

# MKANTSI RIVER LIFESTYLE ESTATE

## BUILDING AGREEMENT

Entered into by and between

**COPACOL PROPRIETARY LIMITED**  
**Registration Number 2010/012882/07**

("the Developer")

more fully described in the Schedule hereto

and

**LEWCON CONSTRUCTION PROPRIETARY LIMITED**  
**REGISTRATION NUMBER 2016/214637/07**

("the Contractor")

more fully described in the Schedule hereto

and

\_\_\_\_\_

("the Employer")

in respect of site \_\_\_\_\_ Mkantsi River Lifestyle Estate

**ERF \_\_\_\_\_ KIDD'S BEACH**  
**BUFFALO CITY METROPOLITAN MUNICIPALITY**  
**DIVISION OF EAST LONDON**  
**PROVINCE OF THE EASTERN CAPE**

**IN EXTENT : \_\_\_\_\_ ( \_\_\_\_\_ ) SQUARE METRES**

### **1. DEFINITIONS**

"the Attorneys" means Gravett Schoeman Inc Reg No. 1999/018451/21

"the Contractor" means the building contractor as described in the schedule "the

Contract sum" shall be the amount stipulated in the Schedule

"the Developer" means the developer as described in the schedule

"the Employer" means the owner of the property or the person about to become the  
owner of the property, as described in the Schedule

"the Property" means Erf \_\_\_\_\_ Kidd's Beach (Site \_\_\_\_\_ Mkantsi River  
Lifestyle Estate)

"VAT" means the rate of value added tax applicable in the RSA from time to time

## 2. AGREEMENT TO CONSTRUCT A DWELLING

It is agreed that the Contractor shall construct a dwelling for the Employer on the Property in accordance with the building plan, specifications and schedule of finishes hereunto annexed, marked Annexures "A" and "B" respectively, on the terms and conditions herein contained.

## 3. CONTRACT SUM

3.1 The contract sum shall be the sum of R\_\_\_\_\_ (\_\_\_\_\_)

3.2 In addition to the cost of construction and building materials, it is agreed that the following charges are included in the contract sum:

- Architectural fees
- NHBRC enrolment fees
- Municipal plan approval fees
- Water deposit / connection fees
- Electrical connection fees including pre-paid meter Sewerage connection fees
- Stormwater connection fees
- Remote devices

3.3 In the event of this being a cash or partly cash transaction, the Employer shall lodge the full Contract sum or the cash portion thereof, as the case may be, with the Attorneys within 21 (Twenty One) days from date of last signature of this agreement or from the date on which all suspensive conditions in the deed of sale referred to in clause 14, have been fulfilled, whichever is the later, to be invested in a separate interest bearing account until required. Interest shall be for the benefit of the Employer. The Employer authorise the Attorneys to make the following payments to the Developer against building progress:

- 20% of the Contract sum on completion of the foundation and concrete slab
- 20% of the Contract sum on reaching wall plate height
- 20% of the Contract sum on completion of the roof
- 20% of the Contract sum on completion of the ceilings, electrical and plumbing, including the installation of sanitation ware such as bath, shower, basins and sink.
- 20% on completion.

Any dispute that may arise between the parties as to the amount due at any stage, shall be referred to the Architect, whose decision shall be binding on the parties.

3.4 The Employer's signature hereto shall constitute the Employer's written consent in terms of Section 78(2A) of the Attorneys Act, authorising the Attorneys to invest these monies in an interest bearing account for the benefit of the Employer until required.

3.5 If the Contract sum is financed by means of a bond through a Financial Institution, the Employer shall sign Progress Payment Authorisation Forms of that Institution, authorising the Institution to make payments on demand from the Developer against various stages of building progress having regard to such Institution's guidelines and procedures.

- 3.6 The Employer hereby irrevocably cedes the proceeds of any bond to the Developer.

#### **4. POSSESSION**

- 4.1 The Employer shall immediately when the Developer or Contractor so requires, give to the Contractor or any person or entity acting on its behalf, possession of the said land and not require the Contractor to give up such possession until date of completion of the building to be erected and so long as the Employer is indebted to the Developer or any persons or entity acting on its behalf, in any amount from whatever cause arising.
- 4.2 It is recorded that any waiver of builder's lien which may have been signed by the Contractor or a sub-contractor is exclusively for the benefit of the bondholder and shall under no circumstances confer any rights or benefits on the Employer.
- 4.3 The Employer hereby waives any right of "set off" which he may have against the Contractor or Developer arising from any cause whatsoever.

#### **5. COMMENCEMENT AND COMPLETION OF BUILDING WORKS**

- 5.1 The Contractor shall commence work within a reasonable time once registration of transfer has been effected, the building plans have been approved, and the contract sum has been paid or secured, and shall complete all aspects of work within 150 (ONE HUNDRED AND FIFTY) days from date of commencement, subject to any extension of time to which the Contractor may be entitled.
- 5.2 The Contractor will be entitled to a fair and reasonable extension of time for the completion of the Works if the Works are delayed as a result of unforeseen circumstances beyond the control of the Contractor, including (but not limited to) any strike, lock-out, shortage of labour or materials, riots, political or civil disturbances, exceptionally inclement weather (over and above that normally associated with the time of year which this contract encompasses), additional work, variation involving alterations and/or modifications to the Works, late starting due to fault of the Employer, temporary stoppage of work due to late payment of monies to the Contractor by the Employer, and other delays caused by the Employer.

#### **6. VARIATIONS**

The Employer may, before the building operations begin, request reasonable variations as to the design, quantity of the works or changes to the drawings, specifications and schedules, provided such variations comply with the Architectural guidelines and other requirements pertaining to Mkantsi River Lifestyle Estate, as determined by the Developer. No such variations shall vitiate this Agreement. All variations shall be in writing, and the value thereof to be assessed and the agreed amount shall be subtracted from/added to the Contract Sum. In the case of an extra, the agreed value shall be paid to the Developer together with the next payment due to it in terms of this Contract.

## **7. INSURANCE**

Insurance on the building(s) to be constructed will be the responsibility of the Contractor, the risk of loss in the event of fire or other damage to the building(s) remaining with the Contractor until completion.

## **8. CONTRACTOR'S OBLIGATIONS**

- 8.1 The Contractor undertakes to construct the building(s) substantially in accordance with the annexed building plans and specifications in a proper and workmanlike manner
- 8.2.1 The Employer shall be afforded the opportunity to inspect the improvements together with the Contractor or its representative as soon as a certificate of completion has been issued by the Architect. At this meeting, a snag list shall be prepared comprising all defects and faults, if any, not being of a frivolous nature.
- 8.2.2 In addition the Employer shall during the construction period be given the opportunity on two occasions to inspect the building works by prior arrangement. Appointments shall be made through the Agent referred to in clause 5 of the Schedule.
- 8.3 The snag list shall be attended to by the Contractor within a period of 30 (THIRTY) days from the date of inspection.
- 8.4 In addition any latent defects caused by defective materials or workmanship, which may appear within 6 months of the date the said works were certified to be ready for occupation, shall be made good by the Contractor at its own cost and expense, provided that the Contractor received from the Employer within 7 (SEVEN) days of expiry of the said 6 (Six) month period, written notice, stating that such defects exist.
- 8.5 In the event of any dispute arising as to what constitutes a defect or fault in terms of 8.2 and 8.4 or as to whether the remedial work has been satisfactorily completed, the matter shall be referred to the Architect, whose decision shall be binding on the parties.

## **9. ELECTRICAL WIRING & ELECTRICAL FENCE CERTIFICATES**

The Contractor shall provide the Employer with the following certificates on completion of the works:

- 9.1 A Certificate of compliance issued by a qualified electrician who is duly registered with both the ECA as well as the Department of Labour, after he has inspected the installation and is satisfied that it is safe and fully compliant in accordance with the provisions of the regulations issued in terms of the Occupational Health and Safety Act 85 of 1993. The Seller undertakes to effect no alteration of whatever nature to the electrical

installation in the property hereby sold after the date of issue of the certificate.

- 9.2 An Electrical Fence System Certificate of compliance in respect of the complex as a whole, if applicable

## **10. DOMICILIUM (I.E. ADDRESS FOR SERVICE OF NOTICES)**

The Contractor and the Employer hereby choose domicilium citandi et executandi for the service of all notices in terms of this agreement at their respective addresses stipulated in the Schedule.

## **11. DEFAULT BY THE EMPLOYER**

- 11.1 In the event of the Employer committing any breach of this agreement and failing to remedy such breach within 10 (TEN) days of the sending of a letter to him by pre-paid registered post, hand delivery or by email at the domicilium citandi et executandi chosen by him herein, the costs whereof shall be borne by the Employer, the Contractor shall have the right:

11.1.1 to cancel this contract summarily by directing a letter by pre-paid registered post, hand delivery or by email to the Employer at the said domicilium citandi et executandi, notifying the Employer of such cancellation. The Employer shall be liable for any damage suffered by the Contractor by reason of the cancellation as well as eviction from the property if occupied by the Employer, and repossession thereof.

11.1.2 Alternatively the Contractor shall be entitled to claim specific performance by the Employer under this agreement as well as such damages as might be suffered as a result of the Employer's breach.

- 11.2 In the event of the Contractor cancelling this agreement in terms of 11.1.1, the provisions of clause 13 of this agreement shall take effect.

## **12. DEFAULT BY THE CONTRACTOR**

- 12.1 In the event of the Contractor committing any breach of this agreement, the Employer shall be entitled to give the Contractor 10 (TEN) days written notice to rectify such defect, by sending a letter to the Contractor by pre-paid registered post, by hand delivery or by email to the domicilium citandi et executandi chosen by him herein. The cost of the notice shall be borne by the Contractor. In the event of the Contractor being of the opinion that it is not reasonably possible to rectify the breach within the notice period, the matter shall be referred to the Architect who shall determine the period within which the breach shall be rectified.

- 12.2 If the Contractor fails to rectify the breach within the notice period determined in 12.1, the Employer shall be entitled:

12.2.1 In the event of the breach being of a material nature, to cancel this contract by directing a letter by pre-paid registered post, hand delivery or by email to the Contractor at the said domicilium citandi et executandi, notifying the Contractor of such cancellation. The Contractor shall be liable for any damage suffered by the Employer and shall forthwith vacate the property. In the event of there being a dispute between the parties as to whether the breach is of a material nature, the matter shall be referred to the Architect whose decision shall be binding on the parties.

12.2.2 Alternatively the Employer shall be entitled to claim specific performance by the Contractor under this agreement as well as such damages as might have been suffered as a result of the Contractor's breach.

12.3 In the event of the Employer cancelling this agreement in terms of 12.2.1, the Employer shall forthwith advise the Developer of such cancellation. The Developer shall then appoint a substitute building contractor to complete the building works on similar terms and conditions within a period to be determined by the Architect.

### **13. INDIVISIBILITY**

13.1 Subject to clause 13.2, this agreement and the separate deed of sale entered into between the Developer and the Employer, shall be indivisible. In the event of this building agreement lapsing because of non-fulfilment of any suspensive condition or being cancelled in terms clause 11 due to breach on the part of the Employer, the said Deed of Sale shall also lapse and the property shall be transferred to the Developer at the cost of the Employer in accordance with clause 22.2 of the deed of sale (full ownership).

13.2 The cancellation of this agreement by the Employer in terms of clause 12.2.1 read with 12.3 shall however not result in the cancellation or lapsing of the deed of sale provided a replacement building contractor is appointed by the Developer to complete the works without undue delay.

### **14. SUSPENSIVE CONDITIONS**

This agreement shall be subject to the following suspensive conditions :

14.1 The conclusion of a deed of sale in respect of the property between the Developer and the Employer and the due fulfilment of any suspensive conditions contained therein.

14.2 The Employer obtaining a loan, which shall include a building loan, upon the security of a first mortgage bond to be passed over the property for the sum of R\_\_\_\_\_ (\_\_\_\_\_), upon terms and conditions acceptable to the Developer's Conveyancers, within 21 (TWENTY ONE) days after the last date of signature of this agreement or such extended period as the Developer may allow. Such bond shall be applied for within 7 days of date hereof.

**15. COMMISSION**

The Contractor shall pay commission to the Agent at the rate stipulated in the Schedule. Payment shall be made from the final progress draw. In the event of this agreement being cancelled due to default on the part of the Employer, the Employer shall be liable for the payment of such commission on demand.

**16. GENERAL**

16.1 For the purpose of conducting all or any legal proceedings flowing from this agreement, the parties hereby consent to the jurisdiction of the Magistrates Court under Section 18 of the Magistrates Court Act of 1944 as amended. Notwithstanding the foregoing, the Contractor shall have the right at its sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction. The party who is successful in such proceedings shall be entitled to recover from the other all legal costs on the scale as between attorney and client.

16.2 The liability of the Employer hereunder, if more than one, shall be joint and several, the terms Developer, Contractor and Employer shall include their successors in title/heirs, executors, administrators or assigns and shall also include the plural thereof and the masculine shall include the feminine gender.

16.3 This building agreement constitutes the entire contract between Developer, Contractor and Employer and is in substitution of any prior agreement or arrangement between the parties and no Warranties, representations or conditions not recorded herein shall be binding on the Developer or Contractor unless endorsed hereon and signed by the parties hereto.

16.4 The Employer warrants that this transaction has not resulted from direct marketing as envisaged in section 16 of the Consumer Protection Act.

**17. EMPLOYER BEING A LEGAL ENTITY OR TRUST**

In the event of the employer being a trust or legal entity, such as a company or close corporation, the representative of the legal entity or trust by his signature of this agreement:

17.1 warrants that he has been duly authorised to enter into this transaction;

17.2 binds himself as surety to the Developer and Contractor for the due compliance by the legal entity or trust of its obligations in terms of this agreement, waiving the benefit of excussion.

## **18. ARBITRATION**

18.1 In the event of any dispute arising in connection with this agreement, such dispute shall be referred to a single arbitrator agreed on by the parties whose decision shall be final.

18.2 If the parties cannot agree on a nomination the arbitrator shall be if the question in issue is :-

18.2.1 primarily a legal matter, an advocate of the Eastern Cape Division of the High Court who has been in practice for not less than 10 years and who shall be nominated by the President for the time being of the Bar Association of the Eastern Cape Division;

18.2.2 primarily an accounting matter, an independent accountant who has been in practice for not less than 10 years and who shall be nominated by the Chairman for the time being of the Association of East London Chartered Accountants;

18.2.3 primarily of a technical nature, including but not restricted to the quality of workmanship, building materials used, interpretation of the building plans, safety and health regulations, an architect or quantity surveyor who has been in practice for not less than 10 years, nominated by the governing body of architects or quantity surveyors for the area in question.

18.3 Such arbitration proceedings shall be conducted informally and as inexpensively and expeditiously as possible at East London or such other place as the arbitrator may consider shall suit the balance of convenience under the circumstances.

18.4 The arbitrator shall decide the matter submitted to him in a manner he considers just and equitable in the circumstances and therefore strict rules of law need not be observed or taken into account by him in reaching his decision.



THUS DONE and SIGNED at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
EMPLOYER

\_\_\_\_\_  
WITNESS

THUS DONE and SIGNED at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
WITNESS

THUS DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day  
of \_\_\_\_\_, accepting the rights and obligations flowing from  
this agreement on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DEVELOPER

\_\_\_\_\_  
WITNESS

THUS DONE and SIGNED at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
AGENT

\_\_\_\_\_  
WITNESS

**SCHEDULE  
(TO BUILDING AGREEMENT)**

**1. "the DEVELOPER"**

Full Name COPACOL (PTY) LTD

Registration Number: 2010/012882/07

Present business Address FARM 1015, BURNSIDE, EAST LONDON / PO BOX 1696, EAST LONDON

Tel No: Bus 082 859 1407

E-mail [info@mkantsiriver.co.za](mailto:info@mkantsiriver.co.za)

**2. "the CONTRACTOR"**

Full Name LEWCON CONSTRUCTION (PTY) LTD

Registration Number: 2016/214637/07

Present business Address 2<sup>ND</sup> FLOOR, BEACON BAY CROSSING, CNR N2 & BONZA BAY ROAD, BEACON BAY

Tel No: Bus \_\_\_\_\_

E-mail \_\_\_\_\_

**3. "the EMPLOYER"**

**SPOUSE**

Full Names \_\_\_\_\_

ID Number \_\_\_\_\_

Present Residential Address \_\_\_\_\_

Postal Address \_\_\_\_\_

Tel No: Bus \_\_\_\_\_

Home \_\_\_\_\_

Cell \_\_\_\_\_

e-mail \_\_\_\_\_

Fax \_\_\_\_\_

**4. "the PROPERTY"**

Erf \_\_\_\_\_ Kidd's Beach  
Buffalo City Metropolitan Municipality  
Division of East London  
Province of the Eastern Cape  
In extent \_\_\_\_\_  
Situate within the magisterial district of East London

**OR** Site \_\_\_\_\_ MKANTSI RIVER LIFESTYLE ESTATE  
Kidd's Beach  
Measuring approximately \_\_\_\_\_ m2  
as will appear from the approved site plan marked C  
Situate within the magisterial district of East London

5.1 "the AGENT" :

\_\_\_\_\_

Of \_\_\_\_\_ (physical address)

PO Box \_\_\_\_\_

E-mail : \_\_\_\_\_

5.2 Commission :

\_\_\_\_\_ % of the contract price

6. "the ARCHITECT": The architect appointed by the Seller

7. "the ATTORNEYS":

GRAVETT SCHOEMAN INC (Mr Hannes Schoeman)  
of Cnr Lillian Lane & Main Road, Gonubie  
PO Box 19772, Tecoma, 5214  
E-MAIL: [hannes@gslegal.co.za](mailto:hannes@gslegal.co.za)

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