

ANNEXURE "C"
BUILDING CONTRACT

PROJECT: MARINA POINT PORT OWEN

CONTRACTOR: LE-CO DEVELOPMENT PTY LTD
Registration Number :

EMPLOYER :

DATE:

1.0 DEFINITIONS AND INTERPRETATION

In this agreement, unless inconsistent with the context, the words and phrases defined hereunder shall bear the meanings assigned to them in this clause

CONTRACTOR means the party contracting with the Employer for the execution of the Works and named in the Schedule.

CONTRACT SUM means the sum tendered by the Contractor and accepted by the Employer for the execution of the works, including VAT where applicable, which sum shall be adjusted in terms of this Agreement.

DEFECT means a fault or insufficiency due to materials or workmanship not being in accordance with the contract documents or this Agreement which has been notified by the Employer to the Contractor provided that hairline cracks due to normal settlement, shrinkage or expansion which appear after Practical Completion shall not constitute a defect.

EMPLOYER means the party contracting with the Contractor for the execution of the Works and named in the Schedule.

LATENT DEFECT means a defect, which a reasonable inspection of the Works by the Employer prior to the issuing of the Employer's written notification in terms of 9.1 and 10.2 hereof would not have disclosed.

PATENT DEFECT means a defect, which a reasonable inspection of the Works by the Employer prior to the issuing of the Employer's written notification in terms of 9.1 and 10.2 hereof would have disclosed.

WORKS means the Works as described in the contract documents, and as recorded in the Schedule including any variations thereto.

- 1.1 The parties hereby choose their physical \, legal address as set out in the Schedule, where all notices and/or processes arising out of or in connection with this Agreement may validly be delivered to or served upon them.
- 1.2 This Agreement constitutes the entire agreement between the parties and no alteration hereof or addition hereto shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.
- 1.3 The law applicable to this Agreement is the law of the Republic of South Africa.
- 1.4 In this Agreement, the masculine includes the other gender and persons shall include bodies corporate.

2.0 OBLIGATIONS OF THE PARTIES

- 2.1 The Contractor has tendered the Contract Sum for carrying out the work shown and described in the contract documents in terms of 3.1 hereof and has agreed to complete the Works to the reasonable satisfaction of the Employer.
- 2.2 The Employer has agreed to pay the Contractor the Contract Sum, which shall be subject to adjustment in terms of 6.5, 7.0,8.3 and 11.6 hereof, at the times and in the manner specified in this Agreement.

3.0 PREPARATION

- 3.1 The drawings and specifications, together with such other documents, which are identified and recorded in the Schedule and this Agreement, constitute the contract documents upon which this Agreement is based.

- 3.2 In the event of there being no specification forming part of the above documents then the latest edition of the Model Preambles for Trades as published by the Association of South African Quantity Surveyors shall be deemed to specify the materials and workmanship required in accordance with paragraph 7 in Section A of the Agreement of Sale of Land between the parties.
- 3.3 The Contractor shall be responsible for the design of the Works, the responsibility for timeously providing all drawings, specifications, finishing schedules and the like and for obtaining all necessary approval from the Local Authority shall be that of the Contractor.
- 3.4 The Employer warrants that he will be the registered owner and/or that he has purchased the property where the Works are situated and shall not conclude any agreement for sale, of such for the duration of this Agreement unless the prior written consent of the Contractor is obtained, which consent shall not be unreasonably withheld.
- 3.5 The Employer shall upon request and prior to the commencement of the Works, furnish to the Contractor a Banker's Guarantee or other acceptable security for the fulfillment of the Employer's liability in terms of this Agreement, in an amount not less than the Contract Sum.

4.0 **SUNDRY COSTS**

- 4.1 All charges for the items set out below are for the account of the Contractor.
- 4.1.1 Engineer's fees and costs.
- 4.1.2 Soil testing and test pits.
- 4.1.3 Special foundations or reinforcing due to adverse subsoil conditions.
- 4.1.4 Blasting and/or work where a compressor is required due to adverse subsoil conditions.
- 4.1.5 The removal or importation of any material as a consequence of 4.1.3 or 4.1.4 hereof.
- 4.1.6 The location of boundary pegs.
- 4.1.7 Footway deposit and hoarding fees.
- 4.1.8 Water, electrical and sewerage connection fees and deposits, subject to the Contractor being responsible for all costs of services utilized in the completion of the Works.
- 4.1.9 Interim rates and taxes.
- 4.1.10 National Home Builders Registration Council (NHBRC) enrolment fee for the Works.

5.0 **WORKS RISK, INDEMNITIES AND INSURANCE**

- 5.1 Subject to the provisions of 5.2 hereof the Works shall be at the risk of the Contractor from the date on which possession of the site is given to the Contractor until the date of Practical Completion after which the risk in the Works shall pass to the Employer.
- 5.2 The Contractor shall not be liable for damage to or physical loss of the Works where this results from any of the following circumstances, and the Employer shall indemnify the Contractor in such circumstances:
- 5.2.1 war, whether declared or not, invasion and hostile acts of foreign enemies
- 5.2.2 rebellion, insurrection, revolution, terrorism, military or usurped power or civil war

- 5.2.3 civil commotion, riot, strike, lockout or disorder by persons other than the Contractor's employees or his subcontractors
 - 5.2.4 confiscation, nationalization or requisition by any public or local authority
 - 5.2.5 sonic shock waves caused by aircraft or other aerial devices and ionizing radiation or contamination
 - 5.2.6 the use or occupation of any part of the Works by the Employer, the Employer's servants and agents, or those for whose acts or omission they are responsible
 - 5.2.7 an act of omission by others engaged by the Employer, the Employer's servants or agents and those for whose acts or omissions they are responsible
 - 5.2.8 an act of omission by others engaged by the Employer and those for whose acts or omissions they are responsible
 - 5.2.9 A latent defect in materials specified by trade names where the Contractor has no right of substitution. The Contractor hereby cedes to the Employer any claim that may exist against the supplier / manufacturer of such materials.
- 5.3 The Contractor shall effect contract works insurance's in the joint names of the Employer and the Contractor, and covering the Contractor's subcontractors. The sum insured shall be the Contract Sum plus 10% (ten percent) thereof.
- 5.4 The limit of the Contractor's liability shall not exceed the amount of the contract Works insurance. Where the Contractor is not liable for damage to or physical loss of the Works, the cost of repairing such damage or making good such loss shall be treated as a variation in terms of 7.0 hereof.
- 5.5 Subject to the provisions of 5.7 hereof the Contractor indemnifies the Employer, against any liability, loss, claim or proceedings whatsoever, from other parties consequent upon death or bodily injury or illness of any person, or damage to or physical loss of any property, other than the Works arising out of or due to the execution of the Works or occupation of the site by the Contractor.
- 5.6 The Contractor does not indemnify the Employer where the liability, loss, claim or proceedings arises from any of the excluded circumstances listed hereunder, and the Employer shall indemnify the Contractor in such circumstances:
- 5.6.1 an act or omission of the Employer, his servants or agents and those for whose acts or omissions they are responsible
 - 5.6.2 an act or omission of others engaged by the Employer or those for whose acts or omissions they are responsible
 - 5.6.3 the use or occupation of the site by the Employer
 - 5.6.4 the right of the Employer to have the Works or any part thereof executed at the site
 - 5.6.5 interference with any servitude or other right that is the unavoidable result of execution of the Works, including the weakening of or interference with the support of land adjacent to the site, unless resulting from any negligent act or omission by the Contractor his subcontractors
 - 5.6.6 damage to or physical loss of an existing structure and the contents thereof in respect of which this Agreement is for alterations or additions to the existing structure
 - 5.6.7 damage to or physical loss of the contents of the Works

5.6.8 the occupation of any part of the Works by the Employer or his tenants

5.7 The Contractor shall effect public liability insurance to cover the joint interest of both parties in respect of the indemnity stated in 5.6 hereof, for not less than the amount stated in the Schedule, The Contractor shall also effect any relevant workmen's compensation or similar insurance's as are required by law.

6.0 EXECUTION OF THE WORKS

6.1 The Contractor shall, to the reasonable satisfaction of the Employer, execute and complete the Works shown upon and described in the contract documents and shall provide everything necessary for the proper execution of the Works.

6.2 Possession of the site shall be given to the Contractor on the date recorded in the Schedule who shall thereupon within a reasonable time begin the Works and regularly and diligently proceed with and bring the Works to practical completion by the date recorded in the Schedule subject to any extension of time granted by the Employer in terms of 8.2 hereof and subject to the provision that the Contractor shall not be obliged to begin the Works until:

6.2.1 the necessary plan and other approvals, consent or other authority required under any law (including any statute, ordinance, by law and/or regulation) has been obtained by the Contractor;

6.2.2 the stand has been registered in the name of the Employer;

6.2.3 the mortgage bond, where applicable, has been granted and registered;

6.2.4 all servitude's, if any, have been registered;

6.2.5 The Employer has furnished the payment guarantee where required in terms of 3.5 hereof.

6.3 The Contractor shall at all reasonable times keep upon the Works a competent person in charge.

6.4 The Employer shall not have the right to interfere with, hinder or obstruct any of the Contractor's workmen or other persons employed by or acting on behalf of the Contractor.

6.5 The Contractor shall order timeously all materials required for the Works, in the event of any of the materials required for the Works being unavailable such as to cause a possible delay to the progress of the Works, the Contractor shall notify the Employer, who shall select substitute material of a similar quality readily available to the Contractor. Any delay so caused to the Works shall operate as an extension of time for completion within the meaning of 8.0 hereof and any difference in price shall be for the account of the Employer.

7.0 VARIATIONS

7.1 The Employer may from time to time issue written instructions for variations as to the alteration or modification of the design, quality or quantity of the Works as shown upon or described in the contract documents provided that no such variation shall change the essential character of the Works and such variation shall vitiate this Agreement.

7.2 The value of any variation shall be agreed between the Contractor and the Employer, before the variation is commenced, and such agreed value shall be added to or subtracted from the Contract Sum.

7.3 Where such value has not been agreed in terms of 7.2 hereof then the variation shall be valued upon the cost of the materials used at their current marked value plus 10% (ten percent) thereof, together with the gross cost of labour involved plus 40% (forty percent) thereof and together with the costs of paint and transport plus 15% (fifteen percent) thereof. The Contractor shall supply supporting vouchers showing the time spent, the materials used and the paint and transport employed for verification to the Employer.

- 7.4 Any additional costs from a variation performed by a subcontractor shall be subject to a 15% (fifteen percent) markup for the Contractor's supervision, overheads and profit.

8.0 EXTENSION OF TIME AND PENALTY FOR LATE COMPLETION

- 8.1 Should the Works be delayed by inclement weather, variations or any other cause for which the Contractor is not responsible, the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Works.
- 8.2 The Contractor shall within 10 (ten) working days of becoming aware of any such delay to the Works give written notice of the cause and effect of the delay to the Employer and the Employer shall grant a reasonable extension of time for the completion of the Works and in so doing shall make allowance for any holidays recognized in the Building Industry.
- 8.3 Should the Works be delayed through any fault of the Employer or those for whom he is responsible, the Contractor shall be entitled to recover any direct loss or expense caused by such delay.
The amount of such loss or expense shall be assessed between the Contractor and the Employer and the agreed value shall be added to the Contract Sum.

9.0 PRACTICAL COMPLETION

- 9.1 When the Works are substantially complete the Contractor shall notify the Employer who shall within 6 (six) working days inspect the Works together with the Contractor and provide the Contractor with a single, comprehensive written list of any work still to be completed and/or defects to be remedied.
- 9.2 As soon as the work shown on the list referred to in 9.1 hereof has been completed by the Contractor and inspected and accepted by the Employer, or when the Employer takes occupation of the Works, whichever is the earlier, the Works shall have reached Practical Completion.

10.0 DEFECTS LIABILITY

- 10.1 Any patent defects, which may appear within 3 (three) calendar months after Practical Completion, shall be made good by the Contractor, at his own cost.
- 10.2 The Employer shall issue to the Contractor a single comprehensive written list of any such patent defects to be remedied or items still to be completed and the Contractor shall attend to such defects and items within a reasonable period thereafter.
- 10.3 The Contractor shall not be responsible for any damage or loss caused by wear and tear, misuse, neglect, negligence, or accident unless caused by the Contractor or those for whom he is responsible.
- 10.4 Any leakage in the roof and any damage to the Works caused thereby, arising from faulty materials or workmanship, occurring within a period of twelve (12) calendar months after Practical Completion of the Works, shall be made good by the Contractor at his own cost. Such remedial work shall be undertaken within a reasonable time after receipt of the Employer's written notification.
- 10.5 The Contractor shall not be responsible for any latent defects in respect of the Works, except where the Employer has notified the Contractor in writing of such defects within a period of five (5) years from date of Practical Completion. The Employer hereby indemnifies the Contractor in respect of any liability for latent defects beyond such period.
- 10.6 The Employer shall provide the Contractor with reasonable access to the Works in order to enable him to fulfill his obligations under 10.0 hereof.

11.0 PAYMENT

The Contractor shall, upon reaching the intervals as stated in the Schedule when Progress Payments are to be effected in terms of

- 11.1 this Agreement, make written application to the Employer for such payments, including the submission of a VAT invoice, where applicable.
- 11.2 In the event that the Employer required a bond for completion of the works, such application for the bond will be done simultaneously with the application as set out in clause 5 of the sale agreement of the stand
- 11.3 Where the total amount owed by the Employer in terms of this agreement is not covered by a bond, the Employer will provide the contractor with a bank guarantee which will be sufficient to cover the amount owed within 14 (FOURTEEN) days of request by the Contractor of his attorneys. The amount will be paid into trust at the commencement of construction into the trust account of Madeleyn Inc. Attorneys and released to the Contractor in terms of the provisions of intervals for progress payments.
- 11.4 If a bond or other finances are obtained to give effect of this agreement and is later withdrawn due to a false declaration made by the Employer or the Employer delays any transaction, then the Contractor, without renouncing any other right, shall have the right to cancel the agreement without any notice.
- 11.5 The Employer cedes herewith his rights to obtain payment from the proceeds of the bond as set out in clause 11.2 above to the Contractor irrevocably and *in rem suam*. The Employer appoints herewith the Contractor as his rightful Agent to accept any payment on behalf of him from the Bank and agree to sign all the necessary documentation to give effect to the payment by the Bank.
- 11.6 In the event that the Employer prohibits the Contractor from accepting a drawing from the Bank, the Contractor will have the right, without prejudice to his rights, in terms of this Agreement, to immediately claim the amount from the Employer together with interest calculated thereon at the maximum rate legally claimable on the date of payment to the date when the Contractor receives the payment. The contractor will further be able to stop all building work and the Employer will be responsible for all costs and damages, whether directly or indirectly, without any prejudice of any rights of the Contractor in terms of this agreement.
- 11.7 Payments due by the Employer to the Contractor will be made without any deduction and the Employer waives any right he may have against the Contractor and the Employer may not withhold any payment as a result of any debt with the Contractor.
- 11.8 Any interim interest on the bond will be for the account of the Employer.
- 11.9 The amount of each such payment shall be a reasonable estimate of the value of work duly executed up to date of each application and shall include any materials properly required for the Works and delivered to the site and any amounts due under 6.5, 7.0 and 8.3 hereof.
- 11.10 Any unfixed materials required for the Works and delivered to the site shall remain the property of the Contractor until they have been paid for by the Employer.
- 11.11 Any amount not paid on the due date shall bear compound interest thereon at a rate of 3% (three percent) greater than the lending rate charged by the Contractor's bank, which interest shall accrue as from the due date for payment.
- 11.12 When the Contract Sum includes a provisional allowance for items of work or materials and goods which are to be selected by the Employer, the Contract Sum shall be adjusted by the difference between the budget allowance and the actual cost of the items of work or the delivered cost of materials and goods, including, any reasonable waste. The Contractor shall be entitled to a 15% (fifteen percent) markup on such provisional allowances which shall be deemed to be included in the Contract Sum and which shall be prorated to the actual costs incurred.
- 11.13 Upon Practical Completion of the Works and concurrent therewith the Employer shall pay to the Contractor the balance due to the Contractor, subject to 11.14 hereof.
- 11.14 The Employer shall be entitled to withhold an amount not exceeding, 1% (one percent) of the contract sum, from the final balance due for a period of (1) one calendar month, after Practical

Completion or until such time as the Contractor has rectified all patent defects in terms of 10.2 hereof.

- 11.15 The Employer shall make payment of the final balance due to the Contractor immediately upon completion of the works and the making of this final payment shall be evidence that the contractor has fulfilled his obligations in terms of 6.1 hereof, save for latent defects.

12.0 DEFAULT

- 12.1 Should the Contractor make default in any of the following respects:

- 12.1.1 fails to furnish a Performance Guarantee in terms of 3.6 hereof
- 12.1.2 without reasonable cause wholly suspends the works before completion;
- 12.1.3 fails to proceed with the Works with reasonable diligence;
- 12.1.4 refuses, after notice in writing from the Employer, to remove defective work or improper materials within a reasonable time, then if such default shall continue for seven (7) calendar days after a written notice has been given to the Contractor from the Employer specifying the same, the Employer may, without prejudice to any other rights he may have in terms of this Agreement or in Law, cancel this Agreement, in such event

The Contractor shall be liable for all damages incurred by the Employer by reason of such default

- 12.2 Should the Employer make default in any of the following respects:

- 12.2.1 Fails to furnish security in terms of 3.5 hereof;
- 12.2.2 Fails to give possession of the site to the Contractor in terms of 6.2 hereof;
- 12.2.3 Fails to make payment to the Contractor in terms of 11.0 hereof, then if such default shall continue for seven (7) calendar days after written notice has been given to the Employer by the Contractor specifying the same, the Contractor may, without prejudice to any other rights he may have in terms of this Agreement, cancel this Agreement.

In such event the Employer shall be liable for all damages incurred by the Contractor by reason of such default.

- 12.3 Failure by the Employer to make payment in accordance with 11.0 hereof shall entitle the Contractor, on giving three (3) calendar days written notice to the Employer, to suspend work under this Agreement until payment shall have been made to the Contractor. The period during which work is suspended shall be granted as an extension of time for completion within the meaning of 8.0 hereof.

13.0 SETTLEMENT OF DISPUTES

- 13.1 Any dispute or difference between the Contractor and the Employer arising out of this Agreement shall be referred to Arbitration. This shall not preclude the parties from attempting to resolve their dispute by mediation, conciliation or any other similar means prior to entering into Arbitration proceedings.
- 13.2 The Arbitrator shall be a person agreed upon between the parties prior to the commencement of the Works and recorded in the Schedule. Calling such agreement, the Arbitrator shall, at the written request of either party, be nominated by the President for the time being, of the Master Builders Association or Construction Industries Association having jurisdiction in the area or, where no such Association has jurisdiction, by the President for the time being of the Building Industries Federation of South Africa. The appointment shall be made within seven (7) days of receipt of such request.

- 13.3 The Arbitration shall be conducted according to the Summary Procedure Rules for the Conduct of Arbitrations as published by the South African Association of Arbitrators unless otherwise agreed.
- 13.4 Cancellation in terms of 12.0 hereof shall not affect the validity of this agreement to refer all disputes to Arbitration.

14.0 SCHEDULE

This Schedule contains all variables referred to in this Agreement and all spaces requiring information should be completed by the parties or shown as inapplicable and not left blank.

14.1 Contractor : LE-CO DEVELOPMENT (PTY) LTD
 Postal address P O Box 614, Vredenburg, 7380.
 Physical address (domicilium) 6 Mermaid street, Langebaan, 7357.
 Tel: 082 772 8822 Office/fax: 022 – 772 0985 E-mail: christoe@intekom.co.za
 Contractor's VAT registration No: _____
 Contractors Company/Close Corporation Registration No. or Personal I.D. No. _____

14.2 Employer _____

 Postal address _____
 Physical address (domicilium) _____

 Tel: _____ fax: _____ E-mail: _____
 Employer VAT registration No: _____
 Employer Company/Close Corporation Registration No. or Personal I.D. No. _____

14.3 Contract Sum, inclusive of VAT R1 220 000,00
 Amount in words ONE MILLION TWO HUNDRED AND TWENTY THOUSAND RAND

14.4 Site address ERF 741 LAAIPLEK

14.5 Description of Works : BUILDING OF DWELLING AS PER AGREEMENT

14.6 Contract documents
 Drawing No's _____
 Specification As To Approved Plan And Attached Quotation and Specification
 Other _____

14.7 Possession of the site shall be given on date of registration of the stand in the employers name and deliver of the bankers guarantee as indicated in clause 3.5 hereof.

14.8 Intervals for Progress Payments

Construction to roof height : 30% of contract sum
Completion of roof, plaster and brick work : 30% of contract sum
Completion of works : 40% of contract sum

4.9 Details of Contractor's Bank:

Bank _____

Branch _____ Code _____

Account No. _____

Bank Account Name _____

Type of Account _____

15.0 SIGNATURE OF THE CONTRACTING PARTIES

Thus done and signed at _____

On _____ 20_____

As Witness

For and on behalf of the Contractor

Thus done and signed at _____

On _____ 20_____

As Witness

For and on behalf of the Employer