



BUILDING AGREEMENT

ENTERED INTO AND BETWEEN:

MARCELLE PROPS 425 CC
REGISTRTION NUMBER: 2005/004186/23

AND
THE BUYER

NAME: _____

ADDRESS _____

ID: _____

ERF: _____ VREDENBURG

1. PREPERATION

- 1.1 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.
- 1.2 The Buyer 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 Buyers' liability in terms of this Agreement, in an amount not less that the Contract Sum.

2. SUNDRY COSTS

- 2.1 All charges for the items set out below are for the account of the Contractor where no agreement has been made for such charges to be included in the Contract:
 - 2.1.1 Engineer's fees and costs.
 - 2.1.2 Soil testing and test pits.
 - 2.1.3 Special foundations or reinforcing due to adverse subsoil conditions.
 - 2.1.4 Blasting and/or work where a compressor is required due to adverse subsoil conditions.
 - 2.1.5 The location of boundary pegs.
 - 2.1.6 Water, electrical and sewerage connection fees and deposits, subject to the Contractor being responsible for all costs of service utilized in the completion of the Works.
 - 2.1.7 Interim rates and taxes.
 - 2.1.8 Inspection fees.
 - 2.1.9 National Home Builders Registration Council (NHBRC) enrolment fee for the Works.

3. WORKS RISK, INDEMNITIES, AND INSURANCE

- 3.1 Subject to the provisions of 3.2 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 Buyer.

- 3.2 The Contractor shall not be liable for damage to or physical loss of the Works where these results from any of the following circumstances, and the Buyer shall indemnify the Contractor in such circumstances:
- 3.2.1 war, whether declared or not, invasion and hostile acts of foreign enemies;
 - 3.2.2 rebellion, insurrection, revolution, terrorism, military or usurped power or civil war;
 - 3.2.3 civil commotion, riot, strike, lockout or disorder by persons other than the Contractor's employees or his subcontractors;
 - 3.2.4 confiscation, nationalization or requisition by any public or local authority;
 - 3.2.5 sonic shock waves caused by aircraft or other aerial devices and ionizing radiation or contamination;
 - 3.2.6 the use or occupation of any part of the Works by the Buyer, the Buyer's servants and agents, or those for whose acts or omission they are responsible;
 - 3.2.7 an act or omission of the Buyer, the Buyer's servants or agents and those for whose acts or omissions they are responsible;
 - 3.2.8 an act or omission by others engaged by the Buyer and those for whose acts or omissions they are responsible;
 - 3.2.9 a latent defect in materials specified by trade name where the Contractor has no right of substitution. The Contractor hereby cedes to the Buyer any claim that may exist against the supplier / manufacturer of such materials.
- 3.3 Subject to the provisions of 3.5 hereof the Contractor indemnifies the Buyer 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.
- 3.4 The Contractor does not indemnify the Buyer where the liability, loss, claim or proceedings arises from any of the excluded circumstances listed hereunder, and the Buyer shall indemnify the Contractor in such circumstances:

- 3.4.1 an act or omission of the Buyer, his servants or agents and those for whose acts or omissions they are responsible
- 3.4.2 an act or omission of others engaged by the Buyer or those for whose acts or omissions they are responsible
- 3.4.3 design of the Works by the Buyer or any agent of the Buyer
- 3.4.4 the use or occupation of the site by the Buyer
- 3.4.5 the right of the Buyer to have the Works or any part thereof executed at the site
- 3.4.6 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
- 3.4.7 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
- 3.4.8 damage to or physical loss of the contents of the Works
- 3.4.9 the occupation of any part of the Works by the Buyer or his tenants
- 3.5 The Contractor shall effect public liability insurance to cover the joint interest of both parties. The Contractor shall also effect any relevant workmen's compensation or similar insurances as are required by law.
- 3.6 The Contractor shall have the right to suspend the progress of the works until he is furnished with the professional engineer's requirements.

4. EXECUTION OF THE WORKS

- 4.1 The Contractor shall, to the reasonable satisfaction of the Buyer, 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.
- 4.2 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 an extension of time granted by the Buyer.

- 4.3 The Contractor shall at all reasonable times keep upon the Works a competent person in charge.
- 4.4 The Buyer 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.

5. EXTENSION OF TIME FOR COMPLETION

- 5.1 The Contractor shall within 10 (ten) working days of becoming aware of such delay to the Works give written notice of the cause and effect of the delay to the Buyer and the Buyer shall grant a reasonable extension of time for the completion of the Works and in so doing shall make allowance for any holidays recognized by the Building industry.
- 5.2 Should the Works be delayed through any fault of the Buyer 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 Buyer and the agreed value shall be added to the Contract sum.

6. PRACTICAL COMPLETION

- 6.1 When the Works are substantially complete the Contractor shall notify the Buyer who shall within 5 (five) 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.
- 6.2 As soon as the work shown on the list referred to in 6.1 hereof has been completed by the Contractor and inspected and accepted by the Buyer, or when the Buyer takes occupation of the Works, whichever is the earlier, the Works shall have reached Practical Completion.

7. DEFECTS LIABILITY

- 7.1 Any patent defects, which may appear within three (3) calendar months after practical Completion, shall be made good by the Contractor, at his own cost.
- 7.2 The Buyer 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.

- 7.3 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.
- 7.4 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 Buyer's written notification.
- 7.5 The Contractor shall not be responsible for any latent defects in respect of the Works.
- 7.6 The Buyer shall provide the Contractor with reasonable access to the Works in order to enable him to fulfill his obligations under 7.0 hereof.

8. PAYMENT

- 8.1 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 Buyer for such payments, including the submission of a VAT invoice, where applicable.
- 8.2 The Buyer shall pay the amount due in each payment to the Contractor at the place stated in the Schedule, within four (4) calendar days of receiving such application.

Where payment is made directly into the Contractor's bank account, written proof thereof shall be furnished to the Contractor forthwith.
- 8.3 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 shall include any materials properly required for the Works and delivered to the site.
- 8.4 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 Buyer.
- 8.5 Upon Practical completion of the Works and concurrent therewith the Buyer shall pay to the Contractor the balance due to the Contractor.

8.6 The Buyer shall make payment of the final balance due to the Contractor immediately upon final completion of the Works and the making of this final payment shall be evidence that the Contractor has fulfilled his obligations in terms of this agreement, save for latent defects.

9. DEFAULT

9.1 Should the Contractor make default in any of the following respects:

- 9.1.1 without reasonable cause wholly suspends the Works before completion;
- 9.1.2 fails to proceed with the Works with reasonable diligence;
- 9.1.3 refuses, after notice in writing from the Buyer, 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 Buyer specifying the same, the Buyer 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 Buyer by reason of such default.

9.2 Should the Buyer make default in any of the following respects:

- 9.2.1 fails to make payment to the Contractor in terms of 8.0 hereof; then if such default shall continue for seven (7) calendar days after written notice has been given to the Buyer 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 Buyer shall be liable for all damages incurred by the Contractor by reason of such default.

9.3 Failure by the Buyer to make payment in accordance with 8.0 hereof shall entitle the Contractor, on giving three (3) calendar days' written notice to the Buyer, 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 5.0 hereof.

10.0 SETTLEMENT OF DISPUTES

- 10.1 Any dispute or difference between the Contractor and the Buyer 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.
- 10.2 The Arbitrator shall be a person agreed upon between the parties prior to the commencement of the Works and recorded in the Schedule. Failing 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 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.
- 10.3 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.
- 10.4 Cancellation in terms of 9.0 hereof shall not affect the validity of this agreement to refer all disputes to Arbitration

11. DWELLINGS TO BE BUILT IN PHASES

- 11.1 The Contractor reserves the right to commence with building works in phases.
- 11.2 Housing Consumers Protection
 - 11.2.1 The Contractor is registered as a Home builder as required by section 10 of Act 95 of 1998.
 - 11.2.2 The Contractor shall obtain an Enrolment Certificate as referred to in Section 14 of Act 95 of 1998 from the NHBRC.
 - 11.2.3 Attached annexure A, B and C supply additional detail where applicable
 - 11.2.4 Works on this Erf has to be completed within 24 (Twenty Four) months of registration in the event this time limit should not be obtained due to the Purchaser's default or request, then and in that event the Contract price shall escalate sixth monthly at a rate of 6%. This condition is not applicable to the Contractor.

12. APPOINTMENT / CESSION

The Contractor reserves the right to cede and assign any of his rights under this agreement to any registered Contractor. This includes the right to appoint Sub-Contractors at his free will.

13. 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.

13.1 **Contractor:** Marcelle Props 425 CC, Registration Number: 2005/004186/23

VAT Registration Number: 4460220207

Postal address: 5 Upper-Auret Street, Paarl, 7646

Physical address (domicilium): 5 Upper-Auret Street, Paarl, 7646

Cell: 082 378 8595

E-mail: antoinette@cadpro.co.za

13.2 **Buyer :** _____

Postal address _____

Physical address (domicilium) _____

Tel: _____ Fax: _____ e-mail: _____

Buyer's Company/Close Corporation Registration no. or Personal ID no.

13.3 Contract Sum, Inclusive of VAT – R _____

Amount in words _____

13.4 Site Address _____

13.5 Description of the Works _____

13.6 Contract documents

Drawings no's _____

Specification _____

Other _____

13.7 Possession of the site shall be given (**date to be supplied by Contractor to buyer**)

13.8 Intended date of Practical Completion (**date to be supplied by Contractor to buyer read in connection with clause 11**)

13.9 Intervals for Progress Payments: **4 draws will be made and executed to the Contractors discretion**

13.10 Details of Contractor's Bank:

To be supplied to Buyers when drawings need to be made.

13.11 Name of Arbitrator: Herman Maree Architect from Maree Design

Address: SF Trust Sakesentrum, 73 Voortrekker Avenue, Malmesbury

14. SIGNATURE OF THE CONTRACTING PARTIES

Thus done and signed at _____
on _____

As Witness

For and on behalf of the Buyer

Thus done and signed at _____
on _____

As Witness

For and on behalf of Marcelle Props 425 cc