

STONEHAVEN ESTATE
ENVIRONMENTAL AGREEMENT
Owner and Builder

ENVIRONMENTAL AGREEMENT
in respect of the house construction works

made and entered into between

THE OWNER OF ERF

.....

(hereinafter referred to as "the Owner")

AND

THE BUILDER

represented by

.....

(in his capacity as, duly authorized hereto)

(hereinafter referred to as "the Builder")

1 DEFINITIONS

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

1.1.1 “**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 Association;
- 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 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 has entered into the agreement referred to under paragraph 2.3 above.
- 2.5 In terms of Agreement 2 referred to under paragraph 2.3 above, the Owner is required to enter into an agreement with the Builder prior to commencement of the Works on an erf on the terms and conditions set out below.
- 2.6 The Owner and Builder 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 is a section of the Operational Environmental Management Plan developed for the property, and is annexed Appendix 1.
- 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 THE OWNER

- 5.1 The Owners shall comply with the Construction EMP in respect of the works and to protect the environment against environmental damage.
- 5.2 The Owner shall appoint an ESO on the terms and conditions set out in Section 2.3 of the Construction EMP (Appendix 1).

- 5.3 The Owner shall enforce compliance with the Construction EMP and the Construction Operational Environmental Agreement by the Builder, including any amendments or additions thereto in accordance with the advice and/or order given by the ESO.
- 5.4 The Owner shall make good and/or redress/repair any environmental damage caused by the Builder or the Owner during the course of the House Construction works on the erf within 24 hours of receiving a written instruction from the HOA to do so or within a reasonable time period from receiving an instruction from the HOA to do so.
- 5.5 The Owner shall comply with the recommendations of the ESO.
- 5.6 The Owner shall comply with the instructions of the HOA.

6 THE BUILDER

- 6.1 The Builder shall comply with the Construction EMP in respect of the works and protect the environment against environmental damage.
- 6.2 The Builder shall undertake the due and punctual performance of all obligations imposed on it in terms of or arising from this Agreement or any breach thereof.
- 6.3 The Builder shall undertake to co-operate fully with the ESO, Owner and HOA, and use its best endeavours to ensure that the objectives of this Agreement are fulfilled in the course of its execution of the works or relevant part thereof.
- 6.4 The Builder shall undertake to impose the obligations contained in this Agreement on each of its subcontractors and to use its best endeavours to ensure that such conditions are complied with by the subcontractors.
- 6.5 The Builder shall comply with 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 Builder fails to comply with the Construction EMP, the HOA and/or Owner shall invoke the penalties as specified in the Construction EMP.
- 8.2 In the event of environmental damage occurring as a result of the Builders non-compliance with the Construction EMP, it shall be the responsibility of the Builder 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 Builder does not remedy such breach, the HOA and/or shall be entitled to carry out the remedial work itself and to claim the costs from the Builder at its discretion.

9 FORCE MAJEURE

- 9.1 The Builder 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 and/or HOA which prevents it/them 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 and the Builder 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 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 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.

12 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.

13 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.

14 INDULGENCES

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.

15 DOMICILIUM AND NOTICES

15.1 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:

15.1.1 the Owner,
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15.1.2 the Builder,
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15.2 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.

15.3 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:

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

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

15.4 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:

2.

.....
duly authorised hereto

APPENDIX 1

Construction Environmental Management Plan for Houses

Annexure 2
Responsibilities of ESO