

ANNEXURE D

**BUILDING CONTRACTOR'S CODE OF CONDUCT
AGREEMENT**

THE MAREMMANA HOME OWNERS' ASSOCIATION

BUILDING CONTRACTOR'S CODE OF CONDUCT AGREEMENT

ENTERED INTO BY AND BETWEEN

STRATOVEST 117 (PROPRIETARY) LIMITED

Registration Number 2002/023831/07 and its successor/s in title or assigns

(hereinafter referred to as the "Developer")

AND

(hereinafter referred to as the "Owner")

AND

(hereinafter referred to as the "Building Contractor")

1. PREAMBLE

This agreement governs the conduct of building contractors and/or building activity in the Development and may be amended from time to time by the Trustees. The primary intention of this agreement is to ensure that all building activity is conducted with the minimum of inconvenience and disruption to residents. The Building Contractor's Agreement and Code of Conduct shall be binding on all Owners and Building Contractors in the Development. It shall be the responsibility of the Owner to ensure that his Building Contractor complies with this Agreement and with the relevant provisions of the Constitution, the Architectural & Urban Design Controls and the Conduct Rules.

2. RECORDAL

- 2.1 The Owner desires to construct a dwelling and/or improvements on the portion.
- 2.2 The Owner has appointed the Building Contractor for the construction/erection of the dwelling and/or improvements.
- 2.3 The Developer and/or the Association wish to ensure that the construction/erection of the dwelling and 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, and also to ensure that such construction/erection is undertaken with due consideration to environmental and other factors so as not to cause any inconvenience to the other owners within the Development, and generally to ensure that such work is undertaken in an orderly and harmonious manner, all of which the Owner and Building Contractor confirm to be in the interests of the Association.
- 2.4 To attain the aforesaid objectives, the Owner and Building Contractor bind themselves jointly and severally in favour of the Developer and Association for the fulfilment of the obligations contained herein.

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement, unless the context otherwise indicates:
 - 3.1.1 **Agreement** means this Building Contractor's Code of Conduct Agreement.
 - 3.1.2 **Architectural & Urban Design Controls** means the Architectural & Urban Design Controls prepared for and applicable to the Development. Both the Owner and the Building Contractor by their signatures hereto, confirm receipt thereof and acknowledge being fully conversant with all provisions thereof.
 - 3.1.3 **Association** means the Maremma Home Owners' Association.
 - 3.1.4 **Association's Architect** means an Architect as nominated and appointed by the Developer or the Trustees.
 - 3.1.5 **Building Contractor** means the Building Contractor and its employees and /or sub-contractors and for the purpose of any claim against the Building Contractor in terms hereof, will include liability for any act or omission by any employee of the Building Contractor and/or its sub-contractor and/or any person acting upon instructions of the Building Contractor in connection with the work to be undertaken by the Building Contractor, inclusive of persons effecting delivery of materials to the building site. It is the responsibility of the Building Contractor to inform the abovementioned "persons" of the contents and responsibilities in terms of this Agreement.
 - 3.1.6 **Developer** means Stratovest 117 (Proprietary) Limited Registration Number 2002/023831/07 and its successor/s in title or assigns.
-

- 3.1.7 **Development** means the entire development known as Maremma.
 - 3.1.8 **Dwelling** means a building or place of residence constructed in accordance with the Architectural & Urban Design Controls
 - 3.1.9 **Improvement** means any building or structure of whatsoever nature constructed or erected on the portion.
 - 3.1.10 **Local authority** means the Theewaterskloof Municipality and its successors in title.
 - 3.1.11 **Owner** means the registered owner of the portion within the Development.
 - 3.1.12 **Managing agent** means the managing agent appointed by the Developer or the Association from time to time.
 - 3.1.13 **Portion** means the portion, upon which the Owner and the Building Contractor propose to construct a dwelling and improvements.
 - 3.1.14 **Trustee** means the trustee committee of the Association.
 - 3.1.15 Words and expressions used herein and in the Constitution of the Maremma Home Owners Association shall have the meaning assigned to it in the Constitution.
 - 3.1.16 Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.
- 3.2 The clause headings are for convenience and shall be disregarded in construing this Agreement.
- 3.3 When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.4 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 3.5 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.
- 3.6 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 it 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.

4. DAMAGE DEPOSIT

- 4.1 The Building Contractor shall, before commencing any work of whatsoever nature on the portion, pay to the managing agents of the Association an amount of **R20 000,00 (TWENTY THOUSAND RAND)**, which will be invested in an interest bearing trust account for the benefit of the Association. The said deposit shall be used to defray expenses incurred in repairing damage of whatsoever nature that may be caused by the Building Contractor to the Development or any portion thereof. However any claim arising against the Building Contractor in respect of damages shall not be limited to the amount of the said deposit, but the Association shall be entitled to recover from the Building Contractor
-

and/or Owner, in addition to the deposit, the amount by which the reasonable costs of reinstatement resulting from such damage exceeds the said deposit. The Association shall quantify the cost of any damage attributable to the Building Contractor and the amount so determined shall be final and binding on the Building Contractor and/or the Owner.

- 4.2 The Association is irrevocably authorized and empowered to deduct the amount of any claim for which the Building Contractor and/or Owner is liable in terms of the foregoing, by way of a deduction against the said deposit. The Building Contractor and/or the Owner shall remain liable to the Association for payment of the amount (if any) by which the claim exceeds the deposit.
- 4.3 Upon final completion (as defined in the Constitution) of all work by the Building Contractor on the portion, the Owner must, prior to occupation, apply for a final inspection, executed by the Association's Architect. Once a completion certificate is issued by the Association's Architect and provided there is no claim pending against the Building Contractor in terms of the foregoing, the Building Contractor shall be entitled to a refund of the deposit mentioned in 4.1 above less the scrutiny fee of the Association's Architect.
- 4.4 If a claim is made against the Building Contractor pursuant to the provisions of this clause 4, the Association shall, in addition to the rights aforementioned, be entitled to recover from the Building Contractor and/or the Owner who shall be liable to the Association for payment of all the Association's legal costs incurred on the scale as between attorney and own client.

5. ARCHITECTURAL & URBAN DESIGN CONTROLS

The Building Contractor undertakes that throughout the construction/erection of the dwelling and/or improvements he will not knowingly deviate from the provisions of the Architectural & Urban Design Controls as amended from time to time. Wherever the provisions of the Architectural & Urban Design Controls and/or this Agreement are contradictory and/or in conflict with the building contract concluded or to be concluded between the Owner and the Building Contractor for the construction/erection of the dwelling and/or improvements, then the provisions of the Architectural & Urban Design Controls and/or this Agreement (as the case may be) shall prevail.

6. NO DEVIATION

The Owner and/or Building Contractor acknowledge that the Developer and/or Association will, from time to time and at all times relevant, be entitled to enforce compliance with the relevant provisions of the Constitution, the Architectural & Urban Design Controls and the Conduct Rules with regard to the construction/erection of the dwelling and/or improvements. The Building Contractor shall, in respect of the construction of the dwelling and/or improvements, at all times adhere to the approved plans and shall in no way deviate therefrom.

7. AVAILABILITY OF PLANS

Prior to and during construction/erection of the improvements, the Building Contractor shall ensure that a copy of the working drawings and plans in respect of the dwelling and/or improvements as approved in terms of the Architectural & Urban Design Controls is on site and available at all times to the Building Contractor's employees and sub-building contractors, as well as being available for inspection by the Developer/Trustees or nominee during all working hours.

8. SITE PREPARATION

- 8.1 No construction may commence until the following provisions have been adhered to:
- 8.1.1 The Building Contractor shall have paid the damage deposit to the managing agent referred to in clause 4 above.
 - 8.1.2 The Building Contractor shall ensure that the building site/portion is suitably screened off with a suitable shade netting screen or any other form of boarding according to the specifications of the Developer/Trustees or nominee.
 - 8.1.3 The Building Contractor shall install a water connection, water meter and tap on site in accordance with the specifications of the Developer/Trustees or nominee.
 - 8.1.4 The Building Contractor shall have provided a temporary electrical connection point, which must be approved by the appointed electrician for the Development.
 - 8.1.5 The Building Contractor shall have erected a builder's board in accordance with the specifications of the Developer/Trustees or nominee, displaying the name and telephone number of the Building Contractor and that of the Owner.
 - 8.1.6 The Building Contractor shall have provided suitable builders' toilet facilities in accordance with the specifications by the Developer/Trustees or nominee, which must be kept and maintained in a clean and hygienic condition.
 - 8.1.7 The Building Contractor shall have constructed a temporary building shed or storage shed in accordance with the specifications of the Developer/Trustees or nominee.

9. ACCESS CONTROL

- 9.1 All Building Contractors must obtain an access permit from the Association, which will be issued by the managing agent.
- 9.2 The Developer/Trustees shall at any time be entitled to impose controls with regard to access to the Development and to introduce such security measures as it considers to be necessary as a result of which the Developer/Trustees or nominee shall be entitled to deny access to the Development to the Building Contractor, its employees or sub-contractors, should the Developer/Trustees or nominee consider the said persons to be in breach of such controls or security measures, in which event the Owner shall have no claim against the Developer and/or the Association arising therefrom. The Developer/Trustees is required to give notice to the Building Contractor of any access control measures implemented.
- 9.3 Where it is necessary to gain access across any paved roadway in the Development, or to travel on any portion of a paved roadway in the Development, vehicles are restricted to 6 (six) cubic meters capacity and no articulated vehicles are allowed, with the exception of roof truss and furniture removal vehicles.
- 9.4 Employees of the Building Contractor may enter or leave the Development by vehicle only and workers on foot will not be permitted entry to the Development. Employees of the Building Contractor must be transported by vehicle to the relevant sites and will not be allowed to walk from one area to another. It is the responsibility of the Building Contractor to ensure that no unauthorised person is present on the portion while building works are being effected.

10. TRAFFIC CONTROLS

- 10.1 Only licensed drivers are permitted to drive vehicles on the Development.
-

- 10.2 For security and safety reasons the speed limit on the Development for all Building Contractors' vehicles is 30 kilometres per hour.
- 10.3 No Building Contractors, sub-contractors, employee and/or delivery vehicles entering the Development will be allowed to be overloaded with personnel or material. No personnel will be allowed to hang on to any moving vehicle or other equipment.
- 10.4 The Building Contractor is responsible for all his employees, sub-contractors and delivery vehicles to ensure adherence to this Agreement.

11. ROADS AND ROAD VERGES

- 11.1 Building Contractors shall ensure that the road in front of their building site is at all times swept clean. This minimizes damage and ensures longevity of the road surface.
- 11.2 Building Contractors shall ensure that the kerbs and paved verges in front of their building sites are adequately protected from damage by the building operations.

12. DELIVERIES

- 12.1 All delivery vehicles shall leave the Development immediately once the delivery is complete.
 - 12.2 Deliveries shall be affected only during the hours recorded in clause 14.2, and not on Saturdays.
 - 12.3 Vehicles carrying abnormally large or heavy loads may be denied access to certain parts of the Development. Similarly, abnormally long or articulated vehicles will not be permitted entry for practical reasons. Suitable advance arrangements must be made with suppliers in this regard.
 - 12.4 Owners and/or Building Contractors will be liable for damage done by any vehicle associated with activity on their site and recovery of any related costs from owners or drivers of those vehicles will be the responsibility of Owners and Building Contractors.
 - 12.5 Where materials are off-loaded by a supplier and encroach onto the verges or road, these materials must be moved immediately onto the portion by the Building Contractor. No material must be allowed to remain on the verges or road and it is the Building Contractor's responsibility to clean the verges and road of all such materials. The same applies to sand or rubble washed or moved onto the verges or road during building operations.
 - 12.6 Any diesel and/or oil spillage caused by any construction or delivery vehicle on any paved roadway or sidewalk shall immediately be cleaned by the relevant Building Contractor and/or Owner.
 - 12.7 The mixing of building materials must occur within the confines of the portion. If any spillage of building material occurs on any paved roadway or sidewalk in the Development, the Building Contractor and/or Owner is responsible for ensuring that such spillage is immediately cleaned.
 - 12.8 The delivery of concrete has the potential of causing the most damage to the road surfacing and vegetation and the following provisions must be adhered to with regard to concrete deliveries:
 - 12.8.1 Building Contractors must ensure that suppliers of concrete are informed of the exact address where a delivery has to be made.
-

- 12.8.2 The washing off of concrete delivery vehicles must take place within the confines of the building site and spillage and runoff contained within this site. Under no circumstances may concrete be spilt onto the road surface and the Building Contractor will be held responsible for the repair to the road if it occurs.

13. CONTROL OF LABOUR

- 13.1 Throughout the construction/erection of the dwelling and/or improvements, the Building Contractor is responsible for the discipline, control and good behaviour of his employees and/or sub-building 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 Building Contractor and/or sub-building contractors in respect of the work undertaken on the portion.
- 13.2 Should the Association be dissatisfied with the conduct of any Building Contractor, sub-contractor or supplier, the Association may rectify as deemed necessary and/or suspend building activity until such undesirable conduct is rectified.
- 13.3 Building Contractors and/or Owners shall be responsible for any damage caused by them or their agents on the Development including, without affecting the generality hereof, damage to kerbs, verges, plants on the sidewalks, common areas, and private property.
- 13.4 If, when the construction/erection of the dwelling and/or improvements occurs, there are existing dwellings on adjacent immovable properties the Building Contractor shall make every endeavour to respect the privacy of the residents of such dwellings and generally to cause least inconvenience to such persons.
- 13.5 Noise must be kept to a minimum and where objections are lodged by nearby residents due to excessive noise, the Association will take appropriate action.
- 13.6 No Building Contractor, sub-contractor or employee shall be permitted on the portion outside the permitted building activity hours.
- 13.7 Building Contractors are responsible to ensure that sub-contractors, employees are confined to the portion during building activity hours.
- 13.8 Any person found disturbing, harming or destroying any animal, reptile or bird, or setting any traps or snares will be summarily evicted from the Development and may be prosecuted in terms of Wildlife Protection Legislation.
- 13.9 Vehicles are confined to the specific portion where contractors are at work. Where no parking space is available vehicles will be parked in such a way that it does not cause any obstacle to other road users.

14. BUILDING HOURS

- 14.1 No building activity shall be undertaken on Sundays or public holidays.
- 14.2 Building activity on the portion shall be confined to Saturdays and weekdays and only between the hours of:
- 14.2.1 07h00 and 18h00 on Weekdays, and
- 14.2.2 08h00 and 14h00 on Saturdays.
-

15. BUILDING ACTIVITIES

- 15.1 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. Any damage caused to the paved roadway/sidewalk must be made good by the Building Contractor immediately once the damage becomes evident.
 - 15.2 All refuse and litter including cement bags and plastic bags must be collected daily and placed in bags and removed from the Development regularly or placed in waste bins/containers securely covered when site is vacated. These bins/containers are to be supplied by the Building Contractor at the Building Contractor's cost. The bins/containers must be emptied and the contents removed from the Development at appropriate intervals, but in any event, not less than once a week. The burning of rubbish and fires generally is not permitted under any circumstances.
 - 15.3 The Building Contractor shall ensure that all building rubble is accumulated in a suitable pre-designated area within the boundaries of the portion and must be removed on a weekly basis or as otherwise required by the Developer/Trustees or nominee.
 - 15.4 Excavation of foundation soil may only be dumped within the Development, in an area, which specifically was allocated for this purpose by the Developer/Trustees or nominee.
 - 15.5 The Building Contractor shall generally ensure that the portion is at all times kept neat and free of litter or other unsightly waste.
 - 15.6 If the Building Contractor fails to keep the portion in an acceptably tidy state or fails to have the rubble removed, then the Developer and/or the Trustees shall, without prejudice to its other rights, have the right to clean the site and/or remove the rubble the costs whereof shall be for the account of the Building Contractor.
 - 15.7 Under no circumstances will the dumping of any building material or rubble be permitted on any portion of the Development or any surrounding area and the Building Contractor is required to make his own arrangements for disposing of materials at a spoil site off the Development.
 - 15.8 Throughout the construction/erection of the dwelling and/or improvements effective dust control measures must be implemented by the Building Contractor.
 - 15.9 All activities relating to the construction must be confined to within the portion boundary where construction is taking place and shall not encroach onto adjacent sites. This relates to location of staff, placing of storage bins etc.
 - 15.10 A suitable fence must be erected on all the site boundaries other than the road boundary before building activities commence.
 - 15.11 The Building Contractor must keep the appearance of his building site neat and tidy at all times. Litter must be removed from the site on a daily basis. No litter may be stored or mixed in amongst building rubble. Should the Building Contractor not comply with the removal of building rubble, the rubble will be removed by an outside contractor and the costs thereof claimed from the Building Contractor. The Building Contractor will be denied access to the Development until such costs have been paid in full.
 - 15.12 Washing of vehicles and equipment will not be allowed on the Development and must be carried out elsewhere.
 - 15.13 No fires will be allowed on any part of the Development. Fire extinguishers are required to be on the portion/site at all times.
 - 15.14 If a store is placed on site it must be acceptable, adequate and secure, properly tied down and placed on the portion according to the specifications of the Developer/Trustees.
-

- 15.15 Where verge landscaping has already been completed, only limited off-street storage and site access will be available. Arrangements must be made with the Developer/Trustees or nominee to remove plant material where possible or to protect it during construction. The Developer/Trustees reserves the right to replace plant material at the Owner's expense should material be damaged.
- 15.16 Sand heaps must be covered before leaving the premises each day. In addition the heaps must be covered during working hours if wind is causing it to be blown away. Loose sand must not be left to spread over the building site and must be regularly heaped. All heaps to be covered with a suitable tarpaulin or shade cloth, which must be adequately secured. Building Contractors will be held responsible should neighbours be affected by wind blown sand.
- 15.17 Owners and Building Contractors are responsible for ensuring that all legislated safety requirements are complied with.

16. SERVICES

- 16.1 The Building Contractor will obtain water for the work to be undertaken on the portion from the water connection on the portion. Under no circumstances may the Building Contractor interfere with any water supply to the Development. The Building Contractor shall be liable for water costs supplied to the portion for the duration of construction. Should the Building Contractor default payment at any stage the supply will be cut off and a reconnection fine will be invoked on the Contactor. Re-connection will only occur when the arrears plus fine are settled.
- 16.2 The Building Contractor may not dispose of any building material, contaminated water rubbish into the sewer system.
- 16.3 The Building Contractor may not dispose of any building material, contaminated water or rubbish into storm water system and nor may the Building Contractor wash paint or cement based products into the storm water system or onto landscaped and paved areas.

17. TREES/VEGETATION

The Building Contractor shall ensure that the construction/erection of the dwelling and/or improvements in no way causes damage to trees, vegetation or landscaping on the Development and he shall take steps to protect such trees and vegetation, where necessary. Should the Building Contractor cause any such damage, the Building Contractor shall be liable for costs to remedy such damage.

18. OWNER

The Owner undertakes to co-operate fully with the Building Contractor and the Developer and/or Trustees or nominee so to ensure that the spirit and intent of this Agreement are complied with. The Owner acknowledges that he has employed the Building Contractor and is responsible to ensure compliance by the Building Contractor with the provisions of this Agreement, including with the relevant provisions of the Constitution, the Architectural & Urban Design Controls and the Conduct Rules.

19. DOMICILIUM/NOTICES

- 19.1 The parties choose as their domicilia citandi et executandi for all purpose under this Agreement, whether in respect of Court process, notices or other documents or communications of whatsoever nature, the following addresses:
-

19.1.1 **Developer:**

.....
.....
.....

TEL:..... FAX:..... E-mail:.....

19.1.2 **Owner:**

.....
.....
.....

TEL:..... FAX:..... E-mail:.....

19.1.3 **Building Contractor:**

.....
.....
.....

TEL:..... FAX:..... E-mail:.....

19.2 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 fax or by e-mail.

19.3 Any notice to a party:

19.3.1 sent by prepaid registered post in a correctly addressed envelope to its domicilium citandi et executandi shall be deemed to have been received on the third day after posting (unless the contrary is proved);

19.3.2 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery;

19.3.3 sent by fax or e-mail during normal working hours to the fax number or e-mail address specified herein for the addressee shall be deemed to have been received by the addressee 4 (four) hours after the time of transmission/disposal or within 12 (twelve) hours of transmission/disposal where it is transmitted/sent outside business hours.

19.4 Any of the parties referred to in clause 19.1 may, by notice in writing to the other parties, alter its address set out above 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.

19.5 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.

20. GENERAL BREACH

- 20.1 In the event of the Owner or Building Contractor (inclusive of it's employees or sub-contractors) breaching any of the provisions of this Agreement then and in such event the Developer and/or the Trustees shall be entitled to all or any of the following relief:
- 20.1.1 to deny the Building Contractor, its employees and/or subcontractors access to the Development and/or
 - 20.1.2 to cancel this Agreement, in which event the Building Contractor shall not be entitled to continue construction on the portion and/or
 - 20.1.3 to hold the Owner and/or Building 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 and/or
 - 20.1.4 to impose upon the Building Contractor a penalty as determined from time to time by the Trustees) and should the Building Contractor fail to pay such penalty/penalties, to deny the Building Contractor, its employees and its subcontractors access to the portion and the development.
- 20.2 Should the Developer and/or the Trustees take such steps against the Owner and/or Building Contractor pursuant to a breach of this Agreement, the Developer or the Association (as the case may be) shall, in addition to the rights aforementioned, be entitled to recover from the Owner and/or Building Contractor all the legal costs calculated as between attorney and own client.
- 20.3 In the event of the Developer and/or Trustees exercising its rights in terms of this agreement, including the denial of access to the Building Contractor, its employees or sub-contractors to the portion or the Development, then any in such event the Owner, Building Contractor and its sub-contractors shall have no claim of any nature whatsoever against the Developer and Association.

21. INDULGENCES

No extension of time or indulgence granted by the Developer and/or the Trustees (as applicable) to the Building Contractor and/or the Owner shall be deemed in any way to affect, prejudice or derogate from the rights of the Developer or the Trustees (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.

22. ENTIRE AGREEMENT

This Agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

23. AMENDMENTS TO THE BUILDING CONTRACTOR'S CODE OF CONDUCT

The Trustees may by majority vote amend or add to the Building Contractor's Code of Conduct from time to time as may be deemed suitable to ensure the general well-being of and orderly co-existence of residents. Any such amendment shall take effect from the date of a resolution of the Trustees and shall form a binding part of any legal agreement between the parties to this Agreement.

24. OWN RISK AND LIABILITY

Owners, Building Contractors and any other person present on a portion and/or the common areas do so entirely at their own risk and hereby waives any right they may obtain against the Association to claim any damage incurred by virtue of damage to or loss of property or personal injury occasioned whilst present in the Development.

25. RESOLUTION OF DISPUTES

25.1 Should any dispute, question, or difference arise between any of the parties of this agreement, or between any of the said parties and the Association, in respect of:

- 25.1.1 the interpretation of;
- 25.1.2 the implementation or effect of;
- 25.1.3 their respective rights or obligations under;
- 25.1.4 a breach of any provision of;

this Agreement, such dispute shall be decided by Expedited Referee Procedures (ERP) in the manner set out in this Clause.

25.2 The ERP referred to in Clause 25.1 shall:

- 25.2.1 be conducted in an informal, summary manner on the basis that it shall not be necessary to observe or carry out the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence and may utilise interrogatory procedures; and
- 25.2.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
- 25.2.3 not be subject to the provisions of the Arbitration Act, No 42 of 1965.

25.3 The Referee shall be a practising advocate or attorney of not less than 10 (ten) years standing appointed by the Attorney within 7 (seven) days of being called upon in writing to make such appointment.

25.4 The Referee shall, after investigating the dispute, in giving his award have regard to the principles contained in this agreement, the Constitution, the Architectural & Urban Design Controls and the Conduct Rules, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of law and procedure need not be applied by him in arriving at his decision.

25.5 The Referee's decision shall be presented within 10 (ten) days after the conclusion of the ERP in a written award and he shall state the reasons for his decision therein. The Referee may determine that the cost of the ERP be paid either by one or other or both of the disputing parties as he in his sole discretion may deem fit.

25.6 The decision of the Referee made at such proceedings:

- 25.6.1 shall be final and binding on each of party to the proceedings;
 - 25.6.2 shall be carried into effect immediately; and
 - 25.6.3 may be made an order of the High Court having jurisdiction in the matter upon application by any party to the proceedings.
-

26. CONTRACT FOR THE BENEFIT OF THIRD PARTY

The provisions of this Agreement are for the benefit of the Maremanna Home Owners' Association, who shall be entitled at any time to accept the benefits of this Agreement.

THUS DONE AND SIGNED at _____ on this _____ day of _____

AS WITNESSES

1. _____

2. _____

FOR THE DEVELOPER

Who warrants that he is duly authorised hereto

THUS DONE AND SIGNED at _____ on this _____ day of _____

AS WITNESSES

1. _____

2. _____

FOR THE BUILDING CONTRACTOR

Who warrants that he is duly authorised hereto

THUS DONE AND SIGNED at _____ on this _____ day of _____

AS WITNESSES

1. _____

2. _____

FOR THE OWNER

Who warrants that he is duly authorised hereto
