

SETTLERS PARK ASSOCIATION

Registered Non-Profit Organisation : Reg. No. 000-351 NPO

RETIREMENT VILLAGE, SERVICE CENTRE AND REGISTERED FRAIL CARE

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PORT ALFRED
6170

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MEMORANDUM OF AN AGREEMENT

made and entered into by and between

SETTLERS PARK ASSOCIATION, PORT ALFRED

(Hereinafter referred to as the Seller)

represented by **KEVIN MILEHAM**

(being duly authorised thereto)

And
(I.D No.)

And (I.D No.)

of (residential address):

Postal address:

Telephone No.:

(hereinafter referred to as the Purchaser/s)

Whereas

- A. The Seller is the registered owner of certain land described in Clause 1.5 hereof upon which it presently conducts the business of providing accommodation and facilities for retired persons but upon which are erected or intended to be erected certain housing units to be made available to retired persons for their lifetime (as defined in Clause 1.5 hereof), and
- B. The Purchaser/s desire/s to acquire the right for his/her/their lifetime (as defined in Clause 1.4 hereof) to occupy a housing unit erected on the aforementioned land on the terms and conditions set forth in this agreement. The Purchaser shall be a member of the Association as defined in its Constitution.

1. Definitions

In this agreement unless the context otherwise indicates, the following terms shall have the following meanings:

- 1.1 “the Acts” shall mean The Housing Development Schemes for Retired Persons Act No. 65 of 1988; and The Housing Development Schemes for Retired Persons Amendment Act, 1990 (No. 70 of 1990); as amended from time to time and the regulations thereunder;
- 1.2 “the housing unit” shall mean certain housing unit **No.** erected upon the property, being dwelling comprising **kitchen, 1 1/2 bathroom/s, 2 bedroom/s, lounge/dining room, garage, and courtyard.**

- 1.3 “date of occupation” means the date on which occupation occurs or when the unit is ready for occupation, whichever is the earlier.
- 1.4 “lifetime” shall mean the period commencing upon the date of occupation and terminating on -
- 1.4.1 the death of the Purchaser or should there be more than one Purchaser, on the death of the last Purchaser, or
- 1.4.2 the date upon which the Purchaser/s should voluntarily vacate the housing unit, or
- 1.4.3 the date upon which the Purchaser/s should vacate the property following cancellation hereof for breach in terms of Clause 17, or
- 1.4.4 the date upon which the Purchaser (or should there be more than one Purchaser, the last of the Purchasers) shall, as a result of frailty or the inability to continue to care for himself/herself be moved into the Seller’s frail care centre in terms of Clause 10 hereof, whichever is the soonest.
- 1.5 “the property” shall mean Erven 2806, 3609, 3853 and 4353 situated on Alfred, Bathurst and Horton Roads, Port Alfred in the district of Bathurst.
- 1.6 “the Purchase Price” shall mean the purchase price referred to in Clause 5.1.
- 1.7 “retired persons” shall mean retired persons as defined in the Acts.
- 1.8 “the rules” shall mean house rules presently existing or to be imposed by the Seller upon all persons occupying or leasing accommodation on the property, a copy of which (as presently in force) has been furnished to the Purchaser/s.
- 1.9 “the scheme” shall mean the provision of lifetime occupation in certain buildings on the property:
- 1.10 “lifetime rights” shall mean a lifetime right of occupation by the Purchaser/s of the housing unit with effect from the date of occupation.
- 1.11 “common property” shall mean that part of the property upon which no buildings are from time to time erected but including the community centre, administration offices and frail care facilities.

Other terms shall bear the meanings ascribed to them in the Acts and the masculine shall include the feminine and vice versa and the singular shall include the plural and vice versa.

2. The Seller hereby grants to the Purchaser/s who hereby acquire/s from the Seller, a lifetime right to the housing unit subject to payment in terms of Clause 5 upon the terms and conditions set forth in this Agreement.
3. It is recorded that the legal basis upon which this grant and acquisition is made is that the Purchaser/s shall have sole right to occupy, enjoy and use the housing unit during his/her/their lifetime but subject to the terms and conditions set out in this Agreement.
4. **Facilities**

It is recorded that the facilities made available to the Purchaser/s in respect of the housing unit shall include the following:

- 4.1 provision of water, electricity and sewerage (subject to metering and inclusion in levies in terms of Clause 11);
- 4.2 the right of access to the housing unit by a road or roads leading from the main entrance of the property through the common property to the housing unit and to other buildings on the property. Permission to fence any portion of the property by the Purchaser/s may be granted by the management of Settlers Park in line with the rules adopted by the Association from time to time; provided that existing fences may remain until the expiry of relevant life rights.
- 4.3 the right of use and enjoyment of the common property, provided that this right shall not prevent the Seller –
 - 4.3.1 from erecting upon the common property other buildings for letting or disposal or other buildings or works for administration of the property and/or use by persons residing on it up to the limit permitted in terms of the Port Alfred/Ndlambe bye-laws and regulations from time to time; and
 - 4.3.2 from changing the design, layout, garden or other features of the common property, or constructing or removing such access roads or other works as it may deem fit without prejudice however to the provisions of Clause 4.2 hereof.
- 4.4 the provision of security services and facilities as determined by the Seller on such terms and conditions as the Seller may from time to time provide for the benefit of all persons residing or working on the property;
- 4.5 the right to make use of the community centre, dining, laundry or other communal facilities as the Seller may provide from time to time for the benefit of all members.
- 4.6 maintenance and repair of the exterior and interior, including the roof and structure of the housing unit, and upkeep of the grounds and gardens;
- 4.7 the provisions of frail care in terms of Clause 10.

5. **Purchase Price**

- 5.1 The Purchase Price shall be R () being variable by the agreed alterations and additions and as finally determined as set out in Addendum A to this Agreement if the Purchase Price has been varied.
- 5.2 The following payments and dates will be made as building progresses:

Sum Payable

Date Payable

- 5.3 The annual rate of interest to be paid by the Purchaser/s for late payments will be the interest rate charged by the large banks plus 2%.

6. **Termination of Right of Occupation**

- 6.1 On the death of the last living or should the last living or the Purchaser/s permanently vacate the dwelling, the right of occupancy shall revert to the Association and the life right shall terminate. The Association shall then refund to the estate or to the last living as the case may be, 75% of the original purchase price or 75% of such lower figure as may be obtained, subject to the Association being able to find a new Purchaser of a life right of occupation of the said dwelling.
- 6.2 Should the Purchaser/s permanently vacate the housing unit due to frailty or the inability to continue to care for themselves and be provided with frail care facilities the lifetime right of the Purchaser/s to the housing unit shall be deemed to have terminated and the provisions of Clause 10 shall apply. The Seller shall however **not** be obliged to refund to the Purchaser/s the 75% of the Purchase Price but shall be entitled to retain it on behalf of the Purchaser/s and to offset against it the cost of provision of frail care for the Purchaser/s until it is exhausted, provided that interest at the 32 day call rate of the Association's banker less 1%, accrue to unspent balance.

7. **Acceptance of Housing Unit**

The Purchaser/s acknowledge/s that prior to taking occupation he/she/they will have inspected the housing unit and by taking occupation are satisfied with the nature, extent and provisions thereof.

8. **Recordals**

- 8.1 The lifetime right granted herein is not registrable and no transfer of the housing unit or registration of any right in respect of the housing unit will be effected in favour of the Purchaser/s;
- 8.2 The Seller is the owner of the property;
- 8.3 No interest (save for interest which may be payable upon any levies or other charges which may be in arrears from time to time) shall be payable by either party to the other arising from the terms hereof: the consideration for lifetime right is to be paid in one single instalment on signature hereof or upon the payment of the final payment on due date as provided in Clause 5 hereof;
- 8.4 The rules applicable to the property and all residents as determined by the Association and as varied from time to time, form part of this agreement.
- 8.5 The nature and extent of the facilities or services to be provided are set out in Clause 4 hereof and the Purchaser/s is entitled to use such facilities and services in conjunction with other persons upon the property. The facilities include care for debilitated or frail persons in respect of all such facilities and services which are presently available;
- 8.6 The Purchaser/s acknowledge/s that the Purchaser/s shall have no claim whatsoever against the Seller for any damage to any movable property brought by him/her/them into the housing unit from whatsoever cause arising and whether caused by the negligence of the Seller or its agents or otherwise;
- 8.7 The housing unit will be insured by the Seller against risk of damage by fire, earthquake, civil riot or otherwise provided in terms of standard house-owner's comprehensive policy(ies). The Purchaser/s shall be obliged to make their own arrangements in regard to the insurance of any movables brought by him/them onto the property;
- 8.8 The Seller will bear its own costs of the drafting of this Agreement; there will be no costs of transfer;
- 8.9 The Seller does not undertake that it will not encumber the property by mortgage bond;
- 8.10 The Seller does not give any estimate of future expenditure in respect of the housing development scheme or of the property, such expenditure shall (save for the obligation of the Purchaser/s to pay

levies) be borne by the Seller. The Seller shall provide to the Purchaser an estimate of the amount of the levy for a period of two years in advance;

- 8.11 The liability of each life-righter to pay by way of a levy to the Seller shall be determined by the floor area of the housing unit, including garage, car port and patios, correct to the nearest square metre. A charge for electricity, water and other municipal services to be allocated by the Seller from time to time. The Seller shall pay levies on all unalienated housing units and common purpose structures.
- 8.12 The attention of the Purchaser/s is drawn to the provisions of sub-section 3 of section 4, section 8 and section 9 of the Act. Should the Purchaser/s be unable to pay the LEVY, the Seller reserves the right to offset or partially offset the levy against the 75% of the Purchase Price. Should the Seller however in its sole discretion decide that such failure is to the disadvantage of the other residents on the property, it has the right to deem this a breach of the Agreement in which event it may terminate this Agreement on reasonable notice to the Purchaser.
- 8.13 All the housing units to be disposed of within the scheme are to be disposed of by a lifetime right to a Purchaser or Purchasers at least one of whom is 60 years or older.
- 8.14 the property and all buildings upon it will be managed and maintained by the Seller and no outline of management structure is accordingly furnished.

9. **Further Recordals**

The following further recordals are made in terms of Regulation 5 (to the extent that such recordals are not otherwise contained in this Agreement).

- 9.1 Further housing units may be erected on the property at the Seller's discretion;
- 9.2 The scheme is a housing development scheme as contemplated by the Act;
- 9.3 A copy of this contract will, on signature, be made available to the Purchaser/s;
- 9.4 The language of this contract and all communication from the Seller will be English;
- 9.5 There is a management agreement, a copy of which is available at the administration offices, and a Managing Agent has been appointed;
- 9.6 The floor area to the nearest square metre of the housing unit, including garage, is **m²**;
- 9.7 The Purchaser/s shall have no right to dispose of, deal in, sublet or grant any right to any other person in respect of his right of occupation: he/she/they shall be obliged to occupy the housing unit personally and may not grant any right of occupation or use to any other person whatsoever. Provided however that in the event that a Purchaser/s should after signature hereof marry or remarry, the Seller may in its discretion consent that the new spouse of such Purchaser/s may become a joint Purchaser/s in which event, such spouse shall sign an Agreement in the same form as this Agreement subject to any additional changes or charges which the Seller may require. Provided too, that if special circumstances exist which make it impossible for the Purchaser to occupy the property, and subject to his obtaining the written approval of the Seller, he may arrange to let the property until such time as he is in a position to occupy it himself. In this event the attached Addendum to this memorandum shall be completed by all parties concerned.

10. **Frail Care**

The Purchaser/s shall be entitled to receive frail care from the Seller and the Seller undertakes to furnish frail care in such divisions in the frail care centre as determined by it from time to time on the following basis:

- 10.1 The Purchaser/s shall be obliged to pay to the Seller a monthly fee in advance in respect of expenses deemed necessary by the Seller to cover the cost of residence and frail care afforded to the Purchaser/s. The monthly fee payable in consideration for frail care shall be determined by the Seller from time to time. Provided that (except as provided in Clause 10.7 hereof) should the Purchaser/s fail to pay the monthly fee his or her right to remain in the frail care facility shall terminate and the Seller shall be entitled to require him or her to move elsewhere.

The Seller has the right to enforce the obligation of the Purchaser/s to move to alternative accommodation as may be identified by the Seller.

- 10.2 The Purchaser/s shall be deemed to be “frail” when he/she is no longer capable of caring for himself or herself or becomes bedridden or senile or otherwise in need of permanent attention and supervision;
- 10.3 The decision as to whether the Purchaser/s is or are frail will be determined by the Seller, a medical practitioner nominated by the Seller in consultation with the Sister in Charge of the Frail Care facilities and the immediate family of the Purchaser/s. The Purchaser/s medical practitioner and other advisers may also be consulted;
- 10.4 In the event that it is decided that the Purchaser/s is or are frail:
- 10.4.1 if there is one Purchaser, he or she shall be moved into the Seller’s frail care facility to be cared for as hereinafter provided. In such event, the lifetime right shall terminate and the Purchaser shall be obliged to vacate the housing unit;
- 10.4.2 if there are two Purchasers and one of them becomes frail, the one who has become frail may be moved to the frail care centre but the remaining Purchaser may remain in occupation and the lifetime right shall not terminate but shall survive in respect of the remaining Purchaser. In such event the remaining Purchaser may continue to occupy the housing unit but no portion of the Purchase Price shall be refundable until the surviving Purchaser dies, or until this Agreement is otherwise cancelled. Upon such termination of the lifetime right, the Seller shall be entitled to set off the outstanding cost of providing frail care to the Purchaser/s against the refund which would otherwise have been paid;
- 10.5 In the event that a Purchaser becomes frail, the Seller undertakes to house and care for such person in the registered frail care facility. The Seller shall provide the necessary accommodation, bed, food, nursing and care for such person until his or her death: provided that if no room is available in the frail care facility the Seller shall be required to provide nursing care at the housing unit or elsewhere at the discretion of the Sister in Charge until a frail care position becomes available. In such event, the Purchaser/s will be required to deposit all medicines with the Sister in Charge, who will dispense these at the prescribed times;
- 10.6 The Purchaser/s will be liable for and shall pay all costs incurred in connection with the services of a medical practitioner if one is required: in the event that the Purchaser/s should develop an ailment or ailments requiring hospital treatment, the Purchaser/s shall also be liable for any costs incurred in connection with such hospital treatment;
- 10.7 If the Seller is satisfied after adequate proof has been given by the Purchaser/s that they are not in possession of sufficient funds or income to enable them to pay the monthly fee in consideration of frail care and that no financial support can reasonably be expected to be furnished by family members or outside resources then the Seller undertakes itself to provide ongoing full frail care attention for the duration of the lifetime of the Purchaser/s and undertakes in such event to temporarily defer payment of any outstanding frail care charges that may accrue but shall not be obliged to waive such charges. If the Seller is not so satisfied the failure by the Purchaser/s to pay the frail care charges shall constitute a breach of the Agreement.

In order to confirm their financial position, the Purchaser/s shall furnish to the Seller details of their assets and income in the form of an affidavit or other information or proof as required by the Seller. Failure to supply these details will be deemed to be a breach of the Agreement. The Seller may use this information to determine a payment arrangement with the Purchaser/s. This payment arrangement may include the relocation of the Purchaser who is not frail to accommodation which shall be decided by the Seller.

- 10.8 The Purchaser/s may be permitted to use the services of a live-in nurse. Permission must be sought from the Seller. If permission is granted, the Seller reserves the right to cancel the arrangement on 30 days written notice should the Seller deem it not to be in the interest of other residents. Failure to respond to the cancellation shall be deemed a breach of contract. Any arrangement for a live-in nurse will, however, have to be made through the Sister in Charge.

11. Levies

- 11.1 The Purchaser/s shall pay a monthly levy in advance in respect of the housing unit. Such levy shall be paid on or before the 7th (seventh) day of each month commencing on occupation date: in the event of any dispute in relation to the amount of the levy, the decision of the Seller's auditors shall be final. Should the levy not be paid within fourteen days of due date, the failure to make payment shall be deemed to be a breach of this Agreement. Any variations of the monthly levy shall become effective on two week's written notice to the effect that the levy will be increased. After calculating and determining the levy for services and amenities for the housing unit and such other services that the residents may determine, details will be set out in an annual statement to be furnished to the Purchaser/s by the Seller.

- 11.2 It is specifically recorded that the levy at Settlers Park includes (but is not limited to) the following items:

- 11.2.1 Electricity
- 11.2.2 Water
- 11.2.3 Sewerage
- 11.2.4 Refuse Collection
- 11.2.5 Other Municipal Charges
- 11.2.6 Maintenance and Repair Costs
- 11.2.7 Garden Maintenance Costs
- 11.2.8 Security Costs
- 11.2.9 Administrative Costs
- 11.2.10 Insurance

12. Joint and Several Liability

In the event of their being more than one Purchaser of the housing unit, the liability of each Purchaser to the Seller shall be joint and several.

13. **Access**

The Seller or its agent shall at all reasonable times be entitled to inspect the housing unit both inside and outside.

14. **Maintenance**

14.1 The Seller undertakes that it will bear responsibility for the overall sound structure of the housing unit;

14.2 The Seller undertakes that it will maintain:

14.2.1 appliances belonging to the Seller;

14.2.2 the common property in a state of good and serviceable repair;

14.2.3 all pipes, wires, cables and ducts existing on the land or the building;

14.3 The Seller shall be obliged to maintain the inside and outside of the housing unit and fixtures and fittings connected therewith at his own cost except for any damage or breakages which may be caused by the willful or negligent use of the housing unit. In the event of the Seller effecting any necessary repairs, caused by willful or negligent use of the housing unit, the Purchaser/s shall be liable to reimburse the Seller of the cost of making good and repairing same. The Purchaser/s shall, upon taking possession of the housing unit and discovering same or any of the keys, locks, windows, plumbing, electrical wiring and light fittings or any other fixtures or appurtenances of whatever nature are in a defective state, within sixty days from the date of occupation notify the Seller in writing of the details of such defects and failure to do so on the part of the Purchaser/s shall be deemed to be an admission that all such items are in a good state of repair and condition.

15. **Conduct of Purchaser/s**

During the course of this Agreement, the Purchaser/s shall:

15.1 not cause or permit any disorderly conduct of whatsoever nature or any act which shall constitute or cause a nuisance or inconvenience to any other resident/s;

15.2 not allow any other person to occupy the housing unit or to share the occupation of the housing unit on a permanent basis without the prior express consent of the Seller in writing;

15.3 not let or sublet the housing unit or any portion thereof without the express written authorisation of the Seller and on such terms and conditions as he may decide;

15.4 not permit any business of any type to be conducted in this housing unit without the prior consent of the Seller;

15.5 not store or harbour in the housing unit nor in the premises of the housing unit any goods or equipment which may vitiate the fire insurance policy held by the insured or which may tend to increase the premium payable in respect of such policy;

15.6 not knowingly or willfully cause any obstruction or blockage of sewerage pipes, water pipes and drains situate on the property or in the housing unit but shall, during the course of this Agreement, maintain such sewerage pipes, water pipes and drains free from any obstruction or blockage;

15.7 not make any alterations, additions or improvements to the housing unit or its immediate surroundings without the prior written consent of the Seller first having been obtained, provided that:

- 15.7.1 in the event of the Seller giving such approval, such alterations, additions or improvements shall, in the absence of written agreement to the contrary, be effected under the supervision and control of the Seller's representative whose fees if any shall accrue and shall be borne by the Purchaser/s;
- 15.7.2 the costs of such alterations or additions shall be borne and paid for by the Purchaser/s;
- 15.7.3 such alterations, additions or improvements shall become the property of the Seller without any compensation whatsoever to the Purchaser/s (this includes such items as TV aerials).

While the alteration or addition becomes the property of the Seller, the Seller reserves the right to accept or reject responsibility for the alteration or addition.

16. **Indemnity**

- 16.1 Neither the Seller nor its agents nor employees shall be liable for any damage sustained to or loss of any movables, fixtures, raw materials, books, papers or other property kept in the housing unit whether the property of the Purchaser/s or not arising from any cause whatsoever.
- 16.2 Neither the Seller nor its agents nor employees shall be liable for any damage, injury, or loss of life that may be made against the Seller by the Purchaser/s or by any other person which is not directly attributable to any willful or negligent act or omission by the Seller.
- 16.3 Neither the Seller nor its agents nor employees shall be liable for any damage, injury, or loss of life that may be made against the Seller by the Purchaser/s or by any other person arising from the Purchaser/s use or storage of workshop equipment, tools or materials.

17. **Breach**

In the event that the Purchaser/s or either of them (if there are two) should be guilty of any breach of this Agreement or fail to make payment of any amount due hereunder, the Seller shall be entitled (without any prejudice to any other rights which it may have in law) to give to the Purchaser/s thirty days notice requiring the Purchaser/s to remedy such breach and in the event that the Purchaser/s should fail to remedy such breach within that period, shall be entitled thereafter by written notice to the Purchaser/s:

- 17.1 to cancel the lifetime right of the Purchaser/s and to take steps to procure the eviction of the Purchaser/s from the housing unit;
- 17.2 claim from the Purchaser/s such damage or loss as they may have sustained as a result of such breach and/or
- 17.3 take such other steps as it may be entitled to take in law to protect itself against the consequences of such breach, to prevent its recurrence, or to seek any other remedy in respect thereof.

18. **General**

- 18.1 This document contains the entire Agreement between the parties.
- 18.2 No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 18.3 No failure by a party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall waiver of any subsequent breach nullify the effectiveness of the provision itself.

- 18.4 No agreement to vary, add or cancel this Agreement shall be of any force effect unless reduced to writing and signed by or on behalf of the parties to this Agreement.
- 18.5 No party may cede any of its rights or delegate any of its obligations under this Agreement.
- 18.6 Each party warrants that he is acting as a principal and not as an agent for an undisclosed principal.
- 18.7 The parties choose their domicilia citandi et executandi for all purposes in terms of this agreement Settlers Park Retirement Village, Alfred Road, Port Alfred.

Signed at PORT ALFRED on 2008.

WITNESSES:

1.
 Capacity:
 2.
 Signatory:
 Authority:

1.
 Capacity:
 2.
 Signatory:
 Authority:

Signed at PORT ALFRED on 2008.

WITNESSES:

for SETTLERS PARK ASSOCIATION

1.
 Signatory: K. Mileham
 2.
 Capacity : Administration Manager