



VICTORIA COUNTRY CLUB ESTATE  
MASTER HOMEOWNERS ASSOCIATION

June 2018

**BUILDING PERFORMANCE AGREEMENT (BPA)**

For works on site no ..... of Victoria Country Club Estate

The following agreement applies to all builders, sub-contractors, labour and material suppliers who are contracted to work on the Estate, and must be signed by the parties listed hereunder prior to commencement of any construction activities on the Estate

**1. PARTIES**

1.1. Master Homeowners Association (hereinafter referred as "MHOA" or, depending on the context, "Estate Management")

1.2. Name.....Signature.....Date.....  
Contractor

1.3. Name.....Signature..... Date.....  
Owner

1.4. Name.....Signature.....Date.....  
Supervising or project managing agent of the owner

It is recorded that the Supervising Agent above is the accredited architect/designer, or other competent person approved by the MHOA, commissioned by the owner for the duration of the building contract, to carry out a full project management service up to certificate of completion and occupation of the dwelling/premises.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

## 2. RECORDAL

- 2.1 The Victoria Country Club Estate ("VCCE") is a private Estate development comprising 5 villages surrounding the Victoria Country Club golf course, and sharing a common boundary in the south-west section of the Estate with the Queen Elizabeth Park Nature Reserve.
- 2.2 VCCE is managed by the Master Home Owners Association ("MHOA").
- 2.3 The contractor has been contracted by the owner to carry out building work on the owner's property on VCCE.
- 2.4 The contractor has accepted his mandate subject to the obligations in favour of the MHOA as set out in this agreement.
- 2.5 All the parties have consented to this agreement being entered into in order to maintain a degree of uniformity in the development of VCCE, to ensure quality control in the building process, to ensure compliance with all relevant local and national bylaws and legislation, to ensure compliance with Estate rules and procedures as amended by the MHOA from time to time, and to ensure that the building process is undertaken in a manner that is least disruptive to the Estate and other property owners.
- 2.6 The parties acknowledge that the MHOA has the right in its sole discretion to add or remove any contractor from the list of accredited contractors.
- 2.7 The contractor agrees, and the owner acknowledges the contractor's agreement, to build only in accordance with the building plans approved, stamped and signed by the Estate Architectural Review Committee (ARC).
- 2.8 The owner undertakes not to issue any instructions to vary the design or any element of the approved plans without first obtaining the necessary ARC and Municipal approvals.
- 2.9 The owner agrees that he/she is jointly and severally liable with the contractor for the performance of the latter's obligations set out in this agreement.

## 3. BUILDING CONTRACTOR APPROVAL

- 3.1. Only building contractors approved by the MHOA will be allowed to work on the Estate.
- 3.2. The owner is responsible for ensuring that the contractor is properly accredited with the MHOA.
- 3.3. The MHOA reserves the right to cancel the Estate accreditation of any contractor for reasonable reasons, which may include repeated non-compliance with this BPA or with Estate rules, or non-compliance with recognised building industry stipulations, and standards of workmanship or behaviour.

## 4. BUILDING PLAN APPROVAL AND COMPLIANCE WITH PLANS

- 4.1. No construction activities shall commence on any site until building plans have been approved by both the ARC and the Msunduzi Municipality.
- 4.2. One copy of the ARC- and Municipality approved set of plans must be supplied to the MHOA for record keeping purposes, and one copy must be retained on the site, and must be made available for scrutiny on request by any representative of the ARC or the MHOA.
- 4.3. The contractor undertakes to carry out all building and construction work in accordance with the approved plans. Any variation from the approved plans must be approved by the ARC prior to construction of any such deviation.
- 4.4. All building and construction work must also comply with any applicable statutory regulations.
- 4.5. The contractor shall also be required to comply with all Estate rules, and it is his responsibility to acquaint himself with such Estate rules prior to commencement of construction.
- 4.6. The contractor shall at all times grant the Estate Manager and/or the Architectural Review Committee access to the site.

## 5. SECURITY CLEARANCE

- 5.1. All contractors, sub-contractors, suppliers and labourers are to comply with security regulations as prescribed by Estate management from time to time.
- 5.2. Contractors, sub-contractors, suppliers and labourers may only gain access to the Estate by prior arrangement with Estate security management.
- 5.3. All security applications in respect of sub-contractors, suppliers and labourers are to be made by the main contractor, who is wholly responsible for these persons, and for compliance by all such parties with Security rules and regulations.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

- 5.4. Hours of work within the Estate are from 07h00 to 17h00 Monday through Friday. No work is permitted over weekends or public holidays.
- 5.5. Access to and egress from the Estate is by way of designated gates and routes. This rule is to be strictly adhered to.
- 5.6. Only authorised vehicles are permitted access to the Estate. Contractors are to apply for access permits for all regularly used vehicles. Such permits must be clearly displayed at all times.
- 5.7. Contractors are to notify Security of vehicles requiring access to the Estate for the purpose of delivery of materials and sub-contract labour. These vehicles will be issued with temporary permits, and will be the responsibility of the main contractor.
- 5.8. The contractor will ensure that all contractor and sub-contractor employees engaged in this contract are aware of and abide by the Security rules prescribed by Security and Estate management.

**6. ENVIRONMENTAL MANAGEMENT PLAN**

- 6.1. It is recorded that the Estate is situated in an environmentally sensitive area, and the MHOA has established an Environmental Management Plan (EMP) which governs the behaviour of all contract personnel, in terms of their obligations in protecting and preserving the environment and its assets.
- 6.2. It is the responsibility of the contractor to secure a copy of this document, to acquaint himself fully with its provisions, and to ensure that all staff, employees, sub-contractors and suppliers involved in his building contract comply with the provisions of the EMP.
- 6.3. The contractor shall control litter and refuse by the following methods:
  - 6.3.1. All litter, building and garden refuse generated by the contractor is to be removed from the Estate by the contractor, to an approved Municipal landfill site.
  - 6.3.2. No burning of litter or refuse on site is permitted.
  - 6.3.3. Any litter or debris generated by construction activities and spread outside the site is to be cleaned at least weekly, and specifically on Fridays.
  - 6.3.4. The contractor will carry out any instructions to clean the site received from the Estate Manager.
- 6.4. No animals, trees, shrubs or plants are to be interfered with, damaged or removed from the site. Non-compliance with this stipulation will result in the imposition of a severe fine relative to the offence, and the contractor hereby agrees to be bound by the imposition of such fines.
- 6.5. Contractors are to take all necessary precautions to prevent the introduction of any alien plant species onto the Estate.
- 6.6. Contractors are to exercise extreme care in the storage, handling and transportation of any materials which could be detrimental to the environment. No hazardous materials may be disposed of on the Estate. All EMP stipulations in this regard must be complied with. Severe fines will be imposed for non-compliance with these stipulations.
- 6.7. Contractors must ensure that cement and concrete products are properly controlled, contained and disposed of, so as not to impact on the environment, or become a nuisance to the Estate. Unused materials may not be disposed of anywhere on the site or Estate.
- 6.8. In particular, any construction site which is adjacent to a green corridor, golf course, watercourse or any other landscaped or maintained common property, requires special attention in terms of all of the above. Contractors must ensure that absolutely no encroachment of or damage to these areas takes place through construction activity, soil spills, shade cloth fencing, pedestrian or vehicular access, for any reason. Any incident of non-compliance will be severely penalised, and any damage will have to be rectified at the contractor and/or Owner's expense to the satisfaction of the MHOA immediately on instruction, and before any completion certificate is issued.

**7. SITE PREPARATION AND MANAGEMENT**

- 7.1. Contractors are responsible for temporary water and electricity connections, which must be legally applied for by the contractor in good time prior to commencement of construction, and approved and supplied by the Municipality. Supplies may not under any circumstances be taken from neighbouring sites, municipal service infrastructure, or natural sources.
- 7.2. Every building site shall be fenced and screened on the property boundary around its entire perimeter with a 1.8m high properly tensioned and supported wire-strand fence supporting an olive green nylon shade cloth fabric of 80% shading. The fence standards shall be treated wood or steel fence standards. The fence shall be maintained in a clean and tidy fashion throughout the duration of the main building contract. Any instructions from Estate management in this regard must be immediately complied with.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

- 7.3. Double farm-gate shade cloth covered lockable gates must be provided to ensure that the site is adequately closed off and protected at all times of non-activity.
- 7.4. No encroachment onto common property or neighbouring stands will be permitted without the prior written permission of Estate management. As soon as the use of such sites is no longer required, the sites will be properly rehabilitated to their original state by the contractor at his expense, and to the satisfaction of the MHOA.
- 7.5. Every site shall have a temporary portable chemical toilet, positioned within the screened area per approval of the MHOA. The toilet shall be serviced weekly to ensure its serviceability and to avoid the presence of obnoxious odours which could be construed as a nuisance to the neighbourhood.
- 7.6. Every construction site shall have its own potable water supply. Labourers may not leave the site in search of water elsewhere on the Estate.
- 7.7. All precautions must be taken to prevent pollution of any sensitive environment from any human waste or the results of any washing activities, either of labour or plant.
- 7.8. The positions of site camps, material storage areas, and site refuse areas are to be agreed with the MHOA.
- 7.9. All site beacons are to be identified, verified, flagged and protected for the duration of the main building contract. Any lost or displaced beacons must be correctly and accurately replaced by the contractor at his expense.
- 7.10. All setting out is either to be carried out by a qualified and registered land surveyor, or is to be checked by one. The contractor must be in possession of such land surveyor's setting out certificate.
- 7.11. The proposed finished floor levels, and the extent of any cut and fill operations on the site, the disposal of any spoil material, and the construction of any retaining structures, are to be agreed on site by the MHOA.
- 7.12. The treatment of all storm water runoff both during construction and after completion of the building works, and any erosion prevention measures, must be agreed by the MHOA.
- 7.13. Construction signage must be erected as stipulated by the MHOA. Only MHOA-approved signage may be erected or displayed.
- 7.14. Prior to commencement of construction, the site is to be inspected by the MHOA, which shall ensure that all of the above stipulations are complied with.

**8. CONSTRUCTION FEE AND INSURANCE**

- 8.1. On signature of this agreement by all parties, and prior to commencement of any construction on the site, the Member shall pay to the MHOA a non-refundable construction fee of R15, 000 and a refundable building deposit of R15, 000. The non-refundable portion to be utilised by the MHOA towards the maintenance and upgrading of the services and the common property. The remainder of the fee is refundable subject to inspection on completion of the developed property, provided that no damage has been caused by the member, his or her contractors or sub-contractors to any of the common property during the course of construction and the payment of any unpaid fines. Completion of the developed property means when the local authority (the Msunduzi Municipality) issues an occupation certificate
- 8.2. The Member hereby acknowledges that the MHOA has the sole discretion to increase the fee at any time should the contractor or his staff exhibit a tendency towards non-compliance with these terms and conditions. It should further be noted that, in the event of the build construction exceeding the allowed 18 months (which commences on date of site commencement certificate issued by MHOA) four times the monthly levy will be payable. In the event of the build construction exceeding 24 months from the date of the site commencement certificate issued by MHOA the monthly levy payable shall be eight times the monthly levy
- 8.3. On conclusion of the construction work, the contractor shall restore all pavements, roadways, verges, ditches and drainage channels to their original condition, ensure positive drainage with no standing water, clean the entire site of all unused materials, construction debris and refuse, both organic and inorganic, and remove all temporary fencing and signage.
- 8.4. Where necessary, verges are to be levelled to their original condition, grass sods laid, and any trees damaged or destroyed are to be replaced in accordance with the MHOA's instructions.
- 8.5. The contractor must arrange for an inspection of the site by Estate management prior to the issue of a completion certificate.
- 8.6. The costs of any remedial work necessary in terms of clauses 8.2 and 8.3, or any other work resulting from the non-compliance by the contractor of any of these provisions, will be for the account of the Member.
- 8.7. The MHOA will ensure that action is taken against the Member to retrieve any expenses incurred by it in carrying out any repairs or remedial work resulting from the building activities which have not been satisfactorily addressed by the contractor.
- 8.8. The MHOA may issue fines or penalties against the Member during the course of the contract for any issues of non-compliance with the BPA, instructions from Estate management, or Estate rules.
- 8.9. The contractor shall take out at his own expense adequate public liability insurance, and shall insure the works for the duration of the contract.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

8.10. The contractor hereby indemnifies all Estate entities and structures against any third party claims for damages arising from any acts or omissions by himself, his employees, or any sub-contractors, contract labourers, suppliers or agents.

## **9. BEHAVIOUR OF SITE PERSONNEL**

- 9.1. All site and contractor personnel, suppliers and agents are expected to behave in a workmanlike, professional and considerate manner at all times and their behaviour may not unreasonably create a disturbance to other residents or activities on the Estate.
- 9.2. The MHOA shall have the right to control behaviour and noise generated by workers and their activities, to ban disruptive or disrespectful workers from the Estate, and at its sole discretion close down building operations for non-compliance with this provision, if necessary.
- 9.3. All contractor personnel shall be suitably dressed and identifiable i.e. identical coloured overalls or t-shirts of the same colour with company name by means of security identity tags at all times whilst on the Estate. No casual labour is permitted on site. All labour must be in the employ of the contractor or his agents. All contractor personnel will be required to produce a South African barcoded ID book prior to the issuing of an access card. Contractors are reminded this is a time consuming operation and should not expect to obtain cards on the day of commencement on site. Prior arrangements should be made by appointment with the Security Manager
- 9.4. All construction activities will be confined to the construction site fenced area. Labourers are not permitted to leave the construction site on foot for any reason. Site personnel are only permitted to leave the construction site in the exercise of their duties, and then only by vehicle.
- 9.5. In the case of a contractor carrying out construction activities on more than one site on the Estate, movement of personnel between sites is restricted to vehicular transport.
- 9.6. The golf course, golf club buildings and parking areas are out of bounds to all contractor personnel and vehicles.
- 9.7. Contractors are themselves ultimately responsible for the conduct of their labour, sub-contractors, suppliers and agents on the Estate.

## **10. COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (OHS ACT 83 OF 1993), CONSTRUCTION REGULATION 84 OF 2014 AND RELEVANT REGULATIONS AND THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT (COIDA ACT 130 OF 1993)**

- 10.1. The role of the MHOA and the Estate Manager with regard to this legislation is to facilitate and enable compliance, not to police or enforce compliance;
- 10.2. The client must ensure adherence to all the relevant legislation, with specific reference to Section 5 of the Construction Regulation;
- 10.3. The principal contractor and sub-contractors must ensure adherence to all the relevant legislation, with specific reference to Section 7 of the Construction Regulation;
- 10.4. Principal contractors and sub-contractors must be registered with the Compensation Commissioner and be in possession of a valid Letter of Good Standing;
- 10.5. The principal contractors are responsible to ensure that all sub-contractors have a site specific Health and Safety File, and that all sub-contractors comply with the relevant legislation;
- 10.6. The Health and Safety Files must be on site at all times for the duration of the activities on site;
- 10.7. On completion of the contract, the principal contractor must consolidate all H&S files for the site, including those of sub-contractors, and hand a consolidated pack to the owner, who must retain the documentation for 5 years after completion of the project;
- 10.8. The principal contractor shall appoint a qualified and experienced supervisor or foreman to control the site, who is to be on site or immediately available during working hours, and will be deemed to represent the principal contractor in that person's absence.
- 10.9. No such supervisor or foreman shall control more than three sites on the Estate at the same time.
- 10.10. The principal contractor shall ensure that his site and site personnel comply with all relevant provisions of the current Occupational Health and Safety legislation at all times.
- 10.11. The Act and Regulations are available on [www.labour.gov.za](http://www.labour.gov.za)

## **11. SITE ACCESS AND THE USE OF STREETS AND VERGES**

11.1. The roads on the Estate are private, and are maintained by the MHOA on behalf of its members. The contractor shall ensure that all vehicles use the roads with due care and consideration in terms of damage to infrastructure, damage to other vehicles, and the safety of pedestrians, passengers and wildlife.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

11.2. Should any of the road surfaces, kerbs/edging, verges, landscaping, trees, shrubs or plants, Telkom and electricity manholes or cables, street lights, sewer manholes or connections, irrigation valves or piping, municipal water manholes, valves or pipes, fire hydrants, road signage, security fencing, infrastructure or hardware, or any other Estate or municipal services or assets, be damaged by the said vehicles or persons under the control of the contractor or his agent, then the contractor shall be responsible for repairing such damage at his own expense. The contractor shall ensure that precautionary measures are taken at all times to prevent such damage.

11.3. The speed limit on the Estate is 30 kph on asphalt surface and 20 kph on a brick-paved surface, however the roads are private, and are designed to narrower lane widths than drivers will encounter outside the Estate. The contractor shall ensure that all his vehicles, and all heavy vehicles transporting materials to site are driven well within the speed limit, and proceed with care at all times. Non-compliance with this provision may result in the imposition of a fine or the banning of the supplier's or contractors vehicles from the Estate

11.4. Construction or supplier vehicles may not park in any area other than on the building site or on the verge adjacent to the building site and only during working hours.. Vehicles shall be parked with due consideration for other vehicles or pedestrians using the street. Any damage to private or Estate property caused by the parking of vehicles, the off-loading of materials, or any other construction activity, must be repaired by the contractor immediately on instruction from Estate management at the contractor's expense.

11.5. The contractor hereby indemnifies the Estate and Estate management against any claims for loss or damage which may occur as a result of non-compliance with these provisions.

## **12. MATERIAL DELIVERY AND STOCKPILING**

12.1. Due to the narrower road widths on the Estate, material delivery is restricted to non-articulated vehicles of a maximum size of 10 tonnes.

12.2. Materials may only be delivered during normal working hours. 7.30 – 16.30 Mon to Fri

12.3. Delivery vehicles, and all other vehicles performing work for the contractor, must be registered with Security and must sign in at the relevant controlled access point and/or comply with all security requirements as modified from time to time.

12.4. Contractors are to ensure that all delivery vehicles are given clear instructions on how to get to the building site. The nature of the road infrastructure and terrain prohibits turning opportunities, and this stipulation must therefore be strictly adhered to. Should vehicles become "lost" on the Estate, causing damage or inconvenience, the contractor may be fined for non-compliance with this provision.

12.5. Materials may only be stockpiled on the building site, unless prior written permission is obtained from Estate management to stockpile materials on adjacent sites, or in designated staging areas.

12.6. Materials may not be dumped or tipped in any areas unless prior written permission is obtained from Estate management. Materials must be properly handled and stacked in designated stockpile areas

12.7. Some areas of the Estate are accessed via narrow private lanes and common driveways, which will impose further restrictions on material delivery and contractor vehicle access. Contractors are to acquaint themselves fully with the restrictions applying to any particular site or development area, and are to agree on access and delivery procedures with the MHOA.

## **13. CONSTRUCTION PERIOD**

13.1. The owner agrees to complete building construction within eighteen months from commencement, which is the date of signature by Estate management of the Estate commencement certificate, or such period as may be agreed or stipulated by the MHOA. The contractor shall ensure that building activities are continuous during the construction period, and are managed to achieve completion within the agreed period.

13.2. Should building operations stop for a period of longer than 48 hours for reasons other than inclement weather or causes beyond the control of the contractor, fines will be imposed.

13.3. Non-compliance may result in the imposition of fines on the property owner, to be determined by the MHOA from time to time, at its sole discretion.

13.4. Any construction work not completed within the agreed period shall be deemed to be a nuisance and the MHOA shall be entitled to remove such nuisance or complete the work at the cost of the owner.

## **14. STANDARD OF MATERIALS AND WORKMANSHIP**

14.1. In order to protect and preserve the quality of development within the Estate, the contractor shall ensure the highest quality of materials and workmanship at all times. The MHOA shall be entitled to raise issues of poor quality with the property owner and contractor, and shall be entitled to demand remedial action should there be reasonable grounds.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

14.2. As stated above, the contractor shall maintain the building site and any other areas of the Estate used during the building activities to the highest standards possible, and shall leave the stated areas in a clean and rehabilitated state on completion of the building works.

**15. CERTIFICATES**

15.1. A VCCE Site Handover Certificate will be provided by Estate management after the following steps have been completed:

- 15.1.1. Approval of building plans by the ARC and the Municipality, or written permission from the Municipality to commence construction pending final approval of building plans.
- 15.1.2. Signature of the Building Performance Agreement
- 15.1.3. Signature of the Estate Rules.
- 15.1.4. Payment of the construction fee and deposit.
- 15.1.5. Completion of a site inspection with the architect/principal agent and the Estate Manager.
- 15.1.6. Identifying, verification and flagging of site beacons by the contractor.
- 15.1.7. Setting out and signing off of designed finished floor levels, which must take into account neighbouring properties and topographical constraints. Final approval of the MHOA is required in this regard.
- 15.1.8. Establishment of temporary connections for water and electricity, or proof of application therefore.
- 15.1.9. Establishment of and agreement with Estate management for security clearance, access routes and restrictions, material stockpile areas, refuse areas, environmentally sensitive areas or assets, erosion protection measures, parking areas, and any other issues which may be applied by Estate management during the plan approval process and up to commencement of construction.

15.2. A VCCE Site Handback Certificate will, on application by the owner, be provided by the MHOA, independent of any Local Authority or Architect certificates of completion, provided that

- 15.2.1. all building work has been completed in accordance with the approved plans and Estate regulations and a completion certificate has been issued by Msunduzi Municipality
- 15.2.2. that landscaping has been completed in accordance with the approved landscaping plans
- 15.2.3. site and Estate areas used during the contract have been suitably cleaned, repaired and rehabilitated.

16. This certificate will give the owner the right to occupy the building, and will allow a refund of any construction deposit monies which may be due to the Owner. If the MHOA is not able to issue the Completion Certificate, it must set out the reasons why, and allow the Owner/contractor a reasonable time to rectify any problem areas.

**17. BREACH AND PENALTIES**

In the event of the contractor or any of his employees, sub-contractors, suppliers or agents being in breach of any obligations under this agreement, the MHOA shall be entitled to one or more of the following remedies:

- 17.1. Written notification to the contractor to remedy the breach within 24 hours.
- 17.2. Prohibition of access to the site and/or Estate until the breaches have been remedied, or until the contractor is in a position to and is willing to remedy the breach.
- 17.3. Insistence on rectification of the breach at the contractor’s expense.
- 17.4. Imposition of a fine as follows, in addition to the costs of any remedial action required as a result of the offence:

First Offence	:	R5,000.00
Second Offence	:	R10,000.00
Third Offence	:	R20,000.00

17.5. Banning of the contractor from the Estate for a period to be decided by the MHOA.

17.6. Permanent banning from the Estate.

**18. NON-WAIVER**

No indulgence which any party may give to the other party in terms of this agreement, shall constitute a waiver by the former of any of its rights under this agreement.

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_

**19. VARIATIONS OR AMENDMENTS TO BUILDING PERFORMANCE CONTRACT**

No variation or amendment to this agreement shall be effective unless it is reduced to writing and signed by or on behalf of the parties.

**20. INDEMNITY**

All persons entering this Estate or making use of its facilities do so entirely at their own risk. The Association, its employees and agents will not be liable to compensate any person for any loss or damage howsoever suffered as a result of any act or omission occurring anywhere on this Estate.

Signed: ..... (Contractor)

Date: .....

Witness: .....

Signed: ..... (Owner)

Date: .....

Witness: .....

Signed: ..... (Architect)

Date: .....

Witness: .....

Signed.....(Project Manager)

Date.....

Signed:.....(MHOA)

Date:.....

Witness:.....

(Initial) Owner \_\_\_\_\_ Contractor \_\_\_\_\_ Project Manager \_\_\_\_\_