

BUILDING AGREEMENT

MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN:

**THE TRUSTEES FOR THE TIME BEING OF THE
FINKENSTEIN BUILDERS TRUST**

**(herein represented by GIDEON JOHANNES FAKCULYN GOUS and/or
DIEDERIK JOHANNES JOOSTE FAKCULYN GOUS and/or LEON
BASSON duly thereto authorised)**

**P O Box 3865
Windhoek**

Address: Finkenstein Site Office, Finkenstein, Windhoek

Tel no.: +264 83 332 0003

(hereinafter referred to as the "Contractor")

and

FULL NAME: _____

IDENTITY NUMBER: _____

MARITAL STATUS: _____

ADDRESS: _____

TEL NUMBER: (H) _____ **(W)** _____

(hereinafter referred to as the "Employer/Owner")

WHEREAS the employer has acquired a property described as:

**CERTAIN: Erf no. _____ FINKENSTEIN (being the approved
General Plan Erf number)**

SITUATED: In the Municipality of Windhoek

REGISTRATION DIVISION "K", Khomas Region

MEASURING: _____ Square metres

(hereinafter referred to as the "property")

and is desirous to have a dwelling house erected in the property:

AND WHEREAS the Contractor is prepared to effect the construction of the dwelling house, subject to certain conditions:

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS

1. INTERPRETATION

1.1 In this contract, unless inconsistent with the context, the words and phrases defined hereunder shall bear the meaning assigned to them in this clause:

1.1.1 “the Developer” shall mean: The Trustees for the time being of the Finkenstein Portion Three Trust

1.1.2 “the Employer” shall mean: _____

1.1.3 “the Contractor” shall mean: The Trustees for the time being of the Finkenstein Builders Trust,

1.1.4 “the Association” shall mean: the Finkenstein Manor Owners Association incorporated for the purposes of the management and administration of certain functions and duties of the Town within the Development;

1.1.5 “the Development” shall mean:

- i. the establishment of the Finkenstein Manor Township;
- ii. Roads and infrastructure services to the Township;
- iii. Security entrance;
- iv. Alarmed perimeter fence with alarm monitoring systems;
- v. Open spaces on which the site is situated;
- vi. Residential units
- vii. Sectional title Schemes

1.1.6 “the Works” shall mean: the construction works which are to be executed on the site in accordance with the provisions of this contract;

1.1.7 “the Contract Sum” shall mean: the sum of N\$ _____
plus such other amounts as shall become payable
as set out hereunder at the times and in the manner
specified herein.

1.1.8 “the Conveyancers” shall mean: Theunissen, Louw & Partners
No. 1 Schutzen Street
Windhoek
Tel: 061 – 237 856

1.1.9 “the Architect” shall mean: the architect nominated and appointed by the
contractor from time to time, but for the purposes
of this agreement shall be deemed to include the
project manager.

1.1.10 “the Contract Documents”
shall mean: i. this agreement and the annexures hereto;
ii. the contract drawings and building plans,
together with schedules of finishes;

1.1.11 “the Material” shall mean: all building materials provided by the
contractor.

1.2 Marginal notes and the headings in this contract are for reference purposes only and shall not be
taken into account in construing the content hereof.

1.3 In this contract, unless inconsistent with the context, the masculine includes the other genders and
the singular includes the plural and *vice versa*;

2. PRE-CONDITIONS

This agreement is subject to and dependent on a deed of sale for the property between the owner of the
property and the employer.. It is recorded and agreed that neither the agreement for sale of the land, nor this
agreement can exist independently, and that cancellation of either one of the agreements will result in the
immediate and simultaneous cancellation of the other.

3. EXECUTION OF THE WORKS

3.1 This Contractor shall, to the reasonable satisfaction of the Employer, execute and complete the
Works shown upon and described in the Contract Documents and specifically in accordance with
the options and finishing schedules annexed hereto as annexures “F” and annexure “G” respectively.

3.2 The Contractor shall be entitled to vary the works for any reason considered reasonably necessary
by the Architect, but so that the Employer’s right will not be materially prejudiced or affected
thereby.

- 3.3 The Contractor shall have the right in its sole discretion to determine the lay-out of the buildings as indicated on the Drawings, or make changes in the area of the buildings provided that the area of the building shall not vary by more than 5% (five per centum) from the estimated area as reflected in the Annexures hereto.
- 3.4 If a dispute arises between the parties as to the design or standard of finishes then the Architect acting as an expert shall in his absolute discretion determine whether or not there has been substantial compliance and the parties will be bound by such decision.
- 3.5 The Employer shall not employ any person or firm to carry out any work of whatsoever nature on or to the works for as long as the contractor shall be on site, or without the consent of the contractor and Owners Association
- 3.6 The Contractor shall appoint such sub-contractors as it may deem necessary in its sole discretion.
- 3.7 The employer has the option of a choice between the building plans presented by the Contractor in respect of the erf.
- 3.8 The Employer has been given the reasonable opportunity of exercising a choice of certain finishes like tiles, interior and colours of paint and joinery from the selection to be made available by the Contractor, broadly in terms of the Drawings and Specifications. Should the Employer not have completed the choices of finishes in this regard in their entirety or at all within the time provided for by the Contractor, then the Employer shall be deemed to have appointed the Architect as its agent to select on its behalf any finishes where the choice or selection of the Employer is incomplete and the Architect's choice shall be final and binding.
- 3.9 The Employer shall attend at the offices of the Contractor within 10 (ten) business days after being requested thereto by the Contractor and sign the drawings for the purposes of their submission to the Local Authority. Should the Employer fail to do so then this agreement shall operate irrevocably and in *rem suam* as a Power of Attorney in favour of the Contractor who shall have the power to sign the building plans and any application required to the Local Authority to obtain the approval thereof on behalf of the Employer.
- 3.10 The Contractor shall be obliged to furnish all materials, equipment and other requirements in order to complete the abovementioned dwelling. All such materials shall be chosen in the absolute discretion of the Contractor who shall also determine the quality thereof.
- 3.11 Neither the Employer nor any person on his behalf shall have the right to issue instructions to, or interfere with, hinder or obstruct any of the Contractor's workmen, any subcontractors employed on the Works or other persons employed by or acting on behalf of the Contractor.
- 3.12 The Contractor shall at all times be entitled to appoint such sub-contractors as it, in its sole and exclusive discretion may deem necessary.

4. CONTRACT SUM

4.1 The contract sum shall be the amount of N\$ _____ which amount will be adjusted using the Haylett Contract Price Adjustment formulae standardly used in the Namibian Building Industry as from 1 January 2017 onwards.

4.2 Subject to clause 10 and in the event of the Employer, at any time or for any reason whether before, during or after the construction of the Works, requiring any alteration, variation or amendment to the drawings and/or finishing schedule involving the Contractor in additional expense, then the cost of complying with such alteration, variation or amendment shall be borne and paid for by the Employer, alternatively sealed full before such alteration variation or amendment be implemented.

5. PLANS PREPARED BY THE CONTRACTOR

Notwithstanding anything to the contrary herein or elsewhere contained, the Employer hereby specifically and unconditionally authorises the Contractor to prepare working drawings for the Works and to submit such plans for and on behalf of the Employer for approval to the Developer and or the Association or their appointed agent concerned .

6. PAYMENT GUARANTEE

6.1 The Employer shall within 30 days of date of a written request by the contractor to such effect, furnish to the Contractor a banker's letter of approval for the full amount of the Contract Sum in terms whereof the Contractor shall be entitled to receive progress payments as hereinunder specified as the Works proceed in accordance with the provisions set out hereunder.

6.2 No condition in terms whereof the financial institution is entitled to withhold any amount of the purchase price until such time as the Purchaser or a valuator on his behalf has certified that the works has been completed to its satisfaction will be a valid guarantee, and will therefore be unacceptable to the Contractor.

7. COMMENCEMENT AND COMPLETION

7.1 Possession of the property shall be given to the contractor on a date not later than 2 (two) years after the date of transfer of the property into the name of the employer who shall thereupon within a reasonable time begin the Works and regularly proceed with and complete the same within 290 (TWO HUNDRED AND NINETY) days following the date given above, subject to anything to the contrary herein contained and subject furthermore to any extension of time granted by the Employer. In the event of the building operations coinciding with the Builder's holiday period in any year, then the intended period of completion within the time limit as aforesaid shall be extended by an additional 30 (THIRTY) days.

7.2 The contractor shall be entitled to receive possession of the property when he is due to commence with the works and to retain possession of the works until all agreed amounts due and payable to him under this agreement have been paid in full and all obligations of the employer in terms of this agreement have been fulfilled.

- 7.3 Clauses 7.1 and 7.2 are subject to the proviso that the Contractor shall not be obliged to begin the Works until:
- 7.3.1 Transfer of the property into the name of the Employer has occurred;
 - 7.3.2 the necessary plan and other approvals, consent or other authority required under any law (including any statute, ordinance, by-law and/or regulation) have been obtained by the Contractor;
 - 7.3.3 the mortgage bond, where applicable, has been granted and registered.
 - 7.3.4 all servitudes, if any, have been registered.
 - 7.3.5 all preconditions in terms of the agreement for the sale of the property concluded between the Developer and the Employer, concluded simultaneously herewith have been met and fulfilled.
- 7.4 The Employer undertakes to employ only the Contractor to erect and complete the buildings, and undertakes not to employ any other Contractor or Sub-contractor to complete the buildings without the prior written consent of the Contractor excluding however such portions of the building works as the parties may agree upon in writing.
- 7.5 The drawings and finishing schedules in respect of the buildings have been drawn by the Contractor's Architect and have been submitted to the Employer who warrants that he is satisfied therewith. These drawings and finishing schedules shall be regarded as any integral part of this agreement and deemed to be incorporated herein by reference.
- 7.6 If necessary all drawings relating to the buildings will be submitted by the Contractor on behalf of the Employer to the Owners Association or in the event of such Association not being established to the Developer and the appropriate local authority for their approval.
- 7.7 The Employer hereby irrevocably empowers the Contractor or its nominee to sign on behalf of the Employer all the necessary drawings and documents required by the Owners Association or in the event of such Association not being established, the Developer and the local authority for or in connection with the buildings to be constructed by the Contractor.
- 7.8 The Employer warrants that he has checked and verified all the Annexures hereto to ensure that all his requirements are included, and the Contractor accepts no liability for any omissions therein.
- 7.9 Provided all suspensive conditions have been fulfilled and provided the Employer has complied with all his obligations in terms hereof and specifically the delivery of guarantees and further subject

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to clause 7.1, the Contractor shall complete the buildings within 290 (TWO HUNDRED AND NINETY) days after the date of commencement or within such extended date as the parties may agree upon, on which date the Employer shall be entitled to vacant occupation. If the work is delayed by

7.9.1 force majeure or by reason of any inclement weather or

7.9.2 by reason of directions given by the Employer or by reason of the Employer's requirements in respect of variations or in consequence of the Contractor not having received in due time the necessary directions from the Employer for which he shall have especially applied in writing, or

7.9.3 by reason of civil commotions

then in such case a fair and reasonable extension of time for completion of the works shall be allowed to the Contractor. Any dispute in regard to extensions of time shall be deemed to be a dispute which has to be dealt with in terms of the dispute clause referred to herein.

7.10 The Contractor shall complete the works, subject to it not being delayed by anything beyond its control, or by the Employer in any manner whatsoever, and further subject to such reasonable extensions of time as may be considered necessary by the Contractor for any variations, extras and omissions made in terms of this Agreement.

7.11 In the event of the works being delayed by an Act of God, vis major, disaster or by reason of any inclement weather, non-availability of any materials, plant or labour, or for any other reason whatsoever, the Employer shall have no claim against the Contractor for damages or otherwise. The Contractor however, undertakes to endeavour to complete the works as soon as possible under the given circumstances.

7.12.1 In the event of the works not being commenced with on the anticipated commencement date as a result of a delay on the part of the Employer, the contract sum shall escalate at the rate of 1,5% per month or part thereof for the period between the anticipated commencement date and the date of actual commencement.

7.12.2 Similarly, should the works be delayed at any point in time during the building process as a result of a delay on the part of the Employer, the contract sum shall escalate at the rate of 1,5% per month or part thereof.

7.13 The Contractor shall not be responsible for any loss, damage or inconvenience suffered by the Employer by reason of any building operations which may be conducted in respect of the Development after the works are complete.

7.14 If the Contractor fails to complete the Works within the period stipulated in the preceding sub-clauses or any extended period authorised in terms of clauses 7.1, 7.9 and 11 in writing by the

Employer, then the contractor shall pay the Employer as liquidated and ascertained damages an agreed maximum sum equal to 0,5% of the contract value per calendar month for the period during which the said Works shall so remain incomplete.

8. COMPLETION DATE

8.1 For the purpose of this agreement the occurrence of any one of the following events shall constitute the completion date namely:

8.1.1 the date of formal handing over of the keys to the works by the contractor to the employer and the signing by the employer of a handing-over certificate in acknowledgement thereof;
or

8.1.2 the date which occupation of the works is taken by the employer or his agent; or

8.1.3 after notice by the contractor to the employer that the final section of the works has been completed and all inspections have been done and tests passed by the bondholder and the works are available for occupation by the employer; or

8.1.4 the date of issue of a certificate signed by the architect stating that the works have been satisfactorily completed.

8.2 The occurrence of one or more of the events detailed in clause 8.1 above shall constitute complete proof of the completion of the works by the contractor and shall determine the completion date. Except for defects liability in terms of clause 14, the contractor shall be discharged completely from all obligations expressed or implied under this contract and any variation thereof or addition thereto and the employer shall have no further claim on the contractor.

8.3 Notwithstanding anything elsewhere provided for in this agreement, all amounts owing in terms of this agreement which have not already been paid in terms of the provisions of this agreement shall be forthwith payable on the completion date.

8.4 the Contractor shall not allow handover of the building works, or subsequent occupation of the works by the Employer, unless all outstanding amounts, excluding retention have been paid in full.

9. RISK AND RETENTION

The risk in the works shall pass wholly and entirely to the employer as from the completion date, provided that the contractor will invest 2,5% of all claims made by approved sub-contractors on the trust account of the conveyancers, interest to the benefit of the contractor as retention money for any latent defects becoming patent during the three months the retention money is held. The three month retention period will start running on the completion date. The employer must notify the contractor in writing of his intention to reclaim any retention money held for purposes of fixing any defects that became patent during the three months the retention money is held. Such notice must provide all relevant details to the disputed work and

afford the contractor a reasonable time to fix the defect listed as a defect that was latent and that became patent during the retention period. The contractor must then in terms of this agreement fix such defect and if it is disputed by the contractor refer the matter to arbitration in terms of this agreement. All retention money will remain invested with the attorneys until the retention period has lapsed or until the arbitrator made a ruling in respect thereof in the event a claim was lodged and disputed.

10. EXTENSION OF TIME

10.1 If completion of the Works is delayed as a result of *vis major* or unforeseen circumstances including but without being limited to any strike, lock-out shortage of labour and materials, riot, political or civil disturbances, exceptionally inclement weather or any other causes beyond the Contractor's control:

10.1.1 the Employer shall not for such reason have any claim against the Contractor whether for damages or otherwise;

10.1.2 the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Works. Such fair and reasonable extent to be determined by the Architect in his sole discretion.

11. LIABILITY AND INSURANCE

11.1 The Contractor shall and hereby does indemnify the Employer against any liability, loss, claim or proceedings whatsoever whether arising under common law or by statute consequent upon personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works unless due to any act or omission of the Employer or his servants or agents.

11.2 The Contractor shall and hereby does indemnify the Employer against any liability, loss, claim or proceedings consequent on loss of or damage to any movable or immovable property arising out of or in the course of or caused by the execution of the Works and due to any act or omission of the Contractor, his agents, servants or subcontractors. The term "property" for the purpose of this sub-clause shall exclude the Works. This indemnity shall not apply if the loss contemplated herein is due to any act or omission of the Employer or his servants or agents.

11.3 The Contractor shall insure against public liability in order to give effect to the indemnities as referred to in clauses 11.1 and 11.2 hereof.

11.4 The Works shall be at the risk of the Contractor who hereby indemnifies the Employer against any liability, loss, claim or proceeding whatsoever arising out of damage caused thereto and undertakes to insure against loss.

12. PAYMENT

The Contractor shall, upon reaching the stages of completion of the Works for which payment is to be effected in terms of this contract, give 7 (seven) days prior written notification to the Employer for such payment.

Payment of the Contract Sum shall be made to the Contractor as set out below and the method of payment shall be determined by the manner in which finance has been secured:

12.1 SELF-FINANCE

First Installment (30 percent)

- All foundations completed
- Brickwork to window sill height
- Backfilling completed

Second Installment (20 percent)

- Floors cast
- Brickwork internal and external walls completed except gables and beam filling

Third Installment (20 percent)

- Roof trusses
- Brickwork gables
- Internal and external walls plastered
- Electrical tubing fitted
- Plumbing pipes and drainage fitted

Fourth Installment (20 percent)

- Roof covering
- Beam filling completed
- Ceilings and cornices fixed
- Cupboard carcasses fitted
- Doors hung with locks fitted
- Glazing complete

Fifth Installment (10 percent)

- Painting and tiling complete
- Electrical and plumbing work complete
- All remaining work done as per finishing schedule
- All contractor's rubble removed and site left clean.

12.2 FINANCE BY MORTGAGE BOND

In the event of the contract price being payable from the proceeds of a building loan secured by a mortgage bond obtained from a building society or approved financial institution, then the Employer irrevocably cedes to the Contractor a sum equal to the amount of such mortgage bond. The Contractor is hereby authorised to receive interim draws on a similar basis as that specified in 12.1 above from the mortgagee and the Employer unconditionally and irrevocably agrees to sign the authority for such payment as and when required by the Contractor. In the event of the Employer

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failing or refusing to authorise payment of such interim draws, the Contractor shall be entitled without prejudice to any other rights which it may have in terms of this contract, or in law, to discontinue the said works forthwith, and all damages arising, costs incurred and additional interest accruing shall be for the account of the Employer. In addition, the Employer hereby irrevocably authorises the Contractor to sign any release for and on behalf of the Employer and to accept all drawings on the Employer's behalf. In the event of the mortgagee, through error or otherwise, paying to the Employer or his agents, or assigns, any of the proceeds of the bond hereby ceded, prior to the Contractor having been paid the full contract price, plus any additional sums herein contained, the Contractor may require the Employer forthwith to pay such amounts to the Contractor plus interest from time to time thereon at a rate of interest equivalent to the minimum lending rate charged by the Contractor's bank in respect of unsecured overdraft facilities as charged from time to time from the date of such payment to the Employer until the date of payment thereof to the Contractor.

12.2.1 The Employer shall be obliged to ensure that his/her loan with the relevant Commercial Bank shall not lapse and to this end the Employer shall confirm with the relevant Commercial Bank at each interval of 6 (six) months that the loans is valid and in force, and re-apply to the bank should it become necessary, until such time as the bond has been registered in the local Deeds Registry.

12.3 No payment shall be made unless a certificate of payment is presented to the Employer by the Contractor in terms whereof the value of work done and materials on site are certified by the Architect subject however to the conditions referred to in clauses 12.1 – 12.2 above.

12.4 The amount stated in each certificate shall, subject to and in accordance with this clause 12, be payable by the Employer and/or the said Namibian Bank within 14 (fourteen) days of the date of issue thereof. If , after expiry of the said period, the amount so certified has not been paid to the Contractor, the Employer shall be liable, without prejudice to any right the Contractor may have to terminate his employment under his contract, to pay the Contractor interest on the amount so due, calculated at a rate of 20% (twenty percent) per annum. The said interest shall accrue as from the date of presentation of the certificate by the Contractor.

12.5 Subject to clauses 12.1 and 12.2 above, the amount due in respect of each certificate shall be based on the timeous valuations prepared by the Contractor's architect and shall

12.5.1 the total value of the work duly executed making due allowance for variations to contract price and of;

12.5.2 the materials and goods delivered to the contractor for use in the buildings on the date of the certificate;

12.5.3 include a deduction of any amounts previously certified under this clause.

- 12.6 The Contractor shall not be obliged to commence building operations until fulfilment of the suspensive conditions referred to in clauses 7.1 and 7.2 hereof and until the applicable guarantee has been issued in favour of the Contractor and all the drawings relating to the buildings have been approved by the Owners Association or failing it by the Developer and the appropriate local authority. In the event that the Contractor in his sole discretion elects to commence the works prior to such guarantee being furnished, it is specifically agreed that this is not a waiver of the right of the Contractor not to commence the works, and it may cease such works at anytime, at its sole discretion, until the guarantee referred to above is furnished. The guarantee shall be delivered to the conveyancers within the periods referred to in clause 6.1 hereof.
- 12.7 Should for any reason the proceeds of the loan not be sufficient to discharge all amounts owing or which shall become owing by the Employer to the Contractor arising from and in connection with the construction of the buildings or in accordance with this Agreement, then and in such event the Employer shall be obliged to pay such shortfall upon demand or as otherwise agreed with the Contractor, without derogating from any other rights which the Contractor may have hereunder. Should the Employer fail to pay any amount as aforesaid on demand or as otherwise agreed with the Contractor, the Contractor shall not be obliged to commence building operations or, if they have been commenced, to continue therewith.

13. DEFECTS LIABILITY

- 13.1 For the purposes of this agreement, except where expressly stated otherwise, 14 (fourteen) days after the date of completion shall be the due date for payment of the final instalment by the Employer to the Contractor (exclusive of the retention referred to in clause 9 above).
- 13.2 Upon completion of the works and payment of the final instalment the Employer shall take possession of and inspect the Works and provide the Contractor with a final written list within 7 (seven) days of any work still to be completed and/or defects to be remedied. The defects liability period shall commence from the date of completion. Any dispute regarding the defects list shall be submitted to the Architect who shall adjudicate thereon, and whose decision shall be final and binding on both parties.
- 13.3 The Contractor shall, within 30 (thirty) days after receipt of the notice of defects referred to in clause 13.2, at its own costs, remedy such defects which it is, after examination thereof, satisfied that it:
- 13.3.1 is due to defects in the materials, design or workmanship;
 - 13.3.2 have not been caused by any alterations, variations or modifications to the materials or the building caused by the Employer;
 - 13.3.3 have not arisen from neglect or misuse by the Employer;
 - 13.3.4 which is not in accordance with the drawings and schedules as amended by any variation agreements or orders.

- 13.4 The Contractor shall however not be liable for:
- 13.4.1 damage or loss caused by misuse, negligence or abuse or accident or any risk insured against in terms of the insurance policy normally used by Banks in respect of a mortgage bond over residential property
 - 13.4.2 touch-up painting of any nature whatsoever;
 - 13.4.3 hairline cracks in the plaster work.
- 13.5 Should the Employer fail to give the said notice timeously and within the period stipulated, it shall be regarded that the building has been built and completed in accordance with the drawings and specifications to the satisfaction of the Employer and the Employer shall be deemed to have accepted the building in good order and condition and the Contractor shall be discharged from its obligations hereunder with no further liability towards the Employer and the Employer shall have no further claim whatsoever against the Contractor.
- 13.6 Should the Employer fail to notify the Contractor within the period provided, of a defect in the materials or the building works of which he could reasonably have been expected to have knowledge of, the Contractor shall notwithstanding any conditions contained herein to the contrary, have no liability towards the Employer.
- 13.7 If any work of whatsoever nature is still required to be done to the works the Employer shall not be entitled to withhold, set off or retain any amounts owing by the Employer to the Contractor nor shall the Employer be entitled to withhold or abate payment of any amount due to the Contractor in terms of this agreement by reason of any breach or alleged breach of the Contractor's obligations hereunder.
- 13.8 Insofar as the Contractor has received warranties from sub-contractors/nominated subcontractors/suppliers and a defect in the works manifests itself in that regard the Contractor shall, upon request by the Employer, or at the election of the Contractor cede its rights in such warranty to the Employer to the extent that the terms of such warranty do not preclude such cession and upon cession as aforementioned the Employer shall have no further claim against the Contractor arising from such defect.
- 13.9 Notwithstanding anything to the contrary herein contained, the Contractor shall not be responsible for any loss or damage which the Employer may suffer by any act or omission whatsoever or neglect on the part of the Contractor, its servants, employees, agents or invitees, nor shall the Contractor be responsible for any loss or damage of any description whether to the property or person which the Employer or any other person may suffer by reason of the works at any time falling into a defective state or by reason of any repairs to the remainder of the development which are to be effected by the Contractor or any other occupant thereof not being effected timeously or at all, and the Employer

shall not be entitled for any of the said reasons or for any other reason whatsoever to withhold payment of any monies due to the Contractor in terms hereof.

13.10 Any patent defects, shrinkage or other faults which may appear within 3 (THREE) months after practical completion of the Works due to materials or workmanship not in accordance with this contract, or to faults occurring before completion of the works, shall within a reasonable time after receipt of the Employer's written instructions be made good by the Contractor and, unless otherwise mutually agreed upon, at his own cost provided that the Contractor shall not be required to make good at his own cost any damage by frost which may appear after completion, unless it is agreed that such damage occurred before completion.

13.11 The Contractor shall, however, not be liable under any circumstances whatever for any faults or defects or consequential damage resulting from surface or storm water, ground containing clay, geological disturbances and adverse subsoil conditions.

13.12 Any leakage in the roof and any damage to the Works caused thereby, arising from the faulty materials or workmanship, occurring within a period of 3 (three) months after 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.

13.13 The Contractor shall be responsible in terms of the preceding paragraph only for damages sustained by the Employer under conditions of normal use and service and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse or accident or in respect of or arising from any risk insured against in terms of owners' insurance policies normally issued by a Namibian insurance company in respect of residential properties; and the Contractor shall under no circumstances be liable for any consequential loss or damage.

14. RETENTION OF OWNERSHIP

Notwithstanding anything to the contrary herein contained, ownership of all materials brought onto the erf or building site shall remain vested in the contractor until such time as all amounts due in terms of this agreement has been paid in full.

15. SECURITY ARRANGEMENTS AND COSTS THEREOF

In the event of the contract period being extended due to any breach of contract by the employer or the employer not taking possession immediately when called upon to do so in terms of this agreement or should there be any delay in completing finishes or items that are to be specified by the employer due to non availability or failure by the employer to specify the said finishes or items promptly when called upon to do so in terms of this contract, then the contractor shall be entitled to engage a security guard and watchman and the costs thereto shall immediately be due owing and payable by the employer. The decision as to whether there is a delay or any failure as contemplated herein and the decision to engage a guard shall be taken solely by the contractor. The contractor decision in this regard shall be final.

16. DEFAULT

16.1 EMPLOYER'S DEFAULT

16.1.1 Should the Employer's estate be provisionally or finally sequestrated or provisionally or finally wound up as insolvent, or should the Employer commit a breach of any of the terms of this contract, all of which terms shall be material, the Contractor shall be entitled forthwith to give the Employer or his trustee, per registered post, 14 (FOURTEEN) days' written notice of the termination of this contract, without prejudice to any other rights which the Contractor may have in terms of this contract or in law.

16.1.2 Failure by the Employer to make payment shall entitle the Contractor, on giving 7 (SEVEN) days' written notice to the Employer, to cease work under this contract until payment shall have been made to the Contractor. The time during which such works shall cease shall operate as an extension of time for completion within the meaning of clause 7.

16.2 A certificate signed by the architect specifying the amount due by the Employer to the Contractor shall be sufficient proof of any amount due to the Contractor in terms of this contract and may be used by the Contractor for the purposes of obtaining judgment by provisional sentence against the Employer in any court of law having jurisdiction in respect thereof.

17. REGULATIONS

The contractor shall be obliged to give adherence to any laws of the Government and ordinances which may become applicable from time to time, and which are applicable to buildings. He shall also be obliged to obtain from the relevant authorities all the necessary permissions which may be necessary in order to erect the dwelling. He indemnifies the employer against any damages which the employer may suffer as a result of the contractor not having adhered to any laws, regulations or ordinances.

18. DISPUTE RESOLUTION

18.1 Save where otherwise provided in this agreement, should any dispute arise between the parties in connection with:-

18.1.3 the interpretation or application of the provisions of;

18.1.4 the parties' respective rights and obligations in terms of or arising out of the breach or termination of;

18.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of any documents furnished by the parties pursuant to the provisions of this agreement or which relates in any way to any matter affecting the interest of the parties in terms of this agreement, that dispute shall, unless resolved amongst the parties to the dispute, be referred to and be determined by arbitration in terms of this clause.

18.2 Any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.

- 18.3 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 18.4 The arbitration shall be held at Windhoek with only the legal and other representatives of the parties to the dispute present thereat.
- 18.5 The arbitrator shall be, if the matter in dispute is principally:-
- 18.5.1 a legal matter, a legal practitioner of Namibia of at least 5 (five) year's standing agreed upon between the parties;
 - 18.5.2 an accounting matter, a practicing chartered accountant of Namibia of at least 5 (five) year's standing agreed upon between the parties;
 - 18.5.3 Any other matter, an independent Architect with at least 5 (five) years' experience in the nature of that matter, agreed upon between the parties to the dispute.
- 18.6 Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after arbitration was demanded, the matter shall be deemed to be a legal matter.
- 18.7 Should the parties fail to agree on an arbitrator within 14(fourteen) days after giving of notice in terms of 19.2, the arbitrator shall be appointed at the request of either party to the dispute by the President of the time being of the Namibia Law Society in accordance with clause 19.5 of this agreement.
- 18.8 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court, at the instance of any of the parties to the dispute.
- 18.9 The parties hereby consent to the jurisdiction of the High Court of Namibia or any other competent court having jurisdiction.
- 18.10 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone.
- 18.11 The provisions of this clause:-
- 18.11.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw or claim at any such proceedings that it is not bound by such provisions;
 - 18.11.2 are severable from the rest of this agreement and shall remain in effect despite determination of or invalidity for any reason of this Agreement.

19. JURISDICTION

The parties hereby expressly consent to the jurisdiction of the magistrates court even though such claim may otherwise exceed that court's jurisdiction to adjudicate on any dispute arising out of this contract which is not otherwise subject to arbitration in terms hereof. This clause is subject to the proviso that if a party elects to institute action in the High Court he shall be entitled to do so.

20. ENTIRE AGREEMENT

20.1 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.

20.2 No representatives, warranties, undertakings or promises of whatever nature which may have been made by either party, their agents or servants, other than those herein contained shall be binding on or enforceable against either party.

20.3 It is agreed between the parties that the law of Namibia shall be the only law of this contract.

21. INDULGENCE

Any indulgence in respect of time or anything else granted by a party to the other will not be considered to impair any of the rights of such party in terms of the agreement, or affect any right of whatsoever party.

22. CLAUSE HEADINGS

The head notes in this agreement are used only for the purpose of reference and shall in no way effect or govern the construction or interpretation of this agreement.

23. DOMICILIUM CITANDI ET EXECUTANDI

The parties hereby choose *domicilium citandi et executandi* at their respective addresses as set out hereinafter, where all notices and/or processes arising out of or in connection with this contract may validly be delivered to or served upon them:

Contractor: Finkenstein Site Office, Finkenstein
Windhoek

Employer/Owner: _____

24. DEVIATION FROM PLANS AND DRAWINGS

The works shall be substantially in accordance with the plan and specifications provided that the contractor shall be entitled in his discretion to deviate from the plan and basic specifications if, during the building and construction of the works it appears that such deviation will result in the most significant, practical and economical completion of the works without essentially deviating from the plan or having a negative effect on the quality and finishing of the works.

THUS DONE AND SIGNED AT WINDHOEK on this _____ day of _____
in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

2. _____

EMPLOYER/Owner

THUS DONE AND SIGNED AT WINDHOEK on this _____ day of _____
in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

2. _____

**for and on behalf of the
CONTRACTOR**

ANNEXURE “F”

FINKENSTEIN MANOR PRICES RESIDENTIAL UNITS					
NOTE: FLOOR AREAS SHOWN BELOW ARE INDICATIVE ONLY AND DIFFERENCES BETWEEN THE AREAS SHOWN					
AND FLOOR AREAS OF SELECTED OPTIONS WILL NOT AFFECT THE PRICES SHOWN BELOW					
Type A1			Type A2		
Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$
Complete with double Garage	135.5	1,446,000	Complete with double Garage	145.8	1,584,000
Core Unit	80.4	1,135,000	Core Unit	90.9	1,284,000
Carport	20.4	47,200	Carport	20.4	47,000
1 x Garage	24.2	168,000	1 x Garage	24.2	168,000
2 x Garage	42.6	296,000	2 x Garage	42.6	296,000
Patio	12.5	80,000	Patio	12.3	78,000

Type B1			Type B2		
Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$
Complete with double Garage	145.6	1,583,000	Complete with double Garage	153.2	1,684,000
Core Unit	90.9	1,284,000	Core Unit	98.5	1,505,000
Carport	21.3	49,000	Carport	21.3	49,000
1 x Garage	24.5	170,000	1 x Garage	24.5	170,000
2 x Garage	42.1	292,000	2 x Garage	42.1	292,000
Patio	12.6	80,000	Patio	12.6	80,000

Type C1			Type D1			Type E1		
Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$
Complete with double Garage	164.5	1,814,000	Complete with double Garage	163.1	1,816,000	Complete with double Garage	177.1	1,964,000
Core Unit	106.6	1,505,000	Core Unit	108.5	1,532,000	Core Unit	116.6	1,647,000
Carport	18.7	43,000	Carport	18.7	43,000	Carport	15.0	35,000
1 x Garage	24.2	168,000	1 x Garage	23.9	166,000	1 x Garage	27.0	188,000
2 x Garage	46.0	320,000	2 x Garage	41.5	288,000	2 x Garage	45.5	316,000
Patio	11.9	76,000	Patio	13.1	83,000	Patio	15.0	96,000

FINKENSTEIN MANOR SECTIONAL TITLE UNITS								
One Bedroom			Two Bedrooms			Garage		
Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$	Description	Area m ²	Cost N\$
Complete with garage	98.0	1 135 000	Complete with garage	112.0	1 230 000	Extra garage	24.5	180 000
Complete with carport	98.8	1 110 000	Complete with carport	112.0	1 200 000			

ANNEXURE “G”

Finkenstein Manor: Construction Specifications

Single Residential Units & Sectional Title Units

1. SUPERSTRUCTURE : FOUNDATIONS & FOUNDATION WALLS

1.1 All external load-bearing walls (220mm) and all internal dividing walls (110mm) will be founded on min 20 MPA mass concrete footings as indicated on the working drawings. All foundations as per appointed Engineers design and approval.

1.2 Conventional building methods, as for normal founding conditions, will be used unless otherwise instructed by the engineer.

2. SUPERSTRUCTURE

2.1 All external walls to be 220mm thick and internal walls to be 110mm thick, constructed with standard 7 MPA cement bricks.

2.2 Pre-cast, pre-stressed concrete lintels will be used over windows and larger than 900mm door openings Reinforced concrete beams will only be used if so specified by the engineer.

2.3 Surface beds according to Engineers design – minimum thickness 85mm.

3. FLOOR FINISHES

3.1 All interior concrete surface beds to be tiled as per Architect’s Drawings as per clients choice.

3.2 All exposed concrete surface beds will be finished smooth with a steel trowel.

3.3 Living rooms, bedrooms, bathrooms, scullery, kitchen and passages will be tiled with ceramic tiles as per sample board. Only one colour tile per bathroom wall and one per floor may be selected for the tiles.

3.4 Grouting colour as per contractor to match floor tile selected by client.

3.5 Shower floors to have a mosaic tile finish. Mosaic tile options as per sample board.

3.6 Aluminium tile edges to match tile thickness will be provided on treads and around windows where tiled.

3.7 Drying Yard will be paved with 100x200x50mm pavers.

3.8 Aprons (1 metre width) around building to be interlocking pavers with garden edging and will be an optional extra.

4. SKIRTINGS

4.1 Meranti timber skirting to be fitted throughout all rooms excluding bathrooms.

4.2 No provision has been made for tile skirting with **plastic or** aluminium edging. This will be an optional extra cost.

MANOR CONTRACT**5. WALLS AND BEAMS (FINISHES)**

- 5.1 Internal walls to receive one coat cement plaster finish, trowelled smooth with a steel trowel.
- 5.2 External walls will be plastered and finished smooth with wood float.
- 5.3 Natural Stone Walls cladding as per Architect`s working drawings and contractor`s approval.
- 5.4 Plaster Surrounds:
- Selected doors and windows to receive a 150mm wide, 15mm thick, plaster surround, smooth wood float cement plaster finish. Refer to Architect`s working drawings.

6. PAINT WORK

- 6.1 All paint to be supplied by **recognized and approved paint suppliers.**
- 6.2 Roof to be pre-painted with matt coloured paint as per Architect`s drawings.
- 6.3 Ceilings and cornices will be painted with two coats of interior quality white pva ceiling paint from Dulux.
- 6.4 Interior plastered wall surfaces will be painted with two coats acrylic PVA.
- 6.5 Exterior walls to be painted two coats acrylic PVA as per Architect`s schedule.
- 6.6 Mild steel surfaces will be finished with Zinchromate, one universal undercoat and two coats paint, colour as per Architect`s schedule or treated with steel varnish.

7. BATHROOMS & KITCHEN FINISHES

- 7.1 Tiles as selected from the sample boards by the purchaser and will be provided as follows:-
- Kitchen – Between floor and wall cupboards or three rows above Formica worktop for a splash back and 1,5m high for the remainder of the kitchen.
 - Tiling to include the window sill. Plastic edging to be provided at window sill.
 - Bathroom – 1.5m above floor level and 2.1m at the shower. Refer to Architect`s working drawings.
 - Tiling to ceiling height optional extra at a costs of N\$275.00/m².
 - Listello's are not included in the standard design. Such requirements will be charged as an extra.
- 7.2 All Tiles and plastic edgings to be selected from the sample boards at the developers office.

8. DOORS AND FRAMES

- 8.1 All external doors to be natural anodized aluminium framed doors with 6.38 mm safety glass insert panels. (all as per AAMSA). Colour as per architect`s door schedules.
- All external doors to have 30mm weather step.
 - Weather bar mechanism to be fitted to all external swing doors.
- 8.2 All interior door frames to be 100x50 hardwood timber frames. All doors are to be semi-solid batten doors with a height of 2030mm.
- 8.3 Garage Doors to be galvanized, pressed, colour impregnated sectional-overhead garage doors. (Supplier for standard doors to be confirmed)
- Electronically operated, mechanized garage door motor included.

9. WINDOWS

- 9.1 Materials:
- Natural anodized Aluminium per AGI or West Coast Aluminium (or similar approved)

MANOR CONTRACT

- Safety glass applied as per AAMSA. Refer to window schedules.

9.2 Sills:

- All window sills to be plastered and painted, level inside and with a slope externally.

9.3 Lintels:

- The soffit height is at 2100mm above FFL.

9.4 No Burglar bars or security doors included. No external burglar bars or security doors are allowed without permission from the Developer/ Home Owners Association. The development is intended to be a secured environment.

10. GLAZING

10.1 Glazing to all aluminium windows to be min 4mm laminated or 6.38mm safety glass to all doors, sliding doors and windows as per window schedules.

10.2 Glass standards for sizes to conform to the AAMSA and National Building Regulations.

10.3 Frosted glass will be provided in bathrooms.

11. IRONMONGERY

11.1 External doors will be fitted with a cylinder lockset with aluminium furniture as per architect.

11.2 Internal doors will be fitted with a two-lever lockset with aluminium plated furniture.

11.3 Aluminium frame shower door 2,1m high will be fitted as per manufacturer.

11.4 Internal door handles as per sample board at contractor's office.

11.5 Doorstops to be provided to all doors.

12. JOINERY

12.1 Joiner to be approved and appointed by contractor.

12.2. Built-in cupboards colour as per client's approval selected from standard panel as provided by developer.

12.3. Built-in cupboards to be manufactured from melamine veneered, bisonboard with impregnated 3mm pvc edging, colour to match. All cupboards to be fitted with 3mm white backing board.

12.4 Kitchen floor units to be fitted with drawers full height, excluding provision for dustbin, Wall units to have doors. Exposed floor unit sides will be constructed with veneer board to match.

12.5 Kitchen tops to be 30mm Formica with bullnose edges. Colour to be selected from developers panel.

12.6. Architect's drawings indicate the calculated joinery position and size in costs calculations.

12.7 Building Agreement to make provision for a lump sum for the joinery.

12.7.1 For A1 & 2, B1 & 2 and C1 = N\$45 000.00/unit

12.7.2 For D1 and E2 = N\$50 000.00/unit

12.7.3 For sectional titles: Bachelor = N\$10 000.00/unit

One Bed = N\$18 000.00/unit

Two Bed = N\$25 000.00/unit

12.8 Any deviations required, will be included in the architects drawings in order to match special client requirement with electrical and plumbing layout. Architects fees for design changes will be charged at N\$1,500 admin fee and N\$1 500,00 per hour.

13. CEILINGS

13.1 All ceilings will be 9mm Gypsum plaster board fixed to galvanized top-hat sections at 400mm

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intervals across and 600mm in longitudinal direction. All ceilings joints to be primed, taped and skimmed smooth for paint.

- 13.2 75mm insulation wool to be provided on top of ceilings.
- 13.3 Cornices to be Nucor "nice", polystyrene core cove cornice as per Everite (or similar approved).
- 13.4 Shadow line cornices will be at extra cost if required.

14. ROOFS

- 14.1 Roof trusses and/or rafters will be approved S.A. Pine trusses and/or rafters and/or light steel frame trusses as approved by the project engineer.
- 14.2 The material of the pitched roofs and lean-to roofs is standard 0.6 mm galvanized ribbed iron sheeting. KraftLOK or similar and the colour scheme as approved by architect.
- 14.3 All exposed steel carports to be painted. Colour as per architect's working drawings.

15. EAVES, PARAPET AND GUTTERS

- 15.1 Eaves to have a min 500mm overhang as per architect's working drawings. Eaves will not be painted but exposed roof members will be painted 2x coats pva.
- 15.2 Parapet walls to have metal flashings and copings.
- 15.3 Gutters and Downpipes
 - Min 75 x 100mm PVC seamless gutters with 75mm downpipes to be fitted as per architect's working drawings. Downpipes must fixed to the walls.
- 15.4 Fascia Boards 190 wide x 9mm thick Nutec fascia boards as per Architect's working drawings.

16. ELECTRICAL

- 16.1 An Electrical layout will be provided by the architect.
- 16.2 If Clients require a different layout, the extra cost will be determined by the Contractor. The architect will charge N\$1 500.00 per hour for his inputs.
- 16.3 A selection of light fittings samples will be provided by the developers for selection by client. A lump sum will be allowed in the contract for internal light fittings.
- 16.4 External, water-proof light fittings as per architect.
- 16.5 One telephone point will be provided in a position as indicated by the client.
- 16.6 One 900mm wide *Defy / KIC / Kalvinator* or similar type hob, eye level oven and extractor, with 30 Amp isolator will be provided. A lump sum of N\$6 500.00/unit will be allowed.
- 16.7 One conduit point for TV to be provided in the Lounge / TV Room and one in Master bedroom.
- 16.8 Basic alarm with keypad, detectors in garage, kitchen, bedrooms, living area and in roof above alarm control panel to be provided.
- 16.9 Satellite dish position to be confirmed by architects for each Erf.

17. PLUMBING AND SANITARY

- 17.1 All sanitary fittings unless otherwise stated in this specification will be standard white.
- 17.2 Washbasins wall-mounted, standard white. Sample suitable for wheel chairs as per contractor.
- 17.3 WC suites to be close-coupled white and confirmed by contractor at time of construction.
- 17.4 A ceramic toilet paper holder will be fitted in the toilet.
- 17.5 A single, semi-recessed ceramic soap dish and shampoo rack will be fitted in the shower.
- 17.6 A Franke (or similar) double bowl drop-in sink will be installed.
- 17.7 The sink unit will be provided with a lever-type sink mixer as selected by contractor.

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- 17.8 All other interior taps will be of chromium plated lever-type mixers as standard.
- 17.9 High pressure 200 L solar-geyser with electrical back-up to be installed at full title properties and as an optional extra at sectional title properties. Panels to be roof mounted with water container's position as per Architects drawings.
- 17.10 Two standard garden taps per unit will be provided. Taps to be brass.
- 17.11 3 sample choices of all sanitary ware and taps will be available for selection at contractor's office for the client to select from.
- 17.12 Standard single stainless steel wash trough to be installed in yard as per contractor.
- 17.13 Stainless steel grab rails and angle bars will be provided in bathrooms at shower and WC. A more comprehensive installation could be included at item specific extra cost.

18. BARBEQUE

- 18.1 BBQ as per Architect's layout plans, if selected as optional extra by client, will be constructed as part of the covered patio. Provision is made for a concrete slab at a height of 800mm and build chimney with fire brick base.
- 18.2 Built-in types Jet-Master, or similar products, with doors, 2x grids, charcoal tray, starter grid, and rotating cowl to be installed at extra costs only if client confirmed in final construction design.
- 18.2 Chimney – As per National Building Regulations.

19. BOUNDARY WALLS & FENCES

- 19.1 Boundary walls on the street boundary will not be permitted by the developer.
- 19.2 All boundary walls will be painted and plastered masonry walls.
- 19.3 Drying yard walls 2,100mm high and rear yard walls 1,2m high. Higher walls, at same specification, for the yard will be an optional extra and requires approval of neighbours. Clients to take note that additional height might require a change in detail and specification which could result in significant cost increases.
- 19.4 No other boundary walls are permitted by developer.

20. PAVING

- 20.1 Paving will be provided for the street edge to inside end of parking and/or front of garage as per architect's drawings.
- 20.2 Additional paving will be provided as per rate and extra cost determined by the contractor. The garden area to be maintained by the HOA may not be paved.

21. SITE WORKS

- 21.1 The property will be levelled to dispose the storm-water as per municipal regulations. Purchasers to take note that neighbouring, higher laying properties, storm water must be accommodated.
- 21.2 A landscaping budget have been allowed and will be used as per developers own discretion.

22. SECURITY

- 22.1 Security will provide 24 hour / 7 day a week security in the residential development.
- 22.2 Perimeter fence standard (specification to be confirmed by developer) electrified and monitored.
- 22.3 Permanent patrols by security to be standard.

PLEASE NOTE:

- All materials herein specified are subject to availability, where any materials are not readily available, the DEVELOPER shall have the right to use the nearest similar material of equal value, available at the time.
- All changes required by the client to the approved municipal and or construction drawings, will be made only by agreement of the developer and/or contractor and following consultation with the architect. Changes then effected by the architect on the client's request, has to be accepted by the developer and contractor. Any changes to approved architects documentation and/or construction drawings will be done at N\$1,500-00 per hour and will be excluding extra construction cost and cost for re-submitting to the City Windhoek. The client will take full responsibility for any additional time and/or cost implications of changes after municipal approval drawings have been submitted to City Windhoek.
- All extras not covered by the Building Agreement, including architects fees, to be paid in advance.
- In case of a discrepancy between this specification and the drawings and/or any other documents the description in this specification will take precedence.
- This specification may be changed in consultation with the client – with a product of the same value and similar quality.