

HOME BUILDING CONTRACT
MEMORANDUM OF AGREEMENT

By and Between:

PRETATONE PTY LTD
2010/019165/07

Or nominee

(from now on referred to as "the **Building Contractor**")

and

Identity Number _____

and

Identity Number _____

jointly (delete if not applicable)

(from now on referred to as "the **OWNER**")

in respect of

PORTION _____ OF ERF 650 FERNDAL TOWNSHIP

(from now on referred to as "the **PROPERTY**")

PREAMBLE

- A. The Owner has entered into an Agreement of Sale in terms of which the property as set out in clause 1.9 is to be acquired by him, and in terms of which agreement he is described as the "Purchaser";
- B. The Owner acknowledges that this Building Contract is materially linked to the Agreement of Sale referred to above and that the provisions of both agreements shall be read in conjunction with each other.
- C. It is a condition precedent of the agreement described above of Sale that the Owner enters a building contract with the Building Contractor to erect and construct a private dwelling and outbuildings (if any) ("the Works") for and on behalf of the Owner.

- D. The parties acknowledge that the Building Contractor may, in its sole and absolute discretion, subcontract the erection and completion of the Works to its appointed nominee or subcontractor.

1. DEFINITIONS

In this agreement, unless inconsistent with or otherwise indicated by the context, the following words or expressions shall have the following meanings:

- 1.1 **"Architect"**: Gavin Wreford or any other architect appointed by the Building Contractor, from time to time, and upon whose instance the certificates of the percentage of completion may be issued.
- 1.2 **"attorneys or conveyancers"**: Ramsay Webber Attorneys or any other attorneys or conveyancers appointed by the Seller from time to time.
- 1.3 **"The Seller"**: Pretatone Proprietary Limited or its duly appointed nominee.
- 1.4 **"Building contract price"**: the amount payable to the Building Contractor by the Owner for the Works as set out in clause 4.1;
- 1.5 **"building plan"**: the plan annexed hereto, marked "B" is for type "UNIT _____", measuring _____ square meters and subject to clause 5.2;
- 1.6 **"date of commencement"**: the date on which the Building Contractor or its appointed nominee, agent or subcontractor, takes occupation of the land and commences building operations and the Works.
- 1.7 **"Development plan"**: presently, the draft Site Plan annexed hereto as "A" for the whole development to be described as **STRELITZIA MANOR 650 FERNDAL**, which includes the cluster development, the roads and security gate. Upon approval by the Local Authority, it shall be described as the **development plan**;
- 1.8 **"Completion form"**: a completion form signed by the Owner certifying his satisfaction that the Works have been satisfactorily and finally completed and as from which date of signing the Owner shall have no claim against the Building Contractor and the Building Contractor shall have no further obligation towards the Owner in terms of this agreement, save and except for the Building Contractor's obligations as set out in clause 6;
- 1.9 **"Land"**: **Portion ___ of ERF ___ Ferndale Township** to be known as "STRELITZIA MANOR" 335 **FERNDAL** situated on, Registration Division I.R., Province of Gauteng, measuring approximately ___ square meters;
- 1.10 **"Specification"**: the specification including a Schedule of Finishes and Provisional amounts allowed for Finishes annexed hereto, marked "C" and subject to clause 5.2;
- 1.11 **"Works"**: the construction, completion and finishing-off of a private domestic dwelling house and outbuildings (if any) following the building plan and specification.
- 1.12 **"certificate of the percentage of completion"**: a certificate signed by the architect stipulating the percentage of completion of the Works undertaken by the Building Contractor from time to time, and the amounts of sums of money required to be paid over to the Building Contractor.
- 1.13 **"occupation certificate"**: the certificate issued by the Local Authority stipulating that the Land and Works are ready for occupation and possession by the Owner.

- 1.14 Clause headings have been inserted for reference purposes only and shall be disregarded in the interpretation hereof;
- 1.15 Words signifying singular include plural and vice versa, and words importing one gender shall include the others.

2. BUILDING CONTRACT

- 2.1 The parties enter a building contract at an agreed price as set out in clause 4.1 for the erection and completion of the Works on the land by the Building Contractor for and on behalf of the Owner on the terms and conditions set out hereinafter.
- 2.2 The Owner acknowledges and agrees that all payments in respect of the contract price to be made in terms of this agreement shall be payable directly to the Building Contractor and no other person, entity, company or association unless the prior written consent of the Building Contractor is obtained.
- 2.3 The Parties acknowledge and agree that this agreement is materially linked to the Agreement of Sale concerning the land referred to in clause 1.9 above.
- 2.4 Subject to the provisions of clause 8 of this agreement,
 - 2.4.1 in the event of this agreement being cancelled for any reason whatsoever, before the land referred to in clause 1.9 above being transferred into the name of the Owner, the provisions of the Agreement of Sale shall apply; or
 - 2.4.2 If this agreement is cancelled for any reason whatsoever after the land as described above has already been transferred into the Owner's name, then the provisions of the Agreement of Sale shall apply.
 - 2.4.3 Pretatone Proprietary Limited shall be entitled to nominate other contractor/contractors in its stead before the building's commencement.

3. POSSESSION AND OCCUPATION

- 3.1 The Building Contractor, its agents, servants, and subcontractors shall be entitled to always enter and be present on the land for construction purposes until the Works have been completed and the Owner has signed and handed over the final finished form. At no time whatsoever shall the Owner be entitled to make a claim, attach or in any way claim possession or retention of any of the Building Contractor's, its agent's, servants' or subcontractor's tools, equipment or building material and by signature hereof, the Owner waives all or any right which he may have acquired in this regard.
- 3.2 The Owner shall be obliged to take possession of the Land and Works, upon the issue of the occupation certificate by the Local Authority, but by not later than the last business day of the month in which the Works have been completed, and it shall be incumbent on the Owner to monitor the progress of the Works to enable him to make whatever arrangements which may be necessary or required by him to:
 - 3.2.1 take possession and occupation of the Land and Works.
 - 3.2.2 Please make a payment of all or any amounts, which may then still be due by him to the Building Contractor.
- 3.3 Should the Owner fail to take occupation or possession of the Land and Works within 7 (SEVEN) days after the Local Authority has issued the occupation certificate, it shall irrevocably be deemed for all purposes hereunder, that the Owner has effectively and fully taken occupation and possession of the Land and Works upon the expiry of the thirtieth (30th) day after the date of the issue of the occupation

certificate. All outstanding amounts of whatsoever nature owing by the Owner to the Building Contractor shall become immediately due, owing and payable to the Building Contractor, and without any further notice being required.

4. **BUILDING CONTRACT PRICE**

4.1 The building contract price shall be

Which shall either be paid to the Building Contractor by way of progress payments following clause 4.2 below or in the event of this being a CASH TRANSACTION, the amount of R _____ shall be paid in Trust to the Attorneys.

Such amount shall be invested in an interest-bearing account for the benefit of the Owner. As a result of this, the Owner irrevocably authorises the Attorneys to make payment of such amounts as are required to be paid to the Building Contractor in accordance with clause 4.3 below. The above part is to be paid to the Attorneys by the _____ day of _____
(Refer to the attached schedule marked Annexure "D" for a breakdown of the calculated building contract price).

4.2 Progress payments shall be made at the Building Contractor's request in such amounts as may be authorised by the relevant inspection body/persons of the financial institution holding a bond over the land.

4.3 In the event of a cash transaction, payments shall be made to the Building Contractor upon demand. As determined by the architect in his certificates of the percentage of completion. The final price shall be made upon the issue of an occupation certificate form regarding the Land and the Works.

4.4 Should the relevant body/persons referred to in clause 4.2 fail to authorise any progress payment or the final payment within 4 (four) days of a written request by the Building Contractor for it to do so, the Owner shall immediately become liable for such cost and the provisions of clause 10.3 shall mutatis mutandis apply upon expiry of the fourth (4th) day after the date of such request.

4.5 Should the architect fail to issue the relevant certificate of the percentage of completion in terms of clause 4.3 above or the final payment within 4 (four) days of a written request by the Building Contractor for it to do so, the Owner shall immediately become liable for such cost and the provisions of clause 10.3 shall mutatis mutandis apply upon expiry of the fourth (4th) day after the date of such request. This clause is only applicable in the event of a cash deal in terms of clause 4.3.

4.6 Should there be any dispute relating to the completion, or percentage of completion, of the Works, or any part thereof, the final stages, then and in such event, a certificate issued by the architect, acting as an expert and not as an arbitrator, shall be sufficient and conclusive proof of the state of completion of such Works.

4.7 Notwithstanding amounts having become due and payable to the Building Contractor as contemplated in clause 4.2 or 4.3 above, any latitude grace or extension of time which may be allowed or permitted by the Building Contractor to the Owner or taken by the Building Contractor shall not be deemed to be a waiver of any of the Building Contractor's rights hereunder.

4.8 Notwithstanding the above, and the actual state of completion of the Works, or any part thereof, the Building Contractor and Owner may at any time agree that any amounts may have accrued in favour of the Building Contractor after which the Building Contractor shall be entitled to claim the payment of such charges as arranged.

- 4.9 Where any stage of the Works has been partially completed, the value of the finished part shall be a fair and reasonable proportion of any progress payment or cash payment and a certificate signed by the architect specifying "the value of the Works" shall be sufficient and conclusive evidence of that value.
- 4.10 Should registration of the land into the Owner's name be delayed by the Owner, the Building Contractor shall be entitled after written notice to the Owner to escalate the building contract price by 2% (two per cent) per month for the period of the delay. This clause shall not apply to any delay, which is not due to the Owner's fault.
- 4.11 The Owner agrees and undertakes to cede to the Building Contractor a sum equal to the building contract price or the balance thereof outstanding, from time to time, from the proceeds of the loan, and to sign any authority for payment thereof by the financial institution directly to the Building Contractor or his nominee, in the form of the building draws or periodic payments. The Owner agrees and undertakes that he shall not under any circumstances whatsoever, directly draw for himself or any third party other than the Building Contractor any payment in respect of the contract price other than as stipulated in this Agreement

5. WORKS AND COMPLETION

- 5.1 The Owner acknowledges that he has inspected the building plan and the specification attached hereto (which shall both form part of this agreement) for the type of house and outbuildings (if any) to be constructed the Works. Save for the provisions of clause 5.2 below, the Owner, because of this, acknowledges and agrees that once these building plan and specification have been finalised between the Owner and the Building Contractor, no further amendments of whatsoever nature may be made to the building plan and specification unless mutually agreed by the Building Contractor and the Owner.
- 5.2 Notwithstanding the meaning of "building plan" or "specification" as defined in clause 1, the parties expressly agree that the Building Contractor shall be entitled to adapt or amend the building plan and the specification which the Building Contractor considers necessary. Where necessary, this will be done in consultation with the Architect and Owner:
- 5.2.1 to meet any or all the requirements of any competent authority.
- 5.2.2 to meet any special features of the land not considered by the architect.
- 5.2.3 to meet any unique impediments such as water, sewer, or electrical lines either above or underground, or any rock, geological or other soil condition which were not known or apparent at the design stage of the Works.
- 5.2.4 to give effect to any changes in materials, finishes or fittings which may not be readily available at the time due to a shortage in supply of such materials, finishes or fittings, without however detracting from the quality and aesthetics of the Works.
- 5.3 As a result of this, the Owner irrevocably appoints the Building Contractor or its nominee as his agent to apply for and obtain such approvals, consents, or authorisations as may be required for the building plan's approval.
- 5.3.1 the Owner has furnished acceptable proof to the satisfaction of the Building Contractor that an adequate building loan has been raised and the bond referred to in clause 7 registered or, in the instance of a cash transaction, that the Owner is financially able to meet his commitments in terms of this contract and has planned acceptable to the Building Contractor for payment of the contract price; and
- 5.3.2 all the required consents, approvals or authorisations have been obtained.

- 5.3.3 The final sketch plan, building plan, specifications and associated cost variations have been approved.
- 5.4 Subject to any reasonable extension/s permitted, the Building Contractor shall endeavour to complete the Works within 150 working days from the commencement date. It is expressly agreed that the Building Contractor shall not be liable for any damages that the Owner may suffer, should the Works not be completed within this time for any reason beyond the control of the Building Contractor as set out in clause 5.5 in the future.
- 5.5 Should the completion of the Works be delayed by any cause whatsoever including vis major or building industry holidays, whether statutory or generally recognised as customary in the industry, which may fall with the contract period, or in the event of any dispute, strike, lockout, squatting, invasion or any other situation causing a delay, then the Building Contractor, its servants and subcontractors shall be entitled to a fair and reasonable extension of time for the completion of the Works and the Owner shall not for that reason have any claim against the Building Contractor, its agents or subcontractors, whether for damages or otherwise.
- 5.6 Any unfixed materials required for the Works and delivered to the land shall not become the Owner's property until they have been paid for. Excess material provided to the ground shall remain the property of the Building Contractor.
- 5.7 On-demand, the Owner shall be responsible for entering into any agreement or into any other arrangement that may be required for the supply of water and electricity to the land.
- 5.8 The Owner shall not under any circumstances be permitted to make alterations, amendments or variations to the plans or specifications with the contractors, sub-contractors or employees. All communication shall be to the appointed official on-site.
- 5.9 Any item supplied and fitted by the Owner shall only be permitted if agreed to in writing, and should such permission be granted, all risks, delays and damage which may be caused as a result of such third parties, intervention shall be at the sole cost and expense of the Owner.
- 5.10 For reasons of safety and security, no unauthorised persons shall be permitted entry to the development. The Owner shall only be allowed site visitations by prior arrangement with the Building Contractor at times determined by the Building Contractor in its sole and absolute discretion. Visitations shall be authorised by the Building Contractor in writing and shall contain the date and time of the proposed visit to the site.

6. DEFECTS

- 6.1 The Owner shall 14 (fourteen) days before the date of completion, and when requested by the Building Contractor, its nominee or subcontractor to do so, attend an inspection of the Works and compile a list (after this referred to as the "FIRST LIST") to be signed by both the Building Contractor or its subcontractor and the Owner setting out any items relating to the Works requiring repair by the Building Contractor. The Owner shall, within 30 (thirty) days after the date of occupation, deliver to the Building Contractor or its agent or subcontractor a list (in the future referred to as the "SECOND LIST" signed by himself setting out items relating to the Works requiring repair by the Building Contractor constituting latent defects, which were not noted or did not exist at the time when the Building Contractor and Owner jointly compiled the First List.
- 6.2 Upon repair of such items as may require repair, the Owner shall be irrevocably deemed to have accepted that the Works are in a fit, proper, and professional state and condition in all respects and the Building

Contractor shall be wholly absolved and discharged from any further obligation towards the Owner in terms hereof. The Owner shall be obliged to furnish the Building Contractor with its completion form.

- 6.3 Any dispute as to whether the said repairs in terms of this clause have been satisfactorily carried out shall be referred to the architect acting as an expert and not as an arbitrator, and his decision thereon shall be final and binding on the parties.
- 6.4 Should the Owner fail to submit the Second List within the period mentioned above, or forget to sign the Final Completion form, it shall be deemed that he has accepted the Works in a fit, proper, and professional state and condition in all respects and the Building Contractor shall have no further obligation towards the Owner.

7. BOND FINANCE

- 7 This agreement is suspensive conditional upon:
 - 7.1.1 there is a valid and binding Agreement of Sale in existence, and
 - 7.1.2 The Owner is obtaining approval in principle of a loan for the full amount for the erection and completion of the Works on the land.
 - 7.1.3 It shall be regarded that if the suspensive conditions have not been fulfilled and subject to clause 2.4 above, this agreement shall lapse and become null and void.
- 7.2 The Owner undertakes to sign all documents relating to such an application for the loan and do all such things as required to apply for a loan to a financial institution. The Owner acknowledges that he is familiar with all the relevant requirements of financial institutions relating to the granting of loans/finance/ bond based, among other things, on the Owner/Applicant's income and liabilities, ability to pay and the total exposure of the Owner towards the relevant financial institution. He warrants that he qualifies in all respects for the grant of a loan/finance/bond to him by the relevant financial institution for the amount required. The Owner warrants that he is solvent and that no existing judgments are recorded against his name.
- 7.3 The Owner shall pay the interim interest charged on the loan/ finance or bond by the financial institution before occupation.

8. BREACH BY THE OWNER

Read in conjunction with the provisions of clause 2.4 above, should the Owner commit any breach of this agreement or persist in such breach after the expiry of a period of 7 (seven) days after dispatch of a written Notice to him requiring him to rectify or remedy such breach, then the Building Contractor shall be entitled, without prejudice to any other remedies that it may have at law, to:

- 8.1 immediately issue Summons against the Owner and claim for specific performance and payment of the full balance of the building contract price plus interest and all other amounts still due in terms hereof, OR
- 8.2 cancel this agreement and to recover all damages suffered by the Building Contractor because of such cancellation, OR
- 8.3 Immediately cancel this agreement and claim all amounts paid by the Owner in terms hereof to the Building Contractor, as its sole and exclusive property, and shall retain such amounts as partial "rouwkoop" and genuine pre-estimate of liquidated damages suffered by it because of such cancellation.

The parties agree that any part thus retained represents a fair and reasonable estimate of the Building Contractor's damages.

9. DOMICILIA

9.1. For this agreement, including the giving of any notice or demand, the parties select as their *domicilium citandi et executandi* the respective addresses reflected against their names as follows:

9.1.1. The Building Contractor hereby chooses *domicilium citandi et executandi* at:

9.1.1 The Seller:
Pretatone (Pty) Ltd
c/o Ramsay Webber Attorneys
269 Oxford Road
Illovo 2196

9.1.2. The Owner hereby chooses *domicilium citandi et executandi* at:

Email: _____

9.2. Any notice, demand or communication required or permitted to be given in terms of this agreement shall be valid and effective only if given in writing. Still, it shall be competent to give notice by telefax and e-mail.

9.3. Either party may, by notice to the other, change the address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa where the post is delivered, provided however that any such change or changes shall only become effective on the third business day following receipt of the notice by the addressee. The telefax number or e-mail address of either party may also be changed per the provisions, *mutatis mutandis*, of this clause 9.

9.4. Any notice to a party:

9.4.1. Sent by prepaid registered post in a correctly addressed envelope to its *domicilium citandi et executandi* shall be deemed to have been received on the 7th (Seventh) business day after posting (unless the contrary is proved).

9.4.2. Delivered by hand to a responsible person during regular business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

9.4.3. Sent by telefax or e-mail to its chosen telefax number or e-mail address shall be deemed to have been accepted on the first business day following the date of transmission (unless the contrary is proved).

9.5. Notwithstanding anything to the contrary herein contained, a written notice or communication received by a party shall be an adequate notice or communication to it, notwithstanding that it was not sent to or delivered at its *domicilium citandi et executandi*.

10. JURISDICTION, LEGAL COSTS AND INTEREST

- 10.1 According to section 45 of the Magistrate's Court Act, No 32 of 1944, or any amendment thereof, the Parties, due to this consent to the Magistrate's Court's jurisdiction.
- 10.2 As a result of this, the Owner agrees that should the Building Contractor utilise any legal services in enforcing any of its rights set out herein, such legal services plus VAT thereon will be paid by the Owner.
- 10.3 Should any amounts due and outstanding under this agreement not be paid on the due date in terms of this agreement, then the Owner shall be liable to pay to the Building Contractor interest on such outstanding amount calculated and the rate of 2% (two per cent) above the ruling prime commercial overdraft rate as charged by ABSA BANK LIMITED from time to time during the period in which the amounts are overdue.
- 10.4 Notwithstanding the provisions of this agreement, the Owner shall be obliged to authorise and sign all progress payment certificates within 48 (Forty-Eight) hours of these being delivered to the Owner, failing which the Building Contractor may be entitled to stop construction. The Owner shall be responsible for paying the Building Contractor a penalty of 2% (Two per cent) of the contract price to restart should such cancellation be necessary.

11. AMENDMENTS AND CESSIONS

- 11.1 This agreement and all of its annexures to that constitutes the whole agreement between the parties, and no stipulation, promise, warranty, representation or condition which is not recorded herein shall be binding on the Building Contractor unless same is reduced to writing and signed by or on behalf of all parties.
- 11.2 No alteration or variation of whatever nature of this agreement, including this clause, shall be of any force and effect unless the same is reduced to writing and signed by all the parties.
- 11.3 The Owner shall not cede, assign, makeover, alienate, pledge, burden or otherwise encumber any of his rights in terms of this agreement without the prior written consent of the Building Contractor first being had and obtained.

12. INDULGENCES AND WAIVERS

- 12.1 Any latitude, grace or extension of time which may be allowed or permitted by the Building Contractor to the Owner in respect of any payment provided for herein, or any matter or thing which the Owner is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of any of the Building Contractor's rights hereunder at any time to require strict and punctual compliance with every provision or term hereof or as a waiver of any of the Building Contractor's other rights hereunder.
- 12.2 The remission of any payment, the grant of any extension of time, relaxation of any term or condition or the condonation of any breach hereof or any other permission, relaxation, or indulgence which the Building Contractor may afford to the Owner shall not be deemed to be a waiver or a negation of any of the Building Contractor's rights in terms hereof.
- 12.3 Unless expressly otherwise confirmed in writing by the Building Contractor, no receipt of any payment by the Building Contractor or its agents or attorneys will in any manner whatsoever prejudice the Building Contractor or be deemed to be a waiver, withdrawal, or abandonment of any cancellation or right to cancellation which the Building Contractor may have acquired before such receipt.

13. BUILDING PLANS AND BUILDING OPERATIONS

- 13.1 The Owner, because of this, confirms that the building plans have been approved. No further alterations or amendments to the program shall be permissible save and except as provided for in clause 5.2 above.

14. ARBITRATION

- 14.1 If any dispute or difference shall arise between the Owner and the Building Contractor during the progress and before completion of the Works or after the termination of the employment of the Building Contractor under this contract, abandonment or breach of the agreement, as to the construction of the deal, or as to any matter or this arising thereunder, or as to the withholding by the Bank of any draw to which the Building Contractor may claim to be entitled, then the parties will jointly appoint an architect, civil engineer, quantity surveyor or any other professional person involved in the Building Industry to determine such dispute or difference ("Arbitrator") by a written decision given to the Parties. The said decision shall be final and binding on the parties unless the Building Contractor or the Owner within fourteen days of the receipt thereof by written notice to the arbitrator disputes the same in which case or in case the arbitrator for fourteen days after a written request to him by the Owner or the Building Contractor fails to give a decision as aforesaid, such dispute or difference shall be referred to the arbitration and final decision of an Arbitrator selected by the President-in-Chief for the time being of the Institute of South Africa Architects, and the award of such arbitrator shall be final and binding on the parties.
- 14.2 The Arbitrator shall have the power to disclose, review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or information had been given, upon every or any such reference, the costs of and incidental to the authority and award shall be at the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between attorney and client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid.

The Customer and the Contractor may refer any dispute related to the structure of the Work to the NHBRC for mediation

15. ANNEXURES TO THIS AGREEMENT

- 15.1 "A" – SITE DEVELOPMENT PLAN
- 15.2 "B" – BUILDING PLAN in terms of 13.1
- 15.3 "C" - SPECIFICATION AND SCHEDULE OF FINISHES
- 15.4 In the event of a dispute in fact or a different interpretation of any meaning contained in this agreement, specification, and building plan, the facts or understanding contained in this agreement shall supersede that of the specification and building plan, whilst the same provision shall apply inter alia concerning differences between specification and building plan in which event the facts or interpretation contained in the specification shall supersede that which is included in the building plan.

16. OTHER TERMS

- 16.1 **SEE ATTACHED ANNEXURE "D."**

FOR CHANGES/MODIFICATIONS AND ASSOCIATED COSTS

16.2 _____ **N/A** _____

SIGNED by the Owner at _____ this ____ day of _____ **2021**

OWNER _____

WITNESS

OWNER _____

WITNESS

SIGNED by the Building Contractor at _____ this _____ day of _____ **2021**

BUILDING CONTRACTOR

AS WITNESSES:

1. _____

2. _____

CONTACT DETAILS:

	TELEPHONE NO:	FAX NO:	E-MAIL:
CONTRACTOR			
OWNER (W)			
(H)			
Cellular)			
SPOUSE (W)			
(Cellular)			