

NAUTILUS BAY COASTAL RESERVE

AGREEMENT OF SALE

SCHEDULE OF INFORMATION & DEFINITIONS

1.1. **SELLER:**

VURU VURU ESTATE WEST (PTY) LTD

REGISTRATION NO: 1999/006617/07

herein represented by THOMAS IGNATIUS VAN DER WATT
duly authorised thereto

1.2. **PURCHASER:**

Full name of individual(s):

.....
.....

Full name/s of Signatory(ies):

.....
.....

Identity/Company/CC/Trust number

Marital status: Unmarried / Married in community of property /
 Married out of community of property
 (Delete whichever is not applicable)

Spouse's full names:.....

Spouse's identity number:

Physical Address:

.....

Postal Address:

.....

Telephone No: (B) (H)

Fax No: (B) (H)

Cell Number : E-Mail Address:

1.3. **PROPERTY:**

NAUTILUS BAY ERF NO:

IN EXTENT:

1.4. **PURCHASE PRICE:**

Purchase Price (VAT INCL.) R.....

Less deposit R.....

Balance R.....

1.5. **ANNEXURES TO THIS AGREEMENT:**

- A Copy of General Plan
- B Design manual and architectural guidelines
- C Home owner's association constitution

2. **DEFINITIONS:**

- 2.1. In this Agreement the following words shall have the meaning as set out unless inconsistent with the context.
- 2.2. "the property" shall mean the erf/stand described in paragraph 1.3 purchased hereby.
- 2.3. "the Development" shall mean the development of Portion of Portion 1 of the Farm KLIPFONTEIN NO 344 DIVISION MOSSEL BAY, PROVINCE WESTERN CAPE (hereinafter referred to as "NAUTILUS").
- 2.4. "the Conveyancers" shall mean **RAUBENHEIMERS INCORPORATED**, P O Box 21, George, 6530 (tel: 044-873 2043 fax no: 044-874 4516)
- 2.5. "transfer date" shall mean the date of registration of transfer of the property in the name of the Purchaser.
- 2.6. Clause headings are for convenience only and are not to be used in the interpretation.

3. **ANNEXURES:**

The parties hereto agree that the Annexures to this Agreement referred to in paragraph 1 are by this reference incorporated herein and will form an integral part of this Agreement and must be read with this Agreement.

4. **THE PROPERTY:**

The Seller sells and the Purchaser purchases the Property as described in paragraph 1.3 hereof and as indicated on Annexures A at the purchase price set out above.

5. **PURCHASE PRICE:**

The Purchaser shall pay to the Seller the purchase price as set out in clause 1.4 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.

6. **PAYMENT OF PURCHASE PRICE:**

6.1. The purchase price shall be paid to the Seller as follows:

6.1.1 a deposit of 10% payable against signature hereof;

6.1.2 the balance thereof upon the Transfer Date.

6.2. For the payment of the amount due in terms of clause 6.1.2, the Purchaser shall furnish bank guarantees, acceptable to the Seller, within 14 (fourteen) days from the date so requested by the Conveyancers, which request, if applicable, will not be made prior to clause 6.3 being complied with;

6.3. The Purchaser will apply for a mortgage bond from a financial Institution in the amount of R.....
and this Deed of Sale is subject to the bond being granted within 21 days after signature hereof.

6.4. Any amounts paid on account of the purchase price shall, pending the registration 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 i.r.o. the deposit accruing to the Purchaser and i.r.o. any other amount accruing to the Purchaser.

7. **TRANSFER:**

- 7.1. Transfer shall be effected by the Conveyancers as soon as possible after the approval of the General Plan in respect of the Property by the Surveyor General.
- 7.2. The Purchaser must sign the transfer documents within 14 (fourteen) days of being called upon to do so by the Conveyancers.
- 7.3. The Purchaser shall be liable for all normal transfer fees, bond registration costs (if applicable) and pro rata rates and taxes, which amounts shall be payable within 7 (seven) days from date of request by the Conveyancers.

8. **WARRANTIES:**

- 8.1. 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.
- 8.2. The Property is sold voetstoots to the extent as it now lies and 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.

9. **POSSESSION AND OCCUPATION. RATES AND OTHER CHARGES:**

- 9.1. The Seller shall give and the Purchaser shall take possession and occupation of the Property on the Transfer Date from which date the risk in and to the Property shall pass to the Purchaser. All benefits and obligations of ownership shall pass to the Purchaser on that date and he shall be liable for all rates and other municipal charges payable in respect thereof.
- 9.2. Should transfer be delayed due to any act or omission on the part of the Purchaser, the date of possession will be the date on which transfer would have been registered but for the act or omission by the Purchaser, from which date the Purchaser shall be liable for interest on the balance of the purchase price calculated at the prime overdraft rate charged by ABSA BANK from time to time plus 3 (three) per cent per annum until the date of payment in full of the balance of the purchase price. The Purchaser shall pay such interest to the Conveyancers no later than the day preceding the Transfer Date. The Conveyancers shall determine when transfer would have been registered but for such delay, which determination shall bind the parties hereto.

10. **COMPANY OR CLOSE CORPORATION OR TRUST AS PURCHASER:**

- 10.1. If the Purchaser buys as nominee or trustee for a company, close corporation, trust or other legal person or persons to be formed, and such company, close corporation, trust or other legal person or persons is not formed within 30 (thirty) days of the conclusion of this Agreement, or the company, close corporation, trust or other legal person or persons does or do not ratify this Agreement within 30 (thirty) days of the conclusion thereof, the nominee or trustee shall be personally liable for all the obligations of the Purchaser in terms of this Agreement, and the Agreement will be regarded as entered into in the personal capacity of the person who signed this Agreement as Purchaser or on behalf of the Purchaser.
- 10.2. If the Purchaser buys as representative of a third party and fails to disclose the name of his principal and furnish written proof of his mandate within 30 (thirty) days of the conclusion of this Agreement, and/or his principal does not ratify this Agreement within the aforementioned period, the representative will be personally liable for all the obligations of the Purchaser in terms of this Agreement, and the Agreement will be regarded as entered into in the personal capacity of the person who signed this Agreement as Purchaser or on behalf of the Purchaser.
- 10.3. If the Purchaser reserved the right to nominate another person as Purchaser, such nomination shall take place within 1 (one) day of the conclusion of this Agreement, which nomination must also be accepted by the nominated person in writing within the aforementioned period, failing which the original Purchaser will be personally liable in terms hereof, and the Agreement will be regarded as entered into in the personal capacity of the person who signed this Agreement as Purchaser or on behalf of the Purchaser. The Purchaser acknowledges being aware that upon such nomination, further transfer duty may become payable on the transfer of the Property into the name of the nominee and undertakes to make payment of such further transfer duty on behalf of the nominee *mutatis mutandis* in accordance with 9.1 above.
- 10.4. If the original Purchaser buys in any of the capacities mentioned in clauses 10.2 and 10.3 or the original Purchaser for whatever reason is not the transferee of the Property, the original Purchaser will remain liable as surety and co-principal debtor to the Seller in terms of this Agreement with renunciation of the legal exceptions of execution and division.
- 10.5. The Purchaser undertakes to pay the normal stamp duty in respect of the suretyship set out above.

11. **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 Agreement.

12. **TITLE CONDITIONS:**

- 12.1. The Property is sold subject to all conditions and servitudes contained in the title deeds or prior title deeds of the Property and such conditions imposed by any competent authority when approving the rezoning and subdivision of the development.
- 12.2. The Seller shall be entitled to register such servitudes within 2 (two) metres from the boundary of the property necessary for purposes of installation of services by the Seller, Local Authority, Home Owners Association and/or any other service provider.

13. **DESCRIPTION AND BOUNDARIES**

- 13.1. 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.
- 13.2. In tie 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 shown and renumbered in satisfaction of the Seller's obligation in terms hereof. In such case the Seller shall not profit by any excess nor shall the Seller be liable for any deficiency in the area of the Property on finalisation of the Land Surveyor's diagrams or general plan.
- 13.3. The Seller hereby undertakes to point out the Surveyors peg to the Purchaser on his request, which will not be made before date of registration or later than 60 (sixty) days thereafter.

14. **HOME OWNER'S ASSOCIATION AND BUILDING CLAUSE:**

- 14.1. The Purchaser acknowledges that, in terms of the conditions of subdivision and rezoning imposed, a Home Owners Association will be established and that he shall automatically upon transfer become a member thereof and remains a member as long as he is the registered owner of the property. The Purchaser shall be bound by the Constitution of the Home Owner's Association and the rules promulgated in terms thereof.
- 14.2. A copy of the Constitution is attached hereto Annexure "C". The Seller hereby reserves the right to amend the Constitution from time to time as he deems fit until incorporation of the Home Owners Association.
- 14.3. The Association shall be responsible for the duties imposed by its constitution for which all members will contribute a levy to be determined by the Association from time to time including fees and costs for the approval of any building plans.

14.4. Until such time the Home Owners Association is functional, the Seller shall fulfil its duties.

14.5. It is further agreed that a condition, substantially in accordance with the following wording, shall be included in the title deed of the Property sold hereby:

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

"The transferee, its successors in title and assigns shall not be entitled to transfer the herein mentioned Property or any interest therein without a clearance certificate from the Home Owners' Association to the effect that the provisions of its constitution, including provisions relating to the payment of levies, have been complied with. This condition shall not apply to the sale in execution of the Property by the holder of any registered bond over the Property."

15. **BUILDING CLAUSE:**

The Purchaser, its successors in title or assigns, shall within 4 (four) years from date of registration cause a house to be completely constructed on the property.

16. **BUILDING PLANS:**

16.1 The plans of all buildings and structures of whatsoever nature to be erected on the Property shall comply with the Architectural Guidelines and must be submitted to the Association for its approval prior to submission to the Local Authority for its approval.

16.2 Building operations may not be proceeded with before the written consents of the Association and the Local Authority have been endorsed on such plan and no building and/or structure shall be erected other than strictly in accordance with such approved plan.

16.3 The Purchaser or his successor in title shall be liable for payment of the fees and costs as determined by the Seller and/or Home Owners Association.

17. **ARCHITECTS AND BUILDING CONTRACTORS:**

17.1 The Purchaser may only mandate an architect to design and supervise the construction of or alteration to the house and structures approved by the Seller and/or Home Owners Association.

17.2 The Purchaser may only mandate a Building Contractor to erect and/or alter a house and related structure on the property approved by the Seller and/or Home Owners Association on condition further that the contractor signs a Code of Conduct and fulfils same.

18. **PENALTIES:**

Should the Purchaser fail to comply with the conditions set out in para. 15 and 16, the Home Owners Association may impose a daily financial penalty as determined from time to time on notice to the Purchaser, alternatively appoint an alternative Contractor to ensure compliance at the cost of the Purchaser, further alternatively after the purchaser has paid penalties for one year without having constructed a house, the Seller shall have the right to buy back the property from the Purchaser at the nett Purchase Price paid by the Purchaser without any consideration for any improvements thereon, and hereby authorises the Director of the Seller to sign all documents on behalf of the Purchaser, his successors in title, to effect transfer against payment of the said consideration.

19. **BREACH:**

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

19.1.1 To cancel the sale by registered letter addressed 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

19.1.2 To claim immediate payment of the whole of the purchase price and fulfilment of all the terms and conditions hereof.

19.2 In the event of the Seller failing to fulfil on due date any of the terms and conditions of this Deed of Sale, the Purchaser shall have the right after 20 (twenty) days, either:

19.2.1 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

19.2.2 To claim the immediate fulfilment of all the terms and conditions hereof.

20. **JURISDICTION:**

- 20.1 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.
- 20.2 The 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.

21. **DOMICILIA AND NOTICES:**

- 21.1 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:
- 21.1.1 The Seller : Vuru Vuru Estate West (Pty.)Ltd,
173 Vaalkom Street, Herold's Bay,
George, 6530
- 21.1.2 The Purchaser: At the address as indicated in the Schedule.
- 21.2 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.
- 21.3 All notices shall be in writing and sent by prepaid registered post or delivered by hand to the domicilium chosen by the party concerned and shall if posted be deemed to have been duly delivered 7 (seven) days after the day on which such notice was posted.

22. **NON WAIVER. WHOLE AGREEMENT AND VARIATION:**

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.

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.

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

23. **SUBDIVISION AND CONSOLIDATION:**

No property shall be subdivided or consolidated without the written consent of the Seller and/or Home Owners Association.

24. **THE SIGNATORIES:**

24.1 This Agreement, once signed by the Purchaser, shall be regarded as final 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.

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

25. **AGENTS COMMISSION:**

The Seller shall be liable to pay agents commission to the estate agent as per written agreement with Grip Realty (Pty) Ltd.

SIGNED by the SELLER at on

AS WITNESSES:

1.

2.

.....

ON BEHALF OF THE SELLER

SIGNED by the PURCHASER at on
..... and acknowledge receipt and having acquainted myself with the Annexures.

AS WITNESSES:

1.
PURCHASER

2.
SPOUSE



SURETY:

I,

Identity number :

being the Trustee/Director/Member of the Purchaser, hereby binds myself as surety and co-principal debtor for and with the Purchaser under renunciation of all the legal benefits with the meaning and effect of which I have been acquainted for the due and proper fulfilment of all the Purchasers obligations to the Seller hereunder.

SIGNED at on

AS WITNESSES:

1.

2.

SURETY