

**DEED OF SALE  
(BREAKWATER BAY ECO ESTATE)**

**A. SCHEDULE OF INFORMATION AND DEFINITIONS**

**1. SELLER:**

**BLP 2004-08 LIMITED**  
REGISTRATION NO: 2004/019845/10

herein represented by N HAYCOCK  
duly authorized hereto

**2. PURCHASER:**

**Purchaser's full names:**

.....

.....

Identity Number / Passport No / Date of Birth.....

Married in/out of community of property / Unmarried

Or

.....

Company/ CC / Trust Registration Number: .....

Represented by .....  
(duly authorized thereto)

**Purchaser's Street Address:**

.....

**Purchaser's Postal Address:**

.....

**E-Mail Address:** .....

**Purchaser's Telephone No:**(B) ..... (H).....

**Purchasers fax Number:** (B) ..... (H) .....

**Cell Number:** .....

**3. PROPERTY**

**ERF NO            HEROLD'S BAY**  
in the Municipality and Division of George, Western Cape Province;

**IN EXTENT (APPROXIMATE) :**

As indicated on the site development plan annexed hereto as Annexure "A".

**4. PURCHASE PRICE:**

<b>Purchase Price (VAT INCL.)</b>	R.....
<b>Less deposit (payable as per Clause 4.1)</b>	R.....
<b>Balance</b>	R.....

**5. ANTICIPATED LEVY:**

**R750, 00 plus VAT per month.**

**6. ANNEXURES TO THIS AGREEMENT**

A Site development plan : Annexure A

**WHEREAS**

- A. The Seller has purchased the property indicated as Portion A on the annexed site development plan, which property has been duly rezoned and stands to be subdivided in terms of the Land Use Planning Ordinance 15/1985 into the erven reflected on Annexure A hereto and is in the process of taking transfer of the aforesaid property;
- B. This sale is in anticipation of the compliance by the Seller with the conditions imposed/or to be imposed by the Municipality or any other relevant authority when approving the rezoning and subdivision of the said development.
- C. The Purchaser wishes to purchase an erf in the said development, which will be known as **BREAKWATER BAY ECO ESTATE**.

**THEREFORE THE PARTIES AGREE AS FOLLOWS:****1. DEFINITIONS**

In this Agreement the following words shall have the meaning as set out unless inconsistent with the context:

- 1.1 "the property" shall mean the erf described in the preamble hereof purchased hereby;
- 1.2 "the Development" shall mean the development on Portion A on annexure A hereto, in the Municipality and Division of George, Western Cape Province, known as Breakwater Bay Eco Estate;
- 1.3 "the Development Property" shall mean Portion A on annexure A, in the Municipality and Division of George, Western Cape Province.

- 1.4 "the Conveyancers" shall mean **ROUX KURGER & HAYCOCK ATTORNEYS, GEORGE**, P O Box 879, 7 Cathedral Square George, Tel. (044) 8730155, Fax: (044) 8730159 E-mail: carla@rouxproc.co.za.
- 1.5 "transfer date" shall mean the date of registration of transfer of the Property in the name of the Purchaser.

## 2. THE PROPERTY

The Seller sells and the Purchaser purchases the Property as described in 3 above and as indicated on Annexure A.

## 3. PURCHASE PRICE

- 3.1 The Purchaser shall pay to the Seller the purchase price as set out in the preamble hereof, which amount shall **include** Value Added Tax. Should the Value Added Tax rate change between the date of signature hereof and the date of final payment, the Purchaser undertakes to pay the additional Value Added Tax then applicable.
- 3.2 The Purchase price does not include any membership or entitlement to any facility, amenity or club in the Development.

## 4. PAYMENT OF PURCHASE PRICE

- 4.1 The purchase price shall be paid to the Seller as follows:

On signature hereof a non-refundable deposit of 10% (ten per centum) by the Purchaser into Roux Kruger & Haycock Trust Account, Absa Bank, George, Acc No. 4060212114, Bank Code: 630 114, Swift Code: ABSA2AJJCPE.

4.1.1 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4.1.2 the balance purchase price payable upon registration of transfer;

- 4.2 For the payment of the amount due in terms of clause 4.1.2, the Purchaser shall furnish bank guarantees, reasonably acceptable to the Seller, within 21 (twenty one) days from date being called upon to do so by the transferring attorneys which request shall not be directed to the purchaser until fulfillment of the suspensive condition referred to in Clause 22.1 (if applicable).
- 4.3 Any amounts paid on account of the purchase price shall, pending the registerability of the Property, be held by the Conveyancers, who shall be entitled and obliged to invest same in an interest bearing trust account in terms of Section 78(2)(A) of the Attorney Act, interest accruing to the Purchaser, until the Transfer Date, when the capital shall be paid to the Seller and accrued interest to the Purchaser.

## 5. POSSESSION DATE

Possession of the property will be given to the Purchaser and the Purchaser shall be obliged to take possession thereof on the date of the transfer into the name of the Purchaser from which date the Purchaser shall be liable for all municipal rates and taxes and/or fees payable on the property and/or levies levied in terms of the constitution of the BREAKWATER BAY ECO ESTATE HOME OWNERS ASSOCIATION (hereinafter referred to as "the HOME OWNER'S ASSOCIATION") and from which date the property shall be the sole risk, profit or loss of the Purchaser. Should the Seller have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof pro rata to the period of prepayment.

## 6. TRANSFER COSTS/TRANSFER OF THE PROPERTY

6.1 The property will be transferred by the Conveyancers. Transfer of the property shall be effected as soon as possible:

6.1.1 after fulfilment of all suspensive conditions;

6.1.2 compliance by the Seller with all conditions imposed by any authority at the rezoning and subdivision of the development property;

6.1.3 after the Purchaser has complied with the conditions stipulated in clause 4 and 6.1.4 hereof.

6.1.4 The Purchaser shall be liable to pay all transfer costs and Value Added Tax thereon at the statutory rate on demand by the Conveyancers.

6.1.5 If this agreement is subject to any suspensive conditions and the contract is cancelled as result of the non-compliance thereof by the Purchaser, or if this Deed of Sale is cancelled due to the breach of any term or condition hereof, the Purchaser will still be liable for payment of any wasted costs incurred by the above Conveyancers in relation to the drafting of transfer documents and related matters.

## 7. 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 has not been influenced by any representation made by or on behalf of the Seller to enter into this Agreement of Sale, save as set out herein.

## 8. DELAY IN REGISTRATION

The Purchaser acknowledges that any delay in registration of transfer of the Property into his name, shall not give rise to a claim for cancellation of this Agreement and this Agreement will remain binding and operative, notwithstanding such delay.

## 9. COMPANY OR CLOSE CORPORATION AS PURCHASER

9.1 Should the Purchaser be acting as a Trustee for a company or a close corporation to be formed, he shall be personally bound and responsible as Purchaser in terms of this agreement, should the company or close corporation not be formed.

9.2 The said company or close corporation must be formed within 45 (forty-five) days of the date of signature of this agreement, failing which the signatory to this agreement shall be personally bound as Purchaser to the terms of this agreement. The Purchaser records that he is aware of the provisions contained in Section 35 of the Company's Act of 1973 (as amended) regulating the registration of pre-incorporation contracts and shall be obliged to comply with such provisions.

9.3 The company or close corporation to be formed shall within 7 (seven) days of registration of such company or close corporation, ratify and adopt this agreement, failing which the signatory of this agreement aforementioned shall be personally responsible and bound in terms of this agreement.

9.4 Any person signing this document on behalf of a company or close corporation to be formed, by his signature to this agreement binds himself to the seller as surety and co-principal debtor *in solidum* with the said company or close corporation and he hereby renounces the benefits of excussion, division and cession of action and binds himself for the proper compliance by the said company or close corporation of its obligations in terms of this agreement.

## 10. BREACH OF AGREEMENT

10.1 In the event of the Purchaser failing to fulfill on due date any of the terms and conditions of this Deed of Sale, the Seller shall have the right, after 5 (five) days written notice has been given to rectify such breach, either:

10.1.1 To cancel the sale by written notice to the Purchaser, in which event the Purchaser shall forfeit all monies paid to the Seller or his Agent in terms hereof, without prejudice to the Seller's other legal rights and remedies and the right to claim damages; or

- 10.1.2 To claim immediate payment of the whole of the purchase price and fulfillment of all the terms and conditions hereof.
- 10.2 In the event of the Seller failing to fulfill on due date any of the terms and conditions of this Deed of Sale, the Purchaser shall have the right after 20 (twenty) days of written notice, to rectify such breach, either:
  - 10.2.1 To cancel the sale by registered letter addressed to the Seller and to recover from the Seller such damages as he may have suffered; or
  - 10.2.2 To claim the immediate fulfillment of all the terms and conditions hereof.

## 11. **JOINT AND SEVERALLY 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 Agreement.

## 12. **NON WAIVER**

No indulgence granted by the Seller shall constitute a waiver of any of the Seller's rights under this Agreement. The Seller shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the Purchaser which may have arisen in the past or which may arise in the future.

## 13. **TITLE CONDITIONS**

- 13.1 The Property is sold voetstoots and subject to all conditions and servitudes contained in the title deeds or prior title deeds of the Property and further subject to the conditions imposed by any competent authority at the approval of the rezoning and subdivision of the development property, the terms and conditions contained in the constitution of the Home Owners Association of Breakwater Bay Eco Estate and all annexures thereto and the Environmental Management Plans approved or to be approved in respect of the proposed development. The Purchaser hereby records that copies of the existing Title Deed of the property, the rezoning approval in terms of the Land Use Planning Ordinance 15/1985, the written authorisations of the competent authority in terms of Section 22 of the Environment Conservation Act and the Constitution of the Home Owners Association with annexures thereto have been made available to him/her and by his/her signature to this Agreement accepts to take transfer of the Property subject thereto and to be bound thereby. It is further recorded that the Seller and the Local Authority is in the process of negotiating a services agreement that will serve as an annexure to the Constitution of the Home Owners Association and that the property purchased by the Purchaser shall furthermore be subject to the terms and conditions contained in such services agreement.

- 13.2 It is hereby recorded that the Constitution with annexures thereto (architectural and development guidelines and the estate rules) is in draft form only and that the Purchaser accepts and consents to such amendments which may have to be effected thereto pursuant to conditions imposed by the Local Authority at the approval of the Constitution (and all annexures thereto) or reasonable amendments effected by the developer prior to such approval and necessary for the proper functioning of the Home Owners Association.
- 13.3 The Seller shall not be liable for any defects, whether latent or otherwise in the property nor for any damages suffered by the Purchaser by reason of such defects.
- 13.4 The Seller shall not be responsible for pointing out or indicating the position of the surveyor's beacons or pegs in respect of the Property to the Purchaser.
- 13.5 If the Property has been erroneously described herein, such mistake or error shall not be binding upon the parties but the correct description as intended by the parties shall apply and they shall effect rectification of this contract accordingly.
- 13.6 In the event of the boundaries of the Property hereby sold differing in minor respects from the boundaries as shown on the annexed plan, or the number of the plot being altered, the Purchaser undertakes to take transfer of the property as finally described on the approved general plan by the Land Surveyor General. In such case the Seller shall not profit by any excess or shall the Seller be liable for any deficiency in the area of the Property on finalisation of the Land Surveyor's general plan.
- 13.7 The Seller shall cause services to the satisfaction of the local authority to be made available to the township for connection to the Property within a reasonable time after fulfilment of the conditions in 22 below. The Purchaser is not entitled to cancel this Agreement or to claim damages as a result of any reasonable delay in the provision of such services.
- 13.8 The Purchaser is not liable for the costs of installation of the necessary services to the township as required in the conditions of establishment of the township, or for any endowment, improvement or value added levies, development contributions or any similar levies.
- 13.9 The Purchaser is responsible for all services connection fees, including, but without limiting the generality thereof, electrical and water connection fees and deposits in respect of the Property purchased in terms hereof.
- 13.10 The Purchaser hereby records that he/she is aware of the fact that the Breakwater Bay Eco Estate forms Portion A of a larger development approved by the relevant authorities as is evident from the official approvals referred to in 13.1 above. Pursuant to the aforesaid provision it is hereby recorded that the Purchaser accepts the fact that the development on the adjacent property may not be similar in character as the Breakwater Bay Eco Estate, that such development property may be developed by a different developer and that there

might be integration between the two developments including shared services and management of the developments.

#### 14. **BUILDING PLANS, HOME OWNER'S ASSOCIATION AND BUILDING CLAUSE**

The Purchaser acknowledges that:

- 14.1 he is aware that the property hereby sold is one of a group of exclusive residential erven situated within a controlled environment created to enhance the security, use and general enjoyment by all property owners within the Controlled Area.
- 14.2 to ensure an orderly, environmentally sensitive, aesthetically and architecturally acceptable development and to control the development of the erven within the Development Area, all registered property owners of erven situated within the Development Area shall become Members of a Home Owners Association established in terms of Section 29(2)(b)(iii) of the Land Use Planning Ordinance 1985 (No. 15 of 1985).
- 14.3 by becoming a registered owner of the erf hereby sold, he automatically becomes a Member of the Home Owners Association and he hereby undertakes to inform his successor(s) in title and hereby binds himself, his heirs, executors, administrators, or assigns to the terms and conditions of this Agreement;

The Purchaser furthermore:

- 14.3.1 undertakes to complete the construction of a single residential dwelling in accordance with the architectural and development guidelines on the property within a period of 4 (four) years from date of registration of the transfer;
- 14.3.2 should the purchaser not commence with building operations of such dwelling in terms of this agreement within 3 (three) years from date of registration of transfer or complete such dwelling within the four year period referred to in 14.3.1, he shall be obliged, if so decided by the Seller in its sole discretion to sell the said property to the Seller at the same price as set out herein above;
- 14.3.3 until such time as the Association is operational, its functions as set out in this sub-clause shall be exercised by the Seller;
- 14.4 It is further agreed that a condition, substantially in accordance with the following wording, shall be included in the title deed of the property hereby sold:

"Subject further to the following condition imposed by the Transferor for the benefit of the Home Owners' Association :

The transferee and his successors in title shall be obliged to become members of the BREAKWATER BAY ECO ESTATE HOME OWNERS ASSOCIATION established in terms of Section 29 of

Ordinance 15/85 by virtue of their ownership of the property, and shall at all times be subject to the Constitution thereof and the property will not be transferred without the written consent of the BREAKWATER BAY ECO ESTATE HOME OWNERS ASSOCIATION".

- 14.5 Furthermore the Purchaser grants to the Seller or its nominee an irrevocable power of attorney in rem suam (operative from the time the Purchaser becomes the registered owner of the Property) to attend the first meeting of the Home Owners Association, and on behalf of and to the exclusion of the Purchaser to vote at the meeting on his/her behalf in respect of the appointment of the first trustees of the Home Owners Association and other matters incidental to the establishment of the Home Owners Association.

## 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:** c/o

ROUX KRUGER & HAYCOCK ATTORNEYS  
7 Cathedral Square, Cathedral Street  
P O BOX 879  
GEORGE  
6530  
Ref: N Haycock

- 15.1.2 **The Purchaser:** At the addresses (including the e-mail and fax addresses) as indicated in the Schedule.

- 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 to the domicilium chosen by the party concerned or faxed or sent by e-mail to the fax number and e-mail address appearing on page 1 hereof and shall if posted be deemed to have been duly delivered 7 (seven) days after the day on which such notice was posted.

## 16. JURISDICTION

- 16.1 For the purposes of any 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.
- 16.2 Purchaser shall be liable for any costs, including but not limited to attorney and client costs, collection commission and tracing

agent's fees, actually incurred by the Seller arising out of or in connection with any breach by the Purchaser of any of the provisions of this Agreement or any other matter relating to this Agreement.

**17. WHOLE CONTRACT**

This Agreement constitutes the entire contract between the parties and any representation, terms, conditions or warranties not contained in this Agreement shall not be binding on the parties.

**18. VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or canceling this Agreement, shall be of any effect unless reduced to writing and signed by or on behalf of the parties.

**19. OFFER**

19.1 This Agreement, once signed by the Purchaser, shall be regarded as an offer by the Purchaser and shall be irrevocable and open for acceptance by the Seller for a period of 20 (twenty) days from date of signature by the Purchaser and shall not be capable of being withdrawn by him during the said period.

19.2 By non-acceptance of this offer the deposit paid shall immediately be repaid by the Seller to the Purchaser.

**20. HEADINGS**

Clause headings are for convenience only and are not to be used in the interpretation of any clause.

**21. ANNEXURES**

The parties hereto agree that the Annexures to this Agreement referred to in the Schedule are by this reference incorporated herein and will form an integral part of this Agreement and must be read with this Agreement.

**22. SUSPENSIVE CONDITIONS**

The whole of this agreement is subject to the following suspensive conditions:

22.1 Should the Purchaser be unable to obtain a loan from a bank payable against the registration of a first bond over the property for the amount of R  
(\_\_\_\_\_RAND)  
within a period of 30 days from date hereof, this Deed of Sale shall, subject to the proviso hereto, lapse and no duty to take transfer of the property shall rest upon the Purchaser.

Provided that if the Purchaser is unable to obtain a loan within the aforementioned period of 30 days from a Bank, it will be in the Seller's sole discretion to extend such period with a further period not exceeding 30 days. If such extension is not granted or if the Purchaser does not obtain such loan within the extended period this agreement will lapse and there will be no obligation on the Purchaser to take transfer of the property. The Purchaser by signature hereto warrants that he is financially able to fulfil all his obligations in terms of this deed of sale. It is hereby recorded that the Purchaser shall have the free option to select the financial institution to apply for a mortgage bond to finance the purchase price or the balance of the purchase price of the property.

- 22.2 That the Constitution of the Home Owners Association (with annexures thereto) be approved by the local authority within a reasonable period from date of signature hereof.
- 22.3 That the development property referred to in the preamble hereto be transferred to the Seller within a reasonable period from date of signature hereof;
- 22.4 That the Seller install all infrastructure services to the proposed development within a reasonable period from date of signature hereof and within such period comply with and implement all official approvals and requirements in respect of the proposed development, including any servitude or other agreement with adjacent owners or third parties necessary to properly implement the development. Should the Seller for whatever reason not succeed with the aforesaid provision, the Seller shall have the right in its sole discretion to resile from this Agreement by merely giving written notice to the Purchaser.
- 22.5 Should any of the abovementioned suspensive conditions not be fulfilled timeously the whole of this agreement will lapse automatically and the parties will have no further claims against each other. It is specifically recorded that the deposit payable in terms of Clause 4.1 above is a non-refundable deposit and that in the event of the abovementioned bond of the purchaser not been approved, the Purchaser shall forfeit the said deposit and only be entitled to repayment of the interest that may have accrued thereon.

### 23. **SPECIAL CONDITIONS**

The following conditions constitute special conditions and/or contractual arrangement of the parties to this Agreement:

- 23.1 The Purchaser shall not be entitled to sell or otherwise alienate the property purchased in terms hereof without the written consent of the

Seller before registration of transfer of the property into the Purchasers name.

- 23.2 The repayment of any future capital expenditure by whomsoever which was incurred by the Seller in respect of the installation of any infrastructure services incidental to the proposed development shall be paid to the Seller for its sole benefit.
- 23.3 In the event of the PURCHASER deciding to sell his property, the SELLER or its nominee shall as long as the purchaser remains of the intention to sell his property have a mandate to sell the property of such PURCHASER on similar terms and conditions as mandated to any estate agent. The aforesaid member shall forthwith inform the SELLER of his intention to sell his property and let the SELLER or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the SELLER or its nominee.

#### 24. **INTEREST**

- 24.1 All moneys payable by the PURCHASER(s) in terms hereof and unpaid on due date and any amounts secured by guarantee which is not provided on due date shall bear interest at 2 % (TWO 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 will be final and binding on the parties.
- 24.2 Interest as aforesaid will be calculated from due date to actual date of payment and in the case of guarantees to be presented from the due date thereof until date of presentation and will be payable without demand having to be made therefore.
- 24.3 Each payment made by the PURCHASER(s) shall be allocated first to the payment of interest and then to the payment of any other moneys due in terms of this contract and thereafter to the reduction of the purchase price.

#### 25. **AGENTS COMMISSION**

The SELLER shall pay commission in accordance with the agreed written mandate to the SELLING AGENT provided that should the PURCHASER fail to carry out his obligations in terms hereof, the AGENT shall be obliged to recover such commission from the PURCHASER. The commission shall be payable upon fulfilment of the suspensive conditions and registration of transfer of the property into the name of the PURCHASER.

## 26. BUILDING OPERATIONS

The PURCHASER acknowledges that the Township is not fully developed, the building operations will take place upon adjacent or neighbouring subdivisions or erven and that the said building operations may cause the PURCHASER certain inconvenience. The PURCHASER agrees that he shall have no claim either against the SELLER and/or the Home Owners Association or against the builder arising out of such building operations and shall not be entitled to claim damages from any person or institute interdict proceedings.

SIGNED by the SELLER at \_\_\_\_\_ on this \_\_\_\_\_ day  
of \_\_\_\_\_

### AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
PURCHASER

SIGNED by the PURCHASER at \_\_\_\_\_ on this \_\_\_\_\_ day  
of \_\_\_\_\_

### AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
ON BEHALF OF THE SELLER

### CERTIFICATE OF RECEIPT

The purchaser hereby certifies that he/she/it has received the copies referred to in Clause 13.1 in a hard copy form (compact disk).

\_\_\_\_\_  
PURCHASER