

**MEMORANDUM OF AGREEMENT UNDER THE ACT OF  
HOUSING DEVELOPMENT SCHEMES NR.65 OF 1988 (HEREAFTER REFERED TO AS  
“THE ACT”), ENTERED INTO AND BETWEEN**

**MATFLOR (PTY) LTD**  
**(Registration number 69/14265/07)**  
**a company with limited liability herein represented by HENDRIK JOHANNES PETRUS SMIT**  
**OR PIETER-PHILIP SMIT**

**(Hereafter referred to as SELLER)**

**FROM: 76 Kommissarisstreet, Welgemoed, Bellville 7530**  
**Telephone number: 021 913 2840**

**AND**

**1. Identity number: Tel:**

**2. Identity number:**

**From:**

(Hereafter referred to as the **OCCUPANT**, also in the case of the Surviving spouse, who must be a spouse on date of signing hereof)

**SEEING AS THE SELLER** established a residential Development known as Jacobsbaai retirement village located on erf 377 Jacobsbaai, with the purpose of selling occupation rights therein;

Therefore the **SELLER** and the **OCCUPANT** agree that the **SELLER** may sell the occupation rights of the living unit stated herein to the **OCCUPANT** for the natural lifetime of the **OCCUPANT**, subject to the conditions herein expounded.

**1. PROPERTY OF WHICH OCCUPATION RIGHT IS BEING SOLD**

The property of which the **SELLER** is the legal owner and of which the **SELLER** hereby dispose of the occupation rights to the **OCCUPANT** is:

The living unit know as Unit nr.....Sized.....sq Meter

Located at Saldanha Bay municipality in the administrative district Malmesbury.

(Hereafter referred to as the property)

**2. SELLING PRICE**

**2.1** The Selling price of the occupation rights created by this agreement is:  
R..... ( )

**2.2** Apart from the portion of the Selling price referred to in paragraph 2.1 the **OCCUPANT** agrees to pay Property Tax and other levies which may be imposed on the property by the local authority and/or the homeowners association from time to time. The **SELLER** will inform the

**OCCUPANT** on a monthly basis of his responsibilities to this regard, and the amount thus calculated will be paid monthly in advance by the **OCCUPANT** to the **SELLER**.

- 2.3 The **OCCUPANT** further undertakes to invest an amount of R..... ( ) that being so 11,111% (to the nearest R) of the selling price in the Jacobsbaai Retirement Village central fund, in the way and according to the conditions indicated hereafter, and as is revealed in appendix A hereto.

### 3. **PAYMENT METHOD**

The full selling price is payable as follows:

- 3.1 A deposit of R..... ( Rand) upon signing this agreement.
- 3.2 The balance of R..... ( Rand) upon the issuance of a certificate as is specified in section 6(1)(A) of the act of retired individuals, act 65 of 1988 (Certificate issued by a quantity surveyor or architect in order to certify the completion of the living unit) or upon date of occupation, as is specified in 4.1 below, which ever occurs last.
- 3.3 The deposit referred to above will be remunerated to the attorney of the **SELLER**, PP Smit Attorneys, Jacobsbaai, Absa Bank Vredenburg, Account number 4058997714, Branch code 632005. Mentioned deposit will be received in trust and will be invested on behalf of the **OCCUPANT** in an interest bearing account. The deposit will be paid to the **SELLER** on the date of issuance of the certificate referred to in 3.2 above and the interest earned on the investment will be paid to the **OCCUPANT**.
- 3.4 The **OCCUPANT** will deliver guarantees for the payment of the balance of the selling price to the **SELLER** or to his attorney, to the satisfaction of the latter, within a period of 21 days of completion of the signing of this document.
- 3.5 On all amounts referred to in this contract but not paid in a timeously the **OCCUPANT** will pay interest at a rate to match the prime homeloan lending rate of Absa Bank.
- 3.6 For the purposes resulting from this agreement the parties indicate their separate *domicilli citandi et executandi* as follows:
- (a) **SELLER** – at 76 Kommissarisstreet, Welgemoed, Bellville  
 (b) **OCCUPANT** – the property

### 4. **SELLING OF OCCUPANCY RIGHTS**

- 4.1 The **SELLER** and the **OCCUPANT** agree that occupation of the unit will take place on ..... , or upon the issuance of the certificate referred to in section 6(1)(a) of act 65 of 1988, whichever date is last, but no later that two (2) years after the signing of the agreement. From the date of issuance of the mentioned certificate the **OCCUPANT** will be liable for levies.
- 4.2 Occupation will be subject to the conditions and stipulations of this agreement and the rules of the Homeowners association. Included are rules of conduct which may be formulated by the Homeowners association in order to indicate, among other things, certain behavioural norms which must be obeyed by all occupants and/or their spouses. The rules of conduct may be adjusted from time to time. The **OCCUPANT** will automatically become a member of the Management association upon signing this agreement and will be bound by the management rules and rules of conduct from such a time onwards. By signing this agreement the **OCCUPANT** declares himself aware of the contents of aforementioned rules.

- 4.3 While the **SELLER** support the viewpoint of providing the occupants with the greatest degree of individual independence and freedom in their daily activities, he will have the right to take the necessary steps to his own discretion, against occupants when he feels it is necessary to do so under the circumstances in order to ensure the interest and maintenance of other occupants as well as of the unit. This right will include eviction of an occupant under exceptional circumstances, in which case this agreement will be cancelled and the conditions of paragraph 14.4 will be relevant *mutatis mutandis*. It will be put on record that the **SELLER** will employ this right with utter circumspection and will only take this step should the stipulations of the agreement not be adhered to or upon seeking medical or additional expert opinion, as well as that of other bodies or individuals concerning all relevant parties.

## 5. **PAYMENT OF MONTHLY LEVY**

Barring any limitations implemented or order commanded by a general assembly of members, the management association called into being by the law has the authority-

- 5.1 to establish for administrative expenses a levy fund sufficient in the opinion of the management association for the repair, upkeep, control, management and administration of the housing development, accommodation, land, common property and the building or buildings in relation thereto, including a reasonable provision for future maintenance and reparation, for the payment of rates and taxes, for the supply of electricity, gas, water, fuel, security services and sanitary and other services to the building or grounds and any insurance premiums, and for the discharge of any obligation of the management association;
- 5.2 to require from members whenever necessary, to pay the levy for the purpose of satisfying any claims against the management association;
- 5.3 to determine from time to time the amounts to be raised for the aforesaid purpose by the management association;
- 5.4 The levy will be calculated in accordance with paragraph 14 of Regulation 1351 as declared in accordance with the act. The property tax and municipal levy component referred to in paragraph 2.2 above, will be calculated by the local municipality based on the municipal evaluation per erf with improvement thereon. If there is no municipal evaluation available at the time of this sale, then the property tax and municipal levy component will in the interim be calculated as one three hundredth of the property tax and municipal levy account for the whole development. This arrangement will be temporary until such a time as the Municipality is able to supply separate accounts for every erf.
- 5.5 The **OCCUPANT** remains accountable for the monthly levy under all circumstances, until the responsibility for the payment thereof is transferred to the next buyer.

## 6. **NO WITHDRAWAL FROM AGREEMENT BEFORE OCCUPATION**

The **OCCUPANT** may not end this agreement before the date of occupation.

## 7. **UNDERTAKING AND REPRESENTATION**

Except as expressly agreed herein, the **SELLER** made no presentation, tacit or otherwise, nor provided an undertaking or guarantee with regard to the specific unit or any aspect linked thereto, and it is being expressly agreed that the sales occurs "voetstoots" (as it stands). This sale is further subject to all the conditions and servitudes linked to the living unit, as well as to the rules declared by the management association from time to time.

8. **TERM**

The living right of the **OCCUPANT** will continue for the natural lifetime of the **OCCUPANT**, unless it is being ended by the **OCCUPANT** or by the **SELLER** as determined in the conditions to follow.

9. **BREACH OF CONTRACT**

Should the **OCCUPANT** fail to use the living unit for the purpose for which it was purchased, the **SELLER** will have the right to inform the **OCCUPANT** in writing to suspend all activities within seven (7) days. Should the request not be adhered to, the **SELLER** will be able to end the **AGREEMENT** in accordance with paragraph 14.

10. **ENDING THE AGREEMENT AFTER OCCUPATION**

This agreement will be ended and will come to an end;

10.1 In the event that the **OCCUPANT** gives the **SELLER** at least two calendar months written notice to this effect; or

10.2 In the event that the health of the **OCCUPANT** deteriorates to the degree that permanent medical care is required and the individual is no longer able to live independently in his unit, this agreement will lapse as of the last day of the second calendar month when these occurrences take place. Medical testimony in the form of a certificate by own doctor or by a doctor or specialist named by the **SELLER** will serve as sufficient evidence that the **OCCUPANT** is no longer able to live in the unit permanently.

10.3 On the last day of at least two full calendar months after the **OCCUPANT** has passed away, or such a later date decided upon with the **SELLER** and his executors or heirs; or

10.4 In the event that the **SELLER** should deem it necessary to cancel this agreement in accordance with paragraph 14.4; or

10.5 By mutual agreement.

With the understanding that the living unit may be marketed by the **SELLER** during the notice period without prejudice to his rights.

10.6 When the agreement comes to an end, for whichever reason, the **SELLER** or his nominated agent will be responsible for the marketing of the occupation right. The alone mandate to do so will be vested in the **SELLER** or his agent at all times. Commission of 3% + VAT will be payable by the follow-up buyer on the total remuneration (central fund component included.)

In the event that neither the **SELLER** nor his agent is able to estrange the occupation right within a period of 3 months, the **OCCUPANT**, his nominee or his executor have the right to propose an approved buyer or buyers with the intent of acquiring the occupation right on the conditions stipulated by the **SELLER**.

In the event that a follow-up buyer is found, the occupation right is sold to the buyer on the same financial basis as is expounded herein. In other words, a price for the occupation right plus 11.1111% thereof as investment in the Jacobsbaai Village central fund. (Both components therefore represent the total remuneration payable by the follow-up buyer.) The follow-up purchase differs in that the follow-up buyer only receives enough debentures in exchange for his 11.1111% investment to cover his monthly levy, as is explained in more detail in paragraph 17 hereafter.

In the event that the net reselling price of the occupation right (excluding the 11.1111% central fund component) is more than the selling price referred to in paragraph 2.1 hereof, after deduction of the agent commission, the **OCCUPANT** shares in 50% of the difference, which 50% along with the selling price in paragraph 2.1 is paid to the **OCCUPANT** as soon as the **SELLER** receives the funds from the successive buyer.

#### 11. **INSURANCE**

The **OCCUPANT** will be responsible for the payment of the insurance premium on the property and herewith cede any payment received from the named insurance to the **SELLER** who will employ the return to fix the damage which led to the payment initially. In addition, the **OCCUPANT** will:

- 11.1 Not use premeditation to do anything in the unit which may affect the insurance policy of the **BUILDING**, declare it invalid or cause the premium thereof to increase.
- 11.2 Be at sole risk for his equipment and property which may be inside or on the living unit at any given time. The **SELLER** will not be responsible for any loss or harm which may directly or indirectly be visited upon the property of the **OCCUPANT** due to defects in the building or any other reason at all, including leakages, cave-ins of the building, its fittings or fixtures, insects or damp;
- 11.3 In the event that the living unit is damaged in its entirety by either fire or by any other cause to an extent that the habitation thereof is no longer possible, the **OCCUPANT** will be entitled to cancel this agreement, in terms of paragraph 10 hereof. In which case the **SELLER** may use the return received from the insurance to repair the property immediately in order to commence the marketing thereof and make the necessary payments to the **OCCUPANT** in terms of paragraphs 10.6 and 17.4 hereof.

#### 12. **LIVING UNIT ADAPTATIONS**

- 12.1 The **OCCUPANT** is not allowed to make changes, improvements or additions of fixed attachments or fittings unless the **SELLER** has provided written consent thereto. Such approval will not be unreasonably withheld by the **SELLER**.

The cost of such improvements, changes or additions will be for the account of the **OCCUPANT** and will not be returned to the **OCCUPANT** once the agreement is ended, unless written approval to do so has been granted in advance.

- 12.2 The **OCCUPANT** will ensure that the interior of the living unit remains neat and clean at his own cost and will be liable for the reparation of anything which may break or become faulty and, when this agreement comes to an end, will leave the living unit in the same pristine condition as it was found. If not the **SELLER** will be allowed to repair the interior to the same condition in which the **OCCUPANT** found it and deduct the cost thereof from the resale proceeds due to the **OCCUPANT**.

#### 13. **PHYSICAL WELBEING OF THE OCCUPANT**

The **OCCUPANT** agrees that, should he become physically or mentally ill to the degree that he is not able to take care for himself while living in the unit, he may be transferred to an institution for such care as may be necessary, at his own cost.

14. **RESPONSIBILITIES OF THE OCCUPANT**

- 14.1 The **OCCUPANT** will refrain from any conduct which will result in the disturbance or discomfort of any other person in the development of which this living unit forms a part.
- 14.2 The **OCCUPANT** will submit to and will adhere to all such rules of conduct or specific instructions as may be determined by the management association from time to time.
- 14.3 The **OCCUPANT** will adhere promptly to all requirements herein stipulated.
- 14.4 In the event that the **OCCUPANT**, after he has been warned in writing by the **SELLER**, remains remiss of sub paragraph 14.3 as mentioned above, or fails to fulfil paragraph 2.2 when it has been required, will the **SELLER** be entitled to end this agreement upon providing 60 days written notice, in which case the stipulations of paragraph 10.6 *mutatis mutandis* becomes relevant.

15. **CESSION AND TRANSFER**

The **OCCUPANT** will not be entitled to transfer, bequeath or pass on any the rights and privileges associated with occupation of this unit. The unit may be sublet to a third party once written approval has been granted by the **SELLER** and the **MANAGEMENT ASSOCIATION** in the event that the lessee is a retired individual as described under the act for retired persons act 65 of 1988.

16. **COST**

The **OCCUPANT** is responsible for paying all costs pertaining to this agreement by law upon request. Furthermore the **OCCUPANT** will be responsible for costs relating to the registration of the occupation right against the title deed of the property on which the unit is located, as well as the cancellation thereof once the occupation right comes to an end. This is optional however and the **OCCUPANT** can choose not to register these rights in order to save costs.

17. **CENTRAL FUND**

It is a suspensive condition of this agreement that the **OCCUPANT** must invest an amount of R..... (the amount of which is 11.1111% of the selling price), above and beyond the selling price as specified in paragraph 2.1 in the Jacobsbaai Retirement Village Central Fund Pty Ltd under the following conditions:

- 17.1 The investment must remain with the mentioned company for the full term of the occupation right of the **OCCUPANT** and until the **SELLER** resells the occupation right.
- 17.2 Written evidence that the investment has been made or, alternatively, that guarantees have been provided for the settlement of the investment to the Jacobsbaai Retirement Village Central Fund Pty Ltd must be provided to the **SELLER** or to his attorney within 21 days of the undersigning of this agreement.
- 17.3 The **OCCUPANT** will receive debentures in exchange for his investment in the Jacobsbaai Retirement Village Fund Pty Ltd. The **OCCUPANT** agrees that the original debentures is held in trust by the **SELLER** until such a time as the living right of the **OCCUPANT** expires and the **SELLER** sells the living right.

- 17.4 The **OCCUPANT** may only sell the debentures issued to him back to the **SELLER**. The **OCCUPANT** hereby provides the **SELLER** with an irrevocable option on the previously mentioned debentures. The date, price and method of payment are as follows:
- 17.4.1 The debentures representing the total investment and the occupation right of the **OCCUPANT** is purchased back simultaneously and at the same price for which it was bought initially.
- 17.4.2 Payment for the debentures which are being bought back will occur along with the receipt of the proceeds of the sale. Seeing as the same financial arrangement will apply to all parties (the follow-up buyer and the seller) with the initial sale as well as with the ultimate resale, the transaction will consist of 2 components namely an occupation right as well as an investment in the Jacobsbaai Retirement Village Central Fund (Pty) Ltd representing 11.1111% (to the nearest R) of the occupation right.
- 17.4.3 In the event that the state of the market is such at the time of resale that the total amount (occupation right plus investment component) which a succeeding buyer is willing to pay, minus the agent's commission, is less than the original investment amount of the debentures, the debentures will be bought back by the **SELLER** for the lesser amount.
- 17.5 The Jacobsbaai Retirement Village Central Fund (Pty) Ltd will pay the full return on investment minus 3% administrative fee to **OCCUPANTS** on a monthly basis in relation to the quantity of R1 debentures owned per unit.
- 17.6 It is an emphatic condition that the return on investment first be applied by the **SELLER** to clear the monthly levy of the **OCCUPANT** and, should a balance be available, it will be paid directly to the **OCCUPANT** by the Jacobsbaai Retirement Village Central Fund (Pty) Ltd. The **OCCUPANT** hereby enables the Jacobsbaai Retirement Village Central Fund (Pty) Ltd to pay the monthly return on investment to the **SELLER** as far as necessary to clear the monthly levy of the **OCCUPANT**.
- 17.7 The **OCCUPANT** will not be entitled to barter, sell, cede or encumber the investment without the written approval of the **SELLER**.
- 17.8 Die borrowing agreement between the Jacobsbaai Retirement Village Central Fund (Pty) Ltd and the **OCCUPANT**, herewith attached as appendix A, must be signed simultaneously with this agreement.
- 17.9 It is hereby recorded that the investment is made with the purpose of subsidising the monthly levy of the **OCCUPANT**. The **SELLER** will therefore on date of resale of the occupation right, at which time he becomes owner of the debentures, evaluate the income from the debentures (see 17.2 with regards hereto) and only sell enough debentures to a following buyer/occupant to clear the monthly levy of the retirement village as it stands. The date of the resale will be deemed the effective date for this calculation. The price of the debentures component at the time of resale will remain as was calculated in 17.4.2 above, despite the amount of debentures being sold. (In other words 11.1111% of the occupation right.) Any fluctuation in income from the debentures is for the exclusive risk of the **OCCUPANT**. In the event that the income grows to become greater than the monthly levy after receipt of the debentures the **OCCUPANT** is entitled to the surplus. Should the growth be negative, though, and the resulting income is less than the monthly levy, the **OCCUPANT** is liable for the payment of the shortage on demand. The **OCCUPANT** hereby indemnifies the **SELLER** or his agent from any liability regarding the return on investment from the debentures.
- 17.10 In the light of the purpose of the debentures, the parties further record that also a first time buyer (in other words the **OCCUPANT** referred to herein) never receives more debentures than is

necessary to clear the monthly levy. The price of the investment will always be 11.1111% of the occupation right.

- 17.11 Furthermore it is hereby recorded that the **OCCUPANT** is aware of the fact that the **SELLER** has a vested interest in the Jacobsbaai Retirement Village Central Fund (Pty) Ltd.
- 17.12 Furthermore it is hereby recorded that the construction of this agreement, as well as the investment agreement with the Jacobsbaai Retirement Village Central Fund (Pty) Ltd, as well as the symbiotic relationship between the agreements and the implementation thereof may become irrelevant, illegal or impractical with the passing of time or possibly due to changing circumstances, legislation or common law. Therefore the parties hereby agree that if such a situation presents itself, new agreements with the same financial results and goals be signed when requested by the **SELLER**.
- 17.13 Furthermore it is hereby recorded that the evaluation of the monthly income of the debentures in relation to the monthly levy be calculated by taking into consideration all the preceding months of the occupation right of the **OCCUPANT**, but not more than the last 12 months. Die average surplus of the aforementioned period, expressed as a percentage of the average monthly income of the **OCCUPANT**, will be used to determine with which percentage the amount of debentures taken over by the follow-up buyer will be increased or decreased. The follow-up buyer takes over all the debentures of the **OCCUPANT** in the event of an average shortage in comparison to expenses.

18. **SPECIAL CONDITIONS UNDER THIS ACT 65/1988**

18.1 Concept description

Act 65/88 refers to Seller and Buyer. In this **AGREEMENT** the parties are being indicated as **SELLER** and **OCCUPANT**.

Unless the context prescribes an alternative meaning, in this agreement it means the following –

- (1) “retired person” a person of 50 years or older;
- (2) “housing development scheme” any scheme, arrangement or undertaking whereby housing concerns are alienated for occupation;
- (3) “right of occupation” the right of the buyer to a housing concern
  - (a) which is subject to the payment of a specific or specifiable financial sum through means of a loan or otherwise, payable as a single amount or in instalments, in addition to or instead of a levy, and, unless such a financial sum has been paid back in full to the seller or to another representative from the estate or any other such individual; and
  - (b) which grants the ability to occupy a section in a housing concern for the extent of the life of the buyer.

18.2 Content of contract as guaranteed by the Seller

- 18.2.1 The title deed of the property whereupon the retirement village is placed, known as erf 377, has been endorsed in accordance with Section 4 C of the act. The endorsement indicates that a Retirement Village, as intended by the act, is placed on the property.
- 18.2.2 The **SELLER** is the owner of the property from which the occupation right is sold, as is specified in paragraph 1 referred to above.
- 18.2.3 The property is not encumbered with a mortgage.

- 18.2.4 The management rules, as well as the rules of conduct relevant to the occupation right can be viewed at the offices of the **SELLER**, located at 76 Kommissaris Street, Welgemoed, Bellville, during normal office hours.
- 18.2.5 The **OCCUPANT** acknowledges that the agreement is available in a language of his preference.
- 18.2.6 The **SELLER** will take out insurance for the unit inhabited by the **OCCUPANT**. Mentioned insurance will be recovered from the **OCCUPANT** by the **SELLER** or by his agent through means of levies as specified in point 5 indicated above.
- 18.2.7 The **SELLER** will not encumber the property with a mortgage.
- 18.2.8 The **OCCUPANT** will be liable only for the payment of services as indicated in this agreement or as agreed between the parties in writing at a later date.

The services, of which the expenses will be claimed by means of a levy at the commencement of this agreement, include the following: Property tax, upkeep, insurance, security costs, as well as a management fee. All additional services, including use of electricity and water, telephone, internet etc. will be paid by the **OCCUPANT** until an additional arrangement has been made.

The estimated expenses of the retirement village for the first 3 years of operation will be approximately R 800 000.00.

The monthly levy payable by the **OCCUPANT** for the first 2 years is as follows:

1<sup>st</sup> year: R 950.00 per month.

2<sup>nd</sup> year: R 1040.00 per month.

- 18.2.9 The **OCCUPANT** confirms that the **SELLER** has focused his attention on the rights and remedies as included in articles 4(3), 8 and 9 of the act.
- 18.2.10 70% of the housing concern is reserved for retired individuals. 30% of the concern may be sold to either legal entities or natural persons under the age of 50. The **OCCUPANT** consents hereto by signing this agreement.
- 18.2.11 The retirement village will be managed by a management agent in compliance with the management agreement. A copy of the management agreement may be viewed at the business premises of the **SELLER** on request during normal business hours. The **SELLER** has a financial interest in the previously mentioned management agent.

## 19. **THE VILLAGE, A PHASED DEVELOPEMENT**

The **OCCUPANT** confirms that the **SELLER** has informed him/her of the fact that the Village will be developed in 14 phases over a period of time and that the property forms part of phase .....(.....). The **OCCUPANT** hereby grants his approval regarding the phased development as far as it is necessary to do so and agrees to do nothing which may hinder or disturb the attempts of the **SELLER** to this degree.

