

# **AGREEMENT OF SALE**

IN RESPECT OF

**UNIT:** \_\_\_\_\_

**THE ESPLANADE, HERMANUS**

ENTERED INTO BY AND BETWEEN

**THE HERMANUS ESPLANADE DEV CO (PTY)  
LIMITED**

AND

\_\_\_\_\_

**SUMMARY:**

<b>PURCHASE PRICE</b>		
<b>DEPOSIT</b>		
<b>BOND AMOUNT (IF APPLICABLE)</b>		
<b>BALANCE</b>		
<b>SUBJECT TO BOND</b>	<b>YES</b>	<b>NO</b>
<b>DATE OF SIGNATURE</b>		

**SCHEDULE  
THE ESPLANADE, HERMANUS**

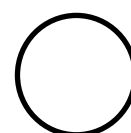
<b>1. PARTIES</b>	
1.1 <b>SELLER:</b>	<b>THE HERMANUS ESPLANADE DEV CO (PTY) LIMITED</b> Registration number 2019/181643/07
Address:	6 <sup>th</sup> Floor, 80 Strand Street, Cape Town
1.2 <b>PURCHASER:</b>	
<b>Natural Person Full names:</b>	
Identity Number	
(Copy of ID to be attached)	
Marital Status	Unmarried / Married in / out of Community of Property / Laws of _____ (foreign country)
Full names Spouse	
Income Tax number	
<b>Natural Person Full names:</b>	
Identity Number	
(Copy of ID to be attached)	
Marital Status	Unmarried / Married in / out of Community of Property / Laws of _____ (foreign country)
Full names Spouse	
Income Tax number	
<b>Company /Close Corporation / Trust</b>	
Registration Number	
Income Tax number	
Full names of authorised person	
(copy of ID / Corporate Body documents to be attached)	
<b>Address: Residential/Registered</b>	
Home telephone number	
Work telephone number	
Mobile telephone number	
Email address	
<b>2. SUBJECT MATTER</b>	
Scheme name	<b>THE ESPLANADE</b>
Unit No.	
Approximate floor size (sqm)	
<b>Exclusive Use Areas:</b>	
- Garden Area/Terrace	
- Parking Bay(s)	
- Storeroom	
<b>3. AGENCY</b>	
Name	

Contact number	
Email address	
<b>4. PURCHASE PRICE</b>	
Purchase price of Subject Matter (inclusive of VAT at 15%)	<b>R</b>
Deposit: 10% of Purchase Price =	<b>R</b>
Balance of Purchase Price =	<b>R</b>
Mortgage Bond (indicate if required)	<b>YES</b>   <b>NO</b>
Amount of Mortgage Bond required	<b>R</b>
Date by which bond to be approved	<b>30 calendar days after signature by the Seller</b>
<b>5. ESTIMATED MONTHLY LEVY (Excluding Rates)</b>	Approximately R
<b>6. ANTICIPATED CONSTRUCTION COMMENCEMENT DATE</b>	
<b>7. ANTICIPATED CONSTRUCTION COMPLETION DATE</b>	
<b>8. ANTICIPATED TRANSFER DATE</b>	
<b>9. OCCUPATIONAL RENT</b>	R
<b>10. ATTORNEYS</b>	<b>DE KLERK &amp; VAN GEND INC.</b> Spring Fields Office Park 109 Jip de Jager Drive, Bellville, 7530 Tel. + 27 21 914 4020 Email. <a href="mailto:jodendaal@dkvg.co.za">jodendaal@dkvg.co.za</a> Ref. Jacques Odendaal
<b>11. ATTORNEYS TRUST ACCOUNT</b>	De Klerk & Van Gend Inc., Absa Bank Account number: 360280276, Branch code: 312109, Swift Code ZA JJ312109 Reference: Esplanade (insert Unit No.)
<b>12. ARCHITECT</b>	Bruce Burmeister & Associate Architects
<b>13. ANNEXURES</b>	<b>A) Standard Conditions of Sale</b>
	<b>B) Mandate</b>
	<b>C) Drawings</b>
	<b>D) Specifications</b>
	<b>E) Rules</b>

## AGREEMENT OF SALE

### INTRODUCTION

- A. The Seller has acquired and is in the process of taking transfer of Erf 9823 Hermanus, situated in the Overstrand Municipality, Division Caledon, Western Cape Province (hereinafter referred to as the "**Property**").
- B. The Seller intends to establish a residential sectional title development in accordance with the Drawings and Specifications on the Property, which is to be known as "**the Esplanade**" (hereinafter referred to as the "**Development**").



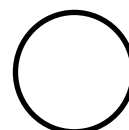
- C. The building work has not been completed and the Sectional Plans not yet drawn, approved nor registered and accordingly the exact and final measurements will only be reflected on the approved Sectional Plans.
- D. The Seller has agreed to sell, and the Purchaser has agreed to purchase the Subject Matter, being the sectional title unit and the rights to the exclusive use area/s as described in the Schedule, in the proposed Scheme and the parties wish to record their agreement in writing.

## 1. SALE

The Seller hereby sells to the Purchaser who hereby purchases the Subject Matter and as will be finally described in the Sectional Plan read with the Register, on the terms and conditions contained in this agreement and the annexures hereto, **all of which the Purchaser acknowledges having had the opportunity to read and understand.**

## 2. PURCHASE PRICE AND PAYMENT

- 2.1 The purchase price shall be the amount specified in the Schedule, which amount is inclusive of Value-Added Tax at the applicable VAT rate (currently 15%) payable as follows:
  - 2.1.1 a deposit in the amount specified in the Schedule, payable in cash to the Attorneys within five (5) business days of the Signature date;
  - 2.1.2 the balance of the purchase price against registration of transfer.
- 2.2 The Purchaser shall within 30 (thirty) days from the date of signature hereof by the Seller furnish the Attorneys with a guarantee issued by a South African bank, or other guarantee acceptable to the Seller, in the Seller's sole discretion, for the due payment of the balance of the purchase price. The Seller shall not be required to give any reason for any refusal of approval of the guarantee issued.
- 2.3 Notwithstanding the provisions of 2.2, the Seller shall have the right, at any time after execution of this agreement, to request the Purchaser to furnish, within 7 (seven) days of such request, proof to the satisfaction of the Seller confirming the Purchaser's financial ability to fulfil his obligations in terms of this agreement.
- 2.4 All monies payable by the Purchaser in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 3% (three percent) above the Prime Rate, calculated from the due date of payment to the actual date of payment thereof.
- 2.5 All or any payments to be effected hereunder, shall be effected by the Purchaser to the Attorneys, free of any exchange, at Cape Town and without deduction or set off.
- 2.6 On demand from the Attorneys, but prior to the Occupation Date, the Purchaser shall pay an amount equal to not less than 3 (three) months of estimated levies to the Attorneys.

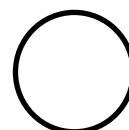


- 2.7 The Purchaser hereby undertakes to provide the Attorneys with all such information and/or documentation required in order to comply with the Financial Intelligence Centre's Act No 38 of 2001 requirements. Any funds received into the trust account of the Attorneys shall be invested in an interest-bearing trust account for the benefit of the Purchaser until date of registration of transfer of the Property, at which time the capital invested will be released to the Seller and the interest (less the administration fee of the Attorneys and or any amounts due by the Purchaser under this Agreement) to the Purchaser. The Attorneys are so authorized.
- 2.8 Interest earned on any portion of the purchase price invested for the account of the Purchaser may be utilised towards payment of any amounts due by the Purchaser under this Agreement.

### 3. SUSPENSIVE CONDITIONS

#### 3.1 LOAN FINANCE

- 3.1.1 In the event of the Purchaser requiring loan finance for the acquisition of the Subject Matter, this sale shall be subject to the condition precedent that the Purchaser is offered a loan by a recognised financial institution in the amount and by the date as specified in the Schedule, on the institution's usual terms and conditions relating to such loans (which may include the signing of suretyships). The Parties agree that the Seller shall be entitled to extend the aforesaid date with a further 30 (thirty) calendar days with written notice to the Purchaser.
- 3.1.2 This condition shall be deemed to have been fulfilled upon the Purchaser obtaining an offer from a recognised financial institution for a loan as herein envisaged. Should the Purchaser be unsuccessful in obtaining the finance, then the deposit and any interest accrued will be refunded to the Purchaser.
- 3.1.3 The Purchaser hereby undertakes to use his best endeavors to ensure that the loan is granted timeously and to sign and provide all such documents and to do all such things as may reasonably be necessary or required for purposes of obtaining the grant/approval of the loan and, after the loan has been granted, the registration of a mortgage bond. **Should the Purchaser fail to sign and or provide all such documents and/or do all such things, any such failure shall be deemed to be a material breach of this agreement by the Purchaser.**
- 3.1.4 **The Purchaser acknowledges that it is fully aware of the requirements of the banks with regard to the maximum loan which banks are prepared to grant on the basis of income and commitments of the borrower** and the Purchaser hereby warrants that its income is sufficient in relation to its commitments to meet the requirements of the bank in this regard and having regard to the amount of the loan to be applied for.
- 3.1.5 **It is a condition of this agreement that in the event of the Purchaser's application for a loan being successful, the registration of the mortgage bond shall be effected and registered by the Attorneys, unless agreed to otherwise in writing by the Seller. The Purchaser undertakes to procure that the financial institution from which the Purchaser obtains the loan instructs the Attorneys to attend to the registration of such bond. The**



**Purchaser acknowledges that the convenience of the bond being registered by the same attorneys as will be attending to the transfer, justifies this condition.**

- 3.1.6 **Any conditions that the bank imposes when approving the loan, must be acceptable to the Seller, failing which the Seller may treat such conditions as a material breach of this agreement and cancel this agreement on notice to the Seller. The same will apply if the bank changes its conditions of approval in a way that is unfavourable to the Seller.**
- 3.1.7 The Purchaser shall be liable for payment of all costs of and incidental to the registration of the mortgage bond, including attorney's fees and necessary disbursements, and any costs payable to the proposed mortgagee.

### **3.2 APPROVAL OF THE DEVELOPMENT AND THE OPENING OF SECTIONAL TITLE REGISTER**

The Purchaser acknowledges that this Agreement is subject to:

- 3.2.1 the approval of the Development by the local authority on or before the transfer of the Subject Matter into the name of the Purchaser; and
- 3.2.2 the opening of the Register prior to or simultaneously with the transfer of the Subject Matter into the name of the Purchaser.
- 3.3 In the event of the non-fulfilment of any of the abovementioned suspensive conditions, this agreement will lapse and be of no further force or effect, the parties further acknowledging that they won't have any claim for damages or for any other amount or any other claim whatsoever against a party arising from this agreement. Upon the lapsing of this agreement, the Seller will instruct the Attorneys to repay the deposit plus interest accrued thereon, together with any other monies paid in terms of this agreement, to the Purchaser.

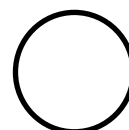
### **4. IRREVOCABLE OFFER**

This agreement once signed by the Purchaser shall be regarded as an offer by the Purchaser and shall be irrevocable and open for acceptance by the Seller within a period of thirty (30) days from date of signature by the Purchaser and shall not be capable of being withdrawn by the Purchaser during the said period.

### **5. CONSUMER PROTECTION ACT**

Should the Consumer Protection Act apply to this Agreement:

- 5.1 **The Purchaser confirms that this sale did not come about as a result of direct marketing by the Seller**, but that the Agreement has been concluded as a result of negotiations between the parties after the Purchaser was provided sufficient time and opportunity to receive and comprehend the nature and effect of all the provisions of the Agreement.
- 5.2 The Purchaser specifically **acknowledges that the provisions of the agreement highlighted in bold have been drawn to the attention of the Purchaser, which**



contain provisions which:

**5.2.1 Limit the risk of the Seller**

**5.2.2 Constitute an assumption of risk or liability on the part of the Purchaser**

**5.2.3 Impose an obligation on the Purchaser to indemnify the Seller; and/or**

**5.2.4 Constitute an acknowledgement of facts by the Purchaser.**

- 5.3 For purposes of this Agreement, the Seller is acting in the ordinary course of business. If the Purchaser is a natural person or an entity with an annual turnover or asset value of less than R2 000 000 (Two Million Rand) at the time of entering into this Agreement, then the Consumer Protection Act applies to this transaction. Therefore where it is necessary to comply with the Consumer Protection Act certain clauses in this Agreement has been highlighted in order to draw the Purchaser's attention thereto.
- 5.4 The Seller confirms that he has not authorised any representations to be made or information to be provided other than that which is set out in this Agreement. No written or oral or other form of representation and/or information has been authorised and is made binding on the Seller. No person is authorised to provide any information or make any representations other than as set out in this Agreement.

SIGNED AT \_\_\_\_\_ on this the \_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
**PURCHASER**

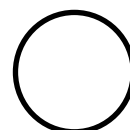
(who warrants, if this agreement is executed by him/her as representative or agent that he/she is duly authorised hereto) assisted by his/her spouse as far as needs be.

\_\_\_\_\_  
**Witness**

SIGNED AT \_\_\_\_\_ on this the \_\_\_ day of \_\_\_\_\_ 20\_\_

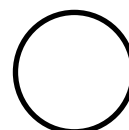
\_\_\_\_\_  
for and on behalf of the **SELLER**

Initial



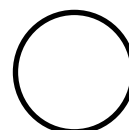
## STANDARD CONDITIONS OF SALE

1. INTERPRETATION		
1.1 In this Agreement, unless inconsistent with the context:		
1.1.1.	the "Act"	means the Sectional Titles Act No 95 of 1986 or any amendment thereof and includes the regulations promulgated thereunder from time to time;
1.1.2.	the "Architect"	means the architect as may be appointed by the Seller to act as such from time to time;
1.1.3.	the "Attorney"	means the Seller's attorney described in the Schedule;
1.1.4.	the "Agent"	means the Seller's agent described in the Schedule;
1.1.5.	the "Body Corporate"	means the controlling body as established when the first transfer register;
1.1.6.	"the Buildings"	means the building(s) to be constructed on the Property in accordance with the Drawings;
1.1.7.	the "Commencement Date"	means the date of commencement of the construction of the Buildings, as certified by the Architect, whose decision as to that date shall be final and binding upon the parties;
1.1.8.	the "Common Property"	means such parts of the Property and Buildings which do not form part of a Section;
1.1.9.	the "Completion Date"	means the date upon which the Unit is complete for beneficial occupation and can effectively be used for the purpose intended, as certified by the Architect, whose decision as to that date shall be final and binding upon the parties;
1.1.10.	the "Contractor"	means the building contractor appointed by the Seller to construct the Buildings;
1.1.11.	"Day"	means all calendar days, including a Sunday, Saturday or Public Holiday;
1.1.12.	the "Drawings"	means the drawings depicting the proposed sectional title scheme, including the site development plan (SDP), the elevations of the Buildings, the floor plan of the Subject Matter and the specifications as annexed hereto and initialled by the parties for purposes for identification;
1.1.13.	the "Exclusive Use Area"	means the areas described in the Schedule which will be registered;
1.1.14.	the "Mandate"	means the investment mandate granted by the Purchaser to the Attorneys, which



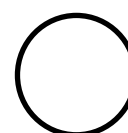


		mandate is attached hereto;
1.1.15.	the "Occupation Date"	means either, the date upon which the Purchaser takes occupation of the Unit or the Completion Date, whichever date is the earlier;
1.1.16.	the "Participation Quota"	means the decimal fraction allocated to the Section in the Sectional Plan, calculated in terms of Section 32(1) of the Act;
1.1.17.	the "Prime Rate"	means a rate of interest per annum which is equal to the Absa Bank published prime lending rate of interest per annum. (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding on the parties);
1.1.18.	the "Property"	means the immovable property situated on Erf 9823 Hermanus;
1.1.19.	the "Purchaser"	means the purchaser as described in the Schedule, its successors in title, heirs, executors, administrators or assigns;
1.1.20.	the "Register"	means the sectional title register in respect of the Development and the Buildings, to be opened in terms of the Act;
1.1.21.	the "Rules"	means the management and conduct rules prescribed by the Sectional Titles Schemes Management Act (No 8 of 2011), as may be amended by the Seller from time to time or by the Body Corporate;
1.1.22.	the "Schedule"	means the covering Schedule, being the second and third pages of this agreement;
1.1.23.	the "Scheme"	means the sectional title scheme to be registered on the Property, which will be known by the name specified in the Schedule;
1.1.24.	the "Section"	means the section as shown as such on the Sectional Plan, relating to the Unit described in the Schedule;
1.1.25.	the "Sectional Plan"	means the sectional plan as will be approved by the Surveyor General and registered by the Registrar of Deeds for the Scheme;
1.1.26.	the "Seller"	means the Seller described in the Schedule, its successors in title, heirs, executors, administrators or assigns;
1.1.27.	the "Signature date"	means the date of signature of the party who signs this Agreement last;
1.1.28.	the "Specifications"	means the specification schedule annexed hereto containing the specifications and finishes for the Subject Matter and the Buildings;



1.1.29.	the "Subject Matter"	means the Unit and the right of exclusive use to the Exclusive Use Areas conferred in terms of Section 27A of the Act, as depicted on the Drawings and annexures and as referred to in the Schedule, including an undivided share in the Common Property apportioned to the Section in accordance with the Participation Quota;
1.1.30.	the "Unanticipated Delay"	Any period of delay in the Completion Date occasioned by circumstances beyond the control of the Contractor or the Seller, as specified in the Seller's contract with the Contractor for the completion of the Buildings, and/or as a result of exceptional or unusual supervening circumstances not normally anticipated in the completion of Buildings. A certificate by the Architect as to the period of such delay shall be final and binding upon the parties;
1.1.31.	the "Unit"	shall be the Unit described in the Schedule.

- 1.2. Words and expressions defined in the Act shall have the meanings therein defined.
- 1.3. Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa.
- 1.4. Reference in this Agreement to "**this Agreement**" means this agreement and all annexures thereto.
- 1.5. The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.6. Words and expressions defined in this Agreement shall bear the same meaning in schedules or annexures to this Agreement save where they conflict with words and expressions defined in such schedules or annexures, in which event the latter shall prevail.
- 1.7. When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday nor a public holiday.
- 1.8. Where this Agreement requires a party to use its "**best endeavours**" in relation to an act or omission, that party shall do all such things as are or may be necessary or desirable so as to achieve that act or to omit taking an action, unless the parties agree that it is not reasonable to take the action or



to omit taking an action, provided however that the party who has the obligation to use his best endeavours shall not be obliged to incur any costs, charges or expenses in relation thereto.

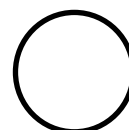
- 1.9. Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Agreement, then –
- 1.9.1. the determination of the expert shall (in the absence of patent error) be final and binding, and be delivered as expeditiously as reasonably possible in the circumstances;
  - 1.9.2. subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
  - 1.9.3. the expert shall be entitled to determine such methods and processes as he/she/it may, in his/her/its discretion, deem appropriate in the circumstances, provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable; and
  - 1.9.4. the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination.

## 2. TRANSFER

- 2.1. Transfer of the Subject Matter shall be passed by the Attorneys and taken as soon as is reasonably possible after the Completion Date and against the opening of the Register, provided the Purchaser has complied with all the terms and conditions herein.
- 2.2. The Purchaser shall, on demand, sign all documents necessary to give effect to such transfer and cession and undertakes to deliver/furnish, on demand, to the Attorney such documents/information as may be required to procure compliance with the provisions of the Financial Intelligence Centre Act No 38/2001 arising from this transaction.
- 2.3. Without prejudice to any other rights it may have, the Seller shall be entitled to withhold transfer in the event of any monies being outstanding by the Purchaser whether in respect of the purchase price, costs, occupational rental, levies or any other amount due under this agreement.
- 2.4. **The Purchaser specifically acknowledges and accepts that lodgement of the purchaser's transfer documents in the Deeds Registry shall be entirely in the discretion of the Attorneys and the Purchaser shall have no claim of whatsoever nature arising from delay in registration and his obligation to pay interest in terms of this Agreement shall remain binding.**

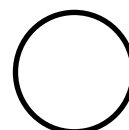
## 3. POSSESSION AND OCCUPATION

- 3.1. The Seller shall give to the Purchaser not less than 30 (thirty) days' notice in writing of the Completion Date, provided, however, that the Seller shall, after having given



the Purchaser notice as contemplated aforesaid, be entitled to postpone the Completion Date by giving further notice to the Purchaser to this effect within 30 (thirty) days of date of receipt by the Purchaser of the first notice.

- 3.2. Possession and occupation of the Subject Matter shall be given and taken by the Purchaser on the Occupation Date, on which date, all risk and benefit in the Subject Matter shall pass to the Purchaser.
- 3.3. **From the Occupation Date, the Purchaser shall pay to the Seller monthly occupational rent as stipulated in the Schedule, payable monthly in advance on the first business day of every month. From the Occupation Date the Purchaser shall be liable for payment of levies, as well as electricity and water consumed in or on the Subject Matter until date of transfer.**
- 3.4. **In the event of transfer being delayed as result of the Purchaser, the occupational rent shall increase with 30% (thirty percent), reckoned from the date on which transfer would have been possible had it not been for the delay caused by the Purchaser until the actual date of registration of transfer. The Attorneys, acting as expert and not as arbitrator, shall decide whether the Purchaser has caused a delay, and if so, for what date.**
- 3.5. The Seller shall not be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of any building operations which may be conducted in respect of the Property after the Occupation Date.
- 3.6. **The failure on the part of the Purchaser to take physical occupation (whether personally or by agent) or to accept the keys to the Subject Matter shall not affect the Occupation Date, which shall remain as defined.**
- 3.7. **The Purchaser acknowledges that:**
  - 3.7.1. **the other portions of the Building or Common Property may not necessarily be complete at the Completion Date;**
  - 3.7.2. **the peaceful use and enjoyment of the Subject Matter, Exclusive Use Area, Common Property and the common areas in the Scheme may be temporarily interrupted from time to time during such building operations, provided it does not interrupt the Purchaser's beneficial occupation of the Subject Matter, but acknowledges that some of the parking bays may temporarily not be available for parking;**
  - 3.7.3. **the Purchaser shall have no claim whatsoever against the Seller, nor shall the Purchaser be entitled to any reduction in the purchase price or interest thereon by reason of any such inconvenience and/or interruption referred to in clause 3.7.2 above. The Seller shall however use reasonable endeavours to procure that such inconvenience or interruption is kept to a minimum;**
  - 3.7.4. the Occupation Date shall under no circumstances be deferred or the Subject Matter considered unsuitable for beneficial occupation by reason of any improvements, additions or alterations to be effected to the Subject Matter by or at the request of the Purchaser not having



been completed;

- 3.7.5. the occupation of the Subject Matter by the Purchaser (and those occupying through or under the Purchaser) between the Occupation Date and the date of registration of transfer, shall not in any way constitute a tenancy between the Seller and the Purchaser (and those occupying the Unit through or under the Purchaser);
- 3.7.6. the failure to deliver the Subject Matter on the Completion Date, or a later date nominated in writing, for any reason shall not entitle the Purchaser to any claims of any nature whatsoever, including consequential loss.

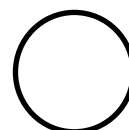
#### **4. NO GENERAL WARRANTY**

- 4.1. **Save as specially set out in this Agreement, the Seller has made no representations and given no warranties in respect of the Subject Matter, the Buildings, the Property, the Development, the Common Property or in respect of anything relating thereto and the Seller shall not be liable for any defects in the Subject Matter or Buildings or in respect of anything relating thereto whether patent or latent.**
- 4.2. **The Purchaser shall accept transfer of the Subject Matter subject to all conditions and servitudes benefiting or burdening the Subject Matter and the Property, whether existing or thereafter imposed by any competent authority or by the Seller.**
- 4.3. The Purchaser shall not be entitled to claim cancellation of this Agreement or any reduction in the purchase price by reason of any minor alteration to the number, size, location or participation quota of any Section, or any increase in their number, to that shown on the plans annexed hereto. The Purchaser undertakes to accept transfer of the Subject Matter as it may be re-defined and re-numbered in the Sectional Plan approved by the relevant Local Authority and the Surveyor General.
- 4.4. **The Architect shall have the sole decision upon whether a deviation referred to in 4.3 is minor and his decision shall be binding on the parties. For the purposes of this clause the word "minor" shall in terms of size be interpreted to mean a difference of less than 5% of the estimated size.**

#### **5. ACKNOWLEDGEMENTS BY PURCHASER**

The Purchaser acknowledges that:

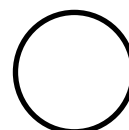
- 5.1. **The Sectional Plan has not been approved and that accordingly the exact and final boundaries and areas of the Subject Matter will be those shown on the Sectional Plan as finally approved.**
- 5.2. **If upon a resurvey or re-measurement the area of the Subject Matter or Property is found not to correspond with that set out in the title deed or Sectional Plan or any other amendment necessary to comply with the Act, the Seller shall not be liable for any default nor claim compensation for any surplus.**



- 5.3. The Register will be opened as soon as is reasonably possible after the Completion Date and transfer of the Subject Matter shall take place simultaneously with or forthwith after the opening of the Register.
- 5.4. The Purchaser has read and approved the Drawings and will be obliged to accept delivery of the Subject Matter:
- 5.4.1. completed substantially according to the Drawings; and
  - 5.4.2. as finally depicted and delineated on the Sectional Plan.
- 5.5. The Purchaser shall be entitled to the exclusive use and enjoyment of the Exclusive Use Areas, subject to the Rules.

## 6. VARIATIONS OF SPECIFICATIONS

- 6.1 The Buildings and the Subject Matter shall be built substantially in accordance with the Drawings and Specifications, **provided that the Seller shall be entitled to:**
- 6.1.1 substitute items of a similar standard and quality for any specified item referred to in the Specifications;
  - 6.1.2 vary the Sectional Plans for the Buildings should the Seller consider it reasonably necessary for technical or aesthetic reasons;
  - 6.1.3 vary the details set out in the annexures hereto, including the finishes or extras, to such extent as may be reasonably necessary;
- in order to - i) meet any requirements of the local authority, ii) meet any special features of the Subject Matter, iii) meet any special impediments such as water, sewer or electrical lines either above or underground or any rock or other soil condition, iv) obtain the approval of the Development, the Scheme and/or the opening of the Register and v) change the area or lay-out of the Subject Matter, save only that the area of the Subject Matter shall not vary by more than 2,5%.
- 6.2 **The Seller reserves the right, in consultation with the Purchaser, to substitute or replace any of the finishes with an equivalent or improved product should problems of availability, or any other reason, be encountered. Should any of the materials, finishes or fittings need to be substituted and/or replaced as canvassed above, the Seller shall provide the Purchaser with 3 alternative options to choose from. All options provided shall be of an equivalent or improved standard and similar style to those originally specified.**
- 6.3 In the event of there being any dispute between the parties as to the nature of the variations referred to in clause 6, the dispute shall be referred for determination to the Architect. The Architect shall act as an expert and not the arbitrator in resolving any such dispute and his decision shall be final and binding on the parties.
- 6.4 Neither the Purchaser nor any person or firm employed by them shall carry out any work on or to the Subject Matter prior to registration or transfer. Work subsequent thereto shall not be carried out without the permission of the Body Corporate in terms of the Rules.



- 6.5 The Seller shall not be obliged at any stage to agree to any extras, omissions, variations or changes of any nature whatsoever to the Buildings and/or the Subject Matter.**

## **7. UNDERTAKINGS AND WARRANTIES BY THE SELLER**

- 7.1 The Seller undertakes and confirms that:

7.1.1 it shall take all reasonable steps necessary to procure:

7.1.1.1 that the Completion Date will take place as close as possible to the Anticipated Construction Completion Date, or as soon as reasonably possible thereafter, but not later than 180 days from the Anticipated Construction Completion Date, excluding any delay in completion caused by any Unanticipated Delay;

7.1.1.2 the registration of the Sectional Plan and the opening of the Register in terms of the Act as soon as is reasonable and practicable after the Completion Date, but in any event not later than 6 (six) months from the Completion Date.

7.1.2 it will, within a reasonable time, remedy any material defects in the Subject Matter which may 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 material defects, failing which the Purchaser shall be deemed to have accepted the Subject Matter on the Completion Date without any defects.**

Initial

7.1.3 it guarantees the Subject Matter and Building in respect of major structural defects for 5 (five) years from the Completion Date.

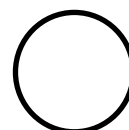
7.1.4 it guarantees the Building and Subject Matter in respect of the roof in respect of leakage for a period of 1 (one) year from the Completion Date.

- 7.2 **The Architect shall determine whether any defects recorded in writing are "material defects" and his determination shall be final and binding upon the parties. The Seller shall only be responsible in terms of clause 7.1 for defects caused by faulty materials and/or workmanship and the Seller shall under no circumstances be liable for any consequential loss or damage and the Purchaser hereby waives any such claim. A certificate issued by the Architect to the effect that any defect has been made good shall be final and binding on both parties and shall relieve the Seller from any further obligation in respect of such defect.**

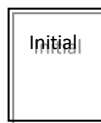
Initial

- 7.3 The Seller shall furnish the Purchaser on request with the standard NHBRC builders guarantee in respect of the Subject Matter issued by the Contractor for the remaining period of such guarantee.

- 7.4 **All confirmations and undertakings given by the Seller to the Purchaser in terms of this Agreement are personal to the Purchaser who cannot cede, assign or make over his rights thereto. The aforesaid warranties and undertakings do not include the Purchaser's successors-in-title.**

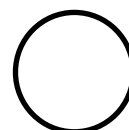


- 7.5 **Notwithstanding the provisions contained within clauses 7.1 and 7.2, it is specifically agreed that the Seller shall not be liable for any defects in the Subject Matter arising in any manner whatsoever from the structural design thereof or any soil and/or ground conditions, or any loss or damage of whatsoever nature howsoever arising therefrom or caused thereby, unless same are due to the failure on the part of the Seller and/or its contractors to erect the Buildings in accordance with the Drawings, Specifications and/or recommendations of the Seller's structural and/or civil engineers.**
- 7.6 **The Purchaser acknowledges that the finishes to the Subject Matter will not necessarily be the same as those illustrated in any showroom utilised for display purposes or contained in any other material exhibited by the Seller or its representatives.**
- 7.7 The Purchaser shall have no claims against the Seller for any discrepancies of whatsoever nature between the building plans and specifications relating to the Development and/or the Buildings and the completed Scheme.
- 7.8 Any model of the Buildings or the Scheme, whether or not to scale, and any advertisement or other advertising material utilised for purposes of marketing the Scheme and selling the Units have been prepared as advertising material only and shall not constitute a representation by the Seller and the Purchaser shall not be entitled to rely on any information therein or derived therefrom and this Agreement is not concluded on the basis of any such material.
- 7.9 Any images reflected in the Specifications and/or Drawings are for illustrative purposes only and will not be binding on the Seller.



## **8. RIGHT TO WITHDRAW**

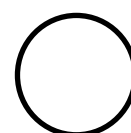
- 8.1. **Should the Commencement Date be delayed for any reason by more than 180 days beyond the Anticipated Construction Commencement Date, either party shall be entitled to withdraw from this Agreement on notice to the other, provided that such notice is given prior to the Commencement Date.**
- 8.2. **Should the period of the Unanticipated Delay be more than 180 days, the Seller shall be entitled to withdraw from this Agreement if the Seller, in its sole discretion, is of the opinion that the viability of the proposed development has been adversely affected thereby.**
- 8.3. **Should the registration of the Sectional Plan and the opening of the Register in terms of the Act not take place within 6 (six) months from the Completion Date the Purchaser shall be entitled, to withdraw from this Agreement by giving written notice to such effect to the Seller within 10 (ten) days of the expiry date as stipulated aforesaid.**
- 8.4. Should either party withdraw from this Agreement in terms hereof, neither party shall thereafter have any claim against the other, except that the Purchaser shall be entitled to immediate repayment of the deposit and interest accrued thereon and the Seller shall be entitled to retain all amounts paid by the Purchaser pursuant to the provisions of clause 3.3.





## 9. CONDITIONS APPLICABLE PENDING TRANSFER

- 9.1. Upon the Purchaser taking occupation of the Subject Matter and pending transfer and cession, the following conditions shall apply:
- 9.1.1. save insofar as may be inconsistent with the provisions of this Agreement, the provisions of Section 44(1) of the Act shall apply;
  - 9.1.2. the provisions of the Rules insofar as they cast any duty upon the owner or occupier of a Subject Matter, shall bind the Purchaser and be enforceable by the Seller;
  - 9.1.3. the Purchaser may not make any alterations or additions to the Subject Matter, without the prior written consent of the Seller;
  - 9.1.4. the Purchaser shall not employ any person or firm to carry out any work of whatsoever nature on or to the Subject Matter, Exclusive Use Area or Property or any portion thereof prior to the date of transfer of the Subject Matter into the name of the Purchaser;
  - 9.1.5. the Purchaser shall maintain the interior of the Subject Matter;
  - 9.1.6. the Purchaser shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the Subject Matter or his rights of occupation thereof, except with the written consent of the Seller;
  - 9.1.7. the Purchaser shall grant access to the Contractor and the Seller to implement remedial work referred to in clause 7.1;
  - 9.1.8. the Purchaser shall be responsible for all costs of electricity and water consumed in the Subject Matter insofar as these may be separately metered, as well as the application to register as a user thereof;
  - 9.1.9. the Purchaser shall not store or harbour or allow to be stored or harboured in or about the Subject Matter and/or the Property and/or the Building any article, goods or materials which may vitiate any fire or other insurance policy held by the Seller or increase the premiums payable in respect of such policy.
- 9.2. The Seller shall, pending the establishment of the Body Corporate:
- 9.2.1. insure the Buildings and all improvements, fixtures and fittings in or upon the Property to the full replacement value thereof against such risks as the Seller may decide;
  - 9.2.2. maintain the Common Property and keep it in a state of good and serviceable repair and in a neat, tidy and sanitary condition;
  - 9.2.3. administer the Property and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the Common Property and all other charges in connection with the



## Property and the Buildings.

- 9.3. If the Building is damaged or destroyed, the Seller may elect to either:
- 9.3.1. cancel this Agreement by giving the Purchaser notice thereof provided the extent of damage is not less than 50% (fifty per centum) of the Building/s which as a result thereof is not habitable; or
  - 9.3.2. keep this Agreement in force and apply any insurance proceeds for the repair or reinstatement of the Building/s.

## 10. INSPECTION OF UNIT

The Seller and/or the Seller's duly authorised agent shall be entitled to inspect the Subject Matter at all reasonable times during the currency of the Agreement.

## 11. LEVIES

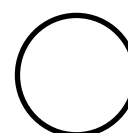
- 11.1. The Purchaser shall be liable from the Occupation Date for levies payable in terms of section 37(1) of the Act calculated in accordance with the participation quota attributable to the Subject Matter.
- 11.2. Pending the determination of the actual amount of such levy, the Purchaser shall from the Occupation Date pay on account of such monthly levy an amount equivalent to the Estimated Levy referred to in the Schedule. Upon the determination of the actual monthly levy so payable any amount unpaid or overpaid shall forthwith be paid or reimbursed by one party to the other.
- 11.3. Such levies shall be paid to the Seller until registration of transfer and thereafter to the Body Corporate, monthly in advance on the first date of each and every calendar month provided that if the Occupation Date falls on any day other than the first day of a calendar month, then the Purchaser shall be obliged to pay a pro-rata share of the levies due for the calendar month in which the Occupation Date occurs.

## 12. DEFAULT

- 12.1. If either the Purchaser or the Seller (the "defaulting party"):
- 12.1.1. fails to pay any amount due by that party and remain in default for more than 7 (seven) days of being notified to pay by the other party (the "aggrieved party"); or
  - 12.1.2. commits any other breach of this Agreement and fails to remedy such breach within 7 (seven) days of being called upon by the aggrieved party in writing to do so;

the aggrieved party shall be entitled:

- 12.1.3. to cancel this Agreement and to claim damages, in which event, should the defaulting party be the Purchaser, the Seller shall be entitled:
  - 12.1.3.1. to retain the deposit and accrued interest as pre-estimated damages, or
  - 12.1.3.2. to retain all monies paid by the Purchaser pending determination of the Seller's damages, or



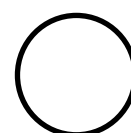
- 12.1.3.3. to claim immediate performance of the obligations of the defaulting party, without prejudice to any other rights or remedies, which it may have in law, including the right to claim damages.
- 12.2. Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever.
- 12.3. Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate forthwith the Subject Matter and to procure that the Subject Matter shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the date of possession.
- 12.4. The Purchaser shall have no claim in respect of variations or improvements to the Subject Matter or Exclusive Use Area.
- 12.5. The defaulting party agrees that, in the event of the aggrieved party instructing its attorneys and/or taking legal proceedings against the defaulting party pursuant to a failure by the defaulting party to fulfil any of its obligations in terms of this Agreement, then the defaulting party shall pay all legal costs, legal fees, outstanding occupational rental owing (if applicable), wasted costs of transfer, plus VAT, incurred by the aggrieved party in connection therewith on a scale as between attorney and own client, including collection commission laid down at the tariff rate applicable. In such event of the Purchaser being the defaulting party, he irrevocably authorizes the Attorneys to deduct the amounts so owing from the deposit and interest in so far as that covers the amount due.

### **13. COSTS**

- 13.1. The Purchaser shall pay on demand all attorney's fees relating to transfer and bond costs, including VAT (at the current applicable VAT rate) thereon, costs of all necessary affidavits, Deeds Office fees relating to the registration thereof, financial institution fees and bank charges.
- 13.2. The Seller shall, in its entire discretion, have the right to make payment on behalf of the Purchaser of all or part of the aforementioned costs. Any such payments made by the Seller shall be refunded to the Seller on demand together with interest thereon calculated from date of payment thereof by the Seller until date of receipt of payment from the Purchaser at the Prime Rate.

### **14. MANAGING AGENT**

- 14.1 **The Seller shall be entitled to appoint the first Managing Agent, whose appointment shall be valid and binding on the Body Corporate for 1 (one) year after the first general meeting of the Body Corporate.**
- 14.2 **The Purchaser gives the Seller the irrevocable power to make this appointment.**

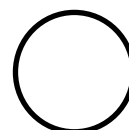


## 15. GENERAL

- 15.1. The terms of this Agreement form the sole contractual relationship between the parties hereto and no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing and signed under the hands of the parties hereto. This Agreement supersedes any prior existing agreement or undertaking relating to the Subject Matter between the parties.
- 15.2. No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.
- 15.3. Each of the parties hereby undertakes to sign and/or execute all such documents (and without limiting the generality of the foregoing) same include the execution of the necessary power of attorney, transfer duty declarations and bond documents.

## 16. NOTICES AND ADDRESSES

- 16.1. Each of the parties chooses their respective addresses set forth in the Schedule as their addresses for the purpose of the receiving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement, save that from Occupation Date the Purchaser's address for that purpose shall be the Subject Matter.
- 16.2. Each of the parties shall be entitled from time to time, by written notice to the others to vary its aforesaid address to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 16.3. Any notice given and any payment made by a party to any of the others ("the addressee") which:
  - 16.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's said address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
  - 16.3.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's said address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.
- 16.4. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile or e-mail. Communications by facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 1 (one) hour after the time of transmission.
- 16.5. 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 him, notwithstanding that it was not sent to or delivered at his said address aforesaid.

## 17. CESSION

- 17.1. The Seller shall be entitled to cede any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be necessary, the Purchaser consents thereto.
- 17.2. **The Purchaser shall not, without the Seller's prior written consent, in the sole discretion of the Seller, be entitled to sell the Subject Matter or in any way to part with beneficial ownership thereof or to advertise same for sale, prior to the registration of transfer of the Subject Matter to the Purchaser.**
- 17.3. When granting any consent, the Seller shall be entitled to impose such reasonable conditions as it considers necessary in order to protect the interest of all the parties hereto and shall furthermore be entitled to stipulate that such disposal and/or alienation shall be effected through the Agent and the Attorneys.

## 18. CONSENT TO JURISDICTION

For the purpose of all or any proceedings, disputes, action or suit hereunder the parties hereby irrevocably agree to the jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town.

## 19. GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of South Africa.

## 20. JOINT PURCHASERS

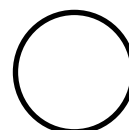
Insofar as there may be more than one Purchaser, the liability of each of such Purchasers shall be joint and several for all obligations arising from this Agreement.

## 21. WITHHOLDING OF PAYMENTS

If any work of whatsoever nature is still required to be done to the Subject Matter or any other part of the Property on the date that transfer thereof is tendered to the Purchaser, the Purchaser shall not be entitled to withhold, set off or retain any amounts owing by the Purchaser to the Seller nor shall the Purchaser be entitled to withhold or abate payment of any amount due to the Seller in terms of this Agreement by reason of any breach or alleged breach of the Seller's obligations hereunder.

## 22. COMPANY TO BE FORMED

- 22.1. In the event of the Purchaser being a Company to be formed, the signatory for the Purchaser shall be personally liable for all obligations of the Purchaser as though he contracted in his personal capacity if:
- 22.1.1. the company in respect whereof he acts as trustee is not incorporated within 30 (thirty) days of date of signature hereof by such signatory;



- and/or
- 22.1.2. the company having been incorporated, fails to adopt and ratify unconditionally this transaction without modification within seven (7) days of incorporation.

- 22.2. Upon timeous formation of the said company and due and timeous ratification and adoption of this transaction as aforementioned, the said signatory shall become and be liable to the Seller as surety for and co-principal debtor with the company for its obligations as Purchaser in terms of this Agreement under renunciation of the benefits of excussion and division.

### **23. COMPANY/CLOSE CORPORATION/TRUST - SURETYSHIP**

**In the event of the Purchaser being a Company or a Close Corporation or the trustees for the time being of a Trust, the signatory for the Purchaser by his/her signature hereto binds himself/herself to the Seller as surety and co-principal debtor for all amounts owing by the Purchaser in terms of this Agreement, and the signatory further renounces of the benefits of excussion and division for the performance by the Purchaser's obligations in terms of this Agreement.**

### **24. NON-LIABILITY**

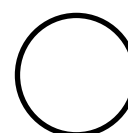
Notwithstanding anything to the contrary herein contained, **the Seller shall not be responsible for any loss or damage which the Purchaser may suffer or any injury to or death of any person which the Purchaser may sustain by any act or omission whatsoever nor neglect on the part of the Seller, its servants, employees or agents, nor shall the Seller be responsible for any loss or damage of any description whether to the property or person which the Purchaser or any other person may suffer by reason of the Buildings or Subject Matter at any time falling into a defective state or by reason of any construction conducted by the Seller on the Property or any portion thereof.** The Purchaser shall not be entitled for any of the said reasons or for any other reason whatsoever to withhold payment of any moneys due to the Seller in terms hereof.

### **25. CONDITIONS AND RULES**

- 25.1. The Purchaser agrees to accept the Subject Matter subject to the terms and conditions imposed by the relevant authorities when approving the Scheme and the Rules imposed by the Seller and agrees to be bound thereby.
- 25.2. **The Purchaser authorises the Seller to make such amendments to the Rules as the Seller in the Seller's sole discretion may determine, including rules relating to the allocation and use of Exclusive Use Areas, and hereby irrevocably authorises the Seller to vote for the adoption of such rules at the first meeting of the Body Corporate.** The Purchaser agrees to abide by the Rules of the Body Corporate.

### **26. AGENTS COMMISSION**

It is recorded that the Agent has a mandate to market the Subject Matter and the Purchaser hereby indemnifies the Seller against any claim or action for the due payment of commission from any other party. The Seller shall be liable for payment against registration of transfer of agent's commission.



**INSTRUCTION TO INVEST TRUST MONEYS**

*(In respect of a conveyancing transaction)*

*Section 86(4) and (5) of the Legal Practice Act, 2014 (Act No 28 of 2014)*

To: De Klerk & van Gend Inc.  
Attorneys, Notaries & Conveyancers  
BELLVILLE

**TRANSFER FROM: THE HERMANUS ESPLANADE DEV CO (PTY) LIMITED to**

\_\_\_\_\_ of :UNIT \_\_\_\_\_ THE ESPLANADE

I/we, \_\_\_\_\_

being the transferee in the abovementioned transaction, hereby confirm my instruction to De Klerk & van Gend Inc. to invest all funds paid to De Klerk & van Gend Inc by me on account of the purchase price, on the basis that:

1. the amount is invested in a trust savings account or other interest-bearing account;
2. the account contains a reference to Section 86 (4) of the Legal Practice Act 2014 (Act No 28 of 2014);
3. the interest which accrues on such investment is to be for the company/close corporation/my benefit and is to be paid to me/us/it, after deducting your professional fee and costs for administering the investment on closure of the account (administration costs of 0,5% per annum (VAT inclusive), will be charged on all monies invested);
4. the capital amount invested is to be paid in accordance with the transferor's instructions on the date of registration of transfer.
5. in terms of section 86(5) of the Legal Practice Act no 28 of 2014, 5% of the interest which accrues on such investment must be paid over to the Legal Practitioners Fidelity Fund and vests in the Fund (5% of the trust interest earned on this trust investment will be paid monthly to the Legal Practitioners Fidelity Fund with effect from 1 March 2019)
6. I am aware of the fact that while the funds are so invested with the said bank, the funds are not protected against a possible liquidation of the said bank.

\_\_\_\_\_  
**PURCHASER**

\_\_\_\_\_  
**DATE**

NOTE: No money will be invested in an interest-bearing trust account until this investment mandate has been furnished and the Purchaser has complied with the provisions of the Financial Intelligence Centres Act (FICA).

