



MEMORANDUM OF AGREEMENT

Painter's Code of Conduct

Entered into and between:

Homeowners Association: Kelderhof Country Village Homeowners Association

Represented by: Sonia Skinner

(Hereinafter referred to as the "HOA")

Member/Owner:

Registration/ID nr:

Erf No:

(Hereinafter referred to as the "Member")

Contractor:

Registration/ID nr:

Represented by:

Registration/ID nr:

(Hereinafter referred to as the "Contractor")

(The above-mentioned parties are all hereinafter referred to as the "contractual parties")

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1. DEFINITIONS

- 1.1 The terms used in this Code of Conduct shall be as defined in the Constitution of the HOA.
- 1.2 A copy of the Constitution of the HOA is available on the Kelderhof website and will form part of this Code of Conduct.
- 1.3 The Member/Owner means the member(s) to this Agreement who is/are also the registered owner(s) of the property.
- 1.4 Contractor means whoever the member duly appoints to do work (as per clause 1.6) in his/her/its capacity, be it a person, company, or close corporation.
- 1.5 Signatory means any person(s), signing on behalf of the contractor.
- 1.6 The member, contractor and/or signatory, when referred to collectively and being jointly and severally liable, are hereinafter referred to as '**responsible parties**'.
- 1.7 Partners mean any company, close corporation, person (being it an agent, personnel, sub-contractor, employee, staff; or a like) that is in partnership with, is assigned by and/or is employed by any of the responsible parties.
- 1.8 All painting, alterations, additions, and any similar activities done on the members property by the contractor and/or signatory (hereinafter referred to as '**work**')

2. PREAMBLE

- 2.1 The purpose of this Code of Conduct is to ensure integration between residential living and control over work, within the Estate with minimal impact to the environment. These terms and conditions of the Code of Conduct have been developed in terms of the best standard practice currently in place to achieve this goal. The HOA reserves the right to make amendments and additions to this document from time to time.
- 2.2 The Member are bound by this Code of Conduct by virtue of their membership to the HOA, which therefore bind all responsible parties.
- 2.3 A Member choosing to use the Code of Conduct, shall require the contractor and/or signatory, to furnish the HOA with a signed copy of the Painter's Code of Conduct, duly signed by the relevant responsible party, prior to commencing work in the Estate. Upon such signature, the Painter's Code of Conduct shall constitute a binding agreement between the HOA and the responsible parties.
- 2.4 If the contractor and/or signatory, has any partners, such responsible party in his/her/their personal capacity will together with the partners be liable for all the penalties incurred and will include a signed resolution to this Agreement stating that all responsible parties involved in the execution of this Agreement will be liable to the HOA, jointly and severally, from date of signature to the completion of the work, in terms of this Agreement.
- 2.5 The signatory, acting on behalf of the contractor and/or member, in the event of said signatory being a partner will also be liable individually in his/her/their personal capacity, jointly and severally, together with the responsible parties.

- 2.6 The responsible parties agree to having the capacity to act in accordance with this Agreement and take full responsibility and liability for all work to be done, on and around the Estate.
- 2.6 The responsible parties (where applicable) together with his/her/their partners will also be jointly and severally liable for all damages and/or penalties incurred (even though the Code of Conduct only refers to the contractor).
- 2.7 The responsible parties must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the HOA to terminate this Agreement and the relevant parties will be barred from doing work on the estate.
- 2.8 In the event of any of the responsible party's failure to complete work on 1 (one) erf the responsible parties will be precluded from commencing work on another and/or adjacent erf. If said responsible parties have already commenced work on another and/or adjacent erf, then said responsible parties will be liable for any debt or unpaid monies, that is due and payable, for the completion of the incomplete erf.
- 2.9 Copies of the following required pre-contract documentation must be issued to the HOA, before work can commence:

Breach of Clause 2.10: Penalty:

Should a responsible party commence work before the aforementioned Painter's agreement documentation has been delivered to the HOA, the responsible parties will be fined R1, 000 (one thousand rand) per week, respectively, and the HOA has the right to preclude the relevant parties all his/her partners from commencing work on the estate. If the relevant parties are in breach, this clause/penalty will be implemented immediately, without any exceptions.

3. PROTECTION OF PERSONAL INFORMATION ACT NO. 2 OF 2013 (POPIA)

- 3.1 The contractual parties agree to abide by and adhere to the POPIA and its amendments, at all times, as well as irrevocably agree and acknowledge that all information provided, whether personal or otherwise, may not be divulged and/or made use of and/or processed by the contractual parties and/or his/her/their partners, without his/her/their, prior written consent.
- 3.2 Non-compliance with POPIA is an offence and in the event of a security compromise, all contracting parties have to notify the Information Regulator (Ombudsman), as well as any person(s) whose personal information have been accessed or acquired by an unauthorized party.

4. QUALIFICATION AND CONTRACTORS

- 4.1 There is an obligation on the member to ensure that the responsible parties, where applicable, are duly registered with and fully paid-up members of the BIBC if there is a valid and binding sectorial agreement in place.

- 4.3 By signing this Agreement, the responsible parties, respectively, are at all times responsible for his/her/its/their partners, while on the Estate (see clause 2.7).
- 4.4 By signing this Agreement, all responsible parties acknowledged that they comply with all health and safety requirements and indemnify the HOA against any liability whatsoever and by whomsoever entering the premises of the Estate.

5. **RULES AND REGULATIONS**

The rules and regulations described below are intended to ensure that the quality of life for residents in the Estate is not unduly compromised and the impact to the environment is minimized by the work operations yet allowing for efficient painting or surface preparation by all responsible parties.

When any responsible parties are found to be in breach of the stated rules and regulations a penalty will be levied. The extent of the penalty is detailed below, with the description of each rule and regulation. The HOA will have the right to deny the responsible parties from further work on the Estate. In the event that the responsible parties breach the stated rules and regulations on an ongoing basis the HOA has the right to place the responsible parties on a list and he/she/they may be barred from working in the Estate, in the future, on any other project within the Estate.

The responsible parties may also not cause any nuisance which infringe(s) on the right of other member(s), if any relevant parties are in breach hereof a penalty of R1,000.00 (one thousand rand) will be charged.

5.1 Environmental controls: the member is aware that it is his/her responsibility, as the party that appointed the contractor and/or signatory, to oversee and take responsibility of all work done on the Estate

The responsible parties acknowledges that work is being done in an environmentally sensitive development and agrees to conform to all environmental controls specified in this document and revised from time to time.

5.2 Environmental Education

All responsible parties and his/her/their partners will be required to be briefed on the Painter's Code of Conduct. The main contractor and/or signatory must do these briefings before his/her/their partners will be allowed to work on the Estate.

Breach of clause 5.1 and 5.2: Penalty:

Relevant parties and his/her/their partners who have not been briefed will not be allowed to work on the Estate. Trespassers will be persecuted.

5.3 Limits of painting activity

All activities relating to the house-work specifically must be confined to/within the erf boundary where painting or surface preparation is taking place. It is the responsibility of the responsible parties to ensure that his/her/their partners do not leave the confines of the erf.

Breach of clause 5.3: Penalty:

5.3.1 House-work by the responsible parties will be stopped by the HOA until such time as the equipment has been moved to/within the erf.

5.3.2 The responsible parties will be fined R500 (five hundred rand) per transgression.

5.4 Site presentation and spoiling of excess material

The responsible parties will be expected to always keep the appearance of the site neat and tidy. Painter's rubble and litter must be removed from the site by 17h00 (seventeen hundred hours) on Friday each week. Refuse drums or mini skips must be supplied for the purpose of storing litter until removed from site. Painting rubble, litter and sand must at all times be neatly covered by shade netting in one designated area. No litter may be stored or mixed in/amongst painting rubble and/or sand. No material or painting rubble shall be spoiled on the Estate.

Breach of clause 5.4: Penalty:

5.4.1. Should a responsible party fail to comply with the removal of painting rubble and litter within a timeframe specified by the Estate's Painting Controller, the rubble will be removed by an outside contractor. The costs thereof shall be paid by the Association and deducted from the owner directly by Debit order, along with the Member's general levy who agrees to the deduction. Deductions will firstly be for damages, secondly for penalties and thirdly for outstanding debts/fees. The relevant party will be fined an additional R1,000 (one thousand rand) per offence.

5.5 Cleaning of vehicles/equipment

The washing of the responsible parties' vehicles and equipment, where applicable, will not to be allowed on the Estate and must be carried out elsewhere.

Breach of clause 5.5: Penalty:

The painting contractor and/or signatory (the responsible party) will be fined R500 (five hundred rand) per offence.

5.6 Fires

No fires will be allowed on any part of the Estate. The responsible parties are to provide fully operational fire extinguishers and comply with all necessary health and safety regulations in terms of the Health and Safety Act No. 85 of 1993, which are to be on site and adhered to by the responsible parties and his/her/their partners, at all times.

Breach of clause 5.6: Penalty

5.6.1 The painting contractor and/or signatory (the responsible party) will be fined R1,000 (one thousand rand) per offence.

5.6.2 The painting contractor and/or signatory (the responsible party) will in addition be held legally and financially responsible for any damage caused by the breach of this regulation

5.7 Smoking & Liquor

No smoking will be permitted on the estate except within a 5m (five-meter) radius of portable fire extinguisher. No liquor or consumption thereof will be allowed by the responsible parties and his/her/their partners, on site at any time.

Breach of clause 5.7: Penalty:

The responsible parties will be fined R100 (one hundred rand) per offence

5.8 Ablution facilities

The responsible parties shall provide temporary water-born or chemical toilets situated on the site for the use of his/her/their partners for the duration of the work period. The toilet must be situated as discreetly as possible, kept level and the door should be fastened at all times.

It will be the responsible party's duty to insure that the above-mentioned facilities are cleaned regularly and that all health and safety regulations in this regard are met and/or adhered to.

Breach of clause 5.8: Penalty:

5.8.1 The contractor and/or signatory (the responsible party) will be denied access to the Estate until such time as this regulation is complied with.

5.8.2 In addition the contractor and/or signatory (the responsible party) will be fined R500 (five hundred rand) per violation.

5.9 Hours of work Public / Private Time

5.9.1 Contractors, signatories and his/her/their partners may only be present on the Estate during the following public time hours:

Normal Working days	07:00 to 18:00
Saturday	08:00 to 12:00

Breach of clause 5.10.1 : Penalty:

5.10.1 Contractors, signatories and his/her/their partners will be escorted from the Estate by security during private times.

5.10.2 In addition, the responsible parties will be fined R500 (Five Thousand Rand) per transgression. Any continued transgressions will be an additional fine of R1,000 (One Thousand Rand) which will be payable by the responsible party.

5.9.2 Permission to work during private times:

Contractors, signatories, and his/her/their partners are not allowed on the Estate on Sundays and public holidays without the written permission of the HOA as these days are considered to be private time. Special applications for abovementioned to be present, on site during private time, should be lodged with the HOA at least 1 (one) week prior to the private time activity.

Breach, as for 5.9.1 above.

5.10 Paint Containers/Brushes etc.

The washing off of paint, the containers or paintbrushes used in the painting, must take place within the confines of the Member's erf and spillage and run-off contained within the erf. Under no circumstances may paint be spilled onto the road surface and the responsible parties will be held responsible for the repair to the road if this occurs.

Breach of clause 5.10: Penalty:

The responsible parties will be fined R1,000 (one thousand rand) per offence and, in addition, will be held liable for the costs of repairing all and/or any damage caused by the breach of paragraph 5.10.

5.11 Speed Limit

For security and safety reasons the speed limit on the Estate for all contractors, signatories and his/her/their partners vehicles is 30 (thirty) kilometres per hour. The responsible parties shall ensure that all his/her/their partners vehicles and delivery vehicles adhere to this rule. The speed shall be at the sole discretion of the Painting Inspector and/or the Estate Manager and/or Assistant Estate Manager.

Breach of clause 5.11: Penalty:

The responsible parties will be fined an amount of R500 (five hundred rand) per transgression. Continuous non-compliance will result in expulsion from the site.

5.12 Paint Approval

5.12.1 The painting contractor and/or signatory (the responsible party) must ensure that the colour the colour used has been pre-approved by the Painting inspector and/or an HOA representative. The approved invoice must at all times for inspection by the HOA's representative.

5.12.2 The Completion Certificate may only be completed thereafter once the work has been certified and that the house complies with the approved plan as adequately assessed by the Kelderhof Design Review Committee.

5.12.4 The painting contractor must ensure that the approved paint colours are applied using the manufacturer's recommended number of coats, to ensure proper coverage and long-term colour durability. Failure to comply may require repainting at the contractor's or owner's cost.

Breach of clause 5.16: Penalty:

5.12.1 The responsible parties will be required to repaint the property where the colours do not comply and/or in the opinion of the Estate Manager are not in compliance with the architectural guidelines.

5.13 Roads and Road Verges

5.13.1 The responsible parties must ensure that the road in front of the erf is at all times kept clean. This is to minimize damage and ensure longevity of the brick road surface.

5.13.2 The responsible parties must ensure that the kerbs and sidewalks in front of their site are adequately protected from damage by the painting operations.

Breach of clause 5.13: Penalty:

5.13.1 The responsible parties will be fined R250 (two hundred rand) per offence for unclean roads.

5.13.2 The responsible parties will be held financially and legally responsible for the damage to road surfaces and kerbs caused through his painting operations.

5.20 Suspensive condition

The contractual parties to this Agreement want to have the following condition and statements added to this Agreement: -

5.20.1 The contractual parties agree that they are in their right-mind and therefore capable to enter into this Agreement.

5.20.2 The contractual parties agree to work being done on the Estate.

5.20.3 The work is conditional to an occurrence, being that the responsible parties complete the work, as agreed in this Agreement.

5.20.4 The work will commence on the _____ day of _____ 20____ and be completed on the _____ day of _____ 20____.

5.20.5 If the work is not completed by close of business on the date specified above, the responsible parties will be in breach of this Agreement.

Breach of clause 5.20: Penalty

5.20.4 On month fine equal to the presiding general levy, at the time for every month or pro-rate thereof, if the work is not completed on time, whereafter the work must be completed, as agreed, and/or;

5.20.2 The HOA/Estate and/or its representative(s) can cancel the Agreement, after giving 14 (fourteen) days written notice to the responsible parties and thereafter be entitled to recover damages.

6. **FORCE MAJEURE**

6.1 No contractual party will be liable for any delay or failure in his/her/its performance under this Agreement caused by events beyond the reasonable control of the contractual party, including without limitation, terrorism, war, riots, labor strikes, interruption of utility services, fires, floods, earthquakes, pandemics, rebellion, revolutions and other natural disasters, in any country and beyond the reasonable control of the contractual parties, provided that: -

- (i) the non-performing contractual party is without fault in causing such default or delay; and;
- (ii) such default or delay could not have been prevented by reasonable precautions; and;
- (iii) such default or delay cannot reasonably be circumvented by the non-performing contractual party through the use of alternate sources or other means.

7. **PAYMENT OF FINES**

7.1 Outstanding fines will be payable on a monthly basis. The HOA reserves the right, if fines are unpaid and/or the deposit has run out and/or the HOA deems it is reasonably necessary, to request the responsible parties to “top up” the penalties (payable by the owner) to the original amount required at any time.

Breach of clause 8 Penalty:

In the event of the responsible parties failing to acknowledge or comply with the stipulations in Par 8.1 he/she will be prohibited from working on the Estate and interest will be levied on the outstanding amount from time to time, at the prime interest rate plus 2% (two percent) from date of default until the outstanding amount has been settled in full.

8. **NO CHANGE, MODIFICATION OR WAIVER**

8.1 No change, modification or waiver to this Agreement will be effective unless in writing and signed by all the contractual parties.

9. **RIGHTS AND REMEDIES CUMULATIVE**

9.1 Any enumeration of rights and remedies set forth in this Agreement is not intended to be exhaustive. Any contractual party's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy.

9.2 All rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the contractual parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

10. **INTERPRETATION**

10.1 This Agreement must be construed as if drafted jointly by the contractual parties after meaningful negotiations. Any rule of painting or surface preparation that a document is to be construed against the drafting party may not be applied to this Agreement.

11. SUCCESSORS AND ASSIGNS

12.1 This Agreement is binding on and is for the benefit of the contractual parties to it, and it/their heirs, administrators, successors, and permitted assignment.

12. BREACH

Should either contractual party breach any of the terms and conditions of this Agreement, then the aggrieved contractual party shall be entitled forthwith, if the defaulting contractual party has failed to remedy such breach within a period of 14 (fourteen) days after receipt of written notice by the aggrieved contractual party requiring to do so, to cancel this Agreement against the defaulting contractual party or to claim immediate payment and/or performance by all the defaulting contractual party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved contractual party's right to claim damages or any other rights as the aggrieved contractual party may have at law.

Notwithstanding any other thing to the contrary, no contractual party shall be liable to the others for any indirect or consequential losses. All legal cost and/or fees shall be paid by the non-prevailing contractual party on an Attorney and Client Scale.

13. APPLICATIONS AND PRAYERS OF RELIEF

13.1 Any person (contractual party) may make an application if such person (contractual party) is a contractual party to or affected materially by a dispute, in terms of Chapter 3, Section 28 and 29 of the Community Scheme Ombud Service Act No.9 of 2011 (the 'Act').

13.2 Should it not be possible to settle the dispute(s), in terms of the Act, it may be settled in the appropriate Court, which Jurisdiction.

14. NOTICE

14.1 All legal and other notices or communications served and/or delivered pursuant to this Agreement must be in writing and will be deemed effectively served and/or delivered upon the earlier to occur of actual receipt or:

- (i) upon personal delivery to the contractual party to be notified;
- (ii) when sent by confirmed electronic mail if sent during normal business hours of the recipient, if not, then on the next business day;
- (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or;

- (iv) one (1) day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications must be sent to the respective contractual parties at the addresses in clause 15 of this Agreement (or at such other addresses as may be specified by notice given in accordance with this clause).

14.2 The contractual parties agree to email as the preferred manner of serving and/or delivery of all notices in this Agreement.

15. **DOMICILIUM CITANDI ET EXECUTANDI**

15.1 The contractual parties hereby nominate their respective address for servicing and/or delivery of all notices at the addresses set out in clause 19, below.

16. **COUNTERPARTS**

16.1 This Agreement may be signed by facsimile or electronic signature in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

16.2 The signatures of all of the contractual parties need not appear on the same counterpart, and delivery of an executed counterpart by electronic transmission in .pdf format or by electronic mail (or any similar technology) is as effective as delivering the original.

17. **ENTIRE AGREEMENT**

17.1 This Agreement constitutes the entire Agreement, together with all Annexures, between the contractual parties, and supersedes any other agreements, representations, or understandings (whether oral, written, express, or implied) that contradicts the subject matter of this Agreement(s).

17.2 The contractual parties record that it shall not be necessary for the contractual parties to initial each page of this Agreement, for this Agreement to be effective, valid, and enforceable, provided that the contractual parties fully sign the signature page(s) of this Agreement.

17.2 The omission of initials to each page of this Agreement shall in no way render this Agreement invalid or unenforceable. All terms of this Agreement that by their nature would survive termination or expiration do survive.

18. **ACKNOWLEDGEMENT AND CERTIFICATE OF UNDERTAKING**

Erf No: _____ Contractor: _____

Telephone: _____ Cell phone: _____

Member: _____

Telephone: _____

Cell phone: _____

I/we, the undersigned, do hereby:

Acknowledge and confirm having read and understood the Painters Code of Conduct (herein after referred to as “**The Code**”) of the HOA, a copy of which is initialled by the undersigned; and; irrevocably undertake to comply with each and every rule and regulation as set out in the Code as may be applicable to any relevant parties and/or partners undertaking work or services for and/or on behalf of any relevant parties at and/or on any premises situated within and/or on the Kelderhof County Village (hereinafter referred to as “Agents”);

Irrevocably undertake to pay all fines and/or any of the fines levied by the HOA against the undersigned for and/or in respect of any breach and/or transgression made by the undersigned, as contemplated and/or provided for in this Code, which fines will be deducted from the penalties (payable by the owner) on completion of the project.

Irrevocably acknowledge that failure to get pre-approval of the Paint colours timeously will result in a prevention, by the HOA, to proceed with work on the Estate and therefore the Contractor agrees not to enter the Estate for purposes of work, for any reason:-

Irrevocably indemnify and hold the HOA and/or the individual Members of property comprising the HOA (hereinafter referred to as “the Members”) harmless against all loss, liability, damage, and/or expense (including without limiting the generality thereof, any claims which may be brought against the HOA and/or the Members or any Member) which the HOA and/or the Members may suffer as a result of the contractor, signatory and/or the Agents presence on the Kelderhof Country Village (HOA) and/or any painting operations being conducted by the contractor and/or signatory on the Kelderhof Country Village (HOA); and,

Acknowledge that he/she, together with any Agents may be denied access to the Kelderhof Country Village (HOA) should he/she not pay any levies and/fines due to the HOA timeously.

Signed at _____ on this day of _____

Address: _____

Email address: _____

Contractor Signature

Witness

Signed at _____ on this day of _____

Address: _____

Email address: _____

Member's Signature

Witness

Signed at _____ on this day of _____

Address: _____

Email address: _____

HOA's Signature

Witness

POWER OF ATTORNEY

I/we the (Registered the registered owner)

ID: _____

the undersigned, nominate/ appoint my agent Mr./ Mrs:

with the power of substitution to be my/our legal agent in my/our name/place and stead to apply for

Erf: _____ and in general to effect the application and to do whatever I/we would do if I/we were present in person and acting in that matter; and we hereby ratify, allow and confirm promise and agree to ratify, allow and confirm everything my agent may do or may permit to be done legally in terms of this power of attorney:

Signature: _____ Date: _____

Builder	Initial	Erf No
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