

MISTY CLIFFS BUILDING AGREEMENT

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

THE MISTY CLIFFS VILLAGE ASSOCIATION (hereinafter referred to as "MCVA")
P.O. BOX 22771, SCARBOROUGH 7975
REPRESENTED BY:

.....
whose 24 hour contact telephone numbers are:

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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 of the Unity ("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 vehicles;
- c) display signage necessary to direct delivery vehicles to the site.

AND WHEREAS the MCVA wants to -

- a) avoid or have made good any and all damage caused by the building operations to the roads, verges and services leading to and in the vicinity of the site; and
- b) limit and make good any and all 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 or have made good all damage of whatsoever nature caused by vehicles or construction equipment or building materials, or by building or site clearing activities, or by services and deliveries 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 and paved roads and their kerbs, gutters, gratings, hydrants and manholes will be repaired and maintained by the Contractor(s) on an ongoing basis, with any damage caused by vehicles being repaired within 48 hours;
 - b) the Contractor(s) shall keep the paved roads free of debris, and repair any holes or damage within one week after occurrence. Damage which restricts access to any of the adjacent properties shall be repaired within 24 hours;
 - c) the Contractor shall ensure that gutters are kept clear at all times, and unavoidable spillage or blocking of gutters, drains, catchpits and the like are cleared immediately;
 - d) the Contractor(s) takes precautions to ensure that no damage occurs to the natural floral environment adjacent to the site, including neighbouring erven, nor any depositing of excavated material, nor any removal of rock and stone for construction purposes, nor any undermining;
 - e) the Contractor(s) provides to the Owner the names and identity numbers of all permanent and casual employees involved in the contract, and shall ensure that no employees leave the site unless under supervision and for legitimate purposes, and that no employees at any time, including rest and refreshment breaks, trespass on any neighbouring properties, including vacant land. The Contractor shall further provide the names and identity numbers of employees of all subcontractors associated with the contract;
 - f) parking for at least two cars shall be constructed on his site to prevent obstruction on the narrow paved roads so that neighbours and traffic are not inconvenienced.
3. The Owner shall further ensure that the Contractor(s) formally warrants that access (including access by associated subcontractors) to all other erven 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 Contractor's failure to meet obligations under this clause shall result in forfeiture of R500 a day or part thereof during which access was unavailable, deducted from the deposit lodged with the MCVA in terms of this agreement.
 4. The MCVA will permit deliveries to be made to the site in vehicles up to a maximum size of Code 10, 6x4 ("double-diff") vehicles, and will advise the Contractor, project managers and all subcontractors and suppliers delivering goods and materials to abide by the designated size of vehicle stipulated by the Unicity and displayed on the signs next to the roads at Misty Cliffs. 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 the Owner's site. 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.

As a consequence the Owner shall instruct the Contractor to excavate the area that will eventually be used for parking before any other building commences in order that building materials can be stored off-road while construction work is in progress.

- (i) Accordingly the building contract must allow for this fact and in particular the Contractor(s) must make appropriate arrangements for deliveries of building material directly to the site. If the Contractor(s) wishes to rent off-loading or storage space from one of the other owners, the MCVA is willing to provide contact phone numbers but is under no obligation to facilitate or negotiate any arrangement which might be sought.
- (ii) The MCVA occasionally may have available an area suitable for offloading and temporary storage of building materials or certain associated operations and if so will indicate this to the Contractor(s). 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 R100 a day or part thereof for the use of such land.
- (iii) Neither MCVA nor any other owner of land used for this purpose shall be liable ;
 - (a) 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;
 - (b) for any loss or damage to the building materials, including theft or vandalism.

6. In addition to or instead of the Contractor(s) standard name board which may be erected (only) on site the MCVA will permit and not object to the Contractor(s) placing a sign to identify the site, such sign to be

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- a) a maximum size of 42 x 60 cm;
- b) placed low down on the side of the road to the satisfaction of MCVA;
- c) for directions for vehicles and deliveries and not for advertising purposes;
- d) removed when there are no more deliveries to the site needed.

- 7.1 The Owner shall pay a deposit of R12 500 (twelve thousand five hundred Rands) into a Bank account of the MCVA.
- 7.2 Of this deposit R2 500 (the "initial portion") shall be paid within five business days of the signing of this Agreement and the remainder shall be paid at least five business days before any construction work commences, 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 SPA formally issuing a certificate of occupation, the deposit shall be repaid to the Owner less deductions in respect of -
 - (a) any 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 R2 500 for professional scrutiny of all plans the Owner intends submitting to the SPA and for administering this Agreement. In the event that the MCVA or its architectural adviser(s) are obliged to spend more time than anticipated on the scrutiny and monitoring of the plans and building, then such amount of R2 500 may be increased to cover such additional work upon giving the Owner prior notice of its intention to do so.

The MCVA shall notify the Owner in writing of all amounts which are deducted from the deposit.

- 7.5** If construction has not commenced within twelve months from the date on which the Owner's plans are passed by the SPA, then that authority's approval of the plans automatically falls away and MCVA shall be entitled to withdraw its approval of the plans and advise the SPA 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 the MCVA for its approval before submission to the SPA, as contemplated in the Agreement.
- 8.** The Owner undertakes to ensure formally that the Contractor(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) secures the Site, especially during but not limited to holidays and weekends. Such security shall take account of the presence of children in the immediate area for whom a building site may be an attraction. The Owner shall ensure, or undertake 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 the MCVA with such evidence of insurance as MCVA may reasonably request. The Owner is advised to ensure that the Contractor(s) insurance imposes no joint liability on the Owner.
- 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 by the Contractor(s).
- 13.** The Owner shall ensure that the Contractor(s) shall remove all rubble, cans, containers, cement bags, packaging and protective material, and other discarded 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 the 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 construction work is taking 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, dumped or stored on the roads, road reserve 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).....

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FOR AND ON BEHALF OF

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Witness

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Witness

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FOR AND ON BEHALF OF

MISTY CLIFFS VILLAGE ASSOCIATION

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Witness

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