



# OPPORTUNITY

PRIVATE CAPITAL

## INVESTMENT DISCLAIMER

**LENDER NAME / ENTITY NAME: JoanneKuster**

**Kindly take note of the terms stated hereunder and sign this document as acknowledgement hereof.**

This is a private placement. Different types of investments involve varying degrees of risk, and there can be no assurance that any specific investment will either be suitable or profitable for a Lender or prospective Lender's investment portfolio. No investors or prospective investors should assume that any information presented and/or made available by Opportunity Private Capital or its Associates is a substitute for personalized individual advice from an advisor or any other investment professional. No guarantees as to the success of the investment or the projected return are offered. They have undertaken to present as much factual information as is available. Every precaution has been taken to offer sufficient security for the investment monies given by investors. Neither Opportunity Private Capital, nor the Borrower has been registered as a regulated collective investment scheme pursuant to the Collective Investment Schemes Control Act 45 of 2002 ('CISCA') and neither Opportunity Private Capital, nor the Borrower, nor NSST, nor the Attorneys is licensed under CISCA. The information contained in this document does not constitute a financial service as defined in the Financial Advisory and Intermediary Services Act nor is it intended to solicit investment or promote a financial product in any way. Opportunity Private Capital do not provide investment, tax, legal or accounting advice. This material has been prepared for informational purposes only. You should consult your own investment, tax, legal and accounting advisors before engaging in any transaction.

**LENDER SIGN:** \_\_\_\_\_

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

**DEVELOPMENT INVESTMENT LOAN AGREEMENT**  
**Construction Phase**

Project Heron Fields

Linked Unit HFB213

between

**HERON PROJECTS PROPRIETARY LIMITED**

Registration Number **2020/495056/07**

Herein represented by **Charles Nixon Morgan**

Duly authorised in terms of a resolution

(hereinafter referred to as 'the Borrower')

and

**JoanneKuster**

Identity/Registration Number \_\_\_\_\_

Herein represented by \_\_\_\_\_ *(delete if not applicable)*

Duly authorised in terms of a resolution *(delete if not applicable)*

(hereinafter referred to as 'the Lender')

and

**NOBLE SHIELD 2 SECURITY TRUST**

Registration Number **IT000426/2021(c)**

Herein represented by **Martin Deon van Rooyen CA(SA), RA**

Duly authorised in terms of a resolution

(hereinafter referred to as 'NSST')

LENDER'S INFORMATION SCHEDULE	
Registered Company name OR Individual Names	JoanneKuster
Trading Name (if different)	Terst
Registration Number	
VAT Number	
Members / Directors / Principals (Please include ID Numbers Or In case of individuals Please include ID Numbers	
Bank Account Holder	
Bank Name	
Account Type	
Bank Branch	
Account Number	
Branch Code	
Physical Address	49 Riverview Drive Crestholme, KZN, South Africa, 3610
Postal Address	PO Box 1663 KZN South Africa 3652
Income Tax Number	
Telephone Number	
Cell Phone Number	(084) 613 - 5457
Telefax	
Email	bugskuster@yahoo.com

INVESTMENT INFORMATION SCHEDULE	
Interest rate (%) per annum	15 %
Loan Amount (R)	R 300,000.00
Property & Linked Unit	Heron Fields - HFB213

## TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	4
2	INTRODUCTION	6
3	THE LOAN	7
4	ADVANCEMENT OF LOAN	7
5	RELEASE OF LOAN AMOUNT FROM TRUST ACCOUNT	8
6	INTEREST	8
7	REPAYMENT OF LOAN AMOUNT AND INTEREST	9
8	MORTGAGE BOND IN FAVOUR OF NSST	9
9	SALE OF DEVELOPMENT LAND	10
10	GENERAL	10
11	BREACH	12
12	DISPUTE RESOLUTION	12
13	NOTICES AND DOMICILIA	13
14	SIGNATURE	14
15	PROTECTION OF INFORMATION ACT ('POPI')	14

# THE PARTIES HEREBY CONTRACT AND AGREE WITH ONE ANOTHER AS SET OUT HEREUNDER

## 1. DEFINITIONS AND INTERPRETATION

- 1 In this Agreement, unless the context clearly indicates a contrary meaning, the undermentioned words and phrases shall bear the meanings attributed to them in this clause.

1.1 **'This Agreement'** means this Development Investment Loan Agreement and all annexures hereto.

1.1.1 Annexure 'A' - Draft Site Development Plan;

1.1.2 Annexure 'B' - Draft Sectional Building Plans;

1.1.3 Annexure 'C' - Instruction Mandate;

1.2 **'Annexures'** means the following annexures which form an integral part of the Agreement

1.3 **'Attorneys'** means Ilismi Du Toit of LAÄS & SCHOLTZ INC, Queen Street Chambers, 33 Queen Street, Durbanville; Tel: 021 975 0802; E-mail: ilismi@Islaw.co.za

1.4 **'Attorneys' Trust Account'** means the following trust account of the Attorneys:

Name of Account:	LAÄS & SCHOLTZ INC
Bank:	STANDARD BANK
Branch:	PAROW CENTRE
Branch code:	051001
Account Number:	27 22 555 05
Client Ref:	HERON / SURNAME

1.5 **'Business Hours'** means the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time

1.6 **'Days'** means calendar days unless qualified by the word 'Business', in which instance a **'Business Day'** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.7 **'Development Amount'** means the total amount of R1 100 000.00 (One Million One Hundred Thousand Rand) which the Borrower requires to complete the Property;

1.8 **'Development Land'** means the Remainder of Portion 18 of the Farm Langeberg Number 311, in the City of Cape Town, Division Cape Town, Province of the Western Cape, in extent 2,7983 (Two comma Seven Nine Eight Three) hectare;

1.9 **'Draft SDP'** means the Draft Site Development Plan which serves as Annexure 'A' hereto;

1.10 **'FICA'** means the Financial Intelligence Centre Act 38 of 2001;

1.11 **'Interest'** means, collectively,

1. the: Interest Rate;
2. an Investment Account Supplemented Interest.

1.12 **'Interest Rate'** per Investment Information Schedule on page 3. Interest shall be calculated on a day-to-day basis and be calculated on the actual number of days elapsed and on the basis of a 365 (three hundred and sixty-five) day year, or on the basis of a 366 (three hundred and sixty-six) day year should a leap year be applicable;

- 1.13 **'Investment Account'** means the account held by Borrower with Momentum under the signatory mandate of NSST;
- 1.14 **'Investment Account Interest'** means the interest earned on the Loan Amount while invested in the Investment account;
- 1.15 **'Investment Account Supplemented Interest'** means the interest earned on the Loan Amount payable by the Borrower to the Lender, which interest is calculated at 2.75% (Two Point Seven Five Percent) above the prevailing bank repo rate (simple interest per annum), adjusted the 1st (First) day of the month following any changes in the bank repo rate;
- 1.16 **'Investment Date'** means the date on which the Attorneys transfer the Loan Amount to the Investment Account.
- 1.17 **'Legal Practice Act'** means the Legal Practice Act 28 of 2014;
- 1.18 **'Legal Practice Council'** means the Council established in terms of the Legal Practice Act;
- 1.19 **'Loan Amount'** per Investment Information Schedule on page 3, advanced or to be advanced by the Lender to the Borrower for the purpose of partially funding the Proposed Development, which Loan Amount is included in the Development Amount and linked to the Property;
- 1.20 **'Parties'** means the Borrower, the Lender and NSST collectively and the word 'Party' shall have a corresponding meaning;
- 1.21 **'Payment Date'** means the date on which the Loan Amount reflects in the Attorneys' Trust Account;
- 1.22 **'Protection of Personal Information Act'** means the Protection of Personal Information Act 4 of 2013;
- 1.23 **'Property'** per Investment Information Schedule on page 3 as shown and more fully described on the Annexures and a sectional plan number to be registered, in the sectional title scheme to be known as HERON VIEW in respect of the land and building or buildings situate on the Development Land, of which section the floor area is approximately 70 (Seventy) square meters in extent. The location and size of the Property is subject to final approval by the relevant local authority and accordingly may change;
- 1.24 **'Proposed Development'** means the implementation and establishment of an approved sectional title scheme(s) in various phases on the Development Land, comprising 166 sectional title units as per the Annexures, together with all necessary services and infrastructure;
- 1.25 **'Protection of Personal Information Act'** means the Protection of Personal Information Act 4 of 2013;
- 1.26 **'Release Date'** means the date on which the Loan Amount, Investment Account Interest or any portion thereof is released from the Investment Account to the Borrower for purposes of funding the Proposed Development, which release will only happen upon instruction from NSST;
- 1.27 **'Repayment Date'** means the date of which the Loan Amount plus Interest thereon has been repaid to the Lender, which can be any of the following:
- 1.1.27.1 date of registration of transfer of the Property;
- 1.1.27.2 date of sale of Development Land;

- 1.1.27.3 Any date prior to the events mentioned in Clauses 1.1.27.1 or 1.1.27.2 which payment is at the sole discretion of the Borrower.
- 1.28 **'Repayment Notice'** means, subject to the Status Report, notice may be given by NSST to the Borrower to make repayment of the Loan Amount plus interest thereon to the Lender within a specified timeframe, failing which NSST, at their discretion and acting in the best interests of the Lender, may call on the security provided for in the covering mortgage bond and act on the provisions provided for in the Loan Agreement to effect repayment to the lender;
- 1.29 **'Signature Date'** means the date of signature of the last signing party to this Agreement;
- 1.30 **'Status Report'** means report called for from the Borrower by NSST on the status of the development to determine when repayment of the Loan Amount plus interest to the Lender will take place and to establish the best course of action, which report will be called for 24 months after the Release Date and will be delivered to NSST within 21 business days by the Borrower;
- 1.31 **'Total Loan'** means the sum of all loan amounts advanced to the Borrower by various investors for the purpose of funding the Proposed Development;
- 1.32 **'VAT'** means Value-added Tax levied from time to time in terms of the Value-added Tax Act, No. 89 of 1991, as amended.
- 2 Words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include partnerships and legal entities and vice versa.
- 3 The head notes to the paragraphs in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 4 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 5 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 6 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

## 2. INTRODUCTION

- 2.1 The Borrower is or is about to become the registered owner of the Development Land.
- 2.2 The Borrower requires the Loan Amount for purposes of partly funding the Proposed Development.
- 2.3 The Lender has agreed to advance the Loan Amount to the Borrower as an investment against security of:
- 2.3.1 the registration of a covering mortgage bond over the Development Land in favour of NSST; and
- 2.3.2 registration of transfer of the linked Property.

2.4 The Parties wish to record their agreement in respect of the above and matters ancillary thereto in writing.

### **3 THE LOAN**

- 3.1 In order to fund the Proposed Development, the Borrower intends to obtain the Total Loan from various investors.
- 3.2 It is recorded that all loan amounts advanced by investors to the Borrower for purposes of funding the Proposed Development, together with the Loan Amount advanced by the Lender, shall constitute the Total Loan.
- 3.3 It is further recorded that the sum total of the Loan Amount and all other loan amounts advanced by various investors which are linked to the Property may not exceed the Development Amount by more than 2.5% (Two Point Five Percent).
- 3.4 The Lender hereby agrees to lend to the Borrower who agrees to borrow from the Lender the Loan Amount on the terms and conditions herein contained.
- 3.5 The Loan Amount paid by the Lender to the Borrower is effective from payment date at which date the Loan Amount vests with the Borrower. The Loan Amount will not be repayable to the Lender, save as otherwise set out herein.
- 3.6 Notwithstanding anything contained herein, the Parties record, and it is agreed, that the Attorneys shall receive the Loan Amount as the agent of, and on instructions of the Borrower.
- 3.7 The Attorneys are hereby instructed by the Borrower, upon successful completion of the FICA process with the Lender, to transfer the Loan Amount advanced by the Lender into the Investment Account.

### **4. ADVANCEMENT OF LOAN AMOUNT**

- 4.1 The Lender hereby agrees to pay the full Loan Amount into the Attorneys' Trust Account within 7 (Seven) days of the Signature Date, which Loan Amount shall, subject to clause 4.5, be transferred by the Attorneys to the Investment Account pending the Release Date.
- 4.2 Upon payment of the Loan Amount into the Attorneys' Trust Account, the Lender shall furnish the Attorneys with proof of payment and the Attorneys shall allocate a reference number to the Loan Amount.
- 4.3 The date on which the Loan Amount reflects in the Attorneys' Trust Account shall be referred to as the Payment Date and the date on which the Loan Amount is transferred by the Attorneys to the Investment Account pursuant to this clause 4 shall be referred to as the Investment Date.
- 4.4 From the Payment Date to the Repayment date, the Lender shall be a beneficiary of NSST.
- 4.5 Before the Loan Amount may be transferred to the Investment Account as aforesaid, in order to comply with the provisions of FICA and the Legal Practice Act, the Lender must furnish the Attorneys with the relevant FICA documentation requested by the Attorneys.
- 4.6 The Lender undertakes to fulfil his/her/its obligations recorded in clause 4.5 upon request by the Attorneys, failing which the Loan Amount shall not be transferred to the Investment Account in accordance with the provisions of this Agreement.
- 4.7 Subject to clause 8, the Borrower may use the Loan Amount held in the Investment Account, or any portion thereof, for the issue of letters of undertaking by attorneys relating to the Proposed Development, which



letters of undertaking are to be approved by the NSST before issue.

## **5. RELEASE OF LOAN AMOUNT FROM INVESTMENT ACCOUNT**

- 5.1 It is specifically recorded that, apart from the payment of transfer duty and conveyancing fees and disbursements relating to the Development Land and Proposed Development, no portion of the Loan Amount or any Investment Account Interest shall be released to the Borrower before the mortgage bond contemplated in clause 8 is registered over the Development Land in favour of NSST.
- 5.2 NSST may, from time to time and as same is required for purposes of funding the Proposed Development, instruct the release of the Loan Amount and Investment Account Interest or any portion thereof out of the Investment Account to the Borrower. The balance of the Loan Amount and Investment Account Interest, if any, shall be retained in the Investment Account and shall be released to the Borrower in such portions as instructed by NSST from time to time.
- 5.3 Any request for payment in terms of clause 5.2 shall be within the sole discretion of NSST.
- 5.4 The Loan Amount, Investment Account Interest or any portion thereof released in terms of this clause 5 may only be used by the Borrower for purposes of funding the Proposed Development, which shall include but not be limited to -
- 5.4.1 the acquisition of the Development Land and any costs related thereto;
  - 5.4.2 the installation of any services or infrastructure as required by the relevant authority on the Development Land (including but not limited to water, electricity, sewerage, roads, boundary walls, refuse room(s), entrance gate(s), and electric fencing);
  - 5.4.3 the payment of any administrative, transactional, municipal and professional fees related to the Proposed Development;
  - 5.4.4 the payment of any construction costs relating to the Property and the other sectional title units situated on the Development Land;
  - 5.4.5 the payment of any unforeseen expenses related to the Proposed Development and approved by NSST.
- 5.5 NSST (Trustees) are the required signatories on the Investment Account for purposes of releasing funds to the Borrower, in respect of the Proposed Development.

## **6. THE INTEREST**

- 6.1 In the event that NSST instructs the release of the Loan Amount and or Investment Account Interest from the Investment Account for purposes of funding the Proposed Development, the Lender shall:
- 6.1.1 from the Investment Date to the Release Date, earn Investment Account Supplemented Interest on the Loan Amount which supplemented interest is paid on repayment date; and
  - 6.1.2 from the Release Date to the Repayment Date, earn the Interest Rate on the Loan Amount. It is recorded that the Interest Rate is simple interest and shall not be compounded and shall be calculated annually on the Loan Amount.
- 6.2 Should the Loan Amount remain in the Investment Account for longer than 6 (Six) months from the Payment Date and not be utilised by the Borrower to fund the Proposed Development, the full Loan Amount plus Investment Account Supplemented Interest thereon shall be paid back to the Lender.

- 6.3 The Lender acknowledges that the Interest shall, unless the provisions of clause 6.2 apply, only vest in the Lender on the Repayment Date and the Lender shall accordingly not be entitled to request payment of the loan amount or any Interest on a date earlier than the Repayment Date.
- 6.4 Before the Repayment Date, the Borrower shall furnish the Lender with a statement which sets out all the Interest earned from the Investment Date to the Repayment Date.

## **7. REPAYMENT OF LOAN AMOUNT AND INTEREST**

- 7.1 Repayment of the Loan Amount plus Interest thereon shall be linked to the registration of transfer of the Property;
- 7.2 Upon registration of transfer of the Property, the proceeds of the sale of the Property shall be paid to the Attorneys and the Loan Amount plus Interest thereon shall be paid by the Attorneys to the Lender from such proceeds.
- 7.3 To secure repayment of the Loan Amount plus Interest thereon to the Lender, neither the Property, Development Land or any portion thereof may be released from the covering bond, as set out in Clause 8, without the required consent to release signed by NSST (Trustees) and submitted to the Attorneys prior to transfer.
- 7.4 It is specifically recorded that the Borrower shall be entitled to, and at its sole discretion, pay the full Loan Amount plus Interest thereon to the Lender at any time before the registration of transfer of the Property or sale of the Development Land without incurring any costs and/or penalty.
- 7.5 Repayment Date is the date upon which the Lender is paid the Loan Amount plus Interest on the Loan Amount, which interest shall be calculated from the Investment Date to the Repayment Date.
- 7.6 The Lender may accordingly not request repayment of the Loan Amount or Interest thereon prior to the Repayment Date.
- 7.7 For the avoidance of any doubt, the Lender shall not earn any Interest until Repayment Date and the Interest shall only vest in the Lender on the Repayment Date.
- 7.8 The Borrower has no obligation towards Lender or the South African Revenue Services reporting on any income or interest earned from this agreement by the Lender. If and where applicable the Lender is responsible for his own tax liability (affairs) and reporting to the South African Revenue Services stemming from this agreement.
- 7.9 NSST will call for a Status Report from the Borrower 24 months after the Release Date to ascertain an estimated repayment date to the Lender. Subject to the findings in the report and in order to serve the best interest of the Lender, NSST may issue a Repayment Notice to the Borrower in order to effect repayment to the Lender of the Loan Amount plus Interest.

## **8. MORTGAGE BOND IN FAVOUR OF NSST**

- 8.1 As security for the Total Loan advanced to the Borrower and the fulfilment of the obligations of the Borrower under this Agreement and similar agreements to be concluded between the Borrower and further investors, the Borrower shall register a covering mortgage bond over the Development Land in favour of NSST to the value of R300 000 000.00 (Three Hundred Million Rand).
- 8.2 The mortgage bond recorded in clause 8.1 shall be registered simultaneously with registration of transfer of the Development Land into the name of the Borrower.

- 8.3 Simultaneously with the opening of a sectional title scheme(s) on the Development Land, of which the Property forms part, the said mortgage bond will convert to a sectional mortgage bond(s) and the Property and all other units in the sectional title scheme(s) shall substitute the Development Land under the mortgage bond(s).
- 8.4 The Lender and all other investors in respect of the Total Loan shall, subject to the provisions of this Agreement and similar agreements to be concluded between the Borrower and the other investors, be beneficiaries of NSST.

## **9. SALE OF DEVELOPMENT LAND**

Notwithstanding anything to the contrary herein contained, should the Borrower at any time receive an offer to purchase for the Development Land or the property (as the case may be) from a prospective purchaser and decide to sell the Development Land or the property (as the case may be) to such a prospective purchaser, the sale proceeds shall, against registration of transfer of the Development Land or the property (as the case may be) to the prospective purchaser and simultaneous cancellation of the mortgage bond(s) over the Development Land or the property (as the case may be) be distributed as follows:

- 9.1 in the event that the sale proceeds are sufficient to settle the Total Loan plus Interest thereon in full, the Borrower shall repay the Loan Amount plus Interest thereon to the Lender; or
- 9.2 in the event that the sale proceeds are not sufficient to settle the Total Loan plus Interest thereon in full, such sale must be authorised by NSST and the Lender, together with all other investors.

## **10. GENERAL**

### **10.1 Borrower Undertakings**

The Borrower hereby undertakes that it shall, for the duration of this Agreement:

- 10.1.1 advise the Lender of any fact, circumstance or the like which may affect the Lender's rights or security in terms of this Agreement, within 7 (Seven) Business Days of becoming aware thereof;
- 10.1.2 not commit any act which would have been an act of insolvency in terms of the Insolvency Act No. 24 of 1936 (as amended), had the Borrower been a natural person;
- 10.1.3 not do or allow to be done any act or thing which prejudices the rights of the Lender.

### **10.2 Company Resolutions**

The Parties undertake to ensure that any and all resolutions necessary for the due performance in and fulfilment of this Agreement and all terms and conditions contained herein or pursuant hereto are passed by their respective directors' and/or shareholders and/or trustees timeously.

### **10.3 Governing Law**

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

### **10.4 No Influence**

The Parties acknowledges that they have not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of any other Party.

### **10.5 Cession and Delegation**

This Agreement is personal to the Parties. Accordingly, no Party may cede any of its rights or delegate any

of its obligations under this Agreement without the prior written consent of the other Parties.

**10.6 Variation**

No variation of, addition to, consensual cancellation of or waiver of provision, term or any right arising in terms of this Agreement shall be of any force or effect unless it is reduced to writing and signed by a duly authorised representative of each of the Parties.

**10.7 Whole Agreement**

This document contains the entire Agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

**10.8 Relaxation**

No relaxation, indulgence or extension of time granted by any Party (the 'Grantor') to any other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or novation of any of the terms of this Agreement or stop the Grantor from enforcing strict and punctual compliance with the terms of this Agreement.

**10.9 Successors-in-Title**

This Agreement will be binding upon the Parties hereto, their estates, administrators, executors, successors-in-title or permitted assigns.

**10.10 Supersession**

This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth in this Agreement.

**10.11 Severability**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**10.12 Survival**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

**10.13 Independent Advice**

Each Party hereto acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal advice or dispensed with the necessity of doing so. Furthermore, each Party hereto acknowledges that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with the transaction contemplated in this Agreement.

**10.14 Risk**

The Lender is exposed to risk and liability equal to the Loan Amount. Neither the Borrower nor NSST nor any of its agents makes any representation and/or guarantees as to the success of the Proposed Development and the amount of return on investment to be made by the Lender, if any.

**10.15 Objection to Proposed Development**

The Lender undertakes to the Borrower and its shareholders that while he/she/it is a Lender, and for a period of 24 (Twenty Four) months thereafter, he/she/it shall not and shall procure that no one on his behalf shall be engaged, concerned or interested (either directly or indirectly and whether on his/her/its own behalf

or on behalf of or in association with others and in any capacity whatsoever) in any objection to the Proposed Development.

#### 10.16 Nature of Agreement

This is not a public offering of securities and nothing in this document should be construed as a profit forecast. Nothing contained in this Agreement constitutes an offer in any area of jurisdiction in which it is illegal to make such an offer. In such circumstances, this Agreement and the application form are sent for information purposes only.

#### 10.17 Stipulatio Alteri

The conditions of this Agreement are for the benefit of the NSST and constitute a *stipulatio alteri*, which it may accept at any time.

### 11. BREACH

Should any Party fail to fulfill any of the terms and conditions of this Agreement ('the defaulting party') on the due date and remain in default for a period of 7 (Seven) days after the other Party ('the aggrieved party') has delivered a written notice to the defaulting party specifying the breach and demanding that it be rectified, the aggrieved party may without further notice and without prejudice to his/her rights:

- 11.1 claim specific performance by the defaulting party of all his/her obligations under this Agreement; or
- 11.2 cancel this Agreement and claim damages from the defaulting party that may have been suffered as a result of the breach.

Any latitude which may have been allowed by the aggrieved party in respect of any breach by the defaulting party in terms hereof, shall not under any circumstances be deemed to be a waiver of the aggrieved party's rights under this Agreement nor a novation hereof, nor shall it prevent the aggrieved party from exercising any right nor absolve the defaulting party from any obligation under this Agreement.

### 12. DISPUTE RESOLUTION

- 12.1 Any dispute arising out of or in connection with this Agreement shall, at the instance of the Party seeking relief, be decided by way of arbitration as follows -

12.1.1 The arbitration shall take place in Cape Town in English in accordance with the rules ('Rules') of the Arbitration Foundation of Southern Africa ('AFSA') before 1 (One) arbitrator appointed by the Parties.

12.1.2 Should the Parties fail to agree in writing on an arbitrator within 10(Ten) days after the arbitration has been demanded, the arbitrator shall be nominated by AFSA at the request of either Party.

12.1.3 Subject to each Party's rights of appeal to a tribunal of arbitrators in accordance with the Rules, the Parties irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect and be capable of being made an order of the High Court of South Africa.

- 12.2 The provisions of this clause 12:

12.2.1 Constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

12.2.2 Are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement; and

12.2.3 Shall not preclude any from obtaining interim relief on an urgent basis from a High Court pending the outcome of the arbitration proceedings.

12.3 Any arbitration in terms of this clause shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the Parties.

12.4 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

### 13. NOTICES AND DOMICILIA

13.1 The Parties to this Agreement choose the following addresses as their respective *domicilia citandi et executandi* for all purposes arising hereunder and as their respective addresses for the service of any notices required to be served upon them:

13.1.1 The Borrower at:

HERON PROJECTS (PTY) LTD  
2ND FLOOR, EDWARD 2 BUILDING, 72 - 76 EDWARD STREET, BELLVILLE  
Email Address: debbie@opportunity.co.za.

13.1.2 the Lender at:

As per Lender Information Schedule on page 2  
Email Address: As per Lender Information Schedule on page 2

13.1.3 NSST at:

C/O of LAÄS & SCHOLTZ INC,  
QUEEN STREET CHAMBERS, 33 QUEEN STREET, DURBANVILLE  
Email Address: deon@nobleshiel.co.za

13.2 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give such notice by email.

13.3 Either Party may by notice to the other change the physical address chosen as domicilium or change the email address; provided that such change(s) shall only become effective on the sixth business day after the date of receipt, or deemed date of receipt, of such notice by the addressee.

13.4 Any notice to a Party shall -

13.4.1 If sent by pre-paid registered post, be deemed to have been received on the sixth business day after posting, unless the contrary is proved.

13.4.2 If delivered by hand, shall be deemed to have been received on the day of delivery or on the next business day if the day of delivery is not a business day.

13.4.3 If sent by email, shall be deemed to have been received on the date of dispatch or on the next business day if the time of dispatch is not on a business day, unless the contrary shall otherwise be proved.

13.4.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party to this Agreement shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at the chosen domicilium or transmitted to such Party's email address as stipulated herein.

## 14 SIGNATURE

- 14.1 This Agreement may be executed in a number of counterparts and by the same Parties in different counterparts, but shall only be deemed to have been concluded at the date of signature of the Party last signing one of the counterparts.
- 14.2 Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document.
- 14.3 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

## 15 PROTECTION OF PERSONAL INFORMATION ACT ('POPI')

**The Lender hereby consents to the Borrower and/or NSST to furnish the Attorneys or third parties associated with this agreement, with all such Personal Information of the Lender, as may be required to process such information for purposes of adhering to the terms of this Agreement, to process payments, and to otherwise comply with the legal and regulatory obligations envisaged in this Agreement.**

**Notice:** The Borrower has not been registered as a regulated collective investment scheme pursuant to the Collective Investment Schemes Control Act 45 of 2002 ('CISCA'). Neither the Borrower nor NSST is licensed under CISCA or under the Banks Act No 94 of 1990 ('Banks Act') and neither the Borrower nor NSST is licensed under the Financial Advisory and Intermediary Services Act 37 of 2002 ('FAIS'). This Agreement does not constitute a solicitation or advertising from any person in respect of which such solicitation or advertising would be prohibited nor does it constitute or relate to the provision of a financial service to any person, the acceptance of any deposit or the solicitation of investment from any member of the public for investment in any collective investment scheme. If this document is in the possession of anyone to whom its provision would be prohibited by CISCA, FAIS or the Banks Act, or any person to whom the distribution hereof would otherwise be prohibited by South African law, it should be returned immediately to the Borrower. Investment in the Property carries risk and there can be no assurance that the investment objective will be achieved and past performance is not necessarily a guide to performance in the future. The capital invested may be returned later, or not at all, as well as be returned with gains. Investment in the Property is only suitable for investors who are in a position to understand and to take risks and satisfy themselves that such investment is appropriate for them in light of their circumstances and financial resources. If you are in any doubt about the contents of this document, you should consult your accountant, attorney, or other independent professional advisor.

**SIGNATURE PAGE OVERLEAF**

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

IN THE PRESENCE OF THE FOLLOWING WITNESSES

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: THE BORROWER  
NAME: **Charles Nixon Morgan**  
(who warrants that he is duly authorised)

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

IN THE PRESENCE OF THE FOLLOWING WITNESSES

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: THE LENDER  
NAME: **JoanneKuster**  
(who warrants that he is duly authorised)

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

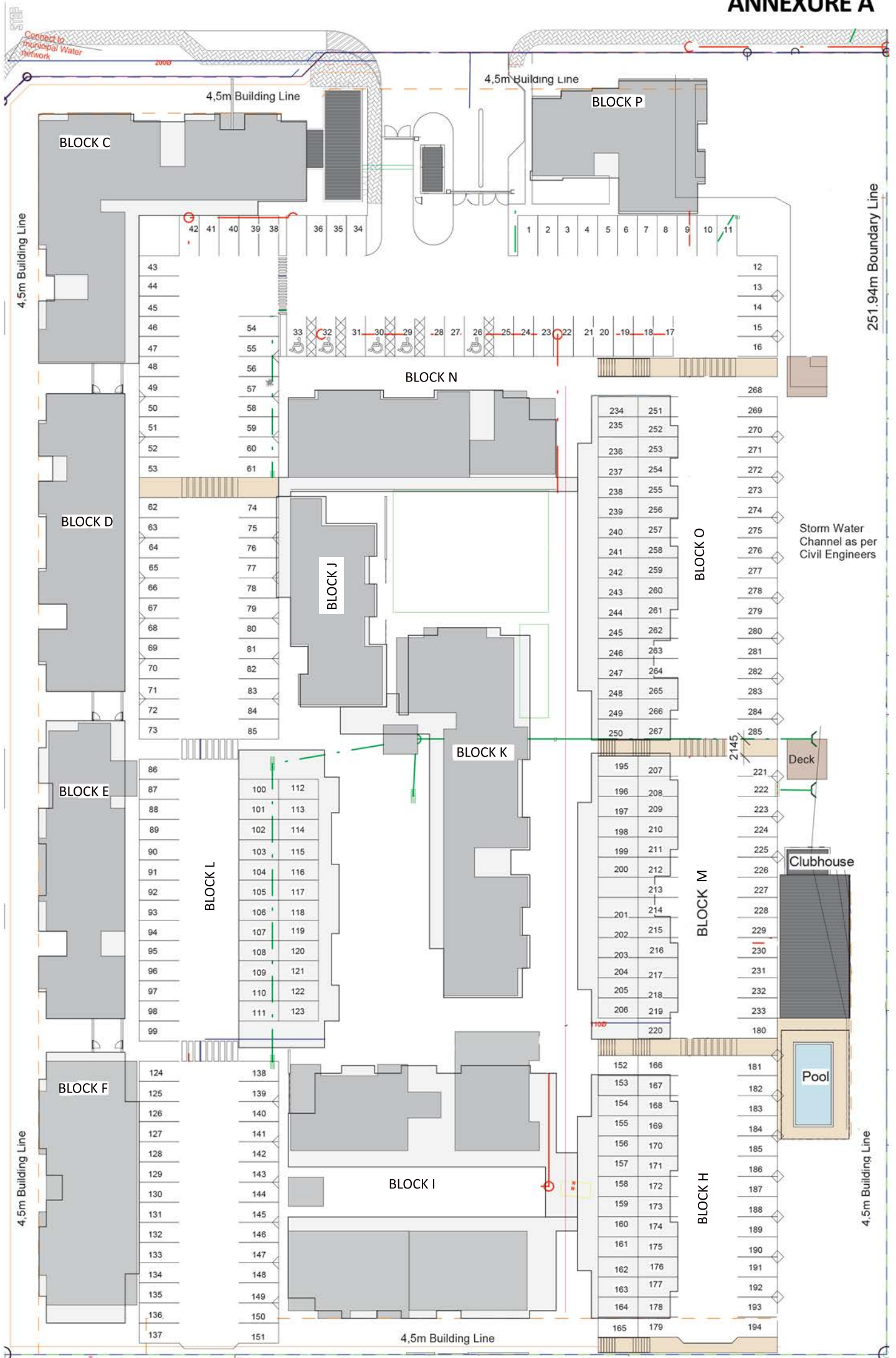
IN THE PRESENCE OF THE FOLLOWING WITNESSES

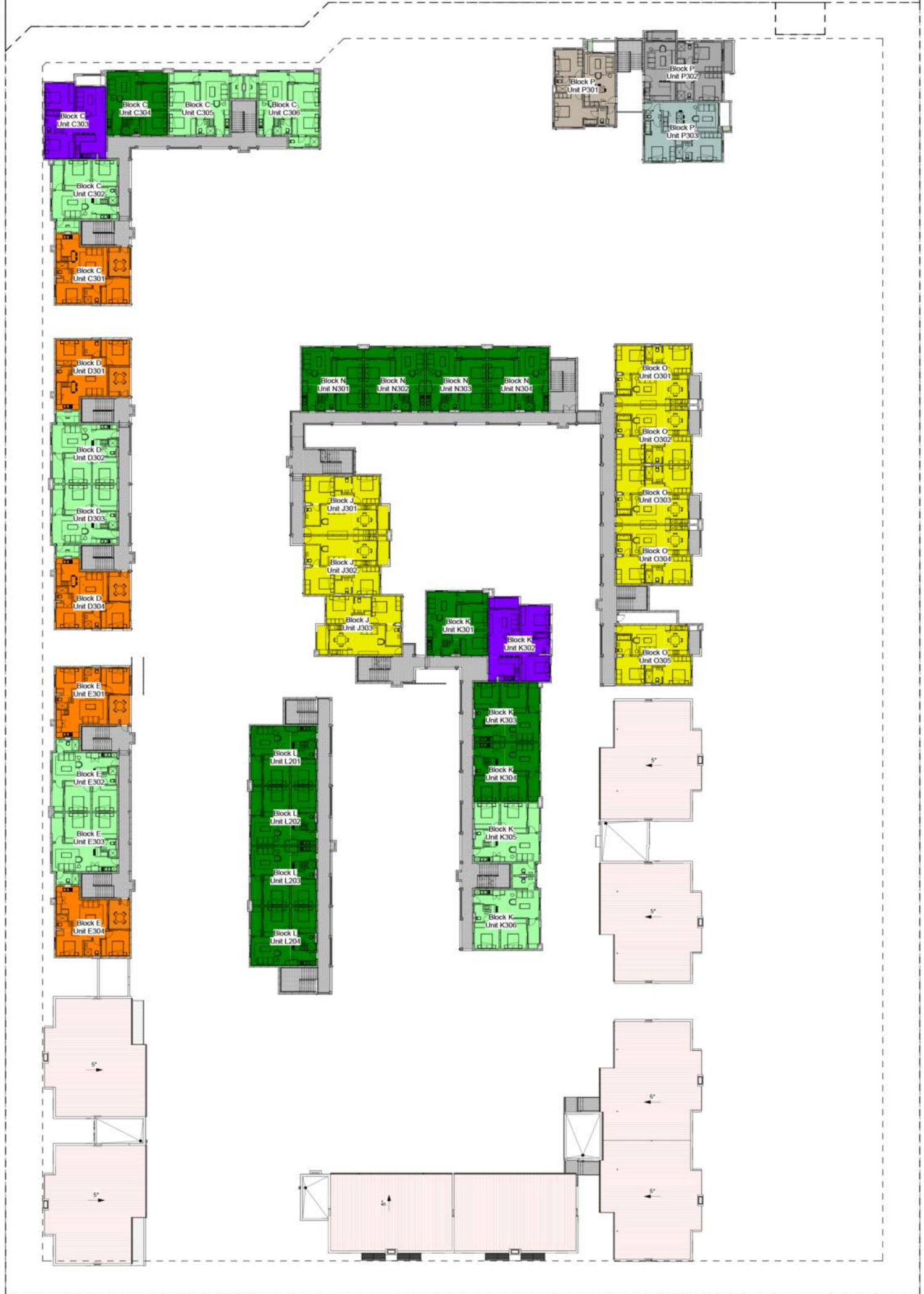
\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: NSST  
NAME: **Martin Deon van Rooyen**  
(who warrants that he is duly authorised)



# ANNEXURE A





**ANNEXURE B**  
Second Floor

**Instruction to Attorneys**

We, the undersigned, confirm that the funds paid into the Trust Account of the Attorneys (LAÄS & SCHOLTZ INC) are held for the benefit of the Borrower, **HERON PROJECTS PROPRIETARY LIMITED**, Registration Number **2020/495056/07**, but insofar as it may be necessary, we consent to the funds being paid to the Investment Account.

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

IN THE PRESENCE OF THE FOLLOWING WITNESSES

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: THE BORROWER  
NAME: **Charles Nixon Morgan**  
(who warrants that he is duly authorised)

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

IN THE PRESENCE OF THE FOLLOWING WITNESSES

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: THE LENDER  
NAME: **JoanneKuster**  
(who warrants that he is duly authorised)

SIGNED AT \_\_\_\_\_ *THIS* \_\_\_\_ DAY OF \_\_\_\_\_ 202\_\_

IN THE PRESENCE OF THE FOLLOWING WITNESSES

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR: NSST  
NAME: **Martin Deon van Rooyen**  
(who warrants that he is duly authorised)