

***STONEHAVEN ESTATE***  
***ENVIRONMENTAL AGREEMENT***  
***Home Owners Association and Owner***

**ENVIRONMENTAL AGREEMENT  
in respect of the house construction works**

made and entered into between

**STONEHAVEN HOMEOWNERS ASSOCIATION**

represented by

.....

(in his capacity as ....., duly authorized hereto)  
(hereinafter referred to as "the HOA")

AND

**THE OWNER OF ERF .....**

.....

(hereinafter referred to as "the Owner")

## 1 DEFINITIONS

1.1 Throughout this Agreement the following terms shall have the indicated defined meanings in each case:

1.1.1 “**Association**” or “**HOA**” means the Stonehaven Estate Homeowners Association;

1.1.2 “**Builder**” means:

1.1.2.1 the main contractor as engaged by the Owner from time to time for the execution of the works including all sub-contractors appointed by the main contractor of his own volition for the execution of parts of the works;

1.1.2.2 any other contractor from time to time engaged by the Owner directly in connection with any part of the works which is not a nominated sub-contractor to the main contractor;

1.1.3 “**common property**” bears the meaning ascribed to it under paragraph 1.1.6 of the Constitution of the HOA.

1.1.4 “**Construction EMP**” means the section attached as Appendix 1, which controls the works in connection with the House Construction in such a way as to ensure that such works does not result in undue or reasonably avoidable adverse impacts on the environment or environmental damage;

1.1.5 “**Council**” means the City of Cape Town, its successors in title or assigns;

1.1.6 “**days**” means the days of the week excluding Sundays and legal public holidays;

1.1.7 “**Environmental Control Officer**” (ECO) means a suitably environmentally qualified official of the Council designated to oversee the protection of the environment which could potentially be affected by the development;

- 1.1.8 “**Environmental Damage**” means any damage caused by the works to the environment, except as foreseen in the Construction EMP and in respect of which no remedial action is required;
- 1.1.9 “**Environmental Site Officer**” (ESO) means a qualified independent environmental manager to be appointed by the owner prior to commencement of the works on an erf, to oversee the implementation of the Construction EMP and this agreement until the completion of the works on the site;
- 1.1.10 “**Erf**” means one of the residential erven that forms part of the Property;
- 1.1.11 “**House Construction**” means all activities, including building works relating to the construction of a new house on an erf, and includes for any and all works relating to the renovation, addition, alteration and/or amending of an existing house on an erf;
- 1.1.12 “**Operational Environmental Management Plan**” (OEMP) means the environmental management plan setting out measures for the ongoing environmental protection of the Property, as amended or varied with the approval of Council from time to time, and which the HOA is obliged to enforce and Owners are obliged to comply with.
- 1.1.13 “**Owner**” means the registered owner of an erf;
- 1.1.14 “**party or parties**” means severally and collectively the Council and the HOA;
- 1.1.15 “**Property**” means Unregistered portions 42,43 and 45 (previously part of portion 1 of Farm no. 953, Cape Division, portion 5 of Farm no. 959, Cape Division and Erf 15461, Fish Hoek which have been consolidated), remainder of portion 22 of Farm 959, Cape Division, Portion 14 of Farm 959, Cape Division and Erf 17222, Fish Hoek and collectively known as Stonehaven Estate;
- 1.1.16 “**this Agreement**” means this agreement and the annexures and amendments thereto and “the agreement” shall have the corresponding meaning;

- 1.1.17 “**Works**” means all activities, including building operations carried out on an erf in connection with or incidental to, house construction;
- 1.2 Unless patently consistent with the context, and expression defined in this paragraph 1, which denotes:
- 1.2.1 any gender, includes the other gender;
- 1.2.2 a natural person, includes an artificial person and *vice versa*; and
- 1.2.3 the singular, includes the plural and *vice versa*.
- 1.3 The headings to the several paragraphs of this agreement are to be ignored in the interpretation hereof; the same having been included only for the ease of reference.
- 1.4 If any provision of this paragraph 1 and/or any provision of the PREAMBLE is a substantive provision conferring rights or imposing obligations to any party, then notwithstanding that such provision is contained in this paragraph 1 and/or PREAMBLE, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

## **2 PREAMBLE**

Whereas:

- 2.1 The Council, when approving the subdivision of the Property, imposed a condition (condition 2) that the developer shall produce an Environmental Management Plan (EMP) and an environmental contract shall be entered into with Council for the construction and installation of the infrastructure (civil and electrical) services. Such plan and contract shall at the same time address the issue of construction of the dwellings and responsibilities and obligations arising from this. The responsibility in time shall fall upon the HOA once its members have the majority ownership of the estate.
- 2.2 The HOA has entered into the agreement referred to under paragraph 2.1 above.
- 2.3 In terms of this agreement, the HOA is required to enter into an agreement with each Owner prior to the commencement of the Works on an erf on the terms and conditions set out below.

- 2.4 The HOA and Owner wish to record herein the agreement entered into between them.

### **3 SCOPE AND OBJECTIVES**

- 3.1 This Agreement outlines procedures to ensure that as far as reasonable practical the execution of the works do not result in undue or reasonable avoidable adverse impacts on the environment.
- 3.2 In the context of this agreement the “environment” refers to and includes but is not limited to the existing and final:
- 3.2.1 biophysical environment on the erf, the property and surrounding properties;
  - 3.2.2 roads and road verges; and
  - 3.2.3 wetland areas, natural runoff and watercourse on the site.

### **4 CONSTRUCTION EMP**

- 4.1 The Construction EMP forms Appendix 1 of this document.
- 4.2 The Construction EMP and any subsequent amendments or variations thereof will be submitted to the Council for their approval, whereupon it shall be deemed to be incorporated into and constitute an integral part of this Agreement.

### **5 STONEHAVEN HOMEOWNERS ASSOCIATION (HOA)**

- 5.1 The HOA shall ensure that prior to the commencement of the works an ESO is appointed by the owner to ensure compliance by owners and builders with the terms and conditions of the Construction EMP for the duration of the works on an erf.
- 5.2 The HOA shall, prior to commencement of the works, require the Owner to furnish proof that the ESO is aware of and agrees to comply with the role and responsibilities of the ESO as set out in Section 2.3 of the Construction EMP (Appendix 1).

- 5.3 The HOA shall monitor and enforce compliance with the Construction EMP by the Owner and Builder during the works on an erf.
- 5.4 The HOA shall, on request of the Council, promptly deliver to the Council copies of all agreements in terms of paragraph 5.2 above.
- 5.5 The HOA shall ensure that any environmental damage caused as a result of the execution of the works or by non-compliance with the Construction EMP is made good and/or restored within a reasonable period after such environmental damage has come to its attention.

## **6 THE OWNER**

- 6.1 The Owners shall comply, and ensure that the Builder complies, with the conditions of the Construction EMP in respect of the works and to protect the property against environmental damage.
- 6.2 The Owner shall enter in an agreement with the Builder to ensure that the provisions of the Construction EMP (Appendix 6b of the OEMP document) are binding on the Builder, and/or include the provisions of the Construction EMP into the contract documentation relating to the works, prior to commencement of the works.
- 6.3 The Owner shall appoint, prior to commencement of the works on an erf, an ESO to ensure compliance by the Builder with the Construction EMP for the duration of the works.
- 6.4 The Owner shall ensure, and furnish proof to the HOA, that the ESO is aware of and agrees to comply with the role and responsibilities of the ESO as set out in Appendix 1, prior to commencement of the of the works on an erf.
- 6.5 The Owner shall make good and/or redress/repair any environmental damage caused by the Builder or the Owner during the course of the works on an erf within 24 hours of receiving a written instruction from the HOA to do so or within a reasonable time period from receiving a written instruction from the HOA to do so.
- 6.6 The Owner shall comply with the recommendations of the ESO.
- 6.7 The Owner shall comply with the instructions of the HOA.

- 6.8 The Owner shall comply with all aspects of the Stonehaven Architectural and Landscape Design Manuals, as well as all relevant Building regulations.

## **7 COMPLIANCE**

The provisions of all laws and regulations required to be incorporated into or be applicable to agreements of this character, are hereby incorporated herein by this reference.

## **8 BREACH**

- 8.1 In the event that the Owner fails to enter into the agreement, referred to in paragraph 6.2 above, with the Builder, or in the event that there should be non-compliance with the construction EMP for any reason whatsoever, then and in such event the HOA shall invoke the penalties as specified in the Construction EMP.
- 8.2 In the event of environmental damage occurring as a consequence of non-compliance with the Construction EMP, it shall be the responsibility of the Owner to remedy or make good at his cost any environmental damage caused to the property within 24 hours after receipt of a notice or within such longer period as may in the circumstances reasonably be necessary to remedy such breach and in the event that the Owner does not remedy such breach, the HOA shall be entitled to carry out the remedial work itself and to claim the costs from the Owner at its discretion which cost shall be payable by the Owner on demand.

## **9 FORCE MAJEURE**

- 9.1 The Owner shall not be liable for failure to meet its obligations in terms of this contract, in the event and to the extent that such failure is caused by a condition of force majeure.
- 9.2 A condition of force majeure shall arise from circumstances beyond the reasonable control of the Owner which prevents him from meeting its/their obligations in terms of this contract, including but not limited to the following:
- 9.2.1 war or hostilities
  - 9.2.2 riot or civil commotion
  - 9.2.3 earthquake, flood, fire or other natural physical disaster.

- 9.3 The Owner shall give notice immediately to the HOA on the occurrence of an event of force majeure which causes or is likely to cause any failure to perform any obligations hereunder.

## **10 APPLICABLE LAW**

This contract shall be governed and constituted in accordance with the laws of the Republic of South Africa.

## **11 ARBITRATION**

In the event of any dispute or difference between any of the parties, regarding this agreement, the EMP or the implementation thereof, the dispute shall be referred to arbitration in accordance with the arbitration rules of the HOA of Arbitrators and otherwise in accordance with the arbitration laws of the Republic of South Africa, the arbitrator being the Chairman of the said Association or his nominee. The arbitration shall be held in Cape Town.

## **12 DURATION OF THIS AGREEMENT**

The duration of this Agreement shall be for the period until the works in respect of the erf have been completed, provided that in the event of the Builder, or any other Builder, thereafter returning to the erf to carry out any form of house construction work, this Agreement shall be reinstated and shall be of full force and effect for the period of carrying out of such house construction operations.

## **13 WHOLE AGREEMENT**

This Agreement records the whole of the Agreement entered into by and between the parties; there being no collateral or extraneous terms and, save as expressly herein set out, no warranties or representations, express or implied, which have been given or made by or on behalf of any party to induce or which had the effect of inducing the transactions the subject of this Agreement.

## **14 NON-VARIATION**

No purported amendment or variation of, or addition to, or cancellation by consent or novation of, this Agreement shall be of any force or effect unless and until it has been reduced to writing and duly signed on behalf of all the parties hereto.

**15 INDULGENCE**

No indulgence which any party (“the grantor”) may grant or permit to any other party (“the grantee”) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which arise in the future and who shall not be obliged to give to the grantee any notice of the withdrawal or discontinuation of such indulgence prior to so exercising its rights against the grantee.

**16 DOMICILIUM AND NOTICES**

16.1 The parties do hereby choose *domicilium citandi et executandi* for all purposes at their respective addresses as set out below at which addresses all notices in terms of or arising out of or in connection with this Agreement shall be given and received:

16.1.1 the Home Owner’s Association .....  
.....  
.....  
.....

16.1.2 the Owner, .....  
.....  
.....  
.....

16.2 Any party may after the elapse of thirty days written notice thereof to the other parties alter its *domicilium* address to another address within the area of jurisdiction of the Cape Metropolitan Council as constituted at the date of execution of this Agreement.

16.3 Any notice in terms of or arising out of or in connection with this agreement shall be in writing and shall be deemed to have been duly given and received:

16.3.1 on the date of delivery, if delivered by hand to the physical *domicilium* address of the addressee; or

16.3.2 seven days after posting, if posted by pre-paid registered post to the *domicilium* address of the addressee.

16.4 Where in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by telefax. Communications by telefax shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee at 12 noon on the first day following that on which such telefax is transmitted provided that the original communication by telefax is delivered by hand or despatched by pre-paid registered post after telefaxing it. For the purpose of communication by telefax the parties hereby choose the following numbers:

16.4.1 the Association at .....

16.4.2 the Owner at.....

16.5 Any correspondence shall include documentation by email for which the parties choose the following email addresses:

16.5.1 the HOA at .....

16.5.2 the HOA at .....

SIGNED AT ..... ON THIS THE ..... DAY OF .....20.....

**AS WITNESSES:**

for and on behalf of  
**STONEHAVEN HOMEOWNERS ASSOCIATION**

1. ....

2. ....

.....  
duly authorised hereto

SIGNED AT ..... ON THIS THE ..... DAY OF .....20.....

**AS WITNESSES:**

for and on behalf of  
**OWNER OF ERF .....**

1. ....

2. ....

.....  
duly authorised hereto

## **APPENDIX 1**

### Construction Environmental Management Plan for Houses