : .....

Occupation : .....

Name of employer : .....

Street address of employer : .....

Period of employment : .....

Contact details of employer : .....

***If period of employment is less than 3 years:***

Previous employer : .....

Contact details : .....

Postal address of employer : .....

Bank name : .....

Account number : .....

Type of account : .....

Branch code : .....

Warranted income : R ..... per month

**MARITAL STATUS** : (mark applicable status with "X")

<b>SINGLE</b>	<b>DIVORCED</b>	<b>MARRIED</b>			
		COP		ANC	

Spouse : Full name : .....

Identity number: .....

Contact number: .....

2. Full names : .....
- Identity No. : .....
- Tax number : .....
- Residential Address : .....
- Postal address : .....
- Telephone number : (.....).....(W)
- (.....).....(H)
- .....(C)
- Fax number : (.....).....
- Email address : .....
- Occupation : .....
- Name of employer : .....
- Street address of employer : .....
- Period of employment : .....
- Contact details of employer : .....
- If period of employment is less than 3 years:**
- Previous employer : .....
- Contact details : .....
- Postal address of employer : .....
- Bank name : .....
- Account number : .....

Type of account : .....

Branch code : .....

Warranted income : R ..... per month

**MARITAL STATUS** : (mark applicable status with "X")

<b>SINGLE</b>	<b>DIVORCED</b>	<b>MARRIED</b>			
		COP		ANC	

Spouse : Full name : .....

Identity number: .....

Contact number: .....

**B) DETAILS OF TRUST, CLOSE CORPORATION OR COMPANY AS PURCHASER:**

Registration number : .....

Please submit a copy : Certificate of appointment as trustee

Appointment as director

Founding statement

Capacity of 1st person/s signing agreement:

Trustee		<b>Director</b>		<b>Member</b>		<b>Surety</b>	
---------	--	-----------------	--	---------------	--	---------------	--

Capacity of 2nd person/s signing agreement:

Trustee		<b>Director</b>		<b>Member</b>		<b>Surety</b>	
---------	--	-----------------	--	---------------	--	---------------	--

SIGNED by the PURCHASER (represented by its duly authorised representative, if applicable) at \_\_\_\_\_  
 on this \_\_\_\_ day of \_\_\_\_\_ 202\_\_

**AS WITNESSES:**

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

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

**IMPORTANT ACKNOWLEDGEMENT BY OWNER**

I / We, the Owner/s, confirm that:

- I/we understand the meaning and effect of all the clauses contained herein;
- All blank spaces have been completed, or deleted;
- I/we understand my/our obligations, assumption of certain risks and indemnities I/we provide to the Contractor herein.

\_\_\_\_\_   
Date

\_\_\_\_\_   
OWNER

\_\_\_\_\_   
OWNER

## **Building Contract: *Kingfisher Estates***

concluded by and between:

**JTC CONSTRUCTION (PROPRIETARY) LIMITED**  
**REGISTRATION NUMBER: 2011/004711/07**  
**253 MONUMENT ROAD, GLEN MARAIS X1, KEMPTON PARK, 1619**

represented herein by its duly authorised representative,  
(hereinafter referred to as “**the CONTRACTOR**”)

AND

- |  |
|--|
| 1. ....<br>(Full names & Identification Number or Trust/Company/CC name & Registration Number) |
| 2. ....<br>(Full names & Identification Number or Trust/Company/CC name & Registration Number) |

(hereinafter referred to as “**the OWNER**”)

in respect of

**ERF \_\_\_\_\_, GLEN MARAIS EXTENSION 73**

(hereinafter referred to as "the property").

**PREAMBLE**

- A. The OWNER has entered into an Agreement of Sale ("the Sale Agreement") with the Developer, in terms whereof the property as set out in clause 1.1.2 was acquired by him/her/them;
- B. It is a condition precedent of the Sale Agreement that the OWNER shall enter into a building contract with the CONTRACTOR, for the erection and construction by the CONTRACTOR of a dwelling and outbuildings (if any) ("the Works") on the property, for and on behalf of OWNER.
- C. The parties desire to record the terms and conditions which they agree upon for the erection and completion of the building works by the CONTRACTOR for the OWNER, as set out herein.

**1. DEFINITIONS**

1.1 In this agreement, unless inconsistent with or otherwise indicated by the context, the following words or expressions shall have the following meanings:

1.1.1 **"Developer"** means GERVOON IMPORTS AND EXPORTS PROPRIETARY LIMITED of 253 Monument Road, GLEN MARAIS X1, Kempton Park;

1.1.2 **"property"** means Erf \_\_\_\_\_, GLEN MARAIS EXTENSION 73, Registration Division IR., Province of Gauteng, measuring approximately \_\_\_\_\_ square metres, which together forms **"KINGFISHER ESTATE"**;

1.1.3 **"General Plan"** means plan SG No 3031/2017 for the whole of X73 forming Kingfisher Estate;

1.1.4 **"Sale Agreement"** means the Agreement of Sale in respect of the Property, concluded between the OWNER and the Developer;

1.1.5 **"Architect"** means JOHAN MARAIS DESIGN STUDIO;

1.1.6 **"Attorneys"** means BARNARDS of Unit 3, Glen Eagle Office Park, 37 Koorsboom Avenue, Glen Marais, KEMPTON PARK : Tel No: (011) 975-2667;

1.1.7 **"the Agent"** means the duly authorised Estate Agency or individual estate agent appointed by the Developer;

1.1.8 **"Bond Originator"**: means the mortgage bond originator appointed by the Developer;

1.1.9 **"financial institution"** or **"Bank"** means any bank or financial institution which may provide the OWNER with a loan to finance the building contract price or any portion thereof against security of registration of a mortgage bond over the property;

1.1.10 **"building plan"** means the provisional plan annexed hereto, marked "B", being for type "UNIT\_\_\_\_\_", measuring \_\_\_\_\_ square metres and subject to clause 5.2;

1.1.11 **"building contract price"** means the total consideration, payable to the CONTRACTOR by the OWNER to erect the Works as set out in paragraph 4 hereof;

1.1.12 **"commencement date"** means the date on which the CONTRACTOR takes control of the property in order to commence building operations, such date being a date determined by the CONTRACTOR and which shall be after approval of the building plans, registration of the OWNER's bond (if applicable),

deposit of any shortfall or the building contract price (if applicable), and connection of building water to the property;

1.1.13 **"estimated completion date"** means the date upon which the CONTRACTOR estimates that the Works will be fully completed and ready for handover to the OWNER, of which date the CONTRACTOR shall inform the OWNER as set out in clause 3.5 and to be confirmed in writing at least 30 (thirty) days prior to the completion date;

1.1.14 **"completion date"** means the date upon which the Works are fully completed and an Occupation Certificate issued by the local authority;

1.1.15 **"handover date"** means **either** the date on which a final inspection will be held at the property between the CONTRACTOR and the OWNER, which inspection will be arranged by the CONTRACTOR and held as soon as reasonably possible but not later than 3 (three) days after the completion date **or** the date as set out in clause 6.3, whichever is applicable.

1.1.16 **"final completion form"** means the final completion form to be completed and signed by the OWNER and the CONTRACTOR on the handover date, certifying that the Works have been completed in accordance with the Building Plan and Specification and the terms of this agreement, after which the OWNER will have 14 (fourteen) days to provide the CONTRACTOR with a snag list of outstanding minor works or snags to be completed or attended to within a reasonable time after the occupation date;

1.1.17 **"minor works/ snags"** means all finishing-off work outstanding on the handover date, as listed on the snag list;

1.1.18 **"Defects"** means major structural defects as defined in section 13 of the Housing Consumers Protection Measures Act 95 of 1998 which Defects arise from non-compliance with the NHBRC Technical Requirements;

1.1.19 **"Specifications"** means the detailed basic specifications annexed hereto and marked "C", comprising the standard specification 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 specified materials proving to be unavailable, the CONTRACTOR reserves the right to use alternative materials of reasonably equal standard after consultation with the OWNER;

1.1.20 **"Package Schedule"** means the schedule annexed hereto and marked "D", setting out all the financial details of this agreement, including (without derogating from the generality hereof) the basic building price, cost of any optional extras and any cash deposit required;

1.1.21 **"Works"** means the construction, completion and finishing-off of a private domestic dwelling house and outbuildings (if any) substantially in accordance with the building plan and specifications;

1.1.22 **"occupation date"** means the date upon which the OWNER takes occupation (or is deemed to take occupation) of the dwelling after the handover date, as set out in clauses 3.3 or 3.4 below;

1.1.23 "snag list" means a list to be completed by the OWNER within 14 (fourteen) days after the handover date, listing all the outstanding minor works / snags to be attended to at that date;

1.1.24 "days" means working days from Monday to Friday, but excluding Saturdays, Sundays and public holidays;

1.2 Clause headings have been inserted for reference purposes only and shall be disregarded in the interpretation hereof.

1.3 Words signifying singular include plural and vice versa and words importing one gender shall include the others.

**2. BUILDING CONTRACT**

2.1 The parties enter into a Building Contract at an agreed price as set out in clause 4.1, for the erection and completion of the Works on the property by the CONTRACTOR for and on behalf of the OWNER, on the terms and conditions set out hereinafter;

2.2 This Building Contract is linked to and forms an indivisible part of the Sale Agreement and in the event of -

2.2.1 this Building Contract; or

2.2.2 the Sale Agreement,

being cancelled for any reason whatsoever, then the Sale Agreement or this Building Contract (whichever may be applicable) shall also ipso facto be simultaneously cancelled without any further notice being required.

**3. POSSESSION AND OCCUPATION**

3.1 The CONTRACTOR, its agents, servants and subcontractors shall at all times until the Works have been completed and the OWNER has signed and handed to the CONTRACTOR the final completion form, be entitled to enter and be present on the property for construction purposes. The CONTRACTOR shall further be entitled to enter into and be present on the property for purposes of completing minor works and snags listed on the snag list.

3.2 At no time whatsoever shall the OWNER be entitled to make claim, attach or in any way claim possession or retention of any of the CONTRACTOR's tools, equipment or building material and by signature hereof the OWNER waives all or any right which he may have acquired in this regard.

3.3 The OWNER shall be obliged to take occupation and possession of the Works at a date agreed upon between the parties but **not later** than 14 (fourteen) days after the handover date and it shall be incumbent on the OWNER to monitor progress of the Works in order to enable him to make whatever arrangements which may be necessary or required by him to:

3.3.1 take possession and occupation of the Works;

3.3.2 make payment of all or any amounts which may then still be due by him to the CONTRACTOR.

3.4 Should the OWNER fail to take occupation and possession of the Works as provided in clause 3.3 OR on such other date as may be agreed between the parties in writing -

3.4.1 it shall irrevocably be deemed for all purposes hereunder, that the OWNER has effectively and fully taken occupation and possession of the property and Works as set out in clause 3.3 and that all items on the

snag list have been completed and accepted by the OWNER;

3.4.2 the CONTRACTOR shall not be responsible for any damages to the property after the deemed occupation date and the OWNER shall at his own cost provide security for the property against any vandalism and/or theft and/or any other damages thereto.

3.5 **The CONTRACTOR shall, within 14 (fourteen) days from the commencement date as defined in clause 1.1.12, inform the OWNER of the estimated occupation date in writing. It is recorded that -**

3.5.1 subject to the bond being registered and/or required proof regarding payment arrangements being submitted by the estimated building commencement date, the date on which the OWNER shall be able to occupy the property is estimated to be approximately 150 (one hundred and fifty) days after the commencement date, subject to the provisions of clause 5.6.

3.5.2 should the CONTRACTOR be unable to meet the estimated occupation date defined in clause 1.1.12 and referred to in clause 3.5.1, he shall be obliged to inform the OWNER in writing thereof at least 30 (thirty) days in advance.

**4. BUILDING CONTRACT PRICE**

4.1 The building contract price shall be R.....

(.....  
.....  
.....  
.....

RAND), which shall be paid to the CONTRACTOR by way of progress payments in accordance with clause 4.2 and/or 4.3.

**4.2 Payments from Bond Finance:**

4.2.1 Progress payments shall be made from the loan to be obtained by the OWNER as set out in clause 7 (if applicable, subject to clause 4.3 below).at the request of the CONTRACTOR in such amounts as may be authorised by the inspection committee of the financial institution holding a bond over the property The final payment shall be made upon the issue of an Occupation Certificate in respect of the building.

4.2.2 Should the inspection committee referred to in clause 4.2.1 fail to authorise any progress payment or the final payment within four (4) days of a written request by the CONTRACTOR for it to do so, the OWNER shall immediately become liable for such payment and the provisions of clause 10.3 shall mutatis mutandis apply upon expiry of the fourth (4th) day after the date of such request.

- 4.2.3 The OWNER agrees and undertakes to cede to the CONTRACTOR a sum equal to the building contract price or the balance thereof outstanding from time to time from the proceeds of the loan and to sign any authority for payment thereof direct to the CONTRACTOR or his nominee by the financial institution in the form of building draws or periodic payments.
- 4.2.4 The OWNER acknowledges being aware that the financial institution will, from the first draw of debit against the loan, charge interim interest on the amount outstanding from time to time, and that –
- 4.2.4.1 the CONTRACTOR shall pay the first R30 000,00 (THIRTY THOUSAND RAND) charged by the Bank for such interim interest, which is provided for in the building contract price;
- 4.2.4.2 the OWNER shall be obliged to pay any shortfall in the final payment to the CONTRACTOR as a result of such interim interest being charged over and above the amount for which the CONTRACTOR is responsible as set out in clause 4.2.4.1, which payment shall be made on or before the occupation date.
- 4.3 **Payment of shortfall / building contract price for a cash transaction:**
- 4.3.1 It is specifically agreed that, should -
- 4.3.1.1 the amount of the loan to be obtained by the OWNER as set out in clause 7 be less than the building contract price, leaving a shortfall to be paid by the OWNER; or
- 4.3.1.2 this be a **CASH TRANSACTION** where the erection of the dwelling is funded by the OWNER and not by way of a loan from a financial institution;
- such shortfall or the total building contract price (whichever may be applicable) shall be deposited in cash by the OWNER into the trust account of the Attorneys **OR ALTERNATIVELY**, payment thereof secured by way of guarantees acceptable to the CONTRACTOR in its sole and absolute discretion, within 14 (fourteen) days after date of signature of this agreement.
- 4.3.2 Any funds deposited into the trust account of the Attorneys in accordance with clause 4.3.1 will be invested in an interest bearing account for the benefit of the OWNER for payment to the CONTRACTOR in accordance with clause 4.3.3 below.
- 4.3.3 All payments to be made to the CONTRACTOR from any cash deposit OR from any guarantees issued in accordance with clause 4.3.1 shall be paid to the CONTRACTOR against certificates of completion, determined and signed by the Architect as reflected in his certificates of the percentage of completion.
- 4.3.4 Should a cash paying OWNER referred to in clause 4.3.1.2 fail to authorise and make any progress payment or the final payment within four (4) days of a written request by the CONTRACTOR for the OWNER to do so, the OWNER shall immediately become liable for such payment and the provisions of clause 10.3 shall mutatis mutandis apply from the fourth (4th) day after the date of such request.
- (Refer to the attached Package Schedule for a breakdown of the calculated building contract price and payment details).*
- 4.4 Notwithstanding amounts having become payable to the CONTRACTOR as contemplated in clause 4.2 or 4.3, the CONTRACTOR may in its sole discretion and at any time claim one or more progress payments or any part thereof after the date upon which any portion or section of the Works has been completed and such amounts have accrued in favour of the CONTRACTOR and in so doing the CONTRACTOR shall not be deemed to have waived any of its rights.
- 4.5 Should there be any dispute relating to the completion of any section of the Works, in particular the final section, then and in such event, the matter will be referred to the Architect appointed by the CONTRACTOR, whose determination will be final and binding on the parties. The costs hereof will be for the account of the OWNER and CONTRACTOR in equal shares.
- 4.6 Notwithstanding the above and the actual state of completion of any particular section or portion of the Works, the parties may at any time agree that any amounts have accrued in favour of the CONTRACTOR, whereupon the CONTRACTOR shall be entitled to make claim for the payment of such amounts agreed upon.
- 4.7 Where any section of the Works has been partially completed, the value of the completed part shall be a fair and reasonable proportion of any progress payment and a certificate signed by any director or manager of the CONTRACTOR specifying 'the value of the Works' shall be sufficient and conclusive evidence of that value.
- 4.8 If –
- 4.8.1 commencement of the Works is delayed for a period in excess of five (5) calendar months from date of signature hereof for any reason other than a reason attributable to the fault or omission of the CONTRACTOR;
- OR
- 4.8.2 a price increase of more than 4% (four percent) occurs in the total cost of material and labour to construct the dwelling OR is expected to occur prior to the date of completion of the dwelling;
- and registration of transfer of the property into the name of the OWNER has not yet occurred, then the CONTRACTOR shall be entitled in its sole discretion to resile from this agreement by giving 7 (seven) days written notice to the OWNER, (with neither party having any further claim against the other) UNLESS the parties agree to an adjustment to the Building Contract Price in accordance with any increases in the cost of material and labour which might in the interim have occurred.

- 4.9 Should clause 4.8.2 become applicable after transfer of the property into the name of the OWNER; the OWNER shall become liable for payment of such increased cost to the CONTRACTOR, which costs shall be payable within 5 (five) working days after receipt of written request from the Contractor but at all times prior to occupation of the property.
- 4.10 In the event of the parties being incapable of agreeing to the extent of an adjustment to the Building Contract price as set out in clause 4.9; then a quantity surveyor, appointed by the CONTRACTOR, shall determine the amount of the adjustment and the quantity surveyor's determination shall be final and binding on the parties.
- The OWNER shall be informed of the name of the quantity surveyor and the costs of such quantity surveyor shall be for the account of the OWNER.
- 4.11 Any shortfall in the total amount available from the bond finance and/or the payment into the trust account of the Attorneys or guaranteed as set out in clause 4.3.1 as a result of the increase in the Building Contract Price in accordance with clause 4.8.2 OR 4.9, shall be payable by the OWNER proportionately as the increased costs on the material and/or labour becomes payable by the CONTRACTOR to the relevant supplier or subcontractor, OR as may be agreed by the parties in writing.
- 4.12 The OWNER shall be in breach of this contract if he interferes with or refuses to cooperate with the payment process or refuses to make any payment as set out in this clause 4. The OWNER's attention is specifically drawn to paragraph 10.3 of this agreement, which provides for the payment of interest on the Building Contract Price by the OWNER.
- 4.13 The OWNER is not entitled to retain any portion of the Building Contract Price or withhold payment of any portion of the Building Contract Price or any retention amount, due to Defects or repair work that arise after the handover date.
- 4.14 On the handover date the CONTRACTOR shall be entitled to payment in full.
- 4.15 Any outstanding minor works / snags shall not in any manner be construed as a cause to claim non-completion and/or entitle the OWNER to withhold payment of any amount due and payable to the CONTRACTOR.
- 4.16 In the event of joint owners, such owners shall be jointly and severally liable for payment of all amounts due in terms of this Agreement.
- 5. WORKS AND COMPLETION**
- 5.1 The OWNER acknowledges that he has inspected the building plan and the specifications attached hereto (which shall both form part of this agreement), for the type of house and outbuildings, (if any), to be constructed as the Works.
- 5.2 Notwithstanding the meaning of "building plan" or "specifications" as defined in the relevant sub-clauses to clause 1, the parties specifically agree that the CONTRACTOR shall be entitled to adapt or amend the building plan and/or the specifications in any way which the CONTRACTOR considers necessary in its sole and absolute discretion:
- 5.2.1 to meet any or all the requirements of any competent authority;
- 5.2.2 to meet any special features of the property not taken into account by the Architect;
- 5.2.3 to meet any special impediments such as water, sewer or electrical lines either above or underground, or any rock, geological or other soil condition which were not known or apparent at the design stage of the Works;
- 5.2.4 to give effect to any changes in materials, finishes or fittings which may not be readily available at the time due to a shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the Works;
- 5.3 Any such adaptation in terms of the above clause 5.2 shall be deemed to be the building plan and/or specifications agreed upon between the parties it being specifically agreed that under no circumstances will any alterations or additions be accepted by the CONTRACTOR at the insistence or request of the OWNER once the bond application has been approved, except when a written Variation Order which includes prices have been agreed to and signed by the parties.
- 5.4 The OWNER hereby irrevocably appoints the CONTRACTOR as his agent to apply for and obtain such approvals, consents or authorisations as may be required for approval of the building plan.
- 5.5 The CONTRACTOR shall begin the Works within a reasonable time after the signing of this agreement, having regard to its other building commitments, provided that it shall not be obliged to begin the Works unless and until receipt of :
- 5.5.1 proof to the satisfaction of the CONTRACTOR that an adequate building loan has been raised and the bond referred to in clause 7 registered or, in the instance of a shortfall or a cash transaction, that the OWNER is financially able to meet his commitments in terms of this contract and has made arrangements acceptable to the CONTRACTOR for payment of the contract price; and
- 5.5.2 all the required consents, approvals or authorisations have been obtained;
- 5.5.3 final sketch plan and associated cost variations have been approved;
- 5.5.4 the property is registered in the name of the OWNER.
- 5.6 Subject to any reasonable extension/s permitted, the CONTRACTOR shall endeavour to complete the Works within 150 (one hundred and fifty) days from the commencement date. It is specifically agreed that the CONTRACTOR shall not be liable for any damages which may be suffered by the OWNER, should the Works not be completed within this time period for any reason beyond the control of the CONTRACTOR as set out in clause 5.7 hereafter.
- 5.7 Should the completion of the Works be delayed by any cause whatsoever including any natural or unavoidable catastrophic event or building industry holidays, whether statutory or generally recognised as customary in the industry, which may fall within the contract period, or in the event of any dispute, strike, lockout, squatting, invasion or any other situation causing delay, then the CONTRACTOR shall be entitled to a fair and reasonable extension of time for the completion of the Works and the OWNER shall not for that reason have any claim against the CONTRACTOR, whether for damages or otherwise.
- 5.8 Any unfixed materials required for the Works and delivered to the property shall not become the property of the OWNER until they have been paid for. Excess material delivered to the property shall remain the property of the CONTRACTOR.

- 5.9 The OWNER shall on demand be responsible for entering into any agreement or into any other arrangement that may be required for the supply of water and electricity to the property. The OWNER will be liable for payment of any deposit that must be paid to the municipality to connect the electricity supply to the Property.
- 5.10 The CONTRACTOR shall in its sole discretion and at its option be entitled to postpone the commencement date of the building Works for any period of time should :
- 5.10.1 the building plans and/or any other approvals and consents to be obtained from the local authority not have been obtained within ninety (90) days from date of signature hereof by the CONTRACTOR;
- 5.10.2 at any time prior to or during the construction period, circumstances arise which make it difficult or impossible for the CONTRACTOR to proceed with the Works such as political upheaval, riots, squatting, invasion, boycotts, strikes, lock-outs or any other situation which may be dangerous for the general safety of the CONTRACTOR or any of its workers, servants or sub-contractors;
- 5.11 On the happening of any of the events set out in clause 5.10, the OWNER shall have no claim whatsoever against the CONTRACTOR for damages. It is specifically agreed that the CONTRACTOR's rights as contemplated in clause 5.10 will not cause or affect the acquisition of the property or entitle the OWNER to cancel this agreement.
- 5.12 Notwithstanding any diagram, sketch or plan which may have been annexed hereto and which indicate the position of the Works in relation to the erf boundaries, the actual siting, orientation or positioning of the Works in relation to the erf boundaries shall always remain within the sole and absolute discretion of the CONTRACTOR.
- 5.13 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 forthwith become payable on the handover date.
- 5.14 The risk in the Works shall pass wholly and entirely to the OWNER as from the handover date.
- 5.15 On the handover date the CONTRACTOR and OWNER will attend a joint site inspection and the OWNER will thereafter have a period of 14 (fourteen) days to draw up a snag list to be attached to the Final Completion Form after completion or rectification of the snags listed.
- 5.16 The CONTRACTOR will rectify or complete the minor works / snags as contained in the snag list within a reasonable time from date of receipt thereof from the OWNER.
- 5.17 Any dispute as to whether the said snags have been satisfactorily repaired or completed or carried out by the CONTRACTOR, shall be referred to the Architect acting as an expert and not as an arbitrator and his decision shall be final and binding on the parties.
- 5.18 Should the OWNER fail to submit the Minor Works / Snags list within the aforesaid period, it shall be deemed that the OWNER has accepted that the Works have been completed in a proper and workmanlike manner and are in proper condition and state of repair in all respects and the CONTRACTOR shall have no further obligation towards the OWNER in terms hereof, save for the guarantees contained in the Housing Consumer Protection Measures Act.
- 6. DEFECTS**
- 6.1 The CONTRACTOR shall only be liable to repair Defects in the Works caused by the noncompliance with the NHBC Technical Requirements as specified in section 13 of the Housing Consumer Protection Measures Act, 95 of 1998.
- 6.2 Although every care is taken to provide a home of the highest quality, the CONTRACTOR shall not be liable for damage or loss caused by misuse, negligence, abuse or accident or any risk insured against by the OWNER's Home Owners Insurance Policy required by the Financial Institution in respect of the residential property nor does it cover any of the exclusions provided for in the regulations to the Housing Consumer Protection Measures Act 95 of 1998.
- 6.3 For purposes of this Agreement, the occurrence of any one of the following (and whichever event may occur first) shall constitute the handover date:
- 6.3.1 the date on which the CONTRACTOR offers to formally hand over the keys to the Works to the OWNER; or
- 6.3.2 the issue of a certificate signed by the Architect nominated by the CONTRACTOR, stating that the Works have been completed; or
- 6.3.3 the issue of an Occupation Certificate by the Local Authority;
- 6.4 The guarantee does not cover damage to floor covering caused after handover.
- 6.5 The OWNER shall be obliged, within the time limits prescribed in the Housing Consumer Protection Measures Act 95 of 1998, to notify the CONTRACTOR in writing of any Defects covered by the aforementioned Act and the CONTRACTOR shall only be liable to rectify the Defects if the OWNER has paid the full contract sum to the CONTRACTOR.
- 6.6 Notwithstanding anything previously provided, the CONTRACTOR shall under no circumstance be responsible for damage 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 Home Owner's 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.**
- 6.7 In the event of there being a dispute between the parties whether any item complained of by the OWNER constitutes a Defect covered by the Housing Consumer Protection Measures Act 95 of 1998 or any dispute relating to the repair of the Defect, such dispute will be determined by the ruling of the Architect, whose determination shall be final and binding on the Parties.
- 6.8 The OWNER must advise the CONTRACTOR in writing within ninety (90) days from the date of possession of any Defects referred in in this clause, which may have developed. Should the OWNER fail to do so, no further claim can be entertained save for the provisions of clause 6.1 above.
- 6.9 Save for the above no other guarantees or warranties of any nature are given.

7. BOND FINANCE

This agreement is suspensively subject thereto that the OWNER obtain a loan upon the security of a first mortgage bond to be passed over the property hereby sold from a Bank or other recognised financial institution at prevailing bank rates and terms in the amount

of not less than R..... (.....  
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.....

RAND) within 21 (twenty-one) days from date of signature hereof, both days inclusive, or within such extended period granted by the CONTRACTOR to the OWNER in writing.

7.1 The OWNER undertakes, within 7 (seven) days from date of signature hereof, to sign all documents relating to such application and to do all such things as may be required to make application for a loan to a financial institution through the Bond Originators referred to in clause 7.4 hereof.

7.2 The OWNER acknowledges that he is familiar with all the applicable requirements of financial institutions relating to the granting of loan/finance/bond based, inter alia, on the OWNER's income and liabilities, ability to pay and the total exposure of the OWNER towards financial institutions. The OWNER warrants that he qualifies in all respects for the grant of a loan/finance/bond to him by a financial institution for the amount reflected above.

7.3 The OWNER warrants that he is solvent and that no existing judgments are recorded against his name.

7.4 The OWNER hereby irrevocably authorises and appoints the Bond Originators, being the mortgage originator nominated by the CONTRACTOR, to make application on his behalf for the loan/ finance/bond set out in clause 7 and undertakes immediately to sign all or any documents relating thereto. In order further to attain these objects, the OWNER undertakes to immediately furnish the Bond Originators with all the required information and documents (and to sign all required documents and/or forms) so that application may be made for and on behalf of the OWNER for such loan/finance or bond.

7.5 It is specifically agreed between the parties that, should -

7.5.1 the CONTRACTOR or the Bond Originators, at any time in either's sole discretion, become of the opinion that it will be impossible to obtain the required loan finance for the OWNER, due to any of the factors referred to in clause 7.2 or 7.3 or for any other reason and advise the OWNER thereof in writing; or

7.5.2 loan finance not be granted to the OWNER, for any reason whatsoever, within the period provided for in clause 7;

it shall be regarded that the suspensive condition has not been fulfilled and the agreement shall lapse and become null and void.

7.6 The OWNER's attention is drawn to the fact that in terms of the doctrine of fictional fulfilment, this clause will be deemed to be fulfilled if the OWNER frustrates the fulfilment of this clause in any way whatsoever.

8. BREACH

8.1 Should -

8.1.1 the estate of either of the parties be finally sequestrated or liquidated (as the case may be) or placed under judicial management or business rescue, or

8.1.2 either of the parties (hereinafter referred to as the "defaulting party") commit a breach of any of the terms of this agreement (including failing to make any payments on due date) and fail to remedy such breach within seven (7) days of date of delivery by the other party (hereinafter referred to as the "aggrieved party") of written notice calling upon the defaulting party to remedy such breach;

then the aggrieved party shall in such circumstances forthwith be entitled to either- cancel this agreement without prejudice to any rights which the aggrieved party may have in terms of this agreement or in terms of law; OR to claim specific performance by the defaulting party of his obligations in terms of this agreement.

8.2 In the event that the aggrieved party institutes legal action against the defaulting party for the recovery of any monies due or for any other breach by the defaulting party in terms of this Agreement, then the defaulting party shall be liable for the non-defaulting party's legal costs as raised between an attorney and his own client.

8.3 Any failure by the OWNER to -

8.3.1 immediately, punctually and comprehensively comply with the requirements of clause 7.1 and/or 7.2; OR

8.3.2 sign or provide any documents or to do anything which may be required by the Contractor, the Attorneys, the architect, the Bond Originator or the Bank, for the purposes of implementation of this Agreement and/or the Sale Agreement defined in clause 1.1.4, registration of the transfer and/or bond, commencement and/or progress with the construction of the dwelling, shall irrevocably be deemed to constitute a vital and material breach of this agreement.

9. ADDRESS FOR SERVICE (DOMICILIUM CITANDI ET EXECUTANDI)

9.1 The parties hereby choose their respective addresses for service of all documents, notices and processes, for all purposes of this Agreement at:

9.1.1 CONTRACTOR: 253 Monument Road  
GLEN MARAIS EXT 1  
Kempton Park  
E-mail: tillie@jtconstruction.co.za

9.1.2 OWNER: .....

.....  
.....  
E-mail .....

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

- 9.2 Any notice given in terms of this Agreement shall be sent by electronic mail, delivered by hand or sent by registered post to the address specified in clause 9.1.
- 9.3 All notices given by either party to the other shall be deemed to have been received by and communicated to the Addressee on the date on which the same is **delivered** to the addressee's address for service (domicilium citandi et executandi) by hand and if sent by e-mail on the first following business day and the fourth (4th) day after **posting** thereof, if sent by prepaid registered post to the addressee's domicilium.
- 9.4 Notice of change of an address stated above shall be given in writing and shall be delivered as provided for in clause 9.2.
- 9.5 Notwithstanding anything to the contrary contained herein, a written notice as communication actually received by one party from the other shall be an adequate notice, notwithstanding that it was not sent or delivered at such party's chosen domicilium citandi et executandi.
- 10. JURISDICTION, LEGAL COSTS AND INTEREST**
- 10.1 The parties hereby consent to the jurisdiction of the Magistrate's Court pursuant to section 45 of the Magistrates' Courts Act, No 32 of 1944, or any amendment thereof. The CONTRACTOR shall, however, have the right at its sole option and discretion to institute proceedings in any other competent court.
- 10.2 The OWNER hereby agrees that should the CONTRACTOR utilise any legal services such legal services plus VAT thereon will be paid for by the OWNER on the scale as between attorney and own client.
- 10.3 Should any amounts due and outstanding under this agreement not be paid on due date in terms of this agreement, then the OWNER shall be liable to pay to the CONTRACTOR –
- 10.3.1 interest on such outstanding amounts calculated at the rate of five percent (5%) above the ruling prime commercial overdraft rate as charged by ABSA BANK LIMITED from time to time; **OR**
- 10.3.2 R2 500,00 (TWO THOUSAND FIVE HUNDRED RAND) per month;
- (whichever is the greater)** during the period in which the amounts are overdue.
- 11. AMENDMENTS AND CESSIONS**
- 11.1 This Agreement constitutes the whole and entire agreement between the parties and no stipulation, promise, warranty, representation or condition which is not recorded herein shall be binding on the CONTRACTOR unless same is reduced to writing and signed by or on behalf of all parties.
- 11.2 No alteration or variation of whatever nature of this agreement, including this clause, shall be of any force and effect unless same is reduced to writing and signed by all the parties.
- 11.3 The OWNER shall not cede, assign, make over, alienate, pledge, burden or otherwise encumber any of his rights in terms of this agreement without the prior written consent of the CONTRACTOR first being had and obtained.
- 11.4 If any paragraph or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms of this Agreement shall be deemed to be severable therefrom and shall continue to be in full force and effect, unless such invalidity, unenforceability or illegality goes to the root of this Agreement.
- 12. CESSION OF GUARANTEES**
- Any guarantees which 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 OWNER.
- 13. PUBLIC LIABILITY INSURANCE**
- The CONTRACTOR shall reasonably insure against public liability on or around the Works from the commencement of building operations until the handover date of the Works.
- 14. VARIATIONS, ADDITIONS, EXTRAS, ALTERATIONS OR DELETIONS**
- 14.1 Should the OWNER, after signature of this Agreement, require that any aspect of the Works be varied 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 or extra work.
- 14.2 On signature of the quotation by the OWNER or acceptance of the quotation by the OWNER, even orally, this Agreement will be deemed to be accordingly varied. All costs arising from such variation or extras shall be paid for by the OWNER to the CONTRACTOR prior to commencement of such Works.
- 14.3 Notwithstanding the above and in the event of the parties inadvertently failing to follow the procedures herein prescribed and the parties in fact have agreed to any extras or variations but have failed to agree on the cost thereof or should the parties be unable to agree as to whether any Works do comprise an extra or variation such dispute will be referred to the Architect or to a quantity surveyor appointed by the CONTRACTOR, who will determine the dispute and whose determination will be final and binding on the parties;
- 14.4 The OWNER shall not be entitled to appoint any other CONTRACTOR to perform and or effect variations, additions, extras, alterations or deletions during the term of this Agreement and until the date the OWNER has taken occupation of the Works.
- 14.5 Should the OWNER appoint an alternative contractor, any damage to the Works of the CONTRACTOR caused by such action shall be for the account of the OWNER. Such work shall specifically be excluded from the CONTRACTOR's warranty as provided for elsewhere herein and the OWNER indemnifies the CONTRACTOR for any claims that may arise from such work.
- 14.6 Should the OWNER supply the CONTRACTOR with materials to be used in the execution of the Works, after the CONTRACTOR has agreed to, in writing, to utilise such materials, then the CONTRACTOR shall not be held liable for nor will it warrant such materials.
- 14.7 Should the CONTRACTOR in its sole discretion agree to written requests for deletions to the Works, the OWNER shall not be entitled to any credits.

- 14.8 The costs of any variations, additions, extras, alterations or deletions will be payable by the OWNER over and above the Building Contract Price contained in clause 4 of this agreement, and will be payable upon demand.

#### 15. INDULGENCES AND WAIVERS

- 15.1 Any latitude, grace or extension of time which may be allowed or permitted by the CONTRACTOR to the OWNER in respect of any payment provided for herein, or any matter or thing which the OWNER is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of any of the CONTRACTOR's rights hereunder at any time to require strict and punctual compliance with each and every provision or term hereof or as a waiver of any of the CONTRACTOR's other rights hereunder.
- 15.2 The remission of any payment, grant of any extension of time or relaxation of any term or condition or condonation of any breach hereof or any other permission, relaxation or indulgence which may be afforded by the CONTRACTOR to the OWNER shall not be deemed to be a waiver or a novation of any of the CONTRACTOR's rights in terms hereof.
- 15.3 Unless expressly otherwise confirmed in writing by the CONTRACTOR, no receipt of any payment by the CONTRACTOR or the Agent or by the Attorneys or by any other person or instance on behalf of the CONTRACTOR, will in any manner whatsoever prejudice the CONTRACTOR or be deemed to be a waiver, withdrawal or abandonment of any cancellation or right to cancellation which the CONTRACTOR may have acquired prior to such receipt.

#### 16. BUILDING PLANS AND BUILDING OPERATIONS

- 16.1 The OWNER hereby irrevocably undertakes and binds himself to finalise the building plans with the CONTRACTOR within 14 (fourteen) days after date of receipt of a written request from the CONTRACTOR, failing which the OWNER agrees to accept the provisional plan annexed hereto as the final plan and no further alterations or amendments to the plan shall be permissible except when a written Variation Order which includes prices have been agreed to and signed by the parties.
- 16.2 The OWNER acknowledges that the GLEN MARAIS 73 (KINGFISHER ESTATE) project is not fully developed, that building operations will take place upon adjacent or neighbouring subdivisions or stands and that the said building operations may cause him inconvenience. The CONTRACTOR undertakes to use its best endeavours to minimise all discomfort to or any infringement of the privacy of the OWNER.
- 16.3 The OWNER agrees that the CONTRACTOR shall at all times and until the whole GLEN MARAIS EXTENSION 73 (KINGFISHER ESTATE) project has been completed, have the right to alter, amend or partially demolish any part of any boundary or communal walls/fences between the OWNER's property and adjacent stand/s in order to accommodate subsequent purchasers of adjacent stands.
- 16.4 The OWNER acknowledges and agrees that he shall have no claim of whatever nature against the CONTRACTOR, its builders or any sub-contractor arising from any such building operations on adjacent stands in the KINGFISHER ESTATE project.

#### 17. MEDIATION AND ARBITRATION

- 17.1 In the event of a dispute arising between the Parties, such dispute shall be referred to mediation and in particular to a single mediator appointed by agreement between the Parties. Should the Parties be unable to reach agreement as to the mediator within a period of 14 (fourteen) days after one Party has given the other notice of the necessity for the appointment of a mediator, then and in such event any such dispute shall be referred to arbitration with 7 (seven) days after the 14 (fourteen) days, afore stated, has expired, or where a decision has been reached between the Parties at the mediation process, or where deadlock has been reached, or if any Party has given notice that it does not want to continue with the mediation process.
- 17.2 In the event of arbitration after the mediator being unable to cause a resolve to any dispute, or a direct referral to arbitration, the arbitration process to be followed shall be as follows:
- 17.2.1 in the event of a dispute between the Parties either Party may give the other Party written notice of such dispute and call for arbitration within the time limit agreed to above;
- 17.2.2 such dispute shall be referred to arbitration by an arbitrator appointed by the Chairman at the time of the Arbitration Foundation of Southern Africa (AFSA) or such other arbitrator as the Parties may agree upon;
- 17.2.3 the arbitration shall take place in accordance with the procedures agreed upon by the Parties within 14 (fourteen) days of the notice of arbitration and the award of the arbitrator shall be final and binding on the Parties;
- 17.2.4 the arbitrator shall, *inter alia*, have the power to open up, review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him in terms of this Agreement, and of which notice shall have been given at aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice have been given;
- 17.2.5 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;
- 17.2.6 save as set out above, or if the Parties do not agree upon the rules to follow, the arbitration proceedings contemplated by this clause shall proceed in accordance with the provisions of the Arbitration Act No 42 of 1965;
- provided that either Party may and shall enjoy the unrestricted right to institute action in the South Gauteng High Court (Johannesburg) or any other competent Court.
- 17.3 This clause is separate from the rest of this Agreement and shall remain in effect even if this Agreement is terminated.

#### 18. UNDERTAKING BY THE OWNER

The OWNER undertakes to become and remain the registered OWNER of the immovable Property until the Works have been completed and the full Building Contract Price paid.



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SIGNED by the OWNER at ..... this..... day of..... 202\_\_.

AS WITNESSES:

1. \_\_\_\_\_  
\_\_\_\_\_ **OWNER**

2. \_\_\_\_\_  
\_\_\_\_\_ **OWNER**

The OWNER is assisted herein insofar as may be necessary or required by his/her spouse who binds her/himself to the CONTRACTOR as surety and co-principal debtor, hereby renouncing the benefits of division, excussion and cession of action.

SIGNED by the CONTRACTOR at KEMPTON PARK this ..... day of ..... 202\_\_.

AS WITNESSES:

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

2. \_\_\_\_\_  
\_\_\_\_\_ **CONTRACTOR**