

ZONNEZICHT RETIREMENT VILLAGE

AGREEMENT OF SALE

Between

AMPHORIA (PTY) LTD
Registration Number : 1969/000595/07

(“the Seller”)

and

.....

(“the Purchaser”)



**LAÄS &
SCHOLTZ**
TEL: 021 975 0802

1. Parties	
1.1. Seller/Developer:	AMPHORIA PROPRIETARY LIMITED Registration number: 1968/000595/07
Address:	c/o Laas & Scholtz Inc (D J Laas) 33 Queen Street Queen Street Chambers Durbanville , 7550 Telephone Number: 021 975 0802 johanna@lslaw.co.za
1.2. Purchaser:	
Full names and Identity No.	
Residential Address:	
Postal Address:	
Marital Status:	
Full names and Identity No. of spouse:	
Company/ CC / Trust:	
Registration Number:	
Telephone numbers: Home Work Cell Fax Number:	
Income Tax Ref No.: VAT Number:	
e-mail address:	

PREAMBLE

- a. The Seller is the owner of the land described as:
ERF 20513 DURBANVILLE
- b. The Seller intends to establish a Sectional Title Scheme comprising residential apartments on Erf 20513 Durbanville for the retired person in a project to be marketed as residential units within a secure environment.
- d. The Seller has agreed to sell to the Purchaser who has agreed to purchase from the Seller the subject matter described hereunder with the undivided shares in the common property subject to the terms and conditions set out in this agreement.

NOW THEREFORE:**THE PURCHASER HEREBY PURCHASES THE HEREINAFTERMENTIONED PROPERTY ON THE FOLLOWING TERMS AND CONDITIONS:****A) SUBJECT MATTER:**

- a) UNIT NO _____ in the building to be known as ZONNEZICHT RETIREMENT VILLAGE at DURBANVILLE measuring _____ square metres; (being the outer measurements).

Together with an undivided share in the common property in the land and building as shown and more fully described on the sectional plan, apportioned to the said section in accordance with the participation quota of the said section specified in the schedule enclosed on the said Sectional Plan/ Location Plan (delete which is not applicable),

- b) The right to the exclusive use of a Parking Bay, described as P_____, as shown on the attached lay-out plan, which parking bay forms part of the common property. This right is allocated by the Seller in terms of Section 10(7) of the STSMA.

“The Property”

B) PURCHASE PRICE

The purchase price is R _____

In respect of the **Unit**; and

R _____

in respect of the right to the exclusive use of a **Parking Bay**

P _____ (delete if not applicable);

TOTAL : R _____

(The Purchase Price includes VAT as the Seller is a VAT Vendor)

PAYABLE AS FOLLOWS:

A DEPOSIT OF R _____,

Payable by the PURCHASER within 3 business days as from signature hereof.

A MORTGAGE BOND OF R _____,

to be approved by a financial institution as provided for in paragraph 2 hereunder.

BALANCE OF R _____,

payable on registration of transfer in the Purchaser's name.

C) OCCUPATIONAL INTEREST:

Occupational interest will be equivalent to interest on the PURCHASE PRICE at the INTEREST RATE less three percent (3%) thereon calculated monthly as from date of occupation till date of registration. This amount is payable monthly in advance to the transferring attorneys as is the monthly Body Corporate levy of R _____, **which amount is what the Seller foresees the approximate body corporate levy to be.** Occupational interest (rental) is the amount which the PURCHASER pays the SELLER/DEVELOPER for the right to have occupation of the unit after it has been completed but before the property is registered in the name of the PURCHASER and, the SELLER receives the purchase price.

D) DATE OF OCCUPATION: _____

The SELLER does not guarantee that the property will be ready for occupation on the anticipated date of occupation. Should the property not

be available for occupation on such date the SELLER shall give the PURCHASER one calendar month written notice (as specified in paragraph 4.2) failing which the PURCHASER can accept that the property shall be available for occupation.

E) DEFINITIONS AND INTERPRETATIONS

Act	means the Sectional Title act No. 95 of 1986, as amended and includes the regulations framed in terms of the Act
Act for retired persons	means Act 65 of 1988 known as the Housing Development Schemes for Retired Persons Act which is applicable to this development and Annexure A to the Main Agreement hereto forms part of this Agreement of Sale.
Architect	means either the Seller's architect or an independent architect appointed by the president of the South African Institute of Architects or his nominee depending on the wording of the paragraph;
Body Corporate	means the Body Corporate of the Zonvezicht Retirement Village. All the owners of the units in the Development are automatically members of the Body Corporate in terms of the STSMA. The functions and powers of the Body Corporate shall be exercised by the Trustees of the Body Corporate, holding office in terms of the rules.
Buildings	means all buildings forming the development and built/to be built on the land;
Common Property	means those portions of the land not forming part of any section, exclusive use area or the seller's right of extension;
Completion Date	means the date which the Seller's architect certifies to be the date on which the unit is completed and ready for beneficial occupation;

Consumer protection Act	means Act 68 of 2008 known as The Consumer Protection Act which is applicable to this development.
CSOSA	means Community Schemes Ombud Service Act 9 of 2011
Defect	means any material imperfection in the unit that renders it less acceptable than persons generally would be reasonably entitled to expect in the circumstances or any characteristic of the unit that renders it less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;
Development	means the land and the building built/to be built on the land (and in respect of which the Seller intends to open a Sectional Title Register
Exclusive Use Area	means the area(s) depicted on such plans, and listed in the attached Annexures, forming part of the development and in respect of which the Purchaser shall have the sole and exclusive use and enjoyment in terms of Section 10(7) of the STSMA
Fault	means a non-material imperfection in the unit which does not amount to a defect as defined in this agreement or Act 95 of 1995
Interest Rates:	means a rate of interest per annum equivalent to the prime rate of interest from time to time as charged by ABSA Bank Limited. A certificate issued and signed by a manager, sub-manager or accountant of the said bank (whose appointment it shall not be necessary to prove) as to the said rate of interest of the said bank from time to time, shall be binding on the parties hereto and shall be conclusive proof of the facts stated herein;

Land	means the land on which the development is established of which the unit sold forms part, being, Erf 20513 DURBANVILLE.
Levy	means the contribution payable by the Purchaser to the Body corporate as contemplated in the Act;
Participation Quota	means in relation to a section, a decimal fraction determined in accordance with the provisions of section 32(1) of the Act in respect of that section;
Plans	mean the architectural plans, which show the section/s where the unit is positioned in the development and the exclusive use areas;
Purchaser	means the Purchaser as defined in the preamble
Rules	means the Management and Conduct rules in terms of the STSMA in force from time to time including any house rules
Schedules	means the schedules herein referred to
Seller/Developer	means the seller as defined on page 2.
Specifications	means the specifications annexed hereto and marked "Zonnezicht Retirement Village (Apartments) General Specifications and Completion Schedule"
STSMA	means Sectional Titles Schemes Management Act 8 of 2011
Transferring attorneys	means the attorneys appointed by the Seller/Developer, Laas & Scholtz Inc., Durbanville
Unit/Property	means a section together with its undivided share in common property apportioned to that section in accordance with the quota of the section, plus the exclusive use area(s) (if any)
Developers Originator	means BIG TIME BONDS (Anita Momberg)

Words and expressions defined in the Act and STSMA shall have the meanings therein defined.

Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa.

The head notes to the paragraphs to this agreement are inserted for reference purposes only shall not affect the interpretation of any of the provisions to which they relate.

Reference to this agreement shall mean this agreement of sale and shall include the covering schedule appearing on the commencement of the signature document appearing after the covering schedule, these conditions of sale and all annexures to this agreement.

Any reference to "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.

If any provision in the preamble to this agreement and/or in this paragraph E is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provisions is contained in the preamble and/or this paragraph E, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.

Unless the context clearly indicates the contrary, the use of a capital letter as against the lower case shall not impact a different meaning.

F) ANNEXURES:

The attached Terms and Conditions, Annexure "A" to Main Agreement, Plans, Minimum Specifications for construction and Finishes (Schedule 4) and the Conduct Rules (Schedule 1) annexed hereto, form part of this Agreement of Sale. Other schedules referred to are merely attached as informative disclosures; such as Regulation 7 – 14 of Act, 65 of 1988, as amended (Schedule 2) and estimated levies (Schedule 3).

G) POSSESSION:

Date of registration.

The PURCHASER is required to ensure that before signing this agreement that he has had an adequate opportunity to understand these terms. If the Purchaser does not understand these terms or if the Purchaser does not appreciate their effect, the Purchaser is required to ask for an explanation and must not sign the agreement until the terms have been explained to the Purchaser's satisfaction.

(a) Direct Marketing

(a) *In terms of section 16 of the Consumer Protection Act, if this transaction has resulted from direct marketing the PURCHASER has the right to cancel this agreement without reason or penalty by written notice within 5 business days after the agreement was concluded, or within 5 business days after delivery of the unit.*

(b) The SELLER is unable to accept the risk of cancellation without reason within 5 business days of delivery as the SELLER will already have incurred the cost of the IMPROVEMENTS based on this agreement.

(c) In addition, if the transaction is cancelled after delivery the SELLER will be left to carry the holding costs of the PROPERTY, which the SELLER will have already built upon, for an uncertain period into the future, whilst looking for a replacement PURCHASER. This has the potential to create substantial losses for the SELLER and place the business of the SELLER in jeopardy.

(d) The SELLER is therefore not prepared to enter in to this agreement with any PURCHASER if the transaction has resulted from direct marketing.

(e) The PURCHASER therefore warrants that this transaction has not resulted from direct marketing and the SELLER enters into this transaction relying entirely upon such a warranty.

(f) If after delivery, the PURCHASER is successful in cancelling this agreement by relying upon the right of cancellation flowing from the direct marketing provisions of the Consumer Protection Act, the PURCHASER shall be liable for the damages suffered by the SELLER as a result thereof on the basis of the PURCHASER's breach of warranty.

After having had sufficient time to consider the matter I hereby confirm I have understood this provision and agree to furnish the required warranty.

PURCHASER to sign here

(b) **Housing Consumer Protection Act, Act 95 of 1995**

The Developer is registered as a home builder with the National Home Builders Registration Council and the structure shall be duly enrolled.

The National Home Builders Fees will be payable by the Developer.

The Unit's and any additional structures will be built in accordance to the drawings and specifications of the Architect and Engineers and the technical requirements of the Local Authority and National Home Builders Regulatory Council.

(b) **Certificates**

The Developer undertakes to provide the Purchaser, at his own expense, with the following certificates: Electrical; Plumbing; Municipal Occupation Certificate; Gas and any other certificate that may be required by law, ordinance or bylaw.

H) APPROVAL:

The Unit hereby sold as indicated on the location plan, is subject to the final approval of the Sectional Title Plans by the Surveyor General.

THUS DONE and SIGNED at _____ on _____

SELLER

WITNESS

THUS DONE and SIGNED at _____ on _____

PURCHASER

WITNESS

WITNESS

THUS DONE and SIGNED at _____ on _____

PURCHASER

WITNESS

WITNESS

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TERMS AND CONDITIONS

1. PURCHASE PRICE AND TRANSFER

- 1.1 The deposit shall be paid to the attorneys Laäs & Scholtz Inc., Queen Street Chambers, 33 Queen Street Durbanville, (Tel: (021) 975 0802 / Fax: (021) 975 0816) to be invested in terms of Section 86 of the Legal Practice Act, 2014 (Act No. 28 of 2014)., with a registered bank of the attorneys choice.

The purchase price includes VAT at a rate of 15%, Should VAT increase or decrease after the date of signature of this agreement but before transfer to Purchaser, the purchase price will be increased or decreased accordingly.

- 1.2 The balance of the purchase price is payable to the transferring attorneys within 7 (seven) days after being requested in writing by the transferring attorneys, who must invest the money as per paragraph 1.1.; which request may be made at any time, but only (if applicable) after the fulfilment of the suspensive conditions referred to in paragraphs 2. and 16.

All payments by the Purchaser in terms of this agreement shall be made to the Developers Attorneys free of any deductions, set-offs, bank charges or exchange at DURBANVILLE and the Purchaser will only be entitled to take transfer after all his obligations in terms of the agreement have been fulfilled.

- 1.3 If the Purchaser cannot pay the balance of the purchase price to the transferring attorneys, the Purchaser must furnish the said attorneys with a Bank Guarantee acceptable to the Seller within 7 days after expiry of the period referred to in paragraph 1.2 above with the only condition of payment being the registration of the unit bought herewith in the name of the Purchaser.

TRANSFER COSTS AND SIMULTANEOUS TRANSFERS

- 1.4 The costs for registration of the transfer shall be paid by the PURCHASER including all bond registration and bank costs. **Prior to completion of all the phases of ZONNEZICHT Retirement Village, the Purchaser shall not sell or alienate the property nor advertise it for sale without the Seller's written consent.**

Should the Developer consent to the selling of the unit he may impose such conditions as he deems fit to protect the selling potential of any remaining units in the development including having the above restriction incorporated into a further contract.

The Purchaser shall not be entitled to simultaneously pass transfer to his purchaser in a subsequent transaction when taking transfer of the unit subject to this agreement and consequently the Purchaser must ensure that his guarantees for payment remain in place at all times until date of payment.

Should the Purchaser fail to keep his guarantees in place the Developer shall be entitled to cancel this agreement and enter into an agreement with such purchaser and the purchaser will have no claim for damages against the Developer for contracting with the Purchasers Purchaser.

- 1.5 The Purchaser shall sign all transfer and bond documents upon the request of the appointed attorneys.

SECTIONAL PLAN AND DATE OF TRANSFER

- 1.6 It is recorded that the Seller will only be in a position to give transfer of the property to the Purchaser after the opening of the Sectional Title Register in respect of the sectional title development of which the property forms a portion and the Developer undertakes to do everything necessary and reasonably possible to legitimize the plans as soon as possible.

The Sellers Land Surveyor draws up the Sectional Plan after completion of the units to be lodged with the Surveyor General for approval and only once they are completed can they be transferred to the Purchaser at the Deeds Office.

- 1.7 Before the Purchaser takes occupation or transfer of the property an architect must in terms of of Act 65 of 1988 issue a certificate stating that the property have been completed to his satisfaction and is in compliance with the buildings plans and is fit for occupation.

2. MORTGAGE LOAN

The loan

- 2.1 As provided in paragraph B of this agreement, the agreement is subject to the Purchaser being granted a loan for the purchase of the unit for an amount of R

against security of a mortgage bond registered over the property and on such terms and conditions as are ordinarily imposed by a mortgage lending financial institutions, which terms and conditions must be acceptable to the Seller, within 21 days after the signature of this agreement.

If the Loan Approval Document is not issued by the date referred to above, then the period for fulfilment of this Suspensive Condition shall be extended automatically for a further 14 (fourteen) days.

Should this agreement lapse due to the loan not being granted or granted timeously as per the contract the seller shall refund to the purchaser the deposit and all amounts paid by the purchaser to the seller's attorneys plus any interest thereon.

- 2.2 **The loan will be deemed to have been fulfilled upon the date on which the mortgage lending financial institution issues a written loan quotation or similar documentation, approving or offering the loan sought "Loan Approval Document" to the Purchaser.**

ORIGINATION

- 2.3 The Purchaser hereby undertakes to provide the Developers Originator with all documentation and information upon their request that may be needed to apply for a loan on the purchaser's behalf.

The Purchaser acknowledges that this is to his benefit as the system of mortgage origination used by the Developer will avoid delays enabling the Developer to keep the Purchase price of the units low. The Developer requested certain banks to pre value the units and will release the signed contract to his bond originator as part of the bond approval process and should any further information be required the originator will contact the Purchaser.

2.4 Should the Purchaser not make use of the Developers originator and make use of another originator the purchaser will be liable to pay a penalty equal to one percent of the purchase price prior to transfer and upon the Developer's Attorney's demand.

No penalty will have to be paid by the Purchaser where the Developer's originator could not procure a bond and the Purchaser obtained a bond through negotiations conducted by him or where the Purchaser is a private bank client and obtained the loan from his private bank or where the Purchaser has obtained pre-financial approval from a bank.

3. PROPERTY SOLD

IDENTIFICATION OF THE PROPERTY

RESERVATION OF RIGHT OF EXTENSION

3.1 **The property is sufficiently identified and sold per the plan and annexures hereto annexed and is a sectional title unit as defined in Act 95/1986 which includes an undivided share in the common property and the Seller reserves a right of extension on the land for the development of further phases as per section 25(1) of the Sectional Title Act. The purchaser is aware that building works will be carried out on the site until the scheme is completed.** The Seller guarantees that the ground relating to the unit will be fully serviced, according to the specifications of the engineers, before registration of the unit in the name of the purchaser.

The annexures referred to above include:

- The plans of the unit showing its position in the development
- The size and the layout of the unit, including:
- Parking
- The minimum specifications for construction and finishing.

GUARANTEES AND CONDITIONS

3.2 **The sale is also subject to all conditions and servitudes contained in or referred to in the title deed, to all limitations of use laid down by the statutory authority and to all conditions of any applicable town planning scheme or any subdivisional requirement as well as the Rules (as amplified, if applicable) as contained in the STSMA**

The Purchaser is aware that upon registration he/she becomes a member of the Body Corporate and that the Body Corporate acquire a servitude of right of way over the undivided property of the Sectional Title Owners and the Body Corporate of the ZONNEZICHT Sectional Title Developments so that the Association's members and the member's visitors that are not members of the Body Corporate may visit the sick bay and other facilities.

- 3.2.1 The Seller does not furnish any explicit or tacit guarantees in regard to the property. The Purchaser acknowledges that he was not persuaded into entering this agreement by any presentations made to him by the Seller or any representative of the Seller, other than what is contained in this agreement.
- 3.2.2 The Purchaser should take note than in addition to the patent (visible) defects in the property, there may be latent (not visible) defects in the property.
- 3.2.3 The property is offered for sale to the purchaser in the specific condition in which it stands. The Seller warrants that the Property is compliant with any applicable standards set out under the Standards Act, Act 29 of 1993, or any other public regulation.
- 3.2.4 In the event that the Consumer Protection Act 68 of 2008 does not apply to the transaction between the parties, it is hereby recorded, despite any other provision to the contrary, that paragraphs 3.2.2 and 3.2.3 will not apply and that the property is sold *voetstoots* to the Purchaser and that the Purchaser shall have no claims of any nature against the Seller for any defects in the property.

PARKING

- 3.5 It is recorded that the Purchaser shall have exclusive use rights to a parking bay, either in terms of Section 10(7) of the STSMA as referred to in paragraph A(b), above, or in terms of the Conduct Rules, which in the discretion of the Trustees, shall be subject to a lease agreement in favour of the Purchaser of a particular unit, and further subject to the availability of parking bays.

BOUNDARIES AND MINOR DIFFERENCES

- 3.6 It is recorded that the property is presently in the course of planning and construction and that the sectional plan has not been drawn and that the exact borderlines of the section forming part of the property sold shall be those shown on the final approved section plan.
- 3.7 The PURCHASER shall not be entitled to claim cancellation of this Agreement or any reduction in the purchase price by reason of any alterations to the number, size, location or participation quota of any Section or Sections or any increase in their number. Where the boundaries or the area of the Section or any other Section or building differing in minor respects from the boundaries or area shown on the Plans annexed hereto or the numbers of the section being altered or the exclusive use areas adjoining the Section being altered, the PURCHASER undertakes to accept transfer of the Unit as defined and re-numbered in the Sectional Plan approved by the relevant Local Authority and the Surveyor General.

The parties agree that a minor difference of no more than 5 % in the depicted size and actual size of the unit shall not entitle the Purchaser to claim any compensation for such a shortfall.

Should the difference between the actual and depicted sizes be more than 5% , the Purchaser may not cancel the agreement however he may claim a proportionate reduction of the purchase price, calculated as follows:

Selling price of unit

Square metre sold

= Rand Value per square metre

Rand per square metre multiplied by the size by which the actual unit differs from the depicted unit size after first deducting the 5% of the reduced square metres for which the parties have excused the Developer from liability

The resulting amount should then be deducted from the purchase price or refunded by the Developer to the Purchaser

Should there be any dispute regarding the difference between the actual and depicted sizes the dispute shall be referred to the Seller's Architect for final determination.

- 3.8 The PURCHASER shall not have any claim of any nature against the SELLER for any loss, damage or injury which the PURCHASER, his agents and/or invitees may directly or indirectly suffer by reason of any latent or patent defect in the property or Scheme or by reason of the property or any other part thereof or the Scheme being in defective condition or state of disrepair or any particular repair not being effected by the SELLER timeously or at all or arising out of vis major or casus fortuitus or any other cause either wholly or partly beyond the SELLER'S control or arising out of any other PURCHASE of a property in the Scheme or from any delay in the Completion Date or from any other cause howsoever arising and the PURCHASER hereby indemnifies the SELLER against any such claims.

The Purchaser is aware, as previously stated, that the building in the development are not yet completed and that there may still be building and related activities taking place on the development to which the Purchaser consents until the development is completed.

The Purchaser acknowledges that he is aware of the risk of damage or loss to property and/or services, injury or death to person and assumes these risks voluntarily and indemnifies the Developer, his agents and contractors against any claim.

- 3.9 The SELLER shall be able to make reasonable alterations or amendments to the property as depicted on the model, diagrams, plans, sketches and schedules due to unavailability of materials or the impracticability thereof, without prior notice to the PURCHASER. The PURCHASER shall have no claim against the SELLER in respect thereof.
- 3.10 **The PURCHASER is aware that should the Development Scheme or Sectional Plan not be approved or the Sectional Title Register not being opened, it will not be possible for the SELLER to transfer the unit to the PURCHASER in terms of the Act. In that event, the PURCHASER acknowledges that his rights shall be limited to those set out in this Agreement and that he shall have no further claim upon the SELLER for damages or otherwise by reason of the failure to transfer the property to the PURCHASER in terms of the Act.**

3.10.1 In the event of such cancellation the Seller will cause the Deposit to be refunded and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

4. POSSESSION, OCCUPATION, COMPLETION AND INSPECTION

4.1 POSSESSION

As from the date of completion of the unit the Purchaser takes occupation of the unit and will pay occupational interest as provided in paragraph C. Possession will be on registration and from date of registration the Purchaser will assume all risk regarding the property, meaning should anything negative happen in regard to the property it is the Purchaser's responsibility to rectify same. The Purchaser may make no alterations to the property until date of possession without the Developers written consent and shall maintain the property as received until possession has occurred.

4.2 OCCUPATION AND COMPLETION

From date of completion of the unit as specified by the developers architect, the Purchaser will be liable for occupational interest as provided in paragraph C, irrespective of whether he has moved into the property or not.

The Purchaser undertakes to accept occupation of the unit as close as possible to the date specified and the Developer shall deliver to the Purchaser not less than one calendar months written notice of the date on which occupation of the unit will be available for occupation, should such date differ from the date specified in paragraph D of the deed of sale. The Purchaser will have no claim for compensation or damages against the seller for a variation in the occupation date of the unit.

The purchaser may not let the property to tenants without the seller's written consent, which may not be unreasonably withheld, until the property is registered in the purchaser's name.

Should the purchaser not accept the seller's architect's completion decision, the matter shall be referred to dispute resolution as provided in paragraph 13 for a final decision.

The seller shall be entitled to withhold occupation should the purchaser

be in default with any of this contract's stipulations and/or conditions. However the purchaser will still be liable to the seller for all amounts due to the seller as from the date of completion until the date of registration and for all outstanding monies in terms of this contract.

4.3 **INSPECTION**

Before taking occupation of the completed unit, the purchaser or his authorised representative shall together with the seller's representative inspect the property and compile a list of defects or faults that accordingly to his judgement appear in the work and that is to be handed to the contractor, who is to rectify the defects or faults before the purchaser takes occupation of the property. Any dispute regarding defects and/or faults shall be solved before the Seller hands over the keys of the property to the purchaser and the Seller may withhold occupation and possession of the property until the full purchase price has been paid or an unconditional guarantee for payment has been received.

Minor defects and/or faults recorded in writing on a snag list within 30 days of date of occupation shall be remedied within 3 (THREE) months of the date of receipt of the snag list and the purchaser undertakes to provide reasonable access to the sellers contractors and subcontractors to remedy defects and/or faults. The purchaser may, if he should deem it necessary, arrange for supervision during the remedying process to avoid loss or damage to his personal effects.

5 **DOMICILIUM**

The parties choose their addresses set out above as their Domicilium Citandi Executandi, the address where all notices and other documents, regarding this Agreement, may be forwarded to and where all process documents may be served. The applicable party will be regarded as having received the same even if they did not as each party bears the responsibility to choose an address where they know they will receive documents served at or sent to the chosen domicilium address.

6. **NOTICES**

Any reference to any notice shall be regarded as been given:

- (a) on the date on which the Post Office issues proof of the registered or prepaid registered mail; or
- (b) on successful dispatch of a fax or email to the relevant party's fax number or e-mail address as mentioned above or later stipulated; or

- (c) on the date on which a letter, addressed to the relevant party, was delivered to the party with confirmation of an independent party that such letter was delivered.

Such notice must be addressed to the relevant parties' domiciliae as indicated in the preamble of this Agreement and shall be considered to be received within three (3) days after date of dispatch where the procedure in paragraph (a) is followed and on the day of despatch where the procedure in paragraphs (b) or (c) are followed.

7. BREACH

Should the Purchaser fail or neglect to fulfil within 10 (ten) days of delivery of written notice from the Seller, any of his obligations hereunder, after having been requested to rectify/fulfil these obligations, the Seller or his Agent shall have the right without prejudice to any other right the Seller might have either:-

- (a) to hold the Purchaser to the Contract; or
- (b) to treat the Contract as cancelled and to retain the deposit and all amounts paid on account of the purchase price as liquidated damages in respect of the Purchaser's breach of contract, without minimising the Seller's right to sue for further damages, and
- (c) to claim commission from the Purchaser.

Should the Seller be in default with a defect or fault that is repairable but the period for performance is not possible because of the period of time granted for rectification, the Seller's architect may certify a date for due performance and this extended date shall be binding on both parties provided the Purchaser is notified in writing of the extended date before the lapsing of the 10 day period.

Should the defaulting party be the Purchaser and should the Purchaser dispute the Seller's right to cancel this Agreement and continue to remain in occupation of the unit after cancellation, the purchaser shall be liable to continue to pay the occupational rent, municipal charges, levy and any other amounts for which the purchaser is liable, failing which the purchaser is deemed to consent to the Seller applying for an eviction order.

Where the Seller claims damages and/or possession and accepts payment of the above amounts, it shall not prejudice the Seller's right to cancel this agreement and claim return of the possession of the unit.

This paragraph is mutatis mutandis applicable to the Seller where he is in default

8 THE CONTRACTOR

It is the Sellers sole discretion to appoint a contractor of his choice to erect the building work herein referred to. It is however a condition that the Contractor erects the buildings according to the plans and specifications forming part of this agreement and that a NHBRC (National Home Builders Registration Council) certificate is provided for.

9. NOMINEE / COMPANY / TRUST / CLOSE CORPORATION NOMINEE

9.1 In the event of the Purchaser reserving his right to appoint a nominee to take transfer, the nominee shall within a period of 24 (TWENTY FOUR) hours after concluding this Agreement, be appointed. **The Purchaser** hereby binds himself/ herself/ themselves as surety and co-principal debtor together with the nominee for the due performance by it of all its obligations in terms of this Agreement and renounces the benefits of: non numeratae pecuniae, non causa debiti, errore calculi, ordinis seu excussionis et divisionis, de duobus vel pluribus reis debendi. (See meaning hereunder.)

JURISTIC PERSON

9.2 Where a person signs this contract as a PURCHASER on behalf of a company, trust or close corporation, such a person binds himself as surety and co-principal debtor to the SELLER for the due performance of the entity on behalf of which he has signed this contract and he renounces the above mentioned legal exceptions, the meaning to be set out hereunder, and the parties confirm that they understand the working and implications of these paragraphs.

9.3 **Where a person signs this contract on behalf of a company not yet formed and the company should not be incorporated within 45 days after acceptance by the Seller or the company after being incorporated does not adopt and ratify this agreement within 7 days after its incorporation, the person who signed this agreement shall remain liable to the seller as surety and co-principal debtor for the obligations of the purchaser in terms of this agreement waiving the legal exceptions mentioned above and explained below.**

10 MEANING OF LEGAL EXCEPTIONS

By renouncing the following benefits the Purchaser understands:

10.1 **excussion** - that the lender becomes entitled to sue the Purchaser for

the full amount for which the Purchaser is liable in terms of the suretyship without first proceeding against the company,

- 10.2 **Cession of Action** – that the lender becomes entitled to sue the purchaser without first ceding the lenders right of action against the company to the Purchaser,
- 10.3 **Exception non causa debiti** – that the onus of proving the absence of reason to perform rests on the purchaser,
- 10.4 **beneficium de duobus vel pluribus reis debendi** – that the purchaser becomes liable for the full amount of the debt (notwithstanding the fact that there may be other surities or co-principal debtors
- 10.5 **beneficium ordinis seu excussionis** – the purchaser renounces the right against the lender to proceed first against the principal debtor with a view of first obtaining payment from him, if necessary, by execution upon his assets, before turning to the purchaser for payment of the debt or of so much of it remains unpaid,
- 10.6 **beneficium divisionis** – that the purchaser is not only responsible for the pro rata share of the debt (in the event of two or more persons binding themselves as sureties for one obligation) but for the entire debt,
- 10.7 **beneficium non numeratae pecuniae** – the purchaser cannot allege that he has received no value,
- 10.8 **beneficium errore calculi** – the purchaser will bear the onus to prove any errors in calculations that he alleges.

11. THE BODY CORPORATE – Rules, Levies and Managing Agent

11.1 The Body Corporate

The common property will be controlled by the Body Corporate on behalf of all the owners in the development. A body corporate can only be established after the first transfer of a unit has occurred.

Prior to the first transfer the Seller bears the rights and obligations of the body corporate and shall insure the development which includes the unit hereby sold against all risk. On establishment of the body corporate the body corporate takes over this function. The Body Corporate is regulated by the STSMA and is bound to rules established and registered in terms of the STSMA at the deeds office. Normal principle of law is applicable

to your right of enjoyment namely you may enjoy the fruits of your unit without causing unjust nuisance to your neighbour within the scope of the rules which rules should be to the benefit of all owners of units in the development.

11.2 The Rules

A copy of the rules of conduct as prescribed in terms of the STSMA and as amended by the seller if applicable and to be filed with the Chief Ombudsman, in terms of the CSOSA.

The purchaser confirms that he has read the rules and shall abide thereto. The rules can be altered by the body corporate once established by way of a special resolution of the members as prescribed by the STSMA and the purchaser is aware that all the owners of a unit are members of the body corporate as long as they are owners.

11.3 Managing Agent

Until the body corporate is established the seller is entitled to recover from the purchaser expenses incurred by himself on behalf of the units relating to insurance, municipal services and where applicable other management expenses relating to the development, as more fully set out in paragraph 11.4.1 hereunder. . The seller may appoint a managing agent prior to and for the 1st 3 (three) years following the opening of the sectional title development, in order to ensure continuity; as well as appoint an Operator for the Hospitality Centre, to whom the seller can delegate all his powers and duties. The said appointment, to be ratified at the first General Meeting of the Body Corporate. The seller stays liable to ensure that the obligations imposed on him by the Act and this contract is fulfilled

11.4 Levies

Levies are payable by each owner from completion date which levy is calculated as follows:

Total expense of the body corporate

Total square metre of the units

= Rates per square metre multiplied by owners participation quota as established by the Land Surveyor, proportionately to the size of each unit. (as more fully referred to in Annexure "A" to the main agreement).

11.4.1 Until the levy is formally determined by the body corporate the amount as determined by the seller or his managing agent according to the above formula shall be paid by the purchasers monthly in advance pro rata from date of completion to the seller and after establishment of the body corporate to the body corporate. **Upon the determination of the actual monthly levy so payable any amount unpaid or overpaid shall forthwith be paid or reimbursed by one party to the other.**

12 THE PURCHASER UNDERTAKES

- 12.1 Not to give any instructions to the Seller's contractor's workmen or subcontractors or in any way interfere with the building/construction process,
- 12.2 Not to supply any material or appoint any subcontractors without the prior written consent of the Seller's contractor until the units are registered in the purchaser's name,
- 12.3 Before taking possession of the completed buildings, to hand a list of faults or defects to the Contractor which, according to his judgment, appear in the work, and the Contractor must rectify same before the Purchaser takes possession. Any dispute shall be solved before the Contractor hands the keys to the Purchaser and the Contractor is entitled to withhold possession of the premises until the full contract price or an unconditional guarantee for payment is received.

13 DISPUTE

Should any dispute arise between the parties regarding a fault or defect to the building or unit or as to the quality of the materials or workmanship, or if any party should be dissatisfied with the decision of the architect, such party can call on arbitration within the scope of the following rules:

- 13.1 written notification must be given to other party that dispute is to be referred to arbitration,
- 13.2 An architect, nominated by the Cape Institute of South African Architects, shall act as arbitrator, inspection of the building work done shall be done within 7 (seven) days after appointment of the arbitrator, to be done by himself and the parties, at which instance the parties shall hand in a Written memorandum, which if required by the arbitrator, shall

be supplemented by oral evidence,

- 13.3 No legal representations or cross examining will be allowed in the arbitration processes,
- 13.4 The arbitrators decision must be made known to the parties within 14 (Fourteen) days after the date of inspection and shall contain an order as to the costs of the arbitration,
- 13.5 In the event of the inspection not taking place within the prescribed time, or if arbitrators decision is not made known within the time provided for in this agreement, any party can, by way of written notification to the other party, withdraw from the arbitration and may take such steps as he deems fit,
- 13.6 The arbitrators decision is final and cannot be rescinded or amended by any order of Court.

14 JURISDICTION

For the purposes of all or any litigation, the parties hereby agree and consent to the jurisdiction of the Magistrate's Court which would have jurisdiction under Rule 28 of the Magistrate's Court Act of 1944, as amended, despite the proceedings falling outside the jurisdiction of that court.

The parties agree that any matter regarding the quality of the material used or workmanship would be subject to arbitration as provided in paragraph 13.

This paragraph does not prohibit either party from instituting legal proceedings in any other court that has jurisdiction and should the parties litigate, the successful party in the legal proceedings shall be entitled to claim from the other party all legal costs they incurred on an attorney and client scale.

15 COMMISSION

The Seller has an agreement with the Estate Agent to pay the Estate Agent commission against registration of the property into the purchaser's name on the basis of the estate agent introducing the purchaser to the seller and facilitating this agreement of sale.

In the event of this agreement being cancelled on account of the Purchaser being unable to comply with his obligations in terms of this Agreement, the Purchaser hereby accepts liability, without redress, for payment of the commission due by the Seller to the Estate Agent. Should the agent hold the

purchaser responsible for commission it shall be calculated at 6 % of the purchase price inclusive of VAT to which the Agent is entitled, but not obliged to claim all such commission from the Purchaser or where applicable to claim damages from the Purchaser.

The Purchaser warrants to the Seller that no other agent/agencies other than the agent reflected in the definitions of this agreement introduced him to the property and that the reflected agency is the effective cause of this Agreement and hereby indemnifies the Seller against any other estate agency instituting a claim against the Seller for commission on the allegation that they were the effective cause of this sale.

16. SALE OF PURCHASER'S PROPERTY

The sale of this property is subject to the sale of the PURCHASER'S property namely Erf/ Unit _____, on or before _____ or such extended condoned date.

The PURCHASER'S property shall be deemed sold, if the suspensive conditions, if any, of such contract have been fulfilled. **The PURCHASER acknowledges that it is practically more viable to, and as such, appoints the developer's transferring attorneys, mentioned on page 7 herein, to transfer his property when sold and hereby contracts to and appoints the developer's attorneys to transfer his property when sold.**

17. 72-HOUR NOTICE

Should the SELLER on or before _____ or such extended condoned date, receive another offer with no suspensive conditions, save for obtaining a bond, and proof can be given that the suspensive condition has been complied with, then the SELLER or his Agent, may give the PURCHASER 72-hour written notice at his domicilium citandi et executandi to waive the suspensive conditions in this Contract contained in paragraphs 2 and 16 hereof or prove that the suspensive conditions contained herein, have been fulfilled. Any notice in terms of this paragraph will not be subject to paragraph 7 calling for 10 (ten) days notice.

Notice in terms of the 72-hour paragraph shall only start subsequent to a letter addressed to the PURCHASER at his domicilium address in the manner provided for in paragraph 6 above. In determining the 72-hour period, Saturdays and Sundays are excluded, but should a public holiday form part of the 72-hour period; the 72-hour period will be extended by 24 hours for each and every public holiday, which falls within this period.

If the PURCHASER wants to proceed with this sale, he/she must within the waiver period, provide the SELLER'S Attorneys with a guarantee from a financial institution for the payment of the full purchase price with no other conditions but the registration of the property into the name of the PURCHASER and confirm their intention to proceed with this sale in writing.

Notice to the Transferring Attorneys takes place in accordance with the notice to the PURCHASER as intended in this paragraph.

18. SEVERABILITY

The Seller has made every effort to incorporate the Purchaser's consumer rights, as provided for the Consumer Protection Act, into this agreement. In the event that any provision in this agreement is found to contravene the Consumer Protection Act, the parties agree that such provision shall be severed from this agreement and be treated as if it were not part of this agreement.

19. PURCHASER'S WARRANTIES

The Purchaser warrants that he has acquainted himself with the terms and conditions of this agreement and where necessary requested assistance to have terms and conditions explained and that by signing this agreement he understands the terms and conditions and the implications thereof.

Where there should be more than one purchaser, the purchasing parties agree that they understand that they are jointly and severally liable to the Seller for the due compliance of their obligations in terms of this agreement.

They understand the undertakings, confirmations and warranties given in terms of this agreement.

The parties warrant that they are fully up to date with all their payments to the South African Revenue Services and will remain so up and to the date of transfer and also will not enter into new debts, so as not to jeopardize their mortgage finance as offered by the bank.

20. WARRANTIES

20.1 The SELLER furnishes the Warranty of Quality in respect of the PROPERTY, including both latent and patent DEFECTS, as set out in Section 56 of the Consumer Protection Act, Act 68 of 2008, and warrants that the PROPERTY shall be:

20.1.1 Reasonably suitable for the purpose for which it is generally intended;

20.1.2 of good quality, in good working order, and free of any DEFECT;

20.1.3 Usable and durable for a reasonable period of time, having regard to the use to which it will be put and to all the surrounding circumstances of the supply;

20.1.4 Compliant with any applicable standards set out under the Standards Act, Act 29 of 1993, or any other public regulation.

20.2 *The aforementioned warranty in terms of the Consumer Protection Act shall be applicable for a period of 6 months from the TRANSFER DATE.*

20.3 The SELLER also furnishes to the PURCHASER the Standard Home Builders Warranty prescribed by the National Home Builders Registration Council.

20.4 *The SELLER furnishes no further warranties in respect of the PROPERTY and in all other respects the PROPERTY is sold without any further warranties in respect of all FAULTS and DEFECTS, whether visible or hidden, as defined in this agreement or the common law.*

20.5 *Written notification of any DEFECTS or FAULTS covered in this paragraph must be received by the SELLER within the time periods of the warranties set out in the paragraphs referred to failing which the warranties will lapse.*

20.6 The SELLER shall only be responsible in terms of this paragraph and paragraph 4.3 for DEFECTS or FAULTS arising as a result of faulty workmanship and/or materials and shall under no circumstances be

responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of or arising from any risk insurable in terms of homeowner's insurance policies issued by South Africa insurance companies in respect of residential properties and the SELLER shall under no circumstances be liable for any consequential loss or damage.

20.7 A certificate by the SELLERS ARCHITECT stating that any DEFECT/FAULT for which the SELLER is liable in terms of paragraph 12 has been made good and shall be final and binding on both parties and shall relieve the SELLER from any further obligations in respect of such DEFECT/FAULT. The SELLERS ARCHITECT shall furthermore determine any dispute between the parties as to whether a DEFECT/FAULT exists.

20.8 In addition, the PURCHASER shall save for gross negligence not have any claim of any nature against the SELLER for any loss, damage or injury which the PURCHASER, his family and/or invitees may directly or indirectly suffer by reason of any latent or patent DEFECTS/FAULTS in the PROPERTY or by reason of the PROPERTY or any part thereof being in a defective condition of state of disrepair or any particular repair not being effected by the SELLER timeously or at all or arising out of any other cause either wholly or partly beyond the SELLER's control or arising out of any act or omission by any other purchaser of a property in the DEVELOPMENT.

20.9 The PURCHASER intends to use the property for residential accommodation purposes only.

IT PAYS TO LOOK AFTER YOUR APARTMENT/UNIT

This contract may only be enforced by the original owner/occupier. It does not cover damage or loss caused by misuse, neglect, negligence, abuse or accident or any risk insured against in terms of the residential property. It is therefore in your interest that your home receives proper care and maintenance.

21. LETTING OF PROPERTY

Any lease agreement entered into between the Purchaser and a tenant shall contain the following annexures; (1) Annexure "A" to the main Agreement, (2) Conduct rules: which tenant shall, where applicable, be bound to the terms thereof.

22. HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT

The Purchaser is aware that **The Housing Development Schemes for Retired Persons Act, Act No. 65 of 1988** is applicable to this development and that Annexure "A" to the Main Agreement forms part of this Agreement of Sale. **In terms of the said Act, no person other than a retired person or a spouse of a retired person may occupy a unit. A retired person means a person who is 50 years or older.**

23. GENERAL PROVISIONS

23.1 The agreement is not subject to any condition not herein contained, and no warranties or representations expressed or implied have been made by the parties other than as set out herein and no indulgence, relaxation or failure to exercise rights in terms hereof by the Seller shall constitute a waiver and any variation hereof is valid only if reduced to writing and signed by the parties.

The Purchaser confirms hereby that neither the estate agent, seller nor any representative of the Seller or any other person acting on behalf of the Seller made any representations to him other than those conditions recorded in this Agreement.

23.2 It is recorded that the Seller or its Agents may have used models and brochures and other advertising material in marketing and presenting the proposed development to the Purchaser and the public at large. The furniture, finishing's and fittings shown in the advertising material were for advertisement purposes only and the Purchaser acknowledges that the finishing's and fittings to his or her property will comply with the finishing schedule that he or she has chosen.

23.3 **The Purchaser's signature hereto constitutes an offer irrevocable for a period of 5 (five) business days within which the Seller may accept it. The date of the purchaser's signature will be the first day of the said 5 business days.**

The parties agree that this agreement is deemed concluded at the time and at the place that the Seller accepts the Purchaser's offer by signing it. Irrespective of when the Purchaser was informed of the acceptance of the offer by the Seller.

23.4 If any provision or provisions of this agreement should be held to be invalid, illegal, unenforceable or in conflict with any law or jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

23.5 The rule that a contract is to be interpreted against the party that is responsible for drafting it and any other similar rules of interpretation shall not apply to this contract and the purchaser waives any rights that he has to rely on such rules of interpretation.

24. SPECIAL CONDITIONS

THUS DONE AND SIGNED AT _____ on _____

SELLER

WITNESS

THUS DONE and SIGNED at _____ on _____

PURCHASER

WITNESS

WITNESS

THUS DONE and SIGNED at _____ on _____

PURCHASER

WITNESS

WITNESS