

AGREEMENT OF SALE ORDINARY TITLE

BETWEEN



Whale Bay
CASCADES

WALKER BAY | HERMANUS

Reg. No. 2003/000043/23

(“the Seller”)

and

_____ (“the Purchaser”)

Sale of:	
Contract category	ERF (Plot and Development Dictated Plan)
Erf Number	_____ Hermanus
S.D.P. Reference Number	_____

AGREEMENT OF SALE
ORDINARY TITLE
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ANNEXURE A : General Plan (with specific reference to the erf under review)
ANNEXURE B : Conceptual Site Development Plan
ANNEXURE C : Finance Plan

1. DEFINITIONS

In this **AGREEMENT**, the definitions, if not detailed herein, will be as defined in the **CONSTITUTION**, further to which, unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

1.1 AGENT

means the agent appointed by the SELLER as detailed in the SCHEDULE.

1.2 AGENT COMMISSION

means an agreed amount or percentage of PURCHASE PRICE payable to AGENT on TRANSFER DATE subject to the successful marketing and sale of the PROPERTY being concluded by AGENT, as defined under Item 3 of the SCHEDULE.

1.3 AGREEMENT

means this Agreement of Sale with the annexures and additional contracts attached hereto.

1.4 ATTORNEYS

means Visagie Vos the details of which appear in the SCHEDULE.

1.5 COMMON PROPERTY

means the land not zoned for residential or sectional title development and not belonging to the DEVELOPER having been transferred to the Master Home Owners Association for administrative purposes on behalf of the MEMBERS (as defined in the CONSTITUTION). Such land will include but not necessarily be limited to the road structures, communal gardens and walkways intended for use by the MEMBERS.

1.6 COMMUNAL AMENITIES

means facilities situated on common property as may be present in the Development and as transferred to the Home Owners Association for administration.

1.7 CONSTITUTION

means the written Constitution of the Master Home Owners Association.

1.8 CONTRACTOR

means the DEVELOPER or his nominee.

1.9 CONSTRUCTION AGREEMENT

means the contract between the DEVELOPER or his nominee and the PURCHASER which defines the terms pertaining to the construction of IMPROVEMENTS.

1.10 CONVEYANCER

means the ATTORNEYS.

1.11 DEVELOPMENT

means certain immovable property being ERF 9846 (a portion of erf 243) Hermanus which has been subdivided into a development to be known as "WHALE BAY CASCADES" in accordance with approval obtained from the LOCAL AUTHORITY.

1.12 DEVELOPMENT DIRECTIVE

means the definition as detailed in the CONSTITUTION

1.13 HOA

means the Home Owners Association constituted in accordance with conditions imposed by the LOCAL AUTHORITY when it granted approval of the DEVELOPMENT.

1.14 IMPROVEMENTS

means any structure of whatever nature constructed or erected or to be constructed or to be erected on an ERF.

1.15 INTEREST RATE

means the rates as detailed under clause 12 of this document.

1.16 LAND

means certain immovable property being Erf 9846 (a portion of Erf 243 Hermanus).

1.17 LOCAL AUTHORITY

means the definition as stipulated in the CONSTITUTION

1.18 MARKET PRICE

means the composite price inclusive of the PURCHASE PRICE and VAT thereupon as well as AGENT COMMISSION and VAT thereupon as defined under Item 3 of the SCHEDULE

1.19 MOHA

means the Master Home Owner Association constituted in accordance with conditions imposed by the LOCAL AUTHORITY when it granted approval of the DEVELOPMENT. The HOA and all other future constitutions applicable to the DEVELOPMENT are subservient to such Master Home Owners Association constitution.

1.20 OCCUPATION DATE

means the date that the PURCHASER may enter and occupy the constructed dwelling as detailed more specifically in the CONSTRUCTION AGREEMENT.

1.21 POSSESSION DATE

means TRANSFER DATE.

1.22 PROPERTY

means the ERF being purchased.

1.23 PURCHASE PRICE

means the price of the ERF as defined under Item 3 of the SCHEDULE.

1.24 PURCHASER

means the person/company/close corporation/trust, whichever is applicable, recorded as PURCHASER in the SCHEDULE or his successor in title.

1.25 SCHEDULE

means the annexure hereto headed "SCHEDULE".

1.26 SELLER

means the SELLER as recorded in the SCHEDULE.

1.27 SERVICE LEVEL AGREEMENT

means the Agreement entered into between the LOCAL AUTHORITY and the DEVELOPER which defines the rights and obligations of both the DEVELOPER and the LOCAL AUTHORITY pertaining to the DEVELOPMENT

1.28 SETTLEMENT PRICE

means the composite price inclusive of the PURCHASE PRICE, VAT and other fees and costs as defined under Item 3 of the SCHEDULE.

1.29 SIGNATURE DATE

means the date of last signature of this AGREEMENT by the SELLER and the PURCHASER.

1.30 TRANSFER DATE

means the date of registration of transfer of the ERF in the name of the PURCHASER arising from this AGREEMENT.

1.31 VAT ACT

means the Value-Added Tax Act No.89 of 1991, as amended.

1.32 VAT

means Value-Added Tax as levied from time to time in terms of the VAT ACT.

2. PARTIES

- 2.1 The parties to this AGREEMENT are as defined in the SCHEDULE
- 2.2 The parties agree as set out below.

3. INTERPRETATION

- 3.1 The clause headings are for convenience and shall be disregarded in interpreting this AGREEMENT.
- 3.2 Unless the context clearly indicates a contrary intention:
 - 3.2.1 The singular shall include the plural and vice versa; and
 - 3.2.2 A reference to any one gender shall include the other gender; and
 - 3.2.3 A reference to natural persons includes legal persons and vice versa.
- 3.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 3.4 When any number of days is prescribed in this AGREEMENT, the same shall be reckoned exclusive of the first and inclusive 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 or public holiday.
- 3.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 3.6 If any provision of this AGREEMENT is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions hereof.
- 3.7 If any provision in a definition in this AGREEMENT is a substantive provision conferring rights or imposing obligations on any of the parties hereto then, notwithstanding that it is only in the definition clause of this AGREEMENT, effect shall be given to it as if it were a substantive provision in the body of this AGREEMENT.
- 3.8 The SCHEDULE, MHOA CONSTITUTION and further annexure and contracts appended to this AGREEMENT are deemed to be incorporated in and form part of this AGREEMENT.

4. RECORDAL

- 4.1 The SELLER is the owner of the LAND.
- 4.2 The LOCAL AUTHORITY has approved the DEVELOPMENT. The Surveyor-General has approved the subdivision. Transfer of the PROPERTY to the PURCHASER is subject to the installation of SERVICES. The DEVELOPER may require that installation of the SERVICES be subject to the sale of a minimum number of erven in total or for a specific phase, as specified in item 4 of the SCHEDULE.
- 4.3 The LOCAL AUTHORITY has in terms of the SERVICE LEVEL AGREEMENT granted the DEVELOPER the right to complete the DEVELOPMENT in phases without any time constraint to any or all phases and to develop the road surface, paving and lighting only once all DWELLINGS in a specific phase of development have been completed subject to relevant guarantees being lodged with the LOCAL AUTHORITY.
- 4.4 Should the SELLER be unable to sell a number of erven in the DEVELOPMENT or specific Phase equal to or more than the number specified in Item 4.1 of the SCHEDULE on/or before the date specified in Item 4.3 of the SCHEDULE, the SELLER may at its discretion cancel this agreement. In the event of cancellation by the SELLER in terms of this clause, the SELLER will refund the deposit paid in terms of clause 6 together with any interest which may have accrued in terms of clause 6, to the PURCHASER. Save for the aforementioned deposit and interest the PURCHASER will have no further claim arising out of this agreement against the SELLER.
- 4.5 A refuse collection entity accessible to the Municipality will be constructed prior to occupation of the first DWELLING.
- 4.6 The SELLER has the right to complete the service installations progressively without any time constraint to any or all phases.
- 4.7 The PURCHASER is advised and herewith accepts that a Municipal Servitude exists within the LAND and that the DEVELOPER has no control, management or effect on the use or maintenance of the servitude as it falls under the management, control and ownership of the LOCAL AUTHORITY and that any indemnity clauses agreed to by the DEVELOPER will be upheld by the PURCHASER as if he had committed thereto.

5. PURCHASE AND SALE

The SELLER sells and the PURCHASER purchases the ERF as defined in Item 2 of the SCHEDULE subject to all the terms and associated contracts and attachments that accompany this agreement.

6. SETTLEMENT PRICE AND PAYMENT

- 6.1 The PURCHASE PRICE of the PROPERTY hereby sold, is as recorded in Item 3 of the SCHEDULE.

6.2 The SETTLEMENT PRICE is payable as follows:

6.2.1 DEPOSIT

6.2.1.1 The PURCHASER shall pay the percentage of the SETTLEMENT PRICE as specified in Item 3.4 as a deposit within 7 (SEVEN) days after signature of this agreement.

6.2.1.2 The parties irrevocably authorize the ATTORNEYS to invest the deposit and any other amounts paid by the PURCHASER with a bank/financial institution pending registration of transfer with the interest and bank charges thereon accruing to the PURCHASER.

6.2.1.3 If this AGREEMENT is cancelled by the SELLER as a result of a breach by the PURCHASER of his obligations in terms hereof then the ATTORNEYS are irrevocably authorised to deal with the deposit and any other amounts paid by the PURCHASER, in accordance with the provisions of Clause 27 hereof

6.2.2 BALANCE OF SETTLEMENT PRICE

6.2.2.1 The balance of the SETTLEMENT PRICE shall be payable to the CONVEYANCER against registration of transfer. The PURCHASER shall, within fourteen (14) days after having been requested to do so by the CONVEYANCER, furnish the CONVEYANCER with a bank guarantee acceptable to the SELLER issued by a bank/financial institution which covers payment of the balance of the SETTLEMENT PRICE as security thereof.

6.2.2.2 As an alternative to the bank guarantee provided for in 6.2.2.1, the PURCHASER may elect to pay the balance of the SETTLEMENT PRICE in cash, in which case the balance shall be paid to the CONVEYANCER within fourteen (14) days after having been requested to do so by the CONVEYANCER, this amount to be held in trust in an interest bearing account for the benefit of the PURCHASER till date of transfer.

6.3 All payments to the CONVEYANCER shall be made by electronic funds transfer to the CONVEYANCER's trust account as detailed in the SCHEDULE and shall be free of bank charges.

6.4 The CONVEYANCER is authorised to invest, in terms of Section 78 (2A) of the Attorneys Act No 53 of 1979, all payments received by him.

6.5 Failure to comply with the preceding terms will be treated in accordance with the provisions of Clause 27 hereof.

7. TRANSFER

7.1 The ATTORNEYS shall effect registration of transfer as soon as practical after all applicable site services have been installed and approved by the LOCAL AUTHORITY and provided the PURCHASER has complied with all his obligations in terms of this agreement.

- 7.2 The PURCHASER undertakes to
- 7.2.1 within 5 (FIVE) days of demand made by the CONVEYANCER:
 - 7.2.1.1 deliver/furnish to the CONVEYANCER, such documents/information as may reasonably be required by the CONVEYANCER;
 - 7.2.1.2 do all such other things as may be necessary to enable this AGREEMENT to be fulfilled without delay;
 - 7.2.2 sign all documents prepared by the ATTORNEYS to give effect to the provisions of this AGREEMENT within 7 (SEVEN) days of demand and, if the documents are signed other than at the offices of the ATTORNEYS, the signed documents shall be delivered to the ATTORNEYS within 3 (THREE) days of signature.
- 7.3 Failure to comply with any of the provisions of clause 7.2 constitutes a breach of this AGREEMENT.
- 7.4 The SELLER shall not be liable to the PURCHASER for any loss or damage suffered by the PURCHASER arising out of any delay in the registration of transfer, nor shall such delay affect the PURCHASER'S liability for payment of any costs resulting from such a delay.
- 7.5 Transfer shall be effected by the CONVEYANCER.

8. MORTGAGE BOND

- 8.1 If this agreement is subject to the approval of a loan/bond granted to the PURCHASER by a Bank or any other Financial Institution then such approval is to be gained by no later than the number of days as detailed under 3.10 of the SCHEDULE, after signature of this agreement.
- 8.2 The PURCHASER undertakes to pay all costs relating to the registration of the above bond and further undertakes to sign all necessary documents within 7 (SEVEN) days after having been requested to do so by the CONVEYANCER.
- 8.3 Should the PURCHASER:
- 8.3.1 fail to obtain approval for the loan within the period specified in clause 8.1:
 - 8.3.1.1 this AGREEMENT shall terminate and be of no further force or effect.
 - 8.3.1.2 the deposit paid by the PURCHASER in terms of clause 6.2.1, together with any interest and bank charges accrued in terms of clause 6.2.1, shall be refunded to the PURCHASER, whereupon the SELLER and the PURCHASER reciprocally acknowledge that they shall have no further claim the one against the other.
 - 8.3.2 failure to apply for the loan/bond or to provide the requested/required information within the period will be considered as a breach and will be treated as per clause 27 of the agreement if the agreement was subject to a bond/loan being granted.
- 8.4 Should a prospective mortgagee require that a matching investment be made to procure the said loan, any raising fee or administration charge connected therewith shall be for the account of the PURCHASER who accepts liability in respect thereof.

- 8.5 Should the bond approval be withdrawn once having been approved or not effected for any reason it will be considered as a breach and the SELLER shall have the right to act in terms of clause 27 hereof.

9. POSSESSION/RISK

- 9.1 Possession of the ERF shall be deemed to have been given by the SELLER and taken by the PURCHASER on the TRANSFER DATE.
- 9.2 From the POSSESSION DATE all risk in and benefit of the ERF shall pass to the PURCHASER. Notwithstanding the fact that any condition contained herein remains to be fulfilled subsequent to the POSSESSION DATE, it is specifically agreed that the PURCHASER is liable to fulfill all obligations which arise with effect from the POSSESSION DATE. The PURCHASER shall, with effect from the POSSESSION DATE, be liable for payment of levies, rates and fees raised by the HOA and LOCAL AUTHORITY.
- 9.3 The PURCHASER acknowledges that apart from Developer Commitments specifically detailed in this agreement, common areas, facilities and services are only to become available during later stages of the DEVELOPMENT as defined in the CONSTITUTION. The PURCHASER shall not be entitled by reason of any of the foregoing to cancel or withdraw from this AGREEMENT or claim damages from any person or institute interdict proceedings or withhold payment of levies raised.

10. RATES AND CHARGES

- 10.1 The PURCHASER acknowledges that the financial year of the LOCAL AUTHORITY runs from 01 July of each year to 30 June of the immediately following year;
- 10.2 The PURCHASER acknowledges that he is solely liable for payment of all amounts for rates, taxes, services charges and any other imposts, charges or levies levied, from the POSSESSION DATE, by the LOCAL AUTHORITY in respect of the PROPERTY irrespective of the basis upon which the LOCAL AUTHORITY levied the PROPERTY.
- 10.3 The SELLER shall pay the rates in respect of the PROPERTY until the POSSESSION DATE.

11. COSTS

- 11.1 The SELLER shall pay all incidental costs relating to the General Plan, rezoning, subdivision of land, surveyor's fees together with the applicable VAT thereon as well as all municipal charges relating to the PROPERTY as received before and due on or before the POSSESSION DATE.
- 11.2 The PURCHASER shall pay the Transferring Attorney Fees as well as all costs of and incidental to the registration of transfer and disbursements necessary to effect registration together with the applicable VAT thereon as detailed in the SCHEDULE.
- 11.3 Costs due to the ATTORNEYS in terms of this clause are payable upon request and payable by the PURCHASER.

- 11.4 It is prudent to have a ± 6 month Levy Security Funds. The PURCHASER'S contribution towards this fund is to be paid on transfer the details of which are as recorded in the SCHEDULE.
- 11.5 AGENT fees together with the applicable VAT thereon, if applicable, as well as VAT on the PURCHASE PRICE are considered as included in the SETTLEMENT PRICE and are to be settled on TRANSFER DATE.

12. INTEREST

- 12.1 Any amount due and payable by the PURCHASER to the SELLER shall bear interest at two percent (2%) above the prime bank overdraft rate of Nedbank as applicable from time to time. Such interest shall be calculated from the date upon which any payment in terms of this agreement is due to date of payment thereof.

13. COMMISSION

- 13.1 The SELLER acknowledges being solely liable to the AGENT (if applicable) for payment of commission calculated in accordance with the agreed or recommended prevailing rate of commission prescribed from time to time by the Institute of Estate Agents which commission shall be deemed to be earned upon fulfillment of all suspensive conditions contained herein or in terms of a commission agreement entered into between the SELLER and the AGENT as stipulated in the SCHEDULE or agent appointment mandate or any such other amount that may be agreed to on a specific sale.
- 13.2 If the PURCHASER fails to carry out his obligations in terms of this AGREEMENT, resulting in the cancellation of this AGREEMENT, then, notwithstanding the provisions of clause 13.1, the PURCHASER shall be liable to the AGENT for payment of the said commission, which shall immediately be due and payable unless otherwise defined in the agent appointment mandate in which case the PURCHASER will be advised accordingly.
- 13.3 The PURCHASER warrants and undertakes to the SELLER that the PURCHASER has not been introduced to the SELLER and/or the DEVELOPMENT by any agent or other third party other than the DEVELOPER or their nominated AGENT.
- 13.4 The PURCHASER hereby indemnifies and holds the SELLER free and harmless against any claim, loss, damages or proceedings which may arise/be made by any other agent in respect of commission arising out of the sale of the PROPERTY where such other agent claims to have actually introduced the PURCHASER to the PROPERTY and/or to the SELLER in connection with this transaction.

14. CONSTRUCTION AGREEMENT

The sale is subject to the condition that the PURCHASER shall enter into a CONSTRUCTION AGREEMENT with the SELLER or his nominee (as defined in the CONSTRUCTION AGREEMENT) as Developer, for the construction and completion of the IMPROVEMENTS to be constructed upon the purchased Erf within the allowed timeframe all of which is as set out in the CONSTRUCTION AGREEMENT, simultaneously with this contract.

15. HOME OWNERS ASSOCIATION

- 15.1 The PURCHASER acknowledges that the LOCAL AUTHORITY, when approving the application for subdivision of the LAND to allow for the DEVELOPMENT, imposed a condition whereby the owner of each subdivided portion of the LAND and all successors in title (which includes the PURCHASER as soon as he becomes the registered owner of the ERF) shall be members of a Home Owners Association (the WHALE BAY CASCADES MASTER HOME OWNERS ASSOCIATION) and be bound by the CONSTITUTION;
- 15.2 The PURCHASER undertakes to abide by the rules of the Association imposed on him and to comply with all obligations and to remain a member for such time as he may retain the right of ownership in the PROPERTY and to include similar conditions in future and/or subsequent leases and deeds of sale which will make the enforcement of this clause possible on all successors in title or owners.
- 15.3 Should separate Home Owner Associations or Body Corporate Constitutions be brought into being as a result of the creation of Sectional Title held PROPERTIES or for any other reason, all such CONSTITUTIONS will be subservient to the MHOA CONSTITUTION whilst carrying specific reference to their own area of interest and the relevant MEMBERS will become members of that entity as well and will comply with terms of that constitution which may not be in conflict with terms defined in the MHOA CONSTITUTION.

16. RESTRICTION ON ALIENATION

- 16.1 The PURCHASER acknowledges that title conditions applicable to the PROPERTY will be documented and imposed, in a form acceptable to the Registrar of Deeds, Cape Town, in terms whereof
- 16.1.1 the PROPERTY shall not be sold or alienated in any way nor shall any transfer thereof be registered without the written consent of the SELLER, before the Developer has sold all units in the specific phase of development within which the PROPERTY falls or for a period of not less than 12 months from date of transfer whichever occurs first
- 16.1.2 the PROPERTY shall not be sold or alienated in any way nor shall any transfer thereof be registered without the written consent of the SELLER, for as long as the SELLER is the registered owner of any portion of the LAND as well as by the Trustees for the time being of the HOME OWNERS ASSOCIATION; and
- 16.1.3 the ERF shall not "be consolidated" with one or more erven compromising the LAND without the written consent of the SELLER, for as long as the SELLER is the

registered owner of any portion of the LAND as well as by the Trustees for the time being of the HOME OWNERS ASSOCIATION.

- 16.2 The PURCHASER undertakes to disclose the existence and contents of clauses 15 and this clause 16 as well as clause 9 of the CONSTITUTION to any person (the "Alienee") to whom the PURCHASER alienates the PROPERTY and acknowledges that the consents referred to in the aforesaid clauses will not be furnished unless a written acknowledgement from such prospective Alienee, acknowledging awareness of and agreeing to be bound by the provisions of the said clauses, is delivered together with the request for such consent. The PURCHASER acknowledges that he shall not be entitled to conclude the lawful alienation of the PROPERTY unless he has furnished the said written acknowledgement by the Alienee and obtained the required consent and have provided copies of this agreement and all documents attached hereto to the Alienee to ensure his comprehensive understanding of all terms and conditions of the DEVELOPMENT.
- 16.3 The PURCHASER further acknowledges that prior to the granting of consent, thereby enabling the Alienee to purchase the PROPERTY, the PURCHASER has acquainted himself and has advised the Alienee of the terms of Alienation as defined in the CONSTITUTION which requires of the PURCHASER to market the PROPERTY through the use of a DEVELOPER appointed agent and which requires a specific percentage of the sales price to be channeled to the MHOA levy fund.
- 16.4 On alienation it is required of the PURCHASER to appoint the ATTORNEYS or an attorney as may be nominated by the SELLER from time to time, as the transferring attorney, failing which the PROPERTY shall not be sold or alienated in any way nor shall any transfer thereof be registered without the written consent of the SELLER for as long as the SELLER is the registered owner of any portion of the LAND.
- 16.5 The PURCHASER undertakes to disclose to the prospective Alienee the existence of Clause 9 of the CONSTITUTION which defines the MEMBER'S obligations inclusive of relevant construction time constraints.

17. INDEMNITY

- 17.1 The PURCHASER is aware of the fact that the DEVELOPMENT may comprise various water features such as cascades, water channels, ponds and rapids. The SELLER and/or TRUSTEES of the HOA or MHOA shall not be responsible for any death, injury or damage which the PURCHASER, his servants, employees, agents, children, guests or animals may suffer arising from the use of the PROPERTY or the DEVELOPMENT or any features forming part of the DEVELOPMENT and the PURCHASER hereby indemnifies the SELLER and TRUSTEES of the HOA and/or MHOA against any claim made arising from the foregoing.
- 17.2 A Municipal Servitude exists within the DEVELOPMENT to serve stormwater and seawater from adjacent properties. All maintenance and risks related to the servitude are attributed to the LOCAL AUTHORITY and the PURCHASER indemnifies the SELLER from any risk of any nature and holds them free of accountability and free from prosecution related to any aspect of the servitude.

17.3 The SELLER has the right to complete the phased service installations progressively without any time constraint to any or all phases and the PURCHASER will not lay any claim of any nature against the SELLER for services that are not as yet operational or available.

18. VOETSTOOTS

Save for warranties specifically contained herein, the ERF is sold VOETSTOOTS as it stands at the TRANSFER DATE without any further warranties and subject to any servitudes and any other registered conditions referred to in the title deed and the provisions of the CONSTITUTION with the clear understanding that the development of the PROPERTY shall be strictly in accordance with the provisions of the architectural plans and the DEVELOPMENT DIRECTIVE.

19. EXTENT

19.1 The PROPERTY is sold to the extent such as it stands at TRANSFER DATE and the SELLER shall not be liable for any deficiency in the extent of the PROPERTY which may be revealed on any surveyor re-survey and shall not benefit from any excess.

19.2 The SELLER shall not take advantage of any excess, or be liable for any shortfall in general. He shall also not be liable for any infringement on and of any neighbouring property.

20. BOUNDARIES

In the unlikely event of boundary pegs not being visible, the SELLER shall not be required to indicate to the PURCHASER the position of the beacons or pegs upon the PROPERTY and/or boundaries thereof, nor shall the SELLER be liable for the cost of locating the same.

21. WHOLE CONTRACT / REPRESENTATIONS

Both parties acknowledge that the contents hereof when accepted by PURCHASER and SELLER, constitute the whole agreement between them and that no other conditions, provisions, guarantees or representations of any nature have been made by any of the parties or their agents other than those set out herein and which have been agreed to in writing and signed by or on behalf of both parties hereafter.

22. EXTENSION

Notwithstanding any express or implied provision of this AGREEMENT to the contrary, any relaxation or extension of period allowed by the SELLER in connection with this agreement shall not be regarded as a waiver of the SELLER'S right to enforce strictly and promptly any provision or condition herein contained without notice, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this AGREEMENT.

23. VARIATION

23.1 No variation of this AGREEMENT shall affect the terms hereof unless such variation shall be reduced to writing and countersigned by all parties.

24. DOMICILIUM/NOTICES

- 24.1 The parties choose as their domicilia citandi et executandi for all purposes under this AGREEMENT, whether in respect of Court process, notices or other documents or communications of whatsoever nature, the following addresses:
- 24.1.1 SELLER : the address recorded in item 1.1 of the SCHEDULE;
 - 24.1.2 PURCHASER: the address recorded in item 1.2 of the SCHEDULE;
 - 24.1.3 AGENT : the address recorded in item 1.3 of the SCHEDULE
- 24.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give such notice or communication by telefax.
- 24.3 Any notice to a party:
- 24.3.1 sent by prepaid registered post in a correctly addressed envelope to its domicilium citandi et executandi shall be deemed to have been received on the third day after posting (unless the contrary is proved);
 - 24.3.2 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery;
 - 24.3.3 sent by telegram shall be deemed to have been received on the first day after the date of dispatch (unless the contrary is proved);
 - 24.3.4 sent by telefax or email during normal working hours to the telefax number or email address specified herein for the addressee shall be deemed to have been received by the addressee 4 (FOUR) hours after the time of transmission or within 12 (TWELVE) hours of transmission where it is transmitted outside business hours.
- 24.4 Any of the parties referred to in clause 24.1 may, by notice in writing to the other parties, alter its address set out in the SCHEDULE to another address in the Republic of South Africa provided such other address may not be a post office box or post restante and provided that such alteration shall not be effective until 14 (fourteen) days after it has been received.
- 24.5 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 such party notwithstanding that it was not sent to or delivered at the domicilium citandi et executandi.
- 24.6 The SELLER has the right to appoint the AGENT or ATTORNEYS as its agent to give effect to all/any of the terms and conditions of this AGREEMENT. Any notice issued by the agent for and on behalf of the SELLER shall for all purposes be deemed to be good and sufficient notice by the SELLER.

25. JURISDICTION

- 25.1 For the purposes of all and any legal action, the parties agree to the jurisdiction of the Magistrate's Court which would otherwise have jurisdiction in terms of Rule 28 of the Magistrate's Court Act of 1944 as amended, notwithstanding that such action would otherwise fall outside the jurisdiction of that Court.
- 25.2 The SELLER however reserves the right to institute any action in any appropriate division of the Supreme Court.

26. SERVITUDE

- 26.1 The PURCHASER acknowledges that the MHOA as the controlling authority shall have a right of inspection in respect of the PROPERTY to enable it to ensure compliance with the terms and conditions of the CONSTITUTION. This condition shall be registered against the title of the PROPERTY.
- 26.2 The PURCHASER acknowledges that a Municipal Servitude exists within the DEVELOPMENT as detailed under clauses 4 and 17 and that the DEVELOPER has no control, management or effect on the use or maintenance of the servitude as it falls under the management, control and ownership of the Local Authority.
- 26.3 The PURCHASER acknowledges that some services or facilities may be installed within the boundaries of his property and acknowledges that the DEVELOPER or TRUSTEES may from time to time need to install, upgrade, alter, inspect or maintain these services or facilities and that he may not prevent or interfere with such projects. The DEVELOPER or TRUSTEES will be responsible to make good any damage that may have occurred as a result of such actions. This condition shall be registered against the title of the PROPERTY.
- 26.4 Erven A6, A7, A17 and A18 may not construct houses within 500mm of the Municipal Servitude border as detailed within the CONSTRUCTION AGREEMENT

27. DEFAULT

- 27.1 Should the PURCHASER not comply with any of his obligations in terms of this agreement and such breach of contract continues for a period of 7 (SEVEN) days after the SELLER has forwarded a notice to the PURCHASER by way of prepaid registered post (the Post Office shall be regarded as the agent of the addressee) to repair such breach, the SELLER shall be entitled [without prejudice to any other rights which the SELLER may have in terms hereof] to exercise any of the following:
- 27.1.1 to cancel this AGREEMENT; or
- 27.1.2 to require the PURCHASER to fulfill his obligations in terms of this AGREEMENT.

Notwithstanding the foregoing, if the PURCHASER fails to make payment of the amount due in terms of clause 6 the SELLER shall be entitled to summarily cancel this AGREEMENT and shall not be required to afford the PURCHASER an opportunity to remedy the breach.

- 27.2 Should the SELLER terminate this AGREEMENT, the SELLER shall be entitled to obtain immediate repossession of the ERF and shall furthermore have the selection at the time of termination or at any time thereafter either to claim damages or to claim forfeiture of and retain the amount paid in terms of clause 6.2.1 together with any other moneys paid by the PURCHASER to the SELLER or the ATTORNEYS on account of the SETTLEMENT PRICE, costs or otherwise in terms of or pursuant to this AGREEMENT as liquidated damages. The SELLER shall not be liable to compensate the PURCHASER for any improvements made to or erected on the ERF notwithstanding the fact that the SELLER consented to such improvements and irrespective of the nature of the improvements.
- 27.3 Should the SELLER require the PURCHASER to fulfill his obligations, the SELLER shall be entitled to claim such damages as the SELLER (or DEVELOPER and/or building contractor referred to in the Construction Agreement) may have suffered by reason of the PURCHASER'S default, in addition to any other remedies that the SELLER (and/or building contractor referred to in the Construction Agreement) may have in terms of this AGREEMENT.
- 27.4 The SELLER shall in any event be entitled to retain all moneys paid by the PURCHASER on account of the PURCHASE PRICE, costs or otherwise, in terms of or pursuant to this AGREEMENT pending the SELLER'S election as aforesaid and in the event that the SELLER elects to claim damages, the SELLER may retain such moneys pending determination of such damages and thereupon the SELLER shall be entitled to set-off the amount so retained against the SELLER'S claim for damages.
- 27.5 Should the SELLER take steps against the PURCHASER pursuant to a breach by the PURCHASER of this AGREEMENT, the SELLER shall, in addition to the rights aforementioned, be entitled to recover from the PURCHASER who shall be liable to the SELLER for payment of all the SELLER'S legal costs incurred on the scale as between attorney and own client, including tracing fees and collection commission paid by the SELLER to the SELLER'S attorneys along with any "attributed AGENT'S commissions" as may be referred to in Item 3.2 of the SCHEDULE.
- 27.6 If the PURCHASER disputes the SELLER'S right to cancel and/or remains in occupation of the ERF after cancellation or purported cancellation, the PURCHASER shall pay interest (monthly before the 1st of each month (or proportionate thereof)) on the SETTLEMENT PRICE in accordance with the INTEREST RATE in consideration for continuing to occupy the ERF.
- 27.7 Notwithstanding the provisions of this clause 27 and clause 6.2.1, if the PURCHASER fails to timeously pay costs due in terms of clause 27.6, the SELLER shall be entitled to summarily and without notice to the PURCHASER appropriate the whole or such portion of the deposit referred to in clause 6.2.1 as may be required in payment of or towards payment of (as the case may be) such interest and/or costs, and upon notice thereof by the SELLER to the PURCHASER, the PURCHASER shall be obliged to immediately pay to the ATTORNEYS the amount by which the deposit was reduced by such appropriation.

28. SURETYSHIP

It is a material term of this AGREEMENT that, should the SELLER so require, the PURCHASER shall procure signature of a suretyship in a form acceptable to the SELLER by a third party acceptable to the SELLER, guaranteeing the obligations of the PURCHASER under this AGREEMENT. Such suretyship shall be delivered to the SELLER within 5 (FIVE) days of demand therefore.

29. OFFER

29.1 This AGREEMENT, once signed by the PURCHASER, shall be regarded as an offer by the PURCHASER and shall be irrevocable and open to acceptance by the SELLER within a period of 30 (THIRTY) days from date of signature by the PURCHASER and shall not be capable of being withdrawn by him during the said period.

29.2 Provided acceptance is within the stipulated time period, this offer shall become a binding agreement of sale and both the SELLER and the PURCHASER appoint the ATTORNEYS as their agent in receiving notice of acceptance on their behalf.

30. BETTER OFFER

Should the SELLER receive a better offer before the suspensive conditions of this contract have been complied with, of which all the suspensive conditions have been met, then the PURCHASER and the AGENT will be notified thereof in writing and the offer will be attached to such notification. In such an instance the PURCHASER will be given 3 (THREE) days or any such extended number of days as may be decided upon by the SELLER exclusively (excluding Saturdays, Sundays and Public Holidays) from date of receipt thereof, to waive any suspensive conditions with regard to his offer, whereafter the PURCHASER will be bound unconditionally to this agreement. Failing to do so, this offer will lapse and be null in void.

31. JOINT PURCHASERS

Insofar as there may be more than one purchaser in terms of this AGREEMENT, the liability of each of such purchasers shall be joint and several and in solidum.

Should the property be registered in the name of more than one PURCHASER, such PURCHASERS shall be jointly and severally liable for payment of any amount payable and for all obligations as PURCHASER in terms of this AGREEMENT.

32. COMPANY/CLOSE CORPORATION/TRUST TO BE FORMED

32.1 In the event of the PURCHASER being a company or a close corporation or trust to be formed, the signatory for the PURCHASER shall be personally liable for all the obligations of the PURCHASER as though he contracted in his personal capacity if

32.1.1 the company or close corporation or trust (as the case may be) in respect whereof he acts as trustee is not incorporated within 30 (THIRTY) days of the SIGNATURE DATE; and

32.1.2 the company/close corporation/trust having been incorporated, fails to adopt and ratify unconditionally this transaction without modification within 7 (SEVEN) days of the date of incorporation.

32.2 Upon timeous formation of the said company/close corporation/trust 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/close corporation/trust for its obligations as PURCHASER in terms of this AGREEMENT under renunciation of the benefits of excussion and division.

33. COMPANY/CLOSE CORPORATION/TRUST - FORMED

In the event of the PURCHASER exercising a nomination or it being a Company or Close Corporation or The Trustee for the time being of a Trust, then the signatory of such Company, Close Corporation or Trust who signs this agreement on behalf of such PURCHASER hereto binds himself to the SELLER as surety and co-principal debtor in solidum on behalf of the PURCHASER, for the obligations of the PURCHASER hereto. The mentioned signatory and duly authorized representative hereby renounces the benefits of excussion and division, non causa debuti, revision of accounts and all other legal exceptions which may operate in his/her favour for the fulfillment by the PURCHASER of all the PURCHASER'S obligations in terms of this AGREEMENT and hereby declares he understands the meaning and execution thereof.

34. NOMINATION

34.1 Should the PURCHASER reserve the right to nominate a nominee as PURCHASER, the PURCHASER shall be entitled to nominate any third party as PURCHASER in terms of this Agreement provided that such nomination –

34.1.1 be made within the lawful allowed period for such nomination (before 12 midnight of day of acceptance of this contract);

34.1.2 be made by way of written notification to the SELLER and signature thereof, by the Nominee, delivered to the SELLER as acceptance in a form that is to the satisfaction of the SELLER;

34.2 Should the PURCHASER fail to make the said nomination as stipulated herein, then he will not be entitled to nominate a nominee, but will be held personally liable for the fulfillment of all the terms and conditions of this agreement.

35. INDIVISIBILITY OF CONTRACT

35.1 This DEED OF SALE and CONSTRUCTION AGREEMENT together with all annexure thereto, form one indivisible contract and should any one of the contracts be cancelled, then the other shall also automatically be cancelled.

35.2 Should any condition, term or stipulation of the AGREEMENT for whatever reason be invalid, unenforceable or not being capable of execution, then this will not invalidate the rest of the agreement which will remain in full force.

36. PROPERTY RIGHT AND OBLIGATIONS

36.1 The PURCHASER declares that he is aware of the fact that transfer of the PROPERTY will only be effected in his name and to no third party unless so defined under clause 34 of the agreement and performed in keeping with the relevant terms attached thereto. He or the NOMINEE shall not be entitled to alienate any rights obtained in terms of this AGREEMENT to a third party in any way before registration of transfer.

36.2 The PURCHASER shall be liable for the payment of all costs as set out in the Schedule of Costs as detailed in the CONSTRUCTION AGREEMENT as and when the construction process comes into being.

37. MARKETING

Any advertisement or advertising material utilised for purposes of marketing the DEVELOPMENT shall not constitute a representation by the SELLER or his appointed agent and the PURCHASER shall not be entitled to rely on any information therein or therefrom and this AGREEMENT is not concluded on the basis of any such material.

38. OTHER TERMS (specific to this sale)

39. ACCEPTANCE

THUS DONE AND SIGNED by the PURCHASER and the SELLER upon the dates and at the places specified below.

SELLER: |.....|

Signature |.....| Signed at: |.....|

On this : |.. .. . | day of |.....| 20 | |

AS WITNESSES:

Signature (1) |.....| **(2)** |.....|

PURCHASER (1): |.....|

Signature |.....| Signed at: |.....|

On this : |.. .. . | day of |.....| 20 | |

AS WITNESSES:

Signature(1) |.....| **(2)** |.....|

PURCHASER (2): |.....|

Signature |.....| Signed at: |.....|

On this : |.. .. . | day of |.....| 20 | |

AS WITNESSES:

Signature (1) |.....| **(2)** |.....|

pp LEGAL ENTITY: |.....|

Signature |.....| Signed at: |.....|

On this : |.. .. . | day of |.....| 20 | |

AS WITNESSES:

Signature (1) |.....| **(2)** |.....|

40. SCHEDULE

1. PARTIES	
1.1 SELLER: including the Seller's succession in title	WHALE BAY CASCADES CC
Address:	p/a Visagie Vos, Vasco Boulevard 181, Goodwood, Cape Town
Telephone Number	[]
Fax number	[]
Vat Registration Number	[]
1.2 PURCHASER:	[]
PRIVATE PERSON	[]
Purchaser (1)	[]
Full name of Purchaser	[]
Identity Number of Purchaser	[]
Full name of agent acting under Power of Attorney	[]
Date of Power of Attorney	[]
Marital Status	[]
Full name of Purchaser's Spouse	[]
Identity Number of Purchaser's Spouse	[]
Residential Address	[]
Postal Address	[]
Married in / out of community of property	[]
Muslim Rights / Foreign Marriage	[/]
Date of Marriage and Place	[/]
ANC No.	[]
Place of Registration of ANC	[]
Income Tax Ref No.	[]
Tel Numbers:	[]
Mr Work	[]
Mr Cell	[]
Mrs Work	[]
Mrs Cell	[]
Email	[]
Purchaser (2)	[]

Full name of Purchaser		
Identity Number of Purchaser		
Full name of agent acting under Power of Attorney	[[
Date of Power of Attorney		
Marital Status		
Full name of Purchaser's Spouse	[[
Identity Number of Purchaser's Spouse	[[
Residential Address		
Postal Address		
Married in / out of community of property	[[
Muslim Rights / Foreign Marriage	[/]	
Date of Marriage and Place	/	
ANC No.		
Place of Registration of ANC		
Income Tax Ref No.		
Tel Numbers:		
Mr Work		
Mr Cell		
Mrs Work		
Mrs Cell		
Email		
	[[
LEGAL ENTITY		
Name of CC/Company/Trust		
Registration Number		
Physical Address		
Postal Address		
Income Tax Ref No.		
VAT Reg No.		
Duly Represented by		
Telephone No		
Fax No.		
Email		
MEMBERS / DIRECTORS / TRUSTEES		
FULL NAMES	IDENTITY NUMBER	ADDRESS
	[[[[
	[[[[
	[[[[
	[[[[

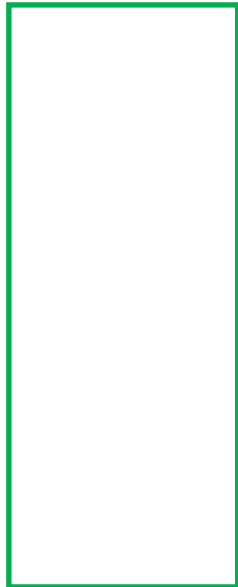
1.3 AGENT :	
Company:	
Name:	
Physical Address:	
Office Phone Number:	
Cellular Number:	
Fax number:	
Vat Registration Number:	
Attributed Agent Commission % included in price	%

2. SUBJECT MATTER	
2.1 Contract Category:	Plot and Plan (with restricted construction time)
2.2 Jurisdiction	HERMANUS, Overstrand Municipality, Division of Caledon, Western Cape Province
2.3 Development Phase	Phase: [_____]
2.4 Erf Number	Erf : [_____] HERMANUS (See Annexure "A")
2.5 Site Development Plan	Ref : [_____] (See Annexure "B")
2.6 Erf Extent	[_____] Square Metres

3. SETTLEMENT PRICE						
ERF Purchase Price:	R	<u>AMOUNT</u>	R	<u>VAT</u>	R	<u>TOTAL</u>
Agent Commission:	R		R		R	
				MARKET PRICE	R	
<u>Extras</u>						
3.3 Levy Security Fund =	R		R		R	
[0.33]% of Market Price						
3.4 Municipal levies and other	R		R		R	
admin fees/costs to date:						
DUE SETTLEMENT PRICE	R		R		R	
3.5 Deposit by Purchaser on signature:		[10,00_%]			R	
3.6 Balance of SETTLEMENT PRICE on transfer					R	
3.7 Transfer Attorney Fee and disbursement costs :	R	<u>AMOUNT</u>	R	<u>VAT</u>	R	<u>TOTAL</u>
3.8 Conveyancer's Trust Account number		<u>Bank</u>		<u>Branch</u>		<u>Acc no</u>
3.9 Mortgage Bond (incl. required construction cost)		Amount of loan to be secured :			R	
3.10 Period to gain a bond		Days:	[30]			

4. RIGHT TO CANCEL	
4.1 Num of Erven to be sold:	[N/A]
4.2 Phase to be sold in:	[Phase 1A]
4.3 Date to be sold by:	[N/A]
5. ESTIMATED TRANSFER DATE	
Date:	Approximately Three months after Agreement date
6. ESTIMATED TOTAL HOA LEVY EXCLUDING RATES & ELECTRICITY	
	R []
7. ESTIMATED RATES	
Rates Levy	R []
8. TRANSFERRING ATTORNEY	
Name of Attorney:	VISAGIE VOS, VASCO BOULEVARD 181, GOODWOOD. Tel: 021 591 9221.
9. Mortgage Originator	
Name of Originator	[]
Address:	[]
Telephone Number:	[]
Fax number:	[]
Vat Registration Number:	[]

ANNEXURE A
GENERAL PLAN – LAYOUT OF ERVEN A1 to A7
HIGHLIGHTING ERF A



ANNEXURE B
Conceptual Site Development Plan



ANNEXURE C
FINANCE PLAN

ERF NO : [SDP ref no A04 = Erf 10622 Hermanus]

DECLARATION BY PURCHASER

The PURCHASER acknowledges that the purchase of the PROPERTY will involve him in the following costs:

1. FINANCE REQUIRED:

Erf Related : R[.....]

Improvements related : R[.....]

Total REQUIREMENT (In words) : [.....]

2. METHOD OF FINANCE:

2.1Deposit due on signature hereof R[.....]

2.2Further payment due on [.....] R[.....]

2.3Further payment due on [.....] R[.....]

2.4Further payment due on [.....] R[.....]

2.5Further payment due on the TRANSFER DATE R[.....]

2.6Further payment due on [.....] R[.....]

2.7Further payment due on [.....] R[.....]

2.8Further payment due on [.....] R[.....]

2.9Further payment due on [.....] R[.....]

2.10 ...Further payment due on [.....] R[.....]

2.11 ...Further payment due on [.....] R[.....]

2.12 ...Further payment due on [.....] R[.....]

2.13 ...Further payment due on [.....] R[.....]

2.14 ...Further payment due on [.....] R[.....]

2.15 ...Further payment due on [.....] R[.....]

2.16...Amount of bond	R[.....]
------------------------------	-----------------

GROSS SETTLEMENT AMOUNT : R|.....|

(In words) : |.....|

3. BOND FINANCE DETAILS:

3.1. Amount of bond required R|.....|

3.2. Financial Institution applied to |.....|

3.3. Details of bond:

100%	95%	90% or below	Other Company	Subsidy

3.4. Basic installment (calculated as at date of signature): R|.....|
(R|.....| bond over | | years at | | %)

3.5. Less: Subsidy from|.....| (if applicable) (R|.....|)
NET MONTHLY INSTALLMENT: R|.....|

4. FURTHER COSTS:

The PURCHASER acknowledges that the purchase of the PROPERTY will involve him in additional costs over and above those documented in 1 above. The costs as detailed hereunder are estimates and are not necessarily a complete list thereof and neither the SELLER, nor the AGENT are liable should the actual costs differ or vary from those documented below and the PURCHASER shall have no claim arising from any omission of costs or any inaccuracy.

- 4.1. Transfer Fees, Disbursements R|.....|
- 4.2. Bond registration Fee R|.....|
- 4.3. Share of Rates R|.....|
- 4.3. Other known Municipal related fees R|.....|
- 4.4. Municipal Rates Clearance Certificate Fee R|.....|
- 4.5. Bulk Services Fee if applicable R|.....|

** ESTIMATED FURTHER COSTS R|.....|

NOTE: The above estimated further costs do not take into account any possessional interest due by the PURCHASER if applicable or any Municipal related fees that may become due by the PURCHASER after date of Transfer or fees that may become due on or prior to date of Occupation of the DWELLING or fees related to the design, plan submissions and clearance or construction of the dwelling.

5. TOTAL CASH REQUIRED BY PURCHASER

The sum of the items indicated via [.....]
amounting to R[.....]
represents an estimate of the cash required by myself, other than any amount due in
respect of possessional interest aforesaid or as yet unknown/undefined municipal fees.

PURCHASER'S NAME : [.....]

PURCHASER'S SIGNATURE : [.....]

DATE : [.....]

WITNESS : [.....]