

# DUNKIRK ESTATE

## RESALE OF PROPERTIES AT DUNKIRK ESTATE (COMPLETED DWELLING)

### AGREEMENT OF SALE

I, the undersigned, .....

duly authorised by:.....

("the purchaser")

Identity number: .....

Postal address: .....

Street address: .....

Telephone: (h) .....(b) .....

Telefax: .....

e-mail: .....

Marital Status: Unmarried / Married In COP / Married out COP / Foreign Marriage

do hereby agree to purchase from

.....

("the seller")

Postal address: \_\_\_\_\_

*Domicilium:* \_\_\_\_\_

Telephone: \_\_\_\_\_

Telefax: \_\_\_\_\_

e-Mail: \_\_\_\_\_

who agrees to sell:

Erf ....., Dunkirk Estate  
Registration Division FU, Province of KwaZulu-Natal  
In extent .....m<sup>2</sup> ("the property").

For the sum of R..... inclusive/exclusive of VAT.

This agreement is subject to the terms and conditions set out below.

1. **Terms of Payment of the Purchase Price:**

The purchase price shall be secured by the purchaser as follows:

- 1.1 The purchaser shall lodge a deposit of R..... (..... %) with Venns Attorneys., 218 Pietermaritz Street, Pietermaritzburg, 3201 **or**..... ("the conveyancers") upon the signing of this agreement, which sum shall be retained by the conveyancers in trust in an interest-bearing account with interest accruing to the purchaser pending transfer. Payments to the conveyancers shall be made in cash or by cheque, or alternatively to the following account:

Name: Venn's Attorneys  
 Bank: Standard Bank of South Africa Limited  
 Branch: Longmarket Street, Pietermaritzburg  
 Branch code: 05 75 25  
 Account: 0522 44326  
 Type: Cheque account  
 Ref: Dunkirk Estate Erf .....

or

<b>Name:</b>	
<b>Bank:</b>	
<b>Branch:</b>	
<b>Branch code:</b>	
<b>Acc No.:</b>	
<b>Ref:</b>	Dunkirk Estate : Erf No.....

- 1.2 The balance of the purchase price shall be secured as follows:

1.2.1 By means of a mortgage bond as contemplated in paragraph 2.2 below; OR

1.2.2 From the proceeds of the sale of the Purchaser's property as contemplated in paragraph 2.1 below; OR

1.2.3 The purchaser shall lodge with the conveyancers, either a guarantee acceptable to them or, alternatively, cash for the balance of the purchase price within ..... days of the date of the purchaser's signature to this agreement. In the event of the purchaser paying the balance of the purchase price in cash, then it shall be held by the conveyancers in accordance with the provisions of 1.1 above.

- 1.3 Should the Seller be a VAT registered entity and VAT is payable over and above the purchase price the Purchaser shall lodge the VAT with the Conveyancers within 14 days of signature hereof.

Delete whichever is not applicable

1.4 The Purchaser shall make payment to the Conveyancers of all costs, rates payable in advance to the municipality, levy stabilisation fees, Beach Club membership fees, HOA levies, transfer duty and any other amounts called for the by the Conveyancers, which is required in order to effect transfer, within 7 days of receipt of request therefor.

1.5 In the event of any of the amounts or guarantees due by the Purchaser in terms of this agreement not being paid or lodged on due date, then interest shall accrue on such outstanding amounts from the date when such payment or guarantee was due until the date when the payment or guarantee is lodged with the conveyancers.

Interest shall be calculated at the prime overdraft rate of the Standard Bank of South Africa Limited and compounded monthly in arrears.

2. **Suspensive Conditions**

This agreement is subject to the following suspensive condition being fulfilled, namely:

2.1 To the purchaser conclusively selling his house situated at .....  
.....  
.....  
by the .....2017

2.2 The granting of a mortgage bond for the sum of R....., within 30 days of the purchaser signing this agreement.

2.3 In the event of a mortgage bond for the amount referred to in clause 2.2 above not being granted in accordance with the provisions of clause 3 below, then either party may cancel this agreement upon written notice to the other party and no party shall have any claim against the other for damages and all funds paid by the purchaser to the conveyancers shall be refunded together with interest, less an administration fee of R250.00 inclusive of VAT.

2.4 The offer is valid until 16H00 on the ...../...../2017. This clause is inserted for the benefit of the Purchaser and may be waived at his election. Should the Seller not accept within the required time and should the Purchaser not waive this condition then the Agreement will become null and void.

3. **Mortgage Bond:**

In the event of the purchaser requiring a mortgage bond for the amount referred to in clause 2.2 above, this condition will be deemed to have been fulfilled upon a financial institution issuing a quote to the Purchaser for the required sum.

4. **Transfer:**

- 4.1 The transfer of the property into the name of the purchaser shall be registered by the conveyancers, Venns Attorneys or .....
- 4.2 The purchaser hereby undertakes, within 7 days of being called upon to do so by the conveyancers, to furnish such information as the conveyancers may require to enable them to prepare documents, to sign all documents necessary to enable the conveyancers to effect registration of transfer of the property into the name of the purchaser and to pay all conveyancing fees and disbursements.
- 4.3 In the event of the purchaser not providing the necessary information, or not signing documents, or not paying conveyancing fees and disbursements within the said 7 day period, then interest shall accrue on the full purchase price as contemplated in paragraph 1.5 above.

5. **Occupation and Risk:**

- 5.1 Occupation and risk in and to the property shall pass to the purchaser upon registration of transfer of the property into the name of the purchaser, or on the date upon which the purchaser takes occupation of the property, whichever is the earlier and from which date the purchaser shall be liable for the payment of levies to the Body Corporate/HOA and rates to the Municipality.
- 5.2 From the date of occupation, the purchaser shall be entitled to all benefits which may be derived from ownership of the property.
- 5.3 If the date of transfer of the property into the Purchaser's name does not coincide with the date of occupation, the party entitled to occupation while the property is registered in the name of the other party shall pay occupational interest monthly in advance, calculated at R..... per month, or a proportionate share for a portion of a month. The Purchaser shall not be entitled to compensation for any improvements made prior to transfer

6. **Voetstoets Sale**

- 6.1 The Property is sold voetstoets and absolutely as it stands any difference as to quantity, quality, description or otherwise notwithstanding and the PURCHASER acknowledges that he has thoroughly inspected the Property and acquainted himself with its nature, extent, locality, conditions of title, servitude, leases, any conditions to be lawfully imposed at the instance of a government and/or provincial and/or local authority and other encumbrances including the applicable statutory and other rules relating thereto and shall have no claim whatsoever against the SELLER or the AGENT for any defects in the Property whether latent or patent.
- 6.2 If the Property has been erroneously described herein, such mistake or error shall not be binding on the SELLER but the description of the Property as set out in the SELLER'S title deed shall apply and in such event, the parties hereto agree to the rectification thereof to conform to the intention of the parties. It is further noted and agreed that if the Surveyor-General has altered the description of the Property in pursuance of any scheme of revision of numbering of Lots in any municipal area that the new description shall apply and if necessary, both SELLER and PURCHASER will agree to the rectification thereof to conform to the intention of the parties and will sign all necessary documents reflecting such amended description.

- 6.3 In the event of the Local Municipality advising the SELLER that the as built plans differ from the approved plans lodged with the Municipality, the SELLER undertakes to employ the services of an Architect in order to rectify the error. The SELLER shall be given 45 days in which to resolve this issue, failing which the PURCHASER shall be entitled to place the SELLER in breach.

7. **Pest Certificate**

The seller shall, before the transfer date and at the seller's expense, provide the purchaser with a certificate from a government approved entomologist certifying that any buildings on the property are free from infestation by timber destroying insects.

8. **Electrical Installations Certificate**

The seller shall, upon being called upon to do so by the Conveyancers, deliver to the purchaser a certificate of compliance as required by the regulations framed under the Occupational Health and Safety Act No. 85 of 1993. Should any repairs need to be effected in order for a compliance certificate to be issued such repairs will be for the Seller's account.

9. **Rates**

- 9.1 The purchaser shall be liable for the rates, taxes and other charges in respect of the property from the date of transfer of the property to the purchaser.
- 9.2 The purchaser shall, on receipt of their account, pay to the conveyancers attending to the transfer, their estimate of the purchaser's share of rates, taxes and other charges payable in order to obtain a rates clearance certificate from the local authority to permit transfer, and this amount may then be paid by the conveyancer to the local authority for this purpose. The Purchaser specifically acknowledges that they will be required to pay rates until 30 June of the following year as required by the Municipality.

10. **Costs**

The purchaser shall be liable for, and shall on receipt of their account pay to the Conveyancers attending to the transfer:

- 10.1 the legal costs of and incidental to the transfer of the property to the purchaser;
- 10.2 transfer duty or Value Added Tax (whichever is applicable).

11. **Fixtures and Fittings**

The property is sold with all fixtures, including the following items, whether fixed or not, which the seller warrants are owned by the seller:

- 11.1 light fittings and bulbs;
- 11.2 shrubs and plants, excluding pot plants;
- 11.3 pelmets or other curtain fittings and blinds;

- 11.4 wall-to-wall carpets, if any;
- 11.5 television aerial, if any;
- 11.6 pool equipment, if any;
- 11.7 burglar alarm system, if any.

12. **Alterations to Property**

The Purchaser shall not make any alterations to the property prior to registration of transfer into their name, without the prior written consent of the seller.

13. **Purchaser's Acknowledgements:**

13.1 The Purchaser hereby acknowledges that the development consists of:

- 13.1.1 a secure residential estate with a perimeter fence and controlled access gates;
  - 13.1.2 316 residential units, comprising 179 free-standing erven and 122 medium density housing units to be developed on 8 medium density erven, all of which shall be built in accordance with the architectural theme referred to in clause 17 below;
  - 13.1.3 a boutique hotel consisting of 40 beds (15 units), restaurant,
  - 13.1.4 clubhouse, community centre and recreation facilities;
  - 13.1.5 Homeowners' Association offices and a maintenance area;
  - 13.1.6 2 ponds of approximately 0,45 hectares, acting as aesthetic features and storm water attenuation facilities;
  - 13.1.7 the indigenous forest and surrounding areas which shall be rehabilitated, walking and jogging trails and the landscaping to the primary roads and public open spaces.
- 13.2 That purchaser hereby acknowledges that a Homeowners' Association, which has been registered as a Section 21 Company in terms of the Companies Act, 61 of 1973, shall control the development. The Memorandum and Articles of Association of the Homeowners' Association provide that the directors and members of the Association shall be entitled to formulate estate rules from time to time, which shall control the conduct of homeowners on the estate.

14. **Management of the Estate:**

- 14.1 The purchaser hereby acknowledges that the purchaser, in common with all property owners at Dunkirk Estate, shall be obliged to become a member of the Dunkirk Estate Homeowners' Association ("**the HOA**") a company incorporated in terms of Section 21 of the Companies Act. The purchaser shall be obliged to remain a member of the HOA for so long as the purchaser owns the property. Any successor in title shall also be obliged to become a member of the HOA and a condition of title shall be included in the title deeds, incorporating this condition.
- 14.2 The developer hereby records that Dunkirk Estate shall be managed by the developer or its agent for a period of not less than 5 years from of registration of the General Plan of Dunkirk Estate. The developer shall then have an option to extend the management period for a further 5 year period on such terms and conditions as may be agreed upon between the developer and the agent. At the termination of the two 5 year periods, the managing agents shall be appointed by the directors of Dunkirk Homeowners' Association. The developer or the agents shall, however, be entitled to hand over the management of the Homeowners' Association to the directors of the Homeowners' Association prior to the termination

of the first 5 year period, should both parties agree that it is in the best interests of Dunkirk Estate.

- 14.3 All property owners at Dunkirk Estate shall pay a **monthly levy** to the HOA to cover security, inclusive of the cost of intercom, estate management, landscaping, upkeep of the common properties, including the amenities, administration and overhead costs of water, refuse removal and the maintenance of the supporting facilities and such other services as are required by the Homeowners of Dunkirk Estate. **The levies shall be payable from the date of transfer** of the property into the name of the purchaser and the amount shall be determined by the directors of the HOA, from time to time. In the event of the property being a medium density site to accommodate **multiple units, levies shall be payable per unit or sub-division allocated to said property from date of transfer.**
- 14.4 Levies shall only be payable in respect of properties to which all services have been installed. The developer shall not be responsible for the payment of any levy in respect of the undeveloped land but shall make a contribution to the administration of the Homeowners' Association, which shall not exceed 10% of the monthly levy, in the case of undeveloped properties. In the case of developed properties, the developer shall pay the same levy as is payable by the purchaser and other owners at Dunkirk Estate.

In addition to the monthly levy, the purchaser shall pay a non-refundable amount of **R3 000 to a levy stabilisation fund** upon registration of transfer of the property into the name of the purchaser. All subsequent purchasers of any property shall be obliged to pay this amount to the fund or such amount as the Directors of the HOA may determine from time to time.

In the event that the property being developed to accommodate multiple units, either in terms of a sectional title development or in any other matter, the amount of **R3 000-00** shall be payable in respect of **each individual unit or sub-division allocated to said property on date of transfer.**

- 14.5 The levy shall not cover the consumption of water and electricity and sewerage or the maintenance of the improvements on the properties. The said expenses shall be for the account of the purchaser. In the event of the purchaser not maintaining his property to the standards laid down by the directors of HOA, then the HOA shall be entitled to, but not obliged to, repair the property and/or the gardens and to charge the owner for such costs.
- 14.6 The purchaser acknowledges having had the opportunity of inspecting the Memorandum and Articles of Association of the HOA, The purchaser hereby agrees to be bound by the terms and conditions of the Memorandum and Articles of Association.

## 15. **Re-sale of Properties**

- 15.1 It is hereby agreed that should the purchaser wish to re-sell the property during the development period, then the purchaser shall be obliged to grant a sole mandate to the developer's managing agent who shall then grant such mandate to one or all of the approved agents nominated by the developer.
- 15.2 Only agents approved by the developer shall be entitled to sell properties at Dunkirk during the development period.

16. **The Architectural Code:**

The property has been developed in terms of the Architectural Code prepared by the developers which determines the position of the house on the property, the materials used on the property, the colours and the architectural style and proportions of the house. The architectural code remains pertinent to all additions and alterations made to the home/house purchased.

17. **Building Committee:**

17.1 A building committee shall be formed which shall include a representative of the developer and an architect appointed by the developer. All dwellings built on Dunkirk Estate shall be approved by the building committee, prior to commencement of construction.

17.2 In the event of there being any dispute relating to the interpretation of the architectural code, then it shall be decided upon by a referee. The referee shall be a qualified architect and shall be appointed by the trustees of the developer. The referee's decision shall be final and binding on the parties.

17.3 When submitting building plans for alterations and additions to the building committee, a submission fee is payable to the Dunkirk Homeowners Association for review of the plans. The fees vary according to whether it is a freehold or medium density site and whether the architect is on the list of approved architects or not.

18. **Variation of Building Clause**

The developer shall be entitled to vary the building clause period in respect of subsequent property sales and shall not itself be bound by any such restrictive conditions in respect of unsold erven. The developer shall also have the prerogative to grant an extension for the time in which houses may be built but subject to such extension being approved by the majority of the members of the Homeowners' Association at the time when the extension is granted.

19. **Landscaping:**

The common property shall be landscaped by the developer in accordance with such condition imposed by the Development Tribunal.

All landscaping on the estate shall be in accordance with a landscaping code, which shall be prepared by the developer in conjunction with landscape designers/environmentalists and approved by the local authority.

**A submission fees will be payable to the Dunkirk Homeowners Association upon submission of these plans.**

20. **Agents Commission:**

20.1 The purchaser warrants that he/she was introduced to the property by the agent, whose name appears at the foot of this offer. The purchaser hereby records that should this offer be accepted by the seller, then the agent shall be the effective cause of this sale.



- 20.2 The seller shall pay the agent's commission in the sum of ..... plus VAT, which commission shall be paid by the conveyancers upon registration of transfer of the property into the name of the purchaser. Should the sale be cancelled, due to the purchaser breaching any of the terms and conditions of this offer, then the agent shall have no claim against the seller for commission and shall be entitled to claim same from the purchaser.
- 20.3 Agent's commission shall be a first charge against any deposit held by the Conveyancers and the Seller hereby irrevocably authorises and instructs the attorney attending to the transfer of the Property to effect payment of the Agent's commission, or the balance thereof, in terms of this clause, forthwith upon such commission becoming due and payable.

21. **Breach**

Should either party fail to carry out its obligations under this agreement, and remain in default for 10 (ten) days after receiving written notice of such breach, then the aggrieved party shall be entitled either to enforce this agreement or to declare it cancelled. In either event the aggrieved party shall be entitled to claim damages from the defaulting party.

If the aggrieved party is the Seller, the Seller shall be entitled, on cancellation, to take possession of the property and re-sell the property, either by public auction or private treaty, at the expense of the Purchaser. The Seller shall be entitled to retain the deposit and costs paid by the Purchaser, together with any interest that may have accrued on such deposit for damages which the seller shall have suffered as a result of the cancellation. Any amounts in addition to the deposit, which have been paid by the purchaser to the seller or its agents in respect of the sale shall be retained by the seller or its agents pending an assessment of the damages, following which set-off shall apply. Upon re-sale, any loss suffered by the seller shall constitute damages payable by the purchaser. Any surplus arising from the re-sale shall be forfeited to the seller.

22. **Notices**

The parties choose their *domicilia citandi et executandi* at the addresses set out on the first page of this agreement. Notices delivered by hand shall be deemed to have been received on the date of delivery. Mailed notices shall be sent by pre-paid registered post and shall be deemed to have been received on the fourth business day following the date of posting. Telefaxed or e-mailed notices shall be deemed to have been received 48 hours after transmission.

23. **Waiver**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement.

24. **Entire Contract**

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

25 **Variation and Cancellation**

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

26 **Indulgences**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement.

27 **Trusts, Companies and Close Corporations**

27.1 In the event of the PURCHASER acting in the capacity of an Agent or Trustee for a Company to be formed, the PURCHASER shall be personally liable should the Purchasing Company or Close Corporation not be formed within 30 (Thirty) days of date hereof, or if when it is formed it does not ratify this Agreement within 7 (Seven) days. In addition, the said PURCHASER shall be deemed to have guaranteed the obligations of the Company or Close Corporation to be formed in terms of this Agreement, as surety and co-principal debtor.

27.2 In the event of the PURCHASER acting on behalf of a Company, Corporation or Trust already formed he warrants that he has the necessary authority to act on behalf of such entity. Should he breach this warranty then he shall become jointly and severally liable in his personal capacity for the obligations of the Company, Trust or Close Corporation contemplated in terms of this agreement.

28 **Beach Club**

28.1 The purchaser hereby acknowledges having been made aware that the Developer has acquired a beachfront property for the purpose of developing it as a Beach Club for the exclusive use of owners at Dunkirk Estate. This offer is subject to the condition that the purchaser agrees that the beachfront property shall be transferred to the Dunkirk HOA, or their nominee, and that the purchaser shall pay an amount of **R30 000 (Thirty Thousand Rand)** to the HOA as an entrance fee to join such club. **This amount is payable on date of transfer of the property.**

28.2 In the event of the property being a medium density site, accommodating multiple units, either in terms of a sectional title development or any other matter, the amount of R30 000 shall be payable **per unit or sub-division allocated to the said site, and shall be paid on date of transfer of the property.** The HOA shall be obliged to accept all home owners as members of the club, and all home owners shall be obliged to become members of such club.

28.3 The HOA shall be responsible for the management of the Beach Club and for determining the rules which are applicable to the use of such club.

29 **Financial Intelligence Centre Act**

The purchaser and seller hereby agree to comply with all the terms and conditions of the Financial Intelligence Centre Act (FICA) and to furnish the conveyancers with

such documents as they may require to satisfy themselves that the terms of FICA are complied with.

30 **Immovable Property Condition Report**

The immovable property condition report attached must be signed as accepted by both Seller and Buyer.

Signed by the purchaser at .....on.....2017

.....  
**Witness** **The purchaser**

*(delete or complete as necessary)*

Assisted as far as may be necessary by purchaser's spouse who also assumes personal liability.

.....  
**Witness** **The purchaser's spouse**

Signed by the seller at .....on.....2017

.....  
**Witness** **The seller**

*(delete or complete as necessary)*

Assisted as far as may be necessary by seller's spouse.

.....  
**Witness** **The seller's spouse**

I, the undersigned hereby accept the benefits conferred under this agreement.

.....  
**The agent**

**(name and initials):** .....

**Representing:** .....

**Telephone number:** .....