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## BLUE RIDGE HOME OWNERS' ASSOCIATION

### CONTRACTOR'S CONDUCT AGREEMENT

#### 1. PARTIES

1.1. The parties to this Agreement are:

- 1.1.1. Blue Ridge Home Owners' Association;
- 1.1.2. The person/partnership/company/Close Corporation/Trust (as applicable) recorded as the Owner of the property in the Schedule.
- 1.1.3. The person/partnership/company/Close Corporation/Trust (as applicable) recorded as the main Contractor in the Schedule.

1.2. The parties agree as set out below:

#### 2. INTERPRETATION

- 2.1. Unless the context indicates a contrary intention, an expression which denotes any gender includes the other genders; a natural person includes a juristic person and vice versa; and the singular includes the plural and vice versa;
- 2.2. The rule of interpretation that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 2.3. The reference to any schedule, appendix or part shall be a reference to a schedule, appendix or part of this Agreement, unless expressly stipulated otherwise. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless that 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.
- 2.4. Where figures are referred to numerals and words, if there is any conflict between the two, the word will prevail;

#### 3. DEFINITIONS

In this Agreement the following expressions and words have the following meaning:-

- **Agreement** - shall mean this agreement with any annexures thereto.
- **Architect** - shall be the firm of architects employed by the Owner.
- **Architectural- and Building Rules** - means the Rules prepared and applicable to the Development, copies which have been given to the Owners who have in turn provided same

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to the Contractors. All parties confirm receipt thereof and acknowledge the provisions thereof.

- **Attorneys** - shall mean attorney appointed by Owner.
- **Contract** - The building Agreement concluded between the Blue Ridge HOA, the Owner and the main Contractor to construct the Improvements on the Erf.
- **Contractor** - means the main building Contractor and the Owner in the case of a builder-Owner referred to in clause 1.1.3 and recorded in the schedule and for the purposes of any claim against the main Contractor which includes liability for any act or omission by any employee and or sub-Contractor and or person acting on the instructions of the main Contractor or in connection with work to be undertaken by the main Contractor as suppliers or person effecting the delivery of materials. The Contractor must be registered at the National Home Builders Registration Council (NHBR).
- **Construction** - includes but is not limited to a new house, additions, or alterations to existing properties; screen or yard walls and driveways.
- **Development** – The Blue Ridge Estate located in 417 Flora Road, Dana Bay.
- **Erf** - means the certain immovable property described as such in the schedule upon which the Owner and the Contractor propose to construct the Improvements.
- **HOA** - means the Blue Ridge Home Owners' Association.
- **Improvements** - any structure of whatsoever nature to be constructed on the Erf, which shall include, but in no way be limited to, the initial construction, alterations, renovations, additions, construction of retaining walls, paving as well as excavation, landscaping and planting.
- **Local Authority** - The Municipality and Division of Mossel Bay, Western Cape Province or its successor in title.
- **Owner** - The party referred to in Clause 1.1.2 and recorded as same in the schedule.
- **Schedule** - means the annexure hereto, if any, headed as Schedule.

#### 4. **RECORDING**

- 4.1. The Owner has purchased the Erf and is the registered Owner.
- 4.2. The Owner has selected the Contractor as his building Contractor for the choice of construction and improvement.
- 4.3. Blue Ridge HOA wishes to ensure that the construction of the Improvements is undertaken to cause the least possible damage to the infrastructure of the Development and that where damage does occur, provision is made for the repair as well as to ensure that the construction is undertaken with consideration to the environmental factors and so as to in no way inconvenience other Owners and Tenants in the Development. To ensure that the quality of life for the residents is not unduly compromised by the Improvements and to ensure

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that the work is undertaken in an orderly and harmonious manner, all of which the Owner and Contractor accept to be in the best interest of the Development.

- 4.4. To attain the said objectives the Owner and Contractor bind themselves jointly for the obligations contained herein and the HOA Committee undertakes to use its best endeavours to monitor the provisions hereof.

## **5. CONTRACTORS OBLIGATION PRIOR TO CONSTRUCTIONS**

The Contractor must address or attend to the following matters before commencing any work of any nature on the Erf and the Contractor will be denied access to the Development until:

- All provisions of this clause have been complied with to the satisfaction of the HOA Committee.
- The Contractor and the HOA Committee have carried out together a site inspection.
- Contractors will not be allowed on site before they have signed the Contractor's Conduct Agreement and paid the relevant fees.

### **5.1. APPROVAL OF BUILDING/CONSTRUCTION PLANS**

- 5.1.1. Outline plans can be submitted for pre-approval to the HOA Committee to avoid any unnecessary cost and time wastage before the Architect prepares the building plans for final approval.
- 5.1.2. The Owner, Architect or Contractor must submit 4 (four) sets of the final plans and specifications to the HOA Committee for written approval prior to their submission to the Local Authority.
- 5.1.3. After the final approval by the HOA Committee, the plans can be submitted to the Local Authority.

### **5.2. APPROVED BUILDING/CONSTRUCTION PLANS**

- 5.2.1. A signed copy of the building/construction plans approved in terms of 5.1 and by the Local Authority must be handed to the HOA Committee together with the signed Agreement and an estimate construction completion date signed by the Contractor to the Management Agent.
- 5.2.2. All construction of Improvements of the Erf must be executed in accordance with the approved plans.
- 5.2.3. Once the work has commenced on the Erf it must be continued to completion without stoppages and interruption.

### **5.3. CONSTRUCTION DEPOSIT**

- 5.3.1. The Contractor shall, before commencing any work, pay to the account of the HOA the amount of R10 000.00 (ten thousand rand) which shall constitute a

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security deposit for damage of whatever nature which may be caused by the Contractor to any portion of the Development. An amount of R5 000.00 (five thousand rand) of this will be refunded interest-free on 100% completion of the project meaning the HOA final inspection has been done and a completion certificate has been issued by the Local Authority. The amount of R5 000.00 (five thousand rand) of the deposit is retained for the Development's road fund.

- 5.3.2. For extensions and alterations, there is a deposit of R5 000.00 (five thousand rand) under the same conditions as above – R4 500.00 (four thousand five hundred rand) refundable (interest-free) and R500.00 (five hundred rand) retained for the Development's road fund.
- 5.3.3. Any claim arising as contemplated is not limited to the amount of the deposit and the HOA Committee shall be entitled to recover from the Owner or the Contractor any amount which is the reasonable costs of reinstatement resulting from such damage.
- 5.3.4. The costs of any damage attributable to the Contractor shall be quantified by the HOA Committee and the amount so determined shall be prima facie evidence of the amount due by the Owner and the Contractor.
- 5.3.5. If the HOA Committee alleges that the conduct of the Contractor is the cause of any damage to any portion of the Development, then the Owner and the Contractor will be presumed to be liable unless they are able to prove the contrary.
- 5.3.6. If the Owner/Contractor fail to dispute any claim within 5 (five) business days of getting notice thereof, they shall be liable for the payment as determined by the HOA Committee.
- 5.3.7. If the claim is disputed, the HOA Committee can institute proceedings against the Owner/Contractor for the recovery of the amount claimed.
- 5.3.8. The HOA Committee will invoice the Contractor for any damage caused which is due and payable within 5 (five) business days. The Contractor will be denied access to the Erf until all amounts have been paid.
- 5.3.9. Upon final completion of work by the Contractor on the Erf, provided there is no claim pending against the Contractor, the Contractor will be entitled to receive payment of the refund of the deposit or any portion remaining thereof.

**5.4. STAFF AND VEHICLE IDENTIFICATION**

- 5.4.1. The Contractor and his staff are required to always wear identification tags while on the Development which state the Erf number, Owner's name, and construction company. A colour photograph identifying the holder is further required.
- 5.4.2. Parties without identification tags will be denied access to the Development.

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**5.5. INSURANCE**

The Contractor shall prior to commencing work on the Erf, submit to the HOA Committee, proof of insurance policies to adequately cover the Contractor's all risks associated with the Improvements, appropriate SASRIA and MVA cover and Public Liability insurance cover to the value \_\_\_\_\_ of R \_\_\_\_\_ ( \_\_\_\_\_ ) per incident, to the satisfaction of the HOA Committee.

**5.6. LABOUR AND TRAINING**

The National Building Regulations and appropriate By-laws of the Local Authority, the Occupational Health and Safety Regulations and where applicable, the requirements of the National Home Builders Registration Council will apply to the construction of all Improvements within the Development.

Neither the HOA nor the HOA Committee shall be responsible for any design or construction defects which may affect the safety or structural integrity of any improvement within the Development or non-compliance with the NBR or NHBRC requirements.

**6. CONTRACTOR'S OBLIGATIONS WHEN COMMENCING CONSTRUCTION**

The Contractor shall address or attend to the following matters when commencing construction of any Improvements on the Erf.

**6.1. BARRICADES AND FENCING**

- 6.1.1. All building sites must be secured and fenced in before work can commence with fencing that has been approved by the HOA Committee.
- 6.1.2. All fences and screens must be properly maintained, to the satisfaction of the HOA Committee during the duration of the construction of the Improvements and 'No Entry' signs must be placed.

**6.2. DUST CONTROL**

The Contractor shall implement appropriate measures to the satisfaction of the HOA Committee to minimise damage to the existing vegetation and to minimise the generation of dust or windblown sand in other open areas of the Development resulting from the Improvements to the Erf.

**6.3. EROSION CONTROL**

- 6.3.1. The Contractor shall be responsible for providing and maintaining protection against the wash away and erosion damage through the duration of the construction process.
- 6.3.2. Should the Contractor fail to provide the protective measures to the satisfaction of the HOA Committee, and still fail to do so after receiving 24 hours' notice of

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such failure from the HOA Committee, the HOA Committee shall instruct an independent party to rectify the damage and establish the necessary protective measures at the Contractor's costs.

6.3.3. The Contractor will be denied access to the Development until these aforementioned costs have been paid.

**6.4. EXCAVATION**

6.4.1. No excavation, filling, clearing of bush or removing of plants on the Erf may be undertaken before all the required conditions for the start of a building project are met.

6.4.2. Any damage caused to a paved road or sidewalk must be made good by the Contractor immediately after the damage becomes evident.

6.4.3. A structural engineer must certify all foundations.

**6.5. MUNICIPAL SERVICES**

6.5.1. The Contractor must make sure that the connection points for all Municipal services are identified and confirm it to be in working order prior to starting any construction work.

6.5.2. All conditions, processes and fees prescribed by the Local Authority for the connections of the water and sewerage, electricity, and other municipal services, shall be the sole responsibility of the Contractor.

6.5.3. All costs pertaining thereto shall be for the account of the Contractor.

6.5.4. The Contractor will obtain water for the work to be undertaken from the municipal water connections on the Erf by installing a water meter prior to any water being consumed. Under NO circumstances may the Contractor interfere with the water supply to the Development.

6.5.5. A sewer connection point has been provided for on the Erf, into which the Contractor is required to connect the sewer system for the Improvements.

6.5.6. The Contractor may NOT dispose of any building material, contaminated water, or rubbish in the sewer system.

6.5.7. The Contractor may not dispose of any building material, contaminated water, or rubbish into the storm water system, nor may the Contractor wash paint or cement-based products into the storm water system or onto landscaped or paved areas.

6.5.8. The Contractor undertakes to implement measures to prevent any soil erosion by wastewater on or around the Erf on which the Improvements are being constructed for the duration of the contract.

**6.6. ABLUTION FACILITIES**

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- 6.6.1. The Contractor shall provide water and/or washing facilities for the employees on the Erf.
- 6.6.2. Prior to the commencement of construction of the Improvements and throughout the duration of the work, the Contractor shall provide a suitable number of, and properly operational chemical toilets, on the Erf and shall ensure that such facilities are always properly maintained and clean, hygienic and in neat condition.
- 6.6.3. Use of the Development's water borne sewerage system is forbidden.
- 6.6.4. Any worker (employee of the Contractor/sub-Contractor) found doing ablutions in any area other than the supplied toilet, will be removed from the Development by the HOA Committee and shall be permanently barred from returning to the Development.
- 6.6.5. The Contractor shall ensure that no wastewater whatsoever enters the conservation areas.

**6.7. STORAGE SHED**

- 6.7.1. Temporary storage sheds of galvanised iron or timber and of a neat appearance are allowed on the Erf. Shipping containers may be used for offices or stores.
- 6.7.2. No other structures are permitted on the Erf unless they appear in the approved building plans and are mentioned in this Agreement.
- 6.7.3. The HOA Committee can instruct that the Contractor remove any shed or storage unit, which in the sole discretion of the HOA Committee is untidy or dilapidated.
- 6.7.4. Should the Contractor fail to remove said shed or storage unit, the HOA Committee will employ an independent contractor to remove same and the Contractor will be held liable for those costs. The Contractor will not be allowed back on to the Development until those costs have been settled.

**6.8. REFUSE CONTAINERS AND REFUSE REMOVAL**

- 6.8.1. All refuse must be deposited into a closed container on a daily basis, which must be supplied by the Contractor, at his costs.
- 6.8.2. All containers must be of a design approved at the sole discretion of the HOA Committee. The container must be of such a nature that it cannot blow over and that refuse cannot escape from it.
- 6.8.3. The container must be emptied and cleaned on a regular basis.
- 6.8.4. Without detracting from the aforesaid, the Contractor specifically acknowledges that all empty cement bags, plastic, and other loose material must be removed from the Development so as not to contaminate the Development and the open areas.

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- 6.8.5. The Contractor shall ensure that all building rubble is removed from the Development on a weekly basis or as is otherwise required by the HOA Committee.
- 6.8.6. The Contractor shall ensure that the Erf is at all times kept neat and free of litter or other unsightly waste.
- 6.8.7. If the Contractor fails to keep the Erf clean to the satisfaction of the HOA Committee, the HOA Committee shall have the right to have the Erf cleaned at the expense of the Contractor.
- 6.8.8. The Contractor shall be denied access to the Development until such costs have been paid.
- 6.8.9. Under NO circumstances will the dumping of any building material or rubble be allowed on any portion of the Development and the Contractor is required to make his own arrangements for the disposal of materials at a spill site off the Development. Failure to comply will result in the Contractor being fined R1 000.00 (one thousand rand) per offence.
- 6.8.10. The Contractor shall be denied access to the Development until the fine has been paid.

**6.9. SURVEY BEACONS**

- 6.9.1. The Contractor is responsible for the maintaining of the boundary pegs. Should the boundary pegs be disturbed, the HOA Committee shall arrange for the Land Surveyor to relocate them at the Contractor's expense.
- 6.9.2. A surveyor certificate of stand pegs is required. (The surveyor is to place 1,5m long timber pegs, painted white, next to the steel pegs for visibility above fynbos.)

**6.10. PERMISSIBLE SIGNAGE**

- 6.10.1. The Contractor shall only be permitted to erect a single signage board.
- 6.10.2. The signage shall be erected at the expense of the Contractor.
- 6.10.3. The Contractor shall not erect the signage anywhere but on the Erf.
- 6.10.4. The signage must comply with HOA Committee requirements.
- 6.10.5. The signage must be removed immediately on completion of the Improvements.

**7. CONTRACTOR'S OBLIGATIONS DURING CONSTRUCTION**

**7.1. AVAILABILITY OF PLANS**

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Prior to and during the construction of the building, alterations or Improvements, the Contractor shall ensure that a copy of the drawings and plans in respect of the project as approved, are always on site and available to the Contractor's personnel as well as the HOA Committee during working hours.

**7.2. ACCESS CONTROL**

- 7.2.1. The HOA Committee shall at any time be entitled to impose controls regarding access to the Development and to introduce security arrangements, as it considers necessary.
- 7.2.2. The Contractor shall adhere to such security arrangements and if he fails to do so after receipt of written notice calling on him to remedy his breach, the HOA Committee shall, without prejudice to its further rights, be entitled to refuse the Contractor access to the Development and the Contractor or Owner shall have no claim against the HOA Committee.

**7.3. BUILDING HOURS**

- 7.3.1. Working hours and hours for delivery of building materials will be determined from time to time by the HOA Committee.
- 7.3.2. No building shall be undertaken on Sundays or Public Holidays or during the annual builder's holiday.
- 7.3.3. Building activity shall be confined on weekdays from 07h00 – 17h30 and Saturdays from 08h00 to 13h30 during summer months (1 September to 30 April) and on weekdays from 07h30 – 17h30 and on Saturdays from 08h00 to 13h30 during winter months (1 May to 31 August).
- 7.3.4. If found on the Erf outside of permitted working hours, the Contractors' employees will be escorted from the Development and the Contractor will be fined R500.00 per transgression.
- 7.3.5. The Contractor will not be allowed access to the Development until the fine has been paid.

**7.4. WORK AND STORAGE AREAS**

- 7.4.1. The Contractor may not use the surrounding Erven, the roadways, pavements, and any open spaces for any purpose whatsoever. This includes vehicle access, the storage of building materials and the dumping of excavated soil. The Development's public areas and conservation areas may not be used under any circumstances.
- 7.4.2. Because space on the Erven is limited, all deliveries of supplies and materials should be planned well ahead and be managed well. No supplies and materials may be left outside the boundaries of the Erf (on the adjacent Erf or next to the road).

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- 7.4.3. Should the Contractor fail to abide by this, he will be fined R1 000.00 (one thousand rand) per transgression and denied access to the Development until such fine has been paid.
- 7.4.4. The mixing of building materials must occur within the confines of the Erf. If spillage of building materials occurs on any paved road or sidewalk in the Development, the Contractor is responsible for ensuring that such spillage is immediately cleaned.
- 7.4.5. The Contractor must ensure that all materials and equipment are locked away at night.

**7.5. DELIVERIES**

- 7.5.1. All deliveries must include the Development Erf number on the delivery note.
- 7.5.2. All deliveries to the Erf must take place ONLY from the street frontage of the Erf.
- 7.5.3. All delivery vehicles shall leave the Development once the delivery is complete and only during working hours as set out in clause 7.3.3.
- 7.5.4. All deliveries must be off loaded and stored within the boundary of the Erf and the storage of any material outside the boundary of the Erf is strictly forbidden subject to clause 7.4.2. No building material shall be off loaded and stored on any sidewalk or roadway within the Development.
- 7.5.5. Delivery vehicles may not be parked unattended upon any paved roadway, sidewalk, or parking bays in the Development. Any diesel or oil spillage caused by any of the construction or delivery vehicles on any paved roadway or sidewalk, shall immediately be cleaned by the Contractor.
- 7.5.6. Only single axle trucks with a maximum weight of 18 (eighteen) ton bearing capacity or such other capacity and limits as determined by the HOA Committee from time to time, will be allowed entrance to Blue Ridge to preserve the roads. Should the truck not be allowed access, further shunting with smaller trucks can be used by the Contractor from the outside of the estate to the building site. In special cases where the trucks exceed to above limits, and access is granted by the HOA Committee, the HOA Committee reserves the right to accompany the truck while in the estate to record if any damage is caused to infrastructure.

**7.6. CONTROL OF LABOUR**

- 7.6.1. Throughout the constructions of the Improvements, the Contractor is responsible for the discipline and control of his employees and/or sub-contractors and is responsible for any damage caused to any part of the Development by any supplier of materials and any other person instructed by or employed by the Contractor and/or sub-contractor in respect of work undertaken on the Erf.

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- 7.6.2. No temporary accommodation for employees of the Contractor is permitted on site.
- 7.6.3. No employees of the Contractor shall be allowed to remain on site outside of the permitted building hours and no person shall sleep on site.
- 7.6.4. The employees must be transported in the Contractor's vehicle, to and from the Development's main gates and the Erf. They are not permitted to walk from one area to another unless prior written permission is obtained from the HOA Committee. Any employees of the Contractor not adhering to this regulation will be removed from site and the Contractor shall be fined R100.00 (one hundred rand) per person per transgression.
- 7.6.5. There must always be a responsible supervisor on site to control and manage the construction process.

**7.7. TRAFFIC RULES**

- 7.7.1. The maximum speed limit is 20 km/h throughout in the Development.
- 7.7.2. The cost of repair necessitated by damage caused to the Development by the Contractor's vehicles, will be recovered from the Contractor.
- 7.7.3. Vehicles shall only be permitted on existing roads to the Erf to complete their specific task and must abide by traffic access and parking plans.
- 7.7.4. All roadways must be kept open for traffic.
- 7.7.5. The driveways of other Erven in the Development may not be used at any time.

**7.8. GENERAL SITE NEATNESS**

- 7.8.1. The Contractor is expected to always keep the appearance of the building site neat and tidy.
- 7.8.2. The Contractor must always ensure that the road in front of the building site is swept clean to protect the road surface. The Contractor must ensure that the kerbs and sidewalks are adequately protected from damage from building operations. The Contractor will be held financially and legally responsible for all damages to road surfaces and kerbs caused by building operations.

**7.9. ANTI POLLUTION MEASURES**

- 7.9.1. The Contractor shall take all reasonable steps to prevent pollution of the surface and ground water. Such pollutions could result from release, accidental or otherwise, of chemicals (paints) oils, fuels, sewerage, construction waste or waste products.
- 7.9.2. Any refuelling of machinery is to take place under adequate spill prevention measures to prevent fuel leakages from entering the open areas directly and indirectly. The Contractor may use a 'trap' filled with sand. The sand must be

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replaced regularly, and its contents disposed of outside the Development at an appropriate waste disposal facility.

- 7.9.3. No open fires or burning of waste is allowed any place on the Development. The Contractor will be fined R1 000.00 (one thousand rand) per breach of this regulation and the Contractor will be held legally and financially responsible for any damage caused by the breach of this regulation.

#### **7.10. CONCRETE AND MORTAR**

- 7.10.1. No mixing of mortar or concrete is permitted on any road surface.
- 7.10.2. The Contractor undertakes to supervise all deliveries of concrete to ensure that damage of road surfaces and vegetation is minimised. Any spillage of concrete is the responsibility of the Contractor and must be cleared up immediately.
- 7.10.3. Washing off of ready mix or any other vehicle is not permitted within the Development and the Contractor will be fined R500.00 (five hundred rand) per offence.

#### **7.11. RIGHT TO STOP WORK**

- 7.11.1. Any construction of Improvements being executed in a poor and unworkmanlike manner, or in any violation of, or inconsistent with the plans previously approved by the Local Authority and the architectural review committee, may be stopped without prior notice by the HOA Committee, until the situation has been corrected to the satisfaction of the HOA Committee.

### **8. GENERAL**

- 8.1. The Owner/Contractor acknowledge that the HOA Committee will be entitled to enforce compliance with the Development's Constitution, building Rules and any other instructions and regulations issued in terms thereof with regard to the construction of the Improvements. The Contractor shall, in terms of the Improvements, at all times work strictly in accordance with the provisions of the approved plans and approved variations thereof as submitted and approved in terms of the HOA Committee Architectural- and Building Rules and by the Local Authority and the Contractor shall in no way deviate there from.
- 8.2. The Owner undertakes to co-operate fully with the Contractor, the Architect and the HOA Committee to ensure compliance with the spirit and intent of this Agreement. The Owner acknowledges that he has employed the Contractor and the Architect and is responsible to ensure compliance with this Agreement as well as the Development's Architectural- and Building Rules and any additional rules made from time to time.
- 8.3. The Contractor, his employees, sub-contractors or suppliers may not do anything, which in the opinion of the HOA Committee is noisy, unsightly, injurious, objectionable, or detrimental, or a public or private nuisance or a source of damage or disturbance to any Owner, tenants or occupier of any Erf in the Development.

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- 8.4. It is the Owner's responsibility to furnish his Architect with all documentation of the Development's relevant to construction including, but not limited, to the Architectural- and Building Rules, Environmental Management Plan and Conduct Rules. This is obtainable from the Management Agent in Mossel Bay or the Development's Website.
- 8.5. This Agreement is to be read in conjunction with the Development's Home Owner's Constitution and Architectural- and Building Rules.
- 8.6. The provisions of this Agreement are subject to the provisions of the Development's Constitution, Architectural- and Building Rules, Environmental Management Plan and Conduct Rules, as amended from time to time. If there is a conflict between the provisions of this Agreement and any of the aforementioned documents then the provisions of the Development's Constitution, Architectural- and Building Rules and Conduct Rules, in this sequence, will prevail.

**9. DOMICILIUM**

9.1. The parties choose their domicilia citandi et executandi at the following addresses:

DEVELOPMENT : .....

OWNER : .....

CONTRACTOR : .....

9.2. Any communication or notice required or permitted to be given in terms of this Agreement, shall be valid and effective only in writing, but it shall be competent to give such notice or communication by email.

9.3. Any notice sent to a party:

- 9.3.1. Sent by registered post in a correctly addressed envelope during business hours at its domicillium citandi et executandi shall be deemed to have been received on the third day after posting (unless the contrary is proven).
- 9.3.2. Delivered by hand to a responsible person during ordinary business hours at its domicillium citandi et executandi shall be deemed to have been received on the day of delivery.
- 9.3.3. Sent by email shall be deemed to have been received on the first day after the date of the dispatch (unless the contrary is proven).
- 9.3.4. Sent by telefax during the normal working hours to the telefax number specified herein for the addressee shall be deemed to have been received by the

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addressee 4 (four) hours after the time of transmission or within 12 (twelve) hours of transmission where it is transmitted outside business hours.

- 9.3.5. Any of the parties referred to may, by notice in writing to the other parties, alter the address set out in the schedule to another address in the Republic of South Africa, provided that such other address may not be a post box and provided that such alteration shall not be effective until 5 (five) business days after it has been received.
- 9.3.6. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be adequate written notice to such party notwithstanding that it was not sent to or delivered at the domicillium citandi et executandi.

## **10. BREACH**

- 10.1. Without detracting from any rights which the HOA Committee may have in terms of this Agreement and in the event of the Owner/Contractor breaching any of the provisions of this Agreement and persisting in such failure for a period of 5 (five) business days after the dispatch of written notification calling upon them or either of them to remedy same, the HOA Committee shall be entitled to all or any of the following relief:
  - 10.1.1. to deny the Contractor access to the Development
  - 10.1.2. appoint an independent Contractor to rectify the breach and recover the remedy costs from the original Contractor with a minimum R100.00 (one hundred rand) handling fee or 25% of the cost whichever is the greater.
  - 10.1.3. To cancel this Agreement, in which event the Contractor shall not be entitled to continue construction on the Erf. Should the Contractor so require, the HOA Committee will, upon reasonable Notice, meet with the Contractor in an effort to obtain the Contractor's undertakings to abide by the terms and conditions of this Agreement. The HOA Committee shall be entitled, in its sole discretion, to reinstate this Agreement to enable the Contractor to continue with the work on the Erf, subject to further conditions as the HOA Committee may impose.
- 10.2. To hold the Owner/Contractor liable and to claim from them the cost of repair of any damage caused by them within the Development, as determined in terms hereof.
- 10.3. Should the HOA Committee take steps against the Owner/Contractor pursuant to the breach of this Agreement, the HOA Committee shall, in addition to the aforementioned rights, be entitled to recover from the Owner/Contractor all the HOA Committee's legal costs incurred on a scale of attorney and own client.
- 10.4. If access to the Development is denied to the Contractor in terms of the aforementioned or this Agreement is cancelled as above, neither the Contractor nor the Owner shall have any claim of whatever nature against the HOA Committee arising there from.

## **11. ARBITRATION**

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- 11.1. Any dispute, questions or difference arising at any time between parties to this Agreement, out of or in regard to:
  - 11.1.1. any matter arising out of these Contracts/Agreements;
  - 11.1.2. the rights and duties of any of the parties mentioned in these Contracts/Agreements; or
  - 11.1.3. The interpretation of those Contract/Agreements
  - 11.1.4. May at the discretion of the HOA Committee be submitted to and decided by arbitration on notice given by the HOA Committee to the other parties who are interested in the matter in question.
- 11.2. Arbitration shall be held at Mossel Bay formally and in terms of the provisions of the Arbitration Act 42 of 1965 (as amended) it being intended that, if possible, it shall be held and concluded within 20 (twenty) business days after it has been demanded.
- 11.3. Same as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:
  - 11.3.1. primarily an accounting matter – an independent accountant.
  - 11.3.2. primarily a legal matter – a practising counsel/attorney of not less than 10 years standing.
  - 11.3.3. any other matter – an independent and suitable qualified person appointed by the HOA auditors as may be agreed upon between the parties to the dispute.
- 11.4. If agreement cannot be reached on whether the question falls under 11.3.1 – 11.3.3, or upon a particular arbitrator within 3 (three) business days after the arbitration has been demanded then the president of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under which category.
- 11.5. The Arbitrator shall make his award within 7 (seven) business days after the completion of the arbitration and shall, in giving his award, have regard to the principals laid down in terms of this Agreement. The arbitrator may determine that the costs of the arbitration may be paid either by one or all of the disputing parties as he, in his sole discretion, may deem fit.
- 11.6. The decision of the arbitrator shall be final and binding and may be made an order of the High Court of South Africa upon application of any party to the arbitration.

## **12. INDULGENCES**

No extension of time or relaxation granted by the HOA Committee to the Contractor/Owner shall be deemed in any way to affect, prejudice, or deviate from the rights of the HOA Committee in any respect under this Agreement, nor shall it, in any way be regarded as a waiver of any rights hereunder or an amendment of this Agreement.

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This Agreement comes into force and effect on the date signed by the last party to this Agreement.

<p>THUS DONE AND SIGNED BY THE DEVELOPMENT'S HOA COMMITTEE AT  ..... ON THIS ..... DAY OF ..... 20 .....</p> <p>AS WITNESESS:</p> <p>1 .....</p> <p>2 ..... DEVELOPMENT'S HOA COMMITTEE</p>
<p>THUS DONE AND SIGNED BY THE OWNER AT ..... ON THIS  ..... DAY OF ..... 20 .....</p> <p>AS WITNESESS:</p> <p>1. ....</p> <p>2. .... OWNER</p>
<p>THUS DONE AND SIGNED BY THE CONTRACTOR AT ..... ON  THIS ..... DAY OF ..... 20 .....</p> <p>AS WITNESESS:</p> <p>1. ....</p> <p>2. .... CONTRACTOR</p>

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