**ENTABENI FARM VILLAGE HOME OWNERS ASSOCIATION**

**BUILDING CONTRACTOR’S AND REGISTERED OWNER’S CODE OF CONDUCT**

**AND CO-OPERATION AGREEMENT**

(Rules relating to Contractors Activities as referred to in clause 26 of the Home Owners Association Constitution)

**THIS IS AN AGREEMENT BETWEEN:**

**THE ENTABENI FARM VILLAGE HOA**

(as represented by ……………………duly authorised on behalf of “EFV” HOA.

(hereinafter referred to as “**EFVHOA”**)

AND

 (Registration number: )

 (herein represented by in his capacity as

duly authorized)

(hereinafter referred to as the **“CONTRACTOR”**)

AND

 As registered owner of Erf

As situated in the development known as Aloes Lifestyle Estate.

(hereinafter referred to as the “**OWNER”**)

**IN TERMS OF WHICH IT IS AGREED AS FOLLOWS:**

# 1. DEFINITION

1.1 **“EFVHOA”** is a reference to Entabeni Farm Village Home Owners Association, a home owners association;

 1.2 **“Contractor**” is a reference to ;

1.3 **“The Estate Rules”** is a reference to the attached document called: “The Entabeni Farm Village Home Owners Association Rules of Conduct” marked Annexure A which governs the behavior of all persons WHO own, occupy or visit properties on the Estate;

1.4 “**Entabeni Estate”** or the “Estate” is a reference to the development area or township referred to as Entabeni Farm Village, situated at Erf 4015, Knysna, Western Cape Province;

1.5 “**Architectural Guidelines**” is a reference to the document which covers the Design and Standards applicable to Single Residential Erven in the Estate and which is available in electronic format (CD), attached hereto, marked Annexure B.

 1.6 “**EMP**” is a reference to the Environmental Management Plan which was

 approved by the the Provincial Authority and which is binding on all owners, professionals and Contractors involved in construction activities at Entabeni

 1.7 “**ARC”**  is a reference to the EFVHOA Architectural Review Committee, and the committee that has been established by EFVHOA to approve building plans on the Estate.

 1.8 “**KLM**” is a reference to Knysna Local Municipality.

1.9 “**BCO**” is a reference to the Building Control Officer as designated and/or

 appointed by EFVHOA and the ARC to conduct the duties as such.

 1.10 **ANNEXURES**: The following Annexures form part of this agreement:

1.10.1 **ANNEXURE “A”** contains The Estate Rules.

1.10.2 **ANNEXURE “B”** is the the Architectural Design Guidelines and Standards and as well as the EMP.

1.10.3 **ANNEXURE “C”**

1.10.4 **ANNEXURE “D”** is a list of transgressions (though it is not necessarily a complete list thereof) and of penalties payable in respect of each transgression.

 1.11 “**THE DEVELOPER”**  means “Axon Investment (Pty) Ltd

# 2. RECORDAL

2.1 In terms of the conditions of establishment of the Entabeni Estate, Deeds of Sale and the Constitution of EFVHOA is responsible for the management of the Estate and the implementation of the Architectural Guidelines and Standards.

2.2 The Contractor wishes to offer his services to the registered owners of stands and/or sectional title units / sectional title developments, for the construction thereof in the Estate.

2.3 In order for the Contractor to be accredited by EFVHOA to undertake construction in the Estate, the Contractor accepts and agrees to abide by the Estate Rules, the EMP, and the Contractor’s Code of Conduct as set out in this agreement.

2.4 The Contractor acknowledges receipt of the aforementioned documents and that he has read them, understands their contents and agrees to abide by their provisions.

2.5 This document sets out the Procedures, Rules, Regulations and Code of Conduct which the Contractor and the Registered Owner will follow during the execution of any building works on the Estate.

2.6 In the event of the Contractor being a closed corporation or a proprietary limited company (Pty) Ltd., the representative who signs this agreement personally accepts all liabilities, penalties and obligations which may arise through the operation of this agreement as if he/she had signed this agreement in his/her personal capacity.

**3. INDUCTION COURSE**

3.1 The Contractor or and all his personnel shall before commencing any work for the owner, attend an Induction Course presented by the Developer.

3.2 Induction Courses will be offered once per week at a cost of R200,00 per attendee.

# 4. SITE HANDOVER

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4.1 A site handover meeting shall be arranged by the Contractor with EFVHOA and/or its nominated agent and the Owner at least 48 hours prior to the date of handover is required. The meeting will be held on the building site before the Contractor will be entitled to move onto site in any form or for any purpose, including the storing of building materials on the site. The handover meeting shall be after completion by the Contractor of the Induction Course.

 4.2 The site handover meeting will be attended by –

4.2.1 The Owner;

4.2.2 The Representative of EFVHOA;

4.2.3 The Contractor;

4.2.4 The Architect.

4.3 The following must be complied with or agreed upon prior to the site handover (and at the site handover a discussion will take place as to whether or not this provision has been complied with), namely :

4.3.1 All site corner pegs must be identified and marked by a registered land surveyor;

4.3.2 The site including the designated building area, prior to the commencement of any work (including cleaning work) and its surroundings will be photographed by EFVHOA in digital format. The photographs shall include the building yard, general site, the street immediately in front of and adjacent to the site, including lampposts, bollards, manholes, all site boundaries, including pavements, all verge planting immediately in from and adjacent to the site.

The purpose of this is to establish the condition of all items prior to handover and shall be deemed *de facto* evidence for the determination and calculation of any damages and breakages.

4.3.4 The delivery of all documentation required for Site Handover to The EFVHOA office 48 hours prior to handover, this shall include proof of payment of building levies and building deposits in terms of this agreement.

4.4 The following will be agreed upon at the site handover meeting:

4.4.1 The positioning on the erf of containers, toilets, showers, site

 kitchens, refuse bins and skips as well as the extent of screened

 areas.

4.4.2 The extent of cut and fill, including retaining structures.

4.4.3 A storm water management plan.

4.4.4 Environmental issues will be identified, including preservation of

 existing vegetation and the storage of material.

4.5 The Contractor shall furnish EFVHOA with a written list of sub-contractors and suppliers to be used on the site.

4.6 The ARC must be in possession of building plans, approved by both EFVHOA and the KLM. No construction may commence before the building plans have been approved by both EFVHOA and the KLM.

 4.7 The EFVHOA Building Control Manager (BCM) or nominated

representative will be furnished with a building program which, *inter alia*, high lights construction milestones and the completion date.

4.8 Service connections on site will be identified and pointed out to the Contractor by the BCM (Building Control Manager).

4.9 Prior to the site handover the Owner and Contractor must comply with the water connection and supply requirements of the EFVHOA and have paid the relevant fees and deposits.

4.10 The Contractor is obliged to inform EFVHOA when clauses 4.3 to 4.11 have been complied with and the site has been established.

4.11 A final site establishment inspection by EFVHOA shall be held before the Contractor may proceed with any building activities.

4.12 The site will be handed over to the Contractor by EFVHOA and the Owner, after all levies and/or deposits have been paid to EFVHOA. EFVHOA will hand to the Contractor a Building Site Handover Approval in writing,without which the Contractor may not commence construction.

# 5. SITE & SITE PREPARATION

5.1 It is acknowledged that the manner, in which the building site (where the construction is to take place) is prepared prior to the commencement of construction, has an important impact on the environment of the Estate.

5.2 Only that portion of the footprint actually required for purposes of building and the driveway may be cleared of any vegetation.

# 6. FENCING AND SCREENING

 6.1 The site must be fenced in a neat and secure manner.

6.2 All street boundaries, pasture and conservation boundaries must be screened and EFVHOA may require that other boundaries be screened off at the Contractors expense should the privacy of neighbours be compromised.

6.3 Once the areas to be screened off have been established by EFVHOA, the relevant areas shall be screened off by the Contractor with forest green 60% factor shade cloth of a minimum of 1.8 meters in height with a one 4 - meter wide entrance gate in the position as agreed at the site handover. Shade cloth shall be supported by 2 sturdy 3mm wire strands, supported by 100mm CCA treated poles spaced at a maximum of 3-meter intervals. The whole structure is to be supported in such a manner so as not to sag or not to come loose and/or adrift. The entrance shall be closed and secured with a gate clad with the same shade cloth. The gate shall be closed and secured at the end of each working day. The base of the shade cloth fence must be closed off beneath ground level or must have sandbags at the base to ensure that no silt or sand movement from inside the construction site can leave the site in the form of erosion caused by rainwater or any other cause.

6.4 The Contractor shall carry out regular inspections during the contract period to ensure containment of all material, equipment and so forth within the screened areas and to monitor damage to the surrounding vegetation. Any damage to existing vegetation shall immediately be reported to the BCM by the Contractor and the costs of replacement will be for the Contractor’s account.

6.5 EFVHOA’s nominated representative, who may include the BCM, is entitled at any time to carry out unscheduled inspections on site to ensure that the provisions of this agreement are adhered to.

# 7. CONSTRUCTION PERIOD

7.1 Construction shall commence within fourteen (14) working days from the date of the site handover and shall be completed within nine (9) months from the date of the site handover.

7.2 EFVHOA is entitled to levy a penalty against the Contractor and or the registered owner of the property jointly and severally of an amount as determined by EFVHOA from time to time, per calendar day in respect of every day or the period by which the Contractor exceeds the above designated construction period.

# 8. CONSTRUCTION SIGNAGE

8.1 The Contractor shall complete the information on the boards similar to that as displayed in Annexure C (the “Contractor’s boards”) attached hereto, for the building site and builders yard respectively. These boards which shall involve the printing of a transparent sticker as illustrated in Annexure C shall be 800mm by 1200mm in size mounted and erected on metal poles at the building site and building yard the date of the site and building yard handover meeting.

8.2 The board to be erected on the construction site shall contain only the following information, namely:

8.2.1 The Owner’s name.

8.2.2 The Stand number.

8.2.3 The Architect’s name and contact telephone number.

8.2.4 The Contractor’s name and contact telephone number.

8.2.5 The name and contact telephone number of the responsible person to contact in the case of an emergency.

8.2.6 In the case of the construction requiring the services of an

Engineer, the Engineer’s name and contact details shall be included.

8.2.7 The Contractor shall ensure that the board will remain firmly planted in soil so as to support the board against strong winds and so that the board shall remain upright. The board must be visible for the full duration of the building period.

8.2.8 The board must be positioned parallel with the road and hard up against the shade cloth fence, as near to the entrance to the site as possible without obscuring any road signage and traffic.

8.2.9 The sign board must be removed within one month after occupation by the owner or on practical completion.

8.3 The Contractor shall ensure that no other signage of any building Contractor, sub-contractor, and service provider, financing company, real estate agent or other party shall be erected anywhere on the site.

# 9. LITTER AND BUILDING RUBBLE CONTROL

The Contractor shall be liable to limit and remove all litter and/or building rubble on site and at the building yard and shall:

9.1 Place litter bins and skips in demarcated and screened refuse areas on site in accordance with the plan as approved by EFVHOA prior to the handover meeting.

9.2 Ensure that not less than once every week the site and building yard will be cleared of all litter and building refuse which shall be removed from the Estate, preferably on Fridays. In addition, the site must be litter and refuse free over weekends, public holidays and during any extended closure and holiday periods.

 9.3 Ensure that no litter, refuse or rubbish shall be burnt on site.

9.4 Ensure that any litter/rubble spread outside the boundaries of the site shall immediately be picked up.

9.5 Clear the site of all rubble and/or refuse at any stage, if in EFVHOA’s unfettered and subjective opinion the site and building yard is untidy and/or aesthetically unacceptable.

9.6 Ensure that all litter bins have lids and skips have a secured shade cloth covering to prevent the contents from being windblown over the site and building yard.

 9.7 Ensure that refuse and bins storage areas are screened off with green

50% factor shade cloth.

9.8 Ensure that all sub-contractors, suppliers, service providers, employees and others adhere to this requirement and the Contractor acknowledges that a breach by any one of them of any provision of this agreement shall be deemed to be a breach by the Contractor.

# 10. EROSION AND EXCAVATION CONTROLS

10.1 The Contractor will at its expense take such reasonable steps to avoid soil erosion as may be prescribed by EFVHOA. Should EFVHOA prescribe such measures, no building work will be undertaken or continued by the Contractor until the measures have been fully implemented and approved of by EFVHOA.

10.2 All excavation shall be undertaken with caution and with particular caution in respect of paved roadways and sidewalks.

10.3 Any damage caused to paved sidewalks and roadways shall be made good immediately upon the damage becoming evident.

# 11. WORK HOURS

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Unless otherwise approved of in writing by EFVHOA, construction work shall be strictly limited to the time between 08h00 and 16h30 from Mondays to Fridays. Construction will only be allowed on Saturdays and public holidays with express written permission from EFVHOA

# 12. SECURITY

12.1 The Contractor will ensure that a responsible person is available who can be communicated with on a 24 hour basis (also on public holidays, Saturdays and Sundays) in the event of an emergency arising at the building yard and/or on the building site. The responsible person’s name and telephone number must appear on the Contractor’s board at the building yard and on the site.

12.2 The Contractor as well as all sub-contractors, suppliers, service providers and labourers are to comply with all security regulations and protocols as prescribed from time to time by EFVHOA and as amended from time to time by EFVHOA.

12.3 Contractors may only access the Estate through the gates as specifically designated by EFVHOA and nowhere else. Employees shall not be allowed to congregate around any of the Estate’s gates while waiting to be transported to and from the Estate. Only pickup points as specifically designated by EFVHOA at the Contractor’s entrances (and nowhere else), shall be used to pick up employees of the Contractors/sub- contractors.

12.4 Casual labour shall not be recruited within one kilometer of any of the entrance gates to the Estate.

12.5 All employees of the Contractor, his sub-contractors and service providers shall comply with the security measures as implemented by EFVHOA from time to time, which shall include the registration of the employees with EFVHOA security management. This will require presentation of the employee’s identity document and a photocopy thereof, as well as the taking of a photographs at registration. This shall be done prior to any such person being granted access to the Estate.

12.6 The Contractor shall register each Employee and sub contractor(s) with EFVHOA, by way of biometrical Fingerprinting. Each Site will be allocated 30 Free Employee registrations, including Sub Contractors, there after additional workers will be charged, an amount OF R50,00 per registration, not exceeding 30 employees. No persons without such registration may enter upon the Estate. Failure to comply herewith shall be regarded as a gross breach of this agreement and viewed in a serious light by EVFHOA.

 12.7 The employment of illegal aliens is expressly prohibited.

12.8 No night watchmen or security guards or employees may live and/or enter the Estate area and/or construction site after the official hours referred to in clause 10. Failure to comply herewith will be regarded as a serious breach of this agreement.

# 13. BEHAVIOUR

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13.1 All construction staff, labourers, service providers and suppliers and others involved on or about the site, shall behave in a professional workmanlike manner at all times on the Estate. Their behavior shall in particular not disturb other residents or activities on the Estate. EFVHOA shall have the right to control behavior and noise generated by the said persons and to banish disruptive or disrespectful persons or employees from the Estate, in which event no claim for damages or otherwise shall lie against EFVHOA or any specific Body Corporate within the Estate.

13.2 No labourers, employees, sub-contractors or construction staff shall leave the building site at any time, save in the exercise of their duties and then only by vehicle (and thus not on foot).

13.3 Should the Contractor be engaged at the same time on more than one building site in the Estate, personnel shall be transported by vehicle between the sites (and thus shall not be allowed to walk between sites).

13.4 No person employed by the Contractor on the building site/s shall be entitled to be present on the building site other than during the hours stipulated in clause 11 here above.

13.5 The Contractor is responsible for the conduct and omissions of his staff, labourers, suppliers and service providers and as stated here above. Any breach of any of the provisions of this agreement or of the provisions arising out of this agreement by any of the aforesaid parties, shall for purposes of this agreement be deemed to be a breach by the

 Contractor.

13.6 All the Contractors, labourers, employees and staff shall at all time whilst on the Estate, wear a name tag displaying the name of the company of the Contractor they represent and their personal details.

# 14. SUPERVISION

 14.1 The Contractor shall provide a supervisor to control the building yard

and site/s and inform EFVHOA of the supervisor’s name and cellular telephone number.

14.2 No such supervisor will control more than three (3) single sites at one time. He is to be on site at all times during building hours and/or when required by EFVHOA and will be deemed to be the Contractor’s representative in the Contractor’s absence from the site.

14.3 *Inter alia*, the supervisor shall report all accidents, break-ins, theft or dangerous situations to EVFHOA immediately.

14.4 The Contractor shall ensure at all times that his/her site fully complies with the provisions of the Occupation Health and Safety Act.

# 15. VEHICULAR ACCESS TO THE ESTATE - ROAD USE - DAMAGE TO ESTATE PROPERTY AND SERVICES

15.1 The Contractor shall ensure that all vehicles use the roads with due care and consideration for the safety of others, in particular pedestrians and shall only use designated construction roads.

15.2 The Contractor will be responsible to replace and/or repair any road verges, road edgings, Telkom and electricity manholes, sewer connections, irrigation coupling valves, water meters and pipes, fire hydrants and other services or trees on the property or verge if the damage is caused by the Contractor, any sub-contractor, any labourers or employee or service provider or supplier or other party involved with the site through the Contractor.

15.3 The Contractor shall ensure that if parties driving to or from the building site shall not exceed 20 (twenty) kilometers per hour and that they shall strictly comply with all traffic signs and rules.

15.4 The Contractor hereby indemnifies EVFHOA and its members and employees and representatives against any claims for loss or damage which may occur while on the Estate during the course of any work being carried out by the Contractor as a result of anything done or omitted by the Contractor and/or his employees.

15.5 No vehicle with a weight in excess of 4000 kg or more than 2 back wheels on the back axle may enter the Estate, unless the express permission of EVFHOA is obtained in advance from the BCM or EVFHOA’s designated security personnel. If permission is granted, it may be granted subject to conditions pertaining, inter alia to any such vehicle being escorted at all times while it is on the Estate and only at the designated access gate. Any such vehicle shall drive on the Estate with due care. The Contractor will be liable for any damage caused by such vehicle on the Estate. Any damage along the way will be recorded and photographed. The Contractor will be held responsible to rectify any damage to EFVHOA’s satisfaction and approval.

15.6 EFVHOA reserves the right to refuse entry to any vehicle which in their opinion is not correctly loaded or in satisfactory condition, in particular articulated and triple axle vehicles.

15.7 Any oil spills on the paving will be cause for EFVHOA to require the contractor to replace the paving.

15.8 Each contractor will be limited to 5 vehicles with authorised access to the Estate at any point in time. Each vehicle shall obtain an access sticker from the Developer. The vehicle identification system will be implemented and controlled by the Developer.

15.9 The cost of access stickers shall be R100,00 per vehicle.

15.10 Vehicles without access stickers shall be denied access to the development.

# 16. PARKING

Vehicles operated by the Contractor as well as vehicles making deliveries to site and vehicles otherwise involved with the construction, shall not be parked in any area other than on the building site or at the building yard itself, or on the road, provided that free movement of traffic is not obstructed. Any damage caused to Estate property including spillages of oil, diesel or similar products will be repaired immediately at the cost of the Contractor.

# 17. STORING OF CONSTRUCTION MATERIALS AND REFUSE REMOVAL

17.1 All construction material shall be stacked neatly and safely behind the shade cloth screening on site. Stockpiles of material are not to exceed 2 meters in height.

17.2 All materials and equipment must be stored in a safe manner and in any event also in terms of the Occupational Health and Safety Act as well as is determined by the KLM.

17.3 All refuse must be collected daily and deposited into a container, supplied by the Contractor at the Contractor’s costs.

17.4 All containers must be of a design approved at the sole discretion of the HOA. The container must have a lid and be of such a nature that if cannot be blown over and that refuse cannot escape from it.

17.5 The container must be regularly emptied and cleaned.

17.6 Without detracting from the generality of the aforegoing, 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 waterways.

17.7. The Contractor shall ensure that all building rubble is removed on a weekly basis or as otherwise required by the HOA.

17.8 The Contractor shall generally ensure that the Erf is at all times kept neat and free of litter or other unsightly waste.

17.9 If the Contractor fails to keep the Erf in an acceptably tidy state or to have the rubble removed, to the satisfaction of the HOA, then the HOA shall, without prejudice to its further rights, have the right as the cost of the Contractor to clean the site and/or removed the rubble.

17.10 The Contractor will be denied access to the Development until the costs in terms of Clause 17.9 have been paid.

17.11 Under no circumstances will the dumping of any building material or rubble be permitted on any portion of the Development, and the Contractor is required to make his own arrangements for disposing of materials at a spoil site off the Development. Failure to comply will result in the Contractor being fined R1 000,00 per offence.

17.12 The Contractor will be denied access to the Development until the fine in terms of clause 17.11 has been paid.

# 18. TOILET AND ABLUTION FACILITIES

18.1 The Contractor must provide adequate temporary portable chemical toilet facilities at both the building yard and building site. These toilets must be serviced by a sanitation company at least once a week. No person is permitted to perform ablutions anywhere on the building yard or building site other than in the toilet facility provided.

18.2 The entrance to toilets must be adequately screened off with green 50% factor shade cloth as previously described in clause 5.

18.3 Toilets are to be provided at a rate of not less than one toilet for every 15 (or part thereof) personnel on each site or building yard.

18.4 EFVHOA reserves the right to stop all work on any site if in their opinion insufficient toilets have been provided.

18.5 Adequate wash-up facilities shall be provided by the Contractor at the Site. These wash-up facilities must be screened off with with green 50% factor shade cloth as previously described in clause 5. The waste water from these wash-up areas must be adequately managed.

18.6 Adequate changing areas where staff and/or labourers can change clothing and store personal effects must be provided by the Contractor on site. No clothing, bags, etc. will be permitted to hang over the shade cloth fencing, trees, or in view of any visitors to the site, or from outside the site. Changing may not take place outside the screened area at the site in view of any public from any road or adjacent areas.

18.7 The Contractor must carry out regular inspections on these facilities and ensure that no contamination and pollution is remedied immediately and that these facilities do not pose a hygiene and/or health hazard at any time.

18.8 Any breach of this clause 18 will be regarded in a serious light and will not be tolerated.

# 19. FINAL CLEAN UP AND COMPLETION

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19.1 At the conclusion of the construction work, the Contractor shall restore all pavements, verges, roadways, ditches and drainage channels to their original condition, including landscaping of pavements, assure positive drainage with no standing water, clean the entire site of all construction debris and refuse and remove all temporary fencing, offices, storage, equipment and materials. Where necessary, verges are to be leveled to their original condition, grass sods laid and any trees destroyed, replaced, in liaison with the Estate landscaping consultant. Any polluted soil due to oil or diesel spills to be excavated and disposed of off-site outside the Estate at an approved landfill site, the hole filled with approved topsoil and the vegetation rehabilitated.

19.2 EFVHOA will on completion of the work carry out a final inspection of the works inclusive of the verges and services. An Estate Completion Certificate will not be issued until the site is substantially clean according to 19.1 here above.

19.3 On completion of the project, the finishing standard and quality of the work will be assessed and should the Contractor’s work not accord with EFVHOA subjective standards and quality, then in the interest of the

Estate and the Owners, the Contractor will be removed from the Accredited List of Contractors.

# 20. INSURANCE

20.1 The Contractor shall take out at his/her own expenses an All Risks insurance policy for of an amount as determined by EFVHOA from time to time for any claim for damages arising from the acts or omissions of the Contractor, or its employees, sub-contractors or agents. The Contractor hereby indemnifies EFVHOA against any claims for damages caused by the act or omission of the Contractor, sub-contractors, whether directly or vicariously.

20.2 Details of this insurance must be lodged with EFVHOA before site handover.

20.3 The Contractor shall ensure that all workers on his/her site/building yard are covered in terms of the Workman’s Compensation Act. In the event of a medical or other emergency on his/her site the Contractor and/or the Registered Owner indemnifies both EFVHOA and the respective HOA for any costs which they may incur in this regard but not limited to ambulance service, medical evacuation, hospital charges or other medical expenses incurred.

# 21. DEVIATION FROM APPROVED PLANS

21.1 The Contractor shall not deviate from the approved building plans in any form without being in possession of an approved amended plan and written permission from ARC to proceed with the deviation.

21.2 All proposed deviations must be submitted by the architect to EFVHOA ARC and the local authority for approval prior to any deviations commencing on site.

21.3 The Contractor must discuss all deviations and additional work on site with ARC before commencing any work in respect thereof.

21.4 In the event that the contractor and or owner deviates in any manner whatsoever from the approved plans , in respect of the aesthetic guidelines, then the BCM shall be entitled to intervene and cause the construction to be suspended pending the rectification . Written notice of the deviation and suspension of construction shall be delivered to the contractor and/or owner ordering that the deviation shall be rectified within 3 (Three) working days of the owner and/or contractor receiving such notice of rectification. Construction may not re commence until such time as the deviation as been rectified to the satisfaction of EFVHOA. Should the owner/contractor fail to rectify the deviation, EFVHOA will be entitled to charge a penalty of an amount as determined by the Trustees from time to time per day as from the 4th day after notice has been given for every day that the deviation has not been rectified.

# 22. EXTERIOR COATINGS

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22.1 The Contractor will adhere to the colour palette issued in terms of the Architectural Guidelines and Standards.

22.2 In addition, the Contractor will adhere to the building specific colours as approved by ARC as part of the building plans.

22.3 Should the Contractor fail to comply with this stipulation, the Contractor and/or Registered Owner will be liable to apply an entire re-coating of the non-compliant building finishes at his expense.

# 23. NEIGHBOURING PROPERTIES

23.1 No encroachment onto neighbouring sites and Estate property will be permitted during construction, without the prior written permission of the Owner and EFVHOA. EFVHOA reserves the right to refuse permission if in its opinion it is not a necessity to encroach.

23.2 Should there be residents in close proximity of the site; additional shade cloth screening may be imposed on the Contractor by EFVHOA in order to enhance the privacy of residents.

# 24. BREACH

24.1 In the event of the Contractor and/or Registered Owner failing to comply

 with any provision of this agreement or any provision arising out of this

 agreement, EFVHOA will be entitled, without prejudice to its other rights,

to notify the Contractor and/or Owner to forthwith remedy the breach in

which event the Contractor/Owner shall do so within 24 (twenty four) hours

of the receipt of the notice failing which EFVHOA will be entitled to deny

the Contractor and or employees access to the site and the Estate until the

breach has been remedied, without incurring any liability for any delay in

the completion of the contract which the Contractor might incur

*vis* a *vis* the Owner or anyone else and EFVHOA may furthermore and in addition impose a fine on the Contractor and or Registered Owner of the property, which accords with the penalty protocol (Annexure D) dealt with in clause 25 here below. In addition, EFVHOA will be entitled to remedy the breach (or have it remedied) and debit the cost thereof to the deposit levy referred to in clause 27.1 and/or claim the balance cost thereof from the Contractor and or Registered Owner of the Property jointly or severally. Until the fine is paid, EFVHOA may deny the Contractor entry to the site.

24.3 The aforegoing notice contemplated in this clause must be given before the Contactor is denied access to the site. EFVHOA shall furnish a copy thereof to the Owner.

24.3 As stated in clause 24, EFVHOA will not be entitled to banish the Contractor from the site and/or building yard, unless in a notice as is contemplated in clause 23.1, the Contractor’s attention is drawn to the fact that the next sanction for failing to comply with the relevant provision (in respect of which the Contractor is in breach) is banishment.

# 25. PENALTIES

25.1 The penalties which EFVHOA may impose on the Contractor and or the Registered Owner of the property in terms of clause 25 in respect of certain breaches, deviations and non-compliance with the terms of this agreement is set out in Annexure “D”, which will be reviewed annually, by the

trustees. A penalty for a first, second and third contravention may be imposed summarily, that is to say, without the notice contemplated in clause 24.1 having first been given to the Contractor.

25.2 Penalties providing for fines payable to EFVHOA will be deducted from the maintenance and damage deposit held by EFVHOA or from the Registered Owner at EFVHOA’s discretion.

25.3 The penalties are agreed to be punitive in nature and will be in addition to any remedies available to EFVHOA.

# 26. ENVIRONMENTAL AND ECOLOGICAL MANAGEMENT PLANS

The Contractor shall comply with the environmental requirements of EFVHOA which were imposed on the development by the authorities and also with the site specific environmental requirements as may be stipulated by EFVHOA. Copies of the EMP are attached and marked Annexure B. This provision is a material and important provision of this agreement.

# 27. MAINTENANCE AND DAMAGE RETAINER

Before the site is handed over in terms of clause 3 hereabove, the Contractor shall:-

27.1 pay a retainer of an amount of R30 000,00. Payment shall be per site. EFVHOA may retain and utilize the retainer towards the cost of having to eliminate and/or repair any damage caused to any part of the Estate by the Contractor or any service provider of sub-contractor or other party on the Estate at the invitation of or on behalf of the Contractor or for any fines which may be imposed on the Contractor. R10 000,00 of the reatainer is non-refundable and will be used for general maintenance of the Estate during and after construction. If upon completion of the building project any portion of the remainder of the retainer remains unused, it shall be refunded to the Contractor by the EFVHOA.

27.2 EFVHOA will not be obliged to invest the retainer in an interest bearing or any other bank account and any interest earned on the retainer is for the benefit of the EFVHOA. The remedy is given to the EFVHOA without prejudice to any other remedies which EVFHOA has in terms of this agreement. EFVHOA may at any time demand that this retainer be topped up or even increase should any part of the original amount be expended for either rectification work or fines. The unused portion of the retainer will not be refunded to the Contractor until the final Municipal Occupation Certificate has been issued.

# 28. CERTICATES REQUIRED FOR ALEMA COMPLETION AND COMPLIANCE AND MUNICIPAL OCCUPATION

28.1 The Contractor shall in respect of each building site ensure that the following documentation is completed before handing in the documentation to the Municipality in order to obtain a Municipal Occupation Certificate.

28.1.1 CERTIFICATES

 See Annexure “C”

28.2 Seven days after each Municipal required inspections, the Builder is to email the required certificate to the EFVHOA office. Should this not be done, ALL work on site shall be stopped and may not commence until certificate is obtained.

28.3 Copies of the documentation as referred to in clause 28.1.1 shall be handed to the EFVHOA administration office to be kept on the registered owner’s file.

28.4 On receipt of the Municipal Occupation Certificate the Registered Owner will then only be allowed to occupy the relevant Erf as situated on the Estate.

28.5 Failure to comply with the clauses as set out in clause 28.1 to clause 28.3 will result in the Registered Owner being refused permission to occupy the Erf.

# 29 DOMICILIA AND NOTICES

*29.1* The parties respectively appoint the street addresses and postal addressed as set out hereunder as their *domicilia citandi et executandi.*

29.1.1 **EFVHOA**:

 Street address:

 Postal address:

 Telephone number:

 Fax number:

 E-mail:

29.1.2 **THE CONTRACTOR**:

 Street address:

 Postal address:

 Telephone number:

Fax number: E-mail:

29.1.3 **THE OWNER**:

 Street address:

 Postal address:

 Telephone number:

Fax number: E-mail:

29.2 The parties respectively appoint the postal addresses and/or e-mail address as set out hereabove for purposes of correspondence and notices given in terms of this agreement.

29.3 Any notice given to a party will be deemed to have been received by such party and its contents to have come to such party’s notice.

29.4 Any notice given to a party will be deemed to have been received by such party and its contents to have come to such party’s notice.

29.4.1 if dispatched by registered mail to the party’s chosen postal address then on the 5th day after the posting thereof in the Republic of South Africa.

29.4.2 if sent by e-mail to the Contractors chosen e-mail then on the date of transmission of the e-mail between 08h00 and 17h00 on Mondays to Fridays, and

29.4.3 if delivered to the party’s chosen domicile to a person seemingly over the age of 16 years then upon such delivery between 08h00 and 17h00 on Mondays to Fridays. The abovementioned provisions of this clause do not preclude a party from giving notice to the other party in any other way.

29.4.4 A party is entitled to change his domicilium and/or postal address and/or e-mail address by giving written notice thereof to the other party.

29.4.5 It is the Contractors obligation to ensure that his/her contact details especially cellphone number and e-mail address is kept current.

**30 VICARIOUS LIABILITY OF CONTRACTOR AND REGISTERED OWNER**

The Contractor and/or Registered Owner shall be liable to EFVHOA in respect of any breach of contract on the part of or any damage caused to any part of the

Estate by any of the Contractor’s employees, sub-contractors, suppliers and other persons on the building site at the insistence of the Contractor AND/OR Registered Owner and the aforesaid other parties.

# 31 WHOLE AGREEMENT

This document contains the whole agreement between the parties and no prior or parallel agreements between them are of any force or effect.

# 32 JURISDICTION

The parties to this agreement consent to the jurisdiction of the Magistrate’s Court, notwithstanding that any claim which may arise in terms of this agreement, exceeds the jurisdiction of the Magistrate’s Court.

# 33 LEGAL PROCEEDINGS

In the event that EFVHOA are necessitating in having to institute legal action for any cause or claim arising out of this agreement, the Contractor and/or Owner agree to pay the legal costs of EFVHOA on an attorney and client scale.

# 34 NON-VARIATION

No alteration or addition to this agreement (including this clause) nor the consensual cancellation thereof or the waiver of any right in terms of this agreement, will be of any force or effect unless it is in writing and signed by the parties.

SIGNED at on the day of 20.

AS WITNESSES:

1.

2.

SIGNED at on the day of 20

AS WITNESSES:

1.

2.

CONTRACTOR

SIGNED at on the day of 20

AS WITNESSES:

1.

2.

OWNER