

BUILDING AGREEMENT

(TOGETHER WITH A FREEHOLD STAND)

NAUTILUS BAY NATURE RESORT

BUILDING AGREEMENT

Memorandum of Agreement entered into by and between:

Vuru Vuru Estate West (Pty) Ltd.
Registration No. 1998\022781\07
(Registration No. Address : Box 1989, George 6530

(hereinafter referred to as the Contractor), and

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(hereinafter referred to as the Employer)

on the terms and conditions set out hereunder:

SCHEDULE OF PARTICULARS:

I. CONTRACTOR

- A. Full name: **Vuru Vuru Estate West (Proprietary) Limited**
- B. Registration No.: **1999\06617\07**
- C. Business Address: **86 Meade Street, George 6530**
- D. Postal Address: **P.O. Box 1989, George 6530**
- E. Name of contact person: **Thomas Van der Watt (Cell 0833032500)**
- F. Telephone No.: **(044) 8741815**
- G. Facsimile No.: **(044) 8741823**

II. EMPLOYER

- A. Full name:
- B. Identity No.:
- C. Full name of spouse (if applicable):
- D. Marital Status:
- E. Business Address:
- F. Postal Address:
- G. Telephone No.: Fax
- H. Cellular No.:

III. THE PROPERTY: Stand No. being Erf Noin Mossel Bay (being part of the development known as " Nautilus Bay Coastal Resort")

IV. DWELLING TYPE:

V. CONTRACT SUM: To be established by the Contractor in terms of option A in the Design Guidelines, being the tender on the plans approved by the employer, which tender price must not exceed R

VI. ANTICIPATED COMPLETION DATE: 200...

GENERAL TERMS AND CONDITIONS:

1. INTERPRETATION:

- 1.1 In this agreement, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 **"the/this agreement"** means the building contract, the schedule of particulars, the general terms and conditions, the plan and specifications;
- 1.1.2 **"the occupation date"** means the date of which occupation of the dwelling shall be given to and taken by the Employer in accordance with the provisions of 3.2.;
- 1.1.3 **"the plans and specifications"** means the plans and specifications of the dwelling type as identified in the Design Manual and Guidelines and drawn by one of the panel Architects, a copy of which remain filed in the offices of the Contractor, and a copy of which is annexed hereto marked "Annexure C";
- 1.1.4 **"the property agreement"** means the agreement entered into or about to be entered into between the Contractor and the Employer in terms of which the property is sold to the Employer;
- 1.1.5 **"the works"** means the works to be executed by the Contractor on the property in accordance with the provisions of this agreement and as described in the schedule.

2. CONSTRUCTION OF DWELLING:

- 2.1 The Contractor shall construct the dwelling on the property for and on behalf of the Employer in a good and proper and workmanlike manner and substantially in accordance with the plans and specifications; and
- 2.2 The Contractor shall provide all labour and materials necessary for the proper execution of the works.

3. COMPLETION:

- 3.1 It is anticipated that the dwelling will be complete and ready for occupation by the date specified in VI. of the schedule of particulars. The Contractor does however not warrant completion on such date.
- 3.2 Occupation of the dwelling shall be given to and taken by the Employer on the date when the dwelling is complete and ready for beneficial occupation. A certificate signed by the architect nominated by the Contractor certifying that the dwelling is complete and ready for beneficial occupation shall constitute the occupation date.

4. COMPLIANCE:

The Contractor shall be responsible for satisfying the requirements, whether as to payment of any amounts due or otherwise, of any regulatory authority in the building industry having jurisdiction, and of all applicable legislation.

5. LIABILITY AND RISK:

- 5.1 The Contractor indemnifies the Employer against any liability, loss, claim or proceedings of whatever nature, whether arising under common law or by statute 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 its employees or agents.

- 5.2 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 against all risks normally included in a "contractor's all risks policy"

6. WARRANTIES:

- 6.1 The Contractor undertakes -
- 6.1.1 For a period of three (3) months from the occupation date, to make good any material latent or patent defects, shrinkage or other faults in the dwelling which became apparent and brought in writing to the notice of the Contractor during that period and which arise from defective materials, workmanship or design;
- 6.1.2 For a period of twelve (12) months from the occupation date, to carry out such repairs and/or make such replacements as may be necessary to eliminate any roof leakages which may become apparent and brought in writing to the notice of the Contractor during that period and which arise from defective materials, workmanship or design;
- 6.1.3 For a period of five (5) years from the occupation date carry out such work as may be necessary to rectify any major structural defects in the dwelling caused by the non-compliance with NHBRC technical requirements within the above period on condition that the above defects be brought in writing to the notice of the Contractor.
- 6.2 Such guarantees as may be received by the Contractor from the manufacturers of any materials and fitting installed in the top structure shall, to the extent that the Contractor is entitled to do so, be passed onto the Employer.

7. CONTRACT SUM AND PAYMENT:

- 7.1. The contract sum shall be paid into the trust account of attorneys Rauch Gertenbach Inc. at Absa No. 4048556299 (Branch Code 334214) which amount will be invested on behalf of the employer and the employer hereby authorises the said attorneys to withdraw from such investment an amount equal to the amount specified on the progress payment certificate as monthly issued by the Architect and pay such amount to the Contractor.
- 7.2. Payments as set out will be made within 7 (SEVEN) days from date a certificate are issued and supplied by the Contractors' architect certifying that the work were duly executed up to the stage claimed for.
- 7.3. Payment referred to above shall be made in cash or by the provision of an acceptable bank cheque, free of exchange.
- 7.4. No deduction of any kind will be allowed on the Contract Sum unless so agreed to by the Contractor in writing.

8. LEGAL PERSONS:

If the Employer is acting as a Trustee for a Company, Closed Corporation, a Trust or a Body Corporate (hereinafter referred to as legal persons) to be formed, then in the event of the said legal persons not being formed and ratifying and adopting this Agreement within 30 (thirty) days after the date hereof, then the signatory confirms that he shall become the Employer in his personal capacity hereunder and shall be bound by all terms and conditions of this Agreement. If the legal persona, is formed and duly adopts and ratifies this Agreement as aforesaid, then the signatory, hereby binds himself as surety and co-principal debtor jointly and severally with the legal persona to the Contractor for the due fulfilment of all the terms and conditions of this

Agreement with renunciation of the legal acceptors of excussion and division.

9. BREACH

If either party commits a breach of any of the provisions of this agreement and/or the property agreement and fails to remedy such breach within 7 (seven) days (or if the breach in question is not capable of being remedied within 7 (seven) days within such extended period as the defaulting party may prove to be reasonable in the circumstances) then the other party shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof, to cancel this agreement and to claim such damages as it may have sustained from the defaulting party.

10. NOTICES AND DOMICILIA:

10.1 The parties choose as their domicilium citandi et executandi at their respective addresses set out in the Schedule of Particulars or such other address which the party concerned may notify the others in writing provided that no street address mentioned in this subclause shall be changed to a post office box or poste restante, for all purposes arising out of or in connection with this agreement its breach or termination may validly be served upon or delivered to the parties;

10.2 Any notice given in terms of this agreement shall be in writing and shall :

10.2.1 be deemed to have been duly received by the addressee on the date of delivery by hand or fax.

10.2.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 5th (fifth) day following the date of such posting unless the contrary is proved;

11. SUSPENSIVE CONDITIONS:

This agreement is subject to the suspensive condition that the property agreement is entered into and becomes unconditional within 21 (twenty one) days from date of signature of the agreement, and if so agreed, that the property be successfully transferred into the name of the employer within the reasonable time thereafter, failing which this agreement will be null and void.

12. VARIATION:

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

13. RELAXATION:

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

14. DISPUTES:

14.1 A dispute between the parties relating to any matter arising out of this agreement or the interpretation thereof, shall be referred to arbitration by either of the parties by way of a notice to the other party in which notice particulars of the dispute are set out;

14.2 When arbitration proceedings are held it shall not be necessary to observe or carry out the usual formalities of procedure;

- 14.3 Arbitration shall be held immediately and with a view to it being completed within 21 (twenty one) calendar days after it is demanded;
- 14.4 The Arbitrator for such arbitration proceedings shall be a suitably qualified person agreed upon by the parties, failing such agreement, nominated by the chair person for the time being of the Association of Arbitrators;
- 14.5 The decision of the Arbitrator shall be final and binding on the parties who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an Order of the Court with competent jurisdiction;
- 14.6 This arbitration clause, shall remain effective between the parties after this agreement has been terminated;
- 14.7 No clause in this agreement which refers to arbitration shall mean or deem to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on a urgent basis from a Court of competent jurisdiction pending the decision of the Arbitrator.

15. Special Conditions

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As witnesses:

1. CONTRACTOR

2.

Signed at this day of
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As witnesses:

1. EMPLOYER

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