

BUILDING AGREEMENT

ENTERED INTO BY AND BETWEEN

(hereinafter referred to as "the Owner")

OF (address): _____

REPRESENTED BY (name): _____

whose 24 hour contact telephone numbers are: _____

AND

MISTY CLIFFS VILLAGE ASSOCIATION (hereinafter referred to as "MCVA") **P O Box 645, Simon's Town, South Africa, 7995**

REPRESENTED BY: _____

whose 24 hour contact telephone numbers are: _____

WHEREAS the Owner wishes to

- (a) employ one or more Contractors for the construction and /or building work and /or site clearing and / or levelling and / or civil work ("the Building Operations") on erf .. Misty Cliffs ("the Site");
- (b) apply to the South Peninsular Administration ("the SPA") for permission to proceed with these Building Operations
- (c) comply with the procedures in this respect which have been agreed between the SPA and the MCVA

AND WHEREAS the Owner wishes to ensure that the Contractor(s) undertaking the Building Operations shall

- (a) maintain cordial relations with the existing residents and plot owners of Misty Cliffs
- (b) secure access to the site for delivery trucks
- (c) display signage necessary to direct delivery trucks to the site

AND WHEREAS the MCVA wants to

- (a) avoid or have made good all damage caused by the Building Operations to the roads and verges leading to and in the vicinity of the Site; and
- (b) limit and make good environmental disturbance and damage caused by the Building Operations, including noise and visual pollution;

THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

- [1] The Owner is aware of and acknowledges that Misty Cliffs has been designated a registered Conservation Village and is being accorded Special Status by the appropriate authorities in recognition of its particular environmental sensitivity and beauty and accepts the extra burden of duty that this imposes upon the Owner and consequently the Owner undertakes to use his best endeavours to ensure that the Contractor(s) undertakes all Building Operations in a way which minimizes disturbance and damage to the environment.
- [2] The Owner shall at his own expense make good all damage of whatsoever nature caused by trucks, bakkies or any other vehicles or construction equipment or building materials, or by building or site clearing activities, or by services associated with the Building Operations, to any of the roads or verges in Misty Cliffs leading to and giving access to the Site.

In particular the Owner shall ensure that

- (a) The concrete roads and their kerbs and gutters will be repaired and maintained by the Contractor(s) on an ongoing basis, with any damage caused by vehicles being repaired within 24 hours.
- (b) The Contractor(s) shall keep gravel roads free of debris and any holes or damage will be repaired within one week. Damage which restricts access to any of the adjacent properties will be repaired within 24 hours.

- (c) The Contractor(s) shall maintain the tar sections of Old Camp Road Extension and that of Upper Old Camp Road, and will repair all damage at the end of the contract, provided that if any damage restricts access to any of the adjacent properties or to residents on these sections, such damage shall be repaired within 24 hours.
- [3] The Owner shall ensure that the Contractor(s) formally warrants that access to all erven beyond the Site as well as in the vicinity of the Site, shall at all times be maintained unless prior agreement has been obtained from affected owners or the MCVA as to the dates and times when access will be restricted and that the Builder's failure to meet obligations under this clause shall result in forfeiture of R500 per day or part thereof during which access was unavailable, deducted from the deposit lodged with the MCVA in terms of this Agreement.
- [4] MCVA will permit deliveries to be made to the Site in vehicles up to a maximum size of Code 10, 8 wheel drive vehicles. It is understood that the SPA may restrict the size of trucks accessing the Site to a smaller size, but the MCVA agrees not to invoke the application of such restrictions by the SPA and to do its best to ensure that other residents of Misty Cliffs do the same.
- [5] The Owner shall ensure that the Contractor(s) formally warrants that no building materials shall be offloaded or stored on any private or public property within Misty Cliffs other than as provided for as follows:
- (a) The Owner takes note of the fact that at present there is no dedicated space for unloading or storage of building materials in Misty Cliffs. Accordingly the building contract must allow for this fact and in particular the Contractor(s) must make appropriate arrangements to be able to deliver building material directly to the Site. If the Contractor(s) wishes to rent storage space from one of the other residents, the MCVA is willing to provide contact phone numbers. However there is no certainty that such space will be made available.
- (b) If MCVA has an area designated as an offloading place for building materials, the Contractor(s) shall use such area which shall be indicated to the Contractor(s). Such an area is intended for receipt and temporary storage of bulk materials. It may also be used by other building operations. The Contractor(s) shall remove all such materials to the Site within 24 hours of receipt, or as soon as possible thereafter, or within such period as the MCVA shall stipulate. The Contractor(s) shall pay the MCVA R20 per day or part thereof for the use of such land.
- (c) Neither the MCVA nor any other owner of land used for this purpose shall be liable for any loss, damage or injury caused by the use of such land by the Contractor(s) who shall have or obtain appropriate insurance cover against all insurable risks and who shall provide MCVA with such evidence of insurance as MVCA may reasonably request.
- (d) any loss or damage to the building materials, including theft or vandalism.
- [6] MCVA will permit and not object to the Contractor(s) placing a sign to identify the Site, such sign to be
- a maximum size of 42 x 60 cm
placed low down on the side of the road to the satisfaction of MCVA
for directions for trucks and deliveries and not for advertising purposes
removed when there are no more deliveries needed to the Site.
- [7.1] The Owner shall pay a deposit of R12,500 (twelve thousand five hundred Rand) into a Bank account of the MCVA. If in the opinion of the MCVA the proposed works are of such a nature that they amount to minor building works, then this shall be reduced to R5000 (five thousand Rand) or to such other amount as the MCVA shall deem reasonable
- [7.2] Of this deposit R2,500 (two thousand five hundred Rand) (the "initial portion") shall be paid within 5 business days of the signing of this Agreement and the remainder shall be paid at least 7 business days before any Building Operations commence and the Owner acknowledges that the MCVA shall withhold its approval of the Owner's plans until the Initial Portion of this deposit has been received.
- [7.3] The deposit shall be held to ensure that the Contractor(s) complies with the provisions of this Agreement.

- [7.4] Within one month of the Local Authority formally issuing a certificate of occupation, the deposit plus such interest paid thereon by the Bank, shall be repaid to the Owner less deductions in respect of
- (a) expenses incurred by MCVA in making good such damage as it deemed necessary and that had not been made good by the Contractor(s); and
 - (b) expenses incurred by MCVA in clearing litter and builders' rubble that had not been cleared by the Contractor(s); and
 - (c) amounts owing in terms of Clause 3 (blocked access) and Clause 5 (materials storage); and
 - (d) MCVA's fee of R2500 (two thousand five hundred Rands) for professional scrutiny of all Plans the Owner intends submitting to Council and for administering this Agreement. In the event that MCVA or its architects are obliged to spend more time than anticipated on the scrutiny and monitoring of the plans and building, then such amount of R2500 may be increased to cover such additional work upon giving the Owner prior notice of its intention to do so.
 - (e) MCVA shall notify the Owner in writing of all amounts which are deducted from the deposit.
- [7.5] If Building Operations have not commenced within twelve months of the date on which the Owner's Plans are passed by the Local Authority, then the Local Authority's approval of the Plans automatically falls away and MCVA shall be entitled to withdraw its approval of the plans and advise the Local Authority accordingly. In this event MCVA shall return any deposit plus interest it has received less expenses it has incurred or expects to incur in scrutinising the Plans and / or in rehabilitating the site and surrounds such as making good any exploratory excavations that might have taken place or removing temporary structures. The Owner acknowledges that subsequent Plans, whether altered or not, shall be submitted to MCVA for its approval before submission to the Local Authority, as contemplated in the Agreement.
- [8] The Owner undertakes to ensure formally that the Contractor(s)'s liability under this Agreement shall include being liable for all disturbance and damage caused by subcontractors, employees, and agents.
- [9] The Owner shall be liable for ensuring that the Contractor(s) secure the Site, especially but not limited to holidays and weekends. Such security shall take account of the fact that there are children in the immediate area for whom a building site may be an attraction. The Owner shall, or undertakes to ensure that the Contractor(s) shall, obtain appropriate insurance to cover liability for any loss, damage, or injury that may be suffered by anyone who gains access to the Site, whether as trespassers or otherwise and the Owner or Contractor(s) shall provide MCVA with such evidence of insurance as MVCA may reasonably request
- [10] The Owner agrees, and undertakes to ensure that the Contractor(s) agrees, not to invoke the existence of other road traffic of any kind as a reason to limit or remove any of the Owner's liability for the repair of roads and environs under this Agreement.
- [11] If there is any pre-existing damage to the roads, verges or elsewhere when the Building Operations are due to commence then the Owner, or on the Owner's behalf, the Contractor, shall notify the MCVA in writing of this damage before going on site. Failing such notification, the Contractor(s) shall be deemed to have accepted that all such roads etc. are in good order and condition when he goes on site.
- [12] The Owner shall ensure: that the Contractor(s) provide at his expense a portable toilet on site for the use of his workmen, which shall be serviced and cleaned in the normal manner; and that the Contractor(s) shall endeavour to see that those working on site do not use the surrounding areas as a toilet; and that such misuse shall be cleared up the Contractor(s).
- [13] The Owner shall ensure that the Contractor(s) shall remove all rubble, tins, papers and other items from the areas around the Site (public roads as well as private erven) and shall make good all damage to the natural and built environment caused by its operations.
- [14] The Owner accepts that the decision as to what damage has been caused and needs to be repaired shall be determined by MCVA.
- [15] The Owner acknowledges that he has no right to use or take or permit to be taken, the natural stone and rock other than that found on the Site where the Building Operations take place. This

applies to rock and stone on public open spaces, the beach, road reserve and other private erven.

[16] The Owner shall ensure that the Contractor(s) shall either remove from Misty Cliffs or contain on the Site all soil, overburden, rocks and stone which may be excavated No such fill or rock shall be kept or stored on the roads or elsewhere in Misty Cliffs without the prior written agreement of the MCVA.

[17] This Agreement shall remain binding irrespective of the nature of the contractual and other relations between the Owner and the Contractor(s)

SIGNED IN AGREEMENT TO THE ABOVE BY THE PARTIES HERETO

on (date) _____

on (date) _____

FOR AN ON BEHALF OF

FOR AND ON BEHALF OF

MISTY CLIFFS VILLAGE ASSOCIATION

Signed _____

Signed _____

Witness _____

Witness _____

Witness _____

Witness _____