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## BUILDING WORKS AGREEMENT

**Project:** PIN OAK HEIGHTS PRIVATE ESTATE

**Employer:**

**Contractor:** DB SPACES (PTY) LTD

**Date:**

## 1 DEFINITIONS AND INTERPRETATION

In this **agreement** the words and phrases defined hereunder shall be printed in bold and bear the meanings assigned to them in this clause or identified in the **schedule**.

**AGREEMENT** means this **agreement** entered into between the parties and other **contract documents** that together form the contract between the parties

**ARCHITECT** means the architect appointed by the **developer** for the design of all houses in the development

**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 may be adjusted in terms of this **agreement**. The **contract sum** shall mean the rate per square meter tendered by the **contractor** and accepted by the **employer**, based on the **specifications** and the **priced document** for the execution of the **works**, multiplied by the actual square meters built by the **contractor** under this **agreement** which sum may be adjusted in terms of this **agreement**. For the purpose of this **agreement**, square meters shall include all covered built areas, as well as and including but not limited to covered and uncovered patios etc. Subject municipal approval, the **parties** agree that the **works** shall comprise of at least 280 (two hundred & eighty) square meters.

**CONTRACT VALUE** means a monetary value that initially is equal to the **contract sum** that is subject to adjustment

**DATE FOR PRACTICAL COMPLETION** means the contractual completion date stated in the **schedule** or revision thereof [8.0] on or before which the **contractor** agrees to bring the **works** to **practical completion**. The **contractor** will be liable for the determined **penalty** in failure of such

**DATE OF PRACTICAL COMPLETION** means the construction completion date or dates, which is initially the intended or planned date or dates to bring the **works** to **practical completion** and subsequently the actual or deemed date or dates on which the **contractor** achieved **practical completion**

<b>DEFECT</b>	means a fault or insufficiency due to materials or workmanship not being in accordance with this <b>agreement</b> , provided that <b>normal wear and tear</b> shall not constitute a <b>defect</b> .
<b>DEVELOPER</b>	means the property developer of where the works will be constructed, being K2020/743096 (South Africa) (Pty) Ltd, not being a party to this <b>agreement</b> .
<b>EMPLOYER</b>	means the party contracting with the <b>contractor</b> for the execution of the <b>works</b> and named in the <b>schedule</b> .
<b>LATENT DEFECT</b>	means a <b>defect</b> which a reasonable inspection of the <b>works</b> by the <b>employer</b> prior to the issuing of the <b>employer's</b> written notification in terms of 9.1 and 10.2 hereof would not have disclosed
<b>WORKS</b>	means the <b>works</b> as described in the <b>contract documents</b> , and as recorded in the <b>schedule</b> including any variations thereto.
<b>CONTRACT DOCUMENTS</b>	means this <b>agreement</b> , the <b>contract drawings</b> , the <b>specification</b> , the <b>priced document</b> and such other documents as are identified in the <b>schedule</b>
<b>CONTRACT DRAWINGS</b>	means the drawings issued by the <b>architect</b> and approved by the relevant authorities, which drawings will be approved by the <b>developer</b> in its sole discretion, which approval shall not be unreasonably withheld. In this regard, the parties acknowledge that the architectural guidelines for the development is still subject to approval by the municipality and that the <b>contract drawings</b> will have to comply with the architectural guidelines once approved.
<b>PRACTICAL COMPLETION</b>	means the stage of completion where the <b>works</b> is substantially complete and can effectively be used for the purposes intended
<b>FINAL COMPLETION</b>	means the stage of completion where the <b>works</b> is free of all defects as contemplated in 10.2
<b>SCHEDULE</b>	means the <b>schedule</b> attached to this <b>agreement</b> marked as "Schedule"
<b>PRICED DOCUMENT</b>	means the <b>prime cost amounts</b> and <b>provisional amounts</b> submitted by the <b>contractor</b> setting out the priced work to partially derive the <b>contract sum</b>

- WORKING DAY** means a day other than Saturdays, Sundays, public holidays and the days during the annual builder's holiday as published by
- SPECIFICATION** shall mean the detailed specifications annexed hereto and shall comprise the standard specifications and finishes which will be supplied by the **contractor** as part of the execution of the **works** in terms of this **agreement**. In the event of any of the specific materials proving to be unavailable, the **contractor** reserves the right to use alternative materials of reasonably equal standard.
- PRIME COST AMOUNT** shall mean the amounts included in the Contract Sum for the delivered cost of materials and goods obtained from a supplier, which actual delivered cost will replace the relevant **prime cost amount** in the event that the actual cost is more than the **prime cost amount** provided.
- PROVISIONAL AMOUNT** shall mean a sum of money included in the **contract sum** for work intended for execution by the **contractor**, the extent of which is identified but not detailed which actual cost of the relevant work will replace the relevant **provisional amount** in the event that the actual cost is more than the **provisional amount** provided.
- NORMAL WEAR AND TEAR** shall mean the normal wear and tear ascribed to improvements to fixed property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work, any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints, any mould growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damages caused thereby, wind and rain entering through open windows and doors and hot water cylinders which is covered by the guarantee issued by the supplier thereof
- BUILDER'S REPORT** shall mean a progress report issued by the **contractor** indicating the actual progress of the **works** at the date of the issue of the same, which report will form the basis to determine the estimated value of the **works** for the purpose of payment under 11 below.
- PAYMENT CERTIFICATE** A document issued by the **contractor** with the progress draws under 11 below signed by the **employer** within one (1) calendar day after receipt certifying the amount due and payable by the **employer** to the **contractor**.
- 1.1. The parties hereby choose their physical and / or electronic mail address as their 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. For the sake of clarity, email correspondence to the address stated in the schedule shall be acceptable for the purpose of communication and notices.
  - 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 authorised 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. OBLIGATIONS OF THE PARTIES

- 2.1. The **contractor** has tendered the **contract sum** for carrying out the **works** shown and described in the **contract documents** in terms of 3.1 hereof and has agreed to complete the **works** in accordance with this **agreement**.
- 2.2. The **employer** has agreed to pay the **contractor** the **contract sum**, which shall be subject to adjustment in terms hereof, at the times and in the manner specified in this **agreement**.
- 2.3. It is expressly acknowledged that the contract drawings and specifications of each house in the development will be particular to the specific erf, the architect's plan for the house and the individual client's requirements and therefore the contract documents of each house will differ and may not be used as comparison or part of the **contract documents** forming part of this **agreement**.

## 3. PREPARATION

- 3.1. This **agreement** is based upon the **contract documents**.
- 3.2. The **architect** has been appointed by the **employer** to issue the **contract drawings** as part of the design of the **works**. In this regard, it is agreed that the **parties** do not have the municipal approved **contract drawings** at the time of signature of the **agreement** and the **architect** will be responsible to issue the same for construction, which inter alia, will be used to determine the actual square meters built. In this regard and notwithstanding anything contained in this **agreement**, the **parties** agree that neither the **contractor** nor the **developer** warrants the minimum or maximum size of the **works** due to the fact that the same is subject to municipal approval.
- 3.3. The **contractor** shall not 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 **architect** who shall furnish the **contractor** with as many copies of all drawings and other documents as are reasonably required for the performance of the **works**.
- 3.4. The **employer** warrants that he will be the registered owner where the **works** are situated prior to commencement of the **works** 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.
- 3.5. The **employer** shall prior to the commencement of the **works**, furnish to the **contractor** acceptable security for the fulfillment of the **employer's** liability in terms of this **agreement**, paying the **contract sum** into the **contractor's** attorney's trust account with an irrevocable instruction to the said attorney to make payments of the funds to the **contractor** as contemplated in this **agreement**. This security shall be effected by the **employer** 30 calendar days prior to the lodgement of the registration of transfer of the erven from the **developer** to the **employer**. The **contractor's** attorney will notify the employer 7 (seven) calendar days prior to the due date of the security.

- 3.6. In the event that the **employer** is utilising a building loan for the payment of the **contract sum**, the **employer** shall furnish the **contractor** with sufficient proof of the approved building loan granted to the **employer** for the fulfilment of its payment obligations in terms of the **agreement** 30 calendar days prior to the lodgement of the registration of transfer of the erven from the **developer** to the **employer**. The **contractor's** attorney will notify the **employer** 7 (seven) calendar days prior to the due date of the security.
- 3.7. In the event that the **employer** instructs a variation to the **works** to the effect that the **contract sum** is increased, the security in 3.5 and / or 3.6 shall be adjusted to reflect the **contract value**

#### 4. SUNDRY COSTS

- 4.1. All charges for the items set out below are for the account of the **employer** where no agreement has been made for such charges to be included in the **contract sum**:
- 4.1.1. Special foundations or reinforcing due to adverse subsoil conditions, which conditions could not have been reasonably foreseen by the **contractor** prior to the time of signature of this **agreement**.
- 4.1.2. Blasting and/or work where a compressor is required due to adverse subsoil conditions.
- 4.1.3. The removal or importation of any material as a consequence of 4.1.1 or 4.1.2 hereof.
- 4.2. The **contractor** shall be liable for the cost of water during the construction up to the **date of practical completion**.

#### 5. WORKS RISK, INDEMNITIES, AND INSURANCE

- 5.1. Subject to the provisions 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** indemnifies 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, nationalisation or requisition by any public or local authority

- 5.2.5. sonic shock waves caused by aircraft or other aerial devices and ionising 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 or omission of the **employer**, the **employer's** servants or agents and those for whose acts or omissions they are responsible
- 5.2.8. an act or omission by others engaged by the **employer** and those for whose acts or omissions they are responsible
- 5.2.9. design of the **works** by the **employer** or any agent of the **employer**
- 5.2.10. **latent defect** in materials specified by trade name where the **contractor** has no right of substitution. The **contractor** hereby cedes to the **employer** any claim that may exist against the supplier or manufacturer of such materials
- 5.3. Subject to the provisions of 5.4 hereof, the **contractor** shall effect contract works insurances, and covering the **contractor's** subcontractors. The sum insured shall be the **contract sum**.
- 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 hereof.
- 5.5. Subject to the provisions of 5.6 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** indemnifies 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. design of the **works** by the **employer** or any agent of the **employer**
  - 5.6.4. the use or occupation of the **site** by the **employer**
  - 5.6.5. the right of the **employer** to have the **works** or any part thereof executed at the **site**
  - 5.6.6. 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** or his subcontractors

- 5.6.7. 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
- 5.6.8. damage to or physical loss of the contents of the **works**
- 5.6.9. the occupation of any part of the **works** by the **employer** or his tenants
- 5.7. The **contractor** shall effect public liability insurance generally covering accidental injury or death of a person and accidental loss or damage to material properly to cover the joint interest of both parties in respect of the indemnity stated in 5.5 hereof, for not less than the amount stated in the **schedule**.
- 5.8. Where the execution of the **works** involves the risk of weakening or interference with the support of adjoining land or structures the **employer** shall effect support insurance in the joint names of both parties and shall engage a professional engineer to design and supervise the provision of any necessary support work. Such support work shall be deemed to be a variation of the **works** in terms of 7.0 hereof.
- 5.9. Notwithstanding anything contained in this **agreement**, the **contractor** shall not be liable for consequential damages as a consequence of any act or omission in the process of the execution of the **works**.

## 6. EXECUTION OF THE WORKS

- 6.1. The **contractor** shall, in accordance with the **agreement**, 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 expected date recorded in the **schedule** who shall thereupon within a reasonable time commence the **works** and regularly and diligently proceed with and bring the **works** to **practical completion** by the **date for practical completion** as indicated in the **schedule** subject to any extension of time granted by the **employer** in terms of 8 hereof and subject to the provision that the **contractor** shall not be obliged to commence the **works** until:
  - 6.2.1. the necessary plan and other approvals, consent, registration, enrollments or other authority required under any law (including any statute, ordinance, by-law and/or regulation) has been obtained by the **employer** and / or the **developer**;
  - 6.2.2. the boundary pegs of the property are located and pointed out to the **contractor**;
  - 6.2.3. the **employer** has furnished the security in terms of 3.5, 3.6 and / or 3.7 hereof.
  - 6.2.4. the deposit has been paid by the **employer** as set out in the **schedule**
- 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 hereof.

- 6.6. All work or installations, coordination and the associated risks related to other contractors employed directly by the **employer** shall be the direct responsibility of the **employer**.
- 6.7. The **employer** acknowledges that there will be construction work in the vicinity of the **site** and that certain inconvenience may be caused thereby. The **contractor** shall not be held liable for such inconvenience or any damages that flow there from and shall be entitled, (where necessary) to enter upon the site for purposes of obtaining access to adjacent erven in the course of such construction work.

## 7. 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 no such variation shall vitiate this **agreement**.
- 7.2. The extension of time and adjustment to the **contract value** shall be agreed between the **contractor** and the **employer**, before the variation is commenced, and such agreed extension of time shall revise the **date for practical completion** as indicated in the **schedule** and the **contract value** shall be adjusted accordingly.
- 7.3. The **contractor** shall be entitled to refuse commencement of any variation until such time when the extension of time and adjustment to the **contract value** has been agreed and the **employer** has fulfilled its obligation in 3.5 and 3.7 above. Any delay caused by the **employer** in this regard, shall entitle the **contractor** to extension of time under 8 below.
- 7.4. In the event that the date of **practical completion** or the commencement of the **works** or possession of the **site** in terms of 6.2 is delayed through default or negligence of the **employer** or its **agents** or persons for which they are responsible the **contract value** shall be adjusted to provide for escalation at a rate of six per cent (6%) per annum applied pro rata to the delayed period. The **contractor** shall include such escalation in the interim **payment certificates**, where applicable.

## 8. EXTENSION OF TIME AND PENALTY FOR LATE COMPLETION

- 8.1. The **contractor** shall be entitled to a revision of the **date for practical completion** if the **date of practical completion** of the **works** is delayed by any circumstance or event beyond the **contractor's** reasonable control.
- 8.2. The **contractor** shall within 20 (twenty) **working days** of the delay ceasing give written notice of the cause and effect of the delay indicating the number of **working days** extension required to the **employer**. The **contractor** shall be granted such extension time to the **date for practical completion** for the delay of the **works** as stated in the said notice except if the **employer** shall within 3 (three) **working days** after receipt of the notice inform the **contractor** in writing of a reduced number of **working days** with reasons for such reduction, failing which the number of **working days** stated in the notice from the **contractor** shall be final and binding on the **parties**. In the event that the **employer** informs the **contractor** in writing of a reduced number of **working days** with reasons for such reduction as set out above and the **contractor** disagrees with the same, the **contractor** will have the right to refer the matter to the **architect** for its

opinion. The parties agree that the **architect's** opinion shall be binding until overturned in terms of clause 13 below.

- 8.3. Should the **contractor** fail to bring the **works** to **practical completion** on or before the **date for practical completion** as indicated in the **schedule**, the **contractor** shall be liable to the **employer** for the **penalty** stated in the **schedule** calculated for every calendar day from the **date for practical completion** until **practical completion** is achieved and the **employer** may deduct such **penalties** from any monies due to the **contractor**.

## 9. PRACTICAL COMPLETION

- 9.1. When the **works** are substantially complete the **contractor** shall notify the **employer** who shall within 3 (three) **working days** inspect the **works** together with the **contractor** and provide the **contractor** with a single, comprehensive written list of any outstanding work and/or **defects** to be remedied.
- 9.2. Subject to 9.3, 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**.
- 9.3. In the event that **employer** fails to inspect the **works** or issue the written list in terms of 9.1 within the said period, the works shall be deemed to have achieved **practical completion** notwithstanding the objective facts.

## 10. DEFECTS LIABILITY

- 10.1. Any **defects**, within three (3) calendar months after **practical completion**, the **defects** liability period, shall be made good by the **contractor**, at his own cost, subject to the **employer** giving written notice of a **defect** to the **contractor** within the **defects** liability period. The **contractor** shall not be liable for any **defects** in the **works** in respect of **normal wear and tear** or any **defects** or damages caused by the conduct of the **employer** or any person for who he is responsible, whether wilfully or by his negligence.
- 10.2. The **contractor** shall attend to and remedy such **defects** and items within a reasonable period after receipt of the **employer's** written notification in terms of 10.1.
- 10.3. On the expiry of the **defects** liability period the works shall reach **final completion**, subject that the **contractor** has completed all the **defects** as listed during the **defects** liability period.
- 10.4. 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.
- 10.5. 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 **latent defects** within a period of six (6) months after **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 hereof.

## 11. PAYMENT

- 11.1. The **contractor** shall, upon reaching the intervals as stated in the **schedule** when progress payments are to be effected in terms of this **agreement**, make written application to the **employer** for such payments with the accompanying **builder's report** and **payment certificate** including the submission of a VAT invoice, where applicable. The **employer** will sign the **payment certificate** reflecting the amount due to the **contractor**.
- 11.2. In the event that the **employer** is making use of bank finance for the payment of the **works**, then the **employer** shall ensure that all the relevant documentation required by the bank for draws from the facility is in place at the commencement date. The **employer** shall communicate the draw schedule of the bank to the **contractor** prior to the **commencement date** in the event that the same differs from the intervals stated in the **schedule**. Notwithstanding anything contained in this **agreement**, it is the **employer's** responsibility to ensure payment to the **contractor** as set out in this clause.
- 11.3. If part of the **contract value** is financed by a bond, the **employer** undertakes to pay the cash portion of the **contract value** according to the progress payment as stated in the **schedule** and the bond will be utilized for the subsequent payments.
- 11.4. The **employer** shall pay the amount due in each payment to the **contractor**, within three (3) calendar days of receiving such documentation in 11.1. Where payment is made directly into the **contractor's** bank account, written proof thereof shall be furnished to the **contractor** within the said period.
- 11.5. The **contractor** shall be entitled to suspend the **works** or reduce the rate of progress of the **works** in the event that the **employer** fails to pay the amount due in 11.4. The **contractor** shall notify the **employer** of its election to suspend or reduce the rate of progress of the **works**. The period during which work is suspended shall be granted as an automatic extension of time for completion within the meaning of 8 hereof.
- 11.6. The amount of each such payment shall be a reasonable estimate of the value of **work** duly executed up to the date of each application and any amounts due under 6.5 and 7.2 hereof as per the contractor's **builder's report**.
- 11.7. Any materials required for the **works**, delivered to the **site** and / or built into and forming part of the **works**, shall remain the property of the **contractor** until they have been paid for by the **employer** in terms of 11.4 hereof. The **contractor** will have the right to regain and keep possession of such materials in the event that the **employer** fails to pay the amounts due under 11.4 above.
- 11.8. Any amount not paid on the due date shall bear compound interest thereon at a rate of 3% (three per cent) greater than the lending rate charged by the **contractor's** bank, which interest shall accrue as from the due date for payment until the actual date of payment.
- 11.9. Where the **contract sum** includes a **provisional sums** for items of **work** or **prime cost amounts** for materials and goods, the **contract value** shall be adjusted by the difference between the **provisional sums** for items of **work** or **prime cost amounts** for materials and goods and the actual cost of the items of work or the delivered cost of the materials and goods in the event that the actual cost is higher than the **provisional sums** or **prime cost amount**, including any reasonable waste. The **contractor** shall

be entitled to a 15% (fifteen percent) markup on such **provisional sums or prime cost amount** which shall be deemed to be included in the **contract sum** and which shall be prorated to the actual costs incurred.

- 11.10. Upon **practical completion** of the **works** and concurrent therewith the **employer** shall pay to the **contractor** the full **contract value**. This final payment shall be evidence that the **contractor** has fulfilled his obligations in terms of 6.1 hereof, save for **latent defects**.
- 11.11. The **contract value** will be finally determined after the **practical completion** on the following principles:
  - 11.11.1. The Rate per Square meter as stated in the **schedule** Incl VAT, as multiplied by the actual square meters built,
  - 11.11.2. Adjustment for variations in accordance with the **agreement**;
  - 11.11.3. Adjustments by omitting **prime cost amounts** and **provisional amount** in the **priced document** from the **contract sum** and the replacement thereof with the actual delivered cost amounts /rates and of such item in the event that the relevant **pc amount** or **provisional amount** allowed is not sufficient for the item, goods or material that the **employer** has elected. The increase will be added to the **contract sum** to derive the **contract value**.

## 12. DEFAULT

- 12.1. Should the **contractor** make default in any of the following respects:

- 12.1.1. without reasonable cause wholly suspends the **works** before completion;
- 12.1.2. fails to proceed with the **works** with reasonable diligence;
- 12.1.3. breach of any material term of this **agreement**

then the **employer** shall, by notice in writing, inform the **contractor** of such default and, if such default shall continue for a further period of 20 (twenty) **working days**, cancel this **agreement** and employ others to complete the **works**. The damages of such cancellation shall be a debt due by the **contractor** to the **employer**

- 12.2. Should the **employer** make default in any of the following respects,

- 12.2.1. fails to furnish an attorney's undertaking or other security in terms of 3.5 or 3.7 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 hereof;
- 12.2.4. breach any other term or condition in this **agreement**

then if such default shall continue for ten (10) **working 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. The **contractor** may retain any cash payments made by the **employer** prior to cancellation as liquidated damages,

without prejudice to any other right that the **contractor** may have. Upon cancellation of this **agreement** as a result of default by the **employer**, the **contractor** will be entitled to keep possession and occupation of the **works** and the **works** and to exercise its builder's lien, if applicable.

### 13. SETTLEMENT OF DISPUTES

- 13.1. Should any dispute between the **employer** and the **contractor** arise out of this **agreement**, the **parties** shall attempt to settle the dispute amicably within 10 (ten) **working days** after the referring party has notified the other party of the said dispute.
- 13.2. Failing settlement within the period as referred to in 13.1 such dispute shall be referred to adjudication by written notice by either party of such dispute.
- 13.3. Adjudication shall be conducted in accordance with the edition of the Construction Industry Development Board's Adjudication Procedure current at the date of issue of the dispute notice.
- 13.4. The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Development Board's Adjudication Procedure.
- 13.5. Save if otherwise stated in the **schedule**, the party, which raises the dispute, shall select three adjudicators from the panel of adjudicators published by the Association of Arbitrators, determine their hourly fees and confirm that these adjudicators are available to adjudicate the dispute in question. The other party shall then select within 7 (seven) days one of the three nominated adjudicators, failing which the chairman for the time being of Association of Arbitrators shall nominate an adjudicator.
- 13.6. The appointed adjudicator shall not be eligible for subsequent appointment as the **arbitrator**
- 13.7. The adjudicator's decision shall be binding on the **parties** who shall give effect to it without delay.
- 13.8. Should either party be dissatisfied with the decision given by the adjudicator, or should no decision be given within the period set in the Rules, such party may give notice of dissatisfaction to the other **party** and to the adjudicator within ten (10) **working days** of receipt of the decision or, should no decision be given, within ten (10) **working days** of expiry of the date by which the decision was required to be given the dissatisfied party shall refer the dispute to arbitration
- 13.9. Where a dispute is referred to arbitration the following shall apply:
  - 13.9.1. The **arbitrator** shall be appointed at the request of either party by the body stated in the **schedule**.
  - 13.9.2. Where nobody is stated or where the stated body is unable or unwilling to act, the appointment shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The appropriate rules current at the time when the dispute is declared shall apply
  - 13.9.3. The arbitration shall be conducted by the **arbitrator** in accordance with the rules of the body stated in the **schedule**.

- 13.9.4. The **arbitrator** shall have the power to open or revise any certificate, opinion, decision, requisition or notice relating to the dispute as if no such certificate, opinion, decision, requisition or notice had been issued or given.
- 13.9.5. The **arbitrator's** decision shall be final and binding on the **parties** who shall give effect to it without delay.

**SCHEDULE**

**1 CONTRACTING AND OTHER PARTIES**

**Contractor** DB SPACES (PTY) LTD  
**Postal Address** PO BOX 3348, SOMERSET WEST  
**Code** 7129  
**Tel** 021 **Fax** \_\_\_\_\_  
**Email** [info@dbspaces.co.za](mailto:info@dbspaces.co.za) ; [phillip@dbspaces.co.za](mailto:phillip@dbspaces.co.za)  
**Domicilium** As above

**Employer** \_\_\_\_\_  
**Postal Ad dress** \_\_\_\_\_  
**Code** \_\_\_\_\_  
**Tel** \_\_\_\_\_ **Fax** \_\_\_\_\_  
**Email** \_\_\_\_\_  
**Domicilium** \_\_\_\_\_

**2 CONTRACT DETAILS**

2.1 **Works** description Construction of a new residential dwelling on the site

2.2 **Site** description Erf \_\_\_\_\_ forming part of Pin Oak Heights Private Estate

2.3 Possession of the **site** to the **contractor** (expected date)

2.4 <b>Date for completion</b>	<b>date for practical completion</b>	<b>penalty amount per calendar day</b>
for the <b>works</b> as a whole	198 <b>working days</b> after commencement	R500.00

2.5 The **contractor** shall be responsible for design elements. Where "yes" the specific elements are listed below: (yes/no)

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2.6 **Building Plans Approval** - The Building Plans must be completed and ready for submission to Council within 60 Calendar Days after transfer.

2.7 **Construction to Start** - The Construction phase to start within 18 Months after transfer .

**3.1 INSURANCES**

3.1	Contract works insurance effected For the sum of	(amount)	<b>Contract Sum</b>
3.2	With a deductible of	(amount)	R 10,000.00
3.3	Specialised insurance is required  If Yes, specify		(yes/no)  <div style="border: 1px solid black; padding: 2px;">No</div>
3.4	Public liability insurance to be effected by the <b>contractor</b> for the sum of	(amount)	R 5,000,000.00
	With a deductible of	(amount)	R 10,000



**4 DOCUMENTS**

**Contract documents** forming part of this **agreement** and annexed hereto:

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**5 POST-TENDER INFORMATION**

5.1 Accepted **contract sum** inclusive of tax  
(in words) \_\_\_\_\_

**R**\_\_\_\_\_ per square meter, which amount will be multiplied by the actual square meters built

Progress Payments on the following intervals:

Deposit of R 250,000 (two hundred thousand rand) 7 calendar days prior to commencement of the **works**. The deposit amount will be deducted in equal shares from the amounts due in the first four Progress Payments

All further Progress Payments will be done as and when needed throughout the construction period, but the **contractor** reserves the right to issue progress payments every 2 weeks during construction.

5.3 **Contractor's** Bank Account Details: **DB Spaces (Pty) Ltd**  
**Nedbank – Account # 1139 266 519**  
**Branch Code: 114145**

5.4 **Contractor's** Attorneys Trust Account Details: **Miltons Matsemela Inc**  
**Nedbank – Account # 1147 255 027**  
**Branch Code: 108809**

5.5 The annual building holiday period/s during the construction period is/are from (dates) 

15/12/2022
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 to 

15/01/2023
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**6 SIGNATURES OF THE CONTRACTING PARTIES**

Signature of the contracting parties

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
for and on behalf of the **employer** who by  
signature hereof warrants authorisation  
hereto

\_\_\_\_\_  
Capacity of signatory

\_\_\_\_\_  
as Witness (1)

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
for and on behalf of the **contractor** who by  
signature hereof warrants authorisation  
hereto

**DIRECTOR**

\_\_\_\_\_  
Capacity of signatory

\_\_\_\_\_  
as Witness (2)

Details of Witness (1)

Name: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Details of Witness (2)

Name: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_