



AGREEMENT OF SALE

between

THE BURGUNDY ESTATE JOINT VENTURE

("the Seller")

and

(Identity / Registration Number _____)
("the Purchaser")

<p>Sale of: :</p> <p>Unit No. _____</p>
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SYNOPSIS / AGREEMENT SUMMARY

INTRODUCTION:

- (a) The Seller will be the registered owner of Erf No.s 213, 214, 215, 217 and 218 Burgundy Estate which are intended to be consolidated to form Erf 779 Burgundy Estate (the Land).
- (b) The Seller intends to establish a residential development known as Zarina on the Land.
- (c) The Seller has agreed to sell to the Purchaser who has agreed to purchase a sectional title unit in the development together with the rights to the exclusive use of the parking bay/s, garage/s, storeroom/s balcony/s and terrace/s (as applicable), described in the covering schedule (altogether known as “the subject matter”), together with its undivided share in the common property, subject to and on the terms and conditions contained in this agreement.

1 Document overview

This Agreement is made up of the following seven parts:-

- 1.1 PART ONE – Agreement summary/structure – being this short summary of the Agreement;
- 1.2 PART TWO – The Covering Schedule – which contains the pertinent transaction information;
- 1.3 PART THREE – Definitions and Interpretation – being a guide to the meaning of certain words and phrases used in the Agreement and rules/guidelines relative to the interpretation of the Agreement;
- 1.4 PART FOUR – Conditions of Sale – being the terms and conditions specific to the sale of the Property;
- 1.5 PART FIVE – The Scheme and Burgundy Estate Development Conditions – which deals with the relationship between the Purchaser and:-
 - (1) the Seller in its capacity as developer of the Burgundy Estate Development;
 - (2) the Seller in its capacity as developer of the Scheme ;
 - (3) the Body Corporate (which is still to be established);
 - (4) Burgundy Estate Master Homeowners’ Association;
 and ancillary related matters.
- 1.6 PART SIX – General Terms and Conditions – being general terms and conditions applicable to the Agreement;
- 1.7 PART SEVEN - Annexures – meaning the annexures to this Agreement.
- 1.8 CERTAIN IMPORTANT CLAUSES EMPHASISED

The Purchaser’s attention is drawn to the fact that, whilst all of the terms of this Agreement are important, certain clauses have been highlighted in order to draw the Purchaser’s attention thereto.

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COVERING SCHEDULE

1. PARTIES		
1.1 SELLER:		The Burgundy Estate Joint Venture comprising of a joint venture between Rabie Property Group (Pty) Ltd (Registration No. 2006/012251/07) and Toontjiesrivier Landgoed (Pty) Ltd (Registration No. 1972/002810/07)
Address:		c/o Rabie Property Group, Suite G18 The Colosseum, Century Boulevard, Century City, 7441
1.2 PURCHASER		
Full Name		
Company <input type="checkbox"/> Close Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Natural Person <input type="checkbox"/>		
Name of Purchaser's Representative in case of legal entities :		
Registration / IT / Identity No.:		
Purchaser's Income Tax No.:		
Registered / Residential Address:		_____ _____ _____ _____
Postal Address:		_____ _____ _____
Telephone No:	(Home)	
	(Work)	
	(Cell)	
Telefax:		
E-mail Address:		

Marital Status(If natural person):	In community of property / out of community of property / single / married by Muslim rites / Laws of another country (select whichever applies) If in community of property - full name of spouse:- _____
2. PROPERTY DESCRIPTION	
(1) Unit No. _____	measuring approximately _____ square metres in extent
3. EXCLUSIVE USE AREAS:-	
3.1 Parking Bay/s :	_____ bay/s being the bay/s numbered : _____ reflected on the Garage, Parking and Storeroom Layout Plan annexed hereto marked "E"
3.2 Storeroom /s :	_____ storeroom/s being the storeroom/s numbered : _____ reflected on the Garage, Parking and Storeroom Layout Plan annexed hereto marked "E"
3.3 Balcony/s or Terrace/s:	measuring approximately _____ square metres in extent reflected on the Apartment / Unit and Electrical Layout annexed hereto marked "D"
3.4 Garage/s	_____ garage/s being the garage/s numbered : _____ reflected on the Garage, Parking and Storeroom Layout Plan annexed hereto marked "E"
3.5 Garden	measuring approximately _____ square metres in extent reflected on the Apartment / Unit and Electrical Layout annexed hereto marked "D"
4. PURCHASE PRICE OF PROPERTY (Inclusive of VAT)	
4.1 Purchase Price	R
4.2 Deposit payable within 24 hours after signature by the Purchaser:	R
4.3 Balance of Purchase Price:	R

5. LOAN FINANCE		
5.1	Amount of Loan required, if any	R
5.2	Balance of purchase price payable in Cash	R
6. ESTIMATED TRANSFER DATE		
7. ESTIMATED POSSESSION DATE		
8.	ESTIMATED LEVY (EXCLUDING RATES) including terrace, balcony, storeroom, garage, parking bays (as applicable)	R
9.	BURGUNDY ESTATE PROPERTY OWNER'S ASSOCIATION LEVY	R
TOTAL LEVY		R
10.	ESTIMATED ANNUAL RATES AND SERVICES	To be levied by the Local Authority
11.	OCCUPATIONAL RENTAL	Prime interest rate calculated on the full purchase price
12. CONVEYANCERS		
Name of Conveyancer:	Norton Rose Fulbright 10 th Floor Norton Rose House, 8 Riebeek Street CAPE TOWN 8001 Ref : Mieke van Rensburg Tel: (021) 405 1200 Fax: (021) 418 6900 Norton Rose Trust Account Bank : Nedbank Limited Account No : 104 102 4533 Branch Name : Nedbank (COGHB) Branch Code : 10410900 Swift Code : NEDSZAJJ	
13. AGENT		
13.1	AGENCY NAME	Property World
13.2	AGENT'S NAME	
14.	AGENT'S COMMISSION	Two percent of the purchase price
15.	CONDITIONS PRECEDENT	Any conditions precedent which may be applicable to this agreement are contained in Annexure J hereto.

PART THREE : DEFINITIONS AND INTERPRETATION

2 Definitions and interpretation

2.1 In this Agreement and the Schedules, unless clearly inconsistent with or otherwise indicated by the context –

- (1) **Agreement** means this agreement of sale of the Subject Matter (and related ancillary matters) comprising Parts One to Seven;
- (2) **Architect** means the architect appointed for the purposes of the development envisaged in this agreement being an independent consultant registered with the South African Institute of Architects;
- (3) **Banking Account** means the Conveyancers' banking account as described in clause 12 of the Covering Schedule and as may be amended by written notice from the Seller (alternatively the Conveyancers) to the Purchaser from time to time;
- (4) **Balconies and terraces** means the area/s indicated as such on the Apartment and Electrical Layout Plan annexed hereto marked "D";
- (5) **Body Corporate** means the controlling body of the Scheme as contemplated in terms of section 36 of the Sectional Titles Act;
- (6) **Building floor plans** means the plans annexed marked C;
- (7) **Buildings** means the buildings to be constructed on the Land;
- (8) **Burgundy Estate MHOA** means the Burgundy Estate Master Home Owners' Association (an association not for gain);
- (9) **Burgundy Estate Development** means the development of all the land which comprises Burgundy Estate which has been and is in the process of being developed by the Seller, comprising, inter alia, the Land envisaged herein as shown on the Burgundy Estate Development Framework Plan annexed hereto marked "F";
- (10) **Common Property** means the common property as defined in the Sectional Titles Act;
- (11) **Communal Amenities** means a swimming pool, braai area, change rooms, park area, kiddies play area, manager's office, laundry drying yard/s and refuse storage areas as indicated on the Site Layout annexed hereto marked B;
- (12) **Companies Act** means Act 71 of 2008;
- (13) **Constitution** means an individual or combined reference (as may be stated or as may appear from the context) to the rules of the Body Corporate and the Burgundy Estate MHOA constitution and all or any rules promulgated by the Burgundy Estate MHOA in terms thereof;
- (14) **Conveyancers** means the Conveyancers appointed by the Seller to attend to the Transfer, as depicted in clause 12 of the Covering Schedule (and/or their successors/replacement);
- (15) **Covering Schedule** means the Schedule contained in Part Two of this Agreement;
- (16) **CPA** means the Consumer Protection Act No. 68 of 2008;
- (17) **Development Period** means the period from the date of the commencement of the development envisaged in this Agreement to the later of the date of transfer of the last saleable sectional title unit in the Scheme or the date of completion of any outstanding work in the Scheme by the Seller, whichever occurs last;

- (18) **Effective Date** means the later of the Signature Date or the date of the fulfilment of the Conditions Precedent;
- (19) **Elevations** means the plans annexed marked C1;
- (20) **Estimated Transfer Date** means the estimated transfer date of the Property being the date specified in clause 6 of the Covering Schedule;
- (21) **Estate agent** means the agent referred to clause 13 of the Covering Schedule;
- (22) **exclusive use areas** (when used in the lower case) means such parts of the common property delineated on the sectional plan as exclusive use areas reserved for the exclusive use and enjoyment so conferred upon the Seller and/or registered owner for the time being of a unit in terms of section 27(1) and/or in respect whereof the Registrar may have issued a certificate of real right in respect of a right of exclusive use in terms of 27(1)(A) and/or in respect whereof the Seller and/or the Body Corporate have made rules conferring rights of exclusive use and enjoyment of parts of the common property upon the Purchaser in terms of section 27A of the Sectional Titles Act;
- (23) **Exclusive Use Areas** (when capitalised) means those portions of the exclusive use areas in respect whereof the Purchaser shall have exclusive use and enjoyment, including:-
- (a) the parking bay/s;
 - (b) the storeroom/s (if any);
 - (c) the terrace/s and / or balcony/s (if any);
 - (d) the garage/s (if any); and
 - (e) the garden (if any);
- (24) **FICA** means the Financial Intelligence Centre Act, Act 38 of 2001, as amended from time to time;
- (25) **Financial Institution** means the registered South African bank with whom the Purchaser concludes an agreement relative to the Loan Finance;
- (26) **Floor Area** in relation to any section means the floor area to the median line of the boundary walls of the section as contemplated in section 5 (3) (e) of the Sectional Titles Act;
- (27) **Garage/s** means the garage/s referred to in clause 3 of the Covering Schedule and indicated as such in the Garage, Parking and Storeroom Layout Plans annexed hereto (marked "E"), the identification number(s) of which shall be as reflected in the sectional plan relating thereto as surveyed on completion;
- (28) **Garden** means the area/s indicated as such on the Apartment and Electrical Layout Plan annexed hereto marked "D";
- (29) **Improvements** means the building and all other improvements of a permanent nature erected on the Land and forming part of the Scheme;
- (30) **land** (when used in the lower case) means the immovable property on which the Burgundy Estate Development takes place;
- (31) **Land** (when capitalised) means the land on which the Scheme is being developed as shown on the land subdivision plan annexed hereto (marked "A"), namely Erf No.s 213, 214, 215, 217 and 218 Burgundy Estate which are intended to be consolidated to form Erf 779 Burgundy Estate;

- (32) **Levy** means the contributions as defined in clauses 8 and 9 of the Covering Schedule;
- (33) **Loan** means an agreement of loan concluded or to be concluded between the Purchaser and the Financial Institution in terms whereof the latter will lend the Loan Finance to the Purchaser for the purposes of paying the Purchase Price or any other amount due to the Seller;
- (34) **Loan Finance** means a loan in the amount recorded in clause 5 of the Covering Schedule;
- (35) **Local Authority** means the municipality exercising jurisdiction over the Property and the Burgundy Estate Development;
- (36) **Members** means the owners of units within the Scheme;
- (37) **NCA** means the National Credit Act No. 34 of 2005;
- (38) **Parking bay/s** means the parking bay/s referred to in clause 3 of the Covering Schedule and indicated as such in the Garage, Parking and Storeroom Layout Plans annexed hereto (marked "E"), the identification number(s) of which shall be as reflected in the sectional plan relating thereto as surveyed on completion;
- (39) **Participation quota** means the percentage determined in accordance with the provisions of section 32 (1) or (2) in respect of that section/unit for the purposes referred to in section 32 (3), and shown on a sectional plan in accordance with the provisions of section 5 (3) (g) of the Sectional Titles Act 95 of 1986.
- (40) **Possession Date** means the date of handover of the Unit by the Seller to the Purchaser and as recorded in clause 7 of the Covering Schedule, which shall not occur prior to the Practical Completion Date;
- (41) **Practical Completion Date** means the date of Practical Completion of the Subject Matter as defined and/or arrived at in terms of clause 9.5;
- (42) **Prime rate** shall mean the basic rate of interest per annum as determined by the South African Reserve Bank;
- (43) **Property** means the unit, parking bay/s, storeroom/s, balcony/s and terrace/s sold to the Purchaser in terms of this Agreement as identified in clause 2 and/or clause 3 of the Covering Schedule (as the case may be) over which the Purchaser will be vested rights contemplated in Sections 27(1) and/or 27(1)(A) read with 27(6) of the Sectional Titles Act;
- (44) **Purchase Price** means the purchase price of the Subject Matter as recorded in clause 4 of the Covering Schedule;
- (45) **Purchaser** means the purchaser of the Property being the party described in clause 1.2 of the Covering Schedule;
- (46) **Register** means the sectional title register to be opened in respect of the Scheme in terms of the Sectional Titles Act;
- (47) **Regulations** mean the regulations promulgated under section 55 of the Sectional Titles Act from time to time;
- (48) **Right to Extend** means the real right to extend the Scheme pursuant to the provisions of Section 25 of the Sectional Titles Act;
- (49) **Risk Transfer Date** means the date on which the risk in and benefits to the Subject Matter pass to the Purchaser;

- (50) **Rules** means the management and conduct rules in terms of which the Body Corporate controls the Development Scheme;
- (51) **Scheme** means the development of the Land by the construction of, amongst others, the building and the division thereof into sections as contemplated in the Sectional Titles Act to be opened and registered as contemplated in Part 2 of the Sectional Titles Act, in relation to the Land;
- (52) **Section** means a section as defined in the Sectional Titles Act;
- (53) **Sectional Plan** means the sectional plan/s to be prepared and registered in respect of the Scheme;
- (54) **Sectional Titles Act** means the Sectional Titles Act No 95 of 1986 (or any statutory modification or re-enactment thereof) and includes the regulations made thereunder from time to time;
- (55) **Seller** means the Burgundy Estate Joint Venture comprising of a joint venture between Rabie Property Group (Pty) Ltd (Registration No. 2006/012251/07) and Toontjiesrivier Landgoed (Pty) Ltd (Registration No. 1972/002810/07) and shall, where applicable, include its nominee(s) and/or successors in title carrying out the Burgundy Estate Development from time to time, and includes its successors in title and their respective successors, if any;
- (56) **Signature Date** means the date of signature by the last party signing this Agreement;
- (57) **Site Layout** means the plan annexed marked B;
- (58) **Statutory Authority** means the local authority and/or provincial authority and/or any other statutory body exercising jurisdiction over the Land;
- (59) **Storeroom** means the storeroom (if any) referred to in clause 3 of the Covering Schedule and indicated in the Garage, Parking and Storeroom Layout Plans annexed hereto (marked "E"), the identification number of which shall be as reflected in the sectional plan relating thereto as surveyed on completion of the storeroom and approved by the Surveyor-General being an exclusive use area;
- (60) **Subject Matter** means a collective reference to the Property, the Exclusive Use Areas (where applicable) and an undivided share in the common property as apportioned to the unit in accordance with the participation quota/s to be determined in accordance with the Sectional Titles Act;
- (61) **Surviving Provisions** means clauses 3, 4.1(1), 27, 28, 30, 32, 33 – 38;
- (62) **Total Floor Area** means the total floor area of all units within the Scheme;
- (63) **Transfer Date** means the date on which ownership of the unit is transferred to the Purchaser in the Deeds Office;
- (64) **TPCA** means the Trust Property Control Act No. 25 of 2005;
- (65) **Unit** means the sectional title unit described in clause 2 of the Covering Schedule and identified in the Elevations and Building floor plans annexed (marked "C1" and "C" respectively); and
- (66) **VAT** means value-added tax at the applicable rate in terms of the Value-Added Tax Act No 89 of 1991 (or any statutory modification or re-enactment thereof) and includes any regulations made thereunder from time to time;

2.2 In this Agreement and the recitals, unless clearly inconsistent with or otherwise indicated by the context -

- (1) any reference to the singular includes the plural and vice versa;
 - (2) any reference to natural persons includes legal persons and vice versa; and
 - (3) any reference to a gender includes the other genders.
- 2.3 If any provision in a definition is a substantive provision imposing rights or 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.
- 2.4 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.5 In the event that the last date for the performance of any obligation or the exercise of any right in terms of this Agreement falls on a day which is not a business day, then the relevant last date for performance of any obligation or the exercise of any right in terms of this Agreement shall be the immediately succeeding Business Day.
- 2.6 When any number of days or other period is prescribed, such number of days or other period shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the immediately succeeding Business Day.
- 2.7 The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.9 Words and expressions defined in any sub-clause shall bear the meanings assigned to such words and expressions in this entire Agreement.
- 2.10 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 2.11 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 2.12 Where this Agreement requires a Party to use "Best Endeavours" in relation to an action or omission, that Party shall do all such things as are reasonably necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, the Parties shall, to the extent that it is commercially reasonable to do so, consult and co-operate with each other and continue to take action so as to achieve that action or omission, provided that any actions or omissions required to be undertaken shall not be such as to result in a breach of fiduciary duty or contravention of any law.
- 2.13 The words "material" and "materially" means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect, or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in this Agreement.
- 2.14 The use of the word "including" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the eiusdem generis rule (which is a rule of interpretation that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of the

general descriptors must be restricted) shall not be applied in the interpretation of such general wording and/or such specific example or examples.

- 2.15 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 2.16 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

PART FOUR : CONDITIONS OF SALE OF PROPERTY

3 Sale, cession and allocation of the subject matter

- 3.1 The Seller hereby sells to the Purchaser who hereby purchases the Property.
- 3.2 The Seller cedes to the Purchaser all of its right, title and interest in and to the Exclusive Use Areas (as contemplated in terms of Section 27(1) of the Act) and/or grants to the Purchaser (and/or undertakes to procure that the Body Corporate grants to the Purchaser) the exclusive use and enjoyment of the Exclusive Use Areas [as contemplated in Section 27(A) of the Sectional Titles Act] which cession and/or allocation shall take effect on registration in the Deeds Office of the Exclusive Use Areas, provided that ownership of the unit has been transferred to the Purchaser.
- 3.3 **The Purchaser acknowledges that:-**
- (1) **the Seller may not be able to simultaneously transfer the Unit, Balcony/s, Terrace/s, Parking bay/s, Garages, Gardens and/or Storeroom/s (as the case may be);**
 - (2) **it may occur that the Seller will first transfer the Unit and thereafter cede the Exclusive Use Areas to the Purchaser;**
 - (3) **in terms of the Sectional Titles Act, the Seller may only cede its rights in and to the exclusive use areas to a Purchaser which owns a unit in the scheme.**

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4 Purchase price and method of payment

- 4.1 The Purchase Price is the amount defined in clause 4 of the Covering Schedule. The Purchaser is liable to effect payment of the Purchase Price by payment to the Conveyancer of the:-
- (1) deposit within twenty four (24) hours of signature of this Agreement by the Purchaser;
 - (2) balance of the Purchase Price (paragraph 4 of the Covering Schedule on page 5) simultaneously against Transfer of the Property.
- 4.2 This Agreement serves as an irrevocable instruction to the Conveyancers to invest the Deposit in terms of Section 78(2)(A) of the Attorneys Act 53 of 1979 (as amended) with interest to accrue for the benefit of the Purchaser.
- 4.3 The Deposit and any additional funds paid by the Purchaser shall only be invested for the benefit of the Purchaser as from the date of compliance by the Purchaser with the requirements of FICA. **The Purchaser acknowledges that:-**
- (1) **it is the responsibility of the Purchaser to ascertain, from the Conveyancers, what documentation the Conveyancers require for the purposes of complying with FICA;**
 - (2) **the Conveyancers shall not invest such funds for his/her benefit until such time as the necessary FICA documentation has been provided to the Conveyancers.**
- 4.4 The Purchaser is liable to effect payment of all amounts payable in terms of this Agreement:-
- (1) to the Conveyancers by payment into the banking account;
 - (2) either by bank guaranteed cheque or by electronic funds transfer;
 - (3) in South African currency;
 - (4) free of exchange and/or bank charges.

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5 Bank guarantee / undertaking to pay

5.1 The Purchaser shall furnish the Conveyancers with either : -

- (1) a guarantee issued by a recognised commercial bank in accordance with the specimen bank guarantee annexed to the conditions of sale (marked "H"); or
- (2) a bond approval from a recognised commercial bank, the terms and conditions whereof are to be to the Seller's approval; or

for the due payment of the balance of the purchase price against registration of transfer of the unit into the name of the Purchaser in the deeds office, either :

- (3) within 30 days after the Signature Date; or
- (4) the Purchaser may elect to make a further payment of 20% of the purchase price to the Conveyancers within 30 days after date of signature by the Purchaser of the agreement of sale, in which event the guarantee or bond approval is to be furnished 45 days prior to the date of lodgement as estimated by the Conveyancers in their sole discretion.

6 Set-off

6.1 The Purchaser may not apply set-off of any of its obligations to the Seller contained in this Agreement unless:-

- (1) the Seller is in breach of this Agreement , and;
- (2) the Purchaser has first given the Seller 7 days' prior notice of the Purchaser's intention to apply set-off which notice must:-
 - (a) be delivered to the Seller, care of the Conveyancers;
 - (b) state the amount which the Purchaser wishes to set-off;
 - (c) state the nature and cause of the indebtedness against which the Purchaser wishes to apply set-off.

6.2 **If the Purchaser invokes the right contemplated in clause 6.1, the Seller may, by written notice to the Purchaser, elect to resile from the Agreement, in which event both parties' rights to claim damages are fully reserved.**

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7 Title conditions

7.1 The Purchaser acknowledges that the Subject Matter is sold subject to:-

- (1) all the conditions of title, restrictions and servitudes; benefiting or burdening the Land contained in the title deed of the Land;
- (2) all terms and conditions pertaining to and/or all benefits to and burdens upon the Subject Matter, by virtue of the Scheme and/or by virtue of it being located within the Burgundy Estate Development;
- (3) all or any other statutory burden and/or restriction and/or condition which may be imposed by any relevant competent authority ;
- (4) the architectural and landscaping guidelines referred to in clause 24;
- (5) the Constitution.

7.2 **The Purchaser acknowledges that :-**

- (1) **the rights of exclusive use and enjoyment of parts of the common property may be conferred for use upon members, at the sole discretion of the Seller, in terms of section 27(1) and/or by means of the Rules of the Development Scheme, in terms of section 27A of the Sectional Titles Act;**
- (2) **the areas reflected in the plans and specifications are estimated and do not constitute floor areas and rental areas or the areas as measured in terms of the Sectional Titles Act;**
- (3) **the Purchaser and the Purchaser's successor/s in title shall not be permitted to extend or subdivide the Unit prior to the Transfer Date without the prior written consent of the Seller.**
- 7.3 The Seller is liable to use its best endeavours to ensure that the final surveyed extent of the Subject Matter is in keeping with the plans annexed hereto.
- 7.4 **The Purchaser hereby acknowledges that the final surveyed extent of the Unit may not be precisely the same as depicted in Annexure D, Part Seven.**
- 7.5 The following provisions apply should there be a variation in the extent of the Unit as described in clause 2 of the Covering Schedule (Part Two) [the "Stated Extent"] and the actual surveyed extent (the "Surveyed Extent") [which difference is hereinafter referred to as the "Difference"]:-
- (1) If the Difference is less than 5%, neither party shall have any claim against the other, it being recorded that in these circumstances:-
- (a) the Purchaser shall benefit from any increase in the extent, or;
- (b) the Purchaser shall abide by any decrease in the extent;
- (2) if the Difference is more than 5%, and if Transfer has not yet occurred, either party shall be entitled (but not obliged) to resile from this Agreement by giving written notice to the other to that effect (within 7 days of the sooner of the date on which they first became aware of the Difference, alternatively the date on which they could reasonably have become so aware) and in which event:-
- (a) the parties shall be restored to their respective positions prior to the conclusion of this Agreement, and;
- (b) neither party shall have any claim against the other (save and except for a claim to be restored to their respective positions prior to the conclusion of this Agreement);
- (3) if the Difference is more than 5% and if neither party has resiled from the Agreement (as contemplated in clause 7.5(2) above) then:-
- (a) neither party may, after Transfer, cancel the Agreement on these grounds, and;
- (b) if the Difference leads to a shortfall in the extent, the Purchaser shall be entitled to require the Seller to reduce the purchase price on a pro rata basis.
- 7.6 The provisions of clause 7.5 apply should there be a variation in the extent of the Exclusive Use Areas, save that the extent of the deviation for this clause will be 10% and not 5%.

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8 Variation of specifications

- 8.1 **The Property and the Exclusive Use Areas shall be substantially in accordance with the Standard Specifications attached hereto (marked "G") provided that the Seller shall be entitled to:**

- (1) **substitute any specified item with items of a similar standard and quality and provided these are aesthetically similar to the items which they are replacing, and**
 - (2) **vary the Elevations and Building Floor Plans annexed hereto (marked "C1" and "C" respectively) and the Sectional Plan of the building should the Seller consider same reasonably necessary for technical or aesthetic reasons provided that the Seller shall be obliged to give the Purchaser reasonable notice of any material variations; and**
 - (3) **determine the exact location of the exclusive use areas, it being recorded that their position will be approximately as indicated on the Parking and Store Layout annexed hereto (marked "E").**
- 8.2 **The Seller may vary the Apartment and Electrical Layout annexed hereto (marked "D"), should the Seller's architect consider same necessary for technical or aesthetic reasons provided that:-**
- (1) **the Seller shall be obliged to give the Purchaser reasonable notice of any material variations, and**
 - (2) **the Purchaser may resale from the Agreement if the variations represent a material departure from the design concept (as appears from the Schedules to this Agreement) and if the Purchaser gives the Seller written notice to that effect within 14 days of receipt of the notice referred to in clause 8.2(1).**

9 Finishes and practical completion

- 9.1 The Purchaser has the right to choose between various types of finishes as selected by the Seller, provided that the building work has not progressed past the point where the finishes have been selected by the Seller for implementation purposes.
- 9.2 **The Purchaser shall within 14 days after being requested to do so, advise the Seller in writing of its selection in respect of the finishes, failing which the Seller shall select the finishes.**
- 9.3 Should the cost of any item selected by the Purchaser exceed the allowance for that item in terms of the specification, the Purchaser shall pay the excess (plus VAT) to the Seller on invoice prior to the installation thereof and should the Seller incur any professional fees relating to this clause 9.3, these shall be for the Purchaser's own account;
- 9.4 The Seller shall not be obliged, at any stage, to agree to any extras, omissions, variations and/or changes of any nature whatsoever which the Purchaser may request the Seller to carry out/perform.
- 9.5 For the purposes of this Agreement the term "Practical Completion" means the completion of the unit up to such a point that renders it capable of effectively being used for the purposes for which it is intended (it being specifically recorded that Practical Completion may occur prior to the finalization of rectification of any snags). The Practical Completion Date is the date upon which Practical Completion occurs.
- 9.6 In the event that the parties cannot agree on whether or not Practical Completion has occurred and/or whether or not the Subject Matter can be effectively used for the purposes for which it is intended, (as contemplated in clause 9.5 above) the parties hereby agree to refer the matter for ruling by the Architect, in the manner and on the further terms and conditions set out hereunder.
- 9.7 In the event that the Purchaser disputes that the Architect shall make the ruling envisaged above, the parties shall as soon as reasonably possible, agree to the identity of another architect to be appointed and, failing agreement within forty eight hours, either party may request the South African Institute of Architects to make the appointment on their behalf.

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9.8 The Architect referred to in clause 9.6 or the architect referred to in clause 9.7 above, in assessing whether or not Practical Completion has occurred and/or whether or not the Subject Matter can be effectively used for the purposes for which it is intended (as contemplated in clause 9.5 on page 16) shall:-

- (1) act as expert and not as arbitrator;
- (2) assess the Subject Matter to establish the applicable stage of completion;
- (3) if so satisfied, issue the parties with a certificate to that effect;
- (4) if not satisfied, be required to specify what still needs to be done in order to successfully achieve Practical Completion.

9.9 The decision of the Architect or the architect referred to in clause 9.7 above concerning the matters referred to in clause 9.6 on page 16:-

- (1) has the effect that liability for payment in respect of Occupational Rental on the Practical Completion Date (if applicable) will be triggered if he certifies that Practical Completion has been achieved;
- (2) does not detract from either party's right to challenge the decision which both parties agree to accept as binding until the decision is altered by an order of court or decision of an arbitrator.

10 Communal amenities

10.1 The Purchaser acknowledges and agrees that the owner/occupier of a Unit in the Development shall be entitled to the use of the Communal Amenities.

10.2 The use of the Communal Amenities shall be regulated by virtue of the Rules.

11 Transfer of the property and costs

11.1 Registration of transfer of the Property from the Seller into the name of the Purchaser ("Transfer") shall be effected by the Conveyancers on or about the Estimated Transfer Date, or, if no such date is provided for, as soon as reasonably possible after the Effective Date or the Practical Completion Date, whichever occurs later.

11.2 The Purchaser is liable to pay, within 10 days of receipt of written demand from the Conveyancers, which demand may not be made before the Effective Date, all costs, charges and expenses associated with Transfer including, but not limited to:-

- (1) VAT (if applicable) in respect of the relevant charges mentioned hereunder;
- (2) **the Conveyancer's legal fees associated with registration of transfer calculated in accordance with the prescribed tariff;**
- (3) pro-rata rates and taxes;
- (4) **all costs and charges associated with the registration of such first mortgage bond as the Financial Institution may require, including Conveyancer's legal fees associated with registration of the mortgage bond;**
- (5) all other costs and charges incidental to and necessary for the purposes of Transfer.

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11.3 The Conveyancers may, at any time after the Effective Date, even if they are not yet in a position to pass transfer, request the Purchaser to:-

- (1) furnish the Conveyancers with such documents as they may reasonably require for the purposes of Transfer, and;

- (2) sign such documents as they may be required to sign for the purposes of Transfer;
- and the Purchaser shall be liable to do so within 5 days of being requested to do so by the Conveyancers.
- 11.4 The Seller is obliged to use its best endeavours to ensure that registration of transfer of ownership of all of the components comprising the Property takes place simultaneously. If it is possible to pass transfer of ownership of the Unit but not of all of the components the Seller is obliged to use its best endeavours to provide the Purchaser with the use of a comparable alternative component, failing which the Purchaser is not liable to pay for such components until such time as the Seller is able to pass Transfer thereof or provide a comparable alternative component.
- 11.5 The Purchaser acknowledges and agrees that it is within the contemplation of the parties that circumstances may arise in which transfer of the Unit on the one hand and the parking bays and storerooms on the other hand may not take place simultaneously, for reasons which are outside the Seller's control and/or which occur as a result of no fault of the Seller in which event the Purchaser shall be obliged to take transfer of the Unit even though transfer of the remainder of the Property falls to take place at a later stage.
- 11.6 In the event that Transfer is delayed for more than 6 months after the Estimated Transfer Date referred to in clause 6 of the Covering Schedule either party shall be entitled to cancel this Agreement by notice in writing to the other.

12 Possession, risk and property charges

- 12.1 The Seller shall give and the Purchaser shall take possession of the Property on the Possession Date.
- 12.2 All risk and benefit in the Property shall pass to the Purchaser on the Possession Date.
- 12.3 If the Possession Date is earlier than the Transfer Date:-
- (1) the Purchaser shall be liable to pay the Occupational Rental in the amount and/or at the rate stipulated in clause 11 of the Covering Schedule for the period commencing from the Possession Date up until the Transfer Date;
 - (2) the payment shall be made monthly in advance starting from the Possession Date and thereafter on the first day of each month following;
 - (3) any failure to pay the Occupational Rent or any part thereof shall be deemed to constitute a material breach of this Agreement, entitling the Seller to cancel and to claim damages;
 - (4) the Purchaser shall not make any structural alterations, additions or improvements and/or carry out any work of any nature whatsoever to the interior or the exterior of the Property, without the Seller's written consent.
- 12.4 In the circumstances contemplated in clause 12.3 and should:-
- (1) the Possession Date occur on any day other than the first calendar day of a month, or;
 - (2) the Transfer Date occur on any day other than the last calendar day of the month,
- the occupational rental shall be pro-rated and adjusted, proportionately.
- 12.5 The Seller shall be liable for the Levy, rates and taxes and service charges on the Property for the period up until the Possession Date. The Purchaser shall be liable for all Levies, rates and taxes and service charges thereafter.

- 12.6 Should any Levies, rates and taxes and service charges be payable in advance (for the purposes of Transfer), the Purchaser shall be liable to pay its pro-rata portion of the Levies, rates and taxes and service charges (as estimated by the Conveyancers) within ten (10) days of written demand, provided that demand may not be made prior to the Effective Date.
- 12.7 In the event of the Body Corporate, within 60 days after the Effective Date, imposing a special Levy to meet expenses which have been underestimated for any period up to the aforesaid date, the Seller shall refund to the Purchaser such amount immediately when such Levy becomes payable by the Purchaser.
- 12.8 In performing the estimate contemplated in clause 12.6 the Conveyancers shall:-
- (1) estimate the anticipated date of Transfer;
 - (2) compute the estimated Levies, rates and taxes and service charges for the period in question;
 - (3) act as experts, and not as arbitrators;
 - (4) act reasonably.
- 12.9 The Purchaser's obligation to pay the advance amount as estimated by the Conveyancers (as provided hereinabove) is an interim measure to facilitate Transfer.
- 12.10 The Purchaser is free to query and/or seek an adjustment of the estimate at any time after Transfer, and in this regard shall, within 5 days of Transfer, provide the Conveyancers with a written request to determine the obligations owed in respect of the advance occupational rental and/or Levies paid by the parties.
- 12.11 On receipt of the written request referred to in clause 12.10 above the Conveyancers are hereby irrevocably instructed to forthwith perform and furnish the parties with a reconciliation of the advance occupational rental and/or Levies paid by the parties, on or as soon as reasonably possible after the Transfer Date. In so doing the Conveyancers are instructed and authorised to act for both parties, and they shall act as experts and not as arbitrators.
- 12.12 In the event that the Conveyancer determines that:
- (1) there has been an overpayment, the party who overpaid shall be entitled to reimbursement on demand;
 - (2) there has been an underpayment, the responsible party shall be liable to effect payment upon demand.
- 12.13 **The Seller intends, when submitting the application for the opening of the register, to register a special rule for the Scheme in terms of which the liability of the owner of any section to make contributions for the purposes of section 37(1)(a) or 47(1) of the Sectional Titles Act in respect of any exclusive use area shall be calculated at a rate that equates to no more than one third of the rate per square metre per floor area payable by owners of sections in respect of their sections.**
- 12.14 **The Seller shall be entitled, but not obliged, to provide in the rules for a fixed rate of levy per exclusive use area.**

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13 Conditions applicable pending transfer

- 13.1 With effect from the Possession Date of the Subject Matter and pending Transfer, the following conditions shall apply:
- (1) save insofar as may be inconsistent with the provisions of this Agreement, the provisions of section 44(1) of the Sectional Titles Act shall apply;

- (2) the provisions of the Rules and/or Constitution insofar as they cast any duty upon the owner or occupier of a unit, shall bind the Purchaser and be enforceable by the Seller and/or the Body Corporate and/or the Burgundy Estate MHOA;
- (3) the Purchaser may not make any alterations or additions to the Subject Matter;
- (4) the Purchaser shall maintain the Subject Matter in good order and condition;
- (5) the Purchaser shall not sell, let or in any other manner dispose of or part with possession (whether temporarily or otherwise) of the Subject Matter save with the written consent of the Seller.

13.2 Pending the establishment of the Body Corporate:

- (1) the Purchaser shall not be entitled to sell, transfer or cede the rights in respect of, or offer for sale or advertise for sale, the Subject Matter;
- (2) the Seller shall insure the building and all Improvements, fixtures and fittings in or upon the Land for the full replacement value thereof ;
- (3) the Seller shall maintain the common property, excluding the Exclusive Use Areas, and keep same in a state of good and serviceable repair and in a neat, tidy and sanitary condition;
- (4) the Seller shall administer the Scheme and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the common property and all other charges in connection with the common property.

14 Brokerage

14.1 The Purchaser warrants to the Seller that no agent other than the estate agent referred to in the Covering Schedule was instrumental in introducing the Purchaser to the Property and/or being the effective cause of this Agreement, save as disclosed herein.

14.2 **The Purchaser hereby indemnifies the Seller against any claim which may be made against it arising out of a breach of the warranty referred to in clause 14.1 above**

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15 Rectification of defects and guarantees

15.1 The Seller warrants that the Property will be:-

- (1) constructed in a workmanlike manner;
- (2) fit for occupation; and
- (3) constructed in accordance with-
 - (a) the terms, plans and specifications of the materials to be used in construction of the Property and the plans reflecting the dimensions and measurements of the Property, as approved by the Statutory Authority;
 - (b) the Seller shall, at its cost and upon demand by the Purchaser,
 - (i) rectify major structural defects in the Property within a period of no more than 5 years and 1 day calculated as from the Practical Completion Date, provided that these are notified to the Seller by the Purchaser within that period;

- (ii) repair roof leaks attributable to workmanship, design or materials occurring and notified to the Seller by the Purchaser within a period of 12 months and one day as from the Completion Date;
- (iii) repair any other defects to the Property which may manifest themselves within 180 days after Transfer.

15.2 **The Purchaser undertakes to give the Seller written notification of any defects manifesting themselves as soon as is reasonably possible, and in such notice to specify the nature of the defect complained of. In the event that the Purchaser fails to give such notice, and the cost of the repairs to the Seller is increased, the Purchaser shall be liable to compensate the Seller in respect of such additional expense.**

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15.3 The Seller shall not be liable for any defects in the Property in respect of the following:-

- (1) any damage or defects not having been caused by the Seller or any of its agents;
- (2) touch up paint of any nature;
- (3) hairline cracks in the plaster work;
- (4) any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints;
- (5) any mould growth caused by condensation or by the Purchaser's failure to allow for proper ventilation;
- (6) any doors and windows slamming in windy conditions or any damage caused thereby;
- (7) wind and rain entering through the windows and doors left open.
- (8) The Seller will endeavour to match such replacement tiles with the surrounding installed tiles, subject to shading inconsistencies found in the different batches of tiles at the point of manufacture thereof and/or fading. **The Seller cannot guarantee that the shading of such replacement tiles will match the shading of the installed tiles and the Seller will not be held liable in cases of inconsistency.**

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16 Statutory certificates

The Seller is obliged to furnish the Purchaser, on Transfer, with the following certificates:-

- 16.1 an Electrical Compliance Certificate as contemplated in Article 3 of the Regulation 2920 promulgated in terms of the Machinery and Occupational Safety Act, Act 6 of 1983, in respect of the electrical installation as constituted at the Possession Date;
- 16.2 a Certificate of Compliance of Water Installation in respect of the Property issued by a suitably qualified plumber and in accordance with the legal requirements laid down in the City of Cape Town: Water By-Law 2010, promulgated in the Western Cape Provincial Gazette No. 6847 on 18 February 2011;
- 16.3 a Certificate of Conformity in respect of such installation as is required by Section 17(3) of Government Notice R734 of 15 July 2009, Government Gazette 32395 (pertaining to gas installations).

17 Acknowledgement and warranty by purchaser

- 17.1 **The Purchaser warrants that the Purchaser is not currently (and will, at least until Transfer not be) in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of transfer duty receipt or exemption certificates from the South African Revenue Service or cause the**

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Financial Institution granting the Loan Finance (if applicable) to withdraw the aforesaid Finance offered.

- 17.2 **The Purchaser acknowledges having been provided sufficient opportunity to consider the terms of this agreement and that the agreement was concluded as a result of a process of negotiation between the parties.**

PART FIVE - DEVELOPMENT CONDITIONS

18 Application of part five / property is part of Scheme / Burgundy Estate Development

18.1 By way of an introduction to this Part Five, it is recorded that:-

- (1) the Subject Matter forms part of the Scheme which in turn forms part of the Burgundy Estate Development;
- (2) as the Subject Matter forms part of the Scheme and the Burgundy Estate Development, the Purchaser and the Subject Matter stand to enjoy certain rights and will be burdened by certain obligations (such as being bound by the rules of the Body Corporate, being subject to the Burgundy Estate MHOA, the benefits and obligations which flow from common areas and facilities and related ancillary matters which flow from the location of the Subject Matter in the Development Scheme) and consequent rights and duties over and above the statutory authority.

18.2 The provisions of this Part Five regulate the relationship of the parties in regard to the Scheme and, where applicable, the Burgundy Estate Development and the additional rights and obligations:-

- (1) of the Purchaser to the Seller, the Body Corporate and the Burgundy Estate MHOA;
- (2) which may burden or benefit the Subject Matter by virtue of the Constitution;
- (3) of the Seller to the Purchaser in its capacity as representative of the Body Corporate and Burgundy Estate MHOA and as Seller.

19 Right to extend the Scheme

The Seller intends in its application for the registration of the sectional plan, to reserve the right in terms of section 25 of the Sectional Titles Act to:

- 19.1 erect and complete from time to time in phases, within a period of 20 years after the opening of the register, for its personal account, further buildings on the Land as shown on the Site Development Plan;
- 19.2 divide such future building into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more sections.

20 Building activities

The Purchaser acknowledges and agrees that the Improvements within the Scheme may be incomplete and that the Purchaser may suffer inconvenience from building operations, noise, dust and other nuisance factors.

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21 Communal services

- 21.1 The Seller will construct, erect and landscape communal services and areas in accordance with the Site Development Plan.
- 21.2 **The Purchaser acknowledges and agrees that the services and structures referred to aforesaid as well as the internal landscaping to be undertaken within the Scheme may not have been completed by the Transfer Date.**

22 Burgundy Estate Master Homeowners' Association

- 22.1 Burgundy Estate has incorporated a property owners' association known as "The Burgundy Estate Master Homeowners' Association" (an association not for gain) ("the Burgundy Estate MHOA") to administer and control all aspects relating to the Burgundy Estate Development as reflected in the general Burgundy Estate Development framework plan for the land, so as to protect the communal interests of all owners of the land on the Burgundy Estate site.
- 22.2 In terms of the Constitution of the Burgundy Estate MHOA, and the Rules established in respect of the Scheme the Body Corporate is obliged to become a member of the Burgundy Estate MHOA and to be bound by the Constitution and rules of the Burgundy Estate MHOA.
- 22.3 The Purchaser undertakes and warrants that all such steps which are necessary to familiarise itself with the Constitution will be taken, including but not limited to any regulation/s and/or resolution/s passed by the Burgundy Estate MHOA from time to time, and by which the Body Corporate in the Burgundy Estate Development will be bound.

23 Body Corporate rules

- 23.1 The Purchaser shall on the Transfer Date become a member of the Body Corporate and shall be bound by its Rules for so long as the purchaser is a registered owner;
- 23.2 **The Seller intends, when applying for the opening of the scheme, to add to and/or amend the management and conduct rules prescribed by regulation in terms of the Sectional Titles Act as follows:**
- (1) The liability of the owner of any section to make contributions for the purpose of Section 37(1)(a) or 47(1) of the Sectional Titles Act in respect of any exclusive use area shall be allocated at a rate which shall be to no more than 1/3 of the rate per square metre per floor area payable by owners of sections in respect of their sections;
- (2) The supply of electricity, gas and water to the sections will be metered by separate consumption meters and owners of sections shall be liable for such consumption in accordance with the meter readings.
- (3) Where expenses of the Body Corporate are charged by the relevant service provider at a fixed rate per unit, the Body Corporate shall be entitled to levy such charges against the owners levy account using the same method.
- (4) **The Seller shall be entitled, when applying for the opening of the register, to add to and/or amend the management rules and the conduct rules (prescribed by regulation in terms of the Sectional Titles Act) as the Seller in its sole discretion may consider appropriate provided that such rules do not materially affect the Purchaser's rights in terms of this Agreement.**

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24 Architectural and landscaping guidelines

The Purchaser acknowledges that there are Architectural Design and Landscaping Guidelines approved for the Burgundy Estate Development and agrees to be bound by and adhere to the said guidelines which will be enforced by the Body Corporate and Burgundy Estate MHOA.

25 Burgundy Estate views

- 25.1 The Purchaser acknowledges and agrees that in the case of improved land, the view currently enjoyed and in the case of vacant land, the projected view from the Subject Matter may be affected by the ongoing Burgundy Estate Development of the land and/or the erection of any further building/s at Burgundy Estate and/or on the Land and/or in the vicinity of the Subject Matter.
- 25.2 The Purchaser acknowledges and agrees that the Purchaser shall have no claim or right of any action whatsoever against the Seller arising from any such impact on or impairment of the view from the Subject Matter, or any derogation from the value thereof, as a result of any such ongoing Burgundy Estate Development and/or erecting of further building/s.

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26 Advertising on the common property

- 26.1 The Purchaser acknowledges being aware that:-
- 26.2 The Seller shall be entitled at any time to erect such signage, flagpoles, messages or any other form of notices or advertising on the common area and/or the building as may be legally permissible solely for the purposes of selling and/or letting properties in The Courtyard, provided that it does not inconvenience the owners/occupants in the Development Scheme.
- 26.3 During the Development Period, the Purchaser shall not be entitled to display any "For Sale" and/or "To Let" signs on the Property or outside the Property, without the prior written consent of the Seller and the Body Corporate.

27 Conditions precedent

- 27.1 This clause shall have application if the Covering Schedule (Part Two) records one or more condition precedent (the "Conditions Precedent".)
- 27.2 Notwithstanding the Conditions Precedent, the Surviving Provisions shall come into force and effect on the Signature Date, and the remainder of this Agreement will only come into effect if the Conditions Precedent are either timeously met or waived (if permissible), as the case may be.
- 27.3 The time periods stipulated for the fulfilment of any one or more of the Conditions Precedent, may be extended by:
- (1) the Seller by giving written notice to this effect to the Purchaser; or
 - (2) written agreement between the parties.
- 27.4 In the event of this Agreement lapsing due to the non-fulfilment of any one or more of the Conditions Precedent and where there has been part performance of the parties' respective duties and obligations the parties shall be entitled to restitution.

28 Right to resile - commercial viability of development

- 28.1 The Seller shall have right to cancel this Agreement if insufficient sales have been achieved in the Scheme so as to ensure its commerciality viability.
- 28.2 The Seller may only invoke this right if it exercises same by giving the Purchaser written notice of its intention to do so by no later than 8 weeks before the estimated transfer date.

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29 Stipulation for the benefit of a third party

The Purchaser acknowledges being aware that:-

- 29.1 certain of the provisions of this Part Five constitute stipulations by the Purchaser for the benefit of the Body Corporate and/or the Burgundy Estate MHOA.
- 29.2 the Seller, by its signature to this Agreement accepts the benefits conferred on behalf of the Body Corporate and the Burgundy Estate MHOA.

PART SIX – GENERAL TERMS AND CONDITIONS

30 Company to be formed

30.1 If the natural person signing this Agreement (the “Signatory”) acts or purports to act as agent or trustee for a company not yet incorporated the Signatory personally undertakes to the Seller to do all such things and take all such steps as the Signatory may reasonably take in order to ensure that the company concerned will be incorporated and that the company will have adopted or ratified this Agreement:-

- (1) without modification;
- (2) in compliance with the Companies Act;
- (3) within 30 days of the signature date.

30.2 **If the said company is not so incorporated within the period mentioned in clause 30.1 or having been incorporated does not adopt or ratify this Agreement within the 30 day period, the Signatory shall in his/her personal capacity be deemed to be the Purchaser in terms of this Agreement and the Signatory by his/her signature hereto does hereby bind himself/ herself as surety jointly and severally to the Seller for the due and proper fulfilment of all the obligations of, and for the punctual payment of all sums which are or may become due by the Purchaser in terms of, or in connection with, or arising in any way whatsoever out of this Agreement or any amendment or cancellation thereof.**

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31 Joint and several liability

Should the Purchaser be a company, close corporation, trust or association of persons, then the natural person/s signing this Agreement on behalf of the Purchaser (the “Signatory/ies”) hereby bind themselves as surety jointly and severally to the Seller for the due and proper fulfilment of all the obligations of, and for the punctual payment of all sums which are or may become due by the Purchaser in terms of, or in connection with, or arising in any way whatsoever out of this Agreement or any amendment or cancellation thereof.

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32 Co-operation

32.1 Each of the parties hereby irrevocably undertakes to:

- (1) sign and/or execute all such documents (and without limiting the generality of the foregoing, this will include the execution of the necessary resolutions, consents and conveyancing documents);
- (2) do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts;
- (3) pass, and to procure the passing of all such resolutions of directors or shareholders of any company or trustees of any trust;
- (4) pass, and to procure the passing of all such resolutions of the trustees or the granting of such consents of the trustees of the Home Owners Association;
- (5) to the extent that same may lie within the power of such party as may be required to give effect to the import or intent of this Agreement.

33 Default provisions

- 33.1 In the event that either party breaches any obligation under this Agreement (“the defaulting party”, the other party (the “aggrieved party”) shall be entitled to send a written notice to the defaulting party calling on the latter to rectify such breach within 7 days.
- 33.2 The defaulting party shall be obliged to make good the breach to which the said notice relates within 7 days of the receipt of the said notice.
- 33.3 If the defaulting party fails to comply with the said notice the aggrieved party shall be entitled to cancel this Agreement without prejudice to any other rights or remedies which the aggrieved party may have in law.
- 33.4 In the event that this Agreement is terminated as is contemplated by clause 33.3 above all of the obligations of the defaulting party shall immediately become due (notwithstanding the fact that the date for such performance may not yet have arrived), and:-

(1) **In the event that the defaulting party is the Purchaser,:-**

- (a) **all monies paid by the Purchaser shall be retained in the trust account of the Conveyancers, pending determination of damages suffered by the Seller;**
- (b) **the Purchaser shall compensate the Seller for any additional damages which it may have suffered;**

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(2) In the event that the defaulting party is the Seller, the defaulting party shall:-

- (a) compensate the Purchaser for any damages which it may have suffered.

33.5 If the Purchaser is in occupation of the Property at the time when the Agreement is cancelled the Purchaser shall immediately vacate the Property:

- (1) The obligation to vacate the Property will arise even if the Purchaser disputes the cancellation or asserts a right to continue to occupy for any reason.
- (2) If the Purchaser for any reason fails to vacate the Property after cancellation:
- (a) the Purchaser shall be obliged to perform obligations under this Agreement as if it had not been cancelled;
- (b) **the Occupational Rental shall in these circumstances be deemed to be an amount equivalent to double the Occupational Rental as defined in clause 11 of the Covering Schedule;**
- (c) the Seller’s acceptance of such performance shall be without prejudice to any of its rights;
- (d) the Seller shall, in addition, be entitled to claim all damages flowing from such unlawful occupation, including but not limited to:
- (i) the fair and reasonable costs of restoring the Property to the condition in which it was at the Possession Date;
- (ii) damages for holding over from the date on which the Agreement was cancelled to the date on which the Property is restored to the Seller, clause (a) above having been complied with (“the Restoration Date”);
- (iii) payment of an amount equivalent to all Levies, rates and taxes and service charges and all other amounts which the Seller has had to pay during the subsistence of the holding over;

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- (iv) such further damages as the Seller may have suffered as a consequence of the Purchaser's holding over, including a loss of profits arising out of any subsequent sale which the Seller may prove would have been concluded but for the holding over.
- (v) If it is held by a competent court that the Seller unlawfully cancelled the Agreement, the Seller shall be liable to the Purchaser for such damages as he may prove he has suffered.

33.6 Should the Transfer be delayed as a consequence of a breach on the part of the Seller, without derogating from any other rights or remedies of the Purchaser in terms of this Agreement, the Seller shall be liable to compensate the Purchaser in respect of said delay by compensation in the form of damages actually suffered by the Purchaser, and which flow naturally from the breach, up to a maximum of:-

- (1) interest at the prime rate plus 3% (three per cent) on the purchase price of the Property;
- (2) the pro rata rates and taxes payable in respect of the Property;
- (3) the pro rata levies payable in respect of the Property;

for the period calculated from the date upon which the Purchaser would have been able to take Transfer of the Property up until the Transfer Date.

33.7 The Seller shall be deemed to not be in breach of its obligations in the event that the delay is occasioned by circumstances which are beyond its control, such as, for example, delays caused by rain, strikes, building supply delays and/or litigation which prevents the completion of the building and/or the Subject Matter and/or any delays by and/or the failure of any regulatory body to grant any permission which may be necessary and/or delays occasioned by the conveyancing process including delays which may arise as a result of the Conveyancers having to do batched transfers and/or to co-ordinate the lodgement of title deeds in the deeds office.

33.8 **Should the Transfer be delayed as a consequence of a breach on the part of the Purchaser, then without derogating from any other rights or remedies of the Seller in terms of this Agreement, the Purchaser shall be liable to compensate the Seller in respect of said delay by making payment to the Seller of:-**

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- (1) the pro rata rates and taxes, and the pro rata levies, payable in respect of the Property for the period calculated from the date upon which the Seller would have been able to pass transfer until the Transfer Date (the Delay Period);
- (2) Interest, in respect of the Delay Period, calculated at the prime rate plus 3% (three per cent) on:
 - (a) the Purchase Price;
 - (b) the estate agent's commission contemplated in clause 14 of the Covering Schedule (in the event that this does not form part of the Purchase Price which is payable by the Purchaser);
- (3) Any other damages which the Seller may suffer.

33.9 In the event that Transfer is delayed for more than 6 months after the estimated transfer date referred to in clause 6 of the Covering Schedule either party shall be entitled to cancel this Agreement by notice in writing to the other.

34 Notices and delivery address

34.1 Each of the parties appoints the address which he has provided in clause 1 of the Covering Schedule as the address to which any notice may be sent, the payment of any sum

demanded, any process may be served, and for any other purposes arising from or in relation to this Agreement.

34.2 Each of the parties shall be entitled from time to time, by written notice to the other to vary its delivery address to any other address within the Republic of South Africa which is not a post office box or poste restante (meaning the department of a post office to which letters can be addressed, and where they can be kept until someone calls for them).

34.3 Any notice given and any payment made by a party to any of the others ("the addressee") which:

- (1) is delivered by hand during the normal business hours of the addressee at the addressee's delivery address for the time being;
- (2) is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's delivery address 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.

34.4 Where, in terms of this Agreement, any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or electronic mail.

35 Integration clause:- whole agreement

35.1 This Agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no express or tacit amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.

35.2 **This document contains the entire Agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded in this Agreement. This does not detract from an aggrieved party's right to claim damages should it have suffered damages as a consequence of a material misrepresentation by the other party.**

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35.3 No indulgence, leniency or extension of time which any party may grant or show to any other party, shall in any way prejudice or preclude the party granting or showing such indulgence.

36 Governing law and magistrate's court jurisdiction

36.1 The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

36.2 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town in regard to all matters arising from this Agreement.

36.3 At the option of either party any action or application concerning or arising out of this Agreement that may be brought in a Court of competent jurisdiction may so be brought in any Magistrate's Court having jurisdiction in terms of sections 28 and/or 29 of the Magistrate's Court Act notwithstanding that the amount in issue may exceed the jurisdictional limits of such Court, and the parties hereby consent to such jurisdiction.

37 Arbitration

37.1 In the event of a dispute between the parties in regard to:

- (1) the interpretation of;

- (2) the effect of;
- (3) the termination of;
- (4) the parties' respective rights and obligations under;
- (5) a breach of; or
- (6) any matter arising out of;

this Agreement, either party may call for the resolution of the dispute in the manner and on the terms and conditions provided in this clause 37.

37.2 It is expressly recorded that :-

- (1) neither party is exclusively obliged to take any such dispute to arbitration in terms of this clause 37;
- (2) if either party exercises the right to take any such dispute to arbitration in terms of this clause 37, the other party is bound by the provisions of this clause 37 in relation to said dispute, without derogating from its right to bring any dispute which it may have in another forum (either by way of the Magistrate's Court or the High Court).

37.3 Any party that is of the view that a dispute of the nature referred to in clause 37.1 has arisen shall give written notice thereof to the other party, provided that such notice shall clearly identify the dispute and provide full particularity thereof, and the parties shall thereafter take immediate steps to attempt to resolve the dispute.

37.4 If the parties cannot agree on a resolution of the dispute within 10 business days of receipt of the notice referred to in clause 37.2 then the subject matter of the dispute may be referred within a further period of 20 business days to arbitration in accordance with this clause 37.

37.5 The said arbitration shall be held subject to the provisions of this clause:

- (1) at Cape Town;
- (2) otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended and the rules of the Arbitration Foundation of South Africa;
- (3) it being the intention that if possible it shall be held and concluded within 30 (thirty) business days after it has been demanded.

37.6 The arbitrator shall be, if the question in issue is:

- (1) primarily an accounting matter, an independent accountant agreed upon between the parties, and failing agreement, appointed by the President for the time being of the Cape Society of Chartered Accountants;
- (2) primarily a legal matter, a retired judge or a practicing Senior Counsel whose identity is agreed upon between the parties and, failing agreement, appointed by the President for the time being of the Bar Council of Cape Town;
- (3) any other matter, an independent person agreed upon between the Parties and failing agreement appointed by the Arbitration Foundation of South Africa.

37.7 If agreement as to the nature of the dispute cannot be reached within 7 (seven) days after the arbitration has been demanded, then a practicing Senior Counsel agreed upon between the parties or, failing agreement, appointed by the President for the time being of the Bar Council of Cape Town as soon as possible thereafter, shall determine whether the question in issue is primarily an accounting or a legal matter and an Arbitrator shall thereafter be appointed in terms of the applicable clause.

- 37.8 The parties irrevocably agree that the decision in these arbitration proceedings:
- (1) shall be final and binding on them (subject to the appeal provided for in clause 37.9);
 - (2) shall be carried into effect.

37.9 An aggrieved party may appeal against the arbitration award in accordance with the procedure set out in the rules of the Arbitration Foundation of South Africa.

37.10 The provisions of this clause 37 shall not preclude any party from obtaining interim relief on an urgent basis in the Western Cape High Court, Cape Town pending the decision of the Arbitrator.

38 Legal costs

In the event of either party breaching any of its obligations to the other (the “aggrieved party”) in terms of this Agreement and further in the event of it being necessary for the aggrieved party to consult attorneys, and/or seek legal advice and/or institute legal action in order to enforce the aggrieved party’s rights herein contained, then and in any of the foregoing events, the defaulting party shall be liable to bear the aggrieved party’s legal costs so incurred on the scale as between attorney and client calculated at the actual rate charged by the aggrieved party’s attorneys subject to a maximum of twice the prevailing High Court tariff as amended from time to time (notwithstanding the fact that proceedings may be sued out of the Arbitration Foundation of South Africa).

39 Contra-proferentum rule

- 39.1 **The Purchaser has been invited to procure own legal advice in relation to the terms of this Agreement.**
- 39.2 The parties have agreed that the contra-proferentum rule (i.e. the rule of construction that, in the event that there is an ambiguity, the contract shall be interpreted against the party responsible for the drafting or preparation of the contract) shall not apply.

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40 Severability

- 40.1 All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.
- 40.2 Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto (not to be read) and the remaining provisions of this Agreement shall remain in full force and effect.
- 40.3 The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

SIGNED at _____ on this _____ day of _____ 20

AS WITNESSES:

1. _____

2. _____

Purchaser or his or her duly authorised representative
who warrants that he/she is duly authorised hereto

I, the undersigned, being the spouse of the Purchaser,
do hereby consent to this transaction as far as needs be
in terms of the Matrimonial Property Act 1984.

Spouse of the Purchaser

SIGNED at CAPE TOWN on this _____ day of _____ 20

AS WITNESSES: for and on behalf of the Seller:

1. _____

2. _____

Authorised signatory – who warrants that he/she is duly
authorised hereto

PART SEVEN - ANNEXURES

No	DESCRIPTION OF ANNEXURES
A	Land subdivision plan
B	Site Layout
C	Building floor plan
C1	Elevations
D	Apartment and electrical layout
D1	Kitchen Layout
E	Garage, Parking and Store layout plan
F	Burgundy Estate General development framework plan
G	Standard Specifications
H	Specimen Guarantee
J	Condition Precedent, if applicable