

**MONTE CHRISTO
ECO-ESTATE**

**CONTRACTOR RULES AND
OBLIGATION AGREEMENT IN
RESPECT OF ERF**

REVISION 1



REVISIONS

Revision 0:

Approved by the Management Committee on 06 December 2019

Revision 1:

Modify / add inverted commas on pages 3, 5 and 6

Clause 2. Number each item with a separate number

Clause 3.1: Revised by removing the following documents which are viewed to be non directly related to the building process as such: (1) *Conduct rules for Owners and Residents*. (2) *Architectural Guidelines*.

Clause 4.1: The wording of the reference document changed to '*Rules Regulating Building Activities – Revision 3 (Attachment A)*'.

Clause 10: Added details for HOA postal address and telephone number.

Clause 14: Added attachment referring to '*Rules Regulating Building Activities*'.

Approved by the Management Committee on 16 October 2024.

ENTERED INTO BETWEEN:

(full name of the HOA approved registered Building Contractor / Developer / Owner
Builder / Proxy Representative)

(‘the Contractor’)

PROXY REPRESENTATIVE / DEVELOPER / CONTRACTOR	
NAME OF BUSINESS	
OWNER: NAME AND SURNAME	
ID NUMBER	
POSTAL ADDRESS	
CELL NUMBER	
TELEPHONE NUMBER	
EMAIL	
NHBRC REGISTRATION	
SUB CONTRACTOR / REPRESENTATIVE ON BUILDING SITE	
NAME AND SURNAME	
ID NUMBER	
POSTAL ADDRESS	
CELL NUMBER	
TELEPHONE NUMBER	
EMAIL	
NHBRC REGISTRATION	

and

(Full names of the Owner or representative who is duly authorised thereto by a proxy from the
Owner

(‘the Owner’)

and

MONTE CHRISTO ECO-ESTATE HOMEOWNERS ASSOCIATION

(‘the HOA’)

1. INTRODUCTION

Whereas, the Owner, who is a member of the HOA, and the Contractor has entered into an agreement in terms whereof certain services shall be provided by the Contractor to the Owner;

Whereas, it is acknowledged that the HOA acts in the interest of its members and aims to ensure a high-quality lifestyle for the Owners and Residents of the Monte Christo Eco Estate through its Constitution and Rules;

Whereas, the HOA is authorised by its constitution to make and amend rules from time-to-time concerning any building or construction activity within Monte Christo Eco Estate (hereafter referred to as the 'Estate'),

Whereas, the HOA is authorised to enforce these rules,

Whereas, the main purpose of this document is to ensure that the building activities on the Estate occur with the least possible disruption to residents and their safety as well as reducing/minimizing mismanaged building operations, and

Whereas, it is acknowledged and understood that the Estate Manager and his team acts as employees of the HOA and not in their personal capacity;

Whereas, once all requirements in this agreement are complied with, the HOA is prepared to consider the commencement of building work. No work shall commence without approval by the HOA.

Now therefor, the parties agree and bind themselves to the following terms and conditions:

2. INTERPRETATION

Unless the context clearly indicates a contrary intention, an expression which denotes a natural person includes an artificial person and vice versa;

The following expressions shall bear the same meaning assigned to them below and cognate expressions bear corresponding meaning:

- 2.1 'Owner'** is the registered Owner of an Erf as registered by the relevant Deeds Office.
- 2.2 'Contractor'** means any person and/or entity who has been approved by the HOA and contracted by an Owner to carry out building services on an Erf in the Estate as indicated by the said Owner.
- 2.3 'Developer'** means a person and / or entity who develops his / her stand / s in the Estate for sale to the public.
- 2.4 'Owner Builder'** means a person who builds a home for occupation by himself or a person who is not a registered Building Contractor in terms of the Housing Consumers Protection Measures Act No. 95 of 1998 and who assists a person contemplated in paragraph (a) of the aforesaid act in the building of his or her home
- 2.5 'Sub-contractor/ Service Provider'** Means any person or entity who provides ancillary services to the main Contractor and includes, but not limited to, bricklayers, plasterers, carpenters, plumbers, electricians, painters, glaziers, paving, landscaping and cleaning services, building material suppliers project/construction managers, and their employees.
- 2.6 'Estate Manager'** means any natural or judicial person appointed by the HOA to manage the Estate and enforce the rules of the HOA.
- 2.7 'The HOA'** is The Monte Christo Eco-Estate Homeowners' Association established in terms of Section 29 of the Land Use Planning Ordinance, 1985. In terms of Clause 9 of the Constitution of the HOA the affairs of the HOA are managed and controlled by a Management Committee.

2.8 'The Rules'

means any provisions established by the HOA which regulates the conduct of its members (Owners), Contractors, Builders, Subcontractors and employees of the aforesaid, which are applicable not only at the date of signing this agreement but that may be amended or adopted by the HOA in future, including but not be limited to the rules contained in this document, *Conduct Rules for Owners and Residents*, *Architectural Guidelines* and *Rules Regulating Building Activities* established in terms of clause 12.13 of the Constitution of the HOA.

In this document, unless inconsistent with or otherwise indicated by the context any reference to gender includes the other gender, any reference to natural persons includes legal persons and vice versa, and any reference to the singular includes the plural and vice versa.

The clause headings have been inserted for convenience only and shall not be taken into account in its interpretation.

This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. Should a discrepancy exist between the rules and the Constitution of the Monte Christo Eco Estate, the Constitution takes preference.

3. THE AGREEMENT

- 3.1 The Owner / Contractor / Developer / Owner Builder / Proxy Representative hereby acknowledge that the following document was read thoroughly, understood and deemed to be incorporated herein:
 - *Rules Regulating Building Activities* (Revision 3) attached as 'Attachment A'
- 3.2 The Contractor / Developer / Owner Builder / Proxy Representative undertakes to abide by the content of the document listed under clause 3.1.
- 3.3 The Contractor / Developer / Proxy Representative shall ensure that all his / her employees, sub-contractors and service providers are familiar with and subscribe to the terms and conditions of this agreement,
- 3.4 This agreement shall remain binding in all respects on each person involved with this building project and who engages with the Contractor and Owner.
- 3.5 The Contractor / Developer / Owner Builder / Proxy Representative is liable towards the HOA for damages sustained as a result of the conduct of all employees in his / her registered employment, who is involved with this building project whether they act within the scope of employment or otherwise.

- 3.6 The HOA, by delegation to the Estate Manager, or his duly authorised representative, reserves the right to inspect all building sites at any time and a right of access may not be denied to any authorized person of the HOA. The builder and Owner are furthermore obliged to answer any and all questions which the HOA may have in regards to any building activities or any aspect of the building contract.
- 3.7 Without abandoning the HOA's right to enforce the provisions of this agreement or any other provision of the Rules and without abandoning any claim which the HOA may have against a Contractor, the Owner is also responsible and liable for the actions and responsibilities of his registered appointed Contractor. The HOA may, in addition to levy any penalties against a Contractor, levy such penalties against an Owner as being co-responsible for the actions of the Contractor. For the avoidance of any doubt, the HOA reserves its right to either claim any penalties or damages caused by the Contractor from either the Owner or the Contractor.

4. PENALTIES

- 4.1 The Contractor / Developer / Owner Builder / Proxy Representative hereby confirms that the penalty clauses as defined in the *Rules Regulating Building Activities* (Revision 3), attached as 'Attachment A', are fully understood and specifically accepted by him / her.

5. DISCLAIMER

- 5.1 The HOA and its appointed management and employees assume no liability and responsibility of whatsoever nature arising from any damages or losses sustained as a result of the suspension of any building activity caused by the contravention of rules embodied herein.
- 5.2 The HOA and its appointed management and employees assume no liability and responsibility for the well-being, safety and protection of any Contractor, employee, sub-contractor or any other individual attending on the Estate for the purpose of executing any work on the Estate.
- 5.3 The Contractor / Developer / Owner Builder / Proxy Representative shall have no claim against the HOA and its appointed employees for damages and losses sustained, arising from the penalties imposed by the Estate as a result of any violation of the provisions, rules and regulations.
- 5.4 The HOA and its appointed employees accept no liability of whatsoever nature arising from any damages and losses sustained as a result of breach of insurance and statutory requirements as set out in the *Rules Regulating Building Activities* (Annexure 'A').

5.5 The HOA and its appointed management and employees assume no liability and responsibility of whatsoever nature arising from any damages or losses sustained by anyone as a result of any loss whatsoever to goods, products, implements, tools or anything whatsoever lost by theft or any damage caused thereto for whatsoever reason.

6. ACKNOWLEDGEMENT

It is acknowledged that:

- 6.1 the Contractor / Developer / Owner Builder / Proxy Representative have read and understand the contents of this document and confirm that they are bound by the terms and conditions herein.
- 6.2 the HOA has a zero tolerance for any misconduct, misbehaviour and verbal abuse by any person on the Estate.
- 6.3 the HOA has the right in its sole discretion from time to time to unilaterally amend the rules, regulations, procedures and penalties. Such amendments will be communicated to Owners and registered Contractors as and when necessary.
- 6.4 some existing buildings may deviate from the current rules and guidelines, due to previous discarded guidelines and therefore leaves no room for precedent referred to arguments.

7. TERMINATION OF AGREEMENT

Notwithstanding clause 17 of the *Rules Regulating Building Activities – Rev. 3*, this agreement will automatically terminate upon the completion of the building project on Erfwhich will consist of the signing off by the HOA of the building project and the complete evacuation by the Contractor and handing over of the project to the Owner.

8. CHANGES IN BUILDING CONTRACT

Any changes ordered to the building contract between the Owner and his Contractor will not invalidate this agreement.

9. TERMINATION FOR BREACH OF BUILDING CONTRACT

Where the building contract between the Owner and the Contractor is terminated prematurely, the Owner undertakes to formerly notify the HOA detailing the specific events that gave rise to the right of termination by either party. Despite the fact that a building contract between the Owner and the Contractor might be terminated, for as long as the Contractor is present and / or has access to the Estate, the terms and conditions of this agreement will remain in place and will the conduct of the Contractor still be regulated in accordance with this agreement incorporating the Rules.

10. NOTICES

For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose their *domicilium citandi et executandi* as follows:

OWNER:

Physical address:

Telephone number:

E-mail address:

CONTRACTOR:

Physical address:

Telephone number:

E-mail address:

HOA:

Postal address: Status-Mark, P.O. Box 567, Mossel Bay, 6500

Telephone number: 044-6913054

E-mail address: status1@status-mark.co.za

Any notice and/or correspondence except for the service of legal processes, shall be via e-mail.

11. SIGNING OF AGREEMENT

This document, duly signed by the Owner and his / her Contractor / Proxy Representative must be submitted to the Estate Manager for signature, prior to the commencement of building operations.

12. ENTIRE AGREEMENT:

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement or the Rules shall be binding on the HOA save where the Rules may be amended from time to time.

No agreement varying, adding to, deleting from or cancelling this agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties, save for the amendment of the Rules which may from time to time be amended.

13. INDULGENCES:

No indulgence granted by the HOA shall constitute a waiver of any rights that the HOA might have under this agreement and accordingly the HOA shall not be precluded from exercising its rights against the Owner or a Contractor as a consequence of having granted such an indulgence which may have arisen in the past or which may arise in the future.

It is furthermore specifically recorded that any indulgence granted to any other Contractor does not preclude the HOA to act in terms of this agreement.

THUS, DONE and SIGNED at _____ on this _____ day of 20_____

AS WITNESSES

1. _____

2. _____

**Contractor / Developer / Owner
Builder / Proxy Representative**

THUS, DONE and SIGNED at _____ on this _____ day of 20_____

AS WITNESSES

1. _____

2. _____

The Owner

THUS, DONE and SIGNED at _____ on this _____ day of 20_____

AS WITNESSES

1. _____

2. _____

HOA

14. ATTACHMENT:

Attachment A: *Rules Regulating Building Activities*, Revision 3, forms part of this document.