

## THE NEW HORIZON DEVELOPMENT TRUST



## BUILDING CONTRACTORS CODE OF CONDUCT

**OCTOBER 2008**

**THE NEW HORIZON DEVELOPMENT TRUST**  
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## 1. **PARTIES**

- 1.1 The parties to this **AGREEMENT** are;
- 1.1.1 The New Horizon Development Trust.
- 1.1.2 The entity, as applicable recorded as OWNER in the SCHEDULE hereto.
- 1.1.3 The entity, as applicable recorded as CONTRACTOR in the SCHEDULE hereto.
- 1.1.4 The entity, as applicable recorded as ARCHITECTS in the SCHEDULE hereto.
- 1.2 The parties agree as set out below.

## 2. **INTERPRETATION**

- 2.1 The clause headings are for convenience and shall be disregarded in construing this AGREEMENT.
- 2.2 Unless the context clearly indicates a contrary intention:
- The singular shall include the plural and vice versa; and
  - A reference to any one gender shall include the other genders; and
  - A reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expression in such sub-clause.
- 2.4 When any number of days is prescribed in this AGREEMENT, the same shall be reckoned as calendar days. All proclaimed public holidays in the Republic of South Africa shall be excluded.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this AGREEMENT is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions hereof.
- 2.7 If any provision in a definition in this AGREEMENT is a substantive provision conferring rights or imposing obligations on any of the parties hereto then, notwithstanding that is only in the definition clause of this AGREEMENT, effect shall be given to it as if it were a substantive provision in the body of this AGREEMENT.
- 2.8 The SCHEDULE and annexure to this AGREEMENT are deemed to be incorporated in and form part of this AGREEMENT.

## 3. **DEFINITIONS**

In this **AGREEMENT**, unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

<b>AGREEMENT</b>	This Agreement with any annexure/s hereto.
<b>ARCHITECTS</b>	The firm of architects referred to in clause 1.1.4 hereof and recorded as such in the <b>SCHEDULE</b> and " <b>ARCHITECT</b> " means any representative of the <b>ARCHITECTS</b> (whose appointment it shall not be necessary to prove) or the Owner if no architect is involved in supervision of the construction.
<b>ATTORNEYS</b>	An attorney appointed to act as such from time to time by the <b>DEVELOPER</b> .
<b>CONDITIONS OF APPROVAL</b>	The conditions imposed by the <b>LOCAL AUTHORITY</b> when approving the <b>DEVELOPMENT</b>
<b>CONTRACT</b>	The Building Agreement concluded between the <b>OWNER</b> and the <b>CONTRACTOR</b> to construct the <b>IMPROVEMENTS</b> on the <b>ERF</b> .

<b>CONTRACTOR</b>	The building contractor and <b>OWNER</b> in the case of an owner-builder, referred to in clause 1.1.3 hereof and recorded as such in the <b>SCHEDULE</b> and for purposes of any claim against the <b>CONTRACTOR</b> in terms hereof included liability for any act or omission by any employee of the <b>CONTRACTOR</b> and/or sub-contractor and/or employee of any sub-contractor and/or any person acting upon instructions received from the <b>CONTRACTOR</b> or in connection with the work to be undertaken by the <b>CONTRACTOR</b> such as suppliers or persons effecting delivery of materials.
<b>DEVELOPER</b>	The New Horizon Development Trust (Registration No IT 1469/2005), a duly registered company and, save where the context specifically otherwise indicated, includes <b>HOA</b> as though <b>HOA</b> had, in the first instance, been a party of this <b>AGREEMENT</b> .
<b>DEVELOPMENT</b>	Certain immovable property being erf 2661 Parsonsvelei which has been subdivided into a township to be known as New Horizon Village in accordance with approval obtained from the <b>LOCAL AUTHORITY</b> and includes any extension of the township approved by the <b>LOCAL AUTHORITY</b> .
<b>DESIGN REVIEW PANEL (DRP)</b>	A Design Review Panel appointed by the <b>DEVELOPER</b> and comprising representatives of the <b>DEVELOPER</b> and representatives from a group of Architects approved by the <b>DEVELOPER</b> .
<b>ENVIRONMENTAL CONTROL OFFICER (ECO)</b>	The party appointed by the <b>DEVELOPER</b> in terms of the COA by the <b>LOCAL AUTHORITY</b> and the Department of Economic Development and Environmental Affairs (DEDEA), whose task it is to monitor and report on the <b>DEVELOPER'S</b> compliance with the environmental requirements of the <b>COA</b> and the <b>ROD</b> .
<b>ENVIRONMENTAL MANAGEMENT PLAN (EMP)</b>	The Environmental Management Plan drafted by the <b>ECO</b> outlining the terms and conditions of the <b>COA</b> and <b>ROD</b> .
<b>ERF</b>	Certain immovable property being the erf, described as such, in the <b>SCHEDULE</b> upon which the <b>OWNER</b> and the <b>CONTRACTOR</b> propose to construct <b>IMPROVEMENTS</b> .
<b>HEALTH AND SAFETY</b>	Conformance in accordance to the OSHAct 85 of 1993, The Construction Regulations, The Driven Machinery Regulations, The General Safety Regulation, The Regulations for Hazardous Biological Agents
<b>HOA</b>	A Homeowners Association, applicable to the <b>DEVELOPMENT</b> , constituted in terms of Section 29 of the Land Use Planning Ordinance (Cape Ordinance No. 15 of 1985) as amended, in accordance with conditions imposed by the <b>LOCAL AUTHORITY</b> when granting approval of the <b>DEVELOPMENT</b> .
<b>IMPROVEMENTS</b>	Any structure of whatever nature to be erected or constructed on the <b>ERF</b> , which shall include, but in no way be limited to, the initial construction/erection, alterations, renovations, additions, construction of retaining walls, paving, as well as excavation, landscaping or planting.
<b>LOCAL AUTHORITY</b>	The Nelson Mandela Bay Metropolitan Municipality, Eastern Cape Province.
<b>OWNER</b>	The party referred to in clause 1.1.2 hereof and recorded as such in the <b>SCHEDULE</b> .
<b>RECORD OF DECISION (ROD)</b>	The conditions imposed by the Department of Economic Development and Environmental Affairs of the Eastern Cape

<p><b>SCHEDULE</b></p> <p><b>NEW HORIZON DEVELOPMENT DESIGN GUIDELINES</b></p>	<p>Government or it's successor/s in title, when approving the <b>DEVELOPMENT</b>.</p> <p>The annexure hereto headed "<b>SCHEDULE</b>"</p> <p>The architectural guidelines prepared for and applicable to the <b>DEVELOPMENT</b>, a copy whereof has been handed to the <b>OWNER</b> who has, in turn, made such copy available to the <b>CONTRACTOR</b> and both the <b>OWNER</b> and the <b>CONTRACTOR</b> by their signatures hereto, confirm receipt thereof and acknowledge being fully conversant with all provisions thereof.</p>
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#### **4. RECORDAL**

- 4.1 The OWNER has purchased the ERF from the DEVELOPER in terms of an Agreement of Sale. Reference in the Agreement of Sale to
  - 4.1.1 "PURCHASER" is a reference to the OWNER,
  - 4.1.2 "CONDUCT AGREEMENT" is a reference to this AGREEMENT,
  - 4.1.3 "SELLER" is a reference to the DEVELOPER, and
  - 4.1.4 "ATTORNEYS", "ERF" and "HOA" have the same meanings as defined in the AGREEMENT.
- 4.2 The OWNER has selected the CONTRACTOR as his building contractor of choice for the construction/erection of IMPROVEMENTS.
- 4.3 The parties to this AGREEMENT acknowledge that this is a phased DEVELOPMENT.
- 4.4 The DEVELOPER wishes to ensure that the construction/erection of the IMPROVEMENTS is undertaken so as to cause least possible damage to the infrastructure of the DEVELOPMENT, and that, where such damage occurs, provision is made for reinstatement as well as to ensure that such construction/erection is undertaken with due consideration to environmental factors and so as to in no way inconvenience other owners in the DEVELOPMENT so as to ensure that the quality of life for residents is not unduly compromised by the IMPROVEMENTS, and generally to ensure that such work is undertaken in an orderly manner, all of which the OWNER, and CONTRACTOR consider to be in the interest of the DEVELOPMENT.
- 4.5 To attain the aforesaid objectives, the OWNER and CONTRACTOR bind themselves jointly and severally for the obligation contained herein and the DEVELOPER and HOA undertake to use its best endeavors to monitor the provisions hereof and to forthwith report to the HOA any breach of any of such obligations.

#### **5. CONTRACTOR'S OBLIGATIONS PRIOR TO CONSTRUCTION (ADMINISTRATIVE)**

- 5.1 The CONTRACTOR must address or attend to the following matters BEFORE commencing any work of whatever nature on the ERF. The CONTRACTOR will be denied access to the DEVELOPMENT until:
  - 5.1.1 all provisions of this clause have been complied with, to the satisfaction of the HOA,
  - 5.1.2 and the CONTRACTOR and the HOA have together carried out a site inspection.

#### **5.2 Approval of Building/Construction Plans**

- 5.2.1 The ARCHITECT must submit a copy of the final plans and specifications to the DESIGN REVIEW PANEL for written approval, PRIOR to their submission to the LOCAL AUTHORITY;
- 5.2.2 The plans and specifications will only be approved if in the opinion of the Design Review Panel they comply with the NEW HORIZON DEVELOPMENT GUIDELINES;
- 5.2.3 Any changes to the final plans and specifications must be approved in writing by the DESIGN REVIEW PANEL and the LOCAL AUTHORITY prior to the implementation;
- 5.2.4 All construction/erection of IMPROVEMENTS on the ERF must be executed in accordance with the plans approved in terms of 5.2.1

### **5.3 Approved Building/Construction Plans**

- 5.3.1 A signed copy of the building/construction plans, approved in terms of 5.2.1 and by the LOCAL AUTHORITY must be handed to the HOA, together with a signed copy of the AGREEMENT and a written schedule outlining a construction commencement date and an estimated construction completion date, signed by the CONTRACTOR.
- 5.3.2 One work has commenced on the ERF it must continued to completion, without interruption or stoppage, other than during the Annual Builder's Holiday.

### **5.4 Construction Deposit**

- 5.4.1 The CONTRACTOR shall, before commencing any work of whatever nature on the ERF, pay to the account of the HOA for the account of the CONTRACTOR an amount of R5,000,00 (FIVE THOUSAND RAND) which shall constitute a security deposit for damage of whatever nature, including but in no way limited to, damage to roads, kerbs, trees, vegetation, landscaping, private or public spaces, which may be caused by the CONTRACTOR to any portion of the DEVELOPMENT.
- 5.4.2 Any claim arising as contemplated in this clause 5.4 is not limited to the amount of the deposit and the HOA shall be entitled to recover from the OWNER and CONTRACTOR, in addition to the deposit, the amount by which the reasonable costs of reinstatement resulting from such damage exceeds the said deposit.
- 5.4.3 The cost of any damage attributable to the CONTRACTOR shall be quantified by the HOA and the amount so determined shall be final and binding on the OWNER and CONTRACTOR.
- 5.4.4 If the HOA alleges that the conduct of the CONTRACTOR, whether by way of commission or omission, is the cause of any damage to any portion of the DEVELOPMENT then the OWNER and CONTRACTOR shall be presumed to be liable therefore unless they are able to prove to the contrary.
- 5.4.5 If the OWNER/CONTRACTOR fails to dispute any claim made in terms of the foregoing within 10 (TEN) days of receiving notice thereof, they shall be liable for payment of the cost arising therefrom as determined by the HOA in terms of the foregoing.
- 5.4.6 If the claim is disputed, the HOA shall be entitled to forthwith institute proceedings against the OWNER/CONTRACTOR for recovery of the amount of the claim.
- 5.4.7 The HOA shall invoice the CONTRACTOR for any damage caused by the CONTRACTOR. The HOA is irrevocably authorized to deduct the amount of any claim for which the OWNER/CONTRACTOR is liable in terms of the foregoing, by way of a deduction against the said deposit whereafter the CONTRACTOR shall forthwith pay to the HOA an amount so that the deposit is maintained at the original amount. Should the CONTRACTOR fail to pay the aforesaid amount forthwith, the CONTRACTOR will be denied access to the DEVELOPMENT until all amounts have been paid. As appears from clause 5.4.2, the OWNER/CONTRACTOR shall remain liable to the HOA for payment of the amount (if any) by which the claim exceeds the deposit.
- 5.4.8 Upon final completion of all work by the CONTRACTOR on the ERF and provided there is no claim pending against the CONTRACTOR in terms of the foregoing, the CONTRACTOR shall be entitled to receive payment of refund of the deposit or the balance of the deposit if any portion was appropriated for payment of a claim.
- 5.4.9 If a claim is made against the CONTRACTOR pursuant to the provisions of this clause 5.4 the HOA shall, in addition to the rights aforementioned, be entitled to recover from the CONTRACTOR who shall be liable to the HOA for payment of all the HOA's legal costs incurred on the scale as between attorney and own client.

## **5.5 Induction Course**

- 5.5.1 The CONTRACTOR and all his personnel, shall before commencing any work of whatever nature on the ERF, attend an Induction Course. The Induction Course will include environmental, access and safety matters pertaining to the DEVELOPMENT.
- 5.5.2 The Induction Course will be held at regular intervals, and information pertaining to course times and location is available from the DEVELOPER.
- 5.5.3 The cost of the Induction Course shall borne by the CONTRACTOR and payable to the DEVELOPER on attendance.
- 5.5.4 The cost of the Induction Course shall be R59.00 per person, which amount may be revised from time to time at the sole discretion of the DEVELOPER.
- 5.5.5 Parties who have not attended the Induction Course will be denied access to the DEVELOPMENT.

## **5.6 Staff and vehicle identification**

### **5.6.1 Staff identification**

- 5.6.1.1 The CONTRACTOR and all his personnel shall be required to wear identification tags at all times while on the DEVELOPMENT. The identification tags must be visible at all times.
- 5.6.1.2 The staff identification system will be implemented and controlled by the DEVELOPER.
- 5.6.1.3 The cost of the identification tags will be borne by the CONTRACTOR.
- 5.6.1.4 Parties without identifications tags will be denied access to the DEVELOPMENT.

### **5.6.2 Vehicle Identification**

- 5.6.2.1 The CONTRACTOR'S vehicles shall require an identification or access sticker. The sticker must be attached to the windscreen of each vehicle.
- 5.6.2.2 The vehicle identification system will be implemented and controlled by the DEVELOPER.
- 5.6.2.3 The cost of the identification of access sticker will be borne by the CONTRACTOR.
- 5.2.6.4 Vehicles without identification stickers will be denied access to the DEVELOPMENT.

## **5.7 Insurance**

The CONTRACTOR shall, prior to commencing work on an ERF, submit to the HOA, proof of insurance policies to adequately cover the Contractors All Risks associated with the IMPROVEMENTS; appropriate SASRIA and MVA cover, liability in respect of third parties for all motor vehicles having access to the DEVELOPMENT and Public Liability Insurance cover to the value of R2 000 000.00 (TWO MILLION RAND) per incident, to the satisfaction of the DEVELOPER.

## **5.8 Labour and Training**

- 5.8.1 The National Building Regulations (NBR), the requirements of the National Home Builder's Registration Council (NHBRC) and the appropriate by-laws of the LOCAL AUTHORITY apply to the construction of all IMPROVEMENTS within the DEVELOPMENT. Neither the HOA nor the DESIGN REVIEW PANEL shall be responsible for any design or construction defects, which may affect the safety or structural integrity of any IMPROVEMENTS within the DEVELOPMENT or any non compliance with the NBR or NHBRC requirements.

## **6. CONTRACTORS' OBLIGATIONS WHEN COMMENCING CONSTRUCTION**

The CONTRACTOR shall address or attend to the following matters when commencing construction/erection of any IMPROVEMENTS on the ERF.

### **6.1 Barricades & Fencing**

- 6.1.1 All building sites must be secured and fenced, in accordance with the specifications set out in clause 6.1.3;
- 6.1.2 The fencing must be approved by the HOA in writing before work can commence;
- 6.1.3 The fencing specifications are as follows:
  - 6.1.3.1 The street front must be a solid wall of a design selected by the OWNER from the approved types, as set out in the NEW HORIZON DEVELOPMENT GUIDELINES.
  - 6.1.3.2 During construction only the wall must be erected, unpainted and the gate opening must remain open;
  - 6.1.3.3 The other side boundaries must be fenced with a 1m high geofabric silt screen as prescribed unless adjacent to a completed building with an existing boundary wall;
  - 6.1.3.4 The boundary adjacent to a completed dwelling without a boundary wall must be screened to 1.8m high or the final boundary wall built.
- 6.1.4 All fences and screens must be properly maintained, to the satisfaction of the HOA, for the duration of the construction/erection of IMPROVEMENTS.

### **6.2 Dust control**

- 6.2.1 It is specifically recorded that areas of the DEVELOPMENT will be planted or seeded to ensure vegetation cover or covered with bark chips.  
The CONTRACTOR shall implement appropriate measures, to the satisfaction of the HOA and the ECO, to minimize damage to existing vegetation and to minimize the generation of dust or wind blown sand in other open areas of the DEVELOPMENT resulting from IMPROVEMENTS on the ERF.

### **6.3 Excavation**

- 6.3.1 No excavation or filling of the ERF may be undertaken without the submission of a detailed plan to the HOA, for written approval.
- 6.3.2 Excavation for foundations and/or walls adjoining paved roadways and/or sidewalks must be undertaken with caution and, in particular, the paved roadway/sidewalk must be protected and supported during excavations.
- 6.3.3 Any damage caused to the paved roadway/sidewalk must be made good by the CONTRACTOR immediately the damage becomes evident.

### **6.4 Municipal services**

- 6.4.1 All conditions, processes and fees as prescribed by the LOCAL AUTHORITY, for the connection of water, sewerage, electricity and other municipal services shall be the sole responsibility of the CONTRACTOR.
- 6.4.2 All costs pertaining thereto shall be for the account of the CONTRACTOR.
- 6.4.3 **Water**  
The CONTRACTOR will obtain water for the work to be undertaken on the ERF from the municipal water connection on the ERF. Application for connection is to be made through the LOCAL AUTHORITY. Under no circumstances may the CONTRACTOR interfere with any water supply to the DEVELOPMENT.
- 6.4.4 **Sewers**
  - 6.4.4.1 A sewer connection has been provided for the ERF into which the CONTRACTOR is required to connect the sewer system for the IMPROVEMENTS. Such



connection may not take place until completion of the IMPROVEMENTS and then only under supervision of the HOA.

- 6.4.4.2 The CONTRACTOR may not dispose of any building material, contaminated water or rubbish into the sewage system.

#### **6.4.5 Storm water**

- 6.4.5.1 The CONTRACTOR may not dispose of any building material, contaminated water or rubbish into the storm water system nor may the CONTRACTOR wash paint or cement based products into the storm water system or onto landscaped and paved areas.

### **6.5 Ablution facilities**

- 6.5.1 The CONTRACTOR shall provide water and/or washing facilities for employees on the ERF.
- 6.5.2 Prior to commencement of the construction/erection of the IMPROVEMENTS and throughout the duration of the work, the CONTRACTOR shall provide a suitable number of and properly operational chemical toilets on the ERF and shall ensure that such facilities are at all time maintained in a clean, hygienic and neat condition.
- 6.5.3 The entrances to all temporary toilets must be screened from view by a barrier constructed from geofabric or 90% black or green shade cloth.
- 6.5.4 Use of the DEVELOPMENT'S water borne sewage systems is forbidden.
- 6.5.5 Any worker (employee of the CONTRACTOR/sub-contractor/s or invitee) found doing ablutions in any area other than the supplied toilet will, upon request by the DEVELOPER and/or the HOA, be removed from the DEVELOPMENT by the CONTRACTOR and shall be permanently barred from returning to the DEVELOPMENT.

### **6.6 Storage shed/site hut**

- 6.6.1 Temporary storage sheds or site huts of galvanized iron or timber and of a neat appearance are allowed on the ERF. The CONTRACTOR may also make use of shipping containers for offices and stores.
- 6.6.2 No other structures are permitted on the ERF unless they appear on the building/construction plans mentioned in clause 5.2 of this AGREEMENT.
- 6.6.3 The HOA may instruct the CONTRACTOR to remove any storage shed, site hut, office or store that in the sole opinion of the HOA is untidy or dilapidated.
- 6.6.4 Should the CONTRACTOR fail to remove the storage shed, site hut, office or store forthwith and to the satisfaction of the HOA, the HOA shall instruct an independent party to remove the structure, at the CONTRACTOR'S cost.
- 6.6.5 The CONTRACTOR will be denied access to the DEVELOPMENT until the costs in terms of clause 6.6.4 have been paid.

### **6.7 Refuse Containers and Refuse removal**

- 6.7.1 All refuse must be collected daily and deposited into a container, supplied by the CONTRACTOR at the CONTRACTOR'S cost.
- 6.7.2 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 it cannot be blown over and that refuse cannot escape from it.
- 6.7.3 The container must be regularly emptied and cleaned.
- 6.7.4 The CONTRACTOR shall ensure that all building rubble is removed on a weekly basis or as otherwise required by the HOA.
- 6.7.5 The CONTRACTOR shall generally ensure that the ERF is at all times kept neat and free of litter or other unsightly waste.
- 6.7.6 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 at the cost of the CONTRACTOR to clean the site and/or remove the rubble.

- 6.7.7 The CONTRACTOR will be denied access to the DEVELOPMENT until the costs in terms of clause 6.7.8 have been paid.
- 6.7.8 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 R500.00 per offence.
- 6.7.9 The CONTRACTOR will be denied access to the DEVELOPMENT until the fine in terms of clause 6.8.9 has been paid.

## **6.8 Survey beacons**

- 6.8.1 Prior the start of construction the CONTRACTOR shall obtain a Beacon Certificate from the project Land Surveyors (VPM Land Surveyors) who will identify, inspect and certify the boundary pegs. The Land Surveyor must also certify the position of any building against a boundary line.
- 6.8.2 The CONTRACTOR is responsible for maintaining the boundary pegs. Should the boundary pegs be disturbed, the HOA will arrange for a Land Surveyor to relocate them at the CONTRACTOR'S cost.

## **6.9 Permissible signage**

- 6.9.1 The CONTRACTOR shall only be permitted to erect a single signboard.
- 6.9.2 The signage shall be at the expense of the CONTRACTOR.
- 6.9.3 The CONTRACTOR shall not erect the signage other than on the ERF.
- 6.9.4 The signage shall conform to the HOA'S requirements.
- 6.9.5 The signage shall be removed immediately on conclusion of the IMPROVEMENT.

## **7. GENERAL MATTERS**

### **7.1 New Horizon Development Design Guidelines**

- 7.1.1 The CONTRACTOR and ARCHITECT undertake that throughout the construction/ erection of the IMPROVEMENTS they will not knowingly deviate from the provisions of the NEW HORIZON DEVELOPMENT GUIDELINES or any further controls or instructions, which may be introduced by the DEVELOPER and/or HOA to the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES.
- 7.1.2 Wheresoever the provisions of the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES and/or this AGREEMENT are contradictory and/ or conflict with the building contract concluded, or to be concluded between the OWNER and CONTRACTOR for the construction/erection of the IMPROVEMENTS, then the provisions of the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES and/or this AGREEMENT (as the case may be) shall prevail.

### **7.2 No Variation**

The OWNER/CONTRACTOR acknowledge that the DEVELOPER/ HOA will, from time to time and at all times relevant, be entitled to enforce compliance with the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES and any other instructions/ regulations issued in terms thereof or in terms of the written Constitution of HOA with regard to the construction/erection of the IMPROVEMENTS. The CONTRACTOR shall, in respect of the IMPROVEMENTS, at all times work strictly in accordance with the provisions of the approved plans or approved variations thereof as submitted and approved in terms of the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES and by the LOCAL AUTHORITY and the CONTRACTOR shall in no way deviate therefore.

### **7.3 Co-Operation**

The OWNER undertakes to co-operate fully with the CONTRACTOR, the ARCHITECT and the DEVELOPER to ensure compliance with the spirit and intent of this AGREEMENT. The OWNER

acknowledges that he has employed the CONTRACTOR and the ARCHITECT and is responsible to ensure compliance with this AGREEMENT as well as the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES, the HOA Constitution and any rules made in terms thereof from time to time.

#### **7.4 Privacy and Rights of Residents**

The CONTRACTOR his employees, sub-contractors or suppliers may not do or suffer to be done anything, which in the opinion of the DEVELOPER, ECO or HOA is noisome, unsightly, injurious, objectionable, or detrimental or a public or private nuisance or a source of damage or disturbance to any owner, tenant or occupier of any ERF in the DEVELOPMENT.

#### **7.5 Availability of Plans**

Prior to and during construction/erection of the IMPROVEMENTS the CONTRACTOR shall ensure that a copy of the drawings and plans in respect of the IMPROVEMENTS as approved in terms of the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES is on site and available at all times to the CONTRACTOR'S personnel, as well as being available for inspection by the DEVELOPER or the HOA during all working hours.

#### **7.6 Building Hours**

- 7.6.1 Working hours and hours for delivery of building materials will be determined from time to time by the DEVELOPER.
- 7.6.2 No building activity shall be undertaken on Saturdays, Sundays or public holidays or the Annual Builders Holiday, without prior written consent of the DEVELOPER.
- 7.6.3 Building activity on the ERF shall be confined to 06h30 to 18h00 Monday to Friday.
- 7.6.4 If found on the ERF outside of permitted working hours, the CONTRACTOR'S employees will be escorted from the DEVELOPMENT. In addition the CONTRACTOR will be fined R500.00 per transgression.
- 7.5.5 The CONTRACTOR will be denied access to the DEVELOPMENT until the fine in terms of clause 7.6.4 has been paid.

#### **7.7 Work and Storage areas**

- 7.7.1 The CONTRACTOR may not use the surrounding erven, the roadways, the pavements or any open areas for any purpose whatsoever without the prior written approval of the HOA. This includes vehicles access, the storage of building materials, and the dumping of excavated soil
- 7.7.2 The CONTRACTOR must ensure that all his activities are confined to within the ERF boundary. This relates to inter alia staff, personnel, storage areas or stockpiles.
- 7.7.3 Should the CONTRACTOR fail to adhere to the provisions of this clause, the CONTRACTOR will be fined R500.00 per transgression.
- 7.7.4 The CONTRACTOR will be denied access to the DEVELOPMENT until the fine in terms of clause 7.7.3 has been paid and the transgression rectified.
- 7.7.5 The mixing of building materials must occur within the confines of the ERF. If any spillage of building material occurs on any paved roadway or sidewalk in the DEVELOPMENT the CONTRACTOR is responsible for ensuring that such spillage is immediately cleaned.
- 7.7.6 The CONTRACTOR shall ensure that all materials and equipment are locked away overnight.

#### **7.8 Deliveries**

- 7.8.1 All orders must include the DEVELOPER'S stand number on the delivery note.
- 7.8.2 Deliveries to the ERF may take place only from the street frontage of the ERF.
- 7.8.3 All delivery vehicles shall leave the DEVELOPMENT once the delivery is complete.
- 7.8.4 Deliveries shall be effected only during the hours recorded in clause 7.7.
- 7.8.5 All building material shall be off-loaded and stored within the boundary of the ERF and the storage of any material outside the ERF is strictly forbidden. Without detracting from the generality of the foregoing, no building material shall be off-loaded or stored on any sidewalk or roadway within the DEVELOPMENT.

- 7.8.6 Delivery vehicles may not be parked unattended upon any paved roadway, sidewalk or parking bays in the DEVELOPMENT. Any diesel or oil spillage caused by any construction or delivery vehicle on any paved roadway or sidewalk shall immediately be cleaned by the CONTRACTOR.

## **7.9 Control of Labour**

- 7.9.1 Throughout the construction/ erection of the IMPROVEMENTS, the CONTRACTOR is responsible for the discipline and control of his employees and/or sub-contractors and is responsible for any damage caused to any part of the DEVELOPMENT by any supplier of materials or any other person instructed by or employed by the CONTRACTOR and/or sub-contractors in respect of the work undertaken on the ERF.
- 7.9.2 No temporary accommodation for employees of the CONTRACTOR is permitted on site.
- 7.9.3 No employees of the CONTRACTOR shall be allowed to remain onsite outside of permitted building hours and no person shall sleep on site.
- 7.9.4 Site security, if required, should be arranged with the DEVELOPMENT security.
- 7.9.5 The employees must be transported by the CONTRACTOR'S vehicle, to and from the DEVELOPMENT.

## **7.10 Traffic Rules**

### **7.10.1 Speed**

A maximum speed limit of 30kph, or less as indicated, must be observed everywhere on the DEVELOPMENT.

### **7.10.2 Vehicle sizes**

- 7.10.2.1 The maximum size vehicle that can be accommodated on the site is 10 tonnes, the maximum wheelbase 4.0 meters and the maximum track is 2.0 meters. (No delivery trucks with trailers are to be used due to limited turning space.)
- 7.10.2.2 Deliveries by extra heavy trucks (10 tonnes plus) are discouraged due to the damage they cause. If this is unavoidable they must be met at the DEVELOPMENT'S main entrance by the CONTRACTOR and offloaded under his supervision.
- 7.10.2.3 The following is suggested when ordering:
- 7.10.2.3.1 A maximum payload of 5 tons.
  - 7.10.2.3.2 Bricks – no more than 5000 are delivered in one load
  - 7.10.2.3.3 Sand and stone – no more than 6m<sup>3</sup> is delivered in one load.
  - 7.10.2.3.4 Cement – no more than 100 pockets are delivered in one load.
- 7.10.2.4 Subject to the above limitations, light delivery vehicles with trailers will be allowed.
- 7.10.2.5 The cost of any repairs necessitated by damage caused to the DEVELOPMENT by the CONTRACTOR'S vehicles or the vehicles of the CONTRACTOR'S sub-contractors or suppliers will be recovered from the CONTRACTOR.

### **7.10.3 Traffic Routes & Parking**

- 7.10.3.1 Vehicles shall only be permitted on existing roads to the ERF to complete their specific tasks.
- 7.10.3.2 All Vehicles and workers must abide by the traffic access and parking plan designated by the DEVELOPER from time to time.
- 7.10.3.3 All roadways and walkways must be kept open for the passage of through traffic.
- 7.10.3.4 The driveways of other erven in the DEVELOPMENT may not be used at any time.

## **7.11 General site neatness**

- 7.11.1 The CONTRACTOR is expected to keep the appearance of the building site neat and tidy at all times

- 7.11.2 The CONTRACTOR must ensure that the road in front of the building site is at all times swept clean. This is to minimize damage and to protect the road surface. The CONTRACTOR must ensure that the kerbs and sidewalks in front of the ERF are adequately protected from damage by building operations. The CONTRACTOR will be held financially and legally responsible for the damage to road surfaces and kerbs caused through building operations.
- 7.11.3 Should the CONTRACTOR not maintain the ERF, the terms of clauses 6.7.6 and 6.7.7 shall apply.

## **7.12 Anti-pollution measures**

- 7.12.1 The CONTRACTOR shall take all reasonable steps to prevent pollution of surface and groundwater. Such pollution could result from release, accidental or otherwise, of chemicals (paint), oils, fuels, sewage, construction water or waste product.
- 7.12.2 Any refueling of machinery is to take place under adequate spill prevention measures. The CONTRACTOR may use a "trap" filled with sand. The sand must be replaced regularly and its contents disposed of outside the DEVELOPMENT at an appropriate waste disposal facility.
- 7.12.3 No open fires or burning waste is allowed on the ERF. The CONTRACTOR will be fined R1000.00 per breach of this clause. The CONTRACTOR and OWNER will be held legally and financially responsible for any damage caused by breach of this regulation.

## **7.13 Concrete and mortar**

- 7.13.1 No mixing of mortar or concrete is permitted on any road surface.
- 7.13.2 The CONTRACTOR undertakes to supervise all deliveries of concrete, to ensure that damage to road surfaces and vegetation is minimized. Any spillage of concrete is the responsibility of the CONTRACTOR and must be cleared up immediately. The CONTRACTOR undertakes to ensure that all drivers of concrete delivery vehicles attend the Induction Course referred to in clause 5.5.

## **7.14 Washing down and cleaning of vehicle & equipment**

Washing off of ready mix or any other vehicle is not permitted within the confines of the DEVELOPMENT. The CONTRACTOR will be fined R500.00 per offence.

## **7.15 Right to stop work**

- 7.15.1 Any construction/erection of IMPROVEMENTS being executed in a poor and un-workmanlike manner, or in violation of, or inconsistent with the plans previously approved by the LOCAL AUTHORITY and the DESIGN REVIEW PANEL may be stopped, without prior notice, by the DEVELOPER or the HOA, until the situation has been corrected to the satisfaction of the HOA.
- 7.15.2 Without detracting from the aforesaid, in terms of clause 11.5 of the New Horizon Village Homeowners Association Constitution, the HOA has the right to stop work and to appoint and independent contractor, at the CONTRACTOR or OWNER'S expense to ensure compliance with the obligations with the New Horizon Village Homeowners Association Constitution and the NEW HORIZON DEVELOPMENT DESIGN GUIDELINES.

## **7.16 Final Completion**

- 7.16.1 IMPROVEMENTS will be inspected by the Homeowners representative on confirmation of final completion by the CONTRACTOR/OWNER whereupon a list of outstanding and non complying work will be prepared and issued to the CONTRACTOR/OWNER for immediate action
- 7.16.2 The date of issue of this final checklist will be accepted as the date on which the house has been completely constructed as required by the property's Title Deed and the New Horizon Village Homeowners Association Constitution.

## **8. DOMICILIUM/NOTICES**

- 8.1 The parties choose as their domicilia citandi et executandi for all purposes under this AGREEMENT, whether in respect of Court process, notices or other documents or communications of whatsoever nature, the addresses as set out in the attached schedule.
- 8.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give such notice or communication by facsimile.
- 8.3 Notices shall be deemed to have been delivered on the date of signed receipt of deliver, if delivered by hand, or on the 4th (fourth) day after the date of posting, if sent by pre-paid courier mail within South Africa, to the domicilium aforesaid, or, if successfully transmitted by facsimile, be deemed to have been received by the addressee on the first day after the day of dispatch.
- 8.4 Any of the parties referring to in clause 8.1 may, by notice in writing to the other parties, alter its address set out in the SCHEDULE to another address in the Republic of South Africa provided such other address may not be a post office box or post restante and provided that such alteration shall not be effective until 7 (SEVEN) days after it has been received.
- 8.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to such party notwithstanding that it was not sent to or delivered at the domicilium citandi et executandi.

## **9. BREACH**

- 9.1 Without detracting from any rights which the DEVELOPER and or the HOA may have in terms of this AGREEMENT, and in the event of the OWNER/CONTRACTOR breaching any of the provisions of this AGREEMENT and persisting in such failure for a period of 7 (SEVEN) days after dispatch of written notification calling upon them or either of them to remedy the same, the DEVELOPER and/or the HOA shall be entitled to all or any of the following relief:
- 9.1.1 To deny the CONTRACTOR access to the DEVELOPMENT;
  - 9.1.2 Appoint an independent contractor to rectifying the breach and recover the remedy cost from the CONTRACTOR with a minimum R100 handling fee of 25% of the cost, whichever is the greater;
  - 9.1.3 to appoint an arbitrator in terms of Clause 10 hereunder'
  - 9.1.4 to cancel this AGREEMENT, in which event the CONTRACTOR shall not be entitled to continue construction on the ERF. Should the CONTRACTOR so require, the DEVELOPER or the HOA (as the case may be) will, upon reasonable notice, meet with the CONTRACTOR in an effort to obtain the CONTRACTOR'S undertakings to abide by the terms and conditions of this AGREEMENT. The DEVELOPER or the HOA (as applicable) shall be entitled, in its absolute discretion, to reinstate this AGREEMENT to enable the CONTRACTOR to continue with the work on the ERF subject to such further conditions as the DEVELOPER or the HOA may impose.
  - 9.1.5 to hold the OWNER/CONTRACTOR liable and to claim from them the cost of reinstatement of any damage caused by them within the DEVELOPMENT, as determined in terms hereof.
- 9.2 Should the DEVELOPER and/or the HOA take steps against the OWNER/CONTRACTOR who shall be liable to the DEVELOPER or the HOA (as applicable) for payment of all the DEVELOPER'S or HOA'S (as applicable) legal costs incurred on the scale as between attorney and own client.
- 9.3 If access to the DEVELOPMENT is denied to the CONTRACTOR in terms of the foregoing or this AGREEMENT is cancelled as above, neither the CONTRACTOR nor the OWNER shall have any claim of whatever nature against the DEVELOPER and/or the HOA arising therefrom.

## **10. ARBITRATION**

10.1 Any dispute, question or difference arising at any time between parties to this AGREEMENT, out of or in regard to:

10.1.1 any matter arising out of these present; or

10.1.2 the rights and duties of any of the parties mentioned in these presents; or

10.1.3 the interpretation of these presents;

may at the instance of the DEVELOPER and/or HOA be submitted to and decided by arbitration on notice given by the DEVELOPER and/or HOA to the other parties who are interested in the matter in question.

10.2 Arbitration shall be held in Port Elizabeth informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time), it being intended that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been demanded.

10.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

10.3.1 primarily an accounting matter – an independent accountant;

10.3.2 primarily a legal matter- a practicing counsel or attorney of not less than 10 (ten) years' standing;

10.3.3 any other matter – an independent and suitably qualified person appointed by the HOA'S auditors;

as may be agreed upon between the parties to the dispute.

10.4 If agreement cannot be reached on whether the question in dispute falls under 10.3.1, 10.3.2 or 10.3.3; or upon a particular arbitrator in terms of 10.3, within 3 (three) business days after the arbitration has been demanded. Then the President for the time being of the Law society of the Cape of Good Hope shall determine whether the question in dispute falls under 10.3.1, 10.3.2 or 10.3.3; or

10.5 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 10 within 7 (seven) business days after the parties have failed to agree, in order that the arbitration can be held and concluded as soon as possible within the 21 (twenty-one) business days referred to in 10.2 above.

10.6 The arbitrator shall make his award within 7 (seven) business days after completion of the arbitration and shall, in giving his award, have regard to the principals laid down in terms of this AGREEMENT. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties as he, in his sole discretion, may deem fit.

10.7 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

10.8 Should a matter be determined in terms of clause 10.3 as not within a stated category or unsuitable for arbitration the provisions of clause 9, will apply.

## **11. INDULGENCES**

No extension of time or indulgence granted by the DEVELOPER and/or HOA (as applicable) to the CONTRACTOR and/or the OWNER shall be deemed in any way to affect, prejudice or derogate from the rights of the DEVELOPER or the HOA (as applicable) in any respect under this AGREEMENT, nor shall it in any way be regarded as a waiver of any rights hereunder or a novation of this AGREEMENT.

THUS DONE AND SIGNED by the parties upon the dates and at the places specified below.

**AS WITNESSESS:** THE NEW HORIZON DEVELOPMENT TRUST  
Per

1. ....

2. ....

**DEVELOPER**

Date .....

Place .....

**AS WITNESSESS:** THE NEW HORIZON VILLAGE HOME OWNERS ASSOCIATION  
Per

1. ....

2. ....

**HOA**

Date .....

Place .....

**AS WITNESSESS:**

1. ....

2. ....

**OWNER**

Date .....

Place .....

**AS WITNESSESS:**

1. ....

2. ....

**CONTRACTOR**

Date .....

Place .....

**AS WITNESSESS:**

1. ....

2. ....

**ARCHITECT**

Date .....

Place .....



**"SCHEDULE"**

ERF No.                      SG No.                      .....

                                 Stand No.                      .....

Estimated construction start date:                      .....

Estimated construction completion date:                      .....

**DEVELOPER:**      THE NEW HORIZON DEVELOPMENT TRUST

Domicilium              73 Heugh Road, Walmer, Port Elizabeth  
Facsimile                  086 683 9899

**HOA**                      NEW HORIZON VILLAGE HOME OWNERS ASSOCIATION

Domicilium              73 Heugh Road, Walmer, Port Elizabeth  
Facsimile                  086 683 9899

**OWNER**                      .....

Domicilium                      .....

Facsimile                      .....

**CONTRACTOR**                      .....

Domicilium                      .....

Facsimile                      .....

**ARCHITECT**                      .....

Domicilium                      .....

Facsimile                      .....

## **Declaration**

I understand that, as I have elected not to use my approved New Horizon Village architect for the supervision of the building of my house and related structures, I personally assume full responsibility for familiarising myself with the requirements of the Design Guidelines and for complying with all aspects of the approved plans. Professionally drawn plans of any amendments, alterations or additions that may be required must be submitted to the Design Review Panel for approval before they are made.

I understand that, if the building specifications of my home do not fully comply with the approved plans building work may be stopped or occupation delayed until any deviations have been corrected at my expense.

Particular attention will be given to the approved size, material, design and placement of doors, windows and shutters; the use of only approved window and door suppliers, coverage and floor areas; non-timber external elements such as balcony and verandah columns and floor thickness, fascias and bargeboards and exterior paint colours.

Any items that were not submitted for approval at the time of plans submission must be submitted and approved by the Design Review Panel before installation. Examples are Paving layout and materials, external light fitting, house signage and numbers, fencing awnings, etc.

It is a concession of the Design Review Panel to allow building without architect's supervision. I accept that a compliance fee of R20 000.00 is to be paid to New Horizon Village Homeowners Association as security against non compliance with the requirements of the Design Guidelines. Consideration will be given to refund a portion of this compliance fee, to a maximum of 75% with the understanding that, should there be any deviation from the approved plans on final inspection, no refund will be considered.

Signed.....

Owner's Name.....

Owner's Fax No.....

Stand Number.....