



ROMANSBAAI

BEACH & FYNBOS ESTATE, DANGER POINT

ROMANSBAAI BEACH AND FYNBOS ESTATE

RESIDENTIAL ERVEN AGREEMENT OF SALE

Between:

DANGER POINT ECOLOGICAL DEVELOPMENT COMPANY (PROPRIETARY) LIMITED

NO. 2002/022486/07

('the Seller')

and

('the Purchaser')

ERF NO:

BIRKENHEAD (PLOT)

January 2018

A. SCHEDULE OF INFORMATION AND DEFINITIONS**1. DETAILS OF SELLER**

Danger Point Ecological Development Company (Proprietary) Limited

Reg. No. 2002/022486/07

c/o Herbie Oosthuizen & Associates
 71 Montagu Street
 Mossel Bay
 Western Cape

2. DETAILS OF PURCHASER

Purchaser's full name / company name:

Identity Number / Registration Number:

Purchaser's Marital Status (ANC / COP / FOREIGN LAW):

Purchaser's business address:
Code:

Purchaser's postal address:
Code:

Purchaser's email address:

Purchaser's Tel. No:
Cell:
Business: Home:

Purchaser's Fax No:
Business: Home:

3. PROPERTY

Residential Erven No.:
In extent:

4. PURCHASE PRICE

Purchase Price (VAT exclusive)	
VAT	
TOTAL	

5. PAYMENT OF PURCHASE PRICE

5.1	Deposit within 10 days of signature of Agreement of Sale	
5.2	Balance on registration of transfer	

6. MORTGAGE BOND

If the sale is subject to the Purchaser obtaining a mortgage bond as per clause 12 of the terms and conditions:

Mortgage bond amount	R
Institution	

If not completed, sale is unconditional and clause 12 of the terms and conditions does not apply.

Purchaser specifically acknowledges this clause

7. NAME OF SELLING AGENT

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8. DEFINITIONS

- 8.1 **'Approved Bond'** shall mean the issue of a quotation and Pre Agreement as received from the banking institution as per Section 92 of the National Credit Act No 34 of 2005;
- 8.2 **'Business Day'** means any day other than Saturday, Sunday or Public Holiday;
- 8.3 **'Conveyancer'** shall mean
HERBIE OOSTHUIZEN & Associates
71 Montagu Street, MOSSEL BAY, 6500
Tel: 044 – 601 8700
Fax: 044 – 690 4803
E-Mail: ingrid@holaw.co.za
ABSA BANK Mossel Bay Branch
Account Nr. 406 100 7833
Branch code: 632005
Reference: Purchaser's Surname and Residential Erven Number
- 8.4 **'the Property'** shall mean the property as per the schedule of information, clause 3;
- 8.5 **'the Purchase price'** shall mean the purchase price as per the schedule of information, clause 4;
- 8.6 **'the Purchaser'** means the Purchaser as per the schedule of information, clause 2;
- 8.7 **'the Schedule of information'** shall mean the schedule of information contained in paragraph A, which forms an integral part of this Deed of Sale;
- 8.8 **'the Seller'** shall mean the Seller as per the schedule of information, clause 1;

8.9 'the **Transfer date**' shall mean the date of registration of transfer of the property into the name of the Purchaser;

8.10 '**VAT**' shall mean value added tax as determined by the Value Added Tax Act, as amended from time to time.

P R E A M B L E :

WHEREAS:

- (a) The Seller has established a residential estate on the property under the name and style of Romansbaai Beach and Fynbos Estate.
- (b) The Seller has agreed to sell to the Purchaser a residential erf in the development being the erf specified in clause 3 of the schedule of information (which erf is hereinafter referred to as 'the property').

B. TERMS AND CONDITIONS

1. SALE OF THE PROPERTY

The Seller hereby sells and the Purchaser hereby purchases the property at the purchase price inclusive of VAT, subject to and upon the terms and conditions contained in this agreement.

2. PAYMENT OF THE PURCHASE PRICE

2.1 The purchase price shall be paid to the Seller as per clause 5 of the schedule of information.

2.2 Within 30 (thirty) days after being requested in writing to do so by the Seller's conveyancer, the Purchaser shall deliver to the Seller's conveyancer a written guarantee by a South African registered Commercial Bank acceptable to the Seller for the due payment of the amount stated in clause 5.2 of the schedule of information. **The Purchaser hereby waives the right that the Seller can only call for a guarantee when the transfer is lodged in the Deeds office and hereby agrees that the Seller can request a guarantee at any time.**

2.3 The conveyancer shall be entitled and obliged and is hereby authorised by the parties hereto in terms of Section 78(2) of the Attorneys Act, 1979, to invest the deposit and any other amount paid to them in terms of clause 2 in an interest-bearing trust account, interest accruing to the Purchaser. The Purchaser hereby authorises the conveyancer to make payment to the Seller in accordance with clause 2 from any monies held on trust by them on behalf of the Purchaser.

2.4 All amounts payable by the Purchaser in terms of this agreement shall be paid to the Seller's conveyancer free of exchange or commission and without deduction or set off in cash or by means of a bank guaranteed cheque or cheque drawn by a South African registered commercial bank.

3. TRANSFER OF THE PROPERTY

3.1 Transfer shall be effected by the conveyancer as soon as possible.

3.2 The Purchaser must sign the transfer documents and return same to the conveyancer within 7 (seven) days of being called upon to do so.

3.3 The Purchaser shall, in addition upon request by the Seller's conveyancer, pay all costs of transfer (including VAT on such costs) Value Added Tax and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the passing of transfer of the property.

4. POSSESSION AND RISK

4.1 The Seller shall give the Purchaser possession and occupation of the property against registration of transfer.

4.2 All risk and benefit in the property shall pass to the Purchaser against registration of transfer.

4.3 In the event of the Seller giving the Purchaser possession of the property prior to registration of transfer, all risk in the property shall pass to the Purchaser on possession and the Purchaser shall carry out any building

work or other improvements thereon at its own risk and shall have no claim whatsoever against the Seller for any compensation in respect thereof.

5. PROPRIETARY CHARGES

- 5.1 The Purchaser shall be liable for a pro rata share of levies, rates, taxes and other proprietary charges payable in respect of the property with effect from registration of transfer or date of possession of the property, whichever is the earlier.
- 5.2 The Purchaser shall upon request of the Seller's conveyancer pay such pro rata share of levies, rates, taxes and other proprietary charges.

6. VOETSTOOTS, EXTENT AND TITLE CONDITIONS

- 6.1 *The property is sold 'voetstoots' and the Seller gives no warranties, express or implied, as to patent or latent defects.*
- 6.2 *The extent of the property as set out in clause 3 of the schedule of information is approximate and the final extent and layout of the property will be shown in the general plan approved by the Surveyor-General.*
- 6.3 *The Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the property and no warranties are given in respect of the boundaries of the property.*
- 6.4 *The property is sold subject to all such conditions as are mentioned and/or referred to in the title deed/s relating to the property and to such conditions as are or may be hereafter be imposed by any relevant authority, including the conditions imposed in respect of the rezoning and/or sub divisions of the land which the property forms part of.*
- 6.5 *The property is furthermore sold subject to the provisions of the memorandum and articles of association of the home owners' association and design manual.*

- 6.6** *The Purchaser acknowledges and agrees that he/she has satisfied himself/herself as to the condition of the property including the soil and it is agreed that the Seller shall not be required to level the property or to carry out any earthworks or landscaping in respect thereof.*

Purchaser specifically acknowledges above clause

7. BUILDING CLAUSE

- 7.1 The Purchaser shall within 4 (four) years after registration of transfer commence to erect and within 5 (five) years, complete a dwelling house on the property in accordance with plans and specifications approved by the home owners' association.
- 7.2 Should the Purchaser fail to comply with the provisions of clause 7.1, the Seller shall be entitled to give the Purchaser 120 (one hundred and twenty) days notice in writing to commence the erection of such dwelling house and if the Purchaser fails to comply with such notice, the Purchaser shall be obliged to pay triple the levies as determined by the home owners' association.

8. SERVITUDES AND RESTRICTIONS

- 8.1 The property is sold subject to such restrictions as may be imposed by any competent authority in respect of the rezoning and/or subdivision of the site, and/or Record of Decision (EIA approval) including restrictions in regard to height, coverage or setback.
- 8.2 The Seller shall be entitled to register such servitudes across the property as may be necessary for the purposes of the installation of services including the following servitude which the Purchaser shall be required to register, without payment of compensation :
- 8.2.1 To allow gas mains, electricity, telephone and television cables and/or wires, main and/or other waterpipes and foul sewers and stormwater pipes, ditches and channels of any other property or properties to be

conveyed across the property, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the local authority or the home owners' association, in such manner and position as may from time to time be reasonably required; this shall include the right of access to the property at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above; and

- 8.2.2 To receive such material or permit such excavation on the property as may be required to allow use of the full width of an abutting road and provide a safe and proper slope to its bank necessitated by differences between the level of the road as finally constructed and the level of the property; unless the owner elects to building retaining walls to the satisfaction of and within a period to be determined by the local authority, and/or the home owners' association.

9. HOME OWNERS' ASSOCIATION

- 9.1 It is recorded that a home owners' association is being established for the benefit of all owners of property in the development and to control and maintain roads, services and amenities within the development.
- 9.2 The Purchaser shall become a member of the home owners' association against transfer of the property and agrees to remain a member for as long as the Purchaser is the registered owner thereof.
- 9.3 The Purchaser confirms that he/she has been furnished with copies of the memorandum and articles of association and rules of the home owners' association, the design manual and the architectural guidelines, and has acquainted himself/herself with the provisions thereof.
- 9.4 The Purchaser acknowledges furthermore that he/she is aware of the following provisions and hereby agrees to be bound thereby.
- 9.4.1 In terms of the articles of association and the rules of the home owners' association, there are standards and guidelines for the design of

buildings and no person shall be entitled to construct any building or other structure on the property until the plans and specifications relating thereto have been approved in terms of the articles of association;

9.4.2 In terms of the articles of association of the home owners' association the members of the association are required to pay levies to meet the expenses of the association, including the costs of maintaining the services and all other amenities within the development; and

9.4.3 The Purchaser will be allowed to use his own architect for the drawing of his building plans. All building plans will however have to be approved in terms of Clause 9.4.1.

9.5 It is a term of this agreement that a title deed condition shall be registered against the property in terms of which the property shall not be transferred without the written consent of the home owners' association in accordance with the provisions of its articles of association and that all successors in title shall be bound to the constitution of the home owners' association.

10. THE DEVELOPMENT

10.1 It is recorded that :

10.1.1 The development will be developed on a phased basis;

10.1.2 In terms of the articles of association of the home owners' association, the Seller has the right to extend or alter the area or composition of the development by requiring the home owners' association to incorporate into the development any adjacent land, and/or any property acquired by the Seller from time to time which the Seller shall be entitled to develop as it may deem fit;

10.1.3 Should any part of the said erven be incorporated into the development the Seller shall be entitled to require that all owners of the incorporated erven and their successors in title become members of the home owners' association in respect of that part and from such date as the

Seller may determine, and on the same terms and conditions as are applicable to the other members of the home owners' association; and

- 10.2 The Seller intends to develop and market the development in phases as the Seller deems fit and for as long as necessary. The Seller shall enjoy unrestricted rights with regard to the marketing of the development and in particular, the right to have a sales office and erect signage within the development in its sole discretion.

11. AGENT'S COMMISSION

- 11.1 The parties record that the agent specified in clause 7 of the schedule of information was the effective cause of this transaction.
- 11.2 The Seller shall pay the agents commission.
- 11.3 The Purchaser warrants and undertakes to the Seller that the Purchaser has not been introduced to the Seller, the property or the development by any third party entitled to commission other than the agent specified in clause 7 of the schedule of information and indemnifies the Seller against any claim that may be instituted by any agent claiming that he/she introduced the property and is the effective cause of the sale.

12. MORTGAGE BOND (IF APPLICABLE)

- 12.1 This agreement is subject to the Purchaser obtaining an approved bond from a bank or other recognised financial institution for the amount (if any) stated in clause 6 of the schedule of information or any lesser amount acceptable to the Purchaser upon the security of a first mortgage bond to be registered against the property.
- 12.2 The Purchaser shall use its best endeavours to obtain such approved bond as soon as is reasonably possible after signature of this agreement by the Seller.
- 12.3 In the event of such loan not being approved in principal within 35 (thirty five) days after signature of this agreement by the Seller, then this agreement shall **become of no force or effect in which event the Seller shall refund to the**

Purchaser the amounts paid in terms of clause 2 above together with accrued interest thereon. The Seller shall have the right to extend the 35 (thirty five) day period with a further reasonable time, in the sole discretion of the Seller.

- 12.4 A quotation from a financial institution or the Seller, confirming that the bond is granted in principal, shall suffice for fulfilment of this suspensive condition. Should the Purchaser fail to furnish the Conveyancers with a quotation from a financial institution that the bond was not granted, this suspensive condition shall be deemed to be fulfilled, alternatively the transaction shall be deemed not to be subject to the Purchaser obtaining bond finance.

13. BREACH BY PURCHASER

- 13.1 If the Purchaser commits a breach of this agreement and/or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser not less than 7 (seven) days' notice in writing to remedy such breach and/or failure and if the Purchaser fails to comply with such notice, then the Seller shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the Seller may have in law, including the right to claim damages:

13.1.1 To cancel this agreement (in which event the Purchaser shall forfeit all monies paid to the Seller or its attorneys or agent/s in terms of this agreement and all interest thereon); and/or

13.1.2 To claim immediate performance and/or payment of all the Purchaser's obligations in terms of this agreement; and/or

13.1.3 To recover from the Purchaser all or any brokerage payable or paid by the Seller in respect of this transaction.

- 13.2 Should the Seller take steps against the Purchaser pursuant to a breach by the Purchaser of this agreement, then without prejudice to any other rights which the Seller may have, the Seller shall be entitled to recover from the Purchaser all legal costs incurred by it including attorney/client charges, tracing fees and such collection commission as the Seller is obliged to pay to its attorneys.

13.3 Should transfer be delayed by the Purchaser for whatever reason and/or the Purchaser fail to deliver guarantees and/or meet any other financial obligation in this Agreement, then the Purchaser shall pay to the Seller interest on the full purchase price at the prime overdraft rate plus 3% (three per centum) charged by the Seller's bankers from time to time calculated from the date that the Seller's attorneys (acting as experts) certify in writing that in their opinion the transfer ought reasonably to have been registered, but for such delay. In the event of non-fulfilment of a financial obligation or failure to deliver a guarantee such penalty interest shall accrue from the due date for delivery of the guarantee/payment up until the actual date of delivery of the guarantee/payment or the date upon which the Purchaser has complied with all of the Purchasers obligations relating to transfer (whichever is the later). The penalty interest shall be paid by the Purchaser to the Seller prior to transfer of the property.

14. PURCHASE ON BEHALF OF A COMPANY / CLOSE CORPORATION / TRUST / OTHER LEGAL ENTITY

14.1 Should the Purchaser act as representative of a Company/Close Corporation, Trust or any other juristic person formed or to be formed, (hereinafter referred to as "the legal entity"), the Purchaser undertakes to register the legal entity within 30 (thirty) days after this agreement has been signed, to inform the Seller of the information of the legal entity and to deliver the notice and ratification and proof thereof to the attorneys, within 60 (sixty) days after this agreement has been signed.

14.2 In the event of a legal entity –

14.2.1 not registering in time; or

14.2.2 failing to ratify this transaction; or

14.2.3 failing to honor the obligations and terms of the contract for whatever reasons; or

14.2.4 failing to furnish proof of ratification to the Seller's attorneys within the set period,

the Purchaser agrees that he/she (the signatory hereto as "Purchaser") shall personally be responsible and shall be obliged to honour the obligations in terms of this agreement and to take transfer of the Property in his / her name.

- 14.3 The person who signs the agreement as the Purchaser binds himself as surety and co-principal debtor to a legal entity that is to be established or has already been established for timeous compliance with all responsibilities in accordance with this agreement.

15. DOMICILIA AND NOTICES

- 15.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose *domicilium citandi et executandi* ('*domicilium*') as follows :

15.1.1 The Seller: as contained in the schedule of information; and

15.1.2 The Purchaser: as contained in the schedule of information.

- 15.2 A party may at any time change his *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes a physical address at which process can be served or notices given.

- 15.3 All notices shall be in writing and sent by prepaid registered post or delivered by hand or faxed or e-mailed, together with proof thereof, to the *domicilium* chosen by the party concerned and shall, if posted, be deemed to have been duly delivered 7 (seven) days after the day on which such notice was posted.

16. WARRANTIES

The Purchaser acknowledges that the Seller has made no representations and given no warranties in respect of the property or in respect of anything relating thereto, whether express or implied, not expressly contained herein, and he/she has not been influenced by any representation made by or on behalf of the Seller to enter into this Deed of Sale, save as set out herein.

Without limiting the generality of the foregoing, it is recorded that the model of Romans Baai Beach and Fynbos Estate as well as the attached site development plan, marked Annexure 1, represents artist impressions of the development and that it is not foreseen that the completed development will correspond with either the model or the site development plan in all detail.

The Seller shall not be held liable for any changes to the layout, design of buildings, water features, landscaping, etc as it appears on the model and/or the site development plan.

Purchaser specifically acknowledges above clause

17. ARBITRATION

17.1 If any dispute, difference or question arises at any time between the parties out of or in regard to any matters arising out of, or the rights and duties of any of the parties, or the interpretation of, or termination of, or any matter arising out of the termination of, or the rectification of this agreement, or any other matter such dispute shall be submitted to and decided by arbitration on notice in writing given by either party to the other of them in terms of this clause.

17.2 Such arbitration shall be held in Cape Town in accordance with the provisions of the Arbitration Act, No. 42 of 1965 (as amended or replaced from time to time) save that the arbitration shall be informal and the arbitrator shall have the absolute discretion to determine the procedure to be adopted, it being the intention that the arbitration shall be held and concluded without delay.

17.3 The arbitrator shall be such independent and suitably qualified person as may be agreed upon between the parties in writing, and failing such agreement, the arbitrator shall be appointed by the President for the time being of the Law Society of the Western Cape or its successor/s at the request of either party.

17.4 This clause 17 is severable from the rest of this agreement and shall remain in force notwithstanding the termination of this agreement for whatever reason.

18. CO-OPERATION

Each of the parties hereby undertakes to :

- 18.1 Sign and/or execute all such documents (and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney and VAT / transfer duty declarations);
- 18.2 Do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 18.3 Pass, and to procure the passing of all such resolutions of directors or shareholders of any company.

19. JOINT AND SEVERAL LIABILITY

Should there be more than one Purchaser, the Purchasers shall be liable jointly and severally and *in solidum* for the payment of all monies hereunder and for the carrying out of all the terms of this Deed of Sale.

20. GENERAL

- 20.1 This agreement constitutes the whole agreement between the parties.
- 20.2 No variation of this agreement will influence the terms of this agreement, unless such variations are put in writing and signed by both parties.
- 20.3 The parties acknowledge that they have not been pursued to sign this agreement by any promises, presentations or guarantees of any sort.
- 20.4 The Purchaser will not be entitled to sell his/her property prior to registration of transfer, without the written consent of the Seller.

21. CONCESSIONS

No extension of time, allowances or concessions allowed and no temporary variation of the terms of this Deed of Sale for any party will be regarded as a waiver of his/her rights hereunder. The Seller may furthermore at any time and without prior notice expect the Purchaser to strictly and timeously comply with each and every term and condition.

22. JURISDICTION

For the purposes of the proceedings arising from this agreement, the parties hereby consent to the jurisdiction of the Magistrate’s Court having jurisdiction over the person of the defendant in terms of section 28 of the Magistrate’s Court Act of 1944, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the Court pursuant to section 45 of the Magistrate’s Court Act of 1944, or any amendment thereof, provided that the Seller shall have the right at its sole option and discretion to institute proceedings in any other competent Court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate’s Court.

23. ACKNOWLEDGEMENT

The Purchaser by his/her signature hereto acknowledges he/she has read the Deed of Sale and Annexure thereto and is satisfied with the contents thereof.

SIGNED at _____ this _____ day _____ 2018

AS WITNESSES:

1. _____ for and on behalf of

2. _____
SELLER

SIGNED at _____ this _____ day of _____ 2018

AS WITNESSES:

1. _____

2. _____

1. PURCHASER or duly authorised representative who warrants that he/she is duly authorised
2. As surety in terms of clause 14 hereof

Annexure 1

