

# VOLUME 1



Prepared by: DTS Attorneys

Contact Person: Rian Du Toit

Address: 108 Cape Road, Mill Park, Port Elizabeth

Telephone number: 041 374 0852

E-mail: rian@dtslaw.co.za

# TABLE OF CONTENTS

## VOLUME 1

### Agreement of Sale (Including Schedule A)

#### Annexure 1

Locality Plan

## VOLUME 2

#### Annexure 2

Design Code Book including Concept Plans and Regulation Plan  
(see <http://www.newhorizonvillages.co.za/>)

#### Annexure 3

Subdivision Approval  
(see <http://www.newhorizonvillages.co.za/>)  
Record of Decision  
(see <http://www.newhorizonvillages.co.za/>)

# AGREEMENT OF SALE

**AGREEMENT OF SALE** entered into by and between **THE NEW HORIZON DEVELOPMENT TRUST "the Seller"** and the person/s or entity referred to in BLOCK 1 of SCHEDULE A attached hereto, **"the Purchaser"**.

## 1. SALE

The Seller sells to the Purchaser who purchases the Property referred to in BLOCK 2 of SCHEDULE A, "the Property", which Property is indicated on the Locality Plan attached hereto marked Annexure 1.

## 2. PURCHASE PRICE & DEPOSIT

The purchase price of the Property is the sum referred to in BLOCK 3 of SCHEDULE A, "the Purchase Price". The Purchase Price shall be payable as follows: a deposit equal to the amount referred to in BLOCK 4 of SCHEDULE A, "deposit", shall be paid by no later than the date referred to in BLOCK 5 of SCHEDULE A to the Seller's conveyancer. The Purchaser irrevocably authorises the Seller's conveyancer to invest the deposit with a financial institution. The interest earned on the investment will be paid to the Purchaser on registration of transfer. The balance of the purchase price of the Property shall be paid in cash by the Purchaser to the Seller on registration of transfer of the Property into the name of the Purchaser, ("transfer") and in respect of which the Purchaser shall deliver to the Seller's conveyancer, a guarantee, approved by the Seller's conveyancers, expressed to be payable in favour of the Seller or his nominee on transfer. The Purchaser undertakes to cause the guarantee/s to be furnished within 7 days from the date on which the Seller's conveyancer requests them.

--	--	--	--	--	--	--	--

### 3. **MORTGAGE BOND**

- 3.1 This agreement is subject to the Purchaser obtaining a bond for the amount referred to in BLOCK 6 of SCHEDULE A from a bank or other financial institution, by no later than midnight on the date referred to in BLOCK 7 of SCHEDULE A. This condition shall be deemed to be fulfilled upon notification by the financial institution to the Purchaser that the bond has been finally approved.
- 3.2 The Purchaser may apply for the grant of a bond to the financial institution it wishes to support, but shall be obliged to apply to its financial institution for a bond through the bond originator chosen by the Seller (at no cost to the Purchaser) and have the bond registered by a conveyancer appointed by the Seller.
- 3.3 The Purchaser undertakes to do all within the Purchaser's power to obtain the bond and if the financial institution requires fulfilment of certain conditions prior to its final approval of the bond, the Purchaser warrants that the Purchaser will fulfil all conditions which the Purchaser is reasonably able to fulfil in order to obtain final bond approval. In the event that the bond is approved subject to conditions, the Purchaser warrants that the Purchaser will comply with all conditions of the bond. If failure to obtain the bond is due to the fault or neglect of the Purchaser, this agreement shall be binding on the Purchaser at the option of the Seller.

### 4. **IMPROVEMENTS ON THE PROPERTY AND SELLER'S RIGHT TO RE-PURCHASE**

- 4.1 The Purchaser acknowledges that the Seller has appointed CMAI Architects to draft a Design Code and Concept Plans for all structures to be erected on the Property. By signature hereto, the Purchaser confirms that it has sourced a copy of Volume 2 from the website referred to above, which includes the Design Code Book and Concept Plans.
- 4.2 The Purchaser (or its successor-in-title) will improve the Property by erecting a completed dwelling on the Property within 24 months from the date of registration of transfer into the name of the Purchaser. The Purchaser warrants that any structure that it erects on the plot will be in compliance with the Design Code and Concept Plans.
- 4.3 The Purchaser acknowledges that it has acquainted itself with the Design Code, the Concept Plans and the Regulation Plan. The Concept Plans are categorised as follows: Row House Concept Designs marked R1 to R6 and Single Residential Concept Designs marked S1 to S5. The Purchaser warrants that it is aware that only the category of Concept Plans so specified by the Regulating Plan may be used as a concept plan for the structure to be erected on the Property.
- 4.4 This condition will be binding on any subsequent Purchaser of the Property and the Purchaser warrants that it will advise all subsequent Purchasers of this condition.
- 4.5 The Purchaser acknowledges that its compliance with this condition is a necessary and desirable for the success of the Seller's current and future adjacent development. This condition will be registered as a restrictive condition against the Title Deed of the Property.
- 4.6 The Purchaser will appoint a registered Architect to draft building plans in accordance with the Concept Plans. All plans for all structures erected on the property must be reviewed by the Design Review Panel and approved by the Design Review Panel as conforming to the Design Code and Concept Plans. The Purchaser will be liable for the costs of submission of the building plans to the Design Review Panel. No building plan shall be submitted to the Nelson Mandela Bay Municipality (NMBM) until it has been approved by the Design Review Panel.

--	--	--	--	--	--	--	--

- 4.7 In the event that the Purchaser fails to adhere to the Design Code and Concept Plans OR fails to erect a completed dwelling on the Property within 24 months from the date of registration of transfer of the Property into the name of the Purchaser, then the Purchaser hereby grants the Seller an option to repurchase the Property at the same purchase price referred to in BLOCK 3 of SCHEDULE A, less VAT and the costs of the re-transfer from the Purchaser to the Seller.

5. **HOMEOWNERS ASSOCIATION (HOA)**

The Purchaser will automatically become a member of the HOA on registration of transfer of the property into its name and be obliged to adhere to the constitution of the HOA. The HOA will be responsible for, *inter alia*, the maintenance of the park areas, park and street furniture, park lighting, plantings on the sidewalks and general security. The HOA shall levy sufficient monetary contribution from each member so as to properly fulfil its functions. The HOA shall implement any conditions imposed by the NMBM. The Purchaser may not transfer the Property without the written consent of the HOA. This condition will be registered as a restrictive condition against the Title Deed of the Property.

6. **CONDITIONS IMPOSED BY LOCAL AUTHORITY**

The Purchaser confirms receipt of Volume 2 which includes a letter from NMBM (Annexure3(a)) and the Record of Decision (Annexure 3(b)) and warrants that it has acquainted itself with the content of both documents. The Purchaser further warrants that it knows and understands the conditions set out therein. The conditions set out in the approvals will be binding on all successive Purchasers. No party shall have any claim against the Sellers relating to the obligation to comply with such conditions.

7. **CONDITION OF PROPERTY**

The Property is sold "*voetstoots*" subject to all the conditions and servitudes set out above and/or referred to in the current and/or prior title deeds of the Property and to such other conditions and servitudes as may exist in regard thereto, and in the condition and to the extent such as it now lies. The Seller shall not be liable for any defects, latent or patent, which may exist in respect of the Property.

8. **PHASED DEVELOPMENT**

The Purchaser acknowledges that it is aware that the Seller's development may be undertaken in phases over a period of time. Phased installation of services and other construction may have an impact on the use of the Property by the Purchaser. The Purchaser will have no claim against the Seller for any damages that it may incur as a result of any nuisance or inconvenience caused by the Seller's phased development.

9. **RISK & BENEFIT**

The risk in and the benefit of the Property will pass to the Purchaser on transfer, from which date the Purchaser shall be entitled to all benefits flowing from the Property.

--	--	--	--	--	--	--	--

10. **POSSESSION & OCCUPATION**

Possession and occupation of the Property will be given to the Purchaser on the date of possession referred to in BLOCK 8 of SCHEDULE A, "the date of possession". The Purchaser shall be liable for all levies, rates, taxes and other outgoings in respect of the Property from the date of possession.

11. **TRANSFER**

Registration of transfer of the Property into the name of the Purchaser (hereinafter referred to as "transfer") shall be given and taken as soon as is reasonably possible after the fulfilment of any suspensive conditions, receipt of the guarantee referred to above and fulfilment of the Purchaser's obligations relating to the payment of the Purchase Price. Transfer shall be effected by the Seller's conveyancers referred to in BLOCK 9 of SCHEDULE A. The Seller and the Purchaser shall sign all such documents as may be required in connection with the transfer immediately they are called upon to do so by the Seller's conveyancers.

12. **NO ALIENATION**

Prior to transfer the Purchaser may not alienate the Property without the Seller's prior written consent.

13. **SUCCESSORS IN TITLE**

All successors-in-title in respect of the Property shall be bound by all conditions of this agreement relating to, *inter alia*, the Design Code and Concept Plans, construction of structures on the Property, any town planning conditions imposed by the NMBM and the HOA. The Purchaser warrants that it will disclose the existence of these conditions to its successor in title in any subsequent deed of sale. The appropriate conditions will be included in the Title Deeds of the Property.

14. **COSTS**

The Purchaser shall pay the transfer fees, disbursements and the costs of the bond (if any) to the Seller's Conveyancer on demand.

15. **DEFAULT AND JURISDICTION**

Should the Purchaser default with the due performance of any of its obligations in terms of this agreement and persist in such default for a period of 7 [seven] days after receiving a notice calling upon it to remedy such default, then notwithstanding any prior waiver, and without prejudice to any other claim which the Seller may have, either in terms of this agreement or at law, the Seller shall be entitled to either: - declare this agreement cancelled and to resume possession and occupation of the Property and to recover from the Purchaser all damages it may have suffered or sustained by reason of such default; or claim and recover from the Purchaser the full balance of the purchase price then outstanding which shall be deemed to be due and owing. The Purchaser agrees that, at the election of the Seller, the Gqeberha Magistrate's Court shall have jurisdiction over any proceedings arising out of this agreement.

--	--	--	--	--	--	--	--

16. **FORFEITURE OF DEPOSIT**

The Purchaser's deposit shall be non-refundable and shall be forfeited to the Seller in the event that the transfer of the Property to the Purchaser does not proceed, for any reason other than non-fulfilment of the suspensive conditions or breach of contract by the Seller.

17. **WHOLE AGREEMENT**

This agreement constitutes the entire contract between the Seller and the Purchaser and no warranties, representations or statements express or implied have been made by/on behalf of any party other than those specifically included herein.

18. **NO VARIATION**

No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives. No latitude, extension of time or other indulgence which may be given or allowed by the Seller to the Purchaser or *vice versa* in respect of the performance of any obligation in terms of or arising from this agreement shall be a waiver or otherwise affect any of the rights of the Seller against the Purchaser or *vice versa*.

19. **DOMICILIUM**

The parties respectively choose as their *domilicium citandi et executandi* for all purposes of and in connection with this agreement as follows: the Seller, the address referred to in BLOCK 10 of SCHEDULE A and the Purchaser, the address referred to in BLOCK 11 of SCHEDULE A. Any notice given by one party to the other in terms of this agreement shall be sent by pre-paid registered post or be delivered by hand and shall be deemed to have been received by the addressee on the 4th (fourth) day after posting, including the date of posting, or on the day of delivery, if delivered by hand, and no notice shall be deemed to have been validly given if given otherwise than in terms of the foregoing.

20. **OFFER**

Signature by the Purchaser of this agreement constitutes an irrevocable offer to purchase the Property and remains open for acceptance until the time and date referred to in BLOCK 12 of SCHEDULE A.

21. **CLAUSE HEADINGS**

The clause headings are used herein for ease of reference only and shall not be used in the interpretation of this agreement.

22. **SURETY**

If the Purchaser is a company, close-corporation or trust, then by his signature hereto the signatory binds himself as surety and co-principal debtor *in solidum* for all the obligations of the Purchaser to the Seller in terms of this agreement. Hereby renouncing the following benefits: *exceptio non causa debiti*, *beneficium de duobus vel pluribus reis debendi*, *beneficium ordinis seu excussionis*, *beneficium divisionis*.

--	--	--	--	--	--	--	--

23. **AGENTS COMMISSION (delete paragraph that does not apply)**

The Purchaser warrants that it was not introduced to the property by an Estate Agent or other third party and indemnifies the Seller against any claim for commission arising out of this sale,

Or

The Purchaser confirms that the Estate Agent referred to in BLOCK 13 of SCHEDULE A is responsible for introducing the Property to the Purchaser. The Seller will pay the commission referred to in BLOCK 14 of SCHEDULE A to the Estate Agent on registration of transfer.

24. **GENERAL INFORMATION SCHEDULE**

The Purchaser warrants that the information given by it in the "General Information SCHEDULE" attached hereto, is true and correct and that all details have been correctly spelt.

25. **PROTECTION OF PERSONAL INFORMATION ACT**

The Parties hereby consent to the reasonable processing of all personal information provided in order to give effect to the terms of this agreement by any service providers, attorneys, or estate agents.

--	--	--	--	--	--	--	--

## SCHEDULE A

BLOCK 1	PURCHASER/S NAME & IDENTITY NUMBER	
BLOCK 2	PROPERTY DESCRIPTION	
BLOCK 3	PURCHASE PRICE (INCL VAT)	
BLOCK 4	PURCHASER'S DEPOSIT	
BLOCK 5	DEPOSIT PAYMENT DATE	
BLOCK 6	MORTGAGE BOND AMOUNT	
BLOCK 7	MORTGAGE BOND DATE	
BLOCK 8	DATE OF POSSESSION	<i>Registration of Transfer</i>
BLOCK 9	SELLER'S CONVEYANCER	<i>DTS Attorneys Attention: Rian Du Toit</i>
BLOCK 10	SELLER'S DOMICILE ADDRESS	<i>New Horizon Development Trust 73 Heugh Road Walmer Gqeberha 6070</i>
BLOCK 11	PURCHASER'S DOMICILE ADDRESS	
BLOCK 12	DATE/TIME FOR EXPIRY OF OFFER	
BLOCK 13	ESTATE AGENT	
BLOCK 14	COMMISSION PAYABLE TO ESTATE AGENT	

--	--	--	--	--	--	--	--





Locality Plan – Insert Here

--	--	--	--	--	--	--	--