

ANNEXURE "H"

PERFORMANCE GUARANTEE

Issued by Orange Insurance Ltd

In favour of:-

(hereinafter referred to as "the Purchaser")

1. DEFINITIONS

In this agreement unless the context clearly indicates the contrary intention:

1.1 words importing:

- 1.1.1 any one gender include the other two genders;
- 1.1.2 the singular include the plural and vice versa, and
- 1.1.3 natural persons include created entities (corporate or unincorporated) and vice versa;

1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings namely:

- 1.2.1 "Orange" – Orange Insurance Ltd
- 1.2.2 "the Purchaser" - _____
- 1.2.3 "Contractor" - The contractor appointed by the developer or Orange to attend to the building of the relevant dwelling on the property
- 1.2.4 "the Building Contract" – The Building Contract concluded between the Developer and the Contractor or between Orange and the Contractor in terms of which the Contractor will build a dwelling on the Property.

1.2.5 "the Property" - _____

1.2.6 "the Building Contract price" – the sum of R_____

1.2.7 "Guaranteed Amount" – the Building Contract price

1.2.8 "Developer" - Waterberg Minerale Bron (Pty) Ltd

1.3 Where any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.

1.4 Expressions defined in this agreement shall bear the same meaning in schedules or annexures to this agreement which do not themselves contain their own definitions.

1.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

1.6 Where any number of days are prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.

1.7 No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured or drafted such provision.

1.8 The head notes to the clauses in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;

1.9 The rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation thereof, shall not apply;

1.10 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16:00 on that day;

1.11 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.12 The words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a party have the same meaning.

2. GUARANTEE BY ORANGE

Orange agrees and undertakes to pay to the Purchaser the Guaranteed Amount upon proof that the Contractor has breached the Building Contract, the Building Contract has been cancelled and the building on the Property has not been completed by the Contractor or Orange, provided that Orange shall have the right instead of paying the Guaranteed Amount to appoint another contractor to complete the building of the dwelling in terms of the Building Contract at the cost of Orange.

3. PAYMENT

Orange shall effect payment of the Guaranteed Amount or advise the Purchaser that it will be appointing a contractor to complete the construction of the relevant dwelling within 10 (ten) calendar days of proof from the Purchaser that the Contractor has breached the Building Contract, the same has been cancelled as a result of such breach and the Contractor and Orange has not completed the dwelling in terms of the Building Contract.

4. NON NEGOTIABILITY

This guarantee is neither negotiable or transferable and shall expire once the Contractor has completed the dwelling in terms of the Building Contract or payment has been made by Orange in terms of this guarantee or Orange has paid for the third party contractor to complete the dwelling in terms of the Building Contract (whichever occurs first). The original of this guarantee must be returned to Orange after it has expired.

5. JURISDICTION

Orange hereby consents in terms of Section 45 of the Magistrate's Court Act of 1944 as amended to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the Act notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

THUS DONE AND SIGNED AT _____ ON THIS THE ____ DAY OF _____ 20_____

AS WITNESSES :-

ORANGE
(The signatory hereto warranting his
authority to act on behalf of Orange)

1. _____

2. _____

