



Village on Sea Homeowners' Association

# **Contractors' Conduct Agreement**

January 2024

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## **1 PARTIES**

The parties to this agreement are:

- 1.1 Village On Sea Home Owners' Association;
- 1.2 The person/partnership/company/close corporation/trust (as applicable) recorded as the owner of the property in the schedule;
- 1.3 The person/partnership/company/close corporation/trust (as applicable) recorded as the contractor in the schedule;

The parties agree as set out below.

## **2 INTERPRETATION**

Clause headings are for convenience and are not to be used in its interpretation;

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;

The rule of construction, that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

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.

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

## **3 DEFINITIONS**

In this Agreement the following expressions and words have the meanings assigned to them and derivative expressions and words will have a corresponding meaning:

- 'Agreement' shall mean this agreement with any annexures thereto;
- 'Architect' shall be the firm of architects employed by owner;
- 'Architectural code and landscape guidelines' mean the guidelines prepared and applicable to the Development, copies which have been given to the Owners who have in turn provided same to the Contractors. All parties confirm receipt thereof and acknowledge the provisions thereof;
- 'Attorneys' to be appointed by the VOS HOA;
- 'Contractor' means the building contractor and the owner in the case of a builder-owner and recorded in the schedule and for the purposes of any claim against the contractor includes liability for any act or omission by any employee and or sub-contractor and/or person acting on the instructions of the contractor or in connection with work to be undertaken by the contractor as suppliers or persons effecting the delivery of materials.
- 'Construction' includes but is not limited to a new house, additions, or alterations to existing properties; screen or yard walls and driveways;

- '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 Home Owners' Association applicable to the Development constituted in terms of Section 29 of the Land Use Planning Ordinance as amended;
- 'Improvements' means any structure of whatsoever nature to be erected or constructed on the erf, which shall include, but in no way be limited to, the initial construction/erection, alterations, renovations, additions, construction of retaining walls, paving as well as an excavation, land scaping and planting.
- 'Local Authority' means The Municipality and Division of Mossel Bay, Western Cape Province or its successor in title
- 'Managing Agent' is the managing agent appointed for the development and is Status-Mark contactable on 044 691-3054;
- 'Owner' means the party referred to in Clause 1.1.2 and recorded as same in the schedule;
- 'Schedule' means the annexure hereto headed as 'Schedule'.

#### **4 RECORDAL**

- 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 to execute the construction and improvement.
- 4.3 VOS HOA wishes to ensure that the construction/erection of the improvements is undertaken in such a way that the least possible damage to the infrastructure of the development is caused. Where damage does occur, provision must be made for the instatement as well as to ensure that the construction/erection is undertaken with consideration to the environmental factors. It must be done such to cause as little inconvenience to other owners in the development, to ensure that the quality of life for the residents is not unduly compromised by the improvements and to ensure that the work is undertaken in an orderly and harmonious manner, all of which the owner and contractor consider to be in the best interests of the development.
- 4.4 To attain the said objectives, the owner and contractor bind themselves jointly and severally for the obligations contained herein and the HOA undertakes to use its best endeavours to monitor the provisions hereof.

#### **5 CONTRACTOR'S OBLIGATION PRIOR TO CONSTRUCTION**

The contractor must attend to the following matters before commencing any work of any nature on the erf. 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 and the contractor and the HOA have together done a site inspection.
- Contractors will not be allowed on site before they have signed the Constructor's Conduct Agreement and paid the relevant fees.
- Contractor contacted the botanical consultant for search and rescue and the botanical consultant have carried out a site inspection prior to the contractor starting work on site.

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

- 5.1.1 As per architectural development code: Stages 1, 2, 3, and 4. Please note the botanical consultant's inspections on site before building work commences.
- 5.1.2 All construction/erection of improvements on the erf must be executed in accordance with the approved plans.
- 5.1.3 Occupational certificate will only be issued once all building inspection forms have been signed off and approved by the AC and VOS HOA.

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

- 5.2.1 Relevant copies of the plans as per stages 2 to 3 must be handed in at the managing agents.
- 5.2.2 Once the work has commenced, it must be continued to completion without stoppages and interruption other than during the annual builders' holiday. The building period allowed is 10 months.
- 5.2.3 During the construction period, the stand must be neatly fenced with 1.8 m green shade netting, excluding 25% (twenty five percent) fynbos area.

## **5.3 BUILDER'S DEPOSIT**

- 5.3.1 Before commencing work, the contractor shall pay the HOA R10 000 (Ten thousand Rand), which shall constitute a security deposit for damage of whatever nature, which may be caused to any portion of the development.
- 5.3.2 Any claim arising as contemplated is not limited to the amount of the deposit and the HOA shall be entitled to recover from the owner or the contractor any amount which represents the reasonable costs of reinstatement resulting from such damage.
- 5.3.3 The costs of any damage attributable to the contractor shall be quantified by the HOA and the amount so determined shall be final and binding on the owner and the contractor.
- 5.3.4 If the HOA alleges that the conduct of the contractor by way of omission or commission is the cause of any damage to any portion of the development, the owner and the constructors will be presumed to be liable, unless they can prove the contrary.
- 5.3.5 If the owner / contractor fails to dispute any claim within 10 days of getting notice thereof, they shall be liable for the payment as determined by the HOA.
- 5.3.6 If the claim is disputed, the HOA can institute proceedings against the owner/ contractor for the recovery of the amount claimed.
- 5.3.7 The HOA will invoice the contractor for any damage caused and will deduct the amount from the deposit held, whereafter the contractor shall forthwith pay to the HOA the amount so that the deposit is maintained at the original amount. The contractor will be denied access to the site until all amounts have been paid.
- 5.3.8 Upon final completion of work and provided there is no claim pending against the contractor, and that the completed inspection form from the AC is handed in at the managing agents, the contractor will be entitled to receive payment of the refund of the deposit or any portion remaining thereof within 7 working days.

## **5.4 STAFF AND VEHICLE IDENTIFICATION**

- 5.4.1 The contractor and his staff are required to wear identification tags at all time while in the estate, which state the stand number, construction company and owner's name. A colour photograph identifying the holder is further required.
- 5.4.2 Parties without identification tags will be denied access to the estate.
- 5.4.3 Construction vehicles can only enter at the Blombosch gate.

## **5.5 INSURANCE**

Before commencing work, the contractor shall submit to the HOA 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 R2 000 000 (Two million Rand) per incident, to the satisfaction of the VOS HOA.

## **5.6 LABOUR AND TRAINING**

The National Building Regulations and appropriate Bylaws of the Local Authority and, where applicable, the requirements of the National Home Builders Registration Council apply to the construction of all improvements within the development. Neither the HOA nor the Architectural 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 and well as any SANS10400 defects or miscalculations.

The architect/builder must inform the owner of the stand/erf of the appointment of a Health and Safety Officer. All Health and Safety plans and regulations must be readily available on site during any stage of the building process.

## **5.7 CONTROLLING BOTANICAL CONSULTANT**

The botanical consultant must do a site inspection before any work commences. The controlling botanical consultant will be employed to do a comprehensive "search and rescue" operation on the area where the construction area is involved.

All rescued plants will be placed in bags for planting later and stored in the "no go" area of the stand. It is the builder and owner's responsibility to ensure that these rescued plants in storage are attended to and watered on a weekly basis.

Environmental awareness training to workers will be done on the construction site when construction commences.

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

The contractor shall address or attend to the following matters when commencing construction/erection of any improvements on the erf.

### **6.1 BARRICADES AND FENCING**

- 1.3.1 All building sites must be secured and fenced in before work can commence with fencing that has been approved by the HOA.
- 1.3.2 All fences and screens must be properly maintained, to the satisfaction of the HOA, during the duration of the construction/erection of the improvements.

## **6.2 DUST CONTROL**

The contractor shall implement appropriate measures to the satisfaction of the HOA 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/erection process.

6.3.2 Should the contractor fail to provide the protective measures, to the satisfaction of the HOA, and still fail to do so after receiving 24-hours' notice of such failure from the HOA, the HOA shall instruct an independent party to rectify the damage and establish the necessary protective measures at the contractor's cost.

6.3.3 The contractor will be denied access to the development until the aforementioned costs have been paid.

## **6.4 EXCAVATION**

6.4.1 No excavation or filling of the erf may be undertaken without the submission of the detailed plan to the HOA for written approval.

6.4.2 No clearing of bush or removing of plants is allowed on any stand by the owner or contractor prior to plan approval.

6.4.3 Any damage caused to a tarred road or sidewalk must be made good by the contractor immediately the damage becomes evident. Work to be done by a reputable civil contractor.

6.4.4 A structural engineer must certify all foundations.

## **6.5 MUNICIPAL SERVICES**

6.5.1 All conditions, processes and fees prescribed by the local authority, for the connection of the water sewage, electricity and other municipal services shall be the sole responsibility of the contractor.

6.5.2 All costs pertaining thereto shall be for the account of the contractor.

6.5.3 The contractor will obtain water for the work to be undertaken on the erf from the municipal water connection on the erf. The contractor may under no circumstances interfere with the water supply to Village on Sea.

6.5.4 A sewer connection point has been provided on the erf into which the contractor is required to connect the sewer system. Such connection may not take place until completion of the improvements and then only under HOA supervision.

6.5.5 The contractor may not dispose of any building material, contaminated water or rubbish in the sewer system.

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

6.5.7 The contractor undertakes to ensure that measures are taken to prevent any soil erosion by waste water on or around the erf on which the improvements are being affected for the duration of the contract.

## **6.6 ABLUTION FACILITIES**

6.6.1 The contractor shall provide water and ablution facilities for staff on the erf.

6.6.2 Prior to commencement of construction/erection 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, clean, hygienic, and neat.

6.6.3 Use of the development's water borne sewage 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 and shall be permanently barred from returning to the development.

6.6.5 The contractor shall ensure that no waste water whatsoever enters the conservation areas.

## **6.7 STORAGE FACILITIES**

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. The placements of these containers must be sensitive to the site and vegetation.

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 can instruct the contractor to remove any shed or storage unit that, in the opinion of the HOA, is untidy, dilapidated or in a wrong or harmful position.

6.7.4 Should the contractor fail to remove said shed or storage unit, the HOA 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 the development until those costs have been settled.

6.7.5 No storage shed/container may be placed in the 25% natural fynbos area.

## **6.8 REFUSE CONTAINERS AND REFUSE REMOVAL**

6.8.1 All refuse must be deposited into an enclosed container daily, supplied by the contractor, at the contractor's cost. The containers must be cleared regularly.

6.8.2 All container designs must be approved at the discretion of the HOA. The container must be of such a nature that it cannot be blown 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 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.

6.8.5 The contractor shall ensure that all building rubble is removed weekly from the development or as otherwise required by the HOA.



- 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, the HOA 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 dumping of 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 site off the development. Failure to comply will result in the contractor being fined R1 000 per offence.
- 6.8.10 The contractor shall be denied access to the estate until the fine has been paid.

## **6.9 SURVEY BEACONS**

- 6.9.1 The contractor is responsible for maintaining the boundary pegs. Should the boundary pegs be disturbed, the HOA shall arrange for a 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 SIGNAGE**

- 6.10.1 The contractor may only erect a single signage board at his expense.
- 6.10.2 The contractor shall not erect the signage anywhere but on the erf itself.
- 6.10.4 The signage must comply with HOA requirements.
- 6.10.5 The signage must be removed immediately on completion of the improvements.

# **7 CONSTRUCTOR'S OBLIGATIONS DURING CONSTRUCTION**

## **7.1 AVAILABILITY OF PLANS**

Prior to and during the construction/erection of the improvements, the contractor shall ensure that a copy of the approved drawings and plans in respect of the approved improvements are on site and always available to the contractor's staff as well as the HOA during working hours.

## **7.2 ACCESS CONTROL**

- 7.2.1 The HOA shall at any time be entitled to impose controls regarding access to the development and to introduce security measures, as it may consider necessary.
- 7.2.2 The contractor shall adhere to such security measures and, if he fails to do so after receipt of written notice for him to remedy his breach, the HOA 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 developer or HOA.

### **7.3 BUILDING HOURS**

- 7.3.1 Building hours and delivery of building materials is between 07:00 and 17:00 on working days or as determined from time to time by the HOA.
- 7.3.2 No building shall be undertaken on Saturdays, Sundays, or Public Holidays or the annual builders' holiday.
- 7.3.3 If the contractor's staff are found on the erf outside of permitted working hours, they will be escorted from the development and the contractor will be fined R500 per transgression.
- 7.3.4 The contractor will not be allowed access to the development until the fine has been paid.
- 7.3.5 No building work may be done from 15 December to 10 January.

### **7.4 WORK AND STORAGE AREAS**

- 7.4.1 The contractor may not use the surrounding stands, roadways, pavements and open spaces for any purpose without the prior written permission of the HOA. This includes vehicle access, storage of building materials or dumping of excavated soil. The development's public areas and conservation areas may not be used under any circumstances.
- 7.4.2 The contractor must ensure that all his activities are confined within the erf boundary. This relates to staff, storage areas and stock piles.
- 7.4.3 Should the contractor fail to abide by this, he will be fined R500 per transgression and denied access to the estate until the fine has been paid.
- 7.4.4 Mixing of building materials must occur within the confines of the erf. If building materials are spilled on any paved road or sidewalk in the development, the contractor is responsible for immediately cleaning such spoilage.
- 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 developers stand 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 offloaded and stored within the boundary of the erf and the storage of any material outside the boundary of the erf is strictly forbidden. No building material shall be offloaded 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 vehicle on any paved roadway or sidewalk shall immediately be cleaned by the contractor.

## **7.6 CONTROL OF LABOUR**

- 7.6.1 Throughout the constructions/erection of the improvements, the contractor is responsible for the discipline and control of his staff 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 or employed by the contractor and/or sub-contractor in respect of work undertaken on the erf.
- 7.6.2 No temporary accommodation for contractor's employees 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. Any employees of the contractor not adhering to this regulation will be removed from site and the contractor shall be fined R100 per person per transgression.
- 7.6.5 There will always during the construction be a responsible supervisor on site to control and manage the construction process.

## **7.7 TRAFFIC RULES**

- 7.7.1 The maximum speed limit of 40 km per hour for cars and 25 km per hour for construction vehicles must always be observed while driving in the estate.
- 7.7.2 The cost of repair of 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 and walkways must be kept open for the passage of through traffic.
- 7.7.5 The driveways of other erven 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 pollution could be caused by chemicals (paints) oils, fuels, sewage, 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

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 VOS. The contractor will be fined R1000 per breach of this issue and the owner 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 must supervise all deliveries of concrete to ensure that damage to 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 of ready mix or any other vehicle is not permitted within the site and the contractor will be fined R500 per offence.

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

Any construction/erection of improvements being executed in an unworkmanlike and poor manner, or any violation of, or inconsistency with, the plans previously approved by the local authority and architectural review committee may be stopped, without prior notice by the HOA, until the situation has been corrected to the satisfaction of the HOA.

### **8 GENERAL**

The owner/contractor acknowledge that the HOA will be entitled to enforce compliance with the Village On Sea Architectural code and guidelines and any other instructions and regulations issued in terms thereof or in terms of the constitution of the HOA regarding construction/erection of the improvements. The contractor shall, in terms of the improvements, always work strictly in accordance with the provisions of the approved plans and approved variations thereof as submitted and approved in terms of the Village On Sea Architectural code and guidelines and by the local authority and the contractor shall in no way deviate therefrom.

The owner undertakes to co-operate fully with the contractor, the architect, and the HOA to ensure compliance with the spirit and intent of this agreement. The owner acknowledges that he has employed the contractor and architect and is responsible to ensure compliance with this agreement as well as the Village On Sea Architectural Code and Guidelines and the HOA constitution and any rules made from time to time.

The contractor, his employees, sub-contractors, or suppliers may not do anything, which in the opinion of the developer or HOA 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.

It is the owner's responsibility to furnish his architect with all documentation of Village On Sea, which is relevant to construction, including, but not limited to, the Constitution; Architectural Guidelines; House Rules; Environmental Management Plan, Search and Rescue. These are obtainable from the Village on Sea website [www.villageonsea.co.za](http://www.villageonsea.co.za) or from the Status-Mark Managing Agents at 044 691-3054.

The fees payable by the owner is R3 500 (Three thousand five hundred rand), which includes the Architects scrutiny fees and three inspections; Controlling Botanical Consultant "search

and rescue" fee of R3 500 (Three thousand five hundred rand). This fee will be re-calculated at the end of the project and retained or partly paid back to the owner depending on the search and rescue outcome.

## 9 DOMICILIUM

9.2 The parties chose their domicilium citandi et executandi at the following addresses:

Village on Sea, C/o Status-Mark, Meyer Street, Mossel Bay.

.....

.....

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

Any notice to a party can be:

- 9.2.1 Sent by registered post in a correctly addressed envelope during business hours at its domicilium citandi et executandi shall be deemed to have been received on the third day after posting (unless the contrary is proven).
  - 9.2.2 Delivered by hand to a responsible person during business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.
  - 9.2.3 Sent by e-mail to a mutually-agreed e-mail address to the addressee 4 (four) hours after the time of transmission or within 12 (twelve) hours of transmission where it is transmitted outside business hours.
- 9.4 Any of the parties referred to may, by notice in writing to the other parties, change an address in the schedule to another address in the Republic of South Africa, provided that such address may not be a post box and that such alteration shall not be effective until 7 (seven) days after it has been received.
- 9.5 Notwithstanding anything to the contrary herein contained, a written notice or communication received by a party shall be adequate, notwithstanding that it was not sent to or delivered at the domicilium citandi et executandi.

## 10 BREACH

10.1 Without detracting from any rights which the HOA 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 7 (seven) days after the dispatch of written notification calling upon them or either of them to remedy same, the HOA 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 To appoint an independent contractor to rectify the breach and recover the remedy costs from the contractor with a minimum R100 handling fee or 25% of the cost, whichever is the greater.
- 10.1.3 To appoint an arbitrator.
- 10.1.4 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 will, upon reasonable notice, meet with the contractor to obtain the contractor's undertakings to abide by the terms and conditions of this agreement. The developer/HOA shall be entitled, in its absolute discretion, to reinstate this agreement to enable the contractor to continue with the work on the erf, subject to further conditions as the HOA may impose.
- 10.1.5 To hold the owner/contractor liable and to claim from them the cost of reinstatement of any damage caused by them within the development, as determined in terms hereof.
- 10.2 Should the HOA take steps against the owner/contractor pursuant to the breach of this agreement, the HOA shall, in addition to the rights, be entitled to recover from the owner/contractor who shall be liable to the HOA for the payment of all the HOA legal costs incurred as on a scale of attorney and own client.
- 10.3 If access to the development is denied to the contractor in terms of the foregoing or this agreement is cancelled as above, neither the contractor nor the owner shall have any claim of whatever nature against the HOA arising there from.

## **11 ARBITRATION**

- 11.1 Any dispute, question or difference arising at any time between parties to this agreement, out of or regarding;
  - 11.1.1 Any matter arising out of these presents.
  - 11.1.2 The rights and duties of any of the parties mentioned in these presents, or
  - 11.1.3 The interpretation of those presents.May at the instance of the HOA be submitted to and decided by arbitration on notice given by the HOA to the other parties who are interested in the matter in question.
- 11.2 Arbitration shall be held at Mossel Bay informally and otherwise 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 21 (twenty-one) business days after it has been demanded.
- 11.3 Save as otherwise 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 ten years standing.
  - 11.3.3 any other matter – an independent and suitably 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 to 11.3.3, or upon a particular arbitrator within 3 (three) business days after the arbitration has been demanded. The then president for the time being 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 other 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 indulgence granted by the HOA to the contractor/owner shall be deemed in any way to affect, prejudice or derogate from the rights of the HOA in any respect under this agreement, nor shall it any way be regarded as a waiver of any rights hereunder or a novation of this agreement.

Thus done and signed by the parties on this ..... day of ..... 20.....

For and on behalf of Village on Sea .....

As witnesses: 1. ....

2. ....

For and on behalf of the owner .....

As witnesses: 1. ....

2. ....

For and on behalf of the contractor .....

As witnesses: 1. ....

2. ....