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- 3.3.7 Maximum roof height should conform to those of the adjacent structures.
- 3.3.8 The Hermanus Heritage Committee report needs to be given a fresh opportunity to approve the new scheme.
- 3.4 The Provincial Zoning Scheme Model by-Law, October 2004,<sup>10</sup> regulates construction in areas zoned as Single Residential Zone 2: Medium Density (SR2)<sup>11</sup> areas. The Development Management Provisions hold that the maximum coverage area shall be determined in accordance with the net erf area. As the net erf area exceeds 250m<sup>2</sup>, the maximum coverage is 60%. The proposed amendments may not be compliant.
- 3.5 An unsightly block of three flat roof garage buildings, pergola and more parking spaces are proposed for the Southern boundary. The fencing was to be unobtrusive, not a block of parking garages. In the event that garages are built on the boundary line, the construction is regulated by Section 17.1.2.<sup>12</sup> This section states that (a) The Council may permit the erection of a garage within the street building line if, in the Council's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit, or for other reasons provided, (i) the height of such garage from the finished floor level to the top of its roof shall not exceed 4,0 m; (ii) the garage shall not be closer than 5,0 m to the road kerb.
- 3.6 The Perspective View From South<sup>13</sup> indicates two more garages, one with an added pergola, to accommodate a further vehicle. The proposed garage block also has a connecting pergola to accommodate another two vehicles.
- 3.7 It is unacceptable that the building line restriction is relaxed to accommodate these extra buildings. Section 5.2.2 (c) regulates building lines. Building lines may be reduced to 2.0m under certain circumstances, but not to 0m.<sup>14</sup>

<sup>10</sup>[http://www.westerncape.gov.za/text/2008/3/model\\_regulations\\_provincial\\_zoning\\_scheme\\_oct\\_2004.pdf](http://www.westerncape.gov.za/text/2008/3/model_regulations_provincial_zoning_scheme_oct_2004.pdf).

<sup>11</sup> Section 5.2.

<sup>12</sup> Provincial Zoning Scheme Model by-Law.

<sup>13</sup> Addendum B.

<sup>14</sup> 5.2.2 (c) Building Lines

(i) Street Building Line

Land Unit Street Building Line

Where the net erf area is greater than 150m<sup>2</sup> but does not exceed 250m<sup>2</sup> 2,0 m

Where the net erf area is greater than 250m<sup>2</sup> 3,0 m

Where the street boundary abuts a declared road 5,0 m. may be required.

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3.8 When applying for the reduction of a building line restriction the application must include the following<sup>15</sup>:

1. Surveyor-General Erf Diagram
2. Copy of title deed and/or a Conveyancer's Certificate (if applicable)
3. Mortgagee's (Bank) Consent (if applicable)
4. Power of Attorney (if the applicant is not the registered owner)
5. Locality Plan (A4)
6. Site Development Plan (A4 or A3 size with contours, if necessary)
7. Complete motivation report as per the minimum guidelines prescribed hereunder:
  - If the proposal is in accordance with the existing planning and the surrounding land uses of the area.
  - The influence of the proposal on the surrounding area.
  - The impact of the proposal in terms of heritage conservation.
  - The impact of the proposal on trees on the property and in the road reserve.
  - The influence of the proposal on the traffic and/or parking of the area.
  - The influence of the proposal on surrounding facilities such as schools, open spaces and other community facilities if the application leads to an increase in the residents of the area.
  - The influence of the proposal on the existing character of the area and the rights of residents with regards to property values, privacy, view, sunlight, etc.
  - The provision of services.
8. Certified 1:50 year flood-line certificate (if necessary)
9. Confirmation that an application in terms of the National Heritage Resources Act, 1999 or the National Environmental Management Act, 1998 is not required. (if requested)

NMH Trading 23 (Pty) Ltd has not properly complied with the requirements set out for a correct Motivation Report. Consequently their application for relaxation of the boundary line should be denied.

3.9 If the housing cluster is fenced in, the 10m building restriction must also be imposed on the West side abutting the golf course, both for safety and to preserve the un-crowded ambiance of the area.

3.10 The 50% increase in rooms will require more water, a new Water Resource assessment needs to confirm that the extra load can be served by the infrastructure in place today.

3.11 To fund the protection of the wetlands the new Lodge has to contribute to a trust fund.

<sup>15</sup> Section 47(1) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985).

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3.11.1 How will this now be funded? Once-off or on-going?

3.10.2 How will the Environmental Control Officer audit be funded?

3.10.3 Did the new development proposal undertake to make this contribution a condition of sale of the proposed housing cluster?

3.10.4 The original site development plan had to provide pedestrian footpaths, which are now in place, for access by the general public to the golf course. How will this be maintained for the Southern residential area?

3.12 Conservation of the Wetlands should be one of the Municipality's major priorities. Wetlands have been identified as the third most important life support system on earth. Wetland plants absorb nutrients from the surrounding water, acting as nutrient 'sponges' and assist in the removal of excess nutrients from the water. The slow passage of water through wetlands means that they play an important role in flow regulation, reducing the rate at which rainfall accumulates in lower-lying areas and reducing the erosive power of surface runoff. The roots of wetland plants are excellent binders of the soil, and thus reduce bank erosion. Wetland soils retain water for long periods of time, contributing towards the constancy of water supply.

3.13 However, despite the ecological, economic and educational value of wetlands, it has been estimated that over half of South Africa's wetlands have already been destroyed and lost, while those that remain are among South Africa's most threatened natural areas. Fortunately, open space remained on the coastal plain as the Hermanus Golf Course. A small but precious wetland area of 11 ha remains formally conserved here, commonly known as the Flat Street Wetland. It is already known that the clicking stream frog, river frog and De Villiers's moss frog find a home here and it is thought that the common platanna, arum lily frog and raucous toad will also be found.<sup>16</sup>

3.14 The Fernkloof Estate (incorporating the new Hermanus Golf Course), now in its fifth year, has successfully met this urban conservation challenge in the following ways:

3.14.1 The primacy of ensuring ecological corridors through the site and of conserving existing remnant wetlands was the guiding design principle in the layout of residential areas and golfing greens.

3.14.2 Careful management of irrigation and drainage through the golf course ensures that the water levels in the wetlands are not altered from what

<sup>16</sup> Lee A Wetlands: why all the fuss? <<http://www.westerncapebirding.co.za/karoo/conservation/476/>> 07-08-2013.

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is needed to maintain their natural character, a major achievement for this type of development, where adequate drainage from the fairways must not be at the expense of wetland health.<sup>17</sup>

3.15 If the proposed building were to be allowed it would disrupt the careful ecosystem management system created over the past five years. The negative effects of insufficient water drainage are immeasurable. This development may also destroy the habitat of the mentioned wetlands creatures. A new environmental impact study will have to be done in terms of the proposed amendments.

I trust that in depth consideration will be given to the stated objections. Please acknowledge receipt of this email and direct further correspondence to this email address, v5ccelia@gmail.com

Yours sincerely,

*Cecilia van der Vyver*

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<sup>17</sup> Further impetus toward "green golfing" at Hermanus Golf Club <<http://www.hgc.co.za/wetlands/>>.

**Loretta Page - Attention: H van der Stoep, Objections Erf 11097**

**From:** Celia van der Vyver  
**To:**  
**Date:** 05/12/2013 03:45 PM  
**Subject:** Attention: H van der Stoep, Objections Erf 11097  
**Attachments:**

---

Dear Director: Infrastructure and Planning

Attached is my written submission detailing my objection to the proposed development on Erf 11097.

Please confirm receipt of this email and that the attachment is downloadable and can be read.

Your favourable attention to this submission will be appreciated.

Yours sincerely  
Cecilia van der Vyver



TP

Berg 'n See 29  
 Privaatsak X06  
 HERMANUS  
 7200  
 4 Desember 2013

## PER HAND

Direkteur, Infrastruktuur en Beplanning  
 Overstrand Munisipaliteit  
 Posbus 20  
 HERMANUS  
 7200

Geagte Meneer

**KOMMENTAAR/BESWARE: ERF 11097, FERNKLOOF, HERMANUS:  
 VOORGESTELDE WYSIGING VAN DIE VOORWAARDES EN WYSIGING  
 VAN DIE TERREIN ONTWIKKELINGSPLAN EN AFWYKING; NMH  
 TRADING 23 (PTY) LTD**

Die ontwikkelaar se pogings om te probeer bewys dat die voorgestelde ontwikkeling geen addisionele negatiewe gevolge sal meebring nie, hou nie water nie. 'n Verdubbeling van die aantal afsonderlike eenhede, die vermeerdering van die slaapkamers, motorhuise, parkeerplekke, ens. sal ongetwyfeld groter druk op die omgewing en naasliggende eiendome meebring en onaanvaarbare ongerief vir die bure tot gevolg hê.

Ek maak ernstig beswaar teen die gewysigde voorstelle en versoek dat dit nie tot nadeel van die omgewing en nabygeleë inwoners godgekeur word nie.

Die uwe

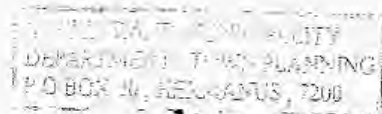
*m. j. Alheit*  
 R ALHEIT (Rita)

EL 11097	COLLABORATOR NO:
	SCAN NO:
572121	FILE NO:

TP

05 DEC 2013

Received: *Ant*





# HERMANUS GOLF CLUB

P O Box 313, GOLF ROAD, HERMANUS 7200

TEL: (028) 3121954/5 - PRO SHOP: (028) 3122271

FAX: (028) 3122333 - E-MAIL: [manager@hgc.co.za](mailto:manager@hgc.co.za)

WEBSITE: <http://www.hgc.co.za>

05 DEC 2013



Reference: Objection Erf 11097, Fernkloof, Hermanus

Overstrand Town Planning  
 Director Infrastructure and Planning  
 Mr. S. Muller  
 Hermanus

Your reference: 11097 HEC (2425)

4 December 2013

Dear Sir,

Re: Erf 11097, Fernkloof, Hermanus; Proposed amendment of the conditions of approval and amendment of the site development plan and departure: NMH trading 23(PTY) Ltd.

The Hermanus Golf Club objects to aspects of the proposed amendment of abovementioned site development plan as follows:

- In the original ROD provision was made that the maintenance of the wetlands within the Estate and Golf course boundaries would be financed by the revenue or rental income from the proposed Golf lodges. This in fact has to date not materialised. We annex hereto the relevant Deed of Sale entered into and between yourselves and ourselves dated 6 December 2006. We would like to bring to your attention Clause 10.3 as well as Clause 4.13 of Annexure C. If the Applicant in writing agrees to accommodate ourselves as per the aforesaid clauses (to our satisfaction) we will withdraw our objection to the changing of the development plan from 9 golf lodges to 18 residential units.
- Security. The security of the Golf Course is of paramount importance to the Hermanus Golf Club. It is therefore not acceptable that the 18 proposed units have an open frontage towards the Golf Course and access to the Golf Course parking area. Hermanus Golf requires, as a condition to their approval of the amendment, that the proposed development be completely fenced in with no direct access to either the Golf Course or its parking area.
- Entrance to Hermanus Golf Club. To access the proposed development from the servitude between itself and Berg and See, the gate leading to the Hermanus Golf Club parking area would have to be repositioned. The Golf Club will give permission for this to be done provided the cost associated with the repositioning is for the Applicant's account.
- At the meeting held on 22 November 2013, we understood from a representative of the applicant that the garages on the Southern Boundary line abutting the parking area of the Golf Club were only originally necessary for the Golf Lodge plan as no provision had been made for garages attached to the lodges. The now proposed development provides every unit with a garage. The Hermanus Golf Club objects to any relaxation of the southern building line as it is intrusive and considered inappropriate.

Yours faithfully

M.E. du Plessis - Club Captain, Hermanus Golf Club

PRESIDENT: W. MIDRING - CAPTAIN: M.E. DU PLESSIS - VICE-CAPTAIN: S. VAN DER MERWE

COMMITTEE: C. DAY, J. DU TOIT, W. MC BEACHY, B.D. RIDLEY, J. ROSE, A. SPRINCK

CLUB MANAGER: SHARON SLEIGH - CLUB PROFESSIONAL: JULIAN SHAW

FILE NO:	E211097
SCAN NO:	
COLLABORATOR NO:	571948

TP

- 4 DEC 2013

**REMAINDER ERF 9935, HERMANUS****DEED OF SALE**

made and entered into by and between:

**OVERSTRAND MUNICIPALITY**

herein represented by the Municipal Manager in terms of a Council resolution dated  
30 August 2006  
whose full and further particulars appear in **Schedule A** hereto  
("the **Seller**")

and

**HERMANUS GOLF CLUB**

herein represented by Deon Hendrik Esterhuyse, duly authorised thereto,  
whose full and further particulars appear in **Schedule A** hereto.  
("the **Purchaser**")

**1. INTERPRETATION AND DEFINITIONS**

Headings to clauses in this Agreement are for purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof.

In this Agreement, unless a contrary intention clearly appears:

- 1.1** Words importing any one gender include the other gender; the singular includes the plural and *vice versa*; and natural persons include created entities (incorporated or unincorporated) and *vice versa*.
- 1.2** The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning unless the contrary clearly appears from the context:

**1.2.1 "Property"**

means Remainder Erf 9935, Hermanus, more fully described in **Schedule A** hereto.

**1.2.2 "Transfer"**

means registration of transfer of the Property into the name of the Purchaser.



- 1.2.3 "Date of Transfer"** means the date on which Transfer is effected by the Attorneys, which shall be as soon as possible after signature of this Agreement by both parties.
- 1.2.4 "the Attorneys"** means Chin Attorneys, 9 on College, College Road, Hermanus.  
Tel No. (028) 313 2450  
Fax No. (028) 313 2455  
**Trust banking details:**  
ABSA, Hermanus 334 812  
Acc. No: 406 258 5577.
- 1.2.5 "DEADP"** means the Department of Environmental Affairs and Development Planning of the Western Cape Province.
- 1.2.6 "GC-OEMP"** means the Golf Course Operational Environmental Management Plan, a working document, as amended from time by DEADP.
- 1.2.7 "Wetlands"** means the wetlands referred to in **Annexure C** hereto.
- 1.2.8 "Trust Fund"** means the trust fund for the maintenance of the Wetlands referred to in **Annexure C** hereto.
- 1.2.9 "Effluent"** means treated sewage effluent, flowing away from treatment.
- 1.2.10 "Wellfield"** means the area described as such in paragraph 5.1.2 (p 49) and depicted on Figure 5-3 (p 50) of the inception report, titled 'Water Source Development and Management Plan for the Greater Hermanus Area Overstrand Municipality', prepared by Umvoto during December 2001/January 2002.
- 1.2.11 "FEPOA"** means Fernkloof Property Owners' Association, being the master property owners' association of which all other property owners' associations of the Fernkloof Estate development will become members.

**1.2.12 "this Agreement"**

means this Deed of Sale together with any Schedules and Annexures hereto.

**2. SALE**

The Seller hereby sells to the Purchaser who purchases from the Seller the Property subject to the terms and conditions set out hereunder.

**3. PURCHASE PRICE**

The purchase price of the Property is the sum mentioned in **Schedule A** hereto and is **exclusive of Value Added Tax**.

**4. PAYMENT OF THE PURCHASE PRICE**

**4.1** The purchase price shall be paid in cash on Date of Transfer

**4.2** The Purchaser shall be obliged to deliver to the Attorneys a written irrevocable banker's guarantee for payment of the purchase price against Transfer, which guarantee shall be payable at Hermanus and shall otherwise be in such format and subject to such terms and conditions as are acceptable to the Seller and or the Attorneys. The guarantee aforesaid shall be delivered within 14 (fourteen) days of demand by the Attorneys. Alternatively, the purchase price shall be paid to the Attorneys in trust within the said period, to be held in an interest bearing account pending Transfer, interest accruing to the Purchaser as from date of compliance with the provisions of clause 4.3 below.

**4.3** Notwithstanding the foregoing, no interest shall accrue to the Purchaser before the date on which the Purchaser has complied with the requirements of the Financial Intelligence Centre Act, 38 of 2001 (FICA), by providing the Attorneys with all the properly signed/commissioned/certified, prescribed documentation as well as the Authority to Make Investment, required in terms of section 78(2A) of the Attorneys Act, 53 of 1979. Copies of the documents to be completed and delivered to the Attorneys, are attached hereto as **Annexures A1 and A2**.

**5. TRANSFER AND COSTS**

**5.1** Transfer shall be given and taken on the Date of Transfer

**5.2** The Purchaser shall pay on demand all costs related to registration and Transfer, including, but not limited to, survey and related costs and the Attorneys' costs in respect of negotiating and drawing this Agreement.

**6. POSSESSION AND OCCUPATION**

- 6.1** The Seller shall give and the Purchaser shall be obliged to take, possession and occupation of the Property on the Date of Transfer, from which date the Property will be at the sole risk of the Purchaser.
- 6.2** The Purchaser is currently in possession and occupation of the Property as Lessee thereof, but shall on Date of Transfer take possession and occupation as owner of the Property.

**7. RATES, TAXES AND RELATED COSTS**

The Purchaser shall on demand from the Attorneys, pay all outstanding rates and taxes and other related costs levied by the Local Authority in respect of the Property, if applicable.

**8. VOETSTOOTS**

- 8.1** The Property is sold "voetstoots", subject to all conditions and servitudes mentioned or referred to in the current or prior title deeds or in the conditions of establishment of the township or imposed/to be imposed by the local authority or in terms hereof, and the Seller shall not be liable for any defects, patent, latent or otherwise, except where expressly provided to the contrary in this Agreement.
- 8.2** The Seller shall not profit by any excess nor shall the Seller be liable for any deficiency in the area of the Property that may be revealed on any survey.
- 8.3** If the Property has been erroneously described herein, such error shall not be binding on the parties, but the correct description as intended by the parties shall apply, and shall effect rectification of this Agreement accordingly.

**9. REVERSION**

- 9.1** The Property shall be utilised by the Purchaser exclusively for the purpose of promoting and encouraging the playing of the game of golf for people, without practising discrimination on the grounds of race, religion or political association, who wish to become members of the Purchaser.
- 9.2** Should the Purchaser be dissolved or cease to utilise the Property as stipulated in clause 9.1 above, or attempt to alienate the Property to a third party, the Property shall revert to the Seller at the purchase price which the Purchaser paid in terms of this Agreement and the Purchaser shall have no claim for any improvements on the Property, irrespective of whether it was made with or without the consent of the Seller, or whether it was made before or after the Date of Transfer.
- 9.3** The stipulations of this clause 9 shall be included in the Deed of Transfer as conditions of title of the Property.

**10. RESTRICTIVE CONDITIONS AND OBLIGATIONS**

- 10.1** The Property shall be restricted to private open space use for golf purposes.
- 10.2** The Purchaser shall, insofar as it applies to the Property and or the Purchaser, comply with all the relevant conditions/requirements of:
- 10.2.1** the Record of Decision issued by the DEADP on 11 July 2002, copy attached hereto as **Annexure B**;
- 10.2.2** subdivision and rezoning issued by the DEADP on 30 September 2003, copy attached hereto as **Annexure C**;
- 10.2.3** the GC-OEMP as revised from time to time, draft copy attached hereto as **Annexure D**;
- 10.2.4** the settlement agreement reached between J E van der Berg and the Seller and others, under Cape High Court case numbers 2007/2004 and 2312/2004, copy attached hereto as **Annexure E**, or any written amendment thereof.
- 10.3** Without derogating from the generality of the foregoing, the Purchaser hereby specifically agrees to accept full responsibility, financial and otherwise, for the proper maintenance of the Wetlands, provided that the Trust Fund is established with appropriate and sufficient initial funding to the satisfaction of the parties, before Transfer.

**11. EFFLUENT**

- 11.1** The Seller shall make available to the Purchaser for irrigation purposes, 700 (seven hundred) kilolitres of Effluent per day at the following rates, as from **1 July 2007**:
- |               |         |                     |                      |
|---------------|---------|---------------------|----------------------|
| <b>11.1.1</b> | Year 1: | R0.50 per kilolitre | R10 500.00 per month |
| <b>11.1.2</b> | Year 2: | R0.90 per kilolitre | R18 900.00 per month |
| <b>11.1.3</b> | Year-3: | R1.30 per kilolitre | R27 300.00 per month |
- 11.2** The Purchaser shall be obliged to pay the fixed amounts referred to in clause 11.1 whether or not it utilises the entire allocation in a particular month or ever.
- 11.3** Any additional Effluent required by the Purchaser, shall, subject to availability, be provided by the Seller at an additional cost of R0.50 (fifty cents) per kilolitre or part thereof.
- 11.4** The price of Effluent as per clause 11.3 above, shall be revised annually in terms of applicable legislation, to take effect on 1 July of each year, while the price of Effluent as per clause 11.1 shall be so revised on 30 June 2010 and take effect on 1 July 2010.
- 11.5** A reconciliation of the Purchaser's account for Effluent shall be done and adjusted annually on 30 June.

- 11.6** The pipe, together with the system whereby the Effluent is delivered to the point of discharge, is and shall remain the property of the Seller and the Seller shall be responsible for the operation and maintenance thereof up to the point of discharge, provided that the Purchaser shall be liable for any damage caused to the pipe and or system due to any wilful or negligent act by the Purchaser or any of its employees, agents, contractors, invitees, members or their invitees.
- 11.7** The Seller shall at all times have the right of access to the Property for purposes of maintenance, repair, inspection and any other purpose in connection with the pipe and system. This in no way detracts from the general right of access the local authority has to the Property in terms of legislation.
- 11.8** The Purchaser shall not utilise any potable water for purposes of irrigation.

## 12. BOREHOLE SERVITUDE

- 12.1** The Seller reserves the right to exploit, at any time in the future, any or all of the boreholes in the Wellfield as per **Annexures F1 and F2** hereto, without compensation to the Purchaser, but subject to obtaining the necessary permit from the Department of Water Affairs and Forestry and or the relevant authority at the time.
- 12.2** The Seller shall at all times have a general right of access to the Wellfield for purposes including, but not limited to, monitoring, exploring, exploiting, testing, preparing for extraction, extraction, laying of pipes and placing of equipment, maintenance and repair.
- 12.3** Should the Seller wish to exploit the Wellfield for extraction of water for supply, it shall have the right to install the necessary pipes and equipment on/over the Property, provided that the placement and manner of installation of pipes and equipment on/over the Property shall be decided after consultation between the Seller and the Purchaser.
- 12.4** The Seller shall be entitled to have the rights in terms of this clause 12 registered as a servitude/servitudes over the Property.
- 12.5** The Purchaser shall not utilise any borehole water for purposes of irrigation.

## 13. OTHER SERVITUDES

- 13.1** The Attorneys shall register:
- 13.1** servitudes over the Property in favour of Erf 10153 (Precinct 6 internal road) according to the draft diagrams attached hereto as **Annexures G1 and G2**;
- 13.2** a right of way servitude over the Property in favour of Erf 10558 according to the draft diagrams attached hereto as **Annexures H1 and H2**.

The image shows a handwritten signature and initials in black ink. The signature is a cursive name, and the initials are 'D' and 'M' followed by a flourish.

- 13.2** The Purchaser shall allow a servitude to be registered in terms of paragraph 5.1 of **Annexure E**.

**13. VALUE ADDED TAX**

- 13.1** For purposes of this clause, words and phrases defined in the Value Added Tax Act, 1991 (as amended) shall, when used here, have the same meaning as given to them in the Act.
- 13.2** If any Value Added Tax is payable by any party to this Agreement in respect of the supply by that party of any goods or services under this Agreement, then the recipient of those goods or services shall pay the Value Added Tax to the supplier of those goods or services at the time of supply of those goods or services, as determined in accordance with the provisions of the Value Added Tax Act, 1991 (as amended) unless expressly provided to the contrary elsewhere in this Agreement. If the recipient of the goods or services disputes liability for such Value Added Tax, he/she shall have the onus of proving that the Value Added Tax is not payable by the supplier of the goods or services.

**14. PENALTY INTEREST**

Should Transfer be delayed due to any failure on the part of the Purchaser:

- 14.1** to sign, within 5 (five) days of demand, any document required by the Attorneys pertaining to the Transfer;
- 14.2** to supply, within 5 (five) days of demand, any document and/or information required by the Attorneys;
- 14.3** to make payment of any amount payable in terms of this Agreement,

then and in such event the Purchaser shall pay interest to the Seller for the duration of such delay at the prime rate of Absa Bank from time to time plus 3% (three percent), calculated from due date to date of payment, both days inclusive.

**15. BREACH IN RESPECT OF TRANSFER AND RELATED MATTERS**

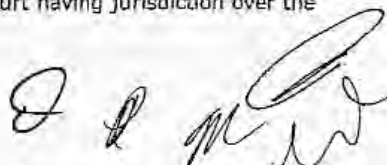
In the event of the Purchaser failing to fulfil on due date any of the terms and conditions of this Agreement in respect of Transfer and related matters, the Seller shall be entitled, having given to the Purchaser 7 (seven) days written notice to remedy the breach, either:

- 15.1** to cancel this Agreement, in which event all monies paid to the Attorneys in respect of the purchase price shall be forfeited to the Seller as genuine, agreed pre-estimated damages, without prejudice to the Seller's other legal rights and remedies and the right to claim further damages, provided that in case of a dispute regarding the amount of damages, any amounts held in trust by the Attorneys in respect of the purchase price, shall remain in trust with the Attorneys pending determination of the dispute; or
- 15.2** to enforce specific performance of this Agreement, at which time all monies payable in terms of this Agreement will be deemed to be forthwith due and payable and furthermore to recover any damages and interest.

**16. ARBITRATION IN RESPECT OF ONGOING OBLIGATIONS**

Should any dispute, question or difference arise between the parties with regard to any matter relating to any of the Purchaser's ongoing obligations in terms hereof, other than those directly related to Transfer, such dispute shall be decided by arbitration in the manner set out in this clause 16.

- 16.1** In respect of any claim arising from non-payment of rates and taxes and similar municipal service charges, the Seller shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 16.2** The arbitration shall:
- 16.2.1** be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
  - 16.2.2** commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
  - 16.2.3** be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 16.3** The arbitrator shall be a practising counsel or attorney of not less than 7 (seven) years standing, appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Bar Association or the Chairman of the Law Society of the Cape of Good Hope.
- 16.4** The arbitrator shall, in giving his award, have regard to the principles contained in this Agreement and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by each of the parties as he in his sole discretion may deem fit.
- 16.5** Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:
- 16.5.1** shall be final and binding on each of them; and
  - 16.5.2** shall be carried into effect immediately; and
  - 16.5.3** may be made an order of any Court having jurisdiction over the parties.



- 16.6** Notwithstanding anything to the contrary contained in this clause 16, the parties shall be entitled to institute legal proceedings by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Agreement.

**17. GENERAL**

- 17.1** This Agreement constitutes the entire agreement concluded between the parties and no warranties or undertakings or representations other than those specifically recorded herein may be relied on by either of the parties.
- 17.2** No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any dispute arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement, shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating only to the matter in respect whereof it was made or given.

**18. DOMICILIA AND NOTICES**

- 18.1** The parties choose *domicilia citandi et executandi* at their respective addresses as follows:
- 18.1.1 Seller:** c/o the Attorneys as set out in **clause 1.2.4** above;
- 18.1.2 Purchaser:** as set out in **Schedule A** hereto,
- at which addresses all notices and legal process in relation to this Agreement or any action arising therefrom may be effectually delivered and served.
- 18.2** Any notice given by one of the parties to the other ("the addressee") which:
- 18.2.1** is delivered by hand to the addressee's *domicilium citandi et executandi* shall be deemed to have been received by the addressee at the time of delivery;
- 18.2.2** is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium citandi et executandi* shall be deemed to have been received by the addressee on the 5<sup>th</sup> (fifth) day after the date of posting;
- 18.2.3** is sent by fax to the addressee's *domicilium citandi et executandi* shall be deemed to have been received on the business day following the day of transmission.
- 18.3** Either party shall be entitled on written notice to the other, to change its address as set out above.



**19. AGREEMENT WITH FEPOA**

**19.1** The Purchaser shall enter into an agreement with the FEPOA to make provision for the co-operation of the FEPOA and its members insofar as same is required to enable the Purchaser to comply with its obligations in terms of this Agreement and specifically, but not limited to, its obligations in terms of clause 10 hereof.

**19.2** The Purchaser shall, within 90 (ninety) days of Date of Transfer, provide the Seller with a copy of the duly signed agreement with the FEPOA.

**20. LINKED TRANSFER**

Transfer in terms of this Agreement shall be effected on the same date as the Transfers of Erven 10549 and 10550 Hermanus, as linked transactions.

Signed at Hermanus on 4 December 2006

AS WITNESSES:

1. [Signature]

[Signature]  
SELLER

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

Signed at HERMANUS on 6 DECEMBER 2006

AS WITNESSES:

1. [Signature]

[Signature]  
PURCHASER

2. [Signature]

\_\_\_\_\_

<b>SCHEDULE A</b>	
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<b>Seller</b>	<b>OVERSTRAND MUNICIPALITY</b>
<b>Purchaser Address</b>	<b>HERMANUS GOLF CLUB</b> Main Road, P O Box 313, Hermanus. 7200
<b>Contact Numbers</b>	<b>Tel:</b> 028 – 312 1954/5 <b>Fax:</b> 028 – 312 2333 <b>e-mail:</b> <a href="mailto:manager@hgc.co.za">manager@hgc.co.za</a>
<b>Property</b>	<b>Remainder Erf 9935, Hermanus</b> In extent <b>104.1587 hectares</b>
<b>Purchase Price</b>	<b>R1 116 500.00</b> (one million one hundred and sixteen thousand five hundred Rand), which sum represents 50% (fifty percent) of the market related value of R2 233 000.00 (two million two hundred and thirty three thousand Rand)
<b>plus 14% VAT on purchase price</b>	<b>R 156 310.00</b> (one hundred and fifty six thousand three hundred and ten Rand)



ANNEXURE D 27/40

Verwagting E1772/201A 9134538  
 . Peterza Erf 4780, Farm 591/1, Hermanus  
 Balaokiso 24/1/5/3/18/01

Nawae  
 Enquiries & van ahl  
 Imibuzo

Datum  
 Date  
 Umhla 30 SEP 2003



Departement van Omgewingsake en Ontwikkelingsbeplanning  
 Department of Environmental Affairs and Development Planning  
 ISebe leMicimbi yeNdalo esiNggongileyo noCwangciso loPhuhliso

The Municipal Manager  
 Overstrand Municipality  
 P O Box 20  
 HERMANUS  
 7200

Attention: Mr R Kuchar

OVERSTRAND MUNICIPALITY: PROPOSED HERMANUS GOLF ESTATE : REMOVAL OF RESTRICTIONS: ERF 5308, HERMANUS; CLOSURE OF STREETS AND OPEN SPACES (REM ERF 1253; ERF 7531; PTN ERF 4780; PTN ERF 5308) AND APPEAL AGAINST SUBDIVISION AND REZONING (PTN REM ERF 1253; ERF 4780; FARM 591/1, CALEDON; ERF 5308)

1. Your reference is TP1-09/2001.
2. The Competent Authority for the administration of the Municipal Ordinance, 1974 (Ordinance 20 of 1974) has, in terms of section 137 of said Ordinance, granted permission for the closure of the portions of Public Open Space on Portions of Remainder Erf 1253, Erf 7531, Portion of Erf 4780 and portion of Erf 5308, Hermanus as reflected on Annexure G.
3. The Competent Authority for the administration of the Municipal Ordinance, 1974 (Ordinance 20 of 1974) has further, in terms of section 137 of said Ordinance, granted permission for the closure of the following portions of Road as indicated on Annexure H:
  - 3.1 Portion G of Contour Street.
  - 3.2 Portion H of Theron Street.
  - 3.3 Existing gravel road link (portion I) between Fernkloof Drive and Contour Street (link road to be realigned).
  - 3.4 Existing access road to Fernkloof Nature Reserve (portion J).
  - 3.5 A portion of Flat Street (portion K).

Ukhosyalo, Dorpsstraat 1  
 Private Sak 15086 Kaapstad 8000

Ukhosyalo, Dorpsstraat 1  
 Private Sak 15086 Cape Town 8000

Tel No.: (021) 463 - 4023  
 Fax No.: (021) 463 - 3618  
 Ifowuni:  
 Ifakazi:

9134538

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- 3.6 A portion of 11<sup>th</sup> Street (portion L).
- 3.7 A portion of road approximately 7,18 m wide between Flat and 11<sup>th</sup> Street in the north and Main Road/Mossel River Drive in the south (portion M).
4. The Competent Authority for the administration of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) has, in terms of sections 16 and 42 of said Ordinance approved the application for the rezoning of the consolidated property (Portions A,B,C,D,E,F,G,H,I,J,K,L,M and Erf 7531 indicated on Annexures H and F) from Public Open Space, Single Residential and Road to Subdivisional Area for the purpose of single residential, group housing (general residential zone), medium density residential (general residential zone), golf lodges (general residential zone), golf course and associated uses (private open space), public open space and road uses subject to the following conditions:
- 4.1 That the applicant complies with the conditions of the environmental authorisation contained in the Record of Decision dated 11 July 2002, subject to possible amendment as a result of the outcome of the appeal to the Chief Director: Environmental Affairs.
- 4.2 The proposed development must be generally in accordance with the proposed development plan, dated 1 October 2001 (Annexure B). A site development plan must be submitted to the municipality for approval before development may commence.
- 4.3 The developer must compile an architectural manual that includes design criteria for all the proposed buildings after consultation with the Hermanus Heritage Committee, to be approved by the municipality.
- 4.4 The developer must provide all municipal services for the development, to the satisfaction of the municipality.
- 4.5 That the proposed development not be proceed with until the Council has approved a water resource development programme which indicates that sufficient water is available to support the proposed development.
- 4.6 The profits and funds generated by the municipality through this development should be utilised in terms of a programme approved by Council and which should be to the benefit of the broader community.
- 4.7 That following requirements with regard to traffic and traffic calming measures must be complied with, to the satisfaction of the municipality and the Department of Economic Affairs, Agriculture and Tourism: Transport Branch:
- 4.7.1 Exclusive right turn lanes on Main Road must be developed at the intersections of Fairways Avenue, Sim Street, Berg en See access, Mossel River Drive, Theron Street and Fir Street.