

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
20 October 2015
(Also the agenda for the Mayoral Committee Meeting: 28 October 2015)**

**9.
APPLICATION FOR PERMISSION FOR THE USE OF BOREHOLE WATER FOR
IRRIGATION PURPOSES BY THE HERMANUS GOLF CLUB**

16/1/8

Hanré Blignaut

(028) 313 5047

Hermanus Administration

28 September 2015

1. Executive Summary

A Deed of Sale was entered into between Overstrand Municipality and the Hermanus Golf Club (HGC) on 6 December 2006 for the purchase of municipal property, remainder of erf 9935 Hermanus, by the HGC. The Deed of Sale was amended on 27 April 2007. One of the conditions of the Deed of Sale was that the HGC will not use any borehole water for irrigation purposes. Due to problems recently experienced with the quality of irrigation water, the HGC submitted an application to make use of borehole water for irrigation purposes. The purpose of this report is for Council to approve a further amendment to the Deed of Sale, to allow for groundwater abstraction by the HGC under specific conditions.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure & Planning
Engineering Planning – Water Services

3. Compliance with Strategic Priority/ies

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

National Water Act, Act 108 of 1997

6. Background/Discussion/Evaluation/Conclusion

Background

A Deed of Sale was entered into between the Overstrand Municipality and the Hermanus Golf Club (HGC) on 6 December 2006 for the purchase of municipal property, i.e. the remainder of erf 9935, Hermanus, by the HGC (refer to Annexure A). Clause 12.5 of the Deed of Sale stated as follows: “the Purchaser (HGC) will not utilise any borehole water for the purpose of irrigation”.

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The Deed of Sale was amended on 27 April 2007 (also refer to Annexure A). The wording of clause 12.5 was replaced in its entirety by the following: “The Purchaser (HGC) shall not utilise any borehole water for purposes of irrigation and should the Purchaser wish to use the borehole water for any other purpose, it shall not do so without the written permission and / or the required permit from the Department of Water Affairs or any other relevant authority, at the time it wishes to use the borehole water”. This condition was not included in the Title Deed of the property, as confirmed by the Property Administration department.

The HGC currently uses mainly treated effluent from the Hermanus Waste Water Treatment Works (WWTW) for irrigation purposes. The relatively high saline content of the treated effluent from the Hermanus WWTW became problematic for irrigation of the golf course. The Hermanus WWTW uses the conventional activated sludge process to treat waste water to acceptable standards for discharge to sea, and as such is not capable of reducing the saline content of water.

The HGC therefore applied to the municipality (refer to Annexure B) for the use of borehole water for irrigation purposes during periods when the saline content of the treated effluent is too high for irrigation of the golf course, and therefore to be able to blend borehole water with treated effluent to dilute the saline content of the effluent water. The HGC proposes to use some of the old and unused boreholes on their property for this purpose.

Discussion

The purpose with the Deed of Sale’s clause 12.5 and its amendment was to ensure that the municipality’s groundwater abstraction (which was still planned at that time) will not be negatively impacted by the possible use of borehole water for irrigation purposes by the HGC.

Overstrand Municipality has been utilising groundwater from the deep Peninsula Aquifer for the past 6 years under 2 licenses issued by the Department of Water and Sanitation, and built up a significant volume of aquifer monitoring data through the groundwater monitoring program, which is reported to the Hermanus Groundwater Monitoring Committee twice a year. A better understanding of aquifer behaviour resulted from the monitoring program.

Evaluation

The use of borehole water by the HGC will require a water use license application to the Breede-Gouritz Catchment Management Agency (BGCMA), as the Overstrand Municipality is not the water use licensing authority in terms of the National Water Act.

If the potential abstraction of groundwater by the HGC can be limited to the shallow Skurweberg Aquifer only, there should be no negative impact on

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municipal abstraction from the deep Peninsula aquifer.

From the municipality's perspective it is therefore important to ensure this, and therefore it will be recommended that the application be supported, but that the following conditions be adhered to:

1. In terms section 21 of the National Water Act, the HGC will have to apply for a water use license to the Breede Overberg Catchment Management Agency (BGCMA) for using borehole water (the processing of water use license applications has recently been delegated to the BGCMA by the Department of Water and Sanitation – previously Department of Water Affairs);
2. The specific boreholes to be re-opened be identified by the HGC and indicated to BGCMA and the municipality for final approval;
3. The condition of the boreholes be assessed by the HGC (e.g. casing, drilling depth, water level, water quality etc.), and reported to the BGCMA and the municipality, to ensure that abstraction will take place only from the shallow Skurweberg aquifer.
4. HGC to provide evidence of implementation of a Water Conservation and Water Demand Management program for irrigation;
5. HGC to establish a monitoring borehole and install monitoring equipment (to be specified by BGCMA / municipality);
6. HGC to make all monitoring data available monthly for routine processing and analysis to the BGCMA / municipality;
7. HGC to become a member of the Hermanus Groundwater Monitoring Committee;
8. Groundwater abstraction by HGC to stop immediately in the event of any negative impact on any existing legal groundwater users.

Conclusion

The application by HGC to use borehole water for irrigation purposes can be supported, subject to the conditions as discussed above.

7. Financial Implications

Support of the application by the HGC to utilise groundwater for irrigation purposes will have no financial implications for Overstrand Municipality, taking into account the existing agreement.

8. Staff Implications

Support of the application by the HGC to utilise groundwater for irrigation purposes will have no staff implications for Overstrand Municipality.

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9. Comments from other Departments, Divisions and Administrations

Acting Senior Manager: Town Planning, Ms H van der Stoep - (028) 313 8109: The Town Planning Department does not have any objection to the use of bore hole water, subject to the points 1 to 8 under Evaluation.

Manager: Property Administration, Ms Anja Kotze (028-316 8277):
Refer to Annexure C.

10. Annexures

- Annexure A: Deed of Sale: Overstrand Municipality / HGC
- Annexure B: Application by HGC for the use of borehole water
- Annexure C: Comments from Manager: Property Administration

RECOMMENDATION TO THE COUNCIL:

that Clause 12.5 of the Deed of Sale between Overstrand Municipality and the Hermanus Golf Club, as amended on 27 April 2007, be replaced by the following:

The Hermanus Golf Club may use borehole water for irrigation purposes only if all the following conditions are being complied with:

- (a) The Hermanus Golf Club to successfully apply for a water use license to the Breede Overberg Catchment Management Agency (BGCMA) for using borehole water for irrigation purposes;
- (b) The specific boreholes to be re-opened be identified by the Hermanus Golf Club and indicated to the municipality and the BGCMA;
- (c) The condition of the proposed boreholes be assessed by the Hermanus Golf Club (casing, depth, water level, water quality), and reported to the BGCMA and the municipality for final approval to ensure that abstraction will take place only from the shallow Skurweberg aquifer;
- (d) The Hermanus Golf Club to provide evidence of the implementation of a Water Conservation and Water Demand Management program for irrigation;
- (e) The Hermanus Golf Club to establish a monitoring borehole and install monitoring equipment as per specification of the BGCMA and the municipality;
- (f) The Hermanus Golf Club to make all monitoring data available monthly for routine processing and analysis to the BGCMA and the municipality;

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- (g) The Hermanus Golf Club to become a member of the Hermanus Groundwater Monitoring Committee; and
- (h) Groundwater abstraction by the Hermanus Golf Club to stop immediately in the event of any negative impact on any existing legal groundwater users.

RESPONSIBLE OFFICIAL :	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	1 NOVEMBER 2015
TARGET DATE TO INFORM APPLICANT :	29 OCTOBER 2015

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16/1/8

**Hanré Blignaut
28 September 2015**

(028) 313 5047

Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 OCTOBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that Clause 12.5 of the Deed of Sale between Overstrand Municipality and the Hermanus Golf Club, as amended on 27 April 2007, be replaced by the following:

The Hermanus Golf Club may use borehole water for irrigation purposes only if all the following conditions are being complied with:

- (a) The Hermanus Golf Club to successfully apply for a water use license to the Breede Overberg Catchment Management Agency (BGCMA) for using borehole water for irrigation purposes;
- (b) The specific boreholes to be re-opened be identified by the Hermanus Golf Club and indicated to the municipality and the BGCMA;
- (c) The condition of the proposed boreholes be assessed by the Hermanus Golf Club (casing, depth, water level, water quality), and reported to the BGCMA and the municipality for final approval to ensure that abstraction will take place only from the shallow Skurweberg aquifer;
- (d) The Hermanus Golf Club to provide evidence of the implementation of a Water Conservation and Water Demand Management program for irrigation;
- (e) The Hermanus Golf Club to establish a monitoring borehole and install monitoring equipment as per specification of the BGCMA and the municipality;
- (f) The Hermanus Golf Club to make all monitoring data available monthly for routine processing and analysis to the BGCMA and the municipality;
- (g) The Hermanus Golf Club to become a member of the Hermanus Groundwater Monitoring Committee; and
- (h) Groundwater abstraction by the Hermanus Golf Club to stop immediately in the event of any negative impact on any existing legal groundwater users.

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RESPONSIBLE OFFICIAL :	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	1 NOVEMBER 2015
TARGET DATE TO INFORM APPLICANT :	29 OCTOBER 2015

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.

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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.

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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

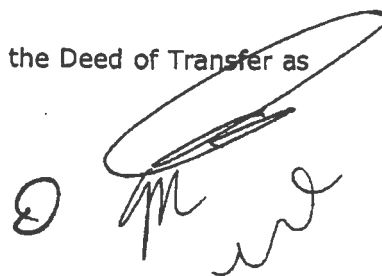
The Purchaser shall on demand from the Attorneys, pay all outstanding rates and taxes and other related costs levied by the Local Authority in respect of the Property, if applicable.

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.

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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**:
- | | | | |
|---------------|---------|---------------------|----------------------|
| 11.1.1 | Year 1: | R0.50 per kilolitre | R10 500.00 per month |
| 11.1.2 | Year 2: | R0.90 per kilolitre | R18 900.00 per month |
| 11.1.3 | 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.

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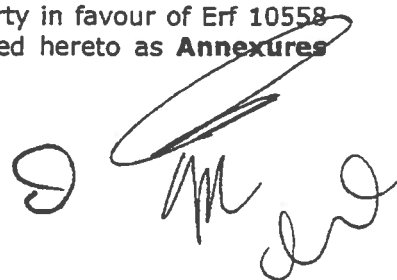
- 11.6** The pipe, together with the system whereby the Effluent is delivered to the point of discharge, is and shall remain the property of the Seller and the Seller shall be responsible for the operation and maintenance thereof up to the point of discharge, provided that the Purchaser shall be liable 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**.

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- 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:

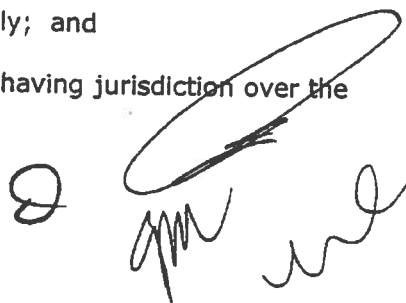
- 15.1** to cancel this Agreement, in which event all monies paid to the Attorneys in respect of the purchase price shall be forfeited to the Seller as genuine, agreed pre-estimated damages, without prejudice to the Seller's other legal rights and remedies and the right to claim further damages, provided 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.

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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 5th (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.

Handwritten signature and initials, possibly 'D' and 'M', located at the bottom right of the page.

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.  _____


SELLER

2. _____

Signed at Hermanus on 6th December 2006

AS WITNESSES:

1.  _____


PURCHASER

2. _____

SCHEDULE A

Seller **OVERSTRAND MUNICIPALITY**

Purchaser Address **HERMANUS GOLF CLUB**
Main Road, P O Box 313, Hermanus. 7200

Contact Numbers
Tel: 028 - 312 1954/5
Fax: 028 - 312 2333
e-mail: manager@hgc.co.za

Property **Remainder Erf 9935, Hermanus**
In extent **104.1587 hectares**

Purchase Price **R1 116 500.00**
(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)

plus 14% VAT on purchase price **R 156 310.00**
(one hundred and fifty six thousand three hundred and ten Rand)



REMAINDER ERF 9935, HERMANUS

ADDENDUM TO DEED OF SALE

made and entered into by and between:

OVERSTRAND MUNICIPALITY

herein represented by the Municipal Manager, duly authorised thereto
("the **Seller**")

and

HERMANUS GOLF CLUB

herein represented by Deon Hendrik Esterhuysen, duly authorised thereto,
("the **Purchaser**")

The parties wish to amend the Deed of Sale entered into by and between them in respect of Erf 9935, Hermanus, on 6 December 2006, as follows:

Clause 12.1 to be replaced in its entirety by the following:

" 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, at the time when it wishes to exploit the boreholes, the necessary permit from the Department of Water Affairs and Forestry and or any other relevant body."

Clause 12.5 to be replaced in its entirety by the following :

" The Purchaser shall not utilise any borehole water for purposes of irrigation and should the Purchaser wish to use the borehole water for any other purpose, it shall not do so without the written permission and/or the required permit from the Department of Water Affairs or any other relevant authority, at the time it wishes to utilise the borehole water."

Signed at HERMANUS on 27 APRIL 2007

AS WITNESSES:

1. Mloeh

gJ Koebene
SELLER

2. [Signature]

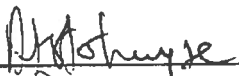
[Handwritten initials]
[Handwritten initials]
[Handwritten initials]

Signed at HERMANUS

on 27 APRIL

2007

AS WITNESSES:

1. 


PURCHASER

2. 

 
ML.



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

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

Reference: C:\My Documents\Correspondence\Overstrand Municipality Application - Commissioning of old existing boreholes.docx

06 July 2015

Mr. H. Blignaut
Deputy Director : Infrastructure
Overstrand Municipality
hblignaut@overstrand.gov.za

Dear Mr. Blignaut,

Application : Commissioning of old existing boreholes

Background and extent of the problem:

For irrigation purposes, the Hermanus Golf Club is obliged to pay a substantial fixed monthly amount, for 700 kilolitres of treated effluent per day, whether or not we utilize the entire allocation in a particular month.

We experienced a serious problem on the greens at the end of March 2015, with discolouration and die-back on a number of the greens.

Upon thorough investigation and testing, it was discovered that the Sodium level in the treated effluent we were using to water our greens was extremely high, way beyond the acceptable levels.

Information regarding the commissioning of existing boreholes:

Prior to the Hermanus Golf Club purchasing the land, boreholes were in use for irrigation purposes.

In terms of our Deed of Sale, the Hermanus Golf Club is currently prohibited from utilizing any potable or borehole water for irrigation.

Estimated volumes of water:

The volume of water, to be extracted from the boreholes, is largely dependent on the quality of the treated effluent.

The extraction of borehole water would enable us to dilute the treated effluent, making it more acceptable for the purposes of irrigation.

Other information relevant to the application:

The Hermanus Golf Club is one of the biggest tourist attractions in Hermanus, drawing visitors from all over the world.

Should this application be denied, the potential effect on the Club could be immense, with the possibility of losing our greens, resulting in a severe financial impact and the potential closure of the golf course.

The Hermanus Golf Club caters to over 7,000 golfers per month from December through to March of every year and if the greens are not up to the expected high standard, the Club will certainly suffer severe financial losses.

It is therefore of paramount importance that this application, for the existing boreholes to be re-opened, be considered favourably.

Your urgent attention and consideration of our application would be appreciated.

Yours sincerely

Stephen van der Merwe
Club Captain

OPINION: ERF 9935 HERMANUS – BOREHOLE SERVITUDE

I have been requested by Ms Heleine Potgieter (Legal Advisor) and Mr Hanré Blignaut (Deputy Director: Engineering Planning) to assist with the interpretation of title deed nr T38434/2007 in relation to the remainder of Erf 9935 Hermanus. The question is whether a borehole servitude/restriction was included in the title deed and if so, whether this condition/restriction may only be uplifted / amended by following the process as stipulated in the Removal of Restrictions Act (Act 84 of 1964).

In order to provide the necessary comments, I perused the following documents:

1. Council report dated 3 August 2006 prepared by Mr R Kuchar for the alienation of Erven 10549, 10550 and a portion of Erf 9935 Hermanus
2. Council decision dated 30 August 2006 for the alienation of Erven 10549, 10550 and a portion of Erf 9935 Hermanus
3. Record of decision for the development (after appeal was upheld)
4. Settlement agreement – Overstrand Municipality / J E van den Berg
5. Deed of sale for Erven 10549 and 10550 Hermanus (which was subsequently consolidated) and the amendment of this deed of sale
6. Deed of sale for the remainder of Erf 9935 Hermanus
7. Amendment of the deed of sale for the remainder of Erf 9935 Hermanus
8. Title deed nr T38434/2007 in relation to the remainder of Erf 9935 Hermanus
9. Removal of Restrictions Act (Act 84 of 1964)
10. "Delegations of powers and duties" (2015)
11. Proposed Council Report by Mr Blignaut dated 31 August 2015

I unfortunately did not peruse the Council report which dealt with the subdivision, rezoning and approval to alienate the properties.

1. Council report and approval – 30 August 2006

I could not find any reference in the report and approval to the borehole on the remainder of Erf 9935 and any restriction against the use of the said borehole by the Hermanus Golf Club.

2. Record of decision for the development (after appeal was upheld)

No restriction against the use of the borehole by the owner of the property. It does however mention the following which I trust was done.

"The proposed development not be proceed with until Council has approved a water resource development programme which indicates that sufficient water is available to support the proposed development."

3. Settlement agreement – Overstrand Municipality / J E van der Berg

The settlement agreement does not make any reference to the subject borehole and will thus not be affected by the proposed amendment.

4. Deed of sale – Erven 10549 and 10550 Hermanus and subsequent amendment thereof

The abovementioned deed of sale and amendment thereof does not make any reference to a borehole servitude or use of a borehole.

5. Deed of sale for the remainder of Erf 9935 Hermanus (signed December 2006) and subsequent amendment thereof (signed 27 April 2007)

In clause 12 of the said deed of sale it is clearly stipulated that:

- "12.1 The Seller reserves the right to exploit, at any time in the future, any of 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 the purpose of 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 registered as a servitude/servitudes over the Property.
- 12.5 The Purchaser shall not utilise any borehole water for purposes of irrigation."

The abovementioned was partially amended by an Addendum signed on 27 April 2007, which amended clauses 12.1 and 12.5 of the initial deed of sale. The mentioned amendments stipulate as follow:

- "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, at the time when it wishes to exploit the boreholes, the necessary permit from the Department of Water Affairs and Forestry and or any other relevant body.
- 12.5 The Purchaser shall not utilise any borehole water for purposes of irrigation and should the Purchaser wish to use the borehole water for any other purpose, it shall not do so without the written permission and / or the required permit from the Department of Water Affairs or any other relevant authority, at the time it wishes to utilise the borehole."

I could not find a record that the Council's approval was obtained for the said amendment. In my opinion, as the subject restriction/condition was not included in the Council approval in 2006, this amendment could have been done with a delegation the Municipal Manager might have had in 2006 to negotiate the terms and conditions of the deed of sale.

6. Title deed nr T38434/2007 in relation to the remainder of Erf 9935 Hermanus

The only restriction/condition imposed by the Overstrand Municipality which is contained the title deed has no reference to the use of the borehole. The subject conditions stipulates as follow:

"In respect of the whole property:

A. *SUBJECT to the following conditions imposed by the Overstrand Municipality, namely:*

1. *The withinmentioned property is subject to a 10 (ten) metre wide right of way servitude of which the south-eastern, south-western and southern boundaries respectively, is depicted by the lines AB, BC and CD on Diagram SG No. 8186/2006, attached hereto, in favour of the Overstrand Municipality."*

The contents of Clause 12 of the initial deed of sale (December 2006) and the subsequent amendment thereof in April 2007 are not included in the said title deed and therefore not registered as a restriction/condition against the property.

7. Removal of Restrictions Act (Act 84 of 1964)

As the condition/restriction contained in clause 12 of the deed of sale was not registered in the title deed against the property, this Act is not applicable

8. **"Delegations of powers and duties" (2015)**

In terms of the Delegations of Powers and Duties as approved by Council on 28 May 2015, the Municipal Manager has the following delegation relating to the sale of municipal owned land:

4.2.3	<i>Framing appropriate terms and conditions in respect of formal agreements to be entered into regarding the acquisition, lease, sale, exchange and granting of land etc.</i>	Municipal Manager
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In my opinion this delegation is only applicable to new agreements and most probably cannot be extended to the amendment of the terms of an agreement that was finalised, signed and registered.

Clause and 12.5 unfortunately does not clearly indicate that the Municipal Manager has the authority to approve the amendment the said clause. It must be noted that clause 12.5 as amended does not give any right to obtain consent for the use of the borehole for irrigation purpose as the clause only provide for the right to request a consent to use the borehole for any other purposes (which does not include irrigation). I would therefore be cautious in this regard and propose that the necessary approval be obtained from Council who initially approved the sale (even though this was not included in the initial Council resolution).

9. **Proposed Council Report by Mr Blignaut dated 31 August 2015**

In my opinion, the route followed by Mr Blignaut by submitting a report to Council to obtain the said approval for the amendment of Clause 12.5 (as amended in April 2007) is the preferred route to follow. The conditions to the consent to amend must not be less stringent as the conditions the Municipality need to adhere to should we be in the same position. It must however be noted that the proposed amendment of the said clause excludes the right to use the borehole for any other purposes than irrigation (which is the total opposite of the said clause 12.5 as amended).

I would suggest that an addendum be signed to ensure that both parties are in agreement as to the proposed new clause 12.5 with its new conditions. The amended clause must make provision for the Municipality to request proof that they have adhered to the conditions.

I trust that you find the above in order.

Kind regards



ANJA KOTZE
MANAGER, PROPERTY ADMINISTRATION