



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



ROMANSBAAI

BEACH & FYNBOS ESTATE, DANGER POINT

A. SCHEDULE OF INFORMATION AND DEFINITIONS

1. DETAILS OF SELLER

Danger Point Ecological Development Company (Proprietary) Limited

Reg. No. 2002/022486/07

c/o Miltos Matsemela Oosthuizen
 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 address:
Purchaser's postal address:
Code:
Purchaser's email address:

Purchaser's Tel. No:
Home:

3. PROPERTY

Residential Erven No.:	
In extent:	

4. PURCHASE PRICE

Purchase Price (VAT exclusive)	
VAT	
TOTAL	

5. PAYMENT OF PURCHASE PRICE TO THE SELLER

5.1	Deposit within 30 days of date of all suspensive conditions being met. (If none, then 30 days after signature)	
5.2	On Registration of Transfer, the balance of the purchase price, inclusive of VAT	

6. MORTGAGE BOND

If the sale is subj etc. 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

8. DEFINITIONS

- 8.1 **'Agreement'** shall mean the Agreement contained in this document including all annexures;
- 8.2 **'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;
- 8.3 **'Conveyancer'** shall mean:
 MILTONS MATSEMELA OOSTHUIZEN INC
 71 Montagu Street, MOSSEL BAY, 6500
 Tel: 044 – 601 8700
 Fax: 044 – 690 4803
 E-Mail: herbie@mmolaw.co.za
 STANDARD BANK Mossel Bay Branch
 Account Nr. 282215425
 Branch
 code:
 Reference: Purchaser's Surname and Residential Erven Number;
- 8.4 **'the Home Owners' Association'** shall mean Romansbaai Beach and Fynbos Estate;
- 8.5 **'the Property'** shall mean the Property as per the schedule of information, clause 3;
- 8.6 **'the Purchase price'** shall mean the purchase price as per the schedule of information, clause 4;
- 8.7 **'the Purchaser'** means the Purchaser as per the schedule of information, clause 2;
- 8.8 **'the Schedule of Information'** shall mean the schedule of information contained in paragraph A, which forms an integral part of this Deed of Sale;
- 8.9 **'the Seller'** shall mean the Seller as per the schedule of information, clause 1;
- 8.10 **'the Transfer date'** shall mean the date of registration of transfer of the Property into the name of the Purchaser;

- 8.11 '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 under the name and style of Romansbaai Beach and Fynbos Estate.
- (b) The Seller has agreed to sell to the Purchaser a residential erf ('the Property') in the residential estate, being the erf specified in clause 3 of the schedule of information.

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 86(4) of the Legal Practice Act, 2014 (Act 28 of 2014), 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 effect payment of the purchase price to the Seller on registration of transfer.

- 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 to be 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.***
- 6.5 ***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

- 6.6 ***The Purchaser has done its own due diligence in respect of the purchase of the Property.***

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, RESTRICTIONS AND SERVICES

- 8.1 The Property is sold subject to such restrictions as imposed by any competent authority in respect of the rezoning and/or subdivision, and/ or Record of Decision (EIA approval) including restrictions in regard to height, coverage or setback.
- 8.2 The Purchaser is responsible for all services and connection fees in respect of the property, including, but without limiting the generality thereof, electrical and water connection fees and deposits.

9. HOME OWNERS' ASSOCIATION

- 9.1 It is recorded that a Home Owners' Association has been 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 and hereby agrees to 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 will, alternatively 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 Constitution and the rules of the Home Owners' Association, there will be 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 by the Home Owners' Association. The Purchaser shall at all times adhere to the administrative procedure and fees prescribed by the Seller or the Home Owners' Association in respect of the lodgement and approval of plans;
- 9.4.2 The Home Owners' Association and/or Seller shall be entitled to refuse such approval if, in its sole discretion, any plans of specifications do not conform to the architectural design guidelines, and the Purchaser shall have no claim of whatsoever nature against the Home Owners' Association and/or Seller arising from any refusal or approval;
- 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; and
- 9.4.4 From registration of transfer of the erf into the Purchasers' name he shall be liable for payment of monthly levies, CSOS levies and other approved amounts levied to members of the Home Owners' Association, as determined at the first Annual General Meeting, to meet the expenses of the association, including the costs of maintaining the services and all other amenities within the Development, commencing on the date of registration of transfer in the name of such member, as well as an alienation levy, on the alienation of the property to a third party Purchaser. The Purchaser hereby agrees and acknowledges liability for such levy amounts and agrees and undertakes to make payment hereof as per the Constitution/rules of the Home Owners' Association
- 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 Should the Purchaser fail to make any payments on due date as provided for herein, or otherwise commit a breach of any of the other terms and conditions hereof or progress payments that are due and payable and remain in breach for 7 (seven) days after dispatch of a written notice by registered post or email, requiring him to remedy such breach of such other terms and conditions, the Seller shall be entitled forthwith, and without prejudice to any other rights available at law, to:

13.1.1 Claim for specific performance; or

13.1.2 Claim immediate payment of the entire balance outstanding although not otherwise due by the Purchaser under this Agreement; or

13.1.3 Cancel this Agreement and claim damages suffered by the Seller as a result of such breach and subsequent cancellation, while retaining all amounts paid by the Purchaser as pre-determined liquidated damages suffered by the Seller (against which amount of damages the amounts paid by the Purchaser shall be set-off), and furthermore, the Purchaser shall not be entitled to compensation from the Seller for any improvements of whatsoever nature he may have caused to the property, whether with or without the Seller's consent; or

13.1.4 The Purchaser hereby authorise the Conveyancers to effect payment in accordance with the above provisions.

13.2 Without prejudice to any rights of the Seller as set out herein, all monies payable by the Purchaser in terms hereof and unpaid on due date and any amounts secured by guarantee which is not provided on the due date shall bear interest at 5% (five percent) above the prime bank lending rate charged by the Seller's bankers from time to time. In the event of a dispute arising as to the rate payable, the rate shall be certified by any manager or assistant manager of any branch of the Seller's bank whose decision shall be final and binding on the Parties. Interest as aforesaid shall be calculated from the due date to actual date of payment and in the case of guarantees to be presented from the due date thereof until date of actual payment and shall be payable without demand having to be made therefore. Each payment made by the Purchaser shall be allocated first to the payment of interest and then to the payment of any other monies due in terms hereof and thereafter to the reduction of the purchase price.

13.3 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 and own client charges, tracing fees and such collection commission as the Seller is obliged to pay to its attorneys.

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 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, formal letters or other documents or communications of whatsoever nature at their respective addresses as set out hereunder:

Seller: _____

Email: _____

Tel: _____

Purchaser: _____

Email: _____

Tel: _____

15.2 Any notice of communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

15.3 Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address in the Republic of South Africa or its email address: Provided that the change shall become effective *vis-à-vis* that addressee on the 3rd business day from the deemed receipt of the notice by the addressee.

15.4 Any notice to a Party:

15.4.1 sent by prepaid registered post in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved); or

15.4.2 delivered by hand to a responsible person at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

15.4.3 sent by email to its chosen email address stipulated, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

15.5 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 it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

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.

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.

24. 72 HOUR CLAUSE

Should the Seller at any time prior to fulfilment of any suspensive conditions, if applicable, receive another unconditional cash offer to purchase the Property, which offer he/she in his/her discretion finds more acceptable, and wishes to accept then the Purchaser herein shall be notified of such in writing and shall have 72 (seventy two) hours from the time of receipt of such notice, to waive in writing the benefit of all suspensive conditions in this Agreement, thereby binding the Purchaser unconditionally to the Agreement, failing which, the Agreement will lapse and be of no further force and effect.

25. THE PROTECTION OF PERSONAL INFORMATION ACT

The Seller/s and the Purchaser/s hereby give consent to the Conveyancing Attorneys who will register the transfer of the Property, to process our/their information for all purposes related to this sale, and to store their information on their data base for future marketing purposes in accordance with the provisions of the Protection of Personal Information Act.

SIGNED at _____ this _____ day of _____

AS WITNESSES:

1. for and on behalf of

2.
SELLER

