

# DUNKIRK ESTATE

## RESALE OF PROPERTIES AT DUNKIRK ESTATE (LAND)

### AGREEMENT OF SALE

I, the undersigned, .....

duly authorised by:.....

**("the purchaser")**

Identity number: .....

Postal address: .....

Street address: .....

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

Telefax: .....

e-mail: .....

do hereby agree to purchase from

**("the seller")**

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

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

Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_  
e-Mail: \_\_\_\_\_

who agrees to sell:

Erf ....., situate on Erf 1 Dunkirk Estate in extent approximately .....m<sup>2</sup>, the position of which is as shown on the plan prepared by Ndebele Kirby Town Planners and attached hereto, marked "A" (**"the property"**), for the purpose of constructing a residential house.

For the sum of R.....

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 Venn Nemeth & Hart Inc., 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 Nemeth and Hart Inc  
**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>	Erf No ..... Dunkirk Estate

1.2 The purchaser shall lodge with the conveyancers, either a guarantee acceptable to them or, alternatively, cash for the balance of the purchase price within 60 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 The purchaser shall secure the transfer duty / VAT payable on this transaction by means of either cash or a guarantee acceptable to the conveyancers, to be lodged within the said 60-day period.

1.4 The purchase price, (together with VAT if applicable) shall be paid by the conveyancers to the seller upon registration of transfer of the property into the name of the purchaser. Interest which accrues on all

the cash deposits shall be paid or credited to the purchaser upon registration of transfer of the property into the name of the purchaser.

- 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 selling his house situated at .....  
.....  
.....  
by the .....2013.

- 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 ...../...../2013 and will be null and void if not accepted by the Seller before the stipulated date.

**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 lodging a letter, acceptable to the conveyancers, confirming that a mortgage bond has been granted to the purchaser upon the normal terms and conditions applicable to home loans.

**4. Transfer:**

- 4.1 The transfer of the property into the name of the purchaser shall be registered by the conveyancers, Venn Nemeth and Hart Inc or .....
- 4.2 The purchaser hereby undertakes, within 14 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 14 day period, then interest shall accrue on the full purchase price at the prime overdraft rate of Standard Bank Limited, from the date when the purchaser was to have complied with his obligations in terms of clause 4.2 above, until the date when the purchaser provides the information, or alternatively signs the documents, or alternatively pays the conveyancing fees and disbursements, whichever the case may be.

**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.

**6. Purchaser's acknowledgements:**

- 6.1 The purchaser hereby acknowledges that the development consists of:
- 6.1.1 a secure residential estate with a perimeter fence and controlled access gates;
- 6.1.2 316 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 10 below;
- 6.1.3 a boutique hotel consisting of 40 beds (15 units)
- 6.1.4 a clubhouse, community centre and recreation facilities;
- 6.1.5 Homeowners' Association offices and a maintenance area;
- 6.1.6 2 ponds of approximately 0,45 hectares, acting as aesthetic features and storm water attenuation facilities;
- 6.1.7 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.

6.2 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.

7. **Management of the estate:**

7.1 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.

7.2 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.

7.3 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.**

7.4 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.**

- 7.5 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.
- 7.6 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.

## 8. **Re-sale of properties**

- 8.1 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.
- 8.2 Only agents approved by the developer shall be entitled to sell properties at Dunkirk during the development period.

## 9. **Building:**

### **Period of commencement of construction:**

All construction is to be have been completed by 31<sup>st</sup> December 2015. The purchaser shall be obliged to commence construction of a freehold site by no later than 1<sup>st</sup> September 2014, for completion within 15 months from commencement of construction. In the case of medium density properties, all the units allowed to be built on the property shall be completed within 2 years of commencement of construction, for completion by no later than 31<sup>st</sup> December 2015.

10. **The architectural code:**

The property shall be developed in terms of the Architectural Code prepared and provided by the developers which shall determine the position of the house on the property, the materials which may be used on the property, the colours and the architectural style and proportions of the house.

11. **Building committee:**

11.1 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.

11.2 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.

11.3 When submitting building plans 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.

12. **Pre-emptive right:**

12.1 In the event that the purchaser does not complete the construction of their dwelling within 15 months from the date of commencement of construction of dwelling on the property, or in the event of the purchaser of a medium density property not completing the construction of all buildings within 2 years of the date of commencement of construction on the property, then the purchaser shall pay a penalty to the HOA of R20 000 and in the case of a purchaser of a medium density site, the purchaser shall pay a penalty to the HOA of R10 000 per uncompleted unit. The money received shall be paid to the Dunkirk Homeowners' Association to be placed in the levy stabilisation fund.

12.2 In addition to the penalty above, all owners who have not completed construction of their dwelling or who have not started construction of their dwelling by the 31<sup>st</sup> December 2015 shall be subject to a penalty of a double monthly levy due to the Association as from the 1<sup>st</sup> January 2016. The increased levy shall be payable by the defaulting member in the case of each un-built or partially built house or sectional title unit. The increase shall be payable from the 1<sup>st</sup> January 2016 until the last day of the month in which the defaulting member's house or sectional title unit is completed, from which date the levy shall revert to the same levy payable by the remaining members of the Association. This increase above the normal levy amount shall be

placed in the Levy Stabilisation Fund for the benefit of the Association.

**13. 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. All purchasers shall be obliged to submit a landscaping plan to the HOA, prior to the commencement of the building on their property, which plan shall comply with the conditions of the Environmental Management Plan that governs the Dunkirk Estate.

**A submission fees will be payable to the Homeowner's Association upon submission of these plans.**

**14. Agents commission:**

14.1 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.

14.2 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 look to the purchaser for any damages which the agent may suffer.

**15. Breach**

Should either party fail to carry out its obligations under this agreement, and remain in default for 10 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 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.

16. **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.

17. **Waiver**

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

18. **Trusts, companies and close corporations**

18.1 If the purchaser under this agreement is a trust, company or close corporation or if the purchaser signs in the capacity of a trustee for a company or close corporation to be formed, then the signatory of this agreement agrees to be personally bound as surety and co-principal debtor with the purchaser for all the purchaser's obligations under the agreement.

18.2 If the signatory of this agreement is signing in the capacity as a trustee for a company or close corporation to be formed, then such signatory personally agrees that the company or close corporation shall be formed within 60 days of the signature of this agreement by the purchaser and the signatory shall procure that the company or close corporation ratifies this contract within 7 days of incorporation failing which the property shall be transferred into the name of the signatory of this agreement.

19. **Beach Club**

19.1 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** to the HOA as an entrance fee to join such club. **This amount is payable on date of transfer of the property.**

19.2 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 properties.** 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.

20.2 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.

20. **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.

Signed by the purchaser at .....on.....2013

.....  
**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.....2013

.....  
**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:** .....

**CONVEYANCER'S INFORMATION**

Full names of purchaser: .....

Married **in** community of property / **out** of community of property: .....

Spouse's full names:.....

Spouse's identity number: .....

Date of marriage: .....

ANNEXURE A

