DIAZ ESTATE

SALE AGREEMENT: DWELLING HOUSE

Sale Agreement: DIAZ ESTATE

Between:

DIAZ BOULEVARD PTY LTD

Registration Number: 2014/080944/07

("the Seller")

and

.....

.....

("the Purchaser")

SALE OF:

Erf No.:

Street Address:

PART A: <u>Schedule of Information and Definitions:</u>

1. DETAILS OF SELLER:

DIAZ BOULEVARD PTY LTD

Registration No: 2014/080944/07

c/o Miltons Matsemela Oosthuizen Incorporated

71 Montagu Street

Mossel Bay

Western Cape

2. DETAILS OF PURCHASER:

Full Names / Company Name:

Identity Number / Registration Number:

Purchaser's Marital status (Antenuptial Contract / In Community of Property / Out of Community of Property):

Purchaser's Business Address:
Code:
Purchaser's E-mail Address:
Purchaser's Telephone No:
Cell:
Business: Home:

3. PROPERTY

ERF NO:	
In Extent:	

DWELING TYPE:			
DWELLING AREA (sqm)			
PURCHASE PRICE (BASE PRICE)			
Optional Extra's Selected:	Price	Area (sqm)	Signature
Under-Cover to Carport			
2nd Garage			
Under-Cover to Braai Patio Area			
Under-Cover Entrance Area			

4. PURCHASE PRICE

4.1 Total Purchase Price (transfer costs and VAT included)	**R**
4.2 To be secured as follow: 4.2.1 Deposit of 10% of the Purchase Price payable within 14 days of signature hereof.	**R**
4.2.2 Balance of the Purchase Price by way of a guarantee in terms of clause 2.2 of the terms and conditions	**R**

5. PAYMENT OF PURCHASE PRICE

5.1	On date of registration of transfer the land release value, including VAT	**R**
5.2	Balance of the Purchaser Price due in payments as per Certificate in terms of clause 2.1.3 of the terms and conditions	**R**

6. BOND

If the sale is subject to the Purchaser having to obtain a bond as per clause 16, of the terms and conditions, the amount must be entered below:

Amount of bond	**R**
The Seller's mortgage originator	

If not completed, the sale is unconditional and clause 16, of the terms and conditions does not apply.

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The Purchaser acknowledge this clause specifically

7. **ESTATE AGENT**

Estate Agency:	
Agent:	

8. DEFINITIONS

8.1 **"Approved Bond"** means the issue of a quotation and "PRE-AGREEMENT" as received from the bank as per Section 92 of the National Credit Act 34 of 2005;

8.2 **"Completion Date"** means the date which the Seller's architect or the principal agent certifies to be the date on which the Property is completed and ready for beneficial occupation;

8.3 **"Conveyancer"** means
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
Trust Account No: 282215425
Branch Code: 050414
Reference: Purchasers Surname

8.4 **“Development”** means Erf 3991, Hartenbos, by the subdivision and rezoning thereof to create the Development to be known as Diaz Estate;

8.5 **“Dwelling House”** means the house to be constructed on the Erf in accordance herewith;

8.6 **H.O.A** and **Association** shall mean the Diaz Estate Home Owners Association;

8.7 **“Schedule of Information and Definitions ”** means PART A of this Agreement;

8.8 **“Land”** means the land on which the Development, of which the Erf sold forms a PART, has been or is to be developed, and being Erf 3991, Hartenbos, in the Municipality and Division of Mossel Bay, Western Cape Province;

8.9 **“Land Release Value”** means the payment amount stipulated in clause 5.1 of the Schedule of Information and Definitions above, excluding the balance of the Purchase Price payable in terms of clause 2.1.3 of the Terms and Conditions;

8.10 **“Levy”** means any one or more or all the levies referred to in clauses 10 and 11 hereof;

8.11 **"Occupation Date"** means the date of beneficial occupation as certified by the architect or principle agent;

8.12 **"The Property"** means an erf together with the dwelling house to be constructed in accordance with annexure 2 and 3;

8.13 **"Purchase Price"** means the Purchase Price as indicated on the Schedule of Information, clause 4;

8.14 **“The Purchaser”** means the Purchaser as per the Schedule of Information, clause 2;

8.15 **"Seller"** means the Seller as per the Schedule of Information, clause 1;

8.16 **“Transfer Date”** means the date of registration of transfer of the Property in the name of the Purchaser;

8.17 **“Terms and Conditions”** means PART B of this Agreement;

8.18 **“VAT”** means value added tax as determined by the Value Added Tax Act as amended from time to time.

9 ANNEXURES TO THIS SALE AGREEMENT

Annexure 1: Site layout and development plan;

Annexure 2: Schedule of Specifications;

Annexure 3: House Plan.

The annexures form an integral part of the sale Agreement and are included. The Purchaser, by signing this sale Agreement, accepts that he/she is fully aware of the content and accepts it as such.

PREAMBLE

WHEREAS

(a) The Seller is the owner of Erf 3991 Hartenbos, In the Municipality and Division of Mossel Bay, Western Cape Province;

(b) The Seller or its agent, will be responsible to erect and build a residential house upon the property in accordance with this agreement of sale and the annexures thereto.

(c) The Seller has agreed to sell to the Purchaser the property together with the building, to be erected and built by the Seller or its agent, on the erf specified in clause 3 of the schedule of information and in accordance with this Deed of Sale and the Annexures thereto.

THEREFORE, it is decided and agreed as follows.

PART B: <u>TERMS AND CONDITIONS</u>

1. PURCHASE

The Seller hereby sells to the Purchaser the Property described herein at the selling price, including VAT, as referred in clause 5 of the Schedule of Information, subject to the terms and conditions contained in this sale Agreement.

2. PAYMENT OF THE PURCHASE PRICE

2.1 The Purchase Price will be paid to the Seller as follows:

2.1.1 10% (ten *per centum*) of the purchase price to the conveyancers within 14 (fourteen) days of the date of signature hereof, which amount shall be held in trust until registration of transfer and shall be invested in an interest bearing trust account with interest to accrue to the Purchaser on transfer;

2.1.2 Against registration of transfer of the Property in the name of the Purchaser, the amount stipulated in clause 5.1 of the schedule of information will be payable to the Seller, being the land release value;

2.1.3 The balance in monthly instalments including VAT against progress as certified by payment certificates issued by a quantity surveyor or the principle agent appointed by the Seller, with the final amount payable on the completion date. For the avoidance of doubt it is recorded that, should the Purchaser's bond not cover the full amount payable as certified, the Purchaser will have the obligation to pay the shortfall immediately. In this regard the Purchaser's attention is further drawn to the possibility that the Financial Institution might debit amounts, i.e. interest, against the bond that can negatively effect the last payment;

2.1.4 The Purchaser hereby irrevocably authorise the Conveyancers to effect payment as stipulated above;

2.1.5 In the event of progress payments being effected via a bond, the Purchaser hereby authorize the Conveyancers to sign the necessary Request for Progress Payment(s) as required by the bank, on their behalf.

2.2 For the payment of the balance of the Purchase price, the Purchaser shall furnish bank guarantees, acceptable to the Seller, within 30 (thirty) days after being requested to do so by the conveyancer. **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, 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 acknowledges that prior to the deposit being invested, the Purchaser must comply with the Conveyancer's requirements with regard to the Financial Intelligence Centre Act and furnish the Conveyancer's with copies of all information and documentation as may be requested for such purposes, failing which, interest on the deposit will not accrue to the Purchaser**,** but will accrue to the Legal Practitioners Fidelity Fund established in accordance with the said Act.

2.4 Without derogating from the provisions of clause 3 below, the Purchaser shall not be entitled to take actual occupation of the building before the purchase price has been paid in full, despite the building being completed and ready for occupation, or occupation being tendered, in terms of this Deed of Sale.

2.5 All amounts payable by the Purchaser in terms of this agreement shall be paid to the Seller's conveyancer free of exchange or commission at Mossel Bay and without deduction or set off in cash or by means of electronic transfer.

2.6 The Purchaser attention is specifically drawn to the following: Due to the ongoing cyber fraud the Purchaser must personally verify the Conveyancer's banking details before making any payments to the Conveyancer in terms of this Agreement. The Conveyancer will not be responsible for any losses resulting from payments made into an incorrect bank account.

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The Purchaser acknowledge this clause specifically

2.7 The Purchaser hereby authorize the Conveyancers to pay the capital contribution levied by the municipality to obtain the section 28 certificate (Mossel Bay Municipality's Land Use Planning By-Law) to enable registration of transfer, from the Purchase Price held in Trust, prior to registration of transfer. Should registration of transfer not be effected for whatever reason, the Seller shall immediately refund this amount to the Purchaser.

2.8 In the event that the Seller receives a credit from the Municipality towards the capital contribution payable in respect of the Property, due to the installation of external services that are the Municipality's responsibility, an amount equal to the capital contribution at that time shall become due and payable to the Seller. The Purchaser irrevocably authorises the Conveyancer, upon the Seller's request, to refund that amount to the Seller from the Purchaser Price held in the Conveyancer's trust account, notwithstanding that such refund may be required prior to registration of transfer. Should registration of transfer not be effected for whatever reason, the Seller shall immediately refund that amount to the Purchaser.

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The Purchaser acknowledge this clause specifically

3 TITLE DEED – CONDITIONS

3.1 The Property is sold subject to all conditions and servitudes as described in the Title Deed or previous Title Deeds of the Property and any other conditions imposed by any other competent authority.

3.2 If the Property is incorrectly described herein, any error or defect will not be binding on the parties hereto, but the correct description as proposed by the Parties will be applicable.

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The Purchaser acknowledge this clause specifically

4 POSSESSION & OCCUPATION

4.1 Possession of the Erf shall be given to the Purchaser on registration of transfer subject to the provisions of this Agreement.

4.2 Possession and vacant occupation of the Dwelling House shall be given to the Purchaser on the occupational date, subject to fulfilment of the provisions of clause 2, PART B above, from which date all risk and benefit in the property shall pass to the Purchaser.

4.3 Any failure by the Purchaser to take physical occupation (either personally or by his agent) or accept the keys of the Property, will not affect the occupation date that will remain as defined.

4.4 The Purchaser acknowledges that:

4.4.1 the occupation date will not, under any circumstances, be deferred or the Property will not be deemed suitable for beneficial occupation if any improvements, additions or changes made to the Property at the request of the Purchaser have not been completed;

4.4.2 he/she is not entitled to make any claims of any kind, including consequential loss if the Property is not delivered on completion date or at a later date nominated and motivated in writing.

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The Purchaser acknowledge this clause specifically

5. "VOETSTOOTS", EXTENT AND TITLE CONDITIONS

5.1 The Property will be located as per the location plan attached.

5.2 The Purchaser has studied the annexure(s) and declares that he/she is fully aware of all relevant details regarding the Property as stated in the annexure(s) as well as the location, extent, and land condition thereof.

5.3 Subject to the provision hereof the Property is sold "*voetstoots*".

5.4 The size of the Property, if disclosed in clause 3 of the Schedule of Information, is an approximation and the final size of the Property will be shown on the general plan approved by the Surveyor General.

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The Purchaser acknowledge this clause specifically

6. TRANSFER

6.1 Transfer will be given by the Conveyancer as soon as possible after signing the contract and all suspensive conditions are met.

6.2 The Purchaser must sign all transfer documents and bond documents (if applicable) and return it to the Conveyancer within 7 (seven) days after receipt thereof.

6.3 The Seller is responsible for all transfer costs. The Purchaser shall pay all costs in respect of any bond registration fee to the Conveyancer.

6.4 In the event of a delay in registration of transfer, caused by the Purchaser, interest on the full purchase price shall be payable, by the Purchaser to the Seller, at the rate of prime interest rate plus 5% (five percent). Interest shall be payable from the date certified by the conveyancers that registration of transfer could have been affected in the normal cause of events. For the avoidance of doubt it is recorded that it will not be necessary to dispatch a notice in terms of clause 9 below, to give effect hereto

7. GUARANTEES

7.1 The Purchaser acknowledges that the Seller has made no representations and has not provided any guarantees in respect of the Property or anything related thereto, whether expressed or implied, which is not expressly contained herein and is not affected by or on behalf of the Seller, except as set out herein.

7.2 ***Without limiting the generality of the aforegoing, it is recorded that the model of Diaz Estate as well as the development plan and/or marketing material, marked Annexure 1, represents artist impressions of the development and that it is not foreseen that the completed development will correspond with either the model or the development plan and/or marketing material in all detail. The developer may at its sole and absolute discretion change or amend any phase of the development. The Seller shall not be held liable for any changes to the layout, design of buildings, water features, landscaping, etc. as it appears on the model and/or the development plan and/or marketing material.***

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The Purchaser acknowledge this clause specifically

8. COMPANY / CLOSE CORPORATION / TRUST / OTHER LEGAL ENTITY

8.1 If this sale Agreement is signed by a Purchaser acting on behalf of a Company, Close Corporation, or other legal entity, which entity is not Registered (hereinafter referred to as juristic entity), the Purchaser undertakes to, within 30 (thirty) days after this sale Agreement has been signed, to Register the juristic entity and to provide the Seller with all information regarding the juristic entity and to deliver the notice and confirmation thereof to the Conveyancers.

8.2 In the event that a legal entity –

8.2.1 is not Registered in time; or

8.2.2 fail to ratify the transaction; or

8.2.3 not to comply with the obligations in terms of this sale Agreement for any reason whatsoever; or

8.2.4 fail to provide proof of ratification to the Seller's Conveyancers within the specified period,

the Purchaser agrees that he/she (the signatory herein as "Purchaser") will be personally responsible and obliged to fulfil all obligations under this sale Agreement and to transfer the Property to his/her personal name.

8.3 By signing this sale Agreement, the Purchaser undertakes to act as a guarantor and co-principal debtor *in solidium* with such legal entity which will be established or already established for the proper fulfilment of all the responsibilities in accordance with this sale Agreement and hereby waive the exception *beneficium ordinis seu excussionis*.

9. BREACH OF CONTRACT BY PURCHASER

9.1 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:

9.1.1 Claim for specific performance; or

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

9.1.3 Cancel this Agreement, claim damages suffered and retain interest 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;

9.2 The Purchaser hereby authorise the Conveyancers to effect payment in accordance with the above provisions. If this Agreement is cancelled as hereinbefore provided, the Purchaser and all persons claiming a right of occupation through the Purchaser shall forthwith be obliged to vacate the Property and to deliver it to the Seller. It is specifically recorded in this regard that no lease or other similar right of occupation in favour of the Purchaser shall be created or come into existence by virtue of this Agreement. Should the Purchaser dispute the Seller's right to do so, then pending the determination of that dispute, the Purchaser shall continue to pay all amounts payable in terms of this Agreement on the due date thereof, and to comply with all the terms hereof and the Seller shall be entitled to retain interest accrued and such amounts received in the interim.

9.3 Without prejudice to any rights of the Seller as set out herein, all moneys 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 moneys due in terms hereof and thereafter to the reduction of the Purchase Price.

10. HOME OWNERS' ASSOCIATION

10.1 It is recorded that a homeowners association will be, *alternatively,* 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 as well as perform other such functions as obligated in terms of the Constitution.

10.2 The Purchaser shall and hereby agrees to become a member of the Homeowners Association against transfer of the property and agrees to remain a member for as long as the Purchaser is the registered owner thereof.

10.3 The Purchaser will, *alternatively,* has been furnished with copies of the Constitution and Rules of the Homeowners Association including the architectural guidelines and will acquaint himself/herself with the provisions thereof and further agrees and undertakes to abide thereto.

10.4 The Purchaser acknowledges furthermore that he/she is aware that the following provisions will be determined to which he/she will be bound.

10.4.1 In terms of the Constitution and the rules of the Homeowners 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 Homeowners Association in respect of the lodgment and approval of plans;

10.4.2 The Homeowners 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 Homeowners Association and/or Seller arising from any refusal or approval;

10.4.3 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 Homeowners 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 thereof as per the Constitution/rules of the Homeowners Association;

10.4.4 The Purchaser acknowledges that, for security reasons and quality control purposes, and in order to ensure that the standards for the development determined by the Seller and the Homeowners Association, is upheld, the Purchaser and its successors in title shall only be allowed to make use of the Sellers registered and pre-approved service providers.

10.4.5 The Developer will not contribute towards the levy fund in respect of unsold erven.

10.5 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 Homeowners Association in accordance with the provisions of the Constitution and that all successors in title shall be bound to the constitution of the Homeowners Association.

11. RESERVE FUND

11.1 Upon the Alienation or Deemed Alienation of a property in the Diaz Estate Development, the transferor or the owner of the property shall pay a Capital Contribution Levy against registration of transfer to the Home Owners Association for the credit of the reserve fund controlled by the Home Owners Association, which levy shall be equal to 1% (one percent) of the higher amount of the selling price or the Fair Market Value of the property at the time of the Alienation or Deemed Alienation, subject to the exemptions specified in 11.2 and 11.3 below. This amount will not be payable in the instance of a sale in execution.

11.2 Where a property is transferred from the estate of the transferor or from the joint estate of the transferor and his or her heir/s, such Alienation shall be exempt from the payment of a Capital Contribution Levy. This clause shall be applicable *mutatis mutandis* in the event of a Deemed Alienation.

11.3 No Levy will be payable in respect of the Alienation of a property from the Developer to the first Purchaser or Transferee hereof.

11.4 In the event of a Company or Close Corporation being the registered owner of the property and more than 50% (fifty percent) of its shares or membership is transferred to a third party, such a transfer will be regarded as a deemed alienation of the property and will the levy referred in clause 11.1 be payable.

12. CONSTRUCTION OF THE PROPERTY

12.1 The Seller or it's nominee undertakes to construct the Dwelling House in accordance with national building regulations, other relevant statutory requirements relating to construction work and substantially in accordance with the annexures.

12.2 Construction of the Dwelling House by the Seller or it's nominee shall take place within a reasonable period from the date of the building plan, finally approved by the local authority, and provided that the Purchaser has met all requirements in terms of clause 2 of the Terms and Conditions. The Seller or it's nominee, undertakes to submit final plans to the local authority for approval.

12.3 The Seller reserves the right to replace items of a similar standard for any specific item referred to in the schedule of finish.

12.4 The Seller is entitled to change the plans of the Property if it is necessary and reasonably deemed by the Seller:

12.4.1 to comply with any requirements claimed by a competent authority;

12.4.2 to meet any special functions on the Property;

12.4.3 to meet any special obstacles such as water, sewerage or electrical lines above or below the ground or any rock or other soil condition;

12.4.5 to change the layout of the Development, except that the area of the Property cannot be changed by more than 5% (five percent) of the estimated area.

12.5 The Purchaser or any person or firm employed by him/her may NOT perform any work on the Property before the Occupation Date.

12.6 Access to the Property, during the construction phase, will be restricted to authorized persons only.

12.7 Any building materials that will be used will be standard quality and freely available on the local market. Product and/or colour nomination is for identification purposes only and the Seller may use other products, types of manufacturers or colours on their own decision and discretion, provided that such products contain at least the same quality. The Seller will try, but is not obliged to notify the Purchaser if alternative materials are used. The finish and colour of the roof and the exterior must be used as specified by the architect.

12.8 The Property will be deemed to be completed on the date on which it is available for beneficial occupation as specified by the Engineer and/or the architect and/or principle agent, whose decision will be deemed final and binding on the Parties.

12.9 The Seller or it’s nominee shall:

12.9.1 within 14 (fourteen) days, remedy any patent defects in the Property which manifest themselves within 30 (thirty) days after the completion date, provided that the Purchaser notifies the Seller in writing within the said period of 30 (thirty) days of any such defects, failing which the Purchaser shall be deemed to have accepted the Property in the condition in which same were at the completion date. The Purchaser shall only be entitled to present the Seller with one snag list;

12.9.2 remedy any material latent defect in the Property due to faulty workmanship or materials, manifesting itself with 60 (sixty) days from completion date, provided that the Purchaser notifies the Seller in writing within the said 60 (sixty) days. For the purposes of this sub-clause, the expression 'material defect' means those defects, the existence of which are recorded in writing as requiring to be remedied or repaired by the architect. The architect shall determine whether such defects recorded in writing are 'material defects' and his/her decision shall be final and binding on the Parties. The architect shall be the final arbitrator as to whether the Seller has complied with his/her obligations in terms of this or the preceding clause 12 of the Terms and Conditions; and

12.9.3 rectify any material latent defect in the Property which occurs through incorrect workmanship or materials within 60 (sixty) days from date of completion, provided that the Purchaser notifies the Seller in writing within the said 60 (sixty) days. For purposes of this sub clause, "material defects" means those defects which is noted in writing, that must be repaired or corrected by the Engineer and/or architect. The architect will determine whether such defects, which are stated in writing, are "material defects" or not and its decision will be final and binding on the Parties. The architect will be the final arbitrator of whether Seller has fulfilled his/her obligations in terms of this clause.

12.10 The Purchaser shall allow suitable access during working hours to the Seller to conduct any works or repairs. To avoid any possible complications the Purchaser must stow away removable valuables i.e. cell phones, jewelry, money, cameras etc. Seller takes no responsibility and will not entertain any claims of this nature.

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The Purchaser acknowledge this clause specifically

13 DISPUTE REGARDING COMPLETION OF DWELLING HOUSE

13.1 Should any dispute arise between the Seller and the Purchaser as to whether the Dwelling House is complete and/or the correctness of the Engineer or architect's completion certificate issued in terms thereof, either party may refer the dispute to arbitration as follows :

13.1.1 He/she must advise the other party of his/her intention in writing;

13.1.2 The arbitrator shall be a registered architect decided upon by the parties within 7 (seven) days of the date of the notice referred to in clause 13.1 and failing such decision, the arbitrator shall be appointed by the chairman for the time being of the Institute of Architects (Cape);

13.1.3 An inspection of the building work will be attended by the arbitrator and both parties within 7 (seven) days of his/her appointment at which time the parties will present their cases by way of a written memoranda supplemented by oral evidence should the arbitrator so desire;

13.1.4 No legal representation or cross examination will be allowed;

13.1.5 The arbitrator will within 14 (fourteen) days after the inspection make his/her decision known to the parties;

13.1.6 The cost of the arbitration shall be borne by the Purchaser; and

13.1.7 The parties irrevocably agree that the decision of the arbitrator shall be final and binding on each of them and can be made an order of court to whose jurisdiction the parties are subject.

14 THE DEVELOPMENT

14.1 The Seller shall have the right to develop and market the development in phases, in his sole and absolute discretion, including but not limited to phases and amendments thereto, as the Seller deems fit, for as long and up to such time the developer has completed the development. 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.

14.2 The Seller reserves the right to incorporate any adjoining land so as to form part of the development.

14.3 The Purchaser acknowledge that an inconvenience may be experienced due to building operations from time to time. The Purchaser will have no claim or damages against the Seller in this regard.

14.4 The Purchaser undertakes to support all applications by the Seller in respect of future rezoning and/or subdivision of the development land to give effect to the developer's intention to develop the development plan to its best potential.

15 ADDITIONAL WORK AND/OR VARIATIONS

15.1 Should the Purchaser, after signature of this agreement, require any extra work to be carried out by the Seller, then such request shall be made in writing whereupon the Seller shall submit a written quotation in respect of the cost, including any administration cost and/or a cost of delay, thereof for acceptance by the Purchaser. All costs arising from such extra works shall be paid by the Purchaser to the Seller prior to commencement of such works.

15.2 In the event that a request in terms of clause 15.1 cause a delay in the anticipated occupation date the Purchaser will have no claim for damages against the Seller in respect thereof.

16. BOND (IF APPLICABLE)

16.1 This sale Agreement is subject to the Purchaser obtaining an approved loan from a bank or other recognised financial institution for not less than the amount (if any) stipulated in clause 6 of the Schedule of Information, or any lesser amount by the Purchaser acceptable against registration of a first mortgage on the Property. In the event that such a loan is not approved in principle within 30 (thirty) days after the signature of this sale Agreement by the Seller, this sale Agreement will be null and void in which case the Seller will pay any amounts already paid by the Purchaser according to clause 2 of the Terms and Conditions, above to him/her together with accrued interest thereon. The Seller reserves the right to unilaterally extend the period by 30 (thirty) days for a further reasonable period at the Seller's discretion. Written notice by the Seller to extend such extension shall suffice.

16.1 A receipt received from the financial institution or the Seller that stipulates that the mortgage is in principle approved is sufficient evidence to comply with this suspensive condition. If the Purchaser fails to provide the carriers of such a quote from a financial institution indicating that such a mortgage has not been approved, this suspensive condition will be considered sufficient, or the transaction will not be subject to the Purchaser mortgage finance needs to be obtained.

16.2 All bond applications must be administered by the mortgage originator nominated by the Seller.

16.3 All bond registrations must be effected by the Conveyancers.

17 AGENT'S COMMISSION

17.1 The Seller shall pay the Agent's commission at the rate as agreed.

17.2 The said commission shall be deemed to have been earned upon the signature of this document by the Purchaser and Seller and fulfilment of suspensive conditions be payable upon registration of transfer or upon cancellation by reason of the Seller's or Purchaser's default. In the event of the sale being cancelled or transfer not being implemented then the defaulting Party shall be liable to the Agent for the payment of the Commission. In the event of the Agreement being cancelled by mutual Agreement, the Seller and Purchaser shall be liable in equal shares to pay the commission to the Agent.

17.3 The provisions of this clause as well as certain other provisions herein are intended by the Seller and the Purchaser to be a contract for the benefit of the Agent (*stipulatio alteri*) which may be

enforced by the Agent, it being recorded and agreed that the Agent has accepted the benefits hereof by the Agent's signature at the foot hereof.

17.4 The Purchaser and Seller hereby warrant that the Agent is the sole and effective cause of the sale and it is hereby recorded that:

17.4.1 the Purchaser warrants to the Seller that he was not introduced to the Property or the Seller by any other person other than the Agent.

18 ARBITRATION

18.1 If any dispute, difference or question arises at any time between the Parties in respect of any matter arising from or the rights and duties of any of the Parties, or the interpretation of, or termination of, or any matter arising from the termination thereof, or the correction of this sale Agreement, or any other matter, such dispute shall be determined by arbitration, of which written notice will be given by any Party to the other in terms of this clause.

18.2 Such arbitration shall be held in Mossel Bay in accordance with the provisions of the Arbitration Act, No. 42 of 1965 (as amended or replaced from time to time) except that the arbitration will be held informal and the arbitrator has full discretion to decide which procedure will be followed to terminate the arbitration that will be held as soon as possible trade.

18.3 The arbitrator shall be an independent and suitably qualified person as agreed between the Parties and in the absence of such Agreement, the arbitrator shall be appointed at the request of any Party by the President of the Legal Practice Council Cape Town or his successor/s.

18.4 Clause 13 of the Terms and Conditions, is divisible to the rest of this sale Agreement and will remain in effect, despite the termination of this sale Agreement for any reason whatsoever.

19 DOMICILIA AND NOTICES

19.1 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: Diaz Boulevard (Pty) Ltd
Miltons Matsemela Oosthuizen
71 Montagu Street, Mossel Bay, 6500
Email: herbie@mmolaw.co.za
Tel: 044 601 8700

Purchaser: _____

_____

_____

Email: _____

Tel: _____

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

19.3 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.

19.4 Any notice to a Party:

19.4.1 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

19.4.2 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

19.4.3 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).

19.5 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.*

20 JURISDICTION

For the purposes of any legal proceedings, the parties agree to the jurisdiction of the Magistrate's Court.

21 JOINT AND SEPERATE LIABILITY

If there is more than one Purchaser, the Purchasers will be jointly and separately (*in solidum*) liable for the payment of all fees mentioned herein and to exercise all the terms of the Agreement.

22 GENERAL

22.1 This sale Agreement contains the entire Agreement between the Parties.

22.2 No deviation from the sale Agreement will affect any conditions unless such deviations have been signed in writing and by both Parties.

22.3 The Parties confirm that they have not been forced or influenced by any promises, offers or warranties of any kind to sign the sale Agreement.

22.4 The Purchaser has no right to sell his/her Property without the written consent of the Seller before registration of transport has taken place.

23 CONCESSIONS

No extension of time, allowances or concessions will be allowed and no temporary deviation from the terms of this sale Agreement in respect of any Party will be regarded as a waiver of its rights below. The Seller may also, at any time and without notice, expect the Purchaser to comply strictly and on time with all conditions and stipulations.

24 MANAGING AGENT

24.1 The Seller may appoint and delegate any or all of its powers and duties in the management of the Development to a managing agent. This managing agent shall be entitled to exercise all such powers as the Seller may determine.

24.2 Nothing in this clause shall, however, be interpreted to relieve the Seller of any of its obligations to the Purchaser as set out in this Agreement.

25 CONNECTION FEES PAYABLE

25.1 The Purchaser will be obliged to pay the following once-off connection fees to the HOA on date of occupation:

25.1.1 R 2 000.00 (two thousand rand) in respect of the municipal water connection; and

25.1.2 R 3 500.00 (three thousand five hundred rand), excluding VAT, in respect of the on-net fibre service.

25.2 In the event of the Purchaser failing to pay the above mentioned amounts on date of occupation to the HOA, the HOA will be entitled to add these amounts to the Purchaser’s levy account.

26 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 4 of 2013.

27 CO-OPERATION

Each of the parties hereby undertakes to :

27.1 Sign and/or execute all such documents (and without limiting the generality of the aforegoing, same shall include the execution of the necessary power of attorney and VAT / transfer duty declarations);

27.2 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

27.3 Pass, and to procure the passing of all such resolutions of directors or shareholders of any company.

28. ACCEPTANCE

The Purchaser, by signing this sale Agreement, accepts that he/she read the Sale Agreement and Schedules and is satisfied with it.

DONE and SIGNED at _____ on this the _____ day of _____

AS WITNESSES:

1. …….. for and on behalf of

2. …….. ……
SELLER

DONE and SIGNED at _____ on this the _____ day of _____

AS WITNESSES:

1. …….. for and on behalf of

2. …….. ……
PURCHASER

……
Surety i.t.o. clause 9 of the Terms and Conditions, hereof