



BUILDING CONTRACT

MADE AND ENTERED INTO BY AND BETWEEN:

16 WEST HERTFORD DEVELOPMENT PROPRIETARY LIMITED

21 Muirfield Boulevard, Silver Lakes, Pretoria, 0081

Telephone No.: +27 (0)60 847 2540

E-mail: russell@renegadeprop.co.za

(the "**Contractor**")

AND

OF _____

_____ (Physical address)

TEL: _____ (H) _____ (W)

CELL: _____ E-MAIL: _____

(the "**Employer**")

FINANCE OVERVIEW

<p>TOTAL PROJECT PRICE</p> <p>The Contractor shall administer and execute the construction of the Building in accordance with Plans and Specifications on the Property for and on the Employer's behalf in accordance with the provisions of this Agreement.</p>		
<p>THE SALE OF THE PROPERTY</p> <p>It is recorded that the Employer is in the process of acquiring the Property, in accordance with the Agreement of Sale concluded simultaneously with this Agreement ("Land Sale Agreement"). The purchase price of the Property (payable on registration of transfer of the Property into the Employer's name) is:</p>		<p>R _____</p> <p>Including VAT</p>
<p>THE BUILDING AGREEMENT</p> <p>1. The Contractor shall build on proposed Portion _____ of Erf 3102 Bryanston Extension 7 Township (or such portion number as the Surveyor General may allocate) ("Property") the following:</p>		
<p>a. a Home ("the Dwelling") of type _____ and _____ m² @ R _____ per sqm</p> <p>totaling = R _____</p> <p>_____ m2 of Covered Patios / entrances @R _____ per sqm</p> <p>totaling =R _____</p> <p>_____ m2 of open balconies @R _____ per sqm</p> <p>totaling =R _____</p>	<p>R _____</p> <p>Including VAT</p>	
<p>b. optional extras, as indicated on attached options list:</p>	<p>R _____</p> <p>Including VAT</p>	
<p>c. plus an additional _____ m²</p> <p>Every extra square meter at a rate of R _____ per sqm</p>	<p>R _____</p> <p>Including VAT</p>	
<p>TOTAL OF THE DWELLING PRICE AND ALL OPTIONAL EXTRAS (CONTRACT PRICE) plus any increase in measurement as stated in 1(c) above</p>		<p>R _____</p> <p>Including VAT</p>
<p>PRICE OF TOTAL PROJECT (LAND PURCHASE PRICE PLUS CONTRACT PRICE):</p>		<p>R _____</p> <p>Including VAT</p>

INTRODUCTION

The Employer requires the Contractor to erect a building on the said portion of land. (See schedule 1)

AGREEMENT

1. DEFINITIONS

In this contract (and unless the context indicates otherwise) the term-

- 1.1 **"Property"** shall mean the portion of land described in 1 of Schedule 1.
- 1.2 **"Specifications"** shall mean the specifications prepared for the purpose of this contract a copy of which is hereto annexed marked "A" and includes any variations thereto.
- 1.3 **"Plans"** means the plans which have been prepared for the purpose of the construction of the building on the Property, a copy of which plans are hereto annexed marked "B" and includes any variations to such plans.
- 1.4 **"Date of Completion"** shall mean the earliest of:
 - 1.4.1 The mutually agreed date that the Building is completed and ready for occupation.
 - 1.4.2 The date of written notification by the Mediator that the Building is complete and ready for occupation.
 - 1.4.3 The date the Employer enters the Building and actually takes occupation.
- 1.5 **"Building"** means the building and outbuildings to be erected on the Property in terms of this contract and in accordance with the plans and specifications.
- 1.6 **"Contract Price"** means the Contract Price referred to in clause 5 hereof and "total Contract Price" means the Contract Price together with any other amounts which may become payable by the Employer to the Contractor in terms of this contract, including, without derogating from the generality of the foregoing: -
 - 1.6.1 Any amount payable by the Employer as the result of any variation referred to in Clause 8 hereof and;
 - 1.6.2 All expenses and costs of whatever nature not specifically provided for herein which arise in connection with the construction of the Building including but not restricted to interest on overdue payments.
- 1.7 The **"Date of Signature"** means the date on which either: -
 - 1.7.1 this contract is signed; or
 - 1.7.2 the plans and specifications are initialed by both the Employer and the Contractor whichever is the latter.
- 1.8 **"Local Authority"** means the municipality within whose boundaries the Property is situated.
- 1.9 **"Mediator"** means a person mutually agreed to between the Contractor and the Employer. Should agreement not be reached a Mediator shall be nominated by the reigning President of the Association of Arbitrators. The purpose of the Mediator shall be to resolve all disputes arising from this agreement including the allocation of costs incurred due to mediation.
- 1.10 **"Mortgagee"** means the financial institution granting such loan to the Employer.
- 1.11 Unless inconsistent with the context, words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and the neuter.
- 1.12 This contract includes the Specification and Optional Extras attached hereto marked "A" and the Plans attached hereto and marked "B".

2. The Employer engages the services of the Contractor for the purpose of erecting the Building on the Property. The Contractor shall be entitled, without reference to the Employer, to sub-contract the whole or any portion of its obligations in terms of this agreement to any other person.
3. The Contractor shall erect the Building on the Property subject to the terms of this contract and in accordance with the Plans and Specifications. In the event of there being any discrepancy or conflict between the Plans and the Specifications, the provisions of the specifications shall prevail.
4. This building contract shall not be binding on either the Contractor or the Employer until such time as it has been signed and the Plans and Specifications have been initialed by both the Contractor and the Employer. Neither the Contractor nor the Employer shall before the date of signature, be entitled to claim the existence of an oral contract in regard to any of the matters referred to herein.
5.
 - 5.1 The Contract Price payable by the Employer to the Contractor is the amount set out in 2 in Schedule 1 (as determined in accordance with clause 1 in the Finance Overview Schedule on page 2 of the Agreement), which amount shall be paid in the manner stipulated in 3 in Schedule 1.
 - 5.2 Any other amounts forming part of the total Contract Price, shall, unless otherwise provided, be paid on demand.
 - 5.3 Any portion of the Contract Price payable from the proceeds of a loan by the Mortgagee shall be subject to the under mentioned conditions:
 - 5.3.1 Such balance shall be paid from the interim draws or progress payments authorized or made by the Mortgagee from time to time.
 - 5.3.2 If any such interim draw or progress payment is not received by the Contractor for whatever reason the Employer shall pay the Contractor on demand an equivalent amount.
 - 5.3.3 In the event of the balance of the Contract Price being paid other than from the proceeds of a mortgage bond, the Contractor shall have the right to require the Employer to provide a suitable guarantee from a financial institution in favour of the Contractor in respect of such interim payment.
 - 5.3.4 If the balance of the Contract Price is payable from the proceeds of a mortgage bond, the responsibility for the payment of the total Contract Price shall always remain that of the Employer it being recorded that the provisions of Clause 5 as read with 3.2 in Schedule 1 record a method of payment only. In the event of the Mortgagee failing for any reason to pay any amount to the Contractor, the Contractor may require the Employer to pay such amount on demand.
6. Should the Employer require a loan from a financial institution for the purpose of paying the portion of the Contract Price set out in 3.2 in Schedule 1, the following provisions shall apply: -
 - 6.1 The Employer shall make application for such loan within 7 (seven) days of the date of signature of this agreement.
 - 6.2 The Employer hereby cedes to the Contractor his right to receive payment from the Mortgagee of so much of the loan granted by the Mortgagee as is equivalent to the Contract Price less any deposit referred to in 3.1 in Schedule 1 paid by the Employer to the Contractor.
 - 6.3 The Contractor is hereby authorized irrevocably and in rem suam by the Employer: -
 - 6.3.1 to receive the interim draws or progress payments from the Mortgagee
 - 6.3.2 to sign whatever documents are necessary to enable the Contractor to receive such interim draw or progress payments.

If any interim draw allowed by the Mortgagee is less than that portion of the Contract Price to which the Contractor is then entitled in terms of this contract, the Contractor may demand payment of the shortfall from the Employer.
 - 6.4 Should any dispute arise between the Contractor and the Employer as to the amount to which the Contractor is entitled to receive from any interim draw or progress payment made by the Mortgagee, such dispute shall be determined by the Mediator, acting as an expert and not an arbitrator, whose decision shall be final and binding on the Contractor and the Employer.

6.5 If the provisions of this Clause 6 are applicable, the Contractor shall not be obliged to commence any work in terms of this contract until such time as the loan or loans referred to herein have been granted and any mortgage bonds incidental thereto have been registered.

7.

7.1 The Employer shall give the Contractor undisturbed possession of the Property registered in the Employer's name, and shall not require the Contractor to give up possession of the Property for so long as any portion of the total Contract Price is owing by the Employer to the Contractor. It is recorded that any Waiver of Builder's Lien which may have been signed by the Contractor is exclusively for the benefit of the Mortgagee and shall under no circumstances confer any rights or benefits on the Employer.

7.2 The Contractor shall commence the construction of the Building within 30 (Thirty) days of all of the following events having occurred: -

7.2.1 The Plans having been approved by the Local Authority;

7.2.2 If the provisions of Clause 6 are applicable, the mortgage bond having been registered in favour of the Mortgagee;

7.2.3 Undisturbed possession having been given to the Contractor in terms of Clause 7.1;

7.2.4 All approvals or authorities as may be required for the purpose of the construction of the Building having been furnished by the persons from whom such approval or authority is required;

7.2.5 The property has been registered in the Employer's name.

7.3 The Employer shall be responsible for the registration of any mortgage bond referred to in Clause 6.

7.4 Should any of the suspensive conditions referred to in Clause 7.2 not have been fulfilled within 90 (Ninety) days of the date of signature of this agreement, the Contractor shall have the right without prejudice to any other rights which it may have in law or in terms of this contract, to cancel this contract without notice to the Employer and to claim from the Employer any costs or charges which the Contractor may have incurred in terms of this contract up to the date of cancellation. The Contractor may in its discretion extend the said 90 (Ninety) day period by such period as it considers appropriate.

7.5 The Contractor shall complete the construction of the Building within the period as recorded in Schedule 1. The commencement date will be determined once all provisions of 7.2 has been fulfilled or as set out in Schedule 1, whichever is the latter.

7.6 Notwithstanding the provisions of Clause 7.5, if the period during which the construction of the Building is being carried out coincides with any statutory or customary builders holiday, then the period for the completion of the Building shall be extended by the period of such holiday.

7.7 The Employer, by taking occupation of the Building either before or after any of the dates referred to in Clause 1.4.1 to 1.4.3 shall be taken to acknowledge that the Building has been properly completed in accordance with this contract save for any claims which he may have in terms of Clause 9.

8.

8.1 There shall be no variation to the plans once they have been signed by the Employer and submitted to the Local Authority for approval.

8.2 Subject to Clause 8.1, should the Employer require any deviation from or amendment to the Plans or Specifications or require any work to be done which is additional to the work reflected in the Plans or Specifications (all of which are hereinafter referred to as "variations"), then: -

8.2.1 The variations shall be reduced to writing and the price confirmed and signed by both the Employer and the Contractor, and the Employer shall be liable to pay the additional costs of the variations prior to commencement of any of the variation work agreed to. Should any dispute arise between the Contractor and the Employer as to the cost of the variations, such dispute shall be determined by the Mediator, acting as an expert and not an arbitrator, whose decision shall be final and binding on the Contractor and the Employer.

8.2.2 The execution of the variations shall in all respect be subject to the terms and conditions of this contract.

8.2.3 The Contractor must notify the Employer of time delays, if any, as a result of a variation order. This time delay will then be added on the completion date.

9.

9.1 The Employer shall within 1 (one) month of the Date of Completion, advise the Contractor in writing of any material faults or defects in the Building arising from defective materials or workmanship.

9.2 The Contractor shall within a reasonable time of receiving such advice from the Employer make good such faults or defects.

9.3 The Contractor shall during the 6 (six) month period following the Date of Completion, carry out such repairs or make such replacements as may be necessary to eliminate roof leakages or other latent defects only.

9.4 The rights granted to the Employer in terms of Clause 9 are personal to the Employer, may not be assigned or ceded by him to any other person and shall not be capable of being exercised by any subsequent owner or occupier of the Property.

9.5 The Contractor shall: -

9.5.1 Be relieved of its obligations in terms of Clause 9.2 if the Employer fails to notify the Contractor in writing of any material faults or defects within the said 1 (one) month period referred to in Clause 9.1.

9.5.2 Be relieved of its obligations in terms of Clause 9.3 should the Employer fail to notify the Contractor in writing within the said 6 (six) month period referred to in Clause 9.3.

9.6 A certificate issued by the Architect stating that any defects for which the Contractor is liable in terms of this Clause 9 has been made good shall be final and binding on both the Contractor and the Employer and shall relieve the Contractor from any further obligations whatever in respect of any such defect.

9.7 Notwithstanding the preceding provisions of this Clause 9, should the Employer be in default of any of its obligations in terms of this contract, the Contractor shall not be obliged to carry out any work in terms hereof until such time as the Employer has remedied its default.

10. Notwithstanding anything to the contrary herein expressly or impliedly contained, the Contractor shall not be held liable for the making good of any damages, faults or defects caused by earth tremors, geological disturbances or subsidence, wear and tear and misuse and neglect by the Employer.

11.

11.1 The full amount outstanding of the total Contract Price shall be payable by the Employer to the Contractor on the Date of Completion.

11.2 Payment by the Employer of the total Contract Price shall be made to the Contractor without any deductions. The Employer shall not be entitled to withhold or defer payment of any portion of the total Contract Price for any reason whatsoever.

11.3 Until such time as the total Contract Price has been paid by the Employer to the Contractor: -

11.3.1 The Contractor may retain possession of the Property and shall have ownership upon all unfixed material and goods intended for the Building which may have become the Property of the Employer in terms of this contract; and

11.3.2 The Contractor may retain possession of the Property and shall have a lien upon all fixed material and goods until all payment obligations by the employer is met.

11.3.3 The Contractor shall, if the Employer takes occupation of the Building and in the event of the breach of any provision of this contract, be entitled without prejudice to any other rights which it may have in law, or in terms of this contract to eject the Employer and all persons claiming occupation by, through or under him from the Building.

12.

12.1 It is further recorded that the Contract Price includes the excavation of pickable material. Should rock be encountered which cannot reasonably be removed by pick and shovel then the Employer shall pay to the Contractor the additional costs of such excavation as a variation.

12.2 The Contractor shall be entitled to require the Employer to make provision to his satisfaction for the payment of such extra charges prior to the Contractor being required to proceed with the erection of the building.

13. Should the Employer: -

13.1 fail to pay any amount payable to the Contractor on the due date thereof; or

13.2 interfere with or obstruct the completion of the Building; or

13.3 commit any breach of this contract whether such breach is material or otherwise; or

13.4 commit any act of insolvency or be sequestered or placed under judicial management or liquidation whether provisional or final; or

13.5 if the provisions of clause 6 are applicable, fails to authorize or prevents the payment of an interim draw from any Mortgagee; or

13.6 delay any required decision on any choice of provisional cost item or finishes in the Specification;

Then the Contractor shall have the right without prejudice to any other rights which it may have in law, to either:-

a) suspend all work on the Building until the overdue payment is made or the breach is remedied; or

b) forthwith terminate this contract and claim payment of all amounts payable by the Employer to the Contractor for work already done on the construction of the Building up to the date of such cancellation.

14. The Employer shall pay interest at the rate of 1,5 % (One comma five per centum) per month or part thereof on all amounts falling due for payment in terms of this contract which are not paid within seven days from the date of receipt of invoice, which interest shall be reckoned on the amount due from the due date to the date of actual payment.

15. The Employer shall not, either personally or through his agents or employees, be entitled to issue instructions to any of the Contractor's workmen, any sub-contractors employed to work on the construction of the Building or any other persons employed by or acting on behalf of the Contractor without the prior written consent of the Contractor. Should any instruction be given in breach of this provision the Contractor shall not be liable for any faults, defects or deficiencies in the building resulting from the implementation of such instructions and the Employer shall forthwith pay to the Contractor any additional expense involved in the implementation of such instructions whether by reason of the changes themselves or by reason of making good, altering or repairing any other work affected by such damages.

16.

16.1 The Surety by his signature hereunder binds himself to the Contractor as surety and co-principal debtor in solidum with the Employer for the payment of all monies and the performance of the obligations of the Employer in terms of this contract and shall remain so bound notwithstanding any variation or addition in terms hereof. The Surety hereby renounces the benefits of excussion, division, cession of action, no value received, error of accounts and revision of accounts, with the full force, meaning and effect of which he declares himself to be acquainted. The provisions of this Clause 19 are separate and divisible from the remaining provisions of this contract. Accordingly, if this contract is cancelled or terminated for any reason whatever, the provision of this Clause 19 will remain in force in respect of any claims, actual or contingent, which the Contractor has against the Employer as at the date of such cancellation or termination.

16.2 The Employer shall not be able to trade the property, other than for the purpose of obtaining a bond, or transfer his/her obligations in terms of this contract to a third party without the written consent of the Contractor.

17. The Contractor shall be entitled, free of charge, to invite the public by public advertisement or otherwise to inspect the Building and the Property and to use the Building and Property as a show house at any time prior to the Employer taking occupation of the Building.

18. 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 Contractor specifically acknowledges that no representations, warranties, inducements of other conditions of any nature whatsoever, including conditions precedent to this agreement, have been made or agreed to by the

Contractor that upon the signing hereof, this agreement and only the terms hereof are operative and binding on the Contractor and the Employer.

- 19. This contract shall not be capable of being varied, altered or amended unless such variation, alteration or amendment is reduced to writing and signed by both the Contractor and the Employer.
- 20. Notwithstanding anything to the contrary contained in this contract, it is specifically recorded that the obligation to pay the Contract Price to the Contractor is that of the Employer.
- 21. The charges referred to in 4 in Schedule 1 are for the account of and payable by either the Contractor or the Employer, as indicated therein. Where payable by the Contractor the relevant charge is included in the Contract Price. Where payable by the Employer, payment shall be made by the Employer when such charges are due and when the Employer is called upon to make such payment.
- 22. Wherever the terms of this contract require a dispute or difference or question to be resolved by the Mediator, such dispute, difference or question shall be submitted by the parties to the Mediator who in all circumstances shall act as an expert and not an arbitrator.

23. **DOMICILIA CITANDI ET EXECUTANDI**

- 23.1 The Seller and the Purchaser hereby select as their respective domicilia citandi et executandi for all purposes under this Agreement, including the giving of any notice or demand, the physical addresses set out under their names on the first page of this Agreement.
- 23.2 Notice of a change of address referred to in Clause 23.1 to another address in the same magisterial district may be given by one party to the other.
- 23.3 Every notice to be given by one party to the other in terms of this Agreement shall be in writing and shall: -
 - 23.3.1 be delivered by hand to the domicilium citandi et executandi of the other party; or
 - 23.3.2 be posted by prepaid registered post to the domicilium citandi et executandi of the other party, in which event the receiving party shall be deemed to have received such notice on the fifth business day after posting.

24. If for any reason it becomes necessary to build retaining walls, then the cost thereof will be for the account of the Employer.

25. The contract price includes **15 % VAT**. Should there be any statutory increase in the amount of VAT payable on the contract price, the price will be increased accordingly to ensure that the Contractor receives the same net payment on the contract.

26. Other conditions:

Signed at _____ on this _____ day of _____ 20__

As Witness:

1. _____

2. _____

Signed at _____ on this _____ day of _____ 20__

As Witness:

1. _____

EMPLOYER

2. _____

Signed at _____ on this _____ day of _____ 20__

As Witness:

1. _____

SURETY

2. _____

SCHEDULE 1

Schedule of terms and conditions to the Building Contract entered into by and between **16 WEST HERTFORD DEVELOPMENT PROPRIETARY LIMITED** and _____

1. **The Property** (Clause 1.1 of the Agreement)
PORTION NO _____ OF ERF 3102
TOWNSHIP OF BRYANSTON EXTENSION 7
MEASURING _____ SQUARE METRES

2. **The Contract Price** (Clause 5.1 of the Agreement):
R _____
(_____)

3. **Payment of the Contract Price** (Clause 5.1 of the Agreement):
 - 3.1 A deposit of R _____
(_____)
payable within 7 days of approval of the building plan.

 - 3.2 The balance of R _____
(_____)

by way of Building Loan to be approved as specified in Clause 3(c)(ii) of Schedule 1 to the Agreement of Sale or to be paid at the following stage of construction when the under mentioned work is substantially complete: -
 - 3.2.1 Up to Plinth height - 15 % of contract price
 - 3.2.2 Up to Wall Plate height - 35 % of contract price
 - 3.2.3 Up to Roof covering - 50 % of contract price
 - 3.2.4 Floor screeds - 65 % of contract price
 - 3.2.5 Sanitary fittings positioned - 80 % of contract price
 - 3.2.6 Building complete for occupation - 100 % of contract price

4. **The under mentioned charges and costs are payable by the party referred to below** (Clause 25 of the Agreement): -
 - 4.1 Working drawing fees and printing costs : **CONTRACTOR**
 - 4.2 Plan approval fees : **CONTRACTOR**
 - 4.3 Bond registration costs : **EMPLOYER**
 - 4.4 Financial institution's interest : **EMPLOYER**
 - 4.5 Financial institution's administration and valuation costs : **EMPLOYER**
 - 4.6 Water connection fees : **EMPLOYER**
 - 4.7 Electric cable connection fees : **EMPLOYER**
 - 4.9 Water consumer deposit : **EMPLOYER**
 - 4.10 Electrical consumer deposit : **EMPLOYER**

4.11 NHBRC Enrolment fee : **CONTRACTOR**

5. **Construction period** (Clause 7.5 of the Agreement).

5.1 The construction of the building shall commence 30 days from date of transfer and building plan approval

5.2 Subject to reasonable extensions permitted in terms of clause 5.3, construction shall be completed for occupation by approximately 12 months from commencement.

5.3 Extension of time and postponement:

5.3.1 If at any time prior to or during the construction period, circumstances arise which make it (temporarily) impossible for the Contractor to proceed with the works, such as pandemics, political upheaval, riots, squatting, invasion, boycotts, strikes, lockouts or any other situation which may be dangerous for the general safety of the contractor or any of its workers or subcontractors, the Employer shall have no claim whatsoever against the Contractor to commence or complete the works or a claim for damages and the work shall be suspended for the period of such delay.

5.3.2 If completion of the works is delayed for any cause whatsoever including vis major, which may fall within the contract period, or in the event of any pandemic, dispute, strike, lockout, squatting, invasion or 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 Employer shall not for that reason have any claim against the Contractor, whether for damages or otherwise.

5.3.3 If the circumstances contemplated in clause 5.3.2 persists for and continues for an uninterrupted period of 3 (three) months, either party shall be entitled to cancel the agreement by giving 4 (four) weeks' written notice to the other. If cancellation occurs in terms of this sub-paragraph, neither party shall have any claim against the other save for such amounts as are due and payable up to the date of cancellation.

5.4 Penalties

If a practical completion certificate is not issued in respect of the works by the date contemplated in clause 5.2 (as extended, if necessary, in terms of this agreement) the Contractor shall pay to the Owner a penalty in an amount equivalent to proven holding costs incurred by the Employer (which for this purpose hereof are the rates and taxes, levies and interest on any funding obtained in respect of the acquisition of the land and the construction of the home thereon) for the period from the agreed completion date (as extended, if necessary, in terms of this agreement) until the date on which the practical completion certificate is issued.