

- (ii) The Vendor offers to purchasers furniture packages by way of separate agreement and the Purchaser may by entering into such separate agreement purchase a furniture package from the Vendor.
- (iii) The Vendor will commence and proceed with the construction of the Building hereby agreed to be sold in accordance with the Plans within a reasonable time from the execution of this agreement and the payment by the Purchaser of the first deposit referred to in Clause 3 above PROVIDED THAT construction of the Building shall be commenced in any event not more than 12 months after receipt of the first deposit.
- (iv) Notwithstanding the foregoing:- (a) the Vendor reserves the right to substitute for any of the materials fixtures and other items that may be specified in the Plans with materials fixtures and other items of a similar or better kind, quality or utility, or of a different colour as the circumstances may reasonably require; and (b) minor variations in dimensions and/or other improvements of the Building or any part thereof shall not vitiate this agreement.
- (v) The Vendor warrants to the Purchaser that the Building will be constructed in a workmanlike manner, that it will be free from defects in materials and that upon delivery it will be fit for habitation and that it will be free from major structural defects PROVIDED THAT this warranty applies only to defects which become apparent within a period of six months following the Closing Date and of which the Purchaser has notified the Vendor in writing within a period of fifteen months following the Closing Date.
- (vi) For the purposes of the warranty granted hereby, "major structural defects" means any defect in workmanship or materials that: (a) results in failure of the load bearing portion of the Building or materially and adversely affects its load bearing functions; or (b) materially and adversely affects the use of the Building for residential purposes, including significant damage due to soil movement, major cracks in foundation walls, collapses or serious distortion of joints or roof structures but excluding flood damage, dampness not arising from drains or services, damages to finishes and damage arising from Acts of God, storms, acts of the Purchaser and the Purchaser's tenants, licensees and invitees, acts of civil and military authorities, acts of war, riot, insurrection or civil commotion and malicious damage or damage from any other cause outside the control of the Vendor.
- (vii) The warranty granted in this Clause shall not extend to any fixtures or fittings installed in or on the interior or exterior of the Building.
- (viii) The Purchaser acknowledges that the warranty granted by this Clause 4 is the total extent of any warranty made by the Vendor to the Purchaser with respect to the Building and any improvements and no other warranty whatsoever, whether express or implied and whether by virtue of common law, equity or statute, shall apply to or be incorporated into this agreement.

- (ix) The Purchaser agrees to inspect the Building and any other improvements, or to arrange for his authorised agent to inspect the same, upon the Vendor's request and with a representative of the Vendor not less than 30 days prior to the Closing Date. At the time of such inspection the Purchaser and Vendor, or their respective representatives, shall execute a Certificate of Inspection listing any and all outstanding, incomplete or apparently defective items in the Building and other improvements. Except as to those items specifically listed in the Certificate of Inspection, the Purchaser shall be deemed to have acknowledged that the Building and other improvements have been duly completed in accordance with the Plans and this Agreement and the Purchaser shall accordingly be deemed to have conclusively accepted the said Building and other improvements.
- (x) If the Purchaser and Vendor disagree as to whether any items or matters should or should not be included in the Certificate of Inspection the said items or matters shall be referred to an architect or engineer appointed as hereinafter provided and the decision of the said architect or engineer as to whether the said items or matters should be included in the Certificate of Inspection shall be final. The architect or engineer shall be appointed by agreement of the Vendor and Purchaser and in default of any such agreement, the parties agree that the architect or engineer shall be appointed by Pannell Kerr Forster. The architect or engineer appointed pursuant hereto shall in his sole discretion determine which of the parties hereto shall bear the costs involved in any appointment made hereunder.
- (xi) If the Purchaser fails, refuses or neglects to inspect the Building and other improvements and/or execute the Certificate of Inspection in accordance with sub-clause (ix) hereof then the Vendor may appoint any qualified architect or engineer to carry out such inspection and/or to execute the said Certificate of Inspection on behalf of the Purchaser and the Purchaser shall be bound by any such inspection and/or Certificate of Inspection accordingly. The cost of the appointment of any such architect or engineer shall be the responsibility of the Purchaser and if the same is paid in the first instance by the Vendor the Purchaser shall repay the same to the Vendor on demand.
- (xii) Notwithstanding that the Certificate of Inspection may contain any matters referred to in sub-clause (ix), the Purchaser shall complete the transaction on or before the Closing Date so long as the architect has issued a certificate of substantial completion as provided in Clause 5 below.

Completion 5. This agreement shall be completed not more than 45 days after service by the Vendor on the Purchaser of a Certificate of Substantial Completion executed by the Development Architect for the time being of the Building and other improvements hereby agreed to be sold in accordance with the Plans (hereinafter referred to as "the Closing Date").

6. Completion shall take place at the offices of the Vendor at Fort Street, Basseterre, St. Kitts or such other place as may be agreed in writing by the parties.
7. The Purchaser's Solicitors shall not less than 14 days before the Closing date deliver to the Vendor's Solicitors a draft of the appropriate Memorandum of Transfer for vetting. On the Closing Date the Purchaser shall deliver to the Vendor a Manager's Bank Draft for any balance of the Purchase Price then due and upon such delivery the Vendor shall deliver to the Purchaser a duly executed Memorandum of Transfer in favour of the Purchaser of the Property hereby agreed to be sold, prepared by the Purchaser's Solicitor, with the easements, covenants and restrictions herein agreed. The Property shall be transferred free and clear of all incumbrances save and except for the statutory charge for land and house tax, the easements and restrictions noted on the Vendor's Certificate of Title in favour of Frigate Bay Development Corporation and other property owners in Frigate Bay and the easements and restrictions reserved or imposed by the Vendor herein.

Termination by
the Purchaser

8. Notwithstanding any other provision of this Agreement if the Vendor fails to substantially complete the Building and other improvements hereby agreed to be sold within 12 months of the date of commencement of construction thereof or if the Vendor fails to commence construction of the Building as provided in Clause 4(iii) above then and in any such case the Purchaser may by notice in writing to the Vendor terminate this agreement and upon such termination the Vendor shall immediately refund to the Purchaser all monies paid by the Vendor towards the Purchase Price hereinbefore provided but the Vendor shall not be liable further to the Purchaser for any loss or damage suffered by the Purchaser whatsoever as a consequence of such failure to complete.
9. (i) At any time prior to the Closing Date, if as a result of Act of God or for any other reason (including but not limited to cost increases such as to render the Development uneconomic) beyond the control of the Vendor the Vendor is unable to proceed with the Development or the continuation of the Development becomes economically unfeasible, the Vendor may by written notice terminate this agreement.
- (ii) If the Vendor terminates this agreement pursuant to subsection (i) of this clause, the Vendor shall immediately refund to the Purchaser all monies paid by the Purchaser towards the Purchase Price hereunder but shall not be liable further to the Purchaser for any loss or damage whatsoever suffered by the Purchaser as a consequence of such termination.

Possession

10. The Vendor shall deliver vacant possession of the Property to the Purchaser at Closing.

Closing
Costs

11. The Purchaser shall pay all closing costs save and except for vendor's stamp duty which shall be paid by the Vendor.

Land Taxes
etc

12. All land and house taxes, water rates and other charges or dues imposed or charged on the land shall be apportioned between the Vendor and the Purchaser as of the Closing Date. Thereafter, the Purchaser shall be solely responsible for all such taxes, rates, and other charges or dues whether existing or future.

Party Walls

13. Any common wall between the building hereby sold and any adjacent or adjoining building in the Development shall be a party wall extending from the roof through the ground floor. The Purchaser is precluded from cutting into or otherwise altering any party wall or from doing any act or thing in the Building hereby sold which affects or may affect the right of support which the adjacent or adjoining owner has in respect of the party wall.

Easements,
restriction,
covenants

14. The Property hereby agreed to be sold is sold subject to the following easements, restrictions and covenants:-
- (i) the easements covenants and restrictions in favour of The Frigate Bay Development Corporation noted on the Certificate of Title in favour of the Vendor to the land comprising Sunrise Hill Resorts.
 - (ii) the easements set out in Schedule III hereto which are hereby reserved by the Vendor over the Property hereby agreed to be sold to the Purchaser PROVIDED however that the exercise by the Vendor of the said easements shall not permanently interfere with the Purchaser's peaceful enjoyment of the Property;
 - (iii) the encumbrances, reservations and restrictions contained in Schedule IV hereto. It is acknowledged and agreed that the said restrictions reservations and conditions shall apply to all the lots of Sunrise Hill Resorts and shall be enforceable by the Vendor its assigns and successors in title against all owners of the said lots and their assigns and successors in title as well as by all owners and their respective assigns and successors in title *inter se* regardless of when each original owner purchased his lot.

Easements

15. The Purchaser shall have and/or be granted the benefit of the following easements:-
- (i) The easements annexed to the land comprising Sunrise Hill Resorts and noted on the Vendor's aforesaid Certificate of Title;
 - (ii) The easements and privileges set out in Schedule V hereto PROVIDED THAT IT IS HEREBY AGREED that the enjoyment of such easements shall be conditional upon the Purchaser fulfilling the obligations set out in the said Schedule V.

Forfeiture of
Deposit

16. (a) If the Purchaser fails to complete the sale on or before the Closing Date, then, without prejudice to any other remedy available to the Vendor the Vendor may terminate this Agreement by written notice to the Purchaser and upon such termination the first and second deposits paid hereunder in accordance with Clause 3 (i) shall be immediately forfeited to the Vendor as liquidated damages for breach of contract.
- (b) Further to the forfeiture of the deposits stated in clause 16 (a) if after the termination of this Agreement the Vendor enters into another Agreement of Sale in respect of the Property and the purchase price in any such further agreement of sale is less than the Purchase Price in this

Agreement the Purchaser shall pay the difference IF ANY in the said purchase prices less the first and second deposits forfeited pursuant to Clause 16(a) to the Vendor by way of additional damages.

- (c) As security for any sum that may become payable to the Vendor by the Purchaser pursuant to Clause 16 (b) above the Vendor shall be entitled to retain 30% of all monies paid by the Purchaser pursuant to clause 3 above (exclusive of the deposits) for a period of 12 months from the date of the termination of the contract pursuant to Clause 16(a).

Management
of the
Development

- 17. (a) The Purchaser hereby acknowledges that the Property is part of a Development and that it is in the interest of the Purchaser and all other owners (present and future) that the Development be properly managed.
- (b) The Purchaser further acknowledges that until the Development is fully completed the Vendor intends to manage and maintain the Development by providing various services including the maintenance and repair of Development Roads, walkways, street lighting, storm and sanitary sewers, water and supplemental electricity facilities, the tennis court and the swimming pool to be constructed for the use of the Development in accordance with the Standard Maintenance Agreement hereinafter referred to;
- (c) It is a condition precedent to the enjoyment of the easements agreed to be granted to the Purchaser hereunder that the Purchaser, his heirs, assigns, personal representatives and/or successors in title shall at all times be party to the Standard Maintenance Agreement of the Development, a copy of which is annexed hereto and marked "C"
- (d) The Purchaser further acknowledges that when the Development is fully completed the Vendor will assign the Standard Maintenance Agreement to Sunrise Hill Resorts Homeowners Association Limited a limited liability company registered under the Companies Act of St. Kitts and Nevis of which Company the Purchaser will at closing become a member
- (e) The Purchaser further acknowledges that the Vendor its assigns and/or successors in title will until the Development is fully completed retain ownership of all the Common Areas of the Development, that is, property of the Development save for such lots with the buildings thereon as may be sold or otherwise transferred by the Vendor. On completion of the Development the Vendor will transfer title to the Common Areas to Sunrise Hill Resorts Homeowners Association Limited.

Time

- 18. Time shall be of the essence of this agreement.

Interpretation

- 19. In this agreement the masculine shall include the feminine or neuter and the singular shall include the plural.
- 20. The Property hereby agreed to be sold shall remain at the risk of the Vendor until completion. If the Building and any other improvement or any part thereof shall be substantially damaged or destroyed prior to completion the Vendor shall be entitled to cancel this Agreement by notice in writing served upon the Purchaser

and to refund all sums paid by the Purchaser without interest. Substantial damage shall be deemed to have occurred if the building is damaged to such an extent that it cannot be repaired by the time fixed for completion.

21. This agreement completely and exclusively states the Agreement of the parties and supercedes, all prior or contemporaneous proposals, agreements, representations or other communication between the parties, oral or written.
22. All notices to be given hereunder shall be in writing and sent by facsimile transmission or registered mail to the Purchaser and the Vendor at the facsimile numbers or addresses given herewith or at such other numbers or addresses as either party may hereafter designate to the other in writing. Notice shall be deemed to have been received on actual transmission if sent by facsimile transmission and 5 days after postage if sent by mail from St. Kitts or 14 days if sent by mail from any place outside St. Kitts.
23. This Agreement shall be governed by the laws of the Federation of St. Christopher and Nevis and the parties agree that any proceedings brought by either party shall be brought exclusively in the Saint Christopher Circuit of the Eastern Caribbean Supreme Court.
24. This Agreement shall not be assigned by the Purchaser without the written consent of the Vendor.

SCHEDULE I

Lot No. [REDACTED] of Sunrise Hill Resorts situate at Frigate Bay, in the Island of St. Kitts more particularly delineated on the survey plan hereto and marked "D".

SCHEDULE II

<u>Payable on Completion of:</u>	<u>Percentage</u>
Deposit payable on Signing	20%
Foundations (Second Deposit)	10%
Floor Slabs	20%
Walls and Ring Beams	20%
Roofing & Cladding	20%
Finishing	10%

SCHEDULE III

To install and maintain utility lines, sewage lines and other necessary facilities and utilities required for the purposes of the Development

SCHEDULE IV

For the purposes of this Schedule, the term "Unit" shall mean the building situate on the land hereby transferred and the term "Land" shall mean the land hereby transferred exclusive of the building. The term 'Vendor' used in this Schedule and in Schedule V shall, after transfer of the Common Area to Sunrise Hill Resorts Homeowners Association Limited, mean that Company.

The Purchaser, his heirs, personal representatives, successors in title and/or assigns shall:-

- (i) not make any structural additions, alterations or improvements in or to the Unit or Land (including but not limited to constructing any sewage facility) without the prior written consent of the Vendor, its assigns or successors in title;
- (ii) not alter the colours of any exterior walls, doors, windows or roofs of the Unit;
- (iii) not use or cause or permit the Land or Unit to be used for any purpose other than as a single dwelling without the prior written consent of the Vendor its assigns or successors in title;
- (iv) not to place, erect, construct or build any fence on the land without the previous written consent of the Vendor;
- (v) not hang or cause or permit to be hung any laundry, clothing or other articles or items whatsoever in such a way as to be visible from the exterior of the Unit;
- (vi) not erect or fasten any television or radio antennae, satellite dish or any other instrument for the receiving or transmitting by wireless or other signals, towers, or similar structures or appurtenances to the exterior of the Unit so as to be visible from the exterior of the Unit, nor on the Land or any part thereof;
- (vii) not place on the exterior of the Unit or on the Land any sign, billboard, notice or other advertising materials whatsoever;
- (viii) not store in the Unit or on any part of the Land any combustible, inflammable or dangerous materials;
- (ix) not keep or permit or cause to be kept in the Unit or on any part of the Land any unfit unsafe or hazardous electrical appliances or equipment;
- (x) not install any air-conditioning apparatus on the Unit or on any part of the Land without the prior written consent of the Vendor its assigns or successors in title;
- (xi) not to erect any awnings or shades on the exterior of the Unit or on any part of the Land nor place or hang any other article whatsoever without the prior written consent of the Vendor its assigns or successors in title;
- (xii) not do anything or cause or permit anything to be done that would or may increase the risk of fire or the rate payable by any other owners of any lots comprising the Development for fire insurance premiums;

- (xiii) not store any garbage or refuse outside the Unit nor suffer nor cause or permit any garbage or refuse to be accumulated or stored outside the Unit.

SCHEDULE V

- (i) To pass over the roads, paths and walkways of the Development with or without motor vehicles and other forms of transportation to gain access to the Property.
- (ii) To have the use of any tennis court and swimming pool(s) situated on any part of the Development designated by the Vendor as Common Areas during such times and subject to such restrictions and conditions as the Vendor may in its sole discretion determine.
- (iii) To use and/or connect any sewage lines, water pipes, any other utility apparatus on or under the land of the Development.

PROVIDED THAT the exercise and enjoyment of the aforesaid easements by the Purchaser and his heirs, assigns and successors in title shall be conditional upon the following:-

- (i) The Purchaser and his heirs, personal representatives and assigns being a party to the Standard Maintenance Agreement in effect with respect to the Development, a copy of which is hereto annexed and marked "C";
- (ii) The Purchaser, his heirs personal representatives and assigns effecting and maintaining a policy of insurance over all insurable structures and improvements on the land hereby agreed to be transferred against loss or damage occasioned by the risks set out in Schedule VI and at the replacement cost of such structures and improvements;
- (iii) The Purchaser, his heirs personal representatives and assigns keeping all buildings and improvements on the land hereby agreed to be transferred in a state of substantial repair;

SCHEDULE VI

The Risks referred to in Schedule V Proviso (ii)

fire, lightning, earthquake, volcanic eruption, hurricane, cyclone, tornado, windstorm and fire and flood caused by any of such perils of nature and riot and strike, civil commotion, malicious damage, impact, aircraft damage, explosion, burst pipes, overflow of drains

ATTACHMENTS

- A Development Plan (subject to change)
- B Building Plans
- C Standard Maintenance Agreement.

IN WITNESS WHEREOF the parties have hereunto set their hands on the following dates.

T.D.C. REAL ESTATE AND CONSTRUCTION LIMITED

By one of its Directors
Nicolas N Menon

Witness:

Purchaser

Witness:-

T. D. C. REAL ESTATE AND
CONSTRUCTION LIMITED

AND

AGREEMENT OF SALE

KELSICK, WILKIN & FERDINAND
SOLICITORS