

AGREEMENT OF SALE
THE BURNSIDE SECTIONAL TITLE SCHEME

PURCHASER:

**APARTMENT PHYSICAL
NUMBER:**

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The Seller and the Purchaser mentioned in the Schedule hereby enter into an Agreement of Sale for the sale of the Unit described in the Schedule for the Total Purchase Price recorded in the Schedule and on the terms set forth in the Schedule and Standard Terms and Conditions forming pages 4 to 22 hereof and Annexures "A" to "M" hereto.

SIGNED AT THIS DAY OF 200_.

AS WITNESSES

1. _____

2. _____

for and on behalf of the **Seller**, the signatory warrants his/her authority hereto

SIGNED AT THIS DAY OF 200_.

AS WITNESSES

1. _____

2. _____

Purchaser, the signatory warrants his/her authority hereto, where applicable

SIGNED AT THIS DAY OF 200_.

AS WITNESSES

1. _____

2. _____

Purchaser's Spouse

SIGNED AT THIS DAY OF 200_.

AS WITNESSES

1. _____

2. _____

Surety

SIGNED AT THIS DAY OF 200_.

AS WITNESSES

1. _____

2. _____

Surety's spouse, if married in community of property

THE SCHEDULE

1. UNIT DETAILS

	SECTIONS			EXCLUSIVE USE AREA
	APARTMENT	PARKING BAY/S	STORE ROOM	TERRACE AND /OR GARDEN
PHYSICAL NUMBER		To be allocated by the Seller		
SECTION/EXCLUSIVE USE AREA NUMBER				
ESTIMATED FLOOR AREA (m ²)				

2. SELLER'S DETAILS

FULL NAMES	BLUE CANYON PROPERTIES 108 CC		
COMPANY NUMBER	2007 / 085086 / 23		
DOMICILIUM ADDRESS	c/o DGS Attorneys, 4th Floor, Cornerstone House, 16 Loop Street, Cape Town		
TEL & FAX NO's.	Tel 021 4214701	Fax 021 4193731	
E-MAIL ADDRESS	tamryn@dgsattorneys.co.za		
SELLER'S ATTORNEYS	DGS Attorneys, 4th Floor, Cornerstone House, 16 Loop Street, Cape Town Att: Tamryn Steel		
POSTAL ADDRESS	P O Box 7052 Roggebaai 8012		
TEL & FAX Nos.	Tel (021) 4214701	Fax (021)4193731	
EMAIL	tamryn@dgsattorneys.co.za	craig@dgsattorneys.co.za	

3. **PURCHASER'S DETAILS (NATURAL PERSON)**

FULL NAMES		
MARITAL STATUS		
DETAILS OF PURCHASER'S SPOUSE Full Names Identity No. or Date of Birth		
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)		
POSTAL ADDRESS		
TEL & FAX NO's.	Tel	Fax
CELL NO.		
E-MAIL ADDRESS		

4. **PURCHASER'S DETAILS (CORPORATE BODY)**

NAME OF DIRECTOR/MEMBER/TRUSTEE		
NAME OF ENTITY		
REGISTRATION NO.		
PHYSICAL ADDRESS		
POSTAL ADDRESS		
TEL & FAX NO's.	Tel	Fax
CELL NO.		
E-MAIL ADDRESS		

5. **TOTAL PURCHASE PRICE**

PURCHASE PRICE	R
PLUS VAT	R
TOTAL PURCHASE PRICE	R
LESS DEPOSIT	R
BALANCE OF TOTAL PURCHASE PRICE (payable on date of registration of transfer)	R

6. ESTIMATED MONTHLY LEVY PER UNIT ON ANTICIPATED OCCUPATION DATE (EXCLUDING "RATES" AS REFERRED TO IN CLAUSE 11.1)

R

7. ANTICIPATED OCCUPATION DATE

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8. ANTICIPATED DATE OF TRANSFER

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9. SELLING AGENT

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10. SURETY'S DETAILS (WHERE APPLICABLE) - CLAUSE 24

FULL NAMES	
IDENTITY NUMBER	
MARITAL STATUS	
DETAILS OF SURETY'S SPOUSE Full Names Identity No. or Date of Birth	
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)	
CELL NO. EMAIL	

11. REQUIRED BOND

EXCLUSIVE MORTGAGE ORIGINATOR	OOBA
AMOUNT REQUIRED	
TO BE APPROVED BY	

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In this Agreement, unless inconsistent with the context –
- 1.1.1 "the Act" means the Sectional Titles Act No. 95 of 1986 or any amendment thereof and includes the regulations promulgated thereunder from time to time;
 - 1.1.2 "the Agent" means the selling agent referred to in item 9 of the Schedule;
 - 1.1.3 "the Agreement" or "this Agreement" means this document and all annexures, written addenda and written variations hereto;
 - 1.1.4 "area" or "areas" mean area/s as determined in accordance with the Act;
 - 1.1.5 "the Architects" mean the firm of architects appointed to act as such from time to time by the Seller and the "Architect" means any partner of the Architects (whose appointment it should not be necessary to prove).
 - 1.1.6 "the Attorneys" means DGS Attorneys 4th Floor, Cornerstone House, 16 Loop street, Cape Town;
 - 1.1.7 "the Body Corporate" means THE BURNSIDE Body Corporate to be established in terms of Section 36 of the Act;
 - 1.1.8 "boundary" or "boundaries" mean the median line as defined in the Act;
 - 1.1.9 "the Building" means the building and other structures to be built on the Property;
 - 1.1.10 "day" means any calendar day;
 - 1.1.11 "the Common Property" means the Property and such parts of the Building which do not form part of a Section;
 - 1.1.12 "Date of Signature" means the date of the last signing of this Agreement;
 - 1.1.13 "Development Scheme" or "Scheme" means the Property and the Building in respect of which the Seller intends to register a Sectional Title Scheme known as THE BURNSIDE;
 - 1.1.14 "the Drawings" mean the Architect's schedules and other drawings as listed on Page 2 under Contents of Agreement of Sale;
 - 1.1.15 "the Dwelling Area" means that portion of the Apartment Section defined in item 1 of the Schedule, excluding any balcony or terrace area;
 - 1.1.16 "Exclusive Use Area" means, where applicable, the area of Common Property allocated for the Purchaser's exclusive use and enjoyment as referred to in item 1 of the Schedule and as indicated on the Unit Plan (Annexure "M").
 - 1.1.17 "the Occupation Date" means the date the Architect certifies in writing (which Certificate shall be final and binding on the parties) that the Unit is ready for beneficial occupation by the Purchaser (the anticipated Occupation Date being the date specified in item 7 of the Schedule), or such earlier date as the parties agree in writing, being the date upon which the Purchaser takes possession and occupation of the Unit;
 - 1.1.18 "the Plans" mean the Drawings as defined in clause 1.1.14;
 - 1.1.19 "the Prime Rate" means a rate of interest per annum which is equal to the Seller's banker's minimum lending rate of interest per annum charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time, on the basis that

such interest is compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is at times also referred to as the prime commercial overdraft rate of interest). In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager whose appointment it will not be necessary to prove, of any branch of the said bank, whose certificate shall be prima facie proof thereof;

- 1.1.20 "the Property" means the site, measuring approximately 600 (six hundred) square metres, upon which the Development Scheme will be created;
- 1.1.21 "the Purchaser" means the Purchaser as set out in the Schedule;
- 1.1.22 "the Register" means the Sectional Title Register in respect of the Property and the Building to be opened in terms of the Act;
- 1.1.23 "the Rules" means the Management and Conduct Rules prescribed by the Act and as amended by the Seller when opening the Register and by the Body Corporate from time to time, as well as the House Rules which may be imposed pursuant to Rule 76 in Annexure "I";
- 1.1.24 "the Schedule" means the pages numbered 4 to 6;
- 1.1.25 "the Sections" mean the Sections in the Development Scheme;
- 1.1.26 "the Sectional Plan" means the Sectional Plan of the Development Scheme to be approved by the Surveyor General and registered by the Registrar of Deeds;
- 1.1.27 "the Seller" means the Seller as set out in the Schedule;
- 1.1.28 "the Seller's bankers" means Firstrand Limited and/or the Bank appointed by the Seller from time to time;
- 1.1.29 "Specifications" means the details of the Unit and the Building as set out in Annexure "G".
- 1.1.30 "the Standard Terms and Conditions" means pages 7 to 22 of this Agreement;
- 1.1.31 "the Surety" means the person described as such in item 10 of the Schedule;
- 1.1.32 "Total Purchase Price" means the amount in item 5 of the Schedule reflected as "TOTAL PURCHASE PRICE"
- 1.1.33 "transfer" means registration of transfer of the Unit in the name of the Purchaser;
- 1.1.34 "the Unit" means:
 - (a) the Sections,
 - (b) the Exclusive Use Area (where applicable); and
 - (c) an undivided share in the Common Property as will be apportioned to the Sections in terms of the participation quota of the Sections in accordance with clause the Act;

all as more fully described in the Schedule read with the Annexure "G" and as will be finally described in the Sectional Plan in the case of the Sections and the Exclusive Use Area (where applicable), but excluding any Sections or Exclusive Use Area in respect of which the relevant block/s in item 1 of the Schedule has been left blank;

- 1.2 Words and expressions defined in the Act shall have the meanings therein defined.
- 1.3 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and the neuter gender and words importing persons shall include partnerships and bodies corporate and vice versa.
- 1.4 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1.5 If any provision in a definition and/or in the Schedule is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

1.6 If any clause (or part thereof) is at any time found to be invalid, such invalidity shall not in any way affect the validity of the remainder of this Agreement.

2. SALE

The Seller sells to the Purchaser who hereby purchases the Unit for the Total Purchase Price reflected in item 5 of the Schedule and on the terms and conditions contained in this Agreement.

3. PAYMENT OF TOTAL PURCHASE PRICE

3.1 The Total Purchase Price shall be paid as follows:

3.1.1 the deposit in item 5 of the Schedule ("the deposit"), payable in cash on the date of the Purchaser's signature hereto; the deposit will be invested by the Attorneys on call, for the benefit of the Purchaser and for release to the Seller on transfer subject, however, to the provisions of clauses 9.4, 13, and 23. The provisions of this clause 3.1.1 shall constitute authority to the Attorneys, in terms of Section 78(2A) of the Attorneys Act, to invest the deposit;

3.1.2 the balance of the Total Purchase Price in cash against registration of transfer of the Unit into the name of the Purchaser.

3.2 The Purchaser shall,

3.2.1 by no later than 60 (sixty) days from signature by the last party hereto, furnish the Attorneys with an irrevocable and unconditional bank guarantee from a bank acceptable to the Seller and in a form acceptable to the Seller, for the due payment of the balance of the Total Purchase Price and any other amounts due in terms of this Agreement. The said guarantee shall provide for payment to be effected at the central Cape Town branch of such bank immediately upon receipt by the bank of written notification from the Attorneys that transfer has been effected. Alternatively, the Purchaser may pay such amounts to the Attorneys, which amounts will be dealt with on the same terms and conditions as provided for in clause 3.1.1 above. In the event that this Agreement of Sale is subject to a mortgage bond then such guarantee shall be called for on signature of the bond documents and shall be delivered to the Attorneys within 7 (seven) days of such request.;

3.3 In lieu of payment of the deposit in cash as contemplated in clause 3.1.1, the Purchaser may, on the date of the Purchaser's signature hereto, furnish the Attorneys with an irrevocable and unconditional guarantee, in the form of Annexure "L" hereto, from a bank acceptable to the Seller for the amount of the deposit. Such guarantee shall provide for payment to be effected at the central Cape Town branch of the bank immediately upon receipt by the bank of written notification from the Attorneys either:

3.3.1 that transfer has been effected; or alternatively

3.3.2 that this Agreement has been cancelled as a result of a breach of the terms thereof by the Purchaser.

3.4 In the event of the percentage of Value Added Tax at any time prior to transfer being amended from the current rate of **14% (fourteen percent)**, then the Total Purchase Price as reflected in item 5 of the Schedule shall be appropriately amended so that the total purchase price shall include Value Added Tax at the rate applicable to this transaction.

3.5 All or any payments to be effected hereunder, shall be effected by the Purchaser to the Seller or the Attorneys free of exchange at Cape Town and without deduction or set-off.

3.6 The Purchaser hereby undertakes, immediately upon request therefore, to provide the Attorneys with all such information and/or documentation required in order to comply with the Financial Intelligence Centres Act No. 38 of 2001, which information shall

include, but not be limited to, proof of the Purchaser's Income Tax Registration Number and residential address.

- 3.7 The Purchaser hereby acknowledges that he is aware that no monies can be invested as provided for herein until such time as the information required in terms of 3.6 is furnished to the Attorneys.

4. **INTEREST ON OVERDUE AMOUNTS AND DELAYS**

- 4.1 All monies payable by the Purchaser in terms hereof and unpaid on due date shall bear interest at **four (4) percentage points** above the Prime Rate reckoned from the due date to the date of payment (both days inclusive).
- 4.2 In the event of a delay in transfer attributable (directly or indirectly) to the Purchaser, the Purchaser shall be liable to the Seller for interest, at the rate referred to in Clause 4.1 on the Total Purchase Price reckoned from the date which the Attorneys certify transfer would in their opinion have been effected had it not been for such delay, until the actual date of transfer. The said certificate of the Attorneys shall be final and binding on the parties.
- 4.3 In the event that there is a delay in the Occupation Date, the delay being attributable (directly or indirectly) to the Purchaser, the Purchaser shall be liable to the Seller for interest, at the rate referred to in Clause 4.1, on the Total Purchase Price reckoned from the date the Architect certifies the Unit would have been ready for beneficial occupation had it not been for such delay, until the Occupation Date. The Architect's said certificate shall be final and binding on the parties.

5. **TRANSFER AND CESSION**

- 5.1 Transfer of the Unit shall be passed and the registration of the mortgage bond/s, if applicable, shall be effected by the Attorneys and taken simultaneously with or as soon as possible after the registration of the Sectional Plan.
- 5.2 The Purchaser shall sign all documents necessary to give effect hereto at the offices of the Attorneys within **5 (five) days** of being called upon to do so.
- 5.3 The Purchaser shall accept transfer of the Unit subject to all conditions and servitudes benefiting or burdening the Property, whether existing or hereafter imposed by any competent authority and/or imposed by the Seller, the Rules of the Body Corporate in force from time to time and the constitution of the Association and any amendments thereto, which the Seller will impose when opening the Register.
- 5.4 Without prejudice to any other rights it may have, the Seller shall be entitled to withhold transfer in the event of any monies being outstanding by the Purchaser whether in respect of the Total Purchase Price, costs, occupational rental, levies or any other amount due under this Agreement.
- 5.5 The Purchaser shall be liable for all fees and charges of and relating to the bond and transfer, including but not limited to conveyancing costs, costs of all necessary affidavits, Deeds Office fees and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the transfer.
- 5.6 The Purchaser shall not be entitled to resile from this Agreement nor to hold the Seller liable for damages or otherwise in the event of delays in the registration of the Sectional Plan.
- 5.7 The Purchaser warrants that all his/its tax and VAT return/s has/have been timeously submitted to the South African Revenue Services and all payments payable to them have been paid so as to avoid any delays in obtaining the necessary VAT Clearance Certificate/ Transfer Duty Exemption for transfer of the abovementioned property from the Seller to the Purchaser; application for the VAT Clearance Certificate will be made approximately 30 (thirty) days prior to the estimated date of transfer.

6. **POSSESSION AND OCCUPATION**

- 6.1 Possession and vacant occupation of the Unit shall be given and taken by the Purchaser on the Occupation Date, on which date all risk and benefit in the Unit shall pass to the Purchaser.

- 6.2 The Purchaser acknowledges that:
 - 6.2.1 other portions of the Building may not necessarily be complete at the Occupation Date;
 - 6.2.2 the peaceful use and enjoyment of and access to the Unit and the Common Property may be temporarily interrupted and noise and dust caused, from time to time during such building operations;
 - 6.2.3 the Purchaser shall have no claim whatsoever against the Seller, nor shall the Purchaser be entitled to any reduction in the Total Purchase Price or interest thereon by reason of any such inconvenience and/or interruption referred to in clause 6.2.2. The Seller shall however use all reasonable endeavours to procure that such inconvenience or interruption due to other portions of the Building being incomplete at the Occupation Date is kept to a minimum;
 - 6.2.4 the Occupation Date shall under no circumstances be deferred or the Unit considered unsuitable for beneficial occupation by reason of any improvements, additions or alterations to be effected to the Unit, in terms of any agreement hereafter signed by the Purchaser and the Seller, not having been completed;
 - 6.2.5 the occupation of the Unit by the Purchaser (and those occupying through or under the Purchaser) between the Occupation Date and the date of transfer, shall not in any way constitute a tenancy between the Seller and the Purchaser (and those occupying the Unit through or under the Purchaser);
 - 6.2.6 the anticipated Occupation Date reflected in item 7 of the Schedule is only an estimate of the actual Occupation Date and no liability whatsoever will attach to the Seller if the Occupation Date occurs before or after the date reflected in item 7 of the Schedule;
 - 6.2.7 the Seller shall be obliged to insure the Unit and the Building up to the date of transfer whereafter the Purchaser shall be obliged to ensure that the Body Corporate insures the Unit and the Building;
 - 6.2.8 with effect from the Occupation Date, the Purchaser shall be entitled to request the Seller to increase the amount of insurance attributable to the Unit, in which event the Purchaser shall be obliged to pay to the Seller, monthly in advance, any additional premiums occasioned thereby;
- 6.3 Should transfer take place after the Occupation Date, the Purchaser shall, in addition to the provisions of clause 4.3 (if applicable), pay to the Seller occupational interest reckoned at the Prime Rate of the Total Purchase Price due, which rental shall be paid monthly in advance from the Occupation Date to the Date of Transfer, both days inclusive. The Purchaser shall also be responsible for all electricity and (where applicable) water consumed on the Unit as from the Occupation Date.

7. EXCLUSIVE USE AREAS

- 7.1 The Purchaser shall be entitled to the exclusive use and enjoyment of the Exclusive Use Area (where applicable), subject to the provisions of the Act, the Rules and this Agreement.
- 7.2 The rights to the Exclusive Use Area shall be allocated by way of a notarial cession in terms of Section 27 of the Act.
- 7.3 The Seller shall be entitled to sell and allocate exclusive use rights to other areas of Common Property to other purchasers in the Development Scheme.

8. SPECIAL TERMS APPLICABLE

- 8.1 Upon the Purchaser taking occupation of the Unit and pending transfer, the following conditions shall apply –

- 8.1.1 save insofar as may be inconsistent with the provisions of this Agreement, the provisions of Section 44(1) of the Act, a copy of which is attached as Annexure "A" shall apply as if the Purchaser were the owner of the Unit;
 - 8.1.2 the other provisions of the Act and the provisions of the Rules and the constitution of the Association insofar as they cast any duty upon the owner or occupier of a Unit, shall bind the Purchaser and be enforceable by the Seller as if the Purchaser was the owner of the Unit;
 - 8.1.3 the Purchaser shall not, without the prior written consent of the Seller and the Association, make or cause or allow to be made any improvements or alterations whatsoever to the Unit; the Purchaser shall not have any claim against the Seller in respect of any expenditure upon or improvements to the Unit, whether made with or without the Seller's consent, and notwithstanding the preservation of such rights, hereby waives his lien (if any) in respect of such improvements; all improvements to the Unit made by or at the instance or expense of the Purchaser shall accede to the Unit and belong to the Seller;
 - 8.1.4 the Purchaser shall maintain the interior of the Unit in good order and repair;
 - 8.1.5 the Purchaser shall not sell the Unit, nor permit the transfer or cession of shares or members' interest or benefit under a company, close corporation or trust, as the case may be, if the Purchaser is such an entity, except with the written consent of the Seller;
 - 8.1.6 The Purchaser may not let or in any other manner dispose of or part with (whether temporarily or otherwise) the Unit or his rights of occupation thereof, unless the Purchaser has fully complied with all his obligations in terms of this Agreement and taken all steps required of him to enable transfer to be registered.
- 8.2 The Purchaser hereby waives all claims against the Seller for any loss or damage to property or any injury to or death of any person which the Purchaser may sustain in or about the Property, the Unit, the Building or the Precinct and indemnifies the Seller against any such claim (including but not limited to any claim for costs, including but not limited to Attorney and own client costs as determined in accordance with the non-litigious tariff of the Law Society of the Cape of Good Hope, or its successor) that may be made against the Seller by any member of the Purchaser's family or the Purchaser's invitees, employees or agents for any loss or damage to property or injury to or death of a person suffered in or about the Property, the Unit, the Building or the Precinct howsoever such loss or damage to property or injury to or death of the person may be caused.
- 8.3 Without limiting the generality of clause 8.2 above, the Seller, its directors, employees and agents, shall bear no liability whatsoever to the Purchaser, the Purchaser's family, invitees, employees or agents in respect of any other development in or on the Precinct or any matter arising therefrom.

9. ERECTION OF DEVELOPMENT SCHEME AND THE UNIT

- 9.1 The Purchaser shall not be entitled to require any alterations to be made to the dimensions or specifications of the Unit specified in this Agreement or in the Plans or Specifications or Theme Finish.
- 9.2 Notwithstanding anything to the contrary contained in this Agreement, the Seller or the Architect shall be entitled to change any of the dimensions, specifications or detail design (including but not limited to materials, colours or layouts) as reflected in the Plans or Specifications or Theme Finish, provided such change does not materially affect the Development Scheme or the Unit. A certificate by the Architect that any changes so made do not result in a material change shall be conclusive proof thereof and shall be final and binding on the parties.
- 9.3 The Seller shall be entitled to vary the areas, layouts and/or position of the apartments on any floor and the parking bays and/or store rooms on the parking floors, provided such change does not materially affect the Unit. A certificate by the Architect that any variation does not result in a material change shall be conclusive proof thereof and shall be final and binding on the parties.

- 9.4 Notwithstanding anything to the contrary contained in this Agreement, in the event of the Unit differing by no more than **10% (ten percent)** from the boundaries or areas shown on the Plans, as certified by the Architect or by the land surveyor or engineer to the Development Scheme, the Purchaser shall be obliged to accept transfer of the Unit as completed. In the event of the Unit differing by more than 10% from the boundaries or areas shown on the Plans, as certified by the said Architect, land surveyor or engineer, either party shall be entitled but not obliged to resile from this Agreement, by giving the other party written notice within **7 (seven) days** of receipt of the said certificate. In the event of a party so resiling, neither party shall have any claim against the other arising therefrom save that the Seller shall refund to the Purchaser the deposit (if paid in cash) and the balance of the Total Purchase Price (if paid in cash in terms of clause 3.2) together with accrued interest and, in the event of the Purchaser having taken occupation of the Unit, the Purchaser undertakes to procure that he and all those occupying through or under the Purchaser shall forthwith vacate the Unit and shall restore vacant possession to the Seller in the same good order and condition as it was at the Occupation Date. In the event of such a difference of more than **10% (ten percent)** and neither party so resiles, neither party shall have any claim whatsoever against the other.
- 9.5 Notwithstanding anything to the contrary elsewhere expressed or implied, in the event of any of the materials (including the colour, style and/or design thereof) used in the finishes as detailed in the Specifications or the Theme Finish, not being available for any reason whatsoever, prior to or during the course of the construction then the Seller or the Architect shall choose another similar material (and/or colour and/or style and/or design) which is available. The choice of the Seller or the Architect shall be final and binding on the parties. Similarly, where any material is not clearly specified or indicated in the Specifications and Theme Finish, the Seller or the Architect shall have the right to specify the material considered in the opinion of the Seller or the Architect to be the most suitable, in which event the decision of the Seller or the Architect shall be final and binding on the parties.
- 9.6 The Purchaser shall in no manner whatsoever be entitled to interfere, including but not limited to the giving of directions or instructions, with the contractors and/or sub-contractors employed by the Seller.
- 9.7 The Purchaser acknowledges that:
- 9.7.1 the Specifications and Theme Finish of the Unit will not necessarily be the same as those illustrated in any showroom utilised for display purposes or contained in any other material exhibited by or on behalf of the Seller;
- 9.7.2 any images reflected displayed on the Sellers website and/or the Agent's website and in Annexures "G" and "M" are for illustrative purposes only and will not be binding on the Seller;
- 9.7.3 any model of the Building or the Unit made by or on behalf of the Seller and any advertisement or other advertising material used for purposes of marketing the Development Scheme and/or the Unit shall not constitute a representation by the Seller and the Purchaser shall not be entitled to rely on any information therein;
- 9.7.4 all measurements and dimensions reflected in this Agreement and in the Annexures to this Agreement are approximate and are subject to finalisation on approval by the relevant authorities.

10. DEFECTS

- 10.1 Subject to Clause 10.3, should any defects in the Unit, other than those referred to in Clause 10.2, manifest themselves within **45 (forty five) days** after the Occupation Date ("the forty five day period"), the Purchaser shall furnish the Seller at its domicile as provided for in Clause 19.1 below, with a written and signed list of such defects ("the defects list") within **7 (seven) days** of the expiry of the forty five day period, failing which the Purchaser shall be deemed to have accepted the Unit in good order and condition. The Seller shall cause reasonable repairs to the said defects to be effected as soon as reasonably possible after receipt of the defects list. The Seller and all persons authorised or employed by the Seller shall be entitled to access to the Unit for purposes of inspection and effecting the said repairs. After such repairs have been effected, no liability shall attach to the Seller in respect of any defects.

- 10.2 Subject to Clause 10.3, should any leaks in the roof of the Section (if it has a roof manifest themselves within **12 (twelve) months** of the Occupation Date ("the twelve month period"), the Purchaser shall furnish the Seller at its domicilium as provided for in Clause 19.1 below, with a written and signed list of such leaks ("the roof leaks list") within **7 (seven) days** of the expiry of the twelve month period, failing which the Purchaser shall be deemed to have accepted the Section in good order and condition. The Seller shall cause all or any reasonable repairs to the said leaks in the roof to be effected as soon as reasonably possible after receipt of the roof leaks list; thereafter no liability shall attach to the Seller in respect of any such leaks.
- 10.3 The Seller's obligations in terms of Clauses 10.1 and 10.2 shall -
- 10.3.1 only apply in respect of defects or leaks arising as a result of faulty workmanship and/or materials used in the construction of the Unit and for no other defects or leaks, howsoever arising;
- 10.3.2 only apply, subject to Clauses 10.1 and 10.2, for so long as the Purchaser is the registered owner of the Unit;
- 10.3.3 not apply in respect of or arising in any way from any alterations to the Unit effected at the instance of the Purchaser;
- 10.3.4 not entitle the Purchaser to claim any consequential damages from the Seller.
- 10.4 A certificate by the Architect stating that any repairs to any defect or leak referred to in Clauses 10.1 and 10.2 are reasonable or that any defect or leak for which the Seller is liable in terms of Clauses 10.1 and 10.2 has been made good, shall be final and binding on the parties and shall relieve the Seller from any further obligations in respect of such defect or leak. In the event of a dispute between the Purchaser and the Seller as to whether or not any defect referred to in Clauses 10.1 and 10.2 arose as a result of faulty workmanship and/or materials, then such dispute shall be referred to the Architect (acting as an expert and not as an arbitrator) whose decision shall be final and binding on the parties.
- 10.5 Notwithstanding the provisions of Clauses 10.1 and 10.2, the Purchaser shall have no claim against the Seller, and in particular shall not be entitled to cancel this Agreement, for any non-material discrepancies of whatsoever nature (as to which a certificate by the Architect or by the land surveyor or engineer to the Development Scheme, will be final and binding on the parties) between the finally approved buildings plans and specifications relating to the Unit and the completed Unit as the case may be, and the completed Dwelling Area. In the event of a material discrepancy, other than as provided for in Clause 9.3, the Seller shall cause same to be remedied within a reasonable time after having been informed thereof in writing by the Purchaser, provided that the liability of the Seller shall only endure for a period of **45 (forty five) days** from the Occupation Date.
- 10.6 After the establishment of the Body Corporate and after the Architect has issued the Final Certificate of Completion referred to and in terms of the contract the Seller will sign with the principal building contractor for the erection of the Building, the Seller will cede to the Body Corporate all rights the Seller may have at that time against the Principal Building Contractor in respect of the Building, provided the Seller gives no warranties as to the credibility of such rights, the effectiveness of enforcing such rights nor anything relating thereto.
- 10.7 Save as specifically provided for in clauses 10.1 to 10.6 above, the Unit is sold voetstoots and the Seller shall not be liable for any defects in the Unit, whether latent or patent.
- 10.8 The Purchaser acknowledges that, the Seller shall not be bound by any representations, warranties, promises, undertakings and the like made by or on behalf of the Seller which are not contained in this Agreement.

11. LEVIES

- 11.1 The Purchaser shall be liable from the Occupation Date for all amounts payable in terms of Section 37(1) of the Act ("levies") calculated in accordance with Annexure "H".
- 11.2 The Purchaser acknowledges that in determining the levies reflected on the Schedule of Estimated Levies (Annexure "H") the following considerations, among other things, have been taken into account:

- 11.2.1 where a section includes a terrace and/or a garden, the boundary of the section will be in line with the boundary of the overhang (which shall be in the form of a reinforced concrete slab) over such terrace and/or garden, as will be reflected on the Sectional Plan;
- 11.2.2 the double volume floor areas of sections which are penthouses, shall be excluded from the levy calculation for such sections.
- 11.3 The Purchaser further acknowledges that the amounts set out in Annexure "H" exclude rates and taxes and other charges (collectively referred to as "rates") payable to the City of Cape Town and that the Purchaser shall be liable to pay same directly to the City of Cape Town. In the event that the City of Cape Town has not separately rated the Unit for rates purposes, the levies shall be increased by the amount of rates attributable to the Unit in accordance with the Unit's participation quota.
- 11.4 Pending the determination of the actual amount of such levy, the Purchaser shall from the Occupation Date pay on account of such monthly levy an amount as shall be certified by the Seller as being its *bona fide* estimate of such monthly levy. 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.
- 11.5 Such levies shall be paid to the Seller until transfer and thereafter to the Body Corporate, monthly in advance on the first day of each and every calendar month provided that if the Occupation Date falls on any day other than the first day of a calendar month, then the Purchaser shall be obliged to pay a pro-rata share of the levies due for the calendar month in which the Occupation Date occurs. The Purchaser shall forthwith on demand refund to the Seller all such levies which have been prepaid by the Seller beyond the Occupation Date.

12. MANAGING AGENT

- 12.1 The Seller shall be entitled to appoint the first Managing Agent which appointment shall be valid and binding on the Body Corporate for the initial period of **three (3) years** following the date of the opening of the Register.
- 12.2 The Purchaser gives the Seller, with effect from the date of transfer, the irrevocable power to make this appointment and authorises the Seller to exercise all of the Purchaser's voting rights in this regard in order to give effect to this provision.

13. DEFAULT

- 13.1 If the Purchaser commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser **five (5) days** notice in writing to remedy such breach or failure, and if the Purchaser fails to comply with such notice then the Seller shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies, which it may have in law, including the right to claim damages -
- 13.1.1 to cancel this Agreement by written notice to the Purchaser, in which event the Purchaser shall forfeit, as "rouwkoop", all monies paid to the Seller or the Attorneys in terms hereof, the Seller retaining the right to recover any amount of damages suffered by the Seller as a result of the Purchaser's default which exceed the amount forfeited;
- 13.1.2 to claim immediate performance and/or payment of all the Purchaser's obligations in terms hereof.
- 13.2 In the event of the Seller or the Attorneys having to give notice to or make any demand against the Purchaser in terms of this Agreement and/or in the event of the Seller instituting legal proceedings against the Purchaser, then the Purchaser shall be obliged to pay all costs incurred thereby, including costs on an attorney and own client scale (reckoned on the non-litigious tariff of the Law Society of the Cape of Good Hope or its successor) and collection commission.
- 13.3 Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the

Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever.

- 13.4 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate forthwith the Unit and to procure that the Unit shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the Occupation Date.

14. BROKERAGE

- 14.1 The Purchaser warrants that the Agent is the sole and effective cause of this Agreement. The Purchaser further warrants that the Unit and/or the Development Scheme and/or the Seller were not introduced to the Purchaser by any person or entity other than the Agent and hereby indemnifies the Seller and holds it harmless against any other claim for agent's commission that may be made by any other agent arising out of this transaction.
- 14.2 The Seller shall pay commission to the Agent and irrevocably instructs the Attorneys to pay over the Agent's commission directly to the Agent on transfer.
- 14.3 If the Purchaser fails to carry out his obligations in terms of this Agreement, the Agent shall have the right to recover the said commission from the Purchaser.

15. NOMINATION

- 15.1 The Purchaser shall have the right to nominate a natural person or persons or an existing Company, Close Corporation or Trust as the Purchaser or co-purchaser herein ("the right of nomination"). If the right of nomination is not exercised (as provided for in 15.1.1 to 15.1.4 both inclusive, below) **by midnight on the date of the last signature to this Agreement** ("the period"), the person whose name appears in item 3 of the Schedule shall be the Purchaser in his personal capacity and be bound by all the terms and conditions of this Agreement. The right of nomination shall be exercised in the following manner, namely that within the period:
 - 15.1.1 the Purchaser shall nominate his nominee(s) in writing;
 - 15.1.2 the nominee(s) shall accept such nomination (including, where applicable, the passing of necessary resolutions) and shall agree to be bound by all the terms and conditions of this Agreement, in writing;
 - 15.1.3 the person whose name appears in item 3 of the Schedule shall sign a deed of suretyship in the form and tenor of Annexure "K" hereto; and
 - 15.1.4 the Purchaser shall deliver the documents referred to in clauses 15.1.1 15.1.2 and 15.1.3 above to the Seller's attorneys.
- 15.2 In the event of the nomination being effected as set out in clauses 15.1.1 to 15.1.4 above, the person whose name appears in item 3 of the Schedule renouncing the benefits of excussion and division, the meaning of which he declares himself to be fully acquainted, hereby binds himself to the Seller as co-principal debtor for all the obligations of the nominee(s) to the Seller arising from this Agreement.

16. TRUSTEE FOR A COMPANY OR CLOSE CORPORATION TO BE FORMED

In the event of the Purchaser acting as a trustee for a company or close corporation to be formed, the person whose name appears in item 3 of the Schedule will be personally liable for all obligations of the Purchaser as though he contracted in his personal capacity if, within **120 (one hundred and twenty) days** of the Date of Signature:

- 16.1 the company or close corporation (as the case may be) in respect whereof he acts as trustee is not incorporated; and/or
- 16.2 the company or close corporation having been incorporated, fails to adopt and ratify (including, where applicable the passing of necessary resolutions) unconditionally this transaction without modification; and

- 16.3 the Purchaser fails to deliver a suretyship in the form and tenor of Annexure “K” in terms of which the Purchaser binds himself as surety and co-principal debtor for all the obligations of the company or close corporation in terms thereof.

17. GENERAL

- 17.1 The terms of this Agreement form the sole contractual relationship between the parties hereto and no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the parties hereto.
- 17.2 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.
- 17.3 If there is more than one Purchaser in terms of this Agreement, the liability of each of the Purchasers shall be joint and several.
- 17.4 If the Purchaser and/or the Surety is married in community of property, then such person's spouse hereby consents to this Agreement.

18. ARBITRATION

- 18.1 Should any dispute arise out of or in connection with this Agreement, other than as provided for in clauses 4.2, 4.3, 9.2, 9.3, 9.4, 9.5, 10.4, 10.5 and 26.1 hereof, then any party shall have the right to declare a dispute and require that the dispute be referred to arbitration, in which event it shall be submitted to, and determined by arbitration in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA"). The parties agree that any such arbitration proceeding is to be concluded in a summary manner with a view to it being completed as soon as possible.
- 18.2 The arbitrator shall be, if the matter in dispute is principally –
- 18.2.1 a legal matter, a practising advocate or attorney of Cape Town of at least 15 (fifteen) years' standing;
 - 18.2.2 an accounting matter, a practising chartered accountant of Cape Town of at least 15 (fifteen) years' standing;
 - 18.2.3 any other matter, any independent person, agreed upon between the parties to the dispute.
- 18.3 The parties shall agree on the arbitrator failing which an arbitrator referred to in clauses 18.2.1 to 18.2.3 will be appointed by AFSA.
- 18.4 In the event that the parties, within 7 (seven) days after the dispute having been referred to arbitration, fail to agree as to whether the dispute is a dispute referred to in clauses 18.2.1 to 18.2.3 above, the matter shall be deemed to be a legal matter.
- 18.5 Each of the parties to the arbitration referred to in clause 18.1 above irrevocably agree that the decision of the arbitrator made at such arbitration proceeding shall be final and binding on each of them and shall be carried out effective immediately. The parties further agree that the arbitration award may at the instance of the parties be made an order of any court to whose jurisdiction the parties are subject.
- 18.6 Notwithstanding the provisions of this clause 18.1, either party shall be entitled to institute proceedings by way of action, application or otherwise, in any court having jurisdiction, for the purpose of obtaining urgent relief.

19. NOTICES AND DOMICILIA

- 19.1 Each of the parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in the Schedule.

- 19.2 Each of the parties shall be entitled from time to time, by written notice to the other party to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 19.3 Any notice given and any payment made by a party to any of the other parties ("the addressee") which –
 - 19.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 19.3.2 posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.
- 19.4 Where, in terms of this Agreement any communication is required to be in writing, the terms of "writing" shall include communications by facsimile. Communications by facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 1 (one) hour after the time of transmission.

20. RULES

The Purchaser acknowledges that the Seller intends, when opening the Register, to amend the Management and Conduct Rules contained in the Act substantially in accordance with Annexures "I" and "J" and so as to provide for:

- 20.1 the levy determination referred to in clause 11.1;
- 20.2 additional rules imposed by the Seller.

21. RIGHT OF CESSION

The Seller shall be entitled to cede any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be necessary, the Purchaser consents thereto.

22. NO WITHHOLDING PAYMENTS

The Purchaser shall not be entitled to withhold, delay, abate or set off payment of any amounts due to the Seller in terms of this Agreement for any reason whatsoever.

23. SUSPENSIVE CONDITION

- 23.1 This agreement is subject to the suspensive condition that the Seller obtains sufficient sales of the units so as to procure development finance to cover the construction costs from a bank or recognized financial no later than 30 December 2010.
- 23.2 This condition has been inserted for the benefit of the Seller who may waive its right to rely thereupon at any time prior to 30 December 2010.

24. MORTGAGE BOND

- 24.1 Should this sale be subject to and conditional upon the Purchaser being granted a mortgage bond for the amount stipulated in item 11 of the Schedule from a financial institution, such loan is to be approved by no later than 30 (thirty) days of the Date of Signature or by such extended period, as the Seller in its sole discretion may determine.
- 24.2 This Agreement shall operate irrevocably and in rem suam as a power of attorney in favour of the Seller granting the Seller power to apply for a mortgage bond on behalf of the Purchaser for the loan contemplated in 11 of the Schedule. A mortgage origination agent, Ooba, shall contact the Purchaser to obtain the necessary information required

for the loan application and to this end, the Purchaser irrevocably agrees to use at no other mortgage origination agent and agrees not to approach any bank or financial institution for finance and/or to procure the mortgage finance required as per clause 11 of the Schedule. The Purchaser hereby undertakes to timeously do all such things and to sign all such documents as may be necessary and/or requisite in order to apply for and procure the approval of the said loan from a bank or other financial institution and to furnish same to the Seller and/or Ooba.

- 24.3 The Purchaser shall within **15 (fifteen)** days of the date of approval of the mortgage bond as contemplated in clause 24.1 above, provide the Seller with an irrevocable bank guarantee, conditional only upon the simultaneous registration of transfer of the Unit and the mortgage bond, in a form acceptable to the Seller, for the due payment of the balance of the Total Purchase Price. The said guarantee shall provide for payment to be effected at the central Cape Town branch of such bank immediately upon receipt by the bank of written notification from the Attorneys that transfer has been effected.
- 24.4 In the event that the condition in clause 24.1 is not fulfilled within the said time period, this Agreement shall automatically lapse and the Seller shall refund the Purchaser's deposit together with accrued interest and less administration charges.
- 24.5 Should written confirmation be received from the Purchaser or his bankers that the Purchaser's bond has been timeously approved and subsequent to such approval, the approval is withdrawn by the Purchaser or their bankers for any reason whatsoever, then the Purchaser agrees that he shall forfeit his deposit.
- 24.6 The Attorneys shall attend to the registration of all and any mortgage bond/s to be registered to secure the balance of the Total Purchase Price.

25. SURETYSHIP

Where the Purchaser is a company, close corporation or trust, the Surety renouncing the benefits of excussion and division, the full meaning of which he declares himself to be fully acquainted, hereby binds himself as Surety and co-principal debtor with the Purchaser for all the latter's obligations under this Agreement. The provisions of the Deed of Suretyship (Annexure "K) shall be deemed to apply and to be incorporated *mutatis mutandis* into the suretyship in this clause 25.

26. DAMAGE OR DESTRUCTION

- 26.1 In the event that, at any time prior to transfer, the Unit is destroyed or damaged to the extent that the Purchaser is or would be deprived of beneficial occupation thereof, or the Building is destroyed or damaged to an extent that **50% (fifty per cent)** or more of the Building requires reconstruction as determined by the Architect, whose decision will be final and binding on all parties, then the Seller shall give notice to the Purchaser within **14 (fourteen) days** of the occurrence of such an event of its decision either to:
 - 26.1.1 resile from this Agreement, in which event:
 - 26.1.1.1 this Agreement shall cease to be of any further force and effect and the parties shall be restored to, as near as may be, the position in which they would have been had this Agreement not been entered into and no party shall have any claims against the other as a result thereof, save that the Purchaser will be refunded the deposit (if paid in cash) and the balance of the Total Purchase Price (if paid in cash in terms of clause 3.2 and 3.3) and accrued interest thereon; and
 - 26.1.1.2 no party shall have any further rights against the other arising out of or in connection with this Agreement; or
 - 26.1.2 proceed with the reconstruction of the Unit and/or the Building utilising the proceeds of the insurance policy effected by or at the instance of the Seller, in which event:
 - 26.1.2.1 the parties shall continue to be bound by this Agreement; and
 - 26.1.2.2 the Purchaser acknowledges that the anticipated Occupation Date and date of transfer as reflected in items 6 and 7 of the Schedule will be substantially delayed; and

- 26.1.2.3 the Purchaser shall not have any claim against the Seller or its agents or employees for, including but not limited to, any loss or damage suffered by the Purchaser directly or indirectly as a result of the Seller’s decision to reconstruct the Building.

27. **OFFER**

The offer to the Seller constituted by the Purchaser having signed this Agreement shall be deemed to be an offer by the Purchaser and shall be irrevocable and may not be withdrawn, except by written notice to the Seller, which in any event may not be given prior to the expiry of a period of **5 (five)** calendar days from the date of signature by the Purchaser.

28. **DELAY IN CONSTRUCTION**

- 28.1 Should construction of the Development Scheme not commence on or before 31 December 2010 for any reason whatsoever then in order to cater for the increased cost of construction due to inflation, holding costs and the like, the Total Purchase Price shall increase by an amount equal to the Consumer Price Index for the middle income group as published by the Cape chamber of Commerce from time to time per month until such time as the development finance has been granted by a bank or recognised financial institution and construction has commenced as certified by the Architect. A certificate by the Attorneys as to the CPI rate to be applied shall be deemed to constitute proof of the amount of the CPI increase should this be applicable.
- 28.2 Should construction of the Development Scheme not have commenced by 31 December 2010, the Purchaser shall have the right to withdraw from this agreement on notice to the Seller and the Seller shall be obliged to return any deposit and accumulated interest to the Purchaser forthwith.

29. **EXCLUSIVITY AND RE-SALE**

In order to preserve the exclusive nature of the Development Scheme the Purchaser irrevocably agrees that he shall not be entitled to sell the Unit purchased in terms of this agreement until all the Units in the Development Scheme have been sold, without the written permission of the Seller, which permission shall not unreasonable be withheld.