

AGREEMENT OF SALE

1. **SELLER:** THE TRUSTEES FOR THE TIME BEING OF THE ALBIDA DEVELOPMENT TRUST [TRUST NO T 219/2014]
 Hereinafter referred to as “ the DEVELOPER” or “the SELLER”
 Herein represented by PIETER ANDRIAS BOSHOFF, ADAM BARNARD BOSHOFF and MARTIENS CHRISTOFFEL BOSHOFF duly authorized thereto

Domicilium Address: 81 Nickle Street, Prosperita
 Postal Address: P O Box 11588, Windhoek
 Telephone No (s): 0811270732 [ADAM] or 0811286475 [WESSEL]
 Email: wessel@brandbergcon.com

2. **PURCHASER:** _____
 Identity Number: _____
 EMAIL ADDRESS: _____
 Domicilium Address: _____
 Postal address: _____
 Telephone No (s) _____
 Marital Status: _____
 Full name of spouse: _____
 Spouse Identity No: _____

3. **PROPERTY:** **Certain Erf _____ Okahandja (Extension no 16)**
 Situate in the Municipality of Okahandja, Registration Division "J", Otjozondjupa Region
 Measuring _____ Square metres as indicated on General Plan S.G. no A.55/2016 and held by Deed of Transfer no T.1719/2015

4. **PURCHASE PRICE:** Total: N\$ _____
 Reservation Deposit: N\$10 000,00 [Ten Thousand Namibia Dollars]
 Balance: N\$ _____

(I, the Purchaser, hereby agree to comply with and be bound by the terms and conditions attached hereto, all of which I acknowledge that I have read and understood).

SIGNED at _____ on this _____ day of _____ 2018

WITNESS _____

SELLER

SIGNED at _____ on this _____ day of _____ 2018

WITNESS _____

PURCHASER

SPOUSE

TERMS AND CONDITIONS

The Seller hereby sells and the Purchaser hereby purchases subject to the terms and conditions set out herein.

1. THE PROPERTY

Certain Erf _____ Okahandja (Extension no 16), Situate in the Municipality of Okahandja, Registration Division "J", Otjozondjupa Region as referred to in paragraph 3 on page 1 hereof ("the property") which the Purchaser acknowledges having inspected.

2. PURCHASE PRICE

The purchase price is the sum stipulated in paragraph 4 on page 1 hereof.

3. PAYMENT OF PURCHASE PRICE

The purchase price shall be paid as follows:

- 3.1 Immediately upon signature of this agreement by the Purchaser, the Purchaser shall pay the non-refundable reservation deposit in the sum stipulated as such in paragraph 4 on page 1 hereof to DR WEDER, KAUTA & HOVEKA INC. (the Seller's Conveyancers) of 3rd Floor, WKH House, Jan Jonker Road, Ausspannplatz, Windhoek to be held by the Seller's Conveyancers and invested by them in an interest bearing trust account, the interest to accrue to the Purchaser pending registration of transfer hereunder. Payments to the Conveyancers shall be made in cash or by cheque, or by direct deposit to either of the following accounts:

DR WEDER KAUTA & HOVEKA INC.
BANK WINDHOEK LTD - INDEPENDENCE AVENUE
TRUST ACCOUNT NO: 102 664 3801
BRANCH CODE: 48 19 72
REFERENCE: _____

Or
DR WEDER KAUTA & HOVEKA INC.
FIRST NATIONAL BANK LTD – INDEPENDENCE AVENUE
TRUST ACCOUNT NO: 620 1677 2578
BRANCH CODE: 28 19 72
REFERENCE: _____

On date of registration of transfer the deposit shall be paid to the Seller and the interest accrued to the Purchaser.

- 3.2 The purchase price / balance of the purchase price shall be paid to the Seller in cash on registration of transfer of the property to the Purchaser, which purchase price / balance of the purchase price shall be secured by a guarantee or guarantees acceptable to the Seller's Conveyancers or alternatively direct deposit and which shall be lodged with the Seller's Conveyancers within 30 (thirty) days after the date of signature of this agreement by the Seller ("the date of signature"). Any such direct deposit paid by the Purchaser shall be held by the Conveyancers in accordance with the provisions of clause 3.1 above.

4. **THE HOMEOWNERS ASSOCIATION (“the association”)**

NOT APPLICABLE

5. **POSSESSION, RATES AND LEVIES**

5.1 The Purchaser shall take possession and occupation of the property on the date of registration of transfer from which date all risk in and benefit of the property shall pass to the Purchaser. The Purchaser shall be liable for all rates and taxes and any other charges whatsoever levied upon the property by the Government or Municipality or other competent authority from the date of registration of transfer. The Purchaser shall refund to the Seller all rates and taxes and other charges paid in advance for any period after the date of registration of transfer.

5.2 Should the Purchaser take occupation of the property before the date of transfer no tenancy shall thereby be created and under no circumstances will the Purchaser acquire any lien or be entitled to any compensation for any improvements effected to the property. Should this sale terminate for whatsoever reason prior to transfer, the Purchaser shall be obliged to vacate the property immediately.

6. **PLACE FOR PAYMENTS**

Unless otherwise provided herein all payments on account of the purchase price, including interest, rates, taxes and other charges provided for in terms of this agreement shall be made by the Purchaser to the Seller's Conveyancers free of all bank costs or other deductions at 3rd Floor, WKH House, Jan Jonker Road, Ausspannplatz, Windhoek or paid into their Trust Account as set out in clause 3 above or at such other address in the Republic of NAMIBIA as the Seller may from time to time direct in writing.

7. **SALE “VOETSTOOTS”**

7.1 The property is sold voetstoots, in the condition and to the extent such as it now lies, subject to all conditions and servitudes whether or not referred to in the current or prior title deeds or in the conditions of establishment of the estate, and the Seller shall not be liable for any defect, latent or otherwise.

7.2 The Seller shall not profit by any excess nor shall the Seller be answerable for any deficiency in the area of the property that may be revealed on any survey, and no claim shall lie against the Seller for loss, damage or otherwise attributable to any such deficiency.

7.3 The Seller shall not be responsible for pointing out or indicating the position of any surveyor's beacons or pegs in respect of the property.

7.4 If the property has been erroneously described herein, such mistake or error shall not be binding upon the parties but the correct description as intended by the parties shall apply, and they shall effect rectification of this contract accordingly.

8. **TRANSFER**

Transfer shall be effected by the Seller's Conveyancers provided that the guarantees in terms of clause 3 have been furnished and after the Purchaser has signed all documents including the debit order referred to in clause 5.2 and has furnished all the information necessary for transfer, and has paid all amounts for which the Purchaser is liable in terms of this agreement inclusive of all rates, taxes, levies. The costs hereof and all transfer costs, including transfer duty and stamp duty, **shall be paid by the Purchaser**. The costs in respect

of the registration of any mortgage bond, shall be for the account of the Purchaser. The costs shall be paid within 7 days after the receipt of an account from the Seller's Conveyancers in this regard.

9. **DEFAULT BY THE PURCHASER**

- 9.1 Should the Purchaser fail to pay any amount, or fail to provide the guarantee(s) required in terms of this agreement on due date or commit a breach of any other of the terms and conditions of this agreement and remain in default for 7 days (unless such breach occurs at a time critical to the registration procedure in which case the 7 day period may at the election of the Seller be reduced to 48 hours) after dispatch of a written notice requiring payment and/or delivery of the guarantee(s) and/or requiring such breach to be remedied, the Seller shall be entitled without prejudice to any other rights of the Seller in law or in terms of this agreement including the right to claim interest.
- 9.1.1 to claim immediate payment of the purchase price or the balance of the purchase price as the case may be, together with all interest and other moneys which may then be outstanding, all of which shall immediately come due and payable, or
- 9.1.2 to cancel this agreement without further notice in which event the Purchaser shall automatically forfeit and the Seller shall be entitled by way of rouwkoop and/or rental and/or a genuine pre-estimate of damages for breach of contract, to retain all moneys then having been paid by the Purchaser under this agreement, or
- 9.1.3 to cancel this agreement without further notice and to claim damages, if any, in lieu of or in addition to such forfeiture, in which event the Seller shall be entitled to retain any moneys paid by the Purchaser pending determination of the amount of the damages by agreement, by order of court, or otherwise.
- 9.2 Should this agreement be cancelled in terms of 9.1.2 or 9.1.3 the Purchaser shall forthwith give up possession of and vacate the property and shall cease to have any rights under this agreement and the Seller shall immediately be entitled to resell the property.
- 9.3 The Purchaser shall be liable for all and any costs, including attorney and own client costs, collection commission or tracing agents fees, incurred by the Seller arising out of or in connection with any breach by the Purchaser of any of the provisions of this agreement, or any other matter relating to this agreement.
- 9.4 No indulgence granted by the Seller shall constitute an estoppel or a waiver of any of the Seller's rights under this agreement. Accordingly the Seller shall not be precluded, as a consequence of having granted such indulgence, from exercising all or any right against the Purchaser which may have arisen in the past or which may arise in the future.

10. **NOMINATION OF THIRD PARTY**

- 10.1 The Purchaser shall have the right to nominate a third party in terms of this agreement including the right to nominate an existing company, close corporation or trust on condition that such nomination be made in writing and accepted by the nominee to the satisfaction of the Seller, within 30 days of signature hereof.
- 10.2 Should the Purchaser make a nomination in terms hereof, then:
- 10.2.1 all reference to the Purchaser in this agreement shall be deemed to be a reference to the Purchaser's nominee aforesaid; and

10.2.2 all the obligations of the Purchaser's nominee in terms hereof shall be the joint and several obligations of the Purchaser and such nominee, and the Purchaser hereby binds himself as surety and co-principal debtor in *solidum*, under renunciation of the benefits of division, excussion and cession of action, for the due and proper performance by the said nominee of all the obligations of the Purchaser under and pursuant to:

10.2.1.1 this agreement, or

10.2.1.2 any cancellation pursuant to this agreement, or

10.2.1.3 section 35 of the Insolvency Act, No, 24 of 1936, as amended, pursuant to the abandonment by a trustee or liquidator or cancellation by a court of this agreement, in the event of the said nominee's estate being sequestrated or the nominee company, close corporation or trust being wound up.

11. **COMPANY, CLOSE CORPORATION OR TRUST ALREADY FORMED**

If this agreement is signed by a person ("the signatory") acting or purporting to act for and on behalf of an existing company, close corporation or trust as Purchaser, the signatory hereby warrants that the company, close corporation or trust as the case may be, is in existence and that the signatory is duly authorised to sign this agreement on its behalf. The signatory shall by his or her signature be bound in favour of the Seller as surety and co-principal debtor in *solidum*, under renunciation of the benefits of division, excussion and cession of action, for the due and proper performance by the said company or close corporation or trust of all the obligations of the Purchaser under and pursuant to:

11.1 this agreement; or

11.2 any cancellation pursuant to this agreement, or

11.3 section 35 of the Insolvency Act No. 24 of 196, as amended pursuant to the abandonment by a liquidator or cancellation by a court of this agreement, in the event of the said company, close corporation or trust being wound up.

12. **COMPANY OR CLOSE CORPORATION TO BE FORMED**

If the person ("the signatory") signing as Purchaser acts or purports to act as agent or trustee for a company or close corporation not yet incorporated:

12.1 the signatory personally undertakes to the Seller that the company or close corporation concerned will be incorporated and that the company or close corporation will have adopted or ratified this agreement without modification within 30 days after signature;

12.2 if the said company or close corporation is not so incorporated within the period mentioned in 14.1 or having been incorporated does not adopt or ratify this agreement within the period of 30 days aforesaid, then the signatory shall in his or her personal capacity be deemed to be the Purchaser in terms of this agreement;

12.3 if the said company or close corporation is incorporated and does not adopt or ratify this agreement as contemplated in 12.1 then the signatory will be bound in favour of the Seller as surety and co-principal debtor in *solidum* under renunciation of the benefits of division, excussion and cession of action, for the due and proper performance by the said company or close corporation of all obligations in terms of or arising in anyway out of:

12.3.1 this agreement; or

12.3.2 any cancellation pursuant to this agreement, or

12.3.3 section 35 of the Insolvency Act No. 24 of 1936, as amended, pursuant to the abandonment by a liquidator or cancellation by a court of this agreement, in the event that the said company or close corporation is wound up.

13. **AGENT'S COMMISSION**

Agents commission in the amount of N\$ _____ [VAT INCLUDED] will be paid by the Seller to the Agent: _____

which commission shall be deemed to have been agreed upon on the date of signature of this Agreement by both parties and shall be payable by the Conveyancers, DR. WEDER, KAUTA & HOVEKA INC. to the Estate Agent from the proceeds of the purchase price upon the date of registration of transfer of the property into the name of the Purchaser.

14. **CESSION**

14.1 Prior to transfer, the Purchaser shall not be entitled to sell the property or to assign or in any other way to deal with or alienate or transfer the Purchaser's rights or obligations under this agreement without the prior written consent of the Seller, which shall not be unreasonably withheld.

14.2 Such consent shall not in any way release the Purchaser from any obligations under this agreement. Where consent is given to an assignment, the Purchaser, by his or her signature hereto shall become bound as surety and co-principal debtor in *solidum* for the due and proper performance by the assignee of all the assignee's obligations hereunder with effect from the date on which consent to such assignment is given up until the date of registration of transfer of the property into the name of the assignee.

15. **DOMICILIUM AND NOTICES**

15.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties hereby choose their respective *domicilium citandi et executandi* ("domicilium") at the address stipulated on page 1 hereof,

15.2 A party may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic of Namibia and consists of, or includes, a physical address at which process can be served or any notice given.

15.3 All notices shall be in writing and sent by registered post or delivered by hand or sent by telefax to the domicilium chosen by the party concerned, and shall if posted be deemed to have been duly delivered 7 days after the day on which such notice was posted. If delivered by hand notice shall be deemed to have been delivered on the date of delivery. If sent by telefax the notice shall be deemed to have been received on the same day of transmission.

16. **JURISDICTION**

For purpose of all or any proceedings hereunder the parties hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over the person of the defendant in terms of Section 28 of the Magistrate's Court Act 1944, as amended, notwithstanding that such proceedings are otherwise beyond its

jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the court pursuant to Section 45 of the Magistrate's Court Act, , provided nevertheless that the Seller shall have the right at its sole option and discretion to institute proceedings in any other court of competent jurisdiction.

17. **JOINT AND SEVERAL LIABILITY**

Should there be more than one Purchaser, the Purchasers shall be liable jointly and severally and in *solidum* for the payments of all moneys hereunder and for the carrying out of all the terms of this contract,

18. **WHOLE CONTRACT**

This agreement constitutes the entire contract between the parties, and the parties shall not be bound by any representations, terms, conditions or warranties not contained in this agreement. The Purchaser warrants that the Purchaser was not induced into entering into this contract by any warranty or representation not contained herein.

19. **VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or canceling this agreement shall be effective unless reduced to writing and signed by or on behalf of both parties.

20. **SINGULAR AND PLURAL**

Any reference in this agreement to the singular shall include the plural and *vice versa*, and any reference to any one of the genders shall include the other genders

21. **SPECIAL CONDITIONS**

That the Purchaser obtains a loan from a financial institution for the full purchase price within **21 days** from date of signature hereof. The Purchaser hereby undertakes to apply immediately for such loan and to sign all documents necessary therefore.
